274 Fed. 160 (2d Cir. 1921), *aff'd*, 260 U. S. 711 (1923)], or forcibly abducted from a foreign or domestic place of refuge. *Ker* v. *Illinois*, 119 U. S. 436 (1886); *Mahon* v. *Justice*, 127 U. S. 700 (1888); *United States* v. *Toombs*, 67 F. 2d 744 (5th Cir. 1933); *United States* v. *Unverzagt*, 299 Fed. 1015 (D. W. D. Wash. 1924), *aff'd*, 5 F. 2d 492 (9th Cir.), *cert. denied*, 269 U. S. 566 (1925); *United States* v. *Insull*, 8 F. Supp. 311 (D. N. D. Ill. 1934); *Ex parte Lopez*, 6 F. Supp. 342 (D. S. D. Tex. 1934; see *Gillars* v. *United States*, 182 F. 2d 962, 972 (D. C. Cir. 1950); *Chandler* v. *United States*, 171 F. 2d 921 (1st Cir. 1948), *cert. denied*, 336 U. S. 918 (1949).

And recently—since Sobell's original appeal—the Supreme Court has in the broadest possible terms held that the power of a court to try a person accused of crime is not impaired by his having been brought before the court by forcible abduction and reaffirmed its holding in *Ker* v. *Illinois, supra. Frisbie* v. *Collins*, 342 U. S. 519 (1952). This is what the Court said:

> "This Court has never departed from the rule announced in *Ker* v. *Illinois*, 119 U. S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.' No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will."
>
> 342 U. S. at p. 522.

This case provides no exception

There has been one exception over the years to the sweeping general rule that the federal courts do not concern themselves with how the defendant comes before it. When a defendant actually goes through a formal extradition treaty and the United States obtains extradition on one ground and then the defendant is tried on another. *E. g. United States* v. *Rauscher, supra; Cosgrove* v. *Winney*, 174 U. S. 64 (1899).

No extradition proceeding

But, as the Supreme Court said in *Ker* v. *Illinois*, decided on the same day as *Rauscher* and written by the same Justice, the exception is made because the defendant has gone through a proceeding and is "clothed" with the rights of that proceeding and because the United States cannot be allowed to perpetrate a fraud on another nation with impunity—and not because a treaty has been violated. 119 U. S. at p. 443. Where there has been no formal extradition proceeding and the defendant is abducted by federal officials in spite of the existence of a treaty, the Supreme Court and the federal courts have held that the defendant is not "clothed" with any right and must face his accusers. *Ker* v. *Illinois, supra*, at p. 443; *United States* v. *Unverzagt, supra; Chandler* v. *United States, supra; United States* v. *Insull, supra; Gillars* v. *United States, supra; Ex parte Lopez, supra;* see *Ex parte Scott*, 9 B. & C. 446 (King's Bench 1829).

Absent the proceedings, the cause, if any, is between nation and nation—not between the defendant and the nation which has taken him. For extradition treaties are made between nations. They confer rights on nations to secure fugitives where as a matter of general international law they could only ask as a favor. They impose duties on nations where otherwise they would have complete discretion. 1 *Moore on Extradition* §§186-8 (1891); *Ker* v. *Illinois, supra; Factor* v. *Laubenheimer,* 290 U. S. 276, 287 (1933). Now, Mexico has not asked for Sobell back. The most even Sobell will say is that the Washington Embassy of Mexican Government, "upon information and belief, made representations in the matter to the United States Government." (¶80th, S. Petition No. 1 p. 38.) Sobell's amazing untold divining power fails to discover what those "representations" were.

No treaty violated

Moreover, there is no treaty violation here. Mexico could not have Sobell back, even if she wanted him.

Neither the Extradition Treaty between the United States and Mexico (31 Stat. 1818-9), nor any similar extradition treaty, pretends to "occupy the field", so that an "abduction" would automatically violate its provisions. Extradition treaties themselves do not even pretend to "occupy the field" on the offenses which are enumerated in them. Countries are still privileged to expel any way they see fit; there is just a right in one state to demand the fugitives from another and no more. And forceful seizure does not violate an extradition treaty. This has been the pronouncement of the American Courts. *Ker* v. *Illinois; Chandler* v. *United States; United States* v. *Unverzagt; United States* v. *Insull; Gillars* v. *United States,* all *supra.* It was the holding of the Permanent Court of

Arbitration in the *Savarkar,* reported in *Scott, Hague Court Reports* p. 275 (1916). All the leading text writers agree. 1 *Moore on Extradition* § 97 (1891) (explaining *Ker* v. *Illinois*); 4 *Moore, Digest of International Law* § 603 (1906); 1 *Hyde, International Law,* p. 581 (1922); 1 *Oppenheim, International Law* § 326 (8th Ed. by Lauterpacht, 1955); *Wheaton, International Law* p. 210 (6th ed. by Keith, 1929); see also *Hawley, International Law* p. 14 (1893).

The holdings of both *Ker* v. *Illinois* and *Savarkar* settle this question of treaty violation beyond cavil.

Frederick Ker was kidnapped from Peru by one Julian, who had been authorized by the President of the United States to receive Ker from the Peruvian authorities upon his extradition, and was his "agent". No demand for extradition, however, was ever presented to the Peruvian Government and Ker was not extradited. The Supreme Court affirmed Ker's conviction for larcency by the Illinois courts, it rejected his contention that the extradition treaty was violated and that the treaty gave him a right that he should only be forcibly removed from Peru in accordance with the provisions of the treaty.

Here is what the Supreme Court said in *Ker* v. *Illinois* about a Treaty nearly identical to the Mexican-United States Extradition Treaty[7]:

> "There is no language in this treaty, or in any other treaty made by this country on the subject of extra-

[7] The Treaty of Extradition between the United States and Mexico was signed in 1899, only thirteen years after the *Ker* decision. 31 Stat. 1818 (1899). Additional extraditable offenses were added by supplementary conventions. 44 Stat. 2409 (1926); 55 Stat. 1133 (1941). The introductory language of Article II of the treaty with Mexico, which Sobell contends "limits the criminal jurisdiction of the contracting parties" to the enumer-

dition, of which we are aware, which says in terms that a party fleeing from the United States to escape punishment for crime becomes thereby entitled to an asylum in the country to which he has fled; indeed, the absurdity of such a proposition would at once prevent the making of a treaty of that kind."

119 U. S. at p. 449.

In the *Savarkar* case a British subject was being conveyed by ship to India to stand trial for high treason and murder. While the ship was in a French port Savarkar escaped. French police arrested him ashore and without any formalities escorted him back to the vessel, assisted by some British sailors. The Government of France then demanded that Britain return Savarkar and requested his extradition in the manner specified by treaty. On Britain's refusal, the case was submitted to the Permanent Court of Arbitration. The Court held that there was no obligation placed by treaty or international law on Britain to restore Savarkar on account of the irregularity of the action of the French police and British sailors.

Sobell's case is *a fortiori* within the rule of *Ker* v. *Illinois* and *Savarkar* because espionage is not even one of the crimes listed in the treaty with Mexico. 31 Stat. 1818-9.

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ated offenses, is strikingly similar to Article II of the treaty with Peru, which the Supreme Court construed in the *Ker* case.

"Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of any of the following crimes or offenses: [listing the offenses]." Treaty with Mexico, 31 Stat. 1818-9.

"Persons shall be so delivered up who shall be charged, according to the provisions of this treaty, with any of the following crimes, whether as principals, necessaries, or accomplices, to wit: [listing the offenses]." Treaty with Peru, 18 Stat. 1919-20.

Sobell has no valid answer

Sobell's answer to all this is to fancy that he sees "distinctions" between his case and *Ker*.

First, he observes that *Ker* arose on review of a decision of a state court, and concludes that it is inapplicable to federal prosecutions and federal activity. (S. brief No. 2, p. 51.) That argument neglects that the construction of a treaty by the Supreme Court is the law of the land, governing equally in State courts and federal courts and that Ker was "kidnapped" by an agent of the President of the United States. Moreover, the United States Courts of Appeals and District Courts have refused to recognize any distinction in this field between the acts of federal and state officials. *United States* v. *Toombs; United States* v. *Unverzagt; United States* v. *Insull; Ex parte Lopez;* see *Gillars* v. *United States; Chandler* v. *United States;* all cited *supra.*

Second, Sobell says that *Ker* involved a claim of denial of "due process" which is not raised here. He apparently abandons the contention made below that the treaty violation resulted in a denial of due process. (S. App. p. 86.) Neither his argument nor his abandonment serves to dispose of *Ker's* express holding on the construction of extradition treaties.

Third, Sobell says *Ker* raised simply a claim to a personal right to asylum; while Sobell is raising a claim of treaty violation. Ker's claim to a right of asylum was, however, based upon the contention that the extradition treaty created in him a right that he should only be forcibly removed from Peru in accordance with the provisions of the extradition treaty. 119 U. S. at p. 441. Sobell's contention here is the same.

Fourth, Sobell urges that in *Ker* the Chilean military occupation force was in control of Lima and consented to the removal of the fugitive; thus, he would construe the *Ker* decision to hold that an extradition treaty is violated by forcible removal of a fugitive "in the absence of assent by the asylum state." (S. brief No. 2, p. 52.) But the occupation is nowhere even mentioned by the Supreme Court. Assent is not the rationale of the court. On the contrary: as far as the Supreme Court was concerned, the removal of Ker was, with respect to the Government of Peru, an "unauthorized seizure within its territory." 119 U. S. at p. 444.

Finally, Sobell says that *Ker* is inapplicable because in that case the United States Government had nothing to do with the "kidnapping". He says, "The removal was by a private party without governmental warrant." These are just not the facts. Moreover, the grounds for decision given by the Supreme Court were that Ker had not been "clothed" with the right of a proceeding and a treaty was not violated by forcible removal of the fugitive. The issue of who did the removing, thus, did not matter; the bases for the decision were much more sweeping.

Here, too, Sobell resorts to citing *Cook* v. *United States*—which, however, was not a criminal case, did not involve the interpretation of an extradition treaty, and dealt with a violation of limitation specifically put on a federal statute by treaty.

In sum

Sobell's most extravagant claims at best can tally only to a violation of some sort of internal law of Mexico or irregularity akin to the one in *Savarkar*, and

this does not help Sobell: time after time, the courts have said that neither the violation of some general rule of international law nor the breaking of an internal law of another nation by United States officials defeats the jurisdiction of American courts over criminal defendants. *Cook* v. *United States*, states that rule! 288 U. S. at p. 122. See also *The Richmond, supra* at p. 103; *The Merino, supra; United States* v. *Unverzagt, supra; United States* v. *Insull, supra.*

There is nothing in the Constitution or the law of nations which requires this Court to permit Morton Sobell to escape justice because he was brought to trial against his will.

POINT 6

The "facts" of any worth in Sobell's petitions only establish that he was forcefully ejected by Mexican Government officials—an act which does not violate international law and which this Court cannot question.

When the allegations of "facts" possibly within the knowledge of Sobell are weeded out from the conclusions and the unattributed hearsay of all sorts, all Sobell has laid out is a story of Mexican Secret Police ejecting him unceremoniously from Mexico into the waiting arms of the F. B. I., who knew he was coming. See pp. 12-6, *supra.*

Sobell does not even make a prima facie showing in his petitions that responsible officials of the "Mexican Government" were ignorant and did not approve of his ejection from Mexico. Indeed, the inference from "facts"

which Sobell can truly report—for examples, his trip to Police Headquarters and the ease with which he crossed the Mexican border—is to the contrary. All Sobell can say is that one man in Mexico did not find a record at Nuevo Laredo of Sobell being "officially deported by the Secretariat of Gobernacion through [Nuevo Laredo]." (Exh. 12 to S. Petition No. 1.) The Secretariat at the home office of Gobernacion even disavows "responsibility" that the person who reported the lack of records was an official of the Mexican Government. (Exh. 13 to S. Petition No. 1.)

There is just no question as a matter of international law that the Mexican Government, acting through whatever agents it wants, could forcefully eject Sobell. Extradition treaties do not hamper a state in getting rid of its undesirables in whatever way they want. (See pp. 48-50, *supra.*) So well-established is a government's right to use force if it chooses to oust aliens, that the right has earned a label—"reconduction" or *"droit de renvoi."* There is even a second half to the "reconduction" right; the alien's homeland must take him. Lauterpacht explains the full doctrine:

> "In some states destitute aliens, foreign vagabonds, suspicious aliens without papers of legitimation, alien criminals who have served their punishment, and the like, are without any formalities, arrested by the police and reconducted to the frontier. But although such reconduction, often called droit de renvoi, is materially not much different from expulsion, it nevertheless differs much from it in form, since expulsion is an order to leave the country, whereas reconduction is forcible conveying away foreigners. The home state of such reconducted aliens has the duty to receive them, since, as has been noted, a state cannot refuse to receive such of its subjects as are expelled from abroad."
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> 1 Oppenheim, *International Law,* § 326 (8th Ed. by Lauterpacht, 1955).

Far from being a violation of international law or a hostile act, the "reconduction" of Sobell by the Mexican Police in alleged "cooperation" with the F. B. I. would have been an act of "friendliness".

> "Two forms of removal may be distinguished; formal orders of expulsion which call on the person concerned to leave the country, on pain of forcible removal; and forcible removal, whether in default of departure of one against whom an expulsion order has been issued, or by judcial order, or as an executive act, foreign police often thus putting across a foreign frontier vagabonds, or criminals, or aliens without proper identification papers or authority to reside. Expulsion or reconduction sometimes is a distinctly friendly act, for some states use this means of helping foreign police to secure criminals without the burden of extradition proceedings * * *."
>
> Wheaton, *International Law,* p. 210 (6th ed. by Keith, 1929).

The crime committed by Sobell before he had fled the United States—that of conspiring to give military secrets to the Soviet Union—was incidentally one particularly appropriate for the "cooperative" action of the police agencies of Mexico and the United States in view of the common security interests of Western Hemisphere nations and the long period of good relations between the two states. See 60 Stat. 1831, 1847; 2 U. S. T. 2394; T. I. A. S. 2361.

Whether or not Mexican Government officials should not have ejected Sobell because of Mexican internal law is of no concern to out-siders. Their acts are absolutely unreviewable in this foreign forum. See *Bernstein* v. *Van Heyghen Frères Société Anonyme,* 163 F. 2d 246 (2d Cir.), *cert. denied,* 332 U. S. 772 (1947); *United States* v. *Belmont,* 301 U. S. 324 (1937).

Conclusion

Morton Sobell was tried for his traitorous crime by a jury under the fairest procedures for obtaining justice in this world. He was represented by counsel of his choice. He had every opportunity to cross-examine witnesses who testified against him. He had every opportunity to introduce evidence in his own behalf, but did not. Each and every one of twelve fair and impartial jurors pronounced him guilty beyond a reasonable doubt. Their verdict was that he had participated in a conspiracy to furnish the Soviet Union with United States military secrets.

Sobell has challenged the validity of his conviction time and time again; his attacks each time reduce to a cipher and less. Each such challenge has served only to re-enforce the verdict of his guilt and the fairness of the procedure by which that verdict was reached.

Sobell's latest petitions, the files, and records in this case conclusively show that he is entitled to no relief. His charges of "perjury", "misrepresentation" and "suppression" of evidence are shown by the light of the record to be so flimsy as to raise a question whether the charges have been made in good faith. Nor is there any merit

whatsoever in his latest attempt to deny the authority of the United States of America to try him for his betrayal of his country.

Morton Sobell has received justice.

The decision of the District Court should be affirmed.

Respectfully submitted,

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50 U. S. C. §§ 32, 34:

§ 32. **Unlawfully disclosing information affecting national defense.**

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years; Provided, That whoever shall violate the provisions of this subsection in time of war shall be punished by death or by imprisonment for not more than thirty years * * *.

§ 34. **Conspiracy to violate Sections 32 or 33.**

If two or more persons conspire to violate the provisions of Sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy * * *.

18 U. S. C. § 3231:

§ 3231. **District courts.**

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

The Facts of the Case of Espionage

The evidence against Sobell at trial was devastating. It was of two sorts. First, his long-time friend, Max Elitcher, testified to Sobell's participation in the conspiracy to do espionage for the Soviet Union. Second, there was uncontroverted evidence of his "flight" to avoid justice.

Sobell's participation in a Soviet spy ring: a recruiter and passer of secrets

Elitcher's testimony was absolutely damning.

Here was his story: Sobell roomed with Elitcher in 1939, and both worked at the Bureau of Ordnance of the Navy Department in Washington, D. C. (264, 296-7.)[2] Sobell was the chairman of a local Communist Party cell and recruited Elitcher into the organization. (264-8, 299-305.) Sobell remained in this cell until he left Washington in September of 1941. (297, 305, 312.) Sobell continually instructed the members of the group to support the cause of Soviet Russia. (299-305.)

One Julius Rosenberg, a college friend of Elitcher, came to Elitcher's home in June of 1944. At this time Elitcher

[2] Naked page references are to the typewritten transcript of the trial minutes.

was employed in the Fire Control Section of the Bureau of Ordnance working on computers for anti-aircraft fire control. Information on the computers was "classified." Rosenberg stated that the war effort of the Soviet Union was being impeded because some interests in the United States were denying it the benefit of a good deal of military information. (270-1.) To counteract this, he explained, many people were furnishing the Soviet Union with classified military information. He asked Elitcher to obtain information about military equipment for the Soviet Union—plans, blueprints or anything which might be of value. (270-1.) He said that documents could be taken to New York to him, and he would photograph them. He assured Elitcher that this would be done in a very safe manner: documents could be brought to him at night, processed immediately, and returned before they were missed. (275.) Rosenberg confided to Elitcher that Sobell was among those who were giving him military information for transmission to Russia. (315-7.)

A few months later, Elitcher told Sobell that Rosenberg had visited him and had requested him to contribute military information to Russia. Elitcher said that Rosenberg informed him that Sobell was among the contributors. (320.) At this point Sobell declared that Rosenberg "should not have mentioned my name. He should not have told you that." (320-1.)

After 1945, Morton Sobell persisted in attempts to secure classified information for Rosenberg and the Soviet Union.

In the course of his Navy Department work, Elitcher occasionally visited the General Electric plant in Schenectady, New York. There Sobell was working on highly

secret and sensitive military research projects. (329.) Sobell inquired about the work Elitcher was doing, and Elitcher told Sobell that he was in charge of work on a new fire control system. Sobell asked if Elitcher could obtain any reports on the system. Elitcher replied that only some reports of little importance were available at the time. Sobell asked if an ordnance pamphlet describing the entire system were available. Elitcher replied that the pamphlet had not yet been completed. (329-33.)

On one visit in 1946, Sobell again asked about the status of the ordnance pamphlet. (334.) Upon being informed that the pamphlet was not yet completed, Sobell suggested that Elitcher see Julius Rosenberg about it. (335.)

Elitcher followed Sobell's suggestion and saw Rosenberg in New York City. He told Rosenberg of his work on the new fire control system. Rosenberg interrupted and said there was a leak in his espionage ring which was causing some difficulty and that it was necessary to take some precautions. So, he told Elitcher, it would be best for them not to meet until further notice. (338-40.)

In late 1947, Sobell shifted his employment from General Electric to the Reeves Instrument Company in New York City. (342.) He continued to work on classified military projects and supervised the work of others. (342, 494-5.) Reeves Instrument Company was doing military work for the Armed Forces on fire control systems and radar. (281.) Sobell was in charge of a plotting board. (343.)

At about this time Sobell talked to Elitcher about recruiting young scientists for the Rosenberg-Soviet spy ring. Sobell asked Elitcher whether he knew of any en-

gineering students or engineering graduates "who were progressive, who would be safe to approach on this question of espionage, of getting materials." Elitcher replied that he did not, but that if somebody came along he would let Sobell know. (276-7, 279, 344.)

Elitcher then informed Sobell that he was having difficulty with his wife. Sobell became very concerned and asked Elitcher whether his wife knew anything about "this espionage business." (344.) Elitcher said he thought she might know something but that he was not sure. Sobell replied, "Well, that isn't good." (345.)

At the end of July or the beginning of August of 1948, Elitcher drove up to New York from Washington in order to look for a place to live and went to Sobell's house. On arrival, he told Sobell that he thought he had been followed by one or two cars from Washington to New York. At this point, Sobell became very angry and said that Elitcher should not have come to the house under those circumstances. Sobell told Elitcher that he should leave the house and find some other place to stay overnight. Sobell, however, finally agreed that Elitcher could stay. (352-3.)

Sobell then said that he had some valuable information in the house, something that he should have given to Julius Rosenberg some time before, but had not; he said that it was too valuable to be destroyed and yet too dangerous to keep around. Sobell said he wanted to deliver it to Rosenberg that night. Elitcher told Sobell that it was a dangerous and silly thing to do. But Sobell insisted and asked Elitcher to go along. After some argument, Elitcher agreed to go. Sobell took with him a 35 millimeter can of film. (354.) Sobell delivered the can to Julius Rosenberg. (354-5.)

In October 1948, Elitcher, too, went to work for the Reeves Instrument Company. Rosenberg and Sobell had tried to persuade him to stay at the Navy Department and argued that the Soviet Union needed somebody there for its espionage business. Elitcher made the move, nonetheless. (346-9.)

Sometime after October of 1948, Sobell again asked Elitcher for the names of persons who might be recruited for espionage work, and added that because of some increased security measures, it would be best to find engineering students who were not involved in any "progressive" activity so that they would not be suspected. (345-6.)

The trial court charged the jury that if they did not believe Elitcher, Sobell had to be acquitted. (2353.)

Flight: Rosenberg's pattern, Sobell's aliases, and Sobell's Forced Return

The evidence of flight sealed the story against Sobell.

In 1950, law enforcement authorities were closing in on the Rosenberg spy ring. Rosenberg knew this and outlined a pattern of flight for David Greenglass and his wife, who have confessed to stealing atom-bomb information and testified at trial. The scheme called for them to go to Mexico and then, via the seaport of Vera Cruz, to Europe and ultimately to the Soviet Union. (145-50, 1019.) Shortly after David Greenglass and Harry Gold, another spy for Rosenberg and Russia, were apprehended, Sobell began to follow the pattern of flight outlined by Rosenberg to the Greenglasses. (251-2.)

With his wife and two children, Sobell went to Mexico City in the Spring of 1950. (1348-50.)

William Danziger, also an old friend of Sobell's, testified that he had received letters from Mexico in 1950 and that return addresses on the envelopes bore the legend of "M. Sowell" on one and "M. Levitov" on another. He said that he had opened the letters and found notes from Morton Sobell requesting that enclosed letters be forwarded to other members of the Sobell family. Sobell also requested Danziger to tell one relative that Sobell could be reached under the name of "M. Sowell" at a specified street address in Mexico. Sobell's friend, Danziger, was not cross-examined. (1245-58.)

Sobell also did not challenge witnesses and documents which established that he traveled to Vera Cruz and Tampico while down in Mexico—under bogus names. (1356-73.)

Since the trial, Sobell has acknowledged not only his use of aliases in Mexico, but also that he made inquiries about passage to Europe and South America for all his family. In an affidavit, dated September 23, 1953, filed with this Court in opposition to the motion of the United States Attorney for affirmance of the decision of the District Court denying Sobell relief under his second motion under Section 2255, Sobell admitted the use of fictitious names. He stated, "I left the family in the Mexico City apartment and travelled around Mexico to Vera Cruz and Tampico, even using false names and inquiring about passage to Europe and South America for all of us." (S. App. p. 49.)

Sobell did not return to the United States of his own free will. Sobell was deported from Mexico and brought across the United States border at Laredo, Texas, by Mexican police on August 18, 1950. This was established

by Immigration Inspector James S. Huggins, who had filled out an immigration manifest card on Sobell's return. Inspector Huggins testified that the card was made out in the regular course of his duties, that he obtained Sobell's signature by telling him that all "deportees" must sign such cards, and that he had obtained most of the information on the card from Sobell himself. Huggins explained that he made that notation "Deported from Mexico" on the card solely on the basis of his personal observation that Sobell had been brought across the border by Mexican officials. (1520-34.)

The sum

There can be no doubt on all the testimony—not a single doubt at all—that Sobell was guilty of betraying military secrets of his country to the Soviet Union and that he was in cahoots with Julius Rosenberg and was part of his Soviet spy-ring.

The Present Petitions: What They Charge

The Government in this brief meets the contentions advanced in the petitions in the two most recent Section 2255 motions of Morton Sobell and in his two briefs on appeal from the denial of those motions.[3]

The major portion of both of Sobell's latest motions concern themselves with allegations by Sobell that he was "kidnapped" in Mexico and "illegally" forced to return for trial in the United States against his will.

[3] The appeal numbers on the two motions are 24,299 and 24,300. Sobell's petition in No. 24,299 is here called "S. Petition No. 1"; his petition in No. 24,300 is called "S. Petition No. 2".
His briefs in Nos. 24,299 and 24,300 are called "S. brief No. 1" and "S. brief No. 2", respectively.

In the first of his latest petitions, Sobell charges that the Government (a) knowingly used "false and perjurious testimony in evidence" about his forced return, (b) "made false representations to the court about his forced return" and flight, and (c) "suppressed evidence" on his forced return.

In the second of his latest motions, Sobell argues that his "kidnapping" and ejection from Mexico violated an extradition treaty and deprived the Courts of the United States of America of "total jurisdiction" over himself and his trial.

The Government will show in this brief that both of Sobell's petitions are legally insufficient and that the record conclusively demonstrates that Sobell is entitled to no relief. It will show that the District Court's dismissal of the two supposititious motions was proper.

Sobell's Technique of Telling the Story of His "Abduction"

The statements in the petitions

Sobell's two petitions, from which he shouts all sorts of accusations of "abduction", are composed of five types of statements:

1. statements of "facts" which Sobell could conceivably know from his own experiences and from exhibited records;
2. statements of "facts", which Sobell could not possibly know from his own knowledge, which he reports without giving his source, but in which he gives names of people;

3. statements of "facts" which Sobell reports also from hearsay, leaves unattributed and mentions no names;
4. unadulterated blanket conclusions;
5. statements on the law of Mexico, of the United States, and of nations.

The statements falling into "facts" which Sobell could know from his own knowledge and from exhibits, tell only this story:

Sobell arrived with his family in Mexico on June 23, 1950. On the afternoon of August 16, 1950, Sobell was arrested by the Secret Police of the Federal District of Mexico—at least, by people who said that they were members of the Secret Police. The Police said they were arresting Sobell for bank robbery, assaulted him, and knocked him unconscious. His credentials were taken from him. Then he was bodily removed to Police Headquarters in Mexico City and remained in a room until 4 A. M. of August 17, 1950. Sobell and his family were driven—in separate cars on the next day and without a hearing of any kind—out of Mexico. Sobell was handed over to the F. B. I. agents who said that they were waiting for him. Sobell complained to an F. B. I. agent named Lewis and to the United States Immigration official, Huggins, that he was unlawfully abducted. Sobell was then put in jail in Texas and later sent to New York. (¶¶28th-36th, S. Petition No. 1, S. App. pp. 20-4.)

Sobell also heard an F. B. I. agent say, "I hated to do it this way, but it was the only way we could." (¶64th, S. Petition No. 1, S. App. p. 32.)

Sobell also saw the Mexican Police *en route* to the border make frequent telephone calls. (¶33rd, S. Petition

No. 1, S. App. p. 23.) A Mexican official at Nuevo Laredo reports that the files at the immigration post at Nuevo Laredo do not show that Sobell was officially deported by one agency of the Mexican Government from that frontier port. (Exh. 12 to S. Petition No. 1.)

From hearsay statements reported by Sobell without saying how he heard them, but which mention some names and titles of people, comes this story:

One Hector Rengel Obregon, Chancellor of the Mexican Consulate in Laredo, Texas, conducted an investigation of the Sobell "matter" at the request of "The Chief of Immigration in Nuevo Laredo, Mexico." Sr. Obregon went to United States immigration offices at Laredo, Texas. (¶¶40th-41st, S. Petition No. 1, S. App. p. 25.)

Sr. Obregon sent a report of his investigation to the Mexican Embassy in Washington, D. C. (¶80th, S. Petition No. 1, S. App. p. 38.) Sobell does not give the exact quotation; but Sr. Obregon expressed "concern and alarm" that the Sobell "matter had been handled without the knowledge and approval of the Mexican Government or its duly constituted authorities." (¶48th, S. Petition No. 1, S. App. p. 27.)

Also from hearsay, unsourced, but in which the names of people are mentioned, comes the tale that the Secret Police of Mexico twice interviewed one Senora Elizabeth Avila DeSota, Sobell's "domestic worker" in Mexico. The Secret Police advised Senora DeSoto in their second interview that they had "seized" Sobell and were going to search the old Sobell premises. At the second interview they supposedly told Sobell's "domestic worker" that they were "acting as agents and representatives of the United States Government." Again Sobell does not actually

quote this directly, but paraphrases. The Secret Police searched the old Sobell apartment and took things away. (¶56th, S. Petition No. 1, S. App. p. 29.)

From hearsay statements for which no source is given and which mention no names at all, Sobell gives these "facts":

On 3:00 P. M. of the day of the Sobell apprehension, a "United States Agent" interviewed "a woman" at Sobell's residence and told "the woman" that Sobell was wanted by the United States for kidnapping. At 6 P. M. that day the same "woman" was approached by a "woman", who came out of a taxi. The "woman" from the taxi found out Sobell's apartment number from the other "woman". A few hours later a "Mexican" in civilian clothes approached "one of the residents" of Sobell's apartment house, flashed a Secret Police badge and told this resident ("her") that Sobell was a criminal. (¶¶54th-55th, S. Petition No. 1, S. App. pp. 28-9.)

Also from unattributed hearsay where no names are mentioned, comes a report that on September 1950, the Mexican Department of Immigration advised its Nuevo Laredo, office that "steps had been taken to prevent such violations of laws in the future". (¶42nd, S. Petition No. 1, S. App. p. 25.) And the Mexican Embassy "made representations in the Sobell matter to the United States Government". (¶80th, S. Petition No. 1, S. App. p. 38.)

Then the petitions are jammed full of "conclusions"—undiluted, unsourced, unsupported by anything but Sobell's signature. Here are some examples:

The United States "planned" and participated in Sobell's seizure in Mexico City; the whole thing was done "without the knowledge or approval of the Mexican Gov-

ernment". (e. g., ¶¶47th, 73rd, S. Petition No. 1, S. App. pp. 27, 35.) Sobell's removal was not "in any way consented to by (the Mexican) Government". (¶17, Petition No. 2, S. App. p. 84.) The Mexican Police were "acting with and solely pursuant to the direction and control of the United States through its agents * * *." (¶14, S. Petition No. 2, S. App. p. 83.)

And, finally, there are all sorts of legal statements: treaty violations, statute breaking, etc.

The ever-expanding accusations

Sobell's technique of reporting his "abduction" in his petitions and argument is to become progressively more daring with his conclusions and more wild with his accusations.

For example, Sobell is quite mild in the beginning of the first petition on the story of "The Abduction from Mexico". He merely charges that "agents of the Department of Justice were parties to the illegal seizure and removal of petitioner to the United States". (¶27th, S. Petition No. 1, S. App. pp. 20-1.) Sobell also early in the petition says that "immigration authorities of the Government of Mexico were without knowledge and did not approve." (¶39th, Petition No. 1, S. App. p. 24.) But later in the same petition, the whole thing becomes "planned" by the United States Government and the entire "Government of Mexico" disapproves and was in ignorance of the abduction. (¶¶47th, 73rd, Petition No. 1, S. App. pp. 27, 35.)

Then, in the next paper submitted—a reply affidavit which was in the nature of argument—Sobell says without qualification, "the [Mexican] Government was in no respect a party to the unlawful seizure." (S. App. p. 68.) Sobell now reports that "these police were acting as agents of the United States." (S. App. p. 69.)

By the next petition Sobell makes the flat statement that the Mexican Secret Police were acting "without the knowledge or consent of the Government of Mexico." And the abduction was all "directed by" the United States.

Finally, in his brief to this Court, Sobell states that "the prosecution" through its agents "kidnapped him without the knowledge and consent of the Government of Mexico." He says also that the "Government of Mexico and its agencies did not legally or illegally oust appellant", and the Government of Mexico "advised the United States that it played no part in removing appellant." (S. brief No. 1, pp. 31-2. See also S. brief No. 2, pp. 2-3, 12, 16.) At another point Sobell without hedging at all says that Mexican police were privately "hired" by the prosecution. (S. brief No. 1, p. 34.)

Thus, does Sobell begin with a claim of United States participation and cooperation with the Mexican Secret Police without the knowledge of certain Mexican officials and ends with prosecution direction of "hired" agents without the consent and knowledge of the entire Mexican Government.

This Story of the "Abduction": A Twice-Told Tall Tale Preserved for the Contingency of a Conviction

Sobell's "facts" and almost all the conclusions and accusations were once before told to the District Court, this Court, and the Supreme Court of the United States.

On April 5, 1951—after the jury verdict against him—Sobell made a motion in arrest of judgment. Sobell's motion challenged the jurisdiction of the Court over what he called then his "person" because of his "unlawful abduction" from Mexico. (2403-25.)

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~~CONFIDENTIAL~~ cc: Mr. Lee
Liaison

SECRET

101-2483

BY COURIER SERVICE

Date: February 8, 1957 (Orig & 2)

To: Mr. E. Tomlin Bailey
Director
Office of Security
Department of State
515 22nd Street, N. W.
Washington, D. C.

CLASSIFIED BY: 3042 PWS
DECLASSIFY ON: OADR

From: John Edgar Hoover, Director
Federal Bureau of Investigation

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

Subject: MORTON SOBELL, with aliases
ESPIONAGE - R

In view of the fact that Luis Sanchez Ponton, Mexican attorney, is attempting to obtain permission to enter the United States to appear on behalf of Morton Sobell in his pending court action, there is set forth background information concerning Ponton. This information has been furnished by informants who have furnished reliable information in the past unless otherwise specified. (U)

Information has been received that Mexico City newspapers carried articles on February 4, 1957, to the effect that Mrs. Morton Sobell, wife of the subject, claimed that Luis Sanchez Ponton, Mexican attorney, had been refused permission to travel to the United States by the American Embassy in Mexico City. Mrs. Sobell claimed this refusal was based upon the fact that Ponton was scheduled to testify on behalf of her husband. She was apparently referring to the oral argument before the Circuit Court of Appeals, Second Circuit, of Sobell's appeal from the denials of his motions for a new trial by the District Court, Southern District of New York. It has been learned that Ponton visited the American Embassy, Mexico City, at 3 p.m. on February 1, 1957, and requested a visa for the purpose of visiting the United States to see an eye specialist and consult with a "colleague."

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Exempt from GDS Category 2 and 3
Date of Declassification Indefinite

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EX-126

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UPGRADED TO 10/20/75 WAB/WOF

~~CONFIDENTIAL~~

APPROPRIATE ACTION TAKEN
DATE 2-20-57

BY COURIER SVC.
17 FEB 8
COMM - FBI

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

Mr. E. Tomlin Bailey

He made no mention of the instant case. Due to derogatory information concerning him, Penton was informed by the visa officer that an investigation would have to be conducted before the visa was issued. Penton remarked it was not too important as he expected that the specialist would be coming to Mexico in the near future. (U)

Following is background information concerning Luis Sanchez Penton. (U)

Penton was born in Puebla, Puebla, Mexico, on August 5, 1899. In 1922 he was a professor at the National School of Jurisprudence, National University. In 1926 he was named as a member of the Reform Commission and sent to the United States. He also served a term as Consulting Attorney in the Treasury Department (Mexican) and was the Mexican delegate to the 7th Pan American Conference in Montevideo. He also had been a deputy to the 37th Legislature; Provisional Governor of Puebla; Secretary of Education 1940-1941, and Mexican Minister to Switzerland in 1945. He also was Mexican Ambassador to the Soviet Union in 1946. (~~S~~) U

[redacted] b1

[redacted] b1

The newspaper "Ultimas Noticias" for December 8, 1939, carried an article indicating that Diego Rivera, prominent artist, testified before the Dies Committee and named persons he believed were Stalinists in the Mexican Government. He furnished the name of Penton as one such person in the Department of Treasury and Public Credit. (~~S~~) U

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Mr. E. Tomlin Bailey

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[redacted] Referred CIA

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Mr. E. Tomlinson Bailey

The newspaper "El Popular" carried an advertisement on May 30, 1951, concerning the Month of Friendship between the people of Mexico and the people of USSR. This advertisement stated that a lecture would be given by Fenton on June 5, 1951.(U)

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Refer CIA

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( ) ~~CONFIDENTIAL~~ ( )

Mr. E. Tomlin Bailey

SECRET

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There is attached for your information a Photostat of an article which appeared in the "Daily Worker," east coast communist newspaper, for February 4, 1957, which contains information concerning the statements made by Mrs. Sobell.(U)

The above is furnished to you for your information.(U)

Enclosure

SECRET

~~CONFIDENTIAL~~

Office Memorandum • UNITED STATES GOVERNMENT

TO : L. V. Boardman 2-8-57 cc - Boardman
Belmont
Nichols
Lee

DATE: February 4, 1957

FROM : A. H. Belmont

SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3012RUT/CS

Subject 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 at Alcatraz. On 5-8-56 subject filed motion in District Court, Southern District of New York, requesting a new trial and a hearing. He contended he had been illegally deported from Mexico and the Government was aware of the fact and, therefore, the Government knowingly used perjured testimony to the effect that he was legally deported. On 5-25-56 he filed a second motion for a new trial requesting a hearing in which he claimed that he was not legally extradited and, therefore, the U.S. Government lacked jurisdiction to try him. On 6-20-56 Judge Irving R. Kaufman, District Court, Southern District of New York, denied both motions.

On 1-30-57 Assistant United States Attorney, Southern District of New York, furnished a copy of the Government's brief filed with the Circuit Court of Appeals, Second Circuit, in answer to the defendant's appeal to that court from the denial of the motion by the District Court.

The Government brief points out Sobell has not raised any issues of fact which warrant a hearing on his allegation of perjury since his petition supports the trial testimony on this point and that he deliberately withheld cross examination which would have raised the issue during the trial. Sobell alleges the Government used perjured testimony when INS Inspector James Huggins introduced into evidence Sobell's manifest card with the notation thereon "Deported from Mexico." Brief points out Huggins testified he wrote this on the card after observing Sobell being escorted to the border by Mexican officials and that no attempt was made during the trial to infer that Sobell was deported after extradition hearings.

RECORDED-87 101-2483-1366

Concerning Sobell's allegation that Government prosecutor misrepresented facts to the trial judge the brief points out that the prosecutor stated Sobell did not have a visa and was literally kicked out as a deportee. Brief points out these statements are true since Sobell traveled on a tourist card, not a visa and that ~~the prosecutor~~'s description of what happened to Sobell is crystal clear.

EX-120 3 FEB 12 1957

Regarding Sobell's allegation that the Government suppressed evidence such as his vaccination certificate, tourist ~~card and other~~ evidence which would have shown he was illegally deported, the brief points out Sobell was aware of all the facts which would prompt an inquiry before the trial and he chose not to initiate any action until after the trial. Further, there is no duty on the part of the Government

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to come forward with details of the alleged "abduction."

Sobell alleges the United States lost jurisdiction over his trial "ab initio" and "in total" due to his abduction. The brief points out that this claim is still Sobell claiming that he was improperly before the court and that this is a matter of personal jurisdiction which he waived by failing to raise it before and during his trial.

The brief points out that in no event would Sobell's forced return defeat his conviction since the rule in federal court, restated by the United States Supreme Court in 1952, is that it matters not how a criminal defendant is brought before a court.

The final point in the brief is that the Mexican Government could forcefully eject Sobell without violating any international law and if such ejection possibly violated any internal Mexican law, it is not reviewable in a United States court.

ACTION:

For your information.

AL BUREAU OF INVESTIGATION
S. DEPARTMENT OF JUSTICE
OMMUNICATIONS SECTION

FEB 6 1957

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	

WA 16 FROM NY 6 10-54PM

DIRECTOR URGENT

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042 auc/pls

Espi

MORTON SOBELL, WAS ESP-R. US APPELLATE COURT CONVENED TODAY TO HEAR SUBJECT-S APPEAL. WAS COMPOSED OF JUDGES MEDINA, CLARK, AND JOSEPH SMITH. SMITH IS A DISTRICT COURT JUDGE FROM CONNECTICUT. MARSHALL PERLIN, SUBJECT-S LAWYER, ADVISED THE COURT THAT HE WAS READY, BUT THAT DEFENSE ATTORNEY LUIS SANCHEZ PONTON UNABLE TO OBTAIN VISA. PERLIN REQUESTED RIGHT TO FILE THE REPLY BRIEF FOR PONTON. AUSA MAURICE MESSEM ADVISED COURT THAT PERLIN TELEPHONED HIM A WEEK AGO REQUESTING ONE WEEK-S EXTENSION, AS PONTON WAS BEING BROUGHT IN FROM MEXICO- THAT MESSEM AGREED TO EXTENSION, BUT THAT IN MONDAY FEBRUARY FOURTH ISSUE OF DAILY WORKER AN ARTICLE APPEARED REFLECTING THAT THE GOVERNMENT WAS WITHHOLDING A VISA FROM PONTON SO HE COULD NOT APPEAR AS COUNSEL FOR SUBJECT, AND THAT SUBJECT-S WIFE HAD SENT A TELEGRAM OF PROTEST TO THE DEPARTMENT OF JUSTICE. MESSEM STATED THAT WAS THE FIRST INFO HE HAD OF THE VISA APPLICATION BY PONTON - THAT THE DEPARTMENT MADE INQUIRY AND ASCERTAINED THAT PONTON HAD APPLIED FOR A VISA GIVING AS A REASON, [redacted] "TO VISIT HIS EYE DOCTOR IN THE US AND FOR PLEASURE" [redacted] - THAT HE MADE NO MENTION OF APPEARING AS COUNSEL FOR SUBJECT - THAT PONTON SAID HIS DOCTOR WOULD PROBABLY BE IN MEXICO SOON ANYWAY WHEN TOLD BY AMERICAN EMBASSY EMPLOYEES THAT HIS VISA WOULD HAVE TO BE PROCESSED - THAT PONTON VISA WAS NEVER DENIED AND THAT HE HAS NOT REAPPEARED SINCE OR MADE FURTHER INQUIRY CONCERNING HIS VISA. MESSEM REQUESTED CLARK TO PUT ARGUMENT OVER UNTIL MONDAY

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EX-120
6 FEB 12 1957

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FEBRUARY ELEVEN SO PONTON COULD APPEAR. JUDGE CLARK SAID MESSEM COULD NOT GUARANTEE THAT VISA WOULD BE GRANTED PONTON BY THAT DATE, AT WHICH TIME PERLIN DENIED MESSEM-S STATEMENT AND JUDGE CLARK STATED IT LOOKED LIKE PERLIN MORE INTERESTED IN PUBLICITY THAN IN GETTING THE CASE ARGUED. PERLIN INSISTED PONTON WOULD HAVE BEEN AVAILABLE IF HIS VISA WAS NOT DELAYED, AND READ TELEGRAM FROM PONTON TO THE EFFECT THAT HE TOLD EMBASSY HE WISHED TO ENTER US FOR [redacted] PROFESSIONAL REASONS [redacted]. JUDGE MEDINA ASKED PERLIN WHY PONTON DID NOT TELL EMBASSY HE WAS COMING AS SOBELL-S COUNSEL AND PERLIN SAID PONTON DID BY INDICATING HE WAS COMING FOR PROFESSIONAL REASON. MEDINA DID NOT AGREE. MESSEM INTERJECTED THAT GOVERNMENT WANTS PETITIONER TO HAVE EVERY AVAILABLE OPPORTUNITY TO SECURE COUNSEL OF HIS OWN CHOICE, SO THAT ANOTHER [redacted] TWO TWO FIVE FIVE [redacted] WILL NOT BE FILED ON THAT BASIS AND POINTED OUT THAT JUDGE LOMBARD WHO WAS ASSOCIATED WITH THE ORIGINAL TRIAL, IS SCHEDULED TO SIT NEXT WEEK, SO IT MIGHT BE NECESSARY TO SET ARGUMENT FOR FRIDAY FEBRUARY EIGHTH INSTEAD OF FEBRUARY ELEVENTH. JUDGE CLARK PUT HEARING OVER TO FRIDAY FEBRUARY EIGHTH. PERLIN ADVISED CLARK HE WOULD NEED FORTYFIVE MINUTES FOR ARGUMENT. CLARK STATED THIS SEEMED EXCESSIVE. PERLIN POINTED OUT HE HAD TWO SEPARATE BRIEFS AND CLARK TOLD HIM HE COULD HAVE FORTYFIVE MINUTES FOR BOTH. HEARING ON FEBRUARY EIGHTH WILL BE COVERED BY NYO AND Bureau BU ADVISED.

THIRD LINE FROM END 4 WRD SEEMED

KELLY

END ACK PLS

NY R 16 WA JG

MR. BELMONT AND SUPERVISOR [redacted]

DSC

1 - Mr. O'Connor

Assistant Attorney General
William F. Tompkins

February 11, 1957

Director, FBI

esa

BAY AREA COUNCIL OF SOBELL COMMITTEES
INTERNAL SECURITY - C

For your information, a confidential informant, who has furnished reliable information in the past, advised on February 4, 1957, that members of the above-captioned committee, which is affiliated with the National Committee to Secure Justice in the Rosenberg Case, have prepared individual telegrams to be sent to the Attorney General, the State Department and various United States Senators and Representatives. Contents of these telegrams urge the recipient to take action to grant permission for Dr. Luis Sanchez Ponton to enter the United States to assist the attorneys for Morton Sobell in his current legal efforts to secure a new trial.

Background information concerning Ponton was furnished you by my memorandum dated February 6, 1957, captioned "Morton Sobell, with aliases, Espionage - R."

The above information has been furnished the Department of State.

100-387835

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

1 - Bufile (101-2483) (Morton Sobell)

NOTE ON YELLOW:

Above was received in San Francisco airtel 2-4-57 captioned as above.

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YELLOW DUPLICATE
FEB 11 1957
MAILED

66 FEB 26 1957

ORIGINAL FILED IN 100-387835

~~CONFIDENTIAL~~ (C) Belmont Lee

Assistant Attorney General (orig. & 1) February 12, 1957
William F. Tompkins

SECRET

Director, FBI

MORTON SOBELL, with aliases
ESPIONAGE - R

Reference is made to our letter of February 6, 1957, concerning Luis Sanchez Ponton, Mexican attorney who reportedly was to participate in the oral argument of Sobell's appeal to the Circuit Court of Appeals from the denial of his motions for a new trial by the District Court. (C)

[redacted]

The Mexico City newspaper "Ultimas Noticias" carried on February 7, 1957, an open letter to the President of Mexico by Sanchez Ponton in which he alleges Sobell was thrown out of Mexico by the police of a foreign nation to the discredit of Mexico's national dignity. The letter also claims the Mexican constitution, the Mexican immigration laws and the Mexican-North American Extradition Treaty of 1899 were violated by the deportation of Sobell without regard for Mexican authorities. (C)

On the morning of February 7, 1957, Sanchez Ponton was offered a visa at the American Embassy for the purpose of attending the Sobell hearing in New York City. He advised that he

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Exempt from GDS, Category 1, 2 AND 3
Date of Declassification Indefinite

FEB 20 1957

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DECLASSIFY ON: 4-29-87 HEREIN IS UNCLASSIFIED
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FEB 15 1957

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COMM-FBI

Tolson
Nichols
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Winterrowd
Tele. Room
Holloman
Gandy

Assistant Attorney General
William F. Tompkins

desired a visa for a longer time as he wished to discuss the case with Sobell's defense attorney after the judge gave his decision on the hearing. He stated he would return to the Embassy on the afternoon of February 7, 1957, at which time he would decide whether to accept the visa. (U)

With regard to the above statement of the maid of the Sobells, it is to be noted that the arrest was made by the Mexican Federal Security Police who had custody of the personal effects which were taken from the apartment. (S) U

The above is furnished to you for your information. (U)

SECRET

1368

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

FEB 8 1957

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

WA 9 FROM NY 8 4-38PM

DIRECTOR URGENT

MORTON SOBELL, WAS, ESPIONAGE DASH R. MARSHALL PERLIN, SUBJECT-S ATTORNEY, ADVISED APPELLATE COURT INSTANT DATE THAT LUIS SANCHEZ PONTON OF THE DEFENSE STAFF HAS BEEN UNABLE TO SECURE HIS VISA TO APPEAR AS COUNSEL FOR SUBJECT AT TODAY-S HEARING, THAT PONTON ADVISED LAST NIGHT THAT HE HAD MADE APPLICATION AT THE US EMBASSY, MEXICO CITY, FOR A VISA TO ENTER THE US FOR PROFESSIONAL REASONS ON ONE THIRTY ONE FIFTYSEVEN AND HAD RECEIVED NO INFORMATION THAT IT WOULD BE GRANTED UNTIL FEBRUARY SEVENTH WHEN HE WAS TOLD A VISA WOULD BE GRANTED ON THE CONDITION THAT IT WOULD BE VALID FOR THREE DAYS OR UNTIL COMPLETION OF HIS ARGUMENT BEFORE THE APPELLATE COURT, WHICHEVER CAME FIRST. THE EMBASSY WAS TO BE INFORMED OF THE TIME, DATE, AND IDENTITY OF AIR-LINE CARRYING PONTON TO NYC AND THAT HE WOULD BE IN CUSTODY OF THE

END PAGE ONE

RECORDED - 14

101-2483-1369

20 FEB 19 1957

EX-120

let to State
cc Mr. Tompkins (O-6)
2-13-57 APL:jdb

Mr. Belmont

ESP-R SEC

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HEREIN IS UNCLASSIFIED
DATE 4-22-82 BY 3042 PWJ/CS

US IMMIGRATION SERVICE UNTIL HIS RETURN TO MEXICO. PERLIN STATED THAT UNDER THESE ~~QUOTE~~ "HUMILIATING CONDITIONS ~~CLOSE QUOTE~~" PONTON FELT ~~QUOTE~~ CONSTRAINED ~~CLOSE QUOTE~~ TO REFUSE TO ACCEPT A VISA. JUDGE CLARK ASKED PERLIN JUST WHAT HE EXPECTED THE COURT TO DO ABOUT IT AND PERLIN REQUESTED AN EXTENSION DATE TO MAKE POSSIBLE THE ENTRANCE OF PONTON. AUSA MAURICE NESSEN ANSWERED ADVISING THE COURT THAT THE STATE DEPARTMENT HAD ADVISED THAT FOLLOWING THE HEARING ON WEDNESDAY, FEBRUARY SIXTH, PONTON CONTACTED BY THE US EMBASSY IN MEXICO CITY AND WAS ADVISED THAT HIS VISA WAS READY AND HE SHOULD PICK IT UP, THAT PONTON FAILED TO APPEAR FOR HIS VISA. HE WAS TWICE CONTACTED YESTERDAY AT WHICH TIME HE ADVISED HE WAS NOT INTERESTED IN COMING TO THE US, BUT WOULD ONLY COME IF HIS DEFENSE ASSOCIATES WANTED HIM. NESSEN STATED THAT A MEXICAN NEWSPAPER ~~QUOTE~~ "DAILY CLOSE" ~~QUOTE~~ HAD CARRIED ARTICLE UNDER PONTON-S NAME YESTERDAY ANNOUNCING THAT PONTON HAD BEEN DENIED A VISA TO APPEAR AS SUBJECT-S COUNSEL. NESSEN TOLD THE COURT THE US GOVERNMENT WAS WILLING TO WAIT FOR THE ARRIVAL OF PONTON TO DEPRIVE THE ~~QUOTE~~ "PROPAGANDA MILLS" ~~CLOSE QUOTE~~ OF GRIST AND TO AVOID ADDITIONAL FILINGS OF ~~QUOTE~~ "TWO TWO FIVE FIVE" ~~CLOSE QUOTE~~ MOTIONS BY DEFENSE ATTORNEYS. JUDGE CLARK ANNOUNCED HE WAS SETTING THE HEARING AHEAD TO MARCH FOURTH. PERLIN REQUESTED A SHORTER ADJOURNMENT, BUT CLARK DENIED THE REQUEST. HEARING ON MARCH FOURTH WILL BE COVERED BY NYO AND BUREAU ADVISED.

KELLY

END ACK PLS

HOLD PLS AFTER ACK

NY R 9 WA RG

MR. BELMONT
AND SUPERVISOR
DOM. INTEL. DIVISION

RECORDED - 101-2483-1369
101-2483

BY COURIER SERVICE

EX - 120

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-87 BY 3042 [illegible]

Date: February 13, 1957 (orig. & 1)

To: Mr. E. Tomlin Bailey
Director
Office of Security
Department of State
515 22nd Street, N.W.
Washington, D. C.

From: John Edgar Hoover, Director
Federal Bureau of Investigation

Subject: MORTON SOBELL, with aliases
ESPIONAGE - R

Reference is made to our letter of February 8, 1957, concerning Luis Sanchez Ponton, Mexican attorney who has applied for a visa at the United States Embassy in Mexico City so that he might assist in the argument of subject's appeal which is pending before the United States Circuit Court of Appeals in New York.

On February 8, 1957, Marshall Perlin, subject's attorney, appeared before the United States Circuit Court of Appeals in New York in connection with the appeal and advised the court that Sanchez has been unable to secure his visa. According to Perlin, Sanchez had made application at the United States Embassy in Mexico City for a visa to enter the United States for professional reasons on January 31, 1957, and received no information that it would be granted until February 7, 1957, when he was told that a visa could be granted on condition that it

BY COURIER SVC.
24 FEB 14
FBI - WASH. D.C.

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Mohr
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Nease
Winterrowd
Tele. Room
Holloman
Gandy

APL:jdb (6)
cc - 1 - AAG Tompkins (A-6 same date)

67 FEB 25 1957

would be valid for three days or until completion of his argument before the United States Circuit Court of Appeals in New York. Further, according to Perlin, the United States Embassy in Mexico City wished to be informed of the time, date and identity of the airline taking Sanchez to New York. The Embassy advised Sanchez that he would be in the custody of the United States immigration service until his return to Mexico. Perlin advised the court that under these "humiliating conditions" Sanchez felt "constrained" to refuse to accept a visa. One of the judges of the court asked Perlin what he expected the court to do about it and Perlin requested an extension of the hearing date to make it possible for Sanchez to appear before the court.

Assistant United States Attorney Maurice Nessen, who represented the Government before the United States Circuit Court of Appeals, advised the court that the Department of State had advised as follows:

On February 6, 1957, Sanchez was contacted by the United States Embassy in Mexico City and was advised that his visa was ready and that he should pick it up. Sanchez failed to appear for his visa. On February 7, 1957, he was contacted twice by the United States Embassy and he advised he was not interested in coming to the United States and would only come if his defense associates wanted him.

Assistant United States Attorney Nessen also advised the court that a Mexican newspaper had carried an article under Sanchez's name on February 7, 1957, announcing that Sanchez had been denied the visa to appear as counsel for Sobell. Mr. Nessen told the court that the United States Government was willing to wait for the arrival of Sanchez to deprive the "propaganda mills" of grist and to avoid additional motions being made by defense attorneys.

At the conclusion of the above arguments, the court adjourned the hearing of subject's appeal to March 4, 1957.

The foregoing is furnished for your information.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

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SECRET

4-29-87

☐ Airgram ☒ Cablegram

CLASSIFIED BY: 3042 RUT/CLS
DECLASSIFY ON: DADR

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DECODE OF CODED CABLE NUMBER 223 DATED FEBRUARY 7, 1957 AT MEXICO CITY, MEXICO. RECEIVED VIA THE STATE DEPARTMENT.

MORTON SOBELL

NATIONAL COMMITTEE TO SECURE JUSTICE IN THE ROSENBERG CASE, IS-C. REMYCABLE FEBRUARY 4 LAST.

[redacted]

(S) MEXICO CITY NEWSPAPER QUOTE ULTIMAS NOTICIAS UNQUOTE TODAY CARRIED OPEN LETTER TO MEXICAN PRESIDENT BY SANCHEZ PONTON IN WHICH HE ALLEDGES SOBELL THROWN OUT OF MEXICO BY POLICE OF FOREIGN NATION TO DISCREDIT OF MEXICO'S NATIONAL DIGNITY. ALSO CLAIMS MEXICAN CONSTITUTION, MEXICAN IMMIGRATION LAWS AND MEXICAN - NORTH AMERICAN EXTRADITION TREATY OF 1899 VIOLATED BY DEPORTATION OF SOBELL WITHOUT REGARD FOR OUR AUTHORITIES. SANCHEZ PONTON OFFERED VISA AT EMBASSY THIS MORNING FOR PURPOSE OF ATTENDING SOBELL HEARING IN NEW YORK. ADVISED THAT DESIRED IT FOR MORE TIME AS WISHED TO DISCUSS CASE WITH DEFENSE ATTORNEY AFTER JUDGE GAVE DECISION ON HEARING. STATED WOULD RETURN TO EMBASSY THIS AFTERNOON AT WHICH TIME HE WILL DECIDE WHETHER TO ACCEPT VISA. CONCERNING REPORTED AFFIDAVIT FROM SOBELL MAID, BUREAU WILL RECALL WE ACTED UNDER SPECIFIC INSTRUCTION FROM BUREAU STATED IN BUAIRGRAM AUGUST 11, 1950 TO EFFECT THAT IF SOBELL WERE LOCATED NO EFFORT SHOULD BE MADE TO INTERVIEW OR OTHERWISE CONTACT HIM.

SECRET

Classified by 2305 [illegible]
Exempt from GDS, Category 2 and 3
Date of declassification indefinite

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be suitably paraphrased in order to protect the Bureau's cryptographic systems.

ENCLOSURE FROM FILES OF OTHER OFFICES
FILE(S) OF [illegible]
DATE 4-29-87

62-25855-1952

ENCLOSURE

20-56)

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SECRET

☐ Airgram ☐ Cablegram

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WE MADE NO CONTACT WITH HIM OR HIS FAMILY AND CERTAINLY DID NOT GIVE ANY INDICATION TO SOBELL MAID THAT AMERICAN EMBASSY HAD ANYTHING TO DO WITH ARREST. MEXICAN POLICE MADE ARREST AND THEREAFTER HAD CUSTODY OF PERSONAL EFFECTS TAKEN FROM APARTMENT. IT IS BELIEVED BUREAU IS ALREADY AWARE OF THIS BUT FELT WELL THAT IT BE RESTATED.

JOHN N. SPEAKES

RECEIVED: 6:56 PM 2-7-57 ECD

SECRET

COMMUNICATIONS SECTION

FBI

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be suitably paraphrased in order to protect the Bureau's cryptographic systems.

TO : L. V. Boardman cc - Boardman
Belmont
Litrento

DATE: February 20, 1957

FROM : A. H. Belmont

SECRET

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE OTHERWISE SHOWN

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SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

CLASSIFIED BY: 3042 DECLASSIFY ON: OADR

#861840

It will be recalled Luis Sanchez Ponton, Mexican attorney of communist background, has applied for visa at U.S. Embassy, Mexico, for purpose of coming to U.S. to assist Marshall Perlin, New York attorney for Sobell, in a hearing on this case scheduled for 3-4-57 before U.S. Circuit Court of Appeals in New York. (U)

b1

[redacted]

b1

It is believed the individual referred to above as having testified against Sobell is Max Elitcher, main Government witness against Sobell at the trial. We have no information indicating Elitcher presently employed by Canadian Government. Most recent information in Elitcher case file discloses his last known employment as of April, 1955, to be with Voorhees, Walker, Smith and Smith, Architects and Engineers, 101 Park Avenue, NYC. Similar allegations had been made concerning Elitcher by National Rosenberg-Sobell Committee in a brief submitted by this Committee December, 1953, to U.S. Senator William Langer in his capacity as Chairman of the Senate Judiciary Committee with a request that this Committee investigate the conduct of the Attorney General's office in its handling of the Rosenberg-Sobell case. The Bureau obtained a copy of this brief and furnished same to the Attorney General by memo 12-11-53. The brief alleged that Elitcher had faced a perjury charge

Enclosures sent 2-25-57 RECORDED - 54 101-2483-1370
101-2483 18 FEB 25 1957
APL:jdb INDEXED - 54
(6)
cc - 100-387835 (Rosenberg-Sobell Committee)
cc - 101-2115 (Elitcher)

58 FEB 28 1957

SECRET

Classified by 2355
Exempt from GDS, Category 2 and 3
Date of declassification Indefinite

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SECRET

for denying CP membership on a Government employment application and that no charges were made as a reward for his testimony. The brief also alleged that a document from the files of O. John Rogge, attorney for Elitcher and David Greenglass, disclosed plans for discussion with the FBI to guarantee Elitcher's future employment. It will be recalled that various papers were filched from Rogge's office shortly before the Rosenbergs' execution in June, 1953, and copies of them showed up in the hands of the Rosenbergs' attorney. These papers consisted of statements made by David and Ruth Greenglass to their attorney and interoffice memos written by Rogge and his assistants covering this case. One of the interoffice memos dated 3-19-51 written by a Rogge assistant to Rogge discussed the difficulty that would be encountered by Elitcher in securing future employment because Elitcher was an admitted former communist and suggested to Rogge that the authorities might be persuaded to assist Elitcher in securing future employment by giving him a commendatory letter for his cooperation. The memo suggested that Rogge discuss this matter with the then Assistant Attorney General James McInerney. This document may be the letter in the possession of the Sobell attorneys referred to above. Our files show clearly that the Bureau made no promises whatsoever or gave any clearance to Elitcher in exchange for his cooperation in this case. (U)

[redacted]

ACTION:

[redacted]

2. Also attached is a proposed air-tel to NYO requesting that the present employment of Max Elitcher be determined. NYO is also being advised of the expected appearance of Sanchez Ponton at the Sobell hearing in NY scheduled for 3-4-57. (U)

SECRET

DECLASSIFIED 10/20/75 WAB/WDF

Belmont
Litrento

Assistant Attorney General
William F. Tompkins

February 21, 1957

(orig. & 1)

SECRET

Director, FBI

4.29.87

MORTON SOBELL, with aliases
ESPIONAGE - R

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

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

Reference is made to previous memoranda furnished concerning Luis Sanchez Ponton, Mexican attorney who has applied for a visa at the United States Embassy in Mexico City for the purpose of coming to the United States to assist Marshall Perlin, Sobell's attorney, at the hearing scheduled for March 4, 1957, before the United States Circuit Court of Appeals in New York City. (U)

(S)

[redacted]

It was subsequently ascertained that Sanchez Ponton appeared at the United States Embassy on February 18, 1957, and stated his desire to visit the United States for a period from February 25, 1957, to March 6, 1957, in connection with the Sobell case. The United States Embassy visa officer advised that the Department of State is being informed of Sanchez Ponton's request and that no doubt he will receive a visa. (S)

MAILED 6
FEB 21 1957
COMM-FBI

[redacted]

101-2483-1371

SECRET

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101-2483

APL:jdb (7)

Cover memo Belmont to Boardman, same caption, was prepared by APL:jdb 2-20-57 re this outgoing mail.

cc-100-387835 (Rosenberg-Sobell Committee)

~~CONFIDENTIAL~~ DECLASSIFIED 10/20/75 WAB/WDF

100-387835-1

UNRECORDED

~~CONFIDENTIAL~~

SECRET

Assistant Attorney General
William F. Tompkins

b/

[redacted]

It is believed that the individual referred to above as having testified against Sobell is Max Elitcher, main Government witness against Sobell at the trial. We have no information indicating that Elitcher is presently employed by the Canadian Government. It may be recalled that similar allegations have been made concerning Elitcher by the National Rosenberg-Sobell Committee in a brief submitted by this Committee in December, 1953, to the United States Senator, William Langer, in his capacity as Chairman of the Senate Judiciary Committee, with the request that this Committee investigate the conduct of the office of the United States Attorney General in connection with his handling of the Rosenberg-Sobell case. We obtained a copy of this brief and furnished it to the Attorney General by memorandum of December 11, 1953. This brief alleged that Elitcher had faced a perjury charge for denying Communist Party membership on a United States Government employment application and that no charges were made as a reward for his testimony. The brief also alleged that a document from the files of O. John Rogge, the attorney for Elitcher and David Greenglass, had disclosed plans for a discussion with the FBI to guarantee Elitcher's future employment. It will be recalled that various papers were filched from the office of Mr. Rogge shortly before the Rosenbergs' execution and copies of these papers showed up in the hands of the Rosenbergs' attorney. (C)

SECRET

~~CONFIDENTIAL~~

137

SECRET

Assistant Attorney General
William F. Tompkins

These papers consisted of statements made by David and Ruth Greenglass to their attorney and various interoffice memoranda submitted by Rogge and his assistants concerning this case. One of the interoffice memoranda dated March 19, 1951, written by an assistant to Mr. Rogge discussed the difficulty that would be encountered by Elitcher in securing future employment because Elitcher was an admitted former communist and suggested to Mr. Rogge that the authorities might be persuaded to assist Elitcher in securing future employment by giving him a commendatory letter for his cooperation. This memorandum also suggested that Mr. Rogge discuss this with the then Assistant Attorney General James McInerney. A copy of this memorandum was attached to the brief filed with the Senate Judiciary Committee and was also made available to the Attorney General along with our memorandum of December 11, 1953. This document may be the letter referred to above which is reportedly in the possession of Sobell's attorneys. In connection with this, it is pointed out that this Bureau made no promises whatsoever or gave any clearance to Elitcher in exchange for his cooperation in this case. (U)

[redacted] b1

You will be kept advised of any additional developments in this matter. (U)

SECRET

1371

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

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

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☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

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1 Page(s) withheld for the following reason(s): Disposition handled by DOJ in 1975

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101-2483-1372

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FBI/DOJ

4-3 (Rev. 1-25-57)

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☐ Airgram

☒ Cablegram

DECODE OF CODED CABLE NUMBER 239 DATED FEBRUARY 18, 1957 AT MEXICO CITY, MEXICO. RECEIVED VIA STATE DEPARTMENT. Morton SOBELL

NATIONAL COMMITTEE TO SECURE JUSTICE IN THE ROSENBERG CASE

[redacted]

JOHN N. SPEAKES

RECEIVED: 2-18-57 6:44 PM DEM

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12-22-87 BY 3042 pat/cs

FEB 18 3 31 PM '57

FBI

RECD - DISPATCHED

FEB 18 1 38 PM '57

101-2483-

NOT RECORDED

44 FEB 21 1957

ORIGINAL

52 MAR 1 1957

If the intelligence contained in the above message is to be disseminated outside the Bureau, it is suggested that it be paraphrased in order to protect the Bureau's cryptographic systems.

CONFIDENTIAL

cc - Lee
Belmont

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

February 27, 1957

Director, FBI

MORTON SOBELL, with aliases
ESPIONAGE - R

Reference is made to our memorandum dated February 21, 1957, concerning Luis Sanchez Ponton, Mexican attorney who applied for a visa at the United States Embassy, Mexico City, for the purpose of coming to the United States to assist Sobell's attorney at the hearing scheduled for March 4, 1957, before the United States Circuit Court of Appeals in New York City.

Information has been received that Ponton has been granted a visa to visit the United States from February 25, 1957, through March 6, 1957. Ponton was expected to depart from Mexico City via Air France on February 25, 1957.

This is furnished to you for your information.

101-2483

DECLASSIFIED BY 3042/pwj/tols ON 4-22-87

JPL:jdb
(5)

RECORDED-82 101-2483-1373

EX-121

28 FEB 1957

COMM - FBI
27 FEB 1957
MAILED 30

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Gandy

66 MAR 6 1957

CONFIDENTIAL

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

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☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ 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).

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☐ For your information: _____

_____

☑ The following number is to be used for reference regarding these pages:
101-2483-1374

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

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FBI/DOJ

elmont
rento

February 21, 1957

Air-tel

~~SECRET~~ SECRET

RECORDED - 60 101-2483-1374

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

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

MORTON SOBELL, was.
ESPIONAGE - R

CLASSIFIED BY: 3042 PLT/cds
DECLASSIFY ON: DADS 4-7-87

[redacted]

APPROPRIATE AGENCIES AND FIELD OFFICES ADVISED BY ROUTING SLIP(S) OF [illegible]

MAILED 11
FEB 21 1957
COMM-FBI

It is believed that the individual referred to is probably Max Elitcher, main Government witness against Sobell at the trial. The most recent information contained in the Bureau's case file on Elitcher discloses his last known employment to be with Voorhees, Walker, Smith and Smith, Architects and Engineers, 101 Park Avenue, New York City. (S) U

You are requested to ascertain the present employment of Elitcher and whether his employment may have any connection with the Canadian Government. Advise promptly. (C)

HOOVER

~~SECRET~~ SECRET

Tolson
Nichols
Boardman
Belmont
Mason
Mohr
Parsons
Rosen
Tamm
Nease
Winterrowd
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Holloman
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101-2483

cc - 100-387835 (Rosenberg-Sobell Committee)
2cc - 101-2115 (Elitcher)

APL:jdb (8)

Classified by 2355 10 boxes wnd/up
Exempt from GDS, Category 2 and 3
Date of Declassification Indefinite

~~SECRET~~ SECRET

Cover memo Belmont to Boardman, same caption, was prepared by APL:jdb 2-20-57.

FD-66 (Rev. 3-13-56)

FBI

Date: 2/25/57

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
ESPIONAGE - R

Re Bureau air-tel, 2/21/57.

MAX KLITCHER contacted 2/25/57, and advised that he is still employed by Voorhees, Walker, Smith and Smith, Architects and Engineers, of NYC and Long Island City, and now has position of Senior Engineer. Stated his company has never, to his knowledge, had any contractual work with the Canadian Government. General nature of work is architectual planning, engineering design, and installation of electrical systems in laboratories and office buildings.

KELLY.

#361840

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 3-18-87 BY 3042 PWT/CK

Mr. Belmont
Mr. W. Turner

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R2 1 MAR 10 1961

RECORDED - 33

101-2483-1375
3-5
4 FEB 26 1957

4 Bureau (101-2483)(RM) EX-132
(1 - 101-2115)
1 - NY 65-14873
1 - NY 134-205
1 - NY 100-37158

let to A A G Tompkins
3-4-57 DPH

VJC:hkl (#6)
(8)

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

UNRECORDED COPY FILED IN 101-2115

Mr. Lee

March 4, 1957

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

Director, FBI

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HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

MORTON SOBELL, with aliases
ESPIONAGE - R

RECORDED 33 101-2483-1876

Reference is made to my letter of February 21, 1957.

On February 25, 1957, Max Elitcher, who appeared as a Government witness in the Rosenberg-Sobell trial, advised that he is employed as Senior Engineer with Voorhees, Walker, Smith and Smith, Architects and Engineers of New York City and Long Island City, New York. Elitcher stated his company has never to his knowledge had any contractual work with the Government of Canada. He advised the general nature of the company's work is architectural planning, engineering, designing and the installation of electrical systems in laboratories and office buildings.

With reference to Luis Sanchez Ponton, Mexican attorney, who is a member of Sobell's defense staff, he arrived at Idlewild Airport, New York City, via Air France on February 25, 1957. Ponton was accompanied by his wife, Minna. He furnished his birth date as August 5, 1889, at Puebla, Mexico. He was carrying Mexican Passport Number 04009 issued January 31, 1957, valid until January 30, 1959. His destination was given as Hotel Roosevelt, New York City, and the purpose of visit was given as appearance as a witness in the Morton Sobell hearing.

The above is furnished to you for your information.

EX-132

CLASSIFIED BY: 3042 pwt/ds ADR
DECLASSIFY ON: 4-22-87

MAILED 2
MAR 4 1957
COMM-FBI

101-2483

JPL:mkz:sle

NOTE:

[redacted]

It is believed this individual is Max Elitcher. This information was furnished to Mr. Tompkins by letter dated February 21, 1957. New York was requested by airtel Feb. 21, 1957, to determine Elitcher's employment and if his company was working on such Canadian matters. Mr. Tompkins was previously been advised concerning the efforts of Ponton to enter the U.S.

Tolson
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Parsons
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Gandy

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

FEB 26 1957

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

2-

WASH 15 FROM NY 26 4-18PM

DIRECTOR URGENT

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

MORTON SOBELL, WAS, ESP-R. INS, NYC, ADVISED INSTANT DATE THAT LUIS SANCHEZ PONTON ARRIVED IDLEWILD AIRPORT, NYC, VIA AIR FRANCE AIRLINES, FLIGHT ZERO SEVEN ZERO, ON TWO TWENTY FIVE FIFTY SEVEN. HE WAS ACCOMPANIED BY HIS WIFE, MINNA. ADVISED DATE OF BIRTH WAS EIGHT FIVE EIGHTY NINE, PUEBLA, MEXICO. PRESENTED MEXICAN PASSPORT NO. ZERO FOUR ZERO ZERO NINE, ISSUED ONE THIRTY ONE FIFTY SEVEN, VALID UNTIL ONE THIRTY FIFTY NINE. DESTINATION GIVEN AS ROOSEVELT HOTEL AND PURPOSE IN US GIVEN AS APPEARANCE AS WITNESS IN MORTON SOBELL HEARING. AS BUREAU KNOWS, PONTON IS MEMBER OF DEFENSE STAFF FOR MORTON SOBELL. FOR INFO.

RECORDED - 33 101-2483-1376

29 MAR 5 1957

57 MAR 13 1957

EX-132

KELLY

END AND HOLD

Mr. Belmont

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

MAR 4 1957

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	

URGENT 3-4-57 6-32PM JJD

TO DIRECTOR 18

FROM SAC, NEW YORK 1P

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

MORTON SOBELL, WAS, ESP - DASH R. SUBJECT-S HEARING AT US COURT OF APPEALS CONTINUED TO MARCH FIFTH DUE TO CROWDED CALENDAR. DEFENSE ATTORNEY LUIS SANCHEZ PONTON OF MEXICO ADMITTED TO BAR. PONTON APPARENTLY PARTIALLY BLIND AS MARSHALL PERLIN GUIDED HIM TO BENCH. USA, SDNY PAUL WILLIAMS APPEARED TO PRESENT GOVERNMENT CASE. APPROXIMATELY ONE MINUTE OF FORMALITY OF ATTORNEYS REPRESENTING THAT THEY WERE READY TO ARGUE MOTION PLACED CASE AHEAD OF CASES SCHEDULED ON MARCH FIFTH CALENDAR AND IN LINE FOR OPENING OF COURT MARCH FIFTH. NY WILL ADVISE BUREAU OF DEVELOPMENTS. 101-2483-1377

U.S. ATTORNEY, SOUTHERN DISTRICT OF N.

Mr. Belmont

RECORDED-13

8 MAR 6 1957

EX-108

END HOLD PLS

67 MAR 11 1957

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

MAR 5 1957

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

URGENT 3-5-57 9-58 PM FJM

TO DIRECTOR 19

FROM NEW YORK 4P

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

MORTON SOBELL, WAS, ESP-R. US CIRCUIT COURT OF APPEALS PANEL COMPOSED OF JUSTICES MEDINA, WATERMAN AND GALSTON HEARD SUBJECT-S APPEAL ARGUED TODAY. MARSHALL PERLIN, ARTHUR KINOY AND LUIS SANCHEZ PONTON, MEXICAN LAWYER, ARGUED FOR SOBELL AND USA, SDNY PAUL WILLIAMS (U.S. ATTORNEY) ARGUED GOVERNMENT-S BRIEF. AFTER BRIEFLY REVIEWING TRIAL, SENTENCING AND SUBSEQUENT APPEALS OF SOBELL, PERLIN CONCENTRATED ON TRIAL TESTIMONY OF HUGGINS, INS REPRESENTATIVE AND HIS WRITING "DEPORTED" ON MANIFEST WHEN SOBELL EJECTED FROM MEXICO, LACK OF REQUEST BY THE US TO MEXICAN GOVERNMENT FOR SOBELL-S RETURN AND CLAIM THAT MEXICO SECRET POLICE WERE ACTING AS AGENTS FOR THE US GOVERNMENT. HE ATTACKED EVIDENCE OF SOBELL-S FLIGHT AND USE OF ALIASES AS FRUITS OF A SEARCH THAT WAS ILLEGAL BECAUSE OF THE MANNER IN WHICH SOBELL RETURNED TO US AND CITED SA JOHN LEWIS WHO SAT AT COUNSEL TABEL DURING ROSENBERG TRIAL AS ACQUIESCING IN PERJURY COMMITTED BY HUGGINS. CLAIMED HUGGINS HAD BEEN ADVISED BY A MEXICO REPRESENTATIVE THAT NO "ORDER" HAD BEEN ISSUED BY MEXICO GOVERNMENT FOR ARREST AND TRANSPORTATION OF SOBELL TO US AND THAT FBI AGENTS HAD BEEN IN MEXICO IMMEDIATELY BEFORE AND AFTER SOBELL-S KIDNAPPING, TALKING TO MEXICAN NATIONALS ABOUT SOBELL AND WHO KNEW THAT SOBELL WAS NOT LEGALLY DEPORTED. STATED THAT WITH HUGGINS- TESTIMONY PERJURED, THE ONLY TESTIMONY AGAINST SOBELL IS THAT OF MAX ELITCHER. EMPHASIZED SOBELL-S ENTERING MEXICO BY HIS TRUE

END PAGE ONE..RECORDED-13 101-2483-1376

NAME AND CHECKING HIS CAMERA WITH CUSTOMS AS INDICATIVE OF HIS INTENTION TO RETURN TO US. MEDINA AND GALSTON INTERJECTED QUESTIONS ABOUT WHAT DIFFERENCE IT MADE HOW SOBELL CROSSED THE BORDER AND PERLIN CITED CASE OF COOK VS. US AND CONTENDED THE GOVERNMENT CLAIMED LEGAL DEPORTATION WHICH WAS NOT THE FACT. UPON CONCLUSION BY PERLIN, JUDGE MEDINA REMARKED THAT AFTER LISTENING TO DEFENSE LAWYERS HE ALWAYS WONDERED HOW THEIR CLIENTS- INNOCENT ACTIONS EVER GOT THEM INTO TROUBLE. KINOY ARGUED THAT VIOLATION OF EXTRADITION TREATY BY US DEPRIVED US OF JURISDICTION TO TRY SOBELL. GALSTON OBSERVED THAT MEXICO APPEARS TO BE THE OFFENDED PARTY BUT THERE IS NO MENTION OF ANY OBJECTION TO SOBELL-S SEIZURE BY MEXICO. WATERMAN ASKED KINOY IF HE WAS SAYING THAT THE MEXICO GOVERNMENT CAN TELL THE SECOND JUDICIAL DISTRICT COURTS WHAT ITS JURISDICTION IS. KINOY LAUNCHED INTO THE US VS. RAUSCHER CASE AND MEDINA ASKED COURTROOM IF ANYONE PRESENT FROM MEXICO GOVERNMENT PROTESTING THE MATTER. KINOY INTRODUCED PONTON TO EXPLAIN OPERATION OF MEXICO LAWS ON SUBJECT. PONTON AFTER READING BRIEFLY FROM A PREPARED STATEMENT THAT HE DID NOT COME INTO THE CASE UNTIL HE UNDERSTOOD THE INJUSTICE OF IT WAS INTERRUPTED BY MEDINA AND ASKED TO ORALLY ARGUE THE LEGAL POINTS IN THE BRIEF. MEDINA TOLD PONTON IN A CORDIAL TONE THAT HIS PERSONAL OPINION WAS OF NO CONCERN TO THE COURT. PONTON IN A LABORED AND ALMOST UNINTELLIGIBLE VOICE TRIED TO MAKE THE POINT THAT NO MEXICO AGENCY HAD ORDERED SOBELL-S DEPORTATION AS HE HAD CHECKED RECORDS AND FOUND NO ORDER AND THAT ONLY AN "ORDER" WOULD HAVE MADE SOBELL-S EJECTION LEGAL. PONTON CLAIMED THAT IF THE MEXICO GOVERNMENT COULD GET JURISDICTION OF(?) IF THE FBI AGENTS WHO PARTICIPATED IN THIS ILLEGAL SEIZURE IN MEXICO THEY COULD BE

PROSECUTED IN MEXICO. GALSTON ASKED PONTON IF SOBELL HAD THE RIGHT TO MAKE APPLICATION FOR COUNSEL IN MEXICO WHEN HE WAS ARRESTED AND IF THE MEXICO SECRET POLICE VIOLATED THE LAWS OF MEXICO. HIS ANSWER WAS UNINTELLIGIBLE AND HE MENTIONED THAT MEXICO LAW HAD NOT BEEN RESPECTED, THAT THE GOVERNMENT OF MEXICO HAD BEEN INSULTED AND THAT THE SEIZURE OF SUBJECT HAD IMPAIRED THE RELATIONSHIP BETWEEN THE US AND MEXICO. WATERMAN AND MEDINA STATED THAT THIS WOULD APPEAR TO BE A MATTER FOR A REPRESENTATIVE OF THE MEXICAN GOVERNMENT RATHER THAN THE LAWYER FOR A CONVICTED DEFENDANT AND HAD NOTHING WHATEVER TO DO WITH THIS CASE. PONTON ATTEMPTED TO GET THE COURT TO ACCEPT A PREPARED STATEMENT BUT MEDINA TOLD HIM THAT JUDGE CLARK HAD RULED THAT NO ADDITIONAL PAPERS WOULD BE RECEIVED. USA PAUL WILLIAMS BRIEFLY REVIEWED THE RELATIONSHIP OF ELITCHER AND SOBELL IN THE CP CELL IN WASHINGTON, DC, AND SOBELL-S REQUEST OF ELITCHER FOR FIRE CONTROL INFO FOR DISSEMINATION TO JULIUS ROSENBERG, THE FLIGHT OF SOBELL ACCORDING TO INSTRUCTIONS ROSENBERG HAD GIVEN TO DAVID GREENGLASS AND EVIDENCE INDICATING HIS INTENTION NOT TO RETURN. HE EMPHASIZED THE TRIAL RECORD IDENTIFYING THE INDIVIDUALS WHO EJECTED SOBELL AT THE MEXICO US BORDER AS MEXICAN POLICE. GALSTON ASKED IF THERE WAS ANYTHING IN THE BRIEFS THAT HAD NOT BEEN BEFORE THE COURT BEFORE. WILLIAMS ANSWERED THAT EVERYTHING HAD BEEN BEFORE THE COURT IN THE PAST EXCEPT THE ALLEGATION OF TREATY VIOLATION. HE ARGUED THAT MEXICO COULD EJECT ANY ALIEN AT ANY TIME FOR ANY REASON NOT WITHSTANDING AN EXTRADITION TREATY AND POINTED OUT THAT ESPIONAGE NOT COVERED BY TREATY. CLAIMED JURISDICTION BY US COURTS OVER DEFENDANTS BEFORE IT REGARDLESS OF THE MANNER IN WHICH DEFENDANT BROUGHT INTO JURISDICTION ESTABLISHED BY SUPREME COURT DECISION IN EIGHTEEN EIGHTYSIX IN KERR CASE AND ONLY EXCEPTION WAS THE US VS. RAUSCHER CASE, THAT IN RAUSCHER CASE SUPREME COURT STATED A

PAGE FOUR.....

DEFENDANT BROUGHT INTO JURISDICTION OF COURT BY INVOKING TREATY AND CHARGING DEFENDANT WITH A SPECIFIC OFFENSE HAD TO BE TRIED FOR THAT OFFENSE AND NO OTHER, THAT THE RAUSCHER CASE RELIED ON BY DEFENDANT WAS NOT APPLICABLE AS SOBELL NOT BROUGHT BACK UNDER PROVISIONS OF AN EXTRADITION TREATY. PERLIN GIVEN A BRIEF REBUTTAL IN WHICH HE CLAIMED HUGGINS LIED ON THE STAND AND IF GRANTED A HEARING HE WOULD PROVE IT BY RESULTS OF INVESTIGATION DEFENSE CONDUCTED IN MEXICO SUBSEQUENT TO CONVICTION OF SOBELL. MEDINA CHARACTERIZED BOTH PRESENTATIONS AS MADE BY EXCELLENT LAWYERS AND CLOSED THE PROCEEDINGS.

END

WA ACK AND HOLD

WA NY R 19 WA SH

cc: Mr. Turner

Office Memorandum • UNITED STATES GOVERNMENT

TO : A. H. Belmont

DATE: March 7, 1957

FROM : W. A. Branigan

SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

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

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

Subject convicted in 1951 with Julius and Ethel Rosenberg of conspiracy to commit espionage and sentenced to 30 years in prison. Now at Alcatraz. On 5-8-57 subject filed motion, District Court, Southern District of New York, requesting a new trial and hearing. Claimed he had been illegally deported from Mexico and the Government was aware of this and, therefore, the Government knowingly used perjured testimony to the effect that he was legally deported. On 5-25-56 he filed second motion for a new trial in which he claimed that he was not legally extradited and Government lacked jurisdiction to try him. Sobell alleged the Government used perjured testimony when INS Inspector James Huggins introduced into evidence Sobell's manifest card bearing the notation "Deported from Mexico." Huggins testified he wrote this on the card after noting Sobell being escorted to the border by Mexican officials. On 6-20-56 Judge Irving R. Kaufman, District Court, Southern District of New York, denied both motions.

On 3-5-57 U.S. Circuit Court of Appeals, Second Circuit, composed of Justices Medina, Galston and Waterman, heard subject's appeal. Marshall Perlin, subject's attorney, in his argument briefly reviewed the trial, sentence and subsequent appeals of Sobell. Perlin concentrated on testimony of Huggins and his writing "Deported from Mexico" on manifest card when Sobell was ejected from Mexico, lack of request by U.S. Government to Mexican Government for Sobell's return and claimed Mexican Federal Security Police were acting as agents for U.S. Government. Perlin attacked evidence of Sobell's flight and use of aliases as fruits of an illegal search because of the manner in which Sobell was returned to the United States and cited SA John Lewis who sat at counsel table during trial as acquiescing in perjury committed by Huggins. (With court permission SAs William F. Norton and John A. Harrington sat at counsel table during trial. SA Lewis sat at counsel table on two occasions when Harrington was ill.) Perlin stated that with Huggins' testimony being perjured, the only testimony against Sobell was that of Max Elitcher. He emphasized that Sobell entered Mexico aby his true name and checked his camera with Customs indicating an intention to return. Justices Medina and Galston asked questions about what difference it made how Sobell crossed the border.

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

RECORDED-13 101-2483-1379
INDEXED-13
EX-153
MAR 12 1957
71 MAR 1

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

Arthur Kinoy of NY Sobell defense argued that the violation of the extradition treaty by the United States deprived the United States of jurisdiction to try Sobell. Justice Waterman asked if Kinoy was stating the Mexican Government can tell Second Judicial District Court exactly what its jurisdiction is. Medina asked if anyone was present from the Mexican Government protesting this matter. Kinoy then introduced Luis Sanchez Ponton, Mexican attorney, to explain Mexican laws on the subject. Ponton read from a prepared statement that he did not come into the case until he understood its injustice. He was interrupted by Judge Medina and told to orally argue the legal points in the brief. Ponton tried to make the point that no Mexican agency ordered Sobell's deportation and he claimed if the Mexican Government could get jurisdiction of the FBI Agents who participated in this illegal seizure, they could be prosecuted in Mexico. Ponton claimed the Mexican law had not been respected and that the Government of Mexico had been insulted. Justices Waterman and Medina said this would appear to be a matter for a representative of the Mexican Government rather than the lawyer for a convicted defendant and had nothing to do with the case.

United States Attorney Paul Williams briefly reviewed the relationship of Max Elitcher and Sobell and Sobell's request of Elitcher for information for Rosenberg, the flight of Sobell, according to instructions Rosenberg had given Greenglass and evidence indicating Sobell did not intend to return. Justice Galston asked if there was anything in the briefs that had not been before the court before. Williams answered everything had been before the court in the past except the allegation of treaty violation. He argued Mexico could eject any alien at any time for any reason notwithstanding an extradition treaty. He also claimed jurisdiction by the United States court over defendants before it regardless of the manner in which defendants brought into court was established by Supreme Court decision in 1886 and only exception to it was United States versus Rauscher. In that case Supreme Court stated defendant brought into the jurisdiction by invoking a treaty had to be tried for the offense specified in the extradition and no other offense. He argued the Rauscher case not applicable as Sobell was not brought back under the provisions of an extradition treaty.

Perlin gave a brief rebuttal claiming Huggins had lied on the stand and if granted a hearing he would prove it by results of investigation conducted in Mexico subsequent to Sobell's conviction.

ACTION:

For your information. New York will be followed in order to obtain decision of the Circuit Court of Appeals.

Drew

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

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deleted under exemption(s) b1 with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

____ 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).

____ Page(s) withheld for the following reason(s):

☐ For your information:

☑ The following number is to be used for reference regarding these pages:
101-2483-1380

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X FOR THIS PAGE X
XXXXXXXXXXXXXXXXXXX

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XXXXXX

FBI/DOJ

GIR 9

6-11 (12-28-56)

FEDERAL BUREAU OF INVESTIGATION

_____, 1957

TO:

___ Director	___ Mr. Nease, 5744
___ Mr. Tolson, 5744	___ Miss Gandy, 5633
___ Mr. Boardman, 5736	___ Mr. Holloman, 5633
___ Mr. Belmont, 1742	___ Records Branch
___ Mr. Mohr, 5517	___ Pers. Records, 6631
___ Mr. Parsons, 7621	___ Reading Room, 5531
___ Mr. Rosen, 5706	___ Mail Room, 5533
___ Mr. Tamm, 5256	___ Teletype, 5644
___ Mr. Trotter, 4130 IB	___ Code Room, 4642
___ Mr. Sizoo, 1742	___ Mechanical, B-110
___ Mr. Nichols, 5640	___ Supply Room, B-216
___ Mr. McGuire, 5642	___ Tour Room, 5625
___ Mr. Wick, 5634	
___ Mr. DeLoach, 5636	
___ Mr. Morgan, 5625	___ Miss Lurz
	___ Mrs. Faber
___ Mr. Jones, 4236	___ Miss McCord
___ Mr. Leonard, 6222 IB	___ Miss Rogers
___ Mr. Waikart, 7204	___ Miss Loper
___ Mr. Eames, 7206	___ Miss Price
___ Mr. Wherry, 5537	

___ See Me
___ For Your Info

___ For appropriate action
___ Note & Return

4 ENCLOSURES #23
2 filed with copy

L. B. Nichols RECORDED
Room 5640, Ext. 691
18 MAR 16 1957

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-97 BY 3042 RWT/ols

File 101-2483

66 1957 2-5

RECORDED COPY FILED IN 62-94763-1381

Mrs. Morton Sobell 30 Charlton Street New York 14, N.Y.

Send the list to your Congressman c/o House of Representatives. Washington, D.C. Ask him to send you the Communist connected records of the signers.

January, 1957

Dear Friend:

As the wife of Morton Sobell and on behalf of his mother too I ask that you take a few minutes of your time to look at my husband's case. His conviction upon the testimony of one tainted witness and his sentence of 30 years imprisonment have caused great concern and uneasiness.

In the past few months a number of eminent Americans have signed the enclosed appeal for a new trial or freedom for my husband. I hope that after you have looked at the facts, you will want to join with Elmer Davis, Dr. Harold C. Urey, Lewis Mumford, Rabbis Uri Miller of Baltimore, Jacob J. Weinstein of Chicago, Emanuel Rackman, Eugene J. Lipman and Harry Halpern of New York, Rev. John Paul Jones of New York, Dr. Roland H. Bainton of Yale Divinity School, Dr. Paul L. Lehmann of Princeton Theological Seminary, Judge Patrick H. O'Brien, and many other persons of prominence.

Throughout history the Jewish people and their spokesmen have always championed the cause of truth and justice not only for their own, but for all people. They have never closed their eyes or hearts or minds to the sufferings of their brothers.

Recently I visited my husband in Alcatraz. It is encouraging to be able to tell you that these years of suffering have not broken his spirit, that he still holds fast to his faith in American justice. We are given strength by the knowledge that so many believe in us and are helping us in this ordeal.

I know my husband to be innocent, and have confidence that the truth will be proved. However, the years pass by. This is the seventh year of my husband's imprisonment. Your voice added to these others can save some of the years of our youth for us.

On Washington's birthday Senator William Langer will address a gathering in Los Angeles on behalf of my husband. I will release at that time the names of all who are permitting their signatures to be made public. Please help me if you possibly can.

Very sincerely yours,

PHOTO COPY.

Helen Sobell
(Mrs. Morton Sobell)

the President.

Note: Affiliations are for identification only.

PHOTO COPY.

Rev. David Andrews, Greensboro, N. C.
Dr. Roland H. Bainton, Yale Divinity School, New Haven, Conn.
Rev. William Baird, Essex Community Church, Chicago, Ill.
Dr. Harold J. Bass, The Church for Today, Tacoma, Wash.
Rev. Reginald H. Bass, Community Church, Brooklyn, N.Y.
Helen Marston Beardsley, Los Angeles, Calif.
Dr. Leo Bigelman, Los Angeles, Calif.
Jessie F. Binford, Hull House, Chicago, Ill.
Prof. David Blackwell, University of California, Berkeley, Calif.
Prof. Derk Bodde, University of Pennsylvania, Philadelphia, Pa.
Prof. Murray Branch, Moorehouse College, Atlanta, Ga.
Robert L. Brook, Attorney, Los Angeles, Calif.
Prof. Anton J. Carlson, University of Chicago, Chicago, Ill.
Rabbi Franklin Cohn, Los Angeles, Calif.
Dr. Ephraim Cross, City College, New York, N.Y.
Prof. Borris Cunningham, University of California, Berkeley, Calif.
Elmer Davis, Commentator, Washington, D.C.
Frank C. Davis, Psychologist, Beverly Hills, Calif.
Dorothy Day, Editor Catholic Worker, New York, N.Y.
Rabbi Julian B. Feibelman, Temple Sinai, New Orleans, La.
Ada M. Field, Guilford College, N.C.
John F. Finerty, Attorney in the Sacco-Vanzetti and Mooney-Billings cases, New York, N. Y.
Waldo Frank, Author, Truro, Mass.
J. Allan Frankel, Attorney, Los Angeles, Calif.
Rev. G. Shubert Frye, Synod of New York, Syracuse, N.Y.
Maxwell Geismar, Literary Critic, Harrison, N.Y.
Prof. Erwin R. Goodenough, Yale University, New Haven, Conn.
Rabbi Harry Halpern, East Midwood Jewish Center, Brooklyn, N.Y.
William Harrison, Publisher and Editor Boston Chronicle, Boston, Mass.
Rev. John Paul Jones, Union Presbyterian Church of Bay Ridge, Bklyn, N.Y.
Prof. Isaac Kolthoff, University of Minnesota, Minneapolis, Minn.
J. M. Kuehne, Prof. Emeritus, University of Texas, Austin, Texas
Rev. John Howland Lathrop, Unitarian Church, Brooklyn, N.Y.
Dr. Norman Lavet, North Holywood, Calif.
Dr. Paul L. Lehmann, Director of Graduate Studies, Princeton Theological Seminary, Princeton, N.J.
Rabbi Eugene J. Lipman, New York, N.Y.
Dr. Milton Z. London, Los Angeles, Calif.
Dr. Bernard M. Loomer, Divinity School of the University of Chicago, Chicago, Ill.
Daniel Marshall, Attorney, Los Angeles, Calif.
Rev. Archie Matson, Broadway Methodist Church, Glendale, Calif.
Dr. Leo Mayer, New York, N.Y.
Louis McCabe, Attorney, Philadelphia, Pa.
Rev. Sidney G. Menk, University Heights Presbyterian Church, New York, NY
Rabbi Uri Miller, Baltimore, Md.
Lewis Mumford, Author, Amenia, N.Y.
Prof. Gardner Murphy, Menninger Foundation, Topeka, Kansas
Dr. Scott Nearing, Camp Rosier, Maine
Judge Patrick H. O'Brien, Detroit, Mich.
Prof. Victor Pashkis, Columbia University, New York, N.Y.
Dr. Linus Pauling, Nobel Prize Scientist, Pasadena, Calif.
Dr. Alexander E. Pennes, Los Angeles, Calif.
Richard W. Petherbridge, Attorney, El Centre, Calif.

Included in this list are some of the "hard core" who seem to "make a career" out of being "duped"... but never by a patriotic society.

Rev. Dreyden L. Phelps, Fellowship Church, Berkeley, Calif.
Dr. Irving E. Putnam, Methodist Church, Minneapolis, Minn.
Rabbi Emanuel Rackman, Congregation Shaarey Tefil[illegible] New York, N.Y.
Prof. Anatol Rappaport, University of Michigan, Ann Arbor, Mich.
Prof. Oscar K. Rice, University of North Carolina, Chapel Hill, N.C.
Rabbi David S. Shapiro, Congregation Anshe Sfard, Milwaukee, Wis.
Prof. Malcolm Sharp, University of Chicago Law School, Chicago, Ill.
Margaret T. Simkin, Los Angeles, Calif.
Judge Edward P. Totten, Santa Ana, Calif.
Dr. Harold C. Urey, Scientist and Nobel Prize Winner, Chicago, Ill.
Rabbi Jacob J. Weinstein, KAM Temple, Chicago, Ill.
Dr. Frank Weymouth, Los Angeles, Calif.
Prof. Francis D. Wormuth. University of Utah, Salt Lake City, Utah.
Rabbi Zvi Anderman of New York
Emily G. Balch, Nobel Prize Winner of Wellesley, Mass.
Rabbi Ben Zion Bergman of the Burbank Jewish Community Center in Burbank, Calif.
Rabbi Samuel Bernstein of New York
Rev. Henry Hitt Crane of the Central Methodist Church in Detroit
Prof. Thomas I. Emerson of Yale Law School in New Haven, Conn.
Rabbi Benjamin Englander, Cong.B'nai Israel, Irvington, N.J.
Rabbi Seymour Freedman of Buffalo, N.Y.
Mary H. Gleason, Hull House, Chicago, Ill.
Rabbi Daniel Goldberg of New York
Rabbi Jacob Goldberg of New York
Rabbi Sidney Greenberg, Temple Sinai, Philadelphia, Pa.
Rabbi Louis D. Gross of New York
Judge Norval K. Harris of Sullivan, Ind.
Dr. Eustace Haydon, Prof.Emeritus of University of Chicago, Chicago
Rev. J. Kenneth Pfohl of Winston-Salem, N.C.
William Appleman Williams, historian, Eugene, Oregon
Prof. H.H. Wilson of Princeton University, Princeton, N.J.

COMMUNICATIONS SECTION

APR 12 1957

TELETYPE

GPU II

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

URGENT 4-12-57 4-55 PM IN

TO DIRECTOR 13

FROM SAC NEW YORK 2 P

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-87 BY 3042 ROT/Brannigan

MORTON SOBELL, WAS, ESPIONAGE DASH R. AUSA, SDNY ROBERT KIRTLAND ADVISED INSTANT THAT SUBJECT-S ATTORNEY MARSHALL PERLIN, FILED MOTION ON APRIL TEN NINETEEN FIFTY SEVEN, THAT THE APPEAL RECORD BE EXPANDED TO INCLUDE AS PART THEREOF AN EXHIBIT RECEIVED FROM DOCTOR LUIS SANCHEZ PONTON, MEXICO LAWYER. SAID EXHIBIT IS IN SPANISH LANGUAGE AND A TRANSLATION OF IT FILED AS AN ATTACHMENT REFLECTS THAT IT PURPORTS TO BE A LETTER FROM THE MEXICO DEPARTMENT OF MIGRATION, ADDRESSED TO AN ATTORNEY NAMED JUAN MANUEL GOMEZ GUTIERREZ, ADDRESS DONCELES NUMBER EIGHT SEVEN DASH ONE FOUR, ADVISING THAT IN REPLY TO HIS LETTER OF APRIL NINETEENTH, ULT, THERE IS NO RECORD IN THE DEPARTMENT FILES, ORDERING THE EXPULSION OF MORTON SOBELL FROM THE COUNTRY. A TYPED NAME, JOSE INEZ PEREZ IS THE SIGNER. THE MOTION IS RETURNABLE APRIL FIFTEENTH IN THE UNITED STATES COURT OF APPEALS. KIRTLAND ADVISED HE IS DRAFTING AN ANSWERING AFFIDAVIT AS DEFENDANT HAS NO BUSINESS ATTEMPTING TO EXPAND THE

END PAGE ONE

101-2483-1380

RECORDED 9 APR 17 1957

Mr. Belmont

FIO

67 APR 23 1957

EX 105

cc Brannigan

RECORD. NO ORAL ARGUMENT CONTEMPLATED BY KIRTLAND. IT IS NOTED THAT LETTER REFERS TO APRIL NINETEENTH INQUIRY INDICATING THAT EXHIBIT IS FROM A PRIOR YEAR. COPY OF DEFENDANT-S AND GOVERNMENT MOTIONS WILL BE OBTAINED AND FORWARDED TO THE BUREAU.

END AND ACK

WA NY R 13 WA MJM

TU DISC

Rout. Slip
FD-4 (6-18-54)

Date 4/16/57

To BUREAU

☐ Director

Att. DONALD KEARNS

FILE # BUFILE 101-2483

☐ SAC ..... DIV. 5

Title MORTON SOBELL, was

☐ ASAC .....

ESP-R

☐ Supv. .....

☐ Agent .....

☐ SE .....

☐ CC .....

☐ Steno .....

☐ Clerk .....

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 IS COPY OF SUBJECTS MOTION TO EXPAND APPEAL RECORD DATED 4/10/57 AND COPY OF GOVERNMENTS' ANSWERING AFFIDAVIT DATED 4-15-57.

101-2483-1383

NOT RECORDED
4 APR 25 1957

ENCLOSURE

SAC J. J. Keeley /bg

Office New York

101-2483 F28

53 MAY 1 1957

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-87 BY 3042 RUT/DS

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-vs-

ROLF M. SOBELL,

Defendant-Appellant.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

PAUL W. WILLIAMS, being duly sworn, deposes and says:

1. I am the Public Affairs Attorney for the Southern District of New York and represent the Government in this case. This affidavit is submitted in opposition to the appellant's motion to incorporate a "Letter into the record on Appeal" a letter supposedly written by the Mexican Department of Migration. The letter tendered by appellant purports to translate that Sobell was not ordered deported by the Department of Migration. That [illegible] Sobell was ordered deported to that Department. The Government will establish that Sobell was in fact deported by the Mexican Secret Police.

2. The letter [illegible] by appellant might be relevant if the issue on this [illegible] turned upon whether the [illegible] of the [illegible] of Migration was a matter of internal [illegible] of the Mexican Government, [illegible] have accomplished [illegible]. That intra-governmental question, however, is not before this Court. Here the question is the authority of the United States to try one of its citizens for the crime of espionage, and the fairness of the trial [illegible] jury of twelve men found beyond a reasonable doubt [illegible] was in fact committed that crime.

3. The grounds of the Government's opposition are: 1. the letter is irrelevant, [illegible] it is not newly discovered, [illegible] the District Court [illegible] ments not before that Court [illegible] properly be added to the record here.

4. Irrelevance. [illegible] contends that Sobell was not deported from Mexico. [illegible] contends that deportation must be accomplished by the Department of Migration. Appellant further [illegible] that before deportation can be effected [illegible] administrative procedures of that Department, [illegible] with a right in the prospective deportee to [illegible] (Appellant's Brief, [illegible] p. [illegible], [illegible] 103.

5. That the Secretary of [illegible] has a right to deport aliens [illegible] of prior court proceedings is [illegible] of the Mexican Constitution contained in [illegible] of May 8, 1946, which [illegible]

Best Copy Available

Best copy available

Department of the Interior

Department of Migration
Prevention Division
Task #
4/300,8... "80 /1948.

Re: Information

To:

JUAN MANUEL GOMEZ GUTIERREZ, [illegible]
Poncelee No. 87-14
City. 10907

In reply to your letter of April 10 ult., I wish to advise you that in the files pertaining to MARCOS GOMEZ, United States Citizen, there is no record to the effect that this Department had ordered his expulsion from the country.

Yours very truly,

TAKE SUFFRAGE, NO REVOLUTION.
Mexico, D.F., March 9, 1957

By consent of the Head of the Dept.

Inspector

(signature illegible)

[illegible]

Dated March 14, 1957

cc: Control, Building
Inv/ehe-g-n-2-copy

Best copy available

DEPTO. DE MIGRACION.
EST. DE FOTOGRAFIAS.
MESA 9.
4/350.2."50"/2441.

GOBERNACION

ASUNTO: [illegible]

Lic.
LIC. JUAN MANUEL DEL [illegible]
Donceles No.87-14,
C I U D A D.

10907

En respuesta a su escrito de 1º de abril anterior, manifiesto a usted que por [illegible] que se lleva al señor MORTON SHELL, de nacionalidad norteamericana, no hay constancia alguna de que este Departamento haya ordenado su expulsión del país.

Atentamente.

SUFRAGIO EFECTIVO, NO REELECCION.
México D.F., 9 de marzo de 1957.
POR AC[illegible] EL JEFE DEL DEPTO.
EL [illegible]

[illegible]

ESPACIADO

c.c.p-Control.-Edif.

APB:/dhc-s-n-g-exp.

Best Copy available

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-v-

MORTON SOBELL,

Defendant-Appellant.

- -

Docket Number
24299 and 24300

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and says: He is one of the attorneys for the appellant herein and submits this affidavit in support of the motion to incorporate a letter from the Secretariat of Gobernacion of the Government of Mexico, (attached hereto, made a part hereof, and marked Exhibit A.) into the record on appeal.

The appeal was argued before this Court on March 8, 1957. The attached exhibit was forwarded by Dr. Luis Sanchez Ponton some time after his return to Mexico City and was received by deponent last week. This Exhibit, dated March 8, 1957 and mailed by the Secretariat of Gobernacion on March 12, 1957, states in part:

> "that in the files pertaining to Morton Sobell, a United States citizen, there is no record to the effect that this department has ordered his expulsion from the country."

Best Copy Available

Facts and documentary evidence in the moving papers establish that appellant was not legally deported or otherwise expelled by the Government of Mexico or any of its authorities; his abduction could not in any manner be attributed to the Government of Mexico or be considered an act of its authorities. (See A 24-25-26, 69, and exhibits referred therein.)

Appellant's allegations heretofore made are sufficient, and they have not been controverted by the Government in its answering papers. Nevertheless, appellant considers it appropriate, in view of certain statements made by the United States Attorney in his brief to this Court and upon oral argument, to bring this official statement to the attention of the Court. In the course of oral argument before this Court Mr. Williams stated, in response to a question by Judge Healy, that appellant had been legally deported by Mexico. [1] The attached document answers this contention.

---

[1] The Government in its answering brief had contended our proof merely indicated that an immigration official of Nuevo Laredo was aware of appellant's deportation. The Government stated, at page 23 of its brief:

> "Sobell does not even make a prima facie showing in his petitions that responsible officials of the 'Mexican Government' were ignorant and did not approve of his ejection from Mexico. Indeed, the inference from 'facts' which Sobell can truly report — for example, his trip to Police Headquarters and the ease with which he crossed the Mexican [illegible] to the contrary. All Sobell can say to that end is that [illegible] a record as to the details of Sobell being 'officially deported by the Secretariat of Gobernacion through Nuevo Laredo.' (Exh. 18 to S. Petition No. 1.) The Secretariat at the head office of Gobernacion even disavows 'responsibility' that the person who reported the lack of records was an official of the Mexican government. (Exh. 18 to S. Petition No. 34)

As set forth in the petition and appendices in support thereof, the Migration Department of the Secretariat of Gobernacion has exclusive authority on all matters relating to the removal of aliens from that country even when the action is instituted by the Chief Executive. Any removal by the authorities of the Government of Mexico must be authorized by and reflected in the files of that Secretariat and Department. (Appendix A to the petition, Article 98; Appendix B to the petition, Articles 1, 3, 28, 32 and 34.) The attached Exhibit demonstrates that appellant was neither deported nor in any fashion expelled by that country.

In light of Appellee's Arguments, in fairness to appellant and as an aid to this Court it is respectfully requested that the aforesaid Exhibit be incorporated into the appeal record.

Marshall Perlin

Sworn to before me the
10th day of April, 1967.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-v-

MORTON SOBELL,

Defendant-Appellant.

Docket Number
24811 and 24900

MOTION

Comes now the appellant, upon the affidavit of Marshall Perlin, duly verified, the tenth day of April, 1957, and respectfully moves the Court that the appeal record be expanded to include as a part thereof the Exhibit attached hereto, and for such other and further relief as to the Court seems necessary and proper in the premises.

Dated: New York, N.Y.
April 10, 1957

Yours, etc.

DOWER, KUNZ & PERLIN
342 Madison Avenue
New York, N.Y.

By _____
Marshall Perlin

BENJAMIN DREYFUS
57 Post Street
San Francisco, California

LUIS MARINELLO FERTON
University of Mexico
Mexico City, Mexico

Attorneys for Defendant-
Appellant

To: Hon. Paul W. Williams, Esq.
United States Attorney
United States Courthouse
New York, New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MORTON SOBELL,

Defendant-Appellant

Docket Number
24299 and 24300

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that the within motion will be submitted to the Honorable Harold R. Medina, Sterry R. Waterman and Clarence G. Galston, Judges of the within named Court, at the United States Courthouse at Foley Square, Borough of Manhattan, City and State of New York, on the 19th day of April, 1957.

Dated: New York, N.Y.
April 10, 1957

Yours, etc.

LOMBEN, KENT & PERLIN
342 Madison Avenue
New York, N.Y.

By _____
Marshall Perlin

BENJAMIN DREYFUS
57 Post Street
San Francisco, California

LEON ARNOLDUS PODTON
University of Mexico
Mexico City, Mexico

Attorneys for Defendant-Appellant

To:
Hon. Paul W. Williams, Esq.
United States Atty
U.S. Courthouse
New York, N.Y.

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

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

7 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☑ Deleted under exemption(s) b7C, b7D with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ 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).

_____ Page(s) withheld for the following reason(s):

_____

_____

☐ For your information: _____

_____

☑ The following number is to be used for reference regarding these pages:
101-2483-1384

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

XXXXXX
XXXXXX
XXXXXX

FBI/DOJ

Tic: Mr. Boardman
Mr. Belmont
Mr. Nichols
Mr. Lee

Mr. Boardman

4/13/57

A. H. Belmont

AMERICAN CIVIL LIBERTIES UNION

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

By memorandum of 4/10/57 Mr. Nichols advised

[redacted]

espionage agent from Mexico.

[redacted]

The Director noted "We should get a discreet line on these 3 characters."

b7C
b7D

SENIEL OSTROW

Ostrow is the subject of case captioned "Seniel Ostrow with alias Samuel Ostrow, Security Matter - C" with Los Angeles as office of origin which was closed in 1948. In 1948 he was described as president and treasurer of Sealy Mattress Company of Southern California, Incorporated. Ostrow was born in Ohio in 1896 and has lived in California since 1912. He has been active in and has made substantial financial contributions to numerous Communist ~~front~~ organizations such as Joint Anti-Fascist Refugee Committee, American Youth for Democracy, Civil Rights Congress and others. His daughter, Helen Ostrow Solomon, according to two confidential informants is a member of the Communist Party. Both his mother, Mary Eisenberg Ostrow, and his sister, Esther Nasatir, have been identified as Communist Party members.

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

61-190
JPL:dgm (8)
cc - 1 - 100-358649 (Ostrow)
cc - 1 - 100-206310 (Masey)
cc - 1 - ~~100-2483~~ (Sobell)

INITIALS ON ORIGINAL

101-2483-4

NOT RECORDED
145 MAY 7 1957

MAY 17 1957

MAY 8 1957 101-2483

ORIGINAL COPY FILED IN 61-190 656

Memorandum to Mr. Boardman
Re: American Civil Liberties Union
61-190

ERNEST MAZEY

Mazey is believed to be identical with the subject of a file captioned "Ernest Alexander Mazey, Internal Security - Socialist Union of America, Internal Security Act of 1950" of which Detroit is office of origin. His name is included on the security index. He was born August 30, 1919, at Detroit, Michigan, and is employed at Huck Manufacturing Company in that city. He was active in the Socialist Workers Party from 1940 until 1953 when the Socialist Union of America was formed as a result of split from the Socialist Workers Party. He has been and still is active in the Socialist Union of America which group favored entrance into other left-wing groups such as the Communist Party, thereby bringing about a revolution sooner. The Detroit branch of the Socialist Union of America is known as the Detroit Labor Federation.

RALPH ATKINSON

Bureau files failed to reflect any identifiable information concerning Ralph Atkinson in the chemical business in Los Angeles.

ACTION:

Inasmuch as Ralph Atkinson cannot be identified in Bureau files, Los Angeles Office was telephonically instructed on this date to discreetly identify Atkinson and submit a summary of information concerning him. Los Angeles was also instructed to prepare an up-to-date report reflecting the activities of Seniel Ostrow since the date of its last report.

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

MAY 15 1957

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	

URGENT 5-15-57 2-10 PM IN

TO DIRECTOR 5

FROM SAC NEW YORK 1 P

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

MORTON SOBELL, WAS., ESPIONAGE DASH R. ON FIVE FOURTEEN FIFTY SEVEN, AUSA ROBERT KIRTLAND, Southern District of New York SDNY, ADVISED THAT US COURT OF APPEALS UNANIMOUSLY UPHELD FEDERAL JUDGE IRVING R. KAUFMAN-S DECISION OF SIX TWENTY FIFTY SIX DENYING MOTIONS FILED BY SUBJECT ON FIVE EIGHT FIFTY SIX ALLEGING GOVERNMENT USE OF PERJURED TESTIMONY AT HIS TRIAL AND ILLEGAL RETURN BY KIDNAPPING FROM MEXICO TO STAND TRIAL. KIRTLAND HAS NOT YET RECEIVED COPY OF APPEAL COURT-S DECISION, BUT EXPECTS PHOTOSTAT WILL BE AVAILABLE INSTNAT AFTERNOON. COPY OF OPINION WILL BE OBTAINED BY NYO AND FORWARDED TO BUREAU.

END AND ACK

WA NY R 5 WA MJM

TU DISC

Mr. Belmont

RECORDED - 51

CC: MR. BELMONT
AND SUPERVISOR
DOM. INTEL. DIVISION

101-2483-1388

101-XX

18 MAY 17 1957

50 MAY 21 1957

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

Date MAY 15 1957

To BUREAU

- ☐ Director
  Att. DONALD MOORE
- ☐ SAC
- ☐ ASAC
- ☐ Supv.
- ☐ Agent
- ☐ SE
- ☐ CC
- ☐ Steno
- ☐ Clerk

FILE # BUFILE 101-2483

Title MORTON SOBELL was
ESPIONAGE-R

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.

101-2483

ATTACHED COPY OF OPINION OF
NOT RECORDED
U.S. COURT OF APPEALS, SDNY, 4/1957
MORTON SOBELL CASE.

ENCLOSURE

XJ2
101-2583

50 JUN 7 1957

Belmont
5/17/57 JPL/ddh

SAC James J. Kelley
Office New York

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-22-97 BY 304 2/ALM/ds

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Tolson

DATE: May 17, 1957

FROM : L. B. Nichols

SUBJECT: MORTON SOBELL

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

I am attaching hereto a Photostat of Judge Medina's opinion denying the motion of Morton Sobell for a new trial which Judge Irving Kaufman has sent to me. The Medina decision supports Kaufman's earlier decision and hits the Sobell motion rather severely.

LBN:hpf
(4)
Enclosure

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

cc - Mr. Boardman
Mr. Belmont

Irving Kaufman
to Mr. Tolson 5/17/57
Sending him opinion
& photostat of which was
received from me -

F 101-2483-1386

RECORDED - 37

MAY 21 1957

50 MAY 23 1957

UNITED STATES COURT OF APPEALS

For the Second Circuit

Nos. 235 and 236 October Term, 1956.

(Argued March 3, 1957 Decided May 14, 1957.)

Docket No. 24299 and 24300

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—v.—

MORTON SOBELL,

Defendant-Appellant.

Before:

MEDINA and WATERMAN, *Circuit Judges*, and

DAWKINS, *District Judge.*

Appeal from an order of the United States District Court for the Southern District of New York, Irving R. Kaufman, *Judge*.

Defendant appeals from an order denying two motions, made pursuant to the [illegible] 28 U. S. C. Section 2255, for hearings and for orders setting aside his conviction for espionage conspiracy. Opinion below, 142 F. Supp. 515. Affirmed.

1953

101-2483-

ENCLOSURE

Paul W. Williams, United States Attorney for the Southern District of New York, New York City (Robert Kirtland and Maurice H. Nessen, Assistant United States Attorneys, New York City, of Counsel), *for plaintiff-appellee.*

Donner, Kinoy & Perlin, New York City, and Benjamin Dreyfus, San Francisco, California (Frank J. Donner, Arthur Kinoy and Marshall Perlin, New York City, Benjamin Dreyfus, San Francisco, California, and Luis Sanchez Ponton, Mexico City, Mexico, of Counsel), *for defendant-appellant.*

Medina, *Circuit Judge:*

At the close of a trial with his co-defendants Julius and Ethel Rosenberg, appellant was sentenced to thirty years imprisonment on April 5, 1951. After numerous attempts to vacate the judgment of conviction on various grounds, including several prior applications under 28 U. S. C. Section 2255, all of which were denied and the rulings affirmed on appeal and certiorari denied by the Supreme Court, appellant made the two motions which resulted in the order appealed from. The first motion is based upon the charge that, at the trial in 1951, the prosecution "knowingly, willfully and intentionally used false and perjurious testimony and evidence, made false representations to the Court, and suppressed evidence which would have impeached and refuted testimony given against petitioner." The second motion is based upon the charge that the "United States itself, as well as its courts * * * lacked all sovereignty and power to conduct the proceedings," and that the trial court

lacked jurisdiction because of alleged violations of the Constitution and laws of the United States, including "the Extradition Treaty between the United States and Mexico." The subject matter of these charges relates to the seizure of appellant in Mexico City by the Mexican Security Police, his transportation to Laredo, Texas, where the United States Immigration Inspector made a record of appellant's entry on August 18, 1950 into the United States, and his arrest, pursuant to a warrant sworn out on August 2, 1950 in the Southern District of New York. While appellant asserts that his contentions have not been made before, the records of the District Court make it abundantly plain that, except for some elaboration on matters of detail and the articulation of what are alleged to be new legal theories, the charges are not new but have already been rejected in one form or another. These prior proceedings and the procedural obstacles to any possible favorable action on the two new motions have been so fully set forth in the detailed discussion appearing in the well reasoned and comprehensive opinion of Judge Irving R. Kaufman that we think it not necessary to do more than note our approval of what he has written.

The charges are of such a serious and sensational character, however, and upon careful examination they turn out on the face of the record to be so utterly groundless that we shall briefly set forth our reasons for holding that the trial judge could not have arrived at any conclusion other than to decide, as he did, that [illegible] no hearing on either application, as the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U. S. C. Section 2255. There was no taking of personal testimony upon the motions addressed to the proceedings, no false representations made by the United States, no suppression of evidence. There was no violation of the

Extradition Treaty between the United States and Mexico, or of any of the provisions of the Constitution and laws of the United States, and the motions were properly denied *in toto*.

I

At the trial there was evidence which definitely connected appellant with the aims and purposes and with the consummation of the ends of the espionage conspiracy. *United States v. Rosenberg*, 2 Cir., 195 F. 2d 583, cert. denied, 344 U. S. 838, rehearing denied, 344 U. S. 889. This was supplemented by proof from which the jury might well have inferred that the Rosenbergs and appellant suspected that the FBI was closing in on them and that an elaborate plan was devised which envisaged escape from the law enforcement authorities of the United States by flight to Mexico and thence by way of Vera Cruz or some other seaport to Europe, with Soviet Russia as the ultimate destination. We had another phase of this same planned exodus to Mexico before us in *United States* v. *Perl*, 2 Cir., 210 F. 2d 457, in which case Perl testified in his own defense and described how he was approached on the subject.

The testimony in this case was to the effect that Rosenberg outlined a pattern of flight for David Greenglass and his wife that would take them to Mexico, then to Europe via Vera Cruz and finally to Russia. Shortly after Greenglass and Harry Gold, another member of the spy ring, were apprehended, appellant began to follow the pattern of flight outlined by Rosenberg to the Greenglasses.

Accordingly, the prosecution proved at the trial that appellant with his wife and [illegible] went to Mexico City in the spring of 1950. Had this been a vacation jaunt for a brief sojourn, with the intention of returning to the United States, there was ample opportunity for appellant's experienced and astute trial counsel to adduce evidence to

prove it; but no such evidence, testimonial or documentary, was forthcoming, and appellant did not even testify in his own defense. The prosecution, on the other hand, produced a number of witnesses who made it clear that appellant went to Mexico for purposes of flight, with a quite settled determination not to return to the United States if he could avoid doing so. The relevancy and sufficiency of this evidence have already been passed upon. *United States v. Rosenberg, supra.*

The witness Manuel Uiner de los Rios, who lived in the same apartment house as appellant in Mexico City, testified that he became acquainted with appellant, who told him some time in July that he was an American and was afraid that "they were looking for him so that he would have to go in the Army"; that appellant was looking for information as to how to get out of Mexico; that a few days later appellant asked for directions of how to go to Vera Cruz, which the witness gave him; that appellant was away for about 15 days, somewhere around the 20th or 22nd of July, 1950, during which period of time the witness received from appellant in the mail an envelope postmarked Vera Cruz addressed to the witness, containing a letter which the witness delivered to appellant's wife, and another postmarked Tampico, another Mexican seaport, also containing a letter for appellant's wife.

Other witnesses testified to the use by appellant of false names and an elaborate system of correspondence from appellant in Mexico, enclosing letters for delivery to members of appellant's family in the United States, with return addresses on the envelopes and the names "M. Sowell" and "M. Levitov." The effort to avoid interception and detection is perfectly plain. Indeed, in one of his prior Section 2255 applications appellant stated: "I left the family in the Mexico City apartment and travelled around Mexico to

Vera Cruz and Tampico, even using false names and inquiring about passage to Europe and South America for all of us."

The proof of appellant's return to the United States by the Mexican Security Police merely supplemented the proof of appellant's consciousness of guilt by explaining his presence at the trial, which appellant appears to concede was not voluntary. As we said on the first appeal, *United States v. Rosenberg*, *supra*, at p. 602, "otherwise the jury might have inferred that he had voluntarily returned to stand trial."

So we turn to the specifications of alleged perjury, false representations and suppression of evidence.

Immigration Inspector Huggins testified that on August 18, 1950 about nine Mexican officials brought appellant to him in Laredo, Texas, that he filled out the manifest, which is now challenged as [illegible] false, noting from what he had observed and not from anything said to him by the Mexican officials, "Deported From Mexico," and further data, such as appellant's occupation of electrical engineer, that he had spent all his life in the United States "until about two months ago," his age, address, and so on, from answers given to him by appellant. On the reverse side of the manifest, under "Remarks and Endorsements" is written, "Brought to Imm. Office by Mex. Police," followed by the signatures of Inspector Huggins and appellant.

By some process of reasoning that is far from clear to us, this is supposed to be wilful perjury because appellant asserts that he was assaulted and "kidnapped" by the Mexican Security Police, as agents of or instigated by the FBI, and brought to Laredo, Texas, without any formal deportation proceedings, which we are told are elaborate and technical and always observed with meticulous care by the Mexican authorities.

But appellant was nonetheless deported and the witness did no more than testify to what he personally observed, or was told by appellant, and acted in the manifest in the regular course of his official duties. It is nothing short of absurd to characterize this as wilful perjury deliberately foisted on the trial court by the prosecution. There was no perjury.

The charge that the judgment of conviction cannot stand because the prosecutor procured it by false representations also falls of its own weight. On appellant's motion in arrest of judgment, made shortly after the conclusion of the trial, and on April 5, 1951, his counsel referred to the manifest prepared by Inspector Huggins as a "downright falsehood," and read into the record the affidavit of appellant describing the "kidnapping" in some detail, in the course of which appellant stated that he tried to show the Mexican police his "papers, visas etc.," concluding with the charge that the United States had secured jurisdiction over appellant "by a criminal, illegal, act, and so the United States must send Sobell back to the place where they took him from, to deal with him accordingly some time in the future." This motion was denied and the order affirmed and certiorari denied, and this forms part of the background described in the opinion of Judge Irving R. Kaufman, 142 F. Supp. 313.

The alleged false statements [illegible] made by the prosecutor who spoke last [illegible] for appellant had fully stated the grounds for his motion in arrest of judgment. The first of these is

[illegible] affidavit [illegible] contains a falsehood in the statement that there was exhibited amongst other things to the Mexican authorities visas. Counsel ought to know that the client never went into Mexico with a visa.

This is supposed to be false because, although appellant concededly had no visa, he did have a tourist card, which counsel now insists is a "tourist card (visa)." Thus the charge collapses. The statement as made was in all respects true. The balance of the claim of wilful deception of the court has in effect already been disposed of. The prosecutor said:

> The whole affidavit [of Sobell] portrays certainly that this defendant was not honorably escorted from Mexico but that literally he was kicked out as a deportee.

As the trial judge had the affidavit before him, it is difficult to see how any characterization of its contents could possibly justify a charge of wilful misrepresentation and deception; but in fact the statement was accurate. Appellant was deported from Mexico; he did not return to the United States voluntarily; and the expression "kicked out," while perhaps offensive to a refined ear, describes precisely what happened to him on August 18, 1950.

The alleged suppression of evidence is more of the same thing, with some elaboration. Appellant's international vaccination certificate is mentioned but appellant knew of its existence, made no reference to it at the trial, and he must have realized that it would cut both ways if offered in evidence. He might well have claimed that its possession demonstrated an intention to return to the United States, but the prosecution would just as likely have argued to the contrary. None of the remaining so-called "facts of abduction" tended in the slightest degree to demonstrate that appellant would have returned to the United States of his own volition. Nor are we able to discern any suppression of any evidence by the prosecution.

The nub of the matter is this: What appellant now asserts he asserted in substance and in the most unequivocal way

in his motion in arrest of judgment. It was then clear that what he then knew was available for his defense at the trial but, as stated by Judge Frank in his opinion on the first appeal (195 F. 2d at p. 603): "He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactic." We may add that the "trump card" would probably have proved more harmful than beneficial to appellant's defense. At least it is fair to assume that such was the conclusion arrived at by his trial counsel. They decided not to pursue the subject at the trial, further than upon the cross-examination of Inspector Huggins, who testified that he was expecting appellant at Laredo, Texas, and "we had a lookout on him to prevent his departure from the United States." When this testimony was thus elicited, counsel for appellant stated, "that is just exactly what I wanted to get at," but the subject was not pursued further after Inspector Huggins left the witness stand.

The cases relied upon by appellant, such as *Hysler v. Florida*, 315 U. S. 411, *Mooney v. Holohan*, 294 U. S. 103, *Pyle v. Kansas*, 317 U. S. 213, *Alcorta v. Texas*, 355 U. S. 28, *Napue v. Illinois*, 360 U. S. 264, *Miller v. Pate*, 386 U. S. 1, *Giglio v. United States*, 405 U. S. 150, *Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238, and *Weatherford v. United States*, 352 U. S. 1, and others, where the court found perjured testimony had been used or there was improper conduct on the part of prosecuting officials, involve facts which bear not even a remote resemblance to the factual background of this case; the principles stated in those cases have no application here.

II

Appellant's supplemental motion also rests upon the charge that he was forcibly abducted from Mexico by the Mexican Security Police, acting for the United States. He contends that the alleged abduction was a violation of the Extradition Treaty between the United States and

Mexico, 31 Stat. 1818, and that as a result the United States lacked power to proceed against him. He relies upon *Cook v. United States*, 288 U. S. 102, which holds that the United States courts may not acquire jurisdiction by means of a treaty violation. As appellant says, his "objection to national and, consequently, judicial power does not rest on the kidnapping or abduction of appellant as such, but rather upon the violation of the treaty." We must inquire, therefore, whether there has been a violation of the treaty with Mexico.

It seems too plain for reasonable debate that *Ker v. Illinois*, 119 U. S. 436, answers that question in the negative, even if appellant's allegations be taken as true. That case involved a treaty with Peru, 18 Stat. 719, in all pertinent respects the same as the one before us, i.e., each treaty provides for extradition for certain named crimes and neither the treaty with Peru nor the treaty with Mexico in terms prohibits abduction by one party of criminals found in the territory of the other. Ker, who had been charged with a crime committed in the United States, had left the country and was located in Peru. The President of the United States issued a warrant and sent a messenger to Peru to receive Ker from the Peruvian authorities in compliance with the treaty. Instead, the messenger kidnapped Ker and returned him forcibly to the United States. Ker excepted to the jurisdiction of the court but was convicted. Upon Supreme Court review of affirmance of his conviction by the Illinois court, Ker urged two other grounds for reversal.

But the main proposition insisted on by counsel for plaintiff in error in this court is, that by virtue of the treaty of extradition with Peru the defendant acquired by his residence in that country a right of asylum, a right to be free from prosecution for the crime com-

> mitted in Illinois, it [gave] right in him that he should [not] only be forcibly removed from Peru to the State of Illinois in accordance with the provisions of the treaty, and that this right is one which he can assert in the courts of the United States in all cases, whether the removal took place under proceedings sanctioned by the treaty, or under proceedings which were in total disregard of that treaty, amounting to an unlawful and unauthorized kidnapping. [119 U. S. at p. 441.]

Although the language appellant uses is slightly different, there can be no doubt that he is asserting precisely the same claim as did Ker, which claim was rejected by the Supreme Court.

And the *Ker* case continues to have validity. It was cited in the *Cook* case, relied upon by appellant, and in *Frisbie v. Collins*, 342 U. S. 519, where the Court said at p. 522:

> This Court has never departed from the rule announced in *Ker v. Illinois*, 119 U. S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a "forcible abduction."

Appellant seeks to avoid the impact of the *Ker* case by insisting that, although there was no treaty violation in that case, there was such a violation in the case at bar. "Unlike the facts in *Ker*," appellant says, "the petition here charges action by the United States Government. . . ." Appellant relies on "The actions of the United States' agents in initiating, planning and participating in the seizure." But if this can be maintained, still assuming the truth of appellant's charges, that the unlawful and unauthorized acts of the Mexican police acting in behalf of subordinate agents of the Executive branch of the United States Government were not acts of the United States

than the unlawful and unauthorized acts of the emissary of the Chief Executive. We think the question presented is indistinguishable from that before the Supreme Court in *Ker*, and that our decision here is controlled by that case.

Affirmed.

125—5-15-57 USCA—2877

RECORD PRESS — 214-16-18 William Street — New York 38, N. Y. — BEekman 3-2638

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

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	

May 15, 1957

Honorable J. Edgar Hoover
Director, Federal Bureau of Investigation
U.S. Department of Justice
Washington 25, D.C.

Dear Edgar:

I forwarded a photostatic copy of the opinion, as filed yesterday, in the Sobell case to Lou Nichols. I am enclosing herewith a printed copy of the opinion, just received, for your records.

With warm regards,

Sincerely yours,

Irving (Kaufman)

Enclosure

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-87 BY SP2 AUC

/ ENCLOSURE

101-2483-1387

MAY 23 1957

RECORDED-11

EX-131

let to Judge Kaufman 5-21-57 JPL:ljdb

File 101-2483

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 235 and 236—October Term, 1956.

(Argued March 5, 1957 Decided May 14, 1957.)

Docket Nos. 24299 and 24300

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

MORTON SOBELL,

Defendant-Appellant.

Before:

MEDINA and WATERMAN, *Circuit Judges,* and GALSTON, *District Judge.*

Appeal from an order of the United States District Court for the Southern District of New York, Irving R. Kaufman, *Judge.*

Defendant appeals from an order denying two motions, made pursuant to the provisions of 28 U. S. C. Section 2255, for hearings and for orders setting aside his conviction for espionage conspiracy. Opinion below, 142 F. Supp. 515. Affirmed.

PAUL W. WILLIAMS, United States Attorney for the Southern District of New York, New York City (Robert Kirtland and Maurice N. Nessen, Assistant United States Attorneys, New York City, of Counsel), *for plaintiff-appellee.*

DONNER, KINOY & PERLIN, New York City, and BENJAMIN DREYFUS, San Francisco, California (Frank J. Donner, Arthur Kinoy and Marshall Perlin, New York City, Benjamin Dreyfus, San Francisco, California, and Luis Sanchez Ponton, Mexico City, Mexico, of Counsel), *for defendant-appellant.*

MEDINA, *Circuit Judge*:

At the close of a trial with his co-defendants Julius and Ethel Rosenberg, appellant was sentenced to thirty years imprisonment on April 5, 1951. After numerous attempts to vacate the judgment of conviction on various grounds, including several prior applications under 28 U. S. C. Section 2255, all of which were denied and the rulings affirmed on appeal and certiorari denied by the Supreme Court, appellant made the two motions which resulted in the order appealed from. The first motion is based upon the charge that, at the trial in 1951, the prosecution "knowingly, willfully and intentionally used false and perjurious testimony and evidence, made false representations to the Court, and suppressed evidence which would have impeached and refuted testimony given against petitioner." The second motion is based upon the charge that the "United States itself, as well as its courts * * * lacked all sovereignty and power to conduct the proceedings," and that the trial court

lacked jurisdiction because of alleged violations of the Constitution and laws of the United States, including "the Extradition Treaty between the United States and Mexico." The subject matter of these charges relates to the seizure of appellant in Mexico City by the Mexican Security Police, his transportation to Laredo, Texas, where the United States Immigration Inspector made a record of appellant's entry on August 18, 1950 into the United States, and his arrest, pursuant to a warrant duly issued on August 3, 1950 in the Southern District of New York. While appellant asserts that his contentions have not been made before, the records of the District Court make it abundantly plain that, except for some elaboration in matters of detail and the articulation of what are alleged to be new legal theories, the charges are not new, but have already been rejected in one form or another. These prior proceedings and the procedural obstacles to any possible favorable action on the two new motions have been so fully set forth in the detailed discussion appearing in the well reasoned and comprehensive opinion of Judge Irving R. Kaufman that we think it not necessary to do more than note our approval of what he has written.

The charges are of such a serious and sensational character, however, and upon careful examination they turn out on the face of the record to be so utterly groundless, that we shall briefly set forth our reasons for holding that the trial judge could not have arrived at any conclusion other than to decide, as he did, that there be no hearing on either application, as "the files and records of the case conclusively show that the prisoner is entitled to no relief," 28 U. S. C. Section 2255. There was no foisting of perjurious testimony upon the court and jury by the prosecution; no false representations were made; there was no suppression of evidence; there was no violation of the

Extradition Treaty between the United States and Mexico, or of any of the provisions of the Constitution and laws of the United States; and the motions were properly denied *in toto.*

I

At the trial there was evidence which definitely connected appellant with the aims and purposes and with the consummation of the ends of the espionage conspiracy. *United States* v. *Rosenberg,* 2 Cir., 195 F. 2d 583, cert. denied, 344 U. S. 838, rehearing denied, 344 U. S. 889. This was supplemented by proof from which the jury might well have inferred that the Rosenbergs and appellant suspected that the FBI was closing in on them and that an elaborate plan was devised which envisaged escape from the law enforcement authorities of the United States by flight to Mexico and thence by way of Vera Cruz or some other seaport to Europe, with Soviet Russia as the ultimate destination. We had another phase of this same planned exodus to Mexico before us in *United States* v. *Perl,* 2 Cir., 210 F. 2d 457, in which case Perl testified in his own defense and described how he was approached on the subject.

The testimony in this case was to the effect that Rosenberg outlined a pattern of flight for David Greenglass and his wife that would take them to Mexico, then to Europe via Vera Cruz and finally to Russia. Shortly after Greenglass and Harry Gold, another member of the spy ring, were apprehended, appellant began to follow the pattern of flight outlined by Rosenberg to the Greenglasses.

Accordingly, the prosecution proved at the trial that appellant with his wife and children went to Mexico City in the spring of 1950. Had this been a vacation jaunt for a brief sojourn, with the intention of returning to the United States, there was ample opportunity for appellant's experienced and astute trial counsel to adduce evidence to

prove it; but no such evidence, testimonial or documentary, was forthcoming, and appellant did not even testify in his own defense. The prosecution, on the other hand, produced a number of witnesses who made it clear that appellant went to Mexico for purposes of flight, with a quite settled determination not to return to the United States if he could avoid doing so. The relevancy and sufficiency of this evidence have already been passed upon. *United States* v. *Rosenberg, supra.*

The witness Manuel Giner de los Rios, who lived in the same apartment house as appellant in Mexico City, testified that he became acquainted with appellant, who told him some time in July that he was an American and was afraid that "they were looking for him so that he would have to go in the Army"; that appellant was looking for information as to how to get out of Mexico; that a few days later appellant asked for directions of how to go to Vera Cruz, which the witness gave him; that appellant was away for about 15 days, somewhere around the 20th or 22nd of July, 1950, during which period of time the witness received from appellant in the mail an envelope postmarked Vera Cruz addressed to the witness, containing a letter which the witness delivered to appellant's wife, and another postmarked Tampico, another Mexican seaport, also containing a letter for appellant's wife.

Other witnesses testified to the use by appellant of false names and an elaborate system of correspondence from appellant in Mexico, enclosing letters for delivery to members of appellant's family in the United States, with return addresses on the envelopes and the names "M. Sowell" and "M. Levitov." The effort to avoid interception and detection is perfectly plain. Indeed, in one of his prior Section 2255 applications appellant stated: "I left the family in the Mexico City apartment and travelled around Mexico to

Vera Cruz and Tampico, even using false names and inquiring about passage to Europe and South America for all of us."

The proof of appellant's return to the United States by the Mexican Security Police merely supplemented the proof of appellant's consciousness of guilt by explaining his presence at the trial, which appellant appears to concede was not voluntary. As we said on the first appeal, *United States* v. *Rosenberg, supra,* at p. 602, "otherwise the jury might have inferred that he had voluntarily returned to stand trial."

So we turn to the specifications of alleged perjury, false representations and suppression of evidence.

Immigration Inspector Huggins testified that on August 18, 1950 about nine Mexican officials brought appellant to him in Laredo, Texas, that he filled out the manifest, which is now challenged as palpably false, noting from what he had observed and not from anything said to him by the Mexican officials, "Deported From Mexico," and further data, such as appellant's occupation of electrical engineer, that he had spent all his life in the United States "until about two months ago," his age, address, and so on, from answers given to him by appellant. On the reverse side of the manifest, under "Remarks and Endorsements" is written, "Brought to Imm. Office by Mex. Police," followed by the signatures of Inspector Huggins and appellant.

By some process of reasoning that is far from clear to us, this is supposed to be wilful perjury because appellant asserts that he was assaulted and "kidnapped" by the Mexican Security Police, as agents of or instigated by the FBI, and brought to Laredo, Texas, without any formal deportation proceedings, which we are told are elaborate and technical and always observed with meticulous care by the Mexican authorities.

But appellant was nonetheless deported and the witness did no more than testify to what he personally observed, or was told by appellant, and noted in the manifest in the regular course of his official duties. It is nothing short of absurd to characterize this as wilful perjury deliberately foisted on the trial court by the prosecution. There was no perjury.

The charge that the judgment of conviction cannot stand because the prosecutor procured it by false representations also falls of its own weight. On appellant's motion in arrest of judgment, made shortly after the conclusion of the trial, and on April 5, 1951, his counsel referred to the manifest prepared by Inspector Huggins as a "downright falsehood," and read into the record an affidavit of appellant describing the "kidnapping" in some detail, in the course of which appellant stated that he tried to show the Mexican police his "papers, visas etc.," concluding with the charge that the United States had secured jurisdiction over appellant "by a criminal, illegal, act, and so the United States must send Sobell back to the place where they took him from, to deal with him accordingly some time in the future." This motion was denied and the order affirmed and certiorari denied, and this forms part of the background described in the opinion of Judge Irving R. Kaufman, 142 F. Supp. 515.

The alleged false statements were made by the prosecutor who spoke briefly, after counsel for appellant had fully stated the grounds for his motion in arrest of judgment. The first of these is:

> This very affidavit (of Sobell) 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.

This is supposed to be false because, although appellant concededly had no visa, he did have a tourist card, which counsel now insists is a "tourist card (visa)." Thus the charge collapses. The statement as made was in all respects true. The balance of the claim of wilful deception of the court has in effect already been disposed of. The prosecutor said:

> The whole affidavit (of Sobell) portrays certainly that this defendant was not honorably escorted from Mexico but that literally he was kicked out as a deportee.

As the trial judge had the affidavit before him, it is difficult to see how any characterization of its contents could possibly justify a charge of wilful misrepresentation and deception; but in fact the statement was accurate. Appellant was deported from Mexico; he did not return to the United States voluntarily; and the expression "kicked out," while perhaps offensive to a refined ear, describes precisely what happened to him on August 18, 1950.

The alleged suppression of evidence is more of the same thing, with some elaboration. Appellant's international vaccination certificate is mentioned but appellant knew of its existence, made no reference to it at the trial, and he must have realized that it would cut both ways if offered in evidence. He might well have claimed that its possession demonstrated an intention to return to the United States, but the prosecution would just as likely have argued to the contrary. None of the remaining so-called "facts of abduction" tended in the slightest degree to demonstrate that appellant would have returned to the United States of his own volition. Nor are we able to discern any suppression of any evidence by the prosecution.

The nub of the matter is that what appellant now asserts he asserted in substance and in the most unequivocal way

in his motion in arrest of judgment. It was then clear that what he then knew was available for his defense at the trial but, as stated by Judge Frank in his opinion on the first appeal (195 F. 2d at p. 603): "He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactic." We may add that the "trump card" would probably have proved more harmful than beneficial to appellant's defense. At least it is fair to assume that such was the conclusion arrived at by his trial counsel. They decided not to pursue the subject at the trial, further than upon the cross-examination of Inspector Huggins, who testified that he was expecting appellant at Laredo, Texas, and "we had a lookout on him to prevent his departure from the United States." When this testimony was thus elicited, counsel for appellant stated, "that is just exactly what I wanted to get at," but the subject was not pursued further after Inspector Huggins left the witness stand.

The cases relied upon by appellant, such as *Hysler* v. *Florida,* 315 U. S. 411, *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.,* 322 U. S. 238, and *Mesarosh* v. *United States,* 352 U. S. 1, and others, where the court found perjured testimony had been used or there was improper conduct on the part of prosecuting officers, involve facts which bear not even a remote resemblance to the factual background of this case; the principles stated in those cases have no application here.

II

Appellant's supplementary motion also rests upon the charge that he was forcibly abducted from Mexico by the Mexican Security Police as agents of the United States. He contends that the alleged abduction was a violation of the Extradition Treaty between the United States and

Mexico, 31 Stat. 1818, and that as a result the United States lacked power to proceed against him. He relies upon *Cook* v. *United States,* 288 U. S. 102, which holds that the United States courts may not acquire jurisdiction by means of a treaty violation. As appellant says, his "objection to national and, consequently, judicial power does not rest on the kidnapping or abduction of appellant as such, but rather upon the violation of the treaty." We must inquire, therefore, whether there has been a violation of the treaty with Mexico.

It seems too plain for reasonable debate that *Ker* v. *Illinois,* 119 U. S. 436, answers that question in the negative, even if appellant's factual assertions be taken as true. That case involved a treaty with Peru, 18 Stat. 719, in all pertinent respects the same as the one before us, i.e., each treaty provides for extradition for certain named crimes and neither the treaty with Peru nor the treaty with Mexico in terms prohibits abduction by one party of criminals found in the territory of the other. Ker, who had been charged with a crime committed in the United States, had left the country and was located in Peru. The President of the United States issued a warrant and sent a messenger to Peru to receive Ker from the Peruvian authorities in compliance with the treaty. Instead, the messenger kidnapped Ker and returned him forcibly to the United States. Ker excepted to the jurisdiction of the court but was convicted. Upon Supreme Court review of affirmance of his conviction by the Illinois court, Ker urged two other grounds for reversal,

> But the main proposition insisted on by counsel for plaintiff in error in this court is, that by virtue of the treaty of extradition with Peru the defendant acquired by his residence in that country a right of asylum, a right to be free from molestation for the crime committed in Illinois, a positive right in him that he should only be forcibly removed from Peru to the State of Illinois in accordance with the provisions of the treaty, and that this right is one which he can assert in the courts of the United States in all cases, whether the removal took place under proceedings sanctioned by the treaty, or under proceedings which were in total disregard of that treaty, amounting to an unlawful and unauthorized kidnapping. [119 U. S. at p. 441.]

Although the language appellant uses is slightly different, there can be no doubt that he is asserting precisely the same claim as did Ker, which claim was rejected by the Supreme Court.

And the *Ker* case continues to have validity. It was cited in the *Cook* case, relied upon by appellant, and in *Frisbie* v. *Collins,* 342 U. S. 519, where the Court said at p. 522:

> This Court has never departed from the rule announced in *Ker* v. *Illinois,* 119 U. S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a "forcible abduction."

Appellant seeks to avoid the impact of the *Ker* case by insisting that, although there was no treaty violation in that case, there was such a violation in the case at bar. "Unlike the facts in *Ker,*" appellant says, "the petition here charges action by the United States Government * * *." Appellant relies on "The actions of the United States' agents in initiating, planning and participating in the seizure." But it can hardly be maintained, still assuming the truth of appellant's charges, that the unlawful and unauthorized acts of the Mexican police acting in behalf of subordinate agents of the executive branch of the United States Government were any more acts of the United States

than the unlawful and unauthorized acts of the emissary of the Chief Executive. We think the question presented is indistinguishable from that before the Supreme Court in *Ker,* and that our decision here is controlled by that case.

Affirmed.

125—5-15-57 USCA—2877

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cc - Belmont
Boardman
Lee

May 21, 1957

RECORDED-11 101-2483-1387

Honorable Irving R. Kaufman (orig. only)
United States District Judge
United States Court House
Foley Square
New York, New York

EX-131

Dear Irving:

I received the printed copy of the opinion of Judge Medina in the Sobell case which you forwarded to me. Thank you for your thoughtfulness in sending me this opinion which I have read with great interest.

Sincerely,

Edgar

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(4)

NOTE: Judge Kaufman furnished Photostat of opinion to Mr. Nichols on 5-17-57. New York Office furnished Photostat of opinion on 5-17-57. Opinion analyzed in memo Branigan to Belmont dated 5-17-57. Opinion affirmed Judge Kaufman's action in denying Sobell's motions for a new trial.

Tolson
Nichols
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Belmont
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Mohr
Parsons
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Tele. Room
Holloman

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COMM-FBI

101-2483

71 MAY 27 1957

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : A. H. Belmont

DATE: May 17, 1957

FROM : W. A. Branigan

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Tolson
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SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

Subject convicted in 1951 with Julius and Ethel Rosenberg for conspiracy to commit espionage and sentenced to 30 years in prison. On 5-8-56 subject filed motion District Court, Southern District of New York, for a new trial and a hearing claiming he had been illegally deported from Mexico and the U.S. Government was aware of this and, therefore, the Government knowingly used perjured testimony that he was legally deported. On 5-25-56 he filed second motion for a new trial claiming he was not legally extradited and the Government lacked jurisdiction to try him. The perjured testimony referred to by Sobell was that of INS inspector James Huggins who introduced into evidence Sobell's manifest card bearing notation: "Deported from Mexico." Huggins testified he wrote this on the card after seeing Sobell escorted to the border by Mexican officials. On 6-20-56 Judge Irving R. Kaufman, District Court, Southern District of New York, denied both motions.

On 3-5-57 U.S. Circuit Court of Appeals, Second Circuit, composed of Justices Medina, Waterman and Galston heard subject's appeal. On 5-14-57 the Circuit Court of Appeals unanimously affirmed the denial by the District Court of subject's motions for a new trial. The opinion was written by Mr. Justice Medina.

In his opinion, Judge Medina states the charges of the defendant are utterly groundless but in view of the serious and sensational character of these charges, the court will set forth its reasons for holding that the trial judge could not have arrived at any other conclusion. Judge Medina states there was no foisting of perjurious testimony on the court and jury by the prosecution, no false representations were made, no evidence was suppressed, no violation of the extradition treaty or any of the provisions of the Constitution of the United States occurred.

The opinion reviews the proof put in by the Government at the trial that Sobell was fleeing from the United States and was not on a vacation. The opinion points out that the proof of Sobell's return to the United States "merely supplemented the proof

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101-2483
cc - Belmont
Branigan
Nichols
Lee

101-2483

RECORDED - 83

14 JUN 4 1957

EX - 131

50 JUN 7 1957