this testimony is compared with Gold's pre-trial statement to his attorneys about the meeting in the late Fall of 1945 (T.(5) 42-43), the inference is compelling that it was at this November meeting that Yakovlev gave Gold the impression that the information previously obtained from Greenglass was valueless, in an apparent effort to discourage Gold from contacting Greenglass through Rosenberg.*

Thus, Gold's statement to his attorneys on June 14, 1950 that after he turned the Greenglass information over to John (Yakovlev), "John never mentioned anything about it" apart from this one occasion in the late Fall of 1945 (T.(5) 42-43) again involves a failure of recollection (i.e., of the discussion with Yakovlev two weeks after June 5, 1945; R. 1201) and not a direct contradiction.

---

* In view of the caution exercised by these espionage conspirators to insure that each courier knew only the names and addresses of his sources of information but not of his superiors or fellow couriers (see, e.g., R. 1121), it is apparent that Greenglass had blundered in June, 1945, in giving Julius Rosenberg's name and phone number to Gold.

The Recordings Show Neither Perjury Nor Knowing Use Thereof

Petitioner's argument that these recordings show perjury and knowing use thereof involves a number of premises, all of which are faulty.

First: It assumes that what Gold told his attorneys was word-for-word identical to what he told the FBI. While Hamilton asked Gold to tell him about the facts underlying the charges "that you have given the FBI, as near as you can" (T.(1) 17; see also T.(2) Side 2, p. 16), to assume that Gold did so down to the very last detail is to engage in fantasy. The FBI and Gold's attorneys were motivated in their questioning by two different purposes; the FBI, to root out each participant and transaction in the espionage scheme; and Gold's attorneys, to lay the foundation for a leniency plea. Gold's log for the period May 22, 1950 to July 19, 1950, showing approximately 162 hours spent with the FBI over that period in comparison with 10 or 12 hours of interviews with his attorneys, is illustrative of the

depth and thoroughness of the FBI investigation. Obviously Gold could not recount every detail of these interviews to his attorneys even had they been interested in going into these matters in great depth.* Conversely, it is also entirely possible Gold told his attorneys matters which he did not tell the FBI.

Second: The premise that the details of the June 3, 1945 meetings testified to at the trial by Gold but not included in his June 14, 1950 interview with his attorneys are attributable to contrivance by the Government, rather than to refreshed recollection in the nine-month period which elapsed before trial, has not one shred of evidence to support it. Petitioner cannot substitute his conclusions, which abound, for proof in this respect. The fact that the other two parties to the June 3, 1945 meetings, David and Ruth Greenglass, became

* See Senate Internal Security Subcommitee Hearings, supra at p. 1087, where in a report dated October 11, 1950, Gold stated that the details of his crime had been "told with the most meticulous thoroughness to the FBI and, in somewhat less exhaustive detail, to my counsel."

cooperating witnesses after June 14, 1950, would of itself provide a fertile field for searching Gold's recollection of these meetings. Unless we are to indulge with petitioner in presumptions of fraud rather than in presumptions of regularity, his allegations of subornation of perjury must be rejected.

Third: Petitioner does not even begin to meet his burden of showing that Gold gave material perjured testimony against him and that it was knowingly and intentionally used by the prosecution. Neither perjury nor knowing use thereof is shown by pointing to the trivial inconsistencies between Gold's early statements and his trial testimony. See the cases cited at pages 77-79 of the Government's memorandum of law, filed September 9, 1966. Particularly is that true because the alleged discrepancies consist of matters of omission in a statement given less than a month after Gold's arrest and nine months prior to his trial testimony.

Fourth: The means were available to petitioner at trial to cross-examine Gold concerning prior inconsistent statements and to lay a foundation for a demand for production of his pre-trial statements to Government agents. See pages 79-81 of the Government's aforesaid memorandum of law. Rather than pursue this course, defense counsel did not cross-examine and conceded the veracity of Gold's testimony.

CONCLUSION

Now that Gold's pre-trial statements to his attorneys have been removed from the realm of conclusory allegations in the amended petition and produced in authenticated form, it is evident that they provide no support for petitioner's request for a hearing on his charges of knowing use of perjured

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testimony of Gold in connection with the occurrence of the June 3, 1945 meetings in Albuquerque, New Mexico.

Respectfully submitted,

ROBERT M. MORGENTHAU
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

ROBERT L. KING
STEPHEN F. WILLIAMS
Assistant United States Attorneys

Of Counsel.

FD-36 (Rev. 5-22-64)

FBI

Date: 10/27/66

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Priority)

TO : DIRECTOR, FBI (101-2483)

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

SUBJECT: MORTON SOBELL
ESP - R
(OO:NY)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12/10/86 BY 3042 fmt pfe

Re Philadelphia airtel 10/13/66, and New York letter 10/18/66.

Enclosed herewith for the Bureau are one copy each of the following documents which were furnished by AUSA KING on 10/26/66:

1. Affidavit of defense counsel entitled "The Matters at Issue and Their Applicability to Petitioner."

2. Affidavit of MARSHALL PERLIN dated 10/22/66, attaching an affidavit of Dr. ROBERT F. CHRISTY dated 9/25/66.

3. Affidavit of AUSA ROBERT L. KING, dated 10/18/66, in opposition to the CHRISTY affidavit.

4. Affidavit of defense attorneys entitled "Petitioner's Memorandum Concerning Pre-Trial Statements and Certain Documents of HARRY GOLD." (For the information of the Bureau, a memorandum of the USA answering the above document was submitted to the Bureau with NY airtel of 10/18/66.)

5. Copy of letter from AUSA KING to attorney AUGUSTUS S. BALLARD, dated 10/25/66.

"ENCL. BEHIND FILE"

101-2483-1680

4 - Bureau (Encls. 5) (RM)
(1 - 65-57449) (HARRY GOLD)
2 - Philadelphia (Encls. 5) (RM)
(1 - 65-4307) (HARRY GOLD)
1 - New York (65-15324)
1 - New York
PFD:eah
(10)

OCT 28 1966

Approved _____ Sent _____ M Per _____

Special Agent in Charge

53 NOV 15 1966

UNRECORDED COPY FILED IN

Enclosed for Philadelphia is all of the documentary material which was obtained from the attorneys for HARRY GOLD on 10/13/66, and forwarded to New York with Philadelphia airtel dated 10/13/66. This material was returned to the New York Office on 10/26/66, by AUSA KING.

Also enclosed for Philadelphia is a letter from AUSA KING to AUGUSTUS S. BALLARD, dated 10/25/66; one copy of defense counsel's memorandum concerning the pre-trial statements of HARRY GOLD; and one copy of the Government's answer to defense counsel's memorandum.

All of the above material should be furnished to GOLD's attorneys.

There is also enclosed for Philadelphia an extra copy of the above-mentioned letter from AUSA KING to Mr. BALLARD for the files of the Philadelphia Office.

AUSA KING advised that all of the material to be presented to the Court by subject's defense counsel and by the Government had now been filed with the Court. KING advised that it is not known how long it might be before a decision is rendered by the Court. He stated, however, that USDJ EDWARD WEINFELD, before whom this matter is pending, will be in chambers until 11/15/66, which may contribute to an early decision.

LEAD

PHILADELPHIA

AT PHILADELPHIA, PA. Will return to the law firm of Pepper, Hamilton and Scheetz the enclosed documents from their files, together with the letter from AUSA KING and the two memoranda mentioned above.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

MORTON SOBELL, :

Petitioner, :

- v - : 66 Civ. 1328

UNITED STATES OF AMERICA, :

Respondent, :

- x

THE MATTERS AT ISSUE AND
THEIR APPLICABILITY TO
PETITIONER

On page 28 of the government's memorandum it argues that no connection was ever shown between Sobell and the alleged thefts of atomic secrets by Greenglass or Gold and Rosenberg and that his conviction depended solely upon the jury's acceptance of the testimony of Max Elitcher. It is therefore argued that even if the allegations in the present petition were sustained, such would afford no grounds for relief to petitioner. In the course of the argument, the government restated this proposition:

> "Finally this brings us all to the more pertinent question of what this all has to do with Morton Sobell, because Judge Kaufman said at the said sentencing of Sobell 'The evidence in the case did not point to any activity on your part in connection with the atomic bomb project'" (Transcript of argument, p. 100)

The Court then noted that the petitioner being a charged co-conspirator was accountable for any acts in furtherance of the conspiracy, and that in substance since petitioner bore the burden he should be the beneficiary in the event the conspiracy conviction was tainted. Mr. King's response was that the evidence of the petitioner's membership was of a different nature than that of the Rosenbergs.

The fact that the petitioner has standing is established both by the nature of the testimony adduced at the trial and by the decision of the Court of Appeals in affirming the original judgment of conviction. United States v. Rosenberg, 195 F.2d 583.

Elitcher was the first prosecution witness. He testified that his claimed knowledge of and involvement in the charged conspiracy resulted from a meeting that he had with Julius Rosenberg in Washington in June of 1944, at which time Elitcher maintained that Rosenberg requested that he be supplied classified confidential information of a military nature for the purpose of transmitting the same to the Soviet Union. (R.208-211) In the course of his testimony Elitcher referred to his personal relationship with Sobell and that some time thereafter during a subsequent meeting with Rosenberg, Rosenberg stated that Sobell was also engaged in similar activity (R. 235-236). Elitcher

went on to testify that during a summer vacation in 1944 he discussed the Rosenberg conversations with Sobell. (R. 236-239, 243-245)

Thus it is clear that Elitcher's testimony was used to establish Rosenberg as the initiator of the conspiracy who involved petitioner as well as Elitcher. The remainder of his testimony continued to intertwine petitioner and Rosenberg with himself in connection with the charged conspiracy.

Julius Rosenberg was specifically interrogated concerning Elitcher and Sobell and the existence of a conspiracy involving the three of them as well as others. Rosenberg categorically denied the Elitcher testimony both as it affected him and Sobell. (R. 1149-1159).

It is therefore manifest that the jury's acceptance of the Rosenberg testimony would have resulted in the rejection of the testimony of Elitcher and caused the acquittal of both the petitioner and his co-defendants. Conversely the acceptance of the testimony of Greenglass and Gold would mean the rejection of the Rosenberg testimony including his denial of the Elitcher testimony -- thus resulting in a verdict of guilty against all three of the defendants -- that is what happened in this trial. If Rosenberg's testimony was accepted, there was no proof of

the existence of a conspiracy. Thus the fraud perpetrated against the Rosenbergs had, in this case, an identical impact upon petitioner.

It is true that the petitioner had asked that the indictment be dismissed at the end of the government's case against him on the ground that the government was seeking to establish two separate conspiracies, but the trial court rejected this contention and did not permit the jury to determine that issue. The trial and conviction were premised on the theory of a single conspiracy -- ". . . one giant conspiracy to send defense information abroad, of which the atomic espionage was only one branch" United States v. Rosenberg, supra, p. 600. In affirming the conviction, Judge Frank dissenting, the Court of Appeals quoted with approval the one conspiracy theory of the trial court's charge:

> "Again I want to emphasize that the conspiracy in this case is a conspiracy to obtain secret information pertaining to the national defense and then to transmit it to the Union of Soviet Socialist Republics. It is not a conspiracy to obtain information only about the atom bomb. I point this out, because the government contends that Sobell was in the general conspiracy to obtain information of a secret nature. . . If you find that there was a conspiracy and that Morton Sobell was a member of the conspiracy, any statements or acts of any co-conspirators are binding upon him because the law is that once you have joined a conspiracy, attempting to accomplish an unlawful

> objective, the acts of the co-conspirators done in furtherance of the same objective, even though the conspirators are unknown to you, are binding upon you." (page 600)

and further

> "A majority of this Court have concluded on the following ground that there was a single unified purpose: the 'common end' consisted of the transmission to the Soviet Union of any and all information relating to the national defense. . . Sobell is confusing the particular part each conspirator played in the espionage activities with the end-all purpose of the conspirators -- the aiding of Russia by sending to it any and all kinds of secret information. It did not matter that Sobell know nothing of the atomic episodes; he is nevertheless charged with the acts done by Greenglass, Gold and Rosenberg, in furtherance of the over-all conspiracy." (page 601)

Having carried that burden at the time of trial and to this very moment, petitioner is entitled to the relief on the ground set forth in the present petition.

Thus the government's argument of "inapplicability" has no foundation in this proceeding, either in law or in fact.

Respectfully submitted,

MARSHALL PERLIN
WILLIAM M. KUNSTLER
ARTHUR KINOY
MALCOLM SHARP
BENJAMIN DREYFUS
VERN COUNTRYMAN

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MORTON SOBELL, :

Petitioner, : AFFIDAVIT RELATING TO THE SUBMISSION OF THE AFFIDAVIT OF DR. CHRISTY

- v - :

UNITED STATES OF AMERICA, : 66 Civ. 1328

Respondent. :

- - - - - - - - - - - - - - - - - x

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

MARSHALL PERLIN, being duly sworn, deposes and says that he is one of the attorneys for the petitioner, MORTON SOBELL, and submits this affidavit in support of the filing, submission and consideration of the Affidavit of Dr. Robert F. Christy in connection with the now-pending motion pursuant to Title 28, U.S.C. Section 2255:

1. Prior to the determination of the Honorable Edmund L. Palmieri on August 3, 1966, the previously impounded Government Exhibit 8 and related testimony was made available to the petitioner and his counsel under certain terms and conditions which limited and made more difficult the opportunity for counsel to consult with scientists with reference thereto. Indeed, it was the government's refusal to lift such restrictions that caused counsel to spend more than one week litigating that issue alone. The lifting of this limitation on August 3, 1966 afforded petitioner's counsel little time to consult with many of the scientists who had knowledge of the subject

matter and who had been involved in the development of the atomic bomb at Los Alamos. By reason thereof, petitioner's counsel communicated with certain scientists, both prior to and after filing the petition on August 22, 1966.

2. In attempting to communicate with certain scientists, deponent learned that many of them were unavailable because of the summer vacation period and that many did not return to their offices until after the argument of the motion on September 12, 1966. It was just because of such circumstances that deponent did not receive the affidavit from Dr. Christy until some time after September 28, 1966.

3. After receiving the affidavit of Dr. Christy, deponent personally delivered a copy of the same to the government on October 7, 1966, and afforded the government adequate time to consider the same prior to the filing of the affidavit and its submission to the Court on October 17, 1966.

4. The unique nature of the evidence and its prior unavailability are such as to constitute exceptional circumstances and good cause as to warrant post-argument filing and consideration by the Court.

5. The government does not in its affidavit maintain that it would in any way be prejudiced by the filing of this affidavit. The government has not deigned to reply to the affidavits previously submitted. If the government desires, petitioner would not oppose affording

reasonable time to the government to submit any papers in response thereto.

6. It would be in the interests of justice and would avoid multiplicity of petitions and piecemeal consideration for the Court to consider now at this time the Christy affidavit as part of petitioner's moving papers in the now pending proceeding. The affidavit of Dr. Christy, although quite brief, indicates his extensive background and knowledge of the subject matter and presents facts as well as expert opinion which should be of aid to this Court in making a determination of the issues raised in the pending proceeding.

WHEREFORE, it is respectfully requested that the affidavit of Dr. Christy, previously filed, be deemed a part of the papers in the now pending proceeding and be considered by the Court in connection therewith.

Marshall Perlin

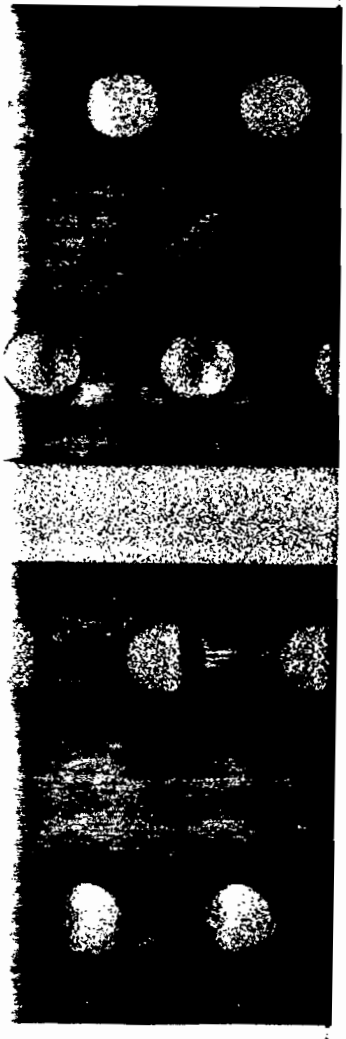
Sworn to before me this
22nd day of October, 1966.

Notary Public

ERIC EICHNER
NOTARY [illegible] of New York
No. 61614/0 [illegible] New York County
Term Expires [illegible] 1968

I, Robert F. Christy, being duly sworn, depose and say:

I reside at 1330 South Euclid Avenue, Pasadena, California. I am a professor of theoretical physics at the California Institute of Technology, Pasadena, California.



During the war, I worked first (in 1942) at the Metallurgical Laboratory at the University of Chicago. There I participated in the design of what were to become the Hanford reactors and in the construction of the first nuclear chain reactor. In 1943 I joined the Los Alamos project. There I proposed the design of the first enriched reactor (the "water boiler") and then worked in the theoretical division on the implosion project where my position involved correlating the experimental and theoretical work on the implosion process. It was I who proposed the modification of the implosion design which was incorporated as the Alamogordo test bomb and the Nagasaki bomb. The design which I proposed is apparently the one involved in exhibit 8.

I have read the accompanying affadavit of Phillip Morrison and I find I am in general and detailed agreement with his statement. In addition, I would like to offer my own comments on some of the relevant testimony quoted in the petition.

Regarding the value of the information in exhibit 8 and the accompanying explanation: I note that the U. S. was able to detonate an implosion bomb essentially immediately after the fissionable material, plutonium, became available. In other words, whatever inventions or discoveries were necessary to design a bomb, they were carried out during the several years required in order to manufacture the plutonium. The time required for our own bomb project is entirely ascribable to the time

required for the major effort of production of fissionable material and we could not have detonated the implosion bomb sooner even if we had been presented a complete design for the weapon in 1943. In view of the history of parallel and almost simultaneous scientific discovery by independent scientists, often in different countries, we are familiar in science with the ripeness of a certain discovery. When an idea is ripe it often appears in different places simultaneously. In the same way I would expect that the effort of many scientists in Russia would probably lead to the design of an implosion bomb during the period needed for the manufacture of plutonium. I would not, therefore, expect that the information in exhibit 8 was able to save them any significant time in the development of an atom bomb. Instead, such information could save some effort.

Re the nature of the information in exhibit 8: The sketch presented is the kind of diagram I would use to explain the ideas involved in the bomb. It can in no way be taken as an engineering drawing which could be used to construct a bomb. In order to be most useful, the sketch should be accompanied by a correct verbal description of components and functions. As has been testified by Morrison, however, the sketch contains basic errors and these are compounded by additional errors in the description. To someone who is already familiar with the implosion bomb design, the sketch does indeed convey the germ of the ideas involved. However, it would be inadequate to convey the actual design to one otherwise unfamiliar with it.

Robert F. Christy

Robert F. Christy

Sworn to before me this

25th day of September 1966.

Evelyn J. Pownall, Notary Public

EVELYN J. POWNALL
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY

My Commission Expires July 5, 1968

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

MORTON SOBELL,

Petitioner,

- v -

GOVERNMENT'S AFFIDAVIT RE OFFER OF CHRISTY AFFIDAVIT

UNITED STATES OF AMERICA,

Respondent.

66 Civ. 1328

- x

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

ROBERT L. KING, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert M. Morgenthau, United States Attorney for the Southern District of New York. I am in charge of the above-captioned proceeding for the United States of America.

2. I make this affidavit to state the position of the Government to the offer by petitioner, in connection with his pending motion of the affidavit of Robert F. Christy, sworn to September 28, 1966. The Government objects to any consideration of this affidavit in connection with the motion.

3. Rule 9(c)(3) of the General Rules of this Court provides that:

> "Upon any motion all affidavits, memoranda and other papers to be submitted in support of the motion must be filed with the clerk of the motion part . . . at least three (3) days before the return day. . . . No papers, either in support of or in opposition to the motion, which have not been filed as heretofore provided, will be accepted for filing or received by the court except upon special permission granted by the court for good cause shown."

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4. Petitioner's motion was filed August 22, 1966. The return date was September 12, 1966. On the return day, petitioner filed four affidavits in contravention of the foregoing rule, two of which related to the same subject matter as does the Christy affidavit. No indication was given at that time or during the oral argument of the motion on that day that submission of an additional affidavit was contemplated. The failure to apprise the Court of the further affidavit is significant since petitioner did offer prospectively the Gold recordings at the oral argument, and failed to respond to the Court's query: "Anything else, now?" (Transcript, September 12, 1966, pp. 134-35).

5. Nor was any mention made of a further affidavit at the conference in chambers on September 19, 1966, to work out the mechanics of providing authentic transcripts of the Gold recordings to the Court.

6. The Government was first apprised of the Christy affidavit on October 7, 1966, and it was first tendered to this Court on October 17, 1966.

7. Notwithstanding that almost two months have elapsed since the filing of the motion, and over a month since its return, no showing of good cause has been made, either in the Christy affidavit itself or apart from it, why that affidavit could not have been submitted in accordance with the Rules of this Court.

WHEREFORE, the Government respectfully objects to any consideration of the Christy affidavit in connection with the above-captioned motion.

Sworn to before me this
18th day of October, 1966.

ROBERT L. KING
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

MORTON SOBELL,

Petitioner,

-against- 66 Civ. 1328

UNITED STATES OF AMERICA,

Respondent.

----------X

PETITIONER'S MEMORANDUM CONCERNING PRE-TRIAL STATEMENTS AND CERTAIN DOCUMENTS OF HARRY GOLD

In evaluating the transcript of the Gold-Hamilton interviews and related documents in the context of all of the allegations of the petition - none of which has been denied by the Government - one is not using this procedure in lieu of the required evidentiary hearing but rather as a response to the Government's argumentative assertion that the allegations are not based on any facts - but are solely broad, unfounded conclusions absent a scintilla of evidentiary support.

The petition specifically alleges that Gold had given a story of an alleged meeting with a G.I. in Albuquerque, New Mexico - but this story was belatedly created and given to

Gold's counsel and thereafter grossly altered and enlarged upon with the knowledge, aid and suggestion of the Government, resulting in the knowing use of false and perjured testimony and a forged document (Government Exhibit 16). The falsity of the testimony can be evidenced not merely affirmatively by prior contradictory statements -- but also negatively by the absence of certain elements of the story essential to the prosecution which thereafter conveniently came into being. The prejudicial conduct of the prosecution was compounded by the fact that it knowingly suppressed impeaching evidence to successfully effectuate the fraud.

The primary need of the Government was to obtain testimony from Gold, in conjunction with Greenglass, that not merely established a wrong on the part of Greenglass and Gold -- but also served to create a link with the Rosenbergs and therefore with the petitioner. That such was the purpose of the Government is reflected in its summation to the jury (See Paragraphs 69-70 of the petition) and the resulting charge of the Court (Pet. Paragraph 71).

The links of the Gold-Greenglass-Rosenberg story are set forth in Paragraph 66 of the petition -- the absence of these links is established by the examination of the "early" Gold narration of his story. (See Paragraphs 84 and 85 of the petition).

We now turn to the transcript of Hamilton-Gold interviews and we find that the first time any reference was made to a meeting with someone in Albuquerque, New Mexico in June of 1945, was on June 14, 1950, after Gold had been in custody 23 days, and the day prior to the arrest of Greenglass, who had been under heavy and fairly obvious surveillance.

At the beginning of the interview of June 14, 1950, Gold states for the first time that, prior to going out to see Fuchs, he was asked by a Soviet contact to take on an additional job of picking up information from another person (Reel 4, pp. 45-46; Exc. p. 10)* stating:

> "This matter I believe had best be told separately but I would like to mention it here or to emphasize it herethat it occurred on the first trip, and that the person from whom this information was picked up, was a G.I. probably a person with a non-com rating . . ." (Emphasis supplied) (See also Reel 4, p. 53; Exc. p. 12).

Gold is then asked by Hamilton to return to the G. I. episode, whereupon Gold gives his then version of the meeting in Albuquerque, New Mexico. (Reel 5, pp. 35-44; Exc. pp. 15-21).

(*) Exc. refers to the page of the excerpts previously given the Court.

Gold, in his statement to his counsel, states that he was given by Yakovlev an additional job, to obtain information from a man in Albuquerque.*

On June 14, 1950, Gold stated that he stayed over in a rooming house and then checked his bag in the railroad station with no reference to a stay or a registration at a hotel.**

In response to the question of whether there was some form of recognition sign, Gold stated that there was - it involved the name of a man "Bob sent me or Benny sent me or John sent me or something like that." Gold, on June 14th suggests that he, Gold, used the name Raymond Frank.***

Gold, as of June 14, 1950, stated that the "G.I." expected to be on furlough in Christmas of 1945 and he gave the name and telephone number of a father-in-law or uncle living in the Bronx. But Gold, "unfortunately [was] unable to recall the name and telephone number though there are several possibilities

(*) In his trial testimony, he adds on the statement that he was taking the place of a woman who was supposed to see th man in Albuquerque (R.821).

(**) In the trial he stated that after leaving the rooming hou he registered at the Hotel Hilton (R.824).

(***) In the trial he testified he was given the name and addre of Greenglass with a recognition signal "I come from Juli and was also given the jello box part as a means of recognition and identification (R.822).

that we have selected ... I believe this G.I.'s position at Los Alamos was either as a physicist or a physicist's helper, as an electrician, as a semi-skilled machinist or possibly a draftsman." (Reel 5, pp.40-41; Exc. pp.18-19). In essence this concluded the story of the G.I. episode as narrated by Gold to his attorney on June 14th with the added comment that the material obtained was apparently of no consequence. The remainder of his discussion with Hamilton constituted in essence a narration of how Gold was working with the Government by the use of pictures, maps and otherwise to arrive at a definitive description and determination of the residence and person, based upon material and information supplied him by the Government. On June 14, 1950, both he and the Government reserved "their rights to alter the story and hence Gold stated, "I believe that we have succeeded in identifying the person who was this G.I." (Emphasis supplied).

Thus, on June 14, 1950 all of the "links" between the G.I. and the Rosenbergs were completely missing. The story which had been slowly developing during his period of custody was still subject to elaboration and change. There was no Hotel Hilton in June of 1945; there was no jello box; there was no name Greenglass; there was no Julius Rosenberg; there was no identifiable recognition signal and he was not replacing a woman courier.

Gold, in the course of his interview with his attorney,

had stated that he had come to Santa Fe in September of 1945 pursuant to a planned arrangement with Pasha in June of 1945 and he was able at that time in June of 1950 to categorically state that he did stay at the Hotel Hilton in September of 1945. He stated:

> "I have made one omission with respect to Albuquerque, and that is the fact that I registered at the Hotel Hilton on the occasion of the second trip . . . I would like to state that my stay at the Palmer House on the occasion of my second trip, my stay at the hotel in Albuquerque had all been verified through information that I had given the investigating agent. This has enabled them to exactly fix the dates. (Reel 4, pp. 72-73; Exc. p.14).

Yet not a word about staying at the Hilton in June of 1945. As set forth in the petition and as not denied by the Government, the F.B.I. on May 23, 1950 is said to have obtained a registration card from the Hotel Hilton, inscribed their initial and the date of acquisition, May 23, 1950, indicating Gold's registration on September 19, 1945. We need not here dispute the legitimacy of that card but we can state as the petition does, without denial by the Government, that the F.B.I. and other investigative agents were not able to find a registration card for Gold in June of 1945.

Thus, it is evident that every single alleged connectiv "link" between Greenglass and Rosenberg relating to the June 3rd affair which was testified to by Gold and corroborated by Greenglass was completely absent from the statements given by Gold to his counsel on June 14, 1950. In addition the Hotel

Hilton as a corroborative factor was non-existent.

The transcript of the interview evidenced many other discrepancies between Gold's prior statements and his testimony at the trial, as well as elaborations developed during the period of his preparation. We do not deem it necessary or appropriate to go into each and every one of these discrepancies. What is of vital interest and of major significance is that there was complete absence of the alleged links and further complete absence of the alleged corroborative evidence of Gold's stay at the Hotel Hilton on June 3, 1945. Surely, the transcript and written documents are supportive of the petition.

The Government, in its memorandum, considers the omissions of no significance whatsoever but, rather, maintains that the Greenglasses, along with Gold, became cooperating witnesses after June 14, 1950 and this "would of itself provide a fertile field for searching Gold's recollections of these meetings" (Govt's. Mem. p. 27). True, indeed, the months that passed after June 14 to the time of trial afforded Gold the opportunity of "bending over backwards to please people" (Reel 3, p. 11, Exc. p. 3) and come up with the tainted fruit of his searching recollections with the aid of Greenglass and the Government to please the Government and utilize his powers of "recall" to meet the convenience of the Government.

Gold, in his pre-trial statement, made not a single

reference to a piece of cardboard from the jello box or otherwise. Yet, on page 822 of the transcript he has, during the nine months working in a fertile field, come up with recollections that he was given an odd-shaped piece of a package food product (R. 822), and that he gave this replica to Greenglass who had the matching portion (R. 823).

In June of 1950 he did not recall the recognition signal name but by the time of his testimony his excellent power of recall permitted him to testify "I come from Julius" (R.825). In his statement to his attorney on June 14, 1950 (Reel 5, pp. 40-41, Exc. p.18), he had no recollection of the name that he used in identifying himself other than the name of Frank or Raymond Frank. In March of 1951, he was able to testify with certitude that he identified himself as "Dave from Pittsburgh". He was also able to recall belatedly that the first name used by him was the same as Greenglass' first name and that they had a discussion about the similarity of first names.

In his statement to his attorney in June of 1950 the subject matter of their discussion was essentially limited to the unavailability of Jewish food in Albuquerque and that the family was sending salamis. (Reel 5, pp.39-41, Exc. p.18). By March of 1951 he had by that time "recollected" that Mrs. Greenglass discussed her brother-in-law, Julius Rosenberg, with him (R. 826). Surely, Gold had a most pleasing power to "recall those things" that might be helpful to the prosecution.

In June of 1950 he states (Reel 5, pp.40-41, Exc. pp. 18-19) that he was told to communicate with an uncle or father-in-law in the Bronx and "unfortunately I have been unable to recall the name and the telephone number, though there are several possibilities we have selected". (Emphasis supplied).

By March of 1951 his remarkable powers of recall permitted him to reframe his memory and testify that he was told to get in touch with Greenglass' brother-in-law Julius and "he gave me the telephone number of Julius in New York City" (R.827).

In the trial, Gold stated that the material given by Greenglass was characterized by Yakovlev as "extremely excellent and very valuable". In his oral statement to his attorney in June of 1950 the material was considered of no value. In his statement of October 11, 1950, Gold stated "Yakovlev had subsequently - and with intent to mislead - told me the information received was of no value. (p.1085).

In Gold's "Chronology of work for Soviet Union" dated June 15 and June 16, 1950, he stated (p.7) "earlier I have said that I believe the information to have been unimportant but I have since learned that it was highly valuable".*

Assuming that this statement was written on June 16,

(*) As will be discussed infra, some of the material contained in the "Chronology" was written in substantially after

1950, who was the source of information to advise him on that date that the material was extremely valuable? The answer is clear - the Government. And as set forth in the petition, Gold was prepared to pick up "suggestions" and "ideas" from the Government, and "bending backwards to please" to give perjurious testimony in the trial, testimony the Government knew to be perjurious.

The Government, in its memorandum, is studiously quiet and limits its discussion about the alleged registration at the Hilton Hotel in June of 1945. It weakly tenders as suggestive "proof" of a June registration at the Hotel Hilton that when the Government showed Gold reels of film of the City of Albuquerque, they started with the Hilton Hotel. The Government then argues: "One may well ask - why start at the Hilton Hotel unless that is where Gold started when he went to the apartment." (Govt. Mem. p.15). The more obvious answer is that the Government's wish was father to the thought -- and the trial testimony.

On the other hand, the Government completely ignores the fact that Gold stated that he stayed at a rooming house and did not even suggest that he stayed at the Hotel Hilton in June. He pointedly adverted to a single stay at the Hilton on September 19, 1945 and at the Palmer House in Chicago in September of 1945 and that the Government had been able to obtain substantiation from the hotel records. (Reel 4, pp.72-73; Exc. p.14)

Gold stated in June of 1950 that he checked his bags at the railroad station but in March of 1951 his bags by means of fertile powers of recollection were relocated at the Hotel Hilton.

The Government, in its memorandum, (pp.7-8)maintains that Gold told the F.B.I. about the episode in Albuquerque on June 1, 1950. Two record references are given: Reel 1, page 8; Exc. p.1 and page 1085 of his statement of October 11, 1950. With reference to the former, Mr.Hamilton states "Mr. Gold told me during the course of the conversation that he had revealed everything to the F.B.I. in the examination which had been conducted prior to this date, except the name of one Soviet agent". In the course of the interview the one undisclosed Soviet agent is clearly identified (Reel 4, pp.5-6; Exc.p.6) and he is interrogated in respect thereto and advises Mr. Hamilton that that one person was Alfred Dean Slack.

Referring then to the October 11, 1950 statement, page 1085, almost five months after Gold's arrest and four months after the arrest of Greenglass during which time his fertile imagination was afforded adequate time to "recall", Gold states that he told F.B.I. agent Miller of Slack, Greenglass and Black on June 1, 1950. This is contradicted by his statements made to his attorney in June of 1950. Moreover, in the same October 11th statement (pp.1083-84), he says at the time of being taken into custody, he "covered up Slack, Black and Brothman and the

story of Smilg - the David Greenglass incident he had completely forgotten about." It is clear by his statement to Hamilton on June 1, 1950 that even at that time he had no "power of recall" of the "Albuquerque incident" and he was therefore not covering up for a person who at least at that time he did not recall having existed.

In Paragraph 84 of the Petition it is alleged that Gold was speaking to his attorney with the aid of detailed notes which were made and used in the course of his intensive conversations with the prosecution and its investigative agencies. The transcript fully substantiates this fact. (See Reel 3, p.28; Exc. p.4; Reel 4, p.56; Exc. p.12; Reel 5, p.31; Exc. p.15; Reel 6, p.11, Exc. p.25; Reel 6, p.36a; Exc. p.27).*

Putting aside Gold's belated recollection of some events in Albuquerque in June of 1945, he had no recollection whatsoever of the name "Greenglass". The name Greenglass never appears in his conversations with his attorney. The first time the name appears is the notation said to have been made on June 16, 1950 after Greenglass' arrest and after his name was known to the public at large. Thus,

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it does appear in his chronology (Exhibit B) under date of June 16 and in his extended statement of October 11, 1950. The Court is respectfully referred to the footnote on page 1085 of the October 11th statement(set forth in Exhibit F). The very description of the method of selection of the name in conjunction with the Government would indicate the aid afforded Gold by the Government to select the needed name of Greenglass, as well as the name of his wife.

It is not disputed by the Government that he was shown maps of Albuquerque, films and innumerable photographs to aid him in "refreshing his recollection" so as to create the story that ultimately was used at the time of the trial. The interview with his lawyer also reveals that the Government was giving him information of which he had no personal knowledge as a means of "aiding" him to refresh his"recollection" to meet the needs of the prosecution. In Reel 3, pp.22-24, Gold, after referring to the 2000 photographs and discussion of reels of motion pictures to enable him to identify one of his alleged contacts as a man named Semanov, then relates to his attorney the background and history of Semanov as given him by the F.B.I. (Reel 3, pp.22-24, Exc. pp.4-5). It is clear that in describing the alleged meeting with Greenglass on June 3 that much of the background material concerning Greenglass and his wife had been given to him by the Government (Excerpt, p.20). Similarly, Gold, in response to a question by Hamilton, narrates information

given him concerning one, Brothman, said to be one of Gold's contacts. (Reel 3, p.50, Exc.p.5; Reel 5, pp.48-49, Exc.p.21).

Gold had testified on August 2, 1950 before the indicting Grand Jury. One week later he meets with his attorney on August 9th and advises that he had lied before the Grand Jury; that he had lied to Hamilton and the F.B.I.; that he had withheld information and that his memory by some undescribed process had been further refreshed and he wishes to bring all of these facts to the attention of his counsel. In advising Mr. Hamilton of this fact Gold stated (Reel 6, p.66, Exc. p.28):

> "...the first concerned certain matters which I have concealed or about which I have told deliberate lies. The second concerns a series of matters which have either come up as a result of questions or further thinking ...(indistinct) or as a result of ... (indistinct), talking with other people and so on. I wish to make - deliberately wish to make definitive the division between these two categories of matters..."

It is strongly suggested by this statement that putting aside patent lies on the part of Gold, further discussions with representatives of the Government were going on as a means of expanding his story or enlarging upon alleged events of the past. It is interesting to note that in the course of these discussions and in his narration of additional data to his attorney on August 9, 1950, he makes no reference whatsoever to any aspect of his story relating to the alleged June 3, 1945 meeting, Greenglass or an alleged stay at the Hotel Hilton in June of 1945.

After recasting his testimony relating to the circumstances of his going out to Xavier University in Cincinnati in 1938 and acknowledging his perjury in stating that he received no monies from any Soviet agent, he comes up with a new addition to his story. He has suddenly hit upon a new point of recall. During the period between his last interview on June 23, 1950 and his subsequent interview on August 9, 1950, Julius Rosenberg had been arrested with much fanfare and publicity and his photograph had appeared in the press.

An examination of the transcript of the interviews between Gold and his counsel reveals that the Government was expressing disbelief in Gold's denial that any agent of the Soviet Union had spoken to him about his fleeing the country. And Gold had no recollection of any such suggestion having been made to him. After perjurying himself before the Grand Jury on August 2nd, Gold suddenly recalls that the Soviet agents had proposed that he leave the country under certain circumstances; that in the interim he lie low and avoid any activity that might cast any suspicion upon him. He also recalls in this context the need to communicate with Soviet agents to advise them that he would refuse to leave the country because of his family ties. After describing elaborate arrangement for bi-monthly meetings at which he would appear and some Soviet agent would be watching him to see whether he, Gold, was under surveillance, he describes an alleged "meeting" in February of 1950. (See Reel 7, pp.34-35,

Exc. pp.31-32). Gold states that it was announced in the papers on the first Friday of February 1950 that Fuchs had been arrested and had confessed all. Whereupon two days later on Friday, Gold allegedly goes to the appointed place and no one appears. Now, after Rosenberg's arrest he suddenly recalls after reading the newspapers that he was then in February, 1950 actually under surveillance by Julius Rosenberg.*

The newspapers refreshed his recollection. Someone had appeared. He "had seen Julius Rosenberg before though I didn't know who he was. Julius Rosenberg, and I am sure of this, smoking a cigar went by on the same side of the street where I was on 90th Street and Elmhurst Avenue and looked at me very closely." ** Gold thereupon stated "I recall him distinctly. There is no mistake. Obviously he had been sent to observe me and see whether I was there."

Later in his October 11th statement, Gold decided that his story needed more elaboration and detail and by that time his "memory" had created a planned meeting with Rosenberg with various kinds of mutual identification devices, Rosenberg to wear his glasses and smoke his cigar - Gold to smoke a curved-stem pipe.*** (See Exhibit F, p. 1085).

(*) It would seem strange to use one alleged espionage agent who was subject to exposure to survey another alleged Soviet agent whose identity they desired to keep secret, and whose exposure they feared.

(**) He had also in the course of his process of recall moved the meeting from Flushing to Elmhurst.

(***) In 1957 another version was phantasized.

The Government had such a suggestible and adaptable witness who was so prepared to meet the exigencies of the Government's case that he went so far beyond their needs that the Government dared not use all of the fiction and fantasy created by Gold's fertile mind during the period of his continued incarceration and interrogation.

Gold, in his statements to his attorney concerning Klaus Fuchs and the transmission of information, stated that other than on one occasion when Fuchs indicated to him the identity of some of the scientific personnel working with him in New York, Chadwick, Bohr and others, stated that all other passage of information was in writing, the contents of which were not known to Gold other than that they were primarily of a mathematical nature and referred to the fissionable isotope uranium, Uranium 235 (Reel 4, pp.15-18, Exc.pp.7-8). Gold described the material as that relating to the separation of the isotopes of uranium (Reel 4, p.51, Exc. p.11) and that Fuchs did not pass any information by word of mouth except for the first general discussion in New York (Reel 4, p.52, Exc. p.11). Indeed, Gold stated (Reel 4, p.62, Exc. p.13) referring to what knowledge Fuchs had relating to the manufacture of the bomb,

> "I don't know to what extent, in fact, I cannot even guess to what extent Klaus actually knew of the actual manufacturing of the bomb. It will be recalled that he was essentially a theoretical physicist, in fact more of a mathematician than a physicist, I believe."

But the Government wished to enlarge the importance of Greenglass and the nature of the information he allegedly transmitted and relate the Greenglass material to Fuchs. Therefore, on page 819 of the printed record, Gold once more adapting his memory, imagination and recall to the needs of the Government's case, stated:

> "In addition he [Fuchs] had made mention of a lens which was being worked on as a part of the atom. bomb ... at this meeting Yakovlev told me to try to remember anything else that Fuchs had mentioned during our Cambridge meeting about the lens. Yakovlev was very agitated and asked me to scour my memory clean so as to elicit any possible scrap of information about this lens."

We do not here dispute or deny that Fuchs had knowledge of the Nagasaki bomb, the use of lenses, and indeed, that his knowledge of all of this must have been extensive and quite detailed. What we do wish to indicate is how readily and rapidly Gold would either reformulate or expand upon his power to adapt and lie to meet the needs of the Government and of all this the Government was fully aware.*

Exhibit B, the chronology of work for the Soviet Union, is dated the first five pages June 15, 1950 and the latter three pages, June 16, 1950. One cannot conclude that all of the notations made on that document were made on those two days. For

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(*) See Exhibit D setting forth hours spent in 1950 and 1951 with the F.B.I. This does not include the hours spent with the prosecution staff prior to his testimony at the trial. The Government's sensitivity in this respect is reflected in the letter of Mr. Bennett of July 11, 1955.(Exhibit E).

example, referring to the rear portion of page 2, the paragraph identified as 3a refers to an alleged meeting by Gold with a third person at the Hotel New Yorker in April of 1940. Gold states, "This person has been positively identified by me -- and I am told that this identification has been verified." This aspect of the Gold story was part of the story he was unable to recall until some time in August 1950 and related to Hamilton on August 9, 1950. (See Reel 7, p.12). Hence, it can be said with a reasonable degree of certitude that various portions of the June 15th-16th statement was at least amended or added to after the dates specified on the document.

The Government's Memorandum.

The government in its memorandum seeks to deprecate the importance of the vital links and the "corroborative evidence" of the Hotel Hilton registration in June of 1945 as mere "omissions and minor discrepancies" (Gov't Memo P.14) and characterizes them as just some "trivial inconsistencies".

If a witness gives a pretrial statement to the effect that a crime was committed and A, B and C were present and thereafter testifies in a trial involving D and states in his testimony that A, B, C and D were present, this in the eyes of the government does not constitute a significant contradiction or variance? It is merely an omission, even though it relates

to a material and necessary part of the proof of the offense. Similarly in this case, every omission was not trivial in nature but related to aspects of subsequent trial testimony which were vital to the government's case against the petitioner and his co-defendants. Moreover, the Government ignores the fact that such a basic and vital variance imposes an affirmative obligation upon the government to bring this to the attention of the defense and to the court. In this case, the government did neither. The government knew that Gold had stated with great particularity that he registered at the Hotel Hilton in September of 1945, but did not even claim he stayed at the Hotel Hilton in June of 1945 and indeed his statement to his attorney indicated quite the contrary. The fact that every aspect of his testimony that sought to relate Greenglass to the Rosenbergs was entirely missing in his detailed statement to his attorney can not be said to be a trivial variance or a minor inconsistency. The stay at the Hilton in June of 1945 was what the government relied on to prove a June 3rd meeting. It did so by use of a document found on many circumstantial grounds as well as the opinion of an expert to be a forgery.

The government says in its brief that the only portion of the transcript of the Gold interview with his attorneys was that related to the claimed June 3rd meeting. That is not correct. Putting aside other aspects of the entire Gold story,

a reading of the transcript establishes that Gold is most vague and most uncertain as to dates and made many errors in that report. On August 9, 1950, he was still correcting in general fashion his dates as to events that allegedly transpired in 1949. Yet, he is specific on only two dates -- June 3rd, 1945 and September 19, 1945. In his statement to his attorney he indicates how the September 19th date was arrived at, it was given to him by the Government on the basis of registration cards said to have been found at the Hotel Hilton in Albuquerque and the Palmer House in Chicago. Why was Gold so specific as to June 3rd? That too, undoubtedly was based upon information supplied him by the government. By June 14th or prior thereto the government may have known about the Greenglass deposit of $400 on June 4, 1945. This afforded a convenient basis for contriving the story. It well may have been because Fuchs in his statement had set a date when he allegedly met a courier in Santa Fe in the Spring of 1945. Or it could have been based upon the employment records of Gold, thus making it a convenient time for the purposes of the story.

In view of his entire confusion as to time, place and events, his unusual specific "recall" in this instance would indicate he had at least been afforded some suggestion as to the time to fix the Albuquerque-G.I. affair.

The government in its memorandum attempts to argue that Gold gave the information of the June 1945 Albuquerque

incident on June 1, 1950, essentially relying solely upon a portion of the October 11, 1950 written statement which in turn is contradicted by the transcript of his interviews with his attorney. Significantly, the government does not advert to any statements in its possession which would support such a contention. It has the statements of Gold. It has the statements of Greenglass and Fuchs. Why is no reference made to these statements? Why the continuing secrecy?

The disclosure of the Gold transcript with the significant and vital omissions, discrepancies and inherent contradictions afford further support to the petitioner's application that the pretrial statements to governmental authorities of Harry Gold and David and Ruth Greenglass be made available forthwith, along with the Fuchs' confession. See United States v. Rutkin, 212 F.2d 641; United States v. White, 342 F.2d 379; United States v. Kelley, 269 F.2d 448, cert. den. 362 U.S. 904.

CONCLUSION

The transcript of the Gold interview and other written material related thereto not only dispose of the government's contention of "wild claims" and "unfounded accusations" but further serve to establish that the petition

on its face makes more than a sufficient showing to warrant an evidentiary hearing.

Respectfully submitted,

MARSHALL PERLIN
WILLIAM M. KUNSTLER
ARTHUR KINOY
MALCOLM SHARP
BENJAMIN DREYFUS
VERN COUNTRYMAN

Attorneys for Petitioner.

United States Department of Justice

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

RLK

114868

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

October 25, 1966

Augustus S. Ballard, Esq.
Messrs. Pepper, Hamilton & Scheetz
123 South Broad Street
Philadelphia, Pennsylvania 19109

Re: Morton Sobell v. United States
66 Civ. 1328

Dear Mr. Ballard:

I am returning herewith each of the enclosures in your October 13, 1966 letter to me. These documents were used by this office solely to verify the authenticity of copies of same offered in evidence by Sobell's counsel in connection with the pending motion.

For your information, the following material originating from your files was proffered by Sobell's counsel and accepted by Judge Weinfeld for consideration:

(1) Transcripts of recordings made on June 1, 6, 8, 14 and 23, and August 9, 1950, consisting of discs entitled Plate 1 and 2, X-1 through X-31, 3 through 19, Y-1 through Y-4 and X-A through X-H;

(2) Two page document in handwriting of Gold listing interviews with the FBI between May 22 and July 19, 1950;

(3) Handwritten document of Harry Gold dated June 15, 1950 and continuation dated June 16, 1950 consisting of eight pages;

(4) Letter from Mr. Hamilton to FBI dated October 21, 1953;

(5) File copy of letter from Mr. Hamilton to the Parole Board dated September 30, 1960;

(6) Letter from James Bennett to Mr. Hamilton, dated July 11, 1955.

In addition, there was submitted for the Judge's consideration Mr. Gold's statement of October 11, 1950, reproduced in Senate Internal Security Subcommittee Hearings on the Scope of Soviet Activity in the United States, 84th Cong., 2d Sess., Part 20, pp. 1058-87 (April 26, 1956).

I am also enclosing for your information copies of memoranda filed by Sobell's counsel and by myself discussing the applicability of the foregoing materials to the pending motion.

As stated in my letter to you of September 19, 1966, the original disc recordings of the Gold interviews at Holmesburg Prison were made available to the Judge along with a Soundscriber machine. Those discs not pertinent to the motion were retained in our files. At the conclusion of the pending proceedings, all these discs will be returned to you.

Once again, please accept our thanks for your continuing cooperation in this matter.

Very truly yours,

ROBERT M. MORGENTHAU
United States Attorney

By: Robert L. King
ROBERT L. KING
Assistant U.S. Attorney

Encls.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (101-2483) DATE: 12/9/66

FROM : SAC, PHILADELPHIA (65-4372) (P*)

SUBJECT: MORTON SOBELL
ESP - R

Re Philadelphia letter to the Bureau 6/21/66.

On 12/1/66 W.H. WELLER, Chief Medical Officer, U.S. Public Health Service, U.S. Penitentiary, Lewisburg, Pa., advised SOBELL has required no medical treatment within recent months and there has been no noticeable change in his mental or physical health.

LEAD

PHILADELPHIA:
AT LEWISBURG, PA.

Will recontact Chief Medical Officer, U.S. Public Health Service, U.S. Penitentiary, Lewisburg, periodically for information regarding any change in the mental or physical health of SOBELL and advise Bureau of results.

2 - Bureau (101-2483)(RM)
2 - New York (100-37158)(RM)
2 - Philadelphia (65-4372)

PMM/lpm

101-2483-1681

REC 73 62-105

14 DEC 12 1966

SOVIET SECTION

DEC 15 1966

FORM IS-44 (REV. 5-14-64)

DEPARTMENT OF JUSTICE

United States Government
MEMORANDUM

SECRET

To: Director
Federal Bureau of Investigation

Date: DEC 13 1966

From: Assistant Attorney General
Internal Security Division

Subject: INDEX REVIEW

Re: MORTON SOBELL

Card U.T.D. 8/16/66

File in

FBI No. 101 - 2483
cc; 100 - 398030

Reports of investigation have been reviewed as requested by you on _____.

It has been determined that indexing of this case for future review should be

☑ continued ☐ discontinued

Commentary:

DECLASSIFIED BY 3042/PUT/CS
ON 5.4.87
per blanket authority
MEMO 2.12.76

REC-62 101-2483-1682

cc: FBI
ISD-SO
Dept. 146-012-18-2

DEC 17

SECRET

DEC 14 1966

61 DEC 29 1966
F386

GROUP 1
Excluded from automatic downgrading and declassification

SUBJECT CONTROL

M. F. ROP

UNRECORDED COPY FILED IN 100-398030

FD-36 (Rev. 5-22-64)

FBI

Date: 2/15/67

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Priority)

TO: DIRECTOR, FBI (101-2483)

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

SUBJECT: MORTON SOBELL
ESP-R
(00:NY)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-4-87 BY 302 PWT

AUSA STEPHEN F. WILLIAMS, SDNY, advised on 2/15/67, that on 2/14/67, MARSHALL PERLIN, Defense Attorney for subject, appeared in USDC, SDNY, seeking to file a motion for release of subject on bail pending a decision by the court on the pending motion to set aside the conviction of subject. A hearing was set on the bail motion for 2:30 pm, at which time PERLIN presented arguments requesting bail.

Following presentation of defense arguments, the court stated that an opinion had just been filed regarding the motion under Sec. 2255, USC, and that the attorneys may desire to read it before proceeding further.

The court granted a recess for this purpose at which time defense and government attorneys proceeded to the Clerk's Office to read the decision. AUSA WILLIAMS advised that neither he nor the defense attorneys had any advance notice that an opinion was to be filed on this date.

EX-112

REC-61 101-2483-1683

SAME INFORMATION RE: BAIL HEARING CONTAINED IN NY TIMES ARTICLE 2-15-67 - JAL

2 - Bureau (~~Encl. 1~~) (RM)
1 - New York

PFD:mvl
(6)

FEB 16 1967

61 FEB 23 1967

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

AUSA WILLIAMS advised that PERLIN spent an hour reviewing the decision, after which he returned to court and stated he intended to appeal the court's decision and therefore desired to proceed with a motion to have subject released on bail pending appeal. The court set date of 2/20/67 for hearing on the bail motion.

AUSA WILLIAMS advised that the above-mentioned opinion of Judge EDWARD WEINFELD is a 79 page document which denies subject's petition to set aside his conviction.

A copy of the above opinion will be forwarded to the Bureau as soon as made available by the AUSA.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : Mr. W. C. Sullivan

DATE: 2/14/67

FROM : Mr. W. A. Branigan

1 - Mr. DeLoach
1 - Mr. Sullivan
1 - Mr. Wick
1 - Mr. Branigan
1 - Mr. Lee

SUBJECT: MORTON SOBELL
ESPIONAGE - RUSSIA

This memorandum reports that the most recent motion of the subject to set aside his conviction for espionage conspiracy has been denied.

BACKGROUND:

Morton Sobell was convicted along with Julius and Ethel Rosenberg in 1951 of conspiracy to commit espionage. The Rosenbergs were executed and Sobell was sentenced to thirty years in prison. Since his conviction numerous efforts have been made to obtain his release without success.

On 5/13/66 Sobell filed his sixth motion under Title 28, U. S. Code 2255, in the District Court, Southern District of New York, to set aside his conviction. Sobell claimed that the Government knowingly used forged documents and perjured testimony to obtain his conviction and had suppressed evidence which would have proved that he was innocent. He requested a hearing to produce evidence of the above allegations. In response to this motion the Government pointed out that the "ends of justice" demand an end to the continuing attack on the credibility on Government witnesses and on the good faith of the prosecution and pointed out that in three of his previous motions, which were denied, Sobell claimed the Government used perjured testimony. The Government also pointed out that no issue of facts had been raised to warrant a hearing.

Mr. John Davitt of the Internal Security Division advised on 2/14/67 that Sobell's motion had been denied in all respects. The decision had been rendered by District Judge Edward Weinfeld, and that Judge Weinfeld had prepared an 80-page opinion to back up his decision.

ACTION:

For information.

REC-59 101-2483-1684

101-2483

18 FEB 17 1967

JPL:chs
(6)

59 FEB 21 1967

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-4-87 BY 3042/PLT/chs

FD-3 (Rev. 5-22-64)

FBI

Date: 2/20/67

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL (Priority)

Mr. Tolson	
Mr. DeLoach	
Mr. Mohr	
Mr. Wick	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Miss Holmes	
Miss Gandy	

TO : DIRECTOR, FBI (101-2483)

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

SUBJECT: MORTON SOBELL
ESP - R
(OO:NY)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-4-87 BY 3042 PMT/CLS

ReNYairtel dated 2/16/67.

On 2/20/67, AUSA STEPHEN F. WILLIAMS, SDNY, advised that on this date MARSHALL PERLIN, attorney for subject, appeared in USDC, SDNY, regarding a habeas corpus proceeding which was filed on subject's behalf on 2/14/67. PERLIN requested that he be granted a delay of one week in order that he could amend his original affidavit.

The court granted a delay and set 2/27/67, as date for presenting amended affidavit. The court also stated that it would accept only the amended habeas corpus affidavit, and would not accept any additional affidavits.

AUSA WILLIAMS furnished amended pages 76 through 79 of Judge WEINFELD's opinion dated 2/14/67. One copy of each is enclosed herewith for the Bureau and should be inserted in place of the original pages.

AUSA WILLIAMS also advised that Judge WEINFELD had called attention to typographical error on page 67 of

ENCLOSURE sealed

3 - Bureau (Encls. 4) (RM)
1 - New York

REC-21 101-2483-1685

PFD:eah
(6)

EX-113 14 FEB 28 1967

FEB 55

C.D. WICK

55 MAR 6 1967

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

his opinion. The last date appearing in Footnote (75) should read "June 15, 1950," instead of "June 15, 1945." The Bureau should make this change in its copy.

36 (Rev. 5-22-64)

FBI

Date: 2/16/67

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL (Priority)

TO : DIRECTOR, FBI (101-2483)

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

SUBJECT: MORTON SOBELL
ESP - R
(OO:NY)

ReNYairtel dated 2/15/67.

Enclosed herewith for the information of the Bureau is one copy of the opinion of the USDJ EDWARD WEINFELD, dated 2/14/67, denying subject's motion for relief under Sec. 2255, USC.

The above was furnished by AUSA STEPHEN F. WILLIAMS, SDNY, on 2/16/67.

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1 ENCLOSURE

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

memo W.A. Branigan to W.C. Sullivan 2/23/67

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MORTON SOBELL,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

66 Civil 1328

OPINION

- x

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BOORUM & PEASE "NOREAR" ®

EDWARD WEINFELD, D. J.

Petitioner, Morton Sobell, moves pursuant to 28 U.S.C., section 2255, to vacate and set aside a judgment of conviction entered upon a jury verdict returned in March 1951, under which he is now serving a thirty-year term of imprisonment.

Petitioner was tried and convicted together with Julius and Ethel Rosenberg upon an indictment which charged that they, together with David Greenglass, Anatoli A. Yakovlev and others to the grand jury unknown, had conspired from June 1944 to June 1950, in violation of the Espionage Act of 1917,[1] to communicate to the Soviet Union documents, writings, sketches, notes and information relating to the national defense of the United States with the intent that they be used to the advantage of the Soviet Union. Named as conspirators but not as defendants were Ruth Greenglass, the wife of David Greenglass, and Harry Gold.

(1) 50 U.S.C. § 32(a), 40 Stat. 218 (1917), which was recodified in 1948 as § 794(a) and (b) of Title 18, 62 Stat. 737.

The indictment was severed as to Greenglass and also as to Yakovlev, an official attached to the Soviet Embassy, who had left the United States prior to the return of the indictment.

Greenglass pleaded guilty before the start of the trial. The principal testimony as to the conspiracy came from Greenglass, his wife and Harry Gold. After trial Greenglass was sentenced to a term of fifteen years. Gold, at the time of trial, was serving a thirty-year sentence imposed upon his plea of guilty in the District Court of Pennsylvania to an indictment charging him and Dr. Klaus Fuchs with conspiracy to violate the Espionage Act. Gold's testimony involved Fuchs, a British scientist, in the conspiracy charged in the instant indictment. The Rosenbergs took the witness stand. The petitioner did not testify.

The evidence of petitioner's participation in the conspiracy came principally from Max Elitcher, a college classmate of both petitioner and Julius Rosenberg. Elitcher, who within the indictment period

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worked in the Navy Department and later in national defense plants engaged in classified projects, testified in substance that petitioner and Rosenberg had attempted to secure from him classified antiaircraft and fire control information for the Soviet Union, and had urged him not to leave his Navy Department job because he could be valuable there in espionage. Elitcher also testified that Sobell had in his possession material contained in a 35 millemeter film can described by Sobell as valuable information, and that he accompanied Sobell on the occasion of its delivery to Rosenberg. In addition, to establish consciousness of guilt, the government introduced evidence that petitioner fled to Mexico with intent not to return, and that the flight followed an escape pattern urged by Rosenberg upon the Greenglasses. The jury was instructed that if they disbelieved Elitcher they were to acquit the petitioner.

The petitioner's present charges are directed not against Elitcher, but the testimony

of Harry Gold, David Greenglass and John Derry, another government witness, and exhibits in evidence -- in broadest terms that the "government . . . knowingly created, contrived and used false, perjurious testimony and evidence and intentionally and wilfully induced and allowed government witnesses to give false, misleading and deceptive testimony in order to obtain the conviction of petitioner and his co-defendants." The "government," according to petitioner, is all-encompassing and includes "the prosecutive, investigative and other agencies of the United States and their agents or employees, as well as all those acting with its knowledge and at its behest, involved in the investigation and prosecution of this case."

Petitioner previously attacked his conviction upon direct appeal (2) and in five separate collateral proceedings, either under the Federal Rules

(2) United States v. Rosenberg, 195 F.2d 583 (2d Cir.), rehearing denied, 195 F.2d 609 (2d Cir.), cert. denied, 344 U.S. 838, rehearing denied, 344 U.S. 889 (1952), leave to file a second petition for rehearing denied, Sobell v. United States, 347 U.S. 1021 (1954), motion to vacate orders denying certiorari and rehearing denied, 355 U.S. 860 (1957).

of Criminal Procedure or section 2255 of Title 28, all of which failed.[3] In the consideration of the charges here made the court has read the entire lengthy trial transcript, including the testimony of witnesses who are not impugned; also the various post-trial petitions by petitioner and those of his co-defendants in which he joined, and the trial and appellate records of those proceedings.

The petitioner contends that in none of the prior proceedings were the issues here presented raised, and that some of the facts now relied on were not available until after 1963 and others not until

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(3) See United States v. Rosenberg, 108 F. Supp. 798 (S.D.N.Y.), aff'd, 200 F.2d 666 (2d Cir. 1952), cert. denied, 345 U.S. 965, rehearing denied, Sobell v. United States, 345 U.S. 1003 (1953); United States v. Rosenberg, 109 F. Supp. 108 (S.D.N.Y.), aff'd as to Rosenbergs, 204 F.2d 688 (2d Cir. 1953), aff'd as to Sobell, Oct. 8, 1953, Docket No. 22885, cert. denied, Sobell v. United States, 347 U.S. 904 (1954); United States v. Sobell, 109 F. Supp. 381 (S.D.N.Y. 1953); United States v. Sobell, 142 F. Supp. 515 (S.D.N.Y. 1956), aff'd, 244 F.2d 520 (2d Cir.), cert. denied, 355 U.S. 873 (1957), rehearing denied, 355 U.S. 920 (1958); United States v. Sobell, 204 F. Supp. 225 (S.D.N.Y. 1962), aff'd, 314 F.2d 314, cert. denied, 374 U.S. 857 (1963).

July 1966. The government, to the contrary, asserts that the present proceeding is a repetition of charges previously heard and determined on the merits and petitioner's application should be denied under section 2255, which provides that the "court shall not be required to entertain a second or successive motion for similar relief."(4) Finally, the government urges that the records and files of this court not only show petitioner is not entitled to relief, but that his application is a flagrant abuse of section 2255 because it is totally groundless and because of failure to allege previously facts known or which with due diligence should have been known to him at the time of trial and on his various post-conviction applications.(5) Whatever the merits of these respective contentions, petitioner's charges must be considered.

(4) Sanders v. United States, 373 U.S. 1, 15-17 (1963); Price v. Johnston, 334 U.S. 266, 287-89 (1948).

(5) Sanders v. United States, 373 U.S. 1, 17-19 (1963); Price v. Johnston, 334 U.S. 266, 289-92 (1948). See also Latham v. Crouse, 347 F.2d 359, 360 (10th Cir. 1965).

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Cutting through the highly repetitious, voluminous, argumentative and conclusory allegations in this present application, the nub of petitioner's claim that he was denied a fundamentally fair trial is twofold: (1) that the prosecution by various means created in the minds of the court, jury and defense the false impression that Exhibit 8, a sketch, and testimony with respect thereto contained the secret and principle of the atomic bomb dropped at Nagasaki; (2) that the government knowingly permitted Harry Gold and David Greenglass to give perjurious testimony as to meetings between them on June 3, 1945 at Albuquerque, New Mexico, and corroborated this perjury through a forged hotel registration card, Exhibit 16. We consider each claim separately.

A preliminary observation is in order. The constant repetition through the petition's 100 paragraphs of allegations of fraud, perjury, concealment of evidence and like epithets, and the "upon information and belief" charges make it desirable to state

what ordinarily would be assumed -- that reiteration of unsupported charges and conclusory allegations is no substitute for factual allegations.(6)

I. THE EXHIBIT 8 CLAIMS

Exhibits 2, 6, 7 and 8, which represent the atomic information Greenglass testified he turned over for transmission to the Soviet Union, were the subject of petitioner's first section 2255 motion brought on in November 1952. In order properly to evaluate the current charges centering about Exhibit 8, the trial testimony with respect to and the former attack upon all the exhibits must be considered.

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(6) Sanders v. United States, 373 U.S. 1, 19-22 (1963); Machibroda v. United States, 368 U.S. 487, 495 (1962); United States ex rel. McGrath v. LaVallee, 319 F.2d 308, 312 (2d Cir. 1963); United States v. Mathison, 256 F.2d 803, 805 (7th Cir.), cert. denied, 358 U.S. 857 (1958); United States v. Pisciotta, 199 F.2d 603 (2d Cir. 1952); United States v. Sturm, 180 F.2d 413, 414 (7th Cir.), cert. denied, 339 U.S. 986 (1950).

The Trial Testimony

Greenglass was a high school graduate and had for limited periods attended Brooklyn Polytechnic and Pratt Institutes. After his induction into the Army, he was stationed, commencing in August 1944, at the Los Alamos project, New Mexico, where atomic bomb experimentation was being carried on and the most stringent security regulations were in effect. His particular experience was as a machinist and he was assigned to a machine shop in a group concerned with high explosives, headed by Dr. George B. Kistiakowski, and subsequently became foreman of the shop. His work consisted of machining various apparatus required in connection with experimentation on atomic energy, including a flat type lens mold and other molds then the subject of experimentation by Dr. Walter S. Koski.

Greenglass testified that while stationed at Los Alamos he became a member of the conspiracy in November 1944 at the instigation of the Rosenbergs, and that his activities extended to obtaining and transmitting classified information to them concerning

experiments, locations, personnel, security measures and the nature of the camouflage at the project. Exhibit 2 was a replica of a sketch of an explosive lens mold used in atomic bomb experiments at Los Alamos which he had prepared and delivered to the Rosenbergs, together with descriptive material and a full report of the experiments, as well as the names of scientists working there, in January 1945 while in New York City on a furlough.

Greenglass also testified that Exhibits 6 and 7 were schematic replicas of sketches of lens molds, one shown in an experimental set up which, together with a report on atomic experimentation, he delivered to Harry Gold on June 3, 1945 at Albuquerque, New Mexico. These exhibits he said were prepared from memory, Exhibits 2 and 7 during the trial, and Exhibit 6 at the time of his apprehension in June 1950.

After Greenglass had testified as to these exhibits he was excused and Dr. Koski was called. Dr. Koski testified that he was a professor of physical chemistry, a consultant in nuclear physics, and an

engineer at the Los Alamos laboratory from 1944 to 1947, associated with implosion research connected with the atomic bomb; that all work at Los Alamos was of a highly classified and secret nature; that Exhibits 2 and 6 were substantially accurate replicas of sketches he had made and submitted to the shop where Greenglass worked; that Greenglass had access to the information shown on those exhibits; that Exhibit 7 was a rough sketch of an experimental setup for studying cylindrical implosion; that the sketches and information which Greenglass testified he had given in connection therewith were reasonably accurate descriptions of the experiments and their details as he, Dr. Koski, knew them at the time.

Dr. Koski also testified that knowledge of his experiments would have been to the advantage of a foreign nation; that his experiments were in a new and original field. He further testified that one familiar with the field could ascertain from Exhibits 2, 6 and 7 the principle and idea of the lenses and the nature and the object of the activities then under

way at Los Alamos in relation to the production of the atomic bomb. Dr. Koski was not cross-examined by petitioner's counsel, although the Rosenbergs' counsel did inquire.

Following Dr. Koski's testimony Greenglass resumed the witness stand. Preliminarily he testified that in January 1945 Rosenberg had described a bomb (which he subsequently learned was the type dropped on Hiroshima) so that he, Greenglass, would know what to be on the lookout for; that thereafter he met persons at Los Alamos who worked in different units of the project, others who talked of the bombs, how they operate, and that he himself worked directly on certain apparatus that went into an atomic bomb. Greenglass further testified that in September 1945, while on furlough in New York City, he told Rosenberg he thought he had "a pretty good description of the atom bomb,"(7) whereupon, at Rosenberg's request, he drew and delivered to the Rosenbergs a sketch of a

(7) Record, p. 490.

cross-section of an atomic bomb and about twelve pages of descriptive material. Exhibit 8, he testified, was a replica of that sketch. When the government offered it in evidence, counsel for petitioner's codefendants, the Rosenbergs, immediately moved to impound the exhibit; petitioner's counsel acquiesced in this request, and subsequently, after the exhibit was shown to the jury, it was impounded. The prosecution then asked Greenglass to state what was contained in the written material which accompanied the sketch. Before Greenglass could answer, the Rosenbergs' counsel stated he was prepared to stipulate that the sketch and twelve-page description were secret, confidential and concerned the national defense; however, Sobell's counsel refused. Thereupon, with the consent of all counsel, Greenglass' testimony with respect to Exhibit 8 and the descriptive material, which relates to the component parts, mechanism and operation of an atomic bomb, was received in camera, although the press was permitted to remain,[8] as were representatives of the Atomic

(8) The press was not enjoined to secrecy, but requested by the court to exercise "good taste." However,

Energy Commission.

John A. Derry, an electrical engineer, also testified as to Exhibit 8. Derry was assigned to the Manhattan District Project from December 1942 to August 1946 and was liason officer between General Groves, Commanding General of the entire Manhattan Project, and the Los Alamos laboratory. His duties required him to keep General Groves informed of the technical progress of the research, development and production phases of the atomic bomb project at Los Alamos. He testified that all activity and work at the project were highly classified and top secret; that he was informed of many of the experiments incidental to the development of the atomic bomb; that he knew what went into parts of it and understood the entire subject matter; that in 1945, on many occasions, he saw the actual bomb that was being developed. Derry testified that Exhibit 8 and the Greenglass descriptive

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footnote 8 cont'd

various publications, including "Life" and "Time," published in 1951 the substance of his testimony.

material related to the atomic bomb which was in the course of development in 1945; that they demonstrated with substantial accuracy the principle involved in its operation; that a scientist could perceive therefrom to a substantial degree what its actual construction was; that the information contained therein was top secret and related to the national defense of the United States; and that the information and sketch concerned a type of bomb similar to that dropped at Nagasaki.

The First Section 2255 Motion

The petitioner's first section 2255 attack was directed, among other matters, to Exhibits 2, 6, 7 and 8 and the testimony of Greenglass, Dr. Koski and Derry with respect thereto.(9) Three separate claims were made:

(9) These charges contained in the Rosenbergs' 1952 petition were adopted by petitioner. Sobell's 1952 petition, ¶ 25; and November 25, 1952 Amendment to Petition. Also his Petition for Certiorari, p. 34, Sobell v. United States, No. 719 (1952).

(1) Concealment of Coached Evidence[10]

Petitioner alleged that Greenglass had perjured himself to the knowledge of the prosecution when he swore he had prepared these exhibits from memory and had not been aided in their preparation by a scientifically trained person. No factual evidence was offered to support this charge. What was relied upon was the opinion of scientists, set forth in affidavits, that it was "improbable," "impossible" or "inconceivable" that Greenglass with his limited technical education could have prepared the sketches represented by Exhibit 8,[11] as well as 2, 6 and 7,[12] and the descriptive material showing the workings, mechanism and component parts of the Nagasaki type bomb without outside coaching or the use of reference books.

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(10) Rosenberg petition, (1952), pp. 64-68.

(11) Affidavit of Thomas R. Kaiser, questions 7 and 8, attached to Rosenberg petition, (1952).

(12) Affidavits of James G. Crowther, Thomas R. Kaiser, Jacques S. Hadamard and John D. Bernal, attached to Rosenberg petition, (1952).

(2) Claim of Lack of Secrecy[13]

Another claim then advanced was that the atomic information transmitted to the Soviet Union was not secret.[14] Koski's testimony that the information contained in Exhibits 2, 6 and 7 was secret was challenged by a scientist who contended that this information was widely known and published throughout the entire world.[15] The petitioner branded Dr. Koski's testimony as false and argued that the classification by the government of the material was capricious and arbitrary. Although petitioner's scientist did not refer expressly to Exhibit 8 as he did to 2, 6 and 7, it is abundantly clear from

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(13) Rosenberg petition, (1952), p. 71, et seq.

(14) The opening paragraphs of petitioner's argument made clear that both Koski's and Derry's testimony was subject to attack. Rosenberg petition, (1952), p. 71.

(15) Affidavit of John D. Bernal, attached to Rosenberg petition, (1952). Challenged was Koski's testimony to the effect that Exhibits 2, 6 and 7 concerned "a new and original field," and could have been of advantage to a foreign nation. Record, p. 478.

his opinion,[16] the petition,[17] and his counsel's oral argument[18] that the attack on the secrecy extended to all the atomic information. With respect to this claim of nonsecrecy, petitioner alleged that "the detail of the atom bomb is trivial technically and most inconsequential as a secret,"[19] and in conclusion urged:

> "5) The 'secret' which David Greenglass allegedly transmitted to the U.S.S.R. was no secret at all to any explosive expert.

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(16) Affidavit of John D. Bernal, ¶ 5(b), attached to Rosenberg petition, (1952).

(17) Thus the petition attacked Derry's testimony as well as Koski's. Rosenberg petition, (1952), p. 71, and argued that the "method for the assembly of the fissile materials was just another detail." Id. at 80.

(18) The broadside nature of the attack appears from the oral argument of the motion. Petitioner asserted that "the alleged subjects of transfer from Greenglass to the petitioner Julius Rosenberg and the petitioner Ethel Rosenberg were, in fact, public property, and not secret." Transcript of Argument, November 28, December 1, 2, 1952, p. 41. He also asserted: "The third point shows that there were no secrets concerning (1) the alleged subjects of transfer here, and (2) with respect to any and all processes that went into the construction of the complete atom bomb that was first dropped at Hiroshima and later the improved bomb at Nagasaki . . . ." Id. at 108.

(19) Rosenberg petition, (1952), p. 81.

"6) The ability of any country to produce an atomic bomb rests upon its ability to mobilize the hundreds of thousands of scientists, technicians and laborers and its ability to make available the vast industrial plant required. It does not rest on stealing the 'secrets' of the United States."(20)

(3) Claim of Lack of Value to the Soviet Union(21)

Finally, petitioner claimed that the atomic information was of little or no value to the Soviet Union. Here he alleged that the Soviet Union "did in fact have the necessary scientists and technology for doing the job. . . . It did not need any American secrets to produce a bomb."(22) In support of this contention he relied upon the opinion of one of the scientists that "any advantage to any foreign nation by the divulging of the design of any particular lens would be nonexistent or very small. . . ."(23)

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(20) Rosenberg petition, (1952), p. 98.

(21) Id. at 74, et seq.

(22) Id. at 82.

(23) Affidavit of John D. Bernal, attached to Rosenberg petition, (1952).

The petitioner's charges and those of his codefendants were rejected by Judge Ryan without a hearing in a carefully considered opinion,[24] and his ruling affirmed upon appeal.[25]

The Present Petition

In May 1966 Exhibit 8 and the Greenglass-Derry testimony with respect thereto were ordered unimpounded on petitioner's motion and thereafter he filed the present amended petition enlarging previous charges of prosecution misconduct.[26]

First: Petitioner, now offering the affidavits of a different group of scientists from those relied upon in the 1952 proceeding, again attacks the evidence

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(24) United States v. Rosenberg, 108 F. Supp. 798 (S.D.N.Y. 1952).

(25) United States v. Rosenberg, 200 F.2d 666 (2d Cir. 1952), cert. denied, 345 U.S. 965, rehearing denied, Sobell v. United States, 345 U.S. 1003 (1953).

(26) Petitioner in May 1966 filed a petition containing only the charges considered under Part II of this opinion.

of the atomic information transmitted through Greenglass to the Soviet Union. The charges center principally about Exhibit 8, Greenglass' testimony and Derry's testimony; also involved are Exhibits 2, 6 and 7. Whereas in the original section 2255 proceeding it was charged that Greenglass committed perjury to the knowledge of the government because, according to the first group of scientists, it was "improbable" or "inconceivable" that he could have drawn the exhibits, now he is faulted because Exhibit 8 and his exposition of the descriptive material fail to measure up to a scientific standard of perfection as to accuracy, precision and detail.

Whereas in the original proceeding Dr. Koski's testimony was denounced as false,[27] and later as the

(27) His testimony "that the theory of 'implosion' utilized for the purpose of assembling the critical mass of fissionable metal was invented and developed at the Los Alamos Project." Rosenberg petition, (1952), p. 74.

"now apparent hoax," (28) now Dr. Koski is accepted. Here the charge is that the government's failure to have him, a recognized scientist, instead of Derry, an electrical engineer, testify with respect to Exhibit 8 and the related testimony demonstrates that it knowingly introduced false evidence since the prosecution was aware that Koski or other scientists would not testify that the exhibit depicted with substantial accuracy the principle involved in the bomb developed at Los Alamos.

The scientists, with respect to the unimpounded evidence, according to one of them, pursued two inquiries:

(1) its accuracy and completeness as a description of the plutonium bomb developed at Los Alamos; and

(2) its possible value in assisting in the development and construction of a bomb by the Soviet Union.

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(28) Sobell brief, (1952), p. 35, Court of Appeals Docket No. 22571.

With respect to the first inquiry, the scientists find errors and omissions in Exhibit 8 and in Greenglass' testimony as to what was contained in the twelve-page description. With respect to the second inquiry, the experts aver that the construction of an atomic bomb involved no single "secret" in the scientific sense, but did involve "a highly complex set of technical tricks, devices and processes, combined . . . with an immense and versatile industrial capability"; that before bomb construction can even begin, a nation must build a full-fledged atomic energy industry, and obtain an adequate supply of fissionable material, all of which require research, development and construction activities measured in hundreds of millions of dollars; that Greenglass' testimony of the sketches was deficient because it omitted the requisite scientific and technical information needed for plutonium production; that the information "was too incomplete, ambiguous and even incorrect to be of any service or value to the Russians in shortening the time required to develop their nuclear bombs."

Apart from the fact that the issue of the secrecy and value of the information to the Soviet Union was determined upon the merits in the first section 2255 motion, their criticism of Greenglass' testimony and his sketches is irrelevant in the light of the substance of his testimony. Their view might be relevant had Greenglass testified that he had purloined at Los Alamos and turned over to the Rosenbergs a set of blueprints, working drawings, dimensional plans and written specifications for the production of plutonium and the bomb, and that Exhibit 8 and the twelve-page description purported to convey this information. But this was neither Greenglass' testimony nor his role in the conspiracy. His role was to get classified information -- to get what he could.

Greenglass, it will be recalled, was given a description in January 1945 by Rosenberg of an atomic bomb to alert him to the type of classified information that was desired. He testified that this was the first time he ever heard a description of any

type of atom bomb, but after months of snooping, conversations, observations and his own machining work, in September 1945, as he informed his co-conspirators, he thought he had "a pretty good description of the atom bomb," and then drew the sketch and prepared the related material. Greenglass never claimed that he had obtained definitive documents, and on cross-examination readily acknowledged he had never taken such material and also that he was no scientific expert, although he knew something about the "basic theory of atomic energy."(29) Exhibit 8, as was expressly called to defense counsel's attention, contained the legend "not to scale."(30) It was represented as a schematic sketch,(31) not a blueprint, and there is no warrant for the contention that the jury or defense

(29) Record, p. 612.

(30) Record, p. 499.

(31) As Greenglass testified with respect to the sketches, "None of those are to scale. So they are all schematic." Record, p. 462.

counsel were misled as to what it represented.(32)

That the scientists do not grade Greenglass' drawing and his descriptive testimony one hundred per cent, judged by their scientific and engineering standards of the information required to enable the Soviet Union in 1945 to construct an atomic bomb is not the test of Greenglass' credibility as to what classified information he did deliver to the Rosenbergs in September 1945. Were there a complete consensus of all the learned atomic scientists in the world that his description was deficient, it would not draw in issue the truthfulness of his version of what he then transmitted to Rosenberg.

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(32) Upon the cross-examination of Greenglass, the following exchange occurred:

"THE COURT: . . . The charge here is not that he gave him everything that might have been accurate in every minute detail, but that he transferred secret material pertaining to National Defense.

"MR. E. H. BLOCH: That is correct.

"THE COURT: And whether he might have turned something over, miscalculating a figure or making an error here and there, is not material to the charge. . . ." Record, p. 613.

Second: It is next urged that Derry's opinion as an expert as to what the exhibit and the Greenglass description portrayed was false. Other than the contrary opinions of the scientists, nothing is presented to impugn Derry's testimony. The fact that they disagree with Derry's opinion does not establish its falsity. Significantly, one of the scientists concedes that judgment on the matter "must be a highly subjective one indeed." Derry's credibility was for the jury and not a panel of experts, who sixteen years after the event seek to undermine it. This aspect of petitioner's motion renews the earlier attempt, also on the basis of affidavits of scientists who neither saw nor heard the witnesses, to condemn them as untrustworthy. Petitioner may no more do so now than the Court of Appeals permitted it to be done in 1952.(33)

(33) United States v. Rosenberg, 200 F.2d 666, 670-71 (2d Cir. 1952), cert. denied, 345 U.S. 965, rehearing denied, Sobell v. United States, 345 U.S. 1003 (1953).

Third: Next it is contended that even if Derry did not knowingly testify falsely, the government knew that Derry was not an expert, but nevertheless had him testify that Exhibit 8 and the description represented with substantial accuracy a cross-section and the principle of the atomic bomb dropped at Nagasaki; that it knew his testimony was false and inaccurate; that it failed to call Dr. Koski or other government scientists since it knew they would not so testify. The accusation dissolves when considered against the indictment charge, the substance of the Greenglass-Derry testimony and the hypothesis upon which the scientists predicated their opinions.

The conspiracy charge was not limited to atomic bomb information. The crime charged was a conspiracy to communicate to the Soviet Union documents, writings, sketches, notes and information to be used to the advantage of the Soviet Union. This was made clear to the jury both during the

trial[34] and in the court's charge.[35] The evidence established the transmittal by the conspirators of other classified material relating to the Los Alamos project, as well as secret information of other defense activities.

There is no evidential support for the charge that Derry was not an expert or that the government knew he was not an expert. His experience and the nature of his work in relation to atomic bomb activity and construction were fully stated. The petitioner did not concede his qualifications as an expert; this was challenged and put in issue at the trial.[36] The petitioner

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(34) During Greenglass' testimony the court admonished defense counsel in the presence of the jury: "You must remember that the conspiracy charge is a general statement to turn over information to the U.S.S.R. pertaining to national defense. It is not limited to atomic information." Record, p. 511.

(35) In its charge to the jury the court stated: "Bear in mind . . . that the Government contends that the conspiracy was one to obtain not only atomic bomb information, but other secret and classified information . . . ." Record, p. 1557; also p. 1560.

(36) Upon the ground that ". . . this witness has failed to qualify as an expert on the ingredients and their functions contained in the statement just read to him." Record, p. 910.

was free to call witnesses to contradict Derry, but failed to do so and no action of the government prevented him from doing so. Petitioner's related claim that had Dr. Koski testified with reference to Exhibit 8 his answers would have differed substantially from Derry's is unsupported.

The charge that the government knowingly fostered false testimony through Derry is based upon the scientists' opinions that Exhibit 8 and the Greenglass description, measured by their standard of scientific perfection, were "both qualitatively and quantitatively incorrect and misleading." Their opinion is based upon a self-propounded inquiry with respect to the now unimpounded material's "accuracy and completeness as a description of the plutonium bomb developed at Los Alamos in 1945." The scope of this inquiry is not the same as that directed to Derry at the trial. The questions put to him were:

> "Q Does the knowledge as disclosed in the material . . . read in conjunction . . . with Exhibit 8 demonstrate substantially and with substantial accuracy the principle involved in the operation of the 1945 atomic bomb?

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"A It does.

"Q Can a scientist and can you perceive what the actual construction of the bomb was?

"A You can." (37)

The record does not support the charge that the government used Derry through these answers to obtain deceptive testimony.

Although the exhibit shown to Derry specified "not to scale," the scientists now, as did one in the 1952 proceeding, (38) condemn it and Derry's testimony because it was not so drawn. No statement, direct or indirect, was made either by Derry or the government that the exhibit and the Greenglass testimony purported to represent more than Derry's testimony indicates. Defense counsel acknowledged that the

(37) Record, pp. 910-11.

(38) Affidavit of John D. Bernal, ¶ 5(b), attached to Rosenberg petition, (1952).

sketch and description were not "a complete description of the cross-section of the atomic bomb . . . and how it works and the principles under . . . which it works,"(39) and himself developed that a twelve-page description of the atom bomb "would not, of course, be a complete description . . . ."(40)

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(39) "MR. E. H. BLOCH: Would you say . . . that [Exhibit 8 and the Greenglass testimony] would represent a complete description of the cross-section of the atomic bomb and the function of the atomic bomb and how it works and the principles under . . . which it works?

"THE COURT: I don't think it was offered on the theory that it represented a complete -- is that true, or am I mistaken?

"MR. SAYPOL: Indeed not. As I said when I had the witness Koski on the stand, the import of this whole thing is that there was enough supplied to act upon --

. . . . .

". . . You remember, your Honor, I used the colloquialism, tip off. That is exactly --

"THE COURT: I don't think it was offered as a complete or as a detailed description." Record, p. 915.

The prosecutor's references relate to the questioning of Koski with respect to Exhibits 2, 6 and 7: "And would I be exaggerating if I were to say, colloquially, that one expert, interested in finding out what was going on at Los Alamos, could get enough from those . . . exhibits in evidence which you have before you to constitute a tip-off as to what was going on at Los Alamos?" Record, p. 483.

(40) Record, pp. 914-15.

To fault the government because the sketch is inaccurate and incomplete, judged by scientific standards of "accuracy and completeness," is to fault it on the basis of questions which were impermissible in the light of the Greenglass evidence. A hypothetical question to any expert, whether called by the prosecution or the defense, could only have been posited on matters in evidence -- in this instance, the sketch and the Greenglass description of the twelve-page memorandum. But over and beyond this, an analysis of the scientists' affidavits, notwithstanding their depreciation of the Derry-Greenglass testimony, demonstrates the essence of Derry's foregoing testimony is not contradicted. Thus one of them states: "Re the nature of the information in Exhibit 8: the sketch presented is the kind I would use to explain the ideas involved in the bomb," [emphasis supplied] although understandably, in the light of the scope of the scientists' inquiry, he adds: "It can in no way be taken as an engineering drawing which could be used to construct the bomb." The same scientist, although of the view that

eventually the Russian scientists would probably have arrived at the design of an implosion bomb during the time required for plutonium production, and hence he ". . . would not expect the information in Exhibit 8 was able to save them any significant time in the development of an atom bomb," does add: "Instead, such information could save some effort." [Emphasis supplied.] How much effort could have been saved or advantage gained he does not opine.

Another scientist states that the Greenglass description "is correct in its most vague and general respects that explosive lenses were used to achieve implosion of a core containing plutonium and beryllium components, the overall system being arranged in an essentially spherically symmetrical configuration." He queries himself and answers with respect to Derry's testimony:

> "Does this constitute a 'substantially accurate representation of the principle' of the bomb? In my opinion, no. Nevertheless, it is clear that such a judgment must be a highly subjective one indeed. A diagram that may obviously represent a 'principle' to a research expert who has devoted years of hard work and worry to the

> problem, and who cannot help but correct and fill in the gaps subconsciously with his own knowledge, may be totally useless to a technician who has actually to construct the device. We undoubtedly have such a situation in Exhibit 8."

Thus he acknowledges that it would not have been difficult for a scientist to fill in the gaps -- hardly different from Derry's testimony quoted above. And why it is assumed that classified information transmitted to a foreign power would not be evaluated by a research expert is not discussed.

Still a third scientist states: "While the sketch contained in government Exhibit 8 illustrates the general points: the use of explosive lenses to make spherical implosion; the use of electrical detonation for simultaneity; the use of a plutonium sphere, and the use of beryllium as one component, it is barren of any meaningful or correct quantitative information," and the description is in some respects erroneous. He continues: "It is a somewhat schematized cross-section, which might be called a pedagogical descriptive picture." Again it is observed that the criticism is based upon a standard of scientific perfection and detail and not upon the evidence given at the trial.

The government was not required to produce evidence to establish that the espionage agents had not achieved perfection because of their failure to obtain and transmit to the Soviet Union all scientific and engineering sketches and specifications required for large scale production and construction of the atomic bomb. The record makes clear that the hypothesis upon which the scientists base their criticism is not the hypothesis upon which the trial was conducted. Perhaps the short answer to their observations is the comment of Mr. Justice Douglas: "The Rosenbergs obviously were not engaged in an exchange of scientific information in the interests of science."(41)

Fourth: Petitioner next contends that by the use of Derry's testimony, by leading questions put to witnesses, by making known the presence at the trial of representatives of the Atomic Energy Commission and other government representatives, by

(41) Rosenberg v. United States, 346 U.S. 273, 318 (1953).

references to renowned scientists, and by other means the government sedulously and falsely established in the minds of the jury, court and defense that the Soviet Union had obtained the "secret" of the bomb long before it had been predicted the Soviet Union could have produced one; that by reason of the aforesaid government conduct, defense counsel were deceived into accepting the testimony as to the accuracy of the sketch as fact, in consequence of which they were trapped into moving to impound the evidence and into not offering scientific evidence to contradict the Greenglass-Derry testimony, with the result that the jury was led to accept Greenglass' entire testimony; that as a further result the defense counsel in various respects failed adequately and effectively to defend petitioner.

A review of the entire record reveals that this contention rests upon a distortion of the record, a disregard of the substance of the testimony, reference to matters out of context, and others not presented to or not occurring in the presence of the

jury and impermissible inferences.(42)

The motion by the Rosenbergs' counsel to impound Exhibit 8 was spontaneous and indeed caught the prosecution by surprise. The assertion that defense counsel were

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(42) A prime example of petitioner's manner of reading the record is his claim that the government, in using the word "secret" in connection with the atomic information, was representing that the sketches convey "the secret" of the bomb. A reading of the passages found objectionable by petitioner reveals that the government's reference, in words or substance, to "secret" was to the classified or confidential nature of the information. Thus, for example, the court suggested that the problem of public disclosure with respect to Greenglass' description of Exhibit 8 could be avoided by a stipulation that the matters contained therein "were of a secret and confidential nature." [Emphasis supplied.] Record, p. 501.

Again, throughout the petition, petitioner attacks the government's use of such terms as "sketch of the very bomb itself" and "cross section of the atom bomb itself" to describe the Exhibit 8 material. Petitioner's scientists do not contend that the sketch or description were of something other than the bomb. If a sketch of an object is inaccurate, it would still be a sketch of that object; it would simply be an inaccurate sketch. In using phrases such as these, the government was describing Exhibit 8 in ordinary language. Thus, in criticizing the accuracy of the exhibit, one of petitioner's scientists himself states: "The cross section and its description are not factually correct. . . ." See also nn. 43 and 44, infra.

intimidated in their action by references to and the presence of representatives of the Atomic Energy Commission is repelled by the fact that it was this petitioner's counsel who in no uncertain terms,(43) and as indeed was his right, refused to concede that the material was secret, classified and pertained to the national defense, in consequence of which witnesses were called to testify on this subject. Clearly the presence of these officials did not deter his counsel from contesting the issue.(44)

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(43) When asked to stipulate that the matter was secret and pertained to the national defense, petitioner's counsel stated: ". . . [W]e would not be defending the rights of our client properly by stipulating any such thing. We feel that our national defense is secure only in so far as . . . we secure the liberty of our present client, and tomorrow the next client, and so on, and because of that we feel that a confession [sic] of that kind would not be in the best interests of the defense of our client, not because of the nature of the testimony or anything like that." Record, p. 509.

(44) Petitioner's suggestion that the government supplied the initiative for the Rosenbergs' counsel's offer to stipulate that the sketch and the description were secret and concerned the national defense is not supported by the record. After the motion to impound Exhibit 8, the government asked Greenglass to tell exactly what the descriptive material

Petitioner professes to see a conspiracy to suppress evidence and to mislead his counsel in the failure of the prosecution to call Dr. J. Robert Oppenheimer, Dr. Harold C. Urey and Dr. George B. Kistiakowski to testify, although they were included in the list of potential witnesses served pursuant to 18 U.S.C., section 3432. The names of all those so listed were read to the jury on the voir dire to learn if any was known to the veniremen. Petitioner now asserts that because of this and other references to the three atomic scientists the government represented that they would testify, in consequence of which defense counsel were fraudulently induced to believe,

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footnote 44 cont'd

contained, and he was prevented from doing so by defense counsel's application that this matter, too, be kept secret. The prosecutor's statement with reference to his consultations with the AEC came after and in reply to this application by defense counsel. Also, the prosecutor's statement, as well as the comment that Derry's testimony was a "security matter" and would "establish the authenticity of the information that Greenglass gave to Rosenberg," was made out of the hearing of the jury. Record, pp. 499-501 and 902.

and the jury was impressed, that the scientists would testify that government Exhibit 8 and the related testimony represented a true and accurate cross-section and description of the bomb, and so counsel accepted the accuracy of the Greenglass-Derry testimony and were trapped into moving to impound and also into foregoing any challenge to its accuracy. This is another oft-reiterated allegation which is without support in the record or otherwise. No statement was made as to the nature of the testimony to be given by any of the listed witnesses. No representation, direct or indirect, was made as to what the three scientists would testify if called to the stand. When their names were mentioned to the jury, the trial had not begun and defense counsel were without knowledge of the contents of any of the exhibits in question or the nature of the Greenglass-Derry testimony with respect thereto. Moreover, as already noted, the fact is that after Exhibit 8 was in evidence, petitioner's counsel challenged its secrecy and pertinence to the national defense and did not at any time stipulate its accuracy or authenticity. Further, during the

trial and even before Derry was called, the defense was advised by the prosecution that it did not intend to call all witnesses listed,(45) since it believed additional testimony would be cumulative.(46) The defense could have compelled the appearance of these witnesses by direction of the court or by means of its processes; or, if it preferred not to have them testify, since they were in government service, it could have asked for an appropriate instruction to the jury on permissible inferences from the nonappearance of witnesses under the control of a party.(47) Furthermore, this is not the first time that a claim has been made with respect to the failure to call Drs. Oppenheimer,

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(45) Record, p. 870. At another point, when a reference was made to a doctor on the list who was not called, the following occurred:

"THE COURT: You mean to say that the Government has to call every witness listed on that?

"MR. A. BLOCH: I didn't say anything of the kind. I am just identifying the man." Record, p. 1325.

(46) Although the list contained the names of 100 potential witnesses, only 22 testified.

(47) Indeed, defense counsel in his summation taxed the government for failure to call certain witnesses. Record, p. 1499.

Urey and Kistiakowski. As far back as 1952, upon the direct appeal, it was urged, "The prosecution failed to produce for examination the above named scientists, whose testimony could have clarified doubts about the accuracy of David [Greenglass], . . . with respect to his scientific exposition."(48)

Petitioner's attempt to bolster his argument with respect to the government's scientists by labelling "a deceptive ploy" the prosecution's questioning of Greenglass concerning scientists he knew were at Los Alamos is unavailing. The identity of these scientists was classified and Greenglass testified he transmitted their names to Rosenberg; the interrogation obviously was calculated to develop evidence in support of the charge.

There is no basis for the claim that the court was misled as to the importance of the atomic information insofar as this petitioner is

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(48) Rosenberg brief, (1951), p. 7, Court of Appeals Docket No. 22201.

concerned. The record makes clear that the court's evaluation of the importance of the atomic information played no part in its sentence of Sobell. Before imposing sentence upon him, the court stated: ". . . [T]he evidence in the case did not point to any activity on your part in connection with the atom bomb project."(49)

Fifth: Finally, the contention that the present claim is based upon newly discovered facts and therefore could not have been presented on prior applications and appeals because the material was impounded for sixteen years flies in the face of the record. Petitioner's statement that "The fact that it [the impounded material] would be available in a subsequent proceeding was itself impounded and not

(49) Record, p.1620. Even as to the Rosenbergs' sentence, the importance of the atomic information to the Soviet Union was strongly challenged by the Rosenbergs' counsel in his argument upon sentencing, Record, p. 1608, and the court's evaluation of the importance of the material was attacked upon the direct appeal as "egregious" and with "little substance." Rosenberg brief, (1951), p. 139, Court of Appeals Docket No. 22201.