F.O.I.A.

JULIUS ROSENBERG ET AL.

FILE DESCRIPTION

HQ FILE

SUBJECT MORTON SOBELL

FILE NO. 101-2483

VOLUME NO. 34

SERIALS

1281-1302

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

File No: 101-2483 Sect 34 Re: Sobell Date: (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1281	6/4/56	HQ let NY	1	1	b1
1282	5/29/56	Belmont memo to Boardman and encl.	2/28	2/28	
1283	5/29/56	DOJ let HQ	—	—	Disposition of document handled by DOJ 1975 (1)
1283	6/1/56	HQ let DOJ	1	1	
1284	5/31/56	Mexico City TT HQ	2	0	b1
1284	6/4/56	HQ let DOJ	2	1	b1
1285	5/25/56	Jones memo to Nichols	1	1	
1286	5/29/56	NY TT HQ	1	1	
1287	6/1/56	NY TT HQ	1	1	
1288	5/25/56	NY TT HQ	1	1	
1289	5/29/56	Incoming let	2/4	0/4	b1
1289	6/6/56	Outgoing let	2	1	b1
			48 Rev	42 Rel	6 Deny 0 Ref Presume Prepros

FBI/DOJ

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

File No: 101-2483 Sect 34 Re: Sobell Date: (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
NR	6/6/56	HQ ltr DOJ	1	—	See J. Rosenberg 65-58236-2260
1290	6/4/56	NY TT HQ	2	2	
NR	6/13/56	HQ ltr DOJ	2	—	See J. Rosenberg 65-58236-2261
1291	6/4/56	NY TT HQ	3	3	
1292	6/5/56	NY TT HQ	1	1	
1293	6/8/56	NY TT HQ	1	1	
1294	6/5/56	Belmont memo to Boardman and encl.	1/10	1/10	
1295	6/12/56	Belmont memo to Boardman and encl.	2/80	2/80	
1296	6/18/56	HQ A/T NY	1	1	b1
NR	6/13/56	HQ ltr CIA	2	—	See J. Rosenberg 65-58236-2262
NR	6/15/56	HQ ltr DOJ	1	—	See J. Rosenberg 65-58236-2263
1297	5/9/56	NY R/S HQ and encl	1/210	1/210	

3/8 Rev 3/2 Rel Deny Ref Presume Prepa

FBI/DOJ

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

File No: 101-2483 Sub 34 Re: Sobell Date: (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1298	6/20/56	NY TT HQ	1	1	
1299	6/21/56	Nichols memo to Tolson	1	1	
1300	6/9/56	Tokyo R/S HQ and encl.	1/2	1/2	
	6/18/56	NY rept	23	21	b1, b2, b7D 2pg ref State
1301	6/26/56	Outgoing ltr	3	3	b1 b7D
1302	5/24/56	Branigan memo to Belmont	2/26	2/26	

59 Rel 57 Rel 0 Deny 2 Ref 0 Presume Prepare

FBI/DOJ

June 4, 1956

AIRTEL

SECRET

SAC, New York (100-37158) (Orig & 1)

MORTON SOBELL, was,
ESPIONAGE - R

Reurtel 5-28-56 stating AUSA Kirtland specifically subject obtains a hearing on issues of fact in his petition for new trial, a Mexican official might be necessary to advise that Mexican Police had legal right to expel the subject, and if such official is sympathetic to communism, it would damage the Government's case.

Legal Attache, Mexico City, furnished following comments:

[redacted]

SECRET

Legat also feels due to [redacted]

SECRET

The above information should be furnished to United States Attorney, Southern District of New York, for [redacted] information.

Classified by 253B
Exempt from GDS, Category 3
Date of Declassification Indefinite

101-2483-X281

RECORDED-62
HOOVER
27 JUN 5 1956

101-2483

NOTE: Although the motion for a new trial and requesting a hearing on the issues of fact is returnable June 4 next, the above information is not necessary for the arguement of this motion, and will be important only if hearing on the facts is granted. Therefore, not believed necessary to send by teletype.

Classified by 3042 PWP-JAL
Declassify on: OADR
4-21-87

Tolson JPL bal
Nichols
Boardman
Belmont
Mason
Mohr
Parsons
Rosen

50 JUN 8 1956

MAILED 16
JUN - 4 1956
COMM-FBI

SECRET

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

TO : L. V. Boardman 6/1/56 DATE: 5/29/56

FROM : A. H. Belmont

SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

Tolson
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Boardman
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Gandy

On 5/8/56 subject filed notice of motion for new trial based mainly on claim he was illegally deported from Mexico and the Government, aware of this fact, prejudiced him by introducing into the trial false information that the deportation was legal. Another motion for a new trial and petition dated 5/25/56 was filed by defendent's attorney in District Court, Southern District of New York. This motion claims Court was without jurisdiction since Sobell had not been legally extradited from Mexico. Sobell contends this motion attacks the jurisdiction of the Court to conduct the trial and differs from previous motion*that Court lacked personal jurisdiction.

Petition claims U.S. through and by its agents, including the prosecution, agents of the FBI and of the U.S. Embassy in Mexico City, unlawfully planned and participated in his illegal seizure in Mexico and his abduction and removal to the U.S. This was done in violation of the extradition treaty between U.S. and Mexico, thus depriving the Court of jurisdiction over the subject matter. The claim is made the Mexican police were acting pursuant to the direction and control of the U.S. through its agents. The petition claims the power and jurisdiction of the U.S. and its agencies and branches are governed and limited by the extradition treaty and points out the treaty specifically excludes crimes of a political nature.

Sobell also filed a reply affidavit in answer to the Government's affidavit dated 5/21/56. This claims the Government's answer raises issues of fact calling for a hearing. It again claims the Government used perjured evidence which invalidated the entire proceeding, thus making other evidence at the trial irrelevant.

The petition claims Inspector Huggins, INS, knew his testimony that Sobell was deported was false and so advised the FBI and the prosecution. This is not correct. Huggins was

101-2483 1 ENCLOSURE 101-2483-1282
Enclosure 20
cc - 1 - Boardman RECORDED-20 11 JUN 5 1956
Nichols
Belmont
Lee

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-21-87 BY 3042 PUT-32R

JPL:blb
(5)

*Motion in arrest of judgment made on day of sentencing.

interviewed 5/14/56 and denied he had been informed by Mexican authorities that Sobell was not legally deported. Further, Huggins did not tell any FBI agents that he knew Sobell was not legally deported. In its original petition, the defense claimed the Mexican Consulate, Laredo, Texas, had advised the INS station at Laredo that Sobell was not legally deported.

Petition claims U.S. Attorney Saypol and his assistant, Roy Cohn, attempted to establish that Sobell was deported by Mexican Government action. Petition claims Saypol in his statement to the Court that Sobell did not enter Mexico on a visa was attempting to leave the impression Sobell illegally entered Mexico. It is noted Saypol made this statement to the Court on a motion for arrest of judgment after the completion of the trial and the jury could not be influenced by it.

The petition expands the charge that the Government suppressed evidence to include not only Sobell's property but the facts of the Government's alleged participation in Sobell's seizure and abduction. It also claims this contention could not have been raised earlier since Sobell was not aware until recently that the Government used perjured testimony. An attempt is then made to explain why Sobell did not take the stand at the trial, stating the jury would not believe the Government was using perjured testimony.

Notice of motion, the petition, and subject's reply affidavit are enclosed.

ACTION:

For your information.

[redacted]

UNITED STATES OF AMERICA,

v.

MORTON SOBELL,

Defendant.

Cr. [redacted]

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the petition of MORTON SOBELL, and the appendices and exhibits attached thereto, and on the files and records of this case, the undersigned will move this Court at a Criminal Part to be held thereof, on May 21, 1956, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for

(1) an order granting a hearing to determine the issues and make findings of fact and conclusions of law with respect thereto, and upon such findings of fact and conclusions of law, for an order vacating and setting aside the sentence and judgment of conviction and discharging the petitioner forthwith from detention and imprisonment or, in the alternative, granting him a new trial;

(2) an order that petitioner be present at the hearing aforesaid; and

for such other and further relief as to the Court may

be just and proper in the premises.

Dated: New York, N. Y.
May 6, 1949.

Yours, etc.

DUNNER, KENNY & PUELIS

By [redacted]

342 Madison Avenue
New York 17, N. Y.

[redacted]
57 Post Street
San Francisco 4, California

Attorneys for Defendant.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MORTON SOBELL,

Defendant.

No. S 134-245

Petition Pursuant to Title 28, U.S.C., Section 2255

TO THE HONORABLE JUDGES OF SAID COURT:

The petition of Morton Sobell respectfully represents:

1. The petitioner is unlawfully, unjustly and illegally detained and imprisoned by Paul J. Madigan, Warden of Alcatraz Penitentiary, a federal penal institution, acting as the agent and under the direction of the Attorney General of the United States and his authorized representatives, in whose custody he was committed, under and by virtue of a judgment entered and commitment issued by the United States District Court for the Southern District of New York dated and filed April 5, 1951.

2. The indictment against petitioner, returned on January 31, 1951, charged in a single count that he had conspired with others to transmit to the Union of Soviet Socialist Republics "documents, writings, sketches, notes and information relating to the national defense of the United States" in violation of Section 34 of Title 50 of the United States Code.

3. Petitioner was tried, together with co-defendants Julius and Ethel Rosenberg, before judge and jury from March 6 to 29, 1951, when the jury returned a verdict of guilty against the petitioner.

4. On April 8, 1931, petitioner was sentenced and committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of thirty years.

5. On November 26, 1932, after petitioner had been incarcerated in the Federal House of Detention and Atlanta Penitentiary, the Attorney General, through his authorized representative, caused and ordered the transfer of petitioner to Alcatraz Penitentiary, where the petitioner has remained and is now detained.

6. Petitioner duly appealed to the United States Court of Appeals for the Second Circuit from the aforesaid judgment of conviction. On February 25, 1932, that Court affirmed the judgment of conviction, Judge Frank dissenting. The Court's opinion is reported at 195 F.2d 583. On April 8, 1932, the Court denied a petition for rehearing, 195 F.2d 609-611.

7. Petitioner duly petitioned the Supreme Court of the United States for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit. On October 15, 1932, the United States Supreme Court entered an order denying said petition, 344 U.S. 838. On November 17, 1932, the United States Supreme Court entered an order denying petitioner's petition for rehearing, 344 U.S. 880.

8. Petitioner makes this application praying that his sentence be vacated and set aside and that he be discharged from detention and imprisonment forthwith pursuant to provisions of Section 2255 of Title 28 of the United States Code. The criminal proceedings against him and his conviction were unlawfully, illegally and unjustly instituted and procured in violation of the Constitution

and laws of the United States, including inter alia the extradition treaty between the United States and Mexico. [9]

The United States itself, as well as its courts, thereby lacked all sovereignty and power to conduct the proceedings herein and this Court was without jurisdiction to impose the sentence. The proceedings were void ab initio. The judgment and sentence are subject to collateral attack. [10]

9. The sovereign power of the United States and the power of its constituted executive and judicial branches to maintain and conduct criminal proceedings involving persons located within the territory of Mexico are limited, restricted and controlled by the extradition treaty between the United States and Mexico. The proceeding must be pursuant to the grounds and official arrangements set forth in the aforesaid treaties; absent this, the jurisdictional power of the United States and its governmental branches in the criminal proceeding is null and void and devoid of any legal basis.

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[9] The Treaty on Extradition signed on February 22, 1899, at Mexico City, 31 Stat. 1818. This treaty was supplemented in 1902, 1925 and 1939. See also Convention between United States of America and other American Republics, signed at Montevideo, December 26, 1933. United States Treaty Series No. 882.

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[10] Title 28, United States Code, Section 2255:

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

(footnote continued on page 4)

Petitioner was not extradited from Mexico, nor was jurisdiction granted to the United States by the Government of Mexico. The United States was precluded from trying petitioner in that the offense charged was excluded by the extradition treaty, and the conditions and requirements of the aforesaid treaty were not complied with.

Agents of the United States, in violation of the Constitution, laws and treaties of the United States and in transgression of the national and territorial sovereignty of the Government of Mexico, arranged, planned, instigated and participated in the unlawful seizure, abduction and kidnaping of petitioner from Mexico to the United States, causing and sustaining the conviction of petitioner. The judgment and sentence were therefore null and void. Also, contrary to due process of law, these actions served to establish a substantial evidentiary basis for the conviction of petitioner.

10. "The objection is that the government, itself, lacked power to seize, since by the treaty it had imposed a territorial limitation upon its own authority . . . our government, lacking power to seize, lacked power because of

(Footnote continued from previous page)

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

the treaty to subject the * * *" petitioner "to any loss. To hold that adjudication may follow a wrongful seizure would go far to nullify the purpose and effect of the treaty * * *. Here the objection is * * * fundamental. It is the jurisdiction of the United States. The objection is not * * * lost by the entry of an answer to the merits. The ordinary instances of possession of" petitioner "yield to the international agreement." (Ker v. United States, 119 U.S. 102, 121-122)

This motion, directed to the jurisdiction of the Court over the subject matter, may be raised at any time.

11. No previous application for relief on the grounds set forth herein has been made.[1]

FACTS ESTABLISHING THE LACK OF SOVEREIGN AND JUDICIAL POWER TO CONVICT PETITIONER

12. The United States, through and by its agents, including the prosecution, agents of the F.B.I. and of the United States Embassy in Mexico City, unlawfully and willfully planned, initiated, and participated in the illegal seizure of petitioner in Mexico and his abduction and removal to the United States, and caused his conviction and sentence through proceedings in violation of the extradition treaty between the Government of the United

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[1] Petitioner has made prior application to the Court for relief pursuant to Title 28, U.S.C. Section 2255, but not on the ground set forth herein. Subsequent to the verdict in the trial of petitioner and prior to sentencing, a motion in arrest of judgment was made challenging the personal jurisdiction of the Court. The present motion does not deal with or direct itself toward the matter of personal jurisdiction.

States and the Government of Mexico, thereby depriving this Court and nation of jurisdiction over the subject matter.

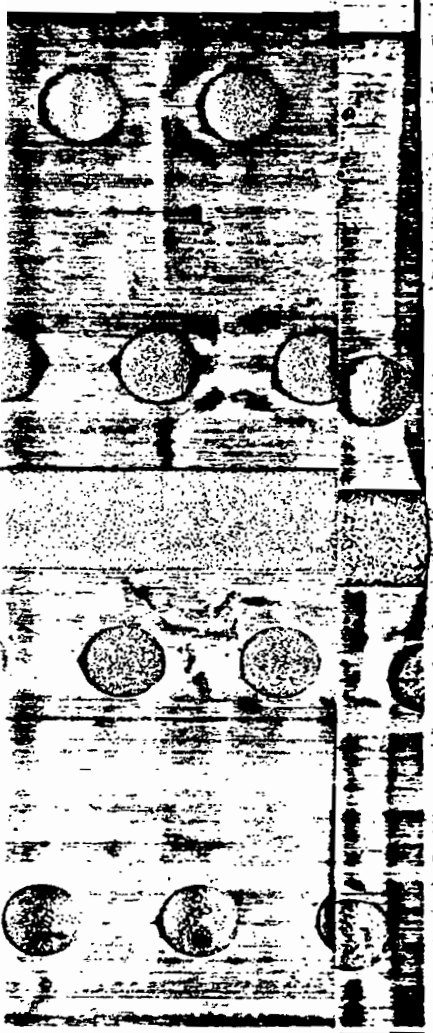
13. Petitioner repeats and re-alleges with the same force and effect as if fully set forth herein, paragraphs 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 49th, 50th, 52nd, 53rd, 54th, 55th and 56th of his petition pursuant to Section 2255 filed on the 9th day of May, 1956.

14. The local police of Mexico City who seized and abducted petitioner were acting unlawfully and without the knowledge or consent of the Government of Mexico or any of its authorized agents. The aforesaid police were acting with and solely pursuant to the direction and control of the United States through its agents, the Department of Justice and the United States Embassy at Mexico.

15. The United States Embassy in Mexico City served not only as a place of interrogation and as a coordination center, but took custody of some of the property and documents seized from petitioner's apartment in Mexico City. Subsequent to the unlawful abduction, agents of the United States continued their unlawful activity in violation of the extradition treaty and the national and territorial sovereignty of Mexico by conducting unlawful investigations, seeking to obtain the conviction of the petitioner.

16. Petitioner repeats and re-alleges with the same force and effect as if fully set forth herein Paragraphs 56th, 57th, 58th, 59th, 74th and 81st of the petition pursuant to Section 2255 of Title 28 U.S.C. filed in this Court on the 9th day of May, 1956.

17. Petitioner was not deported or expelled by the Government of Mexico, nor was his removal in any way consented to by that government (See Paragraphs 37th through



90th of the petition of May 8, 1986). Agents of the United States, including inter alia representatives of the Department of Justice, were advised of this fact (See Paragraphs 87th through 89th of the petition of May 8, 1986).

THE TREATY VIOLATION DEPRIVED THE COURT OF JURISDICTION

18. The United States and Mexico are bound by a treaty on extradition which specifies the grounds of extradition and the arrangements to be followed by the signatories. The power and jurisdiction of the United States and its subsidiary agencies and branches is governed and limited by the aforesaid treaty.

19. Under the aforesaid treaty, the United States is deprived of power to seize, to proceed criminally and to convict a person located in the territory of Mexico, on the charge of espionage or the conspiracy to commit the same. The treaty directly limits the exercise of such jurisdiction to specifically enumerated offenses (Article XI).

20. The treaty specifically excludes extradition for crimes of a political nature, or where political associations or activities are motivating or aggravating elements of the offense, or where such matters constitute any element of proof in establishing the offense (Article XII, Paragraph 2 of the Extradition Treaty).[1] Yet the prosecution adduced

[1] Treaty on extradition must be read in light of the Extradition Law of the United States of Mexico and the procedures there prescribed. See App. C of petition of May 8, 1986; see also Convention between the United States of America and other American Republics, signed at Montevideo, December 26, 1933, U.S. Treaty Series, No. 882, Article VIII.

evidence of petitioner's purported political associations and activities to prove the offense, and as an aggravating and motivating element thereof. Such political associations and activities further entered into the Court's consideration in imposing sentence upon petitioner.d/

21. The treaty further requires a requisition through diplomatic channels. The requisition must be accompanied by an authenticated and attested copy of the warrant of arrest, and the complaint or indictment which may have been issued. It must transmit certified copies of the law defining the offense with which the person is charged and the penalty prescribed therefor.

22. Thereupon, apprehension of the alleged fugitive is accomplished by the proper executive authority of the Government of Mexico and a hearing and examination is had before a proper judicial authority of Mexico to determine on the basis of law and evidence whether probable guilt has been established and whether or not the person is properly extraditable.ee/ The court's judgment would be

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d/ See testimony of Elizabeth Bentley (R. 964-1024); charge of the Court to the jury (R. 1558); comments upon sentencing (R. 1601-1603; 1612-1615), and upon application for reduction of sentence.

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ee/ The complaint against petitioner, issued August 3, 1950, specified five overt acts, none of which was proved in the trial. Petitioner was not indicted until October 17, 1950, two months after seizure. Much of the evidence, including that relating to purported flight, was not obtained until after his seizure and in fact constituted the tainted fruit of the Government's unlawful action.

subject to examination by the President and subsequent review by another court.

25. Upon the facts set forth herein, as well as the allegations set forth in the petition of May 8, 1936, the Government of the United States violated the Treaty of Extradition, the Constitution and laws of the United States and the national and territorial sovereignty of the Government of Mexico, thereby depriving the Court of jurisdiction.

26. Authorities and representatives of the Government of Mexico made representations of objection to the unlawful abduction and seizure and the invasion of the sovereignty of that nation (See Paragraphs 40th, 41st, 48th, 79th and 80th of the petition of May 8, 1936).

27. By reason of the violation of the treaty, the prosecution was enabled to obtain the conviction of petitioner upon false evidence and the suppression of facts (see petition of May 8, 1936), all constituting a denial of due process of law.

WHEREFORE, petitioner asks that upon this petition the Court

(1) Grant a hearing to determine the issues and make findings of fact and conclusions of law with respect thereto; and upon such findings of fact and conclusions of law vacate and set aside the sentence and judgment of conviction and discharge petitioner forthwith from detention and imprisonment;

(2) Order that petitioner be present at the hearing aforesaid; and for such other and further relief as to the Court may seem just and proper in the premises.

Dated, May 25, 1956.

MORTON SOBELL,

By His Attorneys

DONNER, KIRCH & PERLIN,
342 Madison Avenue,
New York, New York.

BENJAMIN DREYFUS,
57 Post Street,
San Francisco, California.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. C 134-245

UNITED STATES OF AMERICA,

v.

MORTON SOBELL,

Defendant.

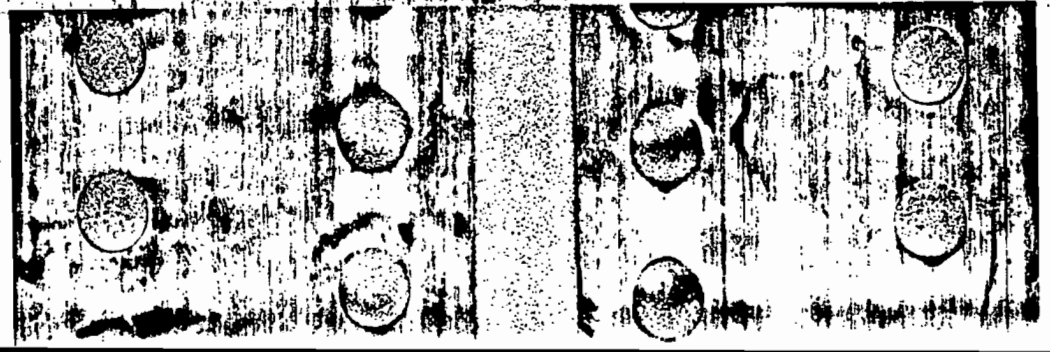
Paul W. Williams

PETITION PURSUANT
TO TITLE 28, U.S.C.,
SECTION 2255

DONNER, KINOY & PERLIN
342 Madison Avenue
New York, New York

BENJAMIN DREYFUS
57 Post Street
San Francisco, California

Attorneys for Petitioner



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, v. MORTON SOBELL, Defendant.	No. C 134-245 REPLY AFFIDAVIT

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO } ss.:

MORTON SOBELL, being duly sworn, deposes and says: He is the petitioner in the proceedings herein and submits this affidavit in reply to the answering affidavit of Paul W. Williams.

The government's affidavit merely reinforces the petitioner's right to a hearing. There are no grounds set forth which can serve as reasons for the denial of the relief sought in the present petition. Moreover, as will be set forth below in more detail, the government's answer raises issues of fact which must be resolved in the course of the hearing. The petition charges that Messrs. Cohn and Saypol knowingly used perjured testimony and suppressed evidence impeaching the prosecution's case. It further charges that Mr. Saypol knowingly made false representations to the Court. No affidavit denying these allegations by either of the aforesaid persons has been submitted.

A-91-83 201564

The petition specifies by name the employees of the Department of Justice involved in the unlawful seizure and the circumstances of the abduction. The petition charges that Huggins presented false and perjurious evidence, that Huggins and Scypol had been advised by the Government of Mexico long prior to the trial that petitioner was not deported, and that Huggins and the prosecution suppressed this vital impeaching evidence. Neither the agents of the F.B.I., Huggins, nor the prosecutors have submitted affidavits controverting these facts.

The allegations set forth in the petition are true. Nevertheless the government does raise issues of fact as to the matter of deportation and the petitioner's tourist card which are not supported by the files and records of the case and which make a hearing necessary.

For the convenience of the Court the petitioner will deal seriatum with the matters raised in the answering affidavit.

THE CLAIM THAT THERE WAS OTHER TESTIMONY ADDUCED AT THE TRIAL, NOT PRESENTLY ATTACKED, IS IRRELEVANT TO THE ISSUE POSED IN THE INSTANT MOTION

The petitioner charges that the prosecution knowingly used perjured and false evidence to obtain his conviction. The false evidence was admittedly material and relevant. That the present motion does not direct itself to other testimony adduced at the trial is irrelevant. Petitioner does not at all concede the truthfulness of the rest of the government's case. He seeks to set aside an illegal sentence and will prove his innocence in the course of a new trial.

If the prosecution knowingly used perjured testimony, made false representations to the court or suppressed evidence impeaching its case, the petitioner must be released or in the alternative, be granted a new trial. The corruption of the judicial process flowing from the knowing use of perjured testimony taints and invalidates the whole proceeding and any sentence and judgment based thereon may not stand.

GOVERNMENT CONCEDES THE FALSE EVIDENCE WAS MATERIAL AND RELEVANT AND WAS USED TO CONVICT PETITIONER

The government admits that the false and perjured evidence was highly relevant and was used to implicate petitioner in the charged conspiracy and as proof of

guilty flight". The government acknowledges it was used to establish that petitioner would not have returned to the United States voluntarily, and that his trip to Mexico was therefore evidence of flight from the prosecution. The major significance of this false testimony, recognized by the trial and appellate courts, need not be argued at length. The prosecution made use of the false claim and perjurious evidence, known to it to be false, throughout the trial. Its importance was reflected in the charge of the court to the jury, and in the briefs submitted to the United States Court of Appeals in reviewing the conviction. 5/

5/

1. Opening statement by Mr. Saypol to the Jury:

   "... these defendants put into operation an elaborate and prearranged scheme to flee the country of their birth... These efforts to flee the borders of our country and avoid facing you followed a carefully planned pattern. Fortunately, in most instances these attempts to escape were nipped in the bud, were thwarted. (R.183)

   "You will hear how the defendant Sobell actually succeeded in getting out of the country, in a desperate and fortunately unsuccessful attempt to flee the country."

2. The Court's charge:

   "To determine whether Morton Sobell was a member of the conspiracy you are only to consider the testimony of Max Elitcher, William Dansiger and the testimony relating to the defendant Sobell's alleged attempt to flee the country." (R.1860)

3. Government's Brief to Court of Appeals (pp. 17 and 37)

4. See also Government's Brief in opposition to the petition for writ of certiorari.

   The deportation "was plainly relevant to show that Sobell's return to the United States was not voluntary and was thus probative to show flight". (p. 8)

The petitioner in the course of the trial and on his appeal recognized the prejudicial nature of the false evidence. In any event petitioner cannot be required to serve an unjust and unlawful sentence based upon perjured testimony, knowingly used by the prosecution, merely because the significance of the false evidence is alleged to have been more fully recognized by the government than by petitioner or his counsel.

THE EVIDENCE THAT PETITIONER WAS DEPORTED FROM MEXICO WAS FALSE; IN ANY EVENT THE GOVERNMENT RAISES AN ISSUE OF FACT WHICH CAN ONLY BE RESOLVED BY A HEARING

The government concedes that the Court of Appeals held that the false evidence was introduced to establish that petitioner was legally deported by the Government of Mexico. (193 F. 2d, at p. 603; see also footnote 20, p. 603.)

No other inference could be drawn by the jury. The government does not contend otherwise. The prosecution sought to establish that petitioner was deported, lawfully, by the Government of Mexico, by its authorized agencies.

As set forth in the petition, the prosecution knew this evidence to be false. Huggins had been advised by an authorized representative that the evidence was false long prior to his testimony. He had so advised the agents of the F.B.I. and the prosecution. 3/

3/ Mr. Saypol adverted to the close coordination between the prosecution and the Federal Bureau of Investigation in the handling of this case. (R 1882)

At the time the prosecution consulted with Ruggins in his preparation for his testimony they well knew that petitioner was not deported, and that the Government of Mexico was in no respect a party to the unlawful seizure.

The local Mexican police were not acting officially or pursuant to any directive of a Mexican governmental agency. They in fact had no power to arrest or deport petitioner or in fact remove him beyond the confines of the City of Mexico. Their action was not authorized by warrant nor did it have the color of law. These police were acting as agents of the United States prosecution and pursuant to its directions alone.

Mr. Williams now states, significantly not supported by an affidavit of Mr. Cohn or Mr. Saypol, that the prosecutor did not, through Ruggins' testimony and Government Exhibit 28A, intend to establish or give the implication that petitioner was legally deported or removed by the Mexican Government. Such a contention is not supported by the record, and if given any weight raises an issue of fact which must be resolved by a hearing.

Mr. Ruggins was an immigration official fully acquainted with the term involved, its significance and meaning. Mr. Saypol was an experienced lawyer, and as a United States attorney had much experience in deportation matters; that field of law and its terminology was not foreign to him.

Further, the record of the trial reveals that the prosecution sought to establish and Ruggins sought to impart from the very beginning that petitioner was deported, [redacted] by governmental action of Mexico.

-6-

Mr. Cohn asked government witness Rios when petitioner was "deported to the United States by the authorities". (R. 936) He stated that there was "other proof coming of deportation". (R. 936) Huggins advised the Court and jury that the Mexicans who delivered Sobell to Laredo were there in their official capacity. (R. 1036) Further, he advised petitioner that he was deported from Mexico. (R. 1036)

Mr. Saypol inferring that petitioner illegally entered Mexico, stated that he was "literally kicked out as a deportee". (R.1899) The Court on the basis of this evidence charged the jury:

> "the prosecution says . . . that he/ Sobell/ was apprehended only after being delivered to the United States by the Mexican authorities." (R. 1880)

The prosecution was fully aware of the impact and meaning of the false evidence to the jury.

The prosecution in seeking to establish that the Government of Mexico [illegible] deported petitioner, knowingly used the perjured testimony of Huggins and the false document in support thereof.

Assuming arguendo Mr. Williams' contention, nevertheless Messrs. Cohn and Saypol used the testimony to hide and suppress the unlawful acts of the prosecution in abducting petitioner and falsely represented to the jury that he would not voluntarily return. The prosecution knew it had deprived petitioner of his right to make the intended voluntary return but suppressed this fact.

The prosecution persisted in its contention that the Government of Mexico expelled petitioner and that his return to the United States was lawful but

contrary to his will. In its brief to the Court of Appeals (Roy Cohn was of counsel on the brief), the following appears:

Page 24: ". . . Mexico had every right to expel Sobell without ceremony and that even if United States agents requested such expulsion (of which there is no proof) it would not render it unlawful."

Page 27: "The trial record in this case simply disclosed that Sobell was ejected from Mexico by the Mexican authorities (with no suggestion of mis-conduct on their part) and delivered to the United States Immigration Service."

Page 28: "There is not a shred of evidence that any United States agent assisted the Mexicans in this act. Nor is there anything in the record to indicate that the United States government procured the Mexican government to deport Sobell. ... From this it may be inferred that the Mexican authorities have alerted the F.B.I. to expect Sobell's arrival, but it by no means follows that the Bureau was the instigator of Sobell's ouster.

"That Mexico had a perfect right to expel Sobell, an alien fugitive from justice, is settled beyond a dispute."

Page 29: "Since Mexico acted lawfully in effecting Sobell's expulsion, even if it were to make the unproved assumption that the United States requested Mexico to surrender Sobell it would not render Mexico's action any the less lawful."

In face of such statements by the prosecution in its brief to the Court of Appeals, the government's present contention cannot stand. It cannot be believed that Messrs. Cohn and Saypol intended to use the word deportation merely to describe a physical act. In any event, the government's affidavit raises an issue of fact which must be resolved by a hearing.

THE PROSECUTOR'S REPRESENTATIONS TO THE COURT WERE FALSE

The government in its answering affidavit does not contest the fact that Mr. Saypol represented to the Court that petitioner was removed from Mexico as a

"deportee" but contends that the prosecutor's representation in the context of his statements [1] was true in that petitioner did not have a visa but rather had a tourist card. Hence, it is argued, Mr. Saypol did not wish to infer to the Court that petitioner did not have a tourist card. [2]

Mr. Williams in his affidavit clearly, directly and frankly concedes that petitioner had a tourist card, but maintains he did not have a "visa". Mr. Saypol, in dereliction of his duties, did not make such a frank disclosure.

Mr. Saypol by his representations sought to establish that petitioner had entered Mexico illegally thereby giving grounds for concluding that the Mexican Government had deported him.

As recognized by the government in its affidavit, a visa, like a tourist card, merely represents an expression of permission by one government for a citizen of another country to enter its borders. Mr. Saypol was well aware of the context in which the term "visa" was used in the affidavit in support of the motion for arrest of judgment. At worst the word "visa" was a misnomer; surely

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[1] "This very affidavit contains a falsehood in the statement that there was exhibited amongst other things to the Mexican authorities visas. Counsel ought to know that his client never went into Mexico with a visa." (R.1599)

[2] Once again the Government's interpretation of the operations of Mr. Saypol's mind, his subjective intent, (not supported by his affidavit), is posed as an issue of fact which may only be resolved by a hearing.

not a basis for challenging the veracity of petitioner's affidavit. The prosecutor was not concerned with exact terminology. He sought to prove that petitioner entered Mexico without that Government's consent.

THE CHARGE OF SUPPRESSION OF EVIDENCE

The government has not recognized the import and significance of the allegations of suppression set forth in the petition. It is not limited to the charge that the prosecution suppressed documents unlawfully seized from petitioner. The petition charges inter alia that Huggins and the prosecution suppressed the facts known to them that they had been advised by the Government of Mexico that petitioner was not deported and was seized contrary to the laws of Mexico and without the sanction of that government. It is charged that the prosecution suppressed the fact that it instigated, planned and participated in the unlawful seizure so as to deprive petitioner of the opportunity of voluntarily returning to the United States and sought to establish that he was returned against his will as proof of guilty flight. This suppression is evidenced further by misrepresentations to the trial court and to the Court of Appeals. (See government's brief to the Court of Appeals.)

The prosecution, after seizing the petitioner's papers, suppressed them. The prosecution did not reveal to the petitioner, or to the Court or jury that it had evidence impeaching the prosecution's case in spite of its obligation and duty to do so. These unlawful actions

of the prosecution constituted a denial of due process and vitiated the trial proceedings and the sentence based thereon. A criminal trial involving a capital offense cannot be conducted as a game of chance.

THE PETITIONER COULD NOT HAVE RAISED HIS PRESENT CONTENTION AT AN EARLIER STAGE IN THE PROCEEDING

The issue posed in the present proceeding is whether or not the prosecution knowingly used false and perjured evidence to secure the conviction of petitioner. That the prosecution would do so could not have been known to the petitioner prior to the trial, nor could it have been litigated in the course of the trial. The government misconceives the point and appears to argue as if the present motion were premised upon the theory of newly-discovered evidence pursuant to Rule 33 of the Federal Rules of Criminal Procedure. This is not in accord with the facts.

The petitioner, both during the trial and for some time thereafter, was unaware of the fact that the prosecution had knowingly used perjured testimony, nor that it was the prosecution who had caused his abduction and removal without the consent or knowledge of the Government of Mexico. He had no proof to support such contentions. It has taken petitioner and those acting in his behalf many years to obtain the requisite proof which served as the foundation for the present petition, some of the evidence having been obtained only within the past few months. Had

petitioner presented prior to obtaining the evidence, his application would have been dismissed as groundless; surely he cannot be punished and caused to suffer unjust imprisonment because he has availed the necessary accumulation of data prior to proceeding in court.

Petitioner's defense was severely prejudiced by the false evidence and the wrongful actions of the prosecution. Surely it was a vital factor which prevented petitioner from taking the stand. He would have had to state in effect that an official of the Department of Justice, Huggins, gave false testimony; that the certification of the documents should be disregarded and the prosecutor's representations were unfounded. Surely the jurors may have conjectured that the Government of the United States or its employees would not testify falsely and in disregarding petitioner's testimony in this respect they would discount the testimony disproving the claims of Kitchen. Neither petitioner nor his wife should be obligated or required to overcome such burdens imposed by false testimony knowingly used by the prosecution. They should not be required to contest perjured testimony purportedly endorsed with the sanction and prestige of the United States Government.

THE PETITIONER HAS NOT SERIOUSLY LITIGATED THE ISSUES POSED IN THE PRESENT NOTICE

Petitioner's motion in arrest of judgment was not based on the grounds set forth herein and raised solely the question of the personal jurisdiction of the Court over him.

The affidavit in support of the motion in arrest of judgment (R. 31-33) did not allege directly or inferentially that the prosecution knowingly used perjured testimony. It did not in fact allege that he was not deported from Mexico, nor did it charge the prosecution caused or instigated his seizure. Faced with the representation of government employees and his own lack of knowledge of Mexican procedure and circumstances leading to his removal, he could do no more. He merely stated that upon his affidavit the Court was not vested with personal jurisdiction.

The issue of knowing use of perjured testimony was not presented to the Court. Petitioner had no proof and tendered none in support of such a proposition. Counsel for petitioner in stating the essence of the motion (R. 1896) declared that a hearing should be held to determine whether or not the United States instigated the removal of petitioner thereby depriving the Court of personal jurisdiction. The object of his motion was to obtain a hearing and thereby acquire information relative to his seizure.

The prosecution recognized the limited nature of the motion and therefore argued the Court could not grant the relief in that matters of personal jurisdiction could not be raised subsequent to trial.

The Court of Appeals in sustaining the denial of the motion held that it related only to a matter of personal jurisdiction and therefore had been waived after a trial on the merits. (195 F.2d 602). As to the issue

[illegible] use of perjured testimony, surely it could not have been contended that it had been waived at that time.

The briefs of petitioner and the prosecution to the Court of Appeals and on the petition for writ of certiorari to the United States Supreme Court reveal that the sole matter at issue was that of personal jurisdiction and in no way related to a claim of knowing use of perjured testimony. 3/

3/ Petitioner's Brief to Court of Appeals:

Page 28: "By motion in arrest of judgment . . . appellant contested the jurisdiction of the United States and hence of the court over the person of Morton Sobell."

Page 65: "Whether the acts that led to Sobell's abduction were an international trespass by the United States, or merely in violation of domestic law by its officials (the facts are equivocal and which of the alternatives apply could only be learned on a hearing) the appropriate consequence is that the United States now has no jurisdiction of his person."

Prosecution's Brief to the Court of Appeals:

Page 17: "After the verdict was returned, Sobell for the first time challenged the trial court's jurisdiction of his person by moving in arrest of judgment."

Page 34: ". . . Sobell forfeited any right to question the court's jurisdiction of his person by going to trial on the merits without objection." See also p.35.

Petitioner's Reply Brief:

Page 9: "We simply reassert that a hearing is required as to whether the assault, detention and transportation of Sobell were acts done or participated in by officers of the United States."

Government Brief in Opposition to Petition for Writ of Certiorari:

Page 41: "Petitioner Sobell contends that his motion in arrest of judgment challenging the trial court's jurisdiction over his person should have been sustained"

In any event the prosecution's false representations to the Court in the course of the argument of the motion in arrest of judgment made that proceeding a nullity.

The Government alludes to a prior 2255 motion made by co-defendants Julius and Ethel Rosenberg. This motion subsequently joined in by petitioner related solely to testimony of David Greenglass and Ben Schneider, government witness whose testimony in no way related to petitioner. The facts and grounds there presented to the Court were in no way related to the present application.

Upon the petition, the government's affidavit in opposition and the files of this case, a hearing should be held and the relief sought be granted.

Petitioner's presence at the hearing is essential. There are substantial issues of fact as to events in which the petitioner participated. Petitioner should be transferred forthwith to this district so that he may be afforded an opportunity to consult with his counsel in preparation for the hearing.

MORTON SOBELL

Sworn to before me this
day of May, 1956.

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

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FEDERAL BUREAU OF INVESTIGATION

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FBI/DOJ

[redacted]

cc [redacted]lmont
Lee

Assistant Attorney General (Orig. & 1)
William P. Rogers

June 1, 1956

RECORDED-20 101-2483-1283

EX-126

Director, FBI

MORTON SOBELL, with aliases
ESPIONAGE - R

Reference is made to your letter of May 29, 1956, requesting the comments of this Bureau relative to the suggestion that the United States Attorney, Southern District of New York, be authorized to return to the subject property taken from his person and luggage at his arrest in 1951 in the event he feels such a move would be advisable during the Court's consideration of Sobell's petition for a new trial. For your information, Sobell was arrested in 1950.

This Bureau will abide by the Department's desires and instructions relating to the disposition of this property. In the event you or the United States Attorney, Southern District of New York, desires to obtain this property it is in the possession of our New York Office and will be made available upon request.

101-2483

cc - 1 - New York (Enclosure) (For Info)

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DATE 7-21-87 BY 3042 PWT-JAR

COMM - FBI
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(Orig & 1)

Assistant Attorney General
William P. Tompkins

June 4, 1956

Director, FBI
RECORDED-27 101-2483-1284
MORTON SOBELL, with aliases
ESPIONAGE - R

EX-122

Reference is made to our memorandum of May 24, 1956, concerning Sobell's deportation from Mexico. Assistant United States Attorney Robert Kirtland has speculated that if Sobell obtains a hearing on the issues of fact, an official of the Mexican Government might be necessary to advise that the Mexican Police had a legal right to expel the subject. Mr. Kirtland stated a Mexican official sympathetic to communism would damage the Government's case.

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Classified by 3355/WAB/DVM
Exempt from GDS, Category 3 & 4
Date of Declassification Indefinite

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FBI/DOJ

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Nichols

DATE: May 25, 1956

FROM : M. A. Jones

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

SUBJECT: FULTON LEWIS BROADCAST
May 24, 1956

During the course of his broadcast tonight, Mr. Lewis stated that a well-known Washington hotel which has catered to Presidents in the past received a request from a Gertrude Evans to reserve the Ballroom of the Willard Hotel for a Wexley lecture. Mr. Lewis stated that as the word spread concerning the lecture, the FBI and police dug around and found this was going to be a meeting of the Sobell Committee of Washington, a committee organized for the release of Morton Sobell who was convicted along with Julius and Ethel Rosenberg and is now serving 30 years in Alcatraz. He said Mrs. Evans gave an F Street address which turned out to be the address of the Progressive Party of America, which was the same party that ran Wallace for President in 1948.

He said John Wexley is the author of a book titled "The Judgement of Julius and Ethel Rosenberg" and has been cited nine times as a member of the Communist Party.

Mr. Lewis stated that after all this information was uncovered, the Manager of the hotel wrote Mrs. Evans that the contract had been called off, and she could come by the hotel and get her money which she had paid originally for the reservation.

RECOMMENDATION:

None. For information.

INDEXED 101-2483-1285
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191 MAY 31 1956

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20 MAY 29 1956

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

MAY 29 1956

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

GIR 3

WASH 14 FROM NEW YORK 29 7-31 PM

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

MORTON SOBELL, WAS, ESP DASH R. AUSA ADVISED INSTANT DATE THAT SUBJECT-S LAWYER, MARSHALL PERLIN TELEPHONICALLY INFORMED THAT ATTORNEY THOMAS MC BRIDE WHO WAS TO ARGUE MOTION ON MAY THIRTYONE FIFTYSIX HAS SUFFERED A HEART ATTACK AND WILL BE UNABLE TO DO SO. PERLIN STATED HE WILL ARGUE MOTION AND ASKED THAT DATE OF RETURN BE POSTPONED TO MONDAY, JUNE FOURTH. REQUEST GRANTED. AUSA DRAWING UP ANSWERING AFFIDAVIT FOR SUBJECT-S PETITION OF MAY TWENTYFIVE. COPY WILL BE OBTAINED WHEN COMPLETED AND FORWARDED TO BUREAU. AUSA ALSO ADVISED THAT CONTACT HAS BEEN MADE WITH ASST ATTORNEY GENERAL WILLIAM F. TOMPKINS REGARDING RETURN OF SUBJECT-S PROPERTY TAKEN AT TIME OF HIS ARREST AND NOW RETAINED IN FBI, NYO BUT NO DECISION HAS BEEN REACHED BY TOMPKINS REGARDING RETURN, THAT GOVERNMENT ATTORNEYS DEBATING ADVANTAGE OF RETURNING PROPERTY BEFORE DATE OF ARGUMENT OF MOTION OR WAITING FOR POSSIBLE NEW DEFENSE MOTION DEMANDING ITS RETURN UNDER SECTION TWO TWO FIVE FIVE. BUREAU WILL BE KEPT ADVISED.

RECORDED - 18 101-2483 KELLY 1286

PLS HOLD 1-D

10 JUN 5 1956

Mr. Belmont

EX-125

cc: Mr. [illegible]

JUN 12 1956

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

JUN 1 1956

TELETYPE

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

WASHINGTON FROM NEW YORK 19 1 9-29 P

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

MORTON SOBELL, WAS, ESP-R. AUSA ADVISED INSTANT DATE NO ACTION HAS BEEN TAKEN BY SUBJECT ATTORNEY IN DIRECTION OF ATTEMPTING TO DISQUALIFY JUDGE IRVING KAUFMAN FROM HEARING MOTION SET FOR JUNE FOUR. AUSA HAS NOT COMPLETED GOV. ANSWER TO SUBJECT-S SECOND PETITION, BUT EXPRESSED CONFIDENCE THAT COURT WILL RULE IN GOV. FAVOR. COPY OF GOV. ANSWERING AFFIDAVIT WILL BE OBTAINED WHEN MADE AVAILABLE BY AUSA. BUREAU WILL BE KEPT ADVISED.

KELLY

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Mr. Belmont

101-2483-1287

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11 JUN 6 1956

cc: MR. BELMONT
AND SUPERVISOR Mr. Lee
DOM. INTEL. DIVISION

66 JUN 14 1956

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

MAY 25 1956

TELETYPE

GIR 3

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

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

MORTON SOBELL, WAS, ESP - R. REBULET MAY NINE, FIFTY SIX. AUSA KIRTLAND ADVISED INSTANT DATE MARSHALL PERLIN, SUBJECT-S LAWYER, INDICATED DEFENSE WOULD PREFER TO ARGUE MOTION ON MAY THIRTY ONE AS DEFENSE INTENDS TO AMPLIFY ITS ORIGINAL PETITION OF MAY EIGHT, FIFTY SIX. KIRTLAND ALSO STATED HE WOULD ASCERTAIN OPINION OF USA, SDNY PAUL WILLIAMS INSTANT DATE REGARDING RETURN OF DOCUMENTS OBTAINED AT TIME OF ARREST OF SUBJECT AND NOW HELD BY FBI, NYO, THAT IF WILLIAMS OPINION IS TO RETURN SAME TO SUBJECT-S ATTORNEY, THAT ASSISTANT ATTORNEY GENERAL WILLIAM F. TOMPKINS OF DEPARTMENTS INTERNAL SECURITY DIVISION WOULD BE TELEPHONICALLY CONTACTED TODAY TO OBTAIN AUTHORITY TO RETURN PROPERTY. KIRTLAND INDICATED IT WOULD BE DESIRABLE TO RETURN PROPERTY BEFORE DATE OF ARGUMENT SO DEFENSE CANNOT CLAIM SURPRISE. KIRTLAND SAID IF TOMPKINS AGREEABLE HE DESIRED FBI, NYO TURN ORIGINAL DOCUMENTS OVER TO USA TODAY. BUREAU WILL BE ADVISED IF REQUEST FOR RETURN OF ORIGINAL DOCUMENTS IS RECEIVED FROM AUSA. NY WILL OBTAIN COPY OF DEFENSE PAPER WHEN FILED.

KELLY

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Mr. Belmont

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EX-145

11 JUN 6 1956

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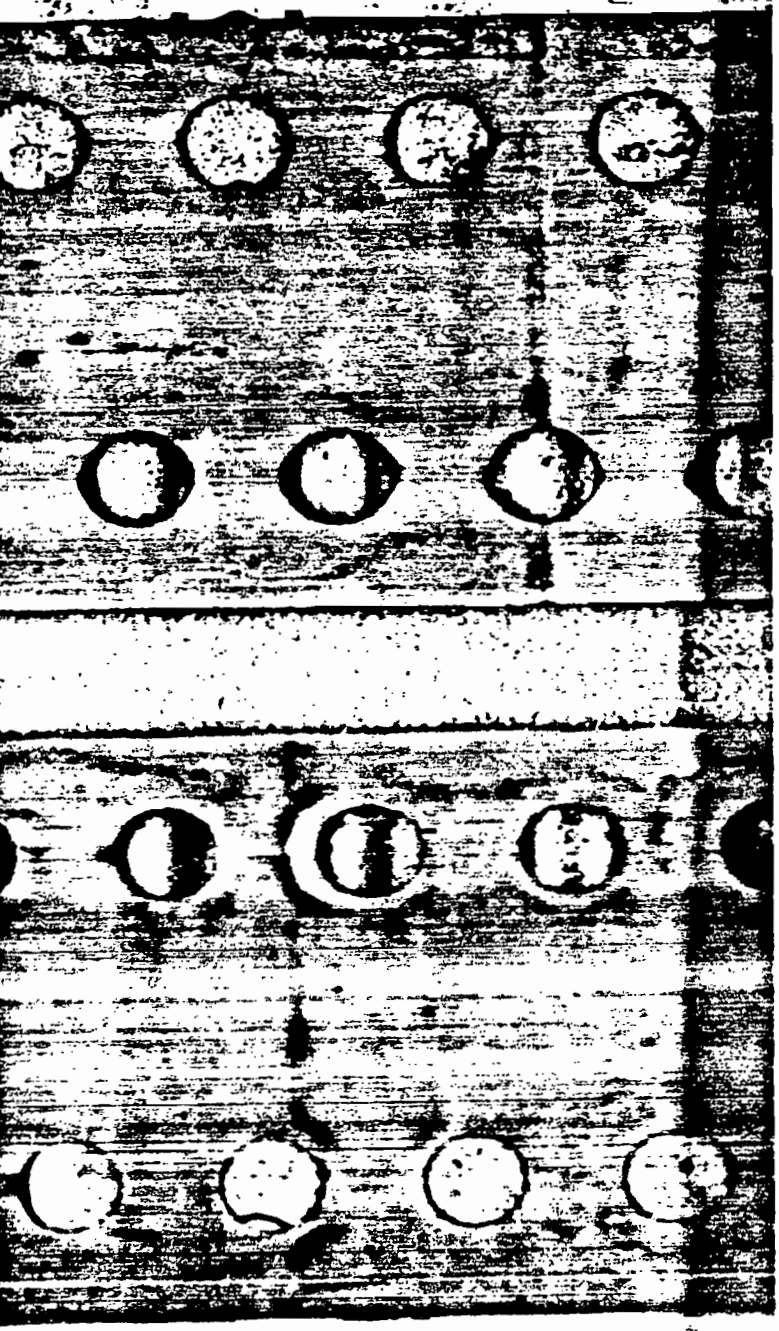

4-22 (Rev. 3-22-56)

Federal Bureau of Investigation
Records Section

5/31, 1956

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- ☐ Service Unit - Room 6524
- ☐ Forward to File Review
- ☑ Attention Burelli
- ☑ Return to Lee 1736
  Supervisor Room Ext.

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- ☐ All References (Subversive & Nonsubversive)
- ☑ Subversive References Only
- ☐ Nonsubversive References Only
- ☐ Main _____ References Only

Type of Search Requested:
- ☐ Restricted to Locality of _____
- ☑ Exact Name Only (On the Nose)
- ☐ Buildup ☐ Variations
- ☐ Check for Alphabetical Loyalty Form

Subject [redacted] (S) b1
Birthdate & Place _____
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Federal Bureau of Investigation
Records Section

5/21, 1956

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- ☐ Service Unit - Room 6524
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  Supervisor Room Ext.

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Type of References Requested:

- ☐ Regular Request (Analytical Search)
- ☐ All References (Subversive & Nonsubversive)
- ☑ Subversive References Only
- ☐ Nonsubversive References Only
- ☐ Main _____ References Only

Type of Search Requested:

- ☐ Restricted to Locality of _____
- ☑ Exact Name Only (On the Nose)
- ☐ Buildup ☐ Variations
- ☐ Check for Alphabetical Loyalty Form

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Address _____

Localities _____

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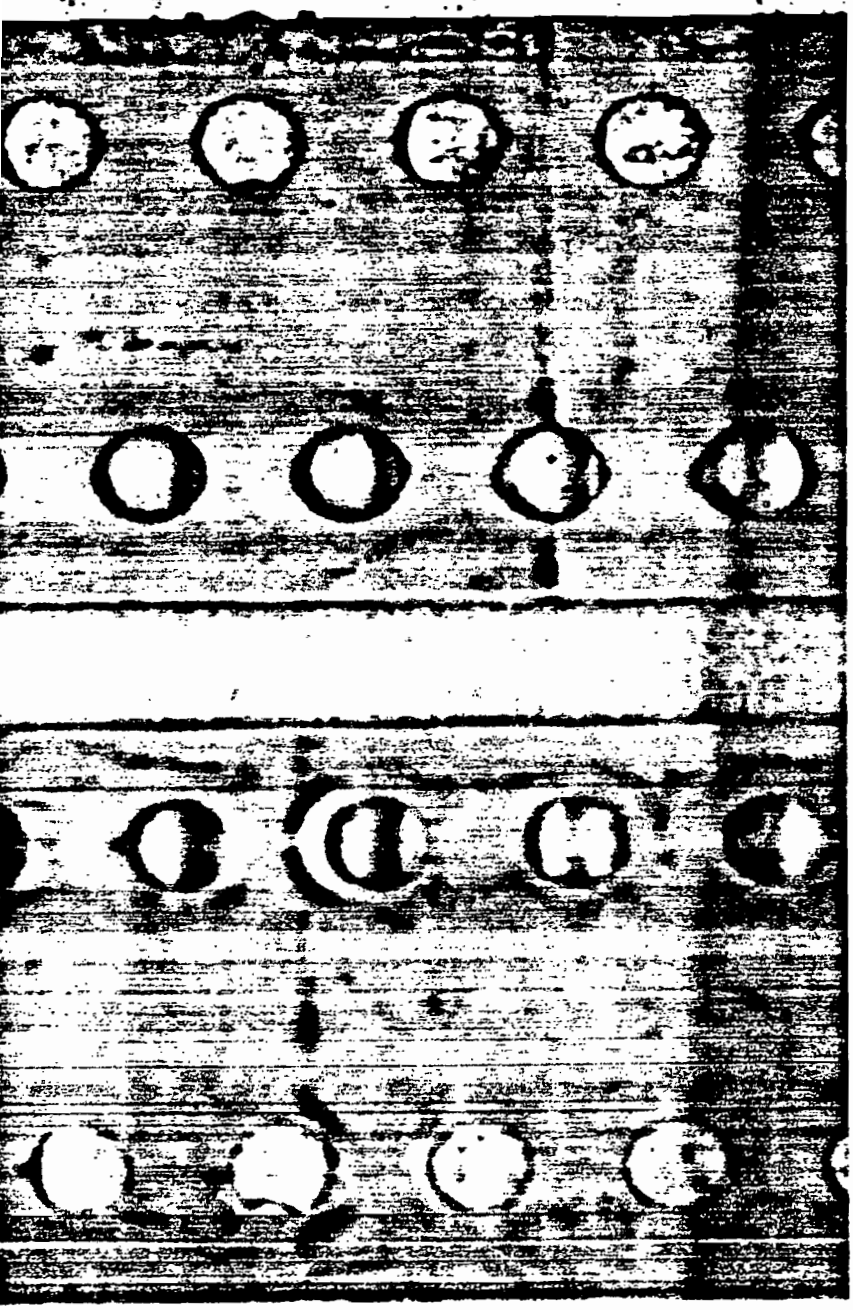

4-22 (Rev. 3-22-

Federal Bureau of Investigation
Records Section

5/21, 1956

- ☐ Name Check Unit - Room 6523
- ☐ Service Unit - Room 6524
- ☐ Forward to File Review
- ☑ Attention Bailli
- ☑ Return to Lee 1726
  Supervisor Room Ext.

SECRET

Type of References Requested:
- ☐ Regular Request (Analytical Search)
- ☐ All References (Subversive & Nonsubversive)
- ☑ Subversive References Only
- ☐ Nonsubversive References Only
- ☐ Main _____ References Only

Type of Search Requested:
- ☐ Restricted to Locality of _____
- ☑ Exact Name Only (On the Nose)
- ☐ Buildup ☐ Variations
- ☐ Check for Alphabetical Loyalty Form

Subject [redacted] (S) SI
Birthdate & Place _____
Address _____

Localities _____

R# _____ Date 5/21/56 Searcher Initials SAC

FILE NUMBER	SERIAL
	NR!
	4-21-87
	Classified by 3042 PWT/JAR
	Declassify on: OADR

4-22 (Rev: 3-22-56)

Federal Bureau of Inv[illegible]gation
Records Section

5/31, 1956

- [ ] Name Check Unit - Room 6523
- [ ] Service Unit - Room 6524
- [ ] Forward to File Review
- [x] Attention [illegible]
- [x] Return to [illegible] 1736

Supervisor Room Ext.

Type of References Requested:

- [ ] Regular Request (Analytical Search)
- [ ] All References (Subversive & Nonsubversive)
- [x] Subversive References Only
- [ ] Nonsubversive References Only
- [ ] Main ______ References Only

Type of Search Requested:

- [ ] Restricted to Locality of ______
- [ ] Exact Name Only (On the Nose)
- [ ] Buildup
- [x] Variations
- [ ] Check for Alphabetical Loyalty Form

Subject [redacted] (S) b1
Birthdate & Place
Address

Localities

R# ______ Date 5/31/56 Searcher Initials [illegible]

	FILE NUMBER	SERIAL
	NR	
	[illegible]	
I	~~100-3058[illegible]~~	
	[illegible]	[illegible]
I	~~61-7566-59~~	
I	~~65-[illegible]~~	
I	~~100-365[illegible]~~	
	[illegible]	
	~~100-[illegible]~~	
4-21-87		
Classified by: 3042 PWT-JAQ		
Declassify on: OADR		

SECRET

TOP SECRET

cc Boardman
Belmont
Lee

RECORDED - 67 101-2483-1289

June 6, 1956

INDEXED - 67 [redacted] (S) bl

4-21-86
Classified by 3054 PAT-JAR
Declassify on: OADR

11980

EX-109

RE: MORTON SOBELL (orig and 2)
ESPIONAGE - R

[redacted] bl (TS)

[redacted] bl (TS)

We have no record identical with [redacted] bl (S)

Investigation has reflected that in [redacted] bl (S)

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

Bufile 101-2483
cc - 2 - Legal Attache, London
cc - 1 - Foreign Liaison Unit
JPL:blb (11)

SEE NOTE ON PAGE 2.

TOP SECRET

MAILED FROM DIVISION FIVE
JUN 7 1956

Classified by 2455 WAA/cor
Exempt from GDS, Category 2
Date of Declassification Indefinite

UNRECORDED COPY FILED IN

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

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☑ The following number is to be used for reference regarding these pages:
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4-750 (Rev. 4-17-85)

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Sue J. Rosenberg 65-58236-2260

☐ For your information: _____

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101-2483-NR 6/6/52

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FBI/DOJ

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

JUN 4 1956

TELETYPE

GIR 6

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

WASH 6 FROM NEW YORK 4 4-37 PM

DIRECTOR URGENT

MR. BRANIGAN

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-21-81 BY 3042 PWT-SAC

MORTON SOBELL, WAS., ESP-R. COURT CONVENED AT ELEVEN THIRTY AM ON INSTANT DATE TO HEAR ARGUMENT ON MOTION UNDER SECTION TWO TWO FIVE FIVE. JUDGE IRVING KAUFMAN PRESIDED. DEFENSE REPRESENTED BY MARSHALL PERLIN OF NYC, BENJAMIN DREYFUS OF SAN FRANCISCO AND LUIS SANCHEZ PONTON, PROFESSOR AT UNIVERSITY OF MEXICO. PERLIN ARGUED MOTION FILED MAY EIGHT NINETEEN FIFTYSIX. REVIEWED CIRCUMSTANCES OF THE SEIZURE OF SUBJ IN MEXICO, HIS SUBSEQUENT ARREST AT LAREDO, TEXAS BY FBI AGENTS, THE TESTIMONY OF HUGGINS AND GOVERNMENT EXHIBIT TWENTY FIVE A, THE INS (IMMIGRATION & NATURALIZAT. SERVICE) MANIFEST. STRESSED USE BY GOVERNMENT OF PERJURED TESTIMONY AND SUPRESSION OF FACTS WHICH WOULD HAVE SHOWN SUBJ WAS NOT LEGALLY DEPORTED. CLAIMED SUBJ KIDNAPPED AND NOT GIVEN OPPORTUNITY TO RETURN TO US VOLUNATRILY. JUDGE KAUFMAN QUESTIONED PERLIN ON USE OF ALIASES BY SUBJ IN MEXICO AND STATED DEFENSE HAS NOT EXPLAINED THIS EXCEPT BY CALLING IT A ~~QUOTE~~ "BRAINSTORM" ~~END QUOTE~~. KAUFMAN

RECORDED - 40 101-2483-1290

END PAGE ONE

58 JUN 14 Belmont EX-108 20 JUN 8 1956

ADVISED PERLIN THAT HIS ARGUMENT CONTINUES TO RETURN TO PERSONAL JURISDICTION OF SUBJ, A MATTER UPON WHICH THE COURTS HAVE PREVIOUSLY RULED, THAT FACTS OF EVENTS IN MEXICO WERE KNOWN TO DEFENSE BUT DEFENSE DID NOT USE KNOWLEDGE TO CROSS DASH EXAMINE HUGGINS. PERLIN ARGUED THAT GOVERNMENT ATTORNEYS AS OFFICERS OF THE COURT WERE OBLIGED TO TELL THE COURT OF THE ALLEGED KIDNAPPING. KAUFMAN TOLD PERLIN THAT THE DEFENSE ATTORNEYS WERE ALSO OBLIGED TO BRING FORTH ALL FACTS TO GUIDE THE COURT. PERLIN FINISHED AT TWELVE FIFTYFIVE PM AND BENJAMIN DREYFUS MADE REQUEST TO COURT TO BRING SUBJ TO NY FROM ALCATRAZ IF HEARING, ON QUESTION OF FACT, WHICH HE BELIEVES EXISTS AFTER PERLINS ARGUMENT, IS GRANTED. COURT ADJOURNED TO TWO PM. OTHER DETAILS FOLLOW.

KELLY

END

NY R 6 WA GB

MR. BELMONT
AND SUPERVISOR
SOVIET INTEL. DIVISION

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

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FEDERAL BUREAU OF INVESTIGATION
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2 Page(s) withheld for the following reason(s):
See J. Rosenberg 65-58236-2261

☐ For your information: _____

☑ The following number is to be used for reference regarding these pages:
101-2483-NR 6/13/56

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X NO DUPLICATION FEE X
X FOR THIS PAGE X
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FBI/DOJ

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

JUN 4 AM 1956

TELETYPE GIR 6

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

WASHINGTON FROM NEW YORK 20 4

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

MORTON SOBELL, WAS., ESP - R. AT AFTERNOON SESSION OF HEARING INSTANT DATE, ARTHUR KINOY AND FRANK DONNER OF LAW FIRM, DONNER, KINOY AND PERLIN, ARGUED FOR DEFENSE. COURT CONVENED AT TWO P.M. AND KINOY ARGUED AT LENGTH THAT DISTRICT COURT DID NOT HAVE JURISDICTION OF THE SUBJECT MATTER, CITING COOK VS. U.S. AS PRECEDENT. JUDGE KAUFMAN SUBSEQUENTLY POINTED OUT DISTINCTION BETWEEN SOBELL AND COOK CASE, THAT QUESTION WAS, COULD SOBELL HAVE BEEN TRIED IN U.S. COURTS IF HE HAD NOT FLED. THAT INASMUCH AS HE COULD HAVE, THERE IS NO QUESTION OF JURISDICTION OF THE SUBJECT MATTER. KINOY ALSO PURSUED POINTS OF VIOLATION OF TREATY BETWEEN MEXICO AND U.S. KAUFMAN ASSERTED THAT THE DEFENSE HAD PREVIOUSLY CITED IDENTICAL CASE PRECEDENTS TO CIRCUIT JUDGE FRANK WHOSE OPINION WAS THAT THERE WAS NO LACK OF JURISDICTION. USA WILLIAMS ANSWERED ARGUMENTS STATING THERE WAS NO WANT OF JURISIDCTION AND THAT THERE IS NO VIOLATION OF A TREATY FOR MEXICO TO THROW OUT AN

MR. BRANIGAN

U.S. ATTORNEY

VEND PAGE ONE

RECORDED - 101-2483-1294

EX-134

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R2 1 MAR 10 1961

Mr. Belmont

71 JUN 15 1956

60 JUN 8 1956

AMERICAN CITIZEN FOR ANY OR NO REASON AND THAT A PERSON WHO COMMITTED A CRIME HAS NO PERSONAL RIGHT, AS THE DEFENSE SEEMS TO INFER, TO ASYLUM IN ANOTHER COUNTRY. WILLIAMS MENTIONED, IN ANSWERING COURT TO DENY PETITION, THAT THE ARGUMENTS ADVANCED BY THE DEFENSE HAVE BEEN MADE REPEATEDLY AND APPARENTLY ARE MADE AS GRIST FOR THE PROPAGANDA MILL TO FEED UPON, CITING THE NATIONAL COMMITTEE TO SECURE JUSTICE FOR MORTON SOBELL. HE MENTIONED BETRAM RUSSELL AS HAVING ISSUED A STATEMENT ON THE JUSTICE OF THE TRIAL AND READ THE STATEMENT TO THE COURT. ATTORNEY DONNER TOOK VIOLENT EXCEPTION TO THE INTRODUCTION INTO THE RECORD OF OUTSIDE ORGANIZATIONS STATING THAT HE AND HIS ASSOCIATES WORK LONG AND ARDUOUSLY ON THE CASE AND THAT THE MOTION WAS FILED IN GOOD FAITH. KAUFMAN COMMENTED THAT THE DAY THAT THE COURTS BECOME SENSITIVE TO SUCH EXTRA-JUDICIAL PRESSURES, WE MAY AS WELL CLOSE THE COURTS OF JUSTICE. DONNER ATTEMPTED TO CONTINUE WITH A SUMMATION BUT KAUFMAN TOLD HIM HIS POINTS HAD ALL BEEN PREVIOUSLY AND ABLY ARGUED AND THAT HE WOULD

END PAGE TWO

RESERVE DECISION. PERLIN WAS GRANTED UNTIL WEDNESDAY, JUNE SIXTH TO FILE HIS ANSWER TO GOVERNMENT AFFIDAVIT IN OPPOSITION TO SOBELL-S FORTH MOTION UNDER SECTION TWO TWO FIVE FIVE WHICH DEFENSE DID NOT RECEIVE UNTIL INSTANT DATE. COPY OF GOVERNMENT AFFIDAVIT OBTAINED AND FORWARDED TO BUREAU INSTANT DATE. COPY OF DEFENSE ANSWER WILL BE OBTAINED.

KELLY

END

NY R 20 WA DD

TU

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

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

JUN 5 1956

TELETYPE

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

WASHINGTON FROM NEW YORK 23 5 9-11P

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

MORTON SOBELL, WAS, ESPIONAGE - R. REBULET JUNE ONE, FIFTY SIX TO DEPARTMENT. NO REQUEST RECEIVED FROM USA, SDNY FOR SUBJECT-S PROPERTY OBTAINED AT TIME OF HIS ARREST AND NOW RETAINED IN NYO. DURING ARGUMENT OF SUBJECT-S MOTION BEFORE JUDGE IRVING KAUFMAN ON JUNE FOUR, FIFTY SIX, DEFENSE COUNSEL PERLIN TOLD JUDGE KAUFMAN HE HAD REQUESTED RETURN OF PROPERTY BUT HAD NOT RECEIVED IT. USA PAUL WILLIAMS TOLD THE COURT THAT THE DEFENSE KNEW WHERE THE PROPERTY WAS AND AS EXPERIENCED LAWYERS KNEW HOW TO OBTAIN IT, BUT THAT THE RECORD SHOWS NO LEGAL REQUEST FOR THE PROPERTY. WILLIAMS ASKED PERLIN IF HE WANTED TO MAKE A REQUEST OF JUDGE KAUFMAN FOR THE RETURN OF THE PROPERTY. PERLIN DID NOT ANSWER AND JUDGE KAUFMAN STATED THAT SUFFICIENT MATTERS WERE BEFORE THE COURT AT THE PRESENT HEARING. BUREAU WILL BE KEPT ADVISED OF ANY REQUEST RECEIVED FOR RETURN OF PROPERTY.

RECORDED-62 10-24483 KELLY 1292

END

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14 JUN 11 1956

NY R 22-23 WA DD

TU

71 JUN 1 1956

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

Mr. Belmont

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

JUN 8 1956

TELETYPE

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

WASH 14 FROM NEW YORK 8 8-13 PM

DIRECTOR URGENT

MORTON SOBELL, WA, ESP DASH R. COPY OF DEFENSE REPLY MEMORANDUM DATED SIX SIX FIFTYSIX, DEFENSE REPLY AFFIDAVIT OF SIX SIX FIFTYSIX, DEFENSE MEMORANDUM OF LAW AND GOVERNMENTS REPLY BRIEF ON FOURTH MOTION UNDER SECTION TWO TWO FIVE FIVE OBTAINED. PHOTOSTATS OF ABOVE OBTAINED AND FORWARDED TO BUREAU INSTANT DATE.

KELLY

END

NY R 13 WZXXX WA J P

TU

Received 6/11/56 - Bureau

RECORDED - 70

Reviewed & ... memos prepared 6/12/56 - EX

101-2483-129

JUN 13 1956

Mr. Belmont

JUN 19 1956

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-21-87 BY 3042 PUT/SAR

AR-MW Lee

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : L. V. Boardman

DATE: June 5, 1956

FROM : A. H. Belmont

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

SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

On 5-8-56 subject filed notice of motion for new trial based mainly on claim he was illegally deported from Mexico and the US Government knew this but nevertheless introduced false information at the trial that this deportation was legal. Another motion for new trial dated 5-25-56 was filed by Sobell, claiming the court lacked jurisdiction over the subject matter since Sobell had not been extradited pursuant to treaty. Sobell's affidavit was analyzed by memo dated 5-29-56.

The attached copy of the Government's affidavit filed in answer to this motion was furnished to the Bureau by the New York Office. This affidavit states Sobell has made the identical claim before and it has been rejected by the District Court, Circuit Court of Appeals and U.S. Supreme Court. The affidavit states that how Sobell was deported has nothing to do with the court's power to try offenses against the United States but can only pertain to whether the court had jurisdiction over Sobell's person. The affidavit points out the Circuit Court of Appeals expressly decided Sobell's ALLEGED "kidnaping" did not raise any question as to the court's jurisdiction over Sobell.

The affidavit cites the case of Ker v. Illinois decided in 1886 which stated that the United States citizen charged with a crime committed in this country and apprehended on foreign soil is given no immunity by the U.S. Constitution, laws or extradition treaties to avoid trial on his forced return to the United States even though extradition was not used to accomplish this return. The affidavit also cites a more recent case, Frisbie v. Collins in which the U.S. Supreme Court upheld this ruling.

ACTION:

For your information.

Enclosure

2 ENCLOSURE

101-2483

RECORDED - 78

101-2483-1294

19 JUN 19 1956

JPL:jdb
(5)

cc - Boardman
Belmont
Nichols

JUN 22 1956

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DATE 4-21-87 BY 3042 PWP-JAR

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

Date 6/4/56

To BUREAU

FILE # Bufile 101-2483

Title MORTON SOBELL

ESP-R

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

ACTION DESIRED

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

☐ Return with explanation or notation as to action taken.

Forward immediately to Inspector Carl Hoffrichter.

ESP

1 ENCLOSURE

ENCLO. ATTACHED

SAC James J. Kelley

Office New York

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-21-87 BY 3042 PWP/JAR

101-2483-1294

ENCLOSURE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

UNITED STATES OF AMERICA :

-v- : AFFIDAVIT IN OPPOSITION TO SOBELL'S FOURTH MOTION UNDER 28 U.S.C. SECTION 2255.

MORTON SOBELL, :

Defendant. : C 134-245

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

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

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

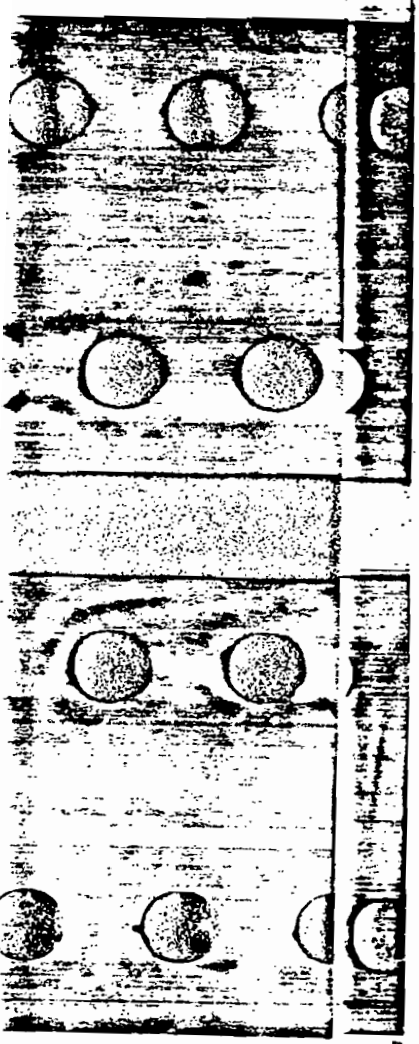
1. I am the United States Attorney for the Southern District of New York and appear for the United States of American in opposition to this fourth motion of Morton Sobell seeking a hearing and an order setting aside his conviction under 28 U.S.C. § 2255. The facts contained in this affidavit are stated upon information and belief based upon the files and records in this case.

2. The moving papers of the defendant, Morton Sobell, and the files and records of this case conclusively show that he is entitled to no relief.

3. The alleged grounds for Sobell's fourth § 2255 motion are that the United States of America and this Court had no jurisdiction by reason of Sobell's allegation that he was "kidnapped" and forcibly ejected from Mexico with the cooperation of the FBI and other agents of the United States. Sobell has advanced this contention previously in his motion in arrest of judgment, in the appeal of his conviction (See Exhibit A which is an extract from his Brief on appeal), and in his petition to the Supreme Court for certiorari (See Exhibit B.) In each instance, the argument has been judicially rejected.

memo Belmont to Branigan 6-5-56 JPL

101-2483-1294



(2403-2425; 195 F. 2d at p. 603; 344 U.S. 838). Sobell attempts to distinguish his present argument on the ground that his earlier arguments raised only the question of the jurisdiction of the Court over his person, whereas he now seeks by realleging a similar story to raise the question of the Court's jurisdiction over the subject matter.

4. The contention that this Court lacked jurisdiction over the subject matter is absurd. The subject matter in a criminal case is the crime charged. The indictment charged that Sobell and others conspired with intent and reason to believe that it would be used to the advantage of the Union of Soviet Socialist Republics, to deliver documents, writings, sketches, notes and information relating to the military defense of the United States of America. The indictment charged that this conspiracy took place at the Southern District of New York and elsewhere in violation of § 34 of Title 50 of the United States Code. The United States Code expressly grants jurisdiction over this offense to the District Court:

> "The district courts of the United States shall have original jurisdiction *** of all offenses against the laws of the United States." Title 18 U.S.C. § 3231.

How Sobell was deported from Mexico has nothing to do with this Court's power to try offenses against the United States, nor with the power of the United States to make espionage conspiracy a crime. All it can pertain to is whether Sobell was properly before the Court - by definition a problem of jurisdiction over the person. Ford v. United States, 273 U.S. 593, 606 (1927); Pon v. United States, 168 F. 2d 373 (1st Cir. 1948).

5. The Court of Appeals expressly decided in United States v. Rosenberg, 195 F. 2d 583 (1952) that Sobell's allegations of "kidnapping" did not raise any question as to this Court's jurisdiction over the subject

matter. After discussing these allegations, which had been made by Sobell for the first time after the trial had been concluded and the jury had rendered its verdict of guilty, the Court stated:

> "Under Rule 34, motions in arrest of judgment are allowed only (1) where the indictment charges no offense and (2) where the court had no jurisdiction over the offense charged. This situation, we think falls into neither category." 195 F. 2d at p. 603

6. The Court of Appeals held that Sobell's challenge went only to jurisdiction over his person and was therefore untimely since he failed to advance his contentions until the trial was over.

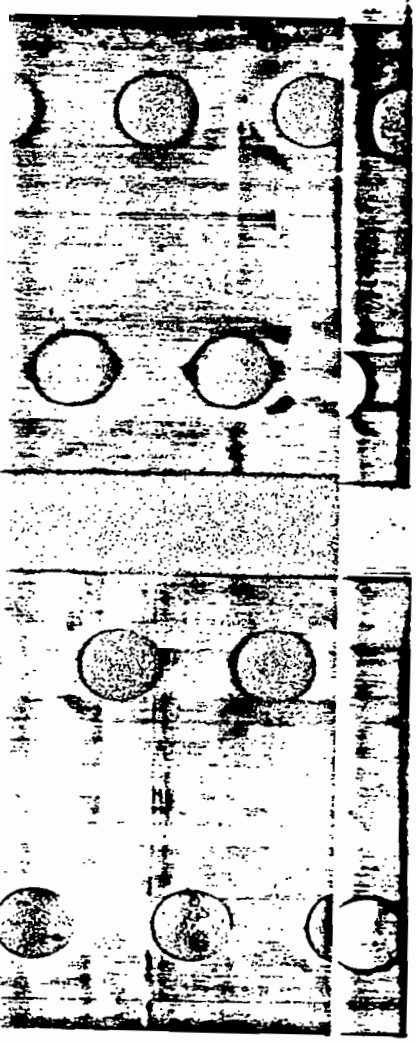
> "He preferred to take his chances on the verdict, withholding his trump card until the trial was over. The Federal Rules of Criminal Procedure allow no such tactic." 195 F. 2d at p. 603.

7. In his petition to the Supreme Court for a writ of certiorari, Sobell again used the "kidnapping" argument. In this petition, however, he did not specify whether he was labeling the argument an attack on jurisdiction over his person or over the subject matter, perhaps to avoid the decision of the Court of Appeals that he had waived any challenge to jurisdiction over his person by holding back information. The Supreme Court denied the petition for a writ of certiorari. 344 U.S. 838.

8. The decision that this Court had jurisdiction over the subject matter has been implicit in each of the many decisions by this Court and the appellate courts which have passed upon this case on numerous occasions. Sobell's allegations that he was illegally "kidnapped" from Mexico with the cooperation of United States officials had been advanced to these courts. It is a fundamental principle that a court must always pass upon its own jurisdiction, whether counsel argue the matter or not. Defiance Water Co.

v. Defiance, 191 U.S. 184, 194 (1903); United States v. Bradford, 194 F. 2d 197, 200 (2d Cir. 1952), cert. denied 343 U.S. 979.

9. As he did in his brief on appeal and in his petition for certiorari, Sobell cites Cook v. United States, 288 U.S. 102 (1933) which is not in point. That case involved the jurisdiction of the United States over a British vessel for an offense alleged to have occurred at a place which was outside the territorial waters of the United States as established by treaty. On the other hand, Sobell is an American citizen who has been convicted of a crime committed on American soil in the Southern District of New York. The Cook case is no authority for the propositon that the United States of America and this Court lack jurisdiction over such an offense.



10. For seventy years, it has been the settled law of this country that a United States citizen charged with a crime committed in this country and apprehended on foreign soil is given no immunity by the Constitution, laws or extradition treaties of the United States to avoid trial upon his forced return to this country, even though the machinery of extradition was not employed to accomplish his return. Ker v. Illinois, 119 U.S. 436 (1886). The Ker case itself concerned a defendant who was forcibly taken from Peru by an agent of the United States Federal Government without following the extradition treaty. In that case however, the time elapsing between Ker's initial apprehension in Peru and his arraignment in the United States was many weeks. In the instant case, Sobell says he was first apprehended by Mexican police at about 8 P.M. on August 16, 1950. A warrant for his arrest had been outstanding since August 3, 1950. He was driven to Texas and at 10 AM on August 18, 1950, less than two days after his apprehension, was brought before a United States Commissioner in Texas for fixing bail on the charges pending against him. Sobell makes no claim that any attempt was made to obtain a confession from him during the time between his apprehension in Mexico City and his return to this country. The contention that the manner of his deportation from Mexico amounted to a violation of the extradition treaty has no more merit now than the contention of Ker which the Supreme Court rejected in 1886:

> "There is no language in this treaty, or in any other treaty made by this country on the subject of extradition, of which we are aware, which says in terms that a party fleeing from the United States to escape punishment for crime becomes thereby entitled to an asylum in the country to which he has fled; indeed, the absurdity of such a proposition would at once prevent the making of a treaty of that kind." 119 U.S. at p. 449.

11. Recently the Supreme Court has rendered a decision which makes even more clear that Sobell raises no issue of any fundamental nature which would deprive this Court of jurisdiction or in any way vitiate his trial. In Frisbie v. Collins, 342 U.S. 519, the Supreme Court denied habeas corpus to a prisoner in a Michigan penitentiary serving a life sentence for murder who alleged that the State of Michigan had no jurisdiction to try him because its agents had illegally seized him in Illinois, blackjacked him and forcibly transported him to Michigan in violation of the Constitution and the Federal Kidnapping Act. The Court held that the Federal Kidnapping Act did not change the rule declared in its prior decision in Ker v. Illinois, 119 U.S. 436. The breadth of the Court's language was not limited in its application to State Courts:

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

12. Morton Sobell was tried for this traitorous crime by a jury under the fairest procedures for obtaining justice yet developed by mankind. He was represented by Counsel of his choice. He had every opportunity to cross-examine the witnesses who testified against him. He had every opportunity to introduce evidence in his own behalf, which he did not choose to employ. Each and every one of twelve fair and impartial jurors pronounced him guilty beyond a reasonable doubt. He has challenged the validity of his conviction time and time again on every ground so far conceived by his various lawyers. See Appendix 1 which is a partial list of judicial proceedings upholding the convictions and sentences of Sobell and the Rosenbergs. Each such challenge has served only to re-enforce the verdict of his guilt and the fairness of the procedure by which that verdict was reached.

13. His latest petition taken together with the previous record from this case shows conclusively that he is entitled to no relief. The petition is so lacking in merit as to raise serious questions whether it is advanced in good faith. Sobell's attempt to deny the authority of the United States of America to try him for his betrayal of this country should be rejected.

Sworn to before me this
day of June, 1956

APPENDIX 1

PARTIAL LIST OF JUDICIAL PROCEEDINGS UPHOLDING THE CONVICTIONS AND SENTENCES OF SOBELL AND THE ROSENBERGS

March 29, 1951	After a trial of three weeks jury renders its verdict of guilty as charged as to the three defendants (2388-9).
April 25, 1951	Motion by Sobell in arrest of judgment denied by this Court (2403-2425).
February 25, 1952	Convictions examined and affirmed by the Court of Appeals. 195 F. 2d 583 (2d Cir. 1952).
April 8, 1952	The Court of Appeals denied petition for rehearing. 195 F. 2d 583 (2d Cir. 1952).
October 13, 1952	The Supreme Court denied petitions for writs of certiorari. 344 U.S. 838.
November 17, 1952	The Supreme Court denied petition for rehearihg. 344 U.S. 889.
December 10, 1952	This Court denied §2255 motions to set aside the judgments. This was Sobell's first § 2255 motion. 108 F. Supp. 798 (Ryan, J.).
December 31, 1952	The Court of Appeals affirmed Judge Ryan's decision. 200 F. 2d 666 (2d Cir.).
January 2, 1953	The Court of Appeals denied Sobell's motion for leave to file a second petition for rehearing of the original appeal.
January 9, 1953	This Court denied Sobell's application for reduction of sentence. 109 F. Supp. 381.
January 19, 1953	The Court of Appeals denied a petition for rehearing of its decision as to the first § 2255 motion.
May 25, 1953	The Supreme Court denied petitions for writs of certiorari to review the denial of the first § 2255 motion. 345 U.S. 965.

June 15, 1953	The Supreme Court denied petition for rehearing. 345 U.S. 1003.
June 9, 1953	This Court denied defendants' §2255 motion and their motion for a new trial. This was Sobell's second §2255 motion. (I.R. Kaufman, J.).
June 11, 1953	The Court of Appeals affirmed the June 9, 1953 decision of this Court, appeal having been taken by the Rosenbergs. 204 F. 2d 688 (2d. Cir).
June 11, 1953	Sobell filed a notice of appeal of his second § 2255 motion.
June 15, 1953	The Supreme Court denied the Rosenbergs' application for a stay of execution pending application for a writ of certiorari to review the Court of Appeals decision of June 11, 1953 and two other decisions. 346 U.S. 271.
June 17, 1953	Mr. Justice Douglas granted a stay to the Rosenbergs. 2[illegible]3 U.S. 313.
June 19, 1953	The Supreme Court vacated the stay stating in part that the Court "saw no substantial question in those [collateral] proceedings to be preserved for its further consideration." 346 U.S. 273, 281.
October 8, 1953	The Court of Appeals granted the Government's motion for summary affirmance of this Court's decision as to the second §2255 motion with respect to Sobell.
October 31, 1953	The Court of Appeals denied Sobell's petition for rehearing of its October 8, 1953 decision.
February 1, 1954	The Supreme Court denied Sobell's petition for certiorari with respect to the denial of his second §2255 motion. 347 U.S. 904.
June 7, 1954	The Supreme Court denied Sobell's second petition for rehearing of its denial of certiorari as to the original appeal. 347 U.S. 1021.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : L. V. BOARDMAN

cc: Mr. Boardman
Mr. Belmont
Mr. Nichols
Mr. Branigan
Mr. Lee

DATE: June 12, 1956

FROM : A. H. [redacted]

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

SUBJECT: MORTON SOBELL, was.
ESPIONAGE - R

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

Subject filed motion for new trial 5/8/56 in Southern District, New York, based mainly on claim that Government knowingly used perjured testimony to show his deportation from Mexico was legal when he alleges such deportation was illegal. Subject filed another motion for new trial 5-25-56, Southern District, New York, claiming court lacked jurisdiction over subject matter of the trial, since he had not been legally extradited from Mexico. These motions were argued before Judge Irving R. Kaufman 6/4/56 and decision was reserved.

New York Office forwarded to the Bureau Photostats of following items pertaining to defendant's motion of 5/25/56: (1) Defendant's memorandum of law in support of motion; (2) Government's reply brief; (3) Defendant's reply memorandum dated 6/6/56; and (4) Defendant's undated reply affidavit.

Defendant's memorandum of law in support of his motion has three main points, which are: (1) Government had no sovereign power to convict Sobell and court had no jurisdiction in the proceedings; (2) Cases holding that illegal abduction may not invalidate a criminal conviction based on proper judicial process do not apply since the Government's action violated the Extradition Treaty; and (3) This challenge to the jurisdiction of the court has not been previously litigated. It is noted that on the day of his sentencing, Sobell made a motion in arrest of judgment, in which he challenged the jurisdiction of the court over his person, and this motion was denied and the denial was upheld on appeal. In this most recent motion, Sobell is attempting to claim the court did not have jurisdiction over the subject matter, which he claims is different from his previous motion.

RECORDED - 72 101-2483-1295

Government reply brief states Sobell waived the question of personal jurisdiction by not making his original motion until the end of the trial, and this latest motion is actually the same point in different language. The brief points out the District Court has jurisdiction over the subject matter, conspiracy to commit espionage committed in the United States, and Sobell is merely claiming here that he should not have been thrown out of Mexico. Government states the Extradition Treaty does not "occupy the field" and does not limit the United States or Mexico from ousting any alien. Further, an alien does not have absolute right to asylum anywhere. Government's brief also states treaties are between nations, and an individual has no right under these treaties unless that individual becomes clothed with the rights of the Government. Since the Treaty was not used here, Sobell did not become clothed with any of these rights.

INDEXED - 72 20 JUN 18 1956

ENCLOSURE

101-2483-1295
JPL:bal (6)

Memorandum to L. V. BOARDMAN

The defendant's affidavit states the points raised on these motions are such as to warrant a hearing on the facts.

The defendant's reply memorandum of 6/6/56 restates the allegation that the Government knowingly used perjured testimony which was prejudicial, and the reason this point was not raised at the trial was that the defendant did not know the Government was knowingly using perjured testimony.

ACTION:

For your information. These papers contain no new allegations by the subject. All pertinent allegations previously made havebeen investigated and results of investigation furnished to Department and to the U. S. Attorney, Southern District of New York, for their use in preparing answers.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MORTON SOBELL,

Defendant.

No. C 134-245

REPLY MEMORANDUM

The basic contentions of the Government in their memorandum and argument are fully dealt with in the brief submitted by petitioner in support of the present motion. This reply memorandum does not attempt to re-state the pertinent arguments and governing propositions of law which establish petitioner's right to a hearing in the present instance.

The Government's contentions overlook one basic and governing rule of law which is decisive in the present

[illegible] testimony

101-2483-1295 Enclosure

aside or negated whether or not the defendant presents any affirmative evidence in the course of the trial to contest falsity of the prosecution's case. The shocking and immoral concept that a prosecution can contrive a conviction with impunity if the defense does not tender affirmative evidence would make a travesty of the concept of due process. */

The Government seems to excuse the prosecution's knowing use of perjured testimony claiming it to be irrelevant. This contention is absurd in the face of the Court of Appeals holding that the evidence was highly material and relevant, and contrary to the Government contention, its use was neither casual nor optional. The perjured testimony was deliberately employed by the prosecution to secure petitioner's conviction by impressing the Court and jury with the view that Sobell had been returned to the United States after making an independent choice not to do so, and that this return was then made over his objection by the Government of Mexico in lawful cooperation with the United States authorities.

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*/ In this connection, we call the Court's attention to the reply affidavit in the jurisdictional motion filed this date and which is incorporated in the present proceeding. The petitioner did not know the prosecution was knowingly using perjured testimony. He did not know inter alia that it was the United States which had contrived the seizure through its agents, that these actions were done without the knowledge or consent of the Government of Mexico or any of its authorities, and that the Government of Mexico had advised the prosecution that there was no deportation or removal by its Government or authorities.

The evidence was false as the prosecution well knew. The prosecution was fully aware that it had deprived petitioner of his right to make his intended return but sought to establish the opposite. The prosecution contrived the events which it then used as a basis for the perjured evidence.

Petitioner will not discuss the cases cited by the Government in its memorandum. Those cases are either inapplicable to the present issues or support the propositions of law tendered by petitioner. The petitioner has made the required showing of knowing use of perjured testimony on the part of the prosecution, that the prosecution suppressed facts favorable to the petitioner and made misrepresentations to the Court. The files and records of the case, the Government's answering affidavit fail to establish conclusively that the petitioner is not entitled to relief sought. Under the circumstances this Court is required to grant a hearing.

Respectfully submitted,

DONNER, KINOY & PERLIN

BENJAMIN DREYFUS

Attorneys for Petitioner

dated: New York, New York
June 6, 1956

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MORTON SOBELL,

Defendant.

No. 8 134-245

REPLY AFFIDAVIT

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO } ss.:

MORTON SOBELL, being duly sworn, deposes and says: He is the petitioner in the proceedings herein and submits this affidavit in reply to the answering affidavit of Paul W. Williams.

1. The affidavit of Paul W. Williams in opposition to petitioner's motion under Title 28 U.S.C., Section 2255 merely reinforces the conclusion that the Court is required to grant a hearing under the governing law.

2. The affidavit fails to recite any facts in the moving papers, files and records of this case which conclusively show that petitioner is entitled to no relief. Instead the affidavit advances certain arguments based upon misconceptions of law and misstatements of the state of the record.

3. The affidavit in Paragraph 3 misstates

petitioner's asserted grounds for relief. The Court is respectfully referred to the notice of motion, the petition, and the memorandum of law filed on June 4th, 1956. The petitioner has alleged that the trial court had no jurisdiction whatsoever over the subject-matter by virtue of the total and absolute breach and violation by the United States and its agents of the binding Treaty of Extradition of 1899 (31 Stat. at large 1818) between the United States and the United States of Mexico. Petitioner suggests that it is significant that the affidavit in opposition conspicuously attempts to avoid stating petitioner's contention openly and directly.

4. This contention as set forth in detail in the petition and the supporting memorandum of law, contrary to the inferences in the affidavit in opposition was never litigated in the prior proceedings. In neither the trial court, nor the Court of Appeals, nor the Supreme Court was the issue of want of total sovereign power and jurisdiction resulting from a breach of the Treaty either presented to the Court or litigated. A fair reading of the Record including Exhibits A and B to the Affidavit in opposition, requires this conclusion. Neither brief cited by Mr. Williams claims a treaty violation as the basis for loss of jurisdiction. It is significant that neither exhibit even mentions the Treaty of Extradition of 1899 between the United States and the United States of Mexico. To urge in the face of such a record that the issue of loss of total jurisdiction based upon violation of that Treaty

was in any way litigated before is in the words of Mr. Williams "so lacking in merit as to raise serious questions whether it is advanced in good faith." (See affidavit in opposition, Paragraph 13.)

5. To the contrary, the record conclusively shows that the only jurisdictional issue litigated was sharply limited to a question of personal jurisdiction. (See Petitioner's Memorandum of Law, pp. 48 to 56) Moreover, none of the operative facts showing a treaty violation were known to the petitioner, or were before the trial court or the Court of Appeals, including the presently charged facts that the United States and its agents directly violated the Treaty by instigating, arranging and participating in the kidnapping of petitioner from the territory of Mexico; that the Government of Mexico or any of its authorities did not accede to or condone in any manner this violation of the governing treaty of extradition, but instead stated to United States authorities its objections to these actions; and that the offense charged was excluded from the competence of the Court by virtue of the extradition treaty.

6. The only other reasons advanced in the affidavit in opposition to the granting of a hearing is a reference to two decisions, Ker v. Illinois, 119 U.S. 436; and Frisbie v. Collins, 342 U.S. 519. Neither of these decisions have anything to do with this issue raised by this motion. (See Petitioner's Memorandum of Law.) Ker

did not involve a treaty violation. Contrary to the statement in the affidavit in opposition, the defendant in Ker was not forcibly taken from Peru by "an agent of the United States Federal Government", (See affidavit in opposition, Paragraph 10), but by a private individual, a Pinkerton detective. The extradition treaty was not in force. Ker was delivered to the Pinkerton agent by the de facto governmental authorities, representatives of the occupying army of Chile. In short, there was no treaty violation, and the action was with the consent of the Government involved. Frisbie v. Collins does not apply in any respect. It relates to an interstate abduction and rendition situation, and as the Supreme Court has held "to apply the rule of international or foreign extradition as announced in United States v. Rauscher ... to interstate rendition involves the confusion of two essentially different things which rest upon entirely different principles. In the former, the extradition depends upon treaty contract or stipulation ... In the matter of interstate rendition, however, there is the binding force and obligation, not of contract, but of the supreme law of the land which imposes no conditions or limitations upon the jurisdiction and authority of the state to which the fugitive is returned." Lascelles v. Georgia, 148 U.S. 537.

7. The government makes no other argument in opposition to this motion. The record and the law conclusively reveal that these arguments opposing a hearing are completely without merit. The Court is required under

the law and the statute to grant the hearing prayed for, and on the facts found and conclusions of law to vacate and set aside the sentence and judgment of conviction and discharge petitioner from detention and imprisonment.

Morton Scoll

Sworn to before me the
day of June, 1950.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - -X

UNITED STATES OF AMERICA,

-v-

NORTON SOBELL,

Defendant.

- - - - - - - - - - - - - - - - -X

REPLY BRIEF ON FOURTH MOTION UNDER TITLE 28 U.S.C. SECTION 2255

PRELIMINARY STATEMENT

The United States of America would address itself in opposition to Sobell's fourth motion under 28 U.S.C. §2255.

The fourth motion made by Sobell is grounded on the allegation that Sobell was removed from Mexico and sent to the United States by Mexican authorities with the cooperation of United States officials in violation of a treaty of extradition between the United States and Mexico. Sobell claims that this violation goes to the District Court's jurisdiction over "the subject matter." And since a criminal defendant never can waive jurisdiction over the "subject matter," Sobell then argues, he can raise this point -- again and again and, perhaps, again -- in order to try to upset his conviction by a jury as a spy.

THE FALLACIES IN SOBELL'S FOURTH MOTION.

First, Sobell's motion must be dismissed because no matter how he labels his attack in this fourth Section 2255 motion he is attacking the jurisdiction of the District Court over his person. He has waived that attack. That is the rule of law in this case.

Second, Sobell does not truly allege a violation of any treaty.

Third, Sobell has no standing to raise any question of non-compliance with an extradition treaty.

ARGUMENT

POINT 1

SOBELL IS AGAIN ATTACKING THE COURT'S JURISDICTION OVER HIS PERSON, WHICH HE WAIVED BY A DELIBERATE CHOICE.

Sobell says in this fourth Section 2255 motion that the district court had no jurisdiction over him because he was "kidnapped" and forcibly ejected from Mexico by Mexican officials with the cooperation of the Federal Bureau of Investigation and agents of the United States. Sobell has advanced this contention in his motion in arrest of judgment, in the appeal of his conviction and in his petition for certiorari to the Supreme Court. (See Exhibits A and B of the Government's Affidavit in Opposition to Sobell's Fourth

Motion under 28 U.S.C. §2255.) In each instance, the argument was rejected. (R.2403-2425; 195 F.2d at p. 603; 344 U.S. 838).

Sobell's "distinction" in this argument is that the earlier arguments raised only the question of jurisdiction of the court over "his" person, whereas he raises the question of jurisdiction "over the subject matter." The "distinction" comes about, Sobell says, because he is now setting out in more detail both his old story and also the extradition treaty between the United States and Mexico and the laws of Mexico.

Sobell's "distinction" offers no difference. This is the twice-told tale in a new semantic guise. The "subject matter" in a criminal case is the crime charged. Ford v. United States, 273 U.S. 593, 606 (1927); Pon v. United States, 168 F.2d 373 (1st Cir. 1948). The indictment in this case charged Sobell with conspiracy to deliver documents, writings, sketches, notes, and information relating to the military defenses of the United States of America to the Soviet Union with the intent to help the Soviet Union and with the belief that it would be to the advantage of the Soviet Union.

The indictment charged that this conspiracy took place in the Southern District of New York and "elsewhere" in violation of 50 U.S.C. §34. There is no question that the indictment charged the offense proscribed by 50 U.S.C. §34. There can be no dispute that the District Court in the Southern District of New York had jurisdiction to hear such offenses under 18 U.S.C. §3231. United States v. Rosenberg, 195 F.2d

583 (2d Cir. 1952); cert. denied 344 U.S. 838 (1952); see also same case, 346 U.S. 273, 281 (1953).

Nowhere in the 56-page brief of Sobell in support of this fourth motion under Section 2255 does he gainsay both the fact that the United States has made his acts of espionage a crime and that the District Court in the Southern District of New York can hear such offenses.

Sobell is again merely claiming that he should not have been thrown out of Mexico. Factually, that has nothing to do with the District Court's power to try offenses against the United States nor with the power of the United States to make espionage or conspiracy to commit espionage a crime punishable with a jail term. The fact that Sobell was ejected from Mexico is not a crime in itself; it is not the crime with which he was charged. All this talk about extradition treaties and the like can aim at one thing: was the defendant Sobell properly here in the Southern District standing trial? By definition, that is strictly a problem of jurisdiction over the person. This point is made in Ford v. United States, supra p.606. It has been made by Judge Frank on the original appeal in this case in the Second Circuit; this court then, not only has a guide from precedents but it has a rule of law in the case to follow. 195 F.2d at p.603.

Since this is an attack on the jurisdiction over the person, Sobell waived the right to attack by deliberately permitting this case to go to the jury and withholding his information and fire until that jury found him to be a spy

[redacted]:GR

for the Soviet Union. 193 F.2d at p.603, Fon v. United States, supra; Ford v. United States, supra.

Not Cook v. United States, 288 U.S. 102 (1933), not United States v. Rauscher, 119 U.S. 407 (1886), not Johnson v. Browne, 205 U.S. 305 (1907), not United States v. Ferris, 19 F.2d 925 (D.Cal. 1925) -- not one of the cases cited by Sobell changes his attack on jurisdiction over his person to something else. Nor do they change the fact that Sobell waived all challenges against that jurisdiction.

None of these cases holds that a charge that treaties were violated when a defendant was brought before the court is an attack on jurisdiction over "the subject matter." On the contrary: Cook at page 121 speaks of "jurisdiction over the vessel"; Johnson v. Browne recognizes at page 320 that it is talking about "jurisdiction over the individual"; Ferris states twice that it is dealing with "jurisdiction over the person."

And in each case on which Sobell would rely, the objection was timely made. See e.g. Cook v. United States, supra at p. 102; United States v. Rauscher, supra at statement of facts.

Soviet spy Sobell cannot metamorphosize a human being into a mole; he cannot change an attack on the jurisdiction over his person to one on the subject matter, the offense of spying for Soviet Russian against his own country.

POINT 2

SOBELL DOES NOT CHARGE A TREATY VIOLATION; HE CANNOT, THUS, ESCAPE HIS CONVICTION BY A JURY OF SPYING AGAINST THE UNITED STATES.

Even if this Court could reach the "jurisdictional" question, Sobell would not succeed. Sobell charges that United States officials violated an extradition treaty with Mexico. As a result, he maintains that the court lost jurisdiction over him.

Sobell realizes that he cannot claim a want of "due process." Frisbie v. Collins, 342 U.S. 519 (1952). He also concedes that the Extradition Treaty between the United States and Mexico does not provide for extradition in espionage cases. Treaty of 1899, in Sen. Doc. No. 357, 61st Cong. 2d Sess. p. 1184. His argument is based on the idea that the United States-Mexican Treaty "occupies the field" in that any extradition not conforming to that Treaty or not specifically mentioned in it is proscribed. Then he contends that United States officials by "assisting" in getting him out of Mexico violated that Treaty, because he was not extraditable. He also argues that American officials helped Mexican officials to violate internal Mexican laws.

Sobell's arrest did not violate the Extradition Treaty. Espionage is not covered by the Treaty and the Treaty does not "occupy the field." Nowhere in the Treaty is there a word about limiting the otherwise unlimited power which Mexico and the United States should have to oust any

alien to the sole power to oust aliens who commit the crimes listed in the Treaty. Articles I and II provide only that the two Governments will deliver up criminals "according to the provisions of this convention" in the enumerated instances. Article III prohibits extradition proceedings in specific instances, including extradition for a crime of a "purely political nature." If Article II's enumerations were intended to be exhaustive there would have been no point at all in having Article III's prohibition on extradition for "purely political" crimes.

The fact that the Treaty does not "occupy the field" is supported by the excerpts from the Political Constitution and internal laws of Mexico appearing in Sobell's Notice of Motion on his Third Section 2255 Motion -- assuming that Sobell's translations are accurate (Exhs. A and C). Article 15 of the Political Constitution, according to Sobell, again places the limitation on extradition of "political offenders." The internal Law of Extradition of Mexico, according to Sobell, looks to instances where extradition will be made where no international agreements are made. Art. I, II (as translated by Sobell).

Indeed, it is ridiculous to think that Mexico has limited itself to ousting only aliens who are charged with the enumerated offenses in the Treaty. An alein does not have an absolute right to asylum anywhere; Governments can, in the absence of self-imposed restriction, expel those aliens whom they do not want. Ker v. Illinois, 119 U.S. 436, 442

(1866); Chandler v. United States, 171 F.2d 921, 935 (1st Cir. 1949); United States v. Unverzagt, 299 Fed. 1015 (D. Wash.), aff'd, 5 F.2d 492 (9th Cir. 1925), cert. denied, 269 U.S. 566; United States v. Insull, 8 F.Supp. 311 (D.Ill. 1934); Gillers v. United States, 182 F.2d 962, 972 (D.C. Cir. 1950). Here is what the Supreme Court said in Ker v. Illinois about a Treaty just about identical to the Mexican-United States Extradition Treaty:

> "There is no language in this treaty, or in any other treaty made by this country on the subject of extradition, of which we are aware, which says in terms that a party fleeing from the United States to escape punishment for crime becomes thereby entitled to an asylum in the country to which he has fled; indeed, the absurdity of such a proposition would at once prevent the making of a treaty of that kind."
> 119 U.S. at p. 449.

The further suggestion made by Sobell that he falls within the Treaty's prohibition against extradition for "purely political" crimes is nonsense. He is a proven spy of a foreign country. Conspiring to commit espionage was the charge against him. Evidence of his membership in the Communist movement -- assuming that movement has anything to do with "politics" -- was admitted at trial only to show his propensity to spy for the Soviet Union and his motive for committing espionage against the country of his birth.

There just is, then, no violation of a Treaty here.

Actually the alleged "facts" in this case are strikingly similar to the facts in Ker v. Illinois, supra. Ker v. Illinois presented a case where an "agent of the

President of the United States" went down to Peru with extradition papers in his hands. The President's agent forcibly dragged Ker out of Peru without using his papers. Although the alien's crimes were within the purview of the Extradition Treaty the Supreme Court said there was no violation of the Treaty and Ker could not have his release. The Court held this despite its statement that an agent of the President was involved. The Government here states the Ker case as the Supreme Court stated it; not as it appears buried in someone's brief.

Upon analysis, Soviet Agent Sobell is claiming at most a violation of some sort of internal law of Mexico. But this claim would not help Sobell: time after time, the courts have said that neither the violation of some general principle of international law nor the breaking of an internal law of another nation by United States officials defeats the jurisdiction of American courts over criminal defendants. Cook v. United States, relied on so heavily by Sobell, states that rule. 288 U.S. at p. 122. And so does The Richmond, 13 U.S. (9 Cranch) 102, 103 (1815); The Merino, 22 U.S. (9 Wheat.) 391, 401 (1824); Ex Parte Lopez, 6 F.Supp. 342 (D.Texas 1934); United States v. Unverzagt, supra; United States v. Insull, supra.

Sobell's petition thus would fail -- even if he could reach the "jurisdictional" question.

POINT I

MOREOVER, SOBELL HAS NO STANDING TO RAISE A QUESTION OF AN EXTRADITION TREATY VIOLATION.

Finally, independent of all other considerations, Sobell's Fourth Section 2255 motion must be dismissed because Sobell lacks standing to raise an extradition treaty violation.

Extradition treaties are made between nations. They confer rights on nations to demand fugitives where as a matter of general international law they would have no rights. They impose duties on nations where otherwise they would have complete discretion. 1 Moore on Extradition, §§186-188; Ker v. Illinois, supra; Factor v. Laubenheimer, 290 U.S. 276, 287 (1933).

Since extradition treaties are between nations the violations are the primary concern of the nations themselves. Only if the defendant becomes somehow "clothed" with the rights of one of the Governments can he claim release. In this situation where noone actually uses the extradition procedures, it has been consistently held that the defendant is not "clothed" with any of the Government's rights to complain of violations and he does not defeat jurisdiction over his person. Ker v. Illinois, supra, at p. 443; United States v. Unverzagt, supra; Chandler v. United States, supra; United States v. Insull, supra; Gilliars v. United States, supra; Ex parte Lopez, supra; Ex parte Scott, 9 B. & C. 446 (King's Bench 1829).

Sobell has urged upon this Court the authority of United States v. Rauscher, supra, Cosgrove v. Winney, 174 U.S. 64 (1899) and several other cases which have held that when the United States goes through extradition proceedings and obtains extradition on one ground it cannot try the defendant on others. Those cases do hold that in that limited instance the defendants can assert a right which a Government could assert. But as the Supreme Court said in Ker that is only so because the defendant has gone through a proceeding and is "clothed" with the rights of that proceeding, and because the United States cannot be allowed to perpetrate a fraud on another nation with impunity. 119 U.S. at p. 443.

Since this one exception to the general rule of lack of standing to assert extradition Treaty violations does not apply here, Sobell's fourth motion for Section 2255 relief must be dismissed on that point alone, even if it be assumed -- contrary to fact -- that his return to the United States constituted a treaty violation.

CONCLUSION

This Court should dismiss this Fourth 28 U.S.C., §2255 motion without a hearing because it raises not a single issue which could sustain it as a matter of law.

Respectfully submitted,

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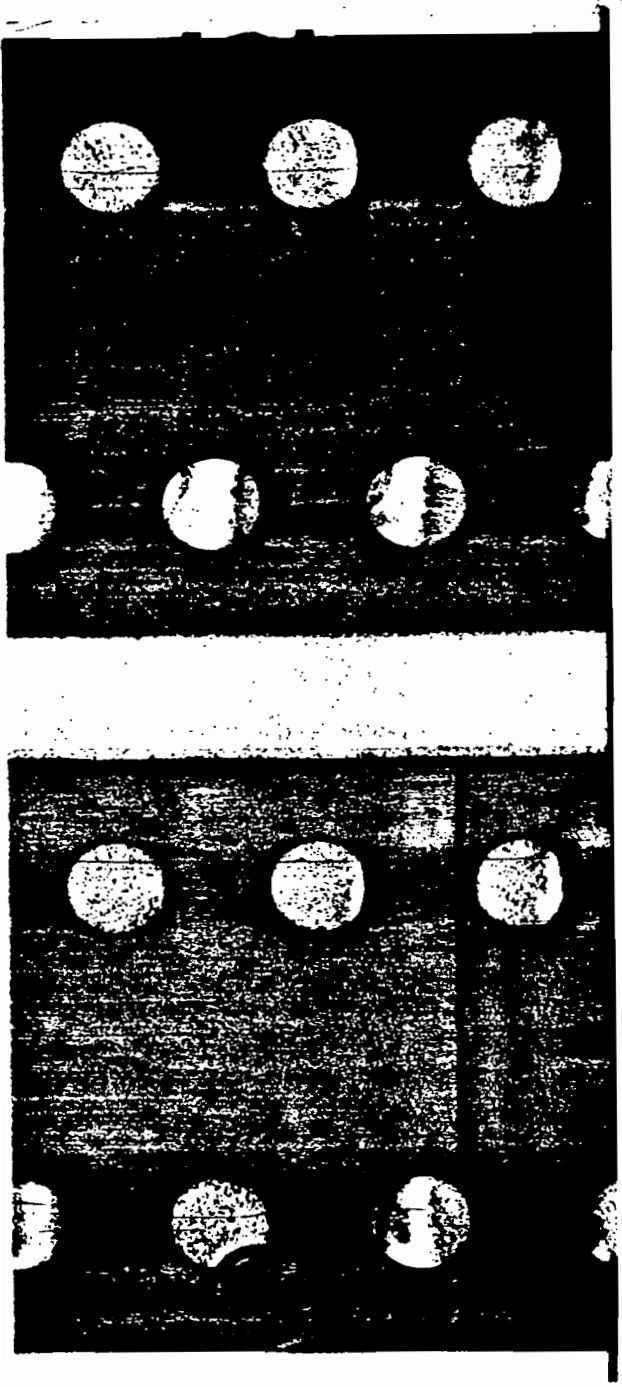

Date June 8 1956

BUREAU

Director

Att.

SAC

ASAC

Supv.

Agent

SE

CC

Steno

Clerk

FILE # Buffile 101-2483

Title MORTON SOBELL, was.
Esp - R.

ACTION DESIRED

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

Forward immediately to

Inspector Carl Hennrich.

memo to Boardman 6-12-56 JPhical

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

SAC James J. Kellyann

Office New York

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MORTON SOBELL,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF A MOTION FOR A HEARING AND OTHER RELIEF PURSUANT TO TITLE 28 U.S.C. SECTION 2255 */

*/ Supplementary Motion Filed May 25, 1956.

101-2483-1295

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STATEMENT OF FACTS

This is a motion pursuant to Title 28, U.S.C. Section 2255, requesting that the judgment of conviction and sentence be set aside and that petitioner be discharged from detention and imprisonment, on the grounds that the sentence was imposed in violation of the Constitution and laws of the United States and that the Court was without jurisdiction to render the judgment of conviction and to impose the sentence.

The petition sets forth that the United States and the trial court lacked all power over the subject-matter of the proceedings against petitioner, as a result of violations of the Treaty of Extradition between Governments of the United States and of Mexico , and the transgression of the sovereignty of the United States of Mexico.

In addition, the petition asserts that due process of law was denied to petitioner because the prosecution made substantial use of evidence derived from the circumstances of the treaty violations, in its case against petitioner.

A. The Facts Alleged in the Petition

The basic operative facts, as alleged in petition, are as follows:

1. Petitioner is unlawfully imprisoned in the Alcatraz Penitentiary by virtue of a judgment entered and commitment issued by the United States District Court for the Southern District of New York, dated and filed April 5, 1951, on an indictment returned on January 31, 1951 which charged in a single count that petitioner had conspired with others to transmit certain materials to the Union of Soviet Socialist Republics in violation of Section 34 of Title 50 of the United States Code.

2. On appeal to the United States Court of Appeals of the Second Circuit, the judgment of conviction was affirmed, Judge Frank dissenting, and the Court of Appeals denied the petition for a rehearing. A petition to the Supreme Court of the United States for a writ of certiorari was denied and thereafter, a petition to the United States Supreme Court for rehearing was also denied.

3. Petitioner has not made prior application to the Court for relief pursuant to Title 28 U.S.C., Section 2255 on the grounds set forth in this petition.

4. Agents of the United States initiated, arranged and planned the seizure of petitioner in Mexico and his abduction and removal to the United States.

5. Local police of Mexico City who acted unlawfully as agents of officials and representatives of the United States Government and solely pursuant to the direction and