F.O.I.A.

JULIUS ROSENBERG ET AL.

FILE DESCRIPTION

[redacted] HQ FILE

SUBJECT ETHEL Rosenberg

FILE NO. [redacted]

VOLUME NO. [redacted]

SERIALS [redacted]

See References

by some kind of "inhuman" blood lust throughout the entire proceedings. The propaganda from the NCSJRC also attempted to invok a note of patriotism on occasion. The Rosenberg sentence has been referred to as a "crime against the American people," and agitation on behalf of the Rosenbergs has been called a fight against "national dishonor and shame" as well as a struggle for "American democracy." To underline this motif, rallies sponsore by the NCSJRC have been solemnly opened with the playing of the National Anthem.

ACTIVITIES OF THE NATIONAL COMMITTEE TO SECURE JUSTICE IN THE ROSENBERG CASE

During August, 1952, only 6 months after the founding of the National Committee to Secure Justice in the Rosenberg Case, a "Midwest Conference on the Rosenberg Case" was held at Chicago, Illinois. During the conference a report of the National Committee was read which reflected that since its inception the NCSJRC had already distributed approximately 400,000 pieces of literature. It was further reported to the conference that the National Office of the Committee had already secured about 35,000 signatures for various petitions and it was indicated that the Midwest affiliates of the Committee would undertake to obtain at least 40,000 additional signatures by the end of October, 1952.

A financial report was delivered setting forth that since November, 1951, the NCSJRC had raised approximately $50,000 in contributions. Some $30,000 of this amount was received through the mails, $10,000 at large public meetings, $5,000 from small meetings and house parties, and $5,000 from literature sales. Expenditures of the NCSJRC through July, 1952, included such items at $4,500 for newspaper advertising, $10,000 for printing costs, $12,500 for overhead, postage and salaries, $7,000 for legal fees and $11,000 for printing a Supreme Court brief. It has been reliably reported that up until the date of the Rosenbergs' execution the NCSJRC raised approximately $300,000.

The "Daily Worker" issue of May 5, 1952, reported that chapters of the NCSJRC had been established in 25 cities. In addition to its own affiliates, the NCSJRC has received support from such organizations as the Civil Rights Congress, the Labor Youth League, and other Communist-front organizations as well as from various divisions of the Communist Party itself. It has been reliably reported in fact that the World Federation of Trade Unions, had been contacted and requested to organize world-wide demonstrations against the U. S. Government in connection with the Rosenberg case.

Among the more spectacular activities of the NCSJRC to date have been the following:

From December 27, 1952, to January 17, 1953, a continuou round-the-clock picket line was maintained at the White House during the perid that former President Truman was presumably studying a plea for executive clemency. This "White House Clemency Vigil" was called off on January 17, 1953, after more than 500 consecutive hours, only when it became evident that President Truman would not rule on the petition for clemency prior to his retirement from office. According to the "Daily Worker" this affair was climaxed on January 5, 1953, when more than 2,000 persons from 22 states arrived at the Nation's Capital to take part in the "vigil."

On December 21, 1952, some 800 persons took part in a demonstration for the Rosenbergs which was held at Ossining, New York, near Sing Sing Prison where the Rosenbergs were incarcerated and awaiting execution. Although barred from holding a meeting directly at the prison gates as originally planned, the demonstrators were permitted to send a five-man delegation to the prison walls to deliver Christmas cards addressed to the Rosenbergs as well as a huge floral wreath bearing the inscription, "Greetings to Julius and Ethel Rosenberg from the People."

As the final legal moves were being made by the Rosenbergs' defense attorneys, thousands of pickets formed around the White House in June, 1953. The majority of these pickets poured into Washington, D. C., from New York City where the NCSJRC had arranged for several special "clemency trains" to carry these Rosenberg sympathizers to the Nation's Capital.

The picketing at the White House commenced at approximately 1:30 P.M. on June 14 and at 4:00 P.M. the pickets marched to Ninth Street and Constitution Avenue, Northwest, where the NCSJRC held a "prayer meeting" at which the Rosenbergs were eulogized by officials of the Committee and several clergymen.

An official count of the pickets by the Washington, D. C Metropolitan Police Department indicated that there were approximately 6,800 persons involved in this blatant attempt to pressure the President of the United States into granting clemency for the

10C

convicted atom spies. The NCSJRC's own estimate of the number of pickets was set at 13,000.

Following this "prayer meeting," the majority of pickets entrained for New York City leaving a small handful of pickets to continue the "24-hour vigil" at the White House. The picketing of the White House continued until June 17, 1953, when, after the U. S. Supreme Court recessed for the summer, Mr. Justice Douglas announced that he had granted a stay of execution in order that new points of law brought before him by defense attorneys could be heard by the lower court.

Upon receiving the news that the Government was successful in petitioning for an extraordinary session of the U. S. Supreme Court, the NCSJRC went into action and again sent pickets to parade before the White House.

The picketing continued until the execution of the Rosenbergs was announced at approximately 8:45 P.M. on June 19, 1953. About 500 pickets were on hand at the White House at the time of the execution.

A near riot was narrowly averted by the local police as roughly 7,000 persons jeered and threatened the 500 pro-Rosenberg pickets. As the pickets marched away, led by 3 men carrying American flags, the throng across the street became incensed. At the request of the police, the pickets lowered the American flags and as they departed they heaped their placards in

a pile in front of the White House.

During the picketing activities of the NCSJRC in Washington, the following incidents occurred which are of interest:

On June 3, 1953, it was learned that the Committee had set up offices at the Inspiration House in Washington and that this office was controlled and directed by people from New York City. It was also ascertained that one of the local members of the Committee voiced strong resentment stating that it appeared to her that the national office of the Committee felt that, "We in D. C. are not competent enough."

On June 14, 1953, a woman telephonically advised the FBI that she had mistakenly received 6 or 8 telephone calls that day from persons inquiring about the details of a demonstration planned by the NCSJRC. She advised that most of the callers asked if this was the Committee for today's "outing."

Another individual advised that on June 18, 1953, a worker at NCSJRC Headquarters at Inspiration House was sent out

1bb

with $60 in large bills to be exchanged for 60 one dollar bills. This money was to be furnished to out-of-town demonstrators for expenses in order to keep as many as possible in D. C. for the White House death vigil.

On June 14, 1953, a demonstration was held by the NCSJRC on the Mall in the vicinity of 9th and Constitution Avenue, Northwest, Washington, D. C. Several ministers read prayers at the meeting. In each instance the ministers were applauded; a rather unusual reception for a prayer.

ATTEMPT TO INFLUENCE CONGRESSMEN

Also, during the activities of the NCSJRC in Washington, delegations from this organization were sent to contact various congressmen, senators and officials here. Many of these individuals had attempted to see a congressman of New York at his office in Washington. He had to hide in the men's room in order to avoid seeing them. A congressman also related that his son, a war veteran, while visiting Washington observed the picketing and recounted that an elderly Negro was being lead around by a white woman; the elderly man asked the woman what he was supposed to do.

ROSENBERGS' ATTORNEY CALLS GOVERNMENT BARBARIC

On June 19, 1953, after Emanuel Bloch had exhausted all legal efforts to see the President and was told that the Rosenbergs were to be executed that evening, Bloch made the statement that the action of the Government had revealed "to the entire world

Tolson
Ladd
Nichols
Belmont
Clegg
Glavin
Harbo
Rosen
Tracy
Gearty
Mohr
Winterrowd
Tele. Room
Holloman
Sizoo
Miss Gandy

107

that the people who are running this Government are much more barbaric than the Nazis when they were in power in Germany." He also reportedly stated that he did not know "what kind of animals I am dealing with, but I know I am dealing with animals." (Washington Star of June 20, 1953.)

Bloch also reportedly requested that the warden at Sing Sing Prison convey the following message to the Rosenbergs: "Tell them I tried to do my best. Tell them I feel ashamed that I'm an American today." (Washington City News Service 6-19-53)

ROSENBERG PROPAGANDA IN FOREIGN COUNTRIES

It is noteworthy that this case has also been used by Communist Parties throughout the world for propaganda purposes against the United States. American embassies in Canada and Europe were flooded with petitions for clemency by various organizations and people. During the last few days prior to the execution of the Rosenbergs, demonstrations were held in major capitals of Europe such as Paris, Rome and London on behalf of the Rosenbergs. In a Washington City News Service release of June 20, 1953, foreign reaction to the execution was reported as follows:

"Paris - Communist-led groups swarmed through European streets last night and early today in generally orderly demonstrations protesting the execution of atom spies Julius and Ethel Rosenberg. A French teen-ager was shot and wounded and 386 persons were arrested in Paris."

Two bottles of kerosene were thrown through the window of the U. S. Information Service in Dublin.

According to this news account, most European newspapers headlined the execution, but only the Communist sheets studiously ignored the fact that the Rosenbergs had been convicted of a particularly odious crime.

In Rome, a pro-Government newspaper, "Il Popolo," suggested that the Reds might better save their tears for the victims of Communist oppression in Berlin. The newspaper said, "We too are moved when we think of the two children of the couple sentenced to death in the West." "But we are still more dismayed by the fate of all the orphans of men mowed down in the streets of Berlin by the machine guns of a grim and inhuman regime." (Obviously referring to the recent riots in East Berlin and the suppression of them by Russian military forces.)

The news account also reported that Tass News Agency (official Soviet news agency) charged the Rosenbergs were executed "in defiance of the protests of world opinion." The Polish News Agency charged the execution was "a murder carefully prepared beforehand and staged in detail by the thugs of the FBI."

According to accounts from Italy, Red flags flying from Communist Headquarters and the homes of Communist Party members in Naples were half-masted after the execution.

In Austria, the Communist Party scheduled a protest meeting at a theater in the Soviet zone of Vienna.

FALSE CLAIMS EXPOSED

The tactics employed in this campaign of pressure were those of falsehoods and distortions. The Red Fascists adopted the Hitler big-lie technique.

Their claim of anti-Semitism brought forth an admonition from the Anti-Defamation League to the Jewish Community cautioning this community not to be used.

They charged infringement of Civil Rights - yet the American Civil Liberties Union concluded, after studying the case, that there were no Civil Rights issues involved.

PART III

COURT ACTION FOLLOWING CONVICTION

The Communist employed every conceivable trick in their efforts to aid the atom spies, including high pressuring the courts by innumerable appeals. The case was dragged out for a period in excess of two years.

On April 5, 1951, Judge Irving R. Kaufman, District Judge, Southern District of New York, sentenced Julius and Ethel Rosenberg to death, and Morton Sobell to thirty years' imprisonment. The execution date was set for the week of May 21, 1951. However, the execution was stayed when a notice of appeal filed in the Circuit Court, was served on the warden of Sing Sing Prison on April 11, 1951. (65-58236-1056)

On April 23, 1951, an application for a writ of habeas corpus was filed before District Judge John C. Knox, United States District Court, Southern District of New York, in which it was requested that Ethel Rosenberg be moved from the condemned cells at Sing Sing Prison, Ossining, New York. The application claimed the

such incarceration was cruel and inhuman treatment and further that she had been put in that prison in order to separate her from her husband, Julius, and force her to cooperate with the Government. The hearing was continued before District Judge Henry W. Goddard, who on June 22, 1951, denied the application. In denying this application, Judge Goddard stated as follows: "The Attorney General may transfer a convict from a Federal to a State prison without notice to or consent of the convict. No evidence was presented to support the relator's allegations in her petition that she was transferred there in an effort to 'break' her or that the Attorney General exercised his discretion for an ulterior purpose or in any but a lawful manner. Indeed, the initiative for her transfer did not come from the Attorney General or any of his subordinates. . . The Commissioner of the Department of Correction, City of New York, requested that the Federal authorities transfer her because of the crowded condition of the House of Detention and because of the lack of proper facilities there for the detention of a prisoner awaiting the execution of a death sentence." Judge Goddard then continued, "The relator's second ground for relief is also without merit. The Eighth Amendment was adopted to prevent inhuman, barbarous, or tortuous punishment or some punishment unknown at common law. Section 3566 of Title 18, U.S. Code, provides 'The manner of inflicting the punishment of death shall be that prescribed by the laws of the place within which the sentence is imposed. The United States marshal charged with the execution of the sentence may use available local facilities. . . .'"

Judge Goddard also said, "Apparently the Congress intended that the general provisions quoted and discussed above should apply in this situation. These provisions give the Attorney Gener authority to determine the place of incarceration for all Federal prisoners. There is no logical reason why these provisions should not be applicable here."

Judge Goddard concluded, "The relator presented no convincing evidence that her confinement was cruel, inhuman, or unusual. Accordingly, my conclusion is that the relator's transfer to Sing Sing prison was lawful and that her confinement in the death cell block there is not unusual or cruel and inhuman within the meaning of the Eighth Amendment of the Constitution of the United States."

It is interesting to note that in support of the Rosenbergs' contention that Ethel Rosenberg was placed in Sing Sing prison in order to cause her to break, the defendants subpoenaed several syndicated newspaper columnists such as Leonard Lyons and Hy Gardner, and questioned them concerning items they had printed in their columns to that effect. Leonard Lyons refused to reveal the source of his information and the question arose as to whether a newspaper writer could claim that the information which he received and printed in his column was of a privileged nature. Judge Knox ruled that as a matter of law in the Federal Courts, such privilege was not ascribed to a newspaper reporter. However, he ruled that in this case Lyons did not have to reveal the source of his information. (65-58236-1116)

RULING OF U. S. CIRCUIT COURT OF APPEALS

On November 5, 1951, Emanuel H. Bloch, attorney for the Rosenbergs, filed with the Circuit Court of Appeals, Second Circuit, an appeal brief, the main points of which were (a) the statute under which the Rosenbergs were tried violated the First, Fifth, and Sixth Amendments to the U. S. Constitution for failure to establish sufficiently definite and certain findings of guilt; (b) the conduct of the trial judge deprived the defendants of a fair jury trial; (c) the trial court committed reversible error in admitting certain Government evidence; (d) the sentence imposed by the trial judge constituted cruel and unusual punishment in violation of the Eighth Amendment.

On February 25, 1952, the U. S. Circuit Court of Appeals, Second Circuit, unanimously affirmed the conviction of Julius and Ethel Rosenberg with the opinion written by Judge Jerome Frank. In dealing with the various points raised by the defense counsel, Judge Frank stated, "Since two of the defendants must be put to death if the judgments stand, it goes without saying that we have scrutinized the record with extraordinary care to see if it contains any of the errors asserted in this appeal."

In dealing with point (a) raised by the defense, Judge Frank stated, "The language employed appears sufficiently definite to apprise the public of prohibited activities and is consonant with due process." Judge Frank also stated, "We think the statute

valid under the First Amendment, as well. The communication to a foreign government of secret material connected with the nation defense can by no far-fetched reasoning be included within the area of the First Amendment protecting free speech." In comment on the defendants' attack against the reliability of the Governme witnesses, Judge Frank observed as follows: "Doubtless if that testimony were disregarded, the conviction could not stand. But where trial is by jury, this court is not allowed to consider the credibility of witnesses or the reliability of testimony. Particularly in the Federal judicial system, that is the jury's province." He was referring to the testimony of the Green-glasses. Judge Frank, in commenting on the instructions to the jury of Judge Kaufman that "In the Federal Court a defendant can be convicted upon the uncorroborated testimony of an accomplice whose testimony satisfied the jury of the defendants' guilt beyon a reasonable doubt," said, "So instructed, the jury found defenda guilty. Faced with such a verdict this Court is obligated to ass that the jury believed the evidence unfavorable to the defendants On that assumption, the evidence to sustain the verdict is more than ample."

In discussing the defendants' allegations that the trial judge's actions prevented a fair trial, Judge Frank stated, "Defendants' counsel who first broached this suggestion on a moti for a mistrial after all the evidence had been heard, said that t

judge's alleged fault had been 'inadvertent' and added that the judge had 'been extremely courteous to us and afforded us lawyers every privilege that a lawyer should expect in a criminal case.' Soon after the denial of this motion, counsel for the Rosenbergs, summing up for the jury, stated 'we feel that the trial has been conducted. . . with that dignity and decorum that befits an American trial.' Still later, the same counsel said that 'the Court conducted itself as an American judge.' These remarks, by a highly competent and experienced lawyer, are not compatible wit the complaints now made. Nor are those complaints deserved. We think the judge stayed well inside the discretion allowed him."

In discussing the effect of evidence introduced to show the defendants expressed a preference for the Russian social and economic organization over ours and that they were members of the Communist Party, Judge Frank spoke as follows: "We think the evidence possessed relevance. An American's devotion to another country's welfare cannot, of course, constitute proof that he has spied for that other country. But one may reasonably infer that he is more likely to spy for it than other Americans not similarl devoted. Hence, this attitude bears on a possible motive for his spying, or a possible intent to do so when there is other evidenc in the case that he did such spying. We have held such testimony admissible in a similar case involving espionage for Nazi Germany

In discussing the testimony of Elizabeth Bentley, Judg Frank stated as follows: "If the jury believed her, she supplie the missing link connecting the Communist Party with the Soviet Union, and making Communist Party membership probative of motive intent to aid Russia." Judge Frank on this same point continued follows: "Whether and how much of that kind of evidence should come into a trial like this is a matter for carefully-exercised judicial discretion. We think the trial judge here did not abus that discretion."

In discussing the testimony of David Greenglass that Julius Rosenberg took a proximity fuse from the Emerson Radio Company where he worked, and gave that fuse to Russia, Judge Frank stated, "At any rate, the testimony was admissible to show an intent on Julius' part to aid Russia."

In ruling on the defendants' argument that it was an abuse of discretion for the trial judge to impose the death penalty in this case, Judge Frank said: "Unless we are to overrule sixty years of undeviating Federal precedents, we must hold that an appellate court has no power to modify a sentence. . . Further discussion of this subject my colleagues think unnecessa He then referred to the argument of the defendants that the deat sentences in this case violated the Eighth Amendment of the U. S Constitution which forbids cruel and unusual punishment, and the test urged by the defendants to indicate that a punishment was

cruel and unusual was that it shocked the conscience and sense of justice of the people of the United States. In commenting on thi Judge Frank stated, "In all likelihood, it would be - - if the evidence was as the Rosenbergs depict it: They say they were sentenced to death, not for espionage, but for political unorthodoxy and adherence to the Communist Party, and that they had only the best of motives in giving information to Russia which, at the time, was an ally of this country, praised as such by leading, patriotic Americans. But the trial judge, in sentencing the Rosenbergs, relied on record evidence which shows a very different picture. If this evidence be accepted, the conspiracy did not end in 1945, while Russia was still 'a friend,' but, as the trial judge phrased it, continued 'during a period when it was apparent to everybody that we were dealing with a hostile nation.'" Judge Frank pointed to the testimony of Government witnesses indicating that the conspiracy continued up through 195 Judge Frank continued, "This Court cannot rule that the trial jud should have disbelieved those witnesses whom he saw and heard testify. And, although the indictment did not charge, and therefore the jury did not find, that the Rosenbergs intended to harm the United States, the trial judge could properly consider the injury to this country of their conduct, in exercising his discretion as to the extent of sentences within the statutory limits."

With regard to the test suggested by the defendants, Judge Frank stated, "Assuming the applicability of the community-attitude test proposed by these defendants, it is impossible to say that the community is shocked and outraged by such sentences resting on such facts. In applying that test it is necessary to treat as immaterial the sentences given (or not given) to the other conspirators, and also to disregard what sentences this Co would have imposed or what other trial judges have done in other espionage or treason cases, for such matters do not adequately reflect the prevailing mood of the public. In short, it cannot be held that these sentences are unconstitutional." (65-58236-12

PETITION FOR REHEARING DENIED

On March 11, 1952, a petition for rehearing was filed on behalf of the Rosenbergs with the Circuit Court of Appeals, Second Circuit. In this petition the same points raised in the prior petition to the Circuit Court of Appeals were raised with additional argument that the defendants actually were tried for treason without the constitutional safeguards surrounding that crime and further, inasmuch as the Courts can give a death sente for treason, to give the same sentence for a lesser crime consti-tuted cruel and unusual treatment. (65-58236-1288)

On April 8, 1952, the Circuit Court of Appeals for the Second Circuit unanimously denied this petition for a rehearing. The opinion of the Court was written by Judge Frank. In this

opinion Judge Frank stated ". . . in the Rosenbergs' case, an essential element of treason, giving aid to an 'enemy,' is irrelev to the espionage offense." In discussing the defendants' argument concerning cruel and unusual punishment, Judge Frank ruled "This argument, we think, involves an unfounded assumption, i.e., that Congress will always authorize the death sentence for treason. Without that assumption the argument would compel the strange conclusion that if Congress in its discretion, authorized a maximum twenty-year penalty for treason, no greater punishment could be given for espionage, sedition, or a similar crime without 'its becoming cruel and unusual.'" (65-58236-1258,1298)

APPEAL TO U. S. SUPREME COURT

On October 13, 1952, the United States Supreme Court denied a petition for a writ of certiorari filed on behalf of Julius and Ethel Rosenberg. At the same time, an application of the National Lawyers Guild for leave to file a brief as amicus curiae was denied by the Supreme Court.

On October 28, 1952, a petition (65-58236-1364) for a rehearing on behalf of the Rosenbergs was filed with the United States Supreme Court. The points raised on this petition were that the Rosenbergs were subjected to a treason prosecution under color of a charge of conspiracy to commit espionage and that the admission of evidence concerning the Communist affiliations of the Rosenbergs was highly inflammatory and prejudicial and that the death sentences were based on untrue assumptions on the part of Judge Irving Kaufman. The petition also claimed that the Supreme Court had the power to modify, vacate or set aside the death sentences imposed by Judge Kaufman. On November 17, 1952, the United States Supreme Court denied the petition of the subjects for a rehearing by a vote of eight to one. Mr. Justice Frankfurter filed a memorandum opinion in which he stated that the Supreme Court of the United States had no power to change a sentence imposed in the United States District Court. He stated it was primarily the responsibility of the Circuit Court of Appeals to review

the record of a trial in a district court and that in the case of the Rosenbergs the "Circuit Court of Appeals for the Second Circuit was deeply conscious of its responsibility in this case. (65-58236-1133)

PETITION TO VACATE THE CONVICTIONS

A petition was filed by the defendants under Section 2255, Title 18 of the United States Code to vacate the convictions and stay the execution of the Rosenbergs. This petition was referred to Federal Judge Sylvester J. Ryan of the Southern District of New York, who on December 10, 1952, denied the petition of the defendants to set aside their convictions. The various grounds listed by the defendants were substantially as follows:

a. Pretrial and trial publicity including press releases precluded the defendants from having a fair trial.

b. The arrest of William Perl and publicity therefrom during the defendants' trial prejudiced their case.

c. The Government knowingly used false testimony of David Greenglass at the trial.

d. Government witness Ben Schneider perjured himself in stating that he had not seen the Rosenbergs from the time he took their photograph until the time of his appearance as a witness at the trial, inasmuch as Schneider had been brought into the court by the Government to identify the Rosenbergs the day before he testified.

e. The Government falsely classified atomic data as being secret.

In an affidavit filed in opposition to this motion as an answer to the claim that pretrial and trial publicity

precluded the defendants from having a fair trial, Myles J. Lane, United States Attorney for the Southern District of New York, stated:

"Counsel for the Rosenbergs at the trial who, incidentally, is the very same counsel making the moving petition on the instant application, stated in open court after the jury had returned its verdict of guilty as to each of the defendants as follows: 'A lawyer does not always win a case; all that a lawyer expects is a jury to decide the case on the evidence with mature deliberation. I feel satisfied by reason of the length of time that you took for your deliberations, as well as the questions asked during the course of your deliberations that you examined very carefully the evidence and came to a certain conclusion.' The Rosenbergs counsel on summation stated: 'We feel that the trial has been conducted and we hope we have contributed our share with that dignity and decorum that befits an American trial.'"

(65-58236-1348)

In his opinion dated December 10, 1952, Judge Ryan stated as follows: "I find no relevant or material issue of substance raised by the petitions, which requires a hearing thereon or which renders the taking of oral testimony either necessary or helpful. I have concluded, after affording the attorneys for petitioners full opportunity to argue the legal problems presented by the petition and to make proffers of proof, that the petitioners are entitled to no relief, that the court which rendered judgment had jurisdiction, that the sentences imposed were authorized by law and are not otherwise open to collateral attack on any of the grounds urged by the petitioners, and that full and complete enjoyment of the constitutional rights of petitioners have been extended them

and have in no way been denied or infringed. These petitions were filed twenty months after the verdict of guilty was returned by the jury, following a trial which petitioners' attorneys stated, 'had been conducted. . .with that dignity and that decorum that befits an American trial' and that defense counsel had been afforded 'every privilege that a lawyer should expect in a criminal case.'"

With regard to the pretrial publicity, Judge Ryan reasoned as follows:

"A reading of the newspaper articles submitted by the petitioners reveals nothing of an unusual or inflammatory character. The articles seem but a fair response to a legitimate public interest in a matter of vital concern to all. . . The accounts of the arrests and subsequent indictments of petitioners tended to allay a public anxiety and to give assurance that those charged with the protection of vital information were alert and diligent in the performance of their obligations."

In further discussing this point, Judge Ryan stated: "The trial began on March 6, 1951, shortly less than seven months after the arrest of Sobell, the last defendant to be taken into custody. Any public prejudice which might be ascribed to newspaper publicity incident to the arrest of these defendants had long since been dissipated among the populace of

the area from which the talesmen were drawn - an area where occurrences no matter how sensational lose their news value and no longer attract public interest after a much shorter space of time than seven months."

In discussing the publicity attending the indictment and arrest of William Perl which occurred during the trial, Judge Ryan remarked, "There was nothing unusual in the procedure followed." Judge Ryan further stated, "By affidavit, the United States Attorney now reveals that it was not until March 6, 1951, that he came into possession of evidence sufficient in law to sustain Perl's indictment for perjury. This satisfactorily explains why Perl was not indicted until March 13, 1951, for perjury alleged to have been committed on August 18, 1950, and on September 11, 1950. The United States Attorney further states that the Perl indictment has not yet been brought to trial because of a purpose on his part to prevent disclosures which would interfere with other prosecutions. I may not on this hearing pry into the reasons which prompted the prosecutor to adjourn the trial of the Perl indictment. I accept the explanation given; certainly the delay does not warrant drawing the inference which the petitioners press. Again, as to the

indictment of Perl, there is not the slightest proof that any of the trial jurors read of the arrest or indictment of Perl or that it came to their attention in any manner. A defendant may not demand that the machinery of law enforcement be stopped while his trial proceeds, or that the prosecution of others, who, as he, are charged with violating the law, be held in abeyance until his trial has been completed."

With regard to the Defense allegation that the Government knowingly used false testimony of David Greenglass at the trial, Judge Ryan stated as follows:

"When he (Greenglass) was pressed on the trial as to the exact time when he had said he would make the statement, Greenglass testified 'You can't pinpoint me on when I said I was going to give a statement, because I don't remember those things.' Questioned further on the subject he added that he hadn't 'read the statement since and I certainly don't know exactly what I put in it' but he added that he hadn't 'conscientiously' withheld any facts that night and that the statement he had then made was substantially the same as his testimony in the trial. At no time did petitioners' attorney call for the production of the statement, or ask the trial judge to examine it for the purpose of determining whether it did, in fact, contain statements

contradictory to the testimony he had given on the trial. No request was made for a direction that the statement be delivered to the petitioners' attorneys for use on their extensive and searching cross-examination of Greenglass." Judge Ryan added, "I do not have to consider the affidavits of Special Agents Lewis and Frutkin to arrive at a finding that there is no factual basis for inferring that Greenglass' testimony was perjurious or 'that it was knowingly, willfully and intentionally used.' Full opportunity during trial was available to petitioners' attorney to demand at least a preliminary examination of Greenglass' statement; no such application was made. I do not feel called upon to now examine the statement on the flimsy showing made."

With reference to the Defense contention that it was improbable Greenglass could have reproduced from memory sketches of the lens mold and the cross section of the atomic bomb which were introduced as evidence during the trial, Judge Ryan opined, "Petitioners now submit 'affidavits from three individuals, represented as experts in the field of physics, who express the opinion that it is 'improbable' that Greenglass could have reproduced the sketches from memory. A fourth affidavit from a scientific writer or correspondent for a newspaper records his opinion as to the 'impossibility' of Greenglass' being able to make these

sketches from memory. It is upon these 'opinions' that petitioners would have me find that Greenglass gave perjurious testimony concerning the circumstances surrounding the drawing by him of these exhibits. None of these four affiants could possibly have seen exhibit 8, which had been impounded."

Exhibit 8, referred to by Judge Ryan, was a sketch of a cross section of the atomic bomb prepared by Greenglass and which Greenglass testified to as being a recollection of a sketch he furnished to Rosenberg in September, 1945.

Judge Ryan also said, "Opinion evidence when offered by one who has neither observed the witness while he testifies nor ever seen him is inadmissible in any trial and may not be considered by me as the basis for a conclusion that perjury was committed."

The Defense also contended that the testimony of Ben Schneider, Government rebuttal witness, was perjurious. Regarding this point, Judge Ryan stated, "It is not disputed that on the day prior to Schneider's testimony he had been brought into the trial courtroom for the purpose of seeing whether he could identify Rosenberg as the person whose photograph he had taken. There was no motive for falsehood on the part of Schneider and there is not the slightest evidence that Schneider's testimony on this was intentionally false. I hold it to be on an immaterial point because the

petitioners (Rosenbergs) did not deny on cross-examination prior to Schneider's appearance as a witness that they had been in Schneider's store."

Judge Ryan continued:

"The vital portion of Schneider's testimony was his recollection of what Julius Rosenberg had told him; on that a sharp issue was raised and it appears from the verdict to have been resolved by the jury adversely to the petitioners. The challenge now made to Schneider's testimony does not stamp him as a perjurer."

Regarding the defendant's claim that the information which they conspired to transmit should not have been classified secret, Judge Ryan said:

"They (defen ants) contend that there was nothing informative or new about the details of the high-explosive lens used in atomic weapons, that the theory underlying the use of the lens and implosion has been known for many years. They have listed the names and authors of various treatises and texts in the field of nuclear physics, and from this would have me conclude that the experimentation in the use of the atomic bomb which was disclosed was a matter of public knowledge. . . Certainly, we cannot say that in the United States this information has been made public, nor can we assume that it has become available in one way or another to any foreign government.' Petitioners offer no evidence to support their

contention that the classification of this information was arbitrary, or that the United States Government had information which would have led it to believe it was well-known."

Judge Ryan also opined: "The claim now made by petitioners cannot be said to constitute newly-discovered evidence. The very basis of their argument that prior knowledge of this use of atomic energy is revealed by the recorded experiments and treatises of numerous physicists was evidence available to them during the trial and an issue which could have been presented then and considered by the jury in its determination of the nature of the information which petitioners conspired to transmit. This issue of fact was presented to the jury by the trial judge; it was resolved against the petitioners; it may not be retried on this application." (65-58236-1432)

ACTION BY THE CIRCUIT COURT OF APPEALS

On December 31, 1952, the Circuit Court of Appeals, Second Circuit, unanimously affirmed the order of Judge Ryan, United States District Court, dismissing the defendants' motion under Section 2255. The opinion in the Circuit Court of Appeals was written by Chief Judge Thomas Swan.

In discussing the alleged prejudicial newspaper publicity, Judge Swan stated, "When a defendant believes that pretrial publicity has been such as to render impossible the selection of an impartial jury, there are well-recognized method of raising this issue before the trial commences. He may move for a change of venue or for a continuance until the public clam shall have subsided. The petitioners took neither of these cour On the voir dire the prospective jurors were carefully questione as to whether they had read or heard about the case and a jury was selected satisfactory to the defendants, who did not even us all the peremptory challenges permitted them. Nor do they allege that any trial juror was, in fact, prejudiced by the publicity now asserted to have made a fair trial impossible. Their presen position is obviously an afterthought inspired by the hope of reversing the verdict by appeal and petitions for certiorari. T excuse offered by counsel for the Rosenbergs is that he did not realize at the trial the extent and the inflammatory character o the publicity as it could not have been revealed to him 'by the

usual sporadic reading of an average newspaper reader, and he was so busy that he 'read the newspapers' infrequently. But if he did not realize it, there is no reason to suppose that the jury was more seriously affected."

In further discussing the matter of publicity, Judge Swan said, "The best that can be said in the instant case is that, at the time of trial, astute counsel decided that the publicity did their clients no harm, and now want this court to decide otherwise."

In discussing the effect of the Perl indictment and the statements made by the United States Attorney to the press that Perl had been listed as a witness in the Rosenberg trial, Judge Swan stated, "But the essence of the wrong done the petitioners does not lie in the intent of the prosecutor but in the prejudicial publicity which may come to the attention of the jury. When publicity believed to be prejudicial occurs during a trial, the defendant may move for a mistrial or may request the trial judge to caution the jury to disregard it. In this case th defendants did neither....This was their deliberate choice after conferring with the judge out of the presence of the jury."

With regard to the alleged use by the Government of perjurious testimony, Judge Swan opined, "There are three specif cations. The first relates to Greenglass' testimony that on the night of his arrest he did not withhold any facts from the FBI. When he was sentenced on April 6, 1951, the day after the

petitioners' sentences, the United States Attorney stated to th
court, 'Mr. Rogge protested his innocence' at the arraignment.
'Through Ruth Greenglass, his wife, came the subsequent recanta
of these protestations, and repudiation of the disclosures of t
facts by both of them.' On the basis of this statement the
petitioners argue that the testimony was false and known to be
false by the prosecuting officer. Judge Ryan said that when re
in context with all the proceedings on April 6 he did not regar
it as an admission that Greenglass had committed perjury and th
there was no factual basis for inferring that perjurious testim
had been knowingly used. We agree. It is notable that petitio
made no mention of these facts on their previous appeal althoug
then well aware of them."

In dealing with the allegations that David Greenglass could not have prepared sketches from memory and hence his testimony was false, Judge Swan stated, "This is nothing new, for at the trial, the defendants, on cross-examination, had bro out the details of Greenglass' education, with the patent purpo of persuading the jury that he had lied. In support of their renewed assertion of his perjury, defendants.....presented the affidavits of four scientists who expressed the opinion that Greenglass, with his limited education as shown at the trial, co not have made the sketches from memory. Since none of them kne Greenglass, none was in a position to give an opinion about the quality of his memory which, no matter what his education, may

have been amply sufficient for this purpose....The affidavits be solely on the credibility of his testimony and that issue was pr erly submitted to the trial jury for decision."

Regarding the testimony of Ben Schneider, Judge Swan said, "Judge Ryan was correct in ruling that there was not the slightest evidence that Schneider's testimony was intentionally false and that in any event it was on an immaterial point, i.e., identification of the Rosenbergs as persons whose pictures he ha taken, since the Rosenbergs had not denied that they might have gone to his shop for that purpose, although Julius Rosenberg categorically insisted that they were not passport pictures."

With regard to the defendants' claim that the informat transmitted should not have been classified "secret," Judge Swan stated, "The petitioners' next point is that their conviction sho be set aside because one item of information classified as secre which they were charged with having conspired to transmit to Russia, was so generally known that transmitting it was not for- bidden by the Espionage Act. This matter was thoroughly discuss by Judge Ryan. We have nothing to add to his opinion except to say that United States v. Heine, 2 Cir., 151 F. (2D), 813, upon which the appellants rely is so different in its facts as to be completely inapposite."

As to the questions advanced by defendant Morton Sobel that he should have been tried under the treason clause of the Constitution rather than the Espionage Act, Judge Swan opined,

13

"It was raised before the Supreme Court in the petition for rehearing which was denied. Assuming without decision that nevertheless it may now be read in its present form by a motion under Section 2255, we hold that it is without merit." (65-58236-14

On January 2, 1953, Judge Irving R. Kaufman, District Court, denied the application of Julius and Ethel Rosenberg for clemency. In the course of his opinion, Judge Kaufman stated as follows:

"In response to this application, I have not only heard counsel at great length and studied the defendants' petition, but also have re-studied the voluminous record of the trial and refreshed my recollection of the demeanor of the witnesses. Re-examining the question de novo, I am again compel to conclude that the defendants' guilt - as found by the unanim verdict of the jury - was established beyond doubt. None of the so-called later discoveries or revelations which counsel contend created doubt of guilt touch the basic matters disclosed by the testimony of Ruth and David Greenglass, Max Elitcher, Ben Schneider, and the other Government witnesses, whom the jury chos to believe and which points unmistakably to the full and conscie participation of the defendants in this conspiracy. On this application baseless charges of perjury have been hurled at seve Government witnesses. The jury has already decided this questio to the contrary, so did my colleague Judge Ryan, so did the

United States Court of Appeals. I am also convinced that these witnesses told the truth. Therefore, we observe several judicial determinations attesting to the credence of the challenged Government witnesses."

Judge Kaufman continued, "The issue which now confronts this Court, therefore, is whether, assuming the guilt of the defendants, and the overwhelming character of the evidence renders such assumption inescapable, there nevertheless exist other considerations which would warrant reduction of the sentence."

Judge Kaufman also stated, "The Court, however, has had a solemn trust placed in its hands by the people of this land and I am convinced that any change of these sentences by this Court, in the light of the evidence adduced in this case, would be a violation of that trust. Devotion to duty and justice must prevail over action which could be attributable only to the emotions."

Judge Kaufman also opined, "The Rosenbergs were not minor espionage agents; they were on the top rung of this conspiracy. Julius had direct contact with the representative of the foreign Government, to wit, Yakovlev, a Russian vice-consul in New York City. He had contacts with other representatives of the U.S.S.R. He dispersed large amounts of Russian espionage funds - for example, the $5,000 given to Greenglass to flee the jurisdiction. He was always the principal recruiter for scientists and technicians and the guiding spirit of the conspirators. And at all times

135

Ethel Rosenberg, older in years and wise in Communist doctrine, aided and abetted and advised her husband."

In discussing the letters received urging judicial clemency Judge Kaufman said as follows: "In the many letters urging judicial clemency, which have been submitted to this Cour the overwhelming preponderance of which are in response to a sel serving solicitation by counsel for the Rosenbergs, it has frequently been urged that the sentences were unprecedented, being the first such sentences imposed for peacetime espionage. I hasten to correct this misapprehension and emphasize, therefor that the sentences were not imposed for peacetime espionage but for wartime espionage. This Court would not have the power to impose these sentences for peacetime espionage. The letters referred to, for the greater part, indicate that the writers hav never read the record, are unfamiliar with the facts in the case or have been misinformed concerning them. Some of these writers do not hesitate to pass judgment on the credibility of witnesses even though they have not observed them on the witness stand, a basic essential to judging credibility. They nevertheless assum the role of a super-jury, sitting in absentia."

In discussing the seriousness of the crime committed by the Rosenbergs, Judge Kaufman said, "Is the act not perhaps more treacherous and reprehensible when our own fellow Americans decide to traffic in our deepest military secrets and to transfe the information concerning these secrets to a foreign power whil

we are engaged in war; then continue to traffic in our military secrets when this allegedly friendly country becomes hostile to us and engages in a cold war with America? We can expect citiz of a foreign nation to do everything to benefit their country, we have a right to expect Americans not to enlist in a conspira to destroy their own country."

In answer to the Defense's contention that Russia was o ally at the time this crime was committed, Judge Kaufman stated, "But the Rosenbergs urge that Russia was our ally in 1944 and 1945 and hence this Court in imposing sentence was using hind-sight. To accept this contention is to approve the theory that this is not a Government of responsible civil and military leade charged with the duty of determining what military secrets are t be given to a foreign power, but that the decision rests with any individual who might be disgruntled with the determination made by our leaders on matters affecting our security. Such a Government, it is obvious, could not long exist."

In dealing with the defendants' contention that Russia was a friendly country at the time of the transmission of infor-mation Judge Kaufman said, "Furthermore, Congress wisely did not distinguish between a friendly or an enemy country in prescribi punishment for acts of espionage. The law was intended to prote and to keep inviolate our military secrets from all foreign powers." Continuing, Judge Kaufman stated, "What right have the defendants now to cry, 'Russia was our ally,' when they were the

very ones caught with their hands in our pockets trying to filch from their own country this weapon which, were its secret inviol might have been crucial in maintaining peace with the post-war world. It is apparent that Russia was conscious of the fact tha the United States had the one weapon which gave it military superiority and that, at any price, it had to wrest that superio from the United States by stealing the secret information concern that weapon. The tragedy of it is that it was successful."

In answer to the defendants' claim that the informatio which allegedly was transmitted was not secret, Judge Kaufman stated as follows:

"The defendants contend that the acts of which they have been found guilty were not detrimental to the United States or of benefit to the Soviet Union, because the information which was transmitted to the Russian agents was not secret but was available in publicly distributed scientific periodicals. But it is ludicrous to assert that the defendants' elaborate precauti to escape detection and the furtive conduct which characterized all their acts as members of the Soviet-run espionage ring were directed at the attainment of information already in the public domain."

With relation to the sentences passed on other conspirators in this conspiracy and on other persons convicted of espionage, Judge Kaufman said, "It has also been urged that others

have received lesser sentences. Indeed, this Court imposed a lesser sentence upon the co-conspirator, David Greenglass. Ther are several answers to this. The degree of implication of each conspirator and his subsequent aid to the Government in ferreting out co-conspirators must be considered. Julius and Ethel Rosenberg were the prime movers in this conspiracy; into it they sucked David and Ruth Greenglass,...Not of little importance in connection with the Greenglass sentence, is the cooperation which the Government received from him, a factor which I publicly stat at the time of his sentence deserved consideration from the Court....Neither defendant has seen fit to follow the course of David Greenglass and Harry Gold. Their lips have remained seale and they prefer the glory which they believe will be theirs by the martyrdom which will be bestowed upon them by those who enlisted them in this diabolical conspiracy (and who, indeed, dest them to remain silent). Harry Gold received the maximum prison sentence of 30 years....Gold has been a most cooperative and penitent witness since his apprehension....Klaus Fuchs received the maximum prison sentence under the English law and his cooperation is now a matter of record....It should be noted that Fuchs was not convicted of violating an espionage statute but of violating an act known as the Official Secrets Act. To be bound by the sentences imposed on Fuchs and Alan Nunn May, would be to say that this country has no right to pass its own laws to deal with offenses as its Congress determines but must blindly follow

the law of a foreign nation even though it materially differs from our own. Of course, both Fuchs and May plead guilty."

Judge Kaufman also stated, "This Court has no doubt but that if the Rosenbergs were ever to attain their freedom they would continue in their deep-seated devotion and allegiance to Soviet Russia, a devotion which has caused them to choose martyr and to keep their lips sealed. The defendants, still defiant, assert that they seek justice, not mercy. What they seek, they have attained. Despite this, I must nevertheless consider whether they are deserving of mercy. While I am deeply moved by considerations of parenthood and while I find death in any form heart-rending, I have a responsibility to mete out justice in a manner dictated by the statutes and interests of our country. My personal feelings or preference must be pushed aside for my prime obligation is to society and to American institutions. The families of these defendants are victims of their infamy, but I am mindful that countless other Americans may also be victims of that infamy. The defendants were not moved by any consideration of their families and their children in committing their crimes, but have urged such consideration upon the Court in order to make more difficult an already difficult task."

In summing up, Judge Kaufman stated, "So, we observe, that it is over one year and nine months since this Court discharged the unpleasant duty of sentencing these defendants.

140

During that time, their appeal has been carried from this Court through all the appropriate Appellate Courts and the sentence and judgment have not been disturbed. No legal recourse has been denied the defendants. Through all of this no other court has been able to find a reversible error or the legal justification to set aside the sentence."

In rendering his decision on this motion, Judge Kaufman said, "I have meditated and reflected long and difficult hours over the sentence in this case. I have studied and re-studied the record and I have seen nothing nor has anything been presented to me to cause me to change the sentence originally imposed. I still feel that their crime was worse than murder. Nor have I seen any evidence that the defendants have experienced any remorse or repentance. Unfortunately, in its place, this Court has been subjected to a mounting organized campaign of vilification, abuse and pressure. This Court, however, is not subject to such an organized campaign and the pressures which have been brought to bear in this case, nor does it require such techniques to make it cognizant of the human tragedy involved. The application is denied."

PETITION FILED FOR EXECUTIVE CLEMENCY

On January 6, 1953, an order was signed by District Judge Irving R. Kaufman, Southern District of New York, and consented to by Emanuel H. Block, Attorney for the Rosenberge, and Myles J. Lane, U. S. Attorney, Southern District of New York. This order granted a stay of execution of the defendants which had been set for the week of January 12, 1953, with the conditions that on or before January 10, 1953, an affidavit of counsel for the defendants be filed attesting that a petition for executive clemency was duly filed for submission to the President and further that the stay was being granted for the sole purpose of permitting the President to pass upon the defendants' plea for executive clemency. Further if any action was to be taken or legal proceeding instituted which caused delay or interfered with the expeditious processing of the said application for executive clemency, the stay would be vacated. The order further contained a provision that the stay granted would expire five days after the determination by the President upon the petition for executive clemency. (65-58236-1393)

On February 11, 1953, President Dwight D. Eisenhower denied the petition for executive clemency filed by the Rosenberge. In denying this petition, President Eisenhower stated, "These two individuals have been tried and convicted

14

of a most serious crime against the people of the United States. They have been found guilty of conspiring with intent and reason to believe that it would be to the advantage of a foreign power, to deliver to the agents of that foreign power certain highly secret atomic information relating to the national defense of the United States. The nature of the crime for which they have been found guilty and sentenced far exceeds that of the taking of the life of another citizen; it involves the deliberate betrayal of the entire nation and could very well result in the death of many, many thousands of innocent citizens. By their act these two individuals have, in fact, betrayed the cause of freedom for which free men are fighting and dying at this very hour."

President Eisenhower continued, "The courts have provided every opportunity for the submission of evidence bearing on this case. In the time-honored tradition of American justice, a freely selected jury of their fellow citizens considered the evidence in this case and rendered its judgment. All rights of appeal were exercised and the conviction of the trial court was upheld after full judicial review, including that of the highest court in the land. I have made a careful examination into this case, and I am satisfied that the two individuals have been accorded their full measure of justice. There has been neither new evidence nor have there been mitigating circumstances which would

justify altering this decision and I have determined that it is my duty in the interest of the people of the United States, not to set aside the verdict of their representatives." (65-58236-Sub A8)

On February 11, 1953, the Circuit Court of Appeals, Second Circuit, granted a stay of execution for the Rosenbergs until March 30, 1953, in order to allow them to appeal to the Supreme Court of the United States. No written decision accompanied this stay. The execution date had been set for March 9, 1953. (65-58236-Sub A8)

On May 25, 1953, the United States Supreme Court denied without opinion an application for a writ of certiorari requested by the defendants. (65-58236-1662)

On May 25, 1953, the United States Supreme Court vacated the stay of execution which was granted by the Circuit Court of Appeals on February 17, 1953. (65-58236-1663)

On May 26, 1953, the United States Supreme Court denied a motion filed by the defendants requesting the Court to stay action on their petition for a writ of certiorari which was denied May 25, 1953. This stay was requested to allow filing of an amended application for a writ of certiorari. (65-58236-1690, 1667, 1664)

On May 29, 1953, District Judge Irving R. Kaufman set the date of execution of the Rosenbergs for the week of June 15, 1953. The usual execution date at Sing Sing Prison is Thursday night which meant the Rosenbergs were scheduled to die June 18, 1953. (65-58236-1677)

On June 1, 1953, Judge Irving R. Kaufman denied a motion made on behalf of the Rosenbergs to set aside the death sentences. On this motion Emanuel Bloch, attorney for the Rosenbergs, argued that the indictment was defective in that it did not allege that the conspiracy took place in time of war or was intended to take place in time of war. Based on this assumption, Bloch alleged that the sentence should not have been more than twenty years. In opposition to this motion, United States Attorney Edward J. Lumbard argued that the indictment clearly showed the Rosenbergs were charged with an offense punishable by death. In denying this motion, Judge Kaufman said that Bloch's application was transparent and without any merit whatever. He stated that if he were to make a guess, twenty-five carefully-planned points of law had been raised in the Court in the two years and two months since the conviction and that this was the first occasion on which this particular point had been submitted. He stated that the words "then and there being at war" appeared in the indictment which clearly showed to the defendants that they were charged with having conspired in wartime to transmit information. (65-58236-1688)

On June 2, 1953, the Circuit Court of Appeals, Second Circuit, denied a motion by the defendants for a writ of mandamus ordering District Judge Kaufman to reduce the

sentences. The basis for this motion was that Judge Kaufman had considered the following factors in sentencing the Rosenbergs: (a) the Rosenbergs' devotion to Soviet Russia; (b) Judge Kaufman classified the Rosenbergs as traitors, whereas, they were not charged as traitors; (c) the Rosenbergs had an intent to injure the United States, whereas, the indictment charged transmittal of information for the advantage of a foreign country; and (d) the death sentence was used by Judge Kaufman in an attempt to coerce a confession from the Rosenbergs.

On June 5, 1953, the Circuit Court of Appeals, the Second Circuit, denied a motion for a stay of execution which was requested to give the defendants time to appeal to the United States Supreme Court from the denial by the Circuit Court of the defendants' motion for a writ of mandamus. In denying this motion, Judge Swan of the Circuit Court instructe Emanuel Bloch that this motion should properly be filed with the United States Supreme Court.

On June 5, 1953, the Circuit Court of Appeals, the Second Circuit, affirmed the action of Judge Kaufman in which he denied a motion for reduction of sentence on June 1, 1953.

On June 8, 1953, the defendants' motion for a new trial under Rule 33 and for vacating and setting aside the death sentences under Section 2255, Title 18, United States Code, was argued before Judge Irving R. Kaufman. The reason

for this motion was based on two general grounds: (a) newly discovered evidence and (b) the prosecuting authorities had knowingly used perjured testimony to convict the Rosenbergs. Emanuel Bloch, defense attorney, argued that the Greenglass testimony relating to the console table allegedly given to the Rosenbergs by the Russians was false; further, that statements the Greenglasses had made to their attorneys contradicted the testimony they had given at the trial. Bloch also argued that a deal had been made between the Government and the Greenglasses in return for their testimony and that the theft of uranium by David Greenglass from Los Alamos was proof that he was engaged in independent espionage and that in order to save himself from prosecution for that theft he falsely involved the Rosenbergs.

It is noted that David Greenglass testified at the trial that the Rosenbergs had a console table which Julius said had been given to him by the Russians. Greenglass further testified that the table had been hollowed out and was used by the Rosenbergs for photographic purposes. Bloch claimed to have recently located the console table in the home of Mrs. Sophie Rosenberg, mother of Julius Rosenberg, and that it was not hollowed out or altered in any way. Bloch also presented an affidavit from a furniture buyer at Macy's Department Store, which affidavit stated that the photograph of this table resembled a type of table possibly

sold by Macy's in 1944 or 1945 for $19.97. Bloch attributed significance to this affidavit because Rosenberg had testified that he purchased the console table at Macy's Department Store for about $21.

In regard to the theft of uranium, David Greenglass admitted to FBI Agents on March 25, 1953, that he had stolen a sample of uranium from Los Alamos while he was stationed there but had thrown it into the East River. Greenglass said he took this as a souvenir and that all members of the Rosenberg family were aware of this fact.

Judge Kaufman gave an oral opinion in which he denied the Rosenbergs' motion in all respects. He stated that in connection with the allegations under Section 2255, the papers and arguments considered in conjunction with the record showed the Rosenbergs were entitled to no relief; that not one Government witness had recanted; and that no material issue of fact was raised requiring the taking of testimony at a hearing. He noted that the affidavits concerning the console table, with the exception of an affidavit from Joseph Fontana, furniture buyer at Macy's, were from relatives and further, that at the trial Mrs. Evelyn Cox, former domestic employed by the Rosenbergs, had testified that Ethel Rosenberg told her the table was a belated wedding gift from a friend. Judge Kaufman also noted that Julius Rosenberg had denied that the table was a gift in his testimony. He said that, assuming the

table was purchased from Macy's Department Store, it did not resolve the conflict and that the identity of the vendor was not important but that the use of the table was important. Judge Kaufman also pointed out no receipts were produced at the trial or at this hearing and that the existence of a table sold by Macy's did not establish that perjury was committed. Further, he stated it was incongruous to say that the Government should have produced the table when it was shown by the defendants on affidavits that it was in the possession of the Rosenberg family. Judge Kaufman also noted that Leon Summit of the "National Guardian," weekly newspaper, had no trouble in locating the table. He pointed out that the information concerning the table furnished by the Greenglasses came in response to questions concerning gifts to Julius Rosenberg from the Russians and the testimony concerning the table played an infinitesimal part in the trial. Judge Kaufman also stated that the facts concerning the table had been testified to by David and Ruth Greenglass in early March, 1951, and again by Julius and Ethel Rosenberg at that time; that since the Rosenberg family was available now, they certainly were available to testify at the trial that they had seen the table in the Rosenberg home. He stated there was no basis for the charge of perjured testimony.

149

Concerning the theft of uranium by David Greenglass Judge Kaufman questioned why Greenglass would throw the uranium in the river and asked how this theft tended to implicate innocent members of the family. He stated it was fair to characterize the conclusion of the defendants as unsupported and incredible.

Concerning the statements of the Greenglasses made to their attorneys and the fact that the defendants sought to attack the credibility of the Greenglasses by these statements, Judge Kaufman stated it was clear the statements referred to general information supplied by David Greenglass to his attorney concerning statements he had furnished to the FBI. Judge Kaufman pointed out that on cross-examination David had testified he had given six or seven statements and had not remembered all of the details of his actions in his first interview. The Judge also pointed out that David's testimony had been corroborated by his wife, Harry Gold, and others. Judge Kaufman denied the motions of the defendants under Section 2255, stating that he did not accept the charges that perjured testimony was knowingly used by the Government.

In connection with the Rosenberg motion for a new trial on the grounds of newly discovered evidence, Judge Kaufman listed 5 points that have to be shown as set forth in the "On Lee Case," namely, that the (a) evidence is newly discovered; (b) diligence of the defendants; (c)

156

evidence is not cumulative or impeaching; (d) evidence is material; and (e) evidence is of such a nature that on a new trial the newly discovered evidence would probably produce an acquittal. Judge Kaufman noted that not one Government witness had recanted. He stated the guilt of the defendants was established overwhelmingly and the present alleged evidence did not in any way diminish the strength of the Government's case. Judge Kaufman denied the motion for a new trial, as well as a stay of execution requested by the defendants. (65-58236-1699)

On June 9, 1953, Emanuel Bloch appeared before the United States Court of Appeals, Second Circuit, and requested a stay of execution pending an appeal to that court of Judge Kaufman's denial for a new trial and arrest of judgment dated June 8, 1953. The court refused to grant a stay. (65-58236-1709)

On June 11, 1953, Circuit Court of Appeals, Second Circuit, affirmed Judge Kaufman's denial of defendants' motion for a new trial. The Circuit Court also denied the defendants' application for a stay of execution. This action was taken without opinion. (65-58236-1746)

On June 13, 1953, one Fyke Farmer, attorney, submitted a 60-page petition for a writ of habeas corpus before Judge Edward Dimock, District Judge, Southern District of New York, requesting the release of Julius and Ethel Rosenberg.

It is noted that Farmer had attempted, in the past, to file papers in the Rosenberg case. He was described as an attorney from Tennessee who had interested himself in the case and who claimed to have attempted to have Bloch bring up certain points of law. Farmer indicated that Bloch had refused to follow his advice and, therefore, he, Farmer, was acting as an independent attorney. One of the points raised by Farmer on this motion was that the Rosenbergs were denied a fair trial, inasmuch as Exhibit 8 was impounded at the trial and witnesses were excluded. (It is noted that Exhibit 8 was the sketch prepared by David Greenglass of the atomic bomb. It should also be noted that this exhibit was impounded, and the witnesses were excluded on motion of defense counsel during the trial.) Farmer also raised the point that the Rosenbergs should have been sentenced under the Atomic Energy Act of 1946 instead of the Espionage Act and that pursuant to the terms of the Atomic Energy Act they could not have received a death sentence unless the jury so recommended. This motion was referred to Judge Kaufman. On June 15, Judge Kaufman denied the motion filed by Fyke Farmer. In denying this motion Judge Kaufman stated as follows: "The defendants have been represented throughout this litigation by counsel of their own choice, Mr. Emanuel H. Bloch. One Irwin Edelman of Los Angeles, California, the petitioner, represented by one Fyke Farmer of Tennessee and two other lawyers strange to this litigation, seeks a writ

of habeas corpus on behalf of Julius and Ethel Rosenberg. The papers submitted show not only no authorization for the petitioners to act, but it is quite clear that the petitioner and his counsel are nothing short of intruders and interlopers in this litigation."

U. S. SUPREME COURT DENIES STAY OF EXECUTION

On June 13, 1953, Emanuel Bloch, attorney for the Rosenbergs, appeared before Supreme Court Justice Jackson and made a motion for a stay of execution. Justice Jackson heard the arguments from both Bloch and the Government attorneys and he then referred the matter to the full court to be heard on June 15, 1953. On June 15, 1953, the full Supreme Court denied the application for a stay of execution made by the Rosenbergs by a five to four decision.

On June 15, 1953, following the denial by the United States Supreme Court for a stay of execution, the defense attorney made an oral application for a writ of habeas corpus. This application for leave to file the writ was denied by the Supreme Court. The basis for this application for a writ of habeas corpus was as follows: (a) The Rosenbergs were convicted without due process of law in violation of the Fifth Amendment; (b) Perjured testimony of certain witnesses, which could not have been innocently accepted by the prosecution. Specific reference was made to the testimony of the Greenglasses. (c) The death sentence should only have been given had secret information actually

been transmitted to Russia. (d) Lack of intelligence and education of David Greenglass to pass the information concerning the processes involved in constructing the A-bomb.

JUSTICE DOUGLAS GRANTS STAY (65-58236-1745, 1752)

On June 16, 1953, Justice Douglas of the Supreme Court requested the Rosenberg defense attorneys to submit their petitions for a stay of execution in writing. On this date, Daniel G. Marshall, attorney, Los Angeles, and Fyke Farmer, attorney, appeared at the Supreme Court and attempted to file petitions for a writ of habeas corpus on behalf of the Rosenbergs. Their action in attempting to file these writs was opposed by Emanuel H. Bloch and John F. Finerty, attorneys for the Rosenbergs. These petitions for a writ of habeas corpus were heard by Mr. Justice Douglas in his chambers. The main point made by Farmer and Marshall in their petition was that under the 1946 Atomic Energy Act the death sentence might be imposed only upon the recommendation of the jury and then only when the defendants were charged with intent to injure the United States. Farmer argued that, inasmuch as the conspiracy for which the Rosenbergs were convicted commenced in 1944 and existed until 1950, the provisions of the Atomic Energy Act applied to the sentencing rather than the provisions of the Espionage Act of 1917. On June 17, 1953, Mr. Justice Douglas granted a stay of execution in order that the question raised by Farmer could be argued in the District Court and more evidence received in order to

determine whether there was merit to Farmer's argument. In granting this stay, Mr. Justice Douglas stated, "It is important that the country be protected against the nefarious plans of spies who would destroy us. It is also important that before we allow human lives to be snuffed out we be sure - emphatically sure - that we act within the law. If we are not sure, there will be lingering doubts to plague the conscience after the event. I have serious doubts whether this death sentence may be imposed for this offense except and unless a jury recommends it. The Rosenbergs should have an opportunity to litigate this issue." Mr. Justice Douglas stated that he felt it was a substantial legal question which should be decided after full argument and deliberation. (65-58236-1896)

On June 18, 1953, R. Boland Ritche, Attorney, Wichita, Kansas, filed by mail with the United States District Court, Southern District of New York, a petition for a writ of habeas corpus in which the allegation was made that the indictment in this case should be dismissed because it contained allegations that acts of espionage were committed in time of war and in time of peace and that the defendants should have been convicted under the peacetime provisions of the espionage statutes which carry a maximum sentence

of thirty years imprisonment. Judge Sulvester J. Ryan, Southern District of New York, denied this motion on June 18, 1953. (65-58236-1879)

On June 18, 1953, Arthur Kinoy, attorney, New York City, filed on behalf of Emanuel Bloch a petition for a stay of execution based on the argument of Fyke Farmer that the Atomic Energy Act superseded the Espionage law of 1917. This petition requested the Court to (a) vacate the sentence and dismiss the indictment, or, (b) vacate sentence and direct a new trial, or (c) grant a full hearing on the allegations contained therein. This motion was denied by Judge Kaufman in all respects on June 19, 1953, prior to the execution of the Rosenbergs. (65-58236-1859)

U. S. SUPREME COURT VACATES STAY OF EXECUTION

On June 19, 1953, a special session of the United States Supreme Court, which had been called by Chief Justice Vinson in order to review the stay granted by Mr. Justice Douglas on June 17, 1953, vacated the stay granted by Mr. Justice Douglas. The opinion of the Court was written by Mr. Justice Jackson with whom there were joined Chief Justice Vinson, Mr. Justice Reed, Mr. Justice Burton, Mr. Justice Clark and Mr. Justice Minton. In his opinion Mr. Justice Jackson stated, "This stay was granted upon such legal ground that this Court cannot allow it to stand as the basis upon which lower courts must conduct further

long-drawn proceedings. The sole ground stated was that the sentence may be governed by the Atomic Energy Act of August 1, 1946, instead of the earlier Espionage Act. The crime here involved was commenced June 6, 1944. This was more than two years before the Atomic Energy Act was passed. All overt acts pertaining to atomic energy on which the Government relies took place as early as January, 1945. The Constitution, Article I, Section 9, prohibits passage of any ex post facto Act. If Congress had tried in 1946 to make transactions of 1944 and 1945 offenses, we would have been obliged to set such an Act aside. To open the door to retroactive criminal statutes would rightly be regarded as a most serious blow to one of the civil liberties protected by our Constitution. Yet the sole ground of this stay is that the Atomic Energy Act may have retrospective application to conspiracies in which the only overt acts were committed before that statute was enacted. We join in the opinion by Mr. Justice Clark and agree that the Atomic Energy Act does not, by text or intention, supersede the earlier Espionage Act. It does not purport to repeal the earlier Act, nor afford any grounds for spelling out a repeal by implication." Mr. Justice Jackson also stated, "This stay is not and could not be based upon any doubt that a legal conviction was had under the Espionage Act. Application here for review of the Court of Appeals' decision affirming the

conviction was refused, 344 U. S. 838, and rehearing later denied, 344 U. S. 889. Later, responsible and authorized counsel raised, among other issues, questions as to the sentenc and an application was made for stay until they could be heard. The application was referred to the full Court, with the recommendation that the full Court hold immediate hearing and as an institution make a prompt and final disposition of all question

Mr. Justice Jackson continued, "Thus, after being in some form before this Court over nine months, the merits of all questions raised by the Rosenbergs' counsel had been passed upon, or foreclosed by denials. However, on this application we have heard and decided a new contention, despite the irregul manner in which it was originally presented."

In discussing the manner in which this stay was granted, Mr. Justice Jackson said, "This is an important procedural matter of which we disapprove. The stay was granted solely on the petition of one Edelman, who sought to appear as 'next friend' of the Rosenbergs. Of course, there is power to allow an appearance in that capacity, under circumstances such as incapacity or isolation from counsel, which make it appropriate to enable the Court to hear a prisoner's case. But in these circumstances the order which grants Edelman's standing further to litigate this case in the lower court cannot be justified. Edelman is a stranger to the

Rosenbergs and to their case. His intervention was unauthorize by them and originally opposed by their counsel. What may be Edelman's purpose in getting himself into this litigation is not explained, although inquiry was made at the bar. It does not appear that his own record is entirely clear or that he would be a helpful or chosen companion. The attorneys who appear for Edelman tell us that for two months they tried to get the authorized counsel for the Rosenbergs to raise this issue but were refused. They also inform us that they have eleven more points to present hereafter, although the authorize counsel do not appear to have approved such issues. The Rosenbergs throughout have had able and zealous counsel of thei own choice. These attorneys originally thought this point had no merit and perhaps also that it would obscure the better points on which they were endeavoring to procure a hearing here Of course, after a Justice of this Court had granted Edelman standing to raise the question and indicated that he is impressed by its substantiality, counsel adopted the argument and it became necessary for us to review it....The lawyers who have ably and courageously fought the Rosenbergs' battle throughout then listened at this bar to the newly imported counsel make an argument which plainly implied lack of understanding or zeal on the part of the retained counsel. They

simply had been elbowed out of the control of their case." Continuing, Mr. Justice Jackson stated "....this precedent presents a threat to orderly and responsible representation of accused persons and the right of themselves and their counse to control their own cases. The lower court refused to accept Edelman's intrusion but by the order in question must accept him as having standing to take part in, or take over, the Rosenberg case. That such disorderly intervention is more likely to prejudice than to help the representation of accused persons in highly publicized cases is self-evident. We discountenance this practice." In discussing the death sentence, Justice Jackson said, "Vacating this stay is not to be construed as indorsing the wisdom or appropriateness to this case of a death sentence. That sentence, however, is permitted by law and, as was previously pointed out, is, therefore, not within this Court's power of revision."

Mr. Justice Clark wrote a separate opinion in which he was joined by the Chief Justice and Mr. Justices Reed, Jackson, Burton and Minton. In his opinion Mr. Justice Clark stated as follows: "Seven times now have the defendants been before this Court. In addition, the Chief Justice, as well as individual Justices, have considered applications by the defendants. The Court of Appeals and the District Court have likewise given careful consideration to even more numerous

applications than has this Court. The defendants were sentenced to death on April 5, 1951. Beginning with our refusal to review the conviction and sentence in October, 1952, each of the Justices has given the most painstaking consideration to the case. In fact, all during the past Term of this Court one or another facet of this litigation occupied the attention of the Court. At a Special Term on June 15, 1953, we denied for the sixth time the defendants' plea. The next day an application was filed contending that the penalty provisions of the Atomic Energy Act governed this prosecution;.....
Mr. Justice Douglas, finding that the contention had merit, granted a stay of execution." Mr. Justice Clark continued, "Human lives are at stake; we need not turn this decision on fine points of procedure or a party's technical standing to claim relief. Nor did Mr. Justice Douglas lack the power and, in view of his firm belief that the legal issues tendered him were substantial, he even had the duty to grant a temporary stay. But for me the short answer to the contention that the Atomic Energy Act of 1946 may invalidate defendants' death sentence is that the Atomic Energy Act cannot here apply.... Where Congress by more than one statute prescribes a private course of conduct, the Government may choose to invoke either applicable law;....Nor can the partial overlap of two statutes work a pro tanto repealer of the earlier Act."

Mr. Justice Clark also stated as follows: "Section 10(b)(6) of the Atomic Energy Act itself, moreover, expressly provides that Section 10 'shall not exclude the applicable provisions of any other laws....,' an unmistakable reference to the 1917 Espionage Act. Therefore, this section of the Atomic Energy Act, instead of repealing the penalty provisions of the Espionage Act, in fact, preserves them in undiminished force."

Mr. Justice Clark continued, "In any event, the Government could not have invoked the Atomic Energy Act against these defendants. The crux of the charge alleged overt acts committed in 1944 and 1945, years before the Act went into effect. While some overt acts did, in fact, take place as late as 1950, they related principally to defendants' efforts to avoid detection and prosecution for earlier deeds. Grave doubts of unconstitutional ex post facto criminality would have attended any prosecution under that statute for transmitting atomic secrets before 1946. Since the Atomic Energy Act thus cannot cover the offenses charged, the alleged inconsistency of its penalty provisions with those of the Espionage Act cannot be sustained."

Mr. Justice Clark concluded his opinion by stating, "Our liberty is maintained only so long as justice is secure. To permit our judicial processes to be used to obstruct the

course of justice destroys our freedom. Over two years ago the Rosenbergs were found guilty by a jury of a grave offense in time of war. Unlike other litigants they have had the attention of this Court seven times; each time their pleas have been denied. Though the penalty is great and our responsibility heavy, our duty is clear." (65-58236-1902)

On June 19, 1953, the Supreme Court of the United States denied a motion for reconsideration of the question of the Court's power to vacate Mr. Justice Douglas's stay order and to hear oral argument.

On June 19, 1953, the defendants' motion for a further stay of execution was denied by the United States Supreme Court.

On June 19, 1953, Mr. Justice Frankfurter turned down Emanuel Bloch's petition for a writ of mandamus to the Circuit Court to grant a stay, pending appeal. Mr. Justice Jackson also viewed this petition and said that he would talk with Bloch but would deny the petition. (65-58236-1845)

On June 19, 1953, following the decision of the Supreme Court, Dwight D. Eisenhower, President of the United States, refused to grant executive clemency to Julius and Ethel Rosenberg. In this refusal, the President stated, "Since its original review proceedings in the Rosenberg case by the Supreme Court of the United States the courts have

16

considered numerous further proceedings challenging the Rosenbergs' conviction and the sentence imposed. Within the last two days, the Supreme Court, convened in a special session, has again reviewed a further point which one of the justices felt the Rosenbergs should have an opportunity to present. This morning the Supreme Court ruled that there was no substance to this point. I am convinced that the only conclusion to be drawn from a history of this case is that the Rosenbergs have received the benefit of every safeguard which American justice can provide. There is no question in my mind that their original trial and the long series of appeals constitute the fullest measure of justice and due process of law. Throughout the innumerable complications and technicalities of this case, no judge has ever expressed any doubt that they committed most serious acts of espionage. Accordingly, only most extraordinary circumstances would warrant executive intervention in this case. I am not unmindful of the fact that this case has aroused grave concern both here and abroad. In this connection, I can only say that by immeasurably increasing the chances of atomic war the Rosenbergs may have condemned to death tens of millions of innocent people all over the world. The execution of two human beings is a grave matter, but even graver is the thought of the millions of dead whose death may be directly attributable to what these spies have done."

The President continued, "When democracy's enemies have been judged guilty of a crime as horrible as that of which the Rosenbergs were convicted; when the legal processes of democracy have been marshaled to their maximum strength to protect the lives of convicted spies; when in their most solemn judgment the tribunals of the United States have adjudged them guilty and the sentence just, I will not intervene in this matter."

THE ROSENBERGS' LAST APPEAL

On June 19, 1953, Judges Frank and Swan of the Circuit Court of Appeals affirmed the decision of Judge Kaufman denying a stay of execution earlier that day.

At 8:05 p.m. on June 19, 1953, Julius Rosenberg was executed at Sing Sing Prison, Ossining, New York. At 8:15 p.m. on the same date, Ethel Rosenberg was executed at Sing Sing Prison.

COMMUNIST-STYLE JUSTICE

By contrast with the American concept of justice with its extensive procedure for appeal, the lack of appellate opportunities under Communist-style justice stands out. ("Time" magazine, August 31, 1936 at PP. 16-17) "Since Stalin," by Borus Shub and Bernard Quint, New York 1951 at P. 71) This is strickly in keeping with the Russian idea of "swift justice." This view was demonstrated in the "trial" of Marshal Tukhacheusky and eight other Red Army leaders in Russia in June, 1938. On June 12, 1938, the Soviet press announced that nine leading generals of the Red Army were tried, convicted and executed within forty-eight hours of their arrest.

In the Russian purge of August, 1936, involving Gregory Zinoviev, former president of the Communist International, and Leon Kamenev, former Politburo members, as well as fourteen others, arrests were made on August 15, 1936, The trial began August 19, 1936. Sentences of death were meted out August 25, 1936. The next day, the "judgment" of the Court was carried out.

Only recently the Communist reaffirmed their belief in their concept of "swift justice." It need only be pointed out that exactly fourteen days elapsed between the time that Rudolf Slansky and thirteen other Czechoslovakian Communist leaders went on trial at Prague in November, 1952, and the day that eleven of these defendants were hanged and the other

166

three sentenced to life imprisonment. The eleven condemned men went to the gallows six days after they were condemned. ("Time" magazine, December 1952)

PART IV

ATTEMPTED MARTYRDOM

After the execution of the Rosenbergs, an attempt was made to elevate the atom-spies to the position of martyrdom. Even in death the NCSJRC did not cease its anti-American propaganda activities.

An item of interest which occurred after the execution of the Rosenbergs appeared in the June 21, 1953, issue of the "New York Journal American." The mothers of the Rosenbergs had returned to their respective apartments in New York City. Representatives of the NCSJRC were on hand at both homes. They were chased away at the home of Mrs. Tessie Greenglass, Ethel's mother.

According to this news report, two women who said they were sent by the Committee attempted to gain admittance but were refused. Outside Mrs. Greenglass' home a crowd of about 50 stood quietly. One man reportedly said, "I've known that couple all o their lives. They are absolutely no good. They broke their mothers' hearts and ruined the lives of their kids. They just wa to make martyrs of themselves for the Reds in Russia."

This news account further reported that the mother of Julius Rosenberg had been accompanied to her home on the night o the execution by a girl who announced, "I'm from the National Committee." This girl refused to allow a news photographer to take her picture. A short time thereafter another woman appeare at the door of Mrs. Rosenberg and rapped on the door for admittance saying, "It's Mary, from the Committee." She was admitted. A short time later, another woman appeared at the

16

Rosenberg door. She stated, "I'm Emily. I was sent here by the Committee." She also gained admittance.

NATIONAL COMMITTEE TO SECURE JUSTICE IN THE ROSENBERG CASE AND THE ROSENBERG FUNERAL

The funeral arrangements for the Rosenbergs were carefully planned by the NCSJRC. The NCSJRC issued invitations to the funeral service, set aside a press section in the chapel for reporters and organized the cortege to the cemetery.

The funeral for the Rosenbergs was held on Sunday, June 21, 1953, in Brooklyn, New York, where approximately 950 persons attended the service within the chapel while an estimated 10,000 persons stood outside on the sun-baked streets listening to the service over a loud-speaker system provided by the committee.

Following a brief religious service, the proceedings became a Communist political attack on the United States, its leaders and its institutions.

In delivering his eulogy, Rabbi Abraham Cronbach, Professor Emeritus of the Hebrew Union College in Cincinnati, Ohio, said, "We must eschew hatred. We must disdain rancor," and in quoting the Hebrew Scripture he said, "Thou shalt not revenge thou shalt bear no grudge." Of the Government, Rabbi Cronbach said, "Let us give them credit for this much, they did what they thought right." The mourners in the packed funeral chapel hissed the Rabbi for his statements. The tirade at the funeral by Defense Attorney Emanuel H. Bloch was vicious. Bloch said, "I place the murder of the Rosenbergs at the door of President Eisenhower, Attorney General Brownell and J. Edgar Hoover. The

is not American justice. America today is living under the hand of a military dictator garbed in civilian attire."

Following the same line the National Committee of the Communist Party issued a statement on June 23, 1953, signed by William Z. Foster, Elizabeth Gurley Flynn and Pettis Perry charging that the Rosenbergs were "foully murdered by the joined forces of President Eisenhower, Attorney General Brownell and J. Edgar Hoover." In the accusation, the Communist leaders called for a "halt to the Hitlerization of America by the Eisenhower - Brownell - John Edgar Hoover forces," who were described as working hand-in-glove with a "swastika-minded" Senator, Joseph McCarthy, and "his goons." The Communist Party statement charged that the Rosenbergs were "brutually murdered by an act of Fascist violence and described the Rosenberg trial as a mockery of truth and justice. The U.S. Supreme Court, the statement contended, was illegally reconvened to take up the stay of execution granted to Rosenbergs by Mr. Justice Douglas and "it met with a pistol to it head in the form of impeachment threats, in an atmosphere of a Southern lynch town."

Thus ended the largest Communist-inspired propaganda and pressure campaign in our Nation's history to save two Communi spies. Now that the Rosenbergs are dead, world Communism will probably continue its propaganda campaign to martyrize them as victims of "American Imperialism."

But the Rosenbergs in the eyes of the non-Communist wor were guilty of the most heinous crime an individual could commit-

they had betrayed their country's secrets.

Their slavish devotion to their Russian masters made a mockery of the love owed to their parents and children.

In imposing the death sentence, Judge Kaufman declared "Indeed, the defendants, Julius and Ethel Rosenberg, placed devotion to their cause above their own personal safety and were conscious they were sacrificing their own children should their misdeeds be detected- - - -all of which did not deter them from pursuing their cause. Love for their cause dominated their lives - it was even greater than their love for their children

AN AGE-OLD COMMUNIST TRICK

The formation of a Communist front to make martyrs of the Rosenbergs was in reality in keeping with the age-old Communist trick of using as a vehicle of Red propaganda some contemporaneous event.

If the American public is now sufficiently aware of this Communist ruse so as to recognize future propaganda efforts of the Communist, then some good has resulted from the Red's devious schemes. Americans in the future will be alerted to handling American justice in the American way without it becoming a Communist propaganda springboard.

Douglas Impeachment Move Attacked in One-Hour Hearing

Walter Says Wheeler's Motion Helps Reds; Turpitude Charge Dropped

By Allen Drury

A House judiciary subcommittee adjourned today after hearing only one hour of testimony by Representative Wheeler, Democrat, of Georgia, on his resolution to impeach Supreme Court Justice Douglas.

Chairman Graham, Republican, of Pennsylvania, said the subcommittee probably would report next Tuesday to the full Judiciary Committee.

The sudden end came after Mr. Wheeler was told by a fellow House member that his attempt to impeach Justice Douglas gave the Communists a major propaganda weapon at the time of the execution of atom spies Julius and Ethel Rosenberg.

The Georgia Congressman introduced an impeachment resolution after Justice Douglas granted a stay of execution to the Rosenbergs.

Mr. Wheeler defended his resolution at the hearing, but Representative Walter, Democrat, of Pennsylvania and other committee members were critical.

Mr. Wheeler began his statement by backing away from a charge of "moral turpitude" which he made against Justice Douglas in a House speech yesterday. At that time, he said the justice had been involved in a divorce case in Portland, Oreg. Before the subcommittee today, he said he had based his statement on material he read in the newspapers. He said he considered it "unfortunate that the least serious charge I held against Justice Douglas got the most play."

"The implication carried in th

(See DOUGLAS, Page A-3.)

INDEXED-6[illegible]

53 JUL 30 1953

Tolson
Ladd
Nichols
Belmont
Clegg
Glavin
Harbo
Rosen
Tracy
Gearty
Mohr
Winterrowd
Tele. Room
Holloman
Sizoo
Miss Gandy

LITIGATION

Times-Herald
Wash. Post
Wash. News
Wash. Star A
N.Y. Herald Tribune
N.Y. Mirror

Date: JUN 30 1953

Douglas

(Continued From First Page.)

newspaper story was false," Mr. Wheeler said. "The divorce proceedings in Portland did not involve Justice Douglas."

"Did you look into the charge yourself?" Mr. Walter asked.

"No," Mr. Wheeler replied.

"Isn't that a rather loose way of attacking the integrity of a justice of the Supreme Court?" Mr. Walter demanded.

Mr. Wheeler said that to him the newspaper accounts indicated something which might tend to bring discredit on the court.

"You realize," said Subcommittee Chairman Graham, Republican, of Pennsylvania, "that what you have quoted up to this moment would be mere hearsay in any court of law."

Mr. Wheeler said he thought the charge of "treason" might stand up better, but on this point he again ran into trouble from the committee.

Mr. Wheeler said he thought Justice Douglas had made statements similar to those "put out by the propaganda artists of the Kremlin." It was then that Mr. Walter told him that he would be surprised at the propaganda value to the Communists of the impeachment proceedings at the time the Rosenbergs were awaiting execution.

Mr. Wheeler said he felt Justice Douglas' granting of a stay of execution was "an impulsive yielding to a clamorous partisan group). He asserted that the justice delivered a printed statement on the case only one day after he had heard the appeal by the Rosenberg lawyers. He said he did not want to imply there was anything wrong about this, but it looked peculiar to him.

"If your interpretation is correct that would be malpractice, wouldn't it?" Mr. Walter asked.

Mr. Wheeler said he assumed so. Mr. Walter pointed out that the framers of the Constitution had rejected malpractice as a *ground for removing a judge.* Instead, he said, they granted judges tenure "during good behavior."

"Unless you have more than you presented to the House," Mr. Walter said, "I frankly believe you haven't made out a case which I would feel justified in presenting to the House."

Mr. Wheeler conceded that under past definitions of treason, Justice Douglas' actions might not be encompassed, but that if treason were to be interpreted "in a liberal fashion" they might be.

Asked to Cite Overt Act.

"Can you cite any overt action he has committed which would indicate treasonable activity?" Mr. Graham asked. Mr. Wheeler said he didn't think so unless the definition of treason could be "stretched."

"We believe in the right of free speech and the right of a justice of the Supreme Court to express himself," Mr. Graham said, "Where has he said anything treasonable?"

Mr. Wheeler explained that he thought Mr. Douglas as a Supreme Court justice should be "a little more careful about providing weapons for psychological warfare," than if he were a private citizen.

When Mr. Wheeler cited a speech Justice Douglas made in 1951 critical of some aspects of American foreign policy, Mr. Walter remarked bluntly:

"If everyobdy who held those views were incarcerated, the population would be sadly depleted. It seems to me that has a very familiar ring."

Depth of Charges Mentioned.

Although subcommittee members did not say what action they would recommend, Mr. Graham at one point in the hearing remarked to Mr. Wheeler:

"I'm afraid that, as a layman, you do not fully comprehend the depth of these charges in the legal sense that we, as lawyers, know and understand."

Mr. Wheeler concluded his testimony by saying that, whether or not the subcommittee recommended impeachment, he believed his resolution would still have served a good purpose. He said that if it did no more than focus attention on the need for tightening up the law "it will have accomplished something."

Mr. Walter remarked that the committe's files are full of impeachment proposals, mostly by unsuccessful litigants who think judges ought to be ousted.

"This isn't a novel experience for us," he remarked dryly.

Other Specifications.

In his House speech yesterday, Mr. Wheeler listed these other specifications to support his charge of high crimes and misdemeanors warranting impeachment:

1. Conduct unbecoming an associate justice of the court.
2. Action tending to bring the court into disrepute.
3. Public statements by Mr. Douglas indicating he had prejudged cases.
4. Conspiracy.

On the score of moral turpitude, Mr. Wheeler asked the House to subpoena records of a divorce case in Portland, Oreg. in which he said Mr. Douglas figured.

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

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

☑ Deleted under exemption(s) 62 67D with no segregable material available for release to you.

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

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

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

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

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

_____

_____

☐ For your information: _____

_____

☑ The following number is to be used for reference regarding these pages:
100-3-68-928

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

XXXXXX
XXXXXX
XXXXXX

FBI/DOJ

No. 3

FD-20

CONFIDENTIAL

FEDERAL BUREAU OF INVESTIGATION

THIS CASE ORIGINATED AT NEW YORK

REPORT MADE AT	DATE WHEN MADE	PERIOD FOR WHICH MADE	REPORT MADE BY
NEW YORK	OCT 18 1955	7/7,28;8/4,24-5;9/19-30/55	ALEXANDER M. GANSKY

TITLE	CHARACTER OF CASE
AMERICAN LITHUANIAN WORKERS LITERARY ASSOCIATION, aka: Amerikos Lietuviu Darbininku Literaturos Draugija, ALDLD, LLD	INTERNAL SECURITY - R & LITHUANIA INTERNAL SECURITY ACT OF 1950

SUMMARY REPORT SUPPLEMENTAL PROSECUTIVE

The American Lithuanian Workers Literary Association is substantially directed, dominated, or controlled by the Communist Party, USA, a Communist action organization so designated by the Subversive Activities Control Board on and is primarily operated for the purpose of giving aid and support to the Communist Party.

The American Lithuanian Workers Literary Association was in existence on or subsequent to September 23, 1950, and has failed to register with the Attorney General as provided in Section 7 (B) of the Internal Security Act of 1950. [redacted]

0-17 NY page 5, exhibit 2 april 7, should be april 27

A24690

11-27-85

NO ENCL. PER

COPIES DESTROYED

R 662 JUN 23 1961

AGENCY RAB exhibit copy A

REQ. REC'D

DATE FORW. 11/55

HOW FORW.

ENCLOSURE ... RAMP

86-1840CV Reviewed pgs 1, 53 only ... 53 are unclassified

31

APPROVED AND FORWARDED:

SPECIAL AGENT IN CHARGE

DO NOT WRITE IN THESE SPACES

100-62545-244

COPIES OF THIS REPORT

4 - Bureau (100-62545) (Encls 112)

3 - New York (100-45453)

INDEXED - 54

RECORDED - 83

NOV 1 1955

11-4-55 141

339

CONFIDENTIAL

175

NY 100-45453

ALDLD

The April-May-June, 1954, issue of "Sviesa" on page 42-46, contains an article captioned: "For Women About Women" by A. BIMBA.

In this article the following is stated on page 46:

"...and finally like in the darkness of the break of day, in the gloomy night of our life, ETHEL ROSENBERG shone in the night. This young mother of two children went to death with her head raised high for her ideas, her ideals. There will come a time, when there will be no city in America which will not have a statue of ETHEL ROSENBERG in a square."

Exhibit Number 40:
"Sviesa" issue of April-May-June, 1954
pages 42-46, article: "For Women About Women" by A. BIMBA

Witness: Librarian of Congress,
Library of Congress,
Washington, D. C.
(or designated representative)

CP Line

"The end of the ROSENBERG case is not yet. The innocent when legally murdered are sometimes given a strangely powerful force that in the fullness of time helps move millions into understanding and action."

Exhibit Number 41:
"Masses and Mainstream",
September, 1954, page 50,
article "The Unconquerable"
by RICHARD O. BOYER

Witness: Librarian of Congress,
Library of Congress,
Washington, D.C.
(or designated representative)