FILE DESCRIPTION

NEW YORK FILE

SUBJECT Abraham Brothman

FILE NO. 100-96341

VOLUME NO. Subfile

SERIALS 1A10
thru
1A18

FREEDOM OF INFORMATION AND PRIVACY ACTS

SUBJECT: ETHEL ROSENBERG/JULIUS ROSENBERG

(ABRAHAM BROTHMAN)

NEW YORK FILE

FILE NUMBER: 100-96341

VOLUME NUMBER: SUB FILE

SERIALS: 1A10 THRU 1A18

FEDERAL BUREAU OF INVESTIGATION

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

VOLUME 2 (Culley Exhibits) NEW YORK FILES

Rev. by [illegible]

REVIEWED BY _____

File No: 100-96341 Re: Abraham Brothman

Date: 6/78 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1A	7-20-54	Exhibit envelope	1	1	
1B(12) to 1A(10)	8-16-50	Exhibit envelope with photostat of 4 checks deposited by Mr Moskowitz for bail	2	2	
1B(13) to 1A(11)	9-8-50	Exhibit envelope with copy notice of Defense motion for Bill of Particulars 9-11-50	2	2	
1B(14) to 1A(12)	9-18-50	Exhibit envelope with tables containing notes by Mr Moskowitz	19	19	Best copy possible
1B(15) to 1A(13)	10-11-50	Exhibit envelope with copy opinion denying Bill of Particulars	8	8	

FBI/DOJ

Inventory Worksheet
FD-003 (2-16-77)

VOLUME 2 (Bulky Exhibit) NEW YORK FILES

REVIEWED BY Sam Ay Mal

File No: 100-96341 Re: Abraham Brothman

Date: 6/78 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1B(19)to 1A(14)	1-8-51	Exhibit envelope with photostats of affidavits by Moskowitz to obtain return bail money	11	11	
1B(20)to 1A(15)	12-8-50	Exhibit envelope with copy examination in Supplementary Proceedings of Miriam Moskowitz	6	6	
1B(22)to 1A(16)	5-5-51	Photostat of Miriam Moskowitz appeal	25	25	
1B(23)to 1A(17)	5-9-51	Exhibit envelope with photostat of letter 4-29-51 from Friedman to N.A. Markowitz removed from A. Brothman in F.D.H.	8	8	Best copy possible

FBI/DOJ

Inventory Worksheet
FD-603 (2-18-77)

VOLUME 2 (Bulky Exhibit) NEW YORK FILES

Inv. by [illegible]

REVIEWED BY

File No: 100-96341 Re: Abraham Brothman

Date: 6/78 (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1B (2)					
1A (18)	7-27-51	Exhibit envelope with photostat decision Circuit Court of Appeals	7	7	

FBI/DOJ

1A SUPPLEMENT

10. Photostats of 4 checks, total amount $18,000 deposited by Moskowitz with Clerk, USDC for bail.
11. Notice of Defense motion to request bill of particulars on 9-11-50.
12. 12. Tablet containing longhand letters and notes and shorthand letters and notes and shorthand letters and notes and shorthand notes left by Miriam Moskowitz and Womens House of Detention.
13. Opinion filed 10-11-50 denying motion for bill of particulars.
14. Photostatic copies of affidavits filed by Clare Moskowitz to obtain return of $25,000 bail.
15. Examination in supplementary proceedings of Moskowitz held 12-7-50.
16. Photostatic copy of appeal filed on behalf of Moskowitz.
17. Photostatic copy of letter 4-29-51 from Jacob Freidus to W. A. Markowitz, removed from A. Brothman's person in F. D. R.
18. Photostatic copy of decision of Circuit Court of Appeals in case of US v Brothman & Moskowitz.

NOTE: The above exhibits have been transferred from bulky green sheet section per. inst. of SA Hugh Thomas Forsha, 7-15-54.

Date Received 8/16/50

From AUSA Roy M Cohn
(Name of contributor)

SDNY
(Address of contributor)

By J M Collins
(Name of Special Agent)

To Be Returned Yes ( )
No (✓)

Description: 4 checks, Total amount $18,000, ~~was~~ deposited by Mockowitz with Clerk, U.S.D.C. for bail

File No 100-96341 ~~1412~~ 1410

CASHIER'S CHECK

The Broadway National Bank

No. 30171

TO THE ORDER OF

Dollars

HUDSON COUNTY NATIONAL BANK

HUDSON COUNTY NATIONAL BANK ESTABLISHED 1851

2 August 1991

$ 1000.00

PAY TO THE ORDER OF

The Sum of $4000 and 00 CTS

CASHIER'S CHECK

NINTH FEDERAL SAVINGS AND LOAN ASSOCIATION

OF THE BOWERY AND THE BOWERY

No. 29366

A/C No. 57633 2 2 Kotkowitz

NEW YORK, N.Y. August 15 19 90

PAY TO THE ORDER OF Clerk, Bureau Motor Vehicles Department

$ 1000.00

EXACTLY $4000 AND 00 CTS DOLLARS

JEFFERSON NATIONAL BANK

NINTH FEDERAL SAVINGS AND LOAN ASSOCIATION

OF THE BOWERY AND THE BOWERY

No. 29365

A/C No. 57633 2 2 Kotkowitz

NEW YORK, N.Y. August 15 19 90

PAY TO THE ORDER OF Clerk, Bureau Motor Vehicles Department

$ 5000.00

EXACTLY $5000 AND 00 CTS DOLLARS

JEFFERSON NATIONAL BANK

Date Received 9/8/50

From AUSA Roy Cohn
(Name of contributor)

SDNY
(Address of contributor)

By T M Keller
(Name of Special Agent)

To Be Returned Yes ( )
No (✓)

Description: Notice of Defense motion to request bill of particulars on 9/11/50

File No. 100-96341-~~6~~ 1411

(Copy)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

C 133-106

-v-

ABRAHAM BROTHMAN and MIRIAM MOSKOWITZ,

Defendants.

----------x

S I R :

PLEASE TAKE NOTICE, that the undersigned will move this Court at the United States Court House, Foley Square, in the City of New York, County and State of New York, on the 11th day of September, 1950, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order requiring the United States to furnish the defendants herein, within a time to be specified therein, a written bill of particulars as to the following matters alleged in the indictment herein, as follows:

1. State the substance of the testimony given by Harry Gold before the Grand Jury with respect to the associations of Harry Gold with the defendants and with divers other persons, and let the Government state whether it claims such testimony was false, and if it does claim that such testimony was false, in what respects it was false.

2. State in what respects, and by what means the defendant, Abraham Brothman, urged, advised and persuaded Harry Gold to give false testimony before the Grand Jury.

3. Give the exact date on which Harry Gold testified before the Grand Jury, and state whether the Government claims the defendants committed any acts in furtherance of the alleged conspiracy after the date on which Harry Gold testified as aforesaid, and if so, what acts.

Dated: New York, September 5, 1950,

Yours etc.

WILLIAM L. MESSING
Attorney for Defendants
Office & P.O. Address

TO: IRVING H. SAYPOL, Esq.
United States Attorney
Foley Square
New York City

Date Received 9/18/50

From U.S. Marshal
(Name of contributor)

U.S. Court House
(Address of contributor)

By J. M. Collins
(Name of Special Agent)

To Be Returned Yes ( )
No (✓)

Description: Tablet containing longhand letters and notes and shorthand notes left by Miriam Moskowitz at Womens House of Detention

File No. 100-96341-~~1014~~ 1A12

Monday 8/7

Dear Chas,

Although I'll see you in court tomorrow I thought I'd write you anyhow.

I walk around with pencil & paper as constant companions. We have nothing to do all day long and the monotony of it drives the girls crazy. I do keep busy, learning, seeing much and trying to get an unfriendly influence in my morning. What appears to be seemingly little, to observe is really quite complicated — I chafe at my frustration in trying to understand the new speech I hear, the deep sad play of emotions, the smoldering, patient anger.

There are human things thoroughly forgotten by society and thoroughly alone except for each other. They are here for murder, robbery, "pushing dope" and anything else that's anti-social. How they came by their crimes are usually all stories of how the system fails them — a more vivid experiment of the

rotters of our society I can't imagine. Each knows she did wrong and each, except for the homicidists whose crimes were ~~thoroughly~~ unpremeditated, expects to return to her former ways, for what else is there for them to do? The next time they'll be smarter — and of that there is no doubt. Recidivists have secrets here and exchanged generously.

Remorse? Only for having been caught. The bitter longing to be free, the muted, haunting wail at night — "I wanna go home" — do not contradict the absence of remorse.

We rise at 6^30, breakfast at 7 — for about 10 to 15 minutes. A half hour is allotted to feed 4 corridors, 2 at a time. Back to our "rooms" at 7^30 until the morning count at 8 am, when the officer's shift changes. At 8 we are permitted out of our rooms, but not out of the corridor. We have nothing to do until lunch which is at 12 noon, unless one is fortunate to have visitors. Visiting is almost a heartbreaking affair — one's visitor stands behind a thick glass window, shouts

from 10-11

into a large telephone-like drum and one must keep one's ear and face atop the drum to hear and to speak. The voices come there secretly, and because all the other "hostesses" and visitors are lined up at listening posts each only about 3 ft apart, the din of the "conversations" is an effective enough damper on having visitors at all.

Lunch at 12 - so it is called. Food and how it is prepared is a relative triviality, to most people, but to these girls, no matter how poor or humble their environment, this food is impossible. Breakfast is simply cereal, "coffee" and bread with jam. It is called coffee, but one would never recognize it by its taste. Lunch is always soup, potatoes, another vegetable and some variation of meat — in its last stages of decay. Dinner, can be merely a dish of noodles, or rice, or macaroni; jello, tea. To supplement this meager food allowance, the more fortunate girls who have money will buy sandwiches, coffee, cakes, candy or an orange when the commissary comes

to the floor at 2 pm. To add to the general unjust treatment of the inmates, it should be recorded that the commissary's prices are generally 2 - 5% higher than on the outside, [illegible] commissary is run by Y.C.

The food is so badly prepared one often suspects deliberate sabotage in the kitchen. A cut will scandalize [illegible] the others in her corridor with the [illegible] announcement that for first time morning will consist of sausages, corn fritters and hot biscuits, — and how many eggs [illegible] will each want?

"When I get out....." Vague but comforting plans are ~~always~~ dreamed of. Good food is a prime anticipation, besides reunion with loved ones. 75% of the inmates are colored — most are under 25 — and many have children. The dope peddlers and the thieves see no future, to turning towards more "honest" work — they cannot earn enough at social labor to care for their needs and/or their dependents.

Officers are viewed with suspicion but ~~occasionally~~ the girls will concede an officer's genuine "[illegible]" if she has been decent to

them. Most officers, however, brush off the necessary human attitude by addressing one as "dear". With the salutation "Dear" she then forgets ~~to practitioner~~ that there is a human being she is talking to. Vague "rules" prevent an officer from doing more than a minimum to see that her charges are reasonably comfortable.

Women's House of Detention
10 Greenwich St. N.Y.C.
Thursday

Hella -

Thought I'd drop you a line - as the junior member of ABA chapter do. (?!)

My sister visited me every day this week except today — I had asked her not to bother today since there is anything special I have to tell her. Bail still seems indefinite but I have an idea it will nevertheless be forthcoming soon. For one thing, a friend of mine with whom I had a date the last night of that evil, never-to-be-forgotten day of arrest somehow managed to find Syl — and came forward with a thousand dollars. I am certain the girls is being treated in this or a like manner with if improbability shady — and the amount will be forfeit, if anything. The only thing bothering me is Ulster — if there were some means of telegraphing your instructions to the crew I would be happily here all day long with my visions of the bastards crowding into the lot, and with no concern for bail.

Max Lerner visited me yesterday and

the gang was the subject on the last picture. I understand your reactions and I do hope they are not lasting. There is no point in holding to them. When this is all over we'll straighten out the business and clean up all concerned with a fresh and very precautionary viewpoint. In the meantime the main job I see is to keep my perspective fast so that when I am released I'll have something to go back to.

It is terrible - this business of being a prisoner - and I would confess not the happiest situation to be in! (I'm sure I have your sympathy!) What appears is I'm in a community, among strangers and therefore relationships are uncertain and to understand is really quite complicated. I chafe at my frustration in trying to understand the new speech I hear, the unexpected use and flair of emotions, the frightening, lascivious images. There must be a better way to correct anti-social offenders - but they seem to grow wiser, but worse.

Of course you are in a federal ~~institution~~ and going has it that compared to our State institution (which mine is) it is all but a country club! I do believe, however, that the federal gov't has a far more constructive approach to the treatment of criminals than the states & state do. (My sociological background rising to the fore!)

At any event, I don't feel too bad about being here. For one thing, many aspects of the restrictions are a bit to life in the army. And from all the tales I hear and read, this is eminently and nearly as wearing.

I would not change places with a soldier today — even tho' they have all my love and prayers — for they are being killed, and my incarceration is only a temporary discomfort. And for another thing, what matters for writing (which is now within my grasp!) is not within my grasp — enough of this rambling. It just did I feel to detach myself from trivia because it is all so unbelievable — these last 12 days. Forgive me from rattling on like this.

[illegible] really wishing you, as to consider
[illegible] if we get this [illegible], it would
[illegible] a working with the office
[illegible] of having various [illegible]
[illegible] in my mind, [illegible]
[illegible] which [illegible]
[illegible] in [illegible] any [illegible]
[illegible] the [illegible] regarding [illegible]
[illegible] (I mean [illegible]
[illegible]) [illegible]
[illegible] very good [illegible] to have
[illegible] and [illegible]
[illegible] we could show [illegible]
[illegible] [illegible]
[illegible] [illegible] we will [illegible]
[illegible] advice [illegible]

In the meantime — [illegible]
[illegible]
[illegible] and [illegible]

Yours [illegible] —
[illegible]

letter to addressee?

[illegible] :-

1. If they are reluctant to [illegible] the contract what [illegible] we do?
2. [illegible] we [illegible] to have a lunch? [illegible]
3. If [illegible] IRC [illegible]
4. [illegible] to hold the [illegible]?
5. [illegible]?

[illegible] :-

Find out what the bank balance is.

Following will be done:-

15.66 Aug 10 (air conditioning)

84 Aug 14 (car)

Leave payable to National City Bank, [illegible] in my studio drawer (Blue folder)

Hospital – 11th also Xray lab etc.

2nd fl – Capt Collins, & Lieu. quarters, chapel (live there)

3rd fl – laundry, [illegible] room, commissary

4th fl – janitors, prisoners (187)

5th fl – court fl [illegible] (murders, robbery, feds.)

6th fl – men's cell also 7 & 8, [illegible] on 9.

10th fl – kitchen, officers' mess hall,

dentist & library

above 11 is roof.

6.30 rise

7 breakfast

7.30-8 am – morning count

No exit from cell block in morning except

to see nurse or to dispensary [illegible]

[illegible] Mon, Wed & Fri [illegible] money for canteen

visiting 10-11 weekdays

lawyers 9-5 weekdays

Dinner at 12 noon.

Back to cell block after dinner

1 pm – roof until 2 pm.

2.15 to 3 pm – commissary

3-4 pm afternoon count

4 – 5 [illegible] cells that need out of commission

5 – 330 [illegible]

6 – 8 pee (of [illegible])

9:00 lock up

9:00 lights out

Learning + Springing are Thursday

Inventory of Elec's supplies – Saturday.

[illegible]:-

1. [illegible] (2) [illegible]
2. E.C. + M.M. [illegible]
3. [illegible] [illegible]
4. [illegible]
5. [illegible] "[illegible]" [illegible]
6. [illegible]
7. [illegible]
8. [illegible]

[illegible]

Eddie Rugan
902 Flatbush Rd.
Brooklyn N.Y.

[illegible] 67600

(Eddie Rugan)

[illegible]

Notes

8-2-10

1. Sense and 'spirit into two remarkable cases?

2. [illegible] — the [illegible] [illegible]
[illegible]

3. [illegible]

4. [illegible]

[illegible]

Abandon hope all ye who enter here.....

(2) [illegible]

[illegible] providing [illegible] "h" [illegible]

[illegible]

[illegible]

Date Received 10/11/50

From AUSA Roy M Cohn
(Name of contributor)

S.D.N.Y.
(Address of contributor)

By T.H. Zeller
(Name of Special Agent)

To Be Returned Yes ( )
No (✓)

Description: Opinion filed 10/11/50 denying motion for bill of particulars

File No. 100-96341 ~~1A6~~ 1A13

#18935

United States District Court
for the
Southern District
of
New York

UNITED STATES OF AMERICA,

-v-

ABRAHAM BROTHMAN and MIRIAM MOSKOWITZ,

Defendants.

OPINION

EDWARD WEINFELD, D. J.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA, :

-v- :

C 133-106

ABRAHAM BROTHMAN and MIRIAM MOSKOWITZ, :

Defendants. :

- -X

This is a two count indictment. The first count charges conspiracy on the part of the defendants Abraham Brothman and Miriam Moskowitz. It alleges that between May 28th, 1947 and June 12th, 1950 they and one Harry Gold, a co-conspirator, but not named as a defendant, and other persons unknown to the Grand Jury, conspired to defraud the United States in the exercise of its governmental function of administering and enforcing the criminal laws of the United States and to influence and obstruct and impede the due administration of justice in violation of Title 18, United States Code, Section 241 (1946 Ed.).

Under this count it is further alleged that during the period of the conspiracy a Grand Jury for the Southern District of New York was conducting an investigation of possible violations of espionage and other Federal criminal statutes, which the defendants well knew. The indictment amplifies the

100-96341 ~~Dr 15~~ 1418

general charge by alleging four specific purposes as part of the conspiracy, as follows:

(1) The defendant, Abraham Brothman, and Harry Gold, the co-conspirator not named as a defendant in the indictment, would agree upon fictitious explanations of their associations with each other and divers other persons;

(2) When the defendant, Abraham Brothman, appeared before the Grand Jury, he would give false, fictitious, fraudulent and manufactured information concerning the aforementioned associations;

(3) Abraham Brothman would inform Harry Gold of the substance of his testimony before the Grand Jury, for the purpose of enabling the latter to conform his testimony thereto; and

(4) When Harry Gold appeared before the aforesaid Grand Jury he would give false, fictitious, fraudulent and manufactured information concerning the aforementioned associations, which would conform to the information theretofore given to said Grand Jury by the defendant, Abraham Brothman.

Thereafter the indictment sets forth four overt acts in pursuance of the conspiracy and to effect the objects thereof.

The second count charges that the defendant Brothman

100-96341-~~115~~ 1418

on July 31st, 1947, corruptly endeavored to influence, intimidate and impede Harry Gold, a witness before a Grand Jury in the Southern District of New York, and did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice therein. The general charge of obstruction is amplified by a charge that the defendant, knowing that Harry Gold had received a subpoena to appear before the Grand Jury inquiring into possible violation of the espionage laws, urged, advised and persuaded him to give false testimony before said Grand Jury. (Title 18, United States Code, Section 24, 1946 Edition).

The defendants moved for an order, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, directing the service of a bill of particulars of three specific items. They seek (1) the substance of the testimony given by Harry Gold before the Grand Jury with respect to his associations with the defendants and divers other persons, and whether the Government claims such testimony was false, and if so, in what respects; (2) the means by which it is alleged defendant Brothman urged, advised and persuaded Harry Gold to give false testimony before the Grand Jury; and (3) the exact date on which Gold testified before the Grand Jury and whether the Government claims the defendants committed any acts in furtherance of the alleged conspiracy after the date on which Gold testified, and if so, what acts.

100-96341_~~115~~ 1A1B

Rule 7(f) which is substantially a restatement of existing law on bills of particulars in criminal cases, authorizes the Court to direct the filing of a bill "for cause".

The requirement of an indictment is that (1) it shall advise the defendant of the nature and cause of the accusation in order that he may meet it and prepare for trial, and (2) after judgment be able to plead the record and judgment in bar of a further prosecution for the same offense. Wong Tai v. United States 273 U. S. 77; Bartell v. United States 227 U. S. 427, 431.

Sufficient cause is shown if the indictment fails to meet the foregoing requirements. In the instant case no affidavit of either defendant or the attorney representing them was submitted in support of the motion. No claim is made that the information enumerated in the motion is necessary to enable the defendants to prepare for trial and to meet the Government's case. On the contrary, when questioned by the Court upon the argument, counsel readily acknowledged that such was not the purpose of the motion. Thus there is eliminated any "cause" based upon a need for the particulars in preparation for trial and to avoid surprise thereat. Counsel's contention, however, was that the particulars are required to protect the defendants' rights against double jeopardy in the event of a conviction or an acquittal. Thus the claim of "cause" required before the motion may be granted is narrowed and is to be determined from the indictment.

Both counts of the indictment, the details of which are stated above, appear sufficiently clear and definite, the one charging the defendants with conspiracy to defraud the United States in the exercise of its governmental function in enforcing its criminal laws and to influence, obstruct and impede the administration of justice, and the other, charging Brothman with endeavoring to influence, intimidate and impede a witness and to obstruct the due administration of justice, to protect the respective rights of the defendants in bar of a further prosecution for the same offense upon a conviction or acquittal.

The indictment in the charging clause sets forth the specific violations of the particularly cited statute in substantially the statutory language. Ordinarily, an indictment in this form is sufficient. United States v. Kushner 135 Fed. (2d) 668. In the instant indictment the basic charge of violation of the statute is amplified in each count by giving information and particulars beyond that required to be stated. (Rule 7(c), Federal Rules of Criminal Procedure.) The conspiracy charge is elaborated and specified in five succeeding paragraphs prior to the allegations containing the overt acts.

So, too, in the case of the substantive count against the defendant Brothman. The indictment in its charging paragraph sufficiently meets the requirements of law; and here,

100-96341-~~110~~ 1418

too, the Grand Jury amplified the charge by setting forth in three succeeding paragraphs details which essentially give the defendant particulars as to the nature of the offense and the crime charged.

To grant this motion would require the Government to furnish its evidence to the defendants in advance of trial. Moreover, in view of the request for the testimony of Harry Gold before the Grand Jury, it would mean more than directing the filing of a bill of particulars. It would be tantamount to granting a partial inspection of the Grand Jury minutes. While the Court has the power to do so, it should rarely be exercised. No sufficient reason has been shown to justify it in this instance.

The motion is denied in all respects.

Dated: October 10th, 1950.

U.S.D.J.

100-96341-~~[illegible]~~ 1418

Date Received 1/8/51

From AUSA Paul RAO
(Name of contributor)

S.D.N.Y.
(Address of contributor)

By T H Zoeller
(Name of Special Agent)

To Be Returned Yes ( )
No (✓)

Description:
Photostatic copies of affidavits filed by Clare Mockowitz to obtain return of 25,000 bail.

File No. 100-96341 ~~[illegible]~~ 1A14

December 21st, 1950

TO WHOM IT MAY CONCERN:

I am an uncle of Clara Moskowitz and Miriam Moskowitz, being the brother of their mother, Rose H. Moskowitz. In August, 1950, I loaned to my niece, Clara Moskowitz, the sum of Four Thousand Dollars which represented money I obtained by cashing in Savings Bonds which belonged to me. The money was to be used by my niece, Clara Moskowitz, as security for bail for Miriam Moskowitz and was to be returned to me by Clara Moskowitz when said bail was returned to her.

Albert Harrison
ALBERT HARRISON

gned before me this
th day of December 1950.
Maximilian Friedman
Notary Public

[illegible]

[illegible]

[illegible]
[illegible]
[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF SUPPLEMENTARY
PROCEEDINGS

UNITED STATES OF AMERICA

v. [illegible] Judgment Creditor

[illegible]

[illegible]
[illegible] POSKOWITZ

Defendant-Judgment Debtor

AFFIDAVIT

[illegible]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.
SOUTHERN DISTRICT OF NEW YORK }

[illegible] POSKOWITZ, being duly sworn, deposes and says that he is the plaintiff-judgment creditor in the above-entitled action, [illegible] POSKOWITZ and the defendant-judgment debtor, [illegible] POSKOWITZ, [illegible] Monroe, [illegible] Boulevard, Bayonne, New Jersey.

[illegible] the [illegible] and [illegible] judgment in the [illegible] of $25,000.00, [illegible] copy of which is annexed hereto.

That on August 26, 1960, the defendant [illegible] the [illegible] United States District Court for the Southern District of New York [illegible] POSKOWITZ, [illegible] Docket No. [illegible]-609, the sum of $25,000.00 [illegible] for which he was [illegible] to pay [illegible] 6/8/62 [illegible] to [illegible] Deputy [illegible].

That [illegible] of the [illegible] sum of $25,000.00 [illegible] the money of [illegible] POSKOWITZ, [illegible] $5,000.00 [illegible] sum of $25,000.00 as the money of your deponent and [illegible] Washington [illegible] Federal Savings and Loan Association of [illegible], 1[illegible] Broadway, [illegible]

savings account under the names of Clare Moskowitz and/or Rose H. Moskowitz, that being Account No. 57833. That all of the monies in said account was the personal property of your deponent and none was the property of my mother, Rose H. Moskowitz. That the balance of $22,000.00 was borrowed from friends and relatives in the amounts set forth below opposite the respective names of the individuals mentioned:

Morris Harrison 623 West 187th Street New York City	$ 4,000.00
Albert Harrison 146 Midland Avenue Kearney, New Jersey	4,000.00
Emil Moskowitz 240 Harrison Avenue Harrison, New Jersey	4,000.00
Julia [illegible] Krug (Mortgage) 28[illegible] [illegible] Ave. Jersey City, N.J.	10,000.00

Morris Harrison and Albert Harrison are uncles of Miriam and myself on the maternal side of our family; Emil Moskowitz is an uncle on the paternal side of the family.

In connection with the loan of $10,000.00 mentioned above, my parents gave a mortgage (copy of which is annexed hereto) to the lender as security for the repayment of the loan on the home which they own at 772 Boulevard, Bayonne, New Jersey.

WHEREFORE, I respectfully request that an order be made returning to me the sum of $25,000.00 deposited by me as aforesaid.

Sworn to before me this
7 day of December 1950.
Thomas F. [illegible]
NOTARY PUBLIC [illegible]
No. [illegible]
[illegible]

Clare Moskowitz

Sir:

You will please take notice that a

of which the within is a copy was this day

entered in the within entitled action in

the office of the Clerk of the

Dated, N. Y.

10

Yours, etc.

U. S. Attorney

Attorney for Defendant

To

Attorney for

Form No. 330

United States District Court

SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF SUPPLEMENTARY PROCEEDINGS

UNITED STATES OF AMERICA

Plaintiff-Judgment Creditor

vs.

ABRAHAM BROUHAN and MICHAEL PASKOWITZ

Defendants-Judgment Debtors

VERIFIED ANSWER

STATE OF NEW YORK

Assistant U. S. Attorney

Of Counsel

Being duly sworn, deposes and says that he is the attorney of record herein, admitted

New York,

10

Sworn to

ENTERED INDEXED COMPARED

COPY COPY

Mortgage

Sigmund [illegible] Leskowitz and
Rose H. Leskowitz [illegible]

to

Julius [illegible] Kruger

Indexed under County Block No. 219

Dated August 15, 1950

Recorded in the Office
of the County Clerk of Nassau County
the 24th day of August
1950 in Liber [illegible]
and recorded in Book 2206
MORTGAGES in said County on page 116

COPY COPY

[illegible]

[illegible]
Julius Kruger
5[illegible] Broadway
Bayonne, N.J.

COPY

This Indenture,

made the 15th day of August in the year One Thousand Nine Hundred and [illegible]

Between [illegible] Koskoff and Rose H. Koskoff, his wife, residing at [illegible] in the Borough of Hudson in the County of Hudson and State of New Jersey

parties of the mortgagor, first part

and [illegible] Veterans Avenue in the City of [illegible] County of Hudson and State of New Jersey

party of the mortgagee, second part

Whereas the said [illegible] Koskoff and Rose H. Koskoff [illegible] justly indebted to the party of the second part in the full and just sum of Ten Thousand ($10,000.00) Dollars lawful money of the United States of America, secured to be paid by their certain bond or obligation bearing even date with these presents in the penal sum of Twenty Thousand ($20,000.00) Dollars lawful money aforesaid, conditioned for the payment of the said sum of Ten Thousand ($10,000.00) Dollars lawful money aforesaid, to the mortgagee or assigns on the [illegible] day of August [illegible] in the year One Thousand Nine Hundred and [illegible] and interest thereon to be computed from the date of these presents at the rate of [illegible] (4%) per cent per annum, to be paid on the [illegible] together with an instalment in the sum of Fifty ($50.00) Dollars on account of principal, the first instalment to be paid on the [illegible] day of October, 1950, and subsequent instalments on the [illegible] day of each and every month thereafter until the [illegible] day of August, 195[illegible], when the entire balance together with arrears of interest shall become due and payable.

And it is hereby expressly agreed that should any default be made in the payment of the said interest or instalment of principal [illegible] or any part thereof on any day whereon the same is made payable, as aforesaid, or should any tax, assessment, water rent or other municipal or governmental rate, charge, impost or lien be assessed or imposed upon the premises described in this mortgage and become due and payable and remain due and unpaid [illegible] or in part thereof remain unpaid and in arrears for the space of [illegible] days, or said tax, assessment, water rent or other municipal or governmental rate, charge, impost or lien or any or either of them remain unpaid and in arrears for the space of [illegible] days then and from thenceforth, that is to say, at the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Ten Thousand ($10,000.00) Dollars with all arrearage of interest thereon shall, at the option of the mortgagee, or her heirs [illegible] or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, any thing therein before contained to the contrary thereof in anywise notwithstanding, and the said mortgagee may, at the option of said mortgagee, pay such tax, assessment, or water rent, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and this mortgage, and shall be payable on demand, with interest at six per centum per annum as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

Now, this Indenture Witnesseth, that the mortgagor, for the more certain securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, and interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to the mortgagor in hand paid by the mortgagee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, alienated, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm unto the mortgagee, and to her heirs and assigns forever,

Provided [illegible] that these presents are upon the express condition that if the mortgagor [illegible] heirs executors, administrators or assigns shall well and truly pay unto [illegible] or assigns the said sum of money mentioned in the condition of said bond or obligation and the interest thereon at the time and times and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents and the estate hereby granted shall cease, determine and be void.

And the mortgagor does covenant and agree to pay unto the mortgagee [illegible] or assigns the said sum of money and interest as mentioned above and expressed in the conditions of the said bond.

And it is also agreed by and between the parties to these presents that the mortgagor [illegible] heirs executors, administrators or assigns shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire [illegible] by insurers and in an amount approved by the mortgagee, [illegible] or assigns and shall assign the policy and certificates thereof to the said mortgagee [illegible] heirs, and in default thereof it shall be lawful for the mortgagee to effect such insurance and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises added to the amount of the said bond or obligation and secured by these presents payable on demand with interest at the rate of four (4) per cent per annum from the time of payment of such premium or premiums and in default thereof for thirty (30) days after demand the principal sum hereof with all arrears of interest thereon shall at the option of the mortgagee [illegible] heirs or assigns, become and be due and payable immediately thereafter.

And the said mortgagor the owner of the lands above described for themselves [illegible] heirs executors, administrators and assigns do hereby covenant and agree to and with the said mortgagee [illegible] heirs executors, administrators and assigns that he will pay in full all taxes, rates or other levies upon the lands embraced in this mortgage, and he will not claim any credit on or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes, rates or other levies during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof this mortgage may become and be due and payable immediately at the option of the mortgagee.

And the said mortgagor does covenant with the mortgagee that he is seized of an indefeasible estate in fee simple in said premises, that he will warrant and forever defend title thereof unto the mortgagee.

And said mortgagor [illegible] that if default shall be made in any of the aforesaid covenants or conditions the mortgagee [illegible] heirs executors, administrators and assigns, shall have the right forthwith after any such default to enter upon and take possession of the said mortgaged premises and of the said premises and receive the rents, issues and profits thereof and to apply the same after payment of all necessary charges and expenses on account of the amount hereby secured and said rents and profits are in the event of any such default hereby assigned to the mortgagee [illegible] heirs executors and assigns [illegible] and the mortgagee [illegible] heirs executors and assigns [illegible] shall also be entitled immediately after any such default upon proceeding being commenced for the foreclosure of this mortgage to apply for the appointment of a receiver of the rents and profits of the said premises and be entitled to the appointment of such receiver as a matter of right as security for the amounts due the mortgagee [illegible] heirs executors and assigns without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payment of such amounts.

And it is agreed by and between the parties hereto that the mortgagor shall and will keep the building or buildings and improvements now on said premises or that may hereafter be erected thereon in good and substantial repair and upon failure so to do the whole indebtedness secured and represented by this mortgage and the bond accompanying same shall at the option of the mortgagee become immediately due and payable and also the mortgagee may enter upon the premises and repair or cause the same to be repaired and the expense thereof shall be added to the principal sum secured hereby with interest.

The covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto, wherever appropriate the singular number shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders and the term "Mortgagee" shall include any owner of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

In Witness Whereof the mortgagor has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in the presence of:

[illegible] (SIGNED) L.S.

[illegible] (SIGNED) L.S.

All that certain tract or parcel of land and premises hereinafter particularly described situate lying and being in the City of Bayonne in the County of Hudson and State of New Jersey.

BEGINNING at a point on the southeasterly side of the Hudson County Public Road commonly called the Boulevard distant thereon sixty-five and forty-nine one hundredths (65.49) feet southwesterly from the corner formed by the intersection of said side of said Boulevard with the southwesterly side of West 51st Street; thence running (1) southeasterly and parallel with said West 51st Street ninety-three and eighty-three one hundredths (93.83) feet; (2) southwesterly thirty (30) feet; thence (3) northwesterly parallel with said West 51st Street ninety-three and forty-seven one hundredths (93.47) feet to said side of said Boulevard; thence (4) northeasterly along said side of said Boulevard thirty (30) feet to the point or place of beginning.

BEING the same premises conveyed to Joseph Godlewski and Valeria Godlewski, his wife, by deed of Annie Levin, widow, dated October 4th, 1923, recorded in the Register's Office of Hudson County in Book 1502 of Deeds, page 387.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the mortgagor, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted and described premises, with the appurtenances, unto the mortgagee, its successors or assigns, to their own proper use, benefit and behoof forever.

her heirs

RECORDED
MAY 20 1929
Hudson County Clerk
Register's Office

Date Received 12/8/50

From AUSA Paul Rao
(Name of contributor)

S.D.N.Y.
(Address of contributor)

By [illegible]
(Name of Special Agent)

To Be Returned Yes ( )
No (✓)

Description: Examination in Supplementary Proceedings of Mocksowitz held 12/7/50

File No. 100-96341 ~~[illegible]~~ /A/3

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

In the matter of Supplementary Proceedings,

UNITED STATES OF AMERICA,

Plaintiff and Judgment Creditor,

-v-

ABRAHAM BROTMAN and MIRIAM MOSKOWITZ,

Defendants and Judgment Debtors.

- X

EXAMINATION OF MIRIAM MOSKOWITZ

Examination in Supplementary Proceedings, pursuant to writ of habeas corpus ad testificandum, returnable December 7, 1950, in Room 318, United States Court House, Foley Square, New York, New York, on which date the defendant MIRIAM MOSKOWITZ, the defendant and judgment debtor, was sworn in before the Honorable Sylvester J. Ryan, a United States District Judge presiding therein, after which the examination was conducted in Room 337, United States Court House, Foley Square, New York.

A P P E A R A N C E S

IRVING H. SAYPOL,
United States Attorney,

By VINCENT PAUL RAO,
Assistant United States Attorney,

JOHN M. COLLINS,
Special Agent,
Federal Bureau of Investigation,

THOMAS PARSON and
MRS. SARAH GOLDSTEIN,
Deputy United States Marshals,

WF:lc
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WILLIAM L. MESSING and
MORTIMER SATTLER,
66 Broad Street,
New York, New York,
Attorneys for the Defendants and
Judgment Debtors,

MIRIAM MOSKOWITZ and
ABRAHAM BROTHMAN,
Defendants and Judgment Debtors.

Stenographer: Louise Stern

EXAMINATION OF MIRIAM MOSKOWITZ:

BY MR. RAO:

Q. Miss Moskowitz, on November 28, 1950 you were sentenced to two years and a fine imposed of $10,000, for which you are to stand committed until the fine is paid. This fine has been entered as a judgment against you and I want to explain to you that this is an attempt on the part of the Government to collect this judgment. You were just sworn in by Judge Ryan in the District Court and you swore at that time to tell the truth. Should you not tell the truth to the questions I put to you you may be liable for an additional penalty over and above the sentence you are serving now. You understand?
A. Yes, I do.

Q. What is your full name?
A. Miriam Moskowitz.

Q. Your address?
A. 772 Boulevard, Bayonne, New Jersey.

Q. You were a partner of Abraham Brothman and together with him you were doing business under the name of Abe Brothman Associates?
A. We were.

Q. At what address?
A. 5920- 41st Avenue, Long Island City.

Q. Miss Moskowitz, you agreed to furnish us with all data and books which Mr. Brothman has already agreed to do with reference to the business and the accounts of the firm?
A. Yes, I do

Q. You as well as Mr. Brothman had equal rights and interest in the firm?
A. No.

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Q. What was your interest in the partnership business?
A. I don't remember, but the 1948 tax return should show it; I think fifteen or twenty-five percent.

Q. Have you any bank accounts?
A. No.

Q. Did you have any bank accounts in the past ten years?
A. Yes.

Q. Where?
A. Empire City Savings, 33rd Street and Park Avenue.

Q. When did you close that account?
A. August, 1950.

Q. What was the balance on deposit at that time?
A. $95.

Q. Any other bank accounts?
A. None with the partnerships.

Q. Do you own any property?
A. No.

Q. Are you single?
A. Yes.

Q. With whom are you living?
A. I am in jail.

Q. I know, but prior to being remanded, with whom were you living?
A. I was sharing an apartment at 151 Eighth Avenue.

Q. Is that an apartment house?
A. Yes.

Q. How many rooms in that apartment?
A. Four.

Q. What was the rental?
A. $50. a month.

Q. You shared it with a friend?
A. With a married couple.

Q. Are you the legatee or devisee under the terms of any will or estate?
A. Not that I know of.

Q. Do you own a car?
A. No, I do not.

Q. Did you ever own a car?
A. No, I did not.

Q. Prior to your association with Mr. Brothman in this business were you in any other business?
A. No, I was not.

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Q. Do you own any stocks or bonds?
A. The same situation exists there as did with Mr. Brothman. I had - well, I had rights to certain stock which was held by someone else.

Q. Name the persons?
A. Claire Kornblau of Tested Chemicals, Inc., and I have asked that that stock be turned over to my father for his having borne my expenses for the trial and appeal.

Q. When did you purchase that stock?
A. That stock came to me as a result of the association with Ulster Chemicals, Inc. I didn't pay any money for it.

Q. To whom was the stock issued?
A. It was issued to Claire Kornblau.

Q. And transferred by Claire Kornblau to whom?
A. I don't know whether it was transferred, but she still holds it because my father's name is Moskowitz. The reason she holds it is because the other stockholders were unwilling to have the names of Moskowitz or Brothman appear on stocks. My father has gotten my stock besides the stock he does hold as a result of his own investment in Tested. My father will get my stock because he has borne the cost of the trial and will bear the cost of the appeal.

Q. Do you hold any insurance policies?
A. Yes, in Metropolitan Life and I believe for $1,000.

Q. Life Insurance Policy?
A. I believe so.

Q. When was that issued?
A. About fourteen years ago.

Q. Is it fully paid up?
A. I don't think so.

Q. Who is the beneficiary?
A. My mother.

Q. What is her name?
A. Mrs. Rose Moskowitz.

Q. Miss Moskowitz, the sum of $25,000. was put as security on your bail. Is that sum or any part of it yours?
A. No, it is not.

Q. Who furnished the sum to the Government?
A. My sister.

Q. What is her name?
A. Claire Kornblau.

Q. Where does she live?
A. 82 Danforth Avenue, Jersey City, New Jersey.

Q. Are these sums entirely here?
A. No, they are not.

Q. They were borrowed from other people?
A. Yes.

Q. Relatives?
A. Relatives.

Q. Is your sister here now?
A. I believe she is. (She was in the hall)

* * * * * *

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

Cross-Appellant,

-against-

ABRAHAM BROTHMAN and
MIRIAM MOSKOWITZ,

Defendants-Appellants,

BRIEF FOR THE DEFENDANT-APPELLANT
MIRIAM MOSKOWITZ

WILLIAM J. MESSICK
Attorney for Defendant-Appellant
Miriam Moskowitz

INDEX

CASES CITED

PAGE

[illegible] v. United States, 273 Fed. 664 (C. C. A. 2, 1921), cert. den. 257 U. S. 637 — 15

[illegible] v. United States, 13 Fed. (2d) [illegible] (C. C. A. 8, 1926) — 7

Linden v. United States, 296 Fed. 104 (C. C. A. 3, 1924) — 15

Marcante v. United States, 49 Fed. (2d) 156 (C. C. A. 10, 1931) — 17

Morgan v. United States, 31 Fed. (2d) 335 (C. C. A. [illegible], 1929) — 17

Morrison v. United States, 6 Fed. (2d) 809 (C. C. A. 8, 1925) — 7

[illegible] v. United States, 13[illegible] Fed. (2d) 875 (C. C. A. 6, 1943) — 7

N. Y. Central R. R. Co. v. Johnson, 279 U. S. 310 (1929) — 16

People v. [illegible], 295 N. Y. 26 (1945) — 18

People v. Watson, 216 N. Y. 565 (1916) — 15

People v. [illegible], 288 N. Y. 418 (1942) — 7

[illegible] v. United States, 48 Fed. (2d) 767 (C. C. A. 6, 1931) — 18

Pinkerton v. United States, 328 U. S. 640 (1946) — 7

Rice v. United States, 35 Fed. (2d) 689 (1929) — 15

Robilio v. United States, 291 Fed. 975 (C. C. A. 6, 1923) — 15, 17

Shea v. United States, 251 Fed. 440 (C. C. A. 6, 1918) — 16

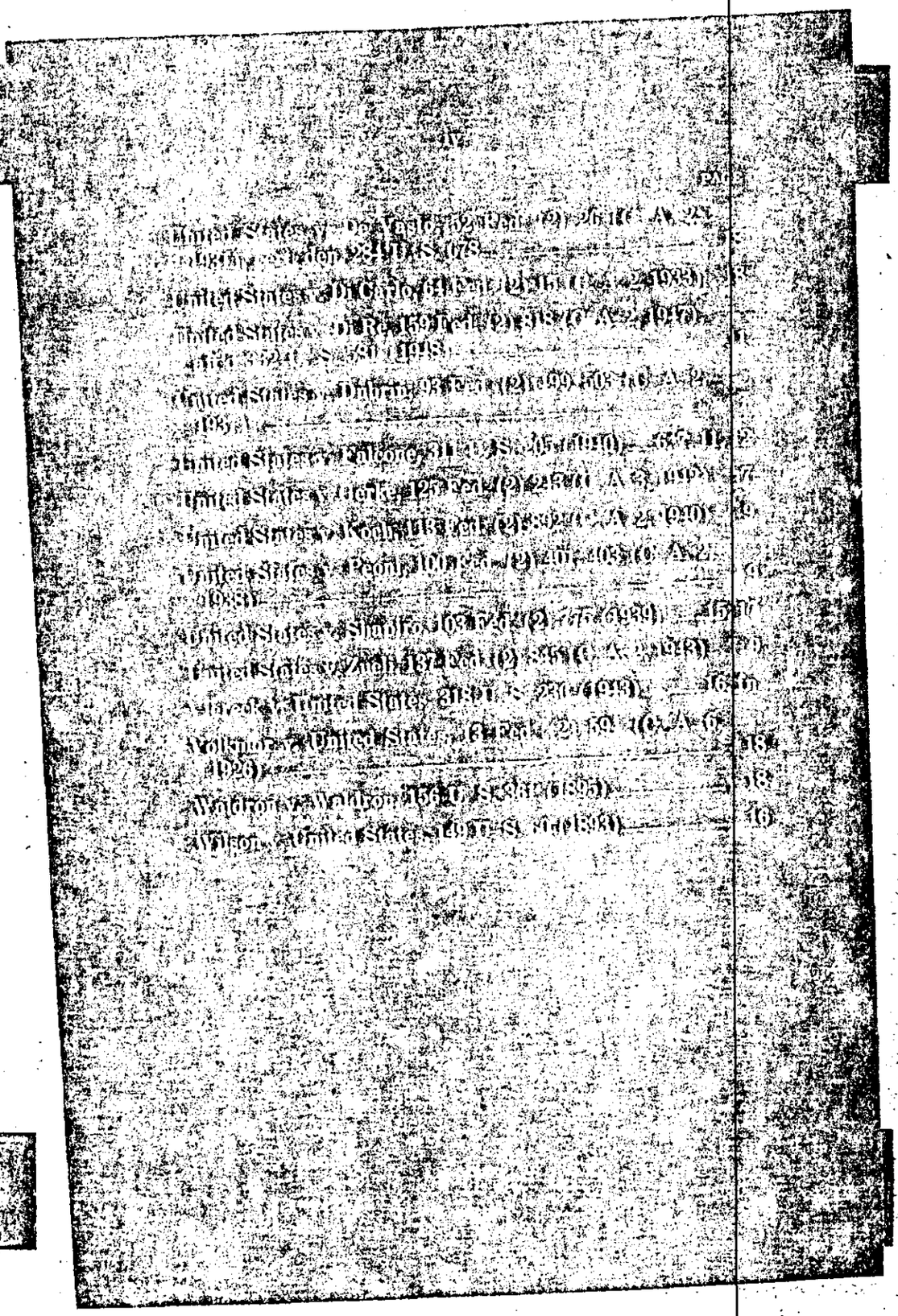
[illegible] v. United States, 39 Fed. (2d) 573 (C. C. A. 8, 1930) — 16

United States v. Antonelli Fireworks Co., 155 Fed. (2d) 631 (C. C. A. 2, 1946), cert. den. 329 U. S. 742 — 18

United States v. Bruno, 105 Fed. (2d) 921 (C. C. A. 2, 1939) — 9

United States v. Crimmins, 123 Fed. (2d) 271 (C. C. A. 2, 1941) — 7

United States v. Dellaro, 99 Fed. (2d) 781 (C. C. A. 2, 1938) — 1



United States Court of Appeals

Second Circuit

United States of America,
Appellee,

vs.

Abraham Brothman and Miriam Moskowitz,
Defendants-Appellants.

BRIEF FOR THE DEFENDANT-APPELLANT MIRIAM MOSKOWITZ

Statement

The appellants were indicted on a conviction entered in the United States District Court for the Southern District of New York on November 31, 1950 after a trial before Honorable Vincent L. Leibell and a jury of twelve. The defendants were charged in the same indictment with violations of Section 371 of the United States Code (1948 Ed.) and (2) the defendant Brothman with violations of Section 371 of the same title.

The defendant Brothman, who appeal [illegible] state prosecution was convicted under both counts of the indictment. Count 1 charges a conspiracy to violate the Federal Communications Act [illegible] Count 2 charges the defendants with the substantive violations [illegible]

[illegible]

[illegible]

The Background to the Indictment

[illegible]

The Indictment

[illegible]

Submissions Made by the Defendant Moskovitz

[illegible]

[illegible]

The Government Proceedings [illegible]

[illegible]

[illegible]

Moskowitz interrupted. She said that they were both [illegible] and that it was not time for them to [illegible] because [illegible] between the two of them was [illegible] [illegible] (S.M. 665-667).

Moskowitz and Brothman received [illegible] [illegible] before the Grand Jury (S.M. 668). It was [illegible] that Brothman [illegible] [illegible] (S.M. 668-669).

While Brothman was [illegible] Moskowitz [illegible] (S.M. 669).

Later, while Moskowitz and Brothman were [illegible] Brothman and Moskowitz individually or jointly [illegible] (S.M. 669).

At this point Moskowitz told Goldstein that [illegible] because Brothman had stated that [illegible] before the Grand Jury [illegible] the story he had given in [illegible] (S.M. 669).

Later, while all three were present, Brothman told Goldstein that he had seen the lawyer but that [illegible] (S.M. 669).

While Brothman was [illegible] Moskowitz [illegible] (S.M. 669-670).

After Brothman testified before the Grand Jury [illegible] restaurant (S.M. 670), Brothman and [illegible] Moskowitz and the lawyer [illegible] (S.M. 670). Shortly after returning to the restaurant (S.M. 670-671), Brothman and Moskowitz left the table for a short time [illegible] (S.M. 672).

All three were together when Brothman told Goldstein that he had [illegible] before the Grand Jury. Moskowitz added that [illegible] that he was [illegible] Brothman

would have time to match their stories (S. M. 676). On cross-examination Gold described that statement as follows: "Moskowitz wanted to go home early so that we [Gold and Brothman] could have a talk" (S. M. 910).

After Gold's testimony before the Grand Jury all three met in a restaurant (S. M. 683). Gold told the others that he had succeeded in creating the appearance of a frightened man who had gone to the fringe of espionage but not beyond it. Brothman and Moskowitz said that if he had created such an impression it was fine (S. M. 683-684).

Moskowitz had begun to work for the Brothman organization in 1945, had become a member of the firm in 1946 or 1947 (S. M. 837), and was secretary, treasurer, stenographer and bookkeeper—in fact the whole office force (S. M. 680).

Gold started working for Brothman's firm in 1946 (S. M. 838). Moskowitz was there at that time (S. M. 837). He remained with the firm until June of 1948 (S. M. 684). In the interval others had entered and left the organization (S. M. 829). When he came to work there he had lost his espionage contacts (S. M. 849) and his work was entirely of a legitimate nature (S. M. 848-849).

In his relationship with Moskowitz, Gold found her to be over-aggressive and of a violent temper. He avoided her (S. M. 910). Shortly before he left the firm he complained that she had not treated him with sufficient dignity (S. M. 868), had bossed him around and treated him like an office boy (S. M. 910).

POINT I

The Government did not establish that Moskowitz had participated in the conspiracy. The case should not have been submitted to the jury.

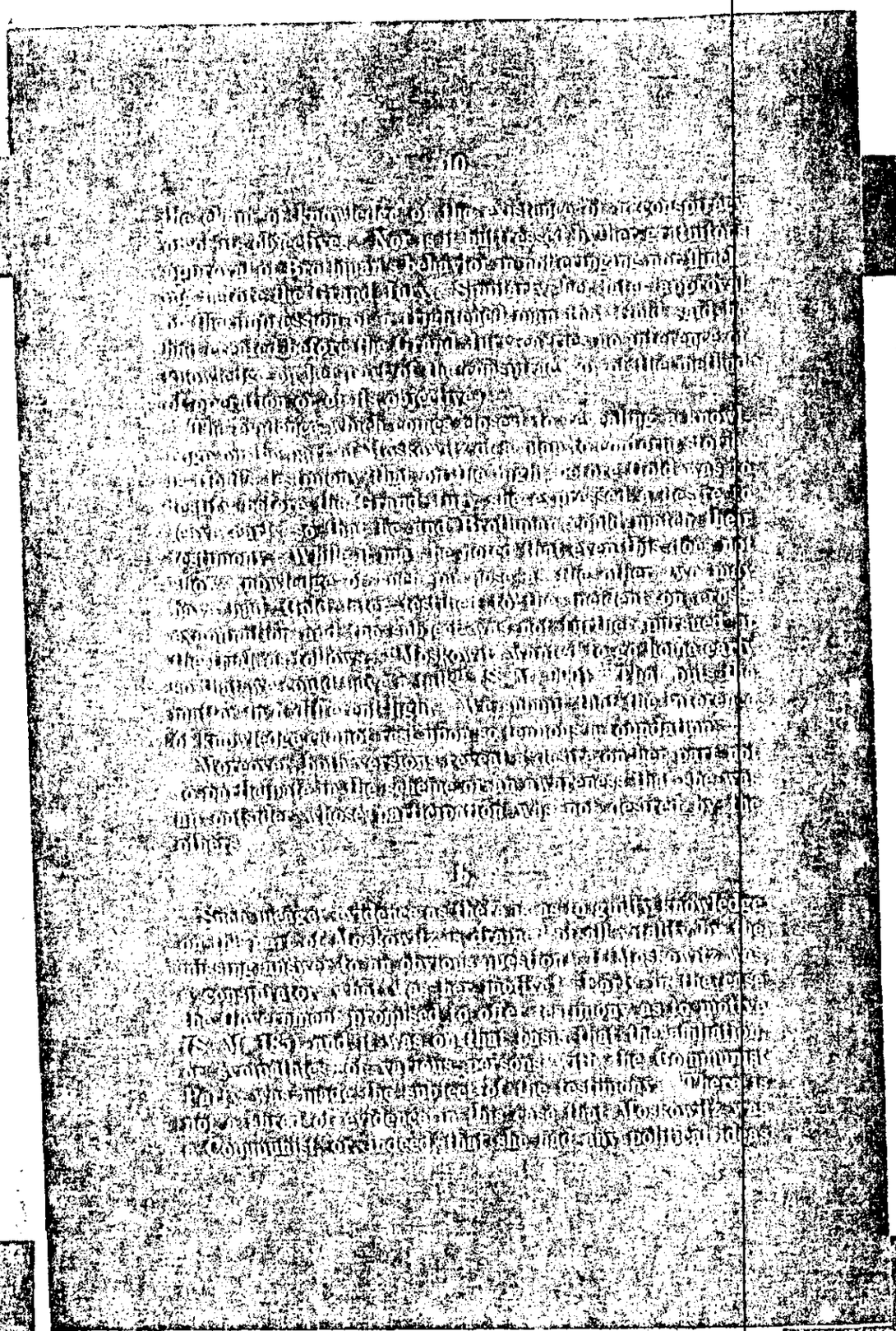
A person who has no knowledge of the scheme is not a conspirator. *United States v. Falcone*, 311 U. S. 205 (1940). To establish the necessary intent the evidence of knowledge

Her action later that night or the following night in breaking up the quarrel between Gold and Brothman reveals nothing more than knowledge of a commonplace known to anyone who has ever read a detective story—that the police exploit a falling out among suspects. Her fear was natural enough in view of her knowledge that the Government was interested in the others. Still, the evidence does not show that she knew what they wanted to conceal, or that she agreed to conceal, or how they proposed to do so.

Thereafter Moskowitz spoke to Gold of her concern about Brothman's contemplated change in his story, of her desire to persuade him to affirm his earlier story and of her success in that effort with Needleman to persuade Brothman. Still the evidence fails to reveal her knowledge of what that story was or whether it was false or whether it was to serve the purpose of enabling Gold to conform his testimony thereto or of the purpose of conformity. The conversations with Gold show only a unilateral effort on her part, an effort which could have been motivated by any number of reasons consistent with the absence of knowledge.

The conspiracy which was charged was one which included Gold as a principal. The effort which Moskowitz directed towards Brothman fails to show that she tried to maintain Brothman's story for Gold's protection and use as well, or that she did anything in concert with Gold, or that she participated in a scheme to which he was a party, or that she had a stake in the success of any scheme to which he was a party. See *United States v. Peoni*, 100 Fed. (2) 401, 403 (C. A. 2, 1938); *United States v. Koch*, 113 Fed. (2) 982, 983 (C. A. 2, 1940); *United States v. Zeuli*, 137 Fed. (2) 845 (C. A. 2, 1943). The situation was not such that she must have known of the use to which Gold had or would later put the story. Cf. *United States v. Bruno*, 105 Fed. (2) 921 (C. A. 2, 1939).

Moskowitz's statement to Brothman that it was good that he had determined not to change his story does not buttress



[illegible]

[illegible]

[illegible]

POINT II

The defendant Nosakowski was prejudiced by repeated references to the failure to contradict the testimony offered by the prosecution.

[illegible]

[illegible] Attorney [illegible]:

Mr. Sayoc: [illegible] testimony offered [illegible] failure to contradict [illegible]

Mr. Kellman: [illegible] objection [illegible]

Mr. Sayoc: [illegible] conference [illegible] before the Grand Jury [illegible]

Mr. Kellman: [illegible] objection and [illegible] Attorney [illegible]

Mr. Sayoc: [illegible]

Mr. Kellman: [illegible]

Mr. Sayoc: [illegible]

Defendant [illegible]:

Neither [illegible] offered [illegible]

Mr. Kellman: [illegible]

"The only ones who have knowledge of the truth of what actually happened between those people were those who participated."

Again (S. M. 1083):

"The one issue at this time, so far as Gold is concerned, is whether or not he told the truth. His truthfulness is established by the testimony of the other witnesses, by documents, and even more eloquently by the fact that not one word Harry Gold has spoken in this courtroom has been contradicted by any evidence produced by the defense.

Mr. Kleinman: I object to that, if Your Honor please, and I ask for the withdrawal of a juror and the declaration of a mistrial.

The Court: Denied.

Mr. Kleinman: Exception."

Again (S. M. 1094):

"Now leave Bentley and Gold. Leave them knowing that not one word has been spoken contradicting anything they have testified to. Not one word to contradict the existence of the conspiracy between Brothman, Moskowitz and Gold."

Again (S. M. 1096):

"We have heard no testimony contradicting the existence of this conspiracy, negating its existence."

Again (S. M. 1100):

"... It has not been [illegible] to the proof and it cannot be contradicted."

At the conclusion of the summation the jury was excused. A motion for the declaration of a mistrial was made on the ground that there had been repeated thinly veiled references to the failure of the defendants to testify.

[illegible]

of statements that were made in her presence. On none of these occasions was anyone present but Gold and the defendants. On two of these occasions only Gold and Moskowitz were present. Only the defendants (or Moskowitz alone in connection with the latter occasions) could have contradicted Gold's testimony.

C.

When attention was called to the improper remarks of the prosecutor, the response of the Court should have been immediate and positive. There should have been a prompt and emphatic condemnation of the prosecutor, a warning against repetition of the offense, an immediate admonition to the jury to disregard the impropriety and an instruction that failure to testify should result in no presumption against the defendants. *Wilson v. United States*, 149 U. S. 60 (1893); *Di Maio v. United States*, 32 Fed. (2) 472 (C. A. 2, 1929); *Tingle v. United States*, 38 Fed. (2) 573 (C. A. 8, 1930); see *N. Y. Central R.R. Co. v. Johnson*, 279 U. S. 310, 318 (1929); *Berger v. United States*, 295 U. S. 78, 84-89 (1935).

A striking contrast to these requirements is furnished by the action taken at the trial. Not only was there a failure to take immediate action, but further impropriety was encouraged. The first objection was overruled, the Trial Judge simply stating that he would deal with that later, himself.

The second objection was overruled and followed by a gratuitous statement that the prosecutor was fully familiar with the rules and their limitations. This was immediately affirmed by the prosecutor. It implied that that was proper procedure.

Another significance may be attributed to the incident

Cf. [illegible] *v. United States*, 318 U. S. 236, 247-248 (1943), where the Trial Judge overruled an[illegible] made to the objection of improper comments of the prosecution.

[illegible]

[illegible] opportunity to sink deeply into the [illegible]
[illegible] As a matter of the prosecutor's argument, the
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [

permitted inference to be drawn from the possession of recently stolen goods. Under those circumstances the Court held that the error was cured by the charge.

Absent from both cases, but present here, was the aggravated repetition of the impropriety,[1] and its approval by the Court. These are substantial differences. We do not think such difference in a situation in which every nuance may have had a critical effect may be glossed over by the generality that the trial judge charged on the point.

This was not a case in which the evidence of guilt was overwhelming. Indeed it was insufficient. This, at least, is true: The jurors themselves were much troubled. About three hours after they had retired they indicated that there was no likelihood of a verdict (S. M. 1149-1153). More than four hours after deliberation started they requested a transcript of the charge as to conspiracy "particularly with regard to the degree of participation" (S. M. 1154)—an obvious reference to Moskowitz. Cf. *Bollenbach v. United States*, 326 U.S. 607, 612 (1946).

The problem presented is not merely one of trial etiquette or of technical error. The affected privilege is a substantial one. *Bruno v. United States*, 308 U.S. 287, 294 (1939). A reversal may be avoided only if it *affirmatively* appears that Moskowitz was not prejudiced. *Bihn v. United States*, 328 U.S. 633, 638 (1946).

The affirmative appearances in this case point the other way. Whether the defendant is to be imprisoned should not turn upon the unfounded speculation provided by this record that she could not have fared better even if her rights had been respected.[2]

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[1] Cf. *Berger v. United States*, 295 U.S. 78, 89 (1935).

[2] It has been suggested that in such a case the "harmless error" concept may not apply. See *Kotteakos v. United States*, 328 U.S. 750, 764-765 (1946).

CONCLUSION

The judgment of conviction of defendant Moskowitz should be reversed and the indictment against him dismissed.

William J. Nissen,
Attorney and Counsel for Appellant,
William Moskowitz,
40 Broadway,
Borough of Manhattan,
New York City, N. Y.

Date Received 5/9/51

From Warden Thomson
(Name of Contributor)

F.D.H., N.Y.C.
(Address of Contributor)

By S.A. A. Yamamoto
(Name of Special Agent)

To be Returned Yes( ) No (✓)

Description: Photostatic copy of ltr 4/29/51 from Jacob Freedus to N.A. Hornbostel, removed from A. Brothman's person

File No. 100-96341 in F.D.H.
~~1823~~ 1419

K3 - 4/29/51

Dear Nat,

This note is being sent you because of the urgent need for action in behalf of Brotman & Marian Moskowitz. No matter how busy you are, you must immediately take care of the various matters to be discussed in this note. Peoples liberty, their sole sources, & the peace of mind & happiness of their families are involved. Because of this, if you cannot come on Saturdays, come during the week. Your coming to the attention of Mr. K. will hurt me very little if any. Mr. K. may already know of your having come personally. He already knows of Mr Minton. Here are the various matters.

1. M. Moskowitz - You've been asked to prepare her appeal. You must get started on this immediately. In addition, most important, she was digitized this past Wednesday to file an "election not to serve form", otherwise they would have shipped her out of the city. Henceforth while this form is in existence her time has ceased to count. It is my belief that this was done for the following reasons (a) No visits from an appeal lawyer (b) It is a city jail & not a Federal one - & why should the Warden then take responsibility for a Federal prisoner, especially when (c) She is ill, bad stomach & getting worse (d) A little troublesome - complaints about food, commissary & perhaps more. Therefore it is necessary to try to get the authorities (Warden & then Mr. Bennett, Director of Prisons in W.D.C.)

P. 2 - 4/25/61
NAM.

for Mrs. Bertolo to stay until determination of her appeal, as is ordinarily the practice with the money. If after a firm effort, this is unsuccessful then all matters must be straightened out (Tested chemicals, etc.) so that she can allow herself to be shipped out + thus not lose any more time than is necessary. She is eligible for parole July 28th (8 months) plus the number of days for "Election not to serve remainder of sentence". Ordinarily she has excellent chance for parole. In view of the color in this case - the chances are slightly. However, more facts + "color" should be gathered to prove that she is innocent + not a "Commie". so as to aid her chances for parole. For the purpose of her appeal, + you should consult with Mr. MINTON. I don't think you have the time to argue this appeal this spring. Therefore you should get an extension of time until the fall + see what happens with her parole. The parole board will be here in June, + their decision comes 3 weeks later. Naturally if she gets parole, there would be no sense in appealing in the fall.

2. MRS. Bottomore has been shot nationally + emotionally upset because of the ordeal for almost a year. On top of this she has financial difficulties. Will you therefore arrange with Mr. GIVELHER when he comes to see you plenty of time + patience. Encourage her to see you or call you anytime she has a problem

To N. R. Mankowitz

2 (cont) This week Mrs Roth was ~~not~~ had ~~you~~ for your weekly visit on Monday. When she learned on Wednesday about M. Masonry's possible means of getting her husband, she tried to see him on Wednesday but was turned away. Likewise on Thurs. & Friday. In desperation she asked Messing to come in to see Roth on Saturday & convey the message.

3. You must arrange promptly to see Mr Minton & ~~you~~ let him know that you and ~~attorn~~ your ~~present~~ Roth was. Also discuss M Masonry case with him. If he won't then speak to Mr McNulty his partner. Tell Minton (or McNulty) that Rothman and you & that he understands that Minton may not want to argue the appeal until the fall. Anything that Minton wants to do is perfectly O.K. Somehow of appeal is going to wait is ~~please~~ made strong appeal for bail. Carrying this out, will indicate to Minton that you ~~present~~ Rothman ~~or~~ displace Messing. Ask Minton about printing of minutes, & follow some up with Messing. Messing was given months ago $3.00 specifically for the printing. Check cost of same). — Messing when he was in Sat. (yesterday) said that Minton was ~~to~~ going to argue appeal in June (which means he has to file appeal within the next few days), & also that the minutes & brief were already printed. Follow up on all this immediately.

P 4 - 7/09/51
NAM

4. Tested Chemicals Inc. — This matter has been terribly neglected & therefore requires prompt attention. The plant has been closed now for several months. Get together promptly with Mrs. Brothman & Clare Moroney (Mrs. Mills sister) for full details. It appears that all the other stockholders, except for Brothman & Moroney, want to make an assignment for benefit of creditors & want to ~~make~~ appoint Messrs as assignee. THIS MUST NOT TAKE PLACE for many reasons such as ~~1~~ (1) Mrs. questionable honesty & morality (2) Mr. bad conduct (3) There is no need to waste the firm's funds that would be wasted by the interests conflict of all those of attorney & Mr. Brothman

(such as — When the plant was being built Brothman & M.M. worked practically continuously for 60 weeks — all of Sept. & ½ of October 1950 rendering engineering service for which Tested Chemicals were never billed. We want you to bill Tested Chem. immediately for this at the following reasonable ~~rates~~ $8 per hour for straight time for A.B. & $4 per hour for straight time for M.M., 1½ time for overtime & double time for SAT. & SUN. (These are fair & reasonable rates for the type of work) ~~Compute~~ the bill at average day of 14 Hours. During the week — 8 Hours straight time & 6 Hours overtime. Also 6 Sat & 6 Sun. at 14 Hours of double time. Place interest at 5% on this bill. Also 6% interest on B.B. & M.M. investment which is 4 or 6 times as large as the others. Of course,

P.5 - 4/24/51
N.A.N.

10 N.H. Monmouth

in order to do the job, you'll have to demand & get promptly from Neal (Tested Chemicals, Inc.) all accounts, resolutions, copies of minutes, financial statements (indicating profit & loss, how much has been loaned or loaned to corp. by various individuals, how much each individual has paid for his stock), copy of license agreement (10¢ a lb.) with Ale Brothman, copy of prospectus (SEC 1½% AR) & that pressing comment to get Norm Both now to put in $25,000 from bail money into the business, agreement whereby the two lawyers come into the Tested Picture — At this point I want to emphasize that a registered notice should be sent to Tested Chemicals Inc. cancelling the sale of the patented process ~~into~~ (or licensing agreement) by which Tested were making their product. This "provides for payment of 10¢ a lb. Point out that this agreement is being cancelled for a number of reasons 1. Failure to pay. 2. Failure to stay in operation (3) No future, etc.

Liquidation of Tested Chemicals can be accomplished by two methods (1) Sale of assets, by unanimous consent of stockholders in bulk to private bidders (2) Sale of assets piece meal or in bulk (whichever bid is higher) at a public auction sale.

With reference to #1, Both now would very much prefer that before anything takes place, that the other stockholders exchange releases with Brothman. Otherwise they could bring

P.C. 4/2/51

all kinds of suits charging fraud, breach of trust, the same type of thing, and claiming all sorts of verbal agreements with Bottman to avoid the entire activities. (THEY are a "bad" bunch.) The method of liquidation is the simplest to accept, but perhaps the most difficult because of the many agreements between the stockholders + Bottman. Of course, plan #1 fails because of inability to get every kind of releases from the lawsuits, filing, etc. Then plan #2 will be necessary. The disadvantage of plan 2 is that it is more expensive to carry out (and in general, good judgment would require that plan #2 may bring down more a bargain for the question of assignee. After all, Bottman's "Box 80" is more of the assignee. After all, the money invested. Bottman should be assignee even be co-assignee. (By the way Bottman tends to use the return of money as the stick of terror against us.)

5. The mills of the tribe should be closed down at Foley Square, should be closed with the Internal Revenue agents doing nothing.

6. After you have digested the letter, have met with Mrs Bottman, Clara Mossinsky, & "Mr." M.M. You should arrange to bring A.B. & M.M. to Foley Square, so that they can [illegible] among [illegible]

P.2 — 4/25/71

Sincerely yours. There is at present an open writ pending the, only recently brought down a couple of weeks ago, regarding this firm. Hope it should not be too difficult to bring the down again on this writ. Do not need proof for any one of the following (1) Straightforward fine (2) Non-handling of appeal of 1971 & quashed till present.

7. By the way, months ago A.B. asked Messing for his file, including agreements, etc. Messing stalled several times for a couple of weeks & finally indicated that he wanted you to give him the file. You must get Bob's entire complete file from Messing, including (a) agreement of A.B. with Lennox v. Imperial Chemicals LTD. (which A.B. considers now null & void) (b) agreement of A.B. associates with Industrial Process Engineers (LEWINSON) - under which A.B. intends to be for money due. → I.P.E. should be pressed now for money & accounting of funds owed A.B.A. (STORIES can be told of the fraudulent practice of phony SOMETIMES issued to BANKS & false signatures of what SHOULD & NOT shipped & false amounts of orders on hand)

As you can readily see there is quite a lot of work to be done & to be done promptly. Though I don't want to assure you at this time that you will be paid in full for your fees & soon as we close get started promptly. Thanks a lot. J.F.

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

OFFICIAL BUSINESS

Date Received 7/27/51

From USA. SDNY
(Name of contributor)

(Address of contributor)

By John M. Collins
(Name of Special Agent)

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Description: Photostatic copy of decision of Circuit Court of Appeals in case entitled U.S. v Brotman & Mensnowitz

File No. 100-96341 - ~~[illegible]~~ 1A18

UNITED STATES COURT OF APPEALS

Second Circuit

No. 29—October Term, 1970

(Argued June 23, 1971 | Decided July 20, 1971)

Docket No. 22089

UNITED STATES OF AMERICA,

Appellee,

—v.—

ALBERT BROWN and JOHN MOSKOWITZ,

Defendants-Appellants.

Before:

[illegible] Circuit Judge, [illegible] District Judge.

Appeal from the United States District Court for the Southern District of New York.

From judgments of conviction and sentence entered upon an indictment charging both defendants with one count of robbery and defendant Brown with one count of the substantive offense the defendants have appealed. Affirmed. Conspiracy count vacated; substantive counts [illegible]

[illegible]

[illegible] Attorney for appellant

[illegible] William McNulty, Counsel

[illegible] Attorney for appellant

[illegible]

[illegible] United States Attorney

[illegible] Brief Schulman, Roy M. Cohn

[illegible] United States Attorney

[illegible] D. Robinson

Assistant United States Attorney

[illegible]

[illegible] and Judgment

[illegible] appeals from judgments of conviction and sentences upon indictments charging appellants in the same [illegible] with violations of the Espionage Act of 1917. Brolman was convicted on twenty counts and Abel on twenty-two counts. Brolman was sentenced to 15 years imprisonment and a fine of $20,000 and Abel to 10 years imprisonment and a fine of $5000 on the respective counts. Abel was sentenced to 10 years imprisonment. Brolman appeals on six grounds, namely, [illegible] the sufficiency of the evidence to prove the conspiracy charged in the indictment, the admission of testimony [illegible] the prosecution's summation.

Abel was indicted on the conspiracy count in the summer of 1957 by a federal grand jury sitting in the Southern District of New York, after an investigation of possible violations of the espionage laws. Brolman and one Gold were subpoenaed to appear as witnesses before this grand jury. The conspiracy count charged that both

appellants together with Gold, who was named as a co-conspirator but not as a defendant, agreed that Brothman should give false testimony before the grand jury, should inform Gold that he had done so, and Gold should likewise give false testimony consonant with Brothman's. The case against the appellants was made largely on the testimony of Gold. Moskowitz does not question the sufficiency of the evidence to prove that such a conspiracy existed between Brothman and Gold, but contends that she was not shown to have been a party to it. An examination of the record convinces us beyond doubt that the contention is groundless. Without discussing the evidence in detail, it will suffice to state that Gold testified that she generally assisted in making the false statements to the grand jury. Mrs. Gold had been interviewed by agents of the Federal Bureau of Investigation, she recounted in the presence of Brothman and Moskowitz what she had told the agents, and Brothman remarked that he had made a very nice choice of a story. The inference that the story was false must have been obvious to Moskowitz. She was also present when Gold recited to Brothman about his espionage activity, because Brothman was already deeply enough involved. When Brothman was considering testifying before the grand jury, he told different from that he had originally told the F.B.I. agents. Moskowitz expressed concern, and told Gold she was going to tell Brothman to stick to the original story, and she later told Gold that she and attorney Nudelman persuaded Brothman to do so. Finally, on the night before Gold was to testify, Moskowitz said that she wished to go home early so that Brothman and Gold would have plenty of time to match our stories before my appearance before the grand jury the next morning."

The next contention of appellant Moskowitz is that she was induced by improper influence of the prosecutor

[illegible]