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MR. E. H. BLOCH: That is right.

THE COURT: But just as the witness has testified it is a description of a principle upon which it works.

MR. E. H. BLOCH: Now what I am trying to do, your Honor, is to use this question for a few follow-up questions.

THE COURT: I thought you said before you had one more question.

MR. E. H. BLOCH: I didn't know what the answer was going to be. I thought the answer might have been that this was a complete description, and that would have been my last question. Now that the answer is that it is not complete I have further questions.

BY MR. E. H. BLOCH:

Q This is not a complete description?

A This substantially gives the principle involved.

Q Would you say as a scientist, a graduate engineer who has received college courses and obtained a degree in engineering, and had the experience that you have detailed to us here, that a machinist without any degree in engineering or any scientist would be able to describe accurately the functions of the atom bomb and its component parts --

THE COURT: Objection sustained.

Q Both in relation --

MR. E. H. BLOCH: May I finish it?

THE COURT: Yes.

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Q Both in relation to their independent functions and to their inter-related functions?

THE COURT: Objection sustained.

MR. SAYPOL: I would like the record to show that it is the jury who will judge from Greenglass's testimony; not this witness.

THE COURT: Yes, we have had a bit of summation right now. So we will take that out of the final summation.

MR. E. H. BLOCH: It wasn't intended as a summation, your Honor. That is all." (R. 1336-39)

Sobell's counsel did not cross-examine Derry.

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Testimony of Harry Gold

Harry Gold testified on March 15, 1951, as part of the Government's direct case as follows: He was engaged in espionage work for the Soviet Union from the spring of 1935 until the time of his arrest on May 23, 1950 (R. 1161). From March 1944 until late December 1946, he engaged in espionage work with Anatoli Yakovlev as his Soviet superior, a man he knew only as "John" (R. 1155, 1158-59, 1171).* Gold had meetings with Klaus Fuchs in June and July, 1944, and January, 1945 in New York and Massachusetts and secured information which he reported to Yakovlev (R. 1172-76, 1183-85).

In May, 1945, Yakovlev told Gold he was to meet Fuchs on the first Saturday in June, 1945 (June 2, 1945) in Sante Fe, New Mexico and then to proceed to an additional mission in Albuquerque, New Mexico (R. 1185-86). Concerning this additional mission, Yakovlev said a woman who was supposed to make the trip was unable to go and that it was vital that Gold do it (R. 1187). Yakovlev gave Gold a piece of paper with the name "Greenglass", an address on High Street, Albuquerque, New Mexico, and the notation "Recognition signal. I come from Julius", together with a piece of cardboard cut in an odd shape from a packaged food container and an envelope containing

* Government's Exhibit 15 showed Yakovlev to be a Soviet national and an official of the Soviet government (R. 1225-28).

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$500 for Greenglass (R. 1187-88).

Gold met with Fuchs in Santa Fe, New Mexico for a half hour on June 2, 1945 (R. 1190). That evening he went to Albuquerque and to the designated address on High Street, but ascertained that the Greenglasses were out for the evening and would return the next morning (R. 1191). He stayed the night at a rooming house and on Sunday morning, June 3, 1945, registered at the Hilton Hotel in Albuquerque (R. 1191-92).

At about 8:30 a.m. on June 3 he went again to the High Street address and there encountered David Greenglass. When Gold said "I came from Julius" and showed David the piece of cardboard Yakovlev had given him, David produced a matching piece of cardboard. Gold then introduced himself as "Dave from Pittsburgh" and David Greenglass introduced Gold to his wife Ruth (R. 1192-93).

David told Gold the information on the atom bomb was not ready and said he would have it ready at 3:00 or 4:00 p.m. that afternoon (R. 1194). When Gold returned at that time, David Greenglass gave him an envelope, saying it contained the information on the atom bomb for which Gold had come. He also told Gold that he expected to get a furlough at Christmas and would return to New York, at which time he could be

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contacted through his brother-in-law Julius. He gave Gold the telephone number of Julius in New York City. (R. 1195-96.)

Gold returned to New York on June 5, 1945 and on the same evening met with Yakovlev and turned over to him information which he had received from Fuchs and Greenglass (R. 1198-1200). Two weeks later, he again met with Yakovlev, at which time Yakovlev told Gold the information had been sent to the Soviet Union and that the information received from Greenglass "was extremely excellent and very valuable" (R. 1201).

Gold also testified to several additional meetings with Yakovlev and a further meeting with Fuchs in September, 1945 (R. 1202-23).

Though given overnight to make their decision, counsel for both Rosenbergs and for Sobell chose not to cross-examine Gold (R. 1230). In his summation, Rosenbergs' counsel made perfectly clear what his trial strategy was in this respect. He conceded the June 3, 1945 meetings between Gold and Greenglass but emphasized that Gold had never claimed to have met Rosenberg (R. 2205-06, 2215). Counsel accepted the Jello-box evidence, except for the Greenglasses testimony that their half was obtained from the Rosenbergs. He stated: "Is it too unreasonable to infer that maybe David got his one-half of

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the Jello box from the very man who gave the other half to Gold?" (R. 2216.)* He added that Gold:

> "got his 30-year bit [his sentence upon his conviction on a similar charge in Philadelphia] and he told the truth. That is why I didn't cross-examine him. I didn't ask him one question because there is no doubt in my mind that he impressed you as well as impressed everybody that he was telling the absolute truth, the absolute truth." (R. 2215; emphasis added.)

Counsel for Sobell, in his summation, adopted the strategy of attacking the testimony of Government witness Max Elitcher and the evidence relating to Sobell's flight to Mexico, emphasizing that this was the only evidence against his client (R. 2243, 2258). Harry Gold was not mentioned once in the entire summation (R. 2239-65).

The Hotel Hilton Registration Card

To corroborate Gold's testimony concerning his June 3, 1945 activities in Albuquerque, New Mexico, the Government on March 16, 1951, introduced in evidence a photostat of a Hotel Hilton registration card showing Gold's registration at the Albuquerque Hotel on June 3, 1945. The circumstances of the introduction of the photostat are as follows:

* The references to "Julius" were explained away by Mr. Bloch as code names rather than true names (R. 2218-19).

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"MR. SAYPOL [the prosecutor]: I now have some testimony which it is possible there may be a stipulation on: The fact of the registration of Harry Gold at the Hotel Hilton on June 3. I have a photostat of the registration card. I also have the original on the way, together with a witness if required. . . ." (R. 1258.)

"MR. SAYPOL: I want to offer in evidence and have received a copy of the registration card as a record regularly kept in the course of business and show it to the jury.

"MR. E.H. BLOCH [Rosenberg's counsel]: I certainly have no objection to that introduction.

"MR. KUNTZ [Sobell's counsel]: We have no objection." (R. 1259.)

Since the foregoing proceedings took place outside the presence of the jury, they were repeated when the jury returned (R. 1261-62). The photostat of the registration card was then received as Government Exhibit 16 and the record reflects:

"MR. SAYPOL: Yes. I will ask leave to read it to the jury and exhibit it to the jury, <u>both the face and the reverse side of the photostat received</u>.
May I proceed to read it to the jury?

THE COURT: Yes.

(Government's Exhibit 16 exhibited and read to the jury.)" (R. 1262; emphasis added.)

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Inapplicability of Foregoing Evidence to Case Against Morton Sobell

Gold did not testify that he ever met either of the Rosenbergs or Morton Sobell. David and Ruth Greenglass made no mention of Sobell in their testimony. In fact, as Judge Kaufman acknowledged when he sentenced Sobell, "the evidence in the case did not point to any activity on your part in connection with the atom bomb project" (R. 2461). Indeed, as requested by Sobell's attorneys (R. 2159-65), Judge Kaufman instructed the jury to the same effect during his charge:

> "To determine whether Morton Sobell was a member of the conspiracy you are only to consider the testimony of Max Elitcher, William Danziger and the testimony relating to the defendant Sobell's alleged attempt to flee the country.
>
> "If you do not believe the testimony of Max Elitcher as it pertains to Sobell, then you must acquit the defendant Sobell." (R. 2355.)

Moreover, the failure of the Government to in any way connect Sobell with the theft of atomic secrets was cited by his defense counsel as the predicate for motions to dismiss the indictment and for acquittal at the end of the Government's direct case (R. 1542-54), at the conclusion of the trial (R. 2151-56), and on appeal, 195 F.2d at 600-2.

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Even the amended petition (p. 40 ftn.) concedes that "no claim was ever made by the Government nor was any evidence ever adduced that he [Sobell] was at any time involved in atomic espionage."

Sobell's Post-Conviction Proceedings

Upon the conviction of the Rosenbergs and Sobell on March 29, 1951, sentencing was scheduled for April 5, 1951. On that day, counsel for Sobell made a motion in arrest of judgment, claiming that Sobell's conviction was obtained upon false testimony about which the F.B.I. must have known (R. 2402-19).* Judge Kaufman denied the motion and sentenced Sobell to 30 years imprisonment (R. 2425, 2462).

The Rosenberg and Sobell convictions were affirmed on appeal, 195 F.2d 583 (2d Cir. 1952). One of the attacks on appeal concerned "the reliability of the damaging testimony given against . . . [the defendants] by the government's chief witnesses who are all self-confessed spies, and particularly the credibility of the testimony of the Greenglasses. . . ." 195 F.2d at 592. Pointing out that Judge Kaufman had instructed the jury that they must consider the accomplice testimony of the

* The alleged false testimony was that of James S. Huggins, an Immigration official from Laredo, Texas, who wrote on an Immigration record that Sobell was "Deported from Mexico" (R. 1516-35). In support of the motion, Sobell submitted an affidavit alleging in substance that he was forceably kidnapped from Mexico (R. 2406-14).

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Greenglasses and Gold "carefully and act upon it with caution" (R. 2364), the Court of Appeals declined to enter the province of the jury and consider the matter of credibility. 195 F.2d at 592. Rehearing of the appeal was denied at 195 F.2d 609 (2d Cir. 1952).

Petition for certiorari was denied, 344 U.S. 838 (1952) and rehearing denied, 344 U.S. 889 (1952). In 1954 Sobell moved for leave to file a second petition for rehearing, which was denied at 347 U.S. 1021. Again, in 1957 Sobell moved to vacate the orders denying certiorari and rehearing, which motion was denied at 355 U.S. 860.

Sobell and the Rosenbergs joined in a motion under 28 U.S.C. §2255 in late 1952. Among the grounds of the Rosenberg motion, in which Sobell joined, was the contention that "the prosecuting authorities knowingly used false testimony to bring about petitioners' conviction." Rosenberg petition, November 24, 1952, p. 5; 108 F. Supp. 800 n.1.**

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* A copy of the motion papers will be supplied at the oral argument of this motion.

** Another ground urged was that pre-trial and trial publicity created a trial atmosphere of prejudice and hostility toward" the petitioners. Rosenberg petition, supra, at p. 4, 108 F. Supp. 800 n.1.

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The claim of knowing use of perjured testimony in this motion was threefold. First, it was contended that David Greenglass lied when he testified that he had cooperated with the authorities from the time of his arrest on June 15, 1950, as was evidenced by a statement of Mr. Saypol, the prosecutor, at the time of David Greenglass' sentencing. Rosenberg petition, supra at 60-64. Second, David Greenglass allegedly perjured himself when he testified that Government Exhibits 2, 6, 7 and 8 (reproductions of sketches of atomic bomb information turned over to Rosenberg and Gold) were prepared from his memory alone without scientific aid. To demonstrate the falsity of this testimony, petitioners adduced affidavits of scientists saying it was "impossible" or "improbable" that Greenglass, lacking scientific qualifications, could have prepared these sketches solely from memory; and petitioners alleged that Gold had assisted Greenglass while both were lodged under the same roof at the "Tombs" (the New York City prison). Rosenberg petition, supra at 64-68. Finally, petitioners asserted that rebuttal witness Ben Schneider perjured himself to the knowledge of the prosecution when he testified on March 28, 1951 that the last time he saw Julius Rosenberg before that day was in May or

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June 1950, when Rosenberg came into his shop for passport photos. Petitioners relied upon reports that Schneider had been brought into court the day before, March 27, 1951, to ascertain whether he could identify Rosenberg. Rosenberg petition <u>supra</u> at 68-70.

The Rosenbergs and Sobell also alleged in their 1952 motion that "their conviction should be set aside because the evidence failed to show that all the information which they conspired to transmit was of such a character as could properly be classified as secret." 108 F. Supp. at 807. In this branch of their motion, petitioners attempted to demonstrate the following:

> "[The petition] . . . will first indicate the general problem of atomic bomb production in order to show the overall process and the interrelations of its many parts. It will demonstrate that the details of the detonation mechanism are but a miniscule part of the whole gigantic operation. It will also show that the details of any particular detonating element need not be known to produce the bomb because there are many alternative paths.
>
> "It will then prove that the secret of the detonating mechanism - - allegedly the secret transmitted by David Greenglass to the U.S.S.R.-- is no secret at all. At the time of the trial, it was held by the Government and its witness, Walter S. Koski, that the theory of

> 'implosion' utilized for the purpose of assembling the critical mass of fissionable metal was invented and developed at the Los Alamos Project. The falsity of this statement will be shown by direct reference to the scientific and patent literature available prior to the initiation of the Manhattan Project." Rosenberg petition, supra at 73-74.

In addition to a listing of the names and authors of various treatises and texts in the field of nuclear physics, this phase of the motion was supported by an affidavit of John Desmond Bernal, professor of physics at Birkbeck College, University of London, and a former Scientific Advisor to the Ministry of Home Security, 1939-1942, and to Combined Operations, 1942-45.

This motion of the Rosenbergs and Sobell was denied by Hon. Sylvester J. Ryan on December 10, 1952 at 108 F. Supp. 798 (S.D.N.Y. 1952), and the denial was affirmed on December 31, 1952, 200 F. 2d 666 (2d Cir.). Certiorari was denied on May 25, 1953, 345 U.S. 965 and rehearing denied on June 15, 1953, 345 U.S. 1003.*

By notice of motion, dated June 5, 1953, the Rosenbergs moved for a new trial under Rule 33, F.R. Crim. P., and for an order pursuant to Section 2255 vacating and setting aside their judgments of conviction.

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* A further motion of the Rosenbergs under Section 2255 and Rule 35, F.R. Crim. P., was denied by Judge Kaufman on June 1, 1953, affirmed June 5, 1953, 204 F.2d 688 (2d Cir.). A motion by Sobell under Rule 35 to reduce sentence was denied by Judge Kaufman on January 9, 1953, 109 F. Supp. 381.

By order to show cause, date the same day, Sobell made a similar motion based on the evidence set forth in the Rosenberg petition. The grounds of the motion were (1) newly discovered evidence, and (2) the use by the prosecuting authorities of knowingly perjured testimony. Rosenberg petition, June 5, 1953, p. 4.*

The newly-discovered evidence consisted of a console table said to belong to the Rosenbergs, about which David and Ruth Greenglass had testified at the trial, and certain pre-trial statements of Ruth and David Greenglass to their attorneys and inter-office memoranda of those attorneys, which had been stolen from the office of those attorneys. Upon the basis of these items, the following contentions were made: (1) Ruth and David Greenglass perjured themselves in their testimony concerning the console table, and the Government knowingly sponsored this testimony and suppressed the console table, knowing that it could expose Ruth Greenglass' perjury with respect thereto, Rosenberg petition, supra at 13-15; (2) Greenglass was a "hysteric" and a habitual liar, id. at 15-17; (3) the Government suppressed the fact that David Greenglass was questioned in February 1950 concerning the theft of uranium from Los Alamos, id. at 17; (4) David Greenglass' pre-trial

* A copy of this petition will also be supplied at the oral argument of this motion.

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statements to his attorneys omitted mention of portions of his trial testimony which tended to connect Julius Rosenberg to the conspiracy, e.g., he stated he identified Gold by a "torn or cut piece of card" rather than by a Jello box and he stated "I did not know who sent Gold to me", id. at 19-23.

These motions were heard by Judge Kaufman on June 8, 1953 and he orally rendered his opinion denying the motions the same day. Transcript of Hearing, June 8, 1953, pp. 122-37. Concerning the relief sought under Section 2255, Judge Kaufman, while noting "that this Court does not in its discretion believe that this motion should be entertained",* proceeded to decide the application "on its merits or lack of merit" (id. at 123). He treated "as true all the basic facts stated in the moving papers", noting that "this does not mean, of course, that I am obliged to accept conclusionary allegations asserted by petitioners" (id. at 123-24). In substance, Judge Kaufman expressed doubts whether the evidence adduced even indicated perjury, but in any event held it was no proof whatsoever of knowing use of perjury. It consisted rather of "a series of

* In this connection, Judge Kaufman adverted to the claim of knowing use of perjurious testimony in the earlier Section 2255 motion decided by Judge Ryan (id. at 122-23).

conjectures", "hypothetical charges" and "incredible" conclusions. (Id. at 126-32.) Judge Kaufman concluded:

> "Bold allegations and charges, which have been unfortunately characteristic of the defense, have been made, but in the realm of facts nothing of significance has been uncovered. I have said many times that I cannot remember a case in our courts which has received the meticulous attention of so many judges on so many occasions. The fervor and persistence of counsel cannot supply substance and merit where such is lacking, and the present attack is devoid of substance and at best cumulative." (Id. at 135.)

The denial as to the Rosenbergs was affirmed on June 11, 1953, 204 F.2d 688 (2d Cir.) and as to Sobell was affirmed on October 8, 1953, with rehearing denied on October 31, 1953 (unreported, Docket No. 22885). A petition by Sobell for certiorari was denied on February 1, 1954, 347 U.S. 904.

By notice of motion, dated May 8, 1956 and May 25, 1956, Sobell brought his third and fourth Section 2255 motions. The grounds for relief in the May 8 motion were that:

> "the prosecuting authorities knowingly, wilfully and intentionally used false and perjurious testimony and evidence, made false representations to the Court, and suppressed evidence which would have impeached and refuted testimony given against petitioner, all to cause and sustain his conviction. . . ." Sobell petition, May 1956, p. 2.

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Renewing the claim that he had been kidnapped from Mexico at the time of his arrest, see page 29 supra, Sobell again claimed the prosecution had suborned perjury when it introduced evidence to show he had been "deported" from Mexico. He further asserted that the Government deliberately suppressed evidence relating to the alleged abduction and made misrepresentations to the Court about it. (Id. at 3-18.) Judge Kaufman carefully considered each of these contentions and denied the motion on its merits, 142 F. Supp. 515 (S.D.N.Y., June 20, 1956). He found neither perjury, nor suppression nor misrepresentation. Id. at 527-31. Once again he observed:

> "It is difficult to find a case in the history of American jurisprudence, or indeed in the judicial annals of any other country, where the defendants' convictions and contentions have received the attention of so many judges at so many levels of a judicial system." Id. at 519.

Finally, Judge Kaufman indicated to Sobell's counsel, three of whom have brought the petition now before this Court, that they should consider the effect of "repeated abuses of . . . [the] processes" of the writ of habeas corpus and Section 2255 on the meaning of this great writ and the consequences of unfounded attacks on all associated with the prosecution of this case. Id. at 531-32.

Judge Kaufman's decision denying both motions

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was affirmed on May 14, 1957, 244 F.2d 520 (2d Cir.). Petition for rehearing was denied on June 3, 1957, Docket Nos. 24299 and 24300. Petitions for certiorari and for rehearing were denied on November 12, 1957 and January 6, 1958, 355 U.S. 873, 920.

A fifth motion by Sobell under Section 2255 was denied by Hon. John F.X. McGohey on April 5, 1962, 204 F. Supp. 225. No claim of use of perjured testimony was made in this motion. The denial was affirmed on February 6, 1963, 314 F.2d 314 (2d Cir.) and certiorari was denied on June 17, 1963, 374 U.S. 857.

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Sobell's Amended Petition

The amended petition currently before this Court is Sobell's sixth motion pursuant to Section 2255 and comes over 15 years after his conviction. It is his fourth such motion which is premised on the ground that the Government knowingly used perjured testimony at the trial; his third such motion which alleges that David Greenglass perjured himself with knowledge of the prosecution; his second such motion making a similar claim with respect to the testimony of Ruth Greenglass; and his second such motion making the claim that the scientific testimony concerning the atomic information passed by Greenglass to Russia was false.

The petition alleges that "the government [vaguely defined in the petition to include all "prosecutive, investigative and other agencies of the United States," and their agents and representatives, involved in the investigation or prosecution of the case (p. 3 ftn.)] knowingly created, contrived and used false, perjurious testimony and evidence and intentionally and wilfully induced and allowed government witnesses to give false, misleading and deceptive testimony in

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order to obtain the conviction of petitioner and his co-defendants" (p. 3).

While the amended petition can best be characterized as a masterpiece of obfuscation, stripped of its verbiage, it contains the following claims of fraudulent prosecution: (1) the Government knowingly used perjured testimony of David and Ruth Greenglass, John A. Derry and Harry Gold; (2) the Government knowingly presented false, misleading and deceptive evidence in the form of Government Exhibit 8; (3) the Government manufactured and presented a false, forged and after-contrived piece of evidence in the form of Government Exhibit 16 (the Hotel Hilton registration card), and then knowingly destroyed and caused and consciously permitted the destriction of this evidence to hide its fraud; (4) the Government knowingly suppressed the pre-trial statements of Harry Gold; and (5) the Government made during the course of the trial representations concerning the authenticity of the scientific information passed by Greenglass to Russia which, if not false in themselves, created misleading inferences concerning the secrecy and content of such information.

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The petition purports to be verified by Sobell's wife on his behalf _in absentia_. However, it is apparent from the face of the petition that neither Sobell nor his wife has any personal knowledge of any of the allegations thereof.

Three affidavits are submitted with the petition. The affidavit of Walter and Miriam Schnier is in the nature of a reply affidavit to the Government's answering papers addressed to the motion petitioner has withdrawn. It affords no factual support whatever for the allegations of the amended petition. As will be shown in more detail _infra_, the remaining two affidavits, to the extent they are even material to petitioner's claims of fraudulent prosecution, refute rather than support these claims.

While the amended petition refers to pre-trial statements of Gold to his attorneys, which were "received" by petitioner's counsel, the statements are not appended to the petition and their substance is set forth in the most conclusory and argumentative form.

The petition itself is replete with conclusions of fraudulent prosecution repeated so often that they

tend to obscure the paucity of factual allegations. Petitioner's strategy is to substitute charges for substantiation, adjectives for proof, and conclusions for fact, evidently on the theory that if you throw enough mud some of it is bound to stick.

Insofar as the amended petition relates to Government Exhibit 8, the petition <u>is</u> what it charges, a "fraud", a "hoax" and a "deception" (p. 31). By references to statements (not evidence) yanked out of context in the opening and closing statements of the prosecution and the charge and sentencing remarks of the trial judge, petitioner weaves from whole cloth a straw man which he labels "the secret of the atomic bomb", which he then attempts to puncture by reference to the affidavits of his scientists and by the conclusory allegations of the petition. He could just as well have used the testimony of the Government's scientific witnesses at the trial for this purpose, the very testimony he now brands as false in the petition.

The remainder of the petition is not supported by any affidavit or offer of relevant proof or indication of witnesses who could testify at a hearing, other than

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the affidavit and offer to testify of the Schmiers, testimony which if even relevant could only be of the rankest hearsay.

Petitioner finds it convenient, though perhaps not honorable, to attack numerous aspects of the trial strategy of counsel for his co-defendants, both now dead, and of the two retained counsel of his own choosing. By challenging their competence, he now seeks to reverse their strategy of 15 years ago, cross-examine witnesses not challenged at the trial, adduce witnesses he failed to call though he had opportunity to do so, withdraw stipulations and motions of defense counsel, and litigate matters which he had full opportunity to explore at the trial.

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ARGUMENT

POINT I

The "Ends of Justice" Dictate a Termination of These Continuing Piecemeal Attacks Upon the Credibility of Government Witnesses and the Good Faith of the Prosecution

Section 2255 provides that:

> "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."

In Sanders v. United States, 373 U.S. 1 (1963), the Supreme Court discussed at length the discretion which the above-quoted language gives the courts to deny repetitive and vexatious applications for relief under the statute. In substance, the Supreme Court there set forth two standards to guide the discretion of the Court in making a determination whether to entertain the motion, discussed under sub-headings A and B infra.

A. The Instant Motion is Premised on the Same Grounds Previously Heard and Determined On the Merits in Prior Applications.

The Supreme Court in Sanders said that:

> "Controlling weight may be given to denial of a prior application for . . . §2255 relief only if (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application." 373 U.S. at 15.

First, the instant motion is based on the same grounds urged in petitioner's first Section 2255 motion, denied by Judge Ryan on December 10, 1952; in his second Section 2255 motion, denied by Judge Kaufman on June 8, 1953; and in his third such motion, denied by Judge Kaufman on June 20, 1956. Each of those motions, together with the present one, sets forth as "a sufficient legal basis for granting the relief sought" the charge that the Government knowingly used perjured testimony in deprivation of petitioner's due process rights. Sanders v. United States,

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supra at 16; see Price v. Johnston, 334 U.S. 277, 288-89 (1948).

Additionally, the 1952 motion challenged the secrecy and value of the atomic information passed by Greenglass to Russia. While that branch of the motion was not cast in the legal framework of knowing use of perjured testimony, there can be no doubt that the argument was the same. The situation here is no different from that in 1956 when petitioner unsuccessfully tried to reassert the argument that he was illegally abducted from Mexico, casting his motion in terms of subject matter jurisdiction to avoid a prior ruling on personal jurisdiction. 142 F. 2d 520-25;

Certainly it is not the law that petitioner can attack the June 3, 1945 Greenglass-Gold meetings in three separate motions simply because three separate persons who were present thereat testified at the trial. Nor can he twice attack the testimony of the scientific witnesses who authenticated the atomic information passed by Greenglass to Russia simply because two different witnesses gave such testimony. Thus the tactic of

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petitioner in now putting the emphasis of this motion on the testimony of Gold and Derry raises no new "ground" which is appropriate for disposition under Section 2255.

Second, each of petitioner's Section 2255 motions were denied "on the merits" as defined by the Supreme Court in Sanders, 373 U.S. at 16. While it is true, as petitioner alleges, that no factual hearings were held on his prior motions, this is only because in each instance it was held that, assuming the truth of each factual allegation pleaded in the application, the motion and the files and records conclusively showed he was entitled to no relief thereunder.

Third, the "ends of justice" would not be served by permitting a redetermination of the same ground.

> "[T]he burden is on the applicant to show that, although the ground of the new application was determined against him on the merits of a prior application, the ends of justice would be served by a redetermination of the ground." 373 U.S. at 17.

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Petitioner makes no effort to meet this burden in his motion papers other than to deny the validity of the appeal and all prior post-conviction proceedings on the ground that the impounding of the Greenglass testimony and Government Exhibit 8 effectively deprived qualified scientists of the opportunity to evaluate this evidence during or after the trial. (Amended Pet., ¶60.) This is patent nonsense. At the time of the impounding the Court assured counsel "The stenographer will read it back to you at any time you want it" and "I may say to the defense, for any subsequent proceeding it will be made available." (Impounded Testimony, p. 4). The same defense counsel represented the defendants on appeal and in connection with their 1952 motion. 195 F.2d at 590; Transcript, December 1 and 2, 1952, p. 1; 108 F. Supp. at 799. Emanuel Bloch again represented the Rosenbergs with respect to the 1953 motion* and

*Among Rosenbergs' other counsel was Malcolm Sharp, one of petitioner's present counsel.

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Howard Meyer, who was of counsel on the appeal, represented Sobell (Transcript, June 8, 1953, p. 1.) Moreover, any attorney who suspected there was something to be gained from unimpounding this evidence would have requested that relief, as petitioner's counsel in fact did without opposition of the Government in March of this year.

Nor were the reviewing courts denied access to the impounded evidence. In its brief on appeal, the Government informed the Court of Appeals of the impounding and stated "If this Court desires to inspect that testimony, it will be necessary to direct the court reporter to read his notes to the Court." Government's Appeal Brief, p. 11 ftn. Judge Irving Kaufman was available to unimpound the evidence and it was he who decided Sobell's three Section 2255 motions in 1953 and 1956.

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In his May motion now withdrawn, petitioner attempted to meet his burden of showing that a redetermination would serve the ends of justice by asserting that his charges are so serious that they fairly shout for an explanation by the Government. Judge Kaufman had a few words to say about this tactic when he denied petitioner's third and fourth motions under Section 2255 in 1956, which bear repeating here.

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> "The ease with which the petitioner tars all associated with the prosecution in the face of a clear record which proves the contrary is truly startling. As was recently said of another prisoner who engaged the courts endlessly with meritless petitions. '"He is smart, shrewd, and resourceful." Thus he knows how to make charges so wild . . . as to induce a concern for their refutation that otherwise he would not command.' United States v. Tramaglio, 2 Cir. 1956, 234 F.2d 489.
>
> "From petitioner's unfounded attacks against the men who conducted the prosecution of his case, it is obvious that he believes in the broadside attack, painting with broad stroke and recklessly maligning all who participated in the process of bringing him to justice." 142 F. Supp. at 532.

In affirming, the Court of Appeals also adverted to the charges of "serious and sensational character" which upon examination proved to be "utterly groundless." 244 F.2d at 521.

Additional considerations dictate that this Court not entertain the motion. This attack comes over 15 years after petitioner's trial. As the Court of Appeals observed in 1963 in this very case:

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> "[N]ormally it is quite academic to talk of a new trial ten or fifteen years after the event; in most cases to direct one after such an interval is in practical result to order a release from further punishment, although the defendant does not even contend he is entitled to that relief from the courts." 314 F.2d at 325.

Moreover, the records and files of this case* show that the so-called "facts" adduced in support of the amended petition were in large part known, and with due diligence should have been known, at the time of trial and of petitioner's prior post-conviction proceedings. Thus:

> "Litigation is endless if it may be indefinitely continued by the asserted afterthoughts of able counsel." Latham v. Crouse, 347 F.2d 359, 360 (10th Cir. 1965).

Even that part of the amended petition addressed to Government Exhibit 8 and the testimony relating thereto is an afterthought, not having been made the basis for relief in the motion petitioner filed in May.

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* The Court's attention is also directed to the affidavit of Robert L. King, sworn to July 11, 1966, submitted in connection with the May motion, a copy of which will be supplied at the oral argument.

This Court cannot go on endlessly entertaining meritless applications in this case, when it already has accorded to petitioner more judicial attention than in any known case, for in view of "the practical demands of over-crowded dockets",

> "Holding evidentiary hearings in cases where no substantial reason has been advanced for holding one interferes with the effective disposition of meritorious applications . . . ." United States ex rel Hicks v. Fay, 230 F. Supp. 942, 947 (S.D.N.Y. 1964).

B. The Instant Motion Constitutes An Abuse of Section 2255

Even were petitioner urging the same grounds herein as in his prior motions, Section 2255 empowers this Court to decline to entertain the motion because it is abusive. Sanders v. United States, 373 U.S. 1, 17 (1963).

> "Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, or to entertain collateral proceedings whose only purpose is to vex, harass, or delay." Id. at 18.

In Sanders, supra, at 18, the Supreme Court held this principle would be applicable

> "if a prisoner deliberately withholds one of two grounds for federal collateral relief at the time of filing his first

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See also Haith v. United States, 221 F. Supp. 379, 381 (E.D. Pa. 1963).

Petitioner's meritless contention that the conduct of the prosecution and the impounding of Government Exhibit 8 and the related testimony had the effect of foreclosing the defendants from challenging this evidence at the trial has already been discussed* Passing that for the moment, there can be no question but that the portion of the amended petition addressed to this evidence is abusive by reason of the 1952 motion of petitioner and his co-defendants.

The grounds of the 1952 motion have already been summarized. See pages 30-33 supra. That branch of the 1952 motion which contended that it was "improbable" that Greenglass could, at trial or shortly before, have prepared Government Exhibits 2, 6, 7 and 8 from memory alone without scientific aid, not only was addressed to the same subject matter as the present petition, but, as petitioner recognizes,

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*See also pages 88-94 infra.

was in some respects inconsistent with his present motion. (Amended Petition, p. 13, ¶17.) Petitioner's argument in this respect seems to be that in 1952 his counsel were shooting pellets in the dark hoping that they would hit something, and therefore advanced a spurious ground for relief which was correctly denied. That is precisely what his counsel are doing now and all this argument shows is that the 1952 motion was abusive as well.

But petitioner and his co-defendants went further in 1952, a fact which the amended petition quite understandably ignores. They challenged the secrecy of the principle of using explosive lenses to make spherical implosion as a means of bringing together the critical mass of the 1945 atomic bomb, disputing Dr. Koski's testimony that this was a "new and original field" and deprecating the value of this information to Russia. Rosenberg Petition, November 24, 1952, pp. 71-98. Judge Ryan quite properly dismissed this contention without a hearing because:

> "Assuming that what they say is so - that the theory of atomic energy in the explosives field was known or contemplated years ago by scientists and physicists - it does not follow

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> that the practicability and feasibility of applying this theory to the manufacture of modern war implements was common knowledge to any other country. Certainly, we cannot say that in the United States this information has been made public nor can we assume that it has thus 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." 108 F. Supp. at 807-8.

Judge Ryan also held that petitioner's failure to raise the issue at the trial, despite the opportunity to do so there, barred the claim. Id. at 808.

Petitioner now in substance claims that he is raising a new "ground" because he centers his attack on Derry rather than Koski, because Government Exhibit 8 and the related testimony was impounded in 1952, and because he has treated the same subject matter under the legal framework of knowing use of perjury rather than arbitrary classification of generally known information. The meritless nature of this argument has already been discussed, but the point here is that petitioner in 1952, knowing the same general information set forth in the amended petition,

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withheld any claim of knowing use of perjury in connection with the same evidence.

The balance of the amended petition, challenging the credibility of Gold and the Greenglasses concerning their June 3, 1945 meetings in Albuquerque and the legitimacy of the Hotel Hilton registration card, is a carryover from petitioner's May motion which he withdrew. In its answering papers the Government demonstrated that the so-called "facts" advanced in support of the motion were in large part known at the time of trial when defense counsel chose not to cross-examine Gold and not to dispute the June 3, 1945 meetings or the validity of the registration card. In his recasting of his argument in the amended petition, petitioner appears to concede the correctness of the Government's position, stressing only as so-called "newly-discovered evidence" Gold's pre-trial statements to his attorneys and the fact of the return of the registration card to the hotel in August, 1951. See, e.g, Schnier affidavit.

The amended petition is totally lacking in any adequate explanation why petitioner should be permitted to maintain this motion when: (1) defense counsel at the

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trial not only failed to cross-examine David and Ruth Greenglass and Harry Gold concerning the existence of the Albuquerque meetings, but conceded that they took place;* (2) in attacking the credibility of David Greenglass in the 1952 and 1953 motions and of Ruth Greenglass in the 1953 motion, petitioner failed to challenge this aspect of their testimony; (3) Gold's public testimony before the Senate Internal Security Subcommittee became available in late April, 1956, when petitioner's counsel, including three of his present attorneys, were actively engaged in preparing Sobell's third and fourth Section 2255 motions; and (4) petitioner waited over 14 years after the trial to inquire about the original hotel registration card, which was not even placed in evidence.

The explanation for this conduct lies not in any "newly-discovered evidence" but in a shift in strategy by petitioner's counsel. When the book "The Judgment of Julius and Ethel Rosenberg", by John Wexley, Cameron and Kahn, New York, was published in 1955, advocating that the

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* Concerning petitioner's conclusory allegation that defense counsel were misled in this respect, see pages 85-94 infra.

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June 3, 1945 Gold-Greenglass meetings never occurred and that the Hotel Hilton card was a contrived document, petitioner's counsel, who were aware of the book,* were not yet prepared to abandon the strategy of trial counsel in not attacking Gold. Thus Malcolm Sharp, one of petitioner's counsel, in his own book "Was Justice Done", Monthly Review Press, 1956, which disputed the accuracy of Greenglass' account of the June 3, 1945 meetings but not their existence, stated: "I consider the theory presented here somewhat preferable to the others" referring to Wexley's book and another. (Author's Preface, p. XXXV). Petitioner's counsel now find the other "theory" attractive, simply because they have exhausted the former one by their numerous and repetitive motions,

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*The book itself contains an acknowledgment to one of Sobell's counsel who has represented him both in 1956 and now; and another of Sobell's present counsel reviewed the book in his own book published in 1956. See the affidavit of Robert L. King, sworn to July 11, 1966, in opposition to petitioner's May motion.

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and if this one doesn't work presumably they will pass on to yet another.*

It would be difficult, therefore, to find a petition more ripe for summary disposition as an abuse of the remedy provided by Section 2255. The voluminous nature of the prior litigation, the absence of new matter, and the deliberate withholding of the present theory of relief at the time of the 1956 motions, all compel this result.

In determining whether the motion is abusive, consideration should also be given to methodology of the motion. Once again, as in 1956 and before, petitioner, represented by three of the same counsel, seeks to "tar all associated with the prosecution in the face of a clear record which proves the contrary." 142 F. Supp. at 532.

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* Obviously it was not the intent of Section 2255 to make this Court the experimental proving grounds for numerous alternative theories of relief. Hence the requirement that petitioner come forward with new facts entitling him to relief. See pages 63-64 and 77 infra.

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For example, they ask this Court to conclude, on the basis of affidavits which, to the extent they are relevant, support the testimony of Koski and Derry, that Derry's testimony was perjured and that the perjury was suborned. They further ask this Court to conclude on the basis of a communication from the Department of Justice (not even attached to the petition) stating that the original June 3, 1945 Hilton registration card was returned to the hotel on August 4, 1951, that such a card never existed but was manufactured by the Government. Judge Kaufman's admonition to three of Sobell's present counsel in 1956 of their duty as officers of the court "to insure that this great writ shall not be stripped of its deep meaning through a corrosive process caused by repeated abuses of its processes," 142 F. Supp. at 531, apparently fell on deaf ears.

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POINT II

Sobell's Amended Petition Does Not Raise Any Issue of Fact Warranting a Hearing on his Allegations of Knowing Use of False and Perjured Evidence, Suppression of Evidence and Misrepresentations to the Court

In seeking collateral post-conviction relief,

> "The petitioner has the burden of overcoming the validity of the judgment of conviction which carries with it the presumption of regularity and is not lightly to be set aside." United States v. Russell, 146 F. Supp. 102, 103 (S.D.N.Y. 1955), aff'd, 238 F.2d 605 (2d Cir. 1956).

See also, United States v. Rosenberg, 108 F. Supp. 798, 801 (S.D.N.Y.), aff'd, 200 F.2d 666 (2d Cir. 1952), cert. denied, 345 U.S. 1003 (1953).

The amended petition is best characterized by the following description set forth in United States v. Kyle, 171 F. Supp. 337, 340 (S.D.N.Y.), aff'd, 266 F.2d 670 (2d Cir.), cert. denied, 361 U.S. 870 (1959):

> "It is plain that the defendant seeks a retrial of matters explored at the original trial of this action and on appeal. He embellishes his plea by violent attacks upon the prosecutor, a timeworn device usually resorted to in extremis. The papers abound with broad charges that the prosecutor wilfully suppressed evidence, wilfully introduced false and misleading testimony, wilfully participated in causing a witness to testify falsely and wilfully made misrepresentations to the Court."

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That this Court is not required to accept as true or direct a hearing upon these broad conclusionary charges of fraud is by now hornbook law. Sanders v. United States, 373 U.S. 1, 4, 19 (1963); United States v. Rosenberg, 200 F.2d 666, 668 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953); United States v. Mathison, 256 F.2d 803, 805 (7th Cir.), cert. denied, 358 U.S. 857 (1958); Taylor v. United States, 229 F.2d 826, 833 (8th Cir.), cert. denied, 351 U.S. 986 (1955); United States v. Pisciotta, 199 F.2d 603, 606 (2d Cir. 1952); United States v. Sturm, 180 F.2d 413, 414 (7th Cir.), cert. denied, 339 U.S. 986 (1950); United States v. Brilliant, 172 F. Supp. 712, 713 (E.D.N.Y. 1959), aff'd, 274 F.2d 618 (2d Cir.), cert. denied, 363 U.S. 806 (1960):*

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* See also United States v. Bradford, 238 F.2d 395, 397 (2d Cir. 1956), cert. denied, 352 U.S. 1002 (1957); Martinez v. United States, 344 F. 2d 325, 326 (10th Cir. 1965); United States v. O'Malley, 311 F.2d 788, 789 (6th Cir. 1963); Hammond v. United States, 309 F.2d 935, 936 (4th Cir. 1962); Wilkins v. United States, 258 F.2d 416, 417 (D.C. Cir.), cert. denied, 357 U.S. 942 (1958); United States ex rel Swaggerty v. Knoch, 245 F.2d 229, 230 (7th Cir. 1957); Walker v. United States, 218 F.2d 80, 81 (7th Cir. 1955).

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Section 2255 is in essence a civil remedy.

> "Rule 9(b) of the Rules of Civil Procedure, 28 U.S.C.A. requires 'particularity' in averments as to 'fraud.' To procure a judgment by known use of perjury is a fraud against the opposing party. Hence, the rule would require this appellant to set forth facts sufficient to inform the Government as to what he relies upon to establish this 'fraud' against him." Taylor v. United States, supra at 833.

While the requirement of specification of facts, not conclusions, has sometimes been relaxed in the case of *pro se* practitioners, on the ground that:

> "we cannot impose on them the same high standards of the legal art which we might place on the members of the legal profession,"*

no relaxation is called for by the present petition, where Sobell is represented by six attorneys and a seventh "associate counsel."

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* Price v. Johnston, 334 U.S. 266, 292 (1948).

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It is clear, therefore, that the allegations of the affidavits attached to the petition, rather than the conclusions of the petition itself, must be examined to determine whether a hearing is required on the charges made therein.

A. The Affidavits of Drs. Linschitz and Morrison Raise No Issue of Material Fact

The affidavits of Dr. Henry Linschitz and Dr. Philip Morrison are addressed to Government Exhibit 8, the replica of the sketch Greenglass gave to the Rosenbergs in September, 1945, and to Greenglass' and Derry's testimony relating thereto. That testimony has already been summarized. See pages 14-16, 18-22 supra. In substance, Greenglass testified that from his work at Los Alamos, his wanderings about the project and his conversations with numerous people there, he was able to formulate and communicate to the Rosenbergs what he regarded as "a pretty good description of the atomic bomb." John Derry testified that this description demonstrated "with substantial accuracy the principle involved in the operation of the 1945 atomic bomb," adding that it was not a complete description of the bomb.

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Petitioner now claims this testimony was perjurious and that the Government knowingly suborned that perjury. His only factual showing is the affidavits of Linschitz and Morrison.

These affidavits show no perjury on Greenglass' part, much less knowing use thereof. Greenglass did not purport to do anything more than to summarize the information he had passed to the Rosenbergs. The allegations in the Linschitz and Morrison affidavits that that information was in some respects incomplete or inaccurate as a description of the bomb is plainly irrelevant to the truthfulness of Greenglass' testimony. Petitioner makes no attempt to show that this description was not in fact the one given to the Rosenbergs in September, 1945.

Nor do the Linschitz and Morrison affidavits impeach the testimony of John Derry in any respect. Derry testified as an expert and gave his opinion as to what Greenglass' description of the bomb represented. Assuming arguendo that Linschitz and Morrison are of a different opinion, that in no way shows that Derry was not honestly expressing his own opinion, especially in a "highly subjective" area where the opinions of experts may diverge. See Linschitz affidavit, pp. 7 - 8.

If differences of opinion among experts proved knowing use of perjury, criminal convictions involving conflicting expert testimony would be almost presumptively void.

But a careful examination of the Linschitz and Morrison affidavits corroborates rather than conflicts with Derry's testimony. Dr. Linschitz's affidavit states that the Greenglass description "is correct . . . that explosive 'lenses' were used to achieve implosion of a core containing plutonium and beryllium components, the overall system being arranged in an essentially sperhically symmetrical configuration" (pp. 2-3); and that the description embodies "the then classified words or concepts, 'lens' and 'implosion,' together with a general impression of spherically disposed components and convergent detonations" (p.7). Dr. Morrison states in his affidavit that Government Exhibit 8 "illustrates the general points: the use of explosive lenses to make spherical implosion; the use of electrical detonation for simultaneity; the use of a plutonium sphere, and the use of beryllium as one component" (p. 3); and that the sketch "is a somewhat schematized cross-section, which might be called a pedagogical descriptive picture" (p. 6). It is apparent from both affidavits that the sketch

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and description relate to the bomb under development at Los Alamos in 1945 and dropped on Nagasaki in August of that year.

Concerning Derry's testimony that the sketch and description demonstrate "with substantial accuracy the principle involved" in the 1945 bomb, only Dr. Linchitz ventures a negative opinion and he promptly backs away from that.

> "After this analysis, what information can one say these drawings finally convey? Essentially, we are left with the then classified words or concepts, "lens" and "implosion," together with a general impression of spherically disposed components and convergent detonations. Does this constitute a "substantially accurate representation of the principle" of the bomb? In my opinion, no. Nevertheless, it is clear that such a judgment must be a highly subjective one indeed. A diagram that may obviously represent a "principle" to a research expert who has devoted years of hard work and worry to the problem, and who cannot help but correct and fill in the gaps subconsciously with his own knowledge, may be totally useless to a technician who has actually to construct the device. We undoubtedly have such a situation in Exhibit 8. In addition, we have to contend with the vagueness of such terms as "substantially accurate." It seems to me, therefore, that in the face of possibly conflicting and certainly subjective judgments, the proper question to ask is not whether the drawings are "substantially accurate" or describe "principles," but simply, what value could this information have had for the Russians in developing their own bombs? One might even hope to answer such a question quantitatively, in terms of the time which might have been saved in the Russian effort, as a consequence of having this information." Linschitz Affidavit, pp. 7 - 8.

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As appears from the above, Linschitz corroborates Derry's testimony that the sketch and description contain information which was "then classified." By the same token, he also corroborates Koski's testimony that Government Exhibits 2, 6 and 7 embody "then classified" information.*

In its broad aspect the Linschitz affidavit is totally irrelevant to either Greenglass' or Derry's testimony. It purports to address itself to two questions: (1) "the accuracy and completeness" of the sketch and testimony "as a description of the plutonium bomb developed at Los Alamos in 1945", and (2) the "possible value" of the sketch and description "in assisting the development and construction of a Russian implosion bomb." Linschitz Affidavit, p. 2. As to the first, Derry emphasized that the sketch and description were not complete and that the principle was "what is intended here" (R. 1336-38). The trial judge and the prosecutor made the same point (R. 1337).

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*It is noteworthy that neither the petition nor the affidavits annexed thereto challenge Dr. Koski's qualifications as a scientific expert or his testimony that Exhibits 2, 6 and 7, if shown to an expert, reveal the nature and object of the activity that was under way at Los Alamos in relation to the production of an atomic bomb.

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As to the value of the information to Russia, this portion of the Linschitz affidavit does not even purport to be directed to any trial testimony, but constitutes rather Linschitz's own concept of "the proper question to ask." Linschitz Affidavit, p. 8. Aside from the wholly irrelevant nature of this discussion, Linschitz's observations are wholly outside his area of expertise. See, for example, his assumptions and presumptions on pages 9 and 10 of his affidavit, whereby he argues that Russians would strike upon "the most important matters treated in Exhibits 2, 6, 7, 8," i.e., the concepts of implosion and lenses (which he admits were "then classified") almost immediately even without the Greenglass information.*

Dr. Morrison's affidavit also addresses itself to the wrong inquiry. It, like the Linschitz affidavit, concerns itself principally with the accuracy and completeness of the description of the bomb.

In addition, on the basis of knowing Derry "in a casual way", Morrison offers his opinions as to Derry's qualifications. He then in effect criticizes Derry for not

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*Another striking example is his treatment of "the information presumably given by Klaus Fuchs" (p. 15) on pages 11 and 12.

volunteering additional classified information about the bomb in order to make it known wherein the Greenglass description was not completely accurate.

Since the Linschitz and Morrison affidavits provide no factual support for petitioner's claim of perjured testimony, knowingly used by the prosecution, no hearing is required with respect to that claim.

B. Petitioner's "Straw Man"--"The Secret of the Atomic Bomb"

The amended petition seeks to nurture the very notion it attacks, that the Greenglass sketch and description contain "the secret of the atomic bomb." It does this by reference to isolated, out of context statements in the prosecution's opening and closing remarks and the charge and sentencing remarks of the trial judge.

Thus, for example, the petition repeatedly suggests that prosecutor Saypol said in his opening that Greenglass turned over to the Rosenbergs and Gold "the very bomb itself" (pp. 3, 8, 9, 15, 27, 31), whereas the actual statement, supported by the record and by petitioner's own affidavits, was that he turned over "sketches of the very bomb itself" (R. 230). Repeated mention is made of that portion of Judge Kaufman's charge (R. 2340) where he says "the Government

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claims that the venture was successful as to the atom bomb secret" (Amended Petition, pp. 3, 9, 39), ignoring the fact that this was judicial shorthand to distinguish the atomic information from the other information which the conspirators sought to transmit to Russia. And the petition relies heavily on the trial judge's opinion, expressed at the Rosenberg's sentencing, that the Rosenberg's conduct hastened Russia's discovery of the atomic bomb "years before our best scientists predicted" (R. 2451). Amended Petition, pp. 3-4, 10, 27, 39-40.*

Petitioner also seeks to foster the notion that the trial testimony revolved around "the secret of the atomic bomb" by insinuations and erroneous connotations derived from various trial occurrences. Thus, the reading, by the court clerk at the court's direction, to prospective jurors during voir dire of the list of witnesses furnished by the Government as required by 18 U.S.C. §3432 (R. 25-28) becomes an insidious device to vouch for the Government's scientific evidence. Amended Petition, pp. 13-14. Greenglass' direct testimony concerning the names of Los Alamos scientists he turned over

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*To the extent that the amended petition implies criticism of Judge Kaufman's actions in this case, it is not consonant with the expressions of defense counsel at the conclusion of the trial and at the time of sentencing, nor with the views of the Court of Appeals. 195 F.2d at 592-93.

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to the Rosenbergs (R. 567-71, 593-94, 597, 613, 632-33, 70[illegible]) becomes a "deceptive ploy" to secure additional scientific sponsorship for Derry's testimony. Amended Petition, pp. 14, 27, 37-38. Mr. Saypol's explanations concerning consideration given by his colleagues and by agencies of the Government, including the Department of Justice, the Atomic Energy Commission and the Joint Congressional Committee on Atomic Energy, to balancing the Government's interest in secrecy against the defendants' right of confrontation (R. 706-7, 713-14), the truth of which is uncontested, become ploys to create a "false aura of secrecy" around the Greenglass sketch and description and to extract concessions from defense counsel. Amended Petition, pp. 20-22. There is not one shred of evidence, but only petitioner's ipse dixits, to support these claims.

Nor does the sequence of the Koski-Derry testimony indicate anything sinister. Obviously the Government had available at the trial other scientific testimony to authenticate the Greenglass sketch and description had any issue been raised in that respect. Considering the classified nature of the subject matter, the Government's decision not to call additional witnesses when Derry's testimony was not challenged is hardly surprising or indicative of anything. It ill-behooves petitioner, who was afforded the opportunity of cross-examination

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and rebuttal at the trial, to come in 15 years later and challenge the trial testimony on the basis of opinions of persons who were available in 1951.

The record discloses that the jury, the trial court, and defense counsel were not confused about the nature of the evidence offered. Thus, when Derry testified, he, the court and defense counsel all acknowledged that the sketch and description were not a "complete description of the cross-section of the atomic bomb and how it works and the principles under which it works" (R. 1336-38). Even earlier, on cross-examination of David Greenglass concerning his lack of scientific training, this same point was made in the jury's presence:

> "The Court: . . . The charge here is not that he gave him everything that might have been accurate in every minute detail, but that he transferred secret material pertaining to the National Defense.
>
> "Mr. E. H. Bloch: That is correct.
>
> "The Court: And whether he might have turned something over, miscalculating a figure or making an error here and there, is not material to the charge, Mr. Bloch.
>
> "Mr. E. H. Bloch: Except this, your Honor, that it goes to his credibility. I agree with your Honor fully on the basic theoretical legal approach with respect to the charge,

> but I am asking these questions to impeach the witness's credibility." (R. 874-75.)

It is therefore apparent that "the fraud, the hoax and the deception" (Amended Petition, p. 31) is not in the evidence at the trial but in the allegations of the petition itself. The classified nature of the atomic information passed by Greenglass to Russia, testified to by Koski and Derry, is not contested, indeed is conceded by petitioner. Linschitz Affidavit, p. 7. The main complaint seems to be that the Russians did not get sufficient value for their money.* As was the case of the 1952 motion raising substantially the same point, petitioner offers no evidence "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." 108 F.Supp. at 808. And, as was the case in 1952, the issue they raise is one which they could have presented at the trial, which was presented to the jury by the trial judge, and which may not be retried on this application. Ibid.

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*Petitioner's argument in this respect can be analogized to the man who, being convicted of robbing a jewelry store, claims that the "loot" consisted of rhinestones rather than diamonds.

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C. The Allegations of Subornation of Perjury in Connection with the June 3, 1945 Gold-Greenglass Meetings

The amended petition contends that the June 3, 1945 meetings at the Greenglass apartment in Albuquerque, testified to at length by David and Ruth Greenglass and Harry Gold, never took place. The only affidavit submitted in connection with this branch of the motion is the Schnier affidavit. As noted earlier, this affidavit is in the nature of a reply affidavit to the Government's answering papers to the May motion, now withdrawn. It provides no factual support for the allegations of the petition.

The Schniers' broad allegations of a "horrendous miscarriage of justice", "a grevious and tragic maladministration of criminal justice", and of "the innocence of the defendants" no more require a hearing than do the broad conclusory charges of the petition itself.* See the authorities cited at pages 63-64 supra. The Schniers' allegations are patently based on hearsay information, which "does not qualify as proper evidentiary material to support a petition under §2255 . . . and could not be used at a hearing." United States v. D'Ercole, 361 F.2d 211, 212 (2d Cir. 1966); United States

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*The Schnier's failure during "five years of intensive research" concerning the instant case to contact the men responsible for its prosecution is indicative of the objectivity of their research.

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v. Pisciotta, 199 F.2d 603, 607 (2d Cir. 1952); United States v. Orlando, 327 F.2d 185, 189 (6th Cir.), cert. denied, 379 U.S. 825 (1964); Green v. United States, 158 F.Supp. 804, 809-10 (D. Mass.), aff'd, 256 F.2d 483 (1st Cir.), cert. denied, 358 U.S. 854 (1958).

To establish a right to a hearing under Section 2255, the petitioner has the burden of showing not only that material perjured testimony was used to convict him but that it was knowingly and intentionally used by the prosecution in order to do so. This burden is not met by pointing out trivial inconsistencies in the evidence. United States v. Spadafora, 200 F.2d 140, 142-43 (7th Cir. 1952); Enzor v. United States, 296 F.2d 62, 63 (5th Cir. 1961), cert. denied, 369 U.S. 854 (1962); United States v. Schultz, 286 F.2d 753, 755 (7th Cir. 1961); Wilkins v. United States, 262 F.2d 223, 227 (D.C. Cir.), cert. denied, 359 U.S. 1002 (1959); Boisen v. United States, 181 F.Supp. 349, 351 (S.D.N.Y. 1960).

The allegations of fraud and subornation of perjury contained in the amended petition are not "substantiated by allegations of fact with some probability of verity," O'Malley v. United States, 285 F.2d 733, 735 (6th Cir. 1961); Malone v. United States, 299 F.2d 254, 256 (6th Cir.), cert. denied, 371 U.S. 863 (1962), but are purely a "matter of speculation." United States ex rel Darcy v. Handy, 351 U.S. 454, 462 (1956).

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The amended petition places virtually complete reliance on Gold's pre-trial statements to his attorneys and on the return of the Hotel Hilton registration card to the hotel.

The amended petition's conclusory and argumentative allegations concerning the substance of Gold's pre-trial statements to his attorneys, which--though available to petitioner--are not set forth, are obviously hearsay on hearsay and do not provide an evidentiary foundation for directing a hearing. See the authorities cited at pages 76-77 supra.

If, despite this lack of evidentiary foundation, the allegations in the petition concerning Gold's pre-trial statements to his attorneys be accepted, they at most show that he changed his testimony in some respects between his arrest and the trial.

> "Obviously this in itself does not warrant a charge of fraud" Price v. Johnston, 334 U.S. 266, 290-91 (1948).

Certainly these inconsistencies afford no basis for a finding either of perjury or of knowing use thereof. See Burns v. United States, 321 F.2d 893, 896-97 (8th Cir.), cert. denied, 375 U.S. 959 (1963); Application of Landeros, 154 F.Supp. 183, 198 (D. N.J. 1957).

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When discrepancies of a similar nature by David Greenglass in his pre-trial statements to his attorneys were made the basis of a Section 2255 motion charging knowing use of his perjured testimony, Judge Kaufman in his oral opinion of June 8, 1953 stated:

> "I do not accept the conclusion that perjury has been committed, but aside from that, even if I were to draw such conclusion from the alleged facts . . . no element of proof offered supports the allegation that the Government knowingly used perjurious testimony." Transcript, June 8, 1953, p. 132.

Moreover, these discrepancies at most raise a question of credibility which could have been pursued at the trial by cross-examination of Harry Gold. See United States v. Abbinanti, 338 F.2d 331, 332 (2d Cir. 1964); McGuinn v. United States, 239 F.2d 449, 451 (D.C. Cir. 1956), cert. denied, 353 U.S. 942 (1957); United States v. Edwards, 152 F.Supp. 179, 183 (D. D.C. 1957), aff'd, 256 F.2d 707 (D.C. Cir.), cert. denied, 358 U.S. 847 (1958).

> "[I]t is apparent from the face of the record that the petitioner merely seeks by his Section 2255 petition to relitigate the credibility of the witnesses" Hill v. United States, 236 F.Supp. 155, 159 (E.D. Tenn. 1964).

Having made a deliberate choice not to cross-examine Gold, Sobell "cannot now by way of motion under

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§2255 assert a defense which was available but not presented at the trial." United States v. Branch, 261 F.2d 530, 533 (2d Cir. 1958), cert. denied, 359 U.S. 993 (1959); see United States v. Smith, 306 F.2d 457,458 (2d Cir. 1962).

Had he chosen to cross-examine Gold, Sobell could have laid the foundation for a demand for examination of the pre-trial statements of Gold to the Government containing inconsistencies with his trial testimony, as was done in the case of the witness Max Elitcher. Judge Kaufman turned over to the defense three statements given by Elitcher to the F.B.I. and his grand jury testimony (R. 516-17, 600-02). Had a similar cross-examination of Gold been undertaken, there is thus every reason to believe Judge Kaufman would have made Gold's pre-trial statements available as well. Moreover, even if a demand had been made for Gold's pre-trial statements and denied by the trial court, that would not be the type of error which could be corrected by a motion under Section 2255, United States v. Angelet, 255 F.2d 383, 384 (2d Cir. 1958); Boisen v. United States, 181 F.Supp. 349, 350 (S.D.N.Y. 1960).

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Where no demand at all was made, a fortiori petitioner's claim is lacking in substance.*

D. The Hilton Hotel Registration Card

Petitioner's brazen allegation of the fraudulent manufacture of the Hotel Hilton registration card (Government Exhibit 16) is again the bare statement of a conclusion. The only "facts" offered to support this conclusion are (1) the handwritten date on the face of the card is June 3, 1945 whereas the machine-stamped date on the reverse side is June 4, 1945; (2) no F.B.I. agent's initials or date of receipt appear on the photostat in evidence; and (3) the original card, which was not put in evidence, was returned to the hotel on August 4, 1951. Petitioner does not even attach to his amended petition the communication from the Department of Justice informing his attorneys of the return of the card to the hotel, but a copy was attached to their petition filed in May.

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*Since petitioner's allegations are woefully insufficient to require a hearing, his requests (1) for release on bail or production at the hearing, (2) for authority to take Gold's deposition, and (3) for all pre-trial statements of Gold and the Greenglasses and the confession of Fuchs, must also be denied. It is apparent from the record that demands (2) and (3) above are "no more than a fishing attempt." Smith v. United States, 252 F.2d 369, 371-72 (5th Cir.), cert. denied, 357 U.S. 939 (1958).

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The fact that the card bears a different date on front and back, if it proves anything, proves its genuineness. Even those with the frame of mind to accuse the F.B.I. of dishonesty do not accuse it of being completely incompetent, which it would have to be if it made the idiotic mistake of placing inconsistent dates on a card it allegedly manufactured.* Moreover, it would be unreasonable to assume that the F.B.I. and the prosecution would have jeopardized the entire case by manufacturing such an insignificant item of evidence.

Nor does the absence of initials and date of receipt on the photostat (which is Government Exhibit 16) signify anything. Initials and receipt date are absent from Government Exhibit 17 as well, the photostats of the credit slip and bank ledger showing the June 4, 1945 deposit by Ruth Greenglass of $400 in the Albuquerque National Trust and Savings Bank. Both Exhibit 16 and Exhibit 17 were introduced into evidence under identical circumstances (R. 1261-69). Why then does not petitioner allege that Government Exhibit 17 was forged as well? Because when the Schniers visited the bank in Albuquerque they were shown the original credit slip

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* Especially is this true when, on petitioner's theory, the September 19, 1945 card served as a model for the forgery. It bears consistent dates on front and back.

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and ledger, to which were attached tags from the F.B.I. Laboratory in Washington. * The absence of F.B.I. initials and date on Government Exhibit 16 is no more indicative of a fraudulent manufacture and surreptitious destruction of evidence than are the similar circumstances with respect to Government Exhibit 17.

Nor is anything sinister indicated by the fact that two registration cards, obtained by the F.B.I. on different dates, were disposed of differently. And the letter from the Justice Department showing that the original registration card was returned to the hotel, far from showing manufacture of evidence, shows precisely the opposite. It is perhaps unnecessary to note that the original of Government Exhibit 16

* "Invitation to an Inquest," pp. 395-96. It is evident that the allegation of the amended petition (p.57) -- "Every exhibit obtained by the FBI introduced into evidence except Government Exhibit 16, bore the initials of one or more FBI agents and the date the document came into the hands of the FBI" -- is patently untrue.

(i.e., the photostat introduced at the trial) has been preserved to this day. *

In any event, the face and reverse side of the registration card were exhibited and read in open Court (R. 1262). Petitioner and his counsel were then informed that the original card was accessible together with an authenticating witness (R. 1258). They had full opportunity to explore the card's authenticity at that time, and their failure to do so cannot be excused on the allegation that counsel were misled when there is no factual support whatever for that allegation.

* The Government certainly could not have anticipated that any significance would be attached to the original card when (1) no objection was offered to the introduction of the photostat, (2) Rosenbergs' counsel stated "I am certainly not going to insist on strict technical testimony", (3) at the same time the registration card was offered, Rosenbergs' counsel made a specific request to look at bank records which the Government proposed to offer in evidence, and (4) Rosenbergs' counsel stated in his summation that Gold had told "the absolute truth" (R. 1258-59, 2215). Ironically, had petitioner not so long delayed the bringing of his present motion, the original of one and perhaps both of the registration cards would have been available.

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POINT III

Sobell's Claim That His Two Retained Counsel Did Not Provide "Effective Representation" at the Trial is Clearly Frivolous.

No longer content to tar merely the prosecution, petitioner turns his attack as well on his own retained trial counsel and those retained by his co-defendants. The amended petition (p. 62) alleges, in its customary fashion without factual support, that the "out-of-court publicity . . . reached such proportion as to deprive counsel of the capacity to fully and effectively represent the petitioner and his co-defendants."

Sobell was represented at trial and on appeal by Harold M. Phillips and Edward Kuntz. The Rosenbergs were represented by Emanuel E. Bloch* and Alexander Bloch. All but Mr. Phillips are now deceased. The quality of the representation provided has been considered before. Thus, the Court of Appeals in affirming the judgment of conviction, observed 'the record shows that defendants' counsel were singularly astute and conscientious." 195 F.2d at 596 n.9.

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* On appeal, the Second Circuit observed that Emanuel E. Bloch was "a highly competent and experienced lawyer." 195 F.2d at 593.

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Judge Ryan, in denying Sobell's first Section 2255 motion, stated: "The trial record reveals a defense intelligently conducted by able counsel of petitioners' own choice and selection." 108 F. Supp at 800. And Judge Kaufman, who presided over the trial and was therefore in unique position to know, stated:

> "[The] verdict was returned at the end of an exhaustive trial, at which Sobell's two extremely able attorneys and the able lawyers of his co-defendants, Julius and Ethel Rosenberg, skillfully but vainly tried to stem the avalanche of evidence against them." 142 F. Supp. at 517.

In substance, the petition alleges in conclusory form that the trial was conducted in an "inflammatory atmosphere" brought about by the Government which disabled defense counsel from conducting an effective defense. Certain trial strategy is singled out for criticism, including counsel's request that Government Exhibit 8 be impounded and the related testimony taken *in camera*; their failure to contest the authenticity and accuracy of Government Exhibit 8 and Greenglass' description relating thereto; their failure to cross-examine Gold; their alleged refusal to permit Sobell to testify; and their failure to secure additional scientific aid. Amended Petition, pp. 62 - 63.

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To collaterally attack his conviction on the ground of ineffective representation of counsel, petitioner must adduce facts showing that "the purported representation by counsel was such as to make the trial a farce and a mockery of justice." United States v. Wight, 176 F.2d 376, 379 (2d Cir. 1949); see United States v. Garguilo, 324 F.2d 795, 796 (2d Cir. 1963); United States v. Gonzalez, 321 F.2d 638, 639 (2d Cir. 1963); Mitchell v. United States, 259 F.2d 787, 793 (D.C. Cir.), cert. denied, 358 U.S. 850 (1958). To justify his claim for relief, petitioner must demonstrate "a total failure to present the cause of the accused in any fundamental respect." United States v. Garguilo, supra at 796.

This burden is not met by "merely complaining of alleged tactical errors or mistakes in strategy." Id. at 797; see United States v. Gonzalez, supra at 639; United States v. Duhart, 269 F.2d 113, 115 (2d Cir. 1959); Mitchell v. United States, supra at 793; Frand v. United States, 301 F.2d 102, 103 (10th Cir. 1962). Judge Kaufman put this principle succinctly in 1956 when, as here, petitioner complained of his counsel's strategy in not putting his story before the jury:

> "Sobell may not now be heard to urge that he is entitled to a new trial because

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> the defense strategy on the first trial was not as soundly based as second guessing and fictional fantasies subsequently created indicate to him that it might have been." 142 F. Supp. at 529.

Moreover, before he is entitled to a hearing, petitioner "must state with particularity sufficient facts to constitute a ground of relief." Gordon v. United States, 216 F.2d 495, 498 (5th Cir. 1954). Motion papers containing "merely conclusory allegations of innocence and miscarriage of justice" will not suffice. United States v. Pisciotta, 199 F.2d 603, 606 (2d Cir. 1952). The allegations of the amended petition are plainly insubstantial under the above authorities. See also O'Malley v. United States, 285 F.2d 733, 735 (6th Cir. 1961), United States v. Trumblay , 256 F.2d 615, 617 (7th Cir. 1958), cert. denied, 358 U.S. 947 (1959); Green v. United States, 256 F.2d 483, 485 (1st Cir.), cert. denied, 358 U.S. 854 (1958).

In place of facts, petitioner substitutes the following conclusions as his predicate for relief:

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(1) Counsel for petitioner and his co-defendants, relying on false statements of the Government, accepted the Government's alleged claim that Government Exhibit 8 and Greenglass' related testimony represented "the secret of the atomic bomb." Amended Petition, pp. 6, 17, 19.

(2) Defense counsel were "tricked . . . into asking for the impounding and sealing of Government Exhibit 8 and its description, and for proceedings to be held *in camera*." *Id*.at 12, 19, 23, 39.

(3) Defense counsel continued to erroneously believe at the time of the 1952 Section 2255 motion that the sketch and description were substantially accurate. *Id*. at 13.

(4) The reading of the Government's witness list, including the names of Drs. Urey, Oppenheimer and Kistiakowski, falsely impressed upon the defense counsel that the Government's scientific evidence was vouched for by these scientists. *Id*. at 13-14, 17, 19.

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(5) Counsel fell into the alleged well-planned trap of the Government and were prepared to concede that any evidence of the atomic bomb would be accurate and would contain the secret of the bomb. Id. at 17

(6) Counsel for the Rosenbergs, when Government Exhibit 8 was offered, believed that all of the scientists referred to by the Government on prior occasions would soon be appearing to attest to its secrecy and authenticity. Id. at 21.

(7) Emanuel Bloch was without scientific aid when he cross-examined Derry and permitted an objection to frustrate his cross-examination. Id. at 31.

(8) The Government's alleged false statements about being prepared to establish the authenticity of Government Exhibit 16 induced defense counsel to stipulate the photostatic copy into evidence. Id. at 6, 45.

(9) The Government's alleged false statements that Government Exhibit 16 was a true copy of

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a document made in the regular course of business at the Hotel Hilton induced the Rosenbergs' counsel to acknowledge the truthfulness of the Gold-Greenglass testimony about the June 3, 1945 meetings. Id. at 6, 53, 61.

(10) The "inflammatory atmosphere" allegedly created by the Government deprived defense counsel of the capacity to fully and effectively represent petitioner and his co-defendants and induced them to rely on statements of the Government during the trial. Id. at 62.

Sobell has presented neither affidavits nor statements from witnesses nor has he suggested that he could produce evidence of any kind to support these bare assertions. There is no claim that these allegations find support in the record of this case, and in fact the record demonstrates the falsity of these claims.

For example, the record belies petitioner's claim that the "aura" of the trial was such as to beguile defense counsel into conceding the Government's evidence concerning the secrecy of the atomic

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information passed by Greenglass to Russia. When a stipulation to the effect that matters involved in Greenglass' description of the bomb were secret and pertained to the national defense of the United States was explored, only Alexander Bloch was prepared to make that concession, stating that "I dissent from the conclusion reached by my three friends." (R. 707-8). The remaining defense counsel, and particularly Sobell's two attorneys, objected to any such concession. (R. 708-21). Mr. Kuntz stated the position of Sobell's attorneys in no uncertain terms:

> "Well, Mr. Phillips and I are in complete agreement that we would not be defending the rights of our client properly by stipulating any such thing. We feel that our national defense is secure only in so far as we secure the liberty of our present client, and tomorrow the next client, and so on, and because we feel a confession [sic.] of that kind would not be in the best interests of the defense of our client, not because of the nature of the testimony or anything of that kind" (R. 720-21).

These are hardly the words of a Government "patsy."

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Nor were counsel for Rosenbergs swept away by the Government's scientific evidence. Thus, at the sentencing of the Rosenbergs, just 16 days after Derry's testimony and 7 days after the end of trial, Emanuel Bloch stated:

> "[W]hen I want to know the scientific facts - and this is with all due deference in respect to Mr. Saypol - I will not come to Mr. Saypol but I will come to people like Dr. Oppenheimer and Dr. Urey and the scientists who work on the A-bomb. I think that is a fair statement, your Honor." (R. 2439).

Mr. Bloch then proceeded to read a "pithy concretization" of the thoughts of these scientists, which in very capsule form was quite similar to arguments made in the 1952 motion and in the amended petition. And the 1952 motion itself, with its voluminous references to scientific and patent literature and its supporting affidavits of four scientists, dispels all illusion that defense counsel were unwilling or unable to secure scientific assistance.

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Sobell's principal allegation that the trial was conducted in a "prejudicial" or "inflammatory atmosphere" is also contradicted rather than supported by the record. In his 1952 motion, Sobell joined with the Rosenbergs in claiming that the trial atmosphere of prejudice and hostility resulting from pre-trial newspaper publicity and other mass media precluded the selection of an impartial jury. See 108 F. Supp. at 800 n.1. When confronted with the obvious answer -- if this is so why didn't you seek a continuance or a change of venue or at least make a complaint at the trial? -- the answer in the reply papers was that counsel were unaware of such publicity. See 108 F. Supp. at 802 & n.7. Now, with no supporting evidence, petitioner would have this Court conclude precisely the contrary and further, that their awareness significantly influenced their conduct at the trial.

RLK:[illegible]
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Conclusion

Petitioner's amended motion under 28 U.S.C. §2255 should be denied in its entirety.

Respectfully submitted,

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

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

Of Counsel.

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

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. W. C. Sullivan

DATE: 9/8/66

FROM : W. A. Branigan

1 - Mr. DeLoach
1 - Mr. W. C. Sullivan
1 - Mr. W. A. Branigan
1 - Mr. J. P. Lee
1 - Mr. R. E. Wick

SUBJECT: MORTON SOBELL
ESPIONAGE - RUSSIA

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-1-87 BY 3012 PWT/JAS

This is an informative memorandum summarizing the Government's answer to the subject's latest petition to set aside his conviction.

BACKGROUND:

Morton Sobell is presently serving a 30-year sentence as a result of his 1951 conviction of espionage conspiracy along with Julius and Ethel Rosenberg. He filed his sixth motion to set aside his conviction on 5/13/66 charging the Government with knowing use of forged documents and perjured testimony to convict him and of suppressing evidence which would have helped him. Sobell filed an amended petition on 8/22/66 and the Government filed its answer on 9/3/66.

SUMMARY OF THE GOVERNMENT MEMORANDUM:

In the memorandum filed by the Government on 9/3/66 three main points are set out:

The first is that the "ends of justice" demand an end to the continuing attack on the credibility of Government witnesses and on the good faith of the prosecution. It is pointed out this latest motion is based on the same grounds previously litigated and constitutes an abuse of judicial procedures under Title Eighteen, Section 2255. As an example, it is noted that in three motions made by Sobell in 1952, 1953, and 1956 it was charged that the Government knowingly used perjured testimony. These motions were denied.

The second point is that no issues of fact are raised which warrant a hearing on the allegations of knowing use of perjured evidence, suppression of evidence and misrepresentations by the prosecution to the court. The memorandum

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EX-112

CONTINUED — OVER

55 SEP 13 1966

examines the affidavits filed by Doctors Linschitz and Morrison which claimed that Exhibit Eight was false and misleading. (Exhibit Eight is a sketch of a cross section of the atomic bomb which was prepared by David Greenglass and introduced into evidence as a reproduction of a sketch which Greenglass gave to Rosenberg.) The Government points out that Greenglass furnished to the court a summary of the information which he furnished to Rosenberg and the fact that the sketch was, in some respects, incomplete or inaccurate is irrelevant to the truthfulness of the Greenglass testimony. One of the defense's allegations was that the FBI had manufactured a hotel registration card to show that Harry Gold was in Albuquerque on June 3, 1945, and that an error was made in creating this card by having a handwritten date of June 3 on the front of the card and a time stamp date of June 4 on the back of the card. The Government notes that even those who accuse the FBI of dishonesty do not accuse it of being incompetent as it would have to be if it made the idiotic mistake of placing inconsistent dates on a card it allegedly manufactured.

The third main point is that the defense claim that the trial counsel did not provide effective representation is described as frivolous. It is pointed out that the quality of defense counsel has been considered by various courts in the past and has been found to be singularly astute and conscientious. The Government memorandum points out that the defense cannot, 15 years after the trial, complain of trial strategy and tactical errors made during the trial.

ACTION:

For informative purposes. This matter is being followed very closely.

F-5 (Rev. 1-17-66)

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☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO ☒ TELETYPE

9:17 PM CST URGENT 9-3-66 JDB

TO DIRECTOR, NEW YORK, AND ABBUQUERQUE

NEW YORK VIA WASHINGTON--ENCODED

FROM OKLAHOMA CITY 032300

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-1-87 BY 3012 PWT/CLS

MORTON SOBELL. ESPIONAGE-RUSSIA.

RE ALBUQUERQUE TEL SEPTEMBER 2, 1966.

FRED BRAASCH, MANAGER, QUARTZ MOUNTAIN LODGE, LONE WOLF, OKLAHOMA, STATED FORMERLY EMPLOYED AS AUDITOR FROM NOVEMBER 1950 TO MAY 1959 HILTON HOTEL ALBUQUERQUE. POLICY OF HILTON HOTELS WAS TO DESTROY REGISTRATION CARDS, STATEMENTS AND FOLIOS IN DUE COURSE OF BUSINESS IN ACCORDANCE WITH STATE AND FEDERAL REGULATIONS AFTER RECORDS SERVE PURPOSE. HILTON HOTEL, ALBUQUERQUE, DESTROYED RECORDS OVER SEVEN YEARS OLD INCLUDING REGISTRATION CARDS, STATEMENTS AND FOLIOS DUE TO STORAGE PROBLEM. BRAASCH STATED IN 1957 HE SUPERVISED THE DESTRUCTION OF THESE RECORDS DATING FROM ABOUT 1939 WHEN HILTON HOTEL OPENED TO ABOUT 1950. HE STATED HE REQUESTED LINDA HUGHES, EXECUTIVE HOUSEKEEPER, HILTON, FOR TWO HOUSEBOYS

REC 54 101-2483-1655

SEP 13 1966 NY

54 SEP 19 1966

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

4-3 (Rev. 1-27-66)

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PAGE 2, FROM OKLAHOMA CITY 032300

UNDER HER SUPERVISION TO ASSIST HIM IN DESTROYING THESE RECORDS AT HILTON INCINERATOR. HE DID NOT RECALL HER SUPERVISING THIS WORK BUT ONLY FURNISHED THE HELP, NAMES NOT RECALLED. BRAASCH STATED HE DID NOT SEE THE HARRY GOLD REGISTRATION CARD AND FOLIO FOR JUNE 3, 1945 DURING TIME HE WAS EMPLOYED AT THE HILTON HOTEL AND DEFINITELY DID NOT RECALL DESTROYING SAME. HE SAID IF PERTINENT RECORD RETURNED TO MRS. A. T. SHRIVER, SECRETARY TO MANAGER, OR ANY OTHER OFFICER THEY WOULD BE AS MATTER OF PRACTICE SENT TO THE AUDITOR FOR REPLACING IN CHRONOLOGICAL ORDER THEIR RESPECTIVE FILE. HOWEVER HE DID NOT RECALL SEEING PERTINENT RECORDS RETURN. BRAASC DID NOT KNOW WHEREABOUTS ROBERT S. CORDERO, STATED MARK NEAL, FORMER ASSISTANT MANAGER 1945 TO 1960, LAST EMPLOYED WHITE WINDROCK MOTOR HOTEL, ALBUQUERQUE, AND LUCILLE BEALE, BOOKKEEPER, FOR 15 YEARS , HILTON, RESIDING MORNINGSIDE DRIVE ALBUQUERQUE, WOULD BE FAMILIAR WITH THIS MATTER AND COULD POSSIBLY FURNISH PERTINENT INFORMATION.

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

REC 54 101-2483-1656

Mr. J. Walter Yeagley
Assistant Attorney General

September 8, 1966

Director, FBI

1 - Mr. Lee

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DATE 5-1-87 BY 3042/PWT/CLS

MORTON SOBELL
ESPIONAGE - RUSSIA

Reference is made to our letter dated September 1, 1966, relating to the policy of the Hilton Hotel, Albuquerque, New Mexico, concerning the destruction of registration cards, particularly the registration card dated June 3, 1945, in the name of Harry Gold.

W. P. Mullen, Assistant Treasurer, Hilton Hotel Corporation, Chicago, Illinois, advised that the policy of all Hilton Hotels is to destroy guest registration cards and folios in the course of business consistent with appropriate city, state, and Federal regulations after they have served their purpose. He explained that storage is always a problem, and he recalled that the Hilton Hotel, Albuquerque, destroyed guest registration cards and folios over seven years of age in the early part of the 1960s. Destruction of records was brought up to date when the hotel was transferred to the Cole Corporation in the Spring of 1963.

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COMM-FBI

Linda Hughes, Executive Housekeeper, Hilton Hotel, Albuquerque, during the pertinent period, advised that in the Spring of 1961 pursuant to instructions from Fred Braasch, then Auditor of the Hilton Hotel, she supervised the destruction, by burning in the hotel's furnace, of all guest registration cards and folios, including statements, that were over seven years of age. In 1963 she supervised the bringing up to date of the destruction of the above-mentioned records prior to or at the time of the transfer of the hotel to the Cole Corporation.

The files of our Albuquerque Office show that Harry Gold's registration card and statement of the Hilton Hotel for June 3, 1945, were returned by an Agent of the Federal Bureau of Investigation to Mrs. A. T. Shriver, secretary to the manager of the Hilton Hotel, Albuquerque, from 1948 to 1963. These items were returned on August 4, 1951. Mrs. Shriver has no present recollection of receiving these items. She advised that it was her practice on receipt of such items to send them to the auditor to have them replaced chronologically in their respective files.

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1 - New York (100-37158)

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SEE NOTE PAGE TWO

Mr. J. Walter Yeagley

Fred Braasch, Manager, Quartz Mountain Lodge, Lone Wolf, Oklahoma, was interviewed and stated that he was formerly Auditor of the Hilton Hotel, Albuquerque, from November, 1950, until May, 1959. He stated that the practice of that hotel was to destroy registration cards, statements, and folios in due course of business in accordance with state and Federal regulations after the records had served their purpose. He stated that the Hilton Hotel, Albuquerque, destroyed records over seven years old, including registration cards, statements, and folios due to a storage problem. He continued that in 1957 he supervised the destruction of those records dating from about 1939 when the hotel opened through about 1950. He stated he requested Linda Hughes to furnish two houseboys under her supervision to assist him in destroying these records in the hotel's incinerator. He stated that he did not see the Harry Gold registration card for June 3, 1945, during the time he was employed at the hotel and could not recall destroying it. He said if the pertinent records had been returned to Mrs. Shriver or any other officer, they would, as a matter of practice, have been sent to the auditor for replacing in chronological order in the proper file. He does not recall seeing the pertinent records returned.

You will be advised of the results of the attempts to locate and interview Robert S. Cordero, Auditor of the Hilton Hotel, Albuquerque, at the time the hotel was purchased by the Cole Corporation.

NOTE: In connection with the current motion of Morton Sobell to set aside his conviction, we are attempting to develop complete information concerning the destruction of the registration card of Harry Gold for June 3, 1945. A photostat of this card was introduced into evidence with the agreement of the defense during the trial in 1951. The defense is now claiming that this card was a fraudulent one and was made by the FBI. After the trial it was returned to the hotel and destroyed in the regular course of business.

4-3 (Rev. 1-27-66)

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☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO xx TELETYPE

5:47 PM URGENT 9-2-66 RON

TO DIRECTOR, NEW YORK CITY AND OKLAHOMA CITY

NEW YORK VIA WASHINGTON - ENCODED

FROM ALBUQUERQUE 022130

MORTON SOBELL, ESPIONAGE - RUSSIA.

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DATE 5-1-87 BY 3042PWT

REBUTEL AUGUST 31 LAST.

W. P. MULLEN, ASSISTANT TREASURER, HILTON HOTEL, CORPORATION, 720 SOUTH MICHIGAN AVE., CHICAGO, IN ALBUQUERQUE IN CONNECTION WITH REPOSSESSION OF HILTON HOTEL, ALBUQUERQUE, NEW MEXICO, ADVISED POLICY OF ALL HILTON HOTELS TO DESTROY GUEST REGISTRATION CARDS AND FOLIOS IN DUE COURSE OF BUSINESS CONSISTENT WITH APPROPRIATE CITY, STATE, AND FEDERAL REGULATIONS AFTER THEY HAVE SERVED THEIR PURPOSE. EXPLAINED STORAGE IS ALWAYS A PROBLEM AND RECALLED HILTON HOTEL, ALBUQUERQUE, DESTROYED GUEST REGISTRATION CARDS AND FOLIOS OVER SEVEN YEARS OLD IN THE EARLY PART OF THE 1960'S AND DESTRUCTION OF THIS TYPE OF RECORDS BROUGHT UP TO DATE WHEN HILTON, ALBUQUERQUE, TRANSFERRED TO COLE CORPORATION IN SPRING OF 1963. MULLEN STATES APPROXIMATELY

REC 54 101-2483-1656

EX-110

4 SEP 13 1966

Ltr to N.Y. J. Walter Yeagley 9/8/66

RELAYED TO NY

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

4-3 (Rev. 1-27-66)

83

Tolson
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Trotter
Tele. Room
Holmes
Gandy

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☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO XX TELETYPE

ONE MONTH AGO RECEIVED AN INQUIRY FROM AMERICANO HOTEL, NEW YORK, RE VERIFICATION OF PAST EMPLOYMENT OF ROBERT S. CORDERO; THIS INQUIRY STATING CORDERO UNDER CONSIDERATION FOR EMPLOYMENT BY AMERICANO HOTEL. LINDA HUGHES, EXECUTIVE HOUSEKEEPER, HILTON, ALBUQUERQUE, NEW MEXICO, DURING PERTINENT PERIOD, ADVISED THAT IN SPRING OF 1961 PURSUANT TO INSTRUCTIONS OF FRED BRAASCH, THE AUDITOR OF HILTON, ALBUQUERQUE, SUPERVISED DESTRUCTION BY BURNING IN THE HOTEL FURNACE OF ALL GUEST REGISTRATION CARDS AND FOLIOS INCLUDING STATEMENTS THAT WERE OVER SEVEN YEARS OLD, AND IN 1963, SUPERVISED THE BRINGING UP TO DATE THE DESTRUCTION OF THIS TYPE OF RECORDS PRIOR TO TRANSFER OR AT THE TIME OF THE TRANSFER OF HILTON, ALBUQUERQUE, TO THE COLE CORPORATION. ALBUQUERQUE FILE REFLECTS HARRY GOLD'S REGISTRATION CARDS AND STATEMENTS, HILTON, FOR JUNE 3, 1945 LAST RETURNED BY AGENT OF FBI TO MRS. A. T. SHRIVER, SECRETARY, TO MANAGER, HILTON, ALBUQUERQUE, ON AUGUST 4, 1951. MRS. A. T. SHRIVER, SECRETARY TO MANAGER, HILTON, ALBUQUERQUE, 1948 TO 1963, HAS NO PRESENT RECOLLECTION OF RECEIVING THESE ITEMS. STATES IT

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

4-3 (Rev. 1-27-66)

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☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO ☒ TELETYPE

PAGE THREE FROM ALBUQUERQUE 022130

WAS HER PRACTICE ON RECEIPT OF SUCH RETURNED ITEMS TO SEND THEM TO THE AUDITOR FOR THE REPLACING OF THEM CHRONOLOGICALLY IN THEIR RESPECTIVE FILES. FRED BRAASCH CURRENTLY MANAGER OF QUARTZ MOUNTAIN LODGE, LONE WOLF, OKLAHOMA.

OKLAHOMA CITY INTERVIEW BRAASCH AND OBTAIN ALL FACTS SURROUNDING DESTRUCTION OF GUEST REGISTRATION CARDS AND STATEMENTS OF HILTON, ALBUQUERQUE, IN SPRING OF 1961, PARTICULARLY AS TO DESTRUCTION OF HARRY GOLD'S REGISTRATION AND STATEMENT FOR JUNE 3, 1945.

DEPARTMENT OF JUSTICE ATTORNEY REQUESTS THIS INFORMATION IN CONNECTION WITH CURRENT MOTION TO SET ASIDE SOBELL'S CONVICTION.

NEW YORK LOCATE AND INTERVIEW ROBERT S. CORDERO PER REFERENCED TELETYPE.

RECEIVED: 9:48 PM REY

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

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

TELETYPE UNIT
SEP 1 4 1966
ENCODED MESSAGE

FBI NEW YORK

1159 AM URGENT 9-14-66 JLW

TO DIRECTOR /5/ AND PHILADELPHIA

PHILADELPHIA VIA WASHINGTON - ENCODED

FROM NEW YORK 3P

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-1-87 BY 3042 PWT/cls

MORTON SOBELL, ESP - R

BUFILE 101-2483 , NEW YORK 100-37158

AT HEARING HELD IN USDC, SDNY, NINE TWELVE SIXTYSIX, ON SUBJECTS MOTION UNDER SECTION TWO TWO FIVE FIVE, USC, DEFENSE ATTORNEYS PRESENTED AFFIDAVIT STATING THAT BETWEEN ARREST OF HARRY GOLD AND THE TIME OF TRIAL IN NINETEEN FIFTYONE, "FUNDAMENTAL AND SUBSTANTIAL ALTERATIONS AND ADDITIONS WERE MADE TO GOLD'S STORY" TO IMPLICATE SOBELL. DEFENSE THEN ATTEMPTED TO INTRODUCE DOCUMENTS AND TAPES CONTAINING GOLD'S PRE-TRIAL STATEMENTS TO HIS ATTORNEY. AUSA ROBERT L. KING OBJECTED TO THE TAPES WHICH WERE IN POSSESSION OF DEFENSE BECAUSE THESE WERE NOT ORIGINAL RECORDINGS, BUT COPIES WHICH WERE PREPARED IN NINETEEN SIXTYONE BY WALTER SCHNEIR, AND COULD NOT BE AUTHENTICATED. DEFENSE STATED THAT ALL OF THE MATERIAL IN POSSESSION OF GOLD'S ATTORNEYS WAS MADE AVAILABLE TO FBI IN OCTOBER, NINETEEN FIFTYONE INCLUDING FOURTEEN HOURS OF RECORDED INTERVIEWS.

REC-9 101-2483-1657

END PAGE ONE

57 SEP 23 1966

RELAYED TO
14 SEP 16 1966

101-2483

OF GOLD WITH ATTORNEYS. COURT STATED THAT IF GOVERNMENT AND DEFENSE COULD AGREE IN OBTAINING AUTHENTICATED COPY OF RECORDINGS, COURT WOULD REVIEW AND CONSIDER THIS MATERIAL.

GOLD'S ATTORNEY, AUGUSTUS S. BALLARD, OF FIRM PEPPER, HAMILTON, SCHEETZ, PHILADELPHIA, CONTACTED AUSA KING NINE THIRTEEN SIXTYSIX AND STATED THEIR RECORDINGS WERE MADE ON SOUND SCRIBER MACHINE. THEY HAVE RECORDINGS BUT NO LONGER HAVE SOUND SCRIBER MACHINE AND WOULD MAKE THEM AVAILABLE TO COURT IF NEEDED. THEY STATED THESE WERE FURNISHED TO FBI IN OCTOBER, NINETEEN FIFTYONE BUT HAVE NO KNOWLEDGE IF FBI MADE TAPE RECORDS OR WRITTEN TRANSCRIPT OF GOLD-S INTERVIEWS. THEY STATED THE MAGNETIC TAPE COPY OF THIS MATERIAL WAS MADE BY SCHNEIR WITHOUT THEIR KNOWLEDGE OR CONSENT.

AUSA KING DESIRES TO KNOW IF FBI HAS MAGNETIC TAPE COPY, WRITTEN TRANSCRIPT, OR WRITTEN SYNOPSIS OF GOLD-S CONFERENCES WITH ATTORNEYS WHICH COULD BE MADE AVAILABLE TO COURT. DEFENSE ATTORNEYS ALSO MADE MENTION OF A TWENTYTWO PAGE WRITTEN STATEMENT OF GOLD COPY OF WHICH WAS FURNISHED BY GOLD-S ATTORNEY TO SCHNEIR, ONE PAGE OF WHICH

PAGE THREE

MAKES REFERENCE TO GOLD'S ACTIVITIES IN ALBUQUERQUE ON SIX THREE FORTY FIVE.

PHILADELPHIA SUTEL NEW YORK IF ANY OF ABOVE ARE AVAILABLE IN FILES OF THAT OFFICE. IF AVAILABLE, FORWARD IMMEDIATELY TO NEW YORK OFFICE. IF NOT AVAILABLE, PHILADELPHIA CONTACT GOLD'S ATTORNEYS FOR ORIGINALS AND FORWARD TO NEW YORK OFFICE FOR USE OF UNITED STATES ATTORNEY.

END

~~CORR P 1 L 7 WD 6 "MADE"~~

END

MAL R RELAY

FBI WASH DC

CODE

F B I

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

F B I

Date: 9/13/66

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

Via AIRTEL ______________________
(Priority)

TO: DIRECTOR, FBI (101-2483)

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

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

ReNYairtel, 9/6/66.

The following information was furnished by AUSA ROBERT L. KING, SDNY, 9/12/66:

A hearing was held before USDJ EDWARD WEINFELD, USDC, SDNY, on 9/12/66, on subject's motion under Sec. 2255, USC, to set aside conviction and sentence of subject. Subject was represented by MARSHALL PERLIN, WILLIAM M. KUNSTLER, ARTHUR KINOY and MALCOLM SHARP. Also present at the hearing for the defense were atomic scientists PHILIP MORRISON and HENRY LINSCHITZ. Oral arguments were presented for defense by PERLIN and KUNSTLER.

KING advised that at 10:30 a.m., prior to the oral arguments on the above motion, defense attorneys presented him with copies of four affidavits and a 70 page memorandum in

3 - BUREAU (RM)
1 - NY 100-109849 (HELEN SOBELL)
1 - NY 100-107111 (CSJMS)
1 - NY 100-135206 (WALTER D. SCHNEIR)
1 - NY 100-89559 (MARSHALL PERLIN)
1 - NY 100-118562 (ARTHUR KINOY)
1 - NY 100-146994 (WILLIAM M. KUNSTLER)
1 - NY 100-37158

PFD:mfd (#331)
(12)

REC 37 101-2483-1658

SEP 14 1966

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12/15/82

Approved: ______________________ Sent ______________ M Per ______________
Special Agent in Charge

70 SEP 21 1966

support of subject's petition. KING advised the court that in-spite of the fact that this material had just been handed to him, the government was against any further delay and desired to proceed with the hearing.

The above-mentioned affidavits were submitted by WALTER D. SCHNEIR; Dr. HAROLD CLAYTON UREY, Professor of Chemistry, University of California; MALCOLM SHARP, Professor of Law, University of New Mexico; and ELIZABETH MC CARTHY, attorney, handwriting and document expert.

The affidavit of MC CARTHY pertained to an examination by her of government exhibit #16 which was conducted in the office of USA, SDNY. This sets forth her findings as to a comparison of the 6/3/45 and 9/19/45 Hilton Hotel registration cards of HARRY GOLD.

Following presentation of oral arguments by the defense and the government, the court took the matter under advisement stating that no early decision would be rendered due to the involved nature of the case.

Copies of the above-mentioned affidavits and memorandum of the defense will be furnished to the Bureau as soon as furnished by AUSA KING.

FD-12 (Rev. 1-27-66)

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☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO xx TELETYPE

2:17 PM URGENT 9-7-66 RON

TO DIRECTOR

FROM ALBUQUERQUE 071920

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

MORTON SOBELL. ESPIONAGE - RUSSIA.

RE. BUREAU TELETYPE SEPTEMBER 2 AND OKLAHOMA CITY TELETYPE SEPTEMBER 3 LAST.

ALBUQUERQUE FILE REFLECTS REGISTRATION CARD AND STATEMENT OF HARRY GOLD FOR JUNE 3, 1945, AT HILTON HOTEL, ALBUQUERQUE, LAST OBTAINED BY FBI AGENT FROM MARC NEAL, ASSISTANT MANAGER, HILTON HOTEL, ALBUQUERQUE, IN MARCH 1951. MARC NEAL, ASSISTANT MANAGER, HILTON HOTEL, 1950 THROUGH 1960, AND LUCILLE BEALL, BOOKKEEPER, HILTON HOTEL, ALBUQUERQUE, 1943 TO 1960, INDIVIDUALLY ADVISED POLICY OF HILTON HOTELS TO DESTROY REGISTRATION CARDS, STATEMENTS, FOLIOS IN DUE COURSE OF BUSINESS IN ACCORDANCE WITH FEDERAL, STATE, AND CITY REGULATIONS AFTER RECORDS HAD SERVED THEIR PURPOSES. NEAL AND BEALL RECALLED IN LATE FIFTIES THE POLICY OF DESTRUCTION BY BURNING IN THE HOTEL INCINERATOR THE GUEST REGISTRATION CARDS, STATEMENTS AND FOLIOS OVER 7 YEARS OF

UNRECORDED COPY FILED IN 65-57449

REC-108 101-2483-1659

12 SEP 16 1966

XEROX SEP 19 1966

50 SEP 22 1966

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

4-3 (Rev. 1-27-66)

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☐ AIRGRAM ☐ CABLEGRAM ☐ RADIO ☒ TELETYPE

PAGE TWO FROM ALBUQUERQUE 071920

AGE WAS INSTUTUTED AT HILTON HOTEL, ALBUQUERQUE, UNDER SUPERVISION OF FRED BRAASCH, THEN AUDITOR OF HOTEL. NEAL AND BEALL BOTH STATED THEY DID NOT DESTROY HARRY GOLD'S CARD AND STATEMENT FOR JUNE 3, 1945 BUT THOUGHT THESE HAD BEEN DESTROYED IN THE REGULAR COURSE OF BUSINESS PROBABLY INN LATE FIFTIES.

AIR-MAIL COPY TO NEW YORK.

FO

RECEIVED 5:25 PM AKJ

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

FBI

Date: 9/7/66

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

Via AIRTEL
(Priority)

TO: DIRECTOR, FBI (101-2483)

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

SUBJECT: MORTON SOBELL
ESP - R

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12/10/86 3042 put DK

Re Albuquerque TT to Director, 9/2/66.

ROBERT S. CORDERO, Auditor, Americana Hotel, NYC, was interviewed 9/7/66, by SA PHILIP F. DONEGAN and furnished the following information.

CORDERO stated he was employed at the Hilton Hotel, Albuquerque, as Auditor, from December, 1960, to March, 1963. He stated this hotel was sold to the Cole Corporation in February, 1963, and he left there the following month. He stated he had no personal knowledge of the hotel registration card for HARRY GOLD for 6/3/45, and has no information as to its possible destruction by the hotel. He stated he could recall hotel employees discussing this matter in general, but that he had no knowledge that the hotel was in possession of the Gold registration card during the period he was employed there. He said that due to the interest created there by the ROSENBERG case, he is certain that if the registration card of HARRY GOLD ever came to his attention, he would recall it.

3 - Bureau (RM)
1 - Albuquerque (Info.) (65-50) (RM)
1 - New York (100-109849) (HELEN SOBELL)
1 - New York (100-107111) (CSJMS)
1 - New York (100-135206) (WALTER D. SCHNEIR)
1 - New York

PFD:ggr
(9)

REC 108 101-2483-1660

SEP 13 1966

UNRECORDED COPY FILED IN 65-59467

CC - WICB

Xerox SEP 19 1966

Ltr to Mr. J. Walter Yeagley 9/19/66 Assistant Attorney General

JPL: sal

SOVIET SECTION

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

CORDERO said that sometime prior to the sale of the hotel to the Cole Corp., believed to be in 1962, but month not recalled, he supervised the destruction of old registration cards and other hotel records. He said although the Hilton made a practice of destroying records over seven years old, this was not done on a yearly basis, but was done only periodically when storage space became scarce. He stated registration cards and other records were kept in cartons in an attic room of the Albuquerque Hilton, and were labeled by marking pencil with the year thatthe records pertained to. He recalled that sometime in 1962, he requested LINDA HUGHES, Executive Housekeeper, to furnish him two houseboys to help him destroy old records in the attic. He stated he accompanied the houseboys, names not recalled, to the attic where he marked with a large "X" the boxes he wished destroyed. He could not recall any specific years for which these pertained, but assumes that he designated everything there for destruction which was more than seven years old. He stated the houseboys actually transported the cartons to the Hilton incinerator but that he was present while the records were being burned.

In attempting to fix the time of this, CORDERO stated he could not recall any specific month, but did recall that it was during warm weather. He stated that in order to reach the attic storage room, it was necessary to go out onto the roof of the hotel, and he knows this was not done during the winter months.

CORDERO stated the only other person he believes might be able to furnish additional information regarding any prior destruction of records is MARK NEAL, who was Executive Assistant Manager at the Albuquerque Hilton for a number of years prior to 1960. Since 1960, NEAL has been Manager of the White Winrock Motel, Albuquerque.

CORDERO recalled that during his period of employment at the Albuquerque Hilton, year not recalled, but possibly 1961, a writer, name unknown, registered as a guest at the hotel. This writer stated he was writing a book about the ROSENBERG case and wished to review certain hotel records. He spent several days in the attic storage room of the hotel.

CORDERO recalled that this person was extremely interested in the registration cards of the hotel and was examining them as to type of paper, printing, etc. He requested information as to who printed the registration cards for the hotel and was advised that all printing for the hotel was done by the Hill Printing Company, El Paso, Texas. CORDERO said this writer then asked him to see invoices from the Hill Printing Company which might reflect the ordering of hotel registration cards. CORDERO said he made available the file containing the invoices from the Hill Company, and this writer made Photostat copies of a number of them. This individual then mentioned that he intended to contact the Hill Printing Company to determine what type of plates are utilized in printing the Hilton registration cards. CORDERO could not recall the name of the above individual. When the name WALTER SCHNEIR was mentioned to him as a possibility, he stated this name meant nothing. He stated the hotel should presently have a registration card for this individual if it was necessary to identify him, because he was registered there for three or four days, but he was sorry he could not identify the approximate time. CORDERO stated that the Hill Printing Company, El Paso, Texas, is owned by MAURICE HILL, and as far as he knows continues to do printing for the Hilton Hotel. He stated that invoices from the Hill Company covering the pertinent period should still be maintained by the hotel.

CORDERO stated that based upon his knowledge of procedures followed at the Hilton Hotel during his employment there, a registration card which had been made available to any agency, would upon return have been refiled in the box of records pertaining to the month and year to which it pertained, and it would not have been filed in any separate place.

Mr. J. Walter Yeagley
Assistant Attorney General

September 14, 1966

Director, FBI

1 - Mr. Lee

MORTON SOBELL
ESPIONAGE - RUSSIA

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

Reference is made to our letter of September 8, 1966, relating to the practice of the Hilton Hotel, Albuquerque, New Mexico, regarding the destruction of guest records.

Robert S. Cordero, Auditor, Americana Hotel, New York City, advised on September 7, 1966, that he was Auditor of the Hilton Hotel, Albuquerque, from December, 1960, until March, 1963, one month after the sale of the hotel to the Cole Corporation. Cordero has no personal knowledge of the registration card for Harry Gold for June 3, 1945, and has no information concerning its possible destruction by the hotel. He stated that he could recall hotel employees discussing this matter in general, but he had no knowledge that the hotel had the Gold registration card during his employment there.

Cordero recalled that sometime prior to the sale of the hotel, believed to be in 1962, he supervised the destruction of old registration cards and other hotel records. He continued that although the hotel made a practice of destroying records over seven years old, this was not done on a yearly basis but was done periodically when storage space became a problem. He recalled that registration cards and other records were kept in cartons in the attic of the hotel and were labeled by marking pencil with the year written on the outside of the carton.

Cordero stated that in 1962 he asked Linda Hughes, Executive Housekeeper, to furnish him with two houseboys to help destroy old records kept in the attic. He said that he accompanied the houseboys to the attic and marked with an "X" the cartons he wanted to have destroyed. He could not recall any of the specific years included in the cartons but he assumed that he designated everything more than seven years old for destruction. He stated the houseboys actually moved the cartons to the hotel incinerator and he was present while the records were being burned.

MAILED 4
SEP 14 1966
COMM-FBI

REC 108 101-2483 — 1660

1 - New York (100-37158)

JPL:sal
(5)

SEE NOTE PAGE THREE.

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

70 SEP 22 1966

MAIL ROOM ☐ TELETYPE UNIT ☐

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Mr. J. Walter Yeagley

In attempting to fix the time of this incident, Cordero recalled that it was during warm weather since it was necessary to go on the roof of the hotel to reach the attic storage room and this was not done during the winter months. Cordero stated the only other person who might have information regarding any earlier destruction of records is Marc Neal, former Executive Assistant Manager of the hotel.

In addition to the above, Cordero remembered that while employed at the Hilton Hotel, Albuquerque, possibly in 1951, a writer whose name he could not recall registered as a guest at the hotel. This writer said he was writing a book about the Rosenberg case and asked to review certain hotel records. This writer spent several days in the attic storage room of the hotel. Cordero recalled that this person was extremely interested in the registration records of the hotel and was examining them as to the type of paper, printing, and the like. This writer determined from Cordero that the Hill Printing Company, El Paso, Texas, handled all printing for the hotel. Cordero said he made available to this writer the file containing the invoices from the Hill Printing Company and the writer made photostats of a number of the invoices.

Cordero was unable to recall the name of the writer, and when the name Walter Schneir was mentioned to him as a possibility, he stated this name meant nothing.

Cordero stated that, based on his knowledge of the procedures followed by the Hilton Hotel during his employment, a registration card which had been made available to any agency when returned would have been refiled in the box of records pertaining to that month and year and it would not have been filed in any separate place.

The files of our Albuquerque Office show that the registration card and statement of Harry Gold for June 3, 1945, at the Hilton Hotel, Albuquerque, were last obtained by one of our Agents from Marc Neal, Executive Assistant Manager, in March, 1951.

Neal, Executive Assistant Manager of the Hilton Hotel from 1950 to 1960, and Lucille Beall, Bookkeeper of the same hotel from 1943 to 1960, were interviewed. These persons individually advised that the policy of the Hilton Hotel was to destroy registration cards, statements, and folios in due

course of business in accordance with Federal, State, and city regulations after the records had served their purpose. Both recalled that in the late 1950s the policy of destruction of records over seven years of age by burning them in the hotel incinerator was instituted at the Hilton Hotel, Albuquerque. This was done under the supervision of Fred Braasch, then Auditor of the hotel. Neal and Beall both stated they did not destroy the Harry Gold registration card and statement for June 3, 1945, but they thought these items had been destroyed in the regular course of business probably in the late 1950s. The above interviews were conducted in September, 1966.

The above is furnished for your information.

NOTE: In connection with the current motion of the subject to set aside his conviction, we are trying to obtain complete information concerning the destruction of the Harry Gold registration card. A photostat of the card was introduced into evidence with the agreement of the defense during the trial in 1951. In this motion the defense is claiming the card was a forgery and was made by the Bureau. Following the trial the original card was returned to the hotel and destroyed in the regular course of business.

FBI NEW YORK ///09///

5:22 PM EDT URGENT 9/15/66 N.F.R.

TELETYPE UNIT
SEP 15 1966
ENCODED MESSAGE

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

TO DIRECTOR/ ALBUQUERQUE/ MIAMI

ALBUQUERQUE AND MIAMI VIA WASHINGTON --- ENCODED

FROM NEW YORK -1P-

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5-1-87 BY

MORTON SOBELL, ESPIONAGE DASH R

RENYAIRTEL NINE FOURTEEN SIXTYSIX.

AUSA ROBERT L. KING, SDNY, ADVISED THIS DATE THAT UPON CONFERRING WITH THE DEPARTMENT IT WAS DECIDED THAT FULL INVESTIGATION REGARDING THE SIX THREE FORTYFIVE REGISTRATION CARD OF HARRY GOLD SHOULD BE HELD IN ABEYANCE PENDING SOME INDICATION FROM USDC AS TO WHETHER AN EVIDENTIARY HEARING MIGHT BE REQUESTED ON THE AUTHENTICITY OF THIS HOTEL CARD. THE DEPARTMENT POINTED OUT THAT THE FORMER HOTEL CLERK MRS. LARRY A. HOCKINSON, HAS BEEN CONTACTED BY THE DEFENSE BUT HER DEGREE OF COOPERATION WITH THE DEFENSE IS UNKNOWN. DEFENSE ATTORNEYS ADVISED THE COURT THAT AN AFFIDAVIT HAD NOT BEEN OBTAINED FROM HER BUT SHE WAS AVAILABLE TO TESTIFY IF SUBPOENAED. KING STATES POSSIBILITY THAT IF INTERVIEWED NOW SHE MIGHT DENY THAT WRITING IS HERS. AUSA KING THEREFORE REQUESTS THAT INTERVIEW OF MRS. HOCKINSON BE HELD IN ABEYANCE. KING STATES SHOULD FULL INVESTIGATION OF HOTEL CARD BE DESIRED, BUREAU WILL BE ADVISED. LABORATORY MAY RETAIN REGISTRATION CARDS SUBMITTED NINE FOURTEEN SIXTYSIX AS LONG AS NEEDED BEFORE BEING RETURNED TO USA, SDNY.

END

REC 65 101-2483-1661

WA..FOR..3

WA.....ML ACKS FOR NR 07 08 09 AND RELAY ON NR 09

SEP 19 1966

FBI WASH D C cc 101-2483

RELAYED TO AQ, MIA

SENT BY CODED TELETYPE

9/16/66

CODE

1 - Mr. Lee

TELETYPE URGENT

VIA TELETYPE
SEP 16 1966
ENCIPHERED

TO SAC, ALBUQUERQUE (65-50)

FROM DIRECTOR, FBI (101-2483)

MORTON SOBELL, ESPIONAGE - RUSSIA

DEPARTMENTAL ATTORNEY HAS REQUESTED THAT WE ATTEMPT TO DETERMINE PRACTICE OF HOTEL HILTON, ALBUQUERQUE, IN ONE NINE FOUR FIVE, PERTAINING TO INITIALING OF REGISTRATION CARDS BY HOTEL CLERKS. DETERMINE, IF POSSIBLE, IF THE INITIALS OF ONE CLERK WERE PUT ON ALL REGISTRATION CARDS PREPARED DURING ONE WORK SHIFT OR IF EACH CLERK USED INDIVIDUAL INITIALS WHEN PREPARING CARDS. THIS INFORMATION DESIRED SINCE DEFENSE IS CLAIMING REGISTRATION CARDS OF HARRY GOLD FOR SIX/THREE AND NINE/ONE NINE/FOUR FIVE BOTH HAVE SAME INITIALS FOR THE CLERK BUT THE INITIALS APPEAR TO HAVE BEEN WRITTEN BY A DIFFERENT PERSON. DEPARTMENT DOES NOT DESIRE TO HAVE THE FORMER CLERK, MRS. HOCKINSON, INTERVIEWED AT THIS TIME. SUTEL RESULTS OF INQUIRY. ONE COPY TO NEW YORK BY MAIL.

1 - NEW YORK (100-37158)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5.1.87 BY

REC 53 101-2483-1662

EX-118

SEP 23 1966

JPL:jmk (4)

NOTE: Departmental Attorney, Paul Vincent, telephonically requested that this information be obtained in connection with current motion by the subject for a new trial. Request was made to Section Chief, W. A. Branigan. Teletype used since the judge is currently studying motion papers to determine if a hearing should b held.

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Tele. Room
Holmes
Gandy

57 SEP 23 1966

MAIL ROOM ☐ TELETYPE UNIT ☑

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

F B I

Date: 9/15/66

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

Via AIRTEL ______________ (Priority)

TO: DIRECTOR, FBI (101-2483)

FROM: SAC, PHILADELPHIA (65-4372)

SUBJECT: MORTON SOBELL
ESPIONAGE - R

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12/10/86 BY 3042 [illegible]

Re NY telephone calls 9/14/66 and NY teletype 9/14/66.

Re NY tel requested Philadelphia to contact the attorneys for HARRY GOLD and obtain original Sound Scriber disks which recorded conversations GOLD's attorneys had with GOLD prior to his sentencing in Philadelphia in 1950.

AUGUSTUS S. BALLARD, attorney, was contacted by Special Agent CHARLES SILVERTHORN on 9/14/66 at which time BALLARD informed that he had been in telephonic contact with ROBERT L. KING, Assistant United States Attorney, Southern District of New York regarding the above. He also informed that he and his associate, JOHN D. M. HAMILTON were "outraged" at the use WALTER and MIRIAM SCHNEIR made of the recordings in 1961 and he and Mr. HAMILTON desired that the full story be incorporated in a letter to Mr. KING at which time the recordings in question would also be made available to the Government. Mr. BALLARD requested that Agents recontact him at 10:30 A.M. on 9/15/66 in order that the letter in question along with the recordings could be obtained.

ENCLOSURE

5 - Bureau (Encl 1) (RM)
cc: 65-57449 (Harry Gold)
62-106323 (Walter Schneir)
4 - New York (Encls 9) (RM)
2 - 100-37158 (Morton Sobell)
1 - 65-15324 (Harry Gold)
1 - 100-135206 (Walter Schneir)
2 - Philadelphia
1 - 65-4372
1 - 65-4307 (Harry Gold)

CS:ec
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REC 31

101-2483-1663

18 SEP 16 1966

SOVIET SECTION

65-57449

62-106323

UNREC COPY FILED IN 62-106323

Approved: ______________ Special Agent in Charge

Sent ______________ M Per ______________

SEP 23 1966