F.O.I.A.

JULIUS ROSENBERG ET AL.

FILE DESCRIPTION

UQ FILE

SUBJECT Morton Sobell

FILE NO. 101-2483

VOLUME NO. 40

SERIALS

1487 -

1519.

NOTICE

THE BEST COPIES OBTAINABLE ARE INCLUDED IN THE REPRODUCTION OF THE FILE. PAGES INCLUDED THAT ARE BLURRED, LIGHT OR OTHERWISE DIFFICULT TO READ ARE THE RESULT OF THE CONDITION AND OR COLOR OF THE ORIGINALS PROVIDED. THESE ARE THE BEST COPIES AVAILABLE.

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

File No: 101-2483 Sect 40 Re: Morton Sobell Date: _____ (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1487	1/29/62	HQ let AG	1	1	b1
N/R	1/9/62	Blind memo	2	2	b2, b7D, b7C
N/R	1/10/62	HQ let State	2	2	b1, b7C, b7D
1488	2/6/62	NY AT HQ w/EBF	1/109	1/109	
1489	2/8/62	AT LET HQ	3	3	
1490	2/7/62	NY AT HQ w/EBF	1/9	0	10 w/H b1, b7D
1491	2/8/62	CIA let HQ	—	—	disposition handled by CIA (1)
1492	2/14/62	NY let HQ	1	1	
N/R	2/13/62	HQ let White House	3	3	b2, b7D
N/R	2/13/62	HQ let AG	3	3	b2, b7D
N/R	2/20/62	HQ let AG	1	1	b2, b7D
N/R	2/20/62	HQ let White House	2	2	b2, b7D

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FBI/DOJ

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

File No: 101-2483 Sect 40 Re: Morton Sobell Date: _____ (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1493	2/20/62	AT LET HQ	12	12	
N/R	3/2/62	HQ let AG	2	2	b2, b7D
N/R	3/2/62	HQ let White House	2	2	b2, b7D
1494	3/13/62	AT AT HQ w/ENC	1/1	1/1	
N/R	3/20/62	HQ let PX	1	1	b7C, b7D, b2
N/R	3/8/62	PX let HQ	1	1	b7C b2
1495	3/22/62	NY let HQ	1	1	
N/R	3/28/62	HQ let AG	2	2	
N/R	3/28/62	HQ let State	2	2	
1496	3/28/62	AT let HQ	1	1	
N/R	3/28/62	HQ let White House	2	2	
1497	4/6/62	NY WI LHM AT HQ	1/1	1/1	
			30	30	

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FBI/DOJ

Inventory Worksheet
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N/R	4/9/62	HQ let AG	2	2	b2, b7D
N/R	4/9/62	HQ let USSS	2	2	b2, b7D
N/R	4/9/62	HQ let White House	2	2	b2 b7D
N/R	4/9/62	HQ let AG	2	2	b2 b7D
N/R	4/9/62	Enclosures to Belmont	1	1	
1498	4/13/62	NY AT to HQ w/enc	1/7	1/7	
N/R	5/6/62	HQ let White House	2	2	b2 b7D
N/R	5/8/62	HQ let AG	2	2	b2 b7D
1499	5/7/62	EP LET HQ	1	1	
1500	5/18/62	NY LET HQ	1	1	
N/R	7/5/62	HQ LET AG	2	2	b2 b7D
N/R	7/5/62	HQ LET White House	2	2	b2 b7D
			27	27	0 0 0 0

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FBI/DOJ

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

File No: 101-2483 Sect 40 Re: Morton Sobell Date: ______ (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1501	8/7/62	NY let HQ	1	1	
N/R	9/21/62	HQ let AG	2	2	b2 b7D
N/R	9/21/62	HQ let White House	2	2	b2 b7D
N/R	9/27/62	HQ let White House	2	2	b2 b7D
1502	10/24/62	Evans to Belmont memo	1	1	
1503	10/24/62	3rd Party letter w/enc	1/2	1/2	b7C, b7D
1504	10/26/62	NY AT to HQ w/enc	1/181	1/181	
1505	10/25/62	AAG let HQ w/enc	1/2	1/2	
1505	10/30/62	HQ let AAG w/enc	3/5	3/5	b1
1506	12/11/62	NY rept	9	9	b1, b2, b7D
1507	12/26/62	Branigan memo to Sullivan	2	2	
1508	12/21/62	DeLoach memo to Mohr	2	2	

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

File No: 101-2483 Sect 40 Re: Morton Sobell Date: (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
N/R	12/31/62	HQ let BA	1	1	
N/R	12/28/62	Jones memo to DeLoach	2	2	
1509	11/8/63	Newspaper article	1	1	
1510	11/4/63	HQ let AG	1	1	b1
N/R	11/21/63	HQ let AG	3	3	b2 b7D
N/R	11/21/63	HQ let White House	3	3	b2, b7D
1511	11/23/63	HQ let AG	1	1	b1
1512	11/18/63	note attached to from NY AT HQ w/info from	1/2	1/2	b1
1513	2/8/63	NY AT HQ	1	1	
1514	2/15/63	AT let HQ	10	10	
1515	2/18/63	NY AT HQ W/ENC	1/31	1/31	
1516	3/4/63	NY AT HQ	3	3	b7c b7D
			61	61	0 0 0 0

rev. rel deny refer presume

FBI/DOJ

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

File No: 101-2483 Sect. 40 Re: Morton Sobell Date: _____ (month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages Actual	No. of Pages Released	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
1517	2/26/63	Memo to Mr. DeLoach	2	2	
1518	4/15/63	NY AT to HQ	1	1	
1519	4/17/63	Def. note w/enc NY AT to HQ	3/55	3/55	
NR	1/8/63	NY let HQ	2	1	b1
			63	62	1 0 0 0

rev. rel deny refer presume

FBI/DOJ

TOP SECRET

1 - Belmont; 1 - Mr. Evans; 1 - Mr. Sullivan; 1-Mr. Gurley
1 - Mr. Lee CONFIDENTIAL

The Attorney General January 29, 1962

Director, FBI

MORTON SOBELL
ESPIONAGE - RUSSIA

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.

The above-captioned individual was convicted along with Julius and Ethel Rosenberg of conspiracy to commit espionage in 1951. He was sentenced to serve 30 years for his participation in this espionage conspiracy.

[redacted]

REC-3 101-2483-1487

[redacted]

The above is furnished for your information.

Classified by 3042 PWT/lmw
Declassify on: OADR 4/29/87

By The Deputy Attorney General

101-2483

JPL:hrt
(9)

TOP SECRET since info obtained by [redacted] No characterization of Committee to Secure Justice for Morton Sobell set forth inasmuch as info re this Committee has been furnished in the past to AG.

Classified by 2355
Exempt from GDS Category 1, 2, 3
Date of Indefinite

CONFIDENTIAL TOP SECRET

APPROPRIATE AGENCIES AND FIELD OFFICES ADVISED BY LETTING SLIP(S) OF DATE 2-22-77

MAILED 25
JAN 30 1962
COMM-FBI

RECEIVED
JAN 29 5 12 PM '62
FBI

RECD-READING ROOM

25 FEB 5 1962

Tolson
Belmont
Mohr
Callahan
Conrad
DeLoach
Malone
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Ingram
Gandy

FEB 8 1962

MAIL ROOM TELETYPE UNIT

CONFIDENTIAL

January 9, 1962

1 - Mr. Krupinsky
1 - Mr. Lee
1 - Mr. Rampton
1 - Liaison

COMMITTEE TO SECURE JUSTICE FOR MORTON SOBELL INTERNAL SECURITY - C

A confidential source who has furnished reliable information in the past furnished the following information concerning a meeting of the Committee to Secure Justice for Morton Sobell which was recently held in New York City.

[redacted]

b7C b7D

The Committee to Secure Justice for Morton Sobell is the successor organization to the National Committee to Secure Justice in the Rosenberg Case, which has been cited as a communist front organization in the "Guide to Subversive Organizations and Publications," issued by the House Committee on Un-American Activities, dated January 2, 1957. Morton Sobell is presently incarcerated in the United States Penitentiary, Atlanta, Georgia, where he is serving a 30-year sentence after being convicted for conspiracy to commit espionage on behalf of the Soviet Union.

1 - 101-2483 (Morton Sobell) SEE NOTE ON YELLOW PAGE TWO
1 - 100-429455 (Helen Sobell)
RJR:bgc (18)

1 - Foreign Liaison Unit (Route through for review)

100-387835
Original to State, cc CIA ENCLOSURE

101-2483

DECLASSIFIED BY [illegible] 11/24/77 ON 3042PWT/lmw 4/29/87

ALL FBI INFORMATION CONTAINED ... FIELD OFFICES NOTIFIED AT ROUTING ... COPY(S) OF ... DATE 4/24/...

CONFIDENTIAL

1 - Mr. Krupinsky
1 - Mr. Lee
1 - Mr. Rampton

Committee to Secure Justice
for Morton Sobell

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

NOTE ON YELLOW:

The information in this memorandum was furnished by New York airtel 1/4/62 captioned "Committee to Secure Justice for Morton Sobell" and was obtained from [redacted] b2 b7D

This memorandum is classified "Confidential" as it contains information from a confidential source, the unauthorized disclosure of which could be prejudicial to the defense interests of the Nation.

CONFIDENTIAL

CONFIDENTIAL

104967

100-387835

1 - Mr. Krupinsky
1 - Mr. Lee
1 - Mr. Rampton
1 - Liaison

Date: January 10, 1962

To: Office of Security
Department of State

From: John Edgar Hoover, Director

Subject: COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL
INTERNAL SECURITY - C

Attached is a copy of a memorandum setting forth information concerning [redacted]

The files of this Bureau contain no identifiable references to [redacted]

b7C
b7D

[redacted] (C) b1

Upon removal of the classified enclosure, this letter becomes unclassified.

Enclosure [redacted] 3042 PWT/lmw 10-2483-

1 - Director (Enclosure) [redacted] 4/29/87
Central Intelligence Agency

NOT RECORDED
141 JAN 17 1962

Attention: Deputy Director, Plans

2 - London (Enclosures - 2) (SEE NOTE PAGE TWO)
2 - Paris (Enclosures - 2) (SEE NOTE PAGE TWO)
2 - Bonn (Enclosures - 2) (SEE NOTE PAGE TWO)
2 - Rome (Enclosures - 2) (SEE NOTE PAGE TWO)

1 - Foreign Liaison Unit (Route through for review)
RJR:bgc (20)
1 - 101-2483 (Morton Sobell)
1 - [redacted] (Helen Sobell)

SEENOTE ON YELLOW
PAGE TWO

CONFIDENTIAL

[redacted]

CONFIDENTIAL

ENCLOSURE
JAN 22 1962

ORIGINAL COPY FILED IN 100-387835-2837

CONFIDENTIAL

Office of Security
Department of State

ATTENTION: LEGAL ATTACHES, LONDON, PARIS, BONN & ROME:

Attached for Legal Attaches London and Paris are four copies and for Bonn and Rome two copies of the memorandum concerning Helen Sobell's trip to Europe in February, 1962. [redacted] b1

[redacted] Helen Sobell is on the Security Index.

[redacted] b1

[redacted] b1

NOTE ON YELLOW:

This transmittal letter is classified "Confidential" inasmuch as it transmits an enclosure so classified. The information prompting this letter is contained in New York airtel 1/4/62 captioned "Committee to Secure Justice for Morton Sobell." Additional pertinent information contained in the memorandum enclosure to New York airtel has been disseminated to the military intelligence agencies; Secret Service; Director, Bureau of Prisons; White House and Attorney General. The enclosure to this letter is classified "Confidential" as it contains information from a confidential source, the unauthorized disclosure of which could be prejudicial to the defense interests of the Nation.

CONFIDENTIAL

Classified by [redacted] E/DAR 10/20/75
Exempt from G.D.S. Category 1,3
Date of Declassification Indefinite

CONFIDENTIAL

FBI

Date: 2/6/62

Transmit the following in PLAIN TEXT
(Type in plain text or code)

Via AIRTEL
(Priority or Method of Mailing)

TO: DIRECTOR, FBI (101-2483)

FROM: SAC, NEW YORK (100-37158)

SUBJECT: MORTON SOBELL
ESP - R

RENY airtel 1/26/62.

Enclosed herewith for the Bureau is one photocopy of memorandum by the USA, SDNY, in reply to motion filed on behalf of subject. Also enclosed is one photocopy of an appendix to Government's Memorandum. The Appendix consists of two parts.

AUSA EDWARD CUNNIFFE, SDNY, advised SA EDWARD F. MC CARTHY on 2/6/62 that, at the request of SOBELL's attorneys, argument on the motion has been adjourned to 2/13/62.

Bureau will be advised.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4/29/87 BY 3046 PWT/lmw

ENCLOSURE BEHIND FILE

EX-108

REC-70 101-2483-1488

3- Bureau (101-2483) (Encls. 2) (RM) ENCLOSURE
1- New York (100-107111) (SOBELL COMMITTEE)
1- New York (100-37158)

4 FEB 7 1962

EFM:ds
(6)

ESP SEC.

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

71 FEB 13 1962

ERC-y 11-[illegible]

56-1840CV

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4/29/87 BY 3042PWT/1MW

[illegible] DISTRICT OF THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

MORTON SOBELL,

C 134-245

Defendant.

MEMORANDUM ON BEHALF OF THE
UNITED STATES OF AMERICA

Preliminary Statement

This is a motion by petitioner Morton Sobell pursuant to Section 2255, Title 28, United States Code, to set aside the judgment of conviction and sentence in the above-entitled case and pursuant to Rule 35 of the Federal Rules of Criminal Procedure to correct the sentence imposed upon him.

Indictment C 134-245 was filed on January 31, 1951, charging Julius Rosenberg, Ethel Rosenberg, Morton Sobell, David Greenglass, and Anatoli A. Yakovlev with

Best copy Available

conspiring to violate Section 32(a) of Title 50, United States Code. The indictment charged that the period of the conspiracy was from June 6, 1944 up to and including June 16, 1950, "the United States being then and there at war", and alleged that the conspiracy was in violation of Section 34 of Title 50, United States Code.

A copy of the indictment is attached hereto.

The Rosenbergs and Sobell went to trial. Greenglass pleaded guilty prior to trial and testified for the Government. Yakovlev, a Russian diplomat, who had left the United States in December of 1946 has never been apprehended.

Following the conviction on March 29, 1951, the defendants were sentenced on April 5, 1951. Sobell received a 30-year prison term. The Rosenbergs were sentenced to death. The convictions were affirmed on appeal, 195 F. 2d 583 (2d Cir. 1952), rehearing denied, 198 F. 2d 609 (2d Cir. 1952).

Petitions for certiorari were then 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, 347 U.S. 1021. Again, in 1957, Sobell moved to vacate the orders denying certiorari and rehearing, which motion was denied, 355 U.S. 860.

Following the original denial of certiorari and rehearing in 1952, a series of collateral attacks were commenced. These included six motions under Section 2255. Sobell and the Rosenbergs joined in two; the Rosenbergs alone brought two; Sobell alone brought two in 1956. All of these motions were denied in the District Court, and these denials were affirmed on appeal, (except in one instance an appeal from one Section 2255 proceeding brought by the Rosenbergs only was withdrawn). Certiorari was sought unsuccessfully from four of the Court of Appeals affirmances.

In addition, there were several original proceedings in the Supreme Court and one in the Court of Appeals.

A more extended history of the post-trial proceedings is set forth in Appendix I.

ERC-y
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STATUTES AND RULES INVOLVED

TITLE 28, SECTION 2255, U.S.C.

§2255. Federal custody; remedies on motion attacking sentence

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

A motion for such relief may be made at any time.

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

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

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

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. June 25, 1948, c. 646, 62 Stat. 967, amended May 24, 1949, c. 139, §114, 64 Stat. 105.

STATUTES AND RULES INVOLVED

(Continued)

Title 50, United States Code, Section 32a.

§32. Unlawfully disclosing information affecting national defense. Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years;

Title 51, United States Code, Section 34

§34. Conspiracy to violate preceding sections. If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the objects of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be punished as provided by section 88 of Title 18. (June 15, 1917, c.30, Title I, § 4, 40 Stat. 219.)

STATUTES AND RULES, (Cont'd)

Rule 30, Federal Rules of Criminal Procedure

Rule 30. Instructions

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 35, Federal Rules of Criminal Procedure

Rule 35. Correction or Reduction of Sentence

The court may correct an illegal sentence at any time. The court may reduce a sentence within 60 days after the sentence is imposed, or within 60 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 60 days after receipt of an order of the Supreme Court denying an application for a writ of certiorari.

DHCnfac/c
11,863

Statement of Facts

The evidence at the trial showed that David Greenglass in 1944 and 1945 was a United States soldier stationed at Los Alamos, New Mexico, where a secret project, the atomic bomb, was being developed (R. 549-552)#. In the fall of 1944 the Rosenbergs asked Ruth Greenglass, David's wife, to pass on to her husband a proposition that he obtain information about the atomic bomb and give it to Julius Rosenberg for transmittal to the Russians (R. 589-593, 972-6).

Ruth, when in New Mexico later that fall, passed the proposition on to her husband who assented to it and in fact gave her certain information to transmit to Julius Rosenberg (R. 593-5, 977-80). Ruth, on her return to New York, gave the information to Julius Rosenberg (R. 981-2). In January of 1945, Greenglass was in New York on furlough and submitted sketches of atomic experimental equipment and other information to Julius Rosenberg (R. 596-8, 612-615, 982-4). During this same furlough Julius Rosenberg introduced Greenglass to a Russian in New York to whom Greenglass passed further information (R. 634-7).

#References with prefix R are to the stenographer's transcript of the proceedings at trial.

Before Greenglass returned to New Mexico, arrangements were made for a visit to New Mexico by another member of the espionage ring (R. 623-633, 985-993).

In June of 1945, one Harry Gold came to New Mexico and, using the means of identification invented by Julius Rosenberg, obtained further information from Greenglass (R. 637-47, 1002-6, 1191-9). This information was turned over to Yakovlev (R. 1200-1).

In September of 1945, Greenglass in New York submitted to Julius Rosenberg further information including a sketch of a cross-section of the bomb (R. 689-702, 1007-1011).

There was evidence also that in 1945 Julius Rosenberg had stolen a proximity fuse from a factory while in the employ of the Army Signal Corps and given it to the Russians (R. 723); that Rosenberg had been rewarded by the Russians for his war-time services to them (R. 738-9), and that from 1946 to 1949 Rosenberg was working for the Russians in the subsidizing of American students and in supplying to the Russians information obtained from contacts in upstate New York and Ohio, including specifically the General Electric plant at Schenectady (R. 731-731a), where during 1946

and part of 1947 Sobell was working (R. 329-342).

According to the testimony of Ruth Greenglass, whose testimony corroborated that of her husband, Julius Rosenberg's avowed purpose in 1945 was to help Russia as a war-time ally, since he felt the Americans and the British were not helping her sufficiently (R. 973-74).

Witnesses were called to testify concerning the methods of operations at Los Alamos during the war and concerning security measures there (R.1280-1309, 1318-1332).

Max Elichter was the principal witness against Sobell. He testified that from 1938 until 1948 he had been employed in the Bureau of Ordnance, Navy Department, in Washington, D. C. (R. 255). In 1939 Sobell had recruited him into joining a Communist cell (R. 256, 264-66). In 1944 Julius Rosenberg, who like Sobell had been a college classmate of Elichter, told Elichter that the Russian war effort was being impeded by the withholding of military information from the Russians by the United States. Rosenberg then importuned Elichter, who at the time was working on anti-aircraft

and missile control equipment, to turn over plans, blueprints, and the like, to him for photographing (R. 270-6). Rosenberg told him that if any film was turned over to him, it would be taken care of in proper containers so that it could be returned without having been spoiled through exposure (R. 314). Rosenberg also told Elichter that others were also contributing military information to him for transmission to the Soviets, including Sobell (R. 315-7).

Later in 1944 Elichter met Sobell and told him of Rosenberg's approach to him and that Rosenberg had said Sobell was helping in the transmittal of military information to the Russians. Sobell became angry and said that Rosenberg should not have disclosed his name to Elichter. Despite Elichter's explanation that Rosenberg knew of the close relationship between Elichter and Sobell, Sobell insisted, "It makes no difference, he shouldn't have done it" (R. 320-1).

Elichter also testified that in 1946 Sobell, who was then working at the General Electric plant in Schenectady, had tried to obtain some classified reports

from him. According to Elichter, Sobell had suggested that Elichter visit Rosenberg, implying that the visit would have to do with espionage (R. 329-335). Elichter did visit Rosenberg and told him that Sobell had suggested it. Rosenberg told Elichter that there had been some leaks in the espionage business and that Elichter should not come to see Rosenberg until instructed to do so and should discontinue Communist Party and union activities so that "it would be much safer" (R. 340-2). In 1947 Sobell asked Elichter for the names of any "progressive" engineering students he knew of and also indicated concern that Elichter's wife might learn of "this espionage business" (R. 344-5). In a subsequent conversation in 1948, Sobell indicated that Sobell's inquiry about engineering students was in order to secure eventual sources of military information (R. 345-6).

Elichter also testified that in 1948 when he was contemplating leaving Naval Ordnance for a job in private industry, Sobell and Rosenberg tried to dissuade him from leaving because someone was needed at Naval Ordnance for espionage purposes (R. 346-9).

Blichter also described an automobile trip with Sobell in 1948 into lower Manhattan for the purpose of delivering to Julius Rosenberg a 35 millimeter film can (R. 353-5). On that occasion Sobell described the information he was delivering to Rosenberg as "too valuable to be destroyed and yet too dangerous to keep around" (R. 354). On the way home Sobell stated that Blichter did not have to worry about being under surveillance because Julius Rosenberg had said that he had once "talked to" Elizabeth Bentley (who was then revealing to the authorities her prior espionage activities) on the telephone but was "pretty sure" she did not know who he was (R. 354-6).

Elizabeth Bentley also testified to the effect that she had been involved in transmitting information to Russian agents. Specifically, she mentioned accompanying a Russian agent named Golos to lower Manhattan in 1942 where the agent received an envelope from "an engineer" in the vicinity of [illegible] Village (R. 1454-60). She then described [illegible] telephone calls from one "Julius" up to late 1943 (R. 1463-4). "Julius" lived

in Knickerbocker Village (R. 1469). Julius Rosenberg was in fact an engineer and in 1942 had at that time lived in Knickerbocker Village (R. 1561-2). Bentley's role was to relay the telephone messages to Golos. She was in effect a "go-between" (R. 1467-72).

The remainder of the Government's case concerned Sobell's flight to Mexico in 1950 and Rosenberg's urging Greenglass to fly to Mexico in 1950 because of the highly publicized arrest on espionage charges of Harry Gold and Dr. Klaus Fuchs who had worked at Los Alamos.

Sobell did not testify in his own behalf. Julius and Ethel Rosenberg both testified in their defense.

HMC:lr
11-1333

POINT I

THERE WAS NO ERROR IN THE CHARGE TO THE JURY AND NO GROUND EXISTS FOR VACATING THE CONVICTION UNDER TITLE 28 UNITED STATES CODE OR RULE 35, FEDERAL RULES OF CRIMINAL PROCEDURE

A. Petitioner has not met the requirements for relief under 28 U.S.C. §2255 or Rule 35, F. R. Crim. P.

Petitioner contends (Mem. I) that the trial court failed to charge the jury on the question of whether the offense occurred "in time of war". He urges this as ground for relief under both Section 2255 of Title 28, United States Code and Rule 35 of the Federal Rules of Criminal Procedure. There are, however, certain principles governing collateral attack under Section 2255 which preclude the granting of this motion. In addition, as will be shown, Rule 35 is completely inapplicable.

1. The alleged errors in the court's charge might have been raised on appeal and therefore are not grounds for relief under 28 U.S.C. §2255.

No issue as to any failure to instruct the jury on the question of the occurrence of the offense in wartime was raised on petitioner's direct appeal, although the charge was attacked in several other respects and the Court of Appeals stated that it "scrutinized the record with extraordinary care." 195 F.2d at 580. Thus, petitioner is met at the outset by the well-settled rule governing Section 2255:

> "The section 'may not be used to retry the case or to raise questions which might have been raised upon appeal.' " Kyle v. United States, 286 F.2d 670, 672 (2d Cir.), cert. denied, 358 U.S. 887 (1959).

Indeed this rule was adverted to in a prior proceeding in this case, United States v. Rosenberg, 200 F.2d 666 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953) where the Court of Appeals stated (200 F.2d at 668:

> "[2] The remedy afforded by this statutory proceeding is analogous to that afforded by a writ of habeas corpus. United States v. Hayman, 342 U.S. 205, 72 S.Ct. 263. It, like that writ, 'cannot ordinarily be used in lieu of appeal to correct errors committed in the course of a trial, even though such errors relate to constitutional rights.'

United States v. Walker, 2 Cir. 197 F.2d 287, 288; Adams v. United States ex rel. McCann, 317 U.S. 269, 274, 63 S.Ct. 236, 87 L.Ed. 268. Nor can it be used to obtain a retrial according to procedure which the petitioner voluntarily discarded and waived at the trial upon which he was convicted. Adams v. United States ex rel. McCann, 317 U.S. 269, 281, 63 S.Ct. 236, 87 L.Ed. 268; Confurthurt v. Reed, 8 Cir., 102 F.2d 933, 938; United States ex rel. Marshall v. Snyder, 2 Cir., 160 F.2d 351, 353; Bowen v. United States, 5 Cir., 192 F.2d 515, 517; Smith v. United States, 88 U.S.App.D.C. 80, 187 F.2d 192, 198, certiorari denied 341 U.S. 927, 71 S.Ct. 792, 95 L.Ed. 1358. These limitations on the function of a petition under § 2255 must be borne in mind in considering the present appeals."

See also United States v. Walker, 197 F.2d 287 (2d Cir.) cert. denied, 344 U.S. 877 (1952); Gardner v. United States, 230 F.2d 127 (4th Cir.) cert. denied, 351 U.S. 955 (1956).

The Court of Appeals for this Circuit also has stated:

> "Only when there has been a deprivation of rights so fundamental as to amount to a denial of a fair trial can the conviction and sentence be set aside under § 2255." United States v. Angelet, 255 F.2d 333, 334 (2d Cir. 1958).

Similarly in Howell v. United States, 172 F.2d 213 (4th Cir.) cert denied, 337 U.S. 906 (1949) the Court observed:

> "It is elementary that neither habeas corpus nor motion in the nature of application for writ of error coram nobis can be availed of in lieu of writ of error or appeal, to correct errors committed in the course of a trial, even though such errors relate to constitutional rights. It is only when there has been the denial of the substance of a fair trial that the validity of the proceedings may be thus collaterally attacked or questioned by motion in the nature of petition for writ of error coram nobis or under 28 U.S.C.A. 2255. Bistch v. United States, 4 Cir., 164 F.2d 880, Miller v. United States, 4 Cir., 158 F.2d 887; Berry v. Huff, 4 Cir., 141 F.2d 554; Sandmelin v. Smyth, 4 Cir., 138 F.2d 720; United States v. Brady, 4 Cir., 138 F.2d 478, 481."

The above principles are particularly applicable where, as here, the collateral attack relates to errors or omissions in the charge to the jury that were not excepted to or raised on appeal. Even on a direct appeal, a court ordinarily will not consider an alleged error in the charge to the jury where, as here, no request was made, and no exception was taken to the charge pointing the error out to the trial court at a time when it could have been corrected.

Rule 30, Federal Rules of Criminal Procedure, provides in part:

> "At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests . . . No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." (emphasis added)

This rule is clear and applies here. See United States v. Cioffi, 253 F.2d 494, 496 (2d Cir. 1958); United States v. Bando, 244 F.2d 833, 844 (2d Cir.), cert. denied, 355 U.S. 844 (1957); United States v. Sherman, 171 F.2d 619, 621 (2d Cir. 1948).

On collateral attack, petitioner is met with even more stringent limitations on his right to relief. In United States ex rel Lusenah v. New York, 153 F. Supp. 1 (S.D.N.Y. 1957), a case involving collateral attack on a state sentence, Judge Levet, referring to the federal rule on collateral attack, stated (152 F. Supp. at 2):

> "It is the rule in the federal courts that errors in a trial court's instructions to a jury do not constitute sufficient basis for granting a writ of habeas corpus and that the inadequacy

> prerequisite to the granting of the writ must consist of the omission of essentials to such an extent that the accused is denied a fair trial in the constitutional sense. Kenion v. Gill, 1946, 81 U.S. App. D.C. 93, 155 F.2d 176. I cannot conclude that the alleged erroneous instruction deprived the petitioner of his constitutional right to a fair trial."

Kenion v. Gill, referred to by Judge Levet, involved a collateral attack on a conviction for second degree murder, where the charge to the jury "was short and omitted many refinements in definition and instructions which are customary in the federal courts in capital cases" including a failure to define reasonable doubt (155 F.2d at 178). In that case the petitioner also alleged that the trial court failed to define clearly the various degrees of homicide and failed to explain their essential elements. In affirming the denial of a writ of habeas corpus, the court applied the following test (155 F.2d at 179):

> "[T]he question presented upon petition for habeas corpus is not whether the charge was erroneous in its inadequacy; the question is whether the inadequacy amounted to denial of due process and therefore ousted the court of jurisdiction to enter judgment, and also whether the errors were open to review upon appeal."

The court inferred that for strategic reasons the defense was apparently satisfied with the charge in that no request for further instructions had been made, no exception had been taken to the charge, and no appeal had been taken (155 F.2d at 179). The court concluded that although it did not approve the charge (155 F.2d at 180), "we are not called upon to decide whether we would have affirmed or reversed if an appeal had been taken." (155 F.2d at 179). Accord: United States v. Jenkins, 197 F.2d 675 (7th Cir. 1952), cert. denied, 344 U.S. 877 (1952).

Nor has petitioner met the requirements for relief under Section 2255 by alleging error in a portion of the charge relating to aggravated circumstances of the crime charged that affect the maximum sentence. This allegation does not make the petition any less a substitute for appeal. Thus, in Banks v. United States, 287 F.2d 374 (7th Cir.), cert. denied, 366 U.S. 989 (1961), the defendant sought, under Section 2255, to correct his sentence for robbery of a post office clerk under the aggravating circumstance

of having put the clerk's life in jeopardy by use of a dangerous weapon. He alleged an error in the charge to the jury in that the instructions failed to define the word "jeopardy", and, in addition, urged that a special interrogatory should have been submitted to the jury on whether he had held the clerk in danger of harm from a dangerous weapon. The Court of Appeals affirmed the dismissal of the petition, without discussing its merits, on the ground that:

> "An attack on allegedly defective instructions is properly raised on appeal and not by a motion under Section 2255."

Similarly, in United States v. Stevens, 230 F.2d 549 (3d Cir. 1956), an alleged failure of an indictment for bank robbery to charge correctly the aggravating circumstance of placing lives in jeopardy, together with an allegation of an error in the charge to the jury, were held "properly presentable only on appeal from the judgment of conviction and . . . not of such fundamental jurisdictional character as to be available to support a writ of habeas corpus or a

motion under section 2255" (280 F.2d at 550). See also United States v. Corsett, 142 F. Supp. 764 (W.D. Ky. 1956), aff'd 245 F.2d 118 (6th Cir. 1957).

The strict rules pertaining to the availability of collateral attack when the matters complained of relate to the Court's instructions to the jury, as well as the requirements of Rule 30, are particularly applicable to the case at bar.

The wartime factor threaded through the whole proceedings, from the selection of jurors to the summations. The testimony concerned in large part the stealing of atomic secrets by a soldier in uniform, ostensibly to aid a wartime ally. The indictment alleged that the crime was committed, "the United States being then and there at war" and all the overt acts were alleged to have occurred prior to the end of actual hostilities. There were continual references to World War II and to the death penalty.* Yet, when on March 26, 1951, defense counsel submitted their requests to charge (R. 1771), not one of the requests related to the wartime element (R. 2314-2324 passim). Although exceptions were taken to the charge (R. 2367-71), no issue was raised with respect to the charge to the jury on the wartime element. In this regard counsel apparently were satisfied with the charge to the jury.

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* See discussion falling under Point I (c) of the various references to the death penalty and to World War II which appear in the trial transcript at R. 12, 13, 37 153-5, 173, 221, 259, 270-1, 522, 703, 704, 973-4, 1495, 1610, 1734, 1744, 2133, 2137, 2207, 2230, 2241, 2242, 2243, 2254, 2283, 2299.

Nor was an alleged omission of the wartime factor raised on appeal, although other aspects of the charge were challenged. Indeed, the argument was made by the Rosenbergs on appeal that "at the most, out of idealistic motives, they gave secret information to Soviet Russia when it was our wartime ally ...." United States v. Rosenberg, 195 F.2d 583, 604.

Moreover, the interpretation of the Espionage Act, upon which appellant's entire contention is based, was not urged at trial or on appeal. The contention that the wartime question was omitted from the charge, of course, implies a construction of the statute that "time of war" was an element of the crime for the jury to decide. Contrary to the construction now urged by petitioner, however, the wartime provision of the Act appears on its face to be a factor for the court to determine for the purpose of imposing sentence. This provision appears in section 32 following the definition of the crime and the elements thereof, as a proviso relating only to sentencing.

Petitioner cites no persuasive authority in support of his construction, and neither the legislative history nor case precedent clearly indicate whether the wartime element in the sentencing proviso is for the court or for the jury.* In this light, if petitioner believed that the wartime element is an essential element of the crime to be found by the jury rather than just a factor for the trial judge to consider on sentencing, he should have requested a charge on the point or at the least raised it on appeal. He is now, for the first time on collateral attack, asking this Court to construe the statute in a manner not suggested by its language. Thus, petitioner is in effect using a proceeding under §2255 as a substitute for appeal. This, as has been shown above, he cannot do.

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* The statute in Gilbert v. United States, 250 U.S. 503 (1919), cited by petitioner because the charge included "time of war" as an element, differs significantly from Section 32. It provides:

> "... whoever, when the United States is at war, shall wilfully cause or attempt to cause insubordination ... shall be punished ...."
> Section 4 Espionage Act,
> 40 Stat. 217, 219,
> 250 U.S. at 504.

Nevertheless, whether or not the wartime factor was to be decided by the Court or the jury, the charge to the jury was sufficient, as shown in subsections B and C, infra.

2. Sobell cannot avail himself of Rule 35, Federal Rules of Criminal Procedure

Alternatively, Sobell urges error in the trial court's charge as ground for correction of sentence under Rule 35 of the Federal Rules of Criminal Procedure. However, since an omission in the charge is an error in the conduct of the trial, and is not an error appearing on the face of the judgment of conviction and sentence, it is not ground for relief under Rule 35. The Supreme Court has stated with respect to the scope of Rule 35:

> "Sentences subject to correction under that Rule are those that the judgment of conviction did not authorize." United States v. Hayman, 342 U.S. 205, 306 (1954).

In Hill v. United States, Vol. 30, U.S. Law Week, No. 28, p. 4121 (January 29, 1962), where the defendant had not been given a right to speak in his own behalf prior

to sentencing in violation of Rule 32(a), the Court refused to consider the motion under Rule 35. The Court held:

> "It is suggested that although the petitioner denominated his motion as one brought under 28 U.S.C. §2255, we may consider it as a motion to correct an illegal sentence under Rule 35 of the Federal Rules of Criminal Procedure. This is correct. Hoffa v. United States, 358 U.S. 415, 418, 422. But, as the Rule's language and history make clear, the narrow function of Rule 35 is to permit correction at any time of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence. The sentence in this case was not illegal. The punishment meted out was not in excess of that prescribed by the relevant statutes, multiple terms were not imposed for the same offense, nor were the terms of the sentence itself legally or constitutionally invalid in any other respect."
> (30 U.S. Law Week 4213)

See to the same effect Green v. United States, 274 F.2d 59 (1st Cir. 1960); United States v. Bradford, 194 F.2d 197, 203-01 (2d Cir. 1951); cf., Hoffa v. United States,

353 U.S. 415 (1956).*

Since petitioner seeks to re-examine alleged errors that occurred at the trial, more particularly in the charge, which are dehors the indictment, the judgment of conviction and the face of the sentence, he cannot move under Rule 35.

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* Petitioner's attempt to bring this case within Hoffin v. United States, supra, because the interpretation of a statute is involved, is without merit. In Hoffin consecutive sentences for taking money from a bank and for receiving such money, 18 U.S.C. §2113(c)(d), were held invalid on their face. The Court made this determination solely from an examination of the judgment of conviction and sentence, and specifically noted that no matters dehors the record was raised.

B. The trial court properly charged the jury that it must find the conspiracy to have existed during the period charged in the indictment, and as a matter of law a state of war existed during that entire period.

Petitioner was convicted of a violation of Section 34 of Title 50, United States C[illegible] (1946 ed.), which provides:

> "If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be punished as provided by section 88 of Title 18."

The indictment charged a conspiracy to violate Section 32(c) of Title 50, which carries a peace-time penalty of imprisonment for not more than twenty years, but provides that:

> ". . . whoever shall violate the provisions of this subsection in time of war shall be punished by death or by imprisonment for not more than thirty years . . ."

Petitioner contends that the court by its charge improperly took from the jury the question of whether petitioner "violated the provisions of this subsection in time of war" or more particularly whether Sobell joined the conspiracy "in time of war", (Mem.I, 3, 15, 23).* Irrespective of whether

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*It may be noted that an attack upon the same aspect of the charge to the jury on different grounds was made in June of 1953 by attorneys who attempted to intervene on behalf of the Rosenbergs. They petitioned for habeas corpus alleging inter alia that the court did not charge the jury that the conspirators had to have intended to transmit documents "in time of war". This petition was denied on June 15, 1953 and again on June 19, 1953 by Judge Kaufman both on the merits and on the ground that the intervenors had no standing in view of the apparent rejection of their contentions by counsel of record for the Rosenbergs. A similar application, containing this and other grounds, was also brought by the same intervenors before the Supreme Court in June of 1953. Justice Douglas granted a stay on June 17, 1953 on the sole ground of another argument contained therein as to the applicability of the Atomic Energy Act. The Supreme Court, finding the question of the applicability of the Atomic Energy Act not substantial, vacated the stay on June 19, 1953. 346 U.S. 271 (1953).

Contrary to the intervenors's construction that the Act contemplates a conspiracy, at any time, to transmit information "in time of war", petitioner contends that under the Act the conspiracy had to have existed in wartime. The Government's arguments are premised upon petitioner's contention.

Without going into detail on the intervenors's contention which is not urged here, suffice it to say that, in addition to the prior rejections of the attack on the charge on this basis, it clearly would have no merit. The court charged the jury that acts actually done are the best evidence of intent, (R.2340, 2352-3) and the record here is replete with passing of secret information during the period of actual hostilities as well as during the technical state of war throughout the indictment period (R.694-7, 1200-1).

a court, under Section 32(c), may invoke the wartime penalty proviso upon its own finding or upon a jury finding that the defendant conspired "in time of war", the jury in this case necessarily made this finding.

Petitioner's contention that it was a material error to omit to charge the jury to find that Sobell "joined the conspiracy in 'time of war'", (Pet. Mem. 8) is premised upon his conclusion that "in time of war" means a period of actual hostilities, and that Petitioner may have joined the conspiracy after the declaration of the end of World War II hostilities in 1946. However, as will be shown below, for the purpose of the penalty provisions of Section 32 and similar statutes, a state of war existed until formal termination of World War II by a Presidential proclamation of the termination of the state of war with Japan on April 28, 1952. See 66 Stat. c. 31 (1952). Therefore, in finding that Petitioner participated in a conspiracy at any time between 1944 and 1950, the jury necessarily found that he violated the Act "in time of war."

The Court charged the jury:

> "You must first determine from all the evidence in the case, relating to the period of time defined in the indictment, whether or not a conspiracy existed." (R. 2041)

The only conspiracy which the jury could have found under that instruction must have been limited to the period in the indictment, from June 6, 1944 to June 16, 1950. If as a matter of law a state of war existed during this entire period, the jury could not have found Petitioner guilty of conspiracy during a period that was not "in time of war," even if it believed that Petitioner was a conspirator for only a part of the period. This conclusion must follow "unless they [the jury] disregarded the instructions, which we may not assume." United States v. Gillette, 189 F. 2d 449, 454 (2d Cir.), cert. denied 342 U.S. 827 (1951).

Contrary to the unsupported assertions in Petitioner's memorandum (Pet. Mem.I, 3, 23, 25 and 29) that the term "in time of war" relates to a period of actual hostilities, it is clear from congressional debates which preceded the enactment of the Espionage Act and

from subsequent interpretation of Congress of that and similar statutes that "in time of war," as used in Section 32(c), was intended to extend until formal conclusion of peace by treaty or declaration.*

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* The relevant legislative materials are set forth and discussed in Appendix II hereto. Reference to such materials will hereinafter be indicated by citations to "App. I" with the appropriate page number.

Sections 32 and 34 were enacted on June 15, 1917, as part of an omnibus wartime bill, H. R. 291, entitled "An Act To punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." See 40 Stat. 217 (1917). Said Sections constituted Sections 2 and 4, respectively, of Title I of H.R. 291, entitled "Espionage". On June 25, 1948, Sections 32 and 34 of Title 50 were consolidated in Section 794 of Title 18. See 62 Stat. 683, 737 (1948). The Reviser's Note indicates that no relevant substantive changes were made at that time. See 18 U.S.C.A. §794, p. 29.

While the definition of "in time of war" was not at issue during the congressional debates in 1917, several leading members of both the Senate and House of Representatives clearly indicated their understanding that limiting phrases such as "in time of war" used throughout H.R. 291 would cover the entire period from commencement of the war to formal conclusion of peace by treaty and/or declaration. App. II 1a-6a. It is also clear from the debates in 1917 that, although several congressmen questioned the advisability of imposing for a period longer than necessary some of the more controversial provisions in H.R. 291, notably a censorship provision which was ultimately eliminated in conference, there was no such question raised as to Section

32(a). Indeed, Congress unanimously condemned the conduct prohibited by Section 32 and favored maximum penalties for violations thereof. App. II 6a-7a.

This original understanding has been repeatedly confirmed by congressional resolutions and debates following the first World War and World War II in which Congress itself, well after cessation of hostilities but prior to formal conclusion of peace, recognized that statutory provisions applicable "in time of war", including the wartime penalty provision in Section 32(a), would continue to be effective, absent some formal action by Congress or the President, until conclusion of a peace treaty. See generally App. II 7a-17a. Thus, in order to terminate the effectiveness of wartime legislation no longer felt to be desirable in the period following cessation of hostilities of the first World War, Congress resolved by joint resolution that "any Act of Congress, or any provision of any such Act, that by its terms is in force only during the existence of a state of war ... shall be construed and administered as if such war ... terminated on the date when this resolution becomes effective ... [March 3, 1921]." App. II 9a.

Termination of the state of war existing after the end of hostilities in World War II was effected separately as to Italy, Germany and Japan. The state of

war with Germany was terminated on October 19, 1951, by a joint resolution of Congress, see 65 Stat. 451 (1951), and a proclamation by the President, see 66 Stat. c 3 (1951). At the time the joint resolution was considered the House of Representatives, the proponent of the resolution represented that statutory provisions whose operability depended upon the existence of a state of war would continue to be effective until conclusion of peace with Japan. App. II 13a.

Immediately prior to the time of promulgation of the Japanese Peace Treaty, Congress adopted a joint resolution recognizing that the "existing state of war" with Japan was about to be terminated and that certain statutory provisions would thereby then cease to be operative. The joint resolution provided that certain provisions considered essential by Congress, including 18 U.S.C. §794 the successor of Sections 32 and 34 of Title 50, would remain in effect notwithstanding declaration of peace with Japan until June 1, 1952, by which time Congress hoped to reexamine legislation in these areas. App. II 14a-15a. The effectiveness of Section 794 was further extended by a series of joint resolutions. App. II 16a-17a.

The language of these joint resolutions and the debates and congressional reports relating to them clearly show a construction by Congress that statutory provisions,

including the wartime penalty provision in Section 704, the effectiveness of which depended upon the existence of hostilities, were by their terms continuously operative until the Japanese Peace Treaty. App. II 11a-17a.

In the face of the foregoing material, all of which manifestly supports only one construction of the term "in time of war" as used in Section 32(a), it is almost scant to raise doubts as to the meaning of the term by referring the Court to:

(a) three sentences from the debates on a 1954 amendment to the Espionage Act (Pet. Mem. I 13);

(b) an introductory sentence from a law review article by the late Professor Hanley G. Lydecker (Pet. Mem. I, 13);

(c) [illegible] statements from Lee v. Madigan, 358 U.S. 228 (1959) (Pet. Mem. I 13, 25-27); and

(d) the doctrine of lenity in construction of ambiguous criminal statutes stated in Bell v. United States, 349 U.S. 81 (1955) and related cases (Pet. Mem. I 28-29).

None of these references has merit.*

Petitioner's quotation (Pet. Mem. I 13) from the statement by Congressman Latham during the debate in the House of Representatives on the 1954 amendment of the Espionage Act is incomplete and somewhat misleading. The full statement by Congressman Latham as to the Espionage Act was as follows:

> "It also makes the espionage statutes applicable both in war and in peace. At present the distinction between a wartime and a peacetime state of affairs is rather shadowy. Sometimes it is a very close proposition as to whether we are at war or peace. So it was felt that these statutes should be made applicable in peacetime. Sabotage committed a week before we are in a war might be just as serious as if it were done a week after.

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*Petitioner also refers to an incidental remark of the trial judge at the time of sentencing to the effect that the existence of a maximum twenty-year penalty for the offense of espionage in peace-time "most likely means" that the maximum punishment which could be imposed for espionage in 1951 would be twenty years. (Pet. Mem. I, 7) In view of the fact that evidence of the conspiracy in large part related to the period of actual hostilities -- 1944-1946 -- and that the position of the defense was that no conspiracy existed, not that one existed only after 1946 (see subpoint C, infra), the question of precisely what date in the 1950's the state of war ended apparently was not raised at trial. Undoubtedly, if the contention presently made by Petitioner had been raised, and the relevant authorities discussed herein had been submitted to the court, the trial judge would have made a definite determination that "time of war" existed during the entire period charged in the indictment.

"Also, this bill would eliminate the statute of limitations in espionage cases, which is now 10 years. It would make possible the death penalty in those cases, but it does not make it mandatory." 100 Cong. Rec. 10101 (1954).

There can be no inference from this statement that Congress was concerned with the difficulty of determining the termination of a formal state of war, such as World War II. Rather, it was concerned with the unprecedented situations presented by the Korean emergency and the "cold war" where clearly no well-established traditional state of war existed.

The article quoted in part by Petitioner (Pet. Mem. I 13) is hardly authority for the proposition that confusion exists "in the entire area as to when a state of war is terminated." (Pet. Mem. I 14). Indeed, Professor Hudson concluded as to the category of legislation within which Section 32(a) falls:

> "It would not seem improper ... to set March 3, 1921 [the effective date of the joint congressional resolution which terminated war-time legislation prior to the declaration of the peace treaty with Germany, see App. I 9a], the date of the end of the war for the purpose of applying much of American's war-time legislation ... " Hudson, The Duration of the War Between the United States and Germany, 39 Harv. L. Rev. 1020, 1045 (1926).

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The general rule applied in construing statutes made effective "in time of war" is clearly that such statutes remain operative until restoration of a formal state of peace by treaty or declaration. See, e.g., Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 165 (1919) (Brandeis, J.); Note, Judicial Determination of the End of the War, 47 Colum. L. Rev. 255, 259 (1947); 40 Ops. Att'y Gen. 421-22 (1945) (see App. II 11a-12a).

Petitioner's contention, for which not a single authority is cited, that "in time of war" must be limited to the duration of actual hostilities, has consistently and emphatically been rejected both in cases defining the proper scope of the war power; see, e.g., Ludecke v. Watkins, 335 U.S. 160 (1948) (Alien Enemy Act); Woods v. Cloyd W. Miller Co., 333 U.S. 138 (1948) (wartime rent control); Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111 (1947) (Emergency Price Control Act); see also National Savings and Trust Co. v. Dromell, 222 F. 2d 395, 398 (D.C. Cir.), cert. denied, 349 U.S. 955 (1955); and in cases construing the termination date

of legislation applicable in wartime, see e.g., Knauff v. Shaughnessy, 338 U.S. 537 (1950) (exclusion of aliens without hearing); Hamilton v. Kentucky Distilleries & Warehouse Co., supra (War-Time Prohibition Act); McElrath v. United States, 102 U.S. 426, 439 (1880) (authority of President summarily to dismiss military officers); In re Miller, 281 Fed. 764, 765-6 (2d Cir. 1922) (Trading With the Enemy Act); cf. United States v. Anderson, 76 U.S. 56, 70 (9 Wall. 1869).

The same rule is applied in the construction of penal statutes whose prohibitions are limited to wartime. In Sichofsky v. United States, 277 Fed. 762 (9th Cir. 1922), affirming Ex parte Sichofsky, 273 Fed. 694 (S.D. Cal. 1921), the Court rejected a contention that a person who entered the United States on August 23, 1920, after announcement of the November 10, 1918 Armistice but before the effective date of termination of the war (March 3, 1921) as declared by Congress for purposes of construing wartime legislation (see App. II 8a-9a) could not be prosecuted under the applicable statute because such statute was operative only during the

period of war. The opinion of the lower court in Sichofsky stated that the congressional declaration constituted a determination by Congress itself that, for purposes of construction of the statute before the Court (which was expressly limited to the period when the United States was at war), the war terminated on March 3, 1921. 273 Fed. at 696.

In Weisman v. United States, 271 Fed. 944 (7th Cir. 1921), appellant was convicted for stealing telegraph wire from a railroad then under control of the Federal government and being used to transport war materials and troops. The indictment was attacked on the ground that it failed to show that the United States was at war at the time of the alleged violation (September 30, 1919). The court refused to find as requested that "the War ceased on the day of the Armistice," citing Hamilton v. Kentucky Distilleries & Warehouse Co., supra.

In United States v. Meyers, 265 Fed. 329 (E.D. Mich. 1920), the court overruled a demurrer to an indictment charging that the defendant on September 7, 1919, violated a provision of the Selective Service Law of May 18, 1917, which authorized the Secretary of

War to prohibit brothels in the vicinity of military installations. The statute was originally applicable "during the present War" and was amended on July 9, 1918, to apply "during the present emergency." The court found that "neither such war nor such emergency" had terminated by the date of the alleged offense.* 265 Fed. at 331.

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* In an earlier case, United States v. Hicks, 256 Fed. 707 (W.D. Ky. 1919), a motion for a new trial was granted on an indictment charging violation of the same provision on December 7, 1918, on the ground that the declaration of the Armistice by the President on November 11, 1918 was prima facie evidence that the war had terminated and might sustain a directed verdict of not guilty "if nothing . . . appeared to demonstrate the inaccuracy of the President's statement" at the new trial. 256 Fed. at 714. Following the decision in the Hicks case, the Supreme Court reversed another decision by the same court which held that the War-Time Prohibition Act was void or inoperative on October 19, 1919, the date of an alleged offense, because hostilities had ceased. See Hamilton v. Kentucky Distilleries & Warehouse Co., [illegible]. In view of the Supreme Court's subsequent holding, the Hicks case would seem to have no precedential value.

The Hicks case was followed by an Alaskan court in sustaining a demurrer to an indictment charging violation on December 29, 1919, of an Alaskan statute prohibiting the uttering, in time of war, of language disrespectful and contemptuous of the flag of the United States. United States v. Sutton, 6 Alaska 223 (1st Div., Juneau, 1920).

The Hicks case is criticized in Hudson, The Duration of the War Between the United States and Germany, 39 HARV. L. REV. 1020, 1031 (1926), and has expressly noted but not followed in United States v. Stewart. See United States v. Stewart, supra, 265 Fed. at 330-331.

The issue whether "time of war" as used in the Espionage Act expired with the end of actual hostilities was squarely presented in United States v. Stoene, 263 Fed. 130 (N.D.N.Y. 1920). The defendant demurred to an indictment charging a violation of the anti-sedition provision of the Espionage Act, which applied "when the United States is at war," on the ground that since the alleged violation occurred after the end of hostilities, "no offense was committed, because the United States was not at the time at war with the Imperial German Government and the Austrian-Hungarian government." 263 Fed. at 131. The court overruled the demurrer, finding that "this contention cannot be sustained." 263 Fed. at 132.*

* On motion of the Solicitor General for the United States, the Stoene case was subsequently reversed on confession of error and remanded for further proceedings. See 255 U.S. 580 (1921). However, the records of the Department of Justice indicate that the confession of error was based upon the opinion that there was not sufficient evidence in the case to establish a violation of the statute. Reversal by the Supreme Court did not, therefore, affect the lower court's construction of "at war."

Carney v. United States, 283 Fed. 398 (9th Cir. 1922), also involved an alleged violation of the anti-sedition provision of the Espionage Act based upon publication of an article entitled "Hands Off Soviet Russia" on November 14, 1919. The court noted that the alleged offense occurred a year after the Armistice and stated that violations of the statute were punishable "only because the United States was then at war with Germany and Austria-Hungary, as charged in the indictment," and not because of "the situation in Russia alone and our relation to that country." 283 Fed. at 399. Thus, the court found that a state of war existed but held that "a mere protest against a future declaration or state of war with another country is not within the statute" and reversed the conviction on the sole ground of the lower court's refusal to charge, as requested by defense counsel, that the United States was not at war with Russia and "that the jury must consider the claim of the defendant that his only purpose in publishing the article was to create public sentiment in opposition to an invasion of Russia or to making active war in Russia . . . ," 283 Fed. at 399-400.

Petitioner relies upon Ex parte Madsen, 359 U.S. 228 (1959), for the propositions that "confusion" exists "in the entire area as to when a state of war is terminated" (Pet. Mem. I 13-14) and that the term "in time of war" must be construed to refer only to the period of actual hostilities (Pet. Mem. I 25-27). However, the limited holding of that case offers no support for either proposition and both the holding and the general statement quoted by Petitioner from the majority opinion, rest upon special considerations which are totally inapplicable to the case at bar.

The question before the Supreme Court in Ex parte Madsen was whether a military court-martial had jurisdiction to try a charge of conspiracy to commit a murder which occurred in California on June 10, 1949, in view of a proviso in Article of War 92, 10 U.S.C. §1564 (1946 ed., Supp. IV), to the effect that "no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace." The holding of the case was that June 10, 1949, the date of the alleged crime, "was in

time of peace' as those words were used in Article 92". 353 U.S. at 236. In so holding, the majority stated that terms such as "state of war" and "in time of peace" must be subjected to a "particularized and discriminating analysis" and "must be construed in light of the precise facts of each case and the impact of the particular statute involved". 353 U.S. at 239-31.

The legislative materials and judicial authorities cited herein clearly meet even these rigid tests. Moreover, the decision of the majority in Ex v. Medina was strongly influenced by considerations peculiar to the statute and facts in the case. When subjected to the same critical analysis advocated by the majority opinion, the inapplicability of its holding as to "in time of peace" in Article of War 92 to the meaning of "in time of war" in the Espionage Act becomes evident.

The subject of the statute before the Supreme Court was the jurisdiction of military tribunals -- a matter which, as Petitioner himself points out, consistently has been held to be closely related to the time of actual hostilities regardless of the existence of a formal state of war. See

footnote, Pet. Mem. I 27. Moreover, as the majority opinion observed, the purpose of the proviso before the Supreme Court was to limit the jurisdiction of military tribunals and preserve the right of trial by jury for individual citizens. See 333 U.S. at 233-35. A strict construction of "in time of war" is perfectly consistent with this purpose and is further supported, as noted by the Court, by a long history of reluctance to grant military tribunals authority to try nonmilitary offenses. See 333 U.S. at 222-35.

None of these considerations apply to the Espionage Act, whose purpose, like that of the statutes considered in the cases cited hereinabove was protection of the public interest in wartime.

Finally, Petitioner invokes the rule of Lenity in the construction of ambiguous statutes. Only brief consideration of the authorities cited by Petitioner (Pet. Mem. I 28-30) is necessary to demonstrate that this doctrine has been given extremely narrow application and, in any event, is irrelevant to the statute before this Court.

Three of the seven cases cited by Petitioner, Pillman v. United States, 304 U.S. 587 (1961), United States v. Bramblett, 348 U.S. 403 (1955) and Kendal v. United States, 335 U.S. 345 (1948), only advert to the so-called doctrine of lenity and hold precisely contrary to the position urged by Petitioner in the instant case.

In each of the remaining four cases cited by Petitioner, Heflin v. United States, 358 U.S. 415 (1959), Lehon v. United States, 353 U.S. 109 (1958), Bryan v. United States, 352 U.S. 322 (1957) and Ball v. United States, 340 U.S. 81 (1955), three compelling considerations were present. First, the statutes being construed were ambiguous; indeed in Bryan and Ball there was a conflict between the Courts of Appeals for various circuits as to the proper constructions of the statutes considered. See Bryan v. United States, supra 352 U.S. at 324; Ball v. United States, supra, 340 U.S. at 82. Second, legislative history either was found inadequate to resolve the ambiguity, see Lehon v. United States, supra, 353 U.S. at 174-75, 177; Bryan v. United States, supra, 352 U.S. at 327-28; Ball v. United States, supra,

349 U.S. at 83-84; or was found to support the Court's construction, see Wolfin v. United States, supra, 353 U.S. at 419-20. Finally, each decision involved the question whether multiple penalties should be imposed for separate aspects of the same criminal act. See discussion in Callanan v. United States, supra, 364 U.S. at 596-97. Thus, a construction favorable to the government would have required the Supreme Court to find, in the face of ambiguous statutory language and either inadequate or flatly contrary legislative history, an extremely unusual intention on the part of Congress.

The limited applicability of the rule of lenity enumerated in the four cases discussed immediately above was emphasized by the Supreme Court in its more recent decision in Gollmann v. United States, supra. That case held that obstructing interstate commerce by extortion and conspiracy to do so are separate offenses for which consecutive sentences may be imposed under the Hobbs Anti-Racketeering Act, 18 U.S.C. §1951. The majority opinion contains the following statement with respect to the rule of lenity:

> "But that 'rule' as is true of any guide to statutory construction, only serves as an aid for resolving an ambiguity; it is not to be used to beget one. The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers. That is not the functions of the judiciary." 364 U.S. 506.

After describing the Heflin, Bell, Prince and Bell cases, the opinion stated:

> "Here we have no such dubiosity within the statutes herself. Unlike all of these cases, the problem before us does not involve the appropriate unit of prosecution--whether conduct constitutes one or several violations of a single statutory provision . . ." 364 U.S. at 507.

In the instant case, there is neither ambiguity, inadequacy of legislative history, nor the unique problem common to the four cases cited by Petitioner. As in Colleman, and for the same reasons, the so-called rule of lenity is therefore inapplicable.

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C. Assuming that "time of war" is limited to a period of hostilities, there are no inadequacies in the charge to the jury on that feature to justify vacating the judgment of conviction on collateral attack.

Assuming, arguendo, that Sobell is correct in his present contention that time of war as used in this statute means a period of actual hostilities, petitioner's assignments of error in the charge in this respect, made for the first time on this collateral attack, are insufficient to require setting aside the conviction.

1. A more detailed charge was not necessary to inform the jury that a war existed between 1944 and 1946.

The jury was aware of the war time requirement of the Act in that it was set forth in the indictment which the trial court ordered read to the jury as part of his charge (R. 2331-4). Further, upon the consent of the defense attorneys, the indictment was sent to the jury room after the charge (R. 2373).

Petitioner contends that the term "time of war" should have been defined in detail by the Court. To the extent that this term was not defined, however, it was to the benefit of

the defendants. To the ordinary layman, "time of war" means hostilities, and from their general information the jury must have known that a war existed during that portion of the period of the conspiracy, as charged, when hostilities existed - 1944 to 1945.* Stilson v. United States, 250 U.S. 583 (1919). At most, a charge on this point might have broadened the definition of war beyond what the jury would otherwise have conceived it to be, to include the legal state of war which existed until 1952.

The propriety of leaving the jury to their general information in deciding when a time of war exists becomes apparent from the opinion in Stilson v. United States, supra, when the portion of the charge on the question of "time of war", quoted in part by petitioner (Mem.I, p. 11), is examined in full.** The trial court there had charged, with respect to another espionage statute containing a "time of war" requirement:

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* Hostilities were declared at an end by Presidential Proclamation on December 31, 1946. See App. I[illegible]. Japan surrendered August 14, 1945.

** As noted in subpoint A, the statute in Stilson, unlike that in the present case, on its face, clearly makes time of war an integral part of the offense.

> "The next question for you to determine is the presence of essential elements. One of them is, for instance, that the United States is at war." * * *
>
> "Whenever you are asked as a jury to pass upon anything which is a matter within common knowledge, common information, things which people ordinarily know, which are generally and practically universally known, when you are passing upon such questions, you have the right to call upon your general knowledge and information. You must determine, for instance, the question of whether or not we are at war, because unless we are, this indictment goes for nothing. You may determine that from your general information, this is something of which, in the phrase of the law, the law takes judicial notice." (250 U.S. at 507).

This charge, held proper by the Supreme Court, clearly does not contain a detailed explanation of the concept of war which petitioner urges was required here. Indeed, in sustaining that charge, the Supreme Court simply stated:

> "Certainly no prejudice could arise from an instruction that the jury might be supposed to know the fact that the country was at war." (Id. at 508).

In the absence of an express statement, in the instant case, to the effect that the jury was supposed to know of a war during 1944-1945, it is obvious that the jury must have applied its general information to determine that a state of war existed at the time of the conspiracy.

It is significant that there was no request to charge in more detail. See Rule 30, Federal Rules of Criminal Procedure. The defendants have raised no issue with respect to the fact that a war existed during this period, and the record shows a substantial number of references to the fact that a state of war existed. Indeed, the fact that the charge was one of wartime conspiracy and that it was therefore a capital case was apparent throughout the trial.

A list of potential Government witnesses was given to the defense at the outset (R. 12); the defense was allowed 30 challenges (R. 13); potential jurors were questioned on their views of capital punishment and some members of the panel were excused (R. 37, 153-5, 175).

David Greenglass was cross-examined on his knowledge that the penalty for the crime charged was death (R. 709, 794).

The death penalty was referred to by counsel for the Rosenbergs on summation (R. 2133, 2137), by counsel for Sobell (R. 2241, 2242, 2245, 2254), and by the prosecution (R. 2205, 2209). In summation, after the Court had instructed the jury to disregard counsel's references to punishment, counsel for Sobell stated (1945):

> "All I know is what I read in the statute, and that, I presume is something that I can comment on, and the statute says for this crime that Mr. Elichter is trying to prove Mr. Sobell guilty of, he can get up to thirty years or death. That is what the statute says."

The war-time element also was before the jury throughout the trial. In its opening the prosecution stated:

> "The significance of a conspiracy to commit espionage takes on added meaning where the defendants are charged with having participated in this conspiracy against our country, at this, the most critical hours in our history in time of war, around 1944." (R. 221)

The prosecution also referred to David Greenglass as a "modern Benedict Arnold, while wearing the uniform of the United States Army." (R. 229)

Most of the testimony related to the period of actual hostilities. Indeed, Julius Rosenberg's avowed purpose when he was trying to persuade the Greenglasses and Elichter to join the conspiracy was to assist "our war-time ally" (R. 270-1, 552, 973-4). During the direct and cross-examination of Julius Rosenberg there were references to the war effort of the allies, particularly that of the Russians (R. 1619), to the opening of the second front (R. 1734) and to "the advances their army made in the winter campaign against the Nazi army (R. 1744).

In summation, counsel for the Rosenbergs referred to the fact that Julius Rosenberg had expressed certain views about Russia "which may have been all right when the Soviet Union and the United States were Allies, but today it is anathema" (R. 2207). Rosenberg's avowed interest in a second front during the war was also referred to (R. 2230).

By analogy, an argument similar to that made by petitioner as to the failure to explain in more detail the concept of "war", could be made with respect to almost every criminal case tried in this district where the indictment alleges that the crime occurred in the Southern District of New York, an essential element of the case. See United States v. Cross, 276 F. 2d 816 (2d Cir. 1960) cert. denied, 366 U.S. 935 (1961). Where the Government's proof shows that criminal acts occurred, for example, in Manhattan, and no issue is raised by the defense as to where the crime occurred and no request to charge is made on the question of venue, it would not be error for the court to fail to include in its charge the fact that the Southern District of New York comprises the counties of Bronx, Columbia, Dutchess, Greene and so forth. (28 U.S.C. 112)

Petitioner's claims here of a lack of detail on when a state of war existed, can not be considered an erroneous omission in the charge. The existence of a state of war during 1944-1945 was generally known to everyone. There was substantial evidence at the trial that hostilities were going on during a portion of the period of the conspiracy as charged, and no issue was raised in this respect, although the defense clearly was aware of the consequences of the war-time factor. Particularly in light of the absence of any request to charge in more detail, the allegations in this respect completely fail to show any error cognizable on collateral attack. See Hodges v. Hill, 155 F. 2d at 179; United States v. Jenkins, 197 F. 2d at 670, discussed supra at subpoint A.

2. Under the circumstances the trial Court was not required to charge the jury that it could find Schell joined the conspiracy after or before the end of hostilities.

There is no question that the jury found that a conspiracy existed during the period of hostilities, 1944-1945. All of the overt acts alleged in the indictment occurred before January 14, 1945. The court charged the jury that they must

find one of the alleged overt acts.* Thus the court charged:

> "the indictment further enumerates 12 overt acts allegedly done to effect the object of the conspiracy. . . Furthermore, the government has to prove beyond a reasonable doubt, only one of the aforementioned overt acts in furtherance of their conspiracy, in addition to proving the existence of the conspiracy and the membership of each defendant in the conspiracy beyond a reasonable doubt." (1553)

Petitioner's main contention appears to be that the court should have charged the jury on the question of whether Sobell joined the conspiracy before or after the end of hostilities in 1940.

The lack of merit in this contention is revealedly a finding by the Court of Appeals on petitioner's direct appeal. On his appeal, Sobell argued that the trial court should have charged the jury that they could find that two conspiracies existed, one for the purpose of transmitting atomic secrets in which the Rosenbergs, but not Sobell, participated, and a

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* This instruction was given despite some indication in other cases that it is sufficient for the jury to find any overt act, regardless of whether or not it is alleged. Moreover, it must be assumed that the jury followed the instruction. United States v. Gillette, 189 F. 2d 449, 454 (2d Cir.), cert. denied, 342 U.S. 827 (1951).

separate conspiracy, of which Sobell was a member, with the purpose of transmitting non-atomic secrets. The Court of Appeals held, one judge dissenting, that it was not improper to have omitted a charge on this issue. United States v. Rosenberg, 195 F. 2d 583, 600-602 (2d Cir. 1952), cert. denied, 344 U.S. 838.

The Court of Appeals found that there was one conspiracy with a "single unified purpose."* The Court held:

> "The jury could and did reasonably find that Sobell consented to the dominant aim, and so became a member of the Rosenberg-Greenglass-Gold conspiracy." (195 F.2d at 601)

This finding of the Court of Appeals that Sobell was a member of the Rosenberg-Greenglass-Gold conspiracy, would preclude petitioner from disclaiming responsibility for the acts of the Rosenbergs during the period of hostilities, even if the proof showed that he may have joined the conspiracy

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* In a dissenting opinion on the Rosenbergs petition for stay pending, inter alia, the applicability of the Atomic Energy Act, Justice Frankfurter stated:

> "Only one conspiracy could have been found by the jury to have existed; and that was the conspiracy averred in the indictment, a conspiracy continuous from a date certain in 1944 to a date certain in 1950." 346 U.S. at 304

subsequent to these acts. In finding the existence of one conspiracy, the Court stated:

> "It did not matter that Sobell knew nothing of the atomic episodes; he is nevertheless charged with the acts done by Greenglass, Gold and Rosenberg in furtherance of the over-all conspiracy." (195 F.2d at 601)

The doctrine that a conspirator is responsible for the acts of co-conspirators in furtherance of the conspiracy is well established. United States v. Sansone, 231 F.2d 887 (2d Cir.), cert. denied, 351 U.S. 937 (1956); United States v. Hamm, 107 F.2d 834 (2d Cir.) cert. denied, 309 U.S. 674 (1940); United States v. Kamler, 253 F.2d 200 (2d Cir. 1958); United States v. Crimmins Blower, etc. Contractors, 177 F. Supp. 213 (S.D.N.Y. 1959). This doctrine was applied by the Court of Appeals to Sobell with respect to the transmittal of atomic secrets by the Rosenbergs, and is equally applicable to hold Sobell responsible for the acts of his co-conspirators, including the Rosenbergs, even if these acts occurred prior to Sobell's joining the conspiracy.

In Sansone, the Court of Appeals stated:

"The rule is clear that one who joins an existing conspiracy takes it as it is, and is therefore held accountable for the prior conduct of co-conspirators." 231 F.2d at 893.

In Manton, the Court stated:

"It is not required that each of the conspirators shall participate in, or have knowledge of, all its operations. He may join at any point in its progress and be held responsible for all that may be or has been done." 107 F.2d at 848.

In Hudspeth v. McDonald, 120 F.2d 962 (10th Cir.), cert. denied, 314 U.S. 617 (1941), the doctrine of a conspirator's responsibility for prior acts of co-conspirators was applied in space as well as time to establish jurisdiction over a defendant. The court rejected the contention of petitioner, McDonald, on a writ of habeas corpus, that the Minnesota District Court had no jurisdiction over the acts he committed in that his participation, which consisted solely of exchanging the ransom money, occurred in Florida. For jurisdictional purposes the court held petitioner responsible for the actual kidnapping by his co-conspirators in Minnesota, even though he had not joined the conspiracy until the victim had been released and the ransom money paid.

The Court, held that petitioner "became a party to it [the conspiracy] with the same effect as if he had joined in at its inception" (120 F.2d at 966).

As noted by the Court of Appeals in Rosenberg, the trial judge properly charged the jury on this aspect of conspiracy law:

> "If you find that there was a conspiracy and that Morton Sobell was a member of the conspiracy, any statements or acts of any co-conspirators are binding upon him because the law is that once you have joined the conspiracy attempting to accomplish an unlawful objective, the acts of the co-conspirators done in furtherance of the same objective, even though the co-conspirators are unknown to you, are binding upon you." 195 F.2d p. 600.

Under this charge, which is in accord with the established doctrine of the responsibility of a conspirator for prior acts of his co-conspirators, petitioner may not escape responsibility for the acts of his co-conspirators during the period of hostilities, irrespective of whether he was a member of the conspiracy at the time when those acts took place.

Even applying the rationale of Judge Frank's dissent with respect to the two-conspiracy issue raised on petitioner's

direct appeal, the present allegation of error in the charge cannot be sustained. Judge Frank stated that the Court erred in omitting the two-conspiracy issue on the ground that Elichter's testimony would have supported two inferences: (1) that Sobell agreed to transmit certain kinds of military information, as he alleged on the appeal, or (2) that he agreed with other conspirators to transmit all kinds of military information, as the majority in the Court of Appeals found. On the basis of what he found to be justifiable inferences from the record, Judge Frank stated that the jury should have been instructed on the issue. 195 F. 2d at 601.

With respect to the present contention, however, the evidence is not reasonably susceptible to the inference that Sobell joined the conspiracy after the end of hostilities. The evidence of Sobell's pre-1946 participation was as compelling as the evidence of his subsequent acts. The same witness, Elichter, whom the judge charged the jury they had to believe in order to convict Sobell,* testified to Sobell's participation

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* The Court charged the jury:

> "If you do not believe the testimony of Max Elichter as it pertains to Sobell, then you must acquit the defendant Sobell." (1560)

throughout the indictment period, except for the evidence of concealment and flight. With respect to Sobell's acts of concealment and flight in 1950, the court specifically charged the jury that these acts were insufficient in themselves to justify a finding that he was a conspirator (R. 1559-1560).

The jury had no reasonable basis to have distinguished the pre-1945 and post-1945 evidence. The Government presented all of its evidence without any such distinction. The trial court summarized the evidence in its charge without making this distinction and no exception was taken by the defense.

Faced with the state of the evidence, petitioner did not contend at trial that he may have joined the conspiracy after the end of hostilities. This may be contrasted with the question of the two conspiracies which, as the Court of Appeals noted (195 F.2d at 601, n. 18), was raised at trial. The thrust of the argument to the jury by Sobell's attorney (R. 2239-2266) was that Elichter was the only witness whose testimony implicated Sobell in the conspiracy, that his testimony was completely untrue and that Sobell was not a member of any conspiracy at any time.

Furthermore, the present contention as to the division in time of Sobell's participation is inconsistent with Sobell's contention at trial that he never joined any conspiracy, and with the position taken by the defense on appeal, that Russia was an ally of the United States during the period of hostilities in which most of the overt acts took place, and there was no conspiracy in later years when Russia was hostile. See United States v. Rosenberg, 195 F. 2d at 603-604.*

The attack upon the court's failure to charge on the question of two conspiracies which was rejected by the Court of Appeals, is an illustration of the fact that there are

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* The Court of Appeals noted in refusing to consider on appeal an assignment of error as to hearsay evidence to which there was no objection below, that there may be a variety of reasons why an able trial lawyer would withhold an objection. The court also stated that while it may notice egregious errors to which there are no objections below, and it might do so here if it believed that failure to object resulted from the incompetence of defendant's counsel, "the record shows that defendants' counsel were singularly astute and conscientious." (195 F. 2d at 596, n. 9).

innumerable variations of conspiracies which may be imagined. The Court might have charged on conspiracies for atomic and non-atomic secrets; a conspiracy involving Sobell and Elichter and a conspiracy involving the Rosenbergs and Greenglass; or as petitioner now contends, a conspiracy before 1945 without him and a conspiracy after 1945 of which he was a member. The court, however, was under no duty to conjure up all of these variations and charge the jury with respect to any or all of them unless an issue was created, either factually or legally, and unless the defense requested such a charge in accord with its theory of the case. As shown above, there was no basis either in the evidence or in the legal theories advanced by the defense for a charge as to a possible peace-time conspiracy.

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PETITIONER'S CONVICTION CANNOT BE SET ASIDE UNDER 28 U.S.C. §2255 BECAUSE OF ALLEGEDLY IMPROPER QUESTIONING OF A CO-DEFENDANT AS TO PRIOR PLEAS OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, PARTICULARLY WHERE THE CO-DEFENDANT'S TESTIMONY WAS OF MINIMAL RELEVANCE TO THE EVIDENCE AGAINST PETITIONER AND THE CO-DEFENDANT HAD PREVIOUSLY INVOKED THE PRIVILEGE AT TRIAL.

A. The error urged on cross-examination is not ground for vacation of the conviction under 28 U.S.C. §2255.

Petitioner contends that his conviction should be vacated on the ground that a co-defendant, Ethel Rosenberg, was asked improper questions on cross-examination. More particularly, petitioner alleges that it was improper to elicit from Mrs. Rosenberg the fact that she had invoked the Fifth Amendment before the grand jury to some of the same questions that she answered at trial.

This contention was not raised on the direct appeal by Sobell or his co-defendants.*/ In accord with

*/ Petitioner concedes that this contention was not made on appeal except insofar as "the defense attacked the fairness of the trial" (Pet. Mem. II, p.21). Forty pages of the Rosenbergs' brief, which inferentially were adopted by Sobell (Sobell brief, Court of Appeals Docket 2201, p. 59) were devoted to the contention that the undue partisan participation of the trial judge deprived them of a fair trial (Rosenbergs' brief, Court of Appeals Docket 2202, pp. 64-105). In setting out examples of the allegedly hostile interferences by the trial judge, the Rosenberg brief in one sentence, at p. 98-9, alludes to the questions regarding the Fifth Amendment pleas. After discussing the point of law as appellants had presented it, the Court of Appeals rejected the contention that the trial judge participated in the trial as a partisan. 195 F.2d at 592-5.

the authorities discussed in Point IA, a motion to vacate sentence under 28 U.S.C. §2255 cannot be used as a substitute for appeal to correct errors at trial. As a justification for collateral attack petitioner urges that Grunewald v. United States, 353 U.S. 391 (1957), on which he now relies, was decided subsequently to his appeal.*/

However, Section 2255 does not become available for the correction of errors, not otherwise cognizable under that section, merely because of an allegation that the arguments did not become apparent to the defense until subsequent appellate decisions in other cases. Hill v. United States, 30 U.S. Law Week 4121 (Jan. 22, 1962); Sunal v. Large, 332 U.S. 174 (1947); United States v. Angelet, 255 F.2d 383 (2d Cir. 1958); 265 F.2d 155 (2d Cir. 1959).

In Sunal v. Large, the Supreme Court rejected petitioners' argument that their convictions for Selective Service violations were subject to collateral attack because the trial court denied them the opportunity to make a defense which had been sustained by Supreme Court

*/ Following the Grunewald decision, Sobell petitioned the Supreme Court to vacate its prior order denying him certiorari, raising the objections made on this motion as to the cross-examination of Ethel Rosenberg. Leave to file the petition was denied. 347 U.S. 1021 (1954).

decisions in other cases subsequent to their convictions. 332 U.S. at 176-178. 181. No direct appeal had been taken from the convictions, allegedly since the then existing state of the law (lower court decisions and a denial of certiorari) indicated that the defense was not available. However, the Supreme Court found that it had not definitively ruled on the question of the availability of the defense at the time petitioners decided not to appeal the original convictions and petitioners had the same opportunity to present the question on appeal as the defendants in other cases who subsequently obtained the ruling that the denial of the defense was erroneous. 332 U.S. at 181. Under these circumstances the court held that the errors committed by the trial court could not be reviewed on habeas corpus.

Similarly, Sobell could have raised the alleged error in cross-examination on appeal. Grunewald did not overrule prior Supreme Court decisions; it merely settled a question previously open.

In the very recent case of Hill v. United States, the Supreme Court reaffirmed the rationale of the Sunal case. In Hill, where the trial court had not afforded the defendant his right under Rule 32, F.R.Crim.P. to speak on his own behalf prior to sentencing, the Supreme Court

held that the sentence could not be collaterally attacked. The force of the Rule 32 requirement, insofar as it made the sentencing illegal, was not established until the case of Green v. United States, 365 U.S. 301 (1961), which was decided some seven years after the conviction in Hill.

The Supreme Court in Hill, in holding that under the circumstances relief under Section 2255 was not available, quoted the following from Sunal:

> "We are dealing here with a problem which has radiations far beyond the present cases. The courts which tried the defendants had jurisdiction over their persons and over the offense. They committed an error of law. . . . That error did not go to the jurisdiction of the trial court. Congress, moreover, has provided a regular, orderly method for correction of all such errors by granting an appeal to the Circuit Court of Appeals and by vesting us with certiorari jurisdiction. It is not uncommon after a trial is ended and the time for appeal has passed to discovery that a shift in the law or the impact of a new decision has given increased relevance to a point made at the trial but not pursued on appeal . . . . If in such circumstances, habeas corpus could be used to correct the error, the writ would become a delayed motion for a new trial, renewed from time to time as the legal climate changed. Error which was not deemed sufficiently adequate to warrant an appeal would acquire new implications . . . . Wise judicial administration of the federal courts counsels against such course, at least where the error does not trench on any constitutional rights of defendants nor involve the jurisdiction of the trial court." 332 U.S. at 181-182. (30 U.S. Law Week at 4122)

In United States v. Angelet, supra, the defendants sought to have their convictions set aside under Section 2255 on the ground that Jencks v. United States, 353 U.S. 657 (1957) established a new legal rule subsequent to trial. The court denied relief, stating:

> "*** This argument is flatly contradicted by the decision in Sunal v. Large, 332 U.S. 174 ***", 255 F.2d at 384.

In essence petitioner's present contention is that the trial court committed an error of law in overruling defense objections to certain cross-examination of a co-defendant, a point which he failed to raise on appeal, but which was subsequently passed on by the Supreme Court in a subsequent case. Thus, the point raised here by Sobell comes squarely with the rule applied in Sunal v. Large and it cannot be considered a ground for relief on collateral attack.

Petitioner attempts to avoid the usual limitations of review under section 2255 by raising this contention to a constitutional level. Even if he succeeded in bringing Sobell's constitutional rights into issue, this would not necessarily open the conviction to collateral attack. United States v. Rosenberg, 200 F.2d 666, 668 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953); United States v. Walker, 197 F.2d 287, 288 (2d Cir.)

cert. denied, 344 U.S. 877 (1952); Howell v. United States, 172 F.2d 213, 215 (4th Cir. 1949), cert. denied, 337 U.S. 906. However, in urging a constitutional violation, petitioner errs in two respects.

First, even in Grunewald v. United States, supra, where the objection to questioning on the subject of prior Fifth Amendment pleas was made by the defendant under examination, the Supreme Court did not hold that such questioning necessarily violates constitutional rights. In Grunewald, the Court, limiting its decision to "the circumstances of the present case" (353 U.S. at 420-421), stated that the questioning should have been disallowed by the trial court "in the exercise of a sound discretion" (353 U.S. 421). While the Court noted that the case involved "grave constitutional overtones" (353 U.S. at 423), it dealt with the issue under its supervisory power over the administration of federal criminal justice (353 U.S. at 424). The Second Circuit Court of Appeals has interpreted Grunewald to permit cross-examination on prior Fifth Amendment pleas under certain circumstances:

> "Grunewald requires an ad hoc determination by the trial judge, wherein he must balance two competing considerations in the light of all the circumstances of the case - the

> extent to which the prior claim of privilege affects the credibility of the witness and the possible impermissable impact on the jury occasioned by a showing of the prior plea." United States v. Sing Kee, 250 F.2d 236, 239-40 (2d Cir. 1957), cert. denied, 355 U.S. 954 (1958).

The Court held that "the trial judge did not abuse his discretion by permitting the cross-examination" of a defense witness, other than the defendant, where the witness' conduct before the grand jury was put in issue on direct examination.

Second, to the extent that Grunewald involved "constitutional overtones," these overtones derive from the witness' Fifth Amendment rights. See United States v. Sing Kee, supra, 250 F.2d at 240. The privilege against self-incrimination, however, belongs exclusively to the witness who has claimed the privilege. The privilege cannot be claimed by someone other than the witness, such as the defendant Sobell in this case. Rogers v. United States, 340 U.S. 367, 371 (1951) and cases cited; United States v. White, 322 U.S. 694, 699 - (1944). Thus, the issue petitioner attempts to raise under section 2255 does not amount to a constitutional deprivation of his rights.

No case has been cited by petitioner in which improper cross-examination, even of the type held improper in Gruenwald, was held to make a conviction subject to collateral attack; nor has the Government found any such case. As a mere allegation of error in the conduct of the trial, this point cannot be considered under section 2255. Even if it could be raised, however, as shown in subpoints B and C, infra, the point has no merit in the circumstances of this case.

B. The testimony of Ethel Rosenberg allegedly impeached by improper cross-examination was of minimal relevance to the guilt of the defendant Sobell.

In addition to the unavailability of the Fifth Amendment "overtones" to petitioner, who was not the witness (see subpoint A, supra), the irrelevance of the testimony of the witness, Ethel Rosenberg, to the case against Sobell precludes petitioner from claiming error in his conviction.

The Court of Appeals has indicated that in weighing the affect of the dangers of such cross-examination, an important consideration is whether the witness allegedly questioned improperly is a defendant. United States v. Gross, 276 F. 2d 816, 821 (2d Cir.), cert. denied, 363 U.S. 831 (1960). In this case although the witness was a defendant, it is another defendant who is seeking relief. Contrary to petitioner's assertion (Mem. II, p.39), the court

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in United States v. Tomaiolo, 249 F. 2d 683 (2d Cir. 1957) did not decide the precise question of Sobell's right to relief for error in cross-examining a co-defendant.* The entirely different circumstances of the instant case make apparent the lack of merit in petitioner's attempt to cover himself with alleged error in the examination of another.

Petitioner's contention is based on the erroneous promise that the direct testimony of Ethel Rosenberg, and the impeachment of her testimony on cross-examination had a substantial affect on the testimony against Sobell.

Max Elichter was the essential witness against Sobell, and the court charged the jury that in order to convict Sobell they must believe Elichter (R. 2355). No conflict existed, however, between the testimony of Elichter against Sobell and the Testimony of Ethel Rosenberg.

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*In Tomaiolo, a witness called by the defendant Tomaiolo was improperly cross-examined on his prior Fifth Amendment pleas. In addition to this error, the Court of Appeals found 5 errors in cross-examination of the defendant Tomaiolo himself, the impeachment of the same witness on the basis of court-martial convictions, and improper summation by the prosecutor. With respect to the co-defendant Saviero, the Court found error in eliciting evidence of his criminal record. The Court reversed the convictions of both defendants on the basis of an accumulation of these many errors. See Stromberg v. United States, 268 F. 2d 256, 269 (2d Cir.), cert. denied, 361 U.S. 863 (1959). There is not the slightest indication, as petitioner categorically states (Mem. II, p. 39), that the statement quoted by him refers to "the errors made in the cross-examination of Tomaiolo's witnesses," as distinguished from all of the other errors in the case.

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Ethel Rosenberg's testimony on direct examination, apart from life history, primarily related to David and Ruth Greenglass. A large portion of it consisted of simple, flat denials that certain acts and conversations, testified to by the Greenglasses, ever took place. Her testimony on direct and cross-examination in no way related to the events and conversations testified to by Elichter. Nor did she at any point even refer to Sobell or Elichter. (R. 1924-2090 passim).

Conversely, Elichter never referred to activities by Mrs. Rosenberg. Nor is it even inferable that any of the events as to which he testified took place in her presence. Elichter's testimony was essentially that Julius Rosenberg and Sobell sought Elichter's assistance in Espionage work in which Julius Rosenberg was involved, and on one occasion Sobell delivered information in a 35-millimeter film container to Julius Rosenberg. The testimony of the Greenglasses which implicated Ethel Rosenberg, and which she contradicted for the most part by bare denials, involved entirely different transactions than those related by Elichter. Elichter, in fact, made no references to either of the Greenglasses except on cross-examination where he denied knowing them (R. 474). Nor did the Greenglasses in their testimony even mention Elichter's name. (R. 547 - 1133 passim).

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Ethel Rosenberg's testimony did not in any way make Elichter's testimony less credible or raise any issue as to whether or not the events he related could not have taken place. She did not, for instance, give any testimony as to her husband's whereabouts that would have made it unlikely or impossible for him to have been in contact with Elichter or Sobell.

Although Julius Rosenberg, in addition to contradicting the Greenglass testimony, had denied committing espionage with Sobell or attempting to recruit Elichter into the conspiracy (R. 1704-24, 1732-43, 1806-12, 1903, 1905-7), his testimony with regard to the latter two manifestly received no corroboration from his wife's testimony. In short, Julius Rosenberg denied committing espionage with the Greenglasses, Sobell and Elichter. The thrust of Ethel's testimony was simply that as far as she knew her husband committed no acts of espionage with the Greenglasses.

Under these circumstances, any impeachment of Ethel Rosenberg's testimony, assuming its impropriety, would have had no direct effect on the testimony against Sobell and should not form a basis for setting aside his conviction on collateral attack.

C. By Invoking the privilege against self-incrimination at the trial itself, Mrs. Rosenberg had already impeached her testimony before the questions complained of were asked.

In numerous instances at the trial itself, Ethel Rosenberg invoked her privilege against self-incrimination in refusing to answer questions (R. 1938-41, 2012-15, 2017-19, 2042-3, 2079). All but the last of these claims of privilege occurred prior to the point at trial when she was asked the questions objected to on this motion concerning her reliance upon the privilege before the Grand Jury. These pleas of the privilege at trial in the presence of the jury necessarily were far more prejudicial than mere testimony by the witness that she had invoked the privilege at some prior time.

In addition, Julius Rosenberg had also on many occasions availed himself of the privilege against self-incrimination (R. 1602, 1724, 1731-2, 1746, 1757-8, 1761-3, 1772, 1899-1900).

Thus before the allegedly prejudicial questions about Ethel Rosenberg's grand jury testimony had been asked, the jury was well aware of the propensity of both her and her husband to refuse to answer relevant questions on Fifth

Amendment grounds. The jury not only had observed the two witnesses plead their privilege on a number of occasions, they had heard Ethel Rosenberg's counsel advise her of her Fifth Amendment rights in open court (R. 2007). The jury also had heard the United States Attorney decline to press a motion for a direction that Julius Rosenberg answer questions to which he had asserted his privilege in open court (R. 1772).

Thus, to the extent that revelation of prior Fifth Amendment pleas would substantially effect credibility, the Rosenbergs had thoroughly impeached themselves at trial before the questions now complained of by Sobell had been asked.

Under these circumstances, these questions cannot so fundamentally have affected the conviction of Sobell as to cause it to be set aside on collateral attack.

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Conclusion

The conviction of petitioner, as well as that of his co-defendants, has been thoroughly reviewed on many occasions by the District Court, the Court of Appeals for the Second Circuit and the Supreme Court (see Appendix I). As noted in Justice Clark's concurring opinion denying a stay, joined in by five other Justices:

> "Beginning with our refusal to review the conviction and sentence in October 1952, each of the justices has given the most painstaking consideration to the case. In fact, all during the past term of this Court one or another facet of this litigation occupied the attention of the Court." 346 U.S. at 293 (1953).

The Court of Appeals stated in affirming the conviction on direct appeal:

> "[We] have scrutinized the record with extraordinary care to see whether it contains any of the errors ascertained on this appeal." 195 F.2d at 590.

Petitioner failed to assert the two contentions made herein on direct appeal although they are merely allegations of errors of law on the face of the record which could have been raised. The points now raised do not approach the magnitude required for relief on collateral attack. Moreover, the merits of the arguments would be insufficient even on direct appeal to cause reversal of

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petitioner's conviction. Under these circumstances, Morton Sobell's motion to vacate his conviction and sentence should be denied in all respects.

Respectfully submitted,

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

EDWARD R. CUNNIFFE,
ROBERT J. GENIESSE,
DAVID KLINGSBERG,
Assistant United States Attorneys

Of Counsel.

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APPENDIX I

INDICTMENT

Indictment C 134-245, filed January 31, 1951, reads as follows:

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

- -x

UNITED STATES OF AMERICA, :

-v- : No. _____

JULIUS ROSENBERG, ETHEL ROSENBERG, :
ANATOLI A. YAKOVLEV, also known
as "John", DAVID GREENGLASS and :
MORTON SOBELL,
:

Defendants.

- -x

The Grand Jury charges:

1. On or about June 6, 1944, up to and including June 16, 1950, at the Southern District of New York, and elsewhere, JULIUS ROSENBERG, ETHEL ROSENBERG, ANATOLI A. YAKOVLEV, also known as "John", DAVID GREENGLASS and MORTON SOBELL, the defendants herein, did, the United States of America then and there being at war, conspire, combine, confederate and agree with each other and with Harry Gold and Ruth Greenglass, named as co-conspirators but not as defendants, and with divers other

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persons presently to the Grand Jury unknown, to violate subsection (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, confederate and agree, with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics, to communicate, deliver and transmit to a foreign government, to wit, the Union of Soviet Socialist Republics, and representatives and agents thereof, directly and indirectly, documents, writings sketches, notes and information relating to the National Defense of the United States of America.

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, in the District of Columbia, on or about June 6, 1944, the defendant JULIUS ROSENBERG visited a building at 247 Delaware Avenue, Washington, D.C.

2. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 15, 1944, the Defendants JULIUS ROSENBERG and ETHEL ROSENBERG conferred with Ruth Greenglass.

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3. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, the defendant JULIUS ROSENBERG gave Ruth Greenglass a sum of money.

4. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about November 20, 1944, Ruth Greenglass boarded a train for New Mexico.

5. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant JULIUS ROSENBERG went to 266 Stanton Street, New York City.

6. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about December 10, 1944, the defendant JULIUS ROSENBERG received from Ruth Greenglass a paper containing written information.

7. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendants JULIUS ROSENBERG and ETHEL ROSENBERG conferred with the

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defendant DAVID GREENGLASS and Ruth Greenglass.

8. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 5, 1945, the defendant JULIUS ROSENBERG gave Ruth Greenglass a portion of the side of a torn cardboard "Jello" box.

9. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 10, 1945, the defendant JULIUS ROSENBERG introduced the defendant DAVID GREENGLASS to a man on First Avenue, New York City.

10. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant JULIUS ROSENBERG conferred with the defendant DAVID GREENGLASS.

11. And further in pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about January 12, 1945, the defendant JULIUS ROSENBERG received from the defendant DAVID GREENGLASS a paper containing sketches of experiments conducted at the Los Alamos Project.