

FILE DESCRIPTION

NEW YORK FILE

SUBJECT **MORTON SOBELL**

FILE NO. **100-37158**

VOLUME NO. **35**

SERIALS **2006**

THRU

2097

① 11/1/60

NOTICE

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Ray / [Signature]
Date: 11-77
(month/year)

File No: 100-37158 Re: Morton Sobell

Serial	Date	Description (Type of communication, to, from)	No. of Pages		*	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released		
2006	12-9-59	N.Y. SAC memo to C.B. captioned: Third Party	3	0	No	
2007	12-1-59	I.P. FD-306	3	0	No	
2008	12-2-59	I.P. FD-306	3	0	No	
2009	2-17-60	N.Y. SA memo to SAC	1	1	No	
2010	2-15-60	A.T. SAC letter to HQ	12	4	Yes	Bufile 101-2483
2010	2-15-60	copy of AT SAC letter to HQ	12	-	Yes	Bufile 101-2483
2011	3-4-60	A.T. SAC letter to HQ	1	-	Yes	Bufile 101-2483
2012	3-2-60	P.H. SAC letter to HQ	2	-	Yes	Bufile 101-2483
2013	2-29-60	Bonn letter to HQ	1	-	Yes	Bufile 101-2483
2014	3-22-60	N.Y. SAC letter to HQ	1	0	Yes	Bufile 101-2483
2015	6-7-60	N.Y. SAC memo to I.A. captioned: Third Party	6	6	No	
2016		N.Y. SA memo to SAC captioned: Third Party	2	2	No	

*Designated to or from Bureau and/or Albuquerque, New York

File No: 100-37158

Re:

Morton Sabell

Serial	Date	Description (Type of communication, to, from)	No. of Pages		*	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released		
2017	9-19-60	N.Y. SA memo to SAC	1	1	NO	
2018	11-14-60	N.Y. SUP. memo to SAC	4	8	NO	
2019	12-19-60	N.Y. report to HQ	5	-	Yes	Bw file 101-2483
2020	1-17-61	A.T. SAC letter to HQ	10	-	Yes	Bw file 101-2483
2021	3-23-61	N.Y. SA memo to SAC captioned: Third Party	4	0	NO	
2022	3-27-61	CP. SA memo to SAC captioned: Third Party	2	4	NO	
2023	5-16-61	N.Y. SA memo to SAC	1	1	NO	
2024	6-30-61	A.T. SAC letter to HQ	2	-	Yes	Bw file 101-2483
2025	8-3-61	Third Party letter to U.S.D.C.N.Y.	2	2	NO	
2026	8-25-61	U.S.D.C.N.Y. letter to SAC N.Y. Re: Above letter	1	1	NO	
2027	8-28-61	N.Y. SAC letter to U.S.D.C.N.Y.	1	1	NO	
2028	8-29-61	N.Y. LHM to HQ captioned: Third Party	3	-	Yes	Bw file 101-2483

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			Actual	Released		
2029	8-29-61	N.Y. letter to HQ captioned: Third Party ^{regarding} LHM Above	1	—	Yes	Bu file 101-2483
2030	9-5-61	HQ letter to SAC captioned: Third Party	1	1	Yes	PROCESS 3rd Party
2031	9-7-61	N.Y. LHM to HQ captioned: Third Party	4	—	Yes	Bu file 101-2483
2032	9-7-61	N.Y. letter to HQ captioned: Third Party	2	—	Yes	Bu file 101-2483
2033	10-3-61	N.Y. SA memo to SAC captioned: Third Party	5	0	No	
2034	10-31-61	N.Y. SA memo to SAC	1	1	No	
2035	10-9-61	C.G. SA memo to SAC captioned: Third Party	4	0	No	
2036	10-21-61	N.Y. SAC letter to HQ	1	—	Yes	Bu file 101-2483
2037	10-13-61	N.Y. Airtel to HQ	1	—	Yes	Bu file 101-2483
2038	10-16-61	HQ Airtel to SAC	1	—	Yes	Bu file 101-2483
2039	10-12-61	C.G. SA memo to SAC captioned: Third Party	3	3	No	
2040	10-12-61	C.G. SA memo to SAC captioned: Third Party	4	0	No	

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Serial	Date	Description (Type of communication, to, from)	No. of Pages		*	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released		
2041	11-14-61	N.Y. SUP. memo to SAC captioned: Third Party	1	1	No	
2042	11-17-61	AT, SAC memo to B.S.	4	4	No	
2042	11-17-61	Copy of AT, SAC memo to B.S.	4	4	No	dupe 4
2043	12-11-61	N.Y. report to HQ,	7	-	Yes	Bw file 101-2483
2044	12-13-61	N.Y. Times Article	1	1	No	
2045	1-4-62	N.Y. letter to HQ captioned: Third Party	4	4	Yes	Process 3rd Party
2046	1-4-62	N.Y. Airtel to HQ captioned: Third Party ^{requiring N.Y. letter} up above	2	2	Yes	Process 3rd Party
2047	1-4-62	N.Y. Airtel to HQ	1	-	Yes	Bw file 101-2483
2048	1-4-62	N.Y. LHM to HQ captioned: Third Party	3	3	Yes	Process 3rd Party
2049	1-4-62	N.Y. Airtel to HQ captioned: Third Party ^{regarding} LHM to HQ	1	1	Yes	Process 3rd Party
2050	1-4-62	N.Y. Times Article	1	1	No	
2051	1-12-62	N.Y. Airtel to HQ	1	-	Yes	Bw file

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11-77

(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		*	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released		
2052	1-16-62	HQ Airtel to SAC WITH one copy	1/1	2	Yes	Bw file 101-2483
2053	1-19-62	N.Y. Airtel to HQ	1	—	Yes	Bw file 101-2483
2054	1-19-62	N.Y. SAC memo to ASAC captioned: Third Party	1	1	NO	1/3
2055	1-24-62	N.Y. Airtel to HQ	1	—	Yes	Bw file 101-2483
2056	1-24-62	N.Y. SA memo to SAC	1	0	NO	1/3
2057	1-25-62	A.T. Airtel to HQ	1	—	Yes	Bw file 101-2483
2057	1-25-62	Copy of A.T. Airtel to HQ	1	—	Yes	Bw file 101-2483
2058	1-26-62	N.Y. Airtel to HQ	1	—	Yes	Bw file 101-2483
2059	2-6-62	N.Y. Airtel to HQ	1	—	Yes	Bw file 101-2483
2060	2-7-62	N.Y. Airtel to HQ	1	—	Yes	Bw file 101-2483
2061	2-6-62	N.Y. SA memo to SAC	1	1	NO	
2062	2-6-62	N.Y. SA memo to SAC Captioned: Third Party	2	2	NO	

*Designated to or from Bureau and/or Albuquerque, New York

Amf

File No: 100-37158

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Morton Sobell

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11-77

(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		*	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released		
2063	2-8-62	N.Y. Airtel to HQ captioned: Third Party	1	0	Yes	Process 3rd Party
2064	1-15-62	U.S.D.C. S.D. N.Y. Petition of Morton Sobell enclosure to ser. 2065	30	30	Yes	being Processed Bu file 101-2483
2065	1-15-62	Perlin Letter to Sobell	2	2	Yes	being Processed Bu file 101-2483
2066	2-8-62	AT. SAC letter to HQ	3	-	Yes	Bu file 101-2483
2066	2-8-62	Copy of AT. SAC letter to HQ	3	-	Yes	Bu file 101-2483
2067	2-13-62	N.Y. SAC memo to CH. captioned: Third Party	2	2	No	
2068	2-14-62	N.Y. Airtel to HQ	1	-	Yes	1492 F2/286 Bu file 101-2483
2069	1-23-62	AT. SAC letter to HQ	5	-	Yes	Bu file 101-2483
2069	1-23-62	Copy of AT. SAC letter to HQ	5	-	Yes	Bu file 101-2483
2070	2-15-62	N.Y. SA memo to SAC captioned: Third Party	1	1	No	
2071	2-20-62	AT. SAC letter to HQ	12	-	Yes	Bu file 101-2483
2071	2-20-62	Copy of AT. SAC letter to HQ	12	-	Yes	Bu file 101-2483

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(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		*	Exemptions used or, to whom referred (Identify statute if (b)(3) cited)
			Actual	Released		
2072	2-26-62	C.G. SAC letter to HQ captioned: Third Party	10	0	Yes	Process 3rd Party
2073	3-8-62	P.X. SAC letter to HQ	1	+	Yes	Bw file 101-2483
2074	3-18-62	AT. LHM to HQ Enclosure to Serial 2075	1	+	Yes	Bw file 101-2483
2074	3-13-62	Copy of AT. LHM to HQ enclosure to Serial 2075	1	-	Yes	Bw file 101-2483
2075	3-13-62	AT. Letter to HQ Re: above LHM.	1	-	Yes	Bw file 101-2483
2075	3-13-62	Copy of AT. Letter to HQ Re: above LHM	1	-	Yes	Bw file 101-2483
2076	3-22-62	N.Y. SAC letter to HQ	1	-	Yes	Bw file 101-2483
2077	3-28-62	AT. SAC letter to HQ	1	-	Yes	Bw file 101-2483
2078	4-6-62	N.Y. Airtel to HQ	2	-	Yes	Bw file 101-2483
2079	2-21-62	B.A.S.A. Memo to SAC captioned: Third Party	4	0	No	
2080	4-13-62	N.Y. SAC memo to C.H. captioned: Third Party	3	3	No	
2081	4-13-62	N.Y. SAC memo to C.H. captioned: Third Party	2	2	No	

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any

File No: 100-37158

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Date:

11-77

(month/year)

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			Actual	Released		
2082	4-13-62	N.Y. SA memo to SAC	1	1	NO	
2083	5-16-62	BA. SA memo to SAC Captioned: Third Party	3	0	NO	
2084	4-5-62	SF. SAC memo to N.Y. captioned: Helen Sobell	1	1	NO	
2085	4-13-62	N.Y. SAC letter to HQ	1	-	Yes	Bu File 101-2483
2086	5-7-62	C.P. SAC letter to HQ WITH ONE COPY	1/1	-	Yes	Bu file 101-2483
2087	5-18-62	N.Y. SAC letter to HQ	1	-	Yes	Bu file 101-2483
2088	3-31-62	Photograph	1	1	NO	
2089	3-31-62	Photograph	1	1	NO	
2090	6-6-62	SA memo to SAC	1	1	NO	
2091	8-7-62	N.Y. SAC letter to HQ	1	-	Yes	Bu file 101-2483
2092	10-2-62	NY. SA memo to SAC captioned: Third Party	4	0	NO	
2093	10-26-62	N.Y. SA memo to SAC	1	1	NO	

*Designated to or from Bureau and/or Albuquerque, New York

Date: 11-77
(month/year)

(month/year

File No: 100-37158

Re:

Morton Subell

[illegible]

*Designated to or from Bureau and/or Albuquerque, New York

FBI/DOJ

MATERIAL MUST NOT BE REMOVED FROM OR ADDED TO THIS FILE

100-37158

FEDERAL BUREAU

of

INVESTIGATION

Bureau File Number 100-2483

DO NOT FURNISH ANY INFORMATION FROM THE FILES OF THE FBI TO ANY OTHER AGENCY OR INDIVIDUAL WITHOUT THE WRITTEN AUTHORIZATION OF THE FBI

See No.

Sub A - Newspaper Clippings

Sub. Number

100-2092

35

Printed in U.S.A.

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2006 **DATE** 12/9/59

CONSISTING OF 3 **PAGES**

is exempt from disclosure, in its entirety,
under (b)(1) as it has been classified pursuant
to Executive Order 11652 as it contains
information which would disclose an intelligence
source. This serial bears the Classification
Officers number [REDACTED]

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2007 DATE 12/1/59

CONSISTING OF 3 PAGES

is exempt from disclosure, in its entirety, under (b)(7)(D) as information contained in this serial would identify an informant to whom an expressed promise of confidentiality has been given. This information includes dates and places of meetings which were attended by a limited number of people known to the informant and/or information from these meetings and situations in which an informant was in close contact with members of these organizations, disclosure of which would reveal his identity.

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2008 DATE 12/2/57

CONSISTING OF 3 PAGES

is exempt from disclosure, in its entirety,
under (b)(1) as it has been classified pursuant
to Executive Order 11652 as it contains
information which would disclose an intelligence
source. This serial bears the Classification
Officers number [REDACTED]

100-37158-2009
Office Memorandum • UNITED STATES GOVERNMENT

TO : SAC, New York (100-37158)

DATE: 2/17/60

FROM : [REDACTED] b7c

SUBJECT: MORTON SOBELL
ESPIONAGE - R

Reference: Letter from Director FBI to Legal Attache, London
dated August 31, 1959 and captioned as above.

Referenced letter reflects a lead for the Legat Bonn to
advise if through his sources he can determine if PERLIN and
KINOY interviewed FUCHS in East Germany.

When the above information is received please direct copies
of same to the case files on PERLIN and KINOY.

2/26/60 P* status
Chief Clerk:
Recopen Case
Origin NY 100-37158-2009

- 1 - MORTON SOBELL (100-37158)
1 - ARTHUR KINOY (100-118562)
1 - MERRILL PERLIN (100-89559)

100-37158-2009

SEARCHED	INDEXED
SERIALIZED	FILED
FEB 17 1960	
FBI - NEW YORK	

33 [REDACTED] b7c

~~CONFIDENTIAL~~

UNITED STATES GOVERNMENT

MEMORANDUM

TO : SAC, INDIANAPOLIS (100-))
FROM : SAC, NEW YORK (100-107111)
SUBJECT: COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL
IS-C

APPROPRIATE AGENCIES
AND FIELD OFFICES
ADVISED BY ROUTING
SLIP(S) (S) *Classification*

- 1 - Indianapolis (100-) (RM)
1 - New York [REDACTED]
1 - New York [REDACTED]
1 - New York [REDACTED]
1 - New York [REDACTED]
1 - New York (100-158) (MORTON SOBELL) (33)
1 - New York [REDACTED] b1
1 - New York [REDACTED]
1 - New York (100-109849) (MRS. NORTON SOBELL) (33)
1 - New York [REDACTED]
1 - New York [REDACTED] b1
1 - New York [REDACTED]
1 - New York (100-128314) (CP, USA NYD Funds) (414)
1 - New York (100-128815) (CP, USA NYD Negro Matters) (414)
1 - New York [REDACTED]
1 - New York [REDACTED] b1
1 - New York (100-49738) (SP-SDF) (413)
1 - New York (100-8414) (VP SL) (413)
1 - New York [REDACTED]
1 - New York (100-107111) (41) b1

RCB:kmk

(19)

CLASSIFIED BY *204 ECHER 11-19-8*
EXEMPT FROM GDS CATEGORY *2*
DATE OF DECLASSIFICATION INDEFINITE

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

~~CONFIDENTIAL~~

100-37168-2015

SEARCHED	INDEXED
SERIALIZED	FILED
JUN 7 1960	
FBI - NEW YORK	

98 88
NY 100-107111

Identity of Source [REDACTED] b1

Description of info

Meeting re MORTON SOBELL

Date Received

5/25/60

Received by

SA [REDACTED] (oral) b7C

Original located [REDACTED] b1

[REDACTED] b1
A copy of informant's report follows:

NY 100-107111

5/25/60

On 5/24/60, there was a meeting at the Community Church, 40 East 35th St., NYC, for a public discussion of the case of MORTON SOBELL. The meeting started at 8:30 PM and ended about 10:45 PM.

Chairman of the meeting was WILLIAM KUNSTLER.

The speakers in order of appearance were DWIGHT MAC DONALD, a writer; NORMAN THOMAS; Mrs. MORTON SOBELL; Conrad LYNN, a colored lawyer; HOWARD RADEST; and US Congressman RANDALL S. HARMON of Indiana.

It was announced that Rev. THOMAS GILGORE was unable to attend.

RADEST, who was introduced as a newspaperman, made a plea for money to raise funds to purchase a full-page ad in the NY Times at a cost of \$5,400.00. A collection was taken and it was announced to be over \$960.00. RADEST said that additional contributions could be sent to Dr. HORACE KALLEN.

KUNSTLER made a short summary of the SOBELL-ROSENBERG case. He said it did not matter whether it was called the ROSENBERG case or the SOBELL case, that after studying the facts it is clear that there are two cases. He said thousands of judges, lawyers and other prominent people agree that SOBELL should have had a separate trial because he was not directly connected with the ROSENBERGs. He stated that guilty or not SOBELL deserved a separate trial. He said he does not agree with Communism, but believes in a fair trial for everyone.

DWIGHT MAC DONALD spoke and repeatedly said he is not a Communist. He said he too feels that MORTON SOBELL should have a separate trial. He mentioned that men, such as FUCHS and MAY (ph) and GOLD, who were responsible for great damage, got only 10-15 years for espionage and some are now free. He said some convicted spies are free and back in business. He concluded that it was unfair that SOBELL should have received the maximum sentence.

NY 100-10711

NORMAN THOMAS stated that he had to leave early due to another important engagement. Before the arrival of THOMAS KUNSTLER stated that HARMON and Mrs. MORTON SOBELL were to accompany KUNSTLER to a radio station to appear on Long John's program from 59th St., NYC. THOMAS stated that he is against Communism which has no place in a democratic country. He said he believes that MORTON SOBELL has not had a fair trial and should have a separate trial. He described Mrs. SOBELL as a fine woman who had dedicated her life to her husband and introduced her as next speaker.

Mrs. SOBELL stated that she as wife of MORTON and the mother of his children knows that he is innocent. She said MORTON is a noble scientist. She said that already 10 years of their lives are gone. She expressed thanks to all the people helping her to get a new trial for her husband.. She said thousands of prominent people are helping her to fight for justice. She introduced MORTON's mother who was sitting in the first row and who took a bow. She said that the mother, and her children and herself were very grateful for the help.

Conrad LYNN was introduced by Mrs. SOBELL as one who had devoted his time without pay to help get justice. LYNN said at the time SOBELL was convicted it was a time of mass emotion, of Korean war and of Mc Carthyism. He said that now since the hysteria is gone a new trial is warranted and that SOBELL should have had a separate trial in the first place. He said that they were asking for the new trial at this time because they felt that at this time the atmosphere has been cleared of hysteria and is ready for justice as it is in the case of the negroes who also are now asking for their constitutional rights. He said that in the South the prisons are over-crowded with young negro men who are put there for demanding the same rights other Americans have. He said just last week he returned from a tour of prisons in the South where hundreds and hundreds of negroes are confined in over-crowded jails. He said that on Sundays, the only visiting day, the prisoners' parents, wives and children and other relatives, are on chartered buses which operate on a full schedule. He said the long line of buses looked like a picnic. He said the prisoners are behind barbed wire and the visitors must talk to them from outside the wire enclosures.

NY 100-10711

LYNN said this side of the story is not in the newspapers. He said that the people now have a feeling for real American justice so that SOBELL should get a new trial. LYNN said that everybody in American should have the right to their own beliefs, anarchists or otherwise, and our democracy should be so strong that Communism or anyother belief will not weaken it.

RANDALL S. HARMON spoke after the collection. He said that he believed MORTON SOBELL was innocent and deserved a new trial. He said he liked to help people who needed help. He mentioned that he himself received bad publicity concerning the use of a front porch office in his wife's home where he lives, but that due to this publicity people all over the world had contacted him. He promised Mrs. SOBELL that he would do all he could to get MORTON SOBELL a new trial.

There were about 300 people present at the meeting.

Distributed at the meeting was a circular advertising the meeting on the reverse side of which is "A Statement on the Case of MORTON SOBELL undersigned" by an eminent group of theologians and law professors based on their independent study." This item is being filed by FD-306 in NY 100-107111.

Distributed outside the meeting were:

(1) A statement by IRWIN EDELMAN, GPO Box 463, New York 1, New York, entitled "J'Accuse...! (I Accuse....!)" charging the SOBELL defense Committee of deliberately holding back from the courts of law and public opinion certain vital facts which could have saved the ROSENBERGs and today can force the liberation of MORTON SOBELL. This item is filed by FD-306 in NY 100-107111.

(2) A circular of the Socialist Party-Social Democratic Federation advertising a debate "Should Students Be Required to Sign Loyalty Oath?", 5/26/60, at Debs Hall, 121 University Place, NYC, 8:00 PM. For the affirmative: ERNEST VAN DEN HAAG,

NY 100-10711

~~CONFIDENTIAL~~

Professor of Philosophy, NY University. For the negative: MICHAEL HARRINGTON, "Fraternal Member, YPSL - National Action Committee. At the bottom of this circular is an appeal for YPSL members identifying the organizer as JOANNE LANDY, home phone MO 2-1898. This item is filed by FD-306 in 100-49738.

~~CONFIDENTIAL~~

SAC, NEW YORK (100-107111)

8/4/60

SA [REDACTED] (424)

CONFIDENTIAL

COMMITTEE TO SECURE JUSTICE FOR
MORTON SOBELL
IS - C

Identity of Source

[REDACTED] who has furnished
reliable info in past (conceal)

Description of info

Norton Sobell Committee

Date Received

7/28/60

Received by

SA [REDACTED] (written)

Original located

[REDACTED]

A copy of informant's report follows:

1 - 100-109349 (HELEN SOBELL) (424)
1 - 100-37158 (NORTON SOBELL)

1 - 100-107111 (41)

JPH:KMG
(9)

CLASSIFIED BY [REDACTED]
EXEMPT FROM GDS [REDACTED]
DATE OF DECLASS [REDACTED] INDEFINITE

100-37158-2016
SEARCHED INDEXED
SERIALIZED FILED
AUG 4 1960
FBI NEW YORK

CONFIDENTIAL

NY 100-107111

CO ~~CONFIDENTIAL~~
4/24/60

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

By FD 306 there has been placed in the file of [REDACTED] a mimeographed sheet entitled "For a World New Deal" by HAL KOPFERSMITH detailing the reasons he is running for Congress in the 19 C.D., Manhattan.

Office Memorandum • UNITED STATES GOVERNMENT

TO : SAC, NEW YORK

DATE 9/19/60

FROM : SA [REDACTED] 100-37158, b7c

SUBJECT:

MARTIN SOBELLESP. - RISA - RISA OF 1950SM - CREG. ACT

Subject on SI. Last report dated 11/4/59.
Annual investigative report should be prepared and submitted.

OPEN
ORIGIN
SUPV9/29/60
REOPENED CASE
DATE 9-28-60
SECT 33100-37158-2017
SEARCHED INDEXED
SERIALIZED FILED
SEP 19 1960
FBI - NEW YORK
b7c

FILE #

100-37158

SUBJECT

MORTON SOBELL

SERIAL

2018

DATE

11/14/60

CONSISTING OF

4

PAGES, OF

WHICH 1 page

is exempt from disclosure, in its entirety, under (b)(7)(D) as information contained in this serial would identify an informant to whom an expressed promise of confidentiality has been given. This information includes dates and places of meetings which were attended by a limited number of people known to the informant and/or information from these meetings and situations in which an informant was in close contact with members of these organizations, disclosure of which would reveal his identity.

Office Memorandum

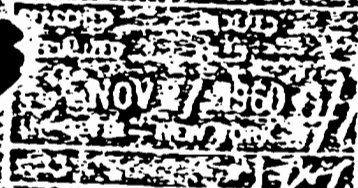
UNITED STATES GOVERNMENT

TO : SAC, NEW YORK

DATE: 11/11/60

FROM :

100-107111

SUBJECT: WORTON SOBELL, et al.
ESP - R

Re SAC memo 11/9/60 reflecting that Judge KAUFMAN had called attention to an article in Time Magazine written by one KUNSTLER concerning the SOBELL case.

The 11/12/60 issue of Time Magazine page 362 contains an article entitled "Perspective on the Sobell Case" by WILLIAM KUNSTLER. The article identifies KUNSTLER as a teacher of law at NYU Law School and the author of "First Degree" and other books.

The article notes that SOBELL is serving the first ten years of his 30 year sentence for conspiracy to commit espionage. It mentions that certain clergymen and other well known persons have urged the commutation of SOBELL'S sentence. Because such a varied and respectable body of opinion is espousing the SOBELL cause, the author feels that it is appropriate at this time to examine the substantive case against SOBELL. The article seems to dwell on three points as follows:

1. THE INSUFFICIENCY OF EVIDENCE AGAINST SOBELL

The article details with what appears to be substantial accuracy the story of MAX ELITCHER concerning his recruitment into the CP by SOBELL and the conversations held during ensuing years between ELITCHER and SOBELL, between ELITCHER and ROSENBERG and among all three in which ROSENBERG and SOBELL attempted to persuade ELITCHER to furnish them information for transmittal to the Russians. The article also mentions SOBELL'S trip to Mexico with his family on a vacation trip, his use of aliases while in Mexico and his subsequent arrest and deportation by Mexican authorities. The article notes that Judge KAUFMAN instructed the jury that if it disbelieved ELITCHER'S story they would have to acquit SOBELL. The author then argues that ELITCHER was not worthy of belief because he had lied about CP membership in an application for Government employment and because his story consisted solely of discussions with SOBELL about extremely nebulous espionage. In passing the author notes that SOBELL did not testify on his own behalf at the trial.

NY 100-107111

NY 80-917

SAC

B-100

Handwritten note: Judge Kaufman was furnished with this information

100-37158-2018

Memo
Re: MORTON SOBELL, was.
ESP. - R

2. ERRONEOUS CHARGE TO THE JURY BY JUDGE KAUFMAN

The author notes that the late Judge HEROME FRANK, who voted to give SOBELL a new trial, thought that Judge KAUFMAN had committed reversible error in not pointing out to the jury that KITCHER'S testimony was capable of supporting one or two inferences, namely, that SOBELL agreed only to transmit certain kinds of military information to Russia or that he agreed to transmit any military information of all kinds. However, as the author points out, the majority of the Court for Appeals thought that Judge KAUFMAN'S charge was entirely correct.

3. THE 30 YEAR SENTENCE WAS EXCESSIVE

The author cites the fact that Dr. ALAN MUNN MAY, the Canadian, and KLAUS FUCHS, in Britain, received 10 and 14 years respectively, although both admitted having given information concerning nuclear fission to the Russians. DAVID GREENGLASS, who confessed to turning this type of information over to HARRY GOLD, and JULIUS ROSENBERG, received 15 years. His wife, RUTH GREENGLASS, was never prosecuted.

The article also points out that SOBELL received as severe a sentence as COL. BEL, the highest ranking Soviet spy ever caught in this country. (The author neglects to mention that HARRY GOLD received 30 years and has as yet found no apologist such as KUNSTLER.)

The author sums up as follows: "Whether SOBELL'S present position is considered from the viewpoint of the serious nature of the evidence against him, the alleged failure of the trial judge to charge the jury correctly, the disparity of sentences for more serious offenders or as a matter of common humanity, that power (of parole) should be exercised."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MEMO
Re: MORTON SOBELL was by
the MSP

[REDACTED]

An informant of known reliability advised that Prof. WILLIAM KUNSTLER as of August, 1957, was running a radio program called "Counterpoint" in which guest speakers gave their views on certain topics for a half hour, followed the next week by a person of the opposite persuasion. As of August 29, 1957, KUNSTLER was negotiating with the CP, USA, to provide a speaker to appear on his program one week following the appearance of HOWARD EAST, the ex-Communist writer. During this series of programs, former Asst. USA ROY COHN appeared on the program and discussed the ROSENBERG case. There are also references to KUNSTLER acting as chairman at various discussions of the SOBELL case.

There is no indication of actual CP membership.

[REDACTED]

The file of MO reflect two main files on the above.

[REDACTED]

b7c

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2021 DATE 3/23/61

CONSISTING OF 4 PAGES

is exempt from disclosure, in its entirety,
under (b)(1) as it has been classified pursuant
to Executive Order 11652 as it contains
information which would disclose an intelligence
source. This serial bears the Classification
Officers number [REDACTED]

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2022 DATE 3/27/64

CONSISTING OF 2 PAGES, ONE
OF WHICH

is exempt from disclosure, in its entirety, under (b)(7)(D) as information contained in this serial would identify an informant to whom an expressed promise of confidentiality has been given. This information includes dates and places of meetings which were attended by a limited number of people known to the informant and/or information from these meetings and situations in which an informant was in close contact with members of these organizations, disclosure of which would reveal his identity.

SAC (100-25530)

March 27, 1961

CHICAGO SOBELL COMMITTEE (CSC)
IS - C

On [REDACTED] who has furnished reliable information in the past, personally provided SA [REDACTED] with a copy of a letter dated [REDACTED] on the stationery of the Chicago Sobell Committee, 208 North Wells Room 209-1, Chicago 4, Illinois. The original of this exhibit is being retained in 100-25530-1B2(429). b7c

[REDACTED] is set forth as follows: b7c

12 - New York (RM)

- 1 - 100-
- 1 - 100-

MORTON SOBELL
Committee to Secure Justice for
Morton Sobell

3 - Chicago

- 1 - A [REDACTED]
- 1 - 100- [REDACTED]

JWW:JVK
(5)

100-37158-2022

SEARCHED INDEXED
SERIALIZED FILED
MAR 29 1961
FBI - CHICAGO

Office Memorandum • UNITED STATES GOVERNMENT

TO : SAC, NY (100-37158)

DATE: 5/16/61

FROM :

#33 b7c

SUBJECT: MORTON SOBELL
ESP-R

On 5/15/61

[redacted] advised that on 5/11/61 information was received from a [redacted] reflecting that MORTON SOBELL, Reg. #71342-A, Federal Prison, Atlanta, Ga., had requested authority to contact a friend by the name of Mr. GRAHAM PRINGLE, 29 Perry St., NYC. According to [redacted] this address is located within the [redacted] b7d

CWM

①- 100-37158

(1)

100-37158-2023

SEARCHED	INDEXED
SERIALIZED	FILED
MAY 17 1961	
FBI - NEW YORK	

mb

JACOB J. WINSTON, D.D., RABBI, R.A.M. Temple

August 3, 1961

Dear Judge Kaufman,

I understand that you are at the present time or in the near future will be reviewing the case of Morton Sobell in order to make your recommendations to the proper authorities on Mr. Sobell's petition for commutation of sentence as of time served.

I am a member of the Central Conference of American Rabbis which, at its Annual Meeting in Detroit in 1960, passed a resolution asking for clemency for Morton Sobell. It is the feeling of many of my colleagues, and I know that it is also the feeling of many Christian clergymen, that Morton Sobell has paid heavily for whatever crime he has been sentenced, and that it would now be within the province of the courts, which you represent, and the Parole Commission, to temper justice with mercy.

I have met Mrs. Sobell, the wife and the mother, on several occasions during these past years and I have been impressed that these people have kept sound family values. And I believe that it would be an act not only of compassion but of the conservation of our richest human resources to restore the father and breadwinner to this devoted, warm and courageous family group.

I know that each legal code and each legal tradition is different, but I am sure that underlying the Western legal tradition is the Jewish teaching that if the world were to be judged by justice alone, it could not endure. Only as mercy tempers justice can the world stand. I am confident that any help that you might exert in behalf of commutation of sentence as of time served for Morton Sobell will be warmly acclaimed by many hundreds of sensitive people who have become acquainted with this case during these past 12 years.

Very sincerely,

Jacob J. Winston

Rabbi, Shady Side Synagogue, Schenectady, N.Y.

Justice William Kaufman
Federal District Court
U.S. of the Second District
New York City, New York

It is my pleasure and opportunity to thank you
for your forward-looking decision in the
New Rochelle case. It has been a great encourage-
ment to those of us interested in integration as
one application of the religious principle of
human equality.

Sincerely,
W. Kaufman

UNITED STATES DISTRICT COURT

CHAMBERS OF
JUDGE IRVING R. KAUFMAN
UNITED STATES COURTHOUSE
NEW YORK 7, N. Y.

August 25, 1961

Special Agent in Charge
Federal Bureau of Investigation
201 E. 69th St.
New York, N.Y.

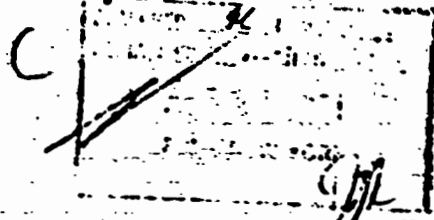
Dear Sir:

At the request of Judge Kaufman, I am enclosing
a copy of a letter received by him in relation to the
Morton Sobell case.

Sincerely,

Law Clerk to Judge
Irving R. Kaufman

100-37158-2026



201 East 69th Street,
New York 21, N. Y.

August 28, 1961.

Judge Irving R. Kaufman,
United States Courthouse,
Foley Square,
New York 7, N. Y.

Dear Judge Kaufman:

Receipt is herewith acknowledged of your letter
of August 25, 1961, together with the letter enclosed
dated August 3, 1961, concerning Morton Sobell,

Your interest in furnishing this information to
our office is indeed appreciated.

Sincerely yours,

HGF
H. G. FOSTER,
Special Agent in Charge.

JJM:DJG
100-37158 (#41)

16

Searched _____
Serialized *2* _____
Indexed _____
Filed *2* _____

100-37158-2027

SAC, New York (100-107111)

September 5, 1961

Director, FBI (100-387835)

COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL
INTERNAL SECURITY - C
INTERNAL SECURITY ACT OF 1950

ReNYlet dated August 29, 1961, enclosing a letterhead memorandum relating to a letter written to Judge Irving R. Kaufman by Rabbi Jacob J. Weinstein.

The letterhead memorandum enclosed with relet is set forth under the caption of the "Committee to Secure Justice for Morton Sobell" and includes a characterization of the Sobell Committee. No mention is made in the letterhead memorandum of the Sobell Committee and the activities mentioned therein do not relate to the Sobell Committee.

Partial review of Bureau files concerning Rabbi Jacob J. Weinstein indicates Rabbi Weinstein has been mentioned in the past in connection with the efforts of the Committee to Secure Justice for Morton Sobell (CSJMS) to obtain Sobell's freedom. Apparently NY should have characterized Rabbi Weinstein in the letterhead memorandum which would have made the submission of this material under the CSJMS caption and inclusion of the CSJMS sketch meaningful.

New York resubmit the letterhead memorandum by return mail including appropriate information to tie in Rabbi Weinstein with the CSJMS.

1 - New York (100-37158) (Morton Sobell)

33

100-37158-2030

SEARCHED	INDEXED
SERIALIZED	FILED
SEP 6 1961	
FBI - NEW YORK	

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL

2033

DATE

10/3/61

CONSISTING OF

5

PAGES

is exempt from disclosure, in its entirety, under (b)(7)(D) as information contained in this serial would identify an informant to whom an expressed promise of confidentiality has been given. This information includes dates and places of meetings which were attended by a limited number of people known to the informant and/or information from these meetings and situations in which an informant was in close contact with members of these organizations, disclosure of which would reveal his identity.

Office Memorandum • UNITED STATES GOVERNMENT

TO : SAC New York

DATE: 10/31/61

FROM : [REDACTED] b7c

SUBJECT:

MORTON SOBELL aka
ESP-R
NY 100-37158

Subject is on SI and last report was
submitted 12/19/60. An annual investigative
report is due.

Reopen and assign to [REDACTED] b7c

10/31/61
OPEN (OR REOPEN) CASE
ORIGIN NY DATE 10-31-61
SUPV. ASB SECT 33

100-37158-2034

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 30 1961	
FBI - NEW YORK	

[REDACTED] b7c

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2035 DATE 10/9/61

CONSISTING OF 4 PAGES

is exempt from disclosure, in its entirety, under (b)(7)(D) as information contained in this serial would identify an informant to whom an expressed promise of confidentiality has been given. This information includes dates and places of meetings which were attended by a limited number of people known to the informant and/or information from these meetings and situations in which an informant was in close contact with members of these organizations, disclosure of which would reveal his identity.

UNITED STATES GOVERNMENT
MEMORANDUM

TO : SAC, CHICAGO (100-38965)

DATE: 10-12-61

FROM : [REDACTED] b7c

SUBJECT: COMMITTEE TO PREVENT WAR (CPW),
aka Committee to Outlaw War (COW)
IS - C

*Re: Morton SOBELL
ESP - R*

On [REDACTED] who has furnished reliable
information in the past, personally made available to SA

[REDACTED] b7c

[REDACTED] b7D

- 1 - Albany (RM)
- 1 - Atlanta (RM)
- 1 - Charlotte (RM)
- 1 - Cleveland (RM)
- 1 - Detroit (RM)
- 1 - Indianapolis (RM)
- 1 - Los Angeles (RM)
- 1 - Louisville (RM)
- 1 - Minneapolis (RM)
- 1 - New York (RM)
- 1 - Pittsburgh (RM)
- 1 - San Juan (RM) (AM)
- 1 - Seattle (RM)
- 1 - Chicago

1 - [REDACTED] b7c
1 - [REDACTED]
1 - [REDACTED]
1 - [REDACTED]

WAB:LPH
(24)

100-37158-2035
[Stamp: OCT 11 1961]
[Signature]

CG 100-38965

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] who has furnished reliable information
in the past, advised on [REDACTED] that [REDACTED] 176

CG 100-38965

[REDACTED]

the CPW, formerly known as the Committee to Outlaw War (COW), was a left wing organization whose primary purpose is to try and get the world powers to negotiate the problems of the world, through peaceful means rather than settling them by another war. b7D

Copies of this memorandum^{ARE} being sent for information regarding the above list of individuals to their office of origin, as well as the office covering their place of incarceration.

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2040 DATE 10/12/61

CONSISTING OF 4 PAGES

is exempt from disclosure, in its entirety,
under (b)(1) as it has been classified pursuant
to Executive Order 11652 as it contains
information which would disclose an intelligence
source. This serial bears the Classification
Officers number [REDACTED]

SAC, NEW YORK (100-97078)

11/18/61

[REDACTED] b7c

SOCIALIST WORKERS PARTY
IS - C

At approximately 8:30 a.m., Saturday, 11/18/61, [REDACTED] called to advise that he had been advised by [REDACTED] Source that at a SWP Open Forum held on Friday evening, [REDACTED] at 116 University Place, NYC, it was announced that Attorney General KENNEDY was scheduled to speak at the dedication of the Fordham Law School, 62nd St. and Columbus Ave., NYC, on Saturday morning, 11/18/61. All those present at this forum were urged to go to this dedication ceremony and picket it, requesting Attorney General KENNEDY to free MORTON SOBELL. They were requested to be present from 10:00 a.m. to 12:00 noon on Saturday at this ceremony. b7cD

The writer furnished this information to [REDACTED] at 8:40 a.m. on Saturday, 11/18/61. b7c

1 - New York (100- [REDACTED])

✓
(MORTON SOBELL)

RFB:dmg
(3)

100-37158-4941
SEARCHED INDEXED
SERIALIZED FILED
NOV 19 1961
[REDACTED] b7c

OF 10

UNITED STATES GOVERNMENT
M E M O R A N D U M

TO: SAC, BOSTON

Date: 11/17/61

FROM: SAC, ATLANTA (65-1361) (RUC)

MORTON SOBELL, aka.
ESPIONAGE - R
(OO:NY)

On 10/20/61 [redacted] Atlanta, Georgia, made available to SA [redacted] greeting cards received at the Penitentiary addressed to the above-captioned subject. Inasmuch as these correspondents of the subject were not on the approved mailing list of inmate SOBELL, all cards were confiscated and made available to the Atlanta Office. [redacted] does not desire that any of these cards be returned to him. These cards are furnished to the respective offices where these correspondents live and there are sufficient copies of this letter enclosed herewith so that they may be made a part of the individual case file if any such file does exist relating to the correspondent or names mentioned in the correspondence. b7d

No specific action is being suggested for these interested offices as it relates to these correspondents.

It is noted that in some instances the name may not appear on the card; however, street addresses do appear as a return address.

The greeting cards are set forth hereinafter as follows:

- 2 - Boston (Enc. 1) (RM)
- 14 - Chicago (Enc. 11) (RM)
- 4 - Cleveland (Enc. 3) (RM)
- 4 - Detroit (Enc. 3) (RM)
- 2 - Los Angeles (Enc. 1) (RM)
- ④ - New York (Enc. 2) (RM)
- 4 - Portland (Enc. 1) (RM)
- 3 - San Francisco (Enc. 1) (RM)
- 7 - Seattle (Enc. 6) (RM)
- 1 - Atlanta

AFM/aab
(45)

② - 100-37158 (MORTON SOBELL)

100 - 37158-2042

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 20 1961	
FBI - NEW YORK	

b7c

SEARCHED	INDEXED
SERIALIZED	FILED
OCT 20 1961	
FBI - NEW YORK	

b7c

AT 65-1361

BOSTON:

1. Greeting card from ANNE B. TIMPSON, 20 Brookledge St., Roxbury, Mass., postmarked Boston, Mass., 9/2/61.

CHICAGO:

1. Greeting card from EDITH CARROLL, postmarked Chicago, Ill., 8/31/61.
2. Greeting card from HARRY J. CAUTER, 5301 N. Kenmore, Chicago 40, Ill., postmarked Seattle, Wash., 8/31/61.
3. Greeting card from FRITZI and DAVID ENGLESTEIN, postmarked Chicago, Ill., 8/30/61.
4. Greeting card from JOHN HESTER, 820 W. Wolfram St., Chicago 14, Ill., postmarked Chicago, Ill., 8/28/61.
5. Greeting card from NATALIE MYERS, postmarked Chicago, Ill., 9/2/61.
6. Greeting card from Mrs. CONNIE NEUHAUS, 11238 S. Vernon Ave., Apt. 3-E, Chicago 28, Ill., postmarked Washington, D. C., 8/29/61.
7. Greeting card from J. E. SANARK, postmarked Chicago, Ill., 8/30/61.
8. Greeting card from LEE TAYLOR, postmarked Argo, Ill., 8/28/61.
9. Greeting card from "members of the Ukrainian organizations" postmarked Chicago, Ill., 9/1/61.
10. Greeting card from OTTO WANGERIN, postmarked Chicago, Ill., 8/30/61.
11. Greeting card from LeROY WOLINS, 2036 N. Sawyer Ave., Chicago 47, Ill., postmarked Chicago, Ill., 9/4/61.

AT 65-1361

CLEVELAND:

1. Greeting card from E. CHAKA, postmarked Cleveland, Ohio, 8/28/61.
2. Greeting card from PEARL and SAK LEVIN, postmarked Cleveland, Ohio, 8/28/61.
3. Greeting card from JAMES and HELEN SMID, 11305 Methye Ave., Cleveland 20, Ohio, postmarked Cleveland, Ohio, 8/28/61.

DETROIT:

1. Greeting card from Z. E. ENGLE, postmarked Detroit, Mich., 9/5/61.
2. Greeting card from VICKY KRAMERECK, postmarked Sawyer, Mich., 8/30/61.
3. Greeting card from Miss KELLY SMITH, postmarked Detroit, Mich., 9/5/61.

LOS ANGELES:

1. Greeting card from REVA and ART HAENDLE, 3612 Kalsman Drive, Apt. 3, Los Angeles 16, Calif., postmarked Los Angeles, Calif., 8/27/61.

NEW YORK:

1. Greeting card from MOMS U. SCHAPPES, 94 or 74 Hamilton Pl., New York 31, N.Y., postmarked New York, N. Y., 9/21/61. (100-20-1A)
2. Greeting card from BETTY and JIM TORMEY, 215 Willoughby Ave., Brooklyn 5, N. Y., postmarked New York, N. Y., 8/31/61. (100-15946-1A)

PORTLAND:

1. Greeting card from I.L.W.U. Federated Auxiliaries, VALERIE TAYLOR, Pres., NORMA WYATT, Secretary, 1840 Maddona, North Bend, Oregon, postmarked North Bend, Oregon, 8/28/61.

SAN FRANCISCO:

1. Greeting card from American Russian Institute, San Francisco, Calif., HOLLAND ROBERTS, 90 McAllister St., San Francisco 2, Calif., postmarked San Francisco, Calif., 8/31/61.

AT 65-1361

SEATTLE:

1. Greeting card from VIVIAN and EARL GEORGE, 1726 - 19th, Seattle 22, Wash., postmarked Seattle, Wash., 8/31/61.
2. Greeting card from T. HALONEN, 6717 Sycamore, NW, Seattle 7, Wash., postmarked Seattle, Wash., 9/1/61.
3. Greeting card from MARION and GLENN KINNEY, 210 - 29 East, Seattle 2, Wash., postmarked Seattle, Wash., 8/30/61.
4. Greeting card from HELLEN and BURT NELSON, 1218 Westlake N. #25, Seattle 9, Wash., postmarked Seattle, Wash., 9/1/61.
5. Greeting card from WILL and LOUISE PARRY, 2323 - 12th So., Seattle 44, Wash., postmarked Seattle, Wash., 9/1/61.
6. Postcard from GENE and THORUN ROBEL, postmarked Seattle, Wash., 8/30/61.

OF 10

UNITED STATES GOVERNMENT
M E M O R A N D U M

TO: SAC, BOSTON

Date: 11/17/61

FROM: SAC, ATLANTA (65-1361) (RUC)

MORTON SOBELL, aka.
ESPIONAGE - R
(OO:NY)

On 10/20/61

[REDACTED] Atlanta, Georgia, made available to SA [REDACTED] b7D
[REDACTED] greeting cards received at the Penitentiary addressed to the above-captioned subject. Inasmuch as these correspondents of the subject were not on the approved mailing list of inmate SOBELL, all cards were confiscated and made available to the Atlanta Office.

[REDACTED] does not desire that any of these cards be returned to him. These cards are furnished to the respective offices where these correspondents live and there are sufficient copies of this letter enclosed herewith so that they may be made a part of the individual case file if any such file does exist relating to the correspondent or names mentioned in the correspondence.

No specific action is being suggested for these interested offices as it relates to these correspondents.

It is noted that in some instances the name may not appear on the card; however, street addresses do appear as a return address.

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- ④ - New York (Enc. 2) (RM)
- 4 - Portland (Enc. 1) (RM)
- 3 - San Francisco (Enc. 1) (RM)
- 7 - Seattle (Enc. 6) (RM)
- 1 - Atlanta

AFM/aab (2) - 100-37158 (MORTON SOBELL)
(45)

100-37158-2042

SEARCHED	INDEXED
SERIALIZED	FILED
NOV 20 1961	
FBI - NEW YORK	

SEARCHED	INDEXED
SERIALIZED	FILED
FBI - NEW YORK	

b7C

AT 65-1361

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AT 65-1361

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6. Postcard from GENE and THORUN ROBEL, postmarked Seattle, Wash., 8/30/61.

PLEADS FOR SOBELL

Minister Is Arrested in Front of the White House

WASHINGTON, Dec. 12 (AP)—The Rev. David Andrews, 37-year-old North Carolina Methodist minister, knelt today in front of the White House, seeking clemency for Morton Sobell, who is in prison. Mr. Andrews was arrested and charged with obstructing the sidewalk after he had ignored instructions by the police to move on. Picketing is permitted in front of the White

House only if the pickets keep moving. Sobell is serving a thirty-year prison term for conspiracy to commit espionage. He was convicted with Julius and Ethel Rosenberg, who were executed as atomic spies. Mrs. Sobell and her 12-year-old son, Mark, were picketing near by when the minister staged his demonstration. They protested his arrest but the police directed them to "do what you're told or you'll go with him." The mother and son resumed their march in front of the White House. They carried signs calling on President Kennedy to release Sobell.

CLIPPING FROM THE

N. Y.

EDITION

DATE

PAGE

Times

Late City

12/13/61

51

FORWARDED BY NY DIVISION

~~NOT FORWARDED BY NY DIVISION~~

100-37158-2014

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DEC 13 1961	
FBI - NEW YORK	

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FILE #

100-37158

SUBJECT

MORTON SOBELL

SERIAL

2045

DATE

1/4/62

CONSISTING OF

4

PAGES,

1 OF WHICH

is exempt from disclosure, in its entirety,
under (b)(1) as it has been classified pursuant
to Executive Order 11652 as it contains
information which would disclose an intelligence
source. This serial bears the Classification
Officers number [REDACTED]



UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

New York, New York

In Reply, Please Refer to
File No.

Bureau 100-387835

~~CONFIDENTIAL~~

Re: Committee to Secure Justice
for Morton Sobell

b1

[REDACTED]

[REDACTED]

b1

[REDACTED]

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[REDACTED]

b1

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nor conclusions of the FBI. It is the property
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your agency.

FBI - NEW YORK

100-37158-2015

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

Re: Committee to Secure Justice
for Morton Sobell

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A characterization of the CSJMS is
attached hereto.

- 3 -

~~CONFIDENTIAL~~

2045
2045

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APPENDIX

Re: Committee to Secure Justice
for Morton Sobell

COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL

"Following the execution of atomic spies ETHEL and JULIUS ROSENBERG in June, 1953, the 'Communist campaign assumed a different emphasis. Its major effort centered upon MORTON SOBELL,' the ROSENBERGS' codefendant. The National Committee to Secure Justice in the Rosenberg Case - a Communist front which had been conducting the campaign in the United States - was reconstituted as the National Rosenberg-Sobell Committee at a conference in Chicago in October, 1953, and 'then as the National Committee to Secure Justice for Morton Sobell in the Rosenberg Case'....."

("Guide to Subversive Organizations and Publications" dated January 2, 1957, issued by the House Committee on Un-American Activities, page 60.)

In September, 1954, the name "National Committee to Secure Justice for Morton Sobell" appeared on literature issued by the Committee. In March, 1955, the current name, "Committee to Secure Justice for Morton Sobell," first appeared on literature issued by the Committee.

The 1960-1961 Borough of Manhattan telephone directory lists the "Committee to Secure Justice for Morton Sobell" as being located at 940 Broadway, New York, New York.

- 4 -
~~CONFIDENTIAL~~

2013

FBI

Date: 1/4/62

Transmit the following in _____
(Type in plain text or code)

Via AIRTEL REGISTERED MAIL
(Priority or Method of Mailing)

TO: DIRECTOR, FBI (100-387835)

FROM: SAC, NEW YORK (100-107111)

SUBJECT: COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL
IS-C
(OO: NY)

Enclosed herewith are six copies of a letterhead memorandum suitable for dissemination containing information furnished by [REDACTED] to [REDACTED] n [REDACTED] b2 b7c

- [REDACTED] B1
- 3 - Bureau (100-387835) (Encls. 6) (RM)
 - 1 - Atlanta (100-4953) (Encl. 1) (RM)
 - 1 - Charlotte (100-8357) (Encl. 1) (RM)
 - 1 - Chicago (100-25530) (Encl. 1) (RM)
 - 1 - Cleveland (100-20243) (Encl. 1) (RM)
 - 1 - Newark (100-36202) (Encl. 1) (RM)
 - 1 - New Haven (100-14203) (Encl. 1) (RM)
 - 1 - Philadelphia (100-37667) (Encl. 1) (RM)
 - 1 - Washington Field (100-25474) (Encl. 1) (RM)
 - 1 - [REDACTED] b2
 - 1 - NY 100-37158 (MORTON SOBELL) (31)
 - 1 - NY 100-109849 (HELEN SOBELL) (424)
 - 1 - NY 100-123869 (ROSE SOBELL) (424)
 - 1 - NY [REDACTED] (424)
 - 1 - NY [REDACTED] (424)
 - 1 - NY [REDACTED] (424)
 - 1 - NY 100-107111 (41)

JAH:mm1
(20)

Approved: _____
Special Agent in Charge

Sent _____ M Per _____

100-37158-2046

SEARCHED _____	INDEXED _____
SERIALIZED _____	FILED _____
JAN 4 - 1962	
FBI - NEW YORK	

b7c

NY 100-107111

~~Confidential~~ The enclosed memorandum is being classified "Confidential" because it contains information which could reveal the identity of the source. This, in turn, would have a detrimental effect on the national defense interests of the United States Government.

New York, New York
January 4, 1962

100-387835

Re: Committee to Secure Justice
For Morton Sobell
Internal Security - C
Internal Security Act, 1950

A characterization of the Committee to Secure Justice for Morton Sobell (CSJMS) may be found attached hereto.

On Page 14 of the late city edition of the January 4, 1962 issue of the "New York Times", a New York City newspaper, is a news article entitled "Freedom or Retrial Sought by Sobell" which is set forth in part as follows:

"A motion for freedom or a new trial for Morton Sobell, who is serving a thirty-year sentence for conspiracy to commit wartime espionage, was filed yesterday in Federal Court. It will be argued on Jan. 15 Sobell, now 44 years old, has served twelve years of his sentence. He is in the Federal Penitentiary in Atlanta.

"Sobell contended in his petition that his conviction had been obtained in violation of his constitutional rights. He said that Judge Irving R. Kaufman, who presided at the trial, did not have the power to impose a wartime sentence of thirty years.

"He contended further that the trial was unfair because, although the indictment charged a wartime conspiracy, Judge Kaufman failed to explain the meaning of the term 'in time of war' to the jury and failed to charge the jury that to convict Sobell it had to find he had committed an offense in wartime."

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Searched
Serialized
Indexed
Filed

100-37158-248

Re: Committee to Secure Justice
for Morton Sobell
Internal Security - C
Internal Security Act, 1950

On Page 17 of the January 4, 1962 late
city edition of the "New York Herald Tribune" and on
Page 46 of the January 3, 1962 edition of the "New
York Post" are similar articles.

APPENDIX

Re: Committee to Secure Justice
For Morton Sobell
Internal Security - C
Internal Security Act, 1950

COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL

"Following the execution of atomic spies ETHEL and JULIUS ROSENBERG in June, 1953, the 'Communist campaign assumed a different emphasis. Its major effort centered upon MORTON SOBELL, the ROSENBERGS' codefendant. The National Committee to Secure Justice in the Rosenberg Case - a Communist front which had been conducting the campaign in the United States - was reconstituted as the National Rosenberg-Sobell Committee at a conference in Chicago in October, 1953, and 'then as the National Committee to Secure Justice for Morton Sobell in the Rosenberg Case'...."

("Guide to Subversive Organizations and Publications" dated January 2, 1957, issued by the House Committee on Un-American Activities, page 60.)

In September, 1954, the name "National Committee to Secure Justice for Morton Sobell" appeared on literature issued by the Committee. In March, 1955, the current name, "Committee to Secure Justice for Morton Sobell," first appeared on literature issued by the Committee.

The 1960-1961 Borough of Manhattan telephone directory lists the "Committee to Secure Justice for Morton Sobell" as being located at 940 Broadway, New York, New York.

1/4/62

PLAIN TEXT

AIRTEL

REGISTERED MAIL

TO : DIRECTOR, FBI (100-387835)
FROM : SAC, NEW YORK (100-107111)
SUBJECT: COMMITTEE TO SECURE JUSTICE
FOR MORTON SOBELL (CSJMS)
IS - C
ISA, 1950
(OO: NY)

Enclosed herewith are 6 copies of a letterhead memorandum suitable for dissemination containing information secured from the NYC newspapers concerning captioned organization.

The attached letterhead memorandum is not being classified "~~Confidential~~" since the information contained therein was secured from public news sources.

The attached letterhead memorandum is being furnished for the information of the Bureau inasmuch as the news articles referred to in attached letterhead memorandum were not distributed by the major news services.

- 3 - Bureau (100-387835)(Encls. 6)(RM)
- 1 - New York (100-37158)(MORTON SOBELL)(41)
- 1 - New York (100-107111)(41)

PHS:rvs
(6)

- 1 - Supervisor (41)

100-37158-2049

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 4 1962	
FBI - NEW YORK	

101-20183-1179

FREEDOM OR RETRIAL SOUGHT BY SOBELL

A motion for freedom or a new trial for Morton Sobell, who is serving a thirty-year sentence for conspiracy to commit wartime espionage, was filed yesterday in Federal Court. It will be argued on Jan. 15.

Sobell was convicted in 1951 with Julius and Ethel Rosenberg, who were executed for stealing atomic secrets for transmission to the Soviet Union. Sobell, now 44 years old, has served twelve years of his sentence. He is in the Federal Penitentiary in Atlanta.

Sobell contended in his petition that his conviction had been obtained in violation of his constitutional rights. He said that Judge Irving R. Kaufman, who presided at the trial, did not have the power to impose a wartime sentence of thirty years.

He contended further that the trial was unfair because, although the indictment charged a wartime conspiracy, Judge Kaufman failed to explain the meaning of the term "in time of war" to the jury and failed to charge the jury that to convict Sobell it had to find he had committed an offense in war-time.

NEW YORK TIMES
1/4/62

100-37158-2050

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 4 1962	
NEW YORK	

bx

and sent
Bureau

UNITED STATES GOVERNMENT

Memorandum

TO : ASAC JOSEPH L. SCHMIT

DATE: 1/19/62

FROM : SAC, NY

SUBJECT: INEZ ROBB,
Columnist, World Telegram*Re: Morton Sobell
Esp R*

On 1/19/62 Judge KAUFMAN, SDNY, called me to advise that he had told INEZ ROBB, a columnist for the World Telegram, that we could assist her in connection with an article she plans to write concerning the SOBEL case. Her intent is to prepare an article that would refute the individuals who are promoting the movement to have the sentences reduced.

Judge KAUFMAN attempted to call Mr. DE LOACH at the Bureau. However, Mr. DE LOACH was unavailable. Judge KAUFMAN advised Miss ROBB that we would call her today at OR 5-5497 to talk to her about the SOBEL case. The Judge felt one thing she would be interested in was a long opinion he had written in about 1957.

Miss ROBB was contacted telephonically at 12:30 p.m. this date at which time it was explained to her that the writer had a commitment outside of the office but would call her at about 4:00 p.m. today. Miss ROBB requested that she be called Monday morning, 1/22/62, between 9:00 a.m. and noon inasmuch as she had an appointment for this afternoon.

1 - NY

*1/22
De Loach connected
with Miss Robb 1/22/62
& advised he would handle or advise
me if anything further to be done*

b7c

100-37158-2054

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2056 DATE 1/24/62

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under (b)(1) as it has been classified pursuant
to Executive Order 11652 as it contains
information which would disclose an intelligence
source. This serial bears the Classification
Officers number [REDACTED]

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, NEW YORK

DATE: 2/6/62

FROM :

SUBJECT:

MORTON SOBELL
ESP. R
NY FILE 100-37138

It is requested that two copies of the government's Memorandum and Appendix thereto in reply to SOBELL's motion be made so that one copy may be furnished to the Bureau and one copy retained in the New York file.

Done 2-6-62

100-37158-2061
100-37138-111

SEARCHED	INDEXED
SERIALIZED	FILED
FEB 6 - 1962	
FBI - NEW YORK	

SAC, NEW YORK (100-107111)(41)

2/6/62

[REDACTED] b7c

COMMITTEE TO SECURE JUSTICE FOR MORTON SOBELL
IS - C
ISA of 1950

The following report is from the "Morning Freiheit" of January 4, 1962, on page 8, columns 4-5:

Morton Sobell Has Submitted Petition For Liberation

It was announced, yesterday, that scientist Morton Sobell has submitted to the Court a petition for his liberation on the basis that it was never proven that he was a spy during the time of the second World War.

Sobell, who, in 1950, was convicted in the trial of Julius and Ethel Rosenberg, to 30 years jail, has appealed to a Federal District Court to reverse his conviction and to free him, or to grant him a new trial, or at least, to reverse that part of his conviction which should be considered illegal from the judicial standpoint. If the Court approves the last point, Sobell could be freed on parole now.

In his petition, Sobell submitted that he was found guilty in an illegal manner in that Federal Judge Irving Kaufman, who sentenced him, did not explain to the jury what the term "during the time of the War" meant.

This term was of utmost importance to the trial, because the testimony against him related to events after the end of the second World War, Sobell said.

The point is that the highest punishment for espionage during peace time is 20 years. According to such a penalty Sobell could be freed on Parole.

1-New York (100-37158)(31)(MORTON SOBELL)
1-New York (100-107111)(41)

PHS:par
(2)

100-37158-2062

SEARCHED	INDEXED
SERIALIZED	FILED
31 33 FEB 6 1962	
FBI - NEW YORK	

[REDACTED] b7c

NY 100-107111

As you know, Sobell was convicted on the testimony on a creature, Max Elitcher, who confessed to perjury. Sobell, who is now in the Federal Penitentiary in Atlanta, Georgia, asked for permission to be present in person at the court hearing on his new petition for liberation.

The above was translated from the Yiddish by [REDACTED]

b7c

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2063 DATE 2/8/62

CONSISTING OF 1 PAGE~~s~~

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to Executive Order 11652 as it contains
information which would disclose an intelligence
source. This serial bears the Classification
Officers number [REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

No. 134-245

MORTON SOBELL,

Defendant.

MEMORANDUM IN SUPPORT OF PETITION PURSUANT TO
SECTION 2255 OF TITLE 28, U.S.C. RELATING TO
THE TRIAL COURT'S FAILURE TO CHARGE WITH
RESPECT TO AN ESSENTIAL ELEMENT OF THE OFFENSE,
OR, ALTERNATIVELY, FOR RELIEF PURSUANT TO RULE
35 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE
TO CORRECT AN ILLEGAL SENTENCE.

Statement

This is a memorandum in support of a motion pursuant to Title 28, U.S.C., Section 2255, requesting that upon the file and records of the case the judgment of conviction and the sentence be set aside and that petitioner be discharged from detention and imprisonment on the grounds that the sentence was imposed in violation of the Constitution and laws of the United States and that the Court was without jurisdiction to render the judgment of conviction and to impose the sentence, or, in the alternative, that the sentence imposed herein be corrected pursuant to Rule 35 of the Federal Rules of Criminal Procedure on the ground that it was invalid by virtue of being in excess of the maximum punishment provided by statute.

100-37158-2064

2

Prior Proceedings

On January 31, 1951, a single count indictment was returned against petitioner charging that she had conspired to commit espionage on behalf of the Union of Soviet Socialist Republics in violation of Title 50, U.S.C., Section 32. Petitioner was tried, together with the two co-defendants Julius and Ethel Rosenberg, before Judge and Jury, and on March 29, 1951, the jury returned a verdict of guilty against all three defendants. On April 5, 1951, a thirty-year sentence was imposed upon petitioner. The judgment of conviction was affirmed on February 25, 1952 by the United States Court of Appeals for the Second Circuit, Judge Frank dissenting. 195 F. 2d 583. A petition for rehearing was denied on April 8, 1952, 195 F. 2d 609. A petition for a writ of certiorari was denied by the United States Supreme Court on October 13, 1952, with Justice Black being of the opinion that the petition should be granted. 344 U.S. 838. A petition for rehearing was denied on November 17, 1952, with Justice Black adhering to his view that the petition should be granted. 344 U.S. 889.

Subsequent applications were made pursuant to Rule 33 of the Federal Rules of Criminal Procedure and Section 2255 of Title 28 U.S.C. The issues raised herein have never been raised or considered before, either upon the trial of the action or in any subsequent appellate or collateral proceeding.

²/References are to the trial record and are indicated as "R".

Grounds for Relief

The indictment under which petitioner was convicted charged that he had joined the conspiracy in time of war. The sentence imposed upon petitioner was pursuant to the wartime sentencing provision of the Espionage Act of 1917. However, the trial court failed to charge the jury that it had to find that petitioner joined the conspiracy in "time of war". This essential element of the offense was neither charged nor explained to the jury. Hence, the conviction and sentence are constitutionally deficient and subject to collateral attack.

"Time of war" as applied to the Espionage Act of 1917 refers solely to a period of actual hostilities. The nature of the evidence adduced against petitioner as to alleged wartime membership in the conspiracy was such, as to raise a substantial question of fact which was required to be resolved by the jury. Absent this finding by the jury, the Court was without power to impose a wartime sentence. Therefore, assuming arguendo that the conviction was valid, petitioner is entitled to be re-sentenced under the peacetime provisions of the Espionage Act of 1917, pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

Pertinent Portions of
the Record

The superseding indictment under which the petitioner, Morton Sobell, was tried was filed on January 31, 1951.

charging, inter alia, that he, along with Julius and Ethel Rosenberg and others, for a period between June 6, 1944 to and including June 16, 1950, the United States of America then and there being at war, conspired to communicate and deliver information relating to the national defense of the United States to the Union of Soviet Socialist Republics (R.C.).

Pursuant to a motion for a bill of particulars by Morton Sobell (R.N.), the government alleged that Sobell joined the conspiracy on or about June 15, 1944, and that the overt acts of Morton Sobell took place between January, 1946 and May of 1948. No testimony whatsoever was introduced by the government in support of any of the alleged overt acts set forth in the bill of particulars.

The sole witness whose testimony tended to implicate Sobell in the alleged conspiracy was Max Elitcher. The only other testimony adduced against Sobell was that he had fled to Mexico, sought to avoid apprehension, and refused to return voluntarily to the United States. As the Court acknowledged, this latter evidence could not be the basis for the conviction (R. 2354) and if the testimony of Elitcher were disbelieved Sobell had to be acquitted (R. 2355). Elitcher's testimony as it related to Sobell covered a period from some time in the early part of 1946 to the summer of 1948.

On the other hand the major portion of the trial related to the Rosenbergs. Fourteen of the witnesses produced by the government at the trial testified as to matters relating only to them. The government, through these witnesses, attempted

to establish that the Rosenbergs were involved in atomic espionage during time of actual hostilities in concert with David Greenglass and others. The testimony referred to the alleged transfer of information relating to the development of the atomic bomb from December of 1944 to June of 1945, a period when we were engaged in actual hostilities against Germany and Japan. The Court acknowledged at the time of sentencing that Sobell was not involved in this aspect of the charged conspiracy. ^{**/} (R. 2461, 2462)

At the end of the government's case, counsel for petitioner Sobell moved to dismiss the indictment on the ground that the testimony, even if sufficient and believed, established two separate conspiracies. ^{**/} (R. 1542-1559)

The Court's Charge

The question posed in the instant motion arises out of the charge of the Court to the jury. We set forth below those portions of the charge pertinent to the issues now raised.

The Court first read an excerpt from Section 32 of Title 50, as follows:

"Whoever, with intent or reason to believe that it is to be used . . . to the advantage of a foreign

^{**/} In setting forth the nature of the evidence against the Rosenbergs and the time factor in respect thereto as it related to time of war, in contrast to the testimony relating to Sobell, we do not in either case concede the truthfulness or sufficiency of the testimony. Sobell, to this date as did the Rosenbergs to the time of their death, insists upon and maintains his absolute innocence.

^{**/} It was on this ground that Judge Frank, in his dissenting opinion, maintained that Sobell was entitled to a new trial. We do not, by this motion, seek to relitigate that issue.

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 representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, sketch, ... note, ... or information relating to the national defense, shall be punished according to law." (R. 2330, 2331)

It is to be noted that the court did not read the wartime sentencing provision of the statute to the jury. The court went on to charge:

"The defendants are accused of having conspired to commit espionage." (R. 2337)

The Court charged the jury with respect to the general conspiracy doctrine that once membership in the conspiracy is established the defendant is responsible for acts or statements of his co-conspirators made in furtherance of the conspiracy. (R. 2341)

The Court then defined each of the following terms relating to the offense:

"espionage", "conspiracy", "relating to national defense", "transmit information relating to the national defense to the advantage of a foreign nation" (R. 2337-2345)

The Court at no point defined "wartime". The only reference to the time period of the conspiracy was the charge that:

As relevant here, the indictment states:

"On or about June 6th, 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 ... to violate subsection (a) of Section 32, Title 50, United States Code..."

"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. 2341, 2342)

The Court did not ask the jury to determine when any of the defendants had joined the conspiracy.

The Court, in summarizing the offense charged, excluded the matter of "time of war" and stated:

"As I have stated before, the indictment in effect charges conspiracy or agreement between the defendants now on trial and persons, such as David and Ruth Greenglass, Harry Gold and Anatoli A. Yakovlev, and others to the grand jurors unknown, to deliver to a foreign government, to wit, the Union of Soviet Socialist Republics, information relating to the national defense of the United States, with the intent that such information would be used to the advantage of the Union of Soviet Socialist Republics." (R. 2342, 2343)

The Court then set forth in synoptic fashion the essential elements of the offense, again omitting the element of "time of war":

"So you must find whether a conspiracy did exist and whether this conspiracy called for

- (1) the transmitting of secret information
- (2) relating to the national defense as I have defined it;
- (3) to the Union of Soviet Socialist Republics or an agent thereof
- (4) intending or with reason to believe that the information was to be used to the advantage of the Union of Soviet Socialist Republics."

(R. 2345)

In short, not one reference was made by the Court in its charge to the jury concerning this crucial element of the offense.

Comments of the Court on Sentencing

On sentencing the defendants, Judge Kaufman made the following comment:

"The incongruent penal provisions of the statute are spotlighted by the 20-year maximum imprisonment provision for commission of the offense of espionage during peacetime. I ask that some thought be given to that for a moment, for it most likely means that even spys are successful in the year 1951 in delivery to Russia or any foreign power our secrets concerning the newer type atom bombs, or even the H-bomb, the maximum punishment that any Court could impose in that situation would be 20 years. I, therefore, say that it is time for Congress to reexamine the penal provisions of the espionage statute.

"In the case before me the conspiracy as alleged and proven commenced on or about June 6, 1944 at which time the country was at war. Overt acts were committed during the period of actual hostilities. Therefore, the maximum penalty is death or imprisonment for not more than 30 years." (R. 2448, 2449)

In sentencing Sobell, Judge Kaufman stated:

"I do not for a moment doubt that you were engaged in espionage activities; however, the evidence in the case did not point to any activity on your part in connection with the atom bomb project." (R. 2461)

POINT I

**THE FAILURE OF THE TRIAL COURT TO CHARGE
ON AN ESSENTIAL INGREDIENT OF THE OFFENSE
CONSTITUTED A DENIAL OF DUE PROCESS INVALID-
ATING THE JUDGMENT OF CONVICTION**

In a criminal case the trial court must, in its charge to the jury, specify, define and explain each and every essential element of the offense. Failure to do so constitutes reversible error. Screws v. United States, 325 U.S. 91; Kreiner v. United States, 11 F. 2d 722 (C.A. 2); United States v. Levy, 153 F.

20 995 (C.A. 3); United States v. Noble, 155 F. 2d 315 (C.A. 3); Kinard v. United States, 96 F. 2d 522 (C.A.D.C.); Williams v. United States, 131 F. 2d 21 (C.A.D.C.); Morris v. United States, 156 F. 2d 525 (C.A. 9); Tatum v. United States, 190 F. 2d 612 (C.A.D.C.); Benatar v. United States, 209 F. 2d 734, 746-748 (C.A. 9) (dissenting opinion); United States v. Gordon, 242 F. 2d 122, 126 (C.A. 3); Barry v. United States, 287 F. 2d 340 (C.A.D.C.); Austin v. United States, 208 F. 2d 420 (C.A. 5); United States v. Petrie, 184 F. 2d 417 (C.A. 3); Samuel v. United States, 169 F. 2d 787 (C.A. 9); Bloch v. United States, 221 F. 2d 786 (C.A. 9); Lash v. United States, 221 F. 2d 237 (C.A. 1); Mullen v. United States, 263 F. 2d 275 (C.A.D.C.); Mills v. United States, 228 F. 2d 645 (C.A.D.C.).

In view of the importance of a charge in a criminal case, the fact that no exception is taken to a court's failure to so charge does not deprive the defendant from subsequently raising such issue on appeal. Indeed, appellate courts have raised such questions sua sponte.

The Supreme Court in Screws v. United States, *supra*, referring to the defendant's failure to except to the court's omission, stated:

"And where the error is so fundamental as not to submit to the jury the essential ingredients of the only offense on which the conviction could rest, we think it is necessary to take note of it on our own motion. Even those guilty of the most heinous offenses are entitled to a fair trial. Whatever the degree of guilt, those charged with a federal crime are entitled to be tried by the standards of guilt which Congress has prescribed." at p. 107

See also, United States v. Atkinson, 297 U.S. 157, 160; Clayton v. United States, 197 U.S. 207; United States v. Noble, supra; Richard v. United States, supra; Morris v. United States, supra; Ratum v. United States, supra; Barry v. United States, supra; Lash v. United States, supra; Mills v. United States, supra.

The Court of Appeals for this Circuit has likewise recognized the salutary principle that

"In criminal cases federal appellate courts have sometimes noticed errors to which no proper objection has been taken if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings."

United States v. O'Connor, 237 F. 2d 466, 472 (C.A. 2); cf. United States v. Stone, 282 F. 2d 547 (C.A. 2); United States v. Barillas, 291 F. 2d 743, 744 (C.A. 2).

Underlying this rule is a fundamental principle of our criminal jurisprudence that to convict a defendant, a jury must find beyond a reasonable doubt that each and every essential element of the offense charged has been proved. See Christoffel v. United States, 338 U.S. 84, 89; Schwachter v. United States, 237 F. 2d 640, 644 (C.A. 6).

A conviction cannot stand when one cannot determine and must leave to surmise whether the jury found all the essential ingredients of the offense present. As stated by the Court in United States v. Noble, supra:

"... [I]t is self-evident that a jury cannot perform its duty of determining the guilt or innocence of a defendant accused of a crime unless they know the essential elements of the crime which he is alleged to have committed."

at p. 316

A. The Trial Court Committed a Fundamental Error in Failing to Charge the Jury That An Essential Ingredient of the Offense Was That It Be Committed in "Time of War."

In the instant case there can be no doubt but that an essential ingredient of the crime of which petitioner was charged and sentenced was that the offense occur "in time of war". The statute under which Sobell was prosecuted was the wartime espionage statute. Section 32 of Title 50 provides in part "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...." It was under this provision of the statute that Judge Kaufman imposed a sentence of thirty years. Had the offense related to peacetime espionage, the statute then provided for a maximum sentence of twenty years imprisonment.

While it would seem that precedent need not be cited to support the obvious fact that "in time of war" is an essential ingredient of the offense here charged, we can find authority for such a principle of law in Stilson v. United States, 250 U.S. 583. The Supreme Court there cited with approval the charge of the trial court in a case involving a different section of the Espionage Act, Section 33 of Title 50, U.S.C. By its terms, Section 33 was applicable only "when the United States is at war". The trial court there charged the jury:

✓ In 1954 the Espionage Act was amended so as to provide for the death penalty in time of peace as well as in time of war. 68 Stat 1219.

"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."

"You must determine, for instance, the question of whether or not we are at war, because unless we are, this indictment goes for nothing."

The Supreme Court, in affirming the conviction, found the charge correct and of necessity affirmed the essentiality of this element of the offense. See also, Schaefer v. United States, 251 U.S. 466.

It cannot be said, on the basis of the record in this case and in view of the nature of the Court's charge, that the jury was ever asked to find or even consider the question of whether the offense was committed "in time of war." The only reference to wartime found in the charge was the reading of the indictment to the jury by the clerk of the court. It cannot be seriously argued that because the indictment included the phrase "in time of war" that the jury was advised and instructed that it had to find beyond a reasonable doubt that Sobell had committed this offense during time of war. Cf. United States v. Noble, supra. Indeed, the indictment at best was ambiguous in this respect. The phrase in the indictment "the United States of America, then and there being at war" related to the opening phrase of the indictment "on or about June 6th, 1944". Thus the phrase "the United States of America then and there being at war" did not relate to the phrase in the indictment "up to and including June 16, 1950."

The mere reading of the indictment did not serve to instruct the jury that "in time of war" was an essential ingredient of

the offense. The charge of the Court runs approximately twenty-five printed pages. Every legal aspect of the case was presented and a substantial portion of the evidence reviewed. It is inconceivable that the one mention of the term in the reading of a legally stilted phrase, "the United States of America then and there being at war", constituted advice or instruction to the jury that they must consider this element in determining the guilt or innocence of Sobell.

It is significant that the trial court in failing to charge with reference to "time of war" defined all the other essential elements of the offense and the indictment itself. See pp. 6, 64 supra.

The exclusion from an otherwise detailed charge wherein all the elements of the offense, save one, were given, only served to remove from the jury's mind the essential element of "time of war", cf. Barry v. United States, supra.

**B. Failure of the Trial Court to Explain
The Meaning of the Term "In Time of
War" to the Jury Service to deprive
Petitioner of a Fair Trial.**

It will not do to contend that the trial court's failure to charge with respect to this essential element of the offense indeed, an element which if proved beyond a reasonable doubt, operated as a precondition to the imposition of either a death sentence or a term of imprisonment for thirty years, was cured and rendered harmless by utilizing the fiction that the term "in time of war" was of such common knowledge and easy comprehension

as to be clear to laymen of ordinary intelligence, that it was unnecessary for the trial judge to define or explain it.

On the contrary, the entire question of when a state of war exists in relation to the operability of diverse criminal and civil statutes has long troubled the courts, the Congress and leading experts in the field. See e.g. National Savings & Trust Co. v. Brownell, 222 F. 2d 395, 397 (C.A.D.C.); compare, for example, Ludecke v. Watkins, 335 U.S. 160 and Hijo v. U. S., 194 U.S. 315, with Lee v. Madigan, 358 U.S. 228 (holding that the term "in time of war" must be construed in light of the particular statute involved -- and that it is the function of the Court to interpret the meaning of the term within the unique context of each statute).

Manley Hudson has observed that:

"As to the termination of war, one date may be selected for dealing with a question relating to the exercise of special governmental powers, another date may serve in dealing with commercial questions, and a third date may be taken in the construction of a statute or contract provision."

--"The Duration of the War Between the United States and Germany," 39 Harv. L.R. 1020, 1021.

When discussing the 1954 amendment to the Espionage Act, which made espionage a capital offense irrespective of when committed, in time of peace or war, Congressman Latham of the House Judiciary Committee stated the problem as follows:

"At present the distinction between a wartime and 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."

--100 Cong. Rec. Pt. 8, 83rd Cong., 2nd Sess., p. 10101 (July 8, 1954).

Indeed, it cannot be said that the trial judge was free from doubt as to when a state of peace existed which would render inapplicable the wartime penalty provisions of the Espionage Act. On sentencing the defendants the trial judge's comments that the "incongruent penal provisions of the statute" (R. 2448) would not permit the imposition of a wartime sentence for espionage committed in 1951 (the defendants were sentenced on April 5, 1951) suggest that he was of the view that this country was not in a state of war in 1951. This is of crucial significance, inasmuch as the formal termination of a state of war with Germany did not take place until October 19, 1951 (Joint Resolution of Congress (65 Stat. 451) and Presidential Proclamation (66 Stat. c3), and not until April 28, 1952, was there a formal termination of war with Japan (Presidential Proclamation (66 Stat. c31)).

In view of the confusion existing in the entire area as to when a state of war is terminated, it was vital, indeed, the petitioner's very life and liberty depended on it, that the trial court properly charge and explain the term "in time of war" to the jury. For, "to fail to define the offense attributed to the accused and the essential elements which constitute it, is to assume that jurors are educated in the law -- an assumption which no one would undertake to justify." State v. Butler, 27 N.J. 560, 143 A. 2d 530, 550. But, as we have pointed out, the jury was not given any instructions with respect to this highly complex element of the offense. It is unlikely, in the absence of any guidance by the trial court, whether the jury ever considered this vital branch of the case at all. Cf. Barry v. U.S.

supra. Not only did the trial court fail to either charge or explain this essential element of the offense, but by imposing the wartime penalty of thirty years imprisonment, it in effect took this essential element from the jury by assuming that they had found beyond a reasonable doubt that the petitioner had joined the conspiracy in time of war.

This, the trial court could not do. It was for the jury to determine the questions of fact encompassing this essential element of the offense, not the trial court. Schwachter v. U.S., supra, at p. 644 and cases thereat.

The trial court by necessity having determined that the petitioner had joined the conspiracy in time of war, a condition precedent to the imposition of a thirty year sentence, deprived petitioner of his constitutional right to be tried by jury and of the due process of law. U.S. v. Oguil, 149 F. Supp. 272 (S.D.N.Y.) aff'd, 252 F. 2d 664 (C.A.2).

We submit, that the failure to charge with respect to this essential element of the offense, an element which served to deprive petitioner of thirty years of his liberty and which could have been used as the basis for depriving him of his very life, amounted to a denial of due process of law. Cl. Kenion v. Gill, 155 F. 2d 176 (C.A.D.C.); U.S. ex rel Luscomb v. State of New York, 153 F. Supp. 1, 2 (S.D.N.Y.).

It will not do to look to the evidence (we discuss the nature of the evidence of petitioner's participation in the conspiracy during wartime, infra), in order to rationalize the verdict, since the failure of the trial court to charge and instruct the

jury with respect to this essential element of the offense, destroyed the possibility of a fair trial under the due process of law." Samuel v. U.S., supra, at p. 796; cf. Barry v. U.S., supra, at p. 342; Jordan v. U.S., 233 F. 2d 362 (C.A.D.C.) rev'd in part on other grounds, 352 U.S. 904.

POINT II

PETITIONER IS PRESENTLY ENTITLED TO RELIEF PURSUANT TO SECTION 2255

There can be no real dispute that the nature of the cross-examination set forth in our companion memorandum of law (hereinafter referred to as the "Grunewald" point) along with the trial court's failure to charge or explain with respect to an essential element of the offense (Point I, supra), would have constituted reversible error if raised on direct appeal from the conviction. The crucial question here posed is whether the errors complained of are of such a nature as to render the judgment of conviction subject to collateral attack. As pointed out by Mr. Justice Frankfurter, a determination of this issue cannot be achieved by merely resorting to the "well-worn formula," that collateral attack cannot be made a substitute for appeal. Sunal v. Large, 332 U.S. 174, 184 (dissenting opinion). A more discriminating analysis is required.

As suggested by Judge Fahy,

"It would seem clear that a failure to appeal from a conviction does not always save it from collateral attack on a constitutional ground or indeed on other grounds where the court is convinced justice requires a remedy though sought collaterally. In other words,

the great writ and Section 2255 are not to be imprisoned within an iron-clad rule stated in terms of collateral relief not being a substitute for an appeal."

Hodges v. U.S., 228 F. 2d 858, 865 (C.A.D.C.)

The scope of Section 2255 is as broad as that of the writ of habeas corpus, U.S. v. Hayman, 342 U.S. 205. However, the precise scope of the writ of habeas corpus and a fortiori Section 2255 cannot be defined with precision. U.S. v. Thompson, 261 F. 2d 809 (C.A. 2). As stated by Judge Hand, no more definite rule as to the availability of the writ can be drawn other than that "the writ is available not only to determine points of jurisdiction stricti juris, and constitutional questions, but whenever else resort to it is necessary to prevent a complete miscarriage of justice." U.S. ex rel Kulick v. Kennedy, 122 F. 2d 642 (C.A. 2). It will always be available "whenever there clearly has been a fundamental miscarriage of justice for which no other adequate remedy is presently available." Sunal v. Large, supra, at p. 189 (dissenting opinion of Mr. Justice Rutledge).

A denial of the due process of law will always render a judgment of conviction subject to collateral attack. In the present case there has been a gross denial of due process. The judgment is therefore constitutionally deficient and subject to collateral attack.

While "the standards of justice" embodied in the concept of due process of law may not be "authoritatively formulated anywhere as though they were specifics" (Rochin v. People of California, 342 U.S. 165, 169), at the very least, a Court must, when called upon to review a judgment of conviction, "exercise (its)

judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offense." Malinski v. People of State of New York, 324 U.S. 401, 416, 417.

It is elementary that "a fair trial in a fair tribunal is a basic requirement of due process". In re Murchison, 349 U.S. 133, 136. Can it be said that the petitioner obtained a fair trial? We think not.

Grunewald Point

It would unduly burden this Court to set forth in extenso what has been fully treated in our companion memorandum of law relating to the cross-examination of the defendant Ethel Rosenberg and its effect upon the petitioner.

The magnitude of the error far surpasses in its prejudicial effect anything heretofore condemned by the Supreme Court. Cf. U.S. v. Grunewald, 353 U.S. 391; Stewart v. U.S., 366 U.S. 1; and see the discussion at pp. 24 of our companion memorandum of law.

Petitioner's entire case, his very life, depended upon the credibility of Ethel and Julius Rosenberg. If their testimony were believed by the jury, a verdict of acquittal would of necessity have had to be returned with respect to all of them (see discussion at pp. 25 of our companion memorandum of law).

The defense case was destroyed and Ethel Rosenberg's credibility was drowned in a sea of improper and unfair questions put to her by the court and prosecution for only that purpose. Along with her was carried the petitioner.

The trial judge's participation in the destruction of Ethel Rosenberg's credibility brought with it the seal of doom for petitioner. The impact on the jury made by the trial court's questions and comments must have been enormous, since it is a truism that any jury gives "great weight" to a judge's "lightest word." Hicks v. U.S., 150 U.S. 442. The practice which was long ago condemned by the Supreme Court in Quercia v. U.S., 289 U.S. 466, 472, namely, the trial judge's "characterization of the manner and testimony of the accused (which) was of a sort most likely to remain firmly lodged in the memory of the jury and to excite a prejudice which would preclude a fair and dispassionate consideration of the evidence", epitomized the trial court's conduct in the case at bar. Not only did it repeatedly pursue a line of questioning in concert with the prosecution as to Ethel Rosenberg's invoking of her Fifth Amendment privilege before the grand jury, it also sought by questions and comments, and by veiled warning to ascertain from her the reasons why she was willing to testify on the trial as to the very same questions to which she previously asserted the privilege against self-incrimination.

We submit that this impermissible cross-examination rendered impossible any semblance of a fair trial to Morton Sobell and served to deprive him of the due process of law.

In the present case, the cross-examination of Ethel Rosenberg was not limited to bringing out before the jury that she had used the privilege and that this cast doubt on the credibility of her testimony. It was used to establish her guilt. Such conduct is so grossly unfair, such a departure from the concept of a fair

trial before a fair tribunal that we are faced here with more than the "grave constitutional overtones" of Grunewald. But, if that case is to have any vitality, in its reversal of the defendant Halperin's judgment of conviction with the stern admonition that the nature of the cross-examination possessed "grave constitutional overtones" (Grunewald v. U.S., supra, at p. 423) bears any germinal significance in the development of the concept of due process (see Stewart v. U.S., supra), then Morton Sobell's judgment of conviction must be set aside.

A. The trial court's failure to charge the jury with respect to an essential element of the offense of which petitioner was charged, or to explain to them the meaning of the term "in time of war" deprived petitioner of the due process of law.

Again, were this point raised on appeal, a reversal of petitioner's judgment of conviction would have been required.

Nevertheless, we submit that the failure of the trial court to charge the jury, or explain to them the meaning of an element of the offense which could serve to deprive petitioner of his life and which did serve to deprive him of thirty years of his liberty constituted a denial of due process. Kenion v. Gill, supra; U.S. ex rel. Luscomb v. State of New York, supra (see discussion at pp. 11/6 infra).

Since the jury returned a general verdict, there is no way of knowing whether they considered this vital branch of the case at all. Cf. Haupt v. U.S., 330 U.S. 631, 641; United Brotherhood of Carpenters & Joiners of America v. U.S., 330 U.S. 395, 408, 409; Barry v. U.S., supra, at p. 342; see also, U.S. v. O'gull, supra.

Obviously, no one can ascertain whether in fact the jury did or did not consider this branch of the case. Nevertheless, constitutional guarantees cannot be preserved by mere speculation. A man's liberty cannot be made to depend on such uncertainties. The record is clear that the trial court did not charge the jury with respect to an essential element of the offense. Equally clear is the trial court's failure to explain the meaning of the element "in time of war." These omissions were highlighted by the trial court's inclusion in its charge and explanations of every other element of the offense.

We must measure petitioner's conviction by the statute which defined the crime. As a consequence of the jury's verdict, petitioner was sentenced to a term of thirty years imprisonment. In order for the trial court to have imposed this sentence, the jury had to find "that all the elements of the crime charged shall be proved beyond a reasonable doubt." Christoffel v. U.S., *supra*, at p. 89.

Petitioner's "fundamental right that he be convicted only on proof of all the elements of the crime charged against him" (Christoffel v. U.S., *supra*, at p. 90) was vitiated to the point of constitutional invalidity when the jury was not instructed or advised as to an essential element of the crime (see cases cited in Point I, *supra*).

In effect, by imposing a thirty year sentence, the trial court, either assumed that petitioner's membership and participation in the charged conspiracy "in time of war" had been established by the evidence or withdrew this vital issue from the jury.

completely. In either event, petitioner was denied his constitutional right to be tried by jury, United Brotherhood of Carpenters & Joiners of America v. U.S., supra; Schwachter v. U.S., supra; U.S. v. Ogull, supra; and his judgment of conviction must be set aside.

POINT III

IN ANY EVENT, PETITIONER IS ENTITLED TO RELIEF PURSUANT TO RULE 35 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 35 provides, in part, as follows:

"The Court may correct an illegal sentence at any time."

Putting aside the availability to petitioner of Section 2255, and assuming arguendo that the points raised by petitioner are insufficient grounds to set aside the judgment of conviction, he is, nevertheless, entitled to relief pursuant to Rule 35.

Petitioner was sentenced to a term of thirty years' imprisonment pursuant to Section 32 of Title 50, U.S.C. Section 32 provides, in part as follows:

"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 communicate, deliver, or transmit to any foreign government... either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be imprisoned not more than twenty years; Provided, That whoever shall violate the provisions of sub-section (a) of this Section in time of war shall be punished by death or by imprisonment for not more than thirty years..."

* Sections 32 and 34 of Title 50 were repealed on June 25, 1948, 62 Stat. 862. These sections are now contained in consolidated form in Section 794 of Title 18.

It is therefore self-evident that the trial court was without power to impose the wartime sentence absent a determination by the jury that the Government had established petitioner's membership and participation in the charged conspiracy "in time of war" beyond a reasonable doubt. cf. United States v. Oguil, supra; see discussion at p. , supra.

In the instant case the Court did not charge the jury that it had to find that petitioner was a member of the conspiracy during time of war; nor did the Court explain the meaning of this term within the context of the Espionage Act of 1917. The jury therefore was deprived of the opportunity of resolving the issue of whether petitioner had joined the conspiracy in time of war; hence the Court, absent this finding by the jury, was without power to impose a wartime sentence.

As we shall show, the term "in time of war" as it applies to the Espionage Act, relates to a period of actual hostilities and not to a mere technical state of war. The character of the evidence adduced against Sobell was such that, even if believed, may have been legally insufficient to establish membership during time of war. In any event the evidence was of such a marginal nature that it raised a question of fact which the jury, had it been cognizant of the issue, may well have determined that petitioner had not joined the conspiracy in time of war. The marginal evidence adduced as to alleged wartime membership on the part of Sobell only accentuated the error on the part of the trial court in failing to allude to this vital element of the offense charged.

The evidence concerning Sobell during the period of actual hostilities was not only equivocal, but even it believed could hardly be competent to establish membership in the charged conspiracy.

The only testimony relating to the period of actual hostilities was as follows:

(1) There was testimony by Elitcher of a conversation he had with Rosenberg, in the absence of Sobell in June of 1944, wherein he stated Rosenberg told Elitcher that Sobell was also helping in getting information to the Soviet Union. (R. 312-315)

(2) Elitcher testified to a conversation with Sobell while they were on vacation in September, 1944, wherein Elitcher purportedly told Sobell of a previous conversation had with Rosenberg, referred to above. Elitcher testified that Sobell became angry and said "He should not have mentioned my name. He should not have told you that." (R. 320, 321)

The testimony of Elitcher, referred to in Paragraph (1) above, as to Rosenberg's conversation in the absence of Sobell, could not be used to establish membership in the conspiracy. Declarations of alleged co-conspirators to a third party are admissible only if there is proof aliunde that the defendant is connected with the conspiracy. Glasser v. United States, 315 U.S. 60, 74; United States v. DeFillo, 255 F. 2d 835 (C.A. 2), cert. denied, 359 U.S. 915; Continental Baking Co. v. United States, 281 F. 2d 137, 152 (C.A. 6); Tripp v. United States, 295 F. 2d, 418, 422 (C.A. 10).

Blitcher's testimony referred to in Paragraph (2) above does not serve to cure this deficiency. It is obvious that Sobell's alleged statement could have impressed the jury as the declaration of an innocent man concerned by a false accusation. While conceivably an adverse inference might be drawn, it was so equivocal in nature that were the testimony against Sobell limited to this the Court may well have been required to dismiss the indictment and direct a judgment of acquittal. //

But we are not here raising the question of evidentiary insufficiency. Since the Court did not charge the jury that they must find the petitioner was a member of the conspiracy in time of war, it was not given any authority by the jury to impose a wartime sentence.

A. "In Time of War" as Provided in the Espionage Act Must be Construed to Refer to the Period of Actual Hostilities Only.

The recent landmark case of Lee v. Madigan, supra, provides us with the approach to be utilized by the courts when confronted with the problem of interpreting the term "in time of war". The Supreme Court rejected the thesis that since the termination of a "state of war" is a political act, the courts

// Under the principle set forth in Thompson v. City of Louisville, 362 U.S. 199, a verdict based on such evidence may be found to be constitutionally invalid. See also Tot v. U.S., 319 U.S. 463. Likewise, the judgment of conviction would be subject to collateral attack. See Kernick v. U.S., 285 F.2d 529 (C.A. 8), Morris v. Mayo, 277 F.2d 103 (C.A. 5).

are precluded from making an independent judicial analysis regardless of executive fiat, stating:

"We deal with a term that must be construed in light of the precise facts of each case and the impact of the particular statute involved." p. 231. Cf. Ludecke v. Watkins, 335 U.S. 160, 169.

The Court dealt with and distinguished away those earlier cases which ostensibly stood for the proposition that war does not terminate with the cessation of actual hostilities, but only by treaty, legislation or Presidential proclamation. The Court insisted that a more particularized and discriminating analysis must be made.

The teaching of Lee v. Madigan is clear. The term "in time of war" must be analyzed by the courts in the context of the particular statute in which it appears. "Only mischief can result if those terms are given one meaning

*See e.g., Ludecke v. Watkins, supra; Kahn v. Anderson, 255 U.S. 1; Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146.

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regardless of the statutory context." (at p. 231) See also
In re Yokoyama, 170 F. Supp. 467, 469 (S.D. Calif.).

In light of Lee v. Madigan, *supra*, we must turn to the
legislative history of the Espionage Act of June 15, 1917, for
it was under this statute that petitioner was convicted and
sentenced. As we have pointed out in Point 1-B, *supra*, the

It is interesting to note that even prior to Lee v. Madigan,
supra, the United States Court of Military Appeals had taken
a similar approach with respect to the problems involving
wartime penalties and the jurisdiction of various military
tribunals for offenses committed during the Korean conflict.
Notwithstanding the fact that no formal state of war existed
it upheld the imposition of punishments which could only be
invoked in "time of war", taking the position that:

"The factors which make certain offenses...more
heinous and reprehensible in time of war depend
upon the existence in fact of substantial armed
hostilities, regardless of whether those hostili-
ties have been formally declared to constitute
war by action of the Executive and Congress."

United States v. Gann, 3 U.S.C.M.A. 12, 11 C.M.R. 12 (1953);
See, also, United States v. Bancroft, 3 U.S.C.M.A. 3, 11 C.M.R. 3
(1953); United States v. Ayers, 4 U.S.C.M.A. 220, 15 C.M.R. 220
(1954); United States v. Aldridge, 4 U.S.C.M.A. 107, 15 C.M.R.
107 (1954); United States v. Anderten, 4 U.S.C.M.A. 354, 15
C.M.R. 354 (1954). Conversely, the Court was also faced with
the problem as to when the Korean conflict qua "war" terminated.
It wisely selected July 27, 1953, the date when an Armistice
was effectuated between the United Nations Command and the
enemy, its rationale being that the Armistice ended

"those actual hostilities essential to a
finding of 'a time of war'..."

"Armed combat ended and battlefield conditions
ceased; there was no more shooting and there
were no more battle casualties..."

United States v. Shell, 7 U.S.C.M.A. 646, 23 C.M.R. 110 (1957);
Accord: United States v. Bustin, 7 U.S.C.M.A. 661, 23 C.M.R.
125 (1957).