was deliberately and wilfully fabricated at the instigation and inducement of the government."*

To show the knowing use of perjury of these three Government witnesses, petitioner further alleges that the Government:

> "a. knowingly suppressed and destroyed or caused to be destroyed evidence [the June 3, 1945 Hotel Hilton registration card] which would have impeached and refuted testimony and evidence given against the petitioner and his co-defendants; and
>
> "b. presented and vouched for the credibility of its main and indispensible witness [apparently Gold; see page 12**] when it knew and knowingly suppressed the evidence that he was a proved and admitted pathological liar, who could not be believed or relied upon" (pp. 3-4)

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* Petitioner also gives himself away by his curious allegation that "No application for similar relief has been founded upon all the facts and the grounds here set forth. The within application, based both upon new evidence and in conjunction with evidence previously obtained mandate that petitioner be granted a evidenciary hearing" (p. 4; emphasis added).

** Compare Sobell's second Section 2255 motion where David Greenglass is referred to as "the Government's witness-in-chief." Sobell Petition, June 5, 1953, p. 22.

The petition is not verified. It is not supported by a single affidavit. Though it refers to Gold's testimony in other proceedings and his pre-trial statements to his attorneys, which are "available to petitioner's counsel" (p. 14), such testimony and statements are not appended to the motion and their substance is only set forth in conclusory form. There is no indication of a single witness who is available to testify for petitioner in the event of a hearing, nor an offer of any other proof that would be adduced thereat. The petition is replete with conclusions of fraudulent prosecution repeated so often that they tend to obscure the paucity of factual allegations.

Giving petitioner every benefit of the doubt, the only allegations of the petition which could be described as factual* are:

* As will be shown infra, pages 43-44 , in large part these matters were known at the time of trial and all of them were known at the time of Sobell's third Section 2255 motion.

(1) Fuchs' description of the courier he met in the United States differs from the appearance of Gold (p. 10):

(2) Gold testified in this Court that he had lied before a 1947 federal grand jury (p. 10);

(3) The F.B.I. on May 23, 1950 found a Hotel Hilton registration card of Harry Gold dated September 19, 1945 and no other (p. 11);

(4) The Government at the trial did not inform the court and the jury that:

(a) it felt impelled to submit Gold for psychiatric observation and testing;

(b) he testified in open court that he had lied before a federal grand jury;

(c) he had admitted to his attorney that he had lied to another federal grand jury and had never

a series of fantasies about a make-believe wife and twin children; and

(d) he had made prior inconsistent statements to his attorneys (p. 12).

(5) Between May and December, 1950 Gold faced the danger of the imposition of the death penalty (p. 13);

(6) Gold's pre-trial statements were at variance in some respects from his trial testimony (pp. 14-15);

(7) Gold and David Greenglass were incarcerated in the same jail from the summer of 1950 to March 1951 (p. 15);

(8) An examination of Government Exhibit 16 shows a variance between the handwritten date on the front and the stamped date on the back and that no F.B.I. agent's initials or date of receipt appear thereon (p. 16).

(9) The original June 3, 1945 registration card, of which Government Exhibit 16 is a photostat, was returned to the Hotel on August 4, 1951; the original September 19, 1945 registration card, which was not used at the trial, was not returned to the Hotel but destroyed on Feb. 11, 1960 (pp. 16-17 and Exhibit A); and

(10) Defense counsel at the trial proposed the impounding of evidence; did not cross-examine Gold; did not put petitioner on the stand; and declared publicly the trial of petitioner and his co-defendants was fairly conducted (p. 19).

It is upon these unsupported allegations that petitioner would have this Court direct a hearing on the motion. Patently, if each and every one of them were substantiated thereat, they would not even show perjury, much less knowing use of perjury. It is apparent that petitioner merely seeks to utilize Section 2255 to relitigate the credibility of the Greenglasses and to reverse his counsel's strategy of 15 years ago and cross examine Harry Gold.

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ARGUMENT

POINT I

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

Section 2255 provides that:

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

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

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

The Supreme Court in Sanders said that:

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

First, the instant motion is based on the same ground urged in petitioner's first Section 2255 motion, denied by Judge Ryan on December 10, 1952; in his second Section 2255 motion, denied by Judge Kaufman on June 3, 1953; and in his third such motion, denied by Judge Kaufman on June 20, 1956. Each of those motions, together with the present one, sets forth as "a sufficient legal basis for granting the relief sought" the charge that the Government knowingly used perjured testimony in deprivation of petitioner's due process rights. Sanders v. United States,

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

Nor is it a sufficient answer to say that the present application is predicated on the alleged falsity of the testimony of a witness not previously attacked (Harry Gold). Factually this is not so because the motion attacks the testimony of three Government witnesses, David and Ruth Greenglass and Harry Gold, see pages 27-29 supra, a position which has been urged twice before as to David Greenglass and once before as to Ruth Greenglass. See pages 19-21 supra. More specifically, the motion attacks the testimony concerning the meetings of these three witnesses on June 3, 1945, and in that respect is the same motion in new dress that Judge Kaufman denied on June 8, 1953.

Nor should petitioner legally be permitted to make three separate motions claiming that the Government knowingly used perjured testimony simply by attacking the testimony of three witnesses separately. See the discussions infra concerning the ends of justice and abuse of Section 2255.

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

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

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

Petitioner purports to meet this burden on pages 29-33 of his "Points and Authorities" in support of the petition. In essence, he alleges that his charges are so serious that they fairly shout for an explanation on the part of the Government. Judge Kaufman had a few words to say about this tactic when he denied petitioner's third and fourth motions under Section 2255 in 1956, which bear repeating here:

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

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

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

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

Moreover, as appears from the Government's affidavit in opposition to the instant motion, the so-called "facts" adduced in support thereof were in large part known at the time of the trial, and each and every one of them were publicly known at the time petitioner made his third Section 2255 motion in May of 1956. Thus:

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

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

> "Holding evidentiary hearings in cases where no substantial reason has been advanced for holding one interferes with the effective disposition of meritorious applications . . . ."

United States ex rel Hicks v. Fay,
230 F. Supp. 942, 947 (S.D.N.Y. 1964).

B. The Instant Motion Constitutes An Abuse of Section 2255

Even were petitioner not urging the same ground herein as in his prior motions, Section 2255 empowers this Court to decline to entertain the motion on the basis that it is abusive. Sanders v. United States, 373 U.S. 1, 17 (1963).

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

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

> "if a prisoner deliberately withholds one of two grounds for federal collateral relief at the time of filing his first application, in the hope of being granted two hearings rather than one or for some other such reason . . . ."

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

Even at the time of trial, when Sobell's retained counsel deliberately chose not to cross examine Harry Gold, the following facts, alleged in support of the instant petition, were publicly available:

(1) Gold testified before this Court on November 17, 1950 in United States v. Brothman (S.D.N.Y., C. 132-106)* that he had lied before a 1947 federal grand jury;

(2) Gold testified on November 17 and 20, 1950 in United States v. Brothman that he had lied to Brothman about a fictitious wife and twin children;

(3) That in connection with Gold's sentencing in Philadelphia on December 7, 1950, a psychiatric examination was made of Harry Gold;**

(4) Gold faced the possible imposition of the death sentence from May to December, 1950; and

(5) An examination of Government Exhibit 16 shows

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* Judge Irving R. Kaufman also presided at the Brothman trial.

** United States v. Gold (E.D. Pa. Cr. 15769). In disclosing the psychiatric examination, Judge James P. McGranery added "you need have no fear as to his mental situation."

a variance in dates on front and back and contains no F.B.I. initials or date of receipt.

Defense counsel also knew the danger of a vigorous cross examination of Gold, for that strategy had unsuccessfully been adopted in United States v. Brothman, supra.

The remaining "facts" on which the instant motion is predicated became publicly available as follows, if not before:

(1) Fuchs description of Gold, with the publication in May, 1951 of F.B.I. Director J. Edgar Hoover's article "The Crime of the Century" in the Readers Digest;

(2) That Gold and Greenglass were incarcerated together in the "Tombs" prior to trial was specifically alleged in the Rosenberg Petition, November 24, 1952, p. 37, in which Sobell joined;

(3) That the Government had in its possession a photostat of the September 19, 1945 Hotel Hilton registration card of Gold was revealed in "The Judgment of Julius and Ethel Rosenberg" by John Wexley, published in 1955; and

(4) That Gold's pre-trial statements to his attorneys did not contain all the details of the June 3, 1945 meetings that he testified to at the trial became known

on April 26, 1956 with the publication of a report thereon furnished by John Hamilton, Gold's lawyer, at Senate Internal Security Subcommittee Hearings on the Scope of Soviet Activity in the United States, 84th Cong., 2d Sess., Part 20, pp. 1084-85 (April 26, 1956).

Not only were all these facts publicly available over ten years ago, but they were drawn together in a book, "The Judgment of Julius and Ethel Rosenberg", by John Wexley published by Cameron and Kahn, New York, in 1955, which can best be described as a extensive brief in support of the instant motion.* That Sobell's counsel were aware of this book is shown by the acknowledgment to Benjamin Dreyfus in the forefront thereof -- the same Benjamin Dreyfus who represented Sobell both in the May, 1956 motions under Section 2255 and in the drafting of the present motion. It is also shown by the book of Malcolm Sharp, who appeared for Rosenbergs in their June, 1953 motion and now appears for petitioner, "Was Justice Done", Monthly Review Press, 1956,

* The book, like the present motion, contends that the June 3, 1945 Gold — Greenglass meetings never occurred and that the Hotel Hilton registration card is a contrived document. See the Government's affidavit in opposition to the motion.

which devoted an Appendix to the Wexley book. In fact, the May, 1956 motion was itself predicated on a point raised in Wexley's 1955 book, i.e., that the prosecution knowingly used the perjured testimony of James S. Huggins.

Thus a theory which apparently even petitioner apparently thought insubstantial in 1955 and 1956 has now been elevated to a new motion under Section 2255.

It is evident from the foregoing that the instant motion is an abuse of Section 2255. The facts known at time of trial plus the opportunity thereat to cross examine and demand any inconsistent pre-trial statements of Gold show that Gold's credibility, if it was to be challenged to all, should have been tested at trial. In any event, the deliberate withholding of the present theory of relief at the time of the 1956 motion should bar this present motion.

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

For example, they ask this Court to conclude on the basis of a letter from the Department of Justice (Exhibit A to the Petition) stating that the original June 3, 1945 Hilton registration card was returned to the hotel on August 4, 1951, that such a card never existed but was manufactured by the Government. They also ask this Court to conclude that petitioner's trial counsel were disabled from effectively defending him upon the basis of a public declaration of those same trial counsel that the trial "was fairly conducted" (Petition, p. 19). Judge Kaufman's admonition to three of Sobell's present counsel in 1956 of their duty as officers of the court "to insure that this great writ shall not be stripped of its deep meaning through a corrosive process caused by repeated abuses of its processes," 142 F. Supp. at 531, apparently fell on deaf ears.

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POINT II

Sobell's Petition Does Not Raise Any Issue of Fact Which Warrants a Hearing on his Allegation of Knowing Use of False and Perjured Evidence, Suppression of Evidence and Misrepresentations to the Court.

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

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

That this Court is not required to accept as true these broad conclusionary charges of fraud is by now hornbook law. Sanders v. United States, 373 U.S. 1, 4, 19 (1963); United States v. Rosenberg, 200 F.2d 666, 668 (2d Cir. 1952), cert. denied, 345 U.S. 965 (1953); United States v. Mathison, 256 F.2d 803, 805 (7th Cir.), cert.

denied, 358 U.S. 857 (1958); Taylor v. United States, 229 F.2d 826, 833 (8th Cir.), cert. denied, 351 U.S. 986 (1955); United States v. Pisciotta, 199 F.2d 603, 606 (2d Cir. 1952); United States v. Sturm, 180 F.2d 413, 414 (7th Cir.), cert. denied, 339 U.S. 986 (1950); United States v. Brilliant, 172 F. Supp. 712, 713 (E.D.N.Y. 1959), aff'd, 274 F.2d 618 (2d Cir.), cert. denied, 363 U.S. 806 (1960):*

Section 2255 is in essence a civil remedy.

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

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

While the requirement of specification has sometimes been relaxed in the case of pro se practitioners, on the ground that:

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

no relaxation is called for by the present petition, where Sobell is represented by six attorneys.

The present petition abounds in "vague conclusional charges of fraud and collusion," with no "specific facts" but merely "unsupported assertions." Davis v. United States, 311 F.2d 495, 496 (7th Cir.), cert. denied, 374 U.S. 846 (1963). Sobell has produced:

> " . . . neither affidavits nor statements from witnesses or others, nor has he suggested that he could produce evidence of any kind which might support his bare assertion that the testimony was perjured and that the government prosecutors were aware thereof and coerced the giving of such testimony . . . . [His] bare assertion . . . with nothing more is a mere ipse dixit and does not entitle such a party to a hearing under §2255." Dunn v. United States, 265 F.2d 544, 545 (8th Cir. 1959).

The allegations of fraud are not "substantiated by allegations of fact with some probability of verity,"

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

O'Malley v. United States, 285 F.2d 733, 735 (6th Cir. 1961); Malone v. United States, 299 F.2d 254, 256 (6th Cir.), cert. denied, 371 U.S. 863 (1962), but are purely a "matter of speculation." United States ex rel Darcy v. Handy, 351 U.S. 454, 462 (1956).

The sparse allegations of fact alleged in the petition are patently based on hearsay information, which "does not qualify as proper evidentiary material to support a petition under §2255 . . . and could not be used at a hearing." United States v. D'Ercole, F.2d (2d Cir., May 19, 1966); United States v. Pignatiotta, 199 F.2d 603, 607 (2d Cir. 1952); United States v. Orlando, 327 F.2d 185, 189 (6th Cir.), cert. denied, 379 U.S. 825 (1964); Green v. United States, 158 F. Supp. 804, 809-10 (D. Mass.), aff'd, 256 F.2d 483 (1st Cir.), cert. denied, 358 U.S. 854 (1958).

The petitioner has the burden of showing not only that material perjured testimony was used to convict him but that it was knowingly and intentionally used by the prosecution in order to do so. This burden is not met by pointing out trivial inconsistencies in the evidence. United States v. Spadafora, 200 F.2d 140, 142-43 (7th Cir. 1952); Enzor v. United States, 296 F.2d 62, 63 (5th Cir. 1961),

cert. denied, 369 U.S. 854 (1962); United States v. Schultz, 286 F.2d 753, 755 (7th Cir. 1961); Wilkins v. United States, 262 F.2d 226, 227 (D.C. Cir.), cert. denied, 359 U.S. 1002 (1959); Boisen v. United States, 181 F.Supp 349, 351 (S.D.N.Y. 1960).

If, despite the lack of evidentiary foundation, the "facts" concerning Harry Gold alleged in the petition be accepted as true, they at most show that he changed his testimony in some respects between his arrest and the trial.

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

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

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

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

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

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

Having made a deliberate choice not to cross-examine Gold, Sobell "cannot now by way of motion under §2255 assert a defense which was available but not presented at the trial." United States v. Branch, 261 F.2d 530, 533 (2d Cir. 1958), cert. denied, 359 U.S. 993 (1959); see

United States v. Smith, 306 F.2d 457, 458 (2d Cir. 1962).

Had he chosen to cross-examine Gold, Sobell could have laid the foundation for a demand for examination of any pre-trial statements of Gold containing inconsistencies with his trial testimony, as was done in the case of the witness Elitcher. Judge Kaufman turned over to the defense three statements given by Elitcher to the F.B.I. and his grand jury testimony. See Record, pp. 516-17, 600-02. Had a similar cross-examination of Gold been undertaken, there is thus every reason to believe Judge Kaufman would have made Gold's pre-trial statements available as well. Moreover, even if a demand had been made for Gold's pre-trial statements and denied by the trial court, that would not be the type of error which could be corrected by a motion under Section 2255, United States v. Angelet, 255 F.2d 383, 384 (2d Cir. 1958); Boisen . United States, 181 F. Supp. 349, 350 (S.D.N.Y. 1960). Where no demand at all was made, a fortiori petitioner's claim is lacking in substance.*

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

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The Hotel Hilton Registration Card

Petitioner's brazen allegation of the manufacture of the Hotel Hilton registration card is again the bare statement of a conclusion. The fact that the card bears a different date on front and back, if it proves anything, proves its genuineness. Even those with the frame of mind to accuse the F.B.I. of dishonesty do not accuse it of being completely incompetent, which it would have to be if it made the idiotic mistake of placing inconsistent dates on a card it allegedly manufactured. Moreover, it would be unreasonable to assume that the F.B.I. and the prosecution would have jeopardized the entire case by manufacturing such an insignificant item of evidence. Nor does the absence of initials and date of receipt on the photostat (which is Government Exhibit 16) signify anything. In any event, those are matters which counsel could have explored at the trial. The face and reverse side of the card were exhibited and read out in open court (R. 1262).

Nor is anything sinister indicated by the fact that two registration cards, obtained by the F.B.I. on different dates, were handled in a different manner. And the letter from the Justice Department showing that the original registration card was returned to the hotel, far from showing

manufacture of evidence, shows precisely the opposite. It is perhaps unnecessary to note that the original of Government Exhibit 16 (i.e., the photostat introduced at the trial) has been preserved to this day.*

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

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POINT III

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

No longer content to tar merely the prosecution, petitioner turns his attack on his own retained trial counsel as well, claiming their conduct "rendered the trial offensive to common and fundamental ideas of fairness and right, and resulted in reducing the trial to a sham." (Petition, pp. 18-19.)

Sobell was represented at trial and on appeal by Harold M. Phillips and Edward Kuntz. The quality of the representation provided has been considered before. Thus, the Court of Appeals in affirming the judgment of conviction, observed "the record shows that defendants' counsel were singularly astute and conscientious." 195 F.2d at 596 n.9. Judge Ryan, in denying Sobell's first Section 2255 motion, stated: "The trial record reveals a defense intelligently conducted by able counsel of petitioners' own choice and selection." 108 F. Supp at 800. And Judge Kaufman, who presided over the trial and was therefore in unique position to know, stated:

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

In substance, the petition alleges in conclusional form that the trial was conducted in an "atmosphere of terror deliberately induced by the Government" which disabled defense counsel from conducting an effective defense. Certain trial strategy is singled out for criticism, including the decision not to cross examine Harry Gold.

Petitioner does not even begin to meet his burden of showing that "the purported representation by counsel was such as to make the trial a farce and a mockery of justice." United States v. Wight, 176 F.2d 376, 379 (2d Cir. 1949); see United States v. Garguilo, 324 F.2d 795, 796 (2d Cir. 1963); United States v. Gonzalez, 321 F.2d 638, 639 (2d Cir. 1963); Mitchell v. United States, 259 F.2d 787, 793 (D.C. Cir.), cert. denied, 358 U.S. 850 (1958). To justify his claim for relief, petitioner must demonstrate "a total failure to present the cause of the accused in any fundamental respect." United States v. Garguilo, supra at 796.

This burden is not met by "merely complaining of alleged tactical errors or mistakes in strategy." Id. at 797; see United States v. Gonzalez, supra at 639; United States v. Duhart, 269 F.2d 113, 115 (2d Cir. 1959); Mitchell v. United States, supra at 793; Frand v. United States, 301 F.2d 102, 103 (10th Cir. 1962).

Moreover, before he is entitled to a hearing, petitioner "must state with particularity sufficient facts to constitute a ground of relief." Gordon v. United States, 216 F.2d 495, 498 (5th Cir. 1954). Motion papers containing "merely conclusory allegations of innocence and miscarriage of justice" will not suffice. United States v. Pisciotta, 199 F.2d 603, 606 (2d Cir. 1952). The allegations on pages 18 and 19 of the petition are plainly insubstantial under the above authorities. See also O'Malley v. United States, 285 F.2d 733, 735 (6th Cir. 1961); United States v. Trumblay, 256 F.2d 615, 617 (7th Cir. 1958), cert. denied, 358 U.S. 947 (1959); Green v. United States, 256 F.2d 483, 485 (1st Cir.), cert. denied, 358 U.S. 8[illegible] (1958).

Nor is this the first time Sobell has raised a claim concerning the "atmosphere" in which the trial was conducted. In his first Section 2255 motion he joined with the Rosenbergs in claiming the trial atmosphere of

prejudice and hostility resulting from pre-trial newspaper publicity and other mass media precluded the selection of an impartial jury. See 108 F. Supp. at 800 n.1. When confronted with the obvious answer -- if this is so why didn't you seek a continuance or a change of venue or at least make a complaint at the trial? -- the answer in the reply papers was that counsel were unaware of such publicity. See 108 F. Supp. at 802 & n.7. Now, with no supporting evidence, petitioner would have this Court conclude precisely the contrary and further, that their awareness significantly influenced their conduct at the trial.

Conclusion

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

Respectfully submitted,

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Of Counsel.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORTON SOBELL,	:	66 Civ. 1330
Petitioner,	:	GOVERNMENT'S AFFIDAVIT IN OPPOSITION TO MOTION UNDER §2255
-v-	:	
UNITED STATES OF AMERICA,	:	
Respondent.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT L. KING, being duly sworn deposes and says:

1. I am an Assistant United States Attorney in the office of Robert M. Morgenthau, United States Attorney for the Southern District of New York. I am in charge of the above-captioned proceeding for the United States of America.

2. I make this affidavit in opposition to the motion of Morton Sobell, returnable July 25, 1966, pursuant to 28 U.S.C. §2255 to vacate and set aside his sentence and judgment of conviction in United States v. Julius Rosenberg et al, S.D.N.Y., C. 134-245.

3. The record facts and the grounds of the Government's opposition to the motion are set forth in the Government's accompanying Memorandum of Law and will not be here repeated. This affidavit is submitted to show that matters set forth in the petition

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were publicly known in 1951 at the time of the trial of this case and that all matters set forth therein were publicly known at the time petitioner brought his third Section 2255 motion in May, 1956.

The Government contends that the ends of justice would not be served should this Court entertain petitioner's motion and that the motion is an abuse of Section 2255.

4. The case of United States v. Abraham Brothman et al., S.D.N.Y.,C. 133-106, was tried in this Court on November 10-22, 1950, before Honorable Irving F. Kaufman and a jury. The indictment charged in two counts that (1) Brothman and his co-defendant Miriam Moskowitz conspired to obstruct justice, in violation of 18 U.S.C. §88 (1946 ed.), and (2) Brothman influenced Harry Gold in his testimony before a federal grand jury, in violation of 18 U.S.C. §241 (1946 ed.). Trial Transcript (hereinafter "Tr."), pp. 65-69.

5. Admitted in evidence as Government's Exhibit 6 at the trial was a written and signed statement of Harry Gold to the FBI, dated May 29, 1947 (Tr. 199). Concerning this statement, Gold testified:

> "Q Was it true or false as indicated in your statement, Exhibit 6, that in October, 1940, you were introduced to a man by the name of John Golish, -- G-o-l-u-s-h or G-o-l-i-s-h? A. That was a lie.

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"Q In the same vein, was it true or false that such an introduction had been made by one Carter Hoodless?

"A That was a lie.

"Q Was it true or false that such an introduction had taken place at a meeting of the American Chemical Society at the Franklin Institute in Philadelphia, Pennsylvania? A That was false. It never occurred.

"Q Was it true or false that after that meeting, this Golish or Golush and you went to a restaurant on Broad Street and remained there until 2:30 a.m.?

"A That was a lie. That event never took place.

"Q Was it true or false that on such an occasion Golish or Golush made the following proposition to you, that you were to telephone Abe Brothman, a chemical engineer in New York City, and make an appointment to see him and you were to discuss two chemical processes with him and to obtain blueprints from him which you were to evaluate against the chemical soundness of the processes?

"A That whole business was a lie.

"Q Was it true or false that as a result of this meeting with Golush you telephoned to Brothman in New York City and made an appointment to see him about two weeks after October 1940? A That never took place. It was a lie.

"Q Is it true or false, as you say in this statement, Exhibit 6, 'I saw Brothman the first time in November, 1940, and obtained the blueprints. That meeting was in the evening and took place in New York City in a restaurant in the downtown section.'?

"A That was a lie.

"Q In truth and in fact, when for the first time did you meet Brothman? A I met Abe somewheres between Sixth and Seventh Avenues, somewheres in the high 20's, in his car on the night of September 28, 1941.

* * *

"Q Was it as a result of your conversation with Abe Brothman, which you have testified, that you made these false statements in Government's Exhibit 6?

"A Yes.

"Q Was that the only reason for the making of the false statements? A That was the only reason for making the statements that I made" (Tr., November 17, 1950, pp. 643-45)

6. Later on the same day, November 17, 1950, Gold testified:

"Q Did you tell the [1947 federal] grand jury in substance the same sort of a false story as is described in Government's Exhibit 6? A Yes, I did.

* * *

"Q More particularly, did you tell the grand jury the same sort of a false story as you told to Agents Shannon and O'Brien as is contained in Government's Exhibit 6, regarding the time and circumstances under which you and Brothman first met? A Yes, I did." (Tr. 681-82)

7. Gold also testified about what he had told Brothman about his marital status:

"Q Did you say anything at that time to Abe about your personal, your marital status?

"A I told Abe that I was married and had a wife and two children, twins.

"Q Was that true? A That was a lie." (Tr., November 15, 1950, p. 503.)

"A I told him [Brothman] that contrary to the story which he had believed up to the present moment on this night or a day or two before Memorial Day of 1947, contrary to that story, that I actually had no wife and two twin children, that I was a bachelor and had always been one." (Tr., November 17, 1950, p. 650.)

"[Cross-examination:] Q But when you first met Abe, you told him about your family, didn't you? A On orders from Sam.

"Q Just answer my question. Did you tell him about your family? A Yes, I did.

"Q Did Sam tell you to tell him that you had twins?

"A Sam said, Tell him you have a wife and children.

"Q Did he give you the names of Essie and David to give to Brothman? A Sam left the details to me.

* * *

"Q You also told him rather intimate details about your two non-identical twins, Essie and David, is that true?

"A That was on orders from Sam, who said, Dress it up." (Tr., November 20, 1950, p. 821.)

"Q Did you not also tell details of your wife and family, this fictitious wife and family, to the young ladies who worked for Messrs. Quick? A I never volunteered any details. On occasion I would be asked and I would answer. I would have to keep up this web of lies in which I had become enmeshed.

"Q But you told it to a great many people, didn't you? A A great many people know of it.

"Q And you started building up and telling more lies from 1946 on, until you left the Abe Brothman Associates in 1948; is that right? A That is not exactly it.

* * *

"THE WITNESS: Here is the point. Over a period of eleven years or rather - the relationship with Abe was the only one of all the Americans I knew and who gave me information for the Soviet Union, the only one where it was permitted to deteriorate, and that they became aware of my true identity. They all knew me by a name, Martin, Raymond, any old thing. They didn't know where I lived, they didn't know who I was. Some of them had an idea I was a chemist. Abe was the only case where this relationship had deteriorated to the extent that when I came to work for him and not until I came to work for him, I asked him, 'What do you think my true name is?' And he said 'Frank Kessler'. I said 'No, it is Harry Gold'. By this time I had become so tangled up in this web of lies that it was easier to continue telling an occasional one than to try and straighten the whole hideous mess out. It is a wonder steam didn't come out of my ears at times --"
(Tr., November 20, 1950, pp. 830-31.)

"Q But if you and Abe Brothman had been working together for a common end, as you told us, why did you not tell him then, 'Abe I am sorry, all this nonsense about having a wife and children was pure fabrication'?
A Because there was so much that had to be straightened out, that it was far easier to continue the fiction. The reason that I was told to give the fiction and to continue it was that one sad experience in the past when I had shown myself as a single man and the person involved had not been very cooperative, he thought I was too unstable; so that was the reason for the fiction - one of the reasons."
(Tr., November 20, 1950, p. 836.)

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8. Gold also testified at the Brothman trial about his conduct at the time of his arrest, as follows:

> "When I was arrested or rather went into voluntary custody, it was as if there was a mountain in front of me. I fought desperately for time for a week. When the jig was up, I said 'Yes, I am the man to whom Klaus Fuchs gave the information on atomic energy.' But I wasn't going to squeal. I wasn't going to inform. I was going to take the whole - I was simply going to admit what happened with Fuchs. I was going to cover everything up, Sam's identity, everything. I was just going to admit, go before the Judge, say, 'I am guilty,' and let happen what may. There was this mountain in front of me. When I saw my brother, part of the mountain came down. When I saw my father, the rest of the mountain came down." (Tr. November 17, 1950, p. 748)

> "[When the F. B. I. began to question Gold in May, 1950] THE WITNESS: I acted exactly as I decided upon. First, I decided that since Fuchs had already disclosed many of the facts involving our espionage activities, that I would confess completely to my activities with Dr. Fuchs, but that I would not reveal the names of any of my Soviet superiors or anything that I knew about them, and I would not reveal anything about any of my American contacts. In other words, I would, as they say, take the rap myself."

> "I decided that because I wanted to spend as much time with my family as possible and to keep them in ignorance of what I had done, that I would fight for time, and also I wanted as much time as possible to complete the work in the Heart Station, or to get it in as good a shape as possible. That was my course of action and I stuck to it."

"Q You had many reasons then for taking this course of action. Was one of the reasons an effort to save your own life? A Yes, I made full -- the very first statement that I made to the FBI was, 'Yes, I am the man who got information on atomic energy from Dr. Klaus Fuchs.'

"Q Was that not only after you had denied being west of the Mississippi, and they put it to you that you had been in Santa Fe; isn't that right?

"A That is correct.

"Q And it was only then that you admitted your complicity with Dr. Fuchs? A It was then, and I did it for a very good reason. The reason was this: the evidence at that time was purely circumstantial -- purely circumstantial -- and I realized that I could possibly fight this thing. --

"Q You mean lie your way out?

"A That is correct. I realized that I could possibly fight this thing, and I knew if I did that my father and brother, all of my boyhood friends, would rally around me, all of the people at the Heart Station, Dr. McMillan, Dr. Bellet and Dr. Steiger, who trusted me and who had faith in me, would rally around me, but I knew that once the FBI began to probe into the hideous snarl that was my life, once they pulled one thread, the whole horrible skein would become untangled and inevitably -- I knew that inevitably I would be exposed. So I made my choice because I didn't want these people who would rally around me to be so terribly disillusioned.

"Q Yes, but you did not make your choice immediately, did you? A I made it -- I take exception to that, and here is what happened.

* * *

"A I said, 'Yes I am the man to whom Klaus Fuchs gave the information on atomic energy.' And I sat down in a chair in my home, and the FBI men gave me a cigarette and I asked for one minute during which - - and they gave it to me - - during which a thousand things went through my mind, and I didn't even need that minute to come to the decision.

"Q Did you at first deny that you had been west of the Mississippi? A I had denied that the week before.

"Q Beginning with the first time that the FBI spoke to you, at that time you denied any knowledge of Dr. Fuchs; is that right?

"A I stated before that for a whole week I fought desperately for time.

"Q You fought to save your life, didn't you?

"A I fought desperately for time with my family, and I fought desperately for time to complete the work at the heart station.

"Q Would you lie to save your life? A Now? No.

"Q I didn't ask you about now. Would you lie to save your life when you spoke to the FBI in May of 1950?

"A In May of 1950 I lied desperately." (Tr., November 21, 1950, pp. 921-24)

9. In United States v. Harry Gold et al., E.D. Pa., C. 15769, Hon. James P. McGranery sentenced Harry Gold to a 30 year prison term on December 9, 1950. The following are excerpts from the sentencing proceedings held two days earlier, December 7, 1950:

"[Judge McGranery:] I think it is very important for me to say, there has been some view that has gone abroad that this case probably was first exposed by Fuchs. That is not true. This matter was uncovered by the Federal Bureau, and Fuchs, as a matter of fact, as I understand it, had never co-operated in any way, shape or form until after the arrest of Harry Gold.

"Am I correct in that?

"[FBI Agent T. Scott Miller, Jr.:] I think the statement is, Your Honor, that the identification of Harry Gold's picture was not made until after Gold signed a confession.

"THE COURT: The point that I make is that Fuchs had never co-operated with the Federal Bureau. I am told that by both the Attorney General and Mr. Hoover.

"MR. MILLER: That is correct, sir."

* * *

"[Judge McGranery:] I had my own privately conducted investigation made. I want to assure Mr. Hamilton [Gold's attorney] that among other things we did have a psychiatric examination made of the defendant, and you need have no fear as to his mental situation."
(Transcript, December 7, 9, 1950, pp. 132-33.)

10. In the May 1951 edition of the Reader's Digest, on pages 149-68, appeared an article entitled "The Crime of the Century" by J. Edgar Hoover. The following are excerpts from the said article:

"Dr. Fuchs disclosed that while in the United States he had dealt with one Soviet agent only. The man's name? Fuchs had never known the agent's name. The man appeared to know chemistry and engineering but was not a nuclear physicist. Fuchs thought he was probably not an employe [sic.] of an atomic-energy installation.

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"What did the man look like? Well, he was from 40 to 45 years of age, possibly five feet ten inches tall, broad build, round face, most likely a first-generation American. A description which might fit millions of men!" (p.159).

"Our hopes were high as photographs of Gold were flown across the Atlantic to Dr. Fuchs. The wan prisoner squinted at the American's round face and bushy hair. Then he shook his head. No, he declared, Harry Gold was not his American confederate." (p. 164).

"Even after he [Harry Gold] confessed, he continued for a while to fabricate. To his credit, however, I must say that ultimately he poured out the whole story." (p. 167).

11. In 1955, there was published a book entitled "The Judgment of Julius and Ethel Rosenberg," authored by John Wexley and published by Cameron & Kahn, New York. In the forefront of the book is a page captioned "Acknowledgments," on which the following appears:

"To attorneys Howard Meyer and Benjamin Dreyfus, for their assistance with legal documents."

12. The following are excerpts taken from the Wexley book:

"It will be shown by official records in a later chapter that Greenglass and Gold were lodged together for many months on the 'eleventh floor' of the Tombs (the New York City prison), where they had complete freedom to confer because of the dormitory arrangement instead of cells." (p. 13).

"For example, we have been told that Fuchs definitely named Harry Gold as his chief courier. Yet the official facts disclose that Fuchs never named anyone -- Gold or anyone else. He could not even describe Gold or identify his photographs. Indeed, he identified the photos of a New York engineer whom J. Edgar Hoover has referred to as 'James Davidson,' and who was completely cleared of any suspicion." (p. 20).

"In Dr. Fuchs' account not one of all his many intermediaries is known to him -- either by name or description -- and, as we shall see, not even his so-called American confederate, Harry Gold." (p. 29).

"[After quoting Mr. Hoover's Reader's Digest statement concerning Fuchs' description of his American courier, supra:] Although Mr. Hoover readily acknowledges the vagueness of this description, let us compare it with that of Gold, such as it is. In Fuchs' description, his courier was a man of broad build, 5 feet 10 inches tall. But Harry Gold, according to Mr. Hoover's article, is a 'little, five-foot six-inch' man! According to Fuchs the courier was 40 to 45 years old. But in the period 1944-45, when Fuchs is supposed to have met with Gold, the latter was only 34 or 35 years old!" (p. 33)

"Not only is he [Fuchs] unable to describe Gold correctly but, according to the Joint Report, even when the FBI showed him various photos of Gold, he still could not 'recall having seen the individual pictured.' In fact, we learn that Dr. Fuchs identified a totally different person!" (p. 33).

"There were other striking features about the Brothman trial . . . .

"For four and one-half days of the one-week trial Harry Gold was on the witness stand and it is from his own direct examination and cross-examination that we have the astounding tale of his roommates, courtship, honeymoon, marriage, children, separation and divorce as recounted to Brothman, to fellow employees, to friends and acquaintances over a period of six years. Here, culled from the Brothman trial record, are the highlights as Gold told them 'in intimate detail':

* * *

"In the year 1935 Gold's 'wife' gave birth to twins . . . ."(P. 44).

"Returning to the standard definition given by psychiatry to 'psuedologia phantastica' or the pathology of abnormal lying, we recall that the imposter achieves through fraud and deception those elements of love and affection which he lacks in real life . . . .

"All through the story of Gold's alleged spy career there is the unmistakable evidence of his acting out his phantasies as a compensation for his barren emotional life." (pp. 47-48).

"At the Rosenberg trial, we will see how the same Mr. Saypol produces still another small white card (the Hotel Hilton registration card), this one purporting to be the only concrete evidence that Gold had ever visited Albuquerque. And this card too will be seen to have all the suspicious earmarks of convenient prearrangement." (p. 59).

"After they had handcuffed Sobell and led him off to the Laredo jail, Inspector Huggins chatted a moment with one of the FBI agents. Then, returning to his desk to pick up the 'manifest,' he took out his pen and carefully wrote on 'the bottom of the face side of the card' (Sobell's signature was 'on the reverse side'), the three words

' DEPORTED FROM MEXICO'

"According to Huggins' own testimony at the trial, he admitted having no basis or authority to make this highly damaging notation and that he knew that Sobell had not been deported in any sense of the word, whether officially or otherwise. Nevertheless, Judge Kaufman permitted this 'spurious' notation to be admitted into evidence. And since the jury knew nothing whatsoever about the brutal details of the kidnaping, it assumed quite naturally that Sobell had been arrested, extradited and deported from Mexico in complete accordance with the law." (p. 169).

"What possible reason was there for Gold and Greenglass to be lodged in the same prison unless it was for the express purpose of their collaboration?

* * *

"On the basis of the disclosures quoted above, one can readily visualize the activities of these two bunkmates lolling about the dormitory up there in 'Singers' Heaven' all through the latter half of 1950, and throughout January and February of 1951; indeed, up to the very moment they testified in March." (p. 205).

"But here it is necessary to pause and analyze the two crucial points just emphasized:

1. That Gold registered needlessly at the Hotel Hilton on Sunday morning, after having spent Saturday night in the rooming house, and with no intention of remaining in town over Sunday night.

2. That Gold registered needlessly and dangerously under his true name.

"With regard to the first point, it may be stated that there was absolutely no logical reason for Gold to register except the one we have indicated, namely, that the prosecution had no documentary evidence to corroborate Gold's claims, and that it felt it necessary to produce a hotel registration card in order to prove his presence in Albuquerque." (p. 385).

"At the conclusion of Gold's testimony the record shows another significant fact about this supposedly authentic hotel card. When Saypol introduced it as Government Exhibit 16, he was very careful not to present the original card, but rather a photostatic copy. His excuse was that he had 'the original on the way, together with a witness if required,' and that time would be saved if the defense would accept it as a genuine copy.

"In this manner he avoided the danger that the defense might summon document experts and examine the card for traces of forgery. With a photostatic copy it would be impossible for such experts to examine the age of the ink or paper as they could with an original." (p. 389).

"In our examination of the ensuing testimony we come to another phase of the prosecution's purpose in introducing Government Exhibit 16, Gold's alleged hotel registration card dated June 3, 1945.

"Why was this particular date so important for the prosecution to establish? Because it had to synchronize with another date, namely an Albuquerque bank record of Ruth Greenglass which showed that she had deposited a sum of $400 on June 4, 1945." (p. 400).

"Since the record does not show what address Gold put down on the card, this writer initiated an inquiry as to this point. The results uncovered the fact that the prosecution had prepared two photostats of two registration cards, one for June 3 and one for September 19, 1945. The photostat of the September 19 card was not introduced in evidence and is not mentioned or referred to in the record. However, it furnishes almost conclusive corroboration of our thesis explaining why the Hotel Hilton in Albuquerque was chosen. Because it turns out that Gold's alleged registration card of September 19 was also at that hotel, despite the fact that he had no reason to be in Albuquerque on that date!" (p. 407).

"By way of a postscript to Gold's testimony, there is the question of why Mr. Bloch decided not to cross-examine him, despite the prosecution's insistence that he was the 'necessary link' in the so-called chain of guilt around the Rosenbergs. The question has been posed to this writer by not a few laymen and therefore bears mentioning in more than a lengthy footnote.

"In a series of interviews this writer had with Emanuel Bloch the problem was frequently discussed in all its ramifications. The attorney explained his decision as follows:

"That in a legal sense Gold had never actually connected Julius Rosenberg with the alleged Yakovlev-Gold-Greenglass conspiracy. That even if one believed Gold's testimony regarding his visit to the Greenglasses his claim was that his half of the Jello box had been given to him by Yakovlev and not by Julius Rosenberg. That although Gold had included the name of a 'Julius' in his password it was not that of Julius Rosenberg and therefore could have been that of any other person or a fictitious name. That Gold never claimed to have met the Rosenbergs or even to have heard about them as members of the alleged conspiracy. And that, in view of these circumstances, it would have been contrary to

all established criminal court strategy -- indeed, sheer folly -- to have challenged Cold in cross-examination and thereby invited that glib and agile witness to involve the Rosenbergs 'spontaneously'.

"In discussing Mr. Bloch's decision and reasons with other attorneys this writer found that the majority sided with Bloch's opinion. . . . "(p. 412).

13. In 1956, Malcolm P. Sharp , one of petitioner's present attorneys, publiched a book entitled 'Was Justice Done?", Monthly Review Press, New York. The following are excerpts from that book:

"The appearance in 1955 of two thoughtful books on the subject -- William E. Reuben's The Atom Spy Hoax and John Wexley's The Judgment of Julius and Ethel Rosenberg -- led me to reconsider carefully the thesis of this book. On reexamination, the theories of these recent books and the theory of this book seem to supplement rather than to contradict each other; though on the information available to me, I consider the theory presented here somewhat preferable to the others. My review of the recent books, both of which are strongly recommended to the interested reader, appears as Appendix 4." (Author's Preface, pp. XXXIV -- XXXV).

"The record of the trial became generally available to the public as a result of its publication and sale by the Committee to Secure Justice for the Rosenbergs. Study of the record did not seriously shake my confidence in the verdict or in the decision of the Court of Appeals. . . . The trial appeared to have been fairly conducted, and the opinion of the Court of Appeals explaining its judgment affirming the conviction still seemed persuasive." (p. 9).

14. At a hearing before the Senate Internal Security Subcommittee on the Scope of Soviet Activity in the United States, 84th Cong., 2d Sess., held on April 26, 1956, there was introduced into evidence as Exhibit No. 280 a report entitled "The Circumstances Surrounding My Work as a Soviet Agent" by Harry Gold. The following are excerpts of that report, published by the United States Government Printing Office in 1956:

> "[On May 22, 1950,] . . . I went into voluntary custody. . . . So I was taken to the Widener Building, and the now-familiar fifth floor, and there I told the full story of my relationship with Klaus Fuchs in every detail (even this took 4 or 5 hours), but I covered up Slack and Black and Brothman and the story of Smilg -- the David Greenglass incident I had actually completely forgotten about." (p. 1083-84).
>
> "Greenglass I had met only twice, both times in Albuquerque, on the first Sunday in June of 1945: once for 15 minutes in the morning, and then for 5 minutes in the afternoon. As has been said before, until some time after my arrest, all memory of this incident had fled from me (probably this was because Yakovlev had subsequently -- and with intent to mislead -- told me that the information received was of no value). And I had forgotten the man's name completely. But I had remembered many things: the fact of my shock at discovering that he was a GI and a noncom; that his bride had just a few months ago, in April, joined him; the location of his apartment in Albuquerque; the fact that he was either a mechanic, an electrician, or a physicist's helper on Los Alamos -- in order of probability; that he had a small salami and a pumpernickel loaf sent to him from New York every week; the [illegible] I had given him (it was discovered later that the very day after my visit, he had deposited

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> $400 of this sum in an Albuquerque bank); the appearance of the house, in which was his tiny apartment, plus a description of the street; plus an accurate physical delineation of Dave and his wife; plus a fragment of conversation concerning a 'Julius'; plus a great deal more.[14] And so, in less than 2 short weeks, a positive identification was made . . . .
>
> "14 But for the life of me, I could not recall David Greenglass's name. So this was done: A list of some 20 last names was selected; first we eliminated the least likely 10; then we cut the list further; finally a group of the 3 most likely was chosen, and lo, Greenglass's was at the top. For his wife's name we did likewise and again 'Ruth' headed the list." (p. 1085).

15. I have compared the above quotations with the original source from which they were taken and I certify that they are in all respects accurate.

ROBERT L. KING
Assistant United States Attorney

Sworn to before me this
11th day of July, 1966.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORTON SOBELL,

Petitioner,

- against - 66 Civ. 1328

UNITED STATES OF AMERICA,

Respondent.

POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER'S APPLICATION FOR AN EVIDENTIARY HEARING PURSUANT TO 28 U.S.C. 2255

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100-37158-2339

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Introductory Statement

In preparing this memorandum of points and authorities, petitioner has not had the benefit of any answering papers or memorandum for respondent and, accordingly, respectfully reserves the right to submit additional memoranda if he deems it necessary.

Statement of the Case

On May 9, 1966, petitioner, pursuant to Title 28, U.S.C. §2255, moved for an evidentiary hearing, and, upon the hearing, for an order vacating and setting aside the sentence and judgment of conviction on the grounds that his conviction was unjustly and illegally procured, in violation of the Constitution and laws of the United States, in that the prosecuting authorities, among other things, knowingly created, contrived and used false, perjurious testimony and evidence, induced and allowed government witnesses to give false testimony, suppressed evidence which would have aided petitioner, impeached the prosecution's case and exposed the falsity thereof, and made false representations to the court.

On May 13, 1966, the return date of the aforesaid motion, the attorneys for petitioner and respondent appeared before Hon. Marvin E. Frankel, United States District Judge,

at which time petitioner's application for an evidentiary hearing was set down for June 20, 1966.*/

Petitioner is presently detained in the United States Penitentiary at Lewisburg, Pa., and has been continuously in federal custody since August of 1950.

Prior Proceedings

On January 31, 1951, an indictment was returned against petitioner charging in a single count that he had conspired with others to transmit to the Union of Soviet Socialist Republics "documents, writings, sketches, notes and information relating to the national defense of the United States", all in violation of Title 50, U.S.C.,§34.**/

Petitioner, together with co-defendants Julius and Ethel Rosenberg, was subsequently tried in this district before a judge and jury. On April 5, 1951, following his conviction, a sentence of thirty years was imposed upon him pursuant to the wartime provisions of the statute.

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*/ After the setting of this date by the court at respondent's request, petitioner's motion to be brought to New York, New York, to inspect certain material, was granted. Because of this, the numerous required consultations between him and his counsel resulted in a necessary revision of the time schedule previously established.

**/ Repealed June 25, 1948, c. 645, §21, 62 Stat. 862, eff. September 1, 1948, now covered by §§792 and 2388, Title 18, U.S.C.

On February 25, 1952, the United States Court of Appeals for the Second Circuit, one judge dissenting, affirmed the judgment of conviction. 195 F.2d 583, 609-611. A subsequent petition for a writ of certiorari was denied by the United States Supreme Court on November 17, 1952. 344 U.S.838, 889.

Since his conviction, petitioner has instituted several collateral proceedings pursuant to Rule 35 of the Federal Rules of Criminal Procedure and 28 U.S.C. 2255. In none of these was a single issue in the within petition raised, presented or litigated. Moreover, petitioner was never granted an evidentiary hearing in connection with any such application.

The Theory of the Prosecution

The theory of the government's case was that a single large conspiracy to commit espionage existed for the purspose of transmitting classified information to the Soviet Union in which petitioner, his co-defendants, David and Ruth Greenglass, Harry Gold, former Soviet Vice-Consul Anatoli A. Yakovlev and German-born scientist Klaus Fuchs, were involved. According to the government, Gold's role in this conspiracy was to serve as the sole courier between Yakovlev, Fuchs and the Greenglasses. At petitioner's trial, Gold, as an obvious stand-in for Fuchs, testified freely as to his courier function with him in order to lend credence to his false

claim of an alleged meeting with David and Ruth Greenglass in Albuquerque, New Mexico, on June 3, 1945, at which time he supposedly received atomic bomb data from them for transmission to Yakovlev.

The Present Motion

The present motion and supporting papers charge that:

1. The prosecution knowingly, wilfully and intentionally introduced false and perjured testimony and false, fraudulent and forged documentary evidence to establish that Harry Gold was present in Albuquerque, N.M. on June 3, 1945. In so doing the prosecution well knew that Harry Gold was not in Albuquerque on the aforementioned date and did not there meet with David and Ruth Greenglass.

2. The prosecution knowingly, wilfully and intentionally suppressed evidence which would have impeached this false testimony and would have disclosed its knowledge of the falsity of the evidence. Among other things, it suppressed its contrivance of false evidence eventually presented at the trial by Harry Gold.

3. The prosecution knowingly, wilfully and intentionally, and with knowledge that Harry Gold was an acknowledged and proven pathological liar, concealed same from the court and jury and unqualifiedly represented and vouched for his complete credibility.

4. The prosecution knowingly, wilfully and intentionally created and contrived the aforesaid false, perjurious testimony and false, fraudulent and forged documentary evidence to conform to the confession of Dr.Klaus Fuchs, who, in January of 1950, had confessed and subsequently pleaded guilty to having violated the British Official Secrets Act by transmitting theoretical data relating to atomic energy to the Soviet Union.

5. The prosecution, in order (a) to prevent petitioner and his co-defendants from ever viewing the original of a crucial government exhibit (hereinafter referred to as Exhibit 16), and (b) to prevent the exposure of its fraud and forgery in connection therewith, arranged for its totally premature and unorthodox disposal and destruction shortly after petitioner's trial and long prior to the argument of his appeal.

The Facts

The substance of the false testimony of Harry Gold as to the alleged meeting with David and Ruth Greenglass in Albuquerque, N.M., on June 3, 1945, was as follows:

> 1. Some time in May of 1945, Yakovlev instructed Gold to see Greenglass. He gave Gold an onionskin paper bearing the name and address of Greenglass which also had typed thereon the words, "Recognition signal. I come from Julius." (R.822) */

*/ All references are to the designated page or pages of the printed Transcript of Record.

2. At the same time he was given a piece of cardboard which appeared to have been cut from a packaged food product in an odd shape, and was told that Greenglass would have the matching portion thereof. (R. 822).

3. He was also given an envelope allegedly containing $500 and was instructed to transmit it to Greenglass (R. 822).

4. He identified a purported reproduction of the cardboard side of a food package previously cut and shaped by Greenglass during the course of the trial as similar to the one purportedly given to him by Yakovlev in 1945 (R. 823).

5. After allegedly visiting Dr. Fuchs in Santa Fe on June 2, 1945, he left by bus for Albuquerque, and, at 8:30 that evening, he visited the Greenglasses' residence but failed to find them at home (R. 824).

6. He spent the night in the hallway of a rooming house and in the early morning of June 3, 1945, registered under his own name at the Hotel Hilton. Thereafter, at approximately 8:30 a.m. he returned to the Greenglass residence (R. 825).

7. Gold there stated to Greenglass, "I came [sic] from Julius" (R. 825).

8. He next brought out his cardboard piece and matched it with that produced by Greenglass (R. 825).

9. Gold then identified himself as "Dave from Pittsburgh" (R. 826).

10. After introducing Gold to his wife, Greenglass told him "that he had not expected me right on that day, but that nevertheless he would have the material on the atom bomb ready for me that afternoon" (R. 826).

11. When Mrs. Greenglass went into the kitchen to prepare some food, Gold gave Greenglass the envelope containing the $500 (R. 826).

12. Gold was instructed to return to the Greenglass residence at "3:00 or 4:00 o'clock in the afternoon" to receive the atomic bomb information. Before leaving he was told by Mrs. Greenglass that she had spoken to Julius "just before she had left New York to come to Albuquerque" (R. 826).

13. This meeting took "about 15 minutes" (R. 827).

14. Gold returned at about 3:00 o'clock, received an envelope containing "the information on the atom bomb" from Geenglass who informed him that he expected a furlough around Christmas time and "if I wished to get in touch with him then I could do so by calling his brother-in-law Julius, and he gave me the telephone number of Julius in New York City." (R. 827).

15. Immediately after this visit, which took 5 minutes, Gold left Albuquerque by rail (R. 828).

16. The material which he had received from Greenglass, consisting of "three or four handwritten pages plus a couple of sketches", he gave to Yakovlev at a prearranged meeting in Brooklyn on the evening of June 5, 1945 (R. 829).

The Fraud

The theme of the fraud connecting Fuchs with Gold and Gold with Greenglass and thereby implicating the Rosenbergs and petitioner, rested and depended upon the fraudulent claim of the above June 3rd meeting. Its importance is underscored by the stress laid thereon by the prosecutor in his summation and, the judge relying thereon, in his charge. See

Petition, Paragraphs 15-17. In part, this fraud was manifested as follows:

1. The Forged Hotel Hilton Registration Card

In order to establish the false fact that Gold had registered at the Hotel Hilton on the morning of June 3, 1945, respondent introduced Exhibit 16, a supposed photostatic copy of an alleged original Albuquerque Hilton registration card.

a. At the time of the introduction of Exhibit 16, respondent knew that this document had, at its inducement and suggestion, been falsely created and contrived by it and those active in concert therewith.

b. Notwithstanding this knowledge, respondent represented the authenticity of Exhibit 16 and thereby seduced defense counsel into stipulating to its introduction into evidence.

c. Exhibit 16 is a false, fraudulent, forged and after-contrived document and is not, as respondent well knew, a registr tion card signed by Gold on June 3, 1945 at the Albuquerque Hilton and kept by that hotel in the regular course of its business. Among other things establishing its falsity:

(1) Exhibit 16 bears an electronic date-time stamp purporting to show that a registration took place at 12:36 p.m. on June 4, 1945, when Gold, according to his testimony at the trial, was already en route to New York for a

pre-arranged meeting with Yakovlev.

(2) Exhibit 16 contains absolutely no identifying initials of any FBI agent, in marked and significant contrast to every other exhibit obtained by the FBI and introduced into evidence at the trial and in contradiction to uniform identification procedures employed by that agency.

(3) Exhibit 16 contains no date of receipt by FBI agents, in marked and significant contrast to every other exhibit obtained by the FBI and introduced into evidence at the trial, and in contradiction to uniform identification procedures employed by that agency.

(4) The original of Exhibit 16 was allegedly returned by the Department of Justice to the Hotel Hilton shortly after petitioner's trial and long before his appeal was ever argued in the United States Court of Appeals for the Second Circuit.

(5) The original of another alleged Hotel Hilton registration card in the name of Harry Gold, not used at the trial, was retained by the Department of Justice for nine years after the trial, and then destroyed "in the normal course of operations" on February 11, 1960.

(6) Mrs. Elizabeth McCarthy, a handwriting and document expert who regularly examines questioned documents for the Boston and Massachusetts State Police, has stated, as would any such expert, that "it is difficult in a case of this kind for a document expert to arrive at a definite, conclusive opinion from a study of photostats or photographs alone. A detailed microscopic study of the originals is necessary before a final opinion can be reached." The incredible destruction

of the original of Exhibit 16 of itself establishes the prosecution's knowledge of its spurious nature and, in any event, raises a presumption as a matter of law of its forged nature. It is to cover situations of this sort that the common law maxim of contra spoliatorem omnia praesumuntur was evolved over the centuries.

2. The Misrepresentation and Concealment as to Harry Gold

Moreover, with full knowledge that Harry Gold was an acknowledged and proven pathological liar, respondent offered him as its main and indispensable witness, representing and vouching for his complete credibility. In so doing, it concealed from the court and jury that:

a. It had felt compelled to submit him for psychiatric observation and testing.

b. He had testified in open court that he had lied before a federal grand jury.

c. He had admitted to his attorneys:

(1) that he had lied before another grand jury and,

(2) that he had for years woven a series of complete fantasies about a non-existent family.

d. He had, in pre-trial statements made to his attorneys, given information wholly inconsistent or at variance with his eventually anticipated testimony at the trial.

e. He had been subjected to untold hours of

preparation with and inducement by respondent and those acting in concert therewith, during which time his ultimate testimony was evolved and contrived. His attorneys only received the product of this preparation as it evolved and changed, hence requiring him to relate his story to them from notes previously drawn in conjunction with this process.

3. Conclusion

In its totality, the above new evidence, obtained since the trial, clearly and conclusively entitled petitioner at the very least to an evidentiary hearing thereon.

Statutes Involved

Title 28, U.S.C., §2255, provides in relevant part:

§2255. Federal custody: remedies on motion attacking sentence.

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

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

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause

notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

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

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

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

Points and Authorities

I. The Substantive Grounds for Relief Set Forth in the Present Petition Are Authorized by 28 U.S.C. 2255

At the outset, counsel wish to make it quite plain that the issue before this court is not the ultimate facts but petitioner's unqualified right to an evidentiary hearing. Petitioner's innocence (which he has steadfastly maintained) or guilt as to the charges against him, or even the probabilities of his eventual success or failure in proving the truth of the factual allegations contained in this

motion are totally irrelevant to the matter at hand. The sole question before this court is whether, according to 28 U.S.C. 2255, "the motion and the files and records of the case conclusively show that [he] is entitled to no relief...." (emphasis supplied) Clearly, from the new facts presented by him, this cannot be held to be the case.

A. 28 U.S.C. 2255 affords the identical grounds for relief from a judgment of conviction as were formerly available by writ of habeas corpus.

It is now clear that a motion under 2255 is exactly commensurate with that previously available to federal prisoners by way of habeas corpus. For all practical purposes the motion and the writ are one and the same. United States v. Hayman, 342 U.S. 205; Hill v. United States, 368 U.S. 424; Sanders v. United States, 373 U.S. 1; Smith v. United States, 270 F.2d 921; Longsdorf, The Federal Habeas Corpus Acts, Original and Amended, 13 F.R.D. 407, 424 (1953).

Thus, in considering petitioner's right to an evidentiary hearing, we must, as Mr. Justice Brennan reminded us in Fay v. Noia, 372 U.S. 391, "bear in mind the extraordinary prestige of the great writ, habeas corpus ad subjiciendum, in Anglo-American jurisprudence: 'the most celebrated writ in the English law'. 3 Blackstone Commentaries, 1929" As the majority put it:

"It is no accident that habeas corpus has time and again played a central role in national crises, wherein the claims of order and of liberty clash most acutely, not only in England in the 17th century, but also in America from our very beginnings, and today. Although in form the great writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. Thus there is nothing novel in the fact that today habeas corpus in the federal courts provides a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office."
(at p. 402)

In discussing some of the arguments raised against the Supreme Court's consistent holding in habeas corpus cases that federal court jurisdiction is conferred by the allegation of an unconstitutional restraint and is not defeated by anything that may or may not have occurred in the state court proceedings, Mr. Justice Brennan referred specifically to the right to a hearing. His language deserves great consideration insofar as the present application is concerned:

"A number of arguments are advanced against this conclusion. One, which concedes the breadth of federal habeas power, is that a state prisoner who forfeits his opportunity to vindicate federal defenses in the state court has been given all the process that is constitutionally due him, and hence is not restrained contrary to the Constitution. But this wholly conceives the scope of due process of law which comprehends not only

the right to be heard but also a number of explicit procedural rights ...." (emphasis supplied) (at p. 427)

In order to eliminate the "backing and filling" */, which it had found so objectionable in federal habeas corpus, from the field of motions under §2255, the court, five weeks after its landmark opinion in Noia, decided Sanders v. United States, supra. In that case, involving a third such motion, the court expressly held that the remedy provided by §2255 was exactly commensurate with that previously available by federal habeas corpus.

> "As we said just last Term 'it conclusively appears from the historic context in which §2255 was enacted that the legislation was intended simply to provide the sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in the court of the district where the prisoner was confined.' Hill v. United States, 368 U.S. 424, 427, 82 S.Ct. 468, 471, 7 L.Ed. 2d 417" (at p. 14)

In deciding Sanders, the Court laid down a series of criteria relating to the breadth, use and function of 2255 motions. In addition to its "exactly commensurate" status with federal habeas corpus, they are as follows:

(1) res judicata is inapplicable to 2255 proceedings.

(2) no controlling weight may be given to the denial of a prior 2255 application unless the same ground

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*/ Fay v. Noia, supra, at 412.

presented in a subsequent application was determined adversely to applicant after a hearing on the merits.

(3) doubts as to whether two grounds of successive 2255 applications are different or the same should be resolved in favor of applicant.

(4) notwithstanding the number of prior applications for 2255 relief, the presentation of a new ground or one that has never before been litigated on the merits in a new application clearly entitles an applicant to an evidentiary hearing.

(5) in seeking to avoid an evidentiary hearing, the government has the burden of showing that there has been an abuse of the motion remedy by the applicant.

(6) the sentencing court cannot, when facts are presented in a 2255 motion which are outside the record, deny it on the ground that the files and records of the case conclusively showed that an applicant was entitled to no relief.

(7) The sentencing court has no power to deny a 2255 motion without an evidentiary hearing unless the allegations areso clearly frivolous as to be deemed an abuse of the remedy, or they can be conclusively determined from the files and records of the case:

See also, Waugaman v. United States, 331 F.182 and cases cited therein; Marchese v. United States, 304 F.2d 154, vacated and remanded, 374 U.S. 101; Bone v.United States, 305 F.722,

vacated and remanded, 374 U.S. 503; Harth v. United States, 330 F. 198; United States ex rel Smith v. Baldi, 344 U.S. 561 (dissenting opinion); Haier v. United States, 334 F.2d 441; Stone v. United States, 58 F. 503; cf. Malone v. United States, 299 F.2d 254, cert. den. 371 U.S. 863.

As has been indicated above and documented in petitioner's moving papers, he has presented numerous new and significant factual grounds to form a sufficient legal basis for granting the relief sought by the applicant. In Sanders, Mr. Justice Brennan, in discussing the Court's definition of the word or term "ground" stated as follows:

> "For example, the contention that an involuntary confession was admitted in evidence against him is a distinct ground for federal collateral relief."
>
> (at p. 16)

Can it be legitimately or logically denied that the admission of a forged document in evidence is any less a "distinct ground for federal collateral relief" than that of an involuntary confession? Merely to raise the question, is, of course, to answer it.

In Machibroda v. United States, 368 U.S. 487, petitioner's motion alleged that he had been induced to plead guilty to two charges of bank robbery by the promises of the prosecutor as to the lengths of the sentences that would be imposed upon him. The motion was denied by the sentencing court without a hearing.(184 F. Supp. 881) and affirmed,

per curiam, by the Court of Appeals for the Sixth Circuit, (280 F.2d 379). In vacating and remanding, the Supreme Court clearly stated that the failure to grant a hearing on "on controverted issues of fact" was at the heart of its decision.

In Mr. Justice Stewart's words:

> "This was not a case where the issues raised by the motion were conclusively determined either by the motion itself or by the 'files and records' in the trial court. The factual allegations contained in the petitioner's motion and affidavit, ... related primarily to purported occurrences outside the courtroom and upon which the record could therefore case no real light. Nor were the circumstances alleged of a kind that the district judge could completely resolve by drawing upon his own personal knowledge or recollection.
>
> "We cannot agree with the government that a hearing in this case would be futile because of the apparent lack of any eye-witnesses to the occurrences alleged, other than the petitioner himself and the assistant United States attorney. The peitioner's motion and affidavit contain charges which are detailed and specific. It is not unreasonable to suppose that many of the material allegations can either be corroborated or disproved by the visitors' records of the county jail where the petitioner was confined, the mail records of the penitentiary to which he was sent and other such sources. 'Not by the pleadings and the affidavits but by the whole of the testimony must it be determined whether the petitioner has carried his burden of proof and shown his right to a discharge. The government's contention that his allegations are improbable and unbelievable cannot serve to deny him an opportunity to support them by evidence. On this record it is his right to be heard.'
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> Walker v. Johnston, 312 U.S. 275, at 287, 61 S. Ct. 574, 579.
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> * * * * * *
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> "There will always be marginal cases, and this case is not far from the line. But the specific and detailed factual assertions of the petitioner, while improbable, cannot at this juncture be said to be

incredible. If the allegations are true the petitioner is clearly entitled to relief. Accordingly, we think the function of 28 U.S.C.A. §2255, can be served in this case only by affording the hearing which its provisions require."

(at 495-496)

In Stone v. United States, supra, a 2255 motion was filed by the petitioner based upon the ground that he was not mentally competent at the time of his plea and sentencing. Subsequent to the filing of this motion, the district court entered an order denying it without an evidentiary hearing "on the ground that the record conclusively showed that appellant was entitled to no relief." (at 505) Petitioner then filed other 2255 motions each raising the same ground and each being denied in turn as a successive motion for similar relief under the statute. In reversing and remanding for a full evidentiary hearing, the Ninth Circuit held that the lower court had erred in denying petitioner's first motion without a hearing on the ground that his competency to stand trial was not reviewable by motion under §2255.

As the court put it:

"The petition presents a substantial factual issue going to the integrity of the judgment under which appellant may be denied his liberty for the greater part of his life. Since we have concluded that no legal bar prevents the resolution of this issue on its merits, we believe -- as the district court would doubtless have agreed had it shared our view of the law -- that the ends of justice would be served by reaching the merits of that issue."

(at 508)

In his motion petitioner has made substantial factual allegations, which, if true, go directly, to use the phraseology of the Ninth Circuit, "to the integrity of the judgment" under which he has been denied and will in the future be denied his liberty for a substantial number of years. The facts he presents are new -- they are significant -- and they are outside the record. The Sanders criteria patently apply.

B. B. The use of testimony or documentary evidence known by the prosecution to be false, fraudulent, perjured or forged renders a conviction and sentence void for want of due process of law.

There is not a remote shadow of a doubt that proof of any of these factual allegations would conclusively entitle petitioner to a vacation of his sentence. In a long, unbroken series of decisions from Mooney v. Holohan, 394 U.S. 103, to the present time, the Supreme Court has consistently affirmed and reaffirmed the principle that a conviction and sentence which rest upon a violation of a prisoner's fundamental constitutional rights are subject to collateral attack. The knowing use by the prosecution of false and perjured testimony and/or forged exhibits subjects any conviction and sentence to collateral attack requiring the vacating of the original sentence and judgment.

> "That requirement [due process of law], in safeguarding the liberty of a citizen against deprivation through the action of the state, embodies the fundamental conceptions

> of justice which lie at the base of our civil and political institutions. Hebert v. Louisiana, 272 U.S. 312, 316, 317 ***. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing, if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."
>
> (Mooney v. Holohan, supra, at 112)

See also, Brown v. Mississippi, 297 U.S. 278; Hysler v. Florida, 315 U.S. 411; Ex parte Hawk, 321 U.S. 114; White v. Reagan, 324 U.S. 760; Hawk v. Olson, 326 U.S. 271; Burke v. Georgia, 338 U.S. 941; United States v. Hayman, 342 U.S. 205; Price v. Johnston, 344 U.S. 266; Ryles v. United States, 198 F.2d 199; Casebeer v. Hudspeth, 121 F.2d 914; United States v. Kaplan, 101 F. Supp. 7. */

The importance of this principle to the preservation of an ordered system of law was incisively stated by Mr. Justice Frankfurter in Hysler v. Florida, supra, at 413:

> "The guides for decision are clear. If a state, whether by the active conduct or the connivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law."

*/ The rule of Mooney v. Holohan, supra, applies, of course to the knowing use of perjured testimony in a federal court as well as in a state court. See for example Ryles v. United States, 198 F. 2d 199 (C.A. 10); Casebeer v. Hudspeth, 121 F.2d 914; United States v. Kaplan, 101 F. Supp.7. (D.C.N.Y.)

C. The prosecution's wilful and deliberate suppression of evidence impeaching its case and favorable to defendant renders a conviction and sentence void for want of due process of law.

The prosecution's suppression of evidence impeaching its case and favorable to petitioner equally renders a conviction and sentence void for want of due process of law. This charge, if sustained at a hearing, would, of course, subject a conviction and sentence to successful collateral attack. See Pyle v. Kansas, 317 U.S. 213, where Mr. Justice Murphy held that allegations of:

> "deliberate suppression by those same authorities of evidence favorable to [a defendant] * * * sufficiently charge a deprivation of rights guaranteed by the federal Constitution, and, if proven, would entitle [him] to release from his present custody."

See also, Mooney v. Holohan, and cases cited, supra; United States ex rel Almeida v. Baldi, 195 F.2d 815, cert. den. 345 U.S. U.S. 904.

In Kyle v. United States, 297 F.2d 507 (1961) a second application under §2255 by a prisoner who had been convicted of a conspiracy to violate the mail fraud laws was denied by the sentencing court without an evidentiary hearing. Despite the fact that the applicant, before the argument of the appeal, had served his sentence, a motion by the government to dismiss the appeal as moot was denied. See 288 F.2d 440. The basis of the second 2255 application was the government's

alleged suppression or loss of certain correspondence which petitioner claimed to have turned over to it. This claim had been asserted on petitioner's appeal and had constituted one ground of his first 2255 proceeding.

In reversing, Circuit Judge Friendly stated that:

> " ... a hearing ought to have been granted .... [T]rue, the hearing might show that the government had merely been negligent, perhaps not even that, but it might also show considerably more. Hence it would be premature to consider whether if the testimony were to show only negligence in the handling of material evidence, petitioner would be entitled to relief under §2255 as Consolidated Laundries held a defendant to be on a motion for a new trial." */

See also, United States ex rel Montgomery v. Ragen, 86 F.Supp. 382; Woollomes v. Heinze, 198 F. 2d 577 (9th Cir.); In re Curtis, 123 F. 2d 936; Robinson v. Johnston, 50 F. Supp. 774.

D. False representations made to the court by the prosecution in a criminal proceeding render the conviction void for want of due process of law.

Furthermore, charges that the prosecution made false representation to the court in the course of the original proceedings against petitioner, if sustained, would certainly render a conviction and sentence void for want of due process of law. Mooney v. Holohan, and cases cited, supra. Misrepresentations to a court by a prosecuting offi-

*/ United States v. Consolidated Laundries Corp., 291 F.2d 563, 2nd Cir. 1961.

cial offend against the very heart of a system of impartial administration of justice. As the Supreme Court has pointed out in Berger v. United States , 295 U.S. 78, at 88:

> "The United States attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done. As such he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

See also, Smith v. United States, 223 F.2d 750(5th Cir.,); Hazel-Atlas Glass Co. v. Hartford-Empire Co., 332 U.S. 238; Mesarosh v. United States, 352 U.S. 1.

II. The Allegations Charging That the Prosecution Knowingly Used Perjured Evidence, Suppressed Evidence and Made Misrepresentations to the Court and Jury Require That a Hearing be Granted Pursuant to 28 U.S.C. 2255.

Since Sanders, it is, as has been indicated above, the clear and unequivocal intent of the United States Supreme Court to make motions under §2255 the exact equivalent of applications for writs of habeas corpus. If, as the Court stated in Fay v. Noia, supra: "Habeas was available to remedy any kind of governmental restraint contrary to fundamental law," petitioner is certainly entitled to a

hearing on the serious and significant factual allegations made by him in his moving papers. Since he would, without a shadow of a doubt, have been afforded such a hearing if he had proceeded by way of habeas corpus prior to the enactment of §2255, he cannot be denied one because he has utilized the only equivalent procedure presently available to him.

In Sanders, the Supreme Court reiterated that an applicant invoking §2255 was entitled to the "same rights" as a habeas corpus applicant. "Indeed, if he was subject to any substantial procedural hurdles which made his remedy under §2255 less swift and imperative than federal habeas corpus, the gravest constitutional doubts would be engendered, as the Court in Hayman */ implicitly recognized." (at 14) Therefore, if petitioner would be entitled to a hearing under federal habeas, he is likewise entitled to one under §2255.

In the instant situation, there is no reason in logic or law not to afford him such an evidentiary hearing. There can be no doubt that, under countless decisions of the federal courts, the assertion of legally sufficient allegations which raise issues of fact require that a hearing be granted. Commonwealth of Pennsylvania ex rel Herman v. Claudy, 350 U.S. 116; Hawk v. Olson, 326 U.S. 271; Ex parte

*/ United States v. Hayman, 342 U.S. 205

Hawk, 321 U.S. 114; Pyle v. Kansas, supra; Smith v. United States, supra; United States v. Rutkin, 212 F. 2d 641; United States ex rel Almeida v. Baldi, supra; Wheatley v. United States, 198 F. 2d 325; Davis v. United States, 210 F. 2d 118; Waley v. Johnston, 316 U.S. 101; Smith v. O'Grady, 312 U.S. 329; Motley v. United States, 230 F. 2d 110; Mays v. United States, 216 F. 2d 186; McKinney v. United States, 208 F. 2d 844; Winhoven v. United States, 201 F. 2d 174; Martin v. United States, 199 F. 2d 279; United States v. Wantland, 199 F. 2d 237; Clark v. United States, 194 F. 2d 528; United States v. Paglia, 190 F. 2d 445; Martyn v. United States, 176 F. 2d 609; Garrison v. United States, 154 F. 2d 107; Hall v. Johnston, 91 F. 2d 363; United States v. Morgan, 202 F. 2d 67; United States v. Pisciotta, 199 F. 2d 603; Haywood v. United States, 127 F. Supp. 485; Buono v. United States, 126 F. Supp. 644; United States v. Bradford, 122 F. Supp. 915; United States v. DiMartini, 118 F. Supp. 601; Putnam v. United States, 337 F. 2d 313; Morse v. United States, 323 F. 2d 418; Burns v. United States, 321 F. 2d 803; Yates v. United States, 316 F. 2d 718; United States v. Cannon, 310 F. 2d 841; Morse v. United States, 304 F. 2d 876; United States v. Thomas, 291 F. 2d 478; Frand v. United States, 289 F. 2d 693; Hill v. United States, 236 F. Supp. 155; Hamby v. United States, 217 F. Supp. 318; McDonald v. United States, 341 F. 2d 378; Berry v. United States, 338 F. 2d 605, cert.

denied, 85 S.Ct. 1099, 380 U.S. 959, 13 L.Ed. 2d 975; Desmond v. United States, 333 F. 2d 378, on remand 345 F. 2d 225; Doyle v. United States, 336 F. 2d 640; Perry v. United States, 332 F. 2d 369; Waugaman v. United States, 331 F. 2d 189; Gill v. United States, 330 F. 2d 241; Pike v. United States, 330 F. 2d 53; Romero v. United States, 327 F. 2d 711; Olive v. United States, 327 F. 2d 646, cert. den'd 84 S.Ct. 1653, 377 U.S. 971, 12 L.Ed. 2d 740; United States v. Hill, 319 F. 2d 653; Green v. United States, 83 S.Ct. 948, 372 U.S. 951, 9 L.Ed. 2d 976, on remand 219 F. Supp. 750, aff'd 334 F. 2d 733, cert. denied 85 S.Ct. 1345, 380 U.S. 980, 14 L. Ed. 274; Milani v. United States, 304 F. 2d 627; United States v. Jones, 197 F. Supp. 421, aff'd 297 F. 2d 835.

No court can conclusively resolve the impact of false evidence on a jury. For this reason, a court will not weigh the extent of prejudice when a prosecutor knowingly, wilfully and intentionally uses false evidence. As stated in Coggins v. O'Brien, 188 F. 2d 130, 139 (C.A. 1):

> "* * * the burden is not on the petitioner to show a probability that in the jury's deliberations the perjured evidence tipped the scales in favor of conviction. If the prosecutor is not content to rely on the untainted evidence, and chooses to 'button up' the case by the known use of perjured testimony, an ensuing conviction cannot stand, and there is no occasion to speculate upon what the jury would have done without the perjured testimony before it."

Commenting on this principle, Mr. Justice Douglas, in Stein v. People of the State of New York, 346 U.S. 156, 205, stated:

> "A similar rule prevails where the prosecution has made knowing use of perjured testimony to convict an accused. Mooney v. Holohan, 294 U.S. 103 * * * ; Hysler v. State of Florida, 315 U.S. 411 * * *; Pyle v. State of Kansas, 317 U.S. 213 * * *. It has never been thought necessary to attempt to weed the perjured testimony from the non-perjured for the purpose of determining the degree of prejudice which resulted."

See also Pyle v. Kansas, 317 U.S. 213.

III. The Ends of Justice Require That a Hearing be Granted Pursuant to 28 U.S.C. 2255.

According to the United States Supreme Court, habeas corpus (and necessarily §2255) "is one of the precious heritages of Anglo-American civilization." Fay v. Noia, supra, at 441. In all candor, can it be reasonably said that petitioner, who has spent more than fifteen years in a variety of federal prisons ranging from maximum-security Alcatraz to Lewisburg, where he is presently confined, has not raised factual issues at the very least worthy of a hearing? If the purpose of federal collateral procedures is to determine the truth, minimally he should be given the opportunity that is readily available to less notorious federal prisoners to present evidence as to the truth of their allegations.

The fact that he is a political prisoner and that an evidentiary hearing might prove distasteful to all concerned should play no part in the determination of this application. If the integrity of the courts and the administration of justice on a wholly impartial basis is to be maintained inviolate, then this court has no alternative but to grant the requested evidentiary hearing. As Mr. Justice Black pointed out in In re Murchison, 349 U.S. 136 (1955),

> "But to perform its high function in the best way 'justice must satisfy the appearance of justice'. Offutt v. United States, 348 U.S. 11,14"

It is high time that the government stops running away from an evidentiary hearing in this celebrated case. If it has nothing to hide, then it should welcome the opportunity to answer petitioner's serious charges in a free and open American forum. Its opposition on at least six prior occasions to such a hearing is highly susceptible of being interpreted as an admission of the fear of ultimate revelation.

Obviously this is not simply a case affecting a single individual, but one going to the very heart of our democracy. If there is the slightest consideration given to the nature of the crime of which petitioner has been convicted, then we stand in grave danger of sullying and possibly destroying our Constitution. As far as this Court is concerned, petitioner must be treated as any other applicant of a less controversial nature would be treated. To fail to do so would be to disserve the "ends of justice" which, the Supreme Court has recently reminded us is the ultimate test which "cannot be too finally particularized." Landers v. United States, at 17.

Petitioner has presented a wealth of facts which are concededly de hors the record and which raise the most crucial factual questions. For example, the destruction or its relinquishment by the Department of Justice of the original Exhibit 16 shortly after the trial and well before

the argument of petitioner's appeal, raises the most serious and searching doubts as to its authenticity. Moreover, it brings into play the question as to whether the government may release from its control crucial documentary evidence which it has presented in a criminal trial before the judgment therein becomes final.

But putting that consideration aside for the moment, there is no doubt that the circumstances of the disposition of Exhibit 16 fairly shout for an explanation on the part of the government in even more compelling fashion than its alleged suppression or loss of certain correspondence in Kyle v. United States, supra. As the Supreme Court stated in Sanders, with respect to 2255 motions, "The federal judge clearly has the power -- and if the ends of justice demand, the duty -- to reach the merits ... we are confident that this power will be soundly applied." (at 18-19)

In accordance with the ideals of American justice, the demands of due process and "the need for great care in criminal collateral procedure" (Sanders v. United States, supra, at 22) petitioner should be granted a hearing. It is particularly true in this case that the ability of our courts to recognize and undo wrong, a characteristic of our democratic tradition, will do great service to our nation and further enhance the prestige of our courts. As Mr. Justice Frankfurter has pointed out:

"Perfection may not be demanded of law, but the capacity to counteract inevitable, though rare, frailties is the mark of a civilized legal mechanism.

"Our heritage requires that questions concerning the corruption of justice be brought to the attention of the courts, where they will be accorded the most careful scrutiny with all the protections of a judicial hearing. The fullest litigation of such questions -- and counsel shares the natural revulstions of their implication -- is in the highest traditions of the bar and the courts."

A full evidentiary hearing, at which petitioner will be put to his proof, will be in the best interests of all concerned. If he fails to sustain the very serious charges he makes, his contention will fall. But if he prevails, justice will require that his conviction be vacated. In either event, our democracy will have proved once more that it is not afraid of the truth and that it wholeheartedly subscribes to the ideals and principles expressed in its Constitution and proclaimed by its lawful representatives.

The Supreme Court has stated that:

"... the untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts ... therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted." Mesarosh v. United States, supra, at 13.

Our nation cannot tolerate any man's conviction based upon fraud. The strength and vitality of our country and its responsible role in the world require the repudiation

of conduct inimical to the impartial administration of justice. As Mr. Chief Justice Warren has put it:

> "The dignity of the United States Government cannot permit the conviction of any person on tainted testimony ... the government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them."
>
> Mesarosh v. United States, supra, at 10.

CONCLUSION

WHEREFORE, it is respectfully requested that petitioner be granted an evidentiary hearing as provided for in 28 U.S.C. 2255.

Respectfully submitted,

ARTHUR KINOY
WILLIAM M. KUNSTLER
511 Fifth Avenue
New York, New York

MARSHALL PERLIN
36 West 44th St.
New York, New York

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341 Market St.
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VERN COUNTRYMAN
3 Suzanne Road
Lexington, Mass.

Attorneys for Petitioner

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

UNITED STATES GOVERNMENT

Memorandum

TO : SAC, NEW YORK (100-37158) DATE: 8/8/66

FROM : SA [redacted] b7C #331

SUBJECT:

MORTON SOBELL
ESP - R

Attached herewith for the file are the following items relating to captioned case which have been furnished by AUSA ROBERT L. KING, SDNY:

1. Copy of brief filed by defense in support of application for a hearing pursuant to Section 2255, USC.

2. Copy of affidavit of AUSA KING in opposition to the above defense motion.

3. Copy of memorandum of AUSA KING in opposition to the petition of MORTON SOBELL.

4. Copy of petition by defense to amend the above motion under Section 2255.

5. Copy of letter from defense attorney ELENNOR JACKSON PIEL to USA, dated 5/24/66, together with court order re government exhibit #8.

6. Copy of letter from defense attorney PIEL to USA, dated 7/6/66.

The above items are being filed herewith for information. Copies of all pertinent items have been previously furnished to the Bureau.

PFD:pd
(1)

100-37158-2345

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
AUG 8 1966
FBI — NEW YORK

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2343 DATE 8·4·66

CONSISTING OF 2 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.

Cover Sheet for Informant Report or Material
FD-306 (3-21-58)

DATE: 9/9/66

Date received b7D	Received from (name or symbol number) b7D	Received by b7C
[redacted]	(reliable)	SA [redacted]

Method of delivery (check appropriate blocks)

☐ in person ☐ by telephone ☐ by mail ☐ orally ☐ recording device ☐ written by informant

If orally furnished and reduced to writing by Agent:

Date

Dictated _____ to _____

Transcribed _____

Authenticated by Informant _____

Date of Report

Exhibit

Date(s) of activity

Brief description of activity or material

Copy of Points and Authorities in Support of Petitioner's Application For Evidentiary Hearing in connection with hearing for HORTON SOBELL.

Correct

File where original is located if not attached

[redacted] b7D

Remarks: [redacted] b7D

1 - [redacted] b7D
1 - 100-37158 (HORTON SOBELL)(31)
1 - 100-107111 (CSJMS)(41)

HPB:msb
(3)

Block Stamp

100-37158-2344

[redacted] b7C

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

5010-107

UNITED STATES GOVERNMENT

Memorandum

TO : SAC (100-37158)

DATE: 8/10/66

FROM : SA [redacted] b7C

SUBJECT: MORTON SOBELL
ESP - R

At 4:30 p.m. on 8/4/66, AUSA ROBERT L. KING, SDNY, telephonically advised that he had just received information that one of subject's defense attorneys, MARSHALL PERLIN, would appear that evening on the WALTER KRONKITE News Program on CBS-TV to discuss the SOBELL case and the release of the GREENGLASS atomic sketch and testimony.

On 8/5/66, AUSA KING advised that PERLIN did not appear on the above program for the following reasons:

KING stated that upon learning of the above, he was in telephonic contact with the Department. The Department was very much concerned over this matter and stated that such an appearance of PERLIN was a violation of Rule 20 of the Cannon of Ethics for attorneys in discussing in this manner a case which is presently pending in USDC. The Department advised KING that should PERLIN appear as above, he should institute action in USDC to have the Court take action against PERLIN stating that the Cannon of Ethics specifies the Court may take such action.

KING stated that in view of the above, he telephonically contacted PERLIN on the evening of 8/4/66, and advised him of the above violation of the Cannon of Ethics and the proposed action by the office of the USA should he appear on such a program.

PFD:mfd
(1)

Bureau advised of above PFD

100-37158-2346

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
FBI — NEW YORK

According to KING, PERLIN, upon learning this, stated that he was not familiar with the provisions of Rule 20 of the Cannon of Ethics. KING thereupon read the pertinent portion of it to him on the telephone. PERLIN stated that in view of this, he would call the TV station and cancel his authorization for the interview of him which had been taped earlier that afternoon. He stated that in addition to the TV interview, he had taped an interview for WCBS radio which he would also cancel.

KING also advised that he had just learned that another of the defense attorneys, WILLIAM KUNSTLER, had appeared on 8/2/66, on an interview on FM radio station WBAI, during which he discussed the SOBELL case for approximately 40 minutes. KING requested, if possible, this office attempt to secure a copy of this interview.

Upon checking with Supervisor FRANK ILLIG, it was determined that station WBAI is a very controversial station and has in the past carried many programs which are anti-Bureau and very unfavorable to the Director. ILLIG stated that we have been advised by the Bureau not to have contact with this station.

The above information was furnished to AUSA KING who stated that in view of the above, he would consider issuing a subpoena to obtain a copy of the tape reflecting the interview of WILLIAM KUNSTLER.

The above is being reported in the file for information.

FILE # 100 · 37158

SUBJECT MORTON SOBELL

SERIAL 2348 DATE 5 · 4 · 64

CONSISTING OF 1 PAGES

is exempt from disclosure, in its entirety under (b)(7)(c) as it concerns the investigation of a third party.

FILE # 100-37158

SUBJECT MORTON SOBELL

SERIAL 2349 DATE 11-24-64

CONSISTING OF 3 PAGES

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FILE # 100 · 37158

SUBJECT MORTON SOBELL

SERIAL 2350 DATE 8 · 16 · 66

CONSISTING OF 3 PAGES

is exempt from disclosure, in its entirety under (b)(7)(c) as it concerns the investigation of a third party.

8/16/66

AIRMAIL AIRTEL

TO : DIRECTOR, FBI (101-2483)

FROM : SAC, BOSTON (100-24710) (RUC)

SUBJECT: MORTON SOBELL
ESP - R

OO: New York

Re New York airtel to Bureau, 8/2/66, and Albany airtel to Bureau, 8/4/66, both captioned as above.

Enclosed herewith for the Bureau are three copies and for New York two copies of an LHM dated as above and captioned "PHILIP MORRISON".

Per New York request that copies of reports which contain pertinent information regarding PHILIP MORRISON be forwarded to that office so that this information could be made available to the USA, SDNY, the following reports and LHMs are being submitted for the completion of the New York file:

Report of SA [redacted] dated 11/24/64 at Albany entitled, PHILIP MORRISON, [redacted] b7C

Xerox copy of Albany LHM dated 5/11/64 at Albany captioned "PHILIP MORRISON"

1 cc of this file in Morrison file 65-2252 ...

3 - Bureau (AM)(RM)(Encls.3)
3 - New York (AM)(RM)(Encls.5)
(2 - 100-37158)
(1 - 100-107111)
1 - Boston
TDM:grs
(7)

100-37158-2351

1cc Boston LHM dated 8/16/66 to AUSA King ...
1cc Rept SA [redacted] 11/24/64 to AUSA King
above pages retained in our file
1cc xerox copy of Albany LHM 5/11/64 to
AUSA King - above pages retained in our file
1cc LHM ... to AUSA King
b7C

SEARCHED.......INDEXED.......
SERIALIZED.......FILED.......
AUG 1 8 1966
[redacted] b7C

BS 100-24710
TDM:grs

Copy of WFO LHM dated 1/20/66 at Washington, D.C., captioned "PHILIP MORRISON"

[redacted]

b7C

Review of the files of the Boston Office further fails to indicate any participation on the part of MORRISON in demonstrations, teach-ins, civil disobedience, or other activity protesting U. S. action in Vietnam or the Dominican Republic.

In view of the above, this case is being RUC to OO New York.

FILE # L00-37158

SUBJECT MORTON SOBELL

SERIAL 2356 DATE 8·15·66

CONSISTING OF 1 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 2040.

FILE # LOO-37158

SUBJECT MORTON SOBELL

SERIAL 2357 DATE 8.22.66

CONSISTING OF 2 PAGES

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FILE # LOO-37158

SUBJECT MORTON SOBELL

SERIAL 2358 DATE 8·20·66

CONSISTING OF 3 PAGES

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Cover Sheet for Informant Report or Material
FD-306 (3-21-58)

DATE: 8/29/66

CONFIDENTIAL

Date received	Received from (name or symbol number)	Received by
8/15/66	[redacted] b1	SA [redacted] b7C

Method of delivery (check appropriate blocks)

☐ in person ☐ by telephone ☐ by mail ☐ orally ☐ recording device ☐ written by Informant

If orally furnished and reduced to writing by Agent:

Date

Dictated _____ to _____

Transcribed _____

Authenticated by Informant _____

Date of Report

EXHIBIT

Date(s) of activity

Current

Brief description of activity or material

Statement by Mrs. MORTON SOBELL dated 7/29/66, on stationery of Committee to Free Morton Sobell re legal action and demand for freedom of MORTON SOBELL

Remarks:

File where original is located if not attached

[redacted] b1

[redacted] C

HPB:eac
(4) b1

Classified by 4913
Exempt from GDS, Category 2
Date of Declassification Indefinite
AP/nt 2/6/78

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

Block Stamp

100-37158-2361

SEARCHED INDEXED
SERIALIZED FILED
AUG 29 1966

[redacted] b7C

[redacted] b7C

3 CONFIDENTIAL

Committee To Free Morton Sobell

CONFIDENTIAL

150 Fifth Avenue, New York, N.Y. 10011

Tel: 243-6030

July 29, 1966

STATEMENT BY MRS. MORTON SOBELL

upon closed hearing scheduled to take place in the chambers of Judge Edmund L. Palmieri at noon July 29, 1966.

The only reason the United States attorney has for making the court proceedings in the Sobell case secret is to conceal the damning fact that there is no secret material. From the beginning the terrifying myth of important secrets vital to the national defense has prevented an examination of the true facts in this case. The so-called sketch of the atom bomb is a worthless farce and the testimony regarding it is fraudulent false testimony presented by the prosecution in the Rosenberg-Sobell trial in 1951.

This case is a national disgrace. Two innocent people lost their lives and my husband, Morton Sobell, has suffered 16 years of imprisonment for a crime that was never committed. Minimum decency demands a full and open hearing going into all of the frauds and perjuries of this frame-up. Star chamber proceedings are alien to a democratic system of justice. The immediate release of Morton Sobell and his full vindication as an innocent man of the greatest integrity are long long overdue.

CONFIDENTIAL

FILE # LOO-37158

SUBJECT MORTON SOBELL

SERIAL 2369 DATE 9-1-66

CONSISTING OF 1 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 2040.