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A Disquieting Case: Ethel and Julius Rosenberg

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A DISQUIETING CASE:
ETHEL AND JULIUS ROSENBERG

A Thesis
Presented to the
Department of History
and the
Faculty of the Graduate College
University of Nebraska at Omaha

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

By
Inez M. Whitehead

August, 1977

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Accepted for the faculty of The Graduate College of
the University of Nebraska at Omaha, in partial fulfillment
of the requirements for the degree Master of Arts.

Graduate Committee

Harold A. Peterson - History
Name Department

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William C. Pratt
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As someday it may happen that
 A victim must be found,
I've got a little list--I've got a little list
Of social offenders who might well be
 Underground,
And who never would be missed--who never
 Would be missed!
There's the pestilential nuisances
 Who write for autographs--
All people who have flabby hands
 And irritating laughs--
All children who are up in dates,
 And floor you with 'em flat--
All persons who is shaking hands,
 Shake hands with you like that--
And all third persons who on spoiling
 Tete-a-tetes, insist--
They'd none of 'em be missed--
They'd none of 'em be missed!

Song - Ko-Ko - from The Mikado*

*William Reuben used a portion of Ko-Ko's song as an introduction to one of his chapters in The Atom Spy Hoax (New York: Action Books, 1955), p. 246. The song is quoted in full here from W.S. Gilbert, The Mikado and Other Plays (New York: The Modern Library, 1931), pp. 10-11.

PREFACE

I can trace my interest in the Rosenbergs to June 20, 1953. On that morning I caught a city transit bus and the conversations were those of contempt for the atomic spies who had been executed the previous evening. Tiring of the derision, I found myself musing over Ethel and Julius Rosenberg. Who were they? It seemed mystifying to me that a couple of no obvious importance had been able to do what they were accused of doing.

In 1974, when Dr. Paul Beck suggested a Constitutional treatment of the Rosenberg case as a thesis topic, I found myself immediately interested. Shortly after I started research, the Rosenberg case began emerging in the news again. Consulting Dr. Beck, I decided to change the thrust of my thesis to a more general treatment of the case.

In the summer of 1975 an occurrence took place which greatly saddened me. Dr. Beck, a man who truly practiced Christianity, died suddenly of cancer. Though he was gone, his encouragement and inspiration sustained me through my research and writing.

Fortunately for me, Dr. William Pratt offered to direct the rest of my work. It is Dr. Pratt's advice,

interest and assistance which gave shape to this thesis. His knowledge and interest in the Cold War provided valuable direction. I wish to thank him for all his efforts on my behalf.

The intent of this paper is to interpret and evaluate the Rosenberg case in its Cold War setting from the perspective of time. I have surveyed a variety of literature on the Rosenbergs and taken note of recent moves and findings which have contributed to making the case a disquieting one.

The research reflecting the most vitality is that of current trends in the case. I wrote the bulk of this chapter in the summer of 1976 as released government documents were being reported in the news. At this point, there is no word from Judge June Green on her inspection of withheld FBI documents. Thus, tomorrow could bring more changes that will outdate or add to what I have written here.

In discussing this work, I am inevitably asked by friends if I think the Rosenbergs were guilty. I counter, as others have, "Guilty of what?" I do not believe the Rosenberg crime--whatever it was or if there was one--was the misdeed characterized in Judge Kaufman's courtroom in 1951. I guess there is always the chance I could be proven wrong, but for now that is where I will stand.

I am sure this thesis has had a rockier history than some. As a part-time student I had to do my research and writing during the summers and evenings. I kept myself going by a thought someone once told me: Suffering comes with any good accomplishment. I hope now that my work is done, the last half of the statement is true.

My research was done primarily through the facilities of Gene Eppley Library at the University of Nebraska at Omaha. Also used were facilities of the Dwight D. Eisenhower Library, The State Historical Society of Wisconsin and the University of Chicago. In 1975 I ordered and received from the FBI the pre-investigative papers used in this thesis. I think I was particularly fortunate in obtaining The Kaufman Papers, a pertinent set of FBI records, which were available at a nominal cost from the National Committee to Re-Open the Rosenberg Case.

I would like to express appreciation to Morton and Helen Sobell for granting a private interview in New York City. Among correspondence written and received, I would like to extend my thanks to Bonnie Brower, Attorney at Law, New York City, who sent material relating to the current Rosenberg positions of the National Lawyers Guild and the American Bar Association. I was extremely heartened, also, by a letter from Michael Meeropol who took the time to give some advice and encouragement.

CHAPTER I

Introduction

Ethel and Julius Rosenberg were arrested at a time when the domestic political scene of the United States was reflecting on and reacting to international tension between the United States and the Soviet Union. Post-war losses to Communism abroad gave politicians within the United States the opportunity to challenge and condemn Democratic leadership of the country. The struggle waged against Communism abroad and at home created an atmosphere of suspicion, fear, and intolerance which would be the background for Cold War subversion and espionage cases.

At the end of World War II, Americans were primarily concerned with thoughts of demobilization. The Communist threat abroad and domestic anti-Communism had not emerged as national anxieties. A Gallup Poll of August, 1945, revealed that 54 percent of the American people felt Russia would co-operate with the United States after the war, and in October, 1945, another Gallup Poll showed 27 percent of

the American people favored a six billion dollar loan to Russia.¹ At this time, the American people had no well-defined concept of the international role they should play in the post-war world.² In the next few years, however, Americans would not maintain views of good will and friendliness toward the Soviet Union. They would be reflecting international events of the Cold War and policies of their leaders in counteracting Communism abroad and at home.

In 1945 the Soviet army had ensured a sphere of influence for Russia in Eastern Europe. After the war, with Poland, Rumania, Albania, Bulgaria, Hungary, Yugoslavia and Czechoslovakia establishing Communist governments, all Europe east of the Elbe River was in the Communist camp. To offset the spread of Communism into the rest of Europe, President Truman initiated economic and military aid to Greece and Turkey in the form of the Truman Doctrine. It was followed by the Marshall Plan, an American-financed project for European economic recovery.

Supporting foreign aid to help offset Communism and becoming increasingly wary of Soviet intentions, Americans

¹ George H. Gallup, The Gallup Poll (2 vols.; New York: Random House, 1972), I, 523,535.

² Social Science Research Council, Public Reaction to the Atomic Bomb and World Affairs (Ithaca: Cornell University, 1947), p. 164.

were further antagonized by two events which occurred in 1949 and 1950. In September, 1949, President Truman announced to the nation that the Soviet Union possessed the atomic bomb. With the American monopoly of a super weapon over, 45 percent of the American public thought a war more likely.³ By the following month, China was lost to the Communists with the Chinese People's Republic being declared in Peking.

The American government, by 1950, was reacting strongly to the turn of events. In January of that year, a three-man special sub-committee of the National Security Council, appointed by President Truman, recommended a crash program to develop a hydrogen bomb. In the spring of 1950, a new American foreign policy was outlined in National Security Council Paper No. 68: Communism would be contained on a world-wide basis regardless of cost.⁴ In Europe, the North Atlantic Treaty Organization, formed in 1949 as a military alliance, was strengthened to meet possible aggression.

The eruption of the Korean conflict in June, 1950, enlarged the Cold War and seemed to confirm American suspicions that the Soviet Union was motivated by a desire for power and

³The Gallup Poll, II, 869.

⁴Henry W. Berger, "Senator Robert Taft Dissents From Military Escalation," Cold War Critics, ed. Thomas G. Paterson (Chicago: Quadrangle Books, 1971), pp. 186-187.

supremacy. In a statement from the White House, President Truman assessed the Korean situation:

The attack on Korea makes it plain beyond all doubt that communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war.⁵

The Korean War became the impetus for United States rearmament. Fifty-one percent of the American people thought that the United States was already engaged in World War III with the Korean involvement.⁶ When Chinese Communist troops entered the fighting and the war stalmated, a Gallup Poll found 56 percent of the American people thinking the Korean War useless.⁷

Culminating a series of Cold War experiences for Americans, the Korean War seemed to verify that the nation was unable to prevent Communist advances around the world. U.S. News & World Report expressed its feeling in a sad comment: "The Korean War is distinctly unpopular, but nobody seems able to suggest a solution. The result is a feeling of futility. . . ."⁸

⁵ The New York Times, June 28, 1950.

⁶ The Gallup Poll, II, 933.

⁷ Ibid., 1019.

⁸ "Why People Are Worried," U.S. News & World Report, May, 1975, p. 21.

American participation in the Korean War had been the response of President Harry S. Truman to Cold War events. In confronting Communism overseas, Truman had given encouragement to Congressional conservatives who sought election victories.⁹ Conservatives became increasingly critical of what they viewed as Soviet victories abroad in contrast to American defeats and appeasement. As early as 1946, conservative politicians were charging Democratic administrations with responsibility for overseas losses, disloyalty and even subversion. Conservative antipathy to Communism, rooted in a conspiratorial view of history, regarded Communism as a demonic evil.¹⁰

President Truman was inevitably placed on the defensive by conservative attacks. Attorney General Tom Clark, reflecting his conservative views, urged President Truman to tighten the government's employee-loyalty standards. Government loyalty procedures established in March, 1947, were a response to attacks upon the Administration. A Loyalty Review Board

⁹ Ronald Lora has used this term to define a group of Congressmen such as Robert Taft, William Knowland, Richard Nixon, Styles Bridges, Pat McCarran, Kenneth Wherry, Homer Ferguson, Karl Mundt, William Jenner and Joseph McCarthy. Ronald Lora, "Conservative Intellectuals, the Cold War and McCarthy," The Specter, ed. Robert Griffith and Athan Theoharis (New York: New Viewpoints, 1974), pp. 44-45.

¹⁰ Ibid., pp. 56-57.

was created to rule on cases of alleged disloyalty in government employees. In addition, the Attorney General was to maintain and publish a list of subversive organizations.¹¹

The Attorney General's list of subversive elements discouraged political dissent at home. Justice Department guidelines, revealed in 1950, were broad enough to include almost any organization opposing Cold War policies.¹² J. Howard McGrath, Attorney General in 1950, justified the public alarm in a statement:

There are today many Communists in America. They are everywhere--in factories, offices, butcher shops, on street corners, in private business--and each carries with him the germs of death for society. . . .¹³

As part of its own brand of anti-Communism, the Truman Administration signaled government hostility to all Communists by seeking indictments against officers of the Communist party on the charge of conspiracy to teach and advocate overthrow of the United States government by force and violence. The 1949 Smith Act trial lasted nine months

¹¹Richard M. Freeland, The Truman Doctrine and the Origins of McCarthyism (New York: Alfred A. Knopf, 1972), pp. 122-144; 207-220.

¹²Ibid, 207-220.

¹³William R. Tanner and Robert Griffith, "Legislative Politics and 'McCarthyism': The Internal Security Act of 1950," The Specter, p. 179.

and was heard in court at Foley Square, Southern District Court of New York. Much of the testimony against the Communists concerned an analysis of literature used to advance Party beliefs. Ex-Communists, including Louis F. Budenz, testified for the government. The jury returned verdicts of guilty on all defendants.¹⁴ On June 4, 1951, the United States Supreme Court upheld the Smith Act convictions. In a dissenting opinion, Justice Hugo Black said:

Public opinion being what it now is, few will protest the conviction of these Communist petitioners. There is hope, however, in calmer times, when pressures, passions, and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society.¹⁵

With Communist trials and the Korean War headlining the news, Americans began viewing with more interest the sensational investigations of the House Committee on Un-American Activities (HUAC). HUAC investigators were probing for a link between Democratic administrations and Communism. As early as 1946, ex-Communist Louis Budenz testified before the Committee that Gerhard Eisler was a representative of the Communist International in the United States. HUAC

¹⁴The Fund for the Republic, Inc., Digest of the Public Record of Communism in the United States (New York: The Fund for the Republic, Inc., 1955), pp. 196-197.

¹⁵Dennis v. United States, 341 U.S. 581.

investigators pursued the case well into 1948, hoping to trace the Eisler case to Eleanor Roosevelt.¹⁶ In 1948, an investigation of Dr. Edward U. Condon was undertaken. Condon was a physicist closely connected to the development of the atomic bomb. When the Truman administration refused to open Condon's file to HUAC, the Committee countered by charging the case could not be resolved when the President of the United States would not co-operate. Attacks on Condon began subsiding when the Atomic Energy Commission issued a statement in his support.¹⁷

With the Condon affair waning, two more ex-Communists-- Elizabeth Bentley and Whittaker Chambers--emerged in HUAC hearings. Bentley and Chambers named espionage contacts in the government, among them Nathan Gregory Silvermaster, William Remington, Harry Dexter White and Alger Hiss. Many of those accused by Bentley and Chambers took the Fifth Amendment when called before HUAC.¹⁸

In the Alger Hiss case, HUAC finally was able to question Democratic fitness to deal with the Cold War. On

¹⁶Robert K. Carr, The House Committee on Un-American Activities (Ithaca: Cornell University Press, 1952), p. 27-31.

¹⁷Walter Goodman, The Committee (New York: Farrar, Straus and Giroux, 1964), pp. 231-239.

¹⁸Ibid., pp. 245-249.

August 3, 1948, Whittaker Chambers declared that Alger Hiss, former State Department official and New Deal Democrat, had been a member of the Communist Party underground. In November, Chambers produced evidence in the form of State Department documents he said Hiss had turned over to him in 1938. Later Chambers produced a cache of microfilm which he said Hiss had given to him to deliver to the Soviets. Hiss eventually was convicted of perjury and sentenced to five years in prison.¹⁹

Some New Deal leaders, sensing the issues at stake in the Hiss case, scorned HUAC's investigation. President Truman termed HUAC's search a "red herring."²⁰ The defense of Hiss gave the conservatives a greater victory. They had what they wanted--evidence of betrayal by a high-placed New Deal Democrat.²¹

HUAC, calling nearly a thousand witnesses between 1951 and 1954, continued to grind out suspicions. Committee members charged the Soviet atomic bomb was hastened by

¹⁹ Allen Weinstein, "The Alger Hiss Case Revisited," The American Scholar, XLI (Winter, 1971-1972), 121-132.

²⁰ "The Durable Herring," Time, June 29, 1953, p. 21.

²¹ Allen Weinstein, "The Symbolism of Subversion: Notes on Some Cold War Icons," Journal of American Studies, VI, (August, 1972), 166-167.

Democratic politicians soft on Communism. Gradually, domestic reaction to the Cold War Red scare became one characterized by fright, illogical thinking, and intolerance.²² After 1949 the Gallup Poll ceased surveys on how people felt about the American bomb monopoly and replaced them with polls on the bomb's use and the effects of atomic warfare.

Reports and stories on atomic secrets, annihilation, the Russian bomb and spies appeared frequently in the press and radio after 1949. Look magazine, less than one month after the Truman announcement of the Soviet bomb, printed a story entitled, "Can Russia Deliver the Bomb?" The Look article, with photographs, asserted Russia had three means of delivering an atomic bomb to America--by airplane, rocket and merchant marine ship. This piece invoked the names of prominent physicists.²³

Native Communists were, of course, bearing the brunt of the Cold War scare. In a cross section of public opinion taken in 1954, 81 percent of the American people rated Communists as dangerous to the country's security, although only 3 percent admitted knowing one. Fifty-two percent of the American people thought Communists should be jailed and

²² Goodman, The Committee, pp. 293-350.

²³ "Can Russia Deliver the Bomb?" Look, October 10, 1949, p. 45.

68 percent thought they should not be allowed to speak in public. Congressional committees investigating Communism were perceived favorably by 77 percent of Republicans and 62 percent of Democrats.²⁴

President Truman himself contributed to the anxiety over spies. On July 25, 1950, after the start of the Korean fighting, he cautioned: "all citizens and police officers to be watchful of spies, sabotage, and other subversive activities. . . ." The President urged Americans to report suspicious activities to the nearest FBI offices.²⁵

For FBI Director J. Edgar Hoover, popular support was impressive. In 1950, 79 percent of Americans expressed approval of Hoover's work as head of the FBI.²⁶ According to former FBI agent Richard Brennan, however, Hoover was experiencing tremendous pressure from Congress and the press to apprehend subversives. Agent Brennan described "unbelievable" pressure on FBI agents to find spies after the Soviet atomic

²⁴ Samuel A. Stouffer, Communism, Conformity and Civil Liberties (Gloucester, Mass.: Peter Smith, 1963), pp. 76-77, 176, 44, 41, 213.

²⁵ The New York Times, July 25, 1950.

²⁶ The Gallup Poll, II, 891.

bomb.²⁷ FBI performance in the Judith Coplon case had been disappointing. Coplon, a Justice Department employee, had been arrested by FBI agents in New York City in March, 1949. She had Justice Department papers in her possession and was believed to be delivering them to a Soviet diplomat. In later Court appeals, FBI blunders in obtaining evidence and technical grounds of her arrest led to the conviction being overturned.²⁸

In his book The FBI Story, Don Whitehead described the reaction of Hoover to news of the Soviet bomb:

Hoover reached for the intercom telephone. He gave a series of orders to his key subordinates and soon the vast machinery of the FBI was in high gear. In essence, Hoover's orders were: "The secret of the atomic bomb has been stolen. Find the thieves!"²⁹

FBI agents, as a result of Hoover's orders, interviewed hundreds of people and were sent to various sites, including Los Alamos, to examine records for clues.

²⁷Alvin H. Goldstein, "The Unquiet Death of Julius and Ethel Rosenberg," script of National Public Affairs Center for Television Production, February 25, 1974, p. 13. The script is now available in book form: Alvin H. Goldstein, The Unquiet Death of Julius & Ethel Rosenberg (New York: Lawrence Hill & Company, 1975).

²⁸Digest of the Public Record of Communism in the United States, pp. 33-34.

²⁹Donald F. Whitehead, The FBI Story (New York: Random House, 1956), p. 305.

Special attention was focused on foreign scientists who had worked on the bomb.³⁰

The loyalties of foreign scientists on the atomic bomb project had been questioned by some from the start. Then, in 1945, a few days after the end of the war, Igor Gouzenko, a Russian Embassy clerk in Ottawa, defected and asked for political asylum in Canada. He turned over to the Canadian government a mass of confidential Soviet Embassy papers containing Soviet intelligence operations in Canada. After an investigation by the Canadian Royal Commission, twenty-six government workers, military personnel and scientists were arrested. Rumors of atomic espionage circulated in the American press.³¹

The Canadian cases were the first of a series of espionage cases unveiled during the Cold War. Evolving from rivalry and distrust between the United States and the Soviet Union, the cases established subversion and espionage as credible explanations of America's inefficacy.

As a result of the Canadian Royal Commission's investigations, British authorities arrested scientist Allen Nunn May on February 15, 1946. In May's confession

³⁰Ibid., pp. 305-306.

³¹William Reuben, The Atom Spy Hoax (New York: Action Books, 1953), pp. 21-37.

he revealed Communist sympathies and admitted passing samples of U-235 and U-238 to a Soviet military contact in Montreal. As part of the war-time Anglo-Canadian team at McGill University, he had worked with the Manhattan Project in Chicago and was familiar with research at Oak Ridge and Los Alamos.³²

In 1947, before the advent of the Russian bomb, there was a little-noted series of arrests of ex-soldiers who had been stationed at Los Alamos. In July, 1947, the Department of Justice announced the arrests of Alexander von der Luft and Ernest Wallis, two former Army sergeants. The two G.I.'s were charged with stealing atomic bomb secrets. At a later trial they received suspended sentences.³³

In the late summer and early fall of 1947, three more Los Alamos ex-soldiers were arrested. Arnold F. Kivi was convicted of stealing atomic bomb data and sentenced to eighteen months for possessing thirty-seven photographs and ten negatives. In October, 1947, two former Army photographers, George W. Thompson and Ernest Paporello, were arrested for possessing photographs of atomic developments at Los Alamos.

³²Eugene Rabinowitch, "Atomic Spy Trials: Heretical Afterthoughts," Bulletin of the Atomic Scientists, VII (May, 1951), 139-148.

³³Reuben, The Atom Spy Hoax, p. 125.

Paporello received a six-month sentence and Thompson was fined \$250.³⁴

In February, 1950, Scotland Yard arrested atomic scientist Dr. Klaus Emil Fuchs, the first arrest in a series which eventually would lead to the Rosenbergs. Authorities in Britain, alerted by the American government, had been investigating possible security leaks in its scientific community. After a number of talks with investigators, Fuchs confessed giving information to Russian espionage agents both in Britain and the United States.³⁵ Pleading guilty to two violations of the Official Secrets Act, he was sentenced to fourteen years imprisonment by the Chief Justice of England, Lord Goddard, who admonished: "You have done irreparable and incalculable harm to this land and to the United States. . . ." ³⁶

FBI agents, in May, 1950, questioned Fuchs on the identity of his American accomplice. On May 23, 1950, three days after the first questioning of Fuchs, Attorney General McGrath and FBI Director Hoover announced the

³⁴ Ibid., pp. 125-127.

³⁵ The Times, February 4, 1950. The Schneirs maintain Fuchs' confession has never been made public by either Britain or the United States. Walter and Miriam Schneir, Invitation to an Inquest (Baltimore: Penquin Books, Inc., 1973), p. 67.

³⁶ The Times, March 2, 1950.

apprehension of Philadelphia chemist Harry Gold, alleged espionage accomplice of Dr. Fuchs.³⁷

Harry Gold, a thirty-nine year old chemist, had been placed on an FBI list after an investigation of Elizabeth Bentley's revelations. Even before FBI questioning of Fuchs, Gold was being interrogated by FBI agents. Allowing the FBI to search his home, he was confronted with a tourist-folder of Santa Fe, New Mexico, which agents found. Whereupon, Gold reputedly confessed to being Fuchs' American contact.³⁸

Gold pleaded guilty before Judge James P. McGranery to a charge of conspiracy to commit espionage, said to cover from December, 1943, to November, 1947. McGranery was requested by the government to delay sentencing to a later date. More than six months later, in December, 1950, Gold was sentenced by Judge McGranery to a maximum thirty years imprisonment.³⁹

On June 16, 1950, David Greenglass, an ex-G.I. who had been stationed at Los Alamos during the war, was arraigned before a United States Commissioner on a capital

³⁷The New York Times, May 24, 1950.

³⁸J. Edgar Hoover, "Crime of the Century," Reader's Digest, May, 1951, pp. 150-168.

³⁹The New York Times, December 10, 1950.

offense of conspiracy to commit wartime espionage. After overnight questioning by agents of the FBI, Greenglass had confessed to supplying information on the atomic bomb to Harry Gold at Albuquerque, New Mexico, in June, 1945.⁴⁰

Greenglass' wife, Ruth, also underwent questioning by FBI agents. She did not immediately confirm her husband's story. In a June 19 consultation with her lawyer, O. John Rogge, Mrs. Greenglass described her husband as having a "tendency to hysteria. . . he would say things were so even if they were not. . . ." ⁴¹

Shortly after David Greenglass confessed, FBI agents interrogated Julius Rosenberg, Greenglass' brother-in-law. Rosenberg, a thirty-two year old electrical engineer from the Lower East Side of New York, was not arrested at that time. In July the Greenglass attorney, O. John Rogge, conferred with government prosecutors in a number of meetings. David and Ruth Greenglass had agreed to discuss co-operation with the government. The case was strengthened against Julius Rosenberg. Mrs. Greenglass, though named as a

⁴⁰ Ibid., June 17, 1950.

⁴¹ "Memorandum Describing Lawyer's Interview With Ruth Greenglass," Committee to Secure Justice for Morton Sobell Papers, The State Historical Society of Wisconsin, Madison, MSS7, Box 19, Folder 4.

co-conspirator, was exempted as a defendant in the later trial.⁴²

On July 18, 1950, FBI agents arrested Julius Rosenberg on charges of spying for the Soviet Union. J. Edgar Hoover announced that Rosenberg had enlisted the services of David Greenglass to supply atomic bomb information to Harry Gold. The Justice Department said Rosenberg was an important link in an American espionage network which included Fuchs, Gold and Greenglass. Rosenberg was said to have volunteered his services to the Soviets in order to contribute to the Russian cause.⁴³

Mrs. Ethel Rosenberg, the thirty-three year old wife of Julius Rosenberg and sister of David Greenglass, was arrested on August 11, 1950, on the steps of the Foley Square Court House after she had testified before a Federal grand jury. Ethel Rosenberg was accused of aiding her husband Julius and her brother David in obtaining classified information on the atomic bomb. The New York Times quoted Myles J. Lane, Chief Assistant United States Attorney, as saying there was "ample evidence that Mrs. Rosenberg and her husband have been affiliated with Communist activities

⁴²Goldstein, "The Unquiet Death of Ethel and Julius Rosenberg," pp. 41-42.

⁴³The New York Times, July 18, 1950.

for a long period of time." Lane added that Mrs. Rosenberg, through her crime, had jeopardized the lives of everyone in the country.⁴⁴

On August 18, 1950, Morton Sobell, a New York electrical engineer, was arrested on charges of espionage in Laredo, Texas. Sobell had been arrested at the Mexican-United States border after being forcibly removed from his apartment in Mexico City. The New York Times declared that unofficial sources indicated Sobell had been driven to the border by Mexican police. The paper said it was believed Julius Rosenberg had urged Sobell and his family to flee to Mexico to await travel visas. Sobell was described as a participant in a conspiracy with Rosenberg to supply the Soviet Union with atomic bomb secrets.⁴⁵

Before the Rosenberg case was called, a related case was conducted in the trial of Abraham Brothman and Miriam Moskowitz. Chemical engineer Brothman had been Harry Gold's former employer. Brothman and Moskowitz were accused of conspiring with Harry Gold to lie to a grand jury investigating revelations of Elizabeth Bentley. In probing the charge against Brothman, prosecutors Irving Saypol and

⁴⁴Ibid., August 12, 1950.

⁴⁵Ibid., August 19, 1950.

Roy Cohn explained that Brothman committed espionage by supplying technical material to the Russians. Elizabeth Bentley, who testified for the first time as a government witness in a trial, supplied details of her contact with Brothman's betrayal. Harry Gold, who had yet to be sentenced, reinforced Bentley's story. Communism was injected into the trial as ideological motive for Brothman's espionage. It was ruled immaterial that espionage information said to be contributed by Brothman was common knowledge. In the end, the jury chose to believe the stories of Bentley and Gold, and the two emerged from this trial as credible witnesses. Judge Irving Kaufman, congratulating the FBI on its investigation, imposed maximum sentences on defendants.⁴⁶

The Rosenberg trial opened approximately six months after the arrests of principals in the case. While the June arrests were taking place, the Korean War erupted. A month after the Brothman-Moskowitz trial, the Chinese Communists crossed the North Korean border and entered the war. Throughout 1950 and 1951 Senator Joseph McCarthy was launching a career of anti-Communism which, along with the war, helped keep the Red scare alive in the press and on television.

⁴⁶The New York Times, October 23, November 29, 1950.

This background, along with public acceptance of spy cases, was to be an unmeasured influence in the Rosenberg-Sobell trial.

CHAPTER II

The Trial and Aftermath

The prosecution of the Rosenbergs, relying primarily on the oral testimony of accomplices, succeeded in convincing the jury the defendants were guilty. Court appeals in the case were unsuccessful, and President Eisenhower, expressing faith in the Court's treatment of the Rosenbergs and resisting pleas for mercy, refused to intervene in the death sentence. A drive for clemency, with the National Committee to Secure Justice in the Rosenberg Case spearheading efforts, reverted in the end to a protest movement against the execution of the couple.

Julius Rosenberg, Ethel Rosenberg and Morton Sobell were placed on trial Tuesday, March 6, 1951, in the Federal Courthouse at Foley Square, New York City. Two other defendants charged with conspiracy to commit espionage were missing. David Greenglass had pleaded guilty and was granted severance

for his trial testimony, and Anatoli Yakovlev had left the United States in 1946.¹

Selecting a jury for the Rosenberg case had required a day and a half. Jury members, drawn from areas of the Southern District of New York, had been screened to exclude those who objected to capital punishment. The panel of veniremen had been quizzed to ascertain their reading habits and possible affiliations with subversive organizations.²

Legal counsel for the Rosenbergs was Emanuel Bloch and his seventy-four year old father, Alexander. Bloch, experienced in some minor civil rights cases, had little practice in the federal criminal courts.³ Alexander Bloch's career had been as a legal consultant in the sale of bakeries.⁴ Representing Morton Sobell was a defense team of Edward Kuntz

¹Soviet diplomat Anatoli Yakovlev left the United States to serve as an intelligence officer in France for two years. Later, he returned to Russia and was placed in a Soviet intelligence "illegals directorate." The New York Times, December 5, 1975.

²Ted Morgan, "The Rosenberg Jury," Esquire, May, 1975, pp. 104-109.

³When Rosenberg first approached Bloch for help after FBI questioning, Bloch evaluated the problem as a routine perjury case. Later he was appointed by the court as counsel. Virginia Gardner, The Rosenberg Story (New York: Masses & Mainstream, 1954), pp. 95-96.

⁴Louis Nizer, The Implosion Conspiracy (Greenwich, Conn.: Fawcett Publications, Inc., 1974), pp. 66-67.

and Harold Phillips. Though experienced as a trial lawyer, Kuntz also had little experience before federal courts. Phillips was an insurance lawyer.⁵

The government's prosecuting team was headed by the United States Attorney for the Southern District of New York, Irving Saypol, who had successfully prosecuted Alger Hiss, William Remington and recent Smith Act defendants. Assisting Saypol were Myles J. Lane, Roy Cohn, James B. Kilsheimer III and James E. Branigan, Jr. Throughout the trial representatives of the Atomic Energy Commission sat at the table with the prosecutors. A long list of potential witnesses, including the names of Leslie R. Groves, Harold Urey, J. Robert Oppenheimer and George Kistiakowski, had been released by the prosecution.⁶

Irving Saypol opened the government case by announcing the loyalty and allegiance of the defendants was not to this country, but to Communism at home and abroad. Defining the law of conspiracy for the jury, the prosecutor explained that it was "an agreement. . . between two or more people to violate some law of the United States. . . ." Saypol said

⁵Morton Sobell, On Doing Time (New York: Charles Scribner's Sons, 1974), p. 130.

⁶Nizer, The Implosion Conspiracy, pp. 60-61.

that persons who had such an agreement were guilty of crime with the performance of any overt act to further the conspiracy.⁷

Under Federal law, conspiracy permitted conviction of a defendant on the uncorroborated testimony of an accomplice. Allowed as evidence were the defendant's admissions to co-conspirators, circumstantial evidence and any evidential material connecting the defendant to the crime. As trial judge, Irving R. Kaufman would serve an important role as legal adviser to the jury on matters of conspiracy.⁸

The major evidence against the Rosenbergs was testimony from Ethel Rosenberg's brother, David Greenglass, and his wife, Ruth. Greenglass disclosed that Rosenberg had detailed to him the existence of an elaborate espionage network sponsored by the Russians. He said Rosenberg told him the Russians had rewarded his espionage successes with various gifts--a citation, watches and a console table with an apparatus used for microfilming. Evelyn Cox, a cleaning woman periodically hired by the Rosenbergs, was later to testify that she had noticed a console table in the Rosenberg

⁷Transcript of Record, Julius Rosenberg and Ethel Rosenberg v. The United States of America (2 vols.; New York: National Committee to Secure Justice in the Rosenberg Case, 1952), I, 179-186.

⁸"The Rosenberg Case: Some Reflections on Federal Criminal Law," Columbia Law Review, LIV (February, 1954), 220-237.

apartment. Though she had noticed nothing unusual about it, Mrs. Cox said it was new and Ethel Rosenberg commented that it was a gift from a friend.⁹

Guided by Roy Cohn, Greenglass said he responded to Julius Rosenberg's wartime request for information about Los Alamos by describing the site and its scientists. Greenglass recounted he later drew sketches and an explanation of the lens mold on which he was working. He said Rosenberg arranged for an espionage contact who was to pick up information from him. From photographs, he identified Harry Gold as the espionage courier who came to his home in Albuquerque in June, 1945. Greenglass testified that while he was on furlough in September, 1945, he gave Rosenberg twelve pages of sketches and descriptive material on a cross-section of the atomic bomb. Ethel Rosenberg typed the material. The prosecution introduced reproductions of the bomb material made by Greenglass and submitted them as an Exhibit under the secondary rules of evidence. Then, in a surprise move, Bloch requested the atomic bomb material be impounded and the courtroom cleared before further testimony from Greenglass. Bloch's requests were spur-of-the-moment decisions. He was fighting the stigma of treason, and he hoped this move

⁹Transcript of Record, I, 516-521; Ibid., II, 1410-1420.

would dramatize the patriotism of his clients.¹⁰ Judge Kaufman, acceding to Bloch's requests, cleared the room. Members of the press allowed to stay were cautioned as to their reporting.¹¹

A series of experts, virtually unchallenged, testified for the prosecution. Dr. Walter S. Koski, physical chemist who had helped develop the implosion lens at Los Alamos, testified that the work was highly confidential. He declared the Greenglass sketches and information to be accurate. Liaison officer at Los Alamos, John Derry, testified that Greenglass' sketches and information on the bomb explained the essential principle involved. John Lansdale, Jr., detailing the elaborate security procedures governing employees at Los Alamos, heightened the aura of treachery.¹²

Assistant United States Attorney James B. Kilsheimer, interrogating Ruth Greenglass, helped confirm and add to her husband's version of the Rosenbergs' Communist activities. From a photograph, Mrs. Greenglass identified Harry Gold as the courier who came to Albuquerque in June, 1945, paying

¹⁰Morgan, "The Rosenberg Jury," p. 127.

¹¹Transcript of Record, I, 508.

¹²Ibid., 470-474; II, 916, 879-902.

them \$500 for espionage material. Introduced into evidence were the records of deposits in an Albuquerque bank which seemed to confirm the testimony. Mrs. Greenglass said that in May and June, 1950, Julius Rosenberg gave them \$5,000 and urged them to go to Mexico where a Soviet contact could be made. Rosenberg advised them to obtain passport pictures, photographs which Kilsheimer then submitted as Exhibits for the prosecution. According to Mrs. Greenglass, Rosenberg said he would obtain the necessary smallpox inoculation statements for them from his doctor. Dr. George Barnhardt later testified that Rosenberg telephoned him in May or June, 1950, to inquire about inoculations needed to enter Mexico. According to Barnhardt, Rosenberg had not asked him to forge smallpox documents.¹³

Confessed spy Harry Gold, called by the prosecution, was never cross-examined by the defense. Impressive in producing facts, Gold disclosed he had engaged in espionage for the Soviet Union from 1935 to the time of his arrest in 1950. Under the guidance of Myles J. Lane, he identified Klaus Fuchs and described his contacts with the scientist. Acknowledging Soviet diplomat Anatoli Yakovlev as his

¹³Ibid., I, 699-704, 710; II, 849-852.

espionage superior, Gold related Yakovlev had given him instructions to contact David Greenglass in Albuquerque, New Mexico, in June, 1945. Gold said he received an irregularly-cut piece of jello box from Yakovlev and was told that Greenglass would produce a matching piece. According to Gold, Yakovlev later evaluated the Greenglass material as extremely valuable. At this point, the prosecution submitted into evidence a photostatic copy of Gold's June, 1945, registration card at the Hilton Hotel in Albuquerque.¹⁴

Ex-Communist Elizabeth Bentley, since 1945 an FBI informer, testified as an expert on the nature of American Communism and the Communist Party. Bentley's testimony gave rise to numerous defense objections, but was permitted by Kaufman under the rules of evidence in order to establish a motive for espionage. Bentley said Jacob Golos, her espionage superior, had once picked up information from "Julius," an engineer who lived in New York City's Knickerbocker Village. She added that she could remember taking five or six telephone calls for Golos from a "Julius."¹⁵

The major witness against Morton Sobell was Max Elitcher, a close friend and neighbor. He testified he had

¹⁴Ibid., I, 804-822.

¹⁵Ibid., II, 979-994.

joined the Communist Party with Sobell in 1939, and he alleged Rosenberg in 1944 had urged him to aid the Soviet Union by supplying information from his work at the Bureau of Ordnance in Washington, D.C. Testifying that Sobell was involved in espionage with Rosenberg, Elitcher said that he once accompanied Sobell in delivering a can of microfilm to Rosenberg. Under cross-examination, Elitcher admitted he was under threat of perjury for signing a non-Communist affidavit in 1947.¹⁶

Emphasizing the theory of flight to avoid prosecution, a series of witnesses took the stand to describe Sobell's suspicious activities in Mexico. William Danziger, a Sobell acquaintance, described letters he received from Sobell in Mexico. Sobell had used aliases and the letters contained notes for other people which Danziger delivered. Manuel Giner de Los Rios, Sobell's Mexican neighbor, testified that Sobell asked him if there was a way to leave Mexico without passports.¹⁷

Unlike Morton Sobell, Julius Rosenberg elected to testify in his own defense. He tersely denied stories of an espionage network and described his contacts with

¹⁶ Ibid., I, 204-361.

¹⁷ Ibid., II, 858-866, 919-949.

Greenglass and Elitcher as ordinary. According to Rosenberg's analysis, Greenglass appeared agitated and financially pressed in May and June, 1950, and had asked him to find out what inoculations were needed to gain admittance to Mexico. Rosenberg refused to answer Saypol's questions on Communist Party membership and said he had never received espionage gifts from the Russians. He denied speaking to Elizabeth Bentley on the telephone or instructing the Greenglasses to flee to Mexico. When probed for his ideological sympathies, Rosenberg answered: "I discussed. . . with my friends on the basis of the performance of what they accomplished, and I felt that the Soviet government has improved the lot of the underdog there."¹⁸

Ethel Rosenberg followed her husband to the stand. Describing their life as simple and ordinary, she told of business and social difficulties with the Greenglasses and her concern that her brother David was in some kind of trouble. Supporting her husband's denials of espionage activity, Mrs. Rosenberg denied the Russians had rewarded them with gifts. Saypol, in cross-examining Mrs. Rosenberg, read her testimony before the grand jury in which she had invoked Constitutional privilege on most questions. Mrs. Rosenberg offered little

¹⁸ Ibid., 1072-1162, 1079.

explanation to Saypol or the Court, and Judge Kaufman informed the jury that it was permissible to take the grand jury testimony into consideration in evaluating Mrs. Rosenberg's credibility. Ethel Rosenberg invoked Constitutional privilege at the trial on all questions of Communist Party membership.¹⁹

A final surprise witness for the prosecution was Ben Schneider, a photographer who told the Court the Rosenbergs had visited his shop in May or June, 1950, and ordered pictures to be used for a trip to France. Both Ethel and Julius Rosenberg had denied making any plans to leave the United States. Later, they would plead photography was their hobby.²⁰

Throughout the trial, the Rosenbergs' alleged Communist connections were emphasized.²¹ The fact that Julius Rosenberg

¹⁹ Ibid., 1300-1395.

²⁰ Ibid., 1425-1428.

²¹ Although the Rosenbergs invoked Constitutional privilege at their trial, sons Michael and Robert Meeropol have concluded their parents were probably members of the Communist Party. Bloch's assistant, Gloria (Agrin) Josephson, says the Rosenbergs were Communists. In addition, released FBI information indicates the Rosenbergs were Communists: Evidence includes early Greenglass letters, record of a Communist Party transfer, and remarks of Rosenberg acquaintances. Finally, Morton Sobell acknowledged Communist Party membership in his book, On Doing Time. Michael and Robert Meeropol, We Are Your Sons (Boston:

had lost a government job on a Communist charge, his activities in a union labeled subversive, his radical college associations, his reading habits and even his ideological comments to other persons were considered at the trial. There were numerous inferences that friends and acquaintances of Rosenberg were members of a spy ring. Testimony of this type prompted Bloch to remind the jury: "If you want to convict these defendants because you think they are Communists, and you don't like any member of the Communist Party. . . you are not convicting on the crime that they are being charged with."²²

A real defense for the Rosenbergs required challenging the power of the government. Defense counsel possessed neither the resources nor the time for such a task. Cross-examinations of major government witnesses did little to alter or shake the prosecution's case. After the trial Bloch was to say: "There was never a friendly face in the courtroom. . . ."²³

Houghton Mifflin Company, 1975), p. 394; Morgan, "The Rosenberg Jury," p. 128; The FBI, "Reports Summarizing the Investigation Conducted Up to the Arrest and Arraignment of Julius Rosenberg," Morton Sobell, On Doing Time, pp. 26-60.

²²Transcript of Record, II, 1072-1162, 1454.

²³National Guardian, August 31, 1953.

Sobell, unhappy with defense counsel throughout the trial, would later comment: "They [the lawyers] thought that somehow something had been put over on the government. . . . I don't know if they really believed it, but. . . . They were naive and frightened. . . ." ²⁴

One week after the jury returned a verdict of guilty on all defendants, the Rosenbergs and Sobell were brought to the Foley Square Courthouse for sentencing. Prosecutor Saypol told the Court that the defendants had committed crimes affecting whole generations of mankind and should be denied mercy. Defense lawyer Bloch pleaded for leniency, said his clients would always maintain innocence and reminded the Court that the United States and the Soviet Union were allies when alleged crimes took place. ²⁵

In sentencing the Rosenbergs, Judge Kaufman remarked that it was difficult to make people realize that the United States was engaged in a grim struggle for survival with a different system. Speaking of Communism as a diabolical conspiracy, Kaufman told the Rosenbergs he considered their crime to be worse than murder. He said: "I believe your conduct in putting into the hands of the Russians the

²⁴Helen and Morton Sobell, private interview held in New York City, July 31, 1975.

²⁵Transcript of Record, II, 1300-1395.

A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea. . . ." ²⁶

Kaufman judged Julius Rosenberg to be the prime mover in the conspiracy with Ethel Rosenberg encouraging and assisting him. Saying he was unable to find any reason to extend mercy, the Judge pronounced a sentence of death. Kaufman acknowledged Sobell had not participated in the atomic bomb espionage, but said his role in the conspiracy was serious. Sentencing Sobell to the maximum of thirty years imprisonment, Kaufman accompanied the decision with a recommendation against parole. ²⁷

On the following day, David Greenglass was brought before Kaufman for sentencing. Defense attorney Rogge reminded the Court of Greenglass' co-operation and asked for leniency. Kaufman, terming the nature of the Greenglass crime revolting, pronounced an unexpectedly-stiff sentence of fifteen years. ²⁸

After the trial, numerous appeals were made through the courts on behalf of the Rosenbergs. The Circuit Court

²⁶ Ibid. , 1614-1615.

²⁷ Ibid. , 1616-1620.

²⁸ Ibid. , 1628-1638.

of Appeals, Second Circuit, handed down its opinion, written by Judge Jerome N. Frank, on February 25, 1952. The twenty-four page opinion acknowledged the severity of the sentences. It read: "It goes without saying that we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted on this appeal."²⁹

The Circuit Court reminded appellants that the 1917 Espionage Act had been declared constitutional and applicable, though espionage information may not be injurious to the country or the country involved was not considered an enemy. It was conceded that informant testimony had convicted the Rosenbergs, and the Court acknowledged that the Greenglasses and others were under the pressure of involvement in alleged criminal activity. The Court, however, stipulated that it was the jury's obligation to weigh the reliability of accomplice testimony. Judge Kaufman's conduct of the trial was said to be fair and proper.³⁰

Testimony on Communism and ideology was ruled relevant to the motive for spying. Although it was conceived ideological evidence might inflame a jury, the Court ruled the trial judge in the Rosenberg case had exercised adequate precaution

²⁹Ibid., 1644.

³⁰Ibid., 1648-1654.

to the jury. Ex-Communist Bentley's testimony was permissible because the judge informed the jury it was free to disregard her testimony. Sobell was held to be a member of the atomic conspiracy with the majority of the Circuit Court finding "a single unified purpose" in the defendants' actions.³¹

On November 24, 1952, lawyers for the Rosenbergs petitioned Judge Sylvester J. Ryan, of the New York Federal Court, to set aside their convictions. Among reasons cited were publicity surrounding the trial and testimony of photographer Schneider. Defense arguments attacked the pre-trial publicity generated by the prosecution's press releases. Lawyers also objected to the mid-trial arrest of William Perl, a college classmate of Rosenberg's, whom prosecutors labeled through the press as an accomplice. Finally, the defense appeal alleged that photographer Schneider was allowed by the prosecutors to give false testimony that he had not seen the Rosenbergs since the day they entered his shop. Defense lawyers alleged Schneider had been brought into the courtroom a day before his testimony to confirm identity of Rosenberg. According to Judge Ryan, none of

³¹Ibid., 1654-1665.

the defense issues represented substantial points of law, and he refused to stay the execution of the Rosenbergs.³²

The Rosenberg case was appealed to the Supreme Court presided over by Fred Vinson. The Vinson Court, described as one of "the darkest [courts to rule] in the history of American freedoms," refused to deal with many of the major civil liberties cases of the time.³³ It consistently refused to hear the Rosenberg case, but on November 17, 1952, a denial of certiorari had prompted Justice Felix Frankfurter to comment: "Petitioners are under death sentence, and it is not unreasonable to feel that before life is taken review should be open in the highest court of the society which has condemned them."³⁴

In June, 1953, a fourth effort was made to gain a hearing before the Supreme Court. In a five-to-four decision, the Court refused the case and recessed for the summer. At this point, a flurry of action took place. Lawyers Daniel G. Marshall and Fyke Farmer, representing Irwin Edelman, approached Justice William O. Douglas for a stay of

³²Walter and Miriam Schneir, Invitation to an Inquest (New York: Penquin Books, Inc., 1973), pp. 180-183.

³³Leo Pfeffer, This Honorable Court (Boston: Beacon Press, 1965), p. 357.

³⁴Rosenberg v. United States, 344 U.S. 899 (1952).

execution. Marshall and Farmer submitted a petition containing twelve points of defense inadequacy. The major point considered by Douglas was an allegation the Rosenbergs had been tried under the wrong law. The Edelman petition contended the 1917 Espionage Act was superseded by the 1946 Atomic Energy Act with its provision for a jury-recommended death penalty. Early in the morning of June 17, Justice Douglas granted a stay to the Rosenbergs. He said, in part: "I have serious doubts whether this death sentence may be imposed for this offense except and unless a jury recommends it. The Rosenbergs should have an opportunity to litigate that issue."³⁵

Later that same afternoon, Attorney General Herbert Brownell, Jr., asked Chief Justice Vinson to call a special session of the Supreme Court to vacate the stay issued by Douglas. Brownell explained: "It is important in the interests of the administration of criminal justice and in the national interests that this case be brought to a final determination as expeditiously as possible."³⁶

On June 18, 1953, for the third time in the history of the Supreme Court, all nine Justices met in special

³⁵Rosenberg v. United States, 346 U.S. 321 (Special Term, 1953).

³⁶Schneir, Invitation to an Inquest, p. 243.

session. Deliberations were continued into Friday, June 19. At noon Vinson delivered the Court's decision, referring to the Attorney General's request for the session and the desire for reasonable promptness. The Court, in a six-to-three vote, vacated the Douglas stay and ruled the Atomic Energy Act inapplicable to the Rosenberg case. Justice Frankfurter would write after the execution that there had been insufficient time to explore the issues of the case. He said: "To be writing an opinion in a case affecting two lives after the curtain has been rung down upon them has the appearance of pathetic futility. But history also has its claims."³⁷

Failing in the Courts by 1953, the Rosenbergs had realized their last avenue of appeal lay in seeking Presidential clemency. By January, 1953, the move for executive clemency had been undertaken by the Rosenbergs. In their petition to the President, the Rosenbergs declared their innocence and reminded the President that the Soviet Union had been a wartime ally. They asked him to note the disparity of sentences among Cold War espionage agents. Accusing the news media of promoting the theory that the Soviet atomic bomb resulted solely from their contribution, they said publicity made the trial unfair. The Rosenbergs reminded the President

³⁷Rosenberg v. United States, 346 U.S. 286-287, 310 (1953).

that the Joint Congressional Committee on Atomic Energy had evaluated the Greenglass contribution to the Russians as inferior to that of other Cold War spies.³⁸

On February 11, 1953, President Dwight D. Eisenhower issued a statement denying clemency to the Rosenbergs. Julius and Ethel Rosenberg, he said, had been accorded a full measure of justice in the courts. He noted:

The nature of the crime for which they have been found guilty and sentenced far exceeds that of the taking of the life of another citizen; it involves the deliberate betrayal of the entire nation and could very well result in the death of many, many thousands of citizens. . . .³⁹

White House officials noted the reaction of the public to the Eisenhower statement. Fifty-one telegrams were received favoring Eisenhower's denial of clemency, but 436 were received in opposition. Sentiments of non-support varied from expressions of trial injustice to objections to capital punishment. White House aide William J. Hopkins,

³⁸"Petition of Ethel Rosenberg for Executive Clemency to the President of the United States," January 9, 1953, Committee to Secure Justice for Morton Sobell Papers, The State Historical Society of Wisconsin, Madison, MSS7, Box 49, Folder 1.

³⁹U.S. President. Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1953 -), Dwight D. Eisenhower, 1953.

however, dismissed the telegrams as being from areas of New York and California where Rosenberg support was strong.⁴⁰

There were no official public opinion surveys on the Rosenberg case, but White House aides noted a little-publicized MacFadden Publications analysis of the affair. Special White House counsel Bernard M. Shanley, in a memorandum to Sherman Adams, quoted the results of a survey of 200 housewives which found 52.5 percent supporting the death sentence, 24 percent recommending life imprisonment, 16.9 percent favoring deportation and 14.7 percent suggesting punishment other than death because of the children.⁴¹

What considerations went into Eisenhower's decision on the Rosenberg case? According to the Oral History Interview with Herbert Brownell, Eisenhower felt obliged by Court decisions on the case. The Attorney General said Eisenhower's concern over internal security was decisive in his judgment. He said Eisenhower felt that at stake in the Rosenberg sentence was the future effectiveness of the FBI

⁴⁰"Memorandum for Mr. Stephens," filed by William J. Hopkins, February 12, 1953, Dwight D. Eisenhower Library, Abilene, Kansas, O.F., Box 411, Central Files 101-R-"U".

⁴¹Memorandum to: Governor Adams, filed by Bernard M. Shanley, April 21, 1953, Dwight D. Eisenhower Library, Abilene, Kansas, O.F., Box 411, Central Files 101-R-"U".

and the Justice Department. According to Brownell, the Rosenberg case had forced Eisenhower to formulate ideas on pardons and commutations quickly. Acknowledging there were sub-Cabinet level officials opposed to the Rosenberg execution, Brownell noted James V. Bennett, of the Bureau of Prisons, had desired commutation of Ethel Rosenberg's sentence.⁴²

In June, 1953, Harry A. Bullis recorded some White House dinner comments:

The President told about the great strain he had been under with the Rosenberg case. . . . He explained he had decided to go along with the judiciary courts, that there wasn't anything anti-Semitic about the case because the Rosenbergs had been sentenced and tried under and by a Jewish judge. . . . Someone asked him if he were disturbed about the people parading. . . in front of the White House. . . . He said. . . he always felt like taking the course that they were having their criticism against.⁴³

Emmet John Hughes described a curious June 19 Cabinet meeting exchange on the case between Attorney General Brownell and President Eisenhower. Eisenhower, who was said to be convinced the Rosenbergs were guilty, remarked:

⁴²"Oral History Interview with Herbert Brownell," #3, Ed Edwin, interviewer, Columbia University Oral History Project, Dwight D. Eisenhower Library, Abilene, Kansas, pp. 192-193; #4, pp. 235-236.

⁴³"Dinner with President Eisenhower at the White House," June 22, 1953, Bullis Papers, Box 2, Correspondence 1947-59, Dwight D. Eisenhower Library, Abilene, Kansas.

"Now if the Supreme Court decides by, say five to four or even six to three, as far as the average man's concerned, there will be doubt--not just a legal point in his mind."⁴⁴

Brownell countered by saying pressure groups would not decide legal points in the Rosenberg case. Ending the conversation, Eisenhower said his concern was "statecraft."⁴⁵

Eisenhower revealed additional concerns in letters. In a message to an unidentified friend opposed to the execution, the President said it distressed him that Communist leaders thought democratic governments too weak to counteract subversive activity. To his son, John, Eisenhower admitted it went "against the grain to avoid interfering in the case where a woman is to receive capital punishment." He feared, however, that if Mrs. Rosenberg was spared the Soviets would recruit their spies among women.⁴⁶

More than a year before the Rosenbergs sought and were refused executive clemency, a campaign was organized on their behalf to spearhead a public drive for clemency. The National Committee to Secure Justice in the Rosenberg Case

⁴⁴Emmet John Hughes, Ordeal of Power (New York: Antheneum, 1963), p. 80.

⁴⁵Ibid.

⁴⁶Dwight D. Eisenhower, The White House Years: Mandate for Change (Garden City: Doubleday & Company, Inc., 1963), p. 225.

was organized in September, 1951, by William Reuben, David Alman and Joseph Brainan. The Committee, though it attracted non-Communist support, was labeled from the beginning as a Communist-front organization. In an initial call for public support, the Committee warned:

It is a relevant fact, as revealed by the trial record of the case that the alleged political opinions of Ethel and Julius Rosenberg were a major element in the case. . . .

. . . beyond the fate of this family is the right of all people in this country to freedom of thought. . . .⁴⁷

The Civil Rights Congress and the International Workers Order, both on the Attorney General's list, assisted in forming chapters of the National Committee to Secure Justice in the Rosenberg Case in fifty cities. In 1952, a notable increase was apparent in Committee activity. In that year elements of the American Left joined in efforts to fight the death sentence. Large rallies, organized to draw support for clemency, saw the Rosenberg children, Michael and Robert, appearing at a number of them. Bloch encouraged a letter-writing campaign for clemency. Morton Sobell's wife, Helen, lectured on the case to help raise money for legal

⁴⁷ "Committee to Secure Justice in the Rosenberg Case - Statement of Purpose," Committee to Secure Justice for Morton Sobell Papers; The State Historical Society of Wisconsin, Madison, MSS7, Box 19, Folder 4. ²³

expenses. By Christmas, 1952, demonstrators were establishing picket lines at the White House in Washington and at Sing Sing Prison.⁴⁸

Government sources were deluged by clemency messages. In June, 1953, Dr. Bernard M. Loomer, Dean of the University of Chicago Divinity School, delivered a clergymen's petition to President Eisenhower bearing 2,300 signatures for clemency.⁴⁹ Professor Harold Urey, an atomic bomb scientist who had joined the clemency move, wrote Judge Kaufman that the case was flimsy and world opinion would not condone an execution.⁵⁰ James A. Wolfe, Chief Justice of the Utah Supreme Court, said a conviction on conspiracy did not warrant a death penalty, especially when based on accomplice testimony.⁵¹ Rabbi Meyer C. Sharff of New York asked that the Rosenbergs be accorded justice by setting aside the death penalty.⁵²

⁴⁸ Nizer, The Implosion Conspiracy, pp. 468-473.

⁴⁹ "Memorandum from Mr. Hagerty," from Thomas E. Stephens, June 16, 1953, Dwight D. Eisenhower Library, Abilene, Kansas, Box 411, Central Files, 101-R-"U".

⁵⁰ "Dr. Urey's letter to Judge Kaufman," Committee to Secure Justice for Morton Sobell Papers, The State Historical Society of Wisconsin, Madison, MSS7, Box 19, Folder 4.

⁵¹ Ethel and Julius Rosenberg, Death House Letters (New York: Jero Publishing Company, Inc., 1953), pp. 161-162.

⁵² Ibid.

Newspaper coverage of the Rosenberg case and the clemency movement was overwhelmingly hostile. In August, 1951, a small left-wing newspaper, the National Guardian, immersed itself in the conflict. Charging that the Rosenbergs were "framed" and that the trial was a sham, the New York weekly initiated a series of articles in defense of the couple. By April, 1953, a search by National Guardian reporters resulted in locating the console table which had figured in much of the trial testimony. When Judge Kaufman was petitioned on the basis of this and other newly-discovered evidence, he agreed to expedite the matter to the Court of Appeals. On June 11, 1953, the Circuit Court unanimously denied a new trial, citing insignificance of evidence.⁵³

In the months before the Rosenbergs' execution, some liberal publications in the United States did urge mercy for the couple. In June, 1953, The Nation asked clemency for the couple, citing what it called loose application of the Espionage Act's death penalty. The Nation warned that future historians might well conclude McCarthyism killed the

⁵³Nizer, The Implosion Conspiracy, p. 460; James Aronson, The Press and the Cold War (Indianapolis: The Bobbs-Merrill Company, Inc.), pp. 58-62.

Rosenbergs.⁵⁴ The New Republic, calling the Rosenberg sentences harsh, predicted their execution would harm American leadership abroad.⁵⁵

With the approach of the June date set for execution, James V. Bennett visited the Rosenbergs at Sing Sing as the representative of the Justice Department. Bennett told the Rosenbergs that if they confessed, commutation of sentences could be considered. The Rosenbergs refused the offer.⁵⁶ In the days before the execution, the clemency campaign grew more intense. In parts of the country, supporters organized house-to-house canvassing urging people to write to the President. Fifteen-minute radio pleas for clemency were aired in Washington, accompanied by an influx of Rosenberg supporters shuttled by train from New York City to the capital.⁵⁷

A Gallup Poll of January, 1953, in an apparent measure of public scorn for the Rosenbergs, found 73 percent of the

⁵⁴Freda Kirchway, "Mercy for the Rosenbergs," The Nation, January 10, 1953, p. 24; "Who Sentenced the Rosenbergs?" The Nation, June 20, 1953, p. 515.

⁵⁵"The Rosenberg Case," New Republic, January 19, 1953, p. 7.

⁵⁶Schneir, Invitation to an Inquest, p. 233.

⁵⁷Nizer, The Implosion Conspiracy, p. 500.

American people favoring a death penalty for traitors.⁵⁸

Though Rosenberg supporters alleged there were Congressmen favoring clemency, few ever responded favorably in public.

The political realities of the Cold War apparently demanded conformity on this case. Reflecting the typical attitude, Senator Herbert H. Lehman wrote a Rosenberg supporter:

So far as the actual conviction of the Rosenbergs is concerned, they were, as you know, given the full benefit of our judicial processes. . . . They were pronounced guilty by a jury of their peers. . . . There is no basis for me to doubt the validity of this verdict.⁵⁹

The fate of the Rosenbergs had become a public debate among Communists and non-Communists in Europe by late 1952. Chapters of the Rosenberg Committee were organized in cities across Europe. Some clemency posters stated: "Death for the Rosenbergs is a Victory for McCarthy."⁶⁰ Before the execution American embassies had received over 10,000 clemency petitions from individuals and groups.⁶¹

⁵⁸George H. Gallup, The Gallup Poll, II, (New York: Random House, 1972), p. 1117.

⁵⁹Herbert H. Lehman, letter, February 21, 1953, Committee to Secure Justice for Morton Sobell Papers, The State Historical Society of Wisconsin, Madison, MSS7, Box 8, Folder 2.

⁶⁰Leslie A. Fiedler, "A Postscript to the Rosenberg Case," Encounter, October, 1953, p. 2.

⁶¹Nizer, The Implosion Conspiracy, p. 499.

The relatives of Alfred Dreyfus and Bartolomeo Vanzetti asked that clemency be granted. Pressure on the Vatican was strong.⁶² In February, 1953, the Apostolic Delegate to the United States contacted Sherman Adams to tell him of the issuance of a release to the press revealing the Pope had already informed the United States Department of Justice of numerous requests for intercession in the case.⁶³ In response to the foreign outcry, the Department of State provided printed reviews of the Rosenberg case to forty diplomatic missions. The reviews stressed the fairness of the trial and evidence of guilt.⁶⁴

Overseas uproar on the Rosenberg execution was so emphatic that Eisenhower aide C.D. Jackson protested the Administration's handling of the foreign aspect of the case. Jackson complained that the Voice of America and the United States Information Offices had had no directives from the government. According to Jackson, he had had to read the newspapers to keep abreast of events on the case. Accusing the Attorney General of handling the situation as

⁶²Death House Letters, pp. 159-167.

⁶³Letter from A.G. Cicognani to Sherman Adams, Feb. 13, 1953, Dwight D. Eisenhower Library, Abilene, Kansas, O.F., Box 411, Central Files, 101-R-"U".

⁶⁴Nizer, The Implosion Conspiracy, p. 525.

though it were merely a legal problem, Jackson emphasized that in Europe "the decision in this case was political warfare raised to the nth power."⁶⁵

On the day appointed for the execution--June 19, 1953--American embassies and consulates in Paris, London, Milan, Toronto, Vienna and Brussels were placed under guard from demonstrators. In New York City, 5,000 people gathered near Union Square. Pickets were parading in front of the White House in Washington. At Sing Sing Prison, United States Marshal William Carroll and FBI agents were present to witness the execution. Telephone lines to the Attorney General had been installed, and the Rosenbergs were advised that the execution would be halted if they agreed to confess. Three reporters in the Death House, representing the news services, were under instructions to convey their experiences to other awaiting newsmen.⁶⁶

Emanuel Bloch spent his last hours before the execution futilely trying to obtain a stay from various Supreme Court justices and attempting to see President Eisenhower. Other colleagues on the defense were engaged in frantic legal

⁶⁵"Memorandum to: Gabriel Hauge," February 23, 1953, Dwight D. Eisenhower Library, Abilene, Kansas, Box 401, Central Files, 101-P.

⁶⁶Gardner, The Rosenberg Story, p. 116.

efforts to gain Court intercession in the execution. All efforts failed and the Rosenbergs went quietly to their deaths on the evening of June 19, 1953. At their funeral, Emanuel Bloch said:

I place the murder of the Rosenbergs at the door of President Eisenhower, Mr. Brownell, and J. Edgar Hoover. They did not pull the switch, true, but they directed the one who did pull the switch. This was not the American tradition, not American justice and not American fair play. . . .⁶⁷

Emanuel Bloch was to suffer later for his remarks. Disbarment proceedings were initiated by the Bar Association of the City of New York, but within eight months he was dead of a heart attack.⁶⁸

From the beginning the Rosenbergs were probably doomed, since their predicament and resources made it inconceivable that a meaningful defense could have been prepared to counter the government case. Perhaps Emanuel Bloch in his remarks had arrived at a final realization of how hopeless the cause had been. Forced to weigh contradictory oral testimony, the jury had chosen to believe the government witnesses. The Judge, speaking of a diabolical conspiracy to control the world, determined death to be an appropriate

⁶⁷ "Legacy of the Rosenbergs," Jewish Life, August, 1953, p. 29.

⁶⁸ Nizer, The Implosion Conspiracy, p. 537-539.

punishment. In view of post-trial information, the Rosenberg case stands as a brutal example of Cold War logic, and through the years it would be debated by various writers and critics.

CHAPTER III

A Review of the Literature 1953/1975

Early literature on the Rosenberg case did not question the fairness of the trial or the guilt of the Rosenbergs. It would take time and a thaw in the Cold War to produce a major literary effort questioning the case. Walter and Miriam Schneir's Invitation to an Inquest, a revisionist investigation of the case, generated substantial discussion on the Rosenberg case and opened the affair for legal and intellectual inquiry. It was followed by a best-seller and personal accounts from those who had been directly involved in the case.

In the years following the trial, a series of books were issued by leading publishing firms. Oliver Pilat's The Atom Spies, S. Andhil Fineberg's The Rosenberg Case, Bob Considine's It's All News To Me, and Jonathan Root's The Betrayers, all conventional in accepting Rosenberg guilt, were allowed the normal reviews, advertising and distribution.¹ British accounts by Alan Moorehead, Justin Atholl and Rebecca West

¹Victor S. Navasky, "In Cold Print: The Case of the Rosenberg Case," The New York Times Magazine, July 15, 1973, p. 2.

who angled in on the Fuchs connection of the Rosenberg case, could be found in many libraries and bookstores. In these espionage accounts, few questions were ever raised about the fairness of the Rosenberg trial.

In 1954 a few legal publications took an interest in the case. In February of that year the Columbia Law Review scrutinized the case and, notwithstanding some qualms, found it judicially respectable. In December, Norman S. Beier and Leonard B. Sand, law clerks of Judge Kaufmann fully defended the trial and verdict in the American Bar Association Journal in an effort to counteract what they called growing Communist distortion of public knowledge.²

Early books disputing Rosenberg guilt won little attention from a public infused with the spirit of the Cold War. Cold War dissenters often privately printed their writings, submitted works to minor left-wing publishers or published overseas. Three early books on the Rosenberg case were relegated to obscurity. Literary critics took little note of them, and they were not available in most libraries and bookstores. William Reuben privately published his The Atom Spy Hoax in 1954. Cameron & Kahn, a left-wing press

² Norman S. Beier and Leonard B. Sand, "The Rosenberg Case: History and Hysteria," American Bar Association Journal, XL (December, 1954), 1046.

published John Wexley's The Judgment of Julius and Ethel Rosenberg in 1955. Malcolm Sharp, a prominent University of Chicago law professor, had his 1956 critique, Was Justice Done?; published by another left-wing house, the Monthly Review Press.³

These books, published within three years of the execution, maintained similar premises on the case. Reuben, a National Guardian reporter instrumental in the formation of the National Committee to Secure Justice in the Rosenberg Case, charged that accusations of atomic espionage were schemes devised by America's ruling capitalists. Cold War politicians, backed by the Chamber of Commerce, were pushing for a strong national policy opposing the Soviet Union. To fuel the Cold War, espionage fears were deliberately injected into domestic politics. Reuben found spy cases such as the Rosenbergs, easy to drum up. The main ingredients were Cold War fears generated by ambitious politicians, an hysterical press, informers with confessions and a powerful government. No real evidence was needed.⁴

John Wexley, differing in thrust from Reuben, emphasized the domestic repression of radicals. With the

³Navasky, "In Cold Print: The Case of the Rosenberg Case," p. 2.

⁴William Reuben, The Atom Spy Hoax (New York: Action Books, 1955), pp. 16-85.

national Administration seeking justification of the Korean War and wanting to demonstrate its antipathy to Communism, alleged Communists on the home front became easy targets. Wexley saw espionage accusations as examples of a government deliberately framing radicals.⁵

Less radical, Malcolm Sharp's book offered contrast to Reuben and Wexley. While not entirely disagreeing with the two authors' theories on the case, Sharp viewed the Rosenberg case primarily as one of compromised justice fueled by a variety of hostilities. The Cold War and the threat to national peril served as background, but unlike Reuben and Wexley, Sharp offered a villain in man's psychological frailties. Searching for motivations, Sharp spoke of a deep, hidden sense of guilt Americans felt over the destructive capabilities of the atomic bomb and possibly having to use it. The Korean War unearthed those frightening passions, and Sharp suggested it was not unreasonable that American society may have engaged in a primitive rite, transferring guilt, hatred and fear to victims who served as scapegoats. Sharp felt that hostilities and fears, personal and impersonal, helped produce the major witnesses against the Rosenbergs. He did not, however, rule out conscious

⁵ John Wexley, The Judgment of Julius and Ethel Rosenberg (New York: Cameron & Kahn, 1955), pp. 9-15.

malice. For instance, Sharp thought the New York Democratic Party's Cold War enmity to Communists explained the ambitious posture of the prosecutors and judge in the trial.⁶

Reuben focused most of his attention on trying to prove the spy hunts were deliberate hoaxes. About half his book is devoted to the Rosenberg case. Reuben used contemporary newspaper headlines as a means of showing mistakes and exaggerations in the prosecution of the case. He believed the Rosenbergs had never committed atomic espionage and attacked Kaufman's logic in sentencing the Rosenbergs. He found Fuchs' confession dubious and raised puzzling discrepancies in the espionage accounts of Fuchs, Gold and Hoover. He detailed similar divergencies between Gold and Greenglass. Reuben believed the investigation and arrests of Fuchs, Gold, and Elitcher evolved and were elaborated in the months before the trial.⁷

Wexley saw the Rosenberg conspiracy trial as one of treason, effectively bypassing the legal requirement of two witnesses to an overt act. According to Wexley, accomplice testimony convicted the Rosenbergs. Judge Kaufman was

⁶ Malcolm Sharp, Was Justice Done? (New York: Monthly Review Press, 1956), pp. 175-189.

⁷ Reuben, The Atom Spy Hoax, pp. 246-456.

accused of reinforcing prosecution testimony in the trial by his questioning of witnesses. Kaufman, who had not experienced military service to his country, was invested in the compensatory role of super patriot by Wexley.⁸

When questioning the character, motives and reliability of major witnesses, Wexley was at his best. He thought Elitcher operated out of fear of a perjury charge. Fuchs was described as emotionally unstable and possibly vulnerable on the issue of Communist associations. Wexley depicted Gold as an imposter and a dangerous pathological liar who, according to Court records, even fantasized a life to enhance his withdrawn existence.

Exploring the character of David and Ruth Greenglass, Wexley concluded their personal weaknesses and inadequacies made them tools in the government's quest to uncover a Communist espionage network. He asserted the FBI knew Greenglass could provide a radical affiliation in Rosenberg. Referring to affidavits of foreign scientists, Wexley said Greenglass could not have reproduced atomic material he allegedly wrote five years previously. He accused the government of coaching

⁸Wexley, The Judgment of Julius and Ethel Rosenberg, pp. 251-271.

Greenglass and co-ordinating the testimony of Greenglass and Gold while they were imprisoned together.⁹

Sharp thought the integrity of the Courts had been at stake in the Rosenberg affair and that the case would remain a legal study for years. Drawn into the last stages of litigation, he had believed the death penalty would subject the proofs of conspiracy to the most searching scrutiny. Sharp was never able to reconcile proof of motive as justification for the excessive amount of Communist and ideological testimony permitted in the trial. The Supreme Court, in Sharp's view, also was guilty of the inexcusable haste in the last hours of the legal battle.¹⁰

Sharp attacked the severity of the penalty based on accomplice and informant testimony and reminded readers that the historical fabrications of informers had been calamitous. He referred to the writings of his colleagues, Dr. Harold Urey and Stephen Love, who had studied the Greenglass testimony and found it suspect. Finally, Sharp pointed out that the State of New York, in contrast to the federal government, required strong corroboration of witnesses to impose a death penalty.¹¹

⁹ Ibid., pp. 76-86; 423-434; 202-206.

¹⁰ Sharp, Was Justice Done?, p. 88.

¹¹ Ibid., pp. 92-146.

The works of Reuben, Wexley and Sharp were the first questioning in book form of the accepted version of the Rosenberg case. Reuben and Wexley attacked the facts of Rosenberg guilt in detail. They did it courageously and occasionally with insight, but lacked proof for many of their assertions. While varying in tone, style and content of expose, all three authors attacked with the weapons available the forces lined up against the Rosenbergs. Wexley's book is more readable than Reuben's, and his theme of a radical purge was not as difficult to maintain and defend. Some of Reuben's ideas were without substantiation. Sharp, drawn into the Rosenberg affair after he had publicly said he thought the couple guilty, was less rabid in attack than Reuben and Wexley, and his work dealt mainly in legal issues. These three authors--Wexley, Reuben and Sharp--wrote alternate versions of a case frozen in Cold War history. They broke ground for later revisionist interpretations of the case.

In contrast to Reuben, Wexley and Sharp, two contemporary essayists described the Rosenbergs in distinctively different tones. Robert Warshow, editor of Commentary, spoke of the couple in a November, 1953, article, "The 'Idealism' of Julius and Ethel Rosenberg." Leslie A. Fiedler looked back at the episode in "A Postscript to the Rosenberg Case," in an October, 1953, issue of Encounter.

Warshow analyzed the Rosenbergs through their letters written in the Death House and found in them an "absolute and dedicated alienation from truth and experience. . . . [an expression of] the Communism of 1953."¹² While granting the Rosenbergs authenticity in their concern for their children, Warshow found their letters filled with falsity and empty in relationship to themselves and American culture. He concluded:

It is as if these two had no internal sense of their own being but could see themselves only from the outside, in whatever postures their "case" seemed to demand--as if, one might say, they were only the most devoted of their thousands of "sympathizers."¹³

Warshow thought the Rosenbergs had willingly ceased to exist as human beings in exchange for personal identities as progressive, Communist martyrs. He believed the Rosenbergs thought only what martyrdom demanded of them. Their letters, according to Warshow, were filled with the symbolic language of the Communist. He explained that ideal Communists responded to universals, such as "revolution" or "progress," which were merely celebrations of the Communist idea. The Rosenbergs' frequently-repeated statement, "We are innocent,"

¹²Robert Warshow, "The 'Idealism' of Julius and Ethel Rosenberg," Commentary, November, 1953, p. 418.

¹³Ibid., p. 415.

really meant dedicated Communists did not waiver in resolve. When the couple declared they were not guilty of committing the crime for which they were convicted, they really meant that only the unenlightened would describe their actions as crime.¹⁴

Leslie Fiedler thought the Rosenbergs possessed genuine warmth and love for each other and their children, but found them vindictive human beings who "committed treason in disregard of all real human considerations." He considered the Death House Letters absurd and said the condemned couple was incapable of distinguishing between devotion and treason.

Fiedler saw two Rosenberg cases, the real one which was tried in Court and the later, more troublesome legend of martyrdom, manufactured by the Committee to Secure Justice in the Rosenberg Case. In the first case, Fiedler found the Rosenbergs legally guilty and said long court appeals made possible the creation of a second case of martyrdom. Fiedler thought the suffering and death of the Rosenbergs was promoted by the Communists because it served their cause. Fiedler attributed European reaction to the case to Communist manipulation of the worker made possible by identifying it

¹⁴Ibid., pp. 413-418.

with the workers' hundreds of years of political struggle. He acknowledged that the Rosenberg movement had attracted non-Communist support. He said:

Even those who had followed the first trial carefully found it difficult to keep it in mind; and the second, the legendary, Rosenberg case, possessed the imagination of the world.¹⁵

Fiedler admired the humanity present in some of the Rosenberg supporters, for he felt they, in contrast to the American government, had taken an admirable moral position "that the political man was not all of man."¹⁶

He concluded the Rosenbergs had denied their own humanity and could not distinguish between devotion and treason, but felt mercy should have been extended to them:

Before the eyes of the world an opportunity was lost to assert concretely what abstract declarations can never prove: that the suffering person is more real than the political moment that produces him or the political philosophy for which he stands. . . .¹⁷

Both Warshow and Fiedler viewed the Rosenbergs as guilty and never really questioned the trial. They found the Rosenbergs deceitful, but were restrained in condemning

¹⁵Leslie A. Fiedler, "A Postscript to the Rosenberg Case," Encounter, October, 1953, p. 13.

¹⁶Ibid., p. 16.

¹⁷Ibid., p. 21.

the couple. Fiedler, expressing distaste for the rigid position of the government, suggested that in dehumanizing Communist opponents, Americans might be dehumanizing themselves.¹⁸

In 1953 S. Andhil Fineberg appraised the Rosenberg personalities in a Cold War diatribe, The Rosenberg Case. Fineberg, a rabbi, found the Rosenbergs guilty, repulsive and unworthy of sympathy. Fineberg sought to sever connections between the Rosenbergs and the Jewish community and said the loyalty of the Rosenbergs was to Communism alone. He noted that the Rosenbergs produced no character witnesses at the trial and accused them of wrecking their children's lives by parading them at Committee rallies. Fineberg mentioned the Rosenbergs' obscure background on the Lower East Side, but made no attempt to probe for motives. In defending the death sentence, he extolled the opportunities the United States provided for those who lived within its bounds. He concluded the Rosenbergs were at best misguided Communists, and the National Committee to Secure Justice in the Rosenberg Case was a Communist scheme.¹⁹

¹⁸Ibid.

¹⁹S. Andhil Fineberg, The Rosenberg Case (Dobbs Ferry, New York: An Oceana Publication, 1953), pp. 67-142.

To comprehend the Rosenberg personalities, a student of the case should turn to Virginia Gardner's The Rosenberg Story and the couple's own Death House Letters. Despite the propaganda limitations, these sources offer the best first-hand accounts of the lives of the Rosenbergs.

Virginia Gardner, a reporter for Communist newspapers, interviewed dozens of Rosenberg friends and acquaintances immediately after the execution. To allay fears, she gave anonymity to her sources. Gardner submerges her reader into the Lower East Side where the Rosenbergs grew up, the children of foreign roots tempered by two worlds. One can see crises of bitterness when youthful aspirations were shattered. Ethel, who dreamed of being an actress or singer and escaping the poverty of the Lower East Side, found herself in 1932 as a seven-dollar-a-week shipping clerk and became a labor agitator.²⁰ Julius, attending the free City College for the price of a subway ticket, immersed himself in campus radicalism. Gardner spoke to an understanding teacher who had seen many of his students on the Lower East Side turn to Communism.²¹ Finally, a member of Julius' union, the

²⁰Virginia Gardner, The Rosenberg Story (New York: Masses & Mainstream, 1954), pp. 29-34.

²¹Ibid., p. 51.

Federation of Architects, Engineers, Technicians, and Chemists (FAETC), recalled:

Julie seemed an average guy. What engrossed him and Ethel engrossed us all. It seemed you knew hundreds of Julies and Ethels. Julie was active in the union, made it a part of his daily life, but so did lots of other rank-and-filers.²²

If one is seeking the Rosenberg personalities, Death House Letters is more limited. The couple undoubtedly wrote the letters with an eye to publication, and, consequently, they suffer from a removed, affected style. They do not have a simple, authentic ring. The Rosenbergs speak of matters that would concern any husband or wife about to be executed, but they seem to use heroics. They write of their problems as though they were writing of people other than themselves. Occasionally, part of a letter becomes less pretentious as when Julius described the struggle of his father who had to support the family despite his blacklisting as an active unionist. Or, in thoughts of the children, Julius wrote:

And so Robbie will be six and Mike is ten and they and we have been denied our birth-rights. . . . When I see spurts of understanding in Michael's deep blue eyes and the

²²Ibid., p. 56. Many of this writer's opinions parallel Warshow's, but general conclusions were formed before the Warshow article was read.

warm smile of feeling in Robbie's face, then
I know the reason we can stand this suffering.
Inside of me I guess I'm a softie. . . .²³

In 1963, Jonathan Root, of the San Francisco Chronicle, published The Betrayers, a book for popular taste. This book, a transitional one, signaled the earliest conventionally-published endeavor to find a small measure of personal redemption for the Rosenbergs. Using fictional technique, Root built the Rosenbergs into personalities which were "thwarted, frustrated, and unfulfilled, bound by deep personal inadequacies."²⁴

Newsweek magazine described Root's effort as "report[ing]. . .with such skill, that the reader has the feeling not so much of reading as of participating."²⁵ The author believed the Rosenbergs guilty and condemned their supporters' attack on the legal system, but he felt the Department of Justice should have produced more evidence against the couple.²⁶ Adhering to the facts of the Rosenberg case, while weaving subconscious thought, imaginary scenes and presumed conversations into

²³ Ethel and Julius Rosenberg, Death House Letters (New York: Jero Publishing Company, Inc., 1953), p. 148.

²⁴ Jonathan Root, The Betrayers (New York: Berkley Medallion Books, 1963), p. 10.

²⁵ "Spies on Trial," Newsweek, June 17, 1963, pp. 93-94.

²⁶ Root, The Betrayers, pp. 288-289.

the tale, Root wrote a novel which seemed to rely heavily on the detail found in Virginia Gardner's The Rosenberg Story. Ultimately, Gardner threatened a law suit and settlement was arranged out of court.²⁷

In the mid-sixties, with the Cold War thawing, Walter and Miriam Schneir spent a year shopping for a major publishing company interested in their revisionist Rosenberg study, Invitation to an Inquest. Making the rounds of reticent editors, the Schneirs found their controversial book finally accepted by Doubleday & Company.²⁸

The Schneirs offered the first investigative revision of the entire Rosenberg episode. They built upon the works of earlier writers. Like Reuben, the Schneirs rejected the idea of a spy network and that the atomic bomb secret could be explained by the uneducated Greenglass. Taking a cue from Wexley, the Schneirs devoted chapters to refuting the credibility of major witnesses against the Rosenbergs. Like Wexley, the Schneirs denounced Gold's June hotel card and added supportive research.²⁹

²⁷ Navasky, "In Cold Print: The Case of the Rosenberg Case," p. 2.

²⁸ Walter and Miriam Schneir, Invitation to an Inquest (Baltimore: Penquin Books, Inc., 1973), pp. xii-xv.

²⁹ Ibid., pp. 261-443.

Invitation to an Inquest theorized the Rosenbergs were scapegoats framed by the United States government to justify the Korean War, militancy toward the Soviet Union, and the menace of Communism. The authors had encountered obstacles in attempting to gain release of government information. Attacking the case as fabrication, the Schneirs charged that the government pressured vulnerable witnesses into creating and co-ordinating testimony. They were able to secure the Court-impounded Greenglass sketches of the atomic bomb, and subsequently described them as worthless caricatures.³⁰

The Schneir book, the first of the pro-Rosenberg books to receive full literary treatment, generated substantive intellectual and legal discussion of the case. Newsweek magazine reviewed the Schneir book and accorded it a measure of respect. Saying that the Rosenbergs lay unquietly in the grave, Newsweek commented:

The Schneirs' book, like the case itself, is disquieting. Not a line of it can be readily dismissed as mere apologetics. No scrap of evidence is transparently flimsy. The book bases itself squarely on the record. . . the authors. . . increase[d] the reader's restiveness.³¹

³⁰ Ibid.

³¹ "Case of the Atom Spies," Newsweek, August 23, 1965, p. 82.

Commentary's Alexander Bickel rejected the Schneir thesis. He did not feel the case against the Rosenbergs was merely a "tissue of lies." Bickel acknowledged the FBI's presumptuous confidence in its own righteousness and its ability to confirm its own assertions quickly, but he added that interrogation procedures did not require FBI agents to wait for the suspect to get ready to tell them everything. Bickel thought the Schneirs guilty of misdirecting public outrage over a death sentence. He asserted the appellate court could have reviewed the death penalty if it had been willing to break court tradition of non-interference in sentencing. On special occasions since the Rosenberg case, the Court of Appeals in the District of Columbia has reviewed sentences. Bickel concluded that the ghastly sentence was meted out to the Rosenbergs because of their silence, the Korean War and a Supreme Court which did not function.³²

In the Columbia Law Review, Robert Pitofsky, an Associate Professor of Law at New York University, took note of the changed concept of due process. He termed the Schneir book inferior investigation and scholarship because accusations of perjury, forgery and confessions were "handled with little judgment and less restraint" and were "unsupported

³²Alexander M. Bickel, "The Rosenberg Affair," Commentary, January, 1966, pp. 69-76.

by substantial evidence." Pitofsky believed the Schneirs ignored the real injustices of the Rosenberg case. He felt the Rosenbergs were not accorded due process and a full measure of justice. Before the trial the Justice Department was guilty of prejudicing the case by releasing allegations in the press as though they were fact. The American press, in turn, inflamed the public in the months before the trial. In addition, testimony on the Communist and ideological sympathies of the Rosenbergs misled the jury and may have prejudiced them. Pitofsky cited an unacceptable performance by the Supreme Court, which in twelve hours saw fit to resolve all issues in the case. In conclusion, he found that due process gave "ample reason to review the treatment accorded the Rosenbergs by our legal system."³³

In 1966 The Yale Law Journal featured a review by Leonard B. Boudin, a member of the New York Bar, who saw Invitation to an Inquest as a significant contribution toward rectifying a miscarriage of justice. As an alternative to the Schneirs' thesis, Boudin believed suggestible witnesses, motivated by self-interest, could gradually assume stories that were gleaned through interrogation and their own imaginations. Boudin thought the Rosenbergs had had very

³³ Robert Pitofsky, "Invitation to an Inquest," Columbia Law Review, LXVI (March, 1966), 606-613.

very little real defense. With an aura of national emergency being built around the case, the Rosenbergs were overwhelmed by a powerful government which had the press at its disposal. Defense counsel for the Rosenbergs was inadequate and unprepared to meet the challenge. Evidence of the affinity between the Rosenbergs and Communism prejudiced the jury, and the Supreme Court did not fulfill its obligation in treatment of the case. Boudin called for an investigation of all the Cold War Communist cases in which the government utilized the services of political informers to seek convictions and recommended the formation "of an executive commission which would have subpoena and immunity powers and be authorized to examine the witnesses and review their statements to the Federal Bureau of Investigation, grand and petit juries and congressional committees."³⁴

Smith College professor Allen Weinstein rebuked radical moralists who represent the Rosenbergs as innocent victims of a government conspiracy and called the Schneir study "an elaborate revisionist tapestry." He said the Schneirs failed to deal with the Rosenbergs' long affiliation with Communism and did not mention Soviet espionage agent

³⁴ Leonard B. Boudin, "Invitation to an Inquest," The Yale Law Journal, LXXVI (November, 1966), 254-265.

Kim Philby's memoirs which implicate the Rosenbergs as Soviet spies.³⁵ The Schneirs, according to Weinstein, never explained satisfactorily how David Greenglass came to possess \$3,900 at the time of his arrest. Finally Weinstein accused the Schneirs of deliberate omission in their failure to treat Ethel Rosenberg's psychiatric history.³⁶

In Weinstein's view, the Rosenbergs, along with Hiss and Oppenheimer, became exaggerated mythological and moral images in the American Cold War epoch. The real Rosenbergs, he thought, lay somewhere between the sainthood and demonology their supporters and detractors endowed in them. Weinstein suggested a novelistic approach could come closer to the truth. He believed that in many respects the Rosenbergs were simple people, but was critical of writers who overlooked traits which might have helped reveal their innocence or why the government was interested in them.³⁷ He surmised the Rosenbergs were minor agents involved in low quality espionage.

³⁵ Allen Weinstein, "Agit-Prop and the Rosenbergs," Commentary, July, 1970, pp. 18-25; Allen Weinstein, "The Symbolism of Subversion: Notes on Some Cold War Icons," Journal of American Studies, VI (August, 1972), 170-171. In his memoirs, Philby mentioned in a footnote that Fuchs was instrumental in uncovering the Gold-Greenglass-Rosenberg espionage ring. Kim Philby, My Silent War (New York: Grove Press, Inc., 1968), p. 225.

³⁶ Weinstein, "Agit-Prop and the Rosenbergs," p. 24.

³⁷ Ibid.

Calling them "bright and ambitious children of the Jewish ghetto," he theorized that dabbling in espionage provided the Rosenbergs with escape from the drabness of their lives. Weinstein saw the Rosenbergs beset by personal problems explained "against a background of lives marred for both by a large measure of personal frustration."³⁸

In 1973 trial lawyer and author Louis Nizer published The Implosion Conspiracy. By July the book was at the top of the bestseller list, having sold over 84,000 hard cover copies. Attacked and threatened with law suits on a variety of charges by earlier Rosenberg writers, the Nizer book was an account with few research notations or credits. Nizer defended his bestseller, saying the Rosenberg case was in the public domain.³⁹

Nizer acknowledged that he had refused to defend Communist clients. He admitted he found the Rosenberg political persuasions repugnant and could not have done "justice to a cause for which I had no enthusiasm." Yet, he asserted the Rosenbergs would have fared better acknowledging their Communism in order to fight the issue of espionage. One

³⁸Weinstein, "The Symbolism of Subversion: Notes on Some Cold War Icons," p. 171. Weinstein has suggested Root's The Betrayers as a good novelistic approach to the Rosenbergs.

³⁹Navasky, "In Cold Print: The Case of the Rosenberg Case," p. 2.

wonders where Nizer would have procured the talented lawyer willing to accept those odds.

Although Bloch was painted a hero by Nizer, the author constantly pointed to errors in his pedestrian conduct of the defense. Nizer said Bloch inadequately scrutinized the stories of the Greenglasses, Gold and Bentley, and his examinations of the Rosenbergs merely served to emphasize the prosecution's story. In Nizer's view, David Greenglass presented a number of opportunities for probing motivation. Bloch, Nizer said, should have emphasized Ruth Greenglass' involvement in the conspiracy. A cross-examination of Gold on his fantasy life might have involved risk, but, handled properly, Nizer thought it could have damaged Gold's credibility to the jury. Finally, Nizer said Bloch should have tested Bentley's tale of Rosenberg espionage by a subpoena of her book draft. The Implosion Conspiracy, a courtroom drama written for popular appeal, was also a defense of the American legal system. Like Root, Nizer fictionalized the Rosenberg story and, in the process, made errors. His book generally ignored the issue of Rosenberg guilt to concentrate on trial evidence.⁴⁰

⁴⁰Louis Nizer, The Implosion Conspiracy (Greenwich, Conn.: A Fawcett Crest Book, 1973), pp. 128-286.

Two books have recently appeared which might take special places in the Rosenberg literature. Morton Sobell's 1974 On Doing Time and Michael and Robert Meeropol's We Are Your Sons in 1975 offer the Rosenberg affair through the eyes of the sufferers. Neither book illuminates the old case with new revelations, but these inside stories enable one to gain further perspective on the case.

Sobell freely confessed his Communist party past. His inside view of the trial was characterized by feelings of helplessness and utter dissatisfaction with lawyers.⁴¹ Sobell considered himself a political prisoner of the government and spoke of FBI tactics over the years to pressure him into confessing.⁴² Sobell treated the Rosenbergs as honorable and even heroic, and he depicted himself as a survivor of shabby justice.

The Meeropol book was an extended melange of their parents' Death House Letters, autobiographical material and a rebuttal of the case. In "A Dialogue of Generations," Michael Meeropol, evoking some ideas reminiscent of Reuben's

⁴¹ Morton Sobell, On Doing Time (New York: Charles Scribner's Sons, 1974), pp. 92-114; 155-162; 190-211.

⁴² Ibid., pp. 324-345; 349; 424.

old one on the ruling class, theorized his parents were the chance victims of the Establishment's repression.⁴³

Relating his own political ideas to the old ones expressed by his parents, Meeropol said: "Our parents' refusal to follow the crowd, tell a lie so they could live, may have. . . helped [make it possible for] the children of the Old Left [to] contribute to the New Left. . . that possibility makes me proud."⁴⁴

Weinstein has said the Rosenberg case offers an example of "how the accidents of history reshape human purpose and personality in our time."⁴⁵ This is precisely what many of the Rosenberg writers were attempting to get at through the years. They had attacked different aspects of the case using varying methods of criticism. With little recognition, Reuben, Wexley, Sharp and Gardner laid the foundation for wider interpretation of the case, and subsequent authors were indebted to their efforts. Some of the writers sought to find the real Rosenbergs, ripping away their Cold War masks to gain knowledge of motivations. Later writers, debating

43

Michael and Robert Meeropol, We Are Your Sons (Boston: Houghton Mifflin Company, 1975), pp. 347-396.

44 Ibid., p. 396.

45 Allen Weinstein, "Letters From Readers," Commentary, November, 1970, p. 15.

the fairness of the trial and the quality and degree of guilt, swathed the Rosenbergs in a variety of speculation. What direction this speculation would take depended on what was found within the entire set of government records on the Rosenbergs.

CHAPTER IV

New Directions and Perspectives

Efforts to reopen the Rosenberg case are being made by those who believe the trial may have been a miscarriage of justice. Michael and Robert Meeropol, the Rosenberg sons, have identified themselves to the public and are working with others in an effort to re-examine their parents' case. New information has been revealed through a television documentary, court actions, and released government documents. Information on government records and the responses of Rosenberg supporters to that information have activated discussion and conflict among elements of the legal community.

In February, 1973, Louis Nizer published his best-selling book, The Implosion Conspiracy. Distressed by the book, Michael and Robert Merropol, the sons of Julius and Ethel Rosenberg, sued Nizer and Doubleday Publishing Company for three million dollars, charging them with invasion of privacy and copyright violations for using and distorting the intent of their parents' Death House Letters.

By filing suit in Federal court, the Meeropols revealed their parental identity and their addresses.¹

To support the cost of a lawsuit against Nizer and Doubleday, fund-raising parties were organized. Robert Meeropol described the subsequent urging for a re-examination of the case. He said:

We had no alternative but to reopen the case. I mean, here we are, standing up and affirming our parents' innocence, and the papers say, 'What are you going to do about it? Nothing?'²

Opening the case on their parents had always been a possibility to both Meeropols, but they also feared it. After the death of their parents, the Rosenberg boys had lived in a succession of homes and institutions until finally adopted by Anne and Abel Meeropol, a middle class Jewish couple.³ The Meeropols have served on the faculty at Western New England College in Springfield, Massachusetts.⁴

In 1974 Alvin H. Goldstein produced a ninety-minute television documentary on the Rosenberg case for the National Public Affairs Center for Television in Washington. Goldstein

¹Sunday World-Herald, March 10, 1974.

²Ted Morgan, "The Rosenberg Jury," Esquire, May, 1975, p. 107.

³Ibid., p. 41.

⁴Jonah Raskin, "Life After Death, The Sons of Julius and Ethel Rosenberg," Ramparts, November, 1973, p. 37.

interviewed the Meeropol brothers on their efforts to reopen their parents' case. Attacking the old open-and-shut case by contrasting participants' memories of the affair, Goldstein unearthed new information and exposed discrepancies which seemed to cast doubt on the Rosenbergs' guilt.

Prosecutors Cohn and Kilsheimer were interviewed by Goldstein. Both remain convinced they handled the case with objectivity and say overwhelming evidence proved the Rosenbergs guilty. Cohn said a "perfect chain. . . led from Fuchs to Gold to Greenglass."⁵ Kilsheimer theorized if the Rosenbergs had talked the most elaborate espionage network in the history of the United States would have been uncovered.⁶

Attorney Marshall Perlin revealed on the program that he had interviewed Dr. Klaus Fuchs in 1959 in a British prison. According to Perlin, Fuchs denied identifying Harry Gold as his espionage courier. Perlin said Fuchs was under heavy pressure from FBI questioning and merely acquiesced to the story when FBI agents told him Gold had admitted his guilt.⁷

⁵ Alvin H. Goldstein, "The Unquiet Death of Julius and Ethel Rosenberg," Script of National Public Affairs Center for Television Production, February 25, 1974, pp. 29-52.

⁶ Ibid., p. 52.

⁷ Ibid., p. 30.

In a taped interview with former FBI agent Richard Brennan, Goldstein was told that Harry Gold could not remember the name of the man Yakovlev told him to use in a recognition signal to Greenglass. Brennan said that Gold believed it might have been Bob, Benny or John. When he (Brennan) asked Gold if it could have been "Julius," Gold eagerly exclaimed that that had been the name. Brennan told Goldstein he did not feel he had put the name "Julius" in Gold's head, but had merely suggested it to Gold.⁸

In attempting to interview Harry Gold, Goldstein discovered and verified Gold's death of heart trouble in August, 1972, in Philadelphia. Augustus S. Ballard, Gold's lawyer, commented that Gold's brother, Joseph, had kept the death quiet because he did not want his brother hounded even in death. Ballard told Goldstein that Gold had been upset by recent attempts to impugn the honesty of his testimony in the Rosenberg trial.⁹ Though Roy Cohn said Harry Gold came across as one of the most truthful witnesses he had ever seen take the stand, Gold's employer of the 1970's

⁸Ibid., pp. 37-38.

⁹The New York Times, February 14, 1974.

said: "Gold was a gentle man who had difficulty telling fantasy from reality."¹⁰

The threat of the death penalty in the Rosenberg case loomed large in pre-trial strategies. Sobell said he was constantly told he faced the death penalty if he didn't confess and co-operate with the government.¹¹ O. John Rogge, the Greenglass lawyer, spoke of the severity of the Rosenberg prosecution. Rogge said he thought providing his clients as government witnesses would inspire moderation, but "the judge wrapped himself in the flag, went overboard and began with death penalties."¹²

Goldstein requested access to FBI files for his television documentary, but was unsuccessful. Acting Attorney General Robert H. Bork refused to let him examine FBI interviews with the Greenglasses on grounds that "the situation of the Greenglasses raises the problem of privacy and related interests in very serious form."¹³ Bork also told Goldstein that opening the Greenglass files would deter others from becoming FBI informers.¹⁴

¹⁰Goldstein, "The Unquiet Death of Julius and Ethel Rosenberg," pp. 32-39.

¹¹Ibid., p. 48.

¹²Ibid., p. 42.

¹³The New York Times, February 25, 1974.

¹⁴Ibid.

Goldstein's documentary, coming after the Meeropols revealed their identities, was not the first recent sympathetic portrayal of the Rosenberg case. In 1966 Walter and Miriam Schneir had published Invitation to An Inquest, an investigative report on many aspects of the Rosenberg case. Four years later, playwright Donald Freed produced the drama, "Inquest" based in part on the Schneir book. E.L. Doctorow in 1971 published The Book of Daniel, a novel based on the lives of the children of Cold War spies executed for atomic bomb espionage for the Soviet Union. Helen Yglesias' How She Died and Sylvia Plath's The Bell Jar were additional works using aspects of the Rosenberg case.¹⁵

Before the publication of Invitation to an Inquest, the Schneirs made available to attorneys for Morton Sobell findings uncovered in their investigations. Sobell's lawyers were successful in gaining access to impounded Exhibit 8 in early 1966 when Federal Judge Edmund L. Palmieri granted permission to the lawyers to examine the exhibit, but restricted the documents to legal counsel and consulting scientists. Later when Perlin filed an affidavit in Court on Exhibit 8, he accompanied scientific appraisals with the Greenglass sketch and explanation. United States Attorney

¹⁵Walter and Miriam Schneir, Invitation to an Inquest, (Baltimore: Penguin Books, Inc., 1973), p. ix.

Robert L. King argued that the sketch and information were still classified and should not be made public, but withdrew objections when Perlin requested proof of that assertion.¹⁶

Sobell's petition to the Court for a new hearing was turned down by Judge Edward Weinfeld in the summer of 1966. Judge Weinfeld ruled the government had not denied Sobell a fair trial and termed new revelations inconsequential. He said affidavits from scientists Philip Morrison and Henry Linschitz which described Exhibit 8 as garbled, inaccurate and incomplete were immaterial in that the government had never claimed the information was completely accurate. Furthermore, defense lawyers had not challenged scientific testimony at the trial. Defense contentions of fraud in the Hilton hotel cards did not prove the government had destroyed, manufactured or tampered with evidence. Weinfeld ruled that Gold's pre-trial statements to his lawyer did not differ substantially from trial testimony, but rather paralleled it on major points.¹⁷

Morton Sobell was released from the Lewisburg, Pennsylvania, federal prison on January 14, 1969, after numerous applications had been submitted to the courts in

¹⁶Schneir, Invitation to an Inquest, pp. 427-432.

¹⁷Ibid., pp. 436-442.

various parts of the country requesting credit be granted for all time served since his arrest in 1950.¹⁸ Sobell today believes he was a victim of the "Establishment's national policy."¹⁹ Like the Meeropols, Sobell says he wishes only that the truth be known. Sobell and the Meeropols view trial witnesses and informers as "frightened and pitiful tools" of a determined government.²⁰

In April, 1974, Morton Sobell, with the aid of Burt Neuborne of the American Civil Liberties Union, filed a writ of mandamus to be allowed to examine all exhibits in the Rosenberg trial. Sobell was informed that such a writ could not be honored because the trial exhibits had been lost.²¹ Requesting a search for the exhibits and additional information, Sobell was informed in July, 1974, that the exhibits had been found in a file cabinet with an unrelated case and had probably been mislaid for years.²²

In July, 1975, this writer interviewed Morton and Helen Sobell in their Manhattan apartment. Mr. Sobell was

¹⁸ Morton Sobell, On Doing Time (New York: Charles Scribner's Sons, 1974), p. 519.

¹⁹ "Tomorrow," June 25, 1975, National Broadcasting Company.

²⁰ Ibid.

²¹ The New York Times, April 10, 1974.

²² Ibid., July 25, 1974.

in the process of arranging for his book to be published in France. When I spoke of the expected release of FBI information, it was apparent the Sobells were exasperated with the delays that had been encountered.

Unlike Michael Meeropol, who saw a direct connection between his parents' case and the internal security issue of the Watergate scandals, Morton Sobell was indignant at the comparison. He replied to a question on the subject:

Watergate was a fight between thieves. . . .
 The accused were all in the Establishment.
 So it was the Establishment fighting itself.
 In our case, you have the ordinary people. . . .
 They [Watergate defendants] had a position
 which in no way was comparable to a position
 like myself who was being charged. . . . You
 have the FBI, the Judiciary, prosecution,
 and the press against you, and you're as if
 nothing. . . it's overwhelming. . . .²³

In 1975 at the time of my interview with Sobell, his interest in reopening the case seemed to be at low ebb. He said: "If other people want to be fighting the cases of yesteryear, then fine. That's their right, but my wife and I don't feel at this point that it's rewarding. Frankly, I could care less whether the courts at this time overturned the conviction. I know they won't, but I could care less."²⁴

²³ Helen and Morton Sobell, private interview, held in New York City, July 31, 1975.

²⁴Ibid.

In 1974, with the support of New York friends who felt the times conducive to a re-examination of the Rosenberg case, Michael and Robert Meeropol supported the efforts of Marjorie Rosenthal in organizing the National Committee to Re-Open the Rosenberg Case.²⁵ On June 17, 1974, a Carnegie Hall rally, noting the twenty-first anniversary of the execution, was attended by 3,000 people who paid from \$5 to \$50 a ticket. Supporting the revived cause were stars Jane Alexander, Rip Torn, and Howard de Silva who read excerpts from Death House Letters. Special guests of the evening were the Meeropol brothers and Morton Sobell. Speeches concerned efforts to gain government documents on the Rosenbergs, the pervasive anti-Communism of the 1950's, and outrage at the Rosenbergs' execution.²⁶

In its February 1976 bulletin, "About Our National Committee: Who Are We?" the NCRRC asserts a wide diversity of public support. It also states that there are thirty-five local Committees across the nation, additional members-at-large and over a hundred sponsors. According to the bulletin, daily business is conducted by a thirteen-person steering committee elected at the National Planning Conference in Washington,

²⁵ The New York Times, May 12, 1974.

²⁶ Morgan, "The Rosenberg Jury," p. 105.

D.C., in October, 1975. A dual objective is listed for NCRRC: The organization will expose the truth that the Rosenbergs were totally innocent and that government abuse, repression and misconduct has occurred in the past and is present in today's political trials. In carrying out its objective, NCRRC has pledged financial support to the litigation of the Meeropols under the Freedom of Information Act.²⁷

NCRRC has committed itself to public activities in support of re-opening the case. On July 2, 1975, a thousand people attended a rally at New York City's Ethical Culture Center to demand government response to the Freedom of Information Act.²⁸ Co-chairperson of the program, Abbot Simon, described the Rosenberg trial and execution as the threat that "was aimed at every trade union militant, every civil rights worker, every person concerned with peace and every person who fought racial discrimination."²⁹

²⁷ "About Our National Committee: Who Are We?", February 2, 1976, National Committee to Re-Open the Rosenberg Case, New York City.

²⁸ Guardian, July 2, 1975.

²⁹ Ibid.

In November, 1975, NCRRC sponsored demonstrations in several cities in the United States.³⁰ Rosenberg supporters petitioned President Ford requesting an interview to discuss rapid release of government records in the case, but were refused.³¹

In June, 1976, the twenty-third anniversary of the Rosenberg execution was marked by a rally in Carnegie Hall in which Marshall Perlin discussed the role of Judge Irving Kaufman and other prosecutors in the Rosenberg trial, as detailed by released FBI documents. The rally was followed by a torchlight march to FBI offices in New York City to demand release of all Rosenberg records.³²

³⁰ There were other indications of unrest on the Rosenberg case in 1975. When a threatened demonstration resulted in the cancellation of an invitation to address the graduation exercises in Pomona, California, Judge Kaufman made his only public comment to date on efforts to revive the Rosenberg case. Writing in the New York Times Magazine, he said:

. . . the potential threat to the graduation ceremonies from my appearance [arose] . . . from a continuing pattern of harassment because of a trial I presided over more than twenty years ago. . . . I felt it unfortunate, if not unfair, that these old issues should affect an invitation to speak today, for in the intervening years, I had written decisions in a wide range of cases. . . . (Irving R. Kaufman, "A Free Speech for the Class of '75," New York Times Magazine, June 8, 1975, p. 36).

³¹ Guardian, November 19, 1975.

³² Ibid., June 9, 1976.

NCRRC has been pledged to support Meeropol litigation under the Freedom of Information Act. This act (FOIA) was passed by Congress in 1966, presumably opening up most government files for public inspection.³³ In a Statement of Policy, July 11, 1973, Attorney General Elliott L. Richardson relaxed Justice Department restrictions on investigatory records of historical interest. The new policy allowed researchers outside the Executive branch access to information more than fifteen years old if it was not related to current investigations.³⁴

FOIA was strengthened in 1974 by amendments. Government agencies were allowed ten days to produce requested material or twenty days to file appeals. FOIA amendments provided that a federal judge could be petitioned to examine any exempted material to decide if confidential status was justified.³⁵ Clarence Kelley, FBI Director, stipulated deletions allowed by law in releasing FBI records. Material

³³ "Open Government: Gains and Losses," United States News & World Report, May 5, 1975, p. 30.

³⁴ Freedom of Information Act, Reprint of Statute, Existing Regulations and Statements of Policy from Title 5, United States Code, Section 552, United States Department of Justice.

³⁵ "Fact Sheet: The Freedom of Information Act Suit of Michael and Robert Meeropol," National Committee to Re-Open the Rosenberg Case, New York City.

could be deleted or exempted on grounds of invasion of personal privacy, revelation of a confidential source, or disclosure of investigative techniques and procedures.³⁶

Allen Weinstein petitioned the FBI for the Hiss and Rosenberg files immediately after Richardson relaxed Bureau restrictions. By November, 1973, the FBI was in compliance with the Richardson policy and established a three-man unit to deal with requests for FBI material. Agent Richard Dennis explained delays in releasing material by citing the absence of specific guidelines on deletions.³⁷

On February 20, 1975, Robert and Michael Meeropol petitioned eighteen government agencies for their papers on the Rosenbergs. Hearing no response, on July 14, 1975, the Meeropols filed suit in a Washington, D.C., Federal Court against the Federal Bureau of Investigation, Central Intelligence Agency, Energy Resources Development Agency (formerly the Atomic Energy Commission), Department of Justice, Department of the Army, and the New Mexico and Southern District of New York United States Attorneys Offices.³⁸

³⁶ Letter from Clarence Kelley, Director of the FBI, to Inez Whitehead, September 26, 1975.

³⁷ The New York Times, February 25, 1974, p. 52.

³⁸ "Fact Sheet: The Freedom of Information Act Suit of Michael and Robert Meeropol."

Subsequently, Deputy Attorney General Harold R. Tyler expedited the release of some of the Rosenberg file, and on August 29, 1975, the FBI issued a first batch of papers. In late November, 1975, the FBI and CIA announced an intended release of approximately 30,000 pages of Rosenberg documents.³⁹ Protesting the assessed fees of \$35,000, Michael Meeropol and Attorney Perlin stated:

At the rate they are charging us our effort to bring all these papers to light would cost over half a million dollars. . . .

This was clearly not the intent of Congress when it passed the Freedom of Information Act. . . .⁴⁰

In early December, 1975, the FBI followed the CIA policy of waiving fees for the Rosenberg material. Deputy Attorney General Harold R. Tyler said:

The Rosenberg case is close to being unique in terms of both current public interest and historical significance.

I am convinced that my action is in the public interest in this particular case inasmuch as release of these records will benefit the general public far more than it will any individual requester.⁴¹

On December 22, 1975, Meeropols and Perlin requested Federal Judge June Green to hold the FBI in contempt of

³⁹ Ibid.

⁴⁰ Daily World, November 25, 1975.

⁴¹ The New York Times, December 2, 1975.

Court for mishandling the Rosenberg file and not releasing all documents, even though Justice Department lawyer Jeffrey Axelrad said the FBI had fully complied with the Court's order. The Meeropols requested a Court agent be appointed to supervise orderly release of all documents. Judge Green denied the contempt citations on January 13, 1976, but ordered the FBI and the Energy Resources Development Agency to submit withheld documents to the Court for in camera inspection. Exempted were records withheld on grounds of national security.⁴²

In interviews with the news media, Meeropols accuse the FBI of hiding part of the file on their parents. They point to the Court inventory of 73,000 pages and charge that to date only 30 percent of the file has been released. They estimate released material to be only 10 percent of what is in the government files on their parents.⁴³ By November, 1975, Meeropols were complaining that government delays were being caused by a "laundering" of the Rosenberg file. They noted deletions of released material sometimes amounted to major sections.⁴⁴

⁴² "Fact Sheet: The Freedom of Information Act Suit of Michael and Robert Meeropol."

⁴³ The New York Times, January 8, 1976.

⁴⁴ Ibid., November 22, 1975.

In addition, Meeropols charge that the government inventories are incomplete and inaccurate. Files on ten witnesses in the Rosenberg trial were requested in Court action, but none were released with the Rosenberg material.⁴⁵ Axelrad counters that the FBI placed all pertinent Rosenberg material in the main file but there were references of material filed elsewhere.⁴⁶

Even though the Meeropols assert the government is withholding important records on their parents, it has become possible within the last few years to get behind the scenes in the Rosenberg trial. More background has been revealed on two major witnesses of the trial--David Greenglass and Harry Gold. According to a November, 1975, article in The New York Times, David Greenglass was reported in FBI releases as having imparted vital information concerning the amounts of uranium and plutonium needed to detonate a bomb. The Atomic Energy Commission requested that this serious evidence not be used in the trial unless Saypol insisted.⁴⁷ By March, 1953, Greenglass was admitting he had stolen a sample of U-238 from Los Alamos, a charge he denied in all questioning before the trial.⁴⁸

⁴⁵ Daily World, January 9, 1976.

⁴⁶ The New York Times, January 14, 1976.

⁴⁷ Ibid., November 23, 1975.

⁴⁸ Ibid., December 4, 1975.

Harry Gold, according to a December, 1975 issue of The New York Times, was the subject of two psychiatric evaluations six months before the Rosenberg trial. The first examination, by a five-member team, concluded that "Gold showed no latent or potential psychopathic tendencies." The second exam, by Dr. Samuel Leopold, director of the Neuropsychiatric Division of the Philadelphia Municipal Court, related that Gold possessed superior mental ability but had a "neurotic personality characterized by extreme orderliness and compulsions." The Leopold findings concluded that Gold was not insane, but he had "poor relationship to the world."⁴⁹

Circumstantial information was gathered by the government before, during and after the Rosenberg trial. Some released FBI information would seem to show the rudiments of later trial testimony.

A discrepancy between David Greenglass' early statements and his trial testimony can be noted in regard to Ethel's participation in the conspiracy. At the trial Greenglass said his wife and Ethel were present when he gave the atomic bomb material to Rosenberg. Ethel then typed the information. However, in a 1950 document of early FBI

⁴⁹ Ibid., December 6, 1975.

questioning, Greenglass was asked if Ethel had talked to him about the information. Greenglass replied: "Never spoke about it to me, and that's a fact. Aside from trying to protect my sister, believe me, that's a fact."⁵⁰

Gold's recognition signal to Greenglass, using the name "Julius," fluctuated in early FBI questioning of Gold. Goldstein, in his television presentation, was told by an FBI agent that the name "Julius" was suggested to Gold when he could not remember the man's name he used in a recognition signal to Greenglass. In the pre-investigative papers of the FBI, the name "Julius" first surfaced when Gold was questioned on July 10, 1950. He told agents that Ruth Greenglass had mentioned a "Julius" who was a relative of hers. On August 1, 1950, Gold spoke again of Mrs. Greenglass' conversations about Julius. Perhaps it is odd that Gold recalled only upon prodding that "Julius" had been his recognition signal when he could remember Mrs. Greenglass mentioning a "Julius."⁵¹

On September 11, 1950, prosecutor Irving Saypol told Attorney General J. Howard McGrath that the case against Sobell was weak. Indicating Elitcher was not a

⁵⁰ Ibid., November 22, 1975.

⁵¹ FBI, "Reports Summarizing the Investigation Conducted up to Arrest and Arraignment of Julius Rosenberg."

convincing witness, Saypol said the successful prosecution of Sobell hinged on an indictment tying him to the conspiracy to steal the atomic bomb. Saypol wrote:

If Sobell were to be included amongst the others. . . , containing an overall conspiracy charge to commit espionage, not only with respect to nuclear fission and the atomic bomb, but one which would also include other matters affecting national defense, the chances of convicting Sobell would be materially strengthened.⁵²

The government had help from the Greenglass family in drawing a pattern of guilt around the Rosenbergs. Indicating surveillance of prison visits, one FBI record declared Ethel Rosenberg had disowned her family. The records disclosed that Ethel's mother and her brother Samuel had urged her to co-operate with the FBI, and her mother even suggested divorcing Julius. Ethel, according to the documents, became emotional and screamed that innocent people were involved. Thereafter, Mrs. Rosenberg requested they be barred from visiting her. In an FBI memo dated September 12, 1950, Samuel Greenglass was said to have related that Julius and Ethel Rosenberg became fanatic Communists sometime in the middle 1930's. Greenglass said he had been concerned about the Rosenbergs' influence over younger brother David and had offered to pay the Rosenbergs'

⁵²The New York Times, November 23, 1975.

transportation costs to the Soviet Union if they would migrate. He added that since the Rosenbergs became Communists they "have maintained that nothing is more important than the Communist cause."⁵³

One of the more provocative episodes from the FBI information was that of secret informant, Jerome Eugene Tartakow. Described as a volunteer informant able to gain the trust of Julius Rosenberg, Tartakow was a fellow prisoner in Manhattan's Federal House of Detention. Indications are that he was rewarded for his information. He had been convicted in 1949 of ten counts of interstate transportation of stolen vehicles and was pleading for early parole. His term was to expire in June, 1951, but in April, 1951, the FBI was urging early parole for Tartakow as a reward for helping in the Rosenberg case. Earlier the Bronx District Attorney had removed an indictment threat against Tartakow, and on April 23, 1951, a memorandum acknowledged dismissal of Arizona indictments.⁵⁴

FBI releases contain hundreds of pages on Tartakow tips. A memorandum dated April 9, 1951, stated Tartakow had received permission to visit Rosenberg in his cell in

⁵³ Ibid., December 4, 1975.

⁵⁴ Ibid., January 3, 1976.

the evening despite the fact that Rosenberg was in solitary confinement. To gain Rosenberg's confidence, Tartakow was said to have told Rosenberg his mother had been involved in Communism for fifteen years. Tartakow informed FBI agents that Rosenberg acknowledged espionage crimes, told him that he had lost, and would have to suffer the consequences. A tip from Tartakow led to Ben Schneider, the photographer who testified that the Rosenbergs had ordered passport pictures from his studio.⁵⁵ An FBI document of February 20, 1951, recorded the Tartakow statement: "Rosenberg said that his wife. . . had done many things on her own with relation to Soviet espionage."⁵⁶

In FBI interviews of Tartakow, he related names, places, and dates Rosenberg allegedly mentioned while discussing his espionage network. Tartakow reported that Rosenberg told him of a meeting with a Soviet agent on Long Island in which he and Sobell delivered six months of espionage work. Rosenberg described business ventures and trips connected with espionage. According to the informer, Rosenberg once spent seventeen hours photographing material contributed by William Perl, technical assistant to

⁵⁵Ibid.

⁵⁶Sunday World-Herald, December 14, 1975.

Dr. Theodore Van Harman, a Columbia University aerodynamics professor who regularly received classified material.⁵⁷

After his release sometime before June, 1951, Tartakow maintained contact with the Rosenbergs and was retained as an FBI informer. A document dated November 19, 1951, recorded that Informant T-1 chauffeured Bloch and the Rosenberg children to a Sing Sing visit with the Rosenbergs, but was unable to get much information from Bloch due to the distraction of the children. The same document stated Tartakow had deposited \$20 in the commissary fund for the Rosenbergs and that Bloch was planning on having photographer Ben Schneider investigated. On February 29, 1952, Tartakow reported Bloch's concern at the lack of funds to sustain the Rosenberg legal appeals.⁵⁸

Tartakow was never called as a witness in legal proceedings. Perhaps explaining why, a memorandum of April, 1951, read:

He has the intelligence and has confidence in man's ability to capitalize on his own knowledge of information which may be available to the press, prison sources, etc., to present a convincing story regarding the scope of his knowledge of Rosenberg's activities.⁵⁹

⁵⁷ Omaha World-Herald, November 24, 1975.

⁵⁸ The New York Times, January 3, 1976.

⁵⁹ Sunday World-Herald, December 14, 1975.

The FBI evidently monitored conversations between the Rosenbergs, their children and their lawyer. On September 7, 1951, an FBI memorandum related that Ethel sang songs and talked to her children. Robert, visiting his father, asked why the Greenglasses were all against his mother. Michael was quoted as asking his father: "You say Uncle Dave and Aunt Ruth framed you and Mama. How is it that they are believed and not you?" Rosenberg answered that although not all FBI men were crooked, the FBI chose to swallow the Greenglass story.⁶⁰

On September 22, 1951, an FBI document related that Ethel Rosenberg told Bloch that any Communist Party member wishing contact with her should do so through him. On a November 2, 1951 visit, Bloch related to the Rosenbergs that someone had stolen \$1,000 from defense funds. Ethel, perhaps having suspicions of Tartakow, asked if he thought it was "Jerry."⁶¹

Records released by the government show a great deal of inter-agency contact during the prosecution, sentencing, and execution of the Rosenbergs. Some documents show that

⁶⁰ Walter Schneir has charged that the government intruded into lawyer-client confidentiality. In the Coplon case, such behavior destroyed the government's prosecution. The New York Times, January 3, 1976.

⁶¹ Ibid.

the Joint Congressional Committee on Atomic Energy and the Atomic Energy Commission were actively disgruntled with what they thought was poor prosecution of the Rosenberg case. Citing mishandling of the case, these agencies favored the collection of more evidence on Sobell's espionage. They referred to espionage of classified fire-control data at General Electric's Schenectady, New York, plant and Sobell's visit to the Massachusetts Institute of Technology.⁶²

Emily Alman, chairperson of the Sociology Department at Douglass College in New Brunswick, New Jersey, also has obtained Rosenberg information under the Freedom of Information Act. Mrs. Alman, once a neighbor of the Rosenbergs, had been active in the Committee to Secure Justice in the Rosenberg Case. David Gelman, in a Newsday article, had examined Mrs. Alman's documents--a transcript of a meeting with the Joint Congressional Committee on Atomic Energy, representatives of the Atomic Energy Commission, the Department of Justice, and the United States Attorney's Offices in New York. This meeting had taken place one month before the trial of the Rosenbergs. Gelman viewed the conversation in the released transcript as showing an apparent agreement between high government officials to manipulate the case to make it a

⁶²Ibid., December 8, 1975.

momentous one requiring the death penalty.⁶³ Some information revealed a government rather preoccupied with obtaining a death sentence. One discerns this in a conversation between prosecutor Myles J. Lane and Gordon Dean, Chairman of the Atomic Energy Commission:

Mr. Lane: . . . We feel that. . . the only thing that will break this man Rosenberg is the prospect of a death penalty or getting the chair plus that if we can convict his wife, too, and give her a stiff sentence of 25 to 30 years, that combination may serve to make him disgorge and give us the information on these other individuals.

The Chairman: In other words, what you are saying is that you think what you want to do is have Greenglass divulge some now-secret information on the chance that the death penalty would then result to Rosenberg.

Mr. Lane: Yes. . . .

Mr. Dean: Mr. Lane feels that if you don't prove in this case that he transmitted something very vital as of 1945, as distinguished from simply the population figures of Los Alamos and the names of some scientists there, you certainly couldn't impose a death penalty on the man.⁶⁴

An entry in Gordon Dean's diary summarized a telephone conversation he had had the day before with Assistant Attorney General James B. McInerney. Dean quoted McInerney as saying that he had talked to the judge and the judge

⁶³Sunday World-Herald, May 25, 1975.

⁶⁴Ibid.

would sentence the Rosenbergs to death if evidence in the case was of sufficient strength.⁶⁵

On March 10, 1951, four days before the Rosenberg trial began, Congressional staff member Bill Sheehy met with FBI agents and discussed conversations between the prosecutors and Judge Irving Kaufman while the latter was vacationing in Florida. In an FBI memorandum Sheehy was recorded as wondering if such communication would be grounds for a mistrial since Kaufman had not disqualified himself.⁶⁶

On March 16, 1951, while the trial was in process, FBI agent Ray Whearty said Kaufman was favorable to the death penalty and added: "I know he will [impose the death sentence] if he doesn't change his mind."⁶⁷ According to records, Judge Kaufman had consulted other judges in imposing the death sentence on the Rosenbergs. A New York FBI office memorandum recounted his consultation with Circuit Court Judge Jerome Frank who told him he was opposed to the death

⁶⁵ Ibid.

⁶⁶ Guardian, May 9, 1976.

⁶⁷ The Kaufman Papers, National Committee to Re-Open the Rosenberg Case, New York City.

penalty. Consulting Federal Court Judge Edward Weinfeld, Kaufman was told he favored the death penalty for all defendants.⁶⁸

Two of the assistant prosecutors in the Rosenberg case advised Kaufman of their feelings on the death penalty. Assistant United States Attorney Roy Cohn favored the death sentence for all three defendants in the trial. Assistant United States Attorney James B. Kilsheimer urged the death sentence for Morton Sobell because he reasoned testimony against Sobell had been uncontradicted and the man would not confess.⁶⁹

Irving Saypol, Chief United States Attorney at the time of the trial, recently clarified his role in the death sentence in a letter to FBI Director Clarence Kelley. Disputing an article by Allen Weinstein, Saypol indicated he had been prepared to recommend the death penalty in the Rosenberg case. He said that before sentencing Kaufman asked him to obtain the views of the Justice Department, and he went to Washington to confer with Deputy Attorney General Peyton Ford and James McInerney of the Criminal Division. Although it was perceived that there was dissent among

⁶⁸Ibid.

⁶⁹Ibid.

Justice Department officials, capital punishment for the Rosenbergs was generally favored. Conveying the situation to Kaufman, Saypol was asked by Kaufman to refrain from making a recommendation on punishment in court.⁷⁰

In contrast to a public image of government unity on the death sentence, documents show that a number of government officials advocated clemency for Ethel Rosenberg. In the memorandum, dated four days before the Rosenbergs were sentenced to death by Judge Kaufman, J. Edgar Hoover, recommending clemency, stated that both Attorney General J. Howard McGrath and his deputy Peyton Ford opposed the death penalty for Mrs. Rosenberg. Ford had suggested that Mrs. Rosenberg, if spared, might eventually talk. Hoover reasoned that Ethel Rosenberg was the mother of young children, and it could be presumed she acted under the influence of her husband. Hoover doubted that Mrs. Rosenberg would ever co-operate with authorities, but worried over the psychological reaction of the American public to a woman being electrocuted.⁷¹

Major prosecution witness David Greenglass also pleaded for clemency. In a letter to his lawyer three

⁷⁰Ibid.

⁷¹The New York Times, December 14, 1975.

months before the execution, Greenglass asked that clemency be granted to his sister and brother-in-law. Greenglass remarked: "If these two die, I shall live for the rest of my life with a very dark shadow on my conscience." Greenglass said his testimony on the Rosenbergs was true, but when he co-operated with the government, he had not realized what the results would be. Attorney Rogge forwarded his client's letter to President Eisenhower for consideration.⁷²

Government documents show that after the trial Kaufman, the prosecutors and the FBI maintained communication on the case. Records revealed Kaufman's concern with monitoring the various Rosenberg legal appeals. On November 28, 1952, an inter-office FBI memorandum noted an FBI phone call from Victor Riesel, a contact of Roy Cohn's. Riesel related Judge Kaufman thought Cohn was talking too much and his imprudent remarks [not described in memo] could jeopardize the case. In the same office memo, note was made of Roy Cohn's complaints that Rosenberg attorneys were seeking revenge. Cohn requested that the FBI check his home and office for hidden microphones and telephone tapes.⁷³

⁷²The New York Times, December 14, 1975.

⁷³The Kaufman Papers.

On February 19, 1953, Kaufman and Kilsheimer related concerns to the New York offices of the FBI on legal delays in the Rosenberg case. The memorandum of February 19 stated that in order that the case not be held over until the fall session of the Supreme Court, Judge Kaufman suggested the government take a forceful role in seeing the case speedily to its conclusion. On that same day, the memo noted prosecutor Kilsheimer phoned the New York FBI office telling them he had talked with Kaufman and had contacted the Justice Department requesting they either take steps to vacate the Circuit Court's stay of execution to the Rosenbergs or ask the Supreme Court to move quickly.⁷⁴

On June 15, 1953, Judge Kaufman phoned the New York FBI offices to ask about the flurry of court action on the case. On June 17, 1953, Kaufman again called the New York FBI offices inquiring about Supreme Court actions on the case, telling them he had been informed by Kilsheimer of an 11:00 P.M. meeting between Brownell and Vinson on the calling of a special session of the Supreme Court. Kaufman advised the New York FBI office that Justice Jackson was disgusted with Justice Douglas for even hearing Fyke Farmer's petition. The June 17 memo said Kaufman advised that Justice

⁷⁴Ibid.

Douglas, as of 7:30 P.M., was wavering on granting the writ. Kaufman related that even if Douglas threw the motion out, Justice Frankfurter would consider it. The memo did not indicate how Kaufman obtained his information.⁷⁵

An Addendum to the June 17, 1953, New York FBI memorandum stated Kaufman had just been "confidentially advised" that if the Rosenbergs were granted a stay, Chief Justice Vinson would hold a special session to vacate it. On June 18, 1953, Kaufman told the New York office of the FBI that a friend of the court petition, being presented at the moment to Judge Ryan, was "junk and will be handled accordingly." On June 18, 1953, Kaufman related to the FBI that Emanuel Bloch's appeal was "another maneuver" and he would not "do a G-D thing until Bloch shows up."⁷⁶

Morton Sobell was repeatedly urged in prison to relinquish assertions of innocence and confess what he knew. A government memorandum of July 1, 1952, reported that Sobell might be likely to co-operate if it were not that his wife had so much control over his actions. The same memo noted that an FBI informant in prison with Sobell told the FBI that Sobell confessed to him:

⁷⁵Ibid.

⁷⁶Ibid.

I was the fall guy in this whole thing. I am innocent. I was around when a lot of things happened and a lot of people were involved in it. I've got a story to tell. They'll listen to me!⁷⁷

After his conviction, the New York FBI office made an appraisal of Sobell in conjunction with FBI efforts to persuade him to talk: "Sobell is arrogant, stubborn, proud, self-centered and egotistical."⁷⁸

On May 8, 1956, an inter-office memorandum of the FBI recorded that Sobell's motion for a new trial was being carefully watched by the FBI, U.S. Attorney's Office, and Judge Kaufman. Prosecutor Kilsheimer, in a May 16, 1956, FBI memo, was said to have urged that collateral issues be avoided when ruling on Sobell's motion for a new trial. Judge Kaufman had been told by Kilsheimer that all issues in the appeal had been raised previously. Kaufman, in the same memo, was reputed to have commented that if the Sobell's motion came before him, he would deny it without a hearing.⁷⁹

Kaufman remained concerned about Sobell appeals throughout the years. On September 15, 1957, an FBI memorandum stated: "Irving is afraid the court might upset

⁷⁷The New York Times, December 6, 1975.

⁷⁸Ibid.

⁷⁹The Kaufman Papers.

the case unless the Department vigorously defends it." On December 21, 1962, an FBI record stated that Kaufman complained and "raised hell" with Circuit Court Judge Thurgood Marshall for asking a question of the United States Attorney on a Sobell petition. Marshall had asked the government if the Sobell conviction could be overturned had it come after the 1957 Grunenwald decision ruling it improper to question a defendant on invoking the Fifth Amendment in grand jury proceedings. The United States Attorney had answered that that possibility existed. Kaufman, in the September 15 memo, stated that such remarks "could be the straw that breaks the camel's back. . . ." ⁸⁰

In a memo to the FBI Director, dated April 11, 1966, the New York FBI office described Judge Kaufman's displeasure over release of the impounded atomic bomb sketch and material to Sobell's lawyers. Kaufman emphasized the sealed status had been his decision and felt he should have been consulted on its release. Kaufman indicated earlier discussions on the matter with Hoover had found them in agreement on this issue, and he requested that his thoughts on the release be recorded with the Bureau. ⁸¹

⁸⁰
Ibid.

⁸¹
Ibid.

Through the years Judge Kaufman was concerned with public treatments of the Rosenberg case. On July 3, 1976, Kaufman forwarded a pamphlet by Nathan Glazer and suggested the FBI obtain copies to be used as an answer to the recently-published Wexley book.⁸² On July 5, 1956, Kaufman forwarded a copy of I.F. Stone's article, "Time For New Tactics on Rosenberg-Sobell, Too," to the FBI. Irving Kaufman, in a letter dated October 15, 1957, to Herbert Brownell, expressed congratulations to the Justice Department for inspiring Bill Davidson's article in Look magazine.⁸³

An FBI memorandum of October 10, 1965, concerned publication of the book, Invitation to an Inquest. A Chicago television man, seeking FBI advice through a contact, asked for the FBI attitude on Walter and Miriam Schneir. The television commentator said he thought the Schneirs might use his program as a means to exonerate the Rosenbergs and smear the FBI. The memorandum concluded with the recommendation that the Schneirs' book should be "smothered and forced out of the public eye. . . ." The memorandum suggested the FBI might refute the book through a well-rounded brief. It was suggested that field

⁸²Kaufman, spelling the name "Glazier," was referring to Nathan Glazer's New Leader pamphlet on the case.

⁸³The Look article was said to be based on a special inside report of the Rosenberg case by the Department of Justice. Schneir, Invitation to an Inquest, pp. 296-297.

offices of the FBI be notified to take measures to prevent the Schneirs from obtaining television time. The FBI memo also suggested that unnamed friendly media contacts should be alerted and that some Catholic publications would assist in efforts.⁸⁴ In a final note, it was stated that Judge Kaufman was having a letter sent to The New York Times.⁸⁵

FBI records on February 24, 1970, evidence a concern over the opening in New York City of Donald Freed's play, "Inquest." Judge Kaufman had expressed indignation that the play had been reviewed twice in The New York Times. J. Edgar Hoover had directed an investigation of the play while it was in performance in Cleveland, and he sent Kaufman the results of his investigation. Director Larry Tarrant and the acting cast had been scrutinized, but "reliable, derogatory information" had not resulted.⁸⁶

⁸⁴ The Kaufman Papers.

⁸⁵ Ibid. Simon H. Rifkind, later head of the ABA subcommittee to examine Rosenberg case developments, wrote the letter to The New York Times defending the conviction of the Rosenbergs. Rifkind also wrote a March 16, 1974, article in TV Guide, defending the conviction. The FBI used this article to respond to the outside inquiries on the Rosenberg case, according to documents in The Kaufman Papers.

⁸⁶ Ibid.

On March 12, 1974, an FBI document registered Kaufman's objections over recent television presentations on the Rosenberg case. On May 4, 1975, Kaufman complained to the FBI of bias in Esquire magazine's recent treatment of the case. At that time he also expressed alarm over publicity by the National Committee to Re-Open the Rosenberg Case and requested a Deputy U.S. Marshall to accompany him on speaking engagements.⁸⁷

Examination of the released material available on the Rosenberg case indicates that the government, proceeding on a conspiracy charge and thereby gaining a wide latitude for testimony and evidence, collected a mass of incriminating information. There was no primary scientific documentation that would conclusively prove the Rosenbergs and Sobell committed the crimes for which they were accused. The Rosenbergs were convicted primarily by the testimony of the Greenglasses and Gold. These witnesses have emerged from government records appearing a little less credible than they did to the public in 1951. FBI records now being inspected by Judge Green include documents withheld by the agency on grounds of personal privacy and miscellaneous

⁸⁷ Ibid.

reasons. These records could shed more light on personalities of the trial.⁸⁸

Government agencies, making much of the Rosenbergs' Communist and pro-Soviet sympathies, seemed to be groping for some cogent proof of guilt. Yet government representatives closest to the case--the prosecutors and the judge--appeared to be confident of Rosenberg guilt and self-assured at the time of the trial. Monitoring Sobell's appeals and attempting to influence public opinion were probably methods of maintaining conformity of opinion on a case which should have aroused more uncertainty in its time.

If incidents described in FBI memos are true, Kaufman may have been prejudiced in his conduct of the Rosenberg trial. Since the death penalty was a possibility, the Judge's private conduct and demeanor should have been scrupulously impartial. Government papers would indicate that on a more private level, Kaufman felt immune from censure. It seems rather unusual that Kaufman would feel a need to express continuous concern and anxiety about this case through a quarter of a century. Known at the time to be a very ambitious man, Kaufman, in sentencing the Rosenbergs

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The New York Times, January 14, 1976.

may have been responding to pressures of his career.⁸⁹

During the trial period, it was probably thought that few people of influence would ever question the Rosenbergs' guilt because they were so hated by the society in which they lived.

Some records in the Rosenberg documents mention pivotal incidents and facts that are disappointingly bare of detail and explanation. The Vietnam era and the Watergate experiences, weakening the credibility of the government, also make one ponder curious voids in the Rosenberg records.

The recent release of government papers has pushed the Rosenberg case a step beyond public discussion and activated a battle in the legal community. On June 23, 1975, a statement on the Rosenberg case was released by past presidents of the Association of the Bar of the City of New York in the New York Law Journal. That organization affirmed the fairness of the Rosenberg trial because it had been "repeatedly examined and upheld by appellate judges on the Supreme Court and elsewhere." The statement expressed

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The reader is referred to the following studies: Jonathan Root, The Betrayers (New York: Berkley Medallion Books, 1963), pp. 126-127; Louis Nizer, The Implosion Conspiracy (Greenwich, Conn.: Fawcett Publications, Inc., 1973), pp. 41-44; John Wexley, The Judgment of Julius and Ethel Rosenberg (New York: Cameron & Kahn, 1955), pp. 348-354.

faith in the integrity of the Courts and Judge Irving R. Kaufman who presided over the trial. It decried the efforts to undermine the Courts by attacks on the Judicial system.⁹⁰

In response to the statement of the Association of the Bar of the City of New York, the National Lawyers Guild issued a rebuttal.⁹¹ Charging Kaufman with judicial partiality, it quoted Supreme Court Justice Black in dissent: "It is not amiss to point out that this court has never affirmed the fairness of the trial below. . . ."⁹²

The National Lawyers Guild sought to refute the argument that re-examining the Rosenberg case would imperil the workings of the Judiciary, and the Guild asked Bar associates to join with them in welcoming an open examination of the Rosenberg case.⁹³

On January 8, 1976, the American Bar Association established a special subcommittee of the ABA Task Force

⁹⁰ "NLG Officers Reply to Statement of City Bar Past Presidents on Attacks on Judge Kaufman," ABA Journal, LXI (October, 1975), 1271.

⁹¹ Lawyers for the Meeropols are members of the National Lawyers Guild. Letter from Bonnie Brower, Attorney at Law, New York City, to Inez Whitehead, July 7, 1976.

⁹² "NLG Officers Reply to Statement of City Bar Past Presidents on Attacks on Judge Kaufman."

⁹³ Ibid.

on Courts and the Public to examine charges being made concerning the Rosenberg espionage trial. The press release of the ABA subcommittee declared: "The creation of the subcommittee is the response to persistent propoganda that the Rosenberg trial was unfair."⁹⁴ The subcommittee would issue press releases occasionally and consult with press representatives to clarify developments or charges made in the Rosenberg case.⁹⁵

On June 10, 1976, Marshall Perlin and other lawyers for the Meeropols called a news conference to charge Chief Judge Irving R. Kaufman of the Second Circuit Court with violating canons of judicial ethics and the United States Constitution in his conduct of the Rosenberg trial. The lawyers referred to the ethics canon disallowing communications between a judge and one party without the knowledge of the other party. Citing documents recording inter-agency communications on the Rosenberg case, Meeropol lawyers charged Kaufman with a Constitutional violation of the separation

⁹⁴"Release: January 8, 1976," New York City, American Bar Association Task Force on Courts and the Public, obtained from Bonnie Brower, Attorney at Law, New York City.

⁹⁵Ibid.

of powers. Perlin called for an independent investigation to look into all questions raised in the handling of the Rosenberg case.⁹⁶

Simon H. Rifkind, the chairman of the ABA subcommittee and a friend of Judge Kaufman, countered charges raised in the June 10 news conference by declaring the Rosenberg trial fair and proper. He said the release of government documents reinforced the guilt of the Rosenbergs and the importance of secrets they passed to the Soviets. Denying any evidence impugned the Rosenberg verdict or Kaufman's conduct of the trial, Rifkind charged the Meeropol lawyers with a publicity tactic by failing to furnish his subcommittee government documents before the news conference. He said the FBI material included rumors and heresay which often accompanied important courtroom proceedings, but most frequently was without any basis or truth.⁹⁷

On January 28, 1976, the president of the National Lawyers Guild, Doron Weinberg, criticized the ABA subcommittee charging it was biased. The Guild protested the subcommittee's approach as judge and censor of public information. It

⁹⁶ The New York Times, June 11, 1976.

⁹⁷ Ibid.; "Release: January 9, 1976, New York City, American Bar Association Task Force on Courts and the Public."

charged that the subcommittee's formation was an effort to divert public speculation from governmental or judicial wrong-doing, which the Guild said had already become evident in released documents on the illegal use of wire-taps and informers.⁹⁸

In early March, 1977, additional public support came for an investigation of the Rosenberg trial. By a vote of thirty-eight to thirteen, the Board of Directors for the American Civil Liberties Union (ACLU) adopted a resolution requesting the House and Senate Judiciary Committees to inquire into the relationship between Judge Kaufman and the prosecutors in the Rosenberg trial. The ACLU resolution asked the Committees to "investigate the need for legislation to prohibit [private communications] between Federal judges and prosecutors and other law enforcement officials."⁹⁹

ACLU Board chairman, Norman Dorsen, commenting that such communications occurred too frequently in Federal courts, added that in the Rosenberg case, FBI documents "raise the possibility that the trial judge in an historic

⁹⁸ Letter from President Doron Weinberg, National Lawyers Guild, to ABA Journal, (January 28, 1976), obtained from Bonnie Brower.

⁹⁹ "Congress Urged to Study Judge, Prosecutor Relations," Civil Liberties, May, 1977, p. 5.

case maintained an improper ex parte relationship with the prosecution, at least with respect to the question of sentencing."¹⁰⁰

The Senate and House Judiciary Committees, who failed to take action on a similar petition of law professors, have not responded to the ACLU request. The ACLU resolution, opposed by the New York state chapter of ACLU, was criticized by ABA subcommittee chairman Rifkind, who dismissed it as "part of the orchestrated campaign that has been conducted by the pro-Rosenberg lobby and used as a recruiting tool for the radical left."¹⁰¹

As yet there has been no dramatic breakthrough in the Rosenberg case. Confirmed are misgivings on the appropriateness of the death penalty. Government information released to date does not prove with certainty that the Rosenbergs were guilty as charged and deserved execution. It does give rise to allegations that it was virtually impossible to defend the Rosenbergs against an array of evidence backed by unrestrained government power.

News media coverage of recent developments in the Rosenberg case have renewed the case in public discussion.

¹⁰⁰ Ibid.

¹⁰¹ The New York Times, March 10, 1974.

The New York Times covered the Meeropol struggle to gain access to government records with an open-minded attitude. On March 20, 1977, however, an editorial of the paper defended the exemplary bench conduct of Judge Kaufman and insisted the Rosenberg case had had extensive review. The editorial concluded that "the plain fact is that the ACLU's present effort [to appeal] to Congressional Committees arises not from any deep concern over a widespread abuse of civil liberties, but in direct response from persons who have lately been seeking to stir up the Rosenberg case again."¹⁰²

Michael and Robert Meeropol are convinced their parents were totally innocent, not just that there are questions.¹⁰³ The Meeropols say they would welcome libel suits from any of the individuals who prosecuted their parents because it would enable them to gain subpoena power to help re-open the case. They would like to see a Congressional Commission established to investigate their parents' case.¹⁰⁴

Over twenty-four years after the execution, familiar battle lines in the Rosenberg case are still drawn, but

¹⁰² Ibid., March 20, 1977.

¹⁰³ Ibid., March 10, 1974.

¹⁰⁴ Ibid.

concerns about the case are being voiced by a widening proportion of the citizenry. This is, perhaps, the necessary first step for the Meeropols if they are to be successful in efforts to re-open their parents' case.

CHAPTER V

Significance of the Case

Cold War tensions and a pattern of government anti-radicalism molded the background for the Rosenberg case. Ethel and Julius Rosenberg were Popular Front Communists whose defense was impaired by the reactions of elements of American society to the times. The legal community responded to the Cold War by seeking to isolate or eliminate Communist influences. Misconceptions at the trial on the atomic bomb rose from a government policy of atomic secrecy. The Cold War attitude toward justice for Communists, the behavior of the American press and the lack of Jewish support for the Rosenbergs contributed to a weak defense. In dealing with the Rosenberg case, government institutions, and the individuals heading them, responded to Cold War agitations. From a perspective of time, all these influences are being examined and questioned.

The losses to Communism in Europe and Asia were confirmations to Americans that the Soviet Union's intentions threatened the world. The loss of China and the reality of

a Soviet atomic bomb were psychological blows to them. The war in Korea served to confirm a Soviet conspiracy to dominate the world. Despite some scientists' warnings that the secret of the bomb could not be kept, Americans after 1949 believed that the Russians had stolen their atomic bomb. With the collapse of the bomb monopoly, the press exploited fears of atomic annihilation.

Congressional conservatives saw a chance in the Cold War to return to power. Conservative rhetoric painted the Soviet Union as a demonic evil. Those politicians resentful of the New Deal era used security issues as political weapons. At first they charged Truman and the Democratic Administration with being inept and inadequate. When that vitriolic charge was not enough to garner large numbers of votes, conservatives probed for evidence of internal disloyalty. The jittery Truman Administration, attempting to pacify its attackers, reacted with its own brand of anti-Communist measures. An aggressive anti-Communism broke all vestiges of the Popular Front.¹

¹By 1950 the Popular Front was in disarray. Communists had lost gains in the trade unions and the Progressive Party had gone down in defeat. Norman Markowitz, "A View From the Left: From the Popular Front to Cold War Liberalism," The Specter, ed. Robert Griffith and Athan Theoharis (New York: New Viewpoints, 1974), p. 104.

Charges of domestic disloyalty were rampant. Probing the Popular Front alliance, investigators unearthed Alger Hiss, impugning the Democratic Party and opening it to attacks of harboring Communist subversives. The 1948 arrests of Communist Party officials signaled open hostility to Communists. A series of spy cases had already set a pattern for public acceptance of a Fifth Column. The American public was prepared for a major case of espionage.

Julius Rosenberg was arrested three weeks after the eruption of the Korean War. The Rosenbergs would prove that Americans fighting for survival were being betrayed by nationals who would give away the one weapon assuring its superiority.

The Rosenberg case had symbolic meaning in Cold War rationales. Developing out of the conviction that the nations' survival was at stake in a battle with the Soviet Union, the unfolding rationales included the imminence of Russian aggression, the stolen atomic bomb secret, and widespread fears of domestic betrayal. These truths were consummated in the trial and conviction of the Rosenbergs. If there were flaws in any of the Cold War logic, few questioned it at that time. They were political absolutes of the times.

The Rosenberg case is not an isolated oddity of history. Its lineage is found in government anti-radicalism.

Nativism, born in the 1800's, was rooted in depression resentment at the influx of immigrant workers. The alien or radical, with differing political and economic philosophies, became an object of scorn and was regarded as an internal security risk by the government.² The twentieth century shock of the successful Bolshevist revolution in Russia strengthened and intensified latent anti-radicalism.³

In the World War I period anti-radical legislation began emerging. The Espionage Act of 1917 witnessed the prosecution of pro-Germans, Socialists, anarchists, and pacifists. The Congressional Record recorded a fierce battle over passage of this legislation. The wisdom of an espionage death penalty was debated in the House of Representatives. One portion of the debate touched directly on testimony David Greenglass was to give in the Rosenberg trial:

Mr. Huddleston. This statute. . . applies to every man who may be intrusted with information, and it does not make any difference whether the information is important or not.

Mr. Webb. Oh, you will not find the \$2.50 mechanic in the United States intrusted with information such as is described here.⁴

² William Preston, Jr., Aliens and Dissenters (Cambridge: Harvard University Press, 1963), pp. 4-7.

³ Ibid., p. 85.

⁴ U.S. Congress. House, 65 Cong., 1st sess., 45, 1762.

The story of radical treatment has been tied closely to the history of the FBI. This agency, conceived early in the century by Attorney General Charles Joseph Bonaparte, assumed a powerful role in suppressing radicals. During World War I, Bonaparte's predecessor at the Bureau of Investigation enforced draft laws and minimized dissent. Organizing the 1920 Red Raids, J. Edgar Hoover emerged from within the Bureau as a leader in the controversial dragnet arrests of radicals.⁵ In 1940 a raid on Detroit radicals prompted Senator George W. Norris to react angrily: "In my judgment, unless this procedure is stopped, the time will soon arrive when there will be a spy behind every stump and a detective in every closet in our land."⁶

Under Presidential directive, the FBI conducted surveillance of the Communist movement throughout World War II. J. Edgar Hoover in 1940 reflected the official militancy of the FBI: "We of the law enforcement have no love for the slimy racketeering, revolution-inciting ways of the Communists."⁷

⁵ Max Lowenthal, The Federal Bureau of Investigation (New York: William Sloane Associates, Inc., 1950), pp. 3-49; 147-201.

⁶ U.S. Congress. Senate, 76 Cong., 3d sess., 86, pt. 5, 5664.

⁷ U.S. Congress. 76 Cong., 3d sess., 86, pt. 17a, 5691.

Through the years the public supported government hostility toward radicals. Beginning with the resentment toward the immigrant, public concern for the rights of radicals remained minimal. A 1940 Fortune survey had found over half the American public believing Communists bad and misguided, but in 1954 Stouffer discovered more widespread fear and concluded unthinking Americans found it easy to believe that those who threatened the dominant ideas were Communist radicals.⁸

Ethel and Julius Rosenberg were Communists collaborating in the Popular Front, an unofficial alliance of New Deal liberals and assorted radicals. During the depression, under the leadership of Earl Browder, the ranks of the Communist Party grew among Americans who had lost faith in capitalism. In urban neighborhoods of America, Communists were organizing and demonstrating for the poor, destitute and unemployed.⁹ Communists were describing themselves as the true descendents of Jefferson and Lincoln. Browder later encouraged the

⁸ "The Fortune Survey: XXXI," Fortune, June, 1940, p. 62; Samuel Andrew Stouffer, Communism, Conformity and Civil Liberties (Garden City: Doubleday & Company, Inc., 1955), p. 186.

⁹ David M. Oshinsky, "Labor's Cold War: The CIO and the Communists," The Specter, pp. 120-121.

Popular Front by urging Communists to join with other groups in political coalitions. During this period several Communists were elected to the New York City Council.¹⁰

Murray Kempton has written of radicals of the 1930's who turned to the revolutionary answers of Marx and Lenin. This writer agreed with Kempton when he described Julius Rosenberg as a revolutionary fashioned originally from the social disenchantment of the depression.¹¹ A number of factors and affiliations in the Rosenbergs' lives support Kempton's pensive image of them as Popular Front Communists.

Ethel and Julius Rosenberg probably never had faith in the capitalist system. They grew to adulthood on New York City's Lower East Side with its condemned and closed buildings, poor sanitary conditions, poverty and hunger. On a recent television documentary, Carlo Marzani, a Lower East Side Communist of the 1930's, minimized the security danger represented by neighborhood Communists. According to Marzani,

¹⁰ Communist candidate Peter V. Caccione was elected to the New York City Council in 1941, 1943 and 1945. Benjamin J. Davis was elected in 1943 and 1945. David A. Shannon, The Decline of American Communism (New York: Harcourt, Brace and Company, 1959), pp. 98-99.

¹¹ Murray Kempton, Part of Our Time (New York: Simon and Schuster, 1955), p. 4.

humanitarian concerns were the chief objectives of these local Communists.¹²

City College of New York (CCNY) offering free education to the poor, attracted impoverished New York Jewish students such as Julius Rosenberg. In earlier years the college had turned out a number of prominent Communists, including John Gates, Joseph Starobin, Joseph Clark and Max Weiss. Julius Rosenberg was undoubtedly strengthened by college radicalism as were many students who passed through the Communist movement in the 1930's.¹³ CCNY radicalism was investigated by a New York Legislative Subcommittee which verified strong Communist leadership on the campus operating primarily through the American Student Union (ASU).¹⁴ The ASU, of which Rosenberg was a member, sponsored courses in radicalism, the trade union movement, class struggle and fascism.¹⁵ Fellow students at CCNY described Rosenberg's

¹²Alvin H. Goldstein, "The Unquiet Death of Julius and Ethel Rosenberg," script of National Public Affairs Center for Television Production, February 25, 1974, pp. 3-4.

¹³Seymour Martin Lipset and Gerald M. Schaflander, Passion and Politics: Student Activism in America (Boston Little, Brown and Company, 1971), p. 181.

¹⁴Julius Rosenberg had signed a petition for formation of an ASU chapter at CCNY in 1935. FBI, "Reports Summarizing the Investigation Conducted up to the Arrest and Arraignment of Julius Rosenberg;" Transcript of Record, Julius Rosenberg and Ethel Rosenberg v. the United States of America (2 vols.; New York: National Committee to Secure Justice in the Rosenberg Case, 1952), II, 1182-1184.

¹⁵New York (State) Joint Legislative Committee on the State Education System, December 1, 1941, pp. 26-44.

single-minded devotion to socialism. According to Virginia Gardner, he was a frequent visitor to the campus alcoves where political discussions took place. "Julie never missed a leaflet distribution," one friend related.¹⁶

The Rosenbergs participated in radical labor activity, typical of Communists of the 1930's who were operating at the ground and middle levels of the trade union movement.¹⁷ Ethel Rosenberg was a labor agitator at National New York Shipping and Packing Company. The family of Julius Rosenberg was closely associated with the trade union movement in the garment industry. While attending CCNY, Rosenberg described his enthusiasm in aiding strikers:

A number of us helped them with their picketing. . . the stricken families were in very bad financial straits. A student committee to help them was set up and funds were collected to buy food for those needy families. I remember well the feeling of brotherhood when we turned over the crates of food to the strikers welfare committee.¹⁸

Both Rosenbergs were to become active in the Federation of Architects, Engineers, Chemists and Technicians (FAECT). This union subsequently was classified by the

¹⁶ Virginia Gardner, The Rosenberg Story (New York Masses & Mainstream, 1954), p. 54.

¹⁷ Markowitz, "A View From the Left: From the Popular Front to Cold War Liberalism," pp. 120-121.

¹⁸ Michael and Robert Meeropol, We Are Your Sons (Boston: Houghton Mifflin Company, 1975), p. 170.

government as Communist-controlled. Rosenberg, after being fired from a government job in 1945, worked in the FAECT to aid members being dismissed from government employment.

Released FBI documents on the Rosenbergs have indicated another strong tie to the Popular Front. Between 1941 and 1943 the Rosenbergs registered as voters in the American Labor Party (ALP), a political party formed by New York supporters of Franklin D. Roosevelt. The ALP attracted racial and ethnic votes in the city, deriving great strength from Jewish labor voters.¹⁹ Though the ALP drew anti-Communist liberals and Socialists into its ranks, from the beginning, Communists were performing menial tasks for the party. The ALP history subsequently became one of war between moderates and radicals. In the last year of the Rosenberg registration, the radicals managed to gain control of the party.²⁰

While the Popular Front lasted, it provided a somewhat respectable and secure home for native Communists like the Rosenbergs. They, along with other Communists were to become rootless in the dissolution of the Popular Front after World War II. The coalition of New Dealers and

¹⁹Robert Franklin Carter, "Pressure From the Left: The American Labor Party" (Unpublished Ph.D. Dissertation, Syracuse University, 1965), p. 86. Xerography copy.

²⁰Ibid., pp. 90-127.

Communist radicals was doomed in the Cold War anti-Communist crusade.²¹

Under the tension of the Cold War, elements of American society were reacting in unusual ways. Some of these patterns of behavior affected the Rosenberg case.

The legal community was a dismal failure in its response to Cold War Communist cases. The American Bar Association, caught up in the anti-Communist hysteria of the times, turned upon itself in order to purge Communists from its ranks. The National Lawyers Guild, cited by HUAC as a Communist-front group, provided the defense lawyers in the Smith Act trial. The Guild, however, was under mounting government attack. Alienated, it dropped in membership throughout the Cold War. Left-wing lawyers also became extremely reluctant to take Communist cases for fear of being labeled subversive. It seemed that defending Communists invited punishment--court citation, disbarment, exclusion, or more subtle retaliation. Emanuel Bloch, suffering in isolation, was no exception.²²

²¹Markowitz, "A View From the Left: From the Popular Front to Cold War Liberalism," pp. 103-104.

²²Jerold S. Auerbach, in Unequal Justice, detailed examples of punitive action used in regard to the Rosenberg case. In Michigan several lawyers were called before the ethics committee to explain their criticism of the trial. In Houston, Texas, the bar association held an applicant's activities on behalf of the Rosenbergs as adverse. Jerold S. Auerbach, Unequal Justice (New York: Oxford University Press, 1976), pp. 248-255.

Even the American Civil Liberties Union (ACLU) failed in its moral obligation toward the Rosenberg case. The history of the ACLU in the Cold War had been one of internal dissent on its public posture toward Communism. In contrast to the ACLU's recent note of interest in the Rosenberg affair, in 1952 the Board of Directors refused to enter the case by a vote of eighteen to four.²³ The ACLU, issuing a statement on December 8, 1952, said the case did not involve abuse of civil liberties.²⁴

A re-examination of the Rosenberg case must consider the depth and extent to which influences of the Cold War damaged the Rosenberg defense. Bloch, emotionally involved with the case, underestimated his opponents. In view of the times, his overwhelming faith in American justice was not realistic.

Bloch was operating from isolation throughout the trial proceedings. He lived with fright. Aggressive legal counsel for the Smith Act defendants had been cited for contempt of court and were under various legal sanctions. Bloch feared the death penalty and hoped his more appeasing attitude would save his clients from death sentences.

²³ Mary S. McAuliffe, "The Politics of Civil Liberties," The Specter, pp. 154-171.

²⁴ Ibid., pp. 166-167.

As Louis Nizer has pointed out, Bloch was not a talented trial lawyer. In retrospect, the defense of the Rosenbergs seems directionless and unplanned. Scientific counsel was not available to Bloch. His maneuvers at the trial allowed important scientific evidence to be withdrawn from public scrutiny. In addition, the word of government experts was never really challenged. Bloch also missed opportunities to explore the human foibles of witnesses. The repetitive and rambling cross-examinations of the Greenglasses only strengthened the prosecution's story of espionage. The Brothman-Moskowitz trial testimony on Gold's fantasy life was never revealed to the jury. Elizabeth Bentley's questionable reliability was never impugned.

The trial of the Rosenbergs was political--a modern governmental method of eliminating irritants to society.²⁵ Considering the charge against the Rosenbergs, the times, and the power and prestige of the federal government, perhaps the outcome was predictable. The indictment of the Rosenbergs on a conspiracy charge allowed wide latitude on evidence and testimony. In the more substantive charges of treason or espionage, much of the trial testimony would have been discounted as heresy. Clarence Darrow, years earlier,

²⁵Theodore L. Becker, ed., Political Trials (Indianapolis: The Bobbs-Merrill Company, Inc., 1970), p. xii.

attacked the ease of conspiracy convictions, saying they "battered down the ordinary safeguards that laws and institutions have made to protect individual rights."²⁶

In 1948 Supreme Court Justice Robert Jackson assailed the growing use of conspiracy indictments, warning co-defendants often could be prodded into accusing and convicting each other.²⁷

The Rosenbergs were at the mercy of government secrecy about the atomic bomb.²⁸ Newsweek magazine as early as 1947 had asserted the Soviet Union could produce an atomic bomb within a year.²⁹ In 1951 atomic scientist Eugene Rabinowitch spoke critically of the security policies that had been deluding the public on issues involved in the Rosenberg case. Of the development of the bomb, he said: "Scientists outside the Manhattan Project, noting the quantity and quality of

²⁶ Clarence Darrow, The Story of My Life (New York: Charles Scribner's Sons, 1932), pp. 64-65.

²⁷ *Krulewitch v. United States*, 93 L. Ed. 795-800, (1948).

²⁸ General Leslie R. Groves, in charge of security at Los Alamos, had estimated it would take the Soviet Union twenty to fifty years to produce an atomic bomb. Scientists Vannevar Bush and James B. Conant predicted it would take the Soviet Union three to five years. Martin J. Sherwin, A World Destroyed (New York: Vintage Books, 1977), p. 237.

²⁹ "Foreign Relations: It Is Later Than You Think," Newsweek, July 28, 1947, p. 22.

scientific manpower swallowed by this project could guess its aim and speculate."³⁰

Rabinowitch was an early critic of government security policies. In 1945, he and six other atomic scientists wrote to the Secretary of War:

In Russia the basic facts and implications of nuclear power were well understood in 1940 and the experience of Russian scientists in nuclear research is entirely sufficient to enable them to retrace our steps within a few years. . . . It would be foolish to hope [our lead and security measures] can protect us for more than a few years.³¹

In the years after the 1951 trial, the public naivete on atomic science, aided by Bloch's courtroom tactics, foreclosed open debate on scientific evidence. Bloch knew little about the atomic bomb and could not judge the Greenglass material. Gloria (Agrin) Josephson, his legal assistant, said the government's word on scientific evidence was accepted because experts to challenge the testimony were unavailable to the defense. The jury, awed by uncontested

³⁰ Eugene Rabinowitch, "Atomic Spy Trials: Heretical Afterthoughts," Bulletin of the Atomic Scientists, VII (May, 1951), 140.

³¹ The "Franck Report," as it came to be known, was signed by scientists Eugene Rabinowitch, James Franck, Thorfin Hogness, D. Hughes, Leo Szilard, Glen Seaborg and C.J. Nickson. Robert Junk, Brighter Than a Thousand Suns (New York: Harcourt, Brace & World, Inc., 1958), p. 350.

government experts and impressed by the imposed secrecy, believed the Greenglass contribution highly valuable.

In The Bulletin of Atomic Scientists, June, 1975, James J. Glackin charged that the United States government deliberately distorted and withheld facts in the Rosenberg case. Glackin said government intelligence knew of bomb research in the Soviet Union as early as 1943. According to Glackin, the Soviet bomb was one of high yield, not a mere copy of the American bomb. Glackin said the government was aware that a 1944 Time magazine article had already revealed essentials of the implosion theory to the public.³²

In their preoccupation with subversion, Americans had little tradition with which to gauge secrecy. According to Edward A. Shils, the Cold War fears exaggerated the importance of espionage objects so that they were more symbolic than real. Shils felt that in countries having a scientific tradition, atomic espionage cases became exaggerated in importance. In addition, he pointed out that bureaucratic espionage procedures tend to de-emphasize individual contributions.³³

³² James J. Glackin, "How Secrecy Played Executioner," Bulletin of the Atomic Scientists, XXI (June, 1975), 14-16.

³³ Edward A. Shils, The Torment of Secrecy (Glencoe: The Free Press, 1956), pp. 220-221.

An excessive amount of ideological testimony was allowed in the Rosenberg trial under the guise of establishing a motive for espionage. Nearly all witnesses against the Rosenbergs spoke of their Communist interests and activities. Informer Bentley gave the Rosenbergs an impressive connection to the Communist movement. Evidence introduced included a coin collection can for the Joint Anti-Fascist Refugee Committee and a 1939 Communist Party election petition bearing Ethel Rosenberg's signature. The Rosenbergs were asked many times if they were members of the Communist Party. Julius Rosenberg was questioned about student activities at CCNY, the loss of his government job and union activities in FAECT. The Rosenbergs were asked if they read the Daily Worker and how they felt about the Communist Party. They were asked to state their preferences in comparing the economic systems of the Soviet Union and the United States. Prosecutors questioned them about acquaintances, intimating the presence of a spy network.

Testimony of Communist affiliation probably encouraged conviction. The Foreman of the Jury, Vincent Lebonitte said: "In my time a Communist was a monster, someone who was going to destroy me and my way of life. They were going to enslave us. . . . A Communist had leprosy."³⁴

³⁴ Ted Morgan, "The Rosenberg Jury," Esquire, May, 1975, p. 108.

In addition, with the Rosenbergs exercising the Fifth Amendment in refusing to answer questions, some jurors acknowledged they took it as a sign the couple had something to hide.³⁵

In a study of ex-Communist informers used by the government, Herbert L. Packer found Elizabeth Bentley's tales the most contrived. Packer insisted that Bentley had never been confronted with discrepancies and ambiguities in her tale.³⁶ By the time Bentley testified in the Rosenberg trial, she had already been hailed by the press and government as the Spy Queen, a confessed Communist undercover agent. She had provided testimony on the nature of the Communist Party and alleged telephone calls she had with a person she thought was Julius Rosenberg.

The United States government was utilizing a variety of ex-Communist informers in the 1950's. The work became profitable for those willing. Philbrick, Budenz, Gitlow, Calomiris, Bentley and Chambers all derived income from book royalties, radio, television and movies. In addition, many of them held regular jobs and were paid FBI informants.

³⁵ Ibid., p. 127.

³⁶ Herbert L. Packer, Ex-Communist Witnesses (Stanford: Stanford University Press, 1962), pp. 109-114.

The informants had even organized a federation to protect their financial interests.³⁷

The calamity caused by Titus Oates is the classic of history's informers, but ex-Communist Harvey Matusow best described the power incentive of the informer: "At first it was a strange feeling to see my picture and name in the newspapers, but then, like a dope addict, I began to crave for it--publicity and more publicity, a never-ending chain that only brings more and more dishonesty."³⁸

The American press, like the legal community, failed to function as a pillar of freedom in the Cold War. James Aronson, in his study of the Cold War press, determined it had served controlling forces in shaping the Communist hysteria. Chiefly, it had been the press which was responsible for forging public consciousness of a tie between international Communism and domestic betrayal.³⁹

After the trial, Emanuel Bloch commented on the biased role of the American press:

³⁷ Frank J. Donner, "The Informer," The Nation, April 10, 1954, pp. 298-307.

³⁸ Harvey Matusow, False Witness (New York: Cameron & Kahn, 1955), p. 225.

³⁹ James Aronson, The Press and the Cold War (Indianapolis: The Bobbs-Merrill Company, Inc., 1970), pp. 24-58.

With the slamming of the door of the Death House on the Rosenbergs, a conspiracy of silence settled on the press. Our great newspapers. . . had seized eagerly upon every propaganda release of the prosecution. . . . From the government's point of view and from the point of view of its ally, the press, the Rosenbergs were as good as dead.⁴⁰

The New York City press was especially negative in its treatment of the case. The New York Times refused even paid advertising of the National Committee to Secure Justice in the Rosenberg Case. The National Guardian, of which Aronson was an editor, was the only newspaper which responded to Bloch's plea for help.⁴¹

In the American Jewish community, the main body of opinion supported the conviction and death sentence of the Rosenbergs. On May 13, 1952, the National Community Relations Advisory Council on behalf of the American Jewish Committee, the Anti-Defamation League of B'nai B'rith, the American Jewish Congress, the Jewish War Veterans of the United States, and the Jewish Labor Committee, stated:

Attempts are being made. . . by a Communist-inspired group called the National Committee to Secure Justice in the Rosenberg Case, to inject the false issue of anti-Semitism into the Rosenberg case. We condemn these efforts to mislead the people of this country by unsupported charges that religious ancestry of the defendants was a factor in this case.⁴²

⁴⁰Ibid., p. 62.

⁴¹Ibid., pp. 58-63.

⁴²Fineberg, The Rosenberg Case (Dobbs Ferry, New York: An Oceana Publications, 1953), p. 69.

Andhil S. Fineberg's book had wide acceptance among Jews. Fineberg dismissed Jewry sympathetic to the Rosenbergs as instruments of the Communist Party. Helen Sobell spoke of the effect of the Fineberg book:

In our attempts to seek the support of people in the Jewish community whom we felt should have been our closest allies during the whole first period of the case, we found that due to the Fineberg book--but more than to the book itself--to the attitude that was propagated. . . there was a tremendous amount of fear in the Jewish community.⁴³

Although the prosecutors and the sentencing judge in the Rosenberg trial were Jewish, the question of anti-Semitism may be more subtle. Juror Vincent Lebonitte perceived an unspoken Jewish dilemma:

I felt good that this was strictly a Jewish show. . . any other judge would have been more lenient than Kaufman. . . the Jews hated the Rosenbergs for the disgrace they had brought. . . . Kaufman wanted to make an example of someone who had disgraced the Jewish people.⁴⁴

Did the Rosenbergs suffer the ultimate penalty to help offset a public identification of Jews with Communism? Sharp and Wexley both mention the Jewish Cold War predicament. In his treatment of the Rosenberg case, Leo Pfeffer acknowledged

⁴³Helen and Morton Sobell, private interview, held in New York City, July 31, 1975.

⁴⁴Morgan, "The Rosenberg Jury," p. 124.

the Cold War dilemma of the Jewish community.⁴⁵ Jews had been heavily present in the New York Communist Party and were linked by innuendo and outright charge to the Party.⁴⁶ Jewish members of the New York Democratic Party were aware of growing public perception of a tie between Jews and the Communist movement.⁴⁷

The execution of the Rosenbergs signaled a failure of American institutions in resisting the compulsions of the Cold War. Instead of withstanding the pressures of the times, individuals representing the government's institutions succumbed to Cold War agitations. The jurors of the trial had voiced no objections to the death penalty. The prosecutors and judge were ambitious and anxious to succeed with the means made available to them.⁴⁸

Judge Irving Kaufman might have shielded the Rosenbergs from Cold War hysteria. He was aware of milder sentences Western European countries had meted out to Cold War espionage agents. Instead, he handed down the death

⁴⁵ Pfeiffer, This Honorable Court, p. 373.

⁴⁶ Nathan Glazer, The Social Basis of American Communism (New York: Harcourt, Brace & World, Inc., 1961), pp. 222-223, 131.

⁴⁷ Sharp, Was Justice Done?, p. 177.

⁴⁸ Ibid.

sentence and told the Rosenbergs they were responsible for the Korean War and the deaths incurred there. Kaufman's actions and words were both confident and bold. Recent revelations have served to warn Americans that improper and illegal methods may have been used to influence trial results. It is possible Kaufman could have experienced some of these pressures.⁴⁹

Within the Department of Justice, Attorney General Brownell and J. Edgar Hoover worked closely and were able to use the facilities of the press for propagandizing the public. Brownell was instrumental in asking for a Supreme Court session, so that the Rosenbergs could be executed promptly. Hoover, though evidently favoring commutation of Ethel's sentence, nevertheless was instrumental in magnifying the importance of the Rosenbergs.⁵⁰ Eisenhower, who saw in this case a means of combatting Russian transgressions, dutifully described his responsibility for the nation's security. In abiding by the sentence, Eisenhower described it as necessary to give support to the Courts and police agencies.

⁴⁹ The Daniel Ellsberg case and that of "Tokyo Rose" are examples of trial interference.

⁵⁰ The FBI has been described in an earlier chapter as under great pressure to find and prosecute spies.

The United States Supreme Court, eluding the vital issues of the Cold War, had turned away many major Communist cases. When it did deal in the Communist issue, it frequently compromised civil rights. In the Rosenberg case, the Court's unusual and hurried actions were more the result of external tensions than justice.

Presumably Ethel and Julius Rosenberg adopted Communism in their youth. Nor was this unusual. Nathan Glazer scrutinized the allegiance young Jews had for radicalism and found major factors to be the Eastern European immigrant background, poverty and opposition to Fascism. The flourishing neighborhood organization of the Communist Party facilitated the movement of young Jews into the Party.⁵¹ Virginia Gardner's poignant anecdotal sketches of the Lower East Side lives of the Rosenbergs would seem to dramatize Glazer's findings. Disillusioned by the broken dreams of youth and the drab experiences of adulthood, the Rosenbergs may have sought solace in trying to reach something better than what they knew.

An anti-radical proclivity was part of the American psyche by the time of the Cold War. A legislative pattern, FBI surveillance, and Congressional investigations reinforced

⁵¹Glazer, The Social Basis of American Communism, pp. 130-137.

public righteousness at protecting America from the enemy within. The case of Iva Toguri D'Aquino, "Tokyo Rose," is an example of government capabilities in trial exploitation. Finally pardoned by President Ford in 1977, Mrs. D'Aquino in 1949 was sentenced to ten years in prison, fined \$10,000, and stripped of her citizenship. Today the two major Japanese witnesses against her have admitted they lied under oath. They say they were pressured to do so by the United States government. The Foreman of the Jury has accused Judge Michael J. Roche of demanding a verdict of guilty. Mrs. D'Aquino says the legend of "Tokyo Rose," tried by the press, made the verdict a foregone conclusion.⁵²

In their book, the Schneirs noted several major newspapers in the country have raised questions on the Rosenberg case.⁵³ There is also a noticeable softened attitude in news periodicals. In 1953 Time described the Rosenbergs as fanatic and loyal Communists to the end. Recently, the magazine acknowledged hysteria's crushing blow to the trial and suggested the government may have elaborated the case for

⁵² "60 Minutes, " Columbia Broadcasting System Television, June 20, 1976.

⁵³ Walter and Miriam Schnier, Invitation to an Inquest (Baltimore: Penquin Books, Inc., 1973), pp. 442-443.

its own purpose.⁵⁴ Newsweek, which once called the Rosenbergs defiant Communists who preferred to die with their secrets, has more recently termed the case "disquieting."⁵⁵ The Commonweal charged the Rosenbergs with betraying humanity in 1953, but in 1973 Msgr. Charles Owen Rice condemned the journalistic blindness that doomed the couple.⁵⁶

Rosenberg's supporters, by attempting to discredit the case, automatically call into question Cold War logic and manipulation of the government's anti-radical tradition. Moreover, in re-examining the traditional interpretation of the Cold War, they are not alone. With wider historical perspective, scholars have been probing this period of American history. Was the United States less than altruistic in its desire for a "Free World"? Were there alternative political and diplomatic policies this country might have explored to ease tension? Was it possible for anyone to give the "secret" of the atomic bomb to the Soviet Union? Why did Americans believe their atomic bomb had been stolen by the Russians? How reliable were the tales of ex-Communists?

⁵⁴"Espionage," Time, June 29, 1953, p. 7; "Generation on Trial," Ibid., May 5, 1975, pp. 77-78.

⁵⁵"Spies: Last Rosenberg Mile," Newsweek, June 29, 1953, p. 27; "Case of the Atom Spies," Ibid., August 23, 1965, p. 82.

⁵⁶"Regarding the Rosenbergs," The Commonweal, January 9, 1953, p. 344; "Rosenbergs Revisited," Ibid., December 28, 1973, p. 330 .

In some ways today's Rosenberg conflict is a re-hash among old Cold War opponents, minus some of the emotional influences of the Cold War. The ACLU, by recent actions, seems to be questioning its Cold War position on the case. The National Lawyers Guild and the American Bar Association continue their confrontation as legal adversaries. NLG criticism of a special ABA subcommittee to evaluate the new Rosenberg documents highlights the differing postures of the legal groups today. A team of NLG lawyers handling the Meeropol Freedom of Information Act lawsuit continues to seek more documents withheld by the government. Lawyer Marshal Perlin says, "We are not afraid of what they [the records] say."⁵⁷

Where the Rosenberg case goes from here, the future will tell. The day may come when there will be more answers to questions raised on this case. The alternatives are that we know the truth already or that it can never be known for certain.

⁵⁷"The Rosenbergs Retried," Newsweek, May 19, 1975, p. 55.

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