

30 January 1953

MEMORANDUM FOR: CHIEFS, ALL AREAS AND DIVISIONS

SUBJECT: Refutation of Communist Charges in connection with the Rosenberg case.

1. Attached hereto is support material suitable for use by field stations in areas where it is necessary to counter pro-Rosenberg propaganda. It constitutes a concise and factual review of the Rosenberg case from its beginning up to the time of appeal for executive clemency.

2. The material is divided into seven sections.

- a. Government's case.
- b. Defendants' case.
- c. Government's Rebuttal.
- d. Conduct of the Trial.
- e. Verdict.
- f. Sentences.
- g. The Rosenberg Case and the Communist Party.

3. Inasmuch as Communist-inspired agitation in regard to the Rosenbergs will doubtless continue over a long period of time regardless of the outcome of their appeal for clemency, it is believed that this material will prove of continuing value to the field stations.

Attachment - 1  
As described

Distribution:

Security Information

#1525

## LEGAL HISTORY

Julius and Ethel Rosenberg were indicted January 31, 1951, charged with conspiring between 1944 and 1950 to commit espionage. With them the Grand Jury indicted David Greenglass, Anatoli Yakovlev a Vice-Consul in the Soviet Consulate at New York, and Morton Sobell

Greenglass pleaded guilty before the trial started. Yakovlev fled the country in 1946 but is still under indictment. Should he return to America, he would have to stand trial.

The trial of the two Rosenbergs and Sobell began on March 6, 1951. They were convicted on March 29, 1951. They were sentenced on April 5, 1951, the Rosenbergs to death by execution, Sobell to 30 years in jail.

From April 5 to date, the verdict and the sentence have been appealed several times to the Circuit Court of Appeals and to the Supreme Court. On February 25, 1952, the US Court of Appeals confirmed the lower court's decision and sentence. The Supreme Court of the United States refused to review the Court of Appeals' decision. The Rosenbergs and Sobell then moved in the District Court to set aside the jury's verdict. This motion was denied. The Rosenbergs and Sobell have appealed this denial, and this appeal is to be argued again in the Circuit Court of Appeals in a special session Dec. 22. This decision can also be appealed to the Supreme Court of the United States. The Rosenbergs and Sobell after that will be able to ask the District Court for a reduction of sentence. No appeal is possible from the decision on that request, and their final recourse will be an application to the President for executive clemency.

After the Rosenbergs and Sobell were convicted and sentenced, Greenglass was sentenced to serve 15 years in jail. Two persons were named in the original indictment as co-conspirators, but not defendants. They were Harry Gold, who pleaded guilty to a separate charge of espionage in Philadelphia and was sentenced to 30 years in prison, and Ruth Greenglass, the wife of David.

## THE GOVERNMENT'S CASE

1. The first government witness was Max Elitcher, a graduate electrical engineer. Elitcher testified that he was a member of the Communist party in Washington, that he had joined through the efforts of Sobell and that as chairman of Elitcher's Communist party group, Sobell instructed members to support continually the cause of Soviet Russia. Elitcher also testified that in 1944 Rosenberg asked him to procure classified information about military equipment from the Navy's bureau of Ordnance where Elitcher worked. Elitcher said Rosenberg told him Sobell was among those who were giving him military information for transmission to Russia. Elitcher testified that both Sobell and Rosenberg repeatedly asked him for the names of engineers "who were progressive, who would be safe to approach on this question of espionage, of getting material."

2. The second government witness was David Greenglass, an army machinist, who worked on the atomic bomb development at Oak Ridge, Tennessee, and Los Alamos, New Mexico, during the war. Greenglass testified he first learned that what he was working on was part of the atomic bomb project when his wife visited him in November 1944, and told him that Rosenberg had said Greenglass was working on the bomb. During this visit from his wife, Greenglass testified she told him Rosenberg wanted him to procure and deliver to him a list of scientists working on atomic research; descriptions of experiments conducted in the atomic laboratory, sketches of materials that atomic scientists asked him to construct. Greenglass testified his wife said Rosenberg also wanted "the general lay-out of the Los Alamos atomic project, the buildings, camouflage, number of people." Greenglass testified he gave his wife the information for which Rosenberg had asked.

In January 1945, Greenglass came to New York on leave. He testified Rosenberg came to him one morning and asked for information, "specifically anything of value on the atomic bomb", and said he would return later that night. In answer to this request Greenglass testified he gave Rosenberg sketches and descriptions of high-explosive lens molds, and how they were used in atomic experiments, plus a list of "some possible recruits for Soviet espionage".

A few days later Greenglass testified he went to Rosenberg's home for dinner and was introduced by Rosenberg to a woman named Ann Sidorovich. Greenglass testified Rosenberg asked him to remember her face because "Julius said this is the woman who he thinks would come out to see us at Albuquerque (where Mrs. Greenglass lived, near Los Alamos) to receive information from myself on the atomic bomb." Greenglass testified Rosenberg that night also established an alternate means of identification between Greenglass and Rosenberg's representative in case Ann Sidorovich was unable to travel. This alternate means of identification, Greenglass testified, consisted of the side of a box of Jello, a prepared dessert made of gelatine powder. Greenglass testified that Rosenberg cut a V-shaped section out of the side of this Jello box, gave one side to Ruth Greenglass and kept one side for himself.

A few nights later, Greenglass testified, Rosenberg drove him to a place on 1st Avenue to a rendezvous with a "Russian" who asked about high explosive lenses; the formula of the curve on the lens, the high-explosive used, and the means of detonation.

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In June of 1945, back in Los Alamos, Greenglass testified, he received a visit from a man who said to him "Julius sent me" and then produced one part of the Jello box which Greenglass had last seen in Rosenberg's possession. Greenglass testified that he learned subsequently this man was Harry Gold, who has pleaded guilty to espionage. Greenglass testified he gave Gold sketches of new lens molds, how they were used in experiments and descriptions of these experiments. Greenglass testified Gold gave him \$500 in return.

In September 1945, Greenglass again went to New York on furlough. On this occasion, Greenglass testified he gave to Rosenberg "a pretty good description of the atom bomb". Greenglass testified he was able to produce this description because, in the course of his work at Los Alamos "I came in contact with various people who worked on different parts of the project, and also I worked directly on certain apparatus that went in to the bomb, and I met people who talked of the bombs and how they worked". Greenglass testified that his description involved the principles, not precise measurements, except for the specific lens molds and other parts which he himself manufactured. Greenglass testified he gave Rosenberg 12 pages of written material, including the sketch of the bomb and a description of the sketch. Greenglass testified Rosenberg gave him \$200 on this occasion. On this same night, Greenglass testified, Rosenberg told him that he had "stolen the proximity fuse when he was working at Emerson Radio". Greenglass said that Mrs. Rosenberg typed up his original notes at this meeting, and these notes were then "taken and burned in the frying pan and then flushed down the drain" by Rosenberg.

Greenglass testified he was honorably discharged from the Army at Los Alamos February 1946, and returned to New York. Soon after, Greenglass testified, Rosenberg offered "to have the Russians pay for part of my schooling, that I should go to College for the purpose of cultivating the friendships of people I had known at Los Alamos and also to acquire new friendships with people who were in the field of research, like physics and nuclear energy."

A few days after Dr. Klaus Fuchs was arrested in England, Greenglass testified, Rosenberg came to Greenglass and told him that Fuchs was also a contact of Harry Gold. Greenglass said Rosenberg told him Gold would soon be arrested, and Gold's arrest might implicate Greenglass. Rosenberg also said he was known to Elizabeth Bentley by name, and he was fearful she might implicate him, Greenglass testified. Rosenberg then said Greenglass would have to leave the country and gave Greenglass \$1000 with instructions to contact the secretary of the Ambassador of the Soviet Union in Mexico City under the alias "I. Jackson". These instructions also entailed contacting the secretaries of the Ambassador of the Soviet Union in Stockholm - under the statue of Linus, Greenglass testified - and the Ambassador of the Soviet Union in Czechoslovakia. Greenglass testified he had passport pictures made and gave five sets to Rosenberg. Greenglass said Rosenberg then gave them an additional \$4000, wrapped in heavy brown paper. He said he gave this package to his brother-in-law, Louis Abel.

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3. The third government witness was Dr. Walter S. Koski, a professor of physical chemistry at John Hopkins University and a consultant in the Brookhaven National Laboratories specializing in nuclear chemistry. Dr. Koski testified that he was engaged in

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atomic research at Los Alamos during the war, that he specialized in "implosion research" using high explosive lenses. He said he designed molds for these lenses and took them to the machine shop, where Greenglass worked, to be manufactured. Dr. Koski testified that Greenglass' sketch - representing a copy of what Greenglass said he gave to his wife for Rosenberg and later to Rosenberg himself - was "a reasonably accurate replica" of his own design. He identified another Greenglass sketch "as a sketch, a rough sketch of our experimental set-up for studying cylindrical implosion". Dr. Koski testified that cylindrical implosion was an entirely new field of research.

The information involved in this Greenglass sketch was declassified by the Atomic Energy Committee especially for the trial, and re-classified immediately after the trial.

4. The fourth government witness was Ruth Greenglass. She testified that Julius Rosenberg had told her that his "friends" had told him David was working on the atomic bomb in Los Alamos, and "that he felt the information should be shared with Russia, that he wanted me to tell David to give information to him to be passed on to the Russians". Mrs. Greenglass testified Rosenberg asked for a physical description of the Los Alamos project, the number of people employed, the names of some of the scientists there, whether the place was camouflaged, what the security measures were, and the distance of the project to Albuquerque and Santa Fe. She testified Rosenberg gave her \$150 for travel expenses to see her husband. She testified she gave her husband Rosenberg's message, and said her husband gave her information Rosenberg had requested. She said she returned to New York in December 1944, wrote down the information her husband had given her, and gave this information to Rosenberg.

Mrs. Greenglass testified that her husband returned to New York in January 1945, when Rosenberg came to their house and received written information from her husband. She testified that a few nights later they went to the Rosenbergs and met Ann Sidorovich. She testified about the Jello box and said that Rosenberg gave her one of the two portions.

In February 1945, Mrs. Greenglass testified, Rosenberg came to see her one night when her sister, Dorothy Abel, was present. She testified that after a few minutes of conversation, Rosenberg asked Dorothy Abel "to take a book and go into the bathroom because he had something private to discuss."

In June 1945, in Albuquerque, she testified Harry Gold came to their apartment and identified himself by producing his half of the Jello box side. She testified Gold asked her husband for the information and that this information was given to Gold later in the afternoon. She testified Gold gave her husband \$500.

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She testified that in September 1945, they returned to New York, and that her husband gave Rosenberg more information in the Rosenberg apartment.

After her husband's discharge from the Army, she testified, they visited the Rosenbergs apartment from time to time. In that apartment, she said, the Rosenbergs showed her a mahogany console

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table which Rosenberg said was "a very nice gift from his friend, a special kind of table hollowed out for a lamp to fit underneath it so that the table could be used for photograph purposes." She testified Rosenberg told her "he took pictures on microfilm of typewritten notes."

Mrs. Greenglass testified that in May 1950 Rosenberg told her and her husband that they would have to leave the country, that they should go to the Soviet Union. She testified Rosenberg gave her husband \$1000. She testified they had passport pictures taken and that they gave copies to Rosenberg. She said Rosenberg gave her husband \$1000 in June 1950. She said Rosenberg told her he also intended to leave the country and would meet the Greenglasses in Mexico.

5. The fifth government witness was Dorothy Abel, the sister of Ruth Greenglass. She testified that Julius and Ethel Rosenberg had told her that they thought Russia was the ideal form of government" and that she had similar conversations with them whenever they met. Dorothy Abel corroborated the testimony of Ruth Greenglass when she testified that in early 1945 Julius Rosenberg once asked her "to take a book and leave the room, because he wanted to speak to Ruth Greenglass privately".

6. The sixth government witness was Louis Abel. He testified that David Greenglass did give him a thick package in brown paper for safekeeping.

7. The seventh government witness was Harry Gold, who testified that he had pleaded guilty in July, 1950, in Philadelphia to a charge of espionage, and had been sentenced to 30 years in prison. Gold testified he knew Anatoli Yakovlev in connection with "my espionage work for the Soviet Union". He testified he had been engaged in this work from 1935 until the time of his arrest. Gold testified he met regularly with Dr. Klaus Fuchs, wrote reports of his conversations with Fuchs and turned these reports over to Yakovlev. Gold testified his espionage duties were "to obtain information from a number of sources in America and to transfer this information to Yakovlev." He testified he met with his source of information after making contact by means of set recognition signals which always involved a code phrase, plus two parts of some object or piece of paper. He testified he paid some of the people he contacted regularly with money given to him by Yakovlev.

When Fuchs was stationed at Los Alamos, Gold testified, Yakovlev told him to go to Albuquerque. He said Yakovlev also gave him a sheet of paper on which was typed the word "Greenglass", then a number "High Street", then "Albuquerque, New Mexico" and then "Recognition signal. I come from Julius". Gold testified "Yakovlev gave me a piece of cardboard which appeared to have been cut from a package of food of some sort. It was cut in an odd shape and Yakovlev told me that the man Greenglass, would have the matching piece of cardboard. Yakovlev told me just in case the

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Gold testified he went to Albuquerque, contacted Greenglass, produced his part of the Jello box side, and matched it with the one Greenglass had. He said Greenglass told him to return later in the afternoon. When he did return, Gold said, Greenglass gave him "the material on the atom bomb" and he gave Greenglass the envelope containing \$500 which Yakovlev had given him. Gold testified he also received documents from Fuchs on this visit and returned to New York with two envelopes, one marked "Doctor" and one, from Greenglass, marked "Other". He testified he gave both envelopes to Yakovlev back in New York. Two weeks later, he testified, "Yakovlev told me the information which I had given him some two weeks previous had been sent immediately to the Soviet Union". He said that the information which I received from Greenglass was "extremely excellent and very valuable." Gold testified Fuchs subsequently gave him information about the first atomic explosion at Alamogordo, New Mexico, and Gold said he gave this information to Yakovlev.

8. The eighth government witness was Dr. George Barnhardt. He testified that in May 1950, Rosenberg asked him what injections were needed to go to Mexico.

9. The ninth government witness was William Danziger. He testified he visited the home of Sobell in June 1950. He said that Sobell had told him he was going to Mexico City, and that he saw suitcases piled into Sobell's car. He testified he received mail from Sobell in Mexico under these aliases asking him to give his address to various people in New York.

10. The tenth government witness was Candler Cobb, the director of Selective Service in New York City. He identified Sobell's signature on various Selective Service documents.

11. The eleventh government witness was John Lansdale jr., who during the war was responsible for all phases of the security of the atom bomb project under General Groves. He explained security procedures at Los Alamos and testified to the secrecy of all research.

12. The twelfth government witness was John A. Derry, a member of the Atomic Energy Commission, who during the war served as the Liaison Officer between the Los Alamos atomic energy laboratories in New Mexico and General Groves, who was in charge of all U.S. atomic research, in Washington.

During Derry's testimony, at the suggestion of lawyers for the Rosenbergs, all spectators were cleared from the courtroom. The stenographic record of Derry's testimony which dealt with the atomic bomb, was sealed and impounded by the Court.

Derry was read Greenglass' testimony concerning the sketch he made of the atomic bomb and was shown a copy of this sketch.

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During Derry's testimony, at the suggestion of lawyers for the Rosenbergs, all spectators were cleared from the courtroom. The stenographic record of Derry's testimony which dealt with the atomic bomb, was sealed and impounded by the Court.

Derry was read Greenglass' testimony concerning the sketch he made of the atomic bomb and was shown a copy of this sketch. Derry testified that the sketch and Greenglass' testimony demonstrated "substantially and with substantial accuracy the principle involved in the operation of the 1945 atomic bomb".

Derry testified that from the sketch and from Greenglass' testimony a scientist could "perceive to a substantial degree what the actual construction of the bomb was".

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Derry was asked "Does this information that has been read to you, together with the sketch, concern a type of atomic bomb which was actually used by the United States of America?" Derry replied "It does. It is the bomb we dropped at Nagasaki, similar to it."

13. The thirteenth government witness was Manuel Giner de Los Rios, who testified through an interpreter that he met Sobell in Mexico City in July, 1950. He said Sobell asked him how it was possible to leave the country without having papers in good order. He said Sobell told him he was afraid to return to the United States because he thought military police were looking for him and he would have to go into the Army. Rios testified that there came a time when Sobell left Mexico City to go to Vera Cruz.

14. The fourteenth government witness was Minerva Bravo Espinosa, an employee of a Mexico City oculist. She testified through an interpreter that Sobell purchased a pair of glasses under the alias, Sand.

15. The fifteenth government witness was Jose Broccado Vendrell, a Vera Cruz hotel owner. He identified the hotel registration card of a man named Sand, and Sobell's attorney stipulated that this was Sobell's signature.

16. The sixteenth government witness was Dora Bautista. She testified that in July, 1950, Sobell registered in her hotel, under the alias, Salt.

17. The seventeenth government witness was Glenn Dennis, a Mexican airline official. He testified Sobell flew in his company's plane from Vera Cruz to Tampico, and from Tampico to Mexico City, under the alias Salt.

18. The eighteenth government witness was Ian Adonian, former employee of the Amtorg Trading Corporation, the Soviet owned purchasing company in New York. He identified Yakovlev as a Vice-Consul in the Soviet Consulate in New York from 1944 until 1946.

Government and defense attorneys stipulated that R. B. Walklett, an official of the United States Lines, had in his possession documents which proved that Yakovlev, his wife, and two children, sailed from the United States for France, December 27, 1946.

19. The nineteenth government witness was Elizabeth Bentley, an admitted former Communist courier. She testified that from her experience as a member, the Communist party in America "only serve the interests of Moscow, whether propoganda, espionage or ...". She testified that while she was working as a Communist ... person called

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19. The nineteenth government witness was Elizabeth Bentley, an admitted former Communist courier. She testified that from her experience as a member, the Communist party in America "only serve the interests of Moscow, whether propoganda, espionage or sabotage". She testified that while she was working as a Communist courier in 1943 she received telephone calls from a person called Julius who, she later learned, lived in Knickerbocker Village, where, in fact, Rosenberg did live. However, in her testimony she could not identify Rosenberg positively as the "Julius" she talked to.

20. The twentieth government witness was James S. Huggins,

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an immigration inspector from the Immigration and Naturalization Service. He testified that Sobell was deported by the Mexican Security Police in August, 1950.

## THE DEFENDANTS' CASE

1. The first defense witness was Julius Rosenberg. He denied categorically every statement by any government witness who tied him to espionage. He specifically denied that he planned to flee the country and had passport photographs taken of himself, his wife and his children. He specifically denied that the Russians gave him the mahogany console table described by Ruth Greenglass and said that he had purchased this table from Macy's department store. He testified that he knew Ann Sidorovich but denied he had ever presented her to the Greenglass' as a Communist courier. He testified that Ruth Greenglass told him that her husband David "has an idea to make some money and take some things from the Army". Rosenberg said he told her "warn David not to do anything foolish." Rosenberg testified that "I heartily approve the system of justice as performed in this country, Anglo-Saxon jurisprudence, I am in favor, heartily in favor of our Constitution and Bill of Rights and I owe allegiance to my country at all times."

Under cross-examination, Rosenberg repeated every denial. When he was asked if he were a member of the Communist party, he claimed his Constitutional privilege against self-incrimination and refused to answer.

2. The second defense witness was John Gibbons, an employe of the New York Herald Tribune who was subpoenaed by the Rosenbergs. Gibbons was on the stand less than one minute, simply producing for Rosenberg's lawyer a picture of Harry Gold which appeared in the Herald Tribune in May, 1950. Rosenberg's attorney then offered the photograph in evidence and asked the jury to compare that photograph with one already introduced in evidence by the government.

3. The third defense witness was Thomas V. Kelly, an employe of Macy's department store, who was also subpoenaed by the defense. He testified he had been unable to locate any record of a sale to the Rosenbergs of a mahogany console table, since company records for the years involved had been destroyed.

4. The fourth and last defense witness was Ethel Rosenberg. She corroborated her husband's testimony, repeating his categorical denial of every government witness who linked the defendants to espionage. She also refused to answer questions about Communist party affiliation on the grounds that her answer might tend to incriminate her.

## THE GOVERNMENT'S REBUTTAL

1. The first government rebuttal witness, and the twenty-first government witness, was Mrs. Evelyn Cox. She testified that she worked part-time as a maid for the Rosenbergs in 1944 and 1945. She testified Mrs. Rosenberg told her that they had received the mahogany console table as a gift from a "friend" of Rosenberg.

2. The second government rebuttal witness, and the twenty-second government witness, was Helen Pagano, a secretary in the law firm of the attorney who represented David Greenglass. She testified that in June 1950, Louis Abel, brought a package of money wrapped in heavy brown paper to the lawyer's office.

3. The last government rebuttal witness, and the twenty-third government witness, was Ben Schneider, a photographer specializing in passport and identification photographs. He testified that Julius and Ethel Rosenberg and their two children visited his studios in the spring of 1950 and ordered three dozen passport-sized photographs. Schneider testified Rosenberg told him that his wife had been left some property and that they were going to France to take care of it.

## THE CONDUCT OF THE TRIAL

### THE JUDGE:

In America, a Federal judge is appointed by the President for life. Within any individual federal court system, the chief judge is charged by law to assign cases to judges. As a general rule, judges rotate from one court to another, trying criminal cases one month, civil cases another month, presiding in District Court another month, sitting on admiralty cases the next month, etc. Thus, in normal circumstances a case is assigned to the court and whichever judge is presiding in that court tries the case. However, in cases where a long trial is anticipated, such as the Rosenberg case, the chief judge as a matter of practice assigns the judge to the particular case. This is how Judge Kaufman, one of 16 District Court judges, was assigned to try the Rosenbergs.

### THE JURY

In the Federal district of southern New York, where the Rosenbergs were tried, a panel of jurors is selected from the list of voters in that area. They are selected from these lists by chance. Voting lists are placed in a pile and a pin is inserted through this pile in several different places. Any juror on any list who has a pin-point through his name is automatically selected as a potential juror.

In the Rosenberg case, two days were required before a jury was selected which satisfied the defendants, the government and the judge. All government employees were excused by the judge. All persons who did not believe in capital punishment were excused. All persons with relatives in any law enforcement division were excused. The jury panel was exhaustively questioned about past military service by themselves or by their relatives. Any juror whose connection with military service might have prevented him reaching an unbiased verdict was excused.

In American law, in cases which carry the death penalty, the defense and the government are allowed to challenge twenty jurors each, without giving any reason. However, in this case, Judge Kaufman allowed the defense thirty challenges. The government was still allowed only twenty. At any time either side may challenge a juror for cause and such a challenge is not deducted from the number of challenges allowed. In the Rosenberg case, defense attorneys announced that they were satisfied with the jury after they had used only 29 challenges. They could have objected at least once more to the jury, if they themselves had not been satisfied.

### THE CONDUCT OF THE TRIAL AND THE DEFENSE.

The Rosenbergs' own lawyer said this at the end of the trial: "I want to say this for the Court, and I for once, and I think all my co-counsel feel, that you have been extremely courteous to us and you have afforded us lawyers every privilege that a lawyer should expect in a criminal case."

IN AMERICA, a judge serves for life. Within any individual federal court system, the chief judge is charged by law to assign cases to judges. As a general rule, judges rotate from one court to another, trying criminal cases one month, civil cases another month, presiding in Motions Court another month, sitting on admiralty cases the next month, etc. Thus, in normal circumstances a case is assigned to the court and whichever judge is presiding in that court tries the case. However, in cases where a long trial is anticipated, such as the Rosenberg case, the chief judge or a matter of practice assigns the judge to the particular case. This is how Judge Kaufman, one of 16 District Court judges, was assigned to try the Rosenbergs.

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Later in his arguments to the jury, the same lawyer said: "I would like to say to the Court on behalf of all defense counsel that we feel that you have treated us with the utmost courtesy, that you have extended to us the privileges that we expect as lawyers, and despite any disagreements we may have had with the Court on questions of law, we feel that the trial has been conducted

## THE CONDUCT OF THE TRIAL

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and we hope we have contributed our share, with <sup>that</sup> dignity and that decorum that befits an American trial." The same lawyer, Mr. E. H. Bloch, also told the members of the prosecution, "We are appreciative of the courtesies extended to us".

Under American law, if a defendant cannot afford to pay for court records, for witness fees, for subpoenas, etc., he may file a pauper's oath, and the government will pay for these expenses. The Rosenbergs filed pauper's oath, and the government provided them with all records at no cost. Subsequently, a committee raised funds, and has assumed the burden of financing the defense of the Rosenbergs.

### THE CHARGE TO THE JURY:

Judge Kaufman took 12,000 words to instruct the jury on the law involved.

The jurors were told that the Rosenbergs and Sobell were presumed to be innocent throughout the trial. The jurors were told that they were the sole judge of the facts, that if their recollection differed from the prosecutor's or from the judge's that it was their recollection which was binding. The jurors were told that if they did not believe the testimony of Max Elischer as it pertained to Sobell, that they must acquit Sobell. The jury was specifically told to consider carefully the testimony of David Greenglass, Ruth Greenglass and Harry Gold, and act upon it with caution, for they are accused of being accomplices.

And Judge Kaufman warned the jury "No matter how careful a judge may be to avoid it, there is always the possibility that the jury or some particular juror may get an impression that the judge has some opinion with reference to the guilt or innocence of the defendants, or that he thinks that some particular phase of the case is more important than another; or that some particular witness is more credible than another, or that a certain inference of fact should not be made and so on. If you have formed any such impression you must put it out of your mind and utterly disregard it. Nothing I have said during the trial nor in these instructions was intended to give any such impression." Judge Kaufman also told the jurors "not to determine the guilt or innocence of a defendant on whether or not he is a Communist".

### THE APPEALS:

The jury reached its verdict in April 1951. For twenty months since that date the case has been appealed. In every case Appellate courts have upheld the conviction of the Rosenbergs and Sobell. In his opinion, Judge Jerome Frank of the United States Court of Appeals, one of the best known civil libertarians in the United States, has said "We have scrutinized the records with extraordinary care to see if it contained any errors"... This court is obligated to assume that the jury believes the evidence unfavorable to the defendants. On that assumption the

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Since Judge Frank's decision, the case went to the Supreme Court. That Court ruled that since no question of law was involved, they would not consider the case and denied certiorari. Counsel for the Rosenbergs and Sobell could and did start over

## THE CONDUCT OF THE TRIAL

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again in the District Court and asked that the jury's verdict be set aside. Although this case would normally come under jurisdiction of Judge Kaufman, he disqualified himself from ruling on the motion. The motion was argued before Judge Sylvester Ryan and denied by him. Counsel for the Rosenbergs and Sobell could and did appeal Judge Ryan's denial to the Circuit Court of Appeals. This Court will hear that appeal in a week, starting Dec. 22, in special session since the Court has adjourned for the Christmas holidays.

If this appeal is denied in the Circuit Court of Appeals, a further appeal can be taken to the Supreme Court. If that appeal is denied, counsel for the Rosenbergs and Sobell can start over, again in District Court with a motion to reduce the sentence.

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- \* Since this paper was written, the Circuit Court of Appeals upheld Judge Ryan's denial and an appeal for judicial clemency was denied by Judge Kaufman who did grant a stay of execution to permit Defense Counsel time to file a plea for Executive clemency. Defense Counsel has filed the petition for Executive clemency and it is still pending.

## THE VERDICT

The government evidence has already been outlined.

It will be noted that the testimony of David Greenglass was corroborated first by his wife, then by Harry Gold, by Max Elitcher, by the passport photographer Schneider, by Dr. Koski, by Darry and by Landale. It was refuted only by the Rosenbergs.

The testimony of Ruth Greenglass was corroborated by David Greenglass, Harry Gold, Max Elitcher, Dorothy Abel, Dr. Bernhardt and Evelyn Cox. It was refuted only by the Rosenbergs. The testimony of Harry Gold was corroborated by the Greenglass'. His testimony was not rebutted.

Testimony of Julius Rosenberg was corroborated only by his wife, and his wife's testimony was corroborated only by his own.

The testimony of the Greenglass' about the Rosenberg's mahogany console table was supported by Evelyn Cox. The Rosenberg version of the mahogany table was not supported, even by the defense witness Thomas Kelly.

The rebuttal testimony of the passport photographer Schneider was not itself rebutted.

Sobell himself did not testify, nor did he produce any witnesses on his behalf.

The expert testimony of Dr. Koski and Darry were not rebutted. The defense called no expert witnesses.

## THE SENTENCES

In American law maximum and minimum penalties are determined by Congress; the decision as to what sentence shall be imposed within the maximum and minimum, is a matter for the judge alone to determine.

The maximum punishment for conviction of conspiring to commit espionage is execution. The jail sentence provided for by law is "not more than 30 years", life imprisonment is not allowed by law. Judge Kaufman sentenced Sobell to serve 30 years in jail. He sentenced the Rosenbergs to death by execution.

In sentencing the Rosenbergs Judge Kaufman did not ask the government for a recommendation, which is normally done in all criminal cases. "The responsibility is so great that I believe the Court alone should assume it", the judge said. Addressing himself to the general charge of espionage Judge Kaufman said "citizens of this country who betray their fellow countrymen can be under none of the delusions about the benignity of Soviet power that they might have been prior to World War II. The nature of Russian terrorism is now self evident. Idealism as a rationale dissolves.....The competitive advantage held by the United States in super-weapons is putting a premium on the services of a new school of spies, the home-grown variety that places allegiance to a foreign power before loyalty to the United States. The punishment to be meted in this case must therefore serve the maximum interest for the preservation of our society against these traitors in our midst. 'It is ironic that the very country which these defendants betrayed and sought to destroy placed every safeguard around them for obtaining a fair and impartial trial, a trial which consumed three weeks in this court. I recall the defendant Julius Rosenberg testifying that our American system of jurisprudence met with his approval and was preferred over Russian justice. Even the defendants realize, - by this admission, - that this type of trial would not have been afforded to them in Russia. Certainly, to a Russian national accused of a conspiracy to destroy Russia not one day would have been consumed in a trial. It is to America's credit that it took the pains and exerted the effort which it did in the trial of these defendants. Yet, they made a choice of devoting themselves to the Russian ideology of denial of God, denial of the sanctity of the individual and aggression against free men everywhere instead of serving the cause of liberty and freedom.

"I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. In committing the act of murder, the criminal kills only his victim. The immediate family is brought to grief and when justice is meted out the chapter is closed. But in your case, I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding

10,000, and who knows but that millions more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country."

"The defendants Julius and Ethel Rosenberg placed their devotion to their cause above their own personal safety and were conscious that they were sacrificing their own children. Love for their cause dedicated their lives - it was even greater than their love for their children.

" In the light of the circumstances I feel that I must pass such sentence upon the principals in this diabolical conspiracy to destroy a God-fearing nation, which will be such a wish fulfillment that this nation's security must remain inviolate; that traitor in military secrets, whether prompted by slavish devotion to a foreign ideology or by a desire for monetary gains must cease".

In sentencing Sobell, Judge Kauffman said: "I do not for a moment doubt that you were engaged in espionage activities; however, the evidence in the case did not point to any activity on your part in connection with the atom bomb project. I cannot be moved by hysteria or motivated by a desire to do the popular thing. I must do justice according to the evidence in this case. There isn't any doubt about your guilt, but I must recognize the lesser degree of your implication in this offense".

In sentencing David Greenglass to 15 years in jail, Judge Kauffman said "the fact that I am about to show you some consideration does not mean that I condone your acts or that I minimize them in any respect. They were loathsome; they were contemptible. I must, however, recognize the help given by you in apprehending and bringing to justice the arch criminals in this nefarious scheme, Julius Rosenberg and his wife Ethel Rosenberg. You have at least not added to your sins by committing the additional crime of perjury. You confessed and told a complete story in this case and it has been of great assistance to the government. I realize the courage that was required for you to give your testimony."

In the opinion of the Circuit Court of Appeals, the sentence was upheld with the verdict. Judge Frank did comment at some length about the death sentence and the defense contention that it consisted of "cruel and unusual" punishment, shocking the "common conscience" since the death sentence has never before been imposed by a civilian court. Judge Frank said "cases are conceivable where there would be little doubt of a general public antipathy to a death sentence. But this is not such a case. We must consider the case as one in which death sentences have been imposed on Americans who conspired to pass important secret information to Russia, not only during 1944-1945, but also during the 'cold war'. It is impossible to say that the community is shocked and outraged by such sentences resting on such facts."

scintillation and hysteria. Some of these questions, and their answers are listed below.

1. Why wasn't Ruth Greenglass indicted?

Under American law, a husband cannot be compelled to testify against his wife, nor is he permitted to testify against his wife over her objection. The government contends that if the Greenglasses had been indicted, both she and her husband would have been required to testify. Without the Greenglass testimony, the supporting testimony of Gold, Elitcher, Schneider, Koski, Derry, the Abels, Lansdale and other government witnesses would probably not have been sufficient to convict the Rosenbergs and Sobell of conspiracy to commit treason. Greenglass was willing to testify against himself but not against his wife.

2. How could Greenglass, a mechanic, know anything about atomic energy?

It was never alleged during the trial that Greenglass transmitted precise, detailed information about the construction of the atomic bomb itself. His sketch of the atomic bomb was identified by experts as a schematic drawing, illustrating the principles of the atomic bomb that was dropped on Nagasaki. He did transmit precise, detailed information about material that he himself constructed for research carried on in connection with the atomic bomb. He gave Rosenberg a detailed drawing of the high explosive lens which he himself had molded. This lens was used in an experiment, one of many experiments conducted before the atomic bomb was perfected. Greenglass found out as much as he could about the materials other machinists were manufacturing for other experiments. He searched for this information "avidly". It is the government contention that the secret of the atomic bomb could be determined by a knowledge of the principles, of the experiments being conducted and of the materials being manufactured for the conduct of those experiments.

3. Was the information transmitted by Greenglass and Rosenberg as valuable and important as claimed by the government?

The Rosenbergs' own attorney, E. H. Bloch, thought the information was so valuable and important that on three occasions he himself privately asked the judge to clear the courtroom of spectators and impound the stenographic record of Greenglass' testimony. Bloch told Judge Kaufman that he was "not at all sure in my own mind, and I am talking privately, whether or not, even at this late date, this information --- (he was referring to the "pretty good description of the atomic bomb" Greenglass said he gave Rosenberg) --- may not be used to the advantage of a foreign power... I am perfectly satisfied that this be kept secret." Bloch also asked Judge Kaufman to impound the sketch Greenglass made of the bomb.

The nuclear chemist Dr. Koski testified Greenglass made an accurate sketch of his experiments with implosion research. He said no similar experiments were being conducted. And his testimony was never rebutted or answered by the Rosenbergs.

## THE ROSENBERG CASE AND THE COMMUNIST PARTY---2

The Atomic Energy Commission representative, Derry, testified that Greenglass produced for Rosenberg an accurate sketch of the atomic bomb actually dropped on Nagasaki. As in the case of Dr. Koski, Derry's testimony was never rebutted or answered by the Rosenbergs.

4. Why didn't the government call the atomic scientists Urey and Oppenheimer, or General Groves as witnesses after their names were given to the defense on a list of government witnesses?

Such a question implies that the last any of these witnesses did to the Rosenbergs. This is not true. But under American law, the government must supply defendants at least three days before trial a list of all witnesses whom the government might possibly call. This rule was made to give defendants an idea of whose testimony they might have to rebut and answer. In the Rosenberg case, the government submitted a list of 102 names. There is no law which requires the government to call as a witness every person the government tells the defense might be called as a witness. At any time during the trial, the defense could have called Oppenheimer, Urey, Groves or anyone else as their own witnesses. Their names were included on the government list, because the government felt their testimony might have been needed if either Koski or Derry were unavailable during the trial, if the Rosenbergs had attacked the qualifications of Koski or Derry as experts, or if the Rosenbergs had produced expert witnesses of their own contradicting Koski or Derry. When the testimony of Koski and Derry went unrebutted and unanswered, the government had no need for Oppenheimer, Groves or Urey.

The government did call one witness whose name was not on the list furnished the defense. This was the passport photographer Ben Schneider. His name was not on the government list, because the government did not discover him until the day before the trial closed. Under American law, the government does not have to give three days notice to the defense on rebuttal witnesses.

5. Didn't anti-semitism play an indirect role in the Rosenberg case, and especially in the sentence?

Here, the communist and others use both the presence of Jews among the government (judge and prosecutor), and an alleged absence of Jews among the jury to charge that the Rosenbergs were victims of anti-semitism.

In the first place it is impossible to determine whether any of the jurors were members of the Jewish faith. Their names were Lebonitte; Booth, Becker, Gibbons, Christie, Axley, Dean, Miller, Damas, Dada, Mitchell, Tessitore. They were never asked by the judge, by the prosecution, or by the Rosenbergs' lawyers to what religion they belonged. The religion of the jurors did not become an issue until after the Prague trials. The religion of the jurors has never

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or answered by the Rosenbergs.

4. Why didn't the government call the atomic scientists Urey and Oppenheimer, or General Groves as witnesses after their names were given to the defense on a list of government witnesses?

Such a question implies that the testimony of these witnesses was vital to the Rosenbergs. This is not true. But under American law, the government must supply defendants at least three days before trial a list of all witnesses whom the government might possibly call. This rule was made to give defendants an idea of whose testimony they might have to rebut and answer. In the Rosenberg case, the government submitted a list of 102 names. There is no law which requires the government to call as a witness every person the government tells the defense might be called as a witness. At any time during the trial, the defense could have called Oppenheimer, Urey, Groves or anyone else as their own witnesses. Their names were included on the government list, because the government felt their testimony might have been needed if either Koski or Derry were unavailable during the trial, if the Rosenbergs had attacked the qualifications of Koski or Derry as experts, or if the Rosenbergs had produced expert witnesses of their own contradicting Koski or Derry. When the testimony of Koski and Derry went un rebutted and unanswered, the government had no need for Oppenheimer, Groves or Urey.

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It is difficult to see how anti-semitism can be attributed to a Jewish judge and a Jewish prosecutor.