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The Trial and Conviction of Julius and Ethel Rosenberg:
Politics as an Obstacle to the Right to a Fair Trial

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Presented for Consideration for Departmental Honors
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Preface

Given the nature of this paper, I felt it necessary to explain my purpose in choosing the Rosenberg-Sobell trial as the subject of my senior honors thesis, and the methodology used in approaching this topic. My purpose in choosing this subject was twofold: First, I wanted to demonstrate the research and writing skills that I have developed during my four years as a student of history. This paper is intended to be a research paper. While I believe that there are some fascinating and controversial arguments discussed in this paper, I cannot claim to have originated any of these theories. Instead, I have attempted to combine the most significant points of many scholars into a paper that provides a relatively thorough understanding of the Rosenberg-Sobell trial. There is a host of outstanding books and journal articles on this topic, but most of the authors that write about the Rosenbergs conduct their research, develop their own theories, and tend to ignore the work that has already been done. The second reason for choosing this subject is personal. I enjoy studying the American legal system, and I selfishly chose this subject because I considered it fascinating. Furthermore, I believe this to be an important subject. The execution of the Rosenbergs represents a failure for not only the American legal system, but the entire system of American politics. In understanding how these events happened, one develops a better

understanding of the problems associated with majoritarian politics and the need to establish bulwarks against the evisceration of minority rights. Few historical events better teach that lesson.

The methodology used in developing this paper was relatively simple. The research for this paper was done in a number of Southern California libraries, including UCLA, UC Riverside and Cal State San Bernardino. A plethora of books and articles exists on the subject of the Rosenbergs, but I decided against relying upon the bulk of that which was available. Most of the materials dealing with the legal history of the case were written in the mid- to late-1950s. While I used the most relevant materials from that time period, including the book entitled Was Justice Done?, published in 1956 and authored by Malcolm Sharp, I felt it unnecessary to read all the legal criticism written immediately after the trial. Most of the documents used in later works were not available until the 1960s or 1970s because the trial dealt with atomic secrets. Additionally, a lot of the literature on this topic deals exclusively with more restricted issues such as the effect of the trial on particular social movements or the Rosenberg family itself. Other material is very personal in nature, such as reproductions of the letters exchanged between family members. While I have included a small portion of that information in my paper, my thesis is almost exclusively concerned with the sentencing of the Rosenbergs, and the

interaction between the trial and the political dynamics of the 1950s.

The method by which this paper was written was also relatively straightforward. Rather than separating historical events into subject areas such as family-related events, court-related events , media-related events, etc., I chose to discuss these events chronologically. I believe that this method of organizing the paper better allows the reader to understand the conviction and execution of Julius and Ethel Rosenberg. Finally, I dedicated the remainder of the paper to a more general criticism of those events and the actors involved.

Justice Frankfurter was not alone in viewing the case as the most disturbing in his court career....Lawyers on both sides of the case felt a deep misgiving they have never forgotten. The guilt or innocence of the defendants had nothing to do with their distress over the Court's conduct and that of the Justice Department. Nor was the worldwide fire of partisan fervor on both sides the cause of their dismay. It was, rather, the spectacle of the Supreme Court of the United States becoming politicized before their eyes, with no one having the will or courage to stop it. Justice was rushed. Proper consideration of matters of the utmost importance was not allowed.¹

On June 19, 1953, Julius and Ethel Rosenberg were executed at Sing Sing prison in New York, having been convicted of conspiring to commit espionage on behalf of the Soviet Union. For nearly four decades, commentators have argued that irrespective of the guilt or innocence of the couple, the American system of justice failed to give the Rosenbergs a fair trial. In this paper, I will similarly argue that justice was not administered in the case of Julius and Ethel Rosenberg. In attempting to defend this position, I will focus primarily on the actors responsible for this miscarriage of justice: the team of prosecuting attorneys, Judge Irving R. Kaufman of the federal district of New York, and select members of the United States Supreme Court. I will also attempt to explain the factors that may or may not

¹ Joseph Sharlitt, Fatal Error: The Miscarriage of Justice that Sealed the Rosenbergs' Fate (New York: Charles Scribner's Sons, 1989), 7.

have contributed to the politicization of the Rosenberg trial, namely anti-communism, McCarthyism, and anti-Semitism. The goal of this paper is not to defend Julius and Ethel Rosenberg as innocent, nor to denounce the severity of the sentence handed down by Judge Kaufman, but to prove that many representatives of the American legal system acted ignorantly and sometimes unethically in their attempt to prosecute or judge the Rosenbergs. Politics and the anti-Soviet fervor of the early 1950s served as obstacles to justice.

In February 1939, Julius Rosenberg graduated from the City College of New York (CCNY) with a degree in electrical engineering. Four months later, he married his childhood sweetheart, Ethel Greenglass. Julius Rosenberg and Ethel Greenglass had both grown up in poverty on the East Side of New York City. It was in this poverty-stricken environment, especially during the chaos of the Great Depression, that Julius and Ethel would begin to question the economic and political system of America.² Ethel Greenglass had long dreamed of performing as an opera singer, but she later trained as a stenographer. By 1940, Julius Rosenberg was working for the Army Signal Corps and Ethel Rosenberg was working in civil defense. Julius would lose this job in 1945, having been the target of charges that he was a Communist sympathizer, and would begin working at the New York plant of the Emerson Radio Company. David Greenglass,

² Alvin H. Goldstein, The Unquiet Death of Julius and Ethel Rosenberg (New York: Lawrence Hill and Company, 1975), 13.

Ethel's brother, had enlisted in the United States Army at the outbreak of World War II, and was being trained in the operation of sophisticated machinery.³ In 1942, Julius and Ethel Rosenberg moved into an apartment on Monroe Street in Knickerbocker Village in New York. It was from this apartment that the prosecuting attorneys would later contend that the Rosenbergs had directed the activities of Harry Gold, David Greenglass, and other persons arrested for stealing atomic secrets and passing them on to the Soviets.⁴

Late in 1944, David Greenglass was relocated by the Army to New Mexico, where he began working as a machinist in the top secret atomic weapons research program at the Los Alamos laboratory. Julius Rosenberg later testified that it was during this time that he and his wife bought a console table at the Macy's department store in downtown New York City. Evelyn Cox, a woman who had occasionally worked as a cleaning person for the Rosenbergs in their apartment, also testified that she first saw the console table during this period. The prosecution would later enter photographs of this table into evidence before the district court, contending that this table had been hollowed out and used to house microfilm equipment.⁵ Max Elitcher of the Naval Ordnance Bureau would testify during the trial that in June 1944, he was first approached by Julius Rosenberg. He claimed that Rosenberg

³ Goldstein, 7.

⁴ Malcolm Sharp, Was Justice Done? The Rosenberg-Sobell Case (New York: Monthly Review Press, 1956), vii.

⁵ Sharp, vii.

attempted to pressure him into engaging in espionage while working at the Navy Ordinance Bureau.⁶ Ruth Greenglass, the wife of David Greenglass, testified that during November and December of 1944, her brother-in-law Julius asked her to travel to Albuquerque and obtain information from her husband concerning the work occurring at Los Alamos. She claimed to have visited her husband in New Mexico, to have obtained sketches of some of the critical components of the atomic device, and to have returned this information to the Rosenbergs in New York before the end of the year.⁷

Most of the crimes for which Julius and Ethel Rosenberg would be convicted six years later were supposed to have happened during the months of January to September 1945. The Greenglasses would both testify that, during the month of January, they furnished the Rosenbergs with information concerning the "lens mold" component of the atom bomb, and arranged for further espionage with a Philadelphia chemist named Harry Gold. David Greenglass also testified to having been provided with one half of a torn Jello box top by Julius during their meeting in New York.⁸ The person with whom David Greenglass was to meet in New Mexico was to be carrying the other half of this box top. Greenglass further testified to having accompanied a Russian on an automobile ride through the streets of New York City.⁹ Greenglass drove his father's

6 Sharp, vii.
7 Sharp, vii.
8 Sharp, viii.
9 Sharp, viii.

car to some point on 1st Avenue between 42nd and 59th Streets, waited for Julius to bring the Russian to his car, and proceeded to drive around town for approximately twenty minutes while the Russian asked questions concerning the work at Los Alamos.¹⁰ This individual was later identified, during the district court proceedings, as Anatoli A. Yakovlev, a former vice-consul of the Soviet Consulate in New York City. Harry Gold and the Greenglasses testified during the trial to having met in Albuquerque during June 1945, and to having identified each other with matching halves of the Jello box top. David Greenglass provided Gold with additional information about the lens mold, and, in exchange, Gold gave Greenglass \$500.¹¹ By September, the Greenglasses were to have provided the Rosenbergs with a "cross section sketch" of the atomic device itself and further explanations concerning the operation of the bomb. Ethel Rosenberg became directly involved when, as David Greenglass testified, she typed up this information into twelve pages of notes. Max Elitcher also testified that during the month of September, Julius Rosenberg tried for a second time to encourage him to provide naval secrets to the Soviets, but was again unsuccessful.¹²

In 1946, Julius Rosenberg and David Greenglass financed the first of a succession of small businesses operating

10 Sharp, 28.
11 Sharp, viii.
12 Sharp, viii.

machine shop equipment. Rosenberg would continue to operate these businesses until his arrest in 1950, but at a great financial loss both to himself and the Greenglass family.¹³ Late in 1950, both Anatoli Yakovlev and Klaus Emil Julius Fuchs, a German-born British scientist and an alleged contact of Harry Gold in the spying ring, left the United States. Yakovlev returned to the Soviet Union, never again to return to the U.S.; Fuchs left the U.S. for England.¹⁴ The Greenglasses testified to having seen the microfilming device built into the console table for the first and only time during the winter months of 1946.

The case against the Rosenbergs began to unfold early in 1950. Klaus Fuchs was arrested on February 3 in England with Allan Nun May, another British atomic scientist, and was later tried and convicted on the basis of his confession to having provided representatives of the Soviet Union with information about the atomic device being built at Los Alamos.¹⁵ Fuchs was sentenced to only fourteen years in prison, the maximum sentence allowed under British law for this type of crime, and May received a lighter sentence of only ten years.¹⁶ The Joint Committee on Atomic Energy of the U.S. Congress admitted in April of 1951 that they considered the information disclosed to the Soviets by Fuchs

¹³ Sharp, viii.

¹⁴ Sharp, viii; Robert and Michael Meeropol, We Are Your Sons: The Legacy of Ethel and Julius Rosenberg (Boston: Houghton Mifflin Company, 1970), xix.

¹⁵ Meeropol, xix.

¹⁶ Sharp, 3.

and May as more important than anything Greenglass admitted to transferring.¹⁷ David Greenglass was visited on an undetermined date in February by FBI agents, and was questioned about uranium missing from the Los Alamos project. On May 23, Harry Gold openly confessed to FBI agents that he had been the American contact for Fuchs and Yakovlev during the years of 1944 and 1945. On June 15, David Greenglass was arrested. He signed a written confession two days later for the Rosse office of the FBI, admitting that he was an accomplice of Gold's during 1945.¹⁸ Less than twenty four hours after the arrest of Greenglass, Julius Rosenberg was questioned by FBI agents about his business involvements with Greenglass, but he was not arrested at this time. It was at this point that the Rosenbergs retained Emanuel Bloch as their legal counsel.¹⁹ Ben Schneider, a professional photographer, testified that during the month of May or June, he had taken thirty six passport pictures for the Rosenbergs. Dr. George Bernhardt, a local physician, testified that he had been contacted by Julius Rosenberg at approximately this time concerning the inoculations needed for a trip to Mexico.²⁰ The testimony of both persons was used by the prosecution to establish an attempt on the part of the Rosenberg family to flee the country during the days after the arrest of Gold and Greenglass.

17 Sharp, 3.

18 Meeropol, xix; Sharp, ix.

19 Meeropol, xix.

20 Sharp, ix.

Morton Sobell, a friend and college classmate of the Rosenbergs, left with his family for Mexico on June 22, 1950.²¹ Three days later, on June 25, North Korean armies invaded the South, forcing American soldiers into war on the Korean peninsula. Less than one year later, by the beginning of the Rosenberg-Sobell proceedings, thousands of American soldiers had already died overseas. The activities of the House Un-American Activities Committee (HUAC), a Congressional subcommittee created in 1938, as well as other anti-communist organizations, seemed to take on added importance as a result of the Korean War. On July 17, Julius Rosenberg was arrested; Ethel Rosenberg was arrested on August 11. The Rosenbergs and David Greenglass were held on \$100,000 bond each. The first of three indictments against the Rosenbergs was served on August 17, the last being served on January 31, 1951 in the New York Southern District, and operating as the basis for the trial.²² Morton Sobell was arrested in his Mexico City apartment, "forcefully" deported by Mexican police on August 18, and left at the border in Laredo, Texas for American law enforcement officials.²³ Sobell and the Rosenbergs would spend seven to eight months in a federal jail before the start of their trial. On December 9, 1950, Harry Gold was sentenced to 30 years in

21 Meeropol, xix.

22 Sharp, ix.

23 Sharp, ix.

prison, the maximum prison sentence allowed under the Espionage Act of 1917.

The arrest of Julius and Ethel Rosenberg devastated their apparently stable family situation. Their two sons, Robert and Michael, were ages four and eight respectively at the time of their parents' arrest. The children initially moved in with Tessie Greenglass, the mother of David and Ethel, but were transferred to the Hebrew Children's Home, a shelter in the Bronx, in November 1950.²⁴ The children were again moved in June 1951, having been taken in by Sophie Rosenberg, Julius's mother, after she had recovered from an illness. In July 1952, during the long and emotionally devastating appeals process initiated by their parents' attorneys, the children were again displaced. They were moved to the home of Ben and Sonia Bach, friends of Julius and Ethel, in Toms River, New Jersey.²⁵ Robert and Michael Rosenberg were moved back to New York City in December 1953, only a few months after having observed the execution of their parents by electrocution at the ages of six and ten. In September of 1954, they moved in permanently with Abel and Anne Meeropol. They were legally adopted by the Meeropols in February 1957, and took the name of their adoptive parents.²⁶

The trial against Julius and Ethel Rosenberg and their co-defendant Morton Sobell began on March 6, 1951 in the

24 Meeropol, xix.

25 Meeropol, xx.

26 Meeropol, xxii-xxiii.

Federal Court House, Foley Square, New York. The three had been charged with conspiracy to commit espionage and were being prosecuted under Section 50 U. S. Code 32 of the Espionage Act of 1917. Julius Rosenberg had been charged with involvement in twelve overt acts of espionage, eleven of which involved atomic energy secrets.²⁷ The prosecution contended that the Rosenbergs had persuaded David Greenglass to pass nuclear secrets to Anatoli A. Yakovlev, often referred to as "John" by Harry Gold. The twelfth charge against Julius Rosenberg involved nonatomic but classified naval secrets which Sobell, under Julius Rosenberg's guidance, had supposedly obtained from Max Elitcher. Elitcher presented the only major testimony for the prosecution in proving this claim. Also, this was the only connection between Sobell and the Rosenbergs or any charge of espionage.²⁸ David and Ruth Greenglass, as well as Harry Gold and Max Elitcher, were the central figures in building the case for the prosecution.²⁹ The prosecution put twenty-three persons on the witness stand in total, but only these four persons could testify to any direct link between the Rosenbergs and an attempt to commit espionage, and none of the witnesses could testify to any direct link between the Rosenbergs and the Soviets. The other nineteen witnesses

²⁷ Opinion of the Court, 346 U.S. 283, 285.

²⁸ Ronald Radosh and Joyce Milton, The Rosenberg File: A Search for the Truth (New York: Vintage Books, 1984), 131.

²⁹ John Wexley, The Judgment of Julius and Ethel Rosenberg (New York: Ballantine Books, 1977), xv.

were either character witnesses, testifying to the Communist tendencies of Julius and Ethel Rosenberg, or were linked to specific events such as the purchase of the console table.³⁰

Under the Espionage Act of 1917, a trial to determine the guilt or innocence of an alleged perpetrator of espionage had to be conducted with jury recommendation, but the sentencing was to be left to the judge in charge of the proceedings. Section (b) of the relevant portion of the Act allowed the judge to impose one of two sentences for conspiracy to commit espionage in time of war: either imprisonment for not more than thirty years, or punishment by death. Ethel Rosenberg, despite being only tenuously linked to the actions of Sobell or her husband, could still be convicted and put to death under section (d) of the portion of the Espionage Act.³¹ Section (d) reads: "If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of conspiracy, each of the parties in such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy."³² Thus, if the prosecution was even able to prove that Ethel was aware of the actions of her husband, such as in typing some of his notes, she could be tried for the charge of conspiracy and suffer the same punishment as her husband.

³⁰ Goldstein, 39.

³¹ Michael E. Parrish, "Cold War Justice: The Supreme Court and the Rosenbergs," American Historical Review 82 (1977): 807-809.

³² 50 U.S.C. 32 (d).

The trial was held in Courtroom 110 of the Federal Courthouse. Presiding over the case was one of the youngest federal judges in the nation, Judge Irving R. Kaufman. The Rosenbergs' attorneys consisted of Emanuel Bloch and his father, Alexander. Gloria Agrin and Malcolm Sharp, a professor of law at the University of Chicago, joined the defense team during the appeals process. Howard Meyer served as counsel for Morton Sobell. At the prosecution table were U.S. Attorney Saypol, and his assistants Myles Lane, Roy M. Cohn, and James Kilsheimer III. Roy Cohn would later serve as counsel for the McCarthy Committee.³³ From a panel of over 300 New Yorkers, a jury of eleven men and one woman was selected. It is disturbing to note that from a city whose ethnic makeup was composed of greater than 30 percent Jewish persons in 1951, not a single Jewish-American was placed on the jury.³⁴ In fact, of the twelve persons selected, a substantial majority of the jurors were older, Caucasian men whose political views could unquestionably have been labeled conservative and strongly anti-communist.³⁵

On Thursday morning, March 8, 1951, the prosecution brought Max Elitcher, their first witness, to the stand. Elitcher, Morton Sobell, and Julius Rosenberg had graduated from CCNY in 1939 with degrees in electrical engineering, and had been relatively close friends while attending school.

³³ Sharp, 20.

³⁴ Goldstein, 65.

³⁵ Goldstein, 65-66.

Elitcher had been contacted about his relationship with Rosenberg and Sobell by FBI agents Vincent Cahill and James O'Brien on July 20, 1950, while working at the Reeves Instrument Company in New York City.³⁶ Elitcher told the FBI agents that he had been contacted twice after graduation by Rosenberg, first in June 1944 and later in September 1945. Elitcher said that, on both occasions, Julius asked many questions of him about his work with the Navy. Also, Elitcher told Cahill and O'Brien that Sobell had repeatedly contacted him, asking him in late 1939 to join the Young Communist League and later to provide Rosenberg with naval secrets.³⁷ Finally, Elitcher reported that he had driven to the home of Morton Sobell in July 1948, and had reason to believe that he had been followed by FBI agents. He told Sobell this, and Sobell immediately demanded that Elitcher drive the two of them to a deserted waterfront street in New York City named Catherine Slip. Sobell removed a film case from his jacket pocket, left the car, and was gone for about 15 to 20 minutes. The only connection between Rosenberg and this incident is that Catherine Slip is two blocks from Knickerbocker Village, the low-income project that was home to the Rosenbergs.³⁸

In retrospect, the testimony of Max Elitcher does not seem to be particularly damaging, but it was in fact

³⁶ Radosh, 132.

³⁷ Wexley, 261.

³⁸ Harold C. Urey, Was Justice Done? The Rosenberg-Sobell Case (New York: Monthly Review Press, 1956, preface to book written by Malcolm Sharp), xvi; Wexley, 258.

instrumental to the decision against the Rosenbergs. Additionally, Elitcher was the only person that testified against Morton Sobell, and he had no physical evidence to support his claims. On the basis of the unsubstantiated statements of one individual, Sobell was found guilty by the jury and sentenced by Judge Kaufman to 30 years in prison, the maximum jail term allowed under the Espionage Act.

The testimony of Elitcher suffered from three critical flaws. First, immediately before his involvement with the Rosenberg-Sobell trial, Elitcher was himself being prosecuted for perjury. Elitcher, when applying for employment with the Naval Department, had sworn that he had never had any involvement with the Communist Party, yet in a 1948 KGB transmission, decoded by the FBI, Elitcher's name was mentioned in conjunction with a series of Communist organizations. Elitcher admitted while on the witness stand that he was testifying under the assumption that he would no longer be prosecuted on the perjury charge.³⁹ In fact, the charges against Elitcher were never brought to fruition. Second, Elitcher testified that Rosenberg had asked him questions about his project, not that Rosenberg had asked Elitcher to spy on behalf of the Soviet Union. One engineer asking another engineer about his work seems to be a very normal question.⁴⁰ Finally, even if Max Elitcher was telling the truth, and Julius Rosenberg had pressured Elitcher on two

39 Urey, xvi.

40 Wexley, 269.

occasions to disclose naval secrets, the disclosure of that information does not carry the same penalty as passing atomic secrets. Judge Kaufman based the death sentence for the Rosenbergs on the fact that it was atomic espionage, and thus particularly threatening to U.S. interests.⁴¹

The court clerk called the second witness for the prosecution, David Greenglass, to the stand at 2:30 p.m. on Friday, March 9. Before the court adjourned for the weekend, Greenglass testified that as a teenager, he had overheard his sister Ethel and her friend Julius Rosenberg praising socialism on a number of occasions.⁴² The court resumed Monday morning, and David Greenglass began his oral testimony by discussing the drawings of the lens mold that he had given to Julius in January 1945 and Harry Gold in June 1945. Greenglass attempted to recreate these drawings while in court. His testimony was supported by Walter Koski, an expert on the high-explosive lens from the Los Alamos laboratory. Koski attempted to explain the difference between an explosion lens and an implosion lens. But, given the technical jargon involved in such an explanation, and the complexity of the subject, his efforts only confused most of the persons in the courtroom.⁴³ Koski also testified that Exhibit 2, Greenglass's recreation of the drawing originally provided to Harry Gold, was a "substantially accurate

41 Urey, xix.

42 Radosh, 181.

43 Radosh, 185.

replica" of the lens mold used in the weapons dropped on Hiroshima and Nagasaki.

David Greenglass was brought back to the stand the next day, and he elaborated on the typing incident of September 1945, claiming that Ethel had typed his handwritten notes and that Julius burned them in a frying pan as soon as she had finished. He concluded his statement by presenting one half of a Jello box top, which was submitted into evidence, and by testifying that he had seen the microfilming equipment stored inside the console table kept at the Rosenberg's apartment.⁴⁴ The Jello box top submitted before the court was not the original, but had been scissored in half by the prosecution as a prop.⁴⁵

Despite the credibility with which his testimony was initially received by the jury, there are a number of intuitive problems with the statements of David Greenglass. First, the Greenglasses testified that the console table had been "hollowed out" to make room for "a lamp to fit underneath it," and that it had been provided to the Rosenbergs by their Russian contact. But the console was found in the spring of 1953 by reporter Leon Summit of the *National Guardian* while interviewing Julius's sister. Not only was Macy's able to identify it as their product, but the structure of the console had not suffered the damage

⁴⁴ Radosh, 193.

⁴⁵ Sharp, 20.

described by the Greenglasses.⁴⁶ Judge Kaufman was unwilling to look at the table once it had been found.⁴⁷ Second, the chronology of events as outlined by Greenglass portrays the Rosenbergs as essentially meaningless actors. According to Greenglass, he travelled two thousand miles to New York in September 1945 so that his sister could type twelve pages of notes and his brother-in-law could burn the evidence in a frying pan. It is difficult to believe that the Soviet Union would risk an operation of this magnitude by unnecessarily including two additional people; David Greenglass could have brought the paperwork directly to Yakovlev at the Soviet Consulate.⁴⁸ Harry Gold testified to the fact that his Soviet contacts took extreme precautions when organizing meetings with American spies.⁴⁹ Finally, Greenglass had a motive to perjure himself while on the witness stand. Julius had purchased David Greenglass's share of their machinery business in 1949, but had been unable to keep up with the monthly payments to his brother-in-law, creating financial havoc for the Greenglass family.⁵⁰ Harold Urey described this financial dispute as a "serious business altercation," creating a large degree of animosity between Rosenberg and the Greenglasses.⁵¹ Additionally, both David and Ruth Greenglass had confessed to a crime that carried a maximum

46 Urey, *xxi*.

47 Sharp, 12-14.

48 Urey, *xxiv*.

49 Sharp, 86.

50 Urey, *xxii*; Wexley, 290.

51 Urey, *xxvi*.

penalty of death, and many of the actors involved in the crime had escaped to foreign nations. Julius and Ethel Rosenberg were two of the few remaining persons that could be used as scapegoats for the entire affair. The Greenglasses had undoubtedly been advised of this fact by their attorneys.⁵² In fact, David Greenglass received a remarkably light sentence of fifteen years and Ruth Greenglass was never prosecuted, largely because they both participated in the trial against the Rosenbergs. As proof of the prosecution's leniency toward Greenglass, the Rosenbergs were also offered a lighter sentence up until the time of their death on the assumption that they could provide the FBI with the names of other persons involved in the spy ring and testify against those persons.⁵³

The testimony of Ruth Greenglass, the third witness for the prosecution, constituted little more than a partial regurgitation of her husband's testimony. Her idealistic affection for Soviet Communism and her respect for Julius Rosenberg quickly withered as she realized that Julius was not concerned with the financial status of G & R Engineering, the machinery business operated in conjunction with her husband.⁵⁴ In an attempt to corroborate her husband, Ruth mentioned that the Rosenbergs, at the height of their involvement with the spy ring, had been spending upwards of

52 Urey, xxv.
53 Sharp, 3.
54 Radosh, 197.

\$50 to \$75 per night entertaining persons that they planned later to involve in their efforts at espionage.⁵⁵ This testimony serves further to weaken the credibility of the Greenglasses as witnesses against the Rosenbergs. In 1945, while an employee with the Emerson Radio Company, Julius Rosenberg was making less than \$100 per week. His wife was not employed at the time, and the family was paying almost \$51 per month for rent on their apartment. Additionally, the family business was operating at a financial loss. Not only is it difficult to believe that the Rosenbergs could have afforded such festivities, but these activities would seem to have put the entire operation at risk, an endeavor that was supposed to be by its nature highly secretive.⁵⁶

One of the most interesting developments of the trial occurred outside of the courtroom during the testimony of Ruth Greenglass. On March 15, 1951, as a result of an arrest warrant signed by Judge Kaufman, William Perl, a college friend of Julius Rosenberg, Morton Sobell, and Max Elitcher, was incarcerated. Irving Saypol had questioned Perl months earlier in connection with the Rosenberg-Sobell trial, but Perl contended that he never knew and thus did not remember either Rosenberg or Sobell from his days at CCNY.⁵⁷ Judge Goddard, a circuit court judge in the Second Federal District, had signed and sealed an indictment against William

55 Urey, xx.

56 Urey, xxi.

57 Sharp, 107; Radosh, 202.

Perl on the grounds that he had perjured himself before Saypol. Saypol brought the paperwork directly to Judge Kaufman on May 13. Kaufman unsealed the indictment, converted it to an arrest warrant, signed his name to the warrant, and resealed the document.⁵⁸ Two days later, Perl's arrest was officially announced by J. Edgar Hoover himself.⁵⁹ The arrest was described in the opinion-editorial section of the *New York Times*, the title of the article reading "Columbia Teacher Arrested, Linked to 2 on Trial as Spies."⁶⁰ This editorial was used by Saypol to present what he believed to be Perl's connection with Sobell and Rosenberg; Perl still refused to cooperate with the prosecution. William Perl was subsequently convicted for perjury, but not until May of 1953, nineteen months after the end of the Rosenberg-Sobell trial.⁶¹ John Wexley believes that the timing of this event, and the actions of all those involved, prove that this was "deliberate falsehood" and malicious "collusion" between Saypol, Kaufman, and Hoover.⁶² It is difficult to believe that the members of the jury successfully avoided both the radio and the newspaper when returning home on the night of May 15. Unquestionably, "the jury was affected by the surrounding publicity."⁶³ Emanuel Bloch, the lead attorney for the Rosenbergs, objected to the publication of the Perl

58 Wexley, 423.
59 Wexley, 421.
60 Radosh, 202.
61 Sharp, 108.
62 Wexley, 423.
63 Radosh, 203.

indictment during the Rosenberg-Sobell trial, but his objection was ignored by both Judge Kaufman and Judge Frank during the appeal.

The next witness, Harry Gold, was described by the prosecutor as the "necessary link" in the case against the Rosenbergs.⁶⁴ Taking the witness stand on the morning of March 15, his direct examination was conducted by Myles Lane, Saypol's senior assistant. Gold echoed the description given by David Greenglass of the events of June 1945 in Albuquerque.⁶⁵ He presented a registration card from the Albuquerque Hilton Hotel in his name; it was dated June 3, 1945, and was used as evidence of his meeting with Greenglass in New Mexico.⁶⁶ When entered into evidence as Government Exhibit 16, a photostatic copy of the document was supplied to the court. Saypol claimed that the original was on its way to New York, but the original never arrived.⁶⁷ Gold testified to numerous encounters with Anatoli Yakovlev, his Soviet contact, and discussed his involvement with Klaus Fuchs, but never said that he even knew either Ethel or Julius Rosenberg by name.⁶⁸

The testimony of Harry Gold suffered from a multitude of deficiencies. First, the credibility of Harry Gold as a witness is highly in doubt. Gold had already been convicted

64 Hentoff, 4.
65 Radosh, 211.
66 Goldstein, 38.
67 Wexley, 332.
68 Radosh, 208.

of conspiring to commit espionage one year earlier, and was serving a thirty-year prison sentence. Additionally, Gold had testified four months prior to the Rosenberg-Sobell trial in another espionage case, this one against his former employer Abraham Brothman. It was disclosed during the course of that trial that Gold, over a period of years, had told a number of individuals the details of his personal life--that he was married with children, and had a brother who had died in World War II.⁶⁹ Allen G. Schwartz, a former assistant district attorney in New York, described these statements as "fantasy." Gold had never married, had no children, and had no brother who had died in the war.⁷⁰

Second, the registration card presented before the court was arguably a forgery. Miriam and Walter Schneir contend that the original of the card, never presented before the court, contained a date-time-stamp error. The back of the card was stamped June 4, and the date-time-stamp would reflect the true date of registration. Yet Gold testified that he met with Greenglass on June 3.⁷¹ Also, the state of New Mexico required hotels to keep their registration cards on record for no more than three years, yet the card in question had been acquired more than five years after Gold had supposedly stayed at the Hilton. It seems highly improbable that Gold unknowingly stayed at the only hotel in

69 Hentoff, 4.
70 Hentoff, 5.
71 Goldstein, 55.

the entire state willing to keep enormous stacks of registration cards years longer than required by state law.⁷² Third, the believability of Gold's testimony depends upon his connection with Klaus Fuchs, yet Fuchs twice failed to identify Gold when presented with his picture by FBI agent Robert Lamphere.⁷³ Finally, Gold testified during the trial that he had been given a piece of onionskin paper by Yakovlev with Greenglass's New Mexico address and the words: "Recognition signal: I come from Julius." But, nine months earlier, during his preliminary interrogation by the FBI, Gold said that the message read "I come from Ben."⁷⁴ Also, Fuchs often referred to himself as Julius, his middle name, and why would Yakovlev use someone's actual name when writing the recognition signal?⁷⁵ This seems to be a tenuous link between the Rosenbergs and Harry Gold. Unfortunately, despite the feebleness of Gold's testimony, Bloch allowed it to go uncontested.⁷⁶

The prosecution quickly began to wrap up its case against the Rosenbergs. The ninth day of the trial, Friday, March 16, was used to put two witnesses on the stand who could demonstrate that the Rosenbergs intended to leave the country and who attempted to undermine the character of Ethel and Julius. Dr. George Bernhardt, the Rosenberg family

72 Wexley, 333.
73 Goldstein, 51.
74 Radosh, 215-216.
75 Sharp, 41-42.
76 Radosh, 215.

physician and a family friend, reluctantly testified that, late in May 1950, Julius contacted his office to ask what types of inoculations would be needed to travel to Mexico. Bernhardt did recall Rosenberg mentioning that the information was for a friend of the family.⁷⁷ William Danzinger, a friend of Morton Sobell since high school, was questioned on his efforts to assist Sobell while he was in Mexico. Danzinger had talked by phone with Sobell on June 20, 1950, and remembered Sobell saying that he was going "on vacation to Mexico City."⁷⁸ Additionally, Danzinger had agreed to forward mail from Sobell to his sister-in-law, Edith Levitav, and his uncle, Max Pasternak.⁷⁹ During this time period, Danzinger had visited Julius Rosenberg on several occasions at his business, thus seeming to implicate Rosenberg in Sobell's flight from the country.⁸⁰ The testimony of William Danzinger was especially damaging, because Sobell's actions demonstrated that he had something to hide, and Bloch's reluctance to cross-examine Danzinger further solidified the impression of guilt.

The trial resumed on Tuesday, March 20. The court had not convened the day before so that Irving Saypol could attend his daughter's wedding. The prosecution presented the last of its witnesses. Saypol called Manuel Giner de Los Rios, an interior decorator who lived next door to Sobell in

77 Radosh, 217.

78 Sharp, 70.

79 Radosh, 218.

80 Radosh, 218-219.

Mexico City, and four other witnesses, all of whom testified that Sobell had lived under an assumed name while in Mexico.⁸¹ Candler Cobb, director of New York City's Selective Service Board, was called to present Sobell's Selective Service file. This was used as evidence that he had used the name Sobell, and not an alias, while living in the United States.⁸² James S. Higgins of the FBI briefly testified to the circumstances surrounding the return of Sobell, contending that the Mexican police brought him back over the border to American officials.⁸³ Finally, the prosecution called Elizabeth Terrill Bentley, a forty-four year old Vassar graduate who had been termed the "Red Spy Queen" by the popular media.⁸⁴ Her presence in the courtroom confirmed the melodramatic nature of the trial and the fact that Communism was on trial, not the Rosenbergs. She described her history of involvement with the Communist Party and her many attempts at espionage. She mentioned Julius Rosenberg's name as one of many she had heard while involved with the Party, but later admitted that she was just repeating gossip she had heard at one point after his arrest.⁸⁵ Bentley knew only of a mysterious "Julius" who had worked with the Party during 1942. Nevertheless, her testimony was accepted as convincing by members of the jury,

81 Radosh, 221.
82 Radosh, 220.
83 Sharp, 71.
84 Radosh, 220.
85 Radosh, 226.

especially given the defense's inability to make inroads into her testimony.

In light of the large number of witnesses and seemingly believable testimony provided for the prosecution, the defense was naive in its hope that its version of the truth would prevail. Julius and Ethel Rosenberg were the only witnesses for the defense. They admitted to having extremely leftist, although not necessarily communist, political and economic beliefs.⁸⁶ Additionally, both Julius and Ethel refused to answer more direct questions about their association with known supporters of the Communist Party, relying on the 5th Amendment privilege against self-incrimination. Julius and Ethel denied all of the events described by Elitcher, the Greenglasses, and Gold. Julius testified that Ruth Greenglass had approached him, fearful that her husband was planning to steal something from the Los Alamos laboratory. But, despite their efforts, Saypol was able to create the impression that their unwillingness to answer certain questions was an admission of guilt, and the Rosenbergs failed to gain the sympathy of the jury as they had originally intended.⁸⁷ Morton Sobell's unwillingness to testify on his own behalf, and Emanuel Bloch's constant objections to the use of the term "communist," also seemed to strengthen the assumption that the Rosenbergs were guilty. In their closing remarks, Bloch unconvincingly attempted to

⁸⁶ Radosh, 244-247.

⁸⁷ Radosh, 245.

portray his clients as innocent victims of majoritarian politics, whereas Chief Prosecutor Saypol effectively manipulated the strongly anti-Communist sentiments of both the presiding judge and the jury.

Despite the initial apprehensions of one juror, the jury handed over a unanimous verdict of guilty. Jury foreman Vincent Lebonite read the guilty verdict for all three defendants on March 29, 1951.⁸⁸ The trial itself had lasted only fourteen days, despite the fact that this case was supposed to demonstrate the method by which the Soviet Union acquired the most destructive weapon ever built. The jury deliberated for only eight hours and forty-five minutes, having never consulted with Judge Kaufman about any particular court procedures or rules of evidence, and yet felt itself capable of handing over a verdict that could potentially result in the execution of three American citizens.⁸⁹ Howard Becker, juror number three on the Rosenberg-Sobell jury, was later quoted during an interview as saying that he was confident in his decision, in large part because the jury had been reassured by Mr. Saypol, while in the judge's chambers, that the prosecution had not presented more than one quarter of the evidence that the United States had to use against the Rosenbergs.⁹⁰

88 Wexley, 242-244.

89 Goldstein, 44.

90 Goldstein, 46.

One week later, on April 5, 1951, Judge Kaufman sentenced Ethel and Julius Rosenberg to death in the electric chair, with a date of execution set for May 21, 1951. Morton Sobell was sentenced to thirty years in prison. David Greenglass, as a result of his confession and willingness to help prosecute the Rosenbergs, received a fifteen-year sentence on May 22. Yakovlev had escaped the country years earlier, and both Ruth Greenglass and Harry Gold had not been named in the indictment.⁹¹

The guilty verdict and the imposition of the death sentence marked the beginning of a long and arduous process during which the lawyers for the Rosenbergs attempted to appeal the conviction. Judge Kaufman issued a stay of indefinite length, postponing the execution until these matters could be resolved. This appeals process achieved no concrete results. On January 10, 1952, the conviction of the Rosenbergs and Sobell was reviewed by the U.S. Court of Appeals, Second District. This three-person panel was composed of Thomas Swan, Harrie B. Chase, and Jerome N. Frank, all of whom were well-respected members of the legal community. Emanuel Bloch felt that their best chance of undoing the Kaufman decision was at the appellate court level, and he was allowed falsely to believe for the next six weeks that the Frank court would undo the Rosenbergs' conviction.⁹² On February 25, 1952, the conviction of the

⁹¹ Wexley, xix.

⁹² Radosh, 320.

Rosenbergs and Morton Sobell was affirmed. Justice Frank, despite having initially counseled Judge Kaufman against imposing the death sentence, wrote the opinion of the appeals court. Frank disagreed with and dissented on the Sobell conviction, but the court unanimously upheld the death sentence for the Rosenbergs. He noted that despite his apprehension over the severity of the sentence, he felt it improper for a higher court to overturn the decision of an inferior court based solely upon the justices' feelings. The Frank court found no legal errors in the handling of the case at the district court level.⁹³ Judge Frank held that even the harsh comments made by Judge Kaufman during the course of the trial constituted an acceptable standard of behavior. Frank's opinion left no doubt that he thought the Rosenbergs had already received their day in court.⁹⁴

On October 13, 1952, the U.S. Supreme Court denied a petition to review the Rosenberg-Sobell case, despite a recommendation made by Judge Frank that the case be reviewed at the Supreme Court level. Frank referenced Section 2206 of the United States Code, an obscure rule governing court procedure dating back to the Judiciary Act of 1789, as warranting review of the Kaufman ruling. This section of the U.S. Code allows both appellate courts and the Supreme Court to "affirm, modify...or reverse a judgment" in capital

⁹³ Walter and Miriam Schneir, Invitation to an Inquest (Baltimore: Penguin Books, 1977), 176-178.

⁹⁴ Radosh, 321.

cases.⁹⁵ Frank thought that the Supreme Court would be best suited both to interpret Section 2206 and to decide the legitimacy of the sentence handed down by Kaufman. Judge Kaufman proceeded to fix a second date of execution for the week of January 12, 1953. Judge Kaufman then removed himself from the case, and was replaced by Judge Sylvester Ryan.

Both a motion for a new trial based upon evidence of perjury and unfair practice, and a stay of execution, were reviewed by Judge Ryan on December 10, 1952. The attorneys for the Rosenbergs argued in their petition that both Saypol's conduct during the indictment of William Perl and the false testimony of Ben Schneider entitled their clients to a new trial.⁹⁶ Schneider had testified during the trial that the last time he had seen the Rosenbergs was in 1950, when they arrived at his photography shop. After the trial, however, Schneider admitted that he had been brought by FBI agents to Courtroom 110 on the day before he was to testify. Judge Ryan quickly disposed of both arguments, contending that Schneider had no apparent motive to lie, and that there was no proof that Saypol's actions influenced any of the jurors.⁹⁷

A clemency appeal was presented to President Truman on January 10, 1953, but was later passed to President Eisenhower as Truman left office on January 20. The clemency

95 Parrish, 815.

96 Parrish, 820.

97 Parrish, 820-821.

petition had been accompanied by thousands of pleas for mercy, including one from Albert Einstein.⁹⁸ Eisenhower refused clemency on February 11, 1953. His actions provoked a worldwide response. On April 16, the *Osservatore Romano* published a compelling editorial urging clemency for the Rosenbergs, and many other commentators, including the Paris newspaper *Le Monde*, urged Eisenhower to consider the severity of the sentence, especially in comparison to the sentences for Fuchs and May.⁹⁹ Jean-Paul Sartre, writing in a June 1953 article in *Libération* which was later reprinted in the *Daily Worker* in the United States, called the impending execution of the Rosenbergs "a legal lynching which smears with blood a whole nation."¹⁰⁰ Ronald Radosh and Joyce Milton described this outcry by the overseas media as creating a "headache" for Eisenhower, impacting Franco-American relations.¹⁰¹

Judge Kaufman again rescheduled the execution, setting the date for March 9. He knew that this provided Bloch with an insufficient amount of time to initiate an appeal before the U.S. Supreme Court. But Chief Judge Learned Hand of the Second District Court of Appeals granted a further stay of execution, arguing that he was horrified by the prospect that the judiciary was rushing two persons to their deaths.¹⁰² On

98 Parrish, 821.

99 Sharp, x; Radosh, 374; "The Rosenberg Case," Bulletin of the Atomic Scientists IX (February 19, 1953): 31.

100 Radosh, 351.

101 Radosh, 373.

102 Radosh, 344.

May 25, 1953, the Supreme Court rejected review for a second time, Justices Black and Douglas dissenting.¹⁰³

On June 17, 1953, Supreme Court Justice William Douglas issued a stay of execution, holding that the petition filed by lawyers Fyke Farmer and Daniel Marshall as "next friend" of the Rosenbergs involved new and substantial questions that needed to be resolved by the Court.¹⁰⁴ Farmer had first become interested in the plight of the Rosenbergs in 1952 after reading a pamphlet distributed by Irwin Edelman, a former Communist Party member and an organizer of the Los Angeles chapter of the National Committee to Secure Justice for the Rosenbergs. Farmer had been impressed by Edelman's argument that the Greenglass testimony was in serious error and that the conviction ought to be reversed on appeal.¹⁰⁵ But he had also been inspired to do some research of his own and proceeded to discover an argument that struck him as even more compelling: the Rosenbergs had been tried under the wrong law. In Farmer's opinion, the Espionage Act of 1917 was no longer applicable to atomic energy secrets, because it had been superseded by the Atomic Energy Act of 1946. Under this statute, a sentence involving the death penalty could only be imposed by jury recommendation.¹⁰⁶

Farmer had been introduced to Emanuel Bloch on March 6, 1953 for the purpose of presenting his argument to the

103 Wexley, xix-xx.

104 Radosh, 402.

105 Radosh, 383.

106 Radosh, 384.

Rosenberg defense team. Bloch listened to Farmer for only thirty minutes, and his assistant, Gloria Agrin, seemed no more impressed than Bloch.¹⁰⁷ Despite this setback, Edelman had found backing for Farmer among the ranks of the Committee's L.A. chapter. Among the supporters was Daniel Marshall, a prominent civil rights lawyer who had been serving as the chapter's legal adviser. Farmer and Marshall made a concerted effort to find a federal judge willing to review their argument. They arrived in New York City on the night of June 12, 1953 with a revised draft of their petition. The Rosenbergs were scheduled to be executed the next Thursday, June 18. They presented their petition to federal judge Edward Dimock, whom Farmer had known from meetings of the American Bar Association, but Dimock was unwilling to act on the petition, referring the lawyers to Kaufman.¹⁰⁸ Kaufman was equally unwilling to listen to their argument.

Farmer and Marshall, having failed in New York, hurried to Washington, D.C. in the hopes of finding a Supreme Court justice willing to lend an ear to their argument. They first knocked at the home of Justice Hugo Black in Alexandria, Virginia, assuming that he would be the most sympathetic to their petition. But there was no answer. Unsure of their next move, they drove to the the Supreme Court building on the morning of Monday, June 15, 1953, to find the Rosenberg

¹⁰⁷ Radosh, 385.

¹⁰⁸ Schneirs, 251.

defense lawyers already awaiting a hearing with Justice Jackson.¹⁰⁹ Bloch was expecting the results of a last-minute petition, and ignored Farmer and Marshall as they walked into the office of the clerk.¹¹⁰ Introducing themselves as "next friends" of the Rosenbergs, Farmer and Marshall asked Harold Willey, the clerk of the court, if any other Supreme Court justices remained in the building. Willey entered their petition without the usual formalities, such as filing and docketing, and carried the paperwork to the office of Justice Douglas.¹¹¹ They arrived at Justice Douglas's office at 11:30 a.m., only to find two lawyers from the Department of Justice and James Kilsheimer, assistant to Chief Prosecutor Saypol, already present. They argued in front of Justice Douglas that the Rosenbergs had been tried under the wrong law. Douglas was impressed with the argument, surprised that it had not yet been forwarded during the appeals, and granted a stay until the Supreme Court could properly deal with the issue.¹¹²

Through a rather unusual series of political maneuvers, Chief Justice Vinson called a special term of the U.S. Supreme Court on June 18, 1953, primarily at the request of Attorney General Brownell. The October 1952-53 term had concluded at noon on June 15, the previous Monday. Normally, the Supreme Court would have waited until October 1953 to

¹⁰⁹ Radosh, 394-6.

¹¹⁰ Sharlitt, 62.

¹¹¹ Sharlitt, 62.

¹¹² Radosh, 400.

reconvene, but as Nat Hentoff has argued, Brownell was so intent on "obliterating" the Rosenbergs that their execution could not wait until October.¹¹³ The attempt to uphold the stay issued by Justice Douglas lost on a 5-3 vote; Justice Frankfurter abstained from the vote. The Court then attempted to shorten the stay by hearing further arguments and requesting additional briefs on the Atomic Energy Act within three weeks, but the move to allow additional argumentation only garnered four votes. Finally, Burton cast his vote with the majority when the first two motions failed, and the Court voted 6-3 to vacate Justice Douglas's stay of execution.¹¹⁴ The Supreme Court claimed a duty to see that the "punishments prescribed by the laws are enforced with a reasonable degree of promptness and certainty."¹¹⁵

One final clemency appeal had been forwarded to President Eisenhower by the Rosenberg defense team, reaching his desk on June 19, the date now scheduled for the execution. Eisenhower and Emmet John Hughes, an assistant to the President, met with Attorney General Brownell. Brownell convinced them that a lot more evidence of the Rosenbergs' guilt existed, but that some of it was unusable due to legal technicalities. Thus, he convinced Eisenhower of the Rosenbergs' guilt using evidence inadmissible in a court of law.¹¹⁶ Murray Snyder, the White House press secretary,

113 Hentoff, 4.

114 Wexley, xix-xx.

115 Opinion of the Court, 346 U.S. 287

116 Goldstein, 82.

issued a statement later that afternoon in which the President was quoted as saying, "I will not intervene in this matter."¹¹⁷ Julius and Ethel Rosenberg were put to death by means of electrocution at 8:31 p.m. on June 19, 1953. The execution had been advanced by nearly three hours to avoid conflict with the Jewish Sabbath.¹¹⁸ The Rosenbergs were asked one more time if they wanted to confess to their crimes, thus allowing the court to reconsider their punishment, but the only voice heard was that of Rabbi Irving Koslow reading the Twenty-Third Psalm minutes before their death.¹¹⁹

During the course of the trial and numerous appeals, a number of legal positions were forwarded that had little substantive value. For example, it was claimed that the sections of the Espionage Act under which the Rosenbergs had been charged should be declared void as an unconstitutional invasion of speech and the press. This type of argument was hardly going to succeed before the courts, especially given the political climate of the early 1950s.¹²⁰ But there were at least six significant objections made by the Rosenberg lawyers that were neglected during the course of the proceedings. First, although the Rosenbergs had been officially charged with conspiracy to commit espionage, the charges against them were tantamount to treason. Convictions

¹¹⁷ Goldstein, 82.

¹¹⁸ Sharp, xi.

¹¹⁹ Goldstein, 84.

¹²⁰ Parrish, 811.

for treason, under Article III, Section 3 of the U.S. Constitution, require two witnesses of the same overt act who were not directly involved in the treasonous actions to confess in open court. The prosecution had not a single witness that met that description.¹²¹ Admittedly, the Soviet Union had not been officially labeled as an "enemy" of the United States by 1945, a requirement for the charge to be classified as treason, but the court failed to address this issue, leaving room for doubt.¹²² Second, no one had ever been executed under the Espionage Act, and the accomplices of the Rosenbergs had received considerably lighter sentences or no sentence at all. This, it has been argued, constituted cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution.¹²³

Third, it has been argued that the prosecution violated Chapter 18, Section 3432 of the Federal Criminal Code, which requires that a person charged with a capital offense be furnished with a list of all witnesses at least three days before the indictment. The name of Benjamin Schneider, the photographer whose testimony was critical to building the case that the Rosenbergs were planning to flee the country, was not on the list.¹²⁴ Fourth, Judge Kaufman was openly hostile to the Rosenbergs. During the course of the trial,

¹²¹ Transcript of Record, 2498-2589. All information pertaining to the in-court proceedings for the federal district court appears in the transcript of the case.

¹²² Sharp, 7.

¹²³ Parrish, 812.

¹²⁴ Parrish, 812.

he made numerous public statements concerning the severity of crimes of atomic espionage and his desire to see the Rosenbergs prosecuted to the fullest extent of the law.¹²⁵ Fifth, it has been argued that Chief Prosecutor, Irving Saypol, deprived the Rosenbergs of a fair trial. Saypol's office, in the thick of the initial proceedings, declared during a news conference that they had arrested William Perl and that his testimony would corroborate that of Ruth Greenglass. It has been argued that this violated the Rosenbergs' Fifth Amendment right to due process of the law. All of these claims received little attention by either the U.S. Circuit Court of Appeals or the U.S. Supreme Court when it was considering the case for review.¹²⁶

Finally, it was argued that the indictment, trial, and sentence were secured under the wrong law. In 1946, Congress provided specific penalties for espionage activities relating to atomic energy secrets in the Atomic Energy Act. The statute allowed the death sentence to be imposed only when a jury so recommended. The Rosenbergs had been charged not with espionage, but conspiracy to commit espionage. The proof used by the prosecution for the charge of conspiracy extended far beyond August 1, 1946, the date on which the Atomic Energy Act went into effect. Had the government's case confined itself to those major acts of wartime espionage that it did prove, there would be no doubt that the Atomic

¹²⁵ Parrish, 813.

¹²⁶ Parrish, 814.

Energy Act would not apply. These overt acts occurred before 1946, and no criminal statute can have retroactive application. But more than 35 percent of the testimony offered by the government dealt with events that took place after August 1, 1946.¹²⁷ As Justice Frankfurter wrote in his dissenting opinion:

The Government could of course have charged a conspiracy beginning in 1944 and ending on July 31, 1946, the day before the Atomic Energy Act came into effect. It did not do so. That fact is of decisive importance. The consequences of a conspiracy that was afoot for six years might have been vastly different from those of a conspiracy that terminated within two years, that is, by the time Congress devised legislation to protect atomic energy secrets.¹²⁸

Justices Frankfurter and Black also noted their uneasiness with the minimal amount of time dedicated to analyzing this important issue.¹²⁹ It appears that a number of arguments of reasonable legal merit were neglected by one or more federal courts in an attempt to expedite the hearing.

Three actors are most prominently cited as having willfully or unknowingly neglected due process of the law during the course of the Rosenberg trial. First, the government, in its prosecution of the case, acted unfairly in attempting to gain a conviction of the Rosenbergs. Attorney General Brownell of the United States, the adversary of the Rosenbergs in the case before the Supreme Court and a man publicly committed to the swift prosecution of convicted

127 Sharlitt, 17.

128 346 U.S. 304.

129 346 U.S. 296, 305.

spies, cooperated with Chief Justice Vinson in plotting against Justice Douglas and a possible warm response to the argument presented by Farmer and Marshall. An FBI memorandum dated June 17 was sent from supervisor D. M. Ladd in New York to FBI official A.H. Belmont in Washington, D.C. It confirmed that Justice Jackson arranged for these two men to meet behind closed doors and plan the special session of the court that occurred on June 18.¹³⁰ It had been planned on June 16 as a response to any stay or writ of habeas corpus granted by Douglas. Such actions violate Judicial Canon 17 of the American Bar Association, a rule already in effect by June of 1953. The section on ex parte communication requires that a judge not permit private interviews or communications to influence judicial action.¹³¹

Additionally, the team of prosecuting attorneys was particularly abusive in conducting its case against the Rosenbergs at the federal trial court level. The prosecution presented a list of over 100 potential witnesses, among whom were such eminent scientists as J. Robert Oppenheimer and Harold C. Urey.¹³² These individuals never testified nor were they even consulted about the possibility of testifying, yet the mere presence of their names on the list of witnesses added credibility to the prosecution's claim that David Greenglass had acquired knowledge of atomic energy secrets.

130 Sharlitt, 4, 65-66.

131 Sharlitt, 66.

132 Schneirs, 119; Wexley, 259.

Ironically, Harold Urey later became a strong supporter of the movement to halt the Rosenberg execution.¹³³ During the actual proceedings, the only person to verify the accuracy of the Greenglass testimony was another machinist at Los Alamos. Finally, the prosecution has been accused of having distorted the facts in attempting to win its case against the Rosenbergs. No one in the courtroom knew the difference between a fission and a fusion bomb, let alone the subtle differences between the particular parts of an atomic weapon. The prosecution misled the jury in convincing them that Greenglass's information was of any consequence. Most if not all of the information revealed by Greenglass had already been provided to the Russians by others, including Fuchs and May. Gerald Markowitz and Michael Meeropol argue that recently released FBI documents prove that the Atomic Energy Commission and the FBI knew before the trial that Greenglass's information was neither accurate nor significant.

The released documents--even though heavily censored--show that the FBI and the AEC knew in detail what material Klaus Fuchs had previously transmitted to the USSR, and thus knew that Greenglass' information was both inaccurate and insignificant.¹³⁴

Judge Irving R. Kaufman of the federal trial court has also been accused of improperly handling the Rosenberg case. Supreme Court Justice Frankfurter primarily blamed Kaufman

¹³³ Urey, xx.

¹³⁴ Gerald E. Markowitz and Michael Meeropol, "The Crime of the Century Revisited: David Greenglass' Scientific Evidence in the Rosenberg Case," Science and Society 44(1980): 18.

for the "less than dispassionate handling of the Rosenberg case." Writing to Judge Learned Hand in 1958, Frankfurter said of Kaufman, "I despise a judge who feels God told him to impose a death sentence."¹³⁵ Kaufman did seem committed to a death sentence for the Rosenbergs. At one point in the trial, he responded to a juror's fears that a guilty sentence would result in the death of the Rosenbergs by telling the juror that the sentence itself was not an issue for the jury to consider, but that he wanted to take full responsibility for that task. Many have accused him of being so dedicated to a death sentence that he, behind closed doors, entered into contacts with the FBI so as to enhance the case against the Rosenbergs.¹³⁶ His statements alone serve as more than convincing evidence of this self-imposed duty to punish the Rosenbergs.

I consider your crime worse than murder....[I]n 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 fifty thousand and who knows but what millions more innocent people may pay the price of your treason.¹³⁷

Arguably, the party most guilty of sheer negligence was the Supreme Court of the United States. The Supreme Court dealt with the questions before it so rapidly that the lawyers representing the Rosenbergs never had a chance to write or argue a brief on the key point of law that had just

¹³⁵ Nathan Glazer, "Verdicts of History," Commentary 76 (October 1983): 68.

¹³⁶ Glazer, 68.

¹³⁷ Schneirs, 170.

been raised before Justice Douglas, and the validity of that point was never tested. A majority of the Supreme Court, in a period of less than twenty-four hours, not only considered themselves prepared to reject the validity of the point raised by Farmer and Marshall, but to go so far as to determine that their position was insubstantial and not worthy of the Court's attention.¹³⁸ Overemphasizing the potential for justice delayed, the Court neglected justice itself. Joseph Sharlitt writes, "The Supreme Court's extreme determination was the only way that the Rosenbergs could be put into the electric chair without further delay. And delay was, it seems, to be avoided at all costs."¹³⁹

The potential for the Rosenbergs to receive a fair and unbiased evaluation of their case by the Supreme Court was slim, because of the significant degree of animosity that existed between the judges. Justice Douglas, in granting the stay of execution, angered many members of the court. Douglas's earlier conduct in the Rosenberg case had so isolated him from his colleagues that even those who might have supported him on the legal merits of the argument at hand were deeply involved in personal disputes with him.¹⁴⁰ For example, just a few months earlier, Douglas had written a memorandum explaining his desire to review the Rosenberg-Sobell case and condemning the Court for not managing the

138 Sharlitt, 7.
139 Sharlitt, 2.
140 Sharlitt, 28.

four votes necessary to grant a writ of certiorari. His memorandum resulted in the necessary four votes after Justice Burton changed his mind, but Douglas then proceeded to repeal his memorandum, removing the incentive for the changed votes. The court never granted review. Vital votes were lost on June 18, not because the argument itself before the Court was wrong, but because Douglas had backed it.¹⁴¹ Sharlitt comments:

It is a damning comment on the High Court's conduct during that week [June 13-19, 1951] that a legal point that had never before been raised, that should have spared the lives of the defendants, that was wholly correct even though scores of judges and lawyers had missed it entirely, was summarily brushed aside by the Supreme Court of the United States because of the personal pique of judge against judge. The animus was present.¹⁴²

Julius Rosenberg, while being housed in solitary confinement at Sing Sing, wrote to his wife, commenting on the motives for the conviction: "We have experienced unbelievable rottenness. There is a new whipping boy in our land 'The Rosenbergs' and all 'respectable' people have to cleanse themselves by throwing stones at us."¹⁴³ It is undoubtedly true that the trial and execution of the Rosenbergs served as a symbol of the tensions that were prevalent in American society during the 1950s. Malcolm Sharp, attorney for the Rosenbergs, labeled his clients as sacrifices to the "fears and hatred" of a society engulfed in

¹⁴¹ Sharlitt, 30.

¹⁴² Sharlitt, 4.

¹⁴³ Schneirs, 426.

the Korean war and the Cold War.¹⁴⁴ Donald Pease described the status of American society during this time period:

As the Cold War made the deployment of national military power against the Soviet Union an ever-present possibility, every American individual was definable as either an agent or an enemy of the state. The loss of the separation of realms led to the conscription of Americans' psychic lives for the internalization of an opposition, which in the years after World War II, settled over the entire globe, setting American freedom against the threat of Soviet totalitarianism. Fearful in their private lives of the enemy within, Americans scrutinized their psyches for signs of treason, subversion, or fanaticism embodied in the external world by the Rosenbergs, Alger Hiss and Joseph McCarthy.¹⁴⁵

The 1950s were an era during which both members of the American judiciary and federal prosecutors were willing to risk their careers to satiate the demands of a nation consumed by anti-communism. The Rosenbergs were not simply a symbol of this sentiment, but their trial and execution could be almost entirely explained by these feelings. Even if the Rosenbergs were guilty of everything with which they had been charged, their trial still amounted to nothing more than a modern day witch hunt. Joseph Sharlitt described the third week of June 1953 as the high point of McCarthyism. He argues that one cannot even begin to evaluate the execution of the Rosenbergs without knowing the "anti-red feeling" prevalent in American during the 1950s.¹⁴⁶ It was impossible to separate these feelings from the trial. The only motive forwarded by the prosecution for the conspiracy was the

¹⁴⁴ Sharp, 188-89.

¹⁴⁵ Donald Pease, "Leslie Fielder, the Rosenberg Trial, and the Formulation of an American Canon," boundary 2 17 (1990):155-56.

¹⁴⁶ Sharlitt, x.

Rosenbergs' admiration for Communism and the Soviet Union. The prosecuting attorneys made every attempt to put Communism on trial, rather than the Rosenbergs. The opening remarks of Chief Prosecutor Irving Saypol amounted to an accusation that the Rosenbergs were Communists. The defense responded with an objection that it was Julius and Ethel Rosenberg, not Communism, that was on trial, but Judge Kaufman not only allowed the statement, but informed the jury that it was the basis of the defendants' motive. Walter and Miriam Schneir claim that Communism and the trial were impossible to separate:

Whatever the rationale, Communism was mentioned so often during the proceedings that at times it threatened to become a separate issue. In the violently anti-communist political climate in which the trial was conducted, it is impossible to believe that the jury could have remained entirely objective toward the Rosenbergs and Sobell in response to such testimony....¹⁴⁷

The Bulletin of the Atomic Scientists described the Rosenbergs as "martyrs for the Communist cause."¹⁴⁸

Many commentators have argued that not only did McCarthyism and anti-communism play an important role in the conviction and sentencing of the Rosenbergs, but anti-Semitism was also a contributing factor. For example, Lucy Dawidowicz, writing at the height of the Rosenberg controversy, argued that the terms "Communist" and "Jew" became synonymous during the course of the trial, expressing

¹⁴⁷ Schneirs, 165.

¹⁴⁸ Bulletin of Atomic Scientists, 31.

a fear that the execution of the Rosenbergs would set the stage for further atrocities of genocidal proportions against the Jewish community.¹⁴⁹ This was a popular argument overseas, but the American media tended to reject anti-Semitism as a factor influencing the verdict.¹⁵⁰ While it is true that many Jewish organizations protested the killing of the Rosenbergs and disturbing that not a single member of the twelve-person jury was Jewish, it is difficult to prove any type of solid correlation between a hatred of Jewish persons and the outcome of the case. Judge Kaufman, the Greenglasses, Morton Sobell and his attorneys, and two of the prosecuting attorneys were all of Jewish heritage. Additionally, many prominent Jewish organizations, including the American Jewish Committee, refused to support the clemency requests of the Rosenbergs, advocating the death penalty for convicted spies regardless of their cultural or religious background.¹⁵¹ Malcolm Sharp, in describing his inability effectively to reverse the Rosenbergs' conviction, admitted that the impact of anti-Semitism on the case was "negligible."¹⁵²

Although most commentators tend to reject the claim that Julius and Ethel Rosenberg were executed because of a general animosity toward Jews, two interesting and controversial

149 Lucy S. Dawidowicz, "Anti-Semitism and the Rosenberg Case," Commentary 14 (July 1952): 41-43.

150 Radosh, 352.

151 Radosh, 357; Schneirs, 179.

152 Sharp, 176.

theories have been forwarded to explain a possible relationship between the cultural background of the Rosenbergs and the outcome of the case. First, *Jewish Day*, a New York weekly newspaper, published an editorial immediately after the sentencing of the Rosenbergs in which it was argued that the Rosenbergs may have been given a harsher punishment because Judge Kaufman suffered from a "Jewish complex."¹⁵³ The newspaper questioned whether Judge Kaufman may have sentenced Julius and Ethel Rosenberg to death so as to avoid being criticized as lenient toward his fellow Jews. Vincent Lebonite, the foreman of the jury, described this feeling: "I felt good that this was strictly a Jewish show. It was Jew against Jew. It wasn't the Christians hanging the Jews." Given that the public assumed the guilt of the Rosenbergs, and that the trial was widely viewed as a Jewish affair, Kaufman may have feared a backlash against the Jewish community if he had been soft on convicted atomic spies.¹⁵⁴ Second, Judge Kaufman may have been angry because he feared the effect that the Rosenbergs' actions would have on the reputation of "respectable Jews."¹⁵⁵ Judge Kaufman's wife's maiden name was Rosenberg, although she was of no relation to Julius and Ethel, and Kaufman may have been disturbed, because he perceived the guilt of the defendants as having a stigmatizing effect not only on his family, but on all

153 Radosh, 288.

154 Radosh, 289.

155 Radosh, 288.

Jewish-Americans. Thus, this type of reverse anti-Semitism may explain why Jewish organizations and attorneys aggressively fought for both a guilty verdict and the execution of the Rosenbergs.

In 1953, the world witnessed two American lives sacrificed to the politics of McCarthyism and an uncontrollable fear of Communism. Julius and Ethel Rosenberg, despite a number of substantial and arguably valid legal defenses, were executed on June 19, 1953 for conspiring to commit espionage on behalf of the Soviet Union. The American legal system failed at all levels. Politics and hatred overwhelmed the ethics of federal prosecutors, the insight and impartiality of federal district judge Irving Kaufman, and the wisdom of the Supreme Court of the United States. Justice Frankfurter was justifiably upset, viewing the Rosenberg case as "the most disturbing in his court career."

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