

The Rosenberg Trial

by

Jake Kobrick

*Research Historian, Federal Judicial History Office,
Federal Judicial Center*

Prepared for inclusion in the project

Federal Trials and Great Debates in United States History

Federal Judicial Center
Federal Judicial History Office
2013

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government." The views expressed are those of the author and not necessarily those of the Federal Judicial Center.

Contents

<i>United States v. Rosenberg, et al.</i> —A Short Narrative, 1	
Introduction, 1	
The arrests and indictments, 2	
The trial, 3	
The verdicts and sentences, 5	
The appeals, 6	
The aftermath and legacy, 9	
The Federal Courts and Their Jurisdiction, 11	
U.S. District Court for the Southern District of New York, 11	
U.S. Court of Appeals for the Second Circuit, 11	
Supreme Court of the United States, 11	
The Judicial Process: A Chronology, 13	
Legal Questions Before the Courts, 17	
Were the defendants guilty of conspiring to commit espionage to aid the Soviet Union by providing it, during wartime, with classified information regarding the national defense of the United States? 17	
Did the prosecution deprive the defendants of a fair trial by knowingly using perjured testimony from David Greenglass? 17	
Did the admission of evidence of the defendants' admiration for the Soviet Union and membership in the Communist Party deprive them of a fair trial? 18	
Did the behavior of Judge Kaufman deprive the defendants of a fair trial? 19	
Did publicity before and during the trial create an environment in which the defendants could not receive a fair trial? 19	
Did a press conference given by U.S. Attorney Irving Saypol, in the midst of the trial, regarding the arrest for perjury of an associate of Julius Rosenberg and Morton Sobell, deprive the defendants of a fair trial? 20	
Did the Rosenbergs' death sentences violate the constitutional ban on cruel and unusual punishment? 21	
Should the defendants have been sentenced under the Atomic Energy Act of 1946 rather than the Espionage Act of 1917? 21	
Did the Supreme Court have the power to vacate the stay of execution issued by Justice Douglas? 22	
Legal Arguments in Court, 23	
The attorneys for the U.S. government, 23	
The attorneys for the defendants, 24	

The Rosenberg Trial

Biographies, 25

- Communist Party USA, 25
- Julius Rosenberg, 26
- Ethel Rosenberg, 27
- Morton Sobell, 28
- David Greenglass, 30
- Ruth Greenglass, 31
- Harry Gold, 33
- Irving Saypol, 34
- Roy Cohn, 35
- Emanuel Bloch, 36
- Irving Kaufman, 37
- Jerome Frank, 39
- William O. Douglas, 40
- Felix Frankfurter, 41

Media Coverage and Public Debates, 43

Historical Documents, 47

- Emanuel Bloch, closing argument for the defense, 47
- Irving Saypol, closing argument for the government, 48
- Judge Irving Kaufman, charge to the jury, 49
- Judge Irving Kaufman, sentencing of Julius and Ethel Rosenberg, 50
- U.S. Court of Appeals for the Second Circuit, decision on the defendants' appeal of their convictions, 51
- U.S. District Court for the Southern District of New York, decision on defendants' motion to have their sentences overturned, 53
- Supreme Court of the United States, opinions regarding stay granted by Justice Douglas, 54
- Federal statutes regarding espionage, 56
- President Dwight Eisenhower, statement regarding executive clemency, 57
- Intercepted Soviet intelligence cable regarding Ethel Rosenberg, 58
- Julius and Ethel Rosenberg, prison correspondence, 59
- Ethel Rosenberg, letter to President Dwight Eisenhower, 61
- Letters to Justice William Douglas regarding the stay of execution, 63
- U.S. Representative Elijah Forrester, remarks on Rosenberg protests, 65
- Los Angeles Times*, editorials regarding Rosenberg executions, 66

Bibliography, 69

United States v. Rosenberg, et al.—A Short Narrative

Introduction

The 1951 trial of Julius Rosenberg, Ethel Rosenberg, and Morton Sobell, Communists accused of conspiring to commit espionage for the Soviet Union, drew worldwide attention at a time of heightened American concerns about nuclear warfare, Soviet aggression, and Communist subversion. In the eyes of those who believed the United States to be under siege by Communists, the defendants were powerful symbols of the threat of subversion. For Americans on the left who had participated in radical political and labor movements in the 1930s and 1940s, the case aroused fears of government persecution. The Rosenberg case has remained alive in public memory, generations after its conclusion, as a watershed political and cultural event of the Cold War era.

A confluence of events between 1948 and 1950 convinced many Americans that Communists were working toward global domination and that the Soviet Union posed a threat to the United States. The Cold War intensified in 1948 when the Soviets attempted to expand their influence in Europe by backing a Communist coup in Czechoslovakia and blockading portions of Berlin that had been occupied by the United States, Britain, and France since the end of World War II. Developments in Asia stoked fears as well, as Chinese Communists led by Mao Zedong took control of the mainland in October 1949 and forced nationalist forces to flee to the island of Taiwan. In June 1950, the Soviet- and Chinese-backed state of North Korea invaded South Korea, beginning a conflict that soon involved American troops in the fight to repel the Communist invaders.

Perhaps most important, in August 1949, the Soviets conducted their first successful test of the atomic bomb, shocking many in the United States who had believed the U.S.S.R. to be several years away from attaining a nuclear weapon. Since the development of its first atomic bomb in July 1945, the United States government had viewed the bomb as a major asset, particularly as a deterrent to Soviet expansion in Eastern Europe. News of the test sparked fears of nuclear warfare and raised the possibility of a Soviet first strike on a major U.S. city. The *Los Angeles Times* asserted that the Soviets' development of the bomb placed "the very existence of the western world at stake."

Meanwhile, events within the United States drew attention to the potential for Soviet infiltration of the federal government. In 1948, Whittaker Chambers, a former Soviet spy who had since become a zealous anti-Communist, testified before the House of Representatives Un-American Activities Committee, describing the Communist Party as dedicated to the infiltration and eventual overthrow of the United States government. Chambers identified Alger Hiss, a former high-ranking official

of the State Department, as a Communist spy. After denying the charge, Hiss was convicted of perjury in a trial in the U.S. District Court for the Southern District of New York in 1950. Also in 1950, the House of Representatives Un-American Activities Committee investigated possible Communist influence in Hollywood, and Senator Joseph McCarthy of Wisconsin began his crusade to uncover Communist infiltration in the federal government.

Suspected Soviet influence and domestic subversion prompted a series of federal prosecutions. In 1948, eleven leaders of the Communist Party USA were indicted for conspiring to advocate the overthrow of the U.S. government, and in 1951 their convictions were upheld by the Supreme Court in *Dennis v. United States*. By the time of the Rosenberg trial, federal prosecutors in several high-profile trials had argued successfully that membership in the Communist Party was itself evidence of an active commitment to the overthrow of the U.S. government.

As prosecutors, political leaders, and much of the public believed, the Communist Party USA was actively involved in Soviet espionage in the United States. As would be publicly documented only in the 1990s with the release of intercepted cables and the opening of Soviet archives, hundreds of American Communists and party supporters worked as part of an extensive network of spies in the 1930s and 1940s. In the 1930s, domestic Communists working for the Soviets focused mainly on political organization and on obtaining American foreign policy secrets, particularly with respect to potential threats posed by Germany and Japan. Beginning in 1941, the Soviets placed a greater emphasis on using the Communist Party USA as a source for military and technical secrets, with gathering information about the American atomic bomb program the top priority.

The arrests and indictments

In February 1950, British authorities arrested Klaus Fuchs, a German-born scientist living in England, on suspicion of providing the Soviet Union with classified information regarding the American atomic bomb program in Los Alamos, New Mexico, on which he had worked. Fuchs' confession led to the arrest in May 1950 of Philadelphia chemist Harry Gold, who served as a courier between Fuchs and Fuchs' Soviet handler, Anatoli Yakovlev. Gold made a full confession as well, informing the FBI of his June 1945 encounter with a U.S. Army officer who provided him with classified information from Los Alamos, which Gold then turned over to Yakovlev. Gold's description of the man he met led the authorities to Sergeant David Greenglass, whom authorities arrested in June 1950.

Like Fuchs and Gold, Greenglass quickly confessed, admitting that his wife, Ruth, had been involved in espionage as well. Both David and Ruth Greenglass soon agreed to cooperate with the government's investigation. They blamed David's sister Ethel Rosenberg and her husband Julius, who, they claimed, had indoctrinated them with

Communist beliefs and recruited them into their espionage ring. Although they made no formal deal with the government, the Greenglasses hoped that their cooperation would secure a lighter sentence for David and spare Ruth from prosecution. U.S. Attorney Irving Saypol and his assistant, Roy Cohn, repeatedly warned the couple that Ruth Greenglass could be charged as well if they did not disclose all they knew, particularly regarding Ethel Rosenberg, about whom little evidence had emerged. As a result of the Greenglasses' claims, Julius Rosenberg was arrested on July 17. Two days later, confronted by Julius's refusal to discuss his espionage activities or to reveal the names of other spies, FBI Director J. Edgar Hoover suggested to Attorney General J. Howard McGrath that to bring about a "change in [Julius'] attitude," "proceeding against his wife might serve as a lever in this matter." The following month, federal prosecutors began to present the espionage case to a grand jury in New York City, and immediately after testifying before the grand jury, Ethel Rosenberg was arrested as well.

On August 17, 1950, the federal grand jury for the Southern District of New York indicted Julius Rosenberg, Ethel Rosenberg, and Anatoli Yakovlev, who was no longer in the United States, charging them with conspiracy to spy for the Soviet Union in violation of the Espionage Act of 1917. Although the indictment defined the object of the conspiracy broadly as the transmission of information relating to the national defense of the United States, public statements by Hoover made clear that government prosecutors believed that the Rosenbergs conspired to give the Soviet Union secret information regarding the atomic bomb. The charge of conspiracy, rather than espionage, required the prosecution to prove a common plan among the defendants and at least one overt act in furtherance of that plan, but did not require proof that the defendants succeeded in transmitting classified information to the Soviets.

The day after the indictment of the Rosenbergs, the FBI arrested engineer Morton Sobell, Julius Rosenberg's college classmate and friend, on suspicion that he was a member of the espionage conspiracy. The grand jury soon added as defendants Sobell and David Greenglass, whose earlier indictment in New Mexico had been dismissed so that his case could be combined with those of the New York defendants. David Greenglass was the only defendant to plead guilty. Ruth Greenglass and Harry Gold had been named as co-conspirators in the original indictment but not charged. (Gold had pleaded guilty to espionage in federal court in Philadelphia.)

The trial

The trial of Julius Rosenberg, Ethel Rosenberg, and Morton Sobell opened on March 6, 1951, before Judge Irving Kaufman of the U.S. District Court for the Southern District of New York. Kaufman, a former federal prosecutor, had been on the bench less than two years, but already had a reputation as a staunch anti-Communist. A few months before the Rosenberg case, Kaufman presided over the trial of Abraham Brothman

and Miriam Moskowitz, Communists accused of conspiring to obstruct justice by convincing Harry Gold to lie to a federal grand jury investigating espionage in 1947. After the defendants were convicted, Kaufman gave them the maximum sentence, castigating them for attempting to “destroy” the United States. U.S. Attorney Irving Saypol, the chief prosecutor on the Brothman case and an assistant prosecutor in the Hiss and Dennis trials, headed up the Rosenberg prosecution. Emanuel Bloch, Julius Rosenberg’s attorney and the head of the defense team, was well known in New York City for working on behalf of a number of leftist causes and had represented Communists in other cases.

The prosecution’s case rested primarily on the testimony of four witnesses—David and Ruth Greenglass, Harry Gold, and Max Elitcher. Elitcher, a classmate of Julius Rosenberg and Morton Sobell at the City College of New York in the late 1930s, was the only witness to name Sobell as a member of the Rosenberg espionage ring. David and Ruth Greenglass provided the only testimony linking the Rosenbergs to espionage. Together they described a series of events that were at the center of the prosecution’s case. According to Ruth, the Rosenbergs in November 1944 asked her to visit David, who was stationed at Los Alamos, and to convince him to steal classified information about the atomic bomb program. Ruth said that she persuaded David to participate in the espionage scheme and that she returned to New York with the requested information. David claimed that he returned to New York City on furlough in January 1945, whereupon he gave Julius sketches he had drawn of high-explosive lens molds used in the atomic bomb, and he described his work at Los Alamos to an unnamed Russian to whom he had been introduced by Julius. The Greenglasses testified that in June 1945, by which time Ruth was living with David in New Mexico, they passed stolen information to a courier who arrived at their home and uttered the predetermined phrase, “I come from Julius.” Julius, they claimed, had set up the meeting in January. Julius had given Ruth half of a torn Jell-O box and promised that the courier would arrive bearing the matching half. Harry Gold, the courier in question, took the witness stand and corroborated the Greenglasses’ testimony.

In the most damaging account, David Greenglass testified that he returned to New York City on another furlough in September 1945 and gave Julius several pages of handwritten notes and sketches regarding the atomic bomb. When the prosecution introduced replicas of the notes and sketches, Bloch asked that the documents be “impounded” and that Judge Kaufman bar spectators and reporters from the courtroom while Greenglass testified about the material. Although Bloch was attempting to impress the jury with his and the defendants’ concern for national security, his request was seen by many observers—including the prosecutors, Sobell’s lawyers, and at least some of the jurors—as a major blunder that lent credibility to the prosecutors’ contention that the material in question did, in fact, contain “the secret of the atomic bomb.”

David and Ruth claimed that Ethel typed a copy of David's notes for delivery to the Soviets. Without this testimony, the prosecution would have had little evidence of Ethel's involvement in espionage beyond her supposed role in asking Ruth Greenglass to recruit her husband into the spy ring in November 1944. In his closing argument, Irving Saypol told the jury that Ethel "sat at that typewriter and struck the keys, blow by blow, against her own country in the interests of the Soviets."

The testimony that sealed Ethel Rosenberg's fate was almost certainly false. The Greenglasses made no mention of it in their initial confessions or in their subsequent interviews with the FBI, and Ruth did not bring it up in her testimony before the grand jury. It was not until shortly before trial, when Ruth still feared she would be indicted, that she first implicated Ethel in preparing the notes. David corroborated Ruth's testimony on this point, but admitted years later that he had done so only to protect his wife.

Upon the conclusion of the prosecution's case, Julius and Ethel Rosenberg took the stand to testify in their own defense. The Rosenbergs offered rote denials of the government's allegations, and when they were asked whether they were Communists, they invoked their Fifth Amendment right to refuse to answer. Julius, while proclaiming allegiance to the United States and respect for its system of justice, admitted that he admired the accomplishments of the Soviet Union and felt that it was primarily responsible for the defeat of the Nazis. The *New York Times* described Julius as "glib" and "self-assured" during direct examination but beset by "nervousness" and "hesitation" when cross-examined. Jurors later recalled the Rosenbergs as displaying no signs of emotion in court; one juror called Ethel Rosenberg "a steely, stony, tight-lipped woman."

The verdicts and sentences

After the three-week trial and eight hours of deliberation, the jury returned its verdicts on March 29, 1951, finding Julius Rosenberg, Ethel Rosenberg, and Morton Sobell guilty of conspiring to commit espionage for the benefit of the Soviet Union. Judge Kaufman told the jurors, "My own opinion is that your verdict is a correct verdict."

Prior to sentencing the defendants on April 5, Kaufman announced that because of the gravity of the case, he had not asked the prosecution for a sentencing recommendation, preferring to bear sole responsibility for his decision. Kaufman, however, had privately solicited the views of the prosecution, other judges, and Department of Justice officials. In his sentencing statement, Kaufman explained that the sentence was presented "in a unique framework of history" defined by democracy's "life and death struggle with a completely different system." He accused the Rosenbergs of trying to destroy the United States, characterizing their crime as "worse than murder." He also assigned them at least partial blame for the outbreak of the Korean War, "with the resultant casualties exceeding 50,000 and who knows but that millions more of

innocent people may pay the price of your treason.” Kaufman then sentenced Julius and Ethel Rosenberg to death, as authorized by the Espionage Act of 1917 in cases of wartime spying, and ordered that Morton Sobell spend thirty years in prison, the maximum term allowed under the statute. The following day, Kaufman sentenced David Greenglass to a reduced term of fifteen years in prison, citing his cooperation with the government.

The appeals

For more than two years after the sentencing, Julius and Ethel Rosenberg fought to avoid the electric chair. They appealed their conviction to the U.S. Court of Appeals for the Second Circuit and then to the Supreme Court of the United States. They returned to the district court to request a rehearing and a reduced sentence, and when those efforts failed they appealed again to the Court of Appeals, and on several occasions to the Supreme Court. They and other lawyers directly petitioned the Supreme Court for writs of habeas corpus and stays of their execution pending arguments on new appeals and new evidence. The Rosenbergs also petitioned President Harry Truman for executive clemency in January 1953. Truman left office later that month without acting on the petition, and his successor, Dwight Eisenhower, denied the request in February. Subsequent clemency petitions, one accompanied by a personal letter from Ethel Rosenberg, met with the same denial by Eisenhower.

In their appeals, motions, and petitions, the Rosenbergs and their lawyers argued at one point or another that both newspaper publicity and Judge Kaufman’s hostility toward the defendants had unfairly prejudiced the jurors; that the defendants were essentially being tried for treason without the constitutional protections guaranteed in treason prosecutions; that witnesses, including David Greenglass, committed perjury with the knowledge of the prosecutors; that the lead prosecutor was guilty of misconduct when he held a press conference announcing the indictment of a Rosenberg associate scheduled to give testimony; that the death penalty was cruel and unusual punishment because associates convicted of similar crimes received lighter sentences; that the prosecutors had violated the rules enforcing the constitutional right to cross-examine witnesses; and, in one of the last appeals, that the Rosenbergs should have been sentenced under a more recent act of Congress that required a jury recommendation for imposing the death penalty on defendants convicted of transmitting atomic secrets to a foreign nation.

The courts ordered several stays of execution to await further appeals or petitions, but none of the courts modified the sentences or ordered a new trial, and the Supreme Court never heard arguments on the Rosenbergs’ conviction. When asked to reduce their sentence to something less than death, Judge Kaufman refused and offered a strident defense of his decision. The Rosenbergs, he declared, “chose the path of traitors” and if ever released would resume their work for the Soviet Union;

they maintained “a devotion which has caused them to choose martyrdom and to keep their lips sealed.” “The fact that the acts of the defendants were not characterized as treason” did nothing to mitigate the enormity of their crime, which exposed “millions of their countrymen to danger or death.”

The failed appeals and the vehemence of Judge Kaufman obscured the doubts expressed by other judges and the inner deliberations of the courts. Justice Felix Frankfurter wrote in his private notes that the published record of the Rosenberg case in the Supreme Court “does not tell the story. Indeed, it distorts the story; it largely falsifies the true course of events.” Similar comments might have been offered about the district court and the court of appeals. In the court of appeals, Jerome Frank, who was among those counseling Kaufman not to impose the death penalty, noted that precedent prohibited the appeals court from revising a sentence, but he suggested that the Supreme Court might want to revisit that rule. Frank privately wrote a prominent law professor that the trial had been fair, but that the sentence was not justified. In response to the alleged misconduct of the prosecutor who had held a press conference to announce perjury charges against a witness, Judge Thomas Swan wrote for the court of appeals that the apparent conduct of the prosecutor was “highly reprehensible” and “cannot be too severely condemned,” but the court denied the defendants’ appeal in part because the defense lawyers had made no motion for a mistrial when the incident occurred in the midst of the trial. Other decisions denying the Rosenbergs’ appeals cited the defense lawyers’ failure to ask for a change of venue or a mistrial or to raise related objections during the trial.

The appeals process played out against the backdrop of continuing public interest in the case and the fate of the defendants. The Rosenberg trial attracted international attention, and the death sentences intensified the fervor surrounding the case. Many on the left, including intellectuals, artists, and writers, protested the death sentences and urged clemency based on the belief that the Rosenbergs were innocent victims of anti-Communist hysteria gripping the United States. Communists played a significant role in opposing the executions, but many others, especially clergy, fought for clemency because of religious and moral objections to the death penalty. In 1952, a reporter for the *National Guardian*, a left-wing New York City newspaper, led the creation of the National Committee to Secure Justice in the Rosenberg Case, which sought a new trial or clemency. Its members picketed the White House and emphasized that the Rosenbergs’ two young sons, Michael and Robert, would be orphaned if the death sentences were carried out. The Committee included both Communists and non-Communists, but its leadership maintained distance from the Communist Party USA in order to avoid alienating mainstream liberals.

By late spring of 1953, as opposition to the death sentences grew, many in the mainstream press and a number of government officials warned that the execution of the Rosenbergs might damage the international reputation of the United States in the Cold War battle for public opinion. The editorial writers for the *Washington Post*,

who considered the trial fair and the evidence of the Rosenbergs' guilt overwhelming, suggested "that the value of this case to the international Communist propaganda would have been far less if the milder penalty had been imposed." Still, the *Post* noted, "the unhappy truth is that whether the Rosenbergs live or die, Communist propaganda stands to benefit." The U.S. ambassador to France, C. Douglas Dillon, writing through the secretary of state, urged President Eisenhower to appraise the Rosenberg sentence "in terms of higher national interest" and warned of the "long term damage that execution of Rosenbergs would do to foreign opinion of US and of our whole democratic processes." Even the many French who accepted the guilt of the defendants, Dillon reported, "are overwhelmingly of [the] opinion" that the death penalty was unjustified.

Despite the large number of people who wanted to see the Rosenbergs spared, many Americans strongly favored the executions based on a deep-seated animus toward Communism and the belief that the Rosenbergs had brought the United States closer to nuclear devastation by delivering to the Soviets the key to the atomic bomb. Several members of Congress denounced Julius and Ethel as traitors who deserved the death penalty, and Representative W.M. Wheeler of Georgia sought to impeach Justice William O. Douglas after he granted the Rosenbergs a stay of execution. Douglas's chambers were also deluged by angry letters and telegrams, some of them from members of the military and their families.

The legal appeals in defense of the Rosenbergs culminated in the Supreme Court. In October 1952, the Supreme Court, by a vote of 5 to 3, denied a petition for certiorari in the appeal of the conviction, with Justices Hugo Black, Harold Burton, and Felix Frankfurter in dissent. Over the next eight months, Black consistently voted to hear arguments on the various appeals from the Rosenberg trial, and Frankfurter became convinced that public acceptance of the verdict in this highly publicized trial would depend on the Supreme Court's full review of the trial and conviction. The Court in November 1952 rejected a petition for a rehearing, and, after several shifts in the justices' votes in their private conference, the Court rejected another certiorari petition in May 1953. Although five justices had at one point or another agreed, in private conference or in recorded votes, to accept some sort of appeal from the Rosenbergs, at no point were there sufficient votes to accept a particular petition or appeal.

On June 17, 1953, two days before the rescheduled execution of the Rosenbergs and after the Supreme Court had adjourned for the summer, Justice Douglas, who until late May had voted to deny each Rosenberg appeal, granted a stay of execution to allow the lower courts to determine the validity of the new argument that Kaufman should have sentenced the Rosenbergs under the Atomic Energy Act of 1946, which required a jury recommendation for the death penalty. The evening before, Justice Robert Jackson arranged a meeting between Attorney General Herbert Brownell and Chief Justice Fred Vinson, who promised to call the full Court into session to vacate any stay from Douglas. The justices, some of whom had left for annual vacations,

returned to Washington and on June 18 heard arguments on a motion to vacate the stay. On June 19, by a vote of 6 to 3, the Supreme Court lifted the stay, and in a per curiam, or unsigned, opinion announced that “the question is not substantial” and “further proceedings to litigate it are unwarranted.”

Bloch made a final, futile appeal to Kaufman for a stay and to the president for clemency, but the Supreme Court decision to vacate Douglas’s stay cleared the way for the Rosenbergs’ execution, scheduled for that night at 11. In anticipation of the executions, thousands of people, some of them demonstrating in front of American embassies, rallied in support of the Rosenbergs in London, Paris, and other foreign cities as well as in the United States. After defense attorneys asked Judge Kaufman to prevent the executions from occurring on the Jewish Sabbath, which began at sundown, the judge ordered that the time be moved up to 8 p.m. On June 19, 1953, at 8:06 and 8:16 p.m., respectively, Julius and Ethel Rosenberg were pronounced dead in the electric chair at Sing Sing Prison in Ossining, New York. They were the only American citizens to be put to death for espionage.

In July 1953, the Supreme Court issued signed opinions explaining the decision of June 19. Chief Justice Vinson’s opinion for the Court majority cited no precedent or statutory authority for the unusual decision to vacate a justice’s stay before the lower courts heard related arguments. Frankfurter’s dissent acknowledged the apparent “pathetic futility” of an opinion released after the execution, but noted that “history also has its claims,” and “this case is an incident in the long and unending effort to develop and enforce justice according to the law.” “The fact that Congress and not the whim of the prosecutor fixes sentences,” Frankfurter concluded, demanded that the Supreme Court should have addressed the question of the proper sentencing statute, regardless of how late the question appeared in the appeals. Douglas agreed that “no man or woman should go to death under an unlawful sentence merely because his lawyer failed to raise the point.”

The aftermath and legacy

In the sixty years since Julius and Ethel Rosenberg died in the electric chair, their case has lived on in public memory as a landmark event in the Cold War. For decades following the trial, the memory of the Rosenberg case served as an ideological battleground for those who decried the criminal prosecutions resulting from the Red Scare and those who insisted that the government had acted appropriately in response to a grave threat to national security.

Numerous books on the Rosenbergs were published between the 1950s and the 1990s, many of which reflected particular views of the Cold War and the impact of anti-Communism on the United States in the 1950s. Among those arguing for the Rosenbergs’ innocence were their sons, Michael and Robert, who took the last name Meeropol after being adopted following their parents’ deaths. In the mid-1970s, the

brothers co-authored a book arguing that their parents had been framed, and they successfully sued the federal government for the release of FBI records relating to the case. But the end of the Cold War and public statements of other defendants shifted the terms of the debate to focus on the degree of Julius's culpability, the strategic value of the information he provided to the Soviets, and the justification for the death penalty.

In 1995, after the collapse of the Soviet Union, the U.S. National Security Agency released intercepted cables, which, along with declassified documents from the Soviet archives, confirmed that Julius Rosenberg did spy for the Soviets throughout the 1940s and was part of a larger spy ring within the United States. As many suspected given the paucity of the evidence against her, Ethel Rosenberg, while likely an accessory, was almost certainly not a spy. A Soviet cable from 1944 stated that Ethel was "sufficiently well developed politically" and that she knew about her husband's espionage activities, but noted, "in view of delicate health [she] does not work."

In 1960, David Greenglass was released from prison and rejoined his wife and children, who were living under assumed names. In 2001, Greenglass publicly admitted committing perjury on the stand in order to save Ruth from prosecution. Morton Sobell was released in 1969 and maintained his innocence until 2008, when he admitted in interviews that he had been a Soviet spy.

The iconic status of the Rosenberg case kept it alive in popular culture as well, through frequent references in music, novels, movies, plays, and television shows. Filmmaker Woody Allen, for example, had his character in the 1989 film *Crimes and Misdemeanors* proclaim of a loathed in-law, "I love him like a brother—David Greenglass." Playwright Tony Kushner's 1993 play *Angels in America* included scenes in which prosecutor Roy Cohn was haunted on his deathbed by the ghost of Ethel Rosenberg. In 2003, the fiftieth anniversary of the executions, Robert Meeropol published another book regarding the case, and the following year Michael Meeropol's daughter, Ivy, premiered her documentary film, *Heir to an Execution*. While the Meeropols acknowledged Julius's guilt, they and many other Americans continued to view the case—and Ethel Rosenberg's death in particular—as evidence of the nation's overreaction to the Communist threat.

The Federal Courts and Their Jurisdiction

U.S. District Court for the Southern District of New York

The Rosenberg trial took place in 1951 before Judge Irving Kaufman of the U.S. District Court for the Southern District of New York. After the defendants were convicted in a jury trial and sentenced by Judge Kaufman, the district court denied them posttrial relief four times between December 1952 and June 1953, declining to overturn or reduce their sentences and refusing to grant them a new trial.

The district courts were established by the Congress in the Judiciary Act of 1789, and they serve as the trial courts in each of the judicial districts of the federal judiciary. The U.S. District Court for the Southern District of New York was established in 1814, when Congress divided New York into two judicial districts. New York was subsequently divided into three and then four judicial districts, but the Southern District has always included Manhattan. The court's jurisdiction over the Rosenberg trial was based on the Espionage Act of 1917, a federal law making it a crime to conspire to transmit to a foreign power information relating to the national defense of the United States.

U.S. Court of Appeals for the Second Circuit

Julius Rosenberg, Ethel Rosenberg, and Morton Sobell appealed their convictions to the U.S. Court of Appeals for the Second Circuit. Their appeal was heard by a three-judge panel consisting of Jerome Frank, Thomas Swan, and Harrie Chase. In February 1952, the panel affirmed the convictions in an opinion authored by Judge Frank. In April, the court denied a rehearing of the appeal. The court of appeals also affirmed each of the district court's denials of posttrial relief and denied the defendants' motion for an order requiring the district court to modify their sentences.

The U.S. courts of appeals were established by Congress in 1891. A court of appeals in each of the regional judicial circuits was established to hear appeals from the federal trial courts, and the decisions of the courts of appeals are final in many categories of cases. The Second Circuit consists of New York, Vermont, and Connecticut, and the Second Circuit court of appeals has always met in Manhattan.

Supreme Court of the United States

The Supreme Court never reviewed the Rosenbergs' convictions, but it considered multiple petitions related to the case, and in the final hours before the executions the Court heard arguments about one justice's decision to grant a stay of execution. In

October 1952, the Supreme Court had voted 6 to 3 to deny the Rosenbergs' certiorari petition appealing their conviction. In November, the court denied their petition for a rehearing. In May, the Court denied a second certiorari petition, this one an appeal of the lower courts' rejection of the defendants' assertion of prosecutorial misconduct. In June, on the final day of the term, the Court denied a request for a stay, for hearing arguments on newly discovered evidence of perjury on the part of David Greenglass, and for rehearing the arguments on the rejected certiorari petition, and a majority of the justices also denied a petition for a writ of habeas corpus related to the evidence of perjury.

On June 17, 1953, after the Court had adjourned, Justice William Douglas exercised an authority available to individual justices and granted a stay of execution to allow the lower courts to consider whether the Atomic Energy Act of 1946, rather than the Espionage Act of 1917, should have governed the Rosenbergs' sentences. In an extraordinary special session two days later, the Supreme Court took the unprecedented step of vacating an individual justice's stay before the lower courts heard arguments on the question. The Court's decision, by a vote of 6 to 3, cleared the way for the Rosenbergs' executions that evening.

The Supreme Court was established by Article III of the Constitution, which granted the Court limited jurisdiction. The Constitution also authorized Congress to grant the Supreme Court jurisdiction over appeals, and Congress provided for various types of appeals from state and federal courts. The so-called Judges' Bill of 1925 fundamentally redefined the Supreme Court's role within the federal judiciary by repealing much of the mandatory jurisdiction of the Court. The act preserved an automatic right of appeal to the Supreme Court in a few types of cases, but in other areas cases would come to the Court only when the justices granted a writ of certiorari in response to a petition from a party in a case before a lower court.

The Judicial Process: A Chronology

July 17, 1950

Julius Rosenberg was arrested in New York City by the Federal Bureau of Investigation on suspicion of having conspired to commit espionage.

August 11, 1950

Immediately after testifying before a federal grand jury in New York City, Ethel Rosenberg was arrested by the FBI on suspicion of having conspired to commit espionage.

August 18, 1950

Morton Sobell, suspected of conspiring with the Rosenbergs to commit espionage, was arrested by the FBI in Laredo, Texas, and subsequently brought back to New York City.

January 31, 1951

The federal grand jury for the Southern District of New York issued its third and final indictment (the first two having been issued in August and October 1950), charging Julius and Ethel Rosenberg, Morton Sobell, David Greenglass, and Anatoli Yakovlev with conspiracy to commit espionage during wartime on behalf of the Soviet Union in violation of the Espionage Act of 1917.

February 2, 1951

Julius and Ethel Rosenberg and Morton Sobell pleaded not guilty, while David Greenglass pleaded guilty. Anatoli Yakovlev was no longer in the United States.

March 6, 1951

The trial of Julius Rosenberg, Ethel Rosenberg, and Morton Sobell began in the U.S. District Court for the Southern District of New York before Judge Irving R. Kaufman.

March 29, 1951

The jury found all three defendants guilty of conspiracy to commit espionage for the Soviet Union.

The Rosenberg Trial

April 5, 1951

Judge Kaufman sentenced Julius and Ethel Rosenberg to death and Morton Sobell to thirty years in prison.

April 6, 1951

Judge Kaufman sentenced David Greenglass to fifteen years in prison.

February 25, 1952

The U.S. Court of Appeals for the Second Circuit affirmed the Rosenbergs' convictions.

October 13, 1952

The Supreme Court declined to hear the case, denying the Rosenbergs' petition for certiorari.

December 10, 1952

Judge Sylvester Ryan of the district court denied the Rosenbergs' motion that their sentences be overturned.

December 31, 1952

The court of appeals affirmed Judge Ryan's December 10 decision declining to overturn the Rosenbergs' sentences.

January 2, 1953

Judge Kaufman denied the Rosenbergs' motion that their sentences be reduced from death to imprisonment.

February 11, 1953

President Dwight Eisenhower denied the Rosenbergs' petition for executive clemency.

May 25, 1953

The Supreme Court again denied the Rosenbergs' petition for certiorari.

June 1, 1953

Judge Kaufman denied the Rosenbergs' motion to reduce their sentences from death to twenty years' imprisonment.

June 2, 1953

The court of appeals denied the Rosenbergs' request that it order Judge Kaufman to resentence them to twenty years' imprisonment.

June 5, 1953

The court of appeals affirmed Judge Kaufman's June 1 refusal to reduce the Rosenbergs' sentences.

June 8, 1953

Judge Kaufman denied the Rosenbergs' motion for a new trial.

June 11, 1953

The court of appeals affirmed Judge Kaufman's June 8 decision denying a new trial.

June 15, 1953

The Supreme Court denied the Rosenbergs' petition for rehearing, their petition for a stay of execution, which had been presented to Justice Robert Jackson, and their petition for a writ of habeas corpus.

June 17, 1953

Supreme Court Justice William Douglas granted the Rosenbergs a stay of execution.

June 19, 1953

The Supreme Court lifted the stay of execution issued by Justice Douglas. After Judge Kaufman denied a further stay of execution and President Eisenhower rejected a final appeal for clemency, Julius and Ethel Rosenberg were put to death.

Legal Questions Before the Federal Courts

Were the defendants guilty of conspiring to commit espionage to aid the Soviet Union by providing it, during wartime, with classified information regarding the national defense of the United States?

Yes, the jury found Julius Rosenberg, Ethel Rosenberg, and Morton Sobell guilty of violating the Espionage Act by conspiring to pass classified defense information, including material related to the atomic bomb, to the Soviet Union.

In order to prove a conspiracy under the Espionage Act, the government was required to establish the existence of a common plan among the defendants to transmit to a foreign nation classified information relating to the national defense of the United States, with the intent of advantaging that foreign nation, and at least one overt act in furtherance of that plan. The jury agreed with the prosecution's contention that the Rosenbergs and Sobell collaborated on a plan to pass stolen defense secrets to the Soviet Union and that they committed several overt acts to further that plan. Sobell was not named in the indictment as committing any of the specific overt acts, but under the law of conspiracy an overt act by any one defendant was sufficient for the conviction of all defendants. The prosecution argued further that the defendants' Communist affiliations and admiration for the Soviet Union were evidence that they acted with the intent of advantaging that nation, as prohibited by the statute.

On appeal, Sobell's lawyers argued that the main conspiracy was aimed at transmitting secrets about the atomic bomb, and that Sobell, who was not linked to atomic espionage, should have been charged with a separate conspiracy with Julius Rosenberg to transmit non-atomic defense information. The U.S. Court of Appeals for the Second Circuit rejected this contention by a vote of 2 to 1, with Judge Jerome Frank casting the dissenting vote to grant Sobell a new trial.

Did the prosecution deprive the defendants of a fair trial by knowingly using perjured testimony from David Greenglass?

No, according to both the district court and the court of appeals, the testimony of David Greenglass was properly admitted into evidence.

The defense claimed on appeal that David Greenglass had committed perjury. The court of appeals, while acknowledging that "if that testimony were disregard-

ed, the conviction could not stand,” held that it is “the jury’s province,” not that of the court, “to consider the credibility of witnesses or the reliability of testimony.” Moreover, the appellate court pointed out, Judge Kaufman had instructed the jury to view with caution the testimony of witnesses who, like Greenglass, had admitted to participating in espionage.

In a subsequent petition to the district court to overturn their sentences, the defendants further claimed that Greenglass lied on the stand, and that the prosecution had presented his testimony with knowledge that it was false. First, the defense alleged that Greenglass lied when he testified that he had made a full statement to the FBI on the night of his arrest, and that in fact his initial statement was inconsistent with his subsequent testimony. District Judge Sylvester Ryan ruled that because the defense neither attempted to use Greenglass’s initial statement when cross-examining him nor asked for it to be entered into evidence, the court was not obligated to conduct a postconviction review of the statement to see if it was consistent with Greenglass’s trial testimony. Next, the defense submitted affidavits from physicists expressing doubt that Greenglass could have reproduced from memory the sketches he made at trial to illustrate the information he provided to Julius Rosenberg. Judge Ryan found no factual basis for concluding that Greenglass had committed perjury or that the government knew his testimony to be false. Judge Ryan ruled that he could not consider the opinions of experts who had not seen the witness testify. The court of appeals affirmed Judge Ryan’s ruling, echoing his statement that only the jury was capable of evaluating Greenglass’s credibility as a witness.

Did the admission of evidence of the defendants’ admiration for the Soviet Union and membership in the Communist Party deprive them of a fair trial?

No, according to the court of appeals, the defendants were not unfairly prejudiced by references to their admiration for the Soviet government and to their membership in the American Communist Party.

While admitting that such evidence could be “highly inflammatory in a jury trial,” the court of appeals nevertheless held that it was properly admitted. Evidence of sympathy for the Soviet Union, while not constituting proof of espionage, was relevant to the defendants’ possible motive for spying. As the court noted, membership in the Communist Party would not have been relevant to the defendants’ motive without evidence tying American Communists to the Soviet Union, but the prosecution presented testimony that the American Communist Party was part of the Communist International and took orders from the Soviet Union. The appellate court acknowledged that Judge Kaufman’s instruction to the jury that the defendants were not on trial for being Communists might have constituted “an empty ritual,”

but explained that the defendants could have opted for a nonjury trial in order to avoid the risk of prejudice.

Did the behavior of Judge Kaufman deprive the defendants of a fair trial?

No, according to the court of appeals, the judge's behavior "stayed well inside the discretion allowed him." Moreover, the court of appeals decided, the defendants' claim on appeal of improper and prejudicial behavior by the judge was "not compatible" with the defense counsel's statements during the trial that the judge had behaved fairly and properly.

The defendants claimed that Judge Kaufman improperly questioned the witnesses, reinforced the prosecutors' arguments, dismissed arguments of the defense counsel, and protected the credibility of witnesses testifying against the defendants. The court of appeals reviewed over one hundred incidents of allegedly unfair behavior by the judge. The court of appeals panel concluded that "in general, we can find no purpose in the judge's questioning except that of clarification. If, with that purpose, he gave witnesses who had contradicted themselves a chance to resolve that conflict, and took away defendants' temporary advantage with the jury, it was an unavoidable incident of his unchallenged power to bring out the facts of the case."

Did publicity before and during the trial create an environment in which the defendants could not receive a fair trial?

No, according to both the district court and the court of appeals, the defendants were not unfairly prejudiced by newspaper coverage of the case.

In their petition to the district court to nullify their sentences, the defendants for the first time raised the argument that media coverage of the case was sufficiently extensive and inflammatory to make impossible the selection of an impartial jury or the conduct of a fair trial.

Judge Ryan of the district court found the pretrial newspaper coverage "negligible" and, in reviewing stories published during the trial, found "nothing of an unusual or inflammatory character," but rather "a fair response to a legitimate public interest in a matter of vital concern to all—the atom bomb and atomic energy and the hope for its employment for the benefit and not the destruction of mankind." The judge also noted the defendants' failure to request that the trial be delayed or moved to another court, both of which were common remedies for adverse pretrial publicity. Finally, the attorneys for the defendants did not object to the jury after it was selected and

did not use all of the challenges to prospective jurors to which they were entitled. The court of appeals affirmed the district court's ruling on this issue.

Did a press conference given by U.S. Attorney Irving Saypol, in the midst of the trial, regarding the arrest for perjury of an associate of Julius Rosenberg and Morton Sobell, deprive the defendants of a fair trial?

No, according to both the district court and the court of appeals, the defendants were not unfairly prejudiced by Saypol's statements. Although the court of appeals called Saypol's conduct "highly reprehensible," it agreed with the district court that the defendants' failure to request a mistrial at the time barred them from obtaining relief later.

The defendants argued that the chief prosecutor had acted improperly by announcing to the press, during the trial, the indictment and arrest for perjury of William Perl, a Columbia University physics instructor. Perl had been arrested for lying to the grand jury after he falsely claimed not to know Julius Rosenberg and Morton Sobell. In announcing the indictment, Saypol told the press that Perl had been listed as a trial witness and that his intended role was to corroborate the testimony of David and Ruth Greenglass.

Perl was arrested on the evening of the day Ruth Greenglass took the witness stand, and the defense complained to trial judge Irving Kaufman that Saypol had timed the arrest and indictment to bring about negative publicity for Rosenberg and Sobell. If members of the jury heard about Perl, they could have inferred that had he testified at trial, he would have identified Rosenberg and Sobell as spies. The defense did not request that Kaufman grant a mistrial, however, after Saypol assured the court that the timing of the indictment was not intended to affect the Rosenberg trial.

Later, in asking the district court to overturn their sentences, the defendants argued that Saypol's failure to bring Perl to trial by late 1952 proved that he had sought the indictment of Perl with the sole aim of affecting the Rosenberg case. Judge Sylvester Ryan, however, accepted Saypol's explanation that he had not yet tried Perl for fear that his trial would lead to disclosures that could affect other cases. In any event, the judge ruled, the defense's failure to ask for a mistrial barred them from complaining about Saypol's actions later. The court of appeals affirmed Ryan's decision on the same grounds, despite condemning Saypol's conduct.

Did the Rosenbergs' death sentences violate the constitutional ban on cruel and unusual punishment?

No, according to the court of appeals, the trial judge acted within his discretion when he sentenced Julius and Ethel Rosenberg to death.

In their appeal, the Rosenbergs claimed that although the Espionage Act authorized a death sentence for wartime spying, the particular circumstances of their case made such a punishment cruel and unusual in violation of the Eighth Amendment. Specifically, the Rosenbergs pointed out that they had no prior criminal history, had not acted out of greed, and were accused of conspiring to pass information not to an enemy nation, but to a wartime ally. Furthermore, other wartime spies were sentenced to prison or avoided punishment entirely, and no civil court had ever imposed a death sentence in an espionage case. The court of appeals held that it had no power to modify a sentence allowed by a statute that had not been found unconstitutional. Judge Jerome Frank, who authored the opinion, added on his own behalf that even if a statutorily authorized punishment could be cruel and unusual, a death sentence in this case was not a punishment that “shocks the conscience and sense of justice of the people of the United States.” This was especially true, wrote Judge Frank, because the espionage conspiracy had lasted beyond the time when the Soviet Union was an ally and into the Cold War, when hostility between the United States and the Soviet Union had become readily apparent.

Should the defendants have been sentenced under the Atomic Energy Act of 1946 rather than the Espionage Act of 1917?

No, according to the Supreme Court, the defendants were properly charged and sentenced under the Espionage Act.

Only in the final week of their appeals did lawyers for the defendants raise the claim that they had been sentenced under the wrong statute. Attorneys who did not formally represent the Rosenbergs raised the issue on June 16, 1953, three days before the Rosenbergs were put to death, in petitioning Supreme Court Justice William Douglas for a stay of execution. These lawyers claimed that the Atomic Energy Act of 1946 had superseded the Espionage Act of 1917 with respect to conduct covered by both laws and did not allow a court to impose a death sentence for espionage without the recommendation of the jury and proof that the espionage had been committed with the intent to injure the United States. The prosecutors' decision to charge the defendants under the Espionage Act was not binding on the trial court, which was responsible for deciding points of law.

Justice Douglas, believing the petition to have raised a substantial question, granted the stay on June 17 with the intent that the issue be resolved by the district court and then the court of appeals. In his decision, Douglas cited the fact that the alleged conspiracy did not end until several years after the passage of the Atomic Energy Act as well as the Act's purpose of ameliorating the penalties for atomic espionage. The attorney general requested that the stay be vacated, and the Supreme Court held oral argument on June 18. The full Court, by a vote of 6 to 3, vacated the stay the next day, noting in the majority's brief written opinion that "the question is not substantial" and "further proceedings to litigate it are unwarranted" because the latter statute had not repealed or limited the prior one in any way. The following month, Chief Justice Fred Vinson authored a longer opinion for the majority, explaining why the Court resolved the matter itself rather than allowing the case to return to the lower courts. Justices Douglas, Hugo Black, and Felix Frankfurter filed dissenting opinions. Explaining that when two statutes covered the criminal conduct in question, a court was obligated to apply the one with the lesser penalty, Douglas insisted, "I know deep in my heart that I am right on the law."

Did the Supreme Court have the power to vacate the stay of execution issued by Justice Douglas?

Yes, according to the Supreme Court, the stay was properly vacated.

The Supreme Court had never before vacated a stay granted by an individual justice, but the Court held that to do so was nevertheless permissible and was proper under the circumstances of this case. The sole reason for the stay was to preserve the opportunity to resolve the underlying issue raised by the petition—in this instance, the applicability of the Atomic Energy Act of 1946 to the defendants. Because the question presented was strictly legal and did not require findings of fact, which would have been the province of the district court, the Supreme Court held that it was competent to resolve the issue immediately without adding months to the process by allowing the case to return to the district court and then the court of appeals. Chief Justice Vinson also wrote that the Supreme Court's responsibility to supervise the administration of justice in the federal courts included a "duty to see that the laws are not only enforced by fair proceedings, but also that the punishments prescribed by the laws are enforced with a reasonable degree of promptness and certainty." In their separate dissents, Justices Black and Frankfurter decried the haste of the Court in vacating the stay.

Legal Arguments in Court

The attorneys for the U.S. government

U.S. Attorney Irving Saypol and assistant U.S. attorneys Myles Lane, Roy Cohn, John Foley, James Kilsheimer, and James Branigan argued that:

1. The defendants—Julius Rosenberg, Ethel Rosenberg, and Morton Sobell—in addition to David Greenglass (who had pleaded guilty), Ruth Greenglass (who was not indicted), Harry Gold (who had pleaded guilty and been sentenced), and Anatoli Yakovlev (who had left the United States), engaged in a conspiracy to violate the Espionage Act of 1917.
2. The members of the conspiracy shared a common purpose to violate the statute by transmitting to the Soviet Union information related to the national defense of the United States. The prosecution defined the object of the conspiracy broadly, without reference to the atomic bomb, in order to include Morton Sobell, who was not linked to atomic espionage.
3. The members of the conspiracy were motivated by their belief in Communism, which led them to devote themselves to the welfare of the Soviet Union above that of the United States; as a result, they acted with the intent of advantaging a foreign nation, as prohibited by the statute.
4. The members of the conspiracy committed several overt acts in furtherance of their common purpose, including traveling, holding meetings, and receiving and transmitting information. It was not necessary for the government to prove overt acts with respect to all defendants; under the law of conspiracy, proof of one overt act on the part of one member was sufficient.
5. The conspiracy, which began in 1944, existed during wartime, making the defendants eligible for the death penalty under the statute. It did not matter that the United States and the Soviet Union were allies in World War II, because the law made no reference to the status of the foreign nation to which information was transmitted.

The attorneys for the defendants

Emanuel and Alexander Bloch, the attorneys for Julius and Ethel Rosenberg, and Harold Phillips and Edward Kuntz, the attorneys for Morton Sobell, argued that:

1. None of the documentary evidence introduced by the prosecution—such as the replicas of sketches and descriptions of the atomic bomb David Greenglass made—tied the Rosenbergs to espionage.
2. David and Ruth Greenglass, on whose testimony the entire case against Julius and Ethel Rosenberg depended, committed perjury so that David would receive a lighter sentence and Ruth would avoid prosecution. The Rosenbergs were easy targets for the Greenglasses to implicate because of their alleged Communist ties and pro-Soviet views. The Greenglasses were further motivated to accuse the Rosenbergs by business disputes between David Greenglass and Julius Rosenberg.
3. The defendants' alleged Communist beliefs and membership in the Communist Party USA were irrelevant to the case, as well as unduly prejudicial, and did not constitute proof that they had ever conspired to engage in espionage.
4. Harry Gold, a key figure in the alleged conspiracy, did not know the Rosenbergs and had no dealings with them.
5. Morton Sobell was not mentioned in any of the overt acts listed in the indictment. The only witness against him was Max Elitcher, who was not credible because he was attempting to avoid prosecution for having falsely taken an oath that he was not a member of the Communist Party.
6. Elitcher's claim that Julius Rosenberg first approached him regarding espionage was not believable because Rosenberg had not seen Elitcher for many years prior to the alleged conversation, and it would have made more sense for Sobell, a close friend of Elitcher's, to have approached him initially.
7. When Sobell traveled to Mexico in June 1950 after the arrest of David Greenglass, he flew under his own name and rented an apartment using his own name, only later using aliases, weakening the government's claim that he was attempting to avoid prosecution.

Biographies

Communist Party USA

When Julius Rosenberg, Ethel Rosenberg, and Morton Sobell went on trial in 1951, the United States was firmly in the grip of the Red Scare, and many Americans believed all Communists to be subversives bent on the overthrow of the United States government. American Communists had not always been so stigmatized, however. As recently as the 1930s, the Communist Party USA had worked alongside other liberal groups on a variety of causes.

Founded in 1919, the Communist Party USA remained small and isolated during its first decade of existence. During the Great Depression, however, the party began to make serious efforts to organize workers, and its membership grew as its center shifted from Chicago to New York City. Between 1935 and 1939, on orders from Moscow, the party followed a Popular Front strategy, downplaying revolutionary rhetoric in favor of patriotic language and attempting to forge bonds with mainstream progressive institutions. Communists became deeply involved in the organized labor movement and worked with many of the unions making up the newly formed Congress of Industrial Organizations. The party also championed racial equality, making civil rights a major part of its agenda, and expressed support for many aspects of the New Deal. As would be revealed in documents released after the collapse of the Soviet Union, the Communist Party USA helped to establish an extensive network of Soviet spies, including Julius Rosenberg, in the 1930s and 1940s.

The Nazi–Soviet nonaggression pact of 1939 made it untenable for American Communists to continue their Popular Front strategy, and the party dissolved during World War II. Although the party reconstituted after the war to continue to press for domestic reforms, it was already doomed, and the Soviet Union’s change in status from wartime ally to Cold War enemy ensured the party’s demise. In 1947, President Harry Truman’s Federal Employee Loyalty Program began a purge of Communists from the ranks of government, and the attorney general published a list of subversive organizations that included the Communist Party and other groups believed to be Communist “fronts.”

In 1948, eleven leaders of the Communist Party USA were arrested and charged with conspiring to violate the Smith Act, a federal law making it a crime to advocate the violent overthrow of the U.S. government. The government alleged, in essence, that the party itself constituted a criminal conspiracy because the Marxist doctrine it espoused advocated the overthrow of existing governments in order to bring about Communism. The defendants were convicted, and the Supreme Court’s upholding of the convictions in 1951 was followed by a wave of Smith Act prosecutions of Communist Party leaders that did not end until 1957, when the Court modified its

stance, holding that criminalizing mere advocacy, unconnected to action, violated the First Amendment.

As a result of both international and domestic developments, the Communist Party USA had by the early 1950s been stripped of influence and legitimacy, its leaders branded as criminals, and its members deeply stigmatized. The party was never again able to participate in mainstream liberal causes and found itself consigned permanently to the margins of American politics.

The defendants

Julius Rosenberg

Julius Rosenberg was propelled to worldwide notoriety when he and his wife, Ethel, were arrested and charged with conspiracy to commit espionage on behalf of the Soviet Union. After his death, his name became virtually synonymous with Cold War threats of Communist subversion and atomic warfare between the Soviet Union and the United States.

Rosenberg was born on May 12, 1918, into a poor family of Eastern European Jewish immigrants living on New York City's Lower East Side. While attending the City College of New York, he organized the school's chapter of the Young Communist League. After graduating with a degree in electrical engineering in 1939—the same year, according to the FBI, he joined the Communist Party—he married Ethel Greenglass, who had attended the same high school as Julius but was three years older. Julius and Ethel had two sons, Michael and Robert, who were born in 1943 and 1947, respectively.

In 1940, Julius began work as an engineer in a civilian position with the U.S. Army Signal Corps, a job from which he was dismissed in 1945 on the grounds that he had concealed his membership in the Communist Party. His firing from the Signal Corps occurred after the FBI sent U.S. Army Intelligence evidence of his party membership. Moreover, FBI informants who had infiltrated the party reported that Julius and his wife were active members in the 1940s. After his dismissal, Rosenberg opened a small machine shop with his brother-in-law David Greenglass, who had just finished a tour of duty in the army, and they remained in business together until 1949.

Julius, whom the Soviets code-named “Antenna” and later, “Liberal,” had been a Soviet spy since 1941, leading a small espionage cell consisting of four other engineers, all of whom were Communists. The group at first focused primarily on obtaining classified information regarding radio engineering and aviation, and by 1942, its Soviet supervisors considered it to be productive. Between 1944 and 1945, Rosenberg contributed to Soviet efforts to steal information from the American atomic bomb project at Los Alamos, New Mexico. After his dismissal from the Signal Corps in 1945, the Soviets instructed him to keep a low profile and cease his supervisory activities,

but by 1946 or 1947, he had resumed an active role in espionage.

Observers at the Rosenbergs' conspiracy trial described Julius as maintaining a calm demeanor and displaying virtually no emotion, even when he and his wife were sentenced to death. After the sentencing, however, guards at the prison where the Rosenbergs were held reported that the couple sang to each other from their adjoining cells. In the two years between sentencing and execution, Julius wrote Ethel a large number of letters declaring his love for

her and his anguish at being separated from her and their sons. Julius's letters also expressed anger at what he claimed was persecution by the government and bias on the part of the press. Ethel was not the only intended audience for these complaints; to gain support for the clemency movement, some of the Rosenbergs' letters were published in the *National Guardian* and, shortly before their deaths, in book form.

Evidence made public after the fall of the Soviet Union—including Soviet intelligence cables the United States intercepted and decrypted during World War II as part of the Venona project—proved that Rosenberg had spied for the Soviets. The notion that Rosenberg gave the Soviets “the secret of the atomic bomb”—as the prosecution claimed and for which Judge Kaufman imposed the death penalty—did not stand the test of time, having been discredited years later by leading atomic scientists, who stated that the atomic information Julius passed to the Soviets was of little value.

Ethel Rosenberg

Ethel Rosenberg, born Ethel Greenglass, was accused of conspiring with her husband Julius to commit atomic espionage on behalf of the Soviet Union and was executed along with him in 1953. The evidence against her at trial consisted solely of the



Julius and Ethel Rosenberg are taken from the courthouse after being found guilty

New York World-Telegram and the Sun Newspaper Photograph Collection
Prints and Photographs Division, Library of Congress [LC-USZ62-117772]

testimony of her brother and sister-in-law, David and Ruth Greenglass, that she had participated in a few conversations and typed notes about the atomic bomb. Crucial elements of that testimony were later revealed to have been fabricated. Government documents released years after the trial suggested that Ethel was prosecuted mainly so that Julius would feel pressured to inform on other spies. A memo written by FBI Director J. Edgar Hoover proposed using Ethel as part of a “lever strategy,” and Assistant U.S. Attorney Myles Lane told the Joint Congressional Committee on Atomic Energy that convicting Ethel would help to “break” Julius and convince him to talk.

Like her husband, Ethel Rosenberg came from a family of Jewish immigrants living on New York City’s Lower East Side. She was born on September 28, 1915, to a Russian father and an Austrian mother. After high school, she found a job as a clerk for a shipping company, from which she was fired four years later after organizing a strike among female employees. Ethel also took instruction in stenography and typing, and later studied voice, modern dance, and child psychology. She and Julius married in 1939, and the couple had two sons, Michael and Robert. Ethel was a devoted adherent to Communist ideology, and, according to FBI informants, a member of the Communist Party USA. At her trial for conspiracy to commit espionage, she described herself as a housewife.

Ethel struck many observers at her trial to be the most calm and self-assured of any of the defendants, and as seeming to be almost contemptuous of the proceedings. She displayed no emotion when her brother, David Greenglass, testified against her, or when Judge Irving Kaufman sentenced her to death. One juror later described her as “a steely, stony, tight-lipped woman.” Ethel’s resolve, which she displayed by keeping her composure on the way to the electric chair, led many, including President Eisenhower, to assume that she was the driving force behind the espionage conspiracy and was in control of her younger husband. While Ethel maintained a stoic demeanor in public settings, her prison letters to Julius were, like his, full of emotion, including avowals of love for him and longing for a reunion between the couple and their sons.

In 1995, the National Security Agency released translations of Soviet intelligence cables that the United States intercepted and decrypted during World War II as part of the Venona project. One such cable, dated November 27, 1944, mentioned Ethel by name and stated, “Knows about her husband’s work. . . . In view of delicate health does not work.”

Morton Sobell

Morton Sobell, Julius Rosenberg’s college classmate and fellow Communist, was the least prominent defendant in the Rosenberg espionage case. Recruited by Rosenberg to spy for the Soviet Union, Sobell helped to provide the Soviets with non-atomic military secrets.

Sobell was born on April 11, 1917, to an immigrant family in New York City. He attended City College of New York, where he joined the Young Communist League, and graduated in 1938. After working as an engineer in the Navy Bureau of Ordnance in Washington, D.C., from 1939 to 1941, Sobell earned a master's degree in electrical engineering from the University of Michigan in 1942. While in Washington,



Morton Sobell (left) is escorted into federal court by a U.S. marshal

Acme Newspictures photo, New York World-Telegraph and the Sun
Newspaper Photograph Collection

Prints and Photographs Division, Library of Congress [LC-USZ62-123563]

he was a member of the Communist Party USA, but dropped out prior to World War II. During the war, he worked in the aircraft and marine engineering division of General Electric in Schenectady, New York. Prior to his arrest, Sobell was working as a radar engineer at the Reeves Instrument Corporation in New York City. He lived in Queens with his wife Helen, whom he married in 1947, and their two children.

On June 21, 1950, five days after the arrest of David Greenglass, Sobell and his family abruptly

left for Mexico. The trip was supposedly a vacation, but the government alleged that Sobell was seeking to escape arrest and prosecution by fleeing to the Soviet Union, supporting the claim with evidence that he had used aliases when checking into hotels in Mexico City. On August 18, Mexican authorities seized him and drove him across the border, delivering him to agents of the Federal Bureau of Investigation in Laredo, Texas. Sobell, accompanied by U.S. marshals, was promptly flown back to New York City and later indicted on charges of participating in the Rosenberg espionage conspiracy.

Based on the testimony of one witness, Max Elitcher, and evidence regarding his flight to Mexico, Sobell was convicted. On the advice of his attorney, who felt that the trip to Mexico would be difficult to explain, Sobell declined to testify at the trial. Because he was not accused of conspiring to disclose secrets regarding the atomic bomb, he was spared the death penalty and instead sentenced to thirty years in prison. After the Rosenbergs were executed, many involved in the campaign to

win them clemency initiated an effort to clear Morton Sobell and have him released from prison. Although he was not exonerated, Sobell was released in January 1969 after serving more than seventeen years of his sentence.

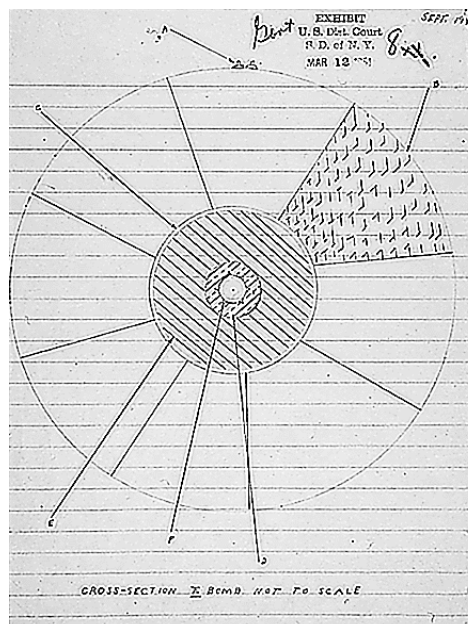
Sobell maintained his innocence after his incarceration, claiming that he had fled to Mexico only to escape persecution for his previous membership in the Communist Party and for having falsely taken an oath that he had never been a Communist in order to obtain employment with the government. In 1974, he published a book, *On Doing Time*, in which he again insisted that neither he nor the Rosenbergs had ever engaged in espionage. In interviews published in 2008 and 2010, however, Sobell admitted that he and Julius had spied for the Soviets, and he provided details of their activities.

The witnesses

David Greenglass

David Greenglass, who spied for the Soviet Union while a U.S. Army soldier stationed at the atomic research facility at Los Alamos, New Mexico, implicated his sister, Ethel Rosenberg, and her husband, Julius, in the espionage conspiracy. After his release from prison, he lived anonymously, as his wife and children had already begun to do, in order to escape the notoriety he earned through his activities as a Communist spy and his role in sending the Rosenbergs to the electric chair.

Greenglass was born on March 3, 1922, and grew up on New York City's Lower East Side. He looked up to his older sister and her then-boyfriend, and later claimed that his "hero worship" of Julius had led him to embrace Communism and to join the Young Communist League at age sixteen. In 1942, David married Ruth Printz, with whom he later had a son and a daughter. After attending several technical schools and beginning work as a machinist in New York, Greenglass was inducted into the U.S. Army as a private in April 1943. He worked as a machinist for the Army at various locations throughout the United States until being assigned in August 1944 to the Manhattan Project at Los Alamos. From 1944 to 1945, David used his position to gather classified information



Cross-section of atomic bomb drawn by David Greenglass for use at trial and impounded at request of Emanuel Bloch

National Archives

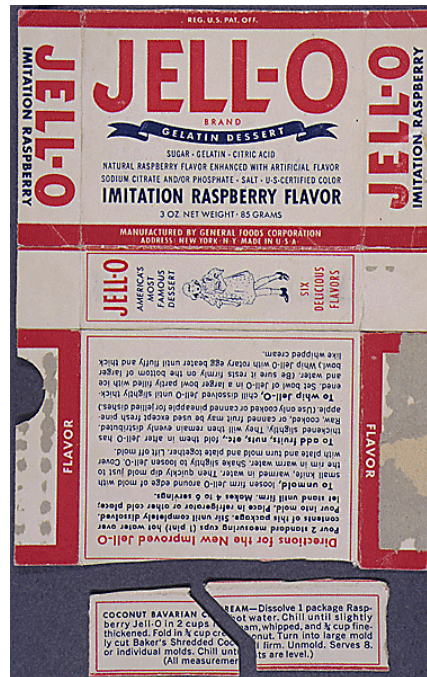
from the facility for transmission to the Soviets. The letters David wrote to Ruth during his Army service revealed that he continued to embrace Communist ideals and followed the fortunes of the Communist Party USA with avid interest. Moreover, soldiers with whom David served remembered him as continually engaging in heated political rants in which he espoused left-wing ideals and praised the Soviet Union, making his Communist sympathies abundantly clear.

After his discharge from the Army as a sergeant in February 1946, Greenglass returned to New York, where he and Julius went into business, opening a machine shop. The business was not very successful, and in 1949 Greenglass obtained a new job with an engineering corporation. In February 1950, after atomic scientist Klaus Fuchs was arrested for spying for the Soviets, Julius warned David to leave the United States, but he declined. As Rosenberg had feared, Fuchs' arrest led the authorities to courier Harry Gold, who in turn identified Greenglass as a spy who had stolen classified material from Los Alamos. Greenglass quickly confessed, implicating his brother-in-law and sister as the primary figures in the espionage ring.

Citing David's cooperation, Judge Irving Kaufman sentenced him to only fifteen years in prison. Ruth Greenglass, who also confessed to espionage and testified against the Rosenbergs, was not indicted. David Greenglass claimed later that Assistant Attorney General James McInerney had promised his lawyers that he would receive a suspended sentence or, at most, five years in prison, but there is no known record of such a pledge. Released on parole in 1960, David Greenglass rejoined Ruth and their two children, who were living under assumed names. In 2001, Greenglass admitted that he lied on the stand when he claimed that Ethel Rosenberg had typed notes relating to the atomic bomb—the testimony most responsible for her conviction and death sentence. As of 2013, David Greenglass continued to live in the New York metropolitan area under his assumed name.

Ruth Greenglass

Ruth Greenglass, born Ruth Printz, was the wife of David Greenglass and the sister-in-law of Julius and Ethel Rosenberg. Although the government named her as a



Jell-O box used at trial to demonstrate recognition signal used by David Greenglass and Harry Gold

National Archives

member of the conspiracy to commit espionage for the Soviet Union, she avoided prosecution by joining her husband in testifying against Julius and Ethel. Her trial testimony, which David corroborated, contributed significantly to the Rosenbergs' convictions and death sentences.

Born on April 30, 1924, Ruth was the oldest of four children. Like her husband and the Rosenbergs, she grew up on the Lower East Side of New York City, and she and David Greenglass, whom she married in 1942, were childhood sweethearts. Like her husband, Ruth believed strongly in Communist ideology and was at one time a member of the Young Communist League, serving briefly as president of a local club. A Soviet agent reported in September 1944 that Julius and Ethel Rosenberg recommended Ruth "as an intelligent and clever girl" who was among recent recruits. The agent added that Ruth's husband was working on the atomic energy project in New Mexico.

Prior to their arrests for conspiracy, Julius Rosenberg had urged David Greenglass to flee the country. Greenglass was reluctant to do so in any case, but when Ruth was badly burned in a household accident in February 1950, requiring her to be hospitalized for several months while pregnant with her second child, flight became impossible.

When David was arrested a few months later, he revealed that Ruth had been involved in the espionage conspiracy as well. Although there is no known record of a formal deal with the government, David hoped that Ruth could avoid indictment if the couple cooperated with the authorities.

At the time of the trial, Ruth was working as a stenographer for Louis Lefkowitz, a Republican assemblyman who later became the state attorney general. In 1956, she was fired from her job with Assemblyman Lefkowitz as a result of publicity surrounding David's testimony before Congress on the subject of Communist subversion. Although she soon found work elsewhere, the incident motivated Ruth to change the family surname.

Ruth's most significant contribution to the Rosenberg trial was her testimony that Ethel Rosenberg had typed notes about the atomic bomb for transmission to the Soviets. Without this testimony, which David corroborated, the government's evidence



David and Ruth Greenglass

National Archives

of Ethel's direct participation in espionage would have been almost nonexistent. FBI documents declassified in the 1980s as well as Ruth's grand jury testimony, released in 2008, made clear that Ruth made this allegation only very shortly before trial, when it was still uncertain whether or not she would be indicted. David Greenglass admitted in 2001 that he had no recollection of Ethel's typing and had lied to protect Ruth.

Ruth Greenglass continued to live in the New York area under her assumed name until she died on April 7, 2008, at the age of eighty-three. Her death was made public in June of that year when the federal government agreed to release the grand jury testimony of consenting or deceased witnesses.

Harry Gold

Harry Gold, born Heinrich Golodnitsky, was a biochemist from Philadelphia who spied for the Soviets on and off from 1936 until his arrest in 1950. Gold was not a Communist, but admired the Soviet Union and began his spying career by committing industrial espionage in order to aid that nation's development. Only later did Gold begin to steal military secrets from the United States government. In the postwar period, Gold acted mainly as a courier, ferrying information from atomic scientist Klaus Fuchs to Soviet spy handler Anatoli Yakovlev. In 1947, he was subpoenaed, along with his employer, engineer Abraham Brothman, to testify before a federal grand jury investigating espionage, but Gold was not indicted. Although he never met the Rosenbergs, Gold became a crucial link in the chain that ultimately led to their arrests.

Gold was born on December 12, 1910, in Berne, Switzerland, to Russian parents. He and his family came to the United States in 1914 and eventually obtained American citizenship, after which the family name was changed to Gold, and he became known as Harry. After graduating from South Philadelphia High School in 1928, Gold worked on and off at the Pennsylvania Sugar Company between 1929 and 1946. He also pursued higher education, attending the University of Pennsylvania, earning an undergraduate degree in chemical engineering from Drexel University in Philadelphia in 1932, and earning a Bachelor of Science degree from Xavier University in Cincinnati in 1940. At the time of his arrest for espionage on May 23, 1950, he worked as a biochemist at a Philadelphia hospital.



Harry Gold
National Archives

Gold confessed to espionage and identified David Greenglass as a spy that had passed him classified information from Los Alamos, resulting in the arrest of Greenglass followed by those of the Rosenbergs. After pleading guilty in the U.S. District Court for the Eastern District of Pennsylvania, Gold was sentenced to thirty years in prison—five more than the government had requested—by Judge James McGranery, who resigned in 1952 to become the attorney general of the United States. Gold was paroled in 1966, after which he worked at John F. Kennedy Memorial Hospital in Philadelphia, doing research on heart ailments. He died on August 28, 1972, while undergoing a heart operation at the hospital where he worked. His death was not announced publicly until 1974, after it was discovered by the producer of a television documentary on the Rosenberg case.

The lawyers

Irving Saypol

Irving Saypol, the U.S. attorney for the Southern District of New York, was the chief prosecutor on the Rosenberg case. His aggressive handling of the case, combined with a penchant for seeking publicity, won him popular acclaim and helped propel him to a state judgeship shortly after the trial.

Saypol was born September 3, 1905, and like the Rosenbergs, came from New York City's Lower East Side. After attending New York City public schools, he studied at St. Lawrence University and Brooklyn Law School and was admitted to the bar in 1928. He first worked in the office of the city's corporation counsel, which he left to found his own law firm in 1934. In 1945, Saypol began work at the U.S. attorney's office in Manhattan, and he served as the U.S. attorney for the Southern District of New York from 1949 to 1951.

Working as chief federal prosecutor for the Southern District of New York, which included Manhattan, during the height of the Cold War, Saypol built his reputation on cases involving Communists, including the leaders of the Communist Party USA. Next to the Rosenberg case, the most prominent was the perjury case against Alger Hiss, the State Department official convicted of lying about having leaked government secrets to the Soviets through admitted spy Whittaker Chambers.

In November 1951, Saypol was elected to a fourteen-year term as a justice of the Supreme Court of the State of New York, the state's second-highest court; he was reelected in 1965, having enjoyed bipartisan support in both elections. In 1976, he was accused of using his power to appoint lawyers to court assignments to benefit his son financially, and was indicted by a grand jury on bribery and perjury charges. The charges against him were dismissed in January 1977. On July 1 of that year, Saypol died at the age of 71, only a few months before he was scheduled to retire from the bench.

Roy Cohn

Roy Cohn, an assistant U.S. attorney, was perhaps the only participant in the Rosenberg trial who became known primarily in connection with events unrelated to the case. Cohn's most significant contribution to the trial was his direct examination of key witness David Greenglass, which produced testimony devastating to Julius and Ethel Rosenberg. Two years later, Cohn embarked on the most memorable phase of his career, serving as chief counsel to Senator Joseph McCarthy in his investigations into alleged Communist subversion of the federal government.

Cohn was born February 20, 1927, in New York City, and grew up in Manhattan. His father, Albert, was a justice of the Supreme Court of the State of New York, the



Roy Cohn

New York World-Telegraph and the Sun Newspaper
Photograph Collection
Prints and Photographs Division, Library of Congress
[LC-USZ62-117816]

state's second-highest court, and a prominent member of the Democratic Party. The family's political connections allowed Cohn to secure a job with the U.S. attorney's office in the Southern District of New York at the age of twenty-one, after graduating from Columbia Law School at twenty. He quickly rose to prominence in the office, specializing in prosecutions of individuals charged with subversive activities and working on several important cases. In 1950, U.S. Attorney Irving Saypol made Cohn his confidential assistant. Cohn's participation in the Rosenberg trial brought him further attention, and in 1952, he became a special assistant to U.S. Attorney General James McGranery.

Once in Washington, Cohn developed a reputation as a staunch anti-Communist, leading Senator McCarthy to appoint him chief counsel to his Senate investigations subcommittee in 1953. McCarthy,

Cohn, and Cohn's friend David Schine teamed up to conduct aggressive investigations of the State Department and other government agencies, looking for Communist infiltration. After Schine was drafted into the Army, Cohn's alleged efforts to secure

special treatment for him led to formal charges against both McCarthy and Cohn. Although the two were cleared, the televised Army–McCarthy hearings of 1954 that resulted from the charges contributed heavily to McCarthy’s eventual loss of credibility and influence.

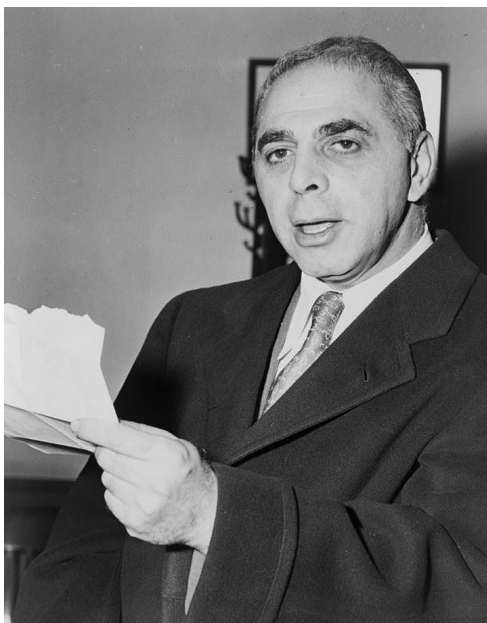
After leaving McCarthy’s subcommittee in 1954, Cohn returned to New York City and began the private practice of law. He was extremely successful, possessing a roster of high-profile clients, and building a reputation as a tough and brilliant litigator. Despite his professional success, Cohn found himself beset by legal troubles, including frequent IRS audits, liens for millions of dollars in back taxes, and federal charges including conspiracy, bribery, and fraud, of which he was acquitted in separate trials in 1964, 1969, and 1971. Cohn attributed his brushes with the law to vendettas on the part of his enemies, most notably U.S. Attorney General Robert Kennedy and Robert Morgenthau, the U.S. attorney for the Southern District of New York.

After several accusations of unethical conduct as an attorney, Cohn was disbarred by the state of New York in June 1986. Already gravely ill by the time of his disbarment, Cohn died at age fifty-nine on August 2, 1986, while receiving treatment at the National Institutes of Health in Bethesda, Maryland.

Emanuel Bloch

Emanuel Bloch, who defended the Rosenbergs at trial along with his father and law partner, Alexander, was hailed for his exhaustive efforts to defend his clients and save them from the death penalty, but also criticized for several crucial errors that may have hurt the Rosenbergs’ already slim chances of acquittal, retrial, or a reduced sentence.

Immediately after Julius Rosenberg was arrested in July 1950, he retained the services of Bloch, a Manhattan lawyer with a good reputation who had defended Communists and other leftists. Shortly before the Rosenberg case, Bloch had represented some of the “Trenton Six”—a group of African American youths accused of killing an elderly shopkeeper; students at the City College of New York who were arrested while demonstrating against two professors accused of anti-Semitism and



Emanuel Bloch

United Press photo, New York World-Telegraph and the Sun Newspaper Photograph Collection
Prints and Photographs Division, Library of Congress [LC-USZ62-118203]

racial discrimination; and William Rosen, who was sentenced to prison after refusing to answer questions before the federal grand jury investigating the Alger Hiss perjury case. Based on Bloch's association with the left-wing National Lawyers Guild, as well as tips from informants, the FBI believed Bloch to be a Communist, and J. Edgar Hoover suggested that the Bureau open an investigative file on him at the conclusion of the Rosenberg case.

Throughout the trial and the more than two years of appeals that followed it, Emanuel Bloch spared no energy in attempting to rescue Julius and Ethel Rosenberg from the electric chair. He raised a multitude of arguments in the district court, court of appeals, and Supreme Court, and sought executive clemency from Presidents Harry Truman and Dwight Eisenhower. Bloch continued to seek stays of execution until the last possible moment, and after the Rosenbergs were executed, he played a major role in seeing to the welfare of the couple's sons, Michael and Robert, acting as a temporary guardian and helping to arrange their adoption. In the trial, however, Bloch failed to offer many of the challenges that might have been the basis for successful appeals and motions for rehearings.

At the funeral of Julius and Ethel Rosenberg on June 21, 1953, Emanuel Bloch accused President Eisenhower, U.S. Attorney General Herbert Brownell, Jr., and Federal Bureau of Investigation head J. Edgar Hoover of "the murder of the Rosenbergs." As a result of his remarks, the New York City bar association sought the revocation of his law license. On January 30, 1954, eight days after being served with the complaint, Bloch died in his New York City apartment at the age of fifty-two.

The jurists

Irving Kaufman

Judge Irving Kaufman, despite a distinguished career of nearly forty-three years on the federal bench, was best known as the man who sentenced Julius and Ethel Rosenberg to die in the electric chair. In the decades following the trial, he was the subject of intense criticism from those who doubted the Rosenbergs' guilt as well as from those who believed the Rosenbergs to be guilty but viewed their sentences as unduly harsh. To others Kaufman was a brave defender of judicial independence. When President Reagan awarded Kaufman the Presidential Medal of Freedom in 1987, he referred to the "international campaign to thwart the course of justice in the Rosenberg espionage case" and to Kaufman's "noble and heroic work" in "protecting the courts from political pressures."

Kaufman already had a reputation as a staunch anti-Communist judge by the time of the Rosenberg trial, and his hostility toward the defendants was particularly evident in his sentencing statement, which characterized the Rosenbergs as traitors

whose crime was worse than murder. The appeals court found nothing in Judge Kaufman's conduct on the bench that would justify overturning the verdict, but the court dismissed some of the most serious charges against Kaufman because the defense lawyers had not adequately challenged those actions during the trial. Unbeknownst to the defense lawyers, Kaufman had consulted with the prosecution and officials in the Justice Department during the trial and the appeals process. Judge Kaufman did make public his personal struggle with the sentencing decision. The day after he delivered the death sentences, the *New York Times* reported that Kaufman had slept only "a bit more than ten hours" during the preceding week, and that "several times he went to his synagogue seeking spiritual guidance." But Kaufman expressed no regrets after imposing the death sentence. In his decision denying the Rosenbergs' motion for a reduced sentence, Kaufman used even stronger language in condemning their crime as "traitorous acts . . . of the highest degree." The death penalty in espionage cases was based on the recognized need to deter others, a deterrent all the more "vital in the world in which we live, infiltrated as we are by the home grown and foreign variety of spies."



Judge Irving R. Kaufman

Associated Press photo, New York World-Telegraph
and the Sun Newspaper Photograph Collection
Prints and Photographs Division, Library of
Congress [LC-USZ-117761]

Kaufman was born on June 24, 1910, in New York City and attended high school in the Bronx. After obtaining his law degree from Fordham University at age twenty, he alternated work in the private and government sectors. He began at the New York City law office of his future father-in-law, departing three years later for the U.S. attorney's office in the Southern District of New York, where he remained from 1935 to 1940. After another stint in private practice, Kaufman served as a special assistant to the U.S. attorney general from 1947 to 1948. The following year, President Harry Truman appointed him a judge of the U.S. District Court for the Southern District of New York.

To Kaufman's dismay, the Rosenbergs' deaths in June 1953 became the most prominent aspect of his judicial career, despite the many other significant cases he handled, including his issuance in 1961 of the first order desegregating a public

school in the North. Later in 1961, President John F. Kennedy appointed him to the U.S. Court of Appeals for the Second Circuit, and Kaufman served on the appellate court until his death on February 1, 1992. He was chief judge from 1973 to 1980, and took senior status, or semi-retirement, in 1987. While on the appeals court, he wrote several important opinions, including some that expanded First Amendment rights for journalists. In 1971, in *United States v. New York Times*, Kaufman dissented from the appellate court's decision that publication of the Pentagon Papers could be restrained in the name of national security. The Supreme Court agreed with Kaufman's position, reversing the decision.

Jerome Frank

Jerome New Frank, a judge on the U.S. Court of Appeals for the Second Circuit, which sat in New York City, wrote the opinion in February 1952 affirming the convictions of Julius and Ethel Rosenberg and Morton Sobell. In reviewing the case as part of a three-judge panel, Frank rejected each of the Rosenbergs' arguments on appeal. Frank denied that the death penalty imposed on the Rosenbergs was cruel and unusual punishment, but privately he had advised Judge Kaufman not to sentence the Rosenbergs to death. In his opinion, he also suggested that the Supreme Court might want to revisit the questions about the death penalty for crimes similar to treason. Frank dissented from his two colleagues by voting to grant Morton Sobell a new trial. The jury, according to Frank, should have been permitted to decide whether Sobell had joined the other conspirators in their plan to send atomic information from Los Alamos to the Soviets, or had merely engaged in a separate, less significant conspiracy with Julius Rosenberg to transmit non-atomic information.

Frank was born on September 10, 1889, in New York City. After his family moved to Chicago when he was seven years old, Frank attended the city's public schools, the University of Chicago, and the University of Chicago Law School, from which he graduated in 1912 with the highest grades in school history. After stretches in private practice in Chicago and New York, Frank moved into government service after the election of Franklin D. Roosevelt as president in 1932, and Frank soon became



Judge Jerome N. Frank
Harris & Ewing Collection
Prints and Photographs Division, Library of
Congress [LC-DIG-hec-26352]

an ardent New Dealer. Between 1933 and 1941, he served as general counsel of the Agricultural Adjustment Administration, as special counsel to the Reconstruction Finance Corporation, and as both commissioner and chair of the Securities and Exchange Commission.

In 1941, Roosevelt appointed Frank to the court of appeals, where he remained until his death. As an appellate jurist, Frank became known as a staunch protector of civil liberties, and influenced the Supreme Court—both through his written opinions and his personal interactions with justices—to expand civil liberties protections as well. He was also a prolific writer, authoring several books on legal philosophy. His most influential book, *Law and the Modern Mind* (1930), made him a pioneer of the legal realism movement. Frank died at the age of sixty-seven on January 13, 1957, in New Haven, Connecticut.

William O. Douglas

William O. Douglas was the longest-serving justice in the history of the Supreme Court of the United States, sitting on the nation's highest court from 1939 until his retirement in 1975. The Rosenberg case became one of the more prominent episodes in his long judicial career when he granted Julius and Ethel Rosenberg a stay of execution on June 17, 1953, two days before they were put to death in the electric chair. Douglas faced enormous public criticism for the stay and for his published dissent asserting that the law should have prohibited the death sentence unless it was recommended by a jury. Douglas also faced harsh, though private, criticism from other justices for his shifting and seemingly inconsistent votes on the multiple petitions from the Rosenbergs. Douglas voted to deny the first petition for certiorari, the petition for a rehearing, and, initially, the second petition for certiorari. After changing his vote on the second petition, he denied a petition for oral arguments on a stay related to the discovery of new evidence. Douglas's fierce rivalry with his



Justice William O. Douglas

Harris & Ewing Collection
Prints and Photographs Division, Library of Congress
[LC-USZ62-44543]

colleagues, particularly Robert Jackson and Felix Frankfurter, complicated the already difficult conference discussions on the Rosenbergs' appeals.

Born on October 16, 1898, in Maine, Minnesota, the son of a Presbyterian minister, Douglas spent most of his early life in the state of Washington. He moved to New York City in 1922 to study at Columbia Law School, from which he graduated second in his class. After a short stint in private practice with a major Wall Street firm, Douglas embarked on an academic career, teaching at Columbia and Yale Law Schools.

In 1934, Douglas entered government service with the newly formed Securities and Exchange Commission and soon found himself a close confidant of President Franklin D. Roosevelt. By 1937, he had been named chairman of the SEC. Two years later, upon the resignation from the Supreme Court of Justice Louis Brandeis, Roosevelt nominated Douglas to fill the position. Douglas took his seat on the Court on April 17, 1939, at the age of forty, becoming the youngest justice since Joseph Story was appointed in 1811.

As a justice, Douglas was known as a fierce protector of individual liberty, especially regarding freedom of expression. In the 1950s, he decried what he felt were witch hunts for domestic Communists. He dissented from the Supreme Court's 1951 ruling in *Dennis v. United States* upholding the speech-based convictions of Communist leaders for conspiracy to overthrow the government, and from another ruling upholding a New York law requiring the firing of schoolteachers belonging to organizations the state board of regents deemed subversive.

Douglas retired from the Court in November 1975 because of health problems, and he died in Washington, D.C., on January 19, 1980, at the age of eighty-one.

Felix Frankfurter

Felix Frankfurter served as an associate justice of the Supreme Court of the United States from 1939 to 1962. Throughout the Supreme Court's deliberations on the various petitions from the Rosenbergs, Frankfurter consistently voted to hear arguments on the case. As in many other cases, Frankfurter was concerned with the public image of the Court and in maintaining public confidence in the judicial process. In the final proceeding in the case before the Supreme Court, Frankfurter joined William Douglas and Hugo Black in dissenting from the Court's ruling that lifted the stay of execution Douglas had granted the Rosenbergs. Frankfurter believed that the questions regarding the sentencing provisions of the Atomic Espionage Act were too complex to be resolved without more time for consideration. Three years later, Frankfurter wrote the recently appointed Justice John Marshall Harlan that "the Rosenberg case is the most disgusting, saddest, despicable episode in the Court's history in my lifetime."

Frankfurter was born on November 15, 1882, to a Jewish family in Vienna, Austria. His family immigrated to the United States in 1894 and settled on New York City's

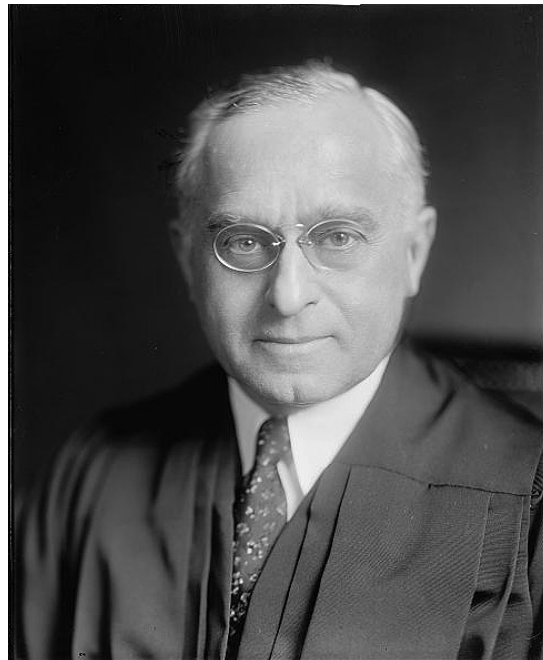
Lower East Side. Frankfurter graduated from the College of the City of New York in 1902, and shortly thereafter entered Harvard Law School.

After law school and a short stint in private practice, Frankfurter served as an assistant U.S. attorney in the Southern District of New York under U.S. Attorney Henry Stimson. When Stimson was named secretary of war, he put Frankfurter in charge of the Bureau of Insular Affairs, which oversaw United States territories.

In 1914, Frankfurter was appointed the first Jewish professor at Harvard Law School and became one of the nation's leading legal scholars. He placed many of his students as law clerks to Supreme Court justices. He also participated in progressive causes, most notably by advocating a new trial for condemned Italian anarchists Nicola Sacco and Bartolomeo Vanzetti. Frankfurter frequently worked with the federal government during the New Deal, helping to draft legislation, including the Securities Act, the Social Security Act, the Revenue Act, and the Fair Labor Standards Act.

In 1939, Franklin Roosevelt nominated Frankfurter to replace Justice Benjamin Cardozo on the Supreme Court. Like many Progressives who came of age in the early twentieth century, Frankfurter believed in a kind of judicial restraint through which courts deferred to elected legislatures. This restraint often separated him from other Supreme Court justices in the years after the Second World War when the Court was more active in protecting civil liberties and defending federal authority. Frankfurter was a critic of the death penalty and believed the Supreme Court should accept any petition appealing a federal death sentence.

Throughout his tenure on the Supreme Court, Frankfurter frequently clashed with other strong-willed justices, and was particularly critical of Douglas and Black, even though he joined them in dissent in the Rosenberg case. Frankfurter retired from the Court in 1962, and died three years later, on February 22, 1965, in Washington, D.C.



Justice Felix Frankfurter

Harris & Ewing Collection

Prints and Photographs Division, Library of Congress

[LC-DIG-hec-21701]

Media Coverage and Public Debates

Media coverage of the Rosenberg case was powerfully shaped by the Cold War atmosphere in which the trial took place. Much of the foundation for the public's perception of the Rosenbergs was laid before most Americans had even heard their names. Newspapers in the years leading up to the Rosenbergs' arrests reported heavily on the Soviet Union's efforts to expand its influence in Eastern Europe and its acquisition of the atomic bomb, as well as the arrests and prosecutions of domestic Communists for advocating the overthrow of the United States government. The notion of Communists as spies was also a familiar subject of press coverage, as exemplified by the Alger Hiss perjury case.

When the Soviets conducted their first successful test of the bomb in August 1949, many Americans were shocked to find that the United States had lost its atomic monopoly. A *New York Times* headline read, "Soviet Achievement Ahead of Predictions by 3 Years," and the accompanying column warned that the Soviet Union might soon have a stockpile of bombs sufficient "to destroy fifty of our cities with 40,000,000 of our population." The following day, a headline in the *Los Angeles Times* proclaimed, "Russ Bomb Threat to Life of West." In February 1950, four months before Julius Rosenberg was arrested, newspapers reported the arrest of atomic scientist Klaus Fuchs for passing information about the bomb to the Soviets. The *Times* reported that Fuchs had possessed "vital" data about the bomb and that some members of the Joint Congressional Committee on Atomic Energy believed that he was responsible for the Soviets acquiring the bomb earlier than expected. The revelation of atomic espionage following the detonation of a Soviet bomb fueled anxieties over the threat to national security posed by Communist subversion.

In the midst of the Red Scare, with widespread sympathy unlikely for Communists suspected of atomic espionage, the media presented the case to the public in a light favorable to the prosecution and detrimental to the Rosenbergs. Newspaper stories often relied on Department of Justice or FBI press releases for the bulk of their source material, and sensational headlines referring to the Rosenbergs as alleged "atom spies" accused of aiding and abetting a "Soviet ring" helped to foster a public perception that they were dangerous traitors bent on helping a bitter enemy to destroy the United States.

After Judge Irving Kaufman sentenced Julius and Ethel Rosenberg to death in April 1951, most mass-circulation newspapers reported the news without editorial comment, and none announced themselves opposed to the sentences. In August, however, the *National Guardian*, a left-wing New York City paper, began a vigorous campaign to exonerate the Rosenbergs, claiming that they had been the victims of a government frame-up. The *Guardian's* advocacy helped to spark an international movement on the Rosenbergs' behalf, and led to the formation of the National

Committee to Secure Justice in the Rosenberg Case. The view of the case presented by the *Guardian* and the movement it helped to inspire were at first ignored by the mainstream press in the United States.

While the Rosenberg case was on appeal, frequent coverage of the nuclear arms race and its potential impact on national security continued. In late April 1951, for example, the *New York Times* reported on a statement by the New York City Civil Defense Office asserting that New York City was “considered by competent authorities to be the country’s atomic target No. 1.” In June, the *Times* printed Governor Thomas Dewey’s urging that preparations be made “as though the atom bomb were expected to fall on us tomorrow.”

In 1952, mainstream American newspapers began to take notice of the growing international movement on behalf of the Rosenbergs, and their coverage equated the movement with Communism and anti-Americanism—the approach taken in a six-part series that ran in the *New York Post* in December 1952 and another series of equal length written by syndicated columnist Bob Considine in January 1953. In February, a *New York Times* story headlined, “Rosenbergs Used in ‘Hate U.S.’ Drive” referenced “daily reports of [pro-Rosenberg] rallies in the Communist press.” Even as the movement grew within the United States during 1953, the media continued to portray it as distant and Communist-controlled.

Press coverage of the Rosenbergs in Western Europe had a flavor substantially different from that in the United States. This was especially true in France, where by 1952 newspapers of all ideological stripes opposed the pending executions. Public opinion in France grew so heated that in December 1952, American press attaché Ben Bradlee, later the editor of the *Washington Post*, was sent from Paris to New York to read the trial transcript and draft a report on the case for distribution to the French media. The report mitigated some of the fiercest hostility to the United States, but deep opposition remained. Some American commentators were critical of the sympathy for the Rosenbergs exhibited by the foreign press; for example, a *Washington Post* editorial accused Paris daily *Le Monde* of having been hoaxed into joining an anti-American propaganda campaign.

American newspapers continued to stress the intertwining of the pro-Rosenberg movement with Communism. A *New York Times* article that ran the day after the Rosenbergs were executed emphasized Communist involvement in the previous day’s protests in England, France, and Italy, and described the efforts of media outlets in Soviet satellite states to publicize the Rosenbergs’ deaths for propaganda purposes. The following day, the paper ran an Associated Press report on the efforts of American officials to counter Communist propaganda. The report asserted that “the Communists have tried unceasingly to make the case a cause célèbre in the cold war” while making only brief references to appeals for clemency that had come from non-Communists.

Throughout the posttrial proceedings, members of Congress carefully monitored coverage of the case, and many senators and representatives read into the *Congressional Record* editorials from papers in their home states condemning the Rosenbergs and praising the prosecutors and Judge Kaufman. The *Chicago Daily News* was the only major mainstream American newspaper to advocate clemency for the Rosenbergs, and in the wake of the executions, several papers ran editorials in support of the government's handling of the case. Ten days after the Rosenbergs' deaths, defense attorney Emanuel Bloch penned an angry editorial in the *National Guardian* accusing the press of a "conspiracy of silence" regarding the case. "Our great newspapers," he wrote, "which during the trial, had seized eagerly upon every propaganda release of the prosecution, closed their pages to all news about the victims. From the Government's point of view, and the point of view of its ally the press, the Rosenbergs were as good as dead."

Historical Documents

Emanuel Bloch, closing argument for the defense, March 28, 1951

Aware of the political climate of the early 1950s and concerned that his clients would suffer prejudice as a result of their being Communists, defense attorney Emanuel Bloch began his closing argument by urging the jurors to ignore the Rosenbergs' political beliefs and focus solely on the factual allegations against them.

[Document Source: *United States v. Rosenberg, et al.*, Stenographer's Minutes, pp. 2168–71.]

The fear that an impartial jury could not be secured was particularly important in this type of case. Now, all of you are New Yorkers or you come from the environs of New York. We are a pretty sophisticated people. People can't put things over on us very easily. We are fairly wise in the ways of the world and the ways of people and we all know that there is not a person in this world who hasn't some prejudice, and you would be inhuman if you didn't have some prejudice. But we ask you now as we asked you before, please don't decide this case because you may have some bias or some prejudice against some political philosophy.

I think by the time we get through here and by the time the Court charges you, you will find out as you have been told repeatedly that these defendants are being charged with conspiracy to commit espionage. This is a very, very serious crime, one of the most serious crimes that we know under our law. They are not charged with being Communists, because if they were charged with being Communists they would not be defending themselves against the indictment in this case. It would be an entirely different indictment. They would be charged with different acts.

...

If you want to convict these defendants because you think that they are Communists and you don't like Communism and you don't like any member of the Communist Party, then, ladies and gentlemen, I can sit down now and there is absolutely no use in my talking. There was no use in going through this whole rigmarole of a three weeks' trial. That is not the crime. . . .

Now, I said we are sophisticated New Yorkers and we can use our common sense and our understanding of the political climate of our times. We know that there is a great tension now in the world. We know that there is great tension by reason of the differences between this country and the Soviet Union. We know that Communism is being attacked repeatedly here in the United States as a doctrine which is inimical

to the interest of the United States. But believe me, ladies and gentlemen, I am not here; other defense counsel are not here as attorneys for the Communist Party and we are not here as attorneys for the Soviet Union. I can only speak for myself and my father. We are here representing Julius and Ethel Rosenberg, two American citizens, who come to you as American citizens, charged with a specific crime, and ask you to judge them the way that you would want to be judged if you were sitting over there before 12 other jurors.

I say that because unless you keep your minds open and your minds should be open even at this time, although you should have done a lot of thinking about the case up to this point, unless you do that, then there is a farcical trial.

Irving Saypol, closing argument for the government, March 28, 1951

U.S. Attorney Irving Saypol devoted most of his closing argument to a methodical recounting of the evidence against each defendant, but also stressed the importance of the defendants' Communist affiliations as relevant to their motive to spy on behalf of the Soviet Union. Although the government was not required to prove that the Soviet Union was a hostile nation in order to obtain a conviction under the Espionage Act, Saypol emphasized the tension between the Soviet Union and the United States in order to impress upon the jurors the seriousness of the charges and to diminish any sympathy they may have felt for the defendants.

[Document Source: *United States v. Rosenberg, et al.*, Stenographer's Minutes, pp. 2266–2313]

Ladies and gentlemen, you have heard statements of defense counsel here concerning the injection of Communism in this case. I repeat again, these defendants are not on trial for being Communists. I don't want you to convict them merely because of their Communist activity.

Communism, as the testimony has demonstrated, has a very definite place in this case because it is the Communist ideology which teaches worship and devotion to the Soviet Union over our own government. It has provided the motive and inspiration for these people to do the terrible things which have been proven against them. It is this adherence and devotion which makes clear their intent and motivation in carrying out this conspiracy to commit espionage.

We ask you to sustain the charge of the grand jury in a verdict of guilty against each of these three defendants, on one basis and one basis alone: the evidence produced in this courtroom as to their guilt of the crime of conspiracy to commit espionage; that proof as to each defendant has been overwhelming. The guilt of each one has been established beyond any peradventure of doubt.

The crime charged here is one of the most serious that could be committed against the United States of America. These defendants before you were parties to an agreement to spy and steal from their own country, to serve the interests of a foreign power which today seeks to wipe us off the face of the earth. It would use the produce of these defendants, the information received through them, from these traitors, to destroy Americans and the people of the United Nations.

These three defendants stand before you in the face of overwhelming proof of this terrible disloyalty, proof which transcends any emotional consideration which must eliminate any consideration of sympathy.

No defendants ever stood before the bar of American justice less deserving of sympathy than these three.

Judge Irving Kaufman, charge to the jury, March 28, 1951

In his instructions to the jury, Judge Kaufman emphasized that evidence about the defendants' ties to Communism was introduced for the purpose of establishing a motive for espionage, and not to incriminate them based on their political beliefs. The defendants later challenged the use of such evidence as prejudicial, but the U.S. Court of Appeals for the Second Circuit held that Kaufman had acted appropriately in allowing it. Kaufman's statement to the jury regarding the importance of enforcing laws against espionage because of international tension and the development of the atomic bomb was also challenged on appeal as implying that to acquit the defendants would be a dereliction of the jurors' patriotic duty, but the court of appeals found nothing improper about the statement. Kaufman reminded the jurors that they were not to consider the fact that the death penalty could apply in the event of a conviction.

[Document Source: *United States v. Rosenberg, et al.*, Stenographer's Minutes, pp. 2325–67.]

The defendants are accused of having conspired to commit espionage. Espionage, reduced to essentials, means spying on the United States to aid a foreign power. Because of the development of highly destructive weapons and their highly guarded possession by nations existing in a state of tension with one another, the enforcement of the espionage laws takes on a new significance. Our national well-being requires that we guard against spying on the secrets of our defense, whether such spying is carried on through agents of foreign powers or through our own nationals who prefer to help a foreign power.

This does not mean that the mere allegation or use of the word “espionage” should justify convicting innocent persons; however, irrational sympathies must not shield proven traitors.

...

Now I wish to instruct you at this point that I have admitted testimony as to membership or activity in the Communist Party and also testimony to the effect that the Communist Party is dedicated to furthering the interests of the Union of Soviet Socialist Republics solely on the question of the defendants' intent or reason to believe that the alleged secret information to be transmitted would be used to the advantage of a foreign nation, in this case the Union of Soviet Socialist Republics, which is an element of the charge that the Government must prove beyond a reasonable doubt.

I wish to caution you most strenuously that proof of Communist Party membership or activity does not prove the offense charged in this indictment, but may be considered by you solely on the question of intent which is one element of the crime charged here. It will be up to you to determine whether you believe that testimony and, if so, the weight that you will give it on the question of intention.

...

You are instructed that the question of possible punishment of the defendants in the event of conviction is no concern of the jury, and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. You cannot allow a consideration of the punishment which may be inflicted upon the defendants to influence your verdict in any way; the desire to avoid the performance of an unpleasant task cannot influence your verdict.

Judge Irving Kaufman, sentencing of Julius and Ethel Rosenberg, April 5, 1951

Judge Kaufman's personal feelings about the Rosenberg case became apparent when he sentenced the couple to death. Reflecting the beliefs of many Americans in the 1950s, Kaufman described the Soviet Union as an evil nation bent on the total destruction of the United States. Although the Espionage Act made no distinction between friendly and hostile foreign powers, Kaufman's explanation of his decision to apply the death penalty rested heavily on what he viewed as the existential threat posed by the Soviet Union. Similarly, although the indictment did not charge the Rosenbergs with acting with intent to harm the United States, Kaufman labeled their actions as treason and asserted that the Rosenbergs must have known of "the basic Marxist goal of world revolution and the destruction of capitalism."

[Document Source: *United States v. Rosenberg, et al.*, Stenographer's Minutes, pp. 2447-55.]

Citizens of this country who betray their fellow-countrymen can be under none of the delusions of 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 issue of punishment in this case is presented in a unique framework of history. It is so difficult to make people realize that this country is engaged in a life and death struggle with a completely different system. This struggle is not only manifested externally between these two forces but this case indicates quite clearly that it also involves the employment by the enemy of secret as well as overt outspoken forces among our own people. All of our democratic institutions are, therefore, directly involved in this great conflict. I believe that never at any time in our history were we ever confronted to the same degree that we are today with such a challenge to our very existence. The atom bomb was unknown when the espionage statute was drafted. I emphasize this because we must realize that we are dealing with a missile of destruction which can wipe out millions of Americans.

...

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 50,000 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. No one can say that we do not live in a constant state of tension. We have evidence of your treachery all around us every day—for the civilian defense activities throughout the nation are aimed at preparing us for an atom bomb attack.

...

In the light of the circumstances, I feel that I must pass such sentence upon the principles in this diabolical conspiracy to destroy a God-fearing nation, which will determine with finality that this nation's security must remain inviolate; that traffic in military secrets, whether promoted by slavish devotion to a foreign ideology or by a desire for monetary gains must cease.

...

The sentence of the Court upon Julius and Ethel Rosenberg is, for the crime for which you have been convicted, you are hereby sentenced to the punishment of death. . .

U.S. Court of Appeals for the Second Circuit, decision on the defendants' appeal of their convictions, February 25, 1952

The defendants sought to have their convictions overturned by the U.S. Court of Appeals for the Second Circuit, citing a host of legal errors Judge Kaufman allegedly

made during the trial. Among their claims was that the judge unfairly prejudiced the jury by admitting testimony regarding the defendants' admiration for the Soviet Union and membership in the Communist Party USA. The court of appeals, in an opinion written by Judge Jerome Frank, held the evidence to be admissible, while conceding that it could be "highly inflammatory in a jury trial."

[Document Source: *United States v. Rosenberg, et al.*, 195 F.2d 583 (1952).]

Evidence was introduced to the effect (1) that the defendants expressed a preference for the Russian social and economic organization over ours, and (2) that the defendants were members of the Communist Party. The defendants say this evidence was incompetent to show they would commit espionage for Russia, and that it improperly inflamed the jury against them. We think the evidence possessed relevance. An American's devotion to another country's welfare cannot of course constitute proof that he has spied for that other country. But the jurors may reasonably infer that he is more likely to spy for it than other Americans not similarly devoted. Hence this attitude bears on a possible motive for his spying, or on a possible intent to do so when there is other evidence in the case that he did such spying. We have held such testimony admissible in a similar case involving espionage for Nazi Germany. . . .

Communist Party membership presents a somewhat more complicated problem than pro-Soviet statements. The government had to prove that the Communist Party was tied to Soviet causes in order to make membership in it meaningful as evidence of motive or intent to aid Russia. . . . To that end, the government put Elizabeth Bentley on the stand. She testified that the American Communist Party was part of, and subject to, the Communist International; that the Party received orders from Russia to propagandize, spy, and sabotage; and that Party members were bound to go along with those orders under threat of expulsion. If the jury believed her, she supplied the missing link connecting the Communist Party with the Soviet Union, and making Communist Party membership probative of motive or intent to aid Russia.

Of course, such evidence can be highly inflammatory in a jury trial. This court and others have recognized that the Communist label yields marked ill-will for its American wearer. . . . Whether and how much of that kind of evidence should come into a trial like this is a matter for carefully-exercised judicial discretion. Each time Party membership was alluded to, and again in his final charge, the judge cautioned the jurors "not to determine the guilt or innocence of a defendant on whether or not he is a Communist." It may be that such warnings are no more than an empty ritual without any practical effect on the jurors. . . . If so, this danger is one of the risks run in a trial by jury; and the defendants made no effort to procure a trial by a judge alone, under Criminal Rule 23(a).

U.S. District Court for the Southern District of New York, decision on defendants' motion to have their sentences overturned, December 10, 1952

After the court of appeals affirmed their convictions, the defendants filed a motion with the district court seeking to have their sentences overturned on the ground that they were imposed in violation of the U.S. Constitution. Because he had presided over the trial and imposed the sentences in question, Judge Kaufman asked Chief Judge John C. Knox to assign the motion to a different judge. Judge Sylvester Ryan, to whom Knox assigned the matter, denied the motion, finding no reason to believe the defendants' constitutional rights had been violated. Much of his written opinion was devoted to the defendants' claim that extensive media coverage of the case before and during the trial had deprived them of a fair trial. In support of this claim, the defendants submitted a large number of newspaper articles as well as a chart quantifying newspaper coverage between February 1950 and April 1951 in four categories: "Atomic Espionage," "Communists as Spies," "Atomic Bomb," and "Rosenberg-Sobell Case."

[Document Source: *United States v. Rosenberg, et al.*, 108 F. Supp. 798 (1952).]

Petitioners complain of the pre-trial and trial publicity and argue in substance that it so adversely reflected on their innocence and created a trial atmosphere of such prejudice and hostility toward them as to make impossible the selection of an impartial jury and the conduct of a fair trial. They object to the "newspaper publicity developed by the independent initiative and private enterprise of the newspapers" and say it contributed to a situation by which they were denied the essential requirement of fair play and of justice—a trial by an impartial jury.

We enjoy a free press; neither the policies nor writings of the press may be censored or dictated by the state or government agencies. "Jurors cannot be treated as unable to withstand any effect of newspaper publications. Indeed such a ruling would make it practically impossible to conduct trials in metropolitan centers and would treat the average sceptical juror as a helpless person." [case citation omitted]

Newspapers, unquestionably in response to popular demand, feature with large headlines and considerable space reports of investigations of corruption, crime, vice and espionage activities. The trials of those charged with these offenses have been made "sensational" and have been the source of what is well-nigh universally considered by the newspapers as "good copy." I need not here consider the wisdom of attempts at judicial curtailment of such publications, or the dangers to our constitutional guaranties of freedom of speech and press which would flow in the wake of unwarranted judicial restrictions on free expression.

A reading of the newspaper articles submitted by petitioners reveals nothing of an unusual or inflammatory character. The articles seem but a fair response to

a legitimate public interest in a matter of vital concern to all—the atom bomb and atomic energy and the hope for its employment for the benefit and not the destruction of mankind. The accounts of the arrests and subsequent indictments of petitioners tended to allay a public anxiety and to give assurance that those charged with the protection of vital information were alert and diligent in the performance of their obligations.

When these publications are measured against the field in which they were circulated their effect upon the general public is seen as negligible. . . . Any public prejudice which might be ascribed to newspaper publicity incident to the arrest of these defendants had long since been dissipated among the populace of the area from which [jurors] were drawn—an area where occurrences no matter how sensational lose their news value and no longer attract public interest after a much shorter space of time than seven months.

Supreme Court of the United States, opinions regarding stay granted by Justice Douglas, July 16, 1953

Two days after Justice Douglas granted the Rosenbergs a stay of execution to litigate the question of whether the Atomic Energy Act of 1946, rather than the Espionage Act of 1917, should have applied to their case, the full Supreme Court lifted the stay by a vote of 6 to 3. It was the first time the Court had lifted a stay granted by an individual justice. The Court set forth its decision in a brief per curiam, or unsigned, opinion. The following month, the Court released a longer opinion, authored by Chief Justice Fred Vinson, explaining why the Court chose to resolve the issue itself rather than allowing the lower courts to do so. Justices Black, Frankfurter, and Douglas published separate dissents. Frankfurter criticized the haste of the Court majority in dismissing a substantive claim in the final hours after what had already been a prolonged judicial process and argued the Court owed it to the cause of justice to examine and answer the claim presented in the petition for a stay. Douglas unhesitatingly asserted that the claim in the petition was correct and that the Rosenbergs should not have been sentenced to death under the 1917 act.

[Document Source: *United States v. Rosenberg, et al.*, 346 U.S. 273 (1953).]

Opinion of the court

It is true that the full Court has made no practice of vacating stays of individual Justices, although it has entertained motions for such relief. But reference to this practice does not prove the nonexistence of the power; it only demonstrates that the circumstances must be unusual before the Court, in its discretion, will exercise its power.

The power which we exercised in this case derives from this Court's role as the final forum to render the ultimate answer to the question which was preserved by the stay.

Thus Mr. Justice Douglas, in issuing the stay, did not act to grant some form of amnesty or last-minute reprieve to the defendants; he simply acted to protect jurisdiction over the case, to maintain the status quo until a conclusive answer could be given to the question which had been urged in the defendants' behalf. . . .

This Court has the responsibility to supervise the administration of criminal justice by the federal judiciary. This includes the duty to see that the laws are not only enforced by fair proceedings, but also that the punishments prescribed by the laws are enforced with a reasonable degree of promptness and certainty. The stay which had been issued promised many more months of litigation in a case which had otherwise run its full course.

The question preserved for adjudication by the stay was entirely legal; there was no need to resort to the fact-finding processes of the District Court; it was a question of statutory construction which this Court was equipped to answer. We decided that a proper administration of the laws required the Court to consider that question forthwith.

Frankfurter dissent

The crux of all I am suggesting is that none of the obvious considerations for bringing the all too leaden-footed proceedings in this case to an end should have barred the full employment of the deliberative process necessary for reaching a firm conclusion on the issue on which the Court has now spoken, however unfortunate it may be that that issue did not emerge earlier than it did. Since I find myself under the disability of having had insufficient time to explore the issue as I believe it should have been explored, nothing I am saying may be taken to intimate that I would now sustain the last claim made in behalf of the Rosenbergs. But I am clear that the claim had substance and that the opportunity for adequate exercise of the judicial judgment was wanting.

To be writing an opinion in a case affecting two lives after the curtain has been rung down upon them has the appearance of pathetic futility. But history also has its claims. This case is an incident in the long and unending effort to develop and enforce justice according to law. The progress in that struggle surely depends on searching analysis of the past, though the past cannot be recalled, as illumination for the future. Only by sturdy self-examination and self-criticism can the necessary habits for detached and wise judgment be established and fortified so as to become effective when the judicial process is again subjected to stress and strain.

Douglas dissent

The crime therefore took place in substantial part *after* the new Act became effective, *after* Congress had written new penalties for conspiracies to disclose atomic secrets. One of the new requirements is that the death penalty for that kind of espi-

onage can be imposed *only* if the jury recommends it. And here there was no such recommendation. To be sure, this espionage included more than atomic secrets. But there can be no doubt that the death penalty was imposed because of the Rosenbergs' disclosure of atomic secrets. The trial judge, in sentencing the Rosenbergs to death, emphasized that the heinous character of their crime was trafficking in atomic secrets.

...

But the Congress in 1946 adopted new criminal sanctions for such crimes. Whether Congress was wise or unwise in doing so is no question for us. The cold truth is that the death sentence may not be imposed for what the Rosenbergs did unless the jury so recommends. . . .

Before the present argument I knew only that the question was serious and substantial. Now I am sure of the answer. I know deep in my heart that I am right on the law. Knowing that, my duty is clear.

Federal statutes regarding espionage

The defendants were indicted, convicted, and sentenced under the Espionage Act of 1917, which prohibited the disclosure to a foreign nation of information related to the national defense of the United States. On June 17, 1953, Justice William Douglas granted the defendants a stay of execution to allow them to litigate the issue of whether the trial court should have sentenced them under the Atomic Energy Act of 1946, which required both the recommendation of a jury and proof that the defendants had acted with intent to injure the United States before a death sentence could be imposed.

[Document Source: 40 Stat. 218 (1917) and 60 Stat. 766 (1946).]

Espionage Act of 1917

Sec. 2. (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits . . . information relating to the national defense, shall be punished by imprisonment for not more than twenty years: *Provided*, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or imprisonment for not more than thirty years . . .

Sec. 4. If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy.

Atomic Energy Act of 1946

Sec. 10. (a) POLICY – It shall be the policy of the [Atomic Energy] Commission to control the dissemination of restricted data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles . . .

(2) That the dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticisms which is essential to scientific progress.

(b) RESTRICTIONS –

(1) The term “restricted data” as used in this section means all data concerning the manufacture or utilization of atomic weapons . . .

(2) Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with, any document, writing, sketch, photograph, plan, model, instrument, appliance, note or information involving or incorporating restricted data –

(A) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by death or imprisonment for life (but the penalty of death or imprisonment for life may be imposed only upon recommendation of the jury and only in cases where the offense was committed with intent to injure the United States); or by a fine of not more than \$20,000 or imprisonment for not more than twenty years, or both . . .

President Dwight Eisenhower, statement regarding executive clemency, February 11, 1953

In his statement denying executive clemency, the recently inaugurated President Eisenhower stressed the seriousness of the Rosenbergs' crime and expressed confidence that the legal system had treated them fairly. Eisenhower limited his remarks to the Rosenbergs' convictions for conspiracy (and implied that the Supreme Court had reviewed the case on its merits, which it had declined to do), making no explicit mention of the appropriateness of the death penalty.

[Document Source: “Eisenhower Statement on Spies,” *New York Times*, Feb. 12, 1953.]

I have given earnest consideration to the records in the case of Julius and Ethel Rosenberg and to the appeals for clemency made on their behalf.

These two individuals have been tried and convicted of a most serious crime against the people of the United States. They have been found guilty of conspiring with intent and reason to believe that it would be to the advantage of a foreign power, to deliver to the agent of that foreign power certain highly secret atomic information relating to the national defense of the United States.

The nature of the crime for which they have been found guilty and sentenced far exceeds that of the taking of the life of another citizen; it involves the deliberate betrayal of the entire nation and could very well result in the death of many, many thousands of innocent citizens. By their act these two individuals have in fact betrayed the cause of freedom for which free men are fighting and dying at this very hour.

We are a nation under law and our affairs are governed by the just exercise of these laws. The courts have provided every opportunity for the submission of evidence bearing on this case. In the time-honored tradition of American justice, a freely selected jury of their fellow-citizens considered the evidence in this case and rendered its judgment. All rights of appeal were exercised and the conviction of the trial court was upheld after four judicial reviews, including that of the highest court in the land.

I have made a careful examination into this case and am satisfied that the two individuals have been accorded their full measure of justice.

There has been neither new evidence nor have there been mitigating circumstances which would justify altering this decision, and I am determined that it is my duty, in the interest of the people of the United States, not to set aside the verdict of their representatives.

Intercepted Soviet intelligence cable regarding Ethel Rosenberg, November 27, 1944

Shortly before World War II, the U.S. government began intercepting messages sent to the Soviet Union by Russian nationals in the United States. The U.S. Army's Signal Intelligence Service began a program in February 1943, later codenamed Venona, to break the Soviet code and decrypt the intercepted messages. By the time of the Rosenberg trial, intelligence officials were in possession of decrypted cables identifying Julius Rosenberg as a Soviet spy, but did not disclose this evidence to prosecutors for use at trial in order to maintain the Venona program's secrecy. When the National Security Agency declassified the translated cables in 1995, one message in particular made clear that Ethel Rosenberg, while aware of Julius' spying, was almost certainly not an active espionage agent. The footnotes added to the translation reflect information gathered by intelligence officials through their investigations.

[Document Source: National Security Agency, http://www.nsa.gov/public_info/_files/venona/1944/27nov_mrs_rosenberg.pdf]

From: New York
To: Moscow
No:1657

27 November 1944

To VIKTOR [i].

Your no. 5356 [a]. Information on LIBERAL's [ii] wife [iii]. Surname that of her husband, first name ETHEL, 29 years old. Married five years. Finished secondary school. A FELLOWCOUNTRYMAN [ZEMLYaK] [iv] since 1938. Sufficiently well developed politically. Knows about her husband's work and the role of METR [v] and NIL [vi]. In view of delicate health does not work. Is characterized positively and as a devoted person.

...

ANTON [xi]

Notes: [a] Not available

Comments:

[i] VIKTOR: Lt. Gen. P.M. Fitin.

[ii] LIBERAL: Julius ROSENBERG.

[iii] Ethel ROSENBERG, nee GREENGLASS.

[iv] ZEMLYaK: Member of the Communist Party.

[v] METR: Probably Joel BARR or Alfred SARANT.

[vi] NIL: Unidentified.

...

[xi] ANTON: Leonid Romanovich KVASNIKOV.

Julius and Ethel Rosenberg, prison correspondence, 1951

The letters Julius and Ethel Rosenberg exchanged while incarcerated at Sing-Sing Prison were filled with expressions of love for each other and their children as well as proclamations of their innocence and their determination to have their convictions overturned on appeal. The Rosenbergs were writing for a public audience as well as for each other; some of the letters were published in the National Guardian in 1951 in order to bolster support for clemency, and others were published in book form only weeks before their deaths in June 1953. In 1994, their son Michael published a complete volume of his parents' prison correspondence.

[Document Source: Meeropol, Michael, ed. *The Rosenberg Letters: A Complete Edition of the Prison Correspondence of Julius and Ethel Rosenberg*. New York: Garland Publishing, Inc., 1994.]

Julius to Ethel, August 16, 1951

My Most Precious Darling Ethel,

Overwhelming longings have taken hold of me and I desire so to hold you in my arms. It is not enough to see you and talk to you. My love for you is overflowing and it cries out for more adequate expression. . . . Honey you may not think so but you are the determining influence in my stability. Of your beauty I can sing. Your loveliness is so satisfying to my eyes and your sweetness warms my heart. The time I am with you I am completely removed from this tomb of steel and concrete and filled with sufficient inspiration, emotional uplift and mental stimulation to make me strong to stand erect in facing the daily hardships. My words are not able to express completely how tremendous an effect you have on me. If only we could spend the time together the torture and hurt would not be so great. However reason and human treatment is not the criteria here. It is so hard to take and conceive particularly because we are so completely innocent of this charge and are only victims of a heinous political frameup. How the pattern keeps on unfolding, more political arrests, arrogant disregard for the rights of people or the Constitution of our land and a greater hysteria spreads through the country. Now is the time for the people to stand up and defend their rights. We see so clearly the similarity with all this of our own case the complete identity of our position with that of the American peoples fight for Democracy and peace. It is essential that the truth and facts be made known to all. . . . Only our complete freedom and an early reunion with our family can serve to heal the harm done to us. No matter what I'll continue to fight for our vindication. All my love

Julius

Ethel to Julius, November 1, 1951

Hello Julie dearest,

Since Wednesday morning and all the good, sweet words that passed between us, I have been walking on air; was there foul weather or fair, I followed the unhurried progress of the clock, undismayed. And whatever the hour brought of loneliness and distaste, could not overthrow the shining monument that is our union. My dear one, rest easy; I am ever fortified in your love.

Also I am fortified in the support of decent people everywhere which is so heart-warmingly and so selflessly increasingly forthcoming. Darling, what a treat it is to be reading this week's issue of the Guardian, today of all gloomy rainy days; all of a sudden the drab gray of my wretched surrounding is touched with magical radiance and color. How unutterably thrilling are the expressions of sympathy and devotion from other precious human beings; I am overwhelmed with an answering love and gratified and the profound desire to be worthy of the beautiful tribute with which they have honored us! In all humility, I pledge my self anew, to the unceasing

war against man's inhumanity to man, in whatever shape, manner or form it may rear its ugly brute's head. Nor shall I ever sell short the priceless trust and faith they have reposed in me for a questionable reward of a "mess of pottage"; else shall I have lived my life for naught!

Sweetheart dear, how very much I love you and want you at my side; and with how much longing do I recall the happy life we led and all the problems of parenthood we were so eagerly in the process of solving! The healthy growth and development of the children often gave us cause for grave concern, but they were also a source of so much genuine enjoyment and pleasure, that no difficulty was too great to dampen our enthusiasm and pride in them.

I am hoping to compose myself enough this week-end to drop them a few lines honey I am reminded of the many kind offers of assistance the Guardian has received with regard to the bunnies. There are no words that will adequately describe the sense of bond and tenderness these "strangers" woke. I am simply speechless with admiration for my new-found brothers and sisters!

Mail call – dearest.

I love you – Ethel

Ethel Rosenberg, letter to President Dwight Eisenhower, June 16, 1953

Three days before Julius and Ethel Rosenberg were executed, Ethel sent President Eisenhower a letter pleading with him to commute the death sentences. She claimed to have been inspired to do so by the case of William Oatis, an American journalist sentenced to prison in Czechoslovakia on charges of espionage, whom the Czech government pardoned in May 1953, supposedly because of a plea made by his wife. Ethel's emotional appeal also implied that for the United States to execute her and her husband would be an act analogous to the Nazi atrocities committed upon European Jews. She closed the letter with an appeal to Eisenhower to "take counsel with your good wife. . . with the mother of your only son; her heart which understands my grief so well and my longing to see my sons grown to manhood like her own."

[Document Source: Dwight D. Eisenhower Presidential Library and Museum, http://www.eisenhower.archives.gov/research/online_documents/rosenbergs.html]

Dear Mr. President,

At various intervals during the two long and bitter years I have spent in the Death House at Sing Sing, I have had the impulse to address myself to the President of the United States. Always, in the end, a certain innate shyness, an embarrassment almost,

comparable to that which the ordinary person feels in the presence of the great and the famous, prevailed upon me not to do so.

Since then, however, the moving plea of Mrs. William Oatis on behalf of her husband has lent me inspiration. She had not been ashamed to bare her heart to the head of a foreign state; would it really be such a presumption for a citizen to ask for redress of grievance and to expect as much consideration as Mrs. Oatis received at the hands of strangers?

Of Czechoslovakia I know very little, of her President less than that. But my own land is a part of me, I should be homesick for her anywhere else in the world. And Dwight D. Eisenhower was "Liberator" to millions before he was ever "President." It does not seem reasonable to me, then, that a letter concerning itself with condemned wife as well as condemned husband, should not merit this particular President's sober attention.

...

It is chiefly the death sentence I would entreat you to ponder. I would entreat you to ask yourself whether that sentence does not serve the ends of "force and violence" rather than an enlightened justice. Even granting the assumption that the convictions had been properly procured (and there now exists incontrovertible evidence to the contrary), the steadfast denial of guilt, extending over a protracted period of solitary confinement and enforced separation from our loved ones, makes of the death penalty an act of vengeance.

As Commander-in-Chief of the European theatre, you had ample opportunity to witness the wonton and hideous tortures that such a policy of vengeance had wreaked upon vast multitudes of guiltless victims. Today, while these ghastly mass butchers, these obscene racists, are graciously receiving the benefits of mercy and in many instances being reinstated in public office, the great democratic United States is proposing the savage destruction of a small unoffending Jewish family, whose guilt is seriously doubted throughout the length and breadth of the civilized world! As you have recently so wisely declared, no nation can chance "going it alone." That, Mr. President, is truly the voice of the sanity and of the leadership so sorely needed in these perilous times. Surely you must recognize then, that the ensuing damage to the good name of our country, in its struggle to lead the world toward a more equitable and righteous way of life, should not be underestimated.

...

Respectfully yours,
(signed) (Mrs.) Ethel Rosenberg #110-510
Women's Wing – C C

Letters to Justice William Douglas regarding the stay of execution, June 1953

After Justice Douglas granted the Rosenbergs a stay of execution on June 17, 1953, his chambers were flooded with letters from the public. Many writers praised Douglas for taking a courageous stand in the face of anti-Communist hysteria and expressed anxiety that if the Rosenbergs were executed, the country's international reputation would suffer. Others, many of whom had family members serving in Korea, condemned him for being soft on Communism and accused him of being sympathetic to traitors who had put American lives at risk.

[Document Source: William O. Douglas Papers, Library of Congress, Washington, D.C.]

Letters Favoring Stay

June 17, 1953

Dear Sir:

I heartily endorse your action regarding the Rosenbergs.

You have upheld the fair name of our country in face of hysterical attacks from individuals who hide their reactionary aims under the guise of "Americanism."

Respectfully yours,
SH Anderman, DDS
Kew Gardens, NY

June 17, 1953

Dear Justice Douglas,

An hour ago the news came over the radio announcing your decision to grant a stay of execution to the Rosenbergs. Hearing it, I felt that at last the light of courage was breaking through an otherwise dreary scene. . . .

Of course, you will be attacked, as courage has always been attacked, but I am sure you will have not only the sustenance of your own convictions, but the active support of all liberal America, all conscientious America, should you need it. . . . Tomorrow, the Rosenbergs might have been dead, and America would again have been shamed in the eyes of all Europe and Asia. . . .

Respectfully,
George Bluestone
Baltimore, MD

June 19, 1953

Dear Sir:

Congratulations for proving yourself to be a true Christian and American. The Rosenbergs are dead now, but thru no fault of yours. It took a lot of courage and good judgement to do what you did.

...

You may be impeached, smeared, and hated, but you have proved yourself to be a true Christian, something they can never take away. There are people in this country (they're not all "Communists", like some of the reactionaries say) who will always remember your courageous stand in the Rosenberg case. I am one of them.

Sincerely yours,
Donald Adamowicz
Chicago, IL

Letters Opposing Stay

June 17, 1953

Dear Mr. Douglass:

You sold us out in the face of Red and Jewish pressure. I wished they would send you to Korea to face some real "Red Pressure." What did we fight for? You let us down and we won't forget you – Why don't you retire? You do our country great harm – No Guts.

Lou – Ed – Tom – Dat
Four GIs from Korea

[No date]

[No salutation]

I hated to call you Justice. I am Three (3) generation American, and to think we have to put up with the likes of you as a so-called Justice.

I have a brother in the Korean War, and to think he is fighting for the likes of you and those stinking Rosenbergs who have been granted a stay by you. What did you receive from the commuies, your kind wouldn't take anything but \$150,000. I suppose. You surely were fixed, but you will be fixed in other ways. You won't have a night's sleep after giving those dirty bums a stay. Just to think, born Americans and they sold our country to russia, and then you also sold us out to rusia. You should be put on a fast ship and sent over to russia, right after the Rosenbergs are electrocuted. I hope you never have another happy moment while you live and that your mind will always be troubled with horrible night-mares because that is what you wished on our beautiful country, a night-mare.

[No signature]

June 17, 1953

Dear Sir

What a disgrace to America you are. How much are you getting from the Com-mies? If anyone in America had a fair trial the Rosenbergs did. You must be low. We are the laughing stock of the world now for sure. You should be put in the chair in their place. This is the first letter of this kind I ever wrote. What is happening to America? I am a veteran of the last war. My two sons are in the Marine Corps. You saved the lives of two people who would have killed thousands of Americans. How could you be such a rat.

J.R. Bernhard
New York, NY

U.S. Representative Elijah Forrester, remarks on Rosenberg protests, June 19, 1953

On the day the Rosenbergs were executed, Congressman Elijah Forrester, a Democrat from Georgia, spoke on the floor of the House of Representatives regarding Washington, D.C., protests of the pending executions. His remarks reflected the view, also prevalent in newspaper coverage, that the pro-Rosenberg movement was entirely inspired and controlled by Communists. Forrester suggested the passage of laws to gather information on people involved in such protests to determine whether they were disloyal to the United States.

[Document Source: 99 Cong. Rec. 6892 (1953).]

I despise communism, and the people I represent despise communism, and we will do anything in our power to defeat it. . . .

But if we are to fight communism we must fight it wherever it appears. That we have not done. I never believed I would live to see what I have seen in Washington in the past few days. Last Sunday I saw six or seven thousand mongrels picketing the White House, parading with banners, charging that our Government had bribed witnesses, and with banners demanding that two particular children not be made orphans. Not one of that crowd was concerned over the widows and orphans of our fine young men who died fighting communism in Korea.

Yesterday the Capitol Grounds were alive with hundreds of people who have no interest whatsoever in our country except to destroy it, even to take our country over. Today as I came down to the office, I saw that riff-raff picketing the President of the United States.

. . . It is my belief that these terrible assemblies, such as I have heretofore described, organized to disturb and cause trouble, can also be placed under reasonable regulations such as requiring each person to register with the proper authorities and give a

description of himself or herself, together with a complete and true address, and to state that he or she is not a member of any organization advocating the overthrow of our Government by force and violence, and any other necessary information that would be conducive to the police powers of our Government.

...

It will do no good to fight communism abroad and let it flourish here. It is not realistic – it is not even ordinary sense. It makes law abiding citizens lose confidence. Communism must be unpopular here if we expect to build sentiment against it abroad.

Los Angeles Times, editorials regarding Rosenberg executions, January 15 and June 20, 1953

Between April 1951, when Judge Kaufman sentenced Julius and Ethel Rosenberg to death, and June 1953, when the executions took place, newspapers throughout the country ran editorials condemning the Rosenbergs for their crimes and expressing confidence that they were being treated fairly by the American judicial system. In the months leading up to the executions and the days immediately following them, editorials such as those below focused specifically on the appropriateness of the death sentences and on the nature of those arguing for clemency.

[Document Sources: “Communists and the Rosenberg Case,” *Los Angeles Times*, Jan. 15, 1953, and “They May Have Condemned Millions,” *Los Angeles Times*, June 20, 1953.]

Communists and the Rosenberg Case

In making the most of the Rosenberg case both here and abroad the Communist enemies of the United States are little concerned with the fate of Julius and Ethel Rosenberg, or their children. In ruthless pursuit of world power the Soviet masters cannot be moved by the case of an American-born couple who served them well until they were charged with stealing atomic secrets, tried, convicted and sentenced to the electric chair.

The mass meetings in foreign capitals, the pickets outside the White House, the shrill cries of martyrdom in the Red press simply follow the Communist practice of exacting the last ounce of usefulness from their converts. In this the Rosenbergs seem willing still to serve.

Whatever action the President takes on the Rosenbergs' final appeal for commutation of the death sentence, the Communists and their dupes have succeeded in muddying the waters of public opinion in the case. It is not, in a legal sense, a treason case, nor is the penalty “unprecedented” for the crime.

The Rosenbergs' crime was espionage and death has been the standard and almost universal punishment for spies since the dawn of history. In wartime it is carried out summarily and without protest.

...

Whatever their fate, the Rosenbergs have done damage enough. But if the Communists can still use them for propaganda purposes, freedom-loving citizens of this country can also learn a valuable lesson from the case. It is that such extremes of individual conceit as they and [British atomic spy] Dr. [Alan Nunn] May have shown cannot be tolerated. Not even here, in the citadel of freedom, can one person arrogate to himself the moral right to jeopardize all.

They May Have Condemned Millions

The real tragedy of the Rosenberg case is not that they were condemned to die for a crime which society has punished with death since the dawn of recorded history.

The real tragedy is that the Communist conspiracy of which Julius and Ethel Rosenberg were by no means minor members did, before they were apprehended, succeed in its design. That design was stealing from the responsible democracies of the United States, Canada and Great Britain the secrets of atomic bomb design and turning them over to the ruthless and aggressive totalitarian regime of the Soviet Union.

Even more terrifying is the fact that, long after this sordid story of espionage and treason was told, many Americans and others in the free nations still remain blithely oblivious of the magnitude of the threat implicit in this international conspiracy and strangely unmoved by the depravity of those who willingly served and continue to serve its godless and inhuman goals.

Now that the Supreme Court of the United States has spoken with finality on the legal aspects of the Rosenberg case, it is important to clear away the cloud of lawyers' argument and recall the essential facts.

First and foremost, it must be remembered that no reasonable doubt has been raised as to the guilt of the Rosenbergs in the terrible crime with which they were charged and convicted.

The Rosenbergs themselves protested their innocence, and Communists in this country and abroad have echoed the cry. But the American jury which heard all the evidence against them, and their own defense, unanimously found them guilty; the trial judge, the U.S. Court of Appeals and the Supreme Court have confirmed that verdict of guilt, and the President of the United States has concurred in it.

Except for the Communist chorus, there has been no question of the Rosenbergs' guilt or the fairness of their trial. The only argument has been about the severity of their sentence, which some honest individuals have questioned on legal, religious or sentimental grounds.

The Rosenberg Trial

That these individuals, some in exalted places, have been exploited by the Communist apparatus should be no surprise. But the intelligent citizen will distinguish between those appeals for mercy which would be made as readily if the condemned were ordinary murderers and the caterwauling that has arisen solely because they were Communist spies.

Bibliography

Note: Those wishing to read further about the Rosenberg case should keep in mind that much of the literature below was written by those with a personal connection to the case, and because the question of Julius and Ethel's guilt remained open for decades after their deaths, some authors approached the topic with advocacy for a particular view of the case. Many books about the case were written prior to the declassification of FBI files in the 1970s and 1980s, the opening of the Soviet archives in the early 1990s, the U.S. government's release of intercepted Soviet cables in 1995, the unsealing of grand jury testimony in 2008, and interviews given by David Greenglass and Morton Sobell between 2001 and 2010.

Alman, Emily Arnow and David. *Exoneration: The Rosenberg–Sobell Case in the 21st Century*. Seattle: Green Elms Press, 2010.

Feklisov, Alexander. *The Man Behind the Rosenbergs: by the KGB Spymaster who was the Case Officer of Julius Rosenberg, Klaus Fuchs, and Helped Resolve the Cuban Missile Crisis*. New York: Enigma Books, 2001.

Fineberg, S. Andhil. *The Rosenberg Case: Fact and Fiction*. Dobbs Ferry, N.Y.: Oceana Publications, 1953.

Garber, Marjorie, and Rebecca L. Walkowitz, eds. *Secret Agents: The Rosenberg Case, McCarthyism, and Fifties America*. New York: Routledge, 1995.

Gardner, Virginia. *The Rosenberg Story*. New York: Masses & Mainstream, Inc., 1954.

Goldstein, Alvin H. *The Unquiet Death of Julius & Ethel Rosenberg*. New York: Lawrence Hill & Co., 1975.

Haynes, John Earl, and Harvey Klehr. *Venona: Decoding Soviet Espionage in America*. New Haven: Yale University Press, 1999.

Meeropol, Michael, ed. *The Rosenberg Letters: A Complete Edition of the Prison Correspondence of Julius and Ethel Rosenberg*. New York: Garland Publishing, Inc., 1994.

Meeropol, Robert, and Michael. *We Are Your Sons: The Legacy of Ethel and Julius Rosenberg, Second Edition*. Urbana: University of Illinois Press, 1986.

Neville, John F. *The Press, the Rosenbergs, and the Cold War*. Westport, Conn.: Praeger, 1995.

- Nizer, Louis. *The Implosion Conspiracy*. New York: Doubleday & Co., 1973.
- Parrish, Michael E. "Cold War Justice: The Supreme Court and the Rosenbergs." *American Historical Review* 82, no. 4 (October 1977): 805–42.
- Radosh, Ronald, and Joyce Milton. *The Rosenberg File, Second Edition*. New Haven: Yale University Press, 1997.
- Roberts, Sam. *The Brother: The Untold Story of Atomic Spy David Greenglass and How He Sent His Sister, Ethel Rosenberg, to the Electric Chair*. New York: Random House, 2001.
- Root, Jonathan. *The Betrayers: The Rosenberg Case—A Reappraisal of an American Crisis*. New York: Coward-McCann, Inc., 1963.
- Schneir, Walter. *Final Verdict: What Really Happened in the Rosenberg Case*. Brooklyn, N.Y.: Melville House, 2010.
- Schneir, Walter and Miriam. *Invitation to an Inquest, Fourth Edition*. New York: Pantheon Books, 1983.
- Sharlitt, Joseph H. *Fatal Error: The Miscarriage of Justice that Sealed the Rosenbergs' Fate*. New York: Charles Scribner's Sons, 1989.
- Sharp, Malcolm P. *Was Justice Done? The Rosenberg–Sobell Case*. New York: Monthly Review Press, 1956.
- Snyder, Brad. "Taking Great Cases: Lessons from the Rosenberg Case." *Vanderbilt Law Review* 63, no. 4 (May 2010): 885–956.
- Weinstein, Allen, and Alexander Vassiliev. *The Haunted Wood: Soviet Espionage in America—the Stalin Era*. New York: Random House, 1999.
- Wexley, John. *The Judgment of Julius and Ethel Rosenberg*. New York: Cameron & Kahn, 1955.

The Federal Judicial Center

Board

The Chief Justice of the United States, *Chair*

Judge Catherine C. Blake, U.S. District Court for the District of Maryland

Magistrate Judge Jonathan W. Feldman, U.S. District Court for the Western District of New York

Judge James F. Holderman, Jr., U.S. District Court for the Northern District of Illinois

Judge Michael M. Melloy, U.S. Court of Appeals for the Eighth Circuit

Chief Judge C. Ray Mullins, U.S. Bankruptcy Court for the Northern District of Georgia

Judge Edward C. Prado, U.S. Court of Appeals for the Fifth Circuit

Judge Kathryn H. Vratil, U.S. District Court for the District of Kansas

Judge Thomas F. Hogan, Director of the Administrative Office of the U.S. Courts

Director

Judge Jeremy D. Fogel

Deputy Director

John S. Cooke

About the Federal Judicial Center

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training programs for judges and court staff, including video programs, publications, curriculum packages for in-court training, and Web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center's research also contributes substantially to its educational programs. The two divisions work closely with two units of the Director's Office—the Information Technology Office and the Communications Policy & Design Office—in using print, broadcast, and online media to deliver education and training and to disseminate the results of Center research. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and assesses how to inform federal judicial personnel of developments in international law and other court systems that may affect their work.