

THE JUDGMENT

OF

Julius and Ethel Rosenberg

By John Wexley

1955



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Acknowledgments

IN THIS work it will be seen that I owe a special tribute to Emanuel Bloch, the attorney for Julius and Ethel Rosenberg. His untimely death on January 30, 1954, was mourned throughout the world. It is difficult to assess all of the reasons which led to the creation of this book, but there is little doubt that among the most important was the example of his magnificent courage in the epic fight he made in behalf of truth and justice in the case of the Rosenbergs.

To the following, my heartfelt thanks: To Emanuel Bloch's colleague Gloria Agrin, who was most helpful in reviewing the manuscript and giving it the benefit of her observations at the trial. To attorneys Howard Meyer and Benjamin Dreyfus, for their assistance with legal documents. To Emily and David Alman, for their unflagging encouragement over the past three years and their invaluable assistance in too many ways to be separately listed. To Joseph Brainin and Theodore Jacobs, for their aid in providing documentation.

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Above all, I should like to pay a salute to my wife, Katharine, for all she did to make this book possible. There was not a moment she was not involved in its creation. For her fortitude, her faith, her painstaking criticism, her uncompromising insistence on simplicity, my debt to her is very great.

J. W.

Author's Note

THE PURPOSE of writing this book can be simply stated. It is to make known the truth about the Rosenberg case. I believe I have been painstakingly accurate in bringing the hitherto hidden and suppressed facts into the light of day. At all times I have used documentation and reliable sources. These will be found within the text, in footnotes and in appendix references. The Chronology of Events will be of considerable aid in following not only the legal sequence of the case but also the political frame of reference in which it took place.

In the analysis, which has involved many thousands of pages of court records and appeals, there was, as always, the difficult problem of selection. In order to present the Government's case in the most impartial way, I have followed an objective summary of the evidence from the *Columbia Law Review*, which is quoted in full in the appropriate chapters. Hence every important point in the case, whether favorable or unfavorable to the defendants, is fully presented.

Although there is provided a synopsis of the Government's case, for those readers who may wish to orient themselves beforehand with the *Columbia Law Review* summary and the official charges against the Rosenbergs and Sobell, there is a special index following the synopsis.

The complete court record is available at the National Rosenberg-Sobell Committee, 1050 Sixth Avenue, New York City.

Despite the above precautions, it is impossible for this writer to pretend utter neutrality after having spent three years in analyzing the case. In the face of the known facts, one can no more be neutral and dispassionate than one can abstain from moral judgment concerning any recognizable evil. In this respect I take my stand with that venerable philosopher and historian, Professor Gaetano Salvemini, formerly of Harvard, who has prefaced his own recent book with this observation:

"Impartiality is either a delusion of the simple-minded, a banner of the opportunist, or the boast of the dishonest. Nobody is entitled to be unbiased towards truth or falsehood."*

J. W.

**Prelude to World War II*, Doubleday, New York, 1954.

Synopsis of the Government's Case

¶ That in 1944 Julius Rosenberg and his wife, Ethel, persuaded her brother, David Greenglass, and his wife, Ruth, to enter a conspiracy to commit espionage by transmitting atomic secrets to the Soviet Union. That the Greenglasses delivered such secrets to the Rosenbergs in 1945. That during 1946-1949 Julius Rosenberg told his brother-in-law of other espionage he and his spy ring had committed.

¶ That included in the spy ring were two former college classmates of Julius Rosenberg, Max Elitcher and Morton Sobell, but since their part in the conspiracy was not connected to atomic espionage, neither was known as a co-conspirator to the Greenglasses.

¶ That in 1945 Julius Rosenberg arranged by unknown means with the New York Soviet Vice Consul, Anatoli Yakovlev, to send a courier to the Greenglasses in Albuquerque, New Mexico, to pick up atomic information. That Yakovlev sent Harry Gold for this purpose, the latter a self-styled "American partner" of Dr. Klaus Fuchs.

¶ That in 1950 after Fuchs, the German-born British atomic scientist, was arrested in England, and after the FBI had subsequently arrested Gold in Philadelphia, the latter had implicated David Greenglass. That upon Greenglass' arrest he had confessed and implicated his sister and brother-in-law, as well as his own wife, Ruth.

¶ That the Rosenbergs were subsequently arrested, but that in the meantime the FBI had obtained from Max Elitcher a confession implicating both Julius Rosenberg and Morton Sobell. That the latter, known to be on a trip to Mexico with his family, was arrested in Texas after the Mexican authorities had "deported" him. That the Soviet official, Yakovlev, could not be apprehended since he and his family had returned to the Soviet Union in 1946.

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Chronology of Events

1945

Aug. 6 First atomic bomb dropped on Hiroshima; dead: 78,150.

Aug. 9 Second atomic bomb dropped on Nagasaki; dead: 73,884.

1949

Sept. 23 President Truman announced that an atomic explosion had taken place in the Soviet Union.

1950

Feb. 3 Dr. Klaus Fuchs, German-born British nuclear physicist, arrested in England on the basis of a voluntary confession that he had transmitted atomic information to the Soviet Union.

Mar. 1 Fuchs tried and sentenced to fourteen years.

May 23 Harry Gold, a hospital laboratory chemist in Philadelphia, arrested on basis of a voluntary confession that he had been the courier in the United States in 1944-45 between Fuchs and a Russian Vice Consul, Yakovlev, who had returned to Russia in 1946. (Yakovlev later tried in absentia at the Rosenberg-Sobell trial.)

June 15 David Greenglass, a machinist, formerly a soldier employed at the Los Alamos Atomic Project, arrested for having been an accomplice of Gold in 1945.

June 16 Julius Rosenberg, owner of a small machine shop in New York City, brother-in-law and former business partner of Greenglass, questioned by FBI and released the same day.

June 25 Outbreak of the Korean War.

July 17 Julius Rosenberg arrested on charges of having conspired to commit espionage with Greenglass and Gold in 1944-45.

July 29 Abraham Brothman, a chemical engineer and former employer of Gold, arrested on charges that he and Gold had conspired to obstruct justice by lying to a Grand Jury during an investigation in 1947.

Aug. 11 Ethel Rosenberg, wife of Julius and sister of David Greenglass, arrested on same charges as her husband.

Aug. 18 Morton Sobell, former college classmate of Julius Rosenberg, while on a vacation trip to Mexico City with wife and children, forcibly abducted by Mexican secret police and "de-

ported" across the Texas border, arrested by the FBI on charges of having conspired to commit espionage with Rosenberg.

Nov. 13 to 22 Trial of Brothman before Judge Irving R. Kaufman. Prosecution: U.S. Attorney Irving H. Saypol, assisted chiefly by Roy M. Cohn. Principal witnesses: Harry Gold and Elizabeth Bentley. Brothman convicted and sentenced to maximum term of seven years on Nov. 28.

Dec. 9 Harry Gold sentenced in Philadelphia by Judge James P. McGranery to thirty years.

1951

Mar. 6-29 Trial of Rosenbergs and Sobell before Judge Irving R. Kaufman. Prosecution: Saypol, with Roy Cohn in full charge of David Greenglass' testimony. Principal witnesses: David and Ruth Greenglass; Max Elitcher, a former classmate of Rosenberg and Sobell; Gold, and Bentley. Verdict: Guilty.

Apr. 5 Ethel and Julius Rosenberg sentenced to death in the electric chair by Judge Kaufman, with date of execution set for week of May 21, 1951. Morton Sobell sentenced to thirty years.

Apr. 6 David Greenglass sentenced to fifteen years.

1952

Feb. 25 Conviction of the Rosenbergs and Sobell affirmed by U.S. Circuit Court of Appeals. (Judges Swan, Chase, Frank)

Oct. 13 Supreme Court declines to review the case, Justice Black dissenting.

Nov. 21 Judge Kaufman fixes second date of execution for week of Jan. 12, 1953.

Nov. 27 Morton Sobell transferred from West Street jail in New York City to Alcatraz.

Dec. 10 Motion for a hearing for a new trial based on evidence of perjury and unfair trial argued before Judge Sylvester Ryan. Motion for hearing denied; stay of execution denied.

Dec. 30 Motion to reduce sentence argued before Judge Kaufman on grounds that sentences were "cruel and excessive" and unprecedented since charges were not treason and indictment did not include "intent . . . to injure the U.S."

Dec. 31 Court of Appeals affirms Judge Ryan's denial of motion for hearing for a new trial.

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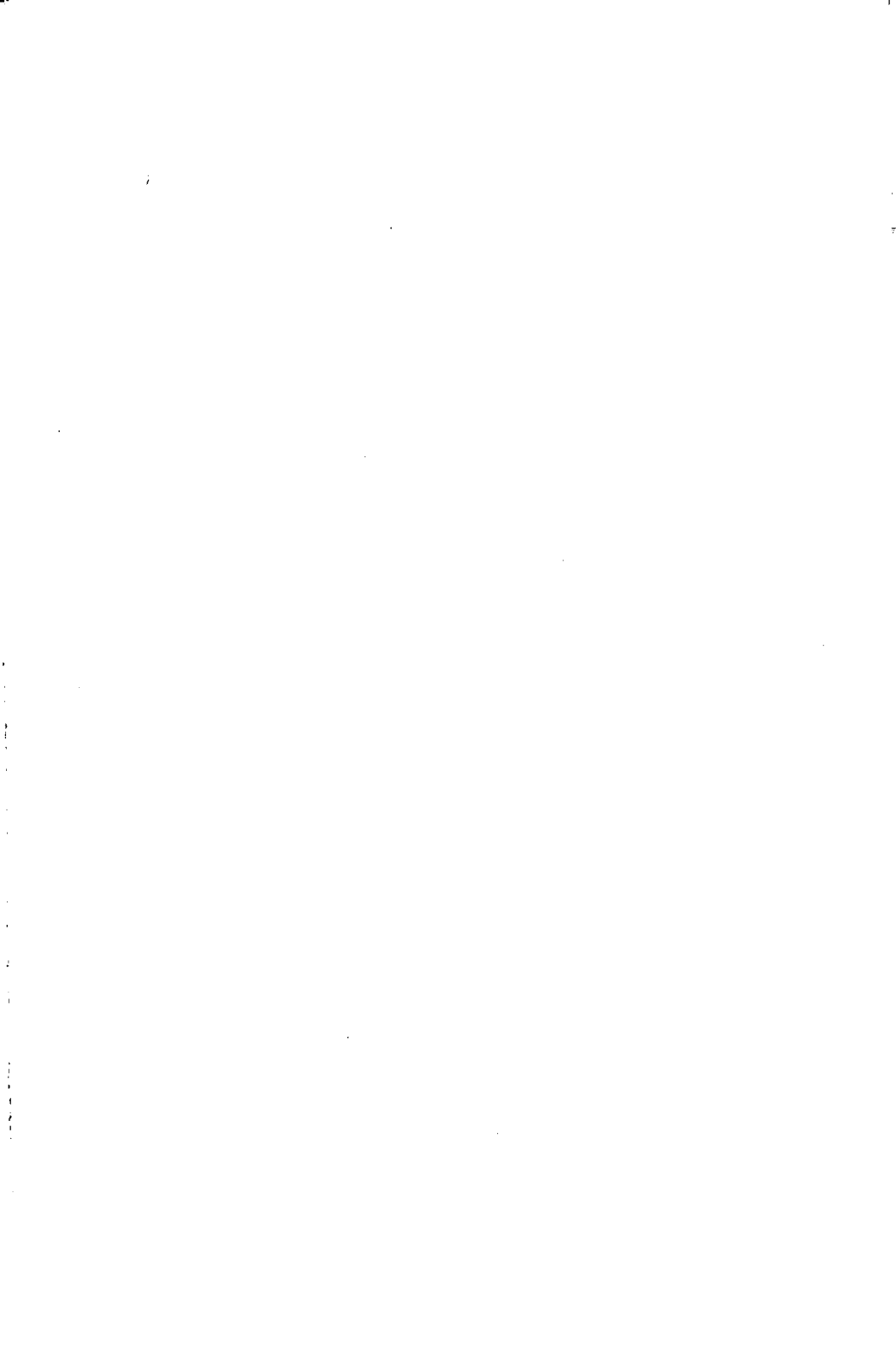
TO THOSE WHO WALKED

Early in January, 1953, thousands of men and women traveled to Washington, D. C. from all parts of the United States to picket the White House during the clemency campaign in behalf of the Rosenbergs.

It was bitterly cold, but the marchers continued their vigil throughout the night, changing shifts every two hours as they had done for many days and nights.

While watching the picket line, this writer asked a Negro policeman assigned there what he thought of the effort. He replied:

"All I can say, sir, if I was waiting in a death cell, I would sure like to have someone walk for me."



THERE was a great unease throughout America that night following the execution of the Rosenbergs. No one could estimate how many were happy about it, how many indifferent, and how many felt a terrible thing had been done. But there could be no question that a vast number of people experienced the most profound disquiet. Even though they were constantly assured that the "A-spies" had been fairly tried and justly sentenced, two perplexing questions continued to gnaw at mind and heart:

If the Rosenbergs were really guilty, if no doubt whatsoever existed that they had received their full measure of justice, then why had the conscience of the world been so deeply aroused?

And if the Rosenbergs were truly innocent, why had they been put to death?

One could not airily dismiss as Communist propagandists men like Dr. Harold Urey, the Nobel Prize physicist, or Rabbi Abba Hillel Silver, friend of President Eisenhower. Such men could not be brushed aside as dupes or victims of "brain-washing." Nor could one ignore the astonishing revelation made by Justice Hugo Black that the Supreme Court "had never reviewed this trial record and therefore never affirmed the fairness of this trial."

Why, then, did so many Americans continue to say that the Rosenbergs had been accorded all due process of law? Why had the Supreme Court been convened into extraordinary session with such desperate haste to dispose of a case which Justice Frankfurter considered so vital that he declared "the magnitude of the issue called for the most prolonged consideration"?

Thus the two initial questions produced many more: Was it really

an issue of guilt or innocence? Had the trial really been a fair one? Were the Rosenbergs legally executed or were they the political victims of the "Cold War" and the convenient scapegoats of the Korean War? Were their deaths to be a symbolic warning to terrify and silence all liberals and dissenters?

Perhaps one did not quite dare to test these questions except among trusted friends, yet one could not help thinking: What had our country gained in shocking the sensibilities, in alienating the respect of great nations? And how was it that the fate of these two obscure people had such a tremendous "global effect"? What were these "grave doubts" which disturbed so many millions abroad and so many hundreds of thousands here? Who were these Greenglasses and how had they come to involve and destroy their own kith and kin? And who were this weird Dr. Klaus Fuchs and this strange creature Harry Gold, who had claimed to be his confederate? Had it been a frame-up similar to so many others perpetrated in periods of national hysteria? If so, why was it so difficult to discern the familiar symptoms? Were any of them present and recognizable in the Rosenberg-Sobell case? Could one get to the underlying facts and arrive at the truth? What was the truth — or as much of it as one could learn? Where, and when, and how did it all start?

PART ONE

The Events Preceding the Trial

January-December, 1950

*"Doubts are more cruel
than the worst of truths."*

— MOLIERE



*"Falsehood flies and truth comes limping after it,
so that when men come to be undeceived it is too
late; the jest is over, and the tale has had its
effect . . ."*

— Jonathan Swift

THE history of man's inhumanity to man provides all too many examples of the device of frame-up, particularly in times of social stress and tension. Perhaps the instance most universally deplored is that described in the Gospels regarding the false testimony brought against Jesus when he was accused of "blasphemy" and "perverting the people."*

It was not the first time it had happened to a man of truth and it was to happen again and again in the two thousand years that followed. In Spain there was the dread Inquisition. All over the rest of Europe the stench of burning human flesh arose from the pyres of heretics condemned to death on false testimony. Even in the American colonies the tactic was utilized by the theocrats of Salem. The frame-ups which took place under the Alien and Sedition Acts were especially bitter for the Jeffersonians, persecuted for their sympathy with revolutionary France, the country which only a short time earlier had aided the cause of the American Revolution. And in France toward the turn of the century, there was the frame-up of Captain Dreyfus, designed to conceal the ineptitude of the military and the betrayal of the Republic into the hands of the monarchists.

In the United States, at this period of our history, the frame-up of union leaders became the stock device to retain child labor, the twelve-hour day and the anti-strike injunction.

In Chicago there was the Haymarket Square frame-up, the result of a police-provoked riot. A grand jury composed of prosperous business men swiftly indicted the city's leading voices of labor, Albert Parsons and seven others. Despite their protestations of innocence, four of the eight were hanged. In later years Governor John Altgeld became famous for his exposure of the frame-up and his freeing of the two surviving victims.†

*"He stirs up the people, teaching throughout all Judea. . . ." Luke xxiii: 5.

†Harry Barnard, *Eagle Forgotten*, Bobbs-Merrill, New York, 1935.

Just previous to American entry into World War I there was the frame-up of Tom Mooney, later officially exposed as "One of the dirtiest jobs ever put over . . . a contemptible piece of work." Such was the statement of the sentencing judge, Franklin A. Griffin, when he became convinced of the extent of the frame-up. In later years, he stated:

"When I look back upon the trial now, it seems to me that we must have been slightly crazed by the hysteria of the time. . . ."*

Each celebrated case of frame-up can be said to be a touchstone to its own particular period of history. The framing of Negroes on trumped-up charges is well known as a favorite diversionary tactic. Its most notable example was the Scottsboro case in the depression years of the early 30's. That of Sacco and Vanzetti is also well known, but a brief mention of the atmosphere which engendered it demonstrates the classic pattern. It came soon after the convulsive events of World War I and the Russian revolution, and was integrally bound up with the notorious Palmer raids of the 1920's. Felix Frankfurter, then a Harvard law professor, instantly recognized the technique:

"They were convicted by the atmosphere and not by the evidence."†

Such, then, is the briefest summary of the history of frame-up. In one form or another, it is a technique as old as human society. Hence, there arise the plaguing questions: Why is it so difficult to recognize clearly at the time it is taking place — before it is too late — that a frame-up is in progress? And why does it ordinarily take so many years for people to become undeceived?

First, there is the political atmosphere which generates, and at the same time cloaks, the frame-up. Since it usually occurs in the midst of, before or after a war, the public becomes easy prey to patrioteering and official endorsement. Fear of the external enemy is whipped up by the creation of an internal "enemy" and the hunt for so-called saboteurs, spies and traitors becomes daily fare.

Coupled with this is the fact that in such an atmosphere those in control of the great media of propaganda are in sympathy with these objectives. Hence the result is disastrous to any detached reasoning. The paralysis of intimidation and self-intimidation, the re-

*Lillian Symes, "Our American Dreyfus Case," *Harper's Magazine*, May, 1931.

†Felix Frankfurter, *The Case of Sacco and Vanzetti*, Academic Reprints, Stanford, Calif., 1954.

luctance to "stick one's neck out," the dread of becoming identified with the "verboden" ideas of the victim, and the threat of social ostracism and economic ruin—all operate toward the concealment of the frame-up.

Second, even when the true nature of the frame-up becomes finally revealed, most people are simply unwilling to believe that our police, prosecutors and judges can be so wicked as to perpetrate or condone such outrages. In periods of national insecurity there is an almost childlike need to retain faith in those whom we have entrusted with high office. It is so much more expedient to say "All is for the best in this best of all possible worlds."

Third, and most important from the viewpoint of this work, there is the inability of people to accept the *reality* of frame-up. The moral, civilized mind simply cannot conceive of witnesses so depraved that they will deliberately provide false testimony, or that prosecutors will knowingly encourage them to do so, no matter how many such cases have been exposed.*

It is a curious thing that we can see the subject of frame-up used as the prevailing theme in popular fiction, in the movies and over radio and television, but we refuse to recognize it when we see it in real life. And rightly so—because, with the stark spectacle of real people actually being imprisoned or put to death, we tend to demand more convincing proof than we receive in those oversimplified fictional presentations.

The common tendency is to view the flat charge of frame-up as too "pat" an explanation. Government officials and their witnesses just could not be that evil; it simply could not be that cut and dried. Furthermore, it is difficult to believe that prosecuting officials would risk their careers, or be so conscienceless as to scheme up a "frame" against a totally innocent person.

And again rightly so! Because the truth is that the technique of modern frame-up is not "pat," not cut and dried, and certainly cannot be explained in terms of black and white. Quite the contrary. The structure of frame-up is exceedingly complex and made up of

*A most notable example is that of the "honest cattleman," Frank Oxman, the chief witness against Tom Mooney, who testified to having been present in San Francisco at the time of the crime. Later it was proven by documentary evidence that Oxman was in a small town some four hours distant from San Francisco by train!

"Only Oxman's testimony carried any weight with me," Judge Griffin later declared. "We did not know then, of course, that he was lying, but the Prosecution must have known." (Lillian Symes, *op. cit.* See also Ernest Jerome Hopkins, *The Mooney Case*, Chap. 12, Harcourt, Brace, New York, 1932.)