

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE PETITION OF NATIONAL SECURITY)
ARCHIVE, AMERICAN HISTORICAL)
ASSOCIATION, AMERICAN SOCIETY OF LEGAL) Miscellaneous Action
HISTORY, ORGANIZATION OF AMERICAN)
HISTORIANS, SOCIETY OF AMERICAN)
ARCHIVISTS, AND SAM ROBERTS)
FOR ORDER DIRECTING RELEASE OF)
GRAND JURY MINUTES)
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DECLARATION OF SAM ROBERTS

1. I am currently the urban affairs correspondent of The New York Times. I submit this declaration to support the petition to unseal the grand jury minutes relating to the indictments of Julius and Ethel Rosenberg and Morton Sobell.

2. I am the author of "The Brother," a nonfiction book about the Rosenberg case that was published in 2001 by Random House and was a finalist for the National Book Critics Circle Award. As a reporter and editor for The New York Times and before that the New York Daily News, I have won numerous awards, including from the Fund for the City of New York, the Newspaper Guild, the Society of Silurians, the National Association of Black Journalists, and other groups. In addition to "The Brother," I have written several books. I co-authored a biography of Nelson A. Rockefeller (Basic Books) and was the author of "Who We Are" and "Who We Are Now" (Times Books), two separate analyses of the nation's changing demography. Since 1992, I have also been the host of The Times's regular public affairs program on NY1 News, the all-news cable television channel. Also, I know produce two weekly podcasts for The Times (a

collection of the texts of those podcasts is being published by St. Martin's). I am currently writing a book (for Public Affairs) on making government work.

3. My interest in the Rosenberg case stems from articles I have written for The New York Times beginning in 1983 and continuing beyond the publication of "The Brother" in 2001 and an updated edition of the book in 2003. The book was also the basis for a screenplay and for a stage play, which opened last year in Chicago. My research and my interest in the case continue. So does my frustration at the unanswered questions about the case, despite my access to principals who had never before been interviewed, the release of previously secret government records by the United States (including the Venona transcriptions and, in response to my Freedom of Information requests, of previously unclassified documents from the Federal Bureau of Investigation) and by the former Soviet Union and the publication of other books by Americans and Russians who were involved in espionage and its investigation.

4. Comings and goings before the Rosenberg grand jury in 1950 were covered extensively by the press in New York City at the time, have been recounted in several books since then, and have been commented upon publicly, in open court during the trial itself, in legal papers, in judicial decisions and in published personal reminiscences by a number of the prosecutors, defense attorneys, judges, defendants, witnesses and others involved in the case. The names of witnesses called before the grand jury is a matter of public record. But the resolution of a number of unanswered questions, questions that history and our collective confidence in the judicial system have a fundamental claim on, can only be resolved by the release of the grand jury minutes themselves (with whatever protections are deemed necessary for personal privacy).

Virtually all of the witnesses who testified before the grand jury or were the subjects of that testimony are dead. Among those who survive are Morton Sobell, who was convicted in the case and imprisoned; David Greenglass, who plead guilty to charges stemming from the investigation and also was imprisoned; Ruth Greenglass, David's wife, who was an acknowledged participant in the conspiracy, but was spared indictment only after she and her husband agreed to testify for the government.

5. Beginning with my research for my very first article on the case for The Times, in 1983, I sought to locate David Greenglass, who was living under a pseudonym since his release from prison in 1960, and to persuade him to be interviewed. Finally, after more than a decade, he agreed for the first time to an open-ended series of interviews with no restrictions (except only that his new identity not be revealed, a condition that I adhered to). In the course of those interviews, Greenglass casually disclosed a vital piece of evidence that totally contradicted what he had said in open court during the 1951 trial.

6. There would have been no prosecution without David Greenglass's confession. ("Would there have been a case without David Greenglass? No," one of the prosecutors, James Kilsheimer, told me.) The government's goal, as confirmed in my interviews with former prosecutors, including William P. Rogers, the former deputy United States Attorney General, was to use the indictment, conviction and possible threat of the death penalty against Ethel Rosenberg as leverage to convince her husband, Julius, to confess his guilt and, more importantly, to implicate his collaborators (whom the government had already identified largely from what became known as the Venona transcripts, a trove of intercepted Soviet cables that were not only

fragmentary, but were probably legally inadmissible as evidence without formal authentication and whose very existence the government did not want to reveal and would not until decades later). With a little more than a week left before the trial was to begin, however, the government's case against Ethel was considered flimsy at best and bereft of an overt act to justify her conviction, much less the imposition of the death penalty.

7. In February 1951, prosecutors again interviewed Ruth Greenglass, as they had been doing since the previous June. After reminding her that she was still subject to indictment and that her husband had yet to be sentenced, they extracted from her an additional recollection: that in the fall of 1945, Ethel Rosenberg had typed her brother's handwritten notes relating to research on an atomic bomb. Confronted with his wife's recollection, David Greenglass told prosecutors that she had a very good memory and if that was what she remembered her version of the events nearly six years earlier was probably correct. We may never know whether Ethel Rosenberg, indeed, typed those celebrated notes. The transcripts of those crucial separate interviews with David and Ruth Greenglass early in 1951 have neither been released nor even located in the files of the Federal Bureau of Investigation or of the United States Attorney. But at the trial, David Greenglass testified that his sister Ethel did the typing. Ruth Greenglass was called to corroborate David's testimony about the typing; she did so. And, in his summation, the chief prosecutor declared: "This description of the atom bomb, destined for delivery to the Soviet Union, was typed up by the defendant Ethel Rosenberg that afternoon at her apartment at 10 Monroe Street. Just so had she on countless other occasions, sat at that typewriter and struck the keys, blow by blow, against her own

country in the interests of the Soviets.”

8. When I interviewed David Greenglass, however, he acknowledged for the first time that, in effect, he had lied in his testimony, that he had no recollection – then or now – as to whether Ethel typed his notes or not. Greenglass told me: “I don’t remember that at all....I frankly think my wife did the typing, but I don’t remember...I can only assume my wife didn’t make it up...my wife put her in it. So what am I gonna do, call my wife a liar?” But a few years earlier, in a brief interview with the authors Ron Radosh and Sol Stern, Ruth’s reply to one question suggested that she, too, had not been 100 percent certain. Asked how she could be so sure that the incriminating scenario occurred precisely the way she described it in her final version – that David deciphered his own cryptic handwriting, that Ruth helped correct the grammar and that Ethel did the typing – Ruth replied: “Because that’s the way it would have been done.” Their conflicting testimony – in what they originally told investigators and then testified to, to say nothing of David Greenglass’s completely contradictory revelations in his interviews with me – can only be reconciled by the release of the grand jury minutes.

9. The record of those grand jury proceedings, and only that record, may hold the key to that vivid and potentially vital inconsistency, and also to others that have defied resolution for more than a half -century. Collectively, those inconsistencies have undermined public confidence in the administration of justice in a case that contributed mightily to cold war political repercussions at home and abroad and to skepticism that still reverberates in public cynicism about government secrecy and tactics to protect national security. While there are legitimate reasons for grand jury secrecy, after more

than 50 years the release of the grand jury minutes in this case warrants special consideration – just as the release of secret Soviet files on the case does.

10. The Rosenbergs were accused of *conspiracy* to commit espionage – a charge that did not mandate proof that espionage was actually committed. But they were convicted of and sentenced for a much more damning crime, a treasonous disregard for their responsibilities as American citizens that, as the prosecutors and the presiding judge himself articulated, delivered the secret of the atomic bomb to the Soviet Union and even triggered and prolonged the Korean War. “I consider your crime worse than murder,” Judge Irving Kaufman said before imposing sentence. “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 aggressions 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.”

11. As a result of the defense’s paralyzing fear of impugning the patriotism of the Rosenbergs, those assertions were never disputed in court. In that climate of fear, the reticence of reputable scientists to testify as to the value of the atomic secrets or, indeed, whether they were secret at all, also allowed the government’s scientific evidence to go unchallenged. What was the grand jury told about the value to the Soviets of the information that David Greenglass gathered at Los Alamos, where he was an army machinist at Los Alamos, and passed along to Julius Rosenberg?

12. One of the most intriguing mysteries of the case is on what legal basis the government persuaded the grand jury to indict Ethel Rosenberg. In his initial interviews

with investigators, David Greenglass implicated his own wife, Ruth, but not his sister. Interviewed again a month later, David told prosecutors that Ethel “never spoke about it to me, and that’s a fact” and even recalled in a sworn statement that he had delivered his notes to Julius on a Manhattan street in 1945 – not in the Rosenbergs’ apartment.

14. Ethel was summoned before the grand jury on August 7. She invoked the Fifth Amendment. She was summoned again for four days later and, told that the government would charge her with conspiracy if she refused to answer questions, again cited her constitutional privilege against self-incrimination, as the trial record reveals. Before she reached the bottom of the courthouse steps, she was arrested. But on what evidence? For all the incriminating innuendo available to the government in the Venona interceptions regarding Julius, there was none about Ethel. Unlike virtually every other principal in the case, she was not given a code name by the Soviets in the secret cables that the United States government intercepted and deciphered. She was undoubtedly a dutiful wife, ideologically, emotionally and romantically inclined to fully support her husband’s commitment to the Soviet Union. But on what evidence was she indicted? Ruth Greenglass’s recollection that Ethel wrote to her in New Mexico that “a member of the family would come out to visit” – a message that Ruth described as “instructing her to be available for the espionage contact” – was made to investigators after Ethel’s indictment. Her recollection about the typing followed months later. Years later, Julius’s Soviet handler, Alexander Feklisov, would write: “It is certain Ethel shared the convictions of Julius and recognized without doubt his collaboration with Soviet spies. However, she had never participated in these clandestine activities.” Feklisov also said “the fact is, I never did meet Ethel.” It is possible that Feklisov was protecting

Ethel Rosenberg and, in fact, a Soviet document made available later said that Ethel Rosenberg, by buying bread and two bottles of milk in a lower Manhattan grocery store, was signaling to Feklisov that it was safe to proceed to the Rosenbergs apartment. That reference, however, is the only Soviet-era record released so far that suggests any direct involvement by Ethel Rosenberg in an espionage conspiracy.

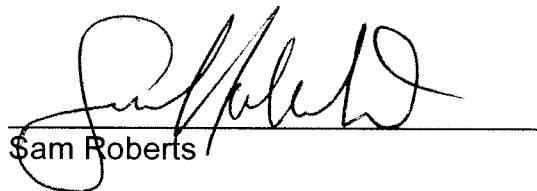
15. From the very beginning, the government's goal was to leverage the indictment, the conviction and finally the death sentence imposed on Ethel to wring a full confession from Julius, counting on her motherly instincts to overcome unconditional loyalty to a noble but discredited cause. (Under current rules for federal prosecutors, "the death penalty may not be sought, and no attorney for the Government may threaten to seek it, for the purpose of obtaining a more desirable negotiating position.") Robert Lamphere, the FBI supervisor and the bureau's liaison to the Venona project, said: "I wanted them to cooperate with us and not to die." That strategy failed. As Deputy Attorney General Rogers admitted to me: "She called our bluff." If the government indicted – and executed – Ethel Rosenberg on an unsubstantiated bluff, a half century later history demands that the details, available at the time to prosecutors and other public officials, be finally shared with the public.

16. Few cases in American jurisprudence have stirred emotions, generated debate in and out of government and the judicial system, and have had as enduring and divisive a political impact as the prosecution of the Rosenbergs – a prosecution that still haunts the nation's psyche and is reflected in the festering cynicism and skepticism that infects our society. Those special circumstances combine to make a compelling argument that, after all these years, the routine and ordinarily legitimate

rules for grand jury secrecy have been trumped by the compelling case for historical accuracy.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct.

Executed in New York, New York, this 24 day of January 2008.



Sam Roberts