

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 JOHN WICKHAM BERRESFORD

1. I am a staff attorney in the Media Bureau of the Federal Communications Commission. Until recently, I was also an adjunct professor teaching communications law at George Mason University. In addition, I am an historian, focusing on Cold War in general, and on the Alger Hiss espionage case in particular. I have published several academic articles on the case, including “Questions and Answers about the Case of Whittaker Chambers and Alger Hiss,” 28 INT’L SOC. OF BARRISTERS J. 363 (1993) and “Whittaker Chambers and Alger Hiss: The Courts Decide,” 27 INT’L SOC. OF BARRISTERS J. 355 (1992) (also published in the February 1993 issue of FED. BAR NEWS & J.). In 1998, I taught a day-long course about the Hiss case for the Smithsonian Associates, an educational outreach program of the Smithsonian Institution.

2. In 1948, Alger Hiss, formerly a high-ranking U.S. government official, was indicted for perjury for lying to a grand jury about his involvement in Soviet espionage. The grand jury records relating to Alger Hiss were released by this court in *In re Petition of Am. Hist. Ass’n*, 49 F. Supp. 2d 274 (S.D. N.Y. 1999). In 2008, the scholarly journal AMERICAN COMMUNIST HISTORY will publish my latest article on the Alger Hiss case,

"The Grand Jury in the Hiss-Chambers Case." While many scholars have used information from the Hiss grand jury records in various academic publications, this new article will be the first exhaustive analysis of the thousands of pages of grand jury records relating to the Hiss espionage case.

3. I first read the Alger Hiss grand jury records in 2005. Although I was very familiar with the case at that time, the records added valuable details to my factual knowledge, opinions, and general understanding of the Hiss case and its milieu. By telling this court what I learned from those records, I hope to give this court an appreciation of what might be learned from the Rosenberg grand jury records.

4. The Alger Hiss records reveal that a wealth of information can be gained from grand jury records relating to a historically important case. The basic material used by historians includes facts, observations, and differing opinions of the same events told by various participants. The Hiss records contain a mountain of this basic material, much of which was not revealed in the perjury trials of Alger Hiss (or in previous Congressional hearings). Several subjects of particular interest to historians are explored in great detail in the Hiss grand jury records and were not discussed, at all or as much, in Hiss's perjury trials. These subjects include (1) the degree to which communism appealed to some native-born Americans who could succeed in the capitalist economy; (2) the ways in which members of the open American Communist Party were recruited to join the underground Communist movement; (3) the manner in which the Communist underground operated in the United States, both through discussion groups and espionage rings; (4) the method of recruiting people from discussion groups into espionage rings; (5) the ways in which Hiss's main accuser, Whittaker Chambers, and others came to

believe they had made a terrible error in accepting communism and engaging in underground work; and (6) the slow, painful process by which they detached—both physically and mentally—from the communist underground and tried to begin new and ordinary lives of legitimate work. This wealth of information in the grand jury records was unexpected and is a large part of my upcoming article, “The Grand Jury in the Hiss-Chambers Case.” The Rosenberg grand jury records will likely contain the same kind of unexpected and valuable information as well.

5. The Hiss records demonstrate that grand jury records can be a treasure trove of information relating to historically important cases. The grand jury process itself encourages the development of this useful information. For example, many witnesses before the Hiss grand jury later testified at Hiss’s perjury trials, in particular Hiss, Chambers, and their wives. Their grand jury testimonies were much less rehearsed were more spontaneous and heartfelt. The witnesses were often permitted to “tell their stories” to the grand jury, while, in court, they were responding to attorneys’ specific questions and subject to objections sustained by the Judge. The Hiss grand jury witnesses were subjected to surprise hostile questions; they had to react quickly and without forethought. The grand jury testimonies were less processed than when, later and perhaps with coaching, the same witnesses testified in court. These unique qualities of grand jury testimony are likely to be evident in the Rosenberg grand jury records.

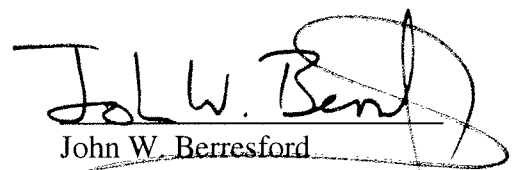
6. Grand jury records are a rich source of new historical knowledge because the grand jury, unlike a trial, often conducts a broad-ranging inquiry into a general subject, such as Soviet espionage in the United States. A grand jury’s inquiry is not limited by the many factors that severely limit what is shown in court. Chief among these limiting

factors are (1) statutes of limitations; (2) the elements of a crime and the defenses to it; (3) the “four corners” of an indictment; (4) the rules of evidence, which impose limitations of materiality and relevance to the case at hand, and which sometimes exclude material and relevant evidence for reasons of public policy; (5) the incentive of both sides in adversarial proceedings not to produce material evidence that helps neither of them; and (6) Constitutional privileges against certain searches and seizures. These limitations do not exist before a grand jury, and their absence can make its proceedings a more fertile field for the historian than a trial transcript. These factors make the Hiss grand jury records a valuable resource for historians, and the Rosenberg records will likely reflect the absence of these limiting factors as well.

7. I am not an expert on the Rosenberg case. However, based on my experience with the Hiss records, I believe that the Rosenberg grand jury records will add significant information to the current knowledge and understanding of the Rosenberg case in particular and of American communism and Soviet espionage in general. Without knowing all the considerations that inform this court’s decision, I do believe that the court should unseal the grand jury records relating to the Rosenberg case in the interest of historical inquiry.

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

Executed in the District of Columbia on this 30th day of November, 2007.


John W. Berresford