

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----)
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)
-----)

DECLARATION OF ELLEN W. SCHRECKER

I, Ellen W. Schrecker, hereby state as follows:

1. I am a Professor of American History at Yeshiva University in New York City where I have been teaching since 1987. This academic year (2007-2008) I am on leave from Yeshiva writing a book on academic freedom with support from the Frederick Ewen Academic Freedom Fellowship from New York University's Tamiment Library. I am also working on a study of American political repression that ranges from the Puritans to the Patriot Act. As a scholar, my main field of interest for more than twenty years has been the anticommunist political repression of the McCarthy era. I am the author of No Ivory Tower: McCarthyism and the Universities (1986); The Age of McCarthyism: A Brief History with Documents (1993); Many Are the Crimes: McCarthyism in America (1998); and Cold War Triumphalism: The Misuse of History After the Fall of Communism (2004). I have also written many articles and delivered many conference papers about communism, McCarthyism, and the anticommunist campaign of the late 1940s and 1950s.

2. As a student of McCarthyism and political repression, I am very interested in the Rosenberg case. In many respects, this case was the most notorious of the political trials of the McCarthy era. While Julius Rosenberg was involved in espionage, his execution and the execution of his wife, Ethel, were disproportionate compared to the crimes for which they were convicted. The Rosenbergs were the only Americans executed for espionage during the Cold War, although many Americans were investigated and convicted of Soviet espionage. This disproportionate reaction to the Rosenbergs' alleged crimes warrants exhaustive study. Thus, I believe that the Rosenberg grand jury records should be released.

3. The Rosenberg case is particularly important to me because of my interest in political repression in a broad context. The Rosenbergs' refusal to confess thwarted the government's likely intention of using them to procure additional information about Julius's espionage activities. By threatening the Rosenbergs with the death penalty—and by eventually carrying it out—the government used the criminal justice system to further its goals of discouraging communist political activities.

4. In a top-secret project beginning in 1943, the U.S. Army Signal Security Service intercepted telegrams, known as the VENONA decrypts, sent between Soviet diplomatic missions. Because the government did not want to reveal that it had deciphered the Soviets' code, it did not directly use information gained from the decrypts in its espionage prosecutions. Instead, the government relied primarily on confessions to build its cases against suspected spies. Confessions from Klaus Fuchs, Harry Gold, and David Greenglass led to the government's interest in the activities of Julius Rosenberg.

However, when questioned, Julius Rosenberg refused to confess, thus preventing the government from acquiring more names and indicting more individuals.

5. The Rosenbergs' execution can thus be characterized as politically motivated, carried out to discourage American communists from adhering to or acting on their political convictions and also to assuage the fears of the American public about Soviet nuclear weapons by showing that that the government was on top of the situation. As a result, I am particularly interested in the grand jury records for the purpose of examining and understanding the prosecutorial strategy that led to the conviction and execution of the Rosenbergs.

6. First, the grand jury records in this case may help us to understand the way in which Cold War prosecutors created the espionage trials that were central to encouraging public support for McCarthyism and for the Cold War.

7. Second, the grand jury records will likely clarify the government's prosecutorial strategy against Ethel Rosenberg. While Ethel was probably aware of her husband's espionage activities, the government had no evidence that she was directly involved with espionage. However, in order to pressure Julius Rosenberg to confess, the government prosecuted his wife and threatened her with the death penalty. The prosecution's strategy of using the death penalty in such an aggressive way is indicative of the McCarthy era's ruthless treatment of suspected Communists.

8. Finally, the grand jury records will also help us to understand the prosecutorial strategy with respect to the evidence presented against the Rosenbergs. FBI files released through FOIA requests suggest that the prosecutors helped David Greenglass and Harry Gold, both confessed spies, make their testimony against the

Rosenbergs consistent. The grand jury records may reveal whether their testimonies were altered under FBI supervision. The grand jury records may reveal whether such prosecutorial indiscretions occurred.

9. If the records are released, I hope to use the Rosenberg grand jury records in a chapter of my forthcoming book on political repression in the United States. The relevant chapter is on the use of the criminal justice system in the creation and perpetuation of political repression. The way in which the government used the grand jury and prepared the Rosenbergs' trial is an important piece of this story. With the grand jury records, it may be possible for me to make a more nuanced argument that would help us to understand the role of the criminal justice system in political repression in the United States.

10. This case continues to interest historians and the public today primarily because of the court's decision to impose the death penalty, which is significant for two reasons. First, had the Rosenbergs not been killed, their case would have been just one of several espionage prosecutions. Instead, the death sentence made the Rosenberg case central to the American public's opinion on international espionage in general and on the Soviets' acquisition of the atomic bomb in particular. Significantly, whatever Julius Rosenberg did was not as central to the Soviet acquisition of the atomic bomb as were the espionage activities of Klaus Fuchs, Theodore Hall, and George Koval. Despite this fact, Julius Rosenberg and his wife received the death penalty while Fuchs, Hall, and Koval did not. Second, the imposition of the death penalty has lent the Rosenberg case an emotional gravitas that is lacking in other Cold War era prosecutions. Julius and Ethel Rosenberg were parents who left behind two young sons, who eventually became strong

advocates for other children of political repression victims. There is an inherent public and historical interest in their family's story.

11. For the foregoing reasons, I urge the court to recognize the claims of history and to open these important records to the scrutiny of scholars and the American public.

12. 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 8th day of December 2007.

Ellen W. Schrecker
Ellen W. Schrecker