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THE GOVERNMENT'S HOSTAGE: THE CONVICTION AND EXECUTION OF ETHEL ROSENBERG

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Abstract

Whether or not Ethel Rosenberg was guilty of the offense for which she was tried, convicted, and executed, there is little doubt that the evidence upon which the conviction was based was threadbare. Indeed, even the government itself thought so. The government's prosecution of Ethel relied exclusively on the testimony of David and Ruth Greenglass, Ethel's brother and sister-in-law. A July 17, 1950 internal FBI memo declared there was not enough evidence to arrest Ethel Rosenberg. The government did not discover any new evidence against Ethel between the release of that memo and Ethel's arrest on August 11, 1950. Furthermore, no new evidence was discovered in the time between her arrest and her indictment on January 31, 1951, shortly before her trial in March. And it was in that brief period that both the Greenglasses' stories dramatically evolved as to the extent of Ethel's supposed connections with the alleged conspiracy.

Her conviction and execution rested on three claims: (1) Ethel asked Ruth to convey Julius' espionage recruitment offer to David; (2) Ethel typed up notes containing nuclear secrets in order to transmit them to the Soviets; and (3) Ethel and Julius received a mahogany table and other gifts from the Soviets as a reward for their commitment to the cause. Of the three, the only evidence present at the time Ethel was indicted was Ruth's statement that Ethel asked Ruth to convey Julius' recruitment offer to David. Despite giving several statements, over the course of eight months, neither Ruth nor David Greenglass mentioned Ethel typing up the notes until two weeks before trial. The indictment and pretrial documents also fail to report that Ethel received gifts from the Russians. This accusation was first introduced into the trial documents during the Greenglasses' trial testimony.

The conclusion in the July 17, 1950 FBI memo, stating that the evidence against Ethel was insufficient to warrant prosecution, remained true throughout her arrest, prosecution, conviction, and execution.

The reason for her prosecution seems clear: Ethel was executed because she refused to cooperate with the Government to help convict her husband, Julius. Ethel was merely a pawn used for leverage in the government's attempt to build a case against Julius Rosenberg.

I. Introduction

Once regarded as the trial of the century, the Rosenberg case continues to elicit contradictory reactions. Most Rosenberg reports focus on the guilt or innocence of both Julius and Ethel as a pair. In creating this report, Seton Hall University School of Law Center for Policy and Research (the Center), adds a new perspective to the existing literature by focusing on Ethel individually. The report will detail the evidence the government had of her guilt, concluding that it was remarkably thin.

On January 31, 1951, a federal grand jury in the Southern District of New York indicted Julius and Ethel Rosenberg, Morton Sobell, Anatoli Yakovelev, and David Greenglass for conspiracy to commit espionage.¹ They were indicted under Section 34, Title 50, of the United States Code,² on the basis of twelve overt acts.³ Ethel Rosenberg was named in only two of the twelve alleged overt acts described in the indictment: (1) on or about November 15, 1944, Julius

¹ *Ethel Rosenberg*, FBI Records: The Vault, 18-19 (Sept. 25, 1953) [hereinafter *Ethel Rosenberg*], <https://vault.fbi.gov/rosenberg-case/rosenberg-case-ethel-rosenberg/rosenberg-case-ethel-rosenber-part-02-of/view> (last visited Nov. 11, 2016). “[T]he defendants herein, did, . . . conspire, combine, confederate and agree with each other . . . to violate subsection (a) of Section 32, Title 50, United States Code, in that they did conspire, combine, confederate and agree, with intent and reason to believe that it would be used to the advantage of a foreign nation . . . to communicate, deliver and transmit to a foreign government, . . . and representatives and agents thereof, directly and indirectly, documents, writings, sketches, notes and information relating to the National Defense of the United States of America.” *Id.* at 19-20.

² Espionage Act, 50 U.S.C. § 34 (1917) (current version at 18 U.S.C. § 794 (2016)).

³ *Ethel Rosenberg*, *supra* note 1, at 20-21.

and Ethel Rosenberg conferred with Ruth Greenglass, and (2) on or about January 5, 1945, Julius and Ethel conferred with David and Ruth Greenglass.⁴

Throughout a month-long trial in March of 1951, the government presented only three pieces of evidence allegedly implicating Ethel in the conspiracy: (1) in mid-November 1944, Ethel asked Ruth to convey a message from Julius to David, asking David to collect sensitive information from scientists working on the Manhattan Project at Los Alamos, New Mexico; (2) Ethel typed notes containing sensitive information that Julius received from David; and (3) Ethel received a mahogany console table and other gifts from the Soviets as a reward for her espionage efforts.

The government relied on the testimony of Ethel's brother, David Greenglass, and David's wife, Ruth, to convict Ethel despite their status as named co-conspirators, and David's additional status as a named co-defendant. David and Ruth appreciated the gravity of the charges and, to avoid facing the same fate as the Rosenbergs, they chose to cooperate with the government at the beginning of the investigation.

Ultimately, Ethel was convicted of conspiracy to commit espionage on March 29, 1951, sentenced to death on April 5, 1951, and executed on June 19, 1953.⁵ David, in contrast, was sentenced to fifteen years in prison, and Ruth was never arrested.

The Center reviewed many FBI documents used to develop the allegations against Ethel and to understand the government's prosecution strategy in the Rosenberg case. While there may be unreleased evidence against Ethel, contemporaneous documents from the FBI and DOJ officials repeatedly note the absence of evidence implicating Ethel in the espionage conspiracy.⁶ Further, most of the government's key evidence against Ethel appears to have been uncovered six months

⁴ *See id.*

⁵ *Id.* at 64.

⁶ *See* Memorandum from A. H. Belmont, Special Agent in Charge, FBI, to D. Milton Ladd, Asst. to the Dir., FBI (July 17, 1950).

after Ethel's arrest, thus casting doubt on the legitimacy of her arrest and imprisonment at that stage.

This report reviews the government's case against Ethel. Part II focuses on the chronology of the evidence's appearance while Part III analyzes the evidence itself, attempting to discern the government's basis for its decision to seek the death penalty against Ethel. Part IV concludes.

II. Chronology of the Evidence

A. The Investigation (June 15, 1950–August 11, 1950)

The investigation into Julius Rosenberg began with David Greenglass' arrest on June 15, 1950. According to Agent Belmont, David's initial signed statement implicated only himself, Ruth, and Julius.⁷ In fact, David did not mention Ethel at all in his initial statement.⁸ David told the FBI agents that during Ruth's visit to New Mexico in November 1944, Ruth told him that Julius "had asked if [he] would give information on the atom bomb."⁹ David cautioned that the message his wife conveyed to him was not Ruth's idea, "but was an idea given to her by Julius Rosenberg."¹⁰ On June 16, 1950, David gave a second statement, but that also failed to mention Ethel.¹¹

The FBI first interviewed Ruth Greenglass on June 16, 1950.¹² Like David, Ruth did not mention Ethel in her initial statement.¹³

⁷ *Id.*

⁸ Statement of David Greenglass to John W. Lewis and Leo H. Frutkin, Special Agents, FBI, in N.Y.C., N.Y. (June 15, 1950).

⁹ *Id.*

¹⁰ *Id.*

¹¹ JOHN W. LEWIS, FBI, DAVID GREENGLASS 7 (June 26, 1950) [hereinafter LEWIS REPORT].

¹² Interview by Raymond P. Worth and Edwin R. Tully, Special Agents, FBI, with Ruth Greenglass, in N.Y.C., N.Y. (June 16, 1950) (Ruth was interviewed at Gouverneur Hospital where she was a patient. FBI agents secured permission from Ruth's doctor to interview her, and Ruth consented. Ruth was scheduled to be released from the hospital later that day). *Id.*

¹³ *Id.*

On June 23, 1950, the FBI sent a memo to Assistant Attorney General McInerney (AAG McInerney) requesting an opinion as to whether there was sufficient evidence against Ruth and Julius to prosecute them.¹⁴ At this point, the FBI was under the impression that David was recruited into a Soviet spy ring by his wife, Ruth, at the request of Julius.¹⁵

Ruth's subsequent statement to the FBI on July 14, 1950 was the first time Ethel was reported as a participant in the November 1944 conversation between Julius and Ruth.¹⁶ Ruth stated that, "when [she] was reluctant to do what Julius asked of her, Ethel told [her] that she should at least ask her husband, David, if he would furnish [that] type of information."¹⁷ In that statement, Ruth also described having dinner with her husband and the Rosenbergs at the Rosenberg apartment in January 1945.¹⁸ Ruth recalled Julius cutting a Jell-O box in half, giving one half to David and stating that he would keep the other half to give to the person who was to travel to New Mexico to collect more information from David.¹⁹ Therefore, David would be assured that whoever produced the matching half of the Jell-O box was sent by Julius. Ruth did not explicitly mention Ethel's presence when this occurred.

However, on July 17, 1950, David and Ruth each gave another statement to the FBI.²⁰ Again, David made no mention of Ethel,²¹ but Ruth's statement, while substantially similar to her

¹⁴ Memorandum from James H. McInerney, Asst. Att'y Gen., to J. Edgar Hoover, Dir., FBI (June 23, 1950).

¹⁵ *Id.* at 2; Memorandum from William M. Whelan, Asst. Special Agent in Charge, FBI, to J. Edgar Hoover, Dir., FBI 1 (June 16, 1950); *see also* Interview by FBI with The Greenglasses 1-5, in N.Y.C., N.Y. (July 14, 1950).

¹⁶ Greenglass Interview, July 14, 1950, *supra* note 15, at 5-8.

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ *Id.* at 6-7.

²⁰ Statement of David Greenglass to John W. Lewis and Leo H. Frutkin, Special Agents, FBI, in N.Y.C., N.Y. (July 17, 1950); Statement of Ruth Greenglass to John A. Harrington and William F. Norton, Jr., Special Agents, FBI, in N.Y.C., N.Y. (July 17, 1950).

²¹ *See* David Statement, July 17, 1950, *supra* note 20.

July 14, 1950 statement, added that Ethel was present when Julius cut the Jell-O box in half.²² Based on these statements, the DOJ arrested Julius.²³

Later that same day, the FBI requested that AAG McInerney issue an opinion as to whether Ethel could be prosecuted.²⁴ The memo, reporting McInerney's response, explained the evidence against Ethel depended on the statement of one witness—Ruth.²⁵ Because of this, AAG McInerney counseled that “there was insufficient evidence to issue process against [Ethel] at this time.”²⁶ However, AAG McInerney further opined that “it might be possible to utilize [Ethel] as a lever against her husband.”²⁷

Two days later, on July 19, 1950, the FBI took another statement from David.²⁸ For the first time, David mentioned Ethel in a statement,²⁹ recounting his late-November 1944 conversation with Ruth in which she told him about her mid-November, 1944 conversation with Julius.³⁰ David explained that, after Ruth told Julius she did not want to convey his message to David, Ethel said, “[w]ell, at least ask David to do this.”³¹ However, David never claimed first-hand knowledge of these statements; he was only able to convey what Ruth had told him. Additionally, David's July 19, 1950 statement also corroborated Ruth's allegation that Ethel was present while Julius cut up the Jell-O box.³² The government considered David's belated

²² See Ruth Statement, July 17, 1950, *supra* note 20, at 20.

²³ *Id.*

²⁴ Belmont FBI Memo, July 17, 1950, *supra* note 6.

²⁵ *Id.*

²⁶ *Id.*; Memorandum from William M. Whelan, Asst. Special Agent in Charge, FBI, to J. Edgar Hoover, Dir., FBI (July 17, 1950).

²⁷ Whelan FBI Memo, July 17, 1950, *supra* note 26.

²⁸ Statement of David Greenglass to John W. Lewis and John A. Harrington, Special Agents, FBI, in N.Y.C., N.Y. (July 19, 1950).

²⁹ *Id.* at 15.

³⁰ *Id.* at 15-16.

³¹ *Id.*

³² *Id.* at 2.

corroboration of Ruth's statement adequate to alleviate AAG McInerney's concern over the insufficiency of evidence implicating Ethel in the conspiracy.

By July 28, 1950, U.S. Attorney Irving Saypol (USA Saypol) was considering Ethel as a possible defendant.³³ Furthermore, he stated that since David and Ruth Greenglass were necessary witnesses for a trial against the Rosenbergs, "it might be necessary to include them in the indictment as co-conspirators rather than defendants."³⁴

On August 1, 1950, despite AAG McInerney's earlier reluctance to proceed against Ethel, USA Saypol instructed Chief Assistant United States Attorney, Myles Lane (AUSA Lane), to request that the New York Office immediately issue a sealed complaint and warrant charging Ethel with conspiracy to engage in espionage. He also proposed that the FBI should apprehend Ethel if she was uncooperative while appearing in front of the Grand Jury.³⁵

In response, Agent Whelan and AAG McInerney protested that USA Saypol's proposed procedure to initiate process against Ethel "was not sound."³⁶ Agent Whelan warned USA Saypol that "the advance issuance of a warrant for Ethel prior to her grand jury appearance might be regarded as a threat against her."³⁷

B. Grand Jury Testimony (August 3–11, 1950)

In preparation for her grand jury appearance, AUSA Lane took another statement from Ruth. She reiterated previous statements and provided a few additional details.³⁸ For instance, Ruth stated that Julius "was almost always alone" and that "he was never accompanied by [Ethel]"

³³ Memorandum from William F. Norton, Jr., Special Agent, FBI, to J. Edgar Hoover, Dir., FBI (July 28, 1950).

³⁴ *Id.*

³⁵ FBI REPORT, JULIUS AND ETHEL ROSENBERG 54 [hereinafter ROSENBERG REPORT].

³⁶ *Id.*

³⁷ *Id.*

³⁸ See Statement of Ruth Greenglass to Myles J. Lane, Chief Asst. U.S. Att'y, S.D.N.Y., in N.Y.C., N.Y. (Aug. 2, 1950).

except when they were at home together.³⁹ Ruth also mentioned that “Dave’s handwriting isn’t always legible,”⁴⁰ but made no mention of anyone helping to type his notes. The next day, Ruth testified, under oath, in front of the Grand Jury.⁴¹ When asked if Ethel ever urged David to remain in the Army and to continue giving information, Ruth stated that, “Ethel never made any mention of this to David. The only time she was there was when there were conversations between her husband and me, in her presence.”⁴²

The next day, Friday, August 4, 1950, AUSA Lane interviewed David in preparation for his grand jury testimony. David’s statement at that time included much more detail than his prior statements. AUSA Lane questioned David about his September 1945 meeting with Julius when he gave Julius a written description of certain aspects of the atomic bomb and some sketches he had prepared from memory.⁴³ David told AUSA Lane that Ethel was never present when he turned over classified information to Julius.⁴⁴ AUSA Lane asked David if Ethel ever talked to David about Julius transmitting information to the Russians, to which David responded, “[Ethel] never spoke about it to me and that’s a fact.”⁴⁵ At the end of the interview, AUSA Lane asked David if Julius and Ethel ever received any gifts from the Soviets.⁴⁶ David replied that Julius had received a watch from the Russians as “a reward for services rendered,” but he did not know if Ethel also received a watch.⁴⁷

³⁹ *Id.* at 12.

⁴⁰ *Id.* at 21.

⁴¹ Ruth Greenglass Grand Jury Tr. (Aug. 3, 1950).

⁴² *Id.* at 9155-56 (referring to the mid-November, 1944 conversation).

⁴³ Statement of David Greenglass to Myles J. Lane, Chief Asst. U.S. Att’y, S.D.N.Y., in N.Y.C., N.Y., 22-23 (Aug. 4, 1950).

⁴⁴ *Id.* at 54.

⁴⁵ *Id.*

⁴⁶ *Id.* at 30.

⁴⁷ *Id.*

On Monday, August 7, 1950, David testified, under oath, in front of the Grand Jury.⁴⁸ David again stated that Julius showed him the watch he had received from the Russians.⁴⁹ AUSA Lane then asked David if Ethel ever made reference to any citations or commendations from the Russians, to which David replied, “[m]y sister has never spoken to me about this subject.”⁵⁰ AUSA Lane questioned David on whether Ethel tried to persuade him to stay in the Army.⁵¹ David replied, “I said before, and say it again, honestly, this is a fact: I never spoke to my sister about this at all.”⁵²

Ethel also testified before the Grand Jury on August 7, 1950.⁵³ Ethel answered background questions, but asserted her right against self-incrimination when asked about the case.⁵⁴ USA Saypol advised the FBI that Ethel was uncooperative, and that on “two or three occasions she was almost in contempt of court.”⁵⁵ On August 11, 1950, Ethel was recalled to the Grand Jury, but she continued to exercise her rights.⁵⁶

C. Arrest and Indictments (August 11, 1950–January 31, 1951)

On August 11, 1950, USA Saypol authorized the FBI’s New York Division to issue a complaint and warrant against Ethel.⁵⁷ Following her grand jury testimony, Ethel was arrested in front of the courthouse, and was arraigned later that afternoon.⁵⁸

⁴⁸ David Greenglass Grand Jury Tr. (Aug. 7, 1950).

⁴⁹ *Id.* at 9173.

⁵⁰ *Id.*

⁵¹ *Id.* at 9191.

⁵² *Id.*

⁵³ Ethel Rosenberg Grand Jury Tr. (Aug. 7, 1950).

⁵⁴ *Id.*

⁵⁵ ROSENBERG REPORT, *supra* note 35, at 54.

⁵⁶ Ethel Rosenberg Grand Jury Tr. (Aug. 11, 1950).

⁵⁷ ROSENBERG REPORT, *supra* note 35, at 54.

⁵⁸ *Id.* at 55.

On August 17, 1950, Julius, Ethel, and Anatoli Yakovlev were indicted by the Grand Jury in the Southern District of New York for conspiracy to commit espionage between November 1, 1944, and June 16, 1950.⁵⁹ David and Ruth were named as co-conspirators, but not as defendants.⁶⁰ The indictment, based on eleven overt acts, mentioned Ethel twice: (1) for conferring with Ruth and Julius on, or about, November 15, 1944, and (2) for conferring with Julius, Ruth and David on, or about, January 5, 1945.

On August 23, 1950, Ethel pled not guilty.⁶¹

At the end of August 1950, over the course of three days, Agent Harrington interviewed David at the Tombs Prison in New York.⁶² During the interview, Agent Harrington showed David a gold woman's wristwatch he alleged to be Ethel's.⁶³ According to Agent Harrington's memo, David stated "he did not recognize [the] watch at all, and had no recollection of ever having seen it in the presence of Ethel."⁶⁴

A month later, on October 5, 1950, Agent Lewis interviewed Bernard Greenglass, Ethel and David's brother.⁶⁵ In his memo regarding Bernard's interview, Agent Lewis noted that "Bernard was unable to furnish any information regarding the source of the Rosenbergs' watches," and that Bernard had not seen Ethel's watch.⁶⁶

⁵⁹ Indictment, U.S. Grand Jury of S.D.N.Y., 1 (Aug. 17, 1950).

⁶⁰ *Id.*

⁶¹ ROSENBERG REPORT, *supra* note 35, at 57.

⁶² Memorandum from John A. Harrington, Special Agent, FBI, to J. Edgar Hoover, Dir., FBI (Sept. 12, 1950).

⁶³ *Id.*

⁶⁴ *Id.* At first, David stated that he had no recollection of Julius telling him that Ethel had received a wristwatch as a gift from the Russians or anyone else. *Id.* Later in the conversation, David recalled that "Julius mentioned to him that Ethel had gotten a watch as a gift, but Julius did not say specifically what the source of the gift was, except to indicate vaguely that it came from some friends. David was of the opinion that this meant it was from the Russians," but he admitted that "he had no proof to substantiate that opinion." *Id.* David then repeated that he did not recall seeing this watch in Ethel's possession, "nor did he have any recollection of having asked Ethel about the gift." *Id.*

⁶⁵ Memorandum from John W. Lewis, Special Agent, FBI, to J. Edgar Hoover, Dir., FBI (Oct. 19, 1950).

⁶⁶ *Id.* at 4.

On October 10, 1950, a federal grand jury in the Southern District returned a superseding indictment, which was identical to the original indictment, except it added David Greenglass and Morton Sobell as defendants.⁶⁷

On January 31, 1951, a federal grand jury in the Southern District handed down a second superseding indictment. This indictment was identical to the October 10, 1950 superseding indictment, except it changed the start date of the conspiracy from November 1, 1944, to June 6, 1944.⁶⁸

Ethel, Julius, and Morton Sobell pled not guilty on February 2, 1951.⁶⁹ That same day, David pled guilty and the judge deferred his sentencing until the end of the Rosenberg trial.⁷⁰

D. The Government’s Need for “Leverage” (February 8, 1951)

On February 8, 1951—one month before trial—AUSA Lane appeared before the United States Congress Joint Committee on Atomic Energy (the Committee) to apprise it of the case and explain that David would have to take the stand as a key witness.⁷¹ In order to justify seeking the death penalty against Julius, David would need to testify about the information he transferred to Julius.⁷² AUSA Lane sought the Committee’s guidance on how to question David on direct examination, so as to protect national security by minimizing the amount of classified information exposed in open court.⁷³ AUSA Lane stressed the importance of convicting Julius, and stated the government’s desire to impose the death penalty.⁷⁴

⁶⁷ *Ethel Rosenberg*, *supra* note 1, at 35.

⁶⁸ *Id.* at 35-36 (lengthening the conspiracy).

⁶⁹ *Id.* at 38.

⁷⁰ *Id.*

⁷¹ *Hearing Before the Joint Comm. on Atomic Energy*, 82nd Cong. (Feb. 8, 1951) (statement of Myles J. Lane, Chief Asst. U.S. Att’y, S.D.N.Y.). [hereinafter *Lane Congressional Testimony*] (statement of Myles J. Lane, Chief Asst. U.S. Att’y, S.D.N.Y.).

⁷² *Id.* at 3.

⁷³ *Id.* at 11-10.

⁷⁴ *Id.* at 6. “We think it is important that he be under the shadow of a death penalty, at least for a while.” *Id.* at 2.

According to AUSA Lane, Julius was “the keystone to a lot of other potential espionage agents,”⁷⁵ and the DOJ felt that, if it could get Julius to cooperate, he would lead them to many other conspirators.⁷⁶ The DOJ believed that threatening Julius with the death penalty would help convince Julius to cooperate.⁷⁷ Notably, AUSA Lane suggested to the Committee that if, in addition to seeking the death penalty against Julius, the government could convict Ethel and give her a “stiff sentence of 25 or 30 years,” Julius may be more inclined to talk.⁷⁸ AUSA Lane added that this “is about the only thing you can use as a lever on those people.”⁷⁹

Senator Cole, one of the members of the Committee, asked AUSA Lane if David was ready “to tell everything. . . . [e]ven that which would involve [Ethel].”⁸⁰ AUSA Lane conceded that David was reluctant when it came to talking about Ethel, but that the government’s case would rely on Ruth’s testimony to convict Ethel.⁸¹ AUSA Lane told the Committee that the only evidence they had against Ruth was “the conference they attended where they made arrangements for this Jell-O box and for the information to be passed on.”⁸² Most notably, AUSA Lane commented that “[t]he case is not too strong against [Ethel]. But for the purpose of acting as a deterrent, I think it is very important that she be convicted, too, and given a stiff sentence.”⁸³

⁷⁵ *Id.* at 3.

⁷⁶ *Id.* at 5 (“We feel that if we can really break him, that he will open the gates and give us information which [would] lead to a lot of other individuals”).

⁷⁷ *Lane Congressional Testimony, supra* note 71, at 6.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 14.

⁸¹ *Id.*

⁸² *Lane Congressional Testimony, supra* note 71, at 14.

⁸³ *Id.*

E. Preparing for Trial

On February 24, 1951—ten days before the start of trial—Agent Harrington interviewed Ruth.⁸⁴ For the first time, Ruth mentioned that, in January 1945, David had prepared hand-written descriptions of his work at Los Alamos, and sketches of the lens mold used in the atomic bomb, for Julius.⁸⁵ She stated that when Julius came to pick up the written descriptions, she “mentioned to Julius that David had very poor handwriting, and that it would be difficult for Julius to read it.”⁸⁶ Ruth said that Julius replied that it “was okay because he would have his wife, Ethel, type it for him.”⁸⁷ Ruth went on to detail the January 1945 dinner at the Rosenbergs’ house. Ruth stated that she mentioned to Ethel that she looked tired, and Ethel replied that she “had been up late the night before typing the material that David had given to Julius and typing other material that Julius had received.”⁸⁸ Ruth further indicated that Ethel told her that “she always typed Julius’ material.”⁸⁹

Next, Ruth described David’s September 1945 transfer of information to Julius. Ruth recalled David spending several hours preparing written information and sketches at Julius’s request.⁹⁰ According to Ruth, when David finished, they went to Julius’ house to turn over the information and sketches.⁹¹ Ruth said Julius read the information, called for Ethel, and then told her she had to type it up immediately.⁹² Ruth testified that Ethel then sat down at the typewriter and typed up the information.⁹³

⁸⁴ Interview by John A. Harrington, Special Agent, FBI, with Ruth Greenglass, in N.Y.C., N.Y. (Feb. 24, 1951).

⁸⁵ *Id.* at 2.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Ruth Statement, Feb. 24, 1951, *supra* note 84, at 4-5.

⁹¹ *Id.* at 5.

⁹² *Id.*

⁹³ *Id.*

On February 26, 1951—one week before the start of trial—Agents Norton and Harrington interviewed David.⁹⁴ Corroborating Ruth’s statements, David said that he and Ruth went to the Rosenbergs’ house in September 1945 to deliver written information to Julius, and Ethel typed the notes up.⁹⁵

F. The Trial (March 6, 1951–March 29, 1951)

David testified as a government witness at trial. On direct examination, David testified about his January 1945 furlough in New York and how Julius asked him to write up information on the atomic bomb and to have it ready the next day.⁹⁶ The following morning, Julius went to David’s house to collect the written information.⁹⁷ David testified that Ruth pointed out David’s poor handwriting to Julius, and indicated it would require interpretation.⁹⁸ David recalled Julius replying, “there was nothing to worry about, as Ethel would type it up.”⁹⁹ David stated that, a few days later, he and Ruth went over to the Rosenbergs’ for dinner.¹⁰⁰ David mentioned that early in the evening, that Ruth told Ethel she had looked kind of tired, and Ethel replied that “she was tired between the child and staying up late at night typing over notes that Julius had brought her.”¹⁰¹

Later in his testimony, David recounted his September 1945 furlough in New York during which he gave Julius another written description of the atomic bomb and more sketches.¹⁰² David stated that Ruth and Ethel were also present when he gave Julius this information.¹⁰³ David told

⁹⁴ Interview William F. Norton and John A. Harrington, Special Agents, FBI, with David Greenglass, in N.Y.C., N.Y. (Feb. 26, 1951).

⁹⁵ *Id.* at 2.

⁹⁶ Trial Tr. vol. 1, 427-28.

⁹⁷ *Id.* at 443.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 444.

¹⁰¹ *Id.* at 450-51.

¹⁰² Trial Tr., *supra* note 96, at 497.

¹⁰³ *Id.* at 498.

the court that, upon getting the written description, Julius “stepped into another room and he read it, and he came out and he said, ‘[t]his is very good. We ought to have this typed up immediately.’”¹⁰⁴ David explained that Ruth then said that “[they] will probably have to correct the grammar.”¹⁰⁵ According to David, Ethel did the typing, while Ruth, Julius and Ethel corrected the grammar.¹⁰⁶

AUSA Cohn questioned David about whether the Rosenbergs had received gifts from the Russians.¹⁰⁷ David testified that, during his furlough in January 1945, Julius told him he had received a watch from the Russians as a reward.¹⁰⁸ AUSA Cohn asked again whether Julius had ever mentioned anything else that he or Ethel had received as a reward from the Russians, to which David said that Ethel also received a watch, but after Julius received his.¹⁰⁹ David did not recall when he was told about Ethel receiving a watch from the Russians, but knew it was Ruth who told him about it.¹¹⁰ AUSA Cohn asked David, for the third time, if there was anything else that the Rosenbergs told him they had received from the Russians.¹¹¹ This time, David recalled that the Rosenbergs told him about a console table they received from the Russians, and that he had seen the table in the Rosenbergs’ home.¹¹²

On March 14, 1951, Ruth took the stand as a government witness.¹¹³ She reiterated four main points: (1) how Ethel asked her to convey Julius’s message to David in November 1944;¹¹⁴

¹⁰⁴ *Id.* at 510.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 520-21.

¹⁰⁸ Trial Tr., *supra* note 96, at 521.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 521-22.

¹¹³ *Id.* at 677.

¹¹⁴ Trial Tr., *supra* note 96, at 679-80.

(2) how, during the January 1945 information transfer, Julius assured her “not to worry” that David’s handwriting was poor because Ethel would re-type the notes;¹¹⁵ (3) how, at the January 1945 dinner, Ethel remarked that she was tired from typing;¹¹⁶ and (4) how Ethel typed the information David brought to Julius in September 1945.¹¹⁷

AUSA Kilsheimer asked Ruth whether she noticed any particular piece of furniture in the Rosenbergs’ apartment when she visited after returning from New Mexico in 1946.¹¹⁸ Ruth recalled admiring a mahogany console table and asking Ethel where she bought it.¹¹⁹ Ethel told Ruth the table was a gift from a friend, and Julius interjected that it was actually a gift from his friend.¹²⁰ Ruth explained how Julius flipped the table on its side to show that a portion of it was hollowed out to accommodate a lamp for photography purposes.¹²¹ According to Ruth, Julius told her that he used the table to “take pictures on microfilm of the typewritten notes.”¹²²

III. Analysis

The government’s case against Ethel at trial was markedly different than its case against her at the time of her arrest. As previously stated, at trial, the government presented three pieces of evidence against Ethel: (1) that she asked Ruth to convey Julius’ message to David in November 1944; (2) that she typed up the classified information Julius collected; and (3) that she received gifts from the Russians—the mahogany console table and a watch.

However, only the first of the three alleged acts—Ethel’s role in the November 1944 conversation—is mentioned in Ethel’s indictment. The notion that Ethel assisted Julius by typing

¹¹⁵ *Id.* at 687.

¹¹⁶ *Id.* at 691.

¹¹⁷ *Id.* at 704.

¹¹⁸ *Id.* at 706.

¹¹⁹ *Id.* at 706-07.

¹²⁰ Trial Tr., *supra* note 96, at 707.

¹²¹ *Id.*

¹²² *Id.*

the secret notes he obtained was not mentioned by any witness until February 24, 1951—over six months after Ethel’s arrest, over eight months after the investigation began, and only ten days before trial.¹²³ The mahogany console table was first mentioned in David’s trial testimony on March 12, 1951.¹²⁴ The allegation that Ethel received a watch as a gift from the Russians was never supported by any witness until David’s trial testimony.¹²⁵ In fact, David had previously expressly denied knowing whether the Russians gave Ethel a watch.¹²⁶ Therefore, David’s trial testimony contradicts his previous statements.

The combination of the inconsistency in the government’s evidence and the severity of the penalty imposed on Ethel warrants deeper investigation into other factors that significantly influenced the case. Three of those factors are discussed in this analysis: (1) the role of Ruth and David Greenglass; (2) the government’s failure to do much to develop the case against Ethel until days before trial; and (3) the government’s interest in identifying, punishing, and deterring espionage operations.

To the government, David and Ruth were more than cooperating witnesses—they were its entire case. Yet the government did not bother to further question either of them regarding Ethel from the time of their grand jury statements in August 1950 until the end of February 1951. That was because this case was never about Ethel; it was about something much larger. Suspecting that Julius had a wealth of information about other Soviet spy operations in the United States, the government was determined to get him to cooperate. The government’s crusade to uncover other

¹²³ See Ruth Statement, Feb. 24, 1951, *supra* note 84; David Statement, Feb. 26, 1951, *supra* note 94.

¹²⁴ Trial Tr. at 521.

¹²⁵ *Id.* Despite the severity of the government’s claims against Ethel, the prosecution failed to produce any physical evidence to corroborate Ruth and David’s allegations. The government did not produce: the typewriter Ethel used to type Julius’s notes, a single page of typewritten notes, nor anything to show that Ethel received a mahogany table or a watch as a gift from the Russians.

¹²⁶ David Statement, Aug. 4, 1950, *supra* note 43, at 30.

Soviet espionage operations in the United States enabled it to justify sacrificing Ethel, the wife of a spy.¹²⁷

A. Ruth and David's Role in Prosecuting Ethel

The government began questioning David and Ruth immediately after David's arrest on June 15, 1950. On June 28, 1950, David and Ruth's attorney, O. John Rogge, informed FBI agents that David had not "made complete divulgence of his activities" to the authorities, and that he was "willing to cooperate."¹²⁸ Moreover, Ruth was "willing to cooperate by all means."¹²⁹ Rogge also told the agents that the only person David could implicate in the conspiracy was Julius.¹³⁰ The next day, as evidenced in a teletype, the FBI recognized the necessity of Ruth and David's cooperation in order to prosecute Julius.¹³¹ It was not difficult to convince Ruth and David to cooperate—they had two young children to think about¹³² and understood that cooperating could go a long way towards receiving leniency.¹³³

In a memorandum documenting David and Ruth's July 11, 1950 interviews,¹³⁴ the FBI expressed its desire to postpone arresting Julius until they could gather "more ammunition" from David and Ruth, in order to "make [Julius] break."¹³⁵ However, the agents did not interview David or Ruth again until July 17, 1950—the day Julius was arrested.¹³⁶ Despite the FBI's intent to

¹²⁷ See *Lane Congressional Testimony*, *supra* note 71, at 5-6.

¹²⁸ Memorandum from Daniel F. O'Connor, Special Agent, FBI, to J. Edgar Hoover, Dir., FBI (June 30, 1950).

¹²⁹ *Id.* at 1.

¹³⁰ *Id.*

¹³¹ Interview by FBI with Julius Rosenberg, in N.Y.C., N.Y. (June 29, 1950). "Ful [sic] investigation and prosecution of instant case depends largely on the complete disclosure by David and Ruth Greenglass of their associations and activities with Rosenberg."

¹³² See *Ruth Grand Jury Tr.*, *supra* note 41, at 9132. At the time of David's arrest, the Greenglasses had a four-year-old son, and a newborn daughter.

¹³³ See *FBI Memo*, June 30, 1950, *supra* note 128, at 2. In fact, the Greenglasses did receive leniency. David received 15 years in prison, and Ruth was never even indicted. See *supra* note 1, at 65.

¹³⁴ Memorandum from Albert J. Tuohy, Special Agent, FBI, to J. Edgar Hoover, Dir., FBI (July 11, 1950).

¹³⁵ *Id.* at 2-3.

¹³⁶ See *Ruth Statement*, July 17, 1950, *supra* note 20; *David Statement*, July 17, 1950, *supra* note 20.

“hammer at specific points”¹³⁷ while questioning the Greenglasses, the July 17th statements were just retellings of the statements David and Ruth had given previously.¹³⁸

Since the FBI did not learn any new information from the Greenglasses, and because Julius refused to cooperate, the government needed to devise a plan to break Julius—Ethel was their answer. AAG McInerney recognized the value in using Ethel to coerce Julius to cooperate, so he requested the FBI to supply him with additional information concerning Ethel.¹³⁹ If AAG McInerney could obtain evidence incriminating Ethel, perhaps Julius would agree to cooperate to save his wife from prosecution. However, at the time of Julius’ arrest, the only evidence against Ethel was Ruth’s statement, and, as AAG McInerney recognized, the statement of a single witness was insufficient to warrant Ethel’s arrest.¹⁴⁰

Two days after AAG McInerney’s recommendation, consistent with his agreement to cooperate, David suddenly corroborated Ruth’s statement.¹⁴¹ In his earlier statements, David reported that Ruth delivered Julius’s message at the sole request of Julius.¹⁴² However, in his July 19, 1950 statement, David reported that Ruth told him that Ethel helped Julius persuade her to deliver the message.¹⁴³ David’s new statement conveniently follows AAG McInerney’s realization that Ethel could be used as a lever against Julius.¹⁴⁴ The government could now use David’s new statement as evidence that Ethel acted in furtherance of the conspiracy. Moreover, David’s corroboration of Ruth’s statement seems to be a response to AAG McInerney’s concern

¹³⁷ Memorandum from Albert J. Tuohy, Special Agent, FBI, to J. Edgar Hoover, Dir., FBI (July 14, 1950).

¹³⁸ See Ruth Statement, July 17, 1950, *supra* note 20; David Statement, July 17, 1950, *supra* note 20.

¹³⁹ Belmont FBI Memo, July 17, 1950, *supra* note 6.

¹⁴⁰ *Id.*

¹⁴¹ David Statement, July 19, 1950, *supra* note 28.

¹⁴² See David Statement, June 15, 1950, *supra* note 8; Greenglass Interview, July 14, 1950, *supra* note 15, at 1–5; FBI Memo, July 11, 1950, *supra* note 134; David Statement, July 17, 1950, *supra* note 20, at 2.

¹⁴³ David Statement, July 19, 1950, *supra* note 28, at 1.

¹⁴⁴ Belmont FBI Memo, July 17, 1950, *supra* note 6.

that only one witness implicated Ethel. Although David did not have personal knowledge of whether Ethel did in fact help Julius persuade Ruth to deliver the message,¹⁴⁵ USA Saypol considered David's willingness to agree with his wife's description of a conversation, which occurred while he was thousands of miles away, sufficient to allay AAG McNerney's objection that there was no evidence to arrest her.

The plan to use Ethel as a lever against Julius had been put into effect. Less than ten days later, USA Saypol was considering Ethel as a possible defendant in the same indictment as Julius.¹⁴⁶ However, he decided to wait to file a charge against her until he could assess her cooperativeness in front of the Grand Jury in relation to the complaint against Julius.¹⁴⁷

B. The Grand Jury Testimony—Two Days of Deafening Silence

In order to use Ethel as a lever against Julius, they needed to gather more evidence implicating her in the conspiracy. At the time, the government had only one potential allegation against Ethel—that she asked Ruth to convey Julius' offer to David. Over the course of two days, AUSA Lane asked the Greenglasses a total of 586 questions.¹⁴⁸ Of those questions, only forty-five mentioned Ethel.¹⁴⁹ Many of the questions pertaining to Ethel focused on background information about Julius, and Ethel's involvement in the communist community.¹⁵⁰

What AUSA Lane failed to do was ask questions that would elicit responses establishing what role, if any, Ethel played in the conspiracy. If Ethel was an actual suspect, the government

¹⁴⁵ Nor did David claim to have personal knowledge of this fact.

¹⁴⁶ FBI Memo, July 28, 1950, *supra* note 33.

¹⁴⁷ ROSENBERG REPORT, *supra* note 35, at 54.

¹⁴⁸ Ethel had not yet even been arrested at the time the Greenglasses testified in front of the Grand Jury.

¹⁴⁹ This equates to 8% of the questions. Thirty-six of the forty-five questions were posed to Ruth, while the remaining nine were posed to David.

¹⁵⁰ It is important to note that Ethel was not on trial for being a communist. So, while this information was interesting, evocative, and damning for Ethel, it was not considered relevant for the purposes of her charges. *See* Trial Tr. vol. 2, 1558 ("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.") (Kaufman, J., charging the jury).

should have been interested in gathering evidence against her. There were multiple instances where Ruth or David mentioned Ethel and, instead of asking a follow-up question and exploring the comment, AUSA Lane continued his questioning along other lines. AUSA Lane's failure to seek any more information regarding Ethel's role even when the topic was broached by the witnesses.

Furthermore, there are certain inconsistencies between the testimony given at the Grand Jury and the testimony at trial which raise suspicion about the strength of the government's case. For example, in her grand jury testimony, Ruth stated that the last time David transferred any information to Julius was when he gave written information to Julius' associate, Harry Gold, in Albuquerque in June of 1945[s1].¹⁵¹ Ruth also explained that she and David did not return to New York from New Mexico until March of 1946.¹⁵² In contrast, four days later, David testified in front of the Grand Jury that he and Ruth did return to New York while he was on furlough in September 1945.¹⁵³ Ruth never mentioned this trip in her grand jury testimony. David stated that during this trip, he gave Julius written information and sketches he personally prepared, but he did not recall having any specific conversations at that time.¹⁵⁴

In her February 24, 1951 statement, however, Ruth detailed an entire afternoon, in September of 1945, spent reviewing David's latest written information with David, Julius, and Ethel, while Ethel typed.¹⁵⁵ This statement directly contradicts what Ruth testified to in front of the Grand Jury—the meeting with Harry Gold was *not* the last time David gave information to

¹⁵¹ Ruth Greenglass Grand Jury Tr. 9154 (Aug. 3, 1950). Julius sent Harry Gold to Albuquerque in June of 1945 to collect more information from David. Harry presented Julius' half of the Jell-O box top to David to assure him that he was sent by Julius. Harry Gold was separately convicted of conspiracy to commit espionage, and was sentenced to thirty years in prison. *Ethel Rosenberg, supra* note 1, at 121.

¹⁵² *Id.* at 9153.

¹⁵³ David Grand Jury Tr., *supra* note 48, at 9189.

¹⁵⁴ *Id.*

¹⁵⁵ Ruth Statement, Feb. 24, 1951, *supra* note 84, at 5.

Julius, and she and David *did* take a trip to New York prior to March of 1946. David's February 26, 1951 statement similarly detailed the same afternoon.¹⁵⁶ In doing so, he, like Ruth, directly contradicted his earlier statements. As mentioned earlier in this report, David previously told AUSA Lane that Ethel was never present when he gave Julius classified information.¹⁵⁷ However, in his February 26, 1951 statement, he first claims that Ethel was not only present for the transmittal, but that she played a role in typing it.

The Greenglasses were able to recall the afternoon in September 1945 with such great detail when asked about it ten days before trial, yet they could not provide a single detail of the same afternoon when asked in front of the Grand Jury seven months earlier. By the time the Greenglasses testified at trial, the afternoon in September 1945 had become the focal point in the government's case to prove Ethel's complicity.

Even though David mentioned the September 1945 transmittal during his grand jury testimony, AUSA Lane did not attempt to question either witness about whether Ethel played a role in that meeting, even though such testimony would have enhanced the government's ability to obtain an indictment against her. Furthermore, it appears that the government did not attempt to clarify what occurred in September 1945 until it took the February statements from David and Ruth—ten days before trial.

The other two pieces of evidence offered against Ethel were never mentioned in any government documents until the Greenglasses testified to them, for the first time, from the witness stand. The Greenglasses also never stated that Ethel received a watch or a table from the Russians in any statement prior to trial. In his previous statements, David explicitly told AUSA Lane that

¹⁵⁶ David Statement, Feb. 26, 1951, *supra* note 94, at 2.

¹⁵⁷ David Statement, Aug. 4, 1950, *supra* note 43, at 23.

he did not know if the Russians gave Ethel a watch.¹⁵⁸ David, once again, contradicted himself when he later testified at trial that Ruth told him that Ethel did receive a watch from the Russians.¹⁵⁹

The fact that these three pieces of evidence were so heavily relied on at trial makes their absence in the statements and grand jury testimony of David and Ruth even more significant. Their absence also raises the question of why the prosecutors missed obvious opportunities to investigate Ethel's involvement in the conspiracy.

C. Leverage: AUSA Lane's Congressional Testimony and the Development of Evidence Against Ethel.

Only one of Ethel's alleged overt acts is corroborated by Ruth and David—her typing. This underscores the need to question the allegation's abrupt appearance in February 1951.¹⁶⁰ The government understood that an allegation made by one witness, without corroboration from another, was insufficient to issue an arrest warrant, let alone impose the death penalty.¹⁶¹ AUSA Lane's February 8, 1951 testimony in front of the Joint Committee on Atomic Energy provides some insight into what the government was thinking leading up to trial. Considering the Greenglasses had not proffered any new information about Ethel's involvement in the conspiracy in the six months following her arrest, the government was feeling pressure to develop its case against her.

In February 1951, with the trial date looming, the government's case against Ethel consisted only of Ruth's allegation that Ethel asked Ruth to convey Julius' recruitment offer to

¹⁵⁸ David Statement, Aug. 4, 1950, *supra* note 43, at 30.

¹⁵⁹ Trial Tr., *supra* note 96, at 521.

¹⁶⁰ The government's key witnesses did not testify to the Grand Jury that they had personally witnessed Ethel type up the classified information David transferred to Julius. The government never attempted to question these witnesses about Ethel's typing at that time, even though such testimony would have greatly enhanced the government's ability to obtain an indictment against her. We can only conclude that the government did not seek to develop its case against Ethel Rosenberg until after she was indicted in January, 1951.

¹⁶¹ Belmont FBI Memo, July 17, 1950, *supra* note 6.

David. When this purported conversation occurred, David was thousands of miles away in New Mexico. However, by the time AUSA Lane appeared in front of the Atomic Energy Commission he had fully committed to AAG McInerney's proposed strategy to use Ethel as a lever against Julius. Despite admitting that the case against Ethel was weak, the government sought to sentence her to twenty-five or thirty years so that Julius would feel, not only the pressure of the possibility of a death sentence for him, but also the pressure of Ethel's fate, because that "is about the only thing you can use as a lever on those people."¹⁶²

Notably, it was a late decision to seek the death penalty against Ethel.¹⁶³ As late as February 8, 1951, when AUSA Lane testified to the Atomic Energy Committee, the government was only seeking a "stiff sentence" of twenty-five or thirty years against Ethel—not the death penalty. Julius still was not cooperating as trial grew closer, and the government needed more evidence against Ethel in order to obtain leverage against Julius. Julius was the real target in this case; Ethel and her two sons were collateral damage.

IV. Conclusion

The government's investigation into Ethel's alleged role in the conspiracy is most notable for what it fails to uncover. Having reviewed the development of the case against Ethel, it is evident that Ethel's prosecution was little more than an afterthought for the government. From the beginning, the FBI knew the case against Ethel Rosenberg was weak—too weak to justify arresting her, much less prosecuting her—but it continued to elicit statements from the Greenglasses in order to support her prosecution. Although Ruth and David each provided several statements throughout

¹⁶² *Lane Congressional Testimony*, *supra* note 71, at 6.

¹⁶³ In a memo written after the conclusion of trial, Director Hoover reported that Attorney General J. Howard McGrath had expressed misgivings about pursuing a death sentence against Ethel as recommended by U.S. Attorney Saypol. Director Hoover also stated that he likewise thought did not feel that the death penalty should be asked for Ethel. Memorandum from J. Edgar Hoover, Dir., FBI (April 2, 1951).

the Rosenberg investigation, the substance of each statement remained relatively consistent—until ten days before trial.

If the facts actually were as the government claimed them to be at trial, the government should have been able to uncover support for those facts much earlier. It may be impossible to ever know whether this evidence would have been advanced early on had the FBI agents and the prosecutors posed the correct questions to David and Ruth, or if the evidence was actually fabricated on the eve of trial in a desperate attempt to persuade Julius and Ethel to cooperate. What we do know, however, is that even though Ruth and David played much larger roles in the conspiracy than Ethel, it was Ethel who was sent to the electric chair, while David received a fifteen-year sentence, and Ruth walked away without ever being indicted. That supports the theory that the government only actively prosecuted Ethel to obtain a confession, and cooperation, from her husband.