A Judicial Decision Under Pressure: A Dramaturgical Analysis of the Rosenberg Case.

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A judicial decision under pressure: A dramaturgical analysis of the Rosenberg case

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Abstract

This study examines the 1951 death sentences imposed upon Ethel and Julius Rosenberg by Judge Irving R. Kaufman. The study's focus is discovering how these sentences came to be, rhetorically. The writer employs the dramatic pentad suggested by Kenneth Burke. The scene is seen as the dominant, driving force behind the judge's sentences. The scene is labeled as "betrayal;" the name betrayal resulting from: (1) the Cold War; (2) McCarthyism; (3) the Korean War; and (4) other domestic post-World War II problems. The analysis pictures the American government using the Rosenbergs as scapegoats symbolically to cleanse away betrayal images. Thus, the government sought to purify itself and to regain some of the power and control it was perceived to have lost. Some of the concerns raised in the Rosenberg case have potential present-day relevance in America's handling of espionage cases.
Chapter One

Introduction

This dissertation seeks to discover the motivational basis of the Rosenberg trial and sentencing. In order to do so, the writer employs the Burkean dramatistic pentad, a method uniquely suited through discourse analysis, to reveal a complete picture of the motives of the trial and sentencing. This methodology not only allows a focus on varying aspects of the genesis of the trial and sentence, but provides a means to determine whether one or more of these aspects guided, predetermined, or greatly influenced other aspects; these means being the pentadic ratios.

Both the focus and method of this study are unique as the majority of the literature relevant to the atomic spy cases in general and to the Rosenberg trial and sentencing in specific have stressed on the rightness or wrongness, the goodness or badness, or on the justice or injustice of the case. Other literature focuses upon the national and international effects of the atom spies' deeds. This study has as its focal issue the genesis of the unique death sentences imposed on Ethel and Julius Rosenberg, the only spies in the entire post-World War II web to receive
the death penalty for their deeds.

The researcher anticipates that the results will have a bearing on many unresolved questions about the trial and sentences, and perhaps serve as a paradigmatic guide for the study of landmark cases of this type.

The literature studied is divided into several types: trial transcripts; newspaper, magazine, and book interviews; published secondary accounts of participants in the case; periodicals and books recalling events and moods of the Rosenberg case period; and scholarly literature arguing various interpretations and consequences of the case.

**Statement of the Problem**

The atomic bomb signaled the end to World War II, but it also spawned a new danger, one as potentially threatening to human life as the one it ended. Treason and espionage involving atomic secrets were new phenomena for the world and for the United States system of justice.

The unexpected defection of Igor Gouzenko, a Russian clerk in the Soviet Embassy, gave Canadian intelligence authorities their first evidence that cooperative British-Canadian-American atomic secrets had been compromised. Not until investigative agencies of all three nations exchanged information did the identities of those who spied for the Soviets become known. The trail of spies grew long and involved many nations.

Ethel and Julius Rosenberg were among the last in the
ring of World War II spies to be arrested, tried, and sentenced. In addition to the Rosenbergs, three other persons were co-defendants in the trial. They were: David Greenglass, Ethel Rosenberg's brother and a confessed state's witness against the other defendants; Morton Sobell, indicted for less serious offenses than the Rosenbergs; and Anatoli Yakovlev, a Russian envoy who had fled to Russia and was indicted in absentia. Because of Yakovlev's absence and Greenglass' cooperation with the government, only the Rosenbergs and Sobell were defendants at the famous trial. This study focuses on the Rosenbergs because of their unique sentences.

In addition to the evidence presented at the trial, several other factors allegedly contributed to the death sentences for the Rosenbergs, who were the only spies in the whole web of treasonous acts in the 1940s and 1950s to be executed. These factors included: (1) fear that the Soviets might become equal or superior to the U.S. in atomic weaponry; (2) fear of Soviet atomic weapon use; (3) belief by some that Soviet aggression in Korea was connected to atomic capability; (4) a rising anti-Communism surge in the U.S.; (5) the Rosenbergs' unwillingness to help authorities identify and locate other spies before, during, and after the trial; (6) selection of a young, Jewish judge to preside over the case; and (7) intense national and international interest aroused by the
media.

The fact that this was the world's first major atomic spying case tried without a confession and that this was the first major American atomic spy case, produced a unique scenario in the U.S. courts. This may well help explain, in part, why the Rosenbergs were the only spies put to death by an American court in peace-time and that they have been the only spies executed in the United States since 1953.

This study's purpose is to examine the milieu of circumstances surrounding the Rosenbergs' sentencing, not to judge the sentence as "good" or "bad," "right" or "wrong," or "just" or "unjust," but to understand the factors that may well have contributed to it. Such an understanding may aid future scholars of other spy sentences. The study may also provide a better understanding of the American judicial system and the role public sentiment plays in judicial decision-making.

Most sentences receive little or no public attention. These sentences usually escape significant media publicity as well. Some sentences are of particular parochial concern; these are attended by local interested parties and are usually covered by the local press. Still other cases, fewer in number, are of national interest, typically paid attention to by many people and receiving national press coverage. The Rosenberg case was a truly rare type of case; this case attracted world-wide notoriety and was reported by the media of almost every nation, whether in the "free
world," in the Communist bloc, or unaligned nations. Historically, very few U.S. cases have aroused such worldwide attention. The Sacco-Vanzetti case of the 1920s, the Lindbergh "baby case" of the 1930s, and the Sam Sheppard case of the 1960s are among the few American cases that received international notoriety comparable in scope to that of the Rosenbergs.

Wide interest in judicial outcomes often have the effect of transforming judicial proceedings into political or even social phenomena. A vexing example was the Sam Sheppard case. Intense public and media interest threatened Sheppard's securing an impartial trial and served as the basis of an appeal and eventual retrial of his case. Another example was the 1968 "Chicago Seven" trial where disruptive behavior by defendants, their lawyers, and courtroom spectators almost turned the event into a circus. Reports of these disruptions were widely reported by the press and these reports exacerbated the already chaotic images that were created. Such intense public interest can place judicial decisions under inordinate scrutiny and appraisal. This review and assessment can place heavy pressures on a judge who is asked to render crucial decisions.

The forces of public interest, scrutiny, and evaluation as well as the pressures these factors place on judges may, in some cases, impinge upon judicial decision-making independence. One example of this arose in the Sacco-
Vanzetti case where the judge has been clearly shown to be a victim of a wave of public sentiment and intense pressures by local politicians to see that the defendants were put to death. Many historical reviews of this case show that little restraint was shown by the judge, the media, and the public to these pressures. Later Supreme Court rulings relevant to defendants' rights reduced the likelihood of such occurrences happening again.

Such pressures could lead to poor justice. Public opinion swaying judicial decisions is one of the reasons federal judges were afforded life-tenure in their posts as jurists.

Review of Relevant Literature

A wealth of literature exists relevant to the Rosenberg case. Most of the literature is either descriptive of the case or evaluative, pro or con, of the evidence, the proceedings, the jury, the judicial decisions, and/or the impact of the alleged offenses. Little has been written concerning the reasons why this case became so notorious or why the Rosenbergs were the only ones in the large cast of spy characters to be executed. By taking the few extant works that directly focus on these matters and gleaning from other tangential works which hint at these matters, one can come to a fairly clear understanding of why the Rosenberg case was unique.

Most Rosenberg case literature was written in three
time periods. The first period of great interest in the case occurred after the 1951 Rosenbergs' arrest and was sustained until their executions in 1953. The next period of marked interest commenced about 1964 and lasted until 1974. The third period of renewed interest in the case began in 1985 and this latest peak in interest seems still to be active.

There appear to be four reasons why peaked public interest in the Rosenberg case seemed to wane after the executions. First, the executions were the culminating events for those whose interests were revenge, "justice," or simply resolution of the case. Second, the height of the McCarthy scare period was upon America, and continued interest in the case after its climax may have been seen as risky by many. Third, the Korean War absorbed substantial American attention and interest until its 1954 negotiated "resolution". Lastly, the fact that there had not been any evidence of further atomic spying in America may have dampened public concern and interest in the Rosenberg case.

Renewed attention to the Rosenberg case in 1964 after a ten year hiatus can be partly explained by two phenomena. The popularity of the "conspiracy theory" following the John F. Kennedy assassination in 1963 served as an invitation for renewed interest in matters such as the Rosenberg case. The decade of the "sixties" was a time when many present and past government acts were being questioned. It therefore
should be no great surprise that interest in the Rosenberg case was revitalized.

Interest in the case seemed to wane again in 1974. This may partly have been due to the peaked interest in the Watergate affair and in the Nixon resignation. The most recent rise in interest in the Rosenberg case may be partly attributable to new revelations of spying activities by both Americans and non-Americans and due to highly publicized attempts by the U.S. government to improve its relations with the Soviet Union.

Much of the writing about the Rosenberg case has defined the trial and sentences in polar, value-laden terms (i.e. good-bad, right-wrong, and just-unjust). This study focuses on the literature that exemplifies and explains the motives of the Rosenberg trial and sentences. Effort has been made to select from the many duplicative books and periodicals the most thorough, the most authoritative, and the most often quoted items relevant to the case. This has resulted in a manageable, accessible selected body of literature for this study. Most of the works cited in this study will lead the reader to further works that pursue various topics at greater depth or which lead the reader to subjects tangential to this study.

The study's literature can be grouped into seven broad categories: (1) quotations, testimony, and media reports relevant to the participants in the atom spy-case drama; (2) press reports, arguments by spy-case scholars, and docum-
ented incidences relevant to various pressures on the 
American system of justice exerted by the defendants, the 
public, domestic and foreign presses, and foreign inter-
est groups; (3) questions and criticism posed by legal 
scholars relative to capital sentences and to atomic spy 
cases in other nations; (4) White House press briefings and 
published records of various judicial, appellate, and presi-
dential appeals; (5) quotations from various documents and 
letters sent to press groups and to the White House 
concerning clemency requests; (6) publicly debated views of 
Communism as an evil force; and (7) other miscellaneous 
facts relevant to this study.

Literature pertaining to the numerous actors in the 
atom spy case drama is summarized below.

Pilat (1952) in *The Atom Spies* and various newspaper 
and magazine accounts provide biographical data about Judge 
Irving R. Kaufman. Pilat also sets Kaufman in the context 
of the Communist/spy setting and discusses his involvement 
in an earlier Communist spy case. Various interpretations 
and facts about Kaufman's private life and career appeared 
in the popular press. Most of this was published as the 
trial began and again at the time of sentencing, each being 
the product of journalistic curiosity, data availability, 
and assumed audience interest. Therefore, some of the 
 writings seem scattered.

Pilat (1952) and Nizer (1973) in *The Implosion*
Conspiracy provide insight into Irving Saypol's role as U.S. Attorney and chief prosecutor in the Rosenberg case. Pilat also argues the importance of Saypol's involvement in an earlier case involving Communists and spies.

Nizer (1973) characterizes the life-threatening efforts by Emanuel Bloch in defending Ethel and Julius Rosenberg as heroic and praises Bloch's taking custody of the Rosenberg children until his death only months after the execution.

The most notable descriptions of appeals made on behalf of the Rosenbergs are found in Fineberg's book, The Rosenberg Case: Fact and Fiction (1953) in which Judge Jerome N. Frank of the U.S. Court of Appeals, is argued to have agreed consistently with Judge Kaufman's decisions on questions of appeal. Opposing positions relevant to the appeals are debated in the Schneirs' book, Invitation to an Inquest (1965, 1983). Radosh and Milton (1983) provide one of the most balanced and thorough examinations of the Rosenberg case in The Rosenberg File.

activities. Newspapers and magazines are replete with both factual reports and with debates about the Rosenbergs throughout the arrest, trial, appeal, and sentencing periods. Much of this debating, however, was either undocumented or repetitious.

David Greenglass, brother of Ethel Rosenberg, and confessed co-conspirator who testified against the other defendants received much more publicity than most others involved in the case. Dulles (1968) in Great True Spy Stories; Pilat (1952); Wise & Ross (1967); and the most probing and informative, Wyden (1951) in "G.I. Spy Who Stole A-Bomb secrets" suggested an interpretation of a more major role for Greenglass than any other account.

Morton Sobell's involvement in espionage activities was not apparently covered in any in-depth or systematic way. This was probably due to the fact that he was charged with lesser offenses and was not as involved in the many channels in the huge spy network nor did he appear implicated in the most serious criminal acts. Some information about Sobell and his deeds appears in the popular literature of the early 1950s.

Anatoli Yakovlev, another defendant named in the Rosenberg, et al. case, was indicted but not tried. He had been the wartime Soviet Vice Counsel in New York and had been the main courier between clandestine U.S. information collectors and Soviet Union leaders. He fled the United
States before he could be arrested. Since his defense was effectively moot, not much was said about him or his deeds except what had been testified to in the Rosenberg trial.

Several prominent tangential participants in the 1940s world-wide spy ring were widely written about in the press and by serious scholars since many of these figures had either previously been tried in other nations, had confessed to their crimes in America, or had fled to Russia. These behind the scenes figures included Klaus Fuchs, who, most experts agree, gave the most damaging information, both quantitatively and qualitatively, to the Russians. Dulles (1968); Grammont (1962) in The Secret War; Johnson (1951, a, b, c, d); Pincher (1984) in Too Secret Too Long; Spender (1950) in The Inner Meanings of the Fuchs Case; and West (1951) in The Terrifying Impact of the Fuchs Case, all provide useful detail and insight into Fuchs' role in the atom spy activities.

Harry Gold, a prominent witness in the Rosenberg trial, who was argued to be significantly involved with most of the Rosenbergs' spying activities, is discussed in some depth by Dallin (1955) in Soviet Espionage; Grammont (1962); Wise & Ross (1967); and Wyden (1951).

Understanding the deeds and the interrelationships of other figures active in the spy ring scenario of the 1940s and 1950s but not directly involved in the Rosenberg case is pivotal to a complete understanding of how it all worked. Some of these other figures included: Alan Nunn May, a
British scientist who gave the Russians highly protected secrets about uranium and who was sentenced to 10 years in prison by the British; Abraham Brothman and Miriam Moscowitz, two avowed Communists who aided in the Rosenberg spy network and who were tried by Judge Kaufman and were prosecuted by Irving Saypol prior to the Rosenberg case; Max Elitcher, a minor espionage participant recruited by Julius Rosenberg; Bruno Pontecorvo, an Italian-born British scientist who fled to Russia upon learning he was under suspicion; Alfred Dean Slack, who was criminally involved with Harry Gold and more indirectly involved with Julius Rosenberg; and Igor Gouzenko, the Russian cipher clerk in the Canadian Embassy who defected and fled with the files that contained the initial disclosures germane to Soviet atomic spy activities and identities. All these indirect but important figures are mentioned in various newspaper and magazine articles of the early 1950s and are included in minor sections of several scholarly books.

Discussions of the many major and minor personalities who were part of the U.S. atomic spy ring are scattered widely due to conflicting agendas of government spokesmen, journalists, and the public (e.g. defending or assailing the government's case, pleading for clemency, and attempting to objectively report on the case) and due to numerous strategies employed to attain these various goals.

Arguments addressing the issue whether or not there
were undue pressures affecting the Rosenbergs' sentences are summarized below.

The *Saturday Evening Post* (Lehman, 1953) contained a forcefully presented chronology of the pressures allegedly placed upon Judge Kaufman, the harassment claimed to be brought upon the judge by various interested parties to the case, and a description of the judge's personal anguish in arriving at his ultimate decision. Alvin Goldstein (1975) in *The Unquiet Death of Julius and Ethel Rosenberg* speak persuasively about the many pressures some claimed were placed upon the judge in his deliberative period. Anti-Semitism is argued as a force that may have entered into the arrest and trial decisions and thus indirectly into the capital sentence (Dawidowicz, 1952). Berger (1951) and White (1950) in the *New York Times* suggests that pressures were placed upon the jury. Supporters of the pressured jury theory used President Truman's sense of urgency in the Fuchs case as evidence for their position. The McCarthy era and its likely influence on the arrest, trial, and sentence of American atomic spies is discussed in Feuerlicht (1972) in *Joe McCarthy and McCarthyism*, Luthin (1965) in *McCarthy as Demagogue*, Mandelbaum (1964) in *The Social Setting of Intolerance*, and Wrong (1965) in *McCarthyism as Totalitarianism*.

Other justifications for the severe sentences given to the Rosenbergs are provided in the judge's sentencing speech (Baird, 1952). Here Judge Kaufman cites his belief that the
Rosenbergs' deeds significantly contributed to the Korean War; that those deeds gave Russia the A-Bomb sooner than they could have gotten it without help; that those deeds contributed to the "cold war;" and that the Rosenbergs' actions had placed their own children in immediate and long-term jeopardy. Various other reasons contributing to the judge's sentences decision are posited in several popular early 1950 magazines. Some of these articles were attempts to defend Kaufman's judgment and others were condemnations of his decision. Many of these periodicals contained highly biased and shallow accounts of the sentencing and most were single-issue in scope.

After the sentences, many famous personalities appealed to Judge Kaufman and to Presidents Truman and Eisenhower for clemency on behalf of the Rosenbergs. These are most poignantly reported in "Mercy and Justice" (1953) in Time which discusses an appeal by Pope Pius XII; Hayes (1952) in which an appeal on behalf of the Rosenbergs' sons is made; and Nizer (1973) in which Albert Einstein made a clemency appeal to President Truman. Appeals made by English, French, Italian, and Japanese leaders, common citizens, and the media are chronicled in several magazines and newspapers and in a journalism dissertation that analyzed the Leftist press of European countries after the Rosenberg sentences (Price, 1956).

Commonweal, in an article, "Regarding the Rosenbergs,"
puts forth the pro-Kaufman case's strongest attack on Communism as an evil force requiring immediate and decisive responses. *Time* in its 1951 article, "Still Defiant" and *Newsweek* in a 1953 article, "Payment Deferred," argue the evils of the "Russian conspiracy".

Discussions of comparatively minor topics that alone have little bearing on the reasons behind the Rosenberg sentence appear in various sources mentioned above and in several other sources not yet mentioned. These discussions become useful and relevant when seen in the aggregate.


**Methodology Used in the Study**

This study attributes motives to the Rosenbergs' sentences. Motives seem most imperative to examine because they promulgate means, ends, and defenses for events. The foremost examinations of motives appear in Kenneth Burke's *A Grammar of Motives* (1950) and in *A Rhetoric of Motives* (1945). This study of the motives that contributed to the Rosenberg case capital sentences will employ the drama-
tistic pentad which Burke discusses in a *Grammar of Motives* (pp. xv-xxxiii).

This methodology is employed because it has been constructed to facilitate precisely the kind of analysis chosen for this study. The pentad allows for a given exigence to be examined from a variety of perspectives and provides guidelines to assure that these perspectives remain relevant to the focal issue. In addition, the use of Burke's dramatistic model for analyzing motives allows the various facets involved to be treated as "ratios." Ratios are the greater or lesser degrees to which various components of the pentad contribute to motives and the degree to which one or more of the components have influence or command over other components. This allows for the labeling of various components in an analysis as "major," "minor," or "necessary." Burke's model allows flexibility without losing focus on the main issue and it allows a concise analysis of a total situation.

Burke suggests five key terms in generating an investigation into motives. They are: Act, Scene, Agent, Agency, Purpose. In a rounded statement about motives, you must have some word that means the act (names what took place in thought or deed), and another that names the scene (the background of the act, the situation in which it occurred); also, you must indicate what person or kind
of person (agent) performed the act, what means or instruments he used (agency), and the purpose. . . . any complete statement about motives will offer some kind of answers to these five questions: what was done (act), when or where was it done (scene), who did it (agent), how he did it (agency), and why (purpose). (p. xv).

These five aspects of the Rosenberg case are examined individually and then, those pentadic elements appearing to bear the most significant importance are shown to bear specific relationship to one another. The popular writings and formal scholarship concerning the Rosenberg case is first examined in the context of the divisions suggested by the pentad. Then, the evidence is appraised to see (1) if any decisions or actions were "forced," that is, was there truly a choice to be made or was there really little or no choice? (2) did any of the choices made preclude other options that may have taken place? and (3) were the components that were chosen or thrust upon the situation facilitative or problematic to the motives circumscribing the event?

The dramatistic pentad allows a given exigence to be examined from a thorough variety of perspectives while maintaining a clear focus on one main issue, that of attributing motives.
Organization of Data

This dissertation is arranged in the following fashion:

Chapter One: Introduction to the Study. This chapter provides background information relevant to the study. The following matters are addressed in this section: (a) an overview of the study; (b) a statement of the problem being investigated; (c) a relevant literature review; (d) the methodology employed; (e) the data organization found in this dissertation; and (f) the significance of the study.

Chapter Two: The Scene. This section describes the setting of the act. The most relevant aspects of the scene, it is argued, are: (1) the "red scare" period, (2) the cold war period, (3) the onset of the Korean War, and (4) other U.S. domestic post-war problems. The author argues the scene is the dominating and controlling pentadic dimension. The scene directly affected almost all decisions made in the Rosenberg case.

Chapter Three: The Act and the Agency. In this segment of the study, the author defines what was done and traces how the act was carried out. In this chapter, the writer evaluates claims and interpretations of the arrest, trial, and sentencing of the Rosenbergs. This chapter weighs conflicting assertions relevant to the process of carrying out the act, namely, the F.B.I., the Justice Department officials, Judge Kaufman, who presided over the case and who sentenced the Rosenbergs, and the lengthy appeals process.
Influences of the scene on both the act and the agency are suggested as is a strong link between the act and agency.

Chapter Four: The Agent. The performer of the act is argued to be the judge. Claims are made that Judge Kaufman was chosen as presiding judge due to influences exerted by the scene, the anticipated act, and the components of the agency already in place. The judge's background, character, and professional career are presented as a claim that he was the ideal agent for the Rosenberg case scene.

Chapter Five: The Purpose. In this section of the study three opposing versions of ends to be reached by the Rosenberg sentences are compared. These competing purposes were forwarded by (1) partisans of the government and those who had a specific reason for wanting to see the Rosenbergs executed; these two broad groups are referred to as "pro-establishment" supporters; (2) partisans of the Left and those who had a specific reason for wanting the Rosenbergs exonerated; these two broad groups are referred to as "anti-establishment" supporters. In addition to these two general partisan groups, there is a more enlightened group that has taken less polar, less strident, and more informed stances on the Rosenberg case. These are the most recent scholars of the case who have the benefit of the wealth of new information available as a consequence of the Freedom of Information Act.

The more recent explanations of why the Rosenbergs were
sentenced to death seem to present a more believable and more utilitarian answer. These more informed views posit that all sides in the case made serious errors and that these errors need to be avoided in future spy cases.

Chapter Six: Conclusion and Implications. This last chapter attributes motives to the Rosenbergs' sentences. The judge in the case, the leaders of the government, and the Rosenbergs themselves all offered, in symbolic ways, justifications for the death sentences. Other parties also offered motives, but these parties were not pivotal to the case and their suggested motives seem too biased or insignificant to deserve great study.

Significance of the Study

This study is significant in at least three ways. First, many conflicting claims and interpretations regarding the Rosenberg sentences have been forwarded and debated, most attempting to label the result according to polar judgments. Very few studies have specifically examined how and why these sentences occurred. Second, our basic understanding of the U.S. legal system includes, for many, the notion that the judiciary is somehow immune from the pressures of public demand and that judges are somehow able to render judgements apart from those pressures. Such a belief is naive at best, but it holds as truth as it is rooted in the very foundation of civics education given our
young school children in almost every U.S. school district. This study argues the fallacy of such a belief. Third, some insights into potential problems common to the Rosenberg case and to recent 1980s spy cases are offered. It is further argued that some of the Rosenberg case problems were caused by various conflicting definitions, polar ideological stances, and by a system of justice that became noticeably rigid in matters of self-criticism.

Dramatic increases in the frequency of spy case arrests and trials in the late 1980s provide the basis for claiming some similarity between the Rosenberg era and the current scene. National security dangers and lowering public confidence in the judicial system are argued to be the most imperative reasons for learning from the Rosenberg case.

Conclusion

The remaining chapters of this dissertation examine the Rosenberg case in order to discover the motives for the unique death sentences imposed upon Ethel and Julius Rosenberg. The case is probed using the dramatistic pentad so that there can be the greatest range of perspectives used. The study will start by focusing on the scene, the pentadic element seen as the driving force in the Rosenberg affair. The scene, as it is envisioned in this study, is limited to the early 1950s and is set in the United Statcs.
Notes

1. Jensen reports on Thomas Lloyd's notes during the 20 November to 15 December 1787 Pennsylvania Convention in which the judicial independence issue was debated. This state convention seemed to produce a cogent argument in favor of judicial independence. Oswald's report shows that even the minority, which had fiercely debated almost every issue, saw judicial independence as vital (Jensen, 1976, p. 451 & Oswald, 1788, n.p.).

2. Examination of the circulation records of Rosenberg case literature at the Troy H. Middleton Library at the Louisiana State University, the John B. Cade Library at Southern University, the Chicago Public Library, and the New York Public Library shows a similar borrowing peak at these times. The geographic diversity of this demand implies a general thematic interest.

3. Examination of any of the state conventions in the constitutional ratification process will show that there was a common hope that this would be the case; however, in most such debates there were those who argued that such was not absolutely assured, that judges cannot be entirely insulated from society.
Chapter Two

Overview of the Scene

The scene is the background of the act, the situation in which it occurred (Burke, 1945, p. XV). The scene is an amalgam of praxes, contexts, and history relevant to an event. The scene is a perspective, one defined and named by the critic in order to provide direction and focus (Bennett, 1979; Ling, 1980).

The writer contends that the scene was the predominant pentadic element in the Rosenberg affair. The author argues that at times the background became the foreground so that the scene appeared to mediate all other dramatistic elements. This idea can be briefly illustrated by showing how some of the behaviors in the 1951 scene seemed to become reversed. One background element was Senator Joseph McCarthy's making wildly unsubstantiated claims in order to prove a point. Then, Chief United States Attorney, Myles Lane, accused Ethel Rosenberg of being partly responsible for "causing the situation in Korea" (Wexley, 1955, p. 132). This behavior, in many ways, was similar to McCarthy's but Lane's behavior was a foreground matter.

The Rosenberg sentencing scene was a complex one; it
was composed of several different pieces like a mosaic. Each piece, when seen alone, seems jagged and incomplete, but when put together, they form a coherent, more complete design. The major Rosenberg sentencing scene components were: (1) the cold war; (2) the red scare period which became known in its mature stages as McCarthyism; (3) the Korean War; and (4) other domestic, post-war problems.

This chapter illustrates how the scene came to be known as betrayal. The name betrayal resulted, in part, from the frustration over the failures of several other names to take hold as representative labels of the overall situation in 1951 America. Such names as fear, anger, impotence, and weakness were accepted, by some, to represent certain parts of the scene, but it was betrayal that was found to transcend these other names and to adequately represent the emotional spectrum Americans were experiencing.

World War II had ended, but several pre-war and wartime acts, called the cold war, were still actively causing anxiety, expense, and fighting. Some of our allies did things we couldn't understand; such as (1) Neville Chamberlain's passive response to Hitler's demands (Fuchser, 1982, pp. 138-44); (2) Vichy France's cooperation with the Nazis (Paxton, 1966); and (3) acts by our "allies," the Soviets, such as their annexation of much of Eastern Europe; and their late, almost token, declaration of war with Japan (Karig, Harris, & Manson, 1949, p. 457). The Russians behaved later in ways that allowed many Americans to believe
they were no longer our allies. Such Soviet behaviors as their Berlin blockade (Charles, 1959); their recalcitrance in ending Austria's partition; and their abrogation of the Czechoslovakian agreement (Root, 1963, p. 87) added to the perception that the Soviets were really not true allies. Many of those responsible for these events were only symbolically identifiable in terms such as "the Russians," "our allies," or "the Left." Many of those who could be identified were dead or were beyond the reach of American sanctions. Various emotions resulting from (1) the perceptions that the "war" had not ended; (2) our nagging disagreements with some of our allies, and (3) the frequent uncooperative and sometimes antagonistic Soviet behaviors came to be interpreted as "betrayal". Betrayal demands a response (Tokaev, 1945, p. 142); one typical response is to identify the betrayers, expose them, inflict sanctions on them, and thus purify the system of their presence. Since most of the betrayers seemed beyond America's control to sanction, scapegoats provided a possible alternative.

The red scare period, later known as McCarthyism, was another set of circumstances that some Americans identified as betrayal ("Investigations: The Network," 1949, p. 16). The American government was accused by some of harboring known Communists and Communist sympathizers (Feuerlicht, 1972; Hunt for War," 1948, pp. 18-19; Investigations: Burden of Proof, 1948, pp. 15-17); with not striving hard enough to
keep mainland China free from Communism; (Spender, 1950, p. 13); and with giving the Soviets our atomic secrets through neglect, apathy, and stupidity (Johnson, 1951a; West, 1951; Wyden, 1951).

These events initially took on names such as "soft on Communism," "criminal," "weak," and "incompetent." The term "betrayal" came to be one that coalesced these scenic descriptions. Again, many of those believed to have betrayed the U.S. were identified in abstract categories such as "the military," "the government," "the Left wing," "socialists," or "the Communists."

The Korean War was yet another event that gave impetus to the betrayal theme. America had toiled hard to get an agreeable partition of the Korean peninsula immediately after the second World War (Sunoo, 1979, pp. 45-47). After initial, positive military encounters in Korea, Americans soon found themselves embroiled in a "no-win" battle (Lee, 1984, p. 380). Many Americans felt betrayed (p. 381); the perceived betrayers were, in many cases, not concretely identified and this promoted a search for someone to blame.

In addition to these three major identifiable events, other less publicized events in the U.S. denied the high, positive expectations of many Americans after the war. Events such as (1) high inflation ("Cities' Most Pressing," 1946, pp. 5-6), (2) housing shortages ("Facts About Housing," 1946, pp. 314-15), (3) rising unemployment (Murray, 1945, pp. 234-38; "Senator Murray's Full," pp.
232-34), (4) numerous union strikes (Snyder, 1946, pp. 34-36), and (5) rising crime ("Crime," 1946, pp. 30-31); "The Year," 1945, pp. 306-307) were the antithesis of high hopes raised at war's end. We had won the war, we were the most powerful nation in the world, and we were helping most of the world's nations; yet we still had many problems of our own. Many believed things ought to be better and felt betrayed because they were not. Once again, the sources of betrayal were only vaguely symbolic; there was a need to identify someone to blame.

This chapter presents arguments that claim (1) the name "betrayal" came to be the dominant name given to the scene; (2) other competing names were rejected by most people; however, some alternate names were retained by certain small groups of people; and (3) specific images, useful to the government, were created by this treatment of the scene.

Naming the Scene

Most social or political scenes of any magnitude or importance come to be named, some after lengthy debate or deliberation. Such scenes as Watergate, child labor reform, or the women's movement acquired their names after alternate names had been discarded and one dominant name seemed to become accepted (Conrad, 1981; Cox, 1974; Smith & Windes, 1976). Following is a series of claims showing how the name "betrayal" came to be the name given to the four
major components of the Rosenberg case scene, namely, (1) the cold war, (2) the red scare period, (3) the Korean War, and (4) other domestic, post-war American problems. The writer also takes the position that other names were suggested and rejected in favor of the name, betrayal.

The Cold War Period


Historians, Grob and Billias, (1982a) cite two major reasons why the cold war developed:

Two developments during the war established the context within which the cold war would be waged. One was the toppling of five major nations from the ranks of first-rate powers . . . This situation left only two superpowers: the United States and the Soviet Union. The second development was . . . the atomic bomb (p. 377). Historian, Louis Halle (1967), saw the U.S. and the Soviet Union in an unusual but graphic way: "... a scorpion and a tarantula together in a bottle, each trying tragically to outdo the other" (p. xiii). Ideological differences surely existed between the U.S. and the Soviet Union before World War II; however, the second World War "created the setting for the Soviet-American confrontation" (Grob & Billias,
The cold war was a time when the U.S. and the Soviets labeled each other in ways that identified their differences as virtually unsettleable.

Soviet labels and perceptions of the Americans as well as American interpretations of the Soviets set the climate for the cold war in America, one of the major facets of the Rosenberg case scene. Some American labels and perceptions of the Soviet Union came from high public officials and from other respected opinion leaders. At times, these leaders made extreme, vivid, and often sensational statements that exacerbated an already tense situation. These statements became most inflammatory when they were amplified by members of the press, which sharpened the focus of such statements and lent them greater weight than they likely would have had without media exposure. Some examples of such statements that came to be the banner for the most anti-Soviet segment of our population include a comment by Soviet scholar, Professor Hans Morgenthau: "The Kremlin was perceived as the headquarters of the devil on earth, causing all that was wrong with the world and most particularly, scheming the destruction of the United States" (Sivachev & Yakovlev, 1979, p. 215). Sivachev & Yakovlev attribute to Secretary of State, Dean Achison, another assertion about the Soviets that focused on differences between the U.S. and the U.S.S.R "...the Kremlin gave top priority to world domination in their scheme of things" (p. 215). On 4 December 1946,
Senator Eastland is reported to have stated in the Senate that some American people must change their beliefs about the Soviets. He is reported to have said, "[Americans] . . . must realize that Russia is a predatory aggressor nation and that today she follows the same fateful road of conquest and aggression with which Adolf Hitler set the world on fire" (p. 217).

Divisive discourse also reportedly came from President Harry Truman's daughter, who wrote on 9 February 1946: "The Russian dictator made a speech . . . It was a brutal, blunt rejection of any hope of peace with the West" (p. 217). One of the most visceral attacks on the Soviets vis-a-vis their war with Germany was made in 1941 by Senator Harry Truman. He stated: "If we see that Germany is winning, we ought to help Russia and if Russia is winning, we ought to help Germany and that way let them kill as many as possible . . ." (Levering, 1982, p. 26). Roberta Feuerlicht (1972) attributes more divisive rhetoric to President Truman: "For it was Truman who had persuaded the American people that Russia planned to communize the world . . . that America was good but Russia was Godless" (p. 67).

These statements were not necessarily representative of the people making them nor of the time; however, coming from highly respected opinion leaders and being echoed in the press, they undoubtedly had a negative impact on the public's perception of the Soviets (Shapiro, 1984, p. 3).

Some public statements surely contributed to the sense
of anxiety, worry, and gloom over the cold war, but public expectations and self-images also put the cold war in context. Grob and Billias (1982a) describe some of these expectations and self-images. "By 1945 the United States had emerged as the strongest nation on earth. Having triumphed over the forces of . . . totalitarianism, American citizens looked forward with confidence to the promise of a bright future. Such hopes and expectations were soon dashed . . . the United States found itself confronting the Soviet Union . . ." (p. 377). Mandelbaum (1964) adds to that sentiment when he states: "... the American people looked forward to a stable peace characterized by continued cooperation with the Soviet Union. This hope soon vanished . . . An 'iron curtain' . . . descended between Western Europe and the Soviet satellites" (p. 117). Large-scale, broad hopes for many Americans were being frustrated in post-war America. This frustration, when added to the focus of public statements concerning the Soviets as the culprits in these events, sowed the seeds of betrayal in the U.S. This betrayal was not publicly stated, was not concretely identified, nor was it the most forceful example of betrayal. It was another example of betrayal that built up and eventually affected a majority of Americans.

Less subtle, more easily identified cold war acts by the Soviets, lent themselves to interpretations as forms of betrayal. Grob and Billias (1982a) report that "the Soviet
Union violated its agreements at Yalta" vis-a-vis Eastern Europe and, to a lesser extent, the role of China (p. 379). Soviet conduct in other arenas, too, gave rise to an interpretation of betrayal. Some of these interpretations of betrayal were relevant to their (1) formal agreement made to the Americans and to the allied forces; (2) role as as a U.S. ally; and (3) world leader role in a world just finished with the worst war this planet had ever seen. The 1948 Berlin blockade "outraged the Western powers, to whom it seemed a breach of the agreements" that had been made by the Soviets (Jackson, 1956, pp. 20-21). Russian conduct in assuring "free [Polish] elections" "made nonsense of any claim that they were 'free and unfettered'" (p. 22). "A third shock to the Western powers" came over abrogations of the Potsdam agreements" (pp. 22-23). This treaty "had revealed an unfriendly obduracy on the part of the Russians" (p. 24). Jackson quotes Ernest Bevan, the British Foreign Secretary, as saying, "Russia's attitude augered ill for the policy of joint peace" (p. 24). Soviet behavior relevant to her agreements with the U.S., her role as an "ally" of the U.S., and her status as a major nation in the post-war world surely added impetus to the betrayal theme.

American institutions, too, were showing signs of the cold war. Jonathan Root (1963) seems to echo some of the emotions of the cold war period. "The Federal Bureau of Investigation, which had never been anything more than an evidence gathering arm for the U.S. Department of Justice,
acquired its unprecedented authority in American life sometime immediately after World War II when the nation finally was forced to abandon the notion that it could conduct affairs with the Soviet Union with reason and trust" (p. 86). Walter Lippmann (1974) also cites (1) the "loyalty program to probe the thoughts of every government employee;" (2) the Civil Defense Program allowing citizens to "take part" in U.S. defense; (3) the Civil Air Patrol, which was given "special powers in times of crises;" and (4) the Committee on Un-American Activities, which was granted "unprecedented powers of investigation" as examples of U.S. institutional changes in response to the cold war. Freedom-loving Americans saw several American institutions being manipulated or newly changed to accommodate the needs of various politicians reacting to the cold war. These changes were possibly interpreted by some as curtailing American freedom. Feuerlicht (1972) sees some of these changes in institutional practices in somewhat sinister terms: "... Communists and Communist sympathizers had to be driven out of government even at great cost to civil liberties" (p. 67). Mandelbaum (1964) also saw threatening implications in the formation of new government agencies. "According to old-guard leaders, these newly important institutions were a threat to traditional American values" (p. 119). These types of views likely led some Americans to believe their government was being betrayed from within.
Post-war perceptions of the Soviet system, Soviet acts that seemed inconsistent with its promises, new institutional policies in America, and unmet expectations and dreams all seem to have produced a climate of betrayal. Grob & Billias (1982b) summarize their views of the 1951 American emotional state. "The cold war reshaped America's image of itself . . . The United States . . . experienced great apprehension in countering Communist Russia lest a confrontation lead to a nuclear war. This sense of anxiety caused many Americans to develop a siege mentality and to become less tolerant of anyone criticizing the American way of life" (pp. 427-28). They also summarize their interpretation of government leaders' reactions to this emotional climate. "At the same time, Congress became more anxious about the issue of national security, and at times, passed repressive laws to check on the loyalty of some American citizens" (p. 428-29).

The American Communist Party, partly due to the McCarran Act of 1942 (50 U.S.C.A. 781) and the Smith Act of 1940 (18 U.S.C.A. 2385, 2386), was visibly different from the formal Soviet regime. The McCarran Act was a fairly specific requirement (Black, 1979, pp. 732, 883-84). "[It] . . . required members of the Communist party and of "Communist fronts" to register with the Attorney General. It also limited their travel abroad, forbade entrance into the United States of former Communists, and permitted the deportation of naturalized citizens who had joined Communist
groups within five years of their naturalization"
(Mandelbaum, 1964, p. 140). The Smith Act was a law that "... punishes, among other activities, the advocacy of
the overthrow of the government by force or violence" (pp. 723, 1246).

The American Communist groups seemed to have views very
similar to those of the Soviet Union and could afford,
politically and economically, to be closer in ideology to
the Soviet model than could the French or Italian Communist
groups (Daily Worker, 1949; Price, 1956). The American
Communist Party saw the American people and the U.S. system
of government in much the same way as did the Soviet regime
(Daily Worker, 1946; 1950). The Kremlin-based Communists
and their followers saw the United States in a very different
light than most Americans saw themselves. Schwartz (1978) claims that America was seen by these
Communists as a system "... which is basically exploitative, oppressive, decadent, and crime ridden, and to pursue
an 'imperialist' - hence aggressive, predatory, anti-socialist and anti-Soviet foreign policy" (p. 2).

Frederick Barghoorn (1950) further argues that
Communist propaganda characterized America as "... ruled
by force and fraud. Its handful of rulers pull the strings
to which their subjects dance like puppets. Its domestic
policy is one of exploitation and oppression and its foreign
policy is characterized by deception and aggression"
(p. 277). The "obscurantist practices of the Stalin period" did not abate until the mid-1950s when Soviet leaders "instructed" the end to "dogmatic and oversimplified attitudes of the past" (Schwartz, 1978, p. 2).

Betrayal was not the only perception of the scene. The Left expressed opposing views of the scene and they offered their perceptions for public acceptance.

Much of the Communist rhetoric of the late 1940s and the early 1950s took on a "broken record" style (New York Times, 1952). The "same words," the "same worn phrases," and the "familiar vitriolic tones" kept repeating themselves (p. 19). This unvarying repetition probably diminished the Left's opportunity to make an impact with the mass American audience.

The Communists and many of their ardent sympathizers tried to define the cold war in their own terms. These terms, consistent with their rhetoric were: (1) the U.S. government and people characterized as aggressors and the U.S.S.R. as the would-be victim; (2) the U.S. government labeled as an oppressor, the American people its victims, and the Communists as saviors of this evil plot; and (3) the U.S. government and the American people portrayed as Soviet and Communist haters, seeking to destroy them at all costs. The Communists offered "aggression," "oppression," and "genocide" as names for the cold war period. The names offered by the Communists and their sympathizers seemed to ignore, to some extent, that America was reacting to
conditions within. Most of the names offered by the Left seemed to be highly negatively charged action terms rather than reaction labels.

For some Americans, these names struck a familiar and acceptable tone. These were, for the most part, the Communists, the Socialists, and their sympathizers, many of whom were: (1) members of unions which had very little power to better the conditions for workers under their control; (2) those who were unemployed or chronically under-employed due to skills that were rendered less useful by modern equipment and changing management styles; and (3) those who deeply resented the higher wages and better working conditions of others who had better educations and superior working skills (Powell, 1956, pp. 132-33).

For most people, though, the names offered by the Left must have seemed harsh, extreme, and not matching the available facts. Few Americans likely believed that the U.S. had any intentions of ruling or of tampering with civic matters in the Soviet Union. Most native-born Americans and many immigrants probably did not conceive of America as being oppressive or exploitative. The mythology of America being the "land of opportunity" and the "land of riches" did not coincide with the Leftist rhetoric. Many Russian exiles and immigrants lived peacefully in America and this condition did not fit the Leftists' genocidal paranoia. The names offered for the late 1940s and early 1950s scene in
America seemed to be too dissonant to be accepted by most Americans; although there were some for whom these Leftist names seemed to be quite acceptable.

The Red Scare Period

The cold war period had several manifestations that, for many people, were interpreted as "betrayal." The cold war, however, was only one of the major events occurring in the Rosenberg case scene. The "red scare" period following World War II was another major event receiving a great deal of public attention in the early 1950s. Following is an argument that one of the most significant events in the 1950s was the red scare period which metamorphised into the era known better as "McCarthyism". Included in this line of argument are: (1) a definition of the term, "red scare;" and (2) the manifestations of the post-World War II red scare period.

Historians, Robert K. Murray (1955, p. 4) and Eric F. Goldman (1956, pp 19-34), have labeled the periods of fear following both World War Eras as "red scares." Martin (1982) expands on Murray's naming of these periods. "A susceptibility to fear, as well as its cognitive and behavioral manifestations, has long been characteristic of the American post-war dilemma. After both World Wars I and II, this susceptibility, nurtured by post-war frustration, culminated in eras referred to . . . as Red Scares. These were periods of exaggerated reactions of fear to internal
threats posed by Communism" (p. 1). Post-World War II historians seem to agree that these "were frustrating times for the American people that seemed to stem from ill-conceived national desires for 'normalcy'" (p. 1). Murray (1955) saw the post-World War I frustrations as a loss of the "old pattern of life" and the burden of "new post-war responsibilities" (p. 4). Goldman (1956) saw the post-World War II frustrations as the American inability to deal with domestic and international affairs that seemed to undermine "their most deeply cherished attitudes" (p. 22). After each World War there appeared "political leaders who recognized" the general masses' "psychological vulnerabilities and who possessed the oratorical skills needed to manipulate them" (Martin, 1982, p. 3).

Martin summarized the focal thrust of the red scare period as follows:

During the post-World Wars I and II eras, these political leaders furnished the masses an ideological scapegoat upon which the discontented could vent their frustrations. This was the internal threat posed by Communism to the basic ideals that are a part of traditional American thought. During each of these post-war eras, this scapegoat, rather than the changing social, political, and economic conditions, was blamed for the nation's inability to return to "normalcy" (p. 4).
After World War I, the best known political leader who championed the anti-Communist cause was Attorney General A. Mitchell Palmer. His notoriety at the time made his name well known; however, his name no longer strikes a familiar chord with most Americans (Mandelbaum, 1964). In contrast, after World War II, the best known political leader who championed the anti-Communist cause was Senator Joseph R. McCarthy, whose name strikes some familiarity to most living Americans (Feuerlicht, 1972). The deeds of McCarthy were so strident, so pervasive, and so ingrained in the American consciousness that a famous World War II cartoonists Herbert Lawrence Block, also known as Herblock, coined the term, "McCarthyism," which is still used widely to refer to the later stages of the post-World War II red scare period (Feuerlicht, 1972, p. 63).

The post-World War II red scare period really represents two distinct phases; like the famous comedy-tragedy masks of classical theater, what appeared to be opposites were really very much related to each other. On one side, were the external worries and fears of the cold war. On the other side, were the worries and fears of Communists within the U.S. system of government and society.

Some of the manifestations of cold war worries and fears have been addressed earlier; however, those aspects that appear to have been most directly relevant to the Rosenberg case scene are discussed here. These facets include the: (1) loss of mainland China to the Communists in
1949; (2) revelations of several U.S. and international spying activities during and after the war; (3) Soviet's possessing of and testing the A-bomb; and (4) searches for alleged Communists in America.

America had recognized China as a nation holding great influence in the stability of Asia, as a valuable trading partner, and as a feared potential enemy in war ever since it decided to assist the revolution of Sun Yat-sen in 1911 (Spence, 1969). America's influence, according to Yale historian, Jonathan Spence, remained at a low but memorable level until late 1937 when China was defending itself against a major invasion by the Japanese. At that time, Claire L. Chennault, a retired U.S. Army pilot, was asked to take over the command of the Chinese air defense and to be an advisor to Generallisimo Chiang Kai-shek (p. 229).

General Chennault discovered Chinese resources, manpower, and strategic and tactical abilities to be less than needed to overcome the Japanese invasion. He also observed an internal struggle in China itself and frequent inside fighting among Chiang's own staff. Chennault greatly admired Chiang and repeatedly requested the U.S. government to increase its aid to the Generallisimo. U.S. military leaders in other parts of the Pacific war zone believed that Chiang Kai-shek was an ineffective and potentially corrupt leader and that any added aid in the war ought not be spent on the defense of China (Blum, 1967, Vol. 2; Spence, 1969,
Chennault ardently defended Chiang Kai-shek's need for added help and publicly stated that it was the U.S. government refusals to increase aid to China that kept Chiang from being successful in his endeavors to defeat the Japanese (Chennault, 1949). General Chennault did not win his case and the Chinese were being overrun by superior forces. He was replaced in command by General Joseph W. Stillwell in 1942 (Spence, p. 243). General Stillwell's assessments of Chiang Kai-shek, after a brief period in China, were scathing. Some of Stillwell's comments that were sent to various U.S. officials were very negative. He described Chiang as "... coolie class, arrogant, untrustworthy, and absolutely impossible to get along with" (Wedemeyer, p. 202). Stillwell also wrote about Chiang in messages to President Roosevelt "He's a vacillating, tricky, undependable old scoundrel, who never keeps his word" (Spence, p. 236). Stillwell believed Chiang Kai-shek to be petty, corrupt, and ill-informed (Blum, 1967; Craven & Cate, 1958; White, 1948). In addition, he accused Chiang of undermining his efforts on China's behalf. Stillwell added a rather fatalistic comment at the end of his tenure as the U.S.'s top military man in China "... the hell with it; it is patently impossible for me to compete with the swarms of parasites and sycophants that surround him" (Spence, p. 245).

Stillwell not only thought negatively of Chiang, but he also believed most of the Chinese generals and soldiers to
be less than exemplary. He wrote to top U.S. officials that they "had committed basic military errors: neglect of fundamental principles of strategy and tactics; improper use of supporting weapons; indifference to military intelligence; inability to adopt sound command and staff procedures; failure to establish a communications net; and failure to keep vehicles and weapons in operating condition" (Spence p. 241). Stillwell's last comment as U.S. commander in China, as reported by Jonathan Spence, summarized his great frustration: "With the U.S. on his side and backing him, the stupid little ass fails to grasp the big opportunity of his life . . . The Chinese government is a structure based on fear and favor, in the hands of an ignorant, arbitrary, stubborn man . . . Only outside influence can do anything for China - either enemy action will smash her or some regenerative idea must be formed and put into effect at once" (p. 247).

Although two successive commanders had been unsuccessful in getting Chiang's forces to improve their standing in the defense of China despite massive monies, equipment, and support forces from the U.S., the leaders in America still seemed to support the Generallisimo. His detractors had not been persuasive in their efforts to force Chiang Kai-shek to change his ways or to be replaced.

Stillwell's successor, General Albert Wedemeyer, too, came to have a very low professional and personal opinion of
Generallisimo Chiang Kai-shek (Spence, pp. 267-68). General Wedemeyer described Chinese conscription patterns as a "ravaging disease, a corrupt and vicious human cattle market whose victims 'their skin [the] shabby cover of an emaciated body which has no other value than to turn rice into dung' - were nevertheless fulfilling the most important function of a citizen of free China! to be a source of income for officials" (p. 277).

Chinese army hospitals were compared to "German extermination camps at Buchenwald" (p. 277). Most of the major foreign advisors who worked with Chiang or his troops seemed to come to the same conclusion: that victory under his leadership was impossible (Blum, 1967; Craven & Cate, 1958; Spence, 1969; White, 1948).

Romanus and Sunderland (1956) seem to support that view by revealing "Finally, new evidence came to suggest that in China itself, Chiang Kai-shek was keeping desperately needed supplies from his own Army commanders who were trying to halt Japanese advances, and that other commanders were abandoning key positions to the Japanese without attempting to fight" (pp. 322-326).

The American people were receiving glowing reports about Chiang and his army, not the damning reports that were received by select high U.S. officials. Since Chennault, Stillwell, and Wedemeyer were career military men, they were not in a position to disclose openly what they knew nor to discuss freely what they believed relevant.
to China or to Chiang. Even after their retirements, much of what was known was not openly revealed until after the deaths of the commanders gave others, not restricted by government rules and traditions, access to their diaries and memoirs (Spence, 1969).

The American public was presented with a series of articles and essays depicting Chiang Kai-shek as a hero, a valiant ally, and a champion of a free China. *Time* ran ten cover stories about Chiang and his regime in rather glowing terms (*Time*, 4 April 1927; 26 November 1931; 11 December 1933; 24 February 1936; 9 November 1936; 3 January 1938; 1 June 1942; 3 September 1945; 6 December 1948; and 18 April 1955). *Time* also ran an article on the Chiang family in the "Man of the year" issue in 1937. In all these pieces written about Chiang and his followers, almost all argued positively about his leadership, his character, and the promise for a successful free China defense.

Senator Joseph McCarthy did not have access to sensitive intelligence reports on China nor was he privy to the views of high-ranking Americans who worked in China and who reported directly to the president of the United States. Without such data at his disposal, McCarthy publicly expressed the view "that the Chinese ought to be winning handily" and that it had to be a waning of U.S. support that blunted rapid success in China (Spence, 1969, p. 277). Such was apparently not the case. Partly because of positive
press accounts of the situation in China due to and the glowing praise of Chiang, the U.S. public came to feel that China ought to win the battle with the Communists (Spence, 1969, White, 1948).

Because the American public had only partial information, arguments suggesting a quick and easy victory for the Chinese Nationals over the Communists seemed possible, likely, and perhaps even imminent. Americans likely felt betrayed when China fell to the Communists in 1949. It was not until several years after the Rosenberg case was over that the other half of the story concerning Chiang's corruptness became publicly accessible and well known.

Betrayal, for the American public, was well established by the cold war and by the disappointment over the fall of China. These events, however, seemed to be somewhat remote from the treacherous misdeeds of the Rosenbergs. There were other betrayals that seemed much more directly relevant to the Rosenberg case. These included the building number of spies, both foreign and domestic, that were discovered in the late 1940s and early 1950s. Following is a discussion of some of the more notorious domestic spies that likely gave many average Americans a further sense of betrayal.

In 1948, events had shaken "all but the most blindly tenacious fellow travelers from the folds of Soviet friendship" (Root, 1963, p. 87). Also, "appropriations to the House Un-American Activities Committee flowed freely" (p. 87). This pro-Committee trend was by no means the only
view. Root (1963) points out an alternative interpretation: Americans were, at the same time, alarmed over the spectacles created by the House on Un-American Activities [Committee] to which, because they were committed in the sacred cause of preserving the nation, nobody could be totally indifferent. Nor could anyone safely guess at what point popular sentiment was divided. Some Americans thought the Committee was the only way to protect the common security; that it was time to recognize that Communism was not politics, but a criminal movement; that the moonstruck radical of the depression era may well have become a traitor, and it was better to destroy a few doubtful ones than to allow a real one to survive. All other Americans saw in this approach the seeds of self-destruction, with the encroaching abridgement of our most cherished, even our most abstract freedoms - the reckless public pilloring of reputations good and bad, and the often incredible impulse to confuse suspicion with guilt. Public opinion - or the fear of it - pulverized more lives than the grinding wheels of justice (my emphases; pp. 83-84).

This interpretation seemed to defy the idealistic result that some Americans attributed to World War II. The American people, as a whole, seemed to believe that they would now be safe in the strongest nation in the world.
Some people's safety, it seemed, was being threatened by (1) past membership in organizations formally labeled as subversive; (2) personal acquaintances with suspected or known subversives; and (3) past deeds, many of which had been performed naively or through idealistic motivation.

A growing list of American spies added to the worries and fears of Americans. Judith Coplon, a U.S. Defense Department employee who had access to sensitive documents, was convicted of passing information along to the Soviets after the war ("Espionage: Baby Face," 1949, p. 28; "Spies: The Girl," 1949, p. 19). Elizabeth Bentley, a prominent Washington D.C. woman with high level friends; Harry White, Assistant Secretary of the Treasury; Lauchlin Currie, a close Roosevelt advisor; William Remington, a member of the War Production Board during the war; and Gregory Silvermaster, a Board of Economic Warfare specialist, all were convicted of spying activities that benefitted the Soviets during the war ("Investigations: The Network," 1948, pp. 14-15). Alger Hiss and Whittaker Chambers were also implicated in Soviet spying ("Investigations: Burden," 1948, pp. 15-17; "Investigations: The Accused," 1948, pp. 15-16).

The arrests and convictions of these spies did not quell the unrest in the nation. True, many - and some thought and hoped most - of the traitors had been apprehended.

Yet, by the summer of 1950, the legal - and, one assumes, the just - conviction of an array of
Communist spies and traitors of varying importance was an indication if not an index of serious national trouble. Ironically, their punishment did nothing to mitigate the climate of fear that misted all our thoughts. Some of us were afraid the evidence of deep-rooted treason was the harbinger of the holocaust, the rest of us were afraid that our fear would drive us to burning witches. A few voices were raised in pleas for dispassion, but who heard them? Exposure of evil soon gathers an irresistible and unselective momentum. We called it a spy scare and we were scared (emphases mine; Root, 1963, p. 84).

Root argues that the F.B.I. became pervasively involved in the hunt for Communists: "... the F.B.I. got an edict, whether tacit or in writing, to stay on top of the Communist conspiracy. In scrutinizing the loyalty of all government employees, it probed into the pasts of too many people, catalogued the gossip and strange confidences of their friends and neighbors and categorized them by the most tenuous associations" (p. 87). Not only were ordinary Americans being investigated along with many government employees, but also "The Republican rallying-cry during the 1948 Presidential election was that the Truman Administra­tion, if not riddled with Communists in key places, was criminally soft toward Communism" (p. 87).

The Communist hunt was on and perhaps this could have
rallied many Americans to the cause and eased the minds of others that our government, though weakened, still was able to fight the problems that had beset it. But "the most unfortunate part of it was that by 1948 a good many Leftists had stopped calling themselves Communists while in no way abandoning either their beliefs or their devotion. The task of identifying Communists became increasingly difficult, multiplying our anxieties and leading to distrust of all indications of dissidence" (p. 88). It was Alistaire Cooke's judgement (1950) that "Americans immediately start looking for someone to blame" when something goes wrong. "It is a process not far from scapegoating . . . it was all a witch hunt" (pp. 103-05).

In addition to the domestic spying that captured the attention of most Americans, there were several foreign spies whose deeds caused many to be fearful and worrisome. These foreign spying activities were closely related to (1) the Soviet possession of the A-bomb - discussed briefly in the next section of this chapter and (2) the connection to the Rosenberg affair - discussed in the next chapter of this study.

Klaus Fuchs, a British atomic scientist, was convicted in early 1950 of atomic spying for the Soviets. Bruno Pontecorvo, an Italian atomic scientist, was charged with similar crimes but fled to the Soviet Union before he could be arrested in 1949. Alan Nunn May, a Canadian atomic scientist, was convicted in 1950 by the British of atomic
spying. Revelations concerning a networking of atomic spies in and out of America surely caused worry and fear for many Americans (Root, 1963). Suspicions, charges, and arrests for spying added to the public perception of betrayal. Some came to believe that the strongest nation in the world, was at risk from within from some of its own citizens.

The Soviet Union detonated their first A-bomb in 1949. For many years Americans had been assured that the Soviets were a long way from being able to deploy atomic weapons. Now, Russia had the bomb and the U.S.'s security of being a monopoly holder on atomic weapons was gone. Many Americans likely were worried and wanted to know how this came about.

The building of the atomic bomb was performed under a cloak of secrecy that has been unparalleled in American history. The facilities at Oak Ridge, the University of Chicago, the University of California, and Los Alamos were unheard of by most Americans during the time of the bomb's design and construction (Groueff, 1967; Hawkins, 1983). Project Trinity at Los Alamos has been labeled one of the best kept national secrets of all time (Groueff, pp. xi-xii; Hawkins, pp. 37-38). Johnson (1951d) discovered, after the war, however, that there was a fatal flaw in the web of secrecy at Los Alamos. "Less than a hundred Americans outside the sprawling atomic bomb assembly plant at Los Alamos knew in June of 1944 what was being done there. But the Russians knew" (Johnson, 1951d, p. 8).
Not only did the Russians seem to know many of our top secrets after the bomb's use in Japan, it appears, according to Johnson, that the Soviets were intimately aware of our progress at a much earlier date" (Johnson, 1951a, 1951b, 1951c, 1951d). In fact, the Russians knew at Potsdam, when Roosevelt told Stalin, of the bomb's existence. Secretary of State, James Byrnes, couldn't understand Stalin's nonchalant attitude at being informed about the A-bomb. Now it is clear why - it seems he knew all along (Johnson, 1951a, p. 1). Not only did Stalin seem to know what he was told at Potsdam by Roosevelt, "it is very likely that he knew even more than most of the top U.S. officials did" (Johnson, 1951d, pp. 1, 4). This situation was deemed grave by some U.S. political leaders. The Joint Committee on Atomic Energy (1951) declared: "The extent of espionage damage known to have been inflicted upon the atomic energy position of the United States is indisputably severe" p. 19).

Many Americans were concerned about the Russians' having the bomb, the process by which they got it, and the fear that Russia's possession of the bomb may lead to more Russian aggression. Luthin (1965) discusses this concern: "The revelation . . . that a Soviet atomic spy ring . . . had successfully stolen and handed over to Moscow American atom bomb secrets shocked and frightened the American people" (p. 6). Some Americans believed there were alleged subversives in their midst and in their government.
They perceived that they had an adversary who possessed atomic weapons.

America might reason that she had been very generous to many highly talented, foreign-born scientists in terms of top quality educational opportunities, access to top-secret information needed to competently work with their American colleagues, and in freedom of mobility while in our country. Most of these scientists had served themselves, their profession, America, and the cause of freedom in World War II with distinction; however, a noted few, some possessing our most highly guarded and sensitive secrets had turned on us and gave these secrets to the Soviets. Some Americans asked, "How could they do such a thing?" (New York Times, May 24, 1951, p. 1).

Perhaps the most venal aspect of the red scare period contributing to the Rosenberg case scene was McCarthyism. Joseph McCarthy was, in reality, a symptom of the red scare period. The red scare dynamics had started and formed before he came on the scene. The time was ripe for a demogogue to take advantage of the circumstances of fear, doubt, and reticence that pervaded the American scene (Luthin, 1965; Martin, 1982).

Joseph McCarthy seemed to be operating in a scene that had a need for a spokesman, and it seems that he chose to be that rhetor. His audience seemed ready and willing to listen to things that may have seemed silly or outrageous at
another time. A "rhetorical situation" had emerged (Bitzer, 1968).

There were surely problems in America when McCarthy entered the scene. These were problems with subversives in some government posts, problems concerning Communists and their sympathizers, and other cold war dilemmas. There were also some honest efforts - some said not enough - to cleanse the system of these worries. Rather than offering to help constructively aid the cleansing process, McCarthy chose instead to invent phoney problems that tragically added to and exacerbated the existing problems (Feuerlicht, 1972; Mandelbaum, 1964; Martin, 1982; Wrong, 1965). McCarthy claimed to know of many Communists, their sympathizers, and other less than patriotic officials in the U.S. government; however, not one record exists that shows he ever gave a court or Congressional panel a shred of evidence that led to the conviction of a single person of any crime against the U.S.!

McCarthy's wild, extreme, and vocal claims caused a level of worry that "bordered on hysteria" (Wrong, 1965, p. 16). Wrong describes the emotional climate in America: "McCarthyism . . . has created a national climate in which departures from the most elementary decencies of a democratic society are imperceptibly becoming the norm" (p. 17). Many "committed Communist hunters" were ashamed of the harsh newcomer and feared he would "disgrace the profession" (Feuerlicht, 1972, p. 61). Some U.S. government
officials knew what a "scoundrel" McCarthy was and others suspected the worst, but fear of his successes and of his vicious attacks kept many of them silent (Feuerlicht, 1972, pp. 61-64; Mandelbaum, 1964, pp. 140-42).

There was a regular cadre of reporters who covered McCarthy. This group of journalists was not composed of "typical reporters." Many of them came to know what a "fraud," a "hoax," and a downright liar he was (Feuerlicht, 1972, pp. 61-62, 74; Luthin, 1965, p. 7). Unfortunately, none of that small group of reporters closest to McCarthy on a day-to-day basis chose to expose him for what he was.

The real close-to-home fear for the average American was just building. The Rosenberg case ended before the worst of McCarthyism came to the forefront. The wild charges that McCarthy did make prior to the Rosenberg trial and sentencing surely exacerbated the fears and sense of betrayal already discussed earlier. With McCarthy's "circus" going non-stop every day, the public could not forget the worries and fears that they had ("Regarding the Rosenbergs," 1953, p. 344).

The red scare, like the cold war, had alternative names that were offered and rejected by the majority of Americans. The Socialists tried to picture America as a nation trying to dominate the world (American Friends, 1949, p. 13; Barghoorn, 1950, p. 114). Barghoorn maintains that "the Soviet line . . . was that there . . . was the tendency
toward world domination and the hatching of a new war."

This line of reasoning by the Russians, posits Barghoorn, was a result of the "ill-fated London Conference and the "disappointing" Teheran Conference, both held in 1945 (pp. 112-114). Barghoorn summarizes a "typical" Soviet press release by saying, "Its major theme has been that the North Atlantic treaty is the chief instrument of an Anglo-American drive for world domination" (p. 190). Most Americans saw the Marshall Plan, the Truman Doctrine, the Berlin airlift, the reconstruction programs in Germany and in Japan, and the generous aid offered to other nations as signs of strength, caring, and sharing, relegating the Left and far right scenic definitions as extreme and not at all representative.

The Communists offered the term "weak" to describe many of the problems Americans were experiencing. Other groups tried to depict the American government as inept (Schwartz, 1978). "Weakness," as used by the Soviets in their 1940s and 1950s propaganda, seemed to mean "having problems." America did have her share of domestic problems and the Russians claimed these as examples of American "weakness." Barghoorn (1950) gives some examples of Soviet claims about the U.S.: "Gloomy pictures of capitalist realities appear before one's eyes . . . the standard of living of the toilers is deteriorating. It is a calamity if a worker becomes ill. He loses all possibility of receiving any means of existence, for there is no social insurance in the
United States." Other Soviet articles (Blocknot Agitatora, 1949) are reputed to have pictured most American city dwellers as "living in slums" (p. 3). Racial discrimination and mistreatment of the American Indian are other issues raised by the Russians (Barghoorn, p. 212). These were some of the issues raised to show the American system as "weak," "uncaring," and "inept" (p. 215). Most Americans recognized that they had problems but most seemed unwilling to accept "weak" and "inept" as apt descriptions of the American system. The Left had offered alternative views of America that were very pejorative; and these views of America really had little chance of success with most Americans. Although there were alternative names offered, the name, betrayal, seemed to be the most accepted and understood for the period.

The Korean War Period

The cold war and the red scare periods were two major events that came to be known for betrayal in the Rosenberg case scene. A third such major event was the outbreak of the Korean War.

In some respects, the Korean War could be considered an extension of the cold war; however, many of its dynamics, the rhetoric surrounding it, and the singular importance attached to it by the judge in the Rosenberg case attributed to it the status of a separate, but related event.
The combat in Korea was, for many, the most current, the most worrisome, and the most negative of the many problems facing The U.S. The cold war lingered, but it couldn't be seen as an immediate, direct threat to American lives. McCarthyism still swept through the land, and although it destroyed lives, it had not yet, in 1951, reached the massive numbers of people it would reach shortly after the Rosenberg sentencing. The war in Korea, on the other hand, killed young Americans daily; the news of their deaths was released each day in the newspapers, on the radio, and on television. American families who had friends and relatives fighting in Korea prayed the death toll would not include their loved ones.

Not all reactions to Korea were completely negative. Root (1963) reveals some less negative responses to the war: "The news [of Korea] came to most Americans as justification for four post-war years of leaden anxiety about the Soviet Union toward which they now felt only fear and its common corollary, hatred (in addition to a sheepish regret that the vicissitudes of World War II had thrust the two countries together in a warm alliance)" (p. 83). President Harry S Truman (1969), on 27 June 1950, two days after the armed conflict in Korea had erupted, delivered a speech in which he identified the Korean War as an event related to the red scare: "... The attack upon Korea makes it plain beyond all doubt that communism has passed beyond the use of subversion to conquer independent nations and will now use
armed invasion and war" (p. 79).

The initial American public reaction toward the war was "a surge of support for President Truman" (Feuerlicht, 1972, p. 71). This support was "more than the usual rally-round-the-flag reflex of a nation at war" (p. 71). Feuerlicht argues there were some positive reactions to the war:

The unbearable tension of the cold war had suddenly been relieved by the recognizable action of a hot war. At last, America's accursed group was being faced on a battle-field. Since God had to be on America's side, the other side being godless, as Americans were so often reminded - the Communists would be whipped.

"Korea has been a blessing," said an American general [not identified]. "There had to be a Korea either here or some-place in the world" (p. 71).

Any elation over Korea soon turned to despair as the rapid early victories by American forces soon transformed into losses and long-term stalemate (p. 71). Americans had fought the biggest war ever only a few years earlier and had had a stunning victory. America's strength and reputation were supposed to keep her out of wars; and if the U.S. got into a war with a tiny nation, she ought to be able to crush it in rapid defeat. Many Americans must have felt betrayed; the U.S.'s strength appeared either non-existent or untapped. The U.S. seemed to be fighting someone else's war.
General Douglas MacArthur planned and began to execute maneuvers designed and publicly announced to get at the source of the problem in Korea. President Truman halted those plans, reversed many of them, and recalled MacArthur from his command in Korea (Feuerlicht, 1972, pp. 71-72; Karruth, 1962, p. 579).

President Truman's dismissal of General MacArthur met a storm of nationwide protest. There was even a huge demonstration in Washington, D.C. where some fanatic protesters attempted to burn down the White House. When MacArthur toured the nation shortly after his release from command in April 1951, he was received by huge, approving crowds (Karruth, 1962, p. 580).

Concern over Truman's handling of MacArthur's plans to "win" raised other troublesome issues. Feuerlicht (1972) argues that some of the vague, more difficult to pin-point questions seemed to be nagging many Americans:

Truman chose to fight a limited war in Korea to show the Communists that they could go no farther, but he also chose not to take on the whole Communist world. This decision caught him in a trap of his own making; since his policy of military restraint clashed with his Cold War rhetoric. For years he had been giving the American people simple-minded answers: now they responded with simple-minded questions. If communism threatened America's survival, why let it survive? If
it was godless, why wasn't America resisting it with all her might? How could she compromise with evil? Wasn't it better to be dead than Red? (p. 72).

The dissonance that resulted in the minds of some Americans undoubtedly caused them to feel that they had been betrayed by their government leaders. Mandelbaum (1964) focuses on the vacillating nature of the war and its relation to America's emotions: "The fluctuations of the war - defeat, victory, defeat, resurgence, and finally stalemate - symbolized the frustration of hopes for world peace and American prestige" (p. 118).

Korea figured as another betrayal for Americans. The war was an ongoing event at the time of the Rosenberg trial and sentencing, so emotions seemed more surfaced there than in the issues of the cold war or with the red scare. Since the issues of the cold war and the red scare had been unfolding for a greater length of time, many people had time to form less emotional opinions and reactions to those issues. Emotion surely played a part in all issues, but it appears that at the time of the Rosenberg case, Korea was potentially the most volatile problem in many people's minds.

Day after day, in 1951, the Daily Worker chose to label the U.S. role in Korea as unprovoked aggression. They maintained over and over that the U.S. was aggressive and belligerent, trying to take over a small, defenseless
nation. However, most Americans did not see North Korea as defenseless having full Soviet support and substantial Chinese support. Nor was America's role there seen as unprovoked. The North Korean invasion was labeled by the American government as the reason for U.S. military involvement (Sunoo, 1979, p. 78). The American public was not, at that time, privy to the fact that the South Koreans had instigated the invasion (p. 1-6).

Most Americans could not come to agree with the Communist definition of the Korean conflict. They saw events in Poland, Czechoslovakia, and the Baltic nations, where the U.S. may well have had great domestic support for armed aggression, and our reluctance to invade as reason to doubt that we would be aggressive. After all, we had no significant immigrant and second generation population supporting an invasion of Korea. The Communist line just did not fit with the self-image of most Americans.

Other Post-War Problems

The cold war, the red scare, and Korea were seen as a series of international betrayals by many Americans. These events had names, heroes, villains, and perceived causes, although they were vague. In post-world War II America, another series of events, few well defined, most without heroes and without easily identifiable villains, directly affected the lives of some Americans or their families on a daily basis.
A general state of "malaise" prevailed in America in the early 1950s. Several domestic conditions contributed to this state (Milwaukee Journal, 1950). None were major in scope, but the accumulation of added difficulties sorely exacerbated an already severe domestic climate. The end of World War II was supposed to portend a progressive and prosperous period; however, it turned out, for many, to be the beginning of a very "bleak period" (p. 7).

High levels of unemployment in the post-World War II years were especially hard to accept for the returning veterans (Murray, 1945, 234-38; "Senator Murray's Full," 1945, pp. 232-34; "Should the U.S.," 1945, p. 227); severe housing shortages which were especially hard on young families in America ("Facts About Housing," 1946, pp. 314-15); frequent and strident union strikes (Snyder, 1946, pp. 34-36); rising crime, which impacted the poor, the elderly, and the weak; significantly less pay for women now that the war effort, which paid them high wages, was over; and rising inflation ("Cities' Most Pressing," 1946, pp. 5-6; "Crime," 1946, pp. 30-31; "The Year," 1945, 1946, pp. 306-307) were among the added burdens for an already overburdened American public.

None but the very fortunate escaped all these added problems. Many promises of "better times," "prosperity," and "peace" were made, that some Americans may have felt betrayed since they could not see these promises being
fulfilled in their lives.

The Left tried to label this malaise as "greed" and "insensitivity" (Daily Worker. 1951, p. 2). Most Americans saw this as an unacceptable and inappropriate definition. They saw the great generosity of America and they saw themselves as entitled to some tangible rewards for the sacrifices and efforts put forth to keep much of the world safe and free.

The cold war, the red scare, Korea, and the many other domestic post-war problems did not all directly affect most Americans; however, a range of possible betrayals Americans could identify with were offered.

Images Created By the Scene

Images frame acts. Some Americans' images were fairly accurate reflections of occurrences; some images were hopeful wishes; and still others were wistful echoes of past events (DuPreez, 1980, pp. 110-150). The images in the Rosenberg case scene selected, interpreted, and evaluated, for the most part, the acts of government rather than individual or societal acts. There is a constant interplay between images and acts. Acts influence images which affect other acts. The exigences of the 1950s and the images of these problems seemed intertwined. Edelman (1971) sees one such relationship: "Governmental actions inevitably affect what people want and how they think as well as how they are coerced to behave" (p. 179). This does not mean that
"political motivations and behaviors are fated and pre-programmed" or that they can't be changed, but that they are influenced by public responses.

The American people, it seems, came to know they were in trouble before most government officials did. The government soon caught up, however. The troubles the country experienced were not the type that individuals were expected or able to solve, so the government formulated policies to help people cope with these problems.

America was perceived by a nagging minority as weak, sympathetic to the left, subverted by spies, and intimidated by the Soviet Union. While these perceptions were held primarily by a minority, that minority was vocal and it was feared by some high placed officials in the government that these perceptions, if left unchallenged, could spread and may well become a major force to contend with. Government leaders decided to seek a way to challenge the left's positions before they became too plausible for plausible for more Americans. The U.S. Justice Department had in its grasp a married couple who embodied many of America's ills and who could be used, if done right, to show that America was strong, non-sympathetic to the left, ridding itself of any subversion, and certainly not intimidated by the Soviets. This couple was Julius and Ethel Rosenberg.
The Scene As the Dominating Element

Murray Edelman (1964) in *The Symbolic Uses of Politics*, argues the relationship between settings and other dramatic-tistic components. "... settings have a vital bearing upon actors, upon responses to acts, and especially upon the evocation of feeling [of those in the scene]" (p. 96). Edelman, in this same book, further claims that settings legitimize "a series of future acts (whose content is still unknown) and thereby maximize the chance of acquiescence in them" (p. 98). As Hugh Duncan (1953) put it, "There are no neutral scenes" (p. 98). Edelman expands on this by asserting "As soon as a setting becomes a conscious object of attention it sets the stage for some general type of action, offering or reinforcing suggestions of its motivation" (pp. 101-102). Edelman also suggests in this regard: "The settings of political acts help "prove" the integrity and legitimacy of the acts they frame, creating a semblance of reality from which counterevidence is excluded. Settings can also help leaders find the roles and identifications that may be significant to followers" (p. 190).

The cold war, the red scare, Korea, and U.S. domestic problems were not directly the fault of government leaders; however, U.S. leaders were blamed, at least in part, for how they reacted to these problems. That so many problems happened together was partly coincidental and those workers who were trying to solve any one of these problems likely
had too much to do to contemplate connections with other problems. The scene in 1951 America presented leaders with several problems that affected most Americans. Government leaders needed to find a way to convince Americans that they were in charge and that they could eventually solve the nation's problems.

Conclusion

The following chapter argues that the scene placed limits on how the government could go about solving its problems. A claim is made that only the government could resolve the nation's ills and that the best prepared government agency was the Justice Department. Once the means to attack its problems was chosen, the government decided on specific actions designed to both bolster public confidence and provide the American public with adequate scapegoats.
Notes

1 Especially scenes that are composed of or result from movements. See Matlon (1987, p. 547) for a lengthy list of movements (scenes).

2 Personal communication with several Korean War veterans who belong to the Baton Rouge American Legion, 1987.

3 Based upon personal recollection of the event being reported.

4 Personal communication with the author's father before his death. He worked for the Department of Justice after the war.
Chapter Three

The Act and Agency

The act represents "what was done," it "names what took place, in thought or deed" (Burke, 1945, p. xv). The act in the Rosenberg case is not one deed but a longitudinal series of related deeds. The focal deeds in this study are the death sentences imposed on Ethel and Julius Rosenberg. In order to understand the act, one must first understand the varied events that preceded and led up to those sentences.

The agency represents how the act was done; "what means or instruments" were used (Burke, 1945, p. xv). The means used to arraign, arrest, try, and sentence the Rosenbergs was the U.S. system of justice. This system included: (1) the F.B.I., (2) Justice Department investigators, (3) the court of Judge Irving R. Kaufman, and (4) the senior U.S. prosecutor and his staff.

It seems that the Rosenberg case act and agency were inextricably linked. Edelman (1964) comments on the linkage issue: "Kenneth Burke's insight that there is a rigid ratio between a dramatic setting and the quality of the acts that can take place within it and be regarded as appropriate offers a useful basis for the analysis of the tie between
background and action" (p. 98). Kenneth Burke (1945) also writes regarding the link between scene, act, and agents: "It is a principle of drama that the nature of acts and agents should be consistent with the nature of the scene . . . " (p. 3). Burke describes balance between pentadic constituents: "From the motivational point of view, there is implied in the quality of a scene the quality of the action that can take place within it. This would be another way of saying that the act will be consistent with the scene" (pp. 6-7).

Overview of the Act/Agency

Given the scene, betrayal, there were a limited number of responses (acts) that would have made any sense at all. Because of the (1) nature of the scene; (2) complexity of the scene, and (3) pervasiveness of the difficulties caused by the scene, the U.S. government seemed the most likely source of relief from the scene's consequences. Betrayal demanded that the betrayers be identified and punished, thus purifying the system. It has been argued earlier that readily identifiable betrayers were not available and that the American public was reacting to anonymous betrayal. Some public reactions were mass responses such as fear, Communist "witch hunts," and malaise. The U.S. government sought ways to (1) identify betrayers symbolically; (2) replace the symbols Americans were reacting to; and (3) get Americans to rally around a common, central issue thus
providing the government a way of appearing to be cleansing betrayal from the system.

The government needed to offer some symbol or set of related symbols that the American public could interact with and understand. Edelman (1964) posits that the public reacts well to symbols. "The basic thesis is that mass publics respond to currently conspicuous political symbols: not to 'facts' and not to moral codes embedded in the character or soul, but to the gestures and speeches that make up the drama of the state" (p. 172). Edelman amplifies his discussion of the use of symbols and the mass public:

Changes in mass responses . . . are, of course, neither instantaneous nor unanimous. They entail struggle and resistance among people with different interests. . . . The political symbols that bring about the change do so, in one sense, by changing the tensions associated with the old and new as they suggest altered possibilities (p. 174).

The U.S. government chose not to pursue other possible courses of action or inaction. One such potential course of action that was not taken was to maintain the status quo and hope the prevailing exigencies would at least partially subside. This alternative was probably not chosen due to the extent of the problems facing the nation and the fact that national elections were upcoming. Another possible path that was dismissed was for the government to overtly
mandate solutions to many of its problems. This choice was probably not made because it could have been seen as confirming many of the Left's claims vis-a-vis the U.S. as an aggressor and a power-hungry state. A third possible course of action that could have been followed but was not was that of segmenting America's many problems and then concentrating mass efforts to solve these fragments one-at-a-time. This approach was not selected probably due to (1) the enormous amount of time that would likely be involved; (2) the negative perception that one failure might have on the rest of the series of problem solutions; and (3) the fear that the Left would so exacerbate other problems, the positive impact of achieved successes would be minimized.

The decision to try to find a single, high-profile symbolic representation of the combined problems and then to try to mobilize public sentiment and energy on that focused symbol became the apparent choice made by the American government.

The symbolic representation that the U.S. government chose required a division that would place good, sensible, rational Americans on one side and the opponents of this approach, especially the Communists, the Socialists, and their sympathizers on the other side. Edelman points out that there is a reason to employ this strategy:

When, on the issue that arouses men emotionally, there is a bimodal value structuring, threat and insecurity are maximized. Those who hold the other value become the enemy. Under these circumstances condensation
symbolism and mental rigidity become key factors in social interaction ... and it becomes relatively easy to shift men's assumptions about the future and therefore their responses to present conditions (p. 175).

The concentrated set of symbols that the U.S. government chose to offer the American public were embodied in the couple, Julius and Ethel Rosenberg. They were to be the scapegoats for the many problems besetting America.

This chapter focuses on how Americans were provided plausible scapegoat images for their personal and national ills and how these images were presented. A chronology of the entire scenario provides the backdrop. The chronology is divided into five time intervals: the (1) pre-arrest investigations; (2) arrest and arraignment; (3) trial; (4) sentencing; and (5) post-sentencing period commentary. An historical overview of World War II period spying activities is presented to establish how the Rosenbergs became the U.S. government's focal betrayal symbols.

Overview Of Atomic Spying In the 1940's

Many people were involved in the complex atomic spy activities of the 1940's. Many books and articles have been written relevant to (1) each of the major individuals involved in the atom spy cases; (2) various in-depth stories about one or more atom spy plots; and (3) overviews
of large segments of the major atom spy story events. This study limits its cited sources to those books and articles that (1) provide clear explanations of what happened; (2) take a stance in reporting the issues in the atom spy cases; and (3) provide insight as to how the "networking" of participants occurred.

Substantial summaries of 1940s atom spy activities include: Dallin (1955), Franklin (1969), Pilat (1968), Seth (1974, 1972), Wexley (1955), and Wise & Ross (1967). These overviews point their readers to several detailed sources containing descriptions and evaluations of most events in the atom spy story.

The spying network that developed from 1943 to 1945 relevant to atomic matters was quite complex and was disturbingly pervasive (Dallin, 1955; Seth, 1974; Wexley, 1955; Wise & Ross, 1967). Dallin provides insight into the spying activities' pervasiveness in the scientific community: "During the war about ten physicists at various scientific institutions in the United States, Britain, and Canada were regularly or sporadically sending information to Moscow" (p, 461). Seth (1974) argues even greater spying breadth in his descriptions of several Soviet espionage networks in the United States and Canada (pp. 596-601).

There were many Canadian spying activities and many important espionage connections were made with the British atomic research community as well (Seth, pp. 599-601; Wexley, 1955, pp. 35-36. Due, in part, to frequent
provincial secrecy between the members of the U.S.-Britain-
Canada atomic alliance, and due, in part, to the sporadic
revelations of uncovered activities in these nations,
"eleven of the twenty accused members of the [overall] spy
ring were sentenced to prison" (Wise & Ross, 1967, p. 69).
Notwithstanding all these active Western spying net-
works, their activities remained little known to American,
British, and Canadian intelligence authorities. Root (1963)
and Wighton (1966) both tell of the various minor parts of
Soviet spying activities that were known in America,
Canada, and Britain. Some important spying activity details
were known by Western intelligence agencies and other
activities were strongly suspected. But it was not until 5
September 1945 that many more "pieces of the puzzle" became
really evident and meaningful (Franklin, 1969; Pilat, 1968;
Wighton, 1966). A young Soviet cipher clerk, Igor Gouzenko,
had decided to defect to Canada. He took with him a large
number of highly secret and sensitive documents which he had
access to from the Russian embassy in Ottawa, Canada, as
collateral for his defection (Franklin, pp. 172-73).
The documents that Gouzenko took were from the private
safe of Soviet Military Attache, Colonel Nikolai Zarobin.
Gouzenko worked closely with the top embassy officials,
belonged to the G.R.U., had top security clearance, and
had access to most embassy papers. The documents that
Gouzenko had stolen from the embassy revealed to Canadian
officials the shocking truth that their highest military and scientific secrets were no longer secret. The entire story was not available in clear form; it took many months and much painstaking work to decipher and interpret the data. Zarobin's papers paved the way to the arrests, trials, and sentences of Alan Nunn May and Emil Klaus Fuchs (Franklin, 1969; Payne & Dobson, 1984; Seth, 1972).

May had supplied the Soviets, through Colonel Zarobin, secrets relevant to "heavy water" and had given the Soviets various types of uranium samples being used in secret experiments (Payne & Dobson, 1984, pp. 117-18). Other secrets concerning the Canadian Chalk River atomic research site were also suspected of being released (Seth, 1972). Dr. May was sentenced by a British court to a jail term of twenty years but he only served seven years imprisonment before he was released.

Canadian authorities discovered that Zarobin had espionage connections in Britain as well as in Canada. When the British authorities finally received this information in 1949, they soon discovered Klaus Fuchs' deeds. "Fuchs had supplied the Soviets with construction details of the atomic and plutonium bombs" (Payne & Dobson, 1984, p. 54). Klaus Fuchs was sentenced in Britain to a fourteen year jail sentence, but served only nine years of that sentence before being released. It was said about Fuchs that "he was, without doubt, the most important of the atom spies" (Johnson, 1951b; Payne & Dobson, 1984; Spender, 1950;
Fuchs, in his confession, stated that he had had an American confederate, a confederate whose name he did not know. British authorities then gave this information to U.S. intelligence authorities who deduced that it likely was Harry Gold. U.S. intelligence officials came to Britain to show him some pictures. This photograph session with Fuchs, it was hoped, would lead to Fuchs' being able to identify clearly his American accomplice. Fuchs identified Gold as his confederate from these photographs as well as supplying other descriptive features of Gold (Payne & Dobson, pp. 54-55, 61). Harry Gold was Fuchs' courier under Anatoli Yakovlev's direction (p. 61). Yakovlev, the New York Soviet Consul, headed the local spy network (Grammont, 1962; Seth, 1972; Wexley, 1955; Wyden, 1951). Gold, in his role as courier, gave Yakovlev "minutely detailed eyewitness accounts of top secret conferences at which America's most brilliant scientific brains considered how to build the A-bomb . . . and the workings of an inevitably intricate process never before tried - producing of the bomb's critical explosive . . ." (Wyden, p. 3). Harry Gold was never tried as such; he was sentenced by a U.S. District Court judge, but without the formal proceedings of a trial (Wexley, 1955, p. 77). Gold received a thirty year prison sentence but he was released sixteen years later.

The Soviets desperately wanted added data and they
wanted more sophisticated, detailed information on American atomic activities, so Yakovlev arranged for Gold to visit a technician who built A-bomb parts. This technician was David Greenglass. Yakovlev knew about David Greenglass through one of his workers, Julius Rosenberg. Julius had recruited his brother-in-law, David Greenglass, for Soviet espionage when he visited David in New Mexico. Greenglass gave Harry Gold detailed data on bomb sighting devices. Gold was to give this data to Julius Rosenberg who would then relay it to Yakovlev (Franklin, 1969, pp. 181-84; Grammont, 1984, pp. 54-55, 61; Wyden, 1951, p. 3). David Greenglass, who willingly became a state's witness, received a fifteen year prison sentence. He was released after he served seven years of his sentence.

Morton Sobell, who received a thirty year sentence; Max Elitcher, who was never tried; Abraham Brothman, who received a seven year sentence; Miriam Moscowitz, who received a two year sentence; and Dean Slack, who was sentenced to fifteen years in prison were all recruited by Anatoli Yakovlev and Julius Rosenberg. They did not directly gather data for the Soviets; they did, however, willingly assist the Rosenbergs' information transmission within the spying network (Wexley, 1955).

This brief historical overview does not show the Rosenbergs to be at the center of the spying activities nor does it show them to be the most venal criminals in the 1940s spying networks. It seems that Alan Nunn May and
Klaus Fuchs were the ones in the spy web who most deserved to be put to death for their crimes. After all, it was these scientists who were labeled the "most dangerous". Then, too, Harry Gold and Anatoli Yakovlev surely emerge as highly central figures in the spy ring organization. These relationships are accurate as far as the formal, written record is concerned; however, another factor that needs to be considered is that May, Fuchs, and Gold had confessed to their crimes and they had willingly given the authorities considerable help. Neither Yakovlev nor Pontecorvo were ever brought to justice for their crimes. They both had fled to the Soviet Union. Greenglass became a witness against the Rosenbergs for the promise of a reduced sentence.

The only significant spies left unpunished were Ethel and Julius Rosenberg. They were American and thus could be tried in the U.S.; they were avowed Communists; and high officials believed they could be successfully convicted in court. Symbolically, there was another major factor that made the Rosenbergs seem valuable to U.S. authorities; they were believed to possess vital information concerning additional spy ring participants and it was hoped that they could be persuaded to give Justice Department officials the names of other spies. The Justice Department hoped that the Rosenbergs would reveal their accomplices. If they did not cooperate with officials, they would be severely punished.
for their deeds as well as for their lack of cooperation. Following are relevant events that occurred in the Rosenberg case from the time shortly preceding their arrest until the time of their sentencing.

The Case of Ethel and Julius Rosenberg

Arguments and responses changed as the Rosenberg case went through different stages from the arrest of Ethel and Julius, to the arraignment of the two, through the lengthy trial, culminating in the sentencing. Some arguments and responses in this period were strategic on the parts of the government and the defendants and others were public and media reactions to the long and complicated process of American justice that was on display in 1951. These rhetorical responses give insight into what happened and help explain why events happened the way that they did in the Rosenberg case. These rhetorical acts help explain the motives for the acts of the U.S. government vis-à-vis the Rosenbergs.

The scene appears to be so dominant in this Rosenberg case analysis that most facets in the discussion seem to have scenic overtones. The actions, speeches, judgments, and interpretations discussed in this chapter that were offered by the defendants, the defense, the government, the press, and the public are characterized as act/agency elements but all are subordinated to the extraordinarily vivid and panoramic scene.
Rhetoric of the Pre-Arrest Period

Prior to the arrests of Ethel and Julius Rosenberg, very little was said publicly by government officials or the press about them or their deeds. A survey of 1950-1951 popular literature shows that only a few small, general articles appeared that were relevant to the Rosenbergs or their deeds. There are at least two plausible explanations for this apparent lack of public information about the Rosenbergs. First, the government was able to protect its evidence from public disclosure. Second, there were, at the beginning of the Rosenberg matter, several other well-defined and publicly important issues which demanded the attention of the press and the public. Such matters as the Korean War, McCarthyism, frequent strikes, inflation, and unemployment supplied a full agenda for national attention. These issues competing for daily media coverage may have reduced the gatekeepers' search for more detailed information on the Rosenberg case.

The Rosenberg case was the first public disclosure of U.S. atomic spying. Alan Nunn May and Klaus Fuchs had been tried in Britain. Harry Gold, although sentenced in the U.S. for atomic spy charges, never really had a public trial (Wexley, 1955, p. 77n). The American people had little upon which to judge the few items that were written or spoken about the Rosenberg case in its early stages.
Using J. Edgar Hoover's testimony before an unnamed congressional committee, Alvin Goldstein (1975) argues Hoover has shown his very conservative view of the Left. "Their [the Communists] goal is the overthrow of our government. There is no doubt as to where a real Communist's loyalty rests. Their allegiance is to Russia, not the United States" (p. 25). Here, it appears, Mr. Hoover, as a leader of the U.S. judicial system's investigative body, was setting the stage in Congress for future Communist trials.

Goldstein, who apparently believes there were few, if any, real "secrets" to be stolen and given to the Soviets, provides a stinging rationale for J. Edgar Hoover's open and strident reaction. Goldstein's analysis also seems appropriate if there were indeed vital secrets that were given to the Soviets. Goldstein's characterization of Hoover's motives were: "The comforting illusion of an atomic secret disappears in a mushroom cloud over Siberia. It is replaced with the concept of atomic theft. And to J. Edgar Hoover, finding the thieves is both a political necessity and a personal crusade . . . For if the so-called secret of the atomic bomb has been stolen, then it has to have been stolen from under the nose of the FBI" (p. 27). Goldstein, it appears, believes that some of Hoover's eagerness to cooperate in the Rosenberg case was based upon personal embarrassment and embarrassment to the F.B.I. as an institution, one with which Mr. Hoover had a very patern­

alistic attachment. Goldstein also seems to believe there

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were few real secrets to be stolen; that Hoover and the F.B.I. were protecting illusions of secrets.

Richard Brennan, a former F.B.I. agent, is quoted by Goldstein as observing great pressure in government at the time of the Rosenberg arrests. "The pressure was almost unbelievable in some ways. Not only from the Bureau of the F.B.I. were we getting it. Mr. Hoover was getting it from outside. He was getting it from Congress. He was getting it in the daily press. Ah - the people of the United States had had a rude awakening. And they wanted something done about it" (p. 28). It seems clear, if Brennan's perception is accurate, that there was a concerted set of efforts to actively do something to change the mood of the American people.

In November 1950, just prior to the Rosenberg arrests, eleven Communists were convicted of violating the Smith Act, advocating the overthrow of the government and failure to register with the Justice Department as Communists. One of the defendants in this case was Abraham Brothman, among those alleged to have worked with Soviet spy-ring leader Anatoli Yakovlev and also alleged to have had dealings with Julius Rosenberg (Wexley, 1955, pp. 39-45). One of the prosecution's witnesses in the Brothman case was Harry Gold, who worked with the Rosenbergs (p. 44). Wexley claims in his book, The Judgment of Julius and Ethel Rosenberg, that the Brothman trial was a "try out" for the upcoming
Rosenberg trial (p. 44). Wexley claims prosecutor Irving Saypol had thought about the Rosenberg case before it ever formally started. "Saypol [the prosecutor in both the Brothman case and the Rosenberg case] and the F.B.I. used the Brothman trial to build up the atmosphere with advance publicity" (p. 217). Root (1963) also suggests: "There was no doubt that America was relieving its frustrated fury over the Cold War in the tangible prosecution of Communists at home. The Smith Act, after all, had been in force for nine years and the evidence, the defendants' devotion to Marxism-Leninism, had been available all that time" (p. 97). These arguments seem to strongly suggest that the Communist trials prior to the Rosenberg case were not coincidental, but were, at least in part, well orchestrated scenarios intended to strongly influence American public opinion.

On 29 May 1950, Harry Gold was arrested. He confessed to his part in the spying network [even to this day, his entire confession is not a matter of public record]. On 16 June 1950, David Greenglass, Ethel Rosenberg's brother, was arrested. Greenglass eventually agreed to be a witness against his sister and brother-in-law (Goldstein, 1975, pp. 30-31). This sequence of events - the Brothman case, in which a basic framework of using the U.S. legal system against Communists seemed to be put into full force; the Gold case, in which a secretive confession apparently led to Greenglass; and the Greenglass case, in which the defendant agreed to bear witness against the Rosenbergs -
seem sufficiently sequenced and timed to suggest a well planned chain of events by the U.S. judicial system.

On the day that David Greenglass was arrested, Julius Rosenberg read a front-page story in the *New York Times* about his brother-in-law. The paper had a large, front page photo of Greenglass. Also, on the front page, was another "F.B.I. release," announcing the arrest of a "Russian-born physicist in California" (Wexley, 1955, pp. 112-13; *New York Times*, 15 June 1950, p.1).

The scientist was Dr. Sidney Weinbaum and the charges were "that he had concealed membership in the Communist Party". It was evident to anyone why the FBI had "timed" these two arrests for the same day. Here were the perfect stereotyped requirements for the scapegoats of 1950: "Russian-born," "scientist," "Red," "Y.C.L. member," "A-secrets passed," all coupled together with the Jewish names "Weinbaum," "Greenglass," and "Gold."

It made a rather neat package, and a frightening one, for every paper contained the ominous phrase: "Greenglass, if convicted, faces a maximum penalty of death" (Wexley, p. 113).

This appears to show further suspicion, according to Wexley, that there was a series of planned, well-organized events preceding the Rosenberg case that had strong image producing results.

Late in 1950, there was another matter of prime concern

The Rosenberg pre-arrest scene did not seem to be one of calm, reason, understanding, and forgiveness. It seemed, instead, to be a time when Communists were being hunted and, when caught, severely punished. As Wexley (1955) put it, "[Another] step toward finding a suitable 'Red scapegoat' was about to be taken" (p. 20).

If the entire Rosenberg case is seen as an opera, the pre-arrest period can be thought of as the overture. In many operas, the overture portends what is to come. Clues to future events are often short, out of sequence, and ethereal. The U.S. government's judicial system had begun to focus and organize its activities in preparation for the Rosenbergs' arrests. In retrospect, it can be seen that investigations into the Rosenbergs' activities began after Gold's confession and intensified after Greenglass' interrogations and arrest (Franklin, 1969; Pilat, 1968; Root, 1963; Wexley, 1955). The agencies that eventually
became greatly involved in the Rosenberg case all had, it appears, a small role in the pre-arrest stage. Those involved in the government pre-arrest activities included: the F.B.I.; both the prosecutor and the judge in the Rosenberg case [they also were involved in the Brothman case; and the press.

Government acts in the pre-arrest period were: (1) formal investigations into the Rosenbergs' activities; (2) alleged manipulation of the people's mood by way of the press, public officials' comments, and the fortuitous timing of various Justice Department announcements; and (3) formal legal proceedings.

Rhetoric of the Arrest and Arraignment Period

The Rosenbergs had reason to be worried that the government would look into their activities. The arrests and confessions of Fuchs, Gold, and the Greenglasses surely should have warned them of impending investigations into their own activities. Government actions and officials' statements warned those who carefully monitored such clues that investigations, arrests, and a trial in the near future were likely. To the untrained and unaware public, the hints of such action were vague; but to the Rosenbergs, who surely could recall and interpret what they did, the signs were likely vivid. Indeed as Root (1963) points out, there were signs that could be read by those who knew what
was going on. "[David] Greenglass had been identified publicly by the FBI as the man who gave Harry Gold the plans for the Nagasaki-type atomic bomb. No mention was made of Rosenberg in the FBI press releases. There was only the recurring intimations by the Justice Department that Greenglass' arrest had carried the search for spies into new and fruitful territory" (p. 102). The Rosenbergs reportedly were "surprised" at the government's investigation and their arrests and trial (Radosh & Milton, 1983, pp. 96-97, 101; Root, 1963, p. 92; Schneir, 1965, pp. 79, 84; Wexley, 1955, pp. 120-21, 131). There appear to be two plausible reasons why the Rosenbergs might have been surprised at the investigations and the eventual trial. First, the Rosenbergs were so ideologically committed to the "Russian cause" that their reasoning may have been impaired. They may have believed that others would eventually see them as having supported a "just cause". Second, they may have believed they would somehow be forgiven their deeds as a result of their commitment (Powell, 1981, pp. 42-44).

Pilat (1952), Root (1963), and Wexley (1955) all relate the fact that there was frequent communication between the Rosenbergs and Ruth Greenglass concerning what she and her husband were telling the authorities. This rather dramatic increase in and frantic nature of the added communication between the Rosenbergs and Mrs. Greenglass can be interpreted as a concern by the Rosenbergs that the Greenglasses were talking openly with the authorities. If that
had been the case, surely the Rosenbergs had seen some danger in their circumstances.

Eventually, the F.B.I. came to see Julius Rosenberg. The discussion between the F.B.I. and Mr. Rosenberg, as documented by former F.B.I. agents and as discovered in F.B.I. records by Franklin (1969); Goldstein, (1975); Pilat (1952); Root, (1963); Wexley, (1955); and Wyden, (1951a, 1951b), is consistently reported as friendly and non-threatening at first, but more pointed, specific, and increasingly threatening in nature later on. Julius, it is reported by Root (1963), got badly shaken and called his lawyer who advised him to say nothing and to leave the interrogation if the F.B.I. would let him go (p. 101). He was not held in custody by the F.B.I.

Julius Rosenberg arranged a meeting with his lawyer in a public place. It seems very unlikely that a lawyer with many Communist clients would be trying to hide the fact that he had one more. If Julius Rosenberg believed that his past Communist connections were the basis of a government investigation, he may well have been prudent in seeking a less conspicuous meeting with a lawyer of Bloch's background. Root (1963) describes the meeting between Emanuel Bloch and Julius Rosenberg as one in which Julius was told that any interest the government was showing in him was a temporary and not too serious matter. Bloch is reported to have told Julius, "a Grand Jury summons was the worst that
would likely happen." Bloch also reportedly advised Julius that if there came a time when he was called to the Grand jury, he was to take advantage of his Fifth Amendment rights (p. 102). "The espionage business Bloch discounted as a bluff" (p. 102). A later comment was attributed to Bloch that suggests his statements to Julius were sincere and not just consoling comments made to a nervous client. "Bloch said later he described the matter to his father [another eminent lawyer] as "just another Fifth Amendment case," and he discussed Rosenberg as "a soft, sweet intellectual sort of fellow" (p. 103). It would appear from these statements that Mr. Bloch was not told the whole truth or that he greatly misjudged the entire situation.

Julius Rosenberg, it turned out, did have something to be worried about. The Justice Department had learned of some of his activities from David Greenglass and, presumably, from Harry Gold. On 17 July 1950, the F.B.I. arrested Julius Rosenberg in his home in clear sight of his wife and two small sons. No attempt was made, according to numerous reports of the arrest, to hide this action from his children (Goldstein, 1975, p. 31; Root, 1963, pp. 106-108; Wexley, 1955, pp. 120-21). At the time of the arrest, J. Edgar Hoover is reported by Goldstein (1975) to have said: "Rosenberg is another link in the Soviet espionage apparatus which includes Dr. Klaus Fuchs, Harry Gold, [and] David Greenglass" (p. 31). Julius Rosenberg termed this charge as "fantastic" and "something like kids hear on television"
Immediately after Julius' arrest, his wife, Ethel, telephoned Mr. Bloch. She excitedly told him the news (Wexley, 1955, p. 120). He calmly told her he would meet Julius at the courthouse. Bloch was quickly faced with another problem after talking with Ethel.

It was a special announcement from Washington made jointly by Attorney General J. Howard McGrath and F.B.I. Director, J. Edgar Hoover... Today, the F.B.I. had seized one Julius Rosenberg "as another important link to the Soviet espionage apparatus."

According to Mr. Hoover, Rosenberg had recruited his brother-in-law, David Greenglass to steal "atomic data," and for some years had made himself "available to Soviet espionage agents" so that he could do "the work he was fated for..." (p. 121).

Mr. Bloch recognized the "careful timing" of the announcement and Julius' arrest. When Bloch arrived at the U.S. Courthouse to see his client, reporters, who had been alerted in advance, were already there (Root, 1963, p. 104).

Federal Judge John F. X. McGohey "swiftly set the bail for Julius at $100,000. It was, of course, a prohibitive one, and therefore, tantamount to no bail at all" (Wexley, p. 121). It is unusual, at night, for a senior jurist to be on duty but this was no ordinary circumstance (p. 121).

The government was giving more clues about its motives
and actions that were available to the keen observer. These clues included: messages from Hoover that were timed with Justice Department actions, other high officials' announcements on television that were timed with arrests, and senior judges performing routine legal chores.

Ethel Rosenberg was called before the Grand Jury on 7 August 1950, two weeks after Julius' arrest. Mr. Bloch and Ethel believed "it was to intimidate her and her husband" (Wexley, 1955, pp. 127-29). They believed it was a "trap," one designed to "get her to make some damaging statement against David [Greenglass]" (p. 127).

In the Grand Jury hearing, Ethel reportedly admitted to signing a Communist party nominating petition, a fairly innocuous event in normal times, but a very charged act in these troubled times. "Her answer, of course, in the viewpoint of the Grand Jury, made her immediately into an unrepentant member of the Communist 'international conspiracy.' Thus, she was damned if she answered and damned if she didn't" (p. 128).

The prosecution attorney made several other "damaging accusations. These were made in the form of questions designed to elicit Fifth Amendment responses" (p. 129). Wexley clearly labels these questions asked of Ethel Rosenberg as "malicious intent" (p. 109n). Mr. Bloch and Ethel Rosenberg were aware of the assumptions made as a result of the Fifth Amendment use, but "what they did not realize was that her taking of the Fifth Amendment was
later to become the 'overwhelming' evidence of her guilt at the trial" (p. 129).

When her Grand Jury testimony was completed, Ethel talked to waiting reporters. "Neither my husband nor I have ever been Communists, . . . and we don't know any Communists. The whole thing . . . is a lot of lies. My brother is innocent and so is my husband" (Root, 1963, p. 106). Both the government and Ethel Rosenberg, it seems, were making public attempts at impression management.

Through unanswered questions and through innuendo, the government had defined Ethel and Julius Rosenberg as risks to society, as Communists, and as ghastly wrongdoers. "And the power to define is the most important power we have. That was made clear in the McCarthy period" (King, 1987, p. 60). The government's defining power was heightened by the fact that it was taking cunning advantage of defendants' exercising their constitutional right of non-self-discrimination.

Not only did the government, the prime agency in the Rosenberg case before the trial, use definition to manipulate its position, it used the "leak" of selective parts of its case as well (Root, 1963, p. 106). As Root observed: "Bit by bit, the Justice Department fed the details of its case to the press. David [Greenglass] had stolen essential secrets of the atomic bomb . . . because he had been mesmerized into doing it by his brother-in-law . . . This
thesis drove Ethel to alter her attitude" (p. 106). Ethel now claimed David Greenglass and Julius Rosenberg never liked each other and that David was jealous of Julius. She solely blamed David for "family business failings" (p. 106).

The government had decided to arrest Ethel Rosenberg on 12 August 1950. They likely could have found her at home on that day, but they decided, instead, to request that she return to the Grand Jury where they asked her the same questions that she had refused to answer the previous time. When she left the courthouse after this second session, she was arrested on the courthouse steps (p. 106-107). She, too, was held on a $100,000 bond (Goldstein, 1975, p. 31).

The strategies that the government was employing were not tame ploys, they were very serious matters indeed. "In communication, strategy is thought of as a message that serves as a symbolic substitute for violence" (King, 1987, p. 27). The government employed another scurrilous strategy. Chief Assistant United States Attorney Myles Lane held a press interview at which he stated: "There is ample evidence that Mrs. Rosenberg and her husband have been affiliated with Communist activities for a long period of time" (Wexley, 1955, p. 132). Mr. Lane then "added to her burden of guilt" with this "fantastic charge": "If the crime with which she is charged had not occurred, perhaps we would not have the present situation in Korea" (p. 132). This was "conviction by public opinion" (p. 132). Two years later, after the Rosenbergs' executions, in Dellaney v. United
States (199 F.2nd 107), the U.S. Court of Appeals ruled that such pronouncements by government officials or spokesmen violated a defendant's rights (p. 132n).

The government was not the only agency using questionable tactics to influence the American people. The powerful non-Socialist press also attempted to define the situation; it accepted government "leaks," made many unsubstantiated inferences, and produced terse, headline-form announcements to support their claims (Root, 1963, pp. 117-119). Root makes a specific point of this in the following:

The words "espionage" and "treason" and "spying" were regarded as sufficient identification for the crimes of the Rosenbergs, particularly by headline writers, whose precisions are limited by lack of space. Whether the American press generally was aware of the important distinctions between treason and espionage, and between an alleged act and an alleged conspiracy to commit an act, it apparently viewed them as distinctions thin in spirit, however large in law (p. 118).

It seemed that the press, in its eagerness to sell its product, cooperated with and was fed by the government. The government was likely eager to have such an ally.

The statute that the Rosenbergs were charged with did not distinguish between friend and foe, but Rabinowitz charges, "There can be little doubt that, in the minds of the judge, the jury, and the public at large, the fact that
the Soviet Union was, in 1950, generally classified as an enemy, totally obscured the fact that it had been an ally when the offense is alleged to have taken place" (p. 68). It is implied here that the more current, negative image would inhibit the older, more positive image from being recalled. If that inference were true, the defendants in the Rosenberg case would likely suffer.

Some "suffering" is real, some is not; some "suffering" is unavoidable, some is not. The Rosenbergs, their lawyers, and numerous Socialists made claims that excessive bail caused Ethel and Julius Rosenberg to suffer "injustice" and "indignity" as a result of being held in jail (Rosenberg, 1954, p. 82). Fineberg (1953) relates how the Rosenbergs may have had their misery lightened.

Had the required bail bond of $100,000 each been posted for them, the Rosenbergs would not have been jailed during the seven months between their arrest and the trial. The Civil Rights Congress, a Communist-dominated organization which posted tremendous sums of bail for other Communists, some of whom fled the country, made no effort to help. Eighteen months after the Rosenbergs' arrest (and long after their conviction) the Civil Rights Congress was screaming that they were totally innocent and Communist propagandists raised many hundreds of thousands of dollars to exploit the case. None of these "friends" furnished any help at the time of their arrest (p. 134).
The American judicial system was working very hard as a result of public feelings of betrayal and here were the Rosenbergs, the symbols of U.S. betrayal, being betrayed by the group that they ardently served.

Pilat (1952) states: "The sharp propaganda tone on both sides before the trial suggested the magnitude of the stakes" (p. 275). The stakes were great - for the Rosenbergs, it was their lives; for the U.S. government, it was a vital set of images such as safety, power, control, and action; and for the U.S. public, it was the belief that their government was able to regain control of the secrets that were being stolen, could correct the problems that were striking the nation, and could raise the spirits of its citizens again. The loser would be in a terrible position; and the U.S. government was determined that it would not be the loser.

The Rosenberg case jury selection has been a topic of great debate and concern to trial analysts who are disposed to take positions on the rightness or wrongness of the verdict and/or the procedures in the case (Goldstein, 1975; Glynn, 1955; Franklin, 1969; Pilat, 1952; Root, 1963; Schneir, 1983; Wexley, 1955; Wyden, 1951a). Some authors, such as Goldstein, Meeropol & Meeropol (1975), Pilat, and Schneir advance the theory that the Rosenberg case jury selection somehow placed the defendants at a disadvantage.
Louis Nizer, one of the nation's most capable and well known trial lawyers and one of the best jury analysts, wrote in *The Implosion Conspiracy* (1973), that he thought the jury selection in the case was in the better interests of the defendants. It may never be known what effect jury selection had in the final outcome. With the jury selected for the case, the stage was set for the trial to begin.

**Rhetoric of the Trial Period**

The rhetoric of the trial period, it seems, contributed heavily to the decision to impose the death sentence on the Rosenbergs. Much of this rhetoric stemmed from direct courtroom testimony. The press, it appears, contributed some of the trial period rhetoric that may well have been influential in the final outcome of the Rosenberg case. Public officials' statements may also have influenced the sentence. This segment of the study focuses on those rhetorical acts that seemed most likely to have influenced the sentence imposed on Ethel and Julius Rosenberg. The discussions of rhetorical acts by trial participants, by members of the press, and by public officials will be developed chronologically. This approach will enable the reader to better focus on the timing of various acts and to be aware of the cumulative effect of numerous rhetorical acts on the final Rosenberg case outcome.

When direct trial testimony references are made, these references will be taken from Wexley's work (1955). His is
the only work on the trial and appeals that has been found to have cited a version of the trial transcript. There are at least three reasonable explanations for the omission of citations in other works: (1) Each time an appeal is granted, the court record is forwarded to the new court of jurisdiction where it is amended to reflect the appellate court's decision; (2) the Atomic Energy Commission, the Defense Department, and the Justice Department had, for varying lengths of time, kept portions of the court record hidden from public view; and (3) the 1967 Freedom of Information Act opened more of the court record to public scrutiny. There are many versions of the court record obstensibly available to people in the region where they are located.

The Justice Department was more openly arresting and trying spies in the U.S. This openness by the Justice Department was likely due to a need to quell images put forth by the Left. This openness also gave the Justice Department a chance to create new, positive images of their own. Root (1963) provides a clear picture of problems faced by the Justice Department as a result of their decision to go after spies openly.

The national security gains little and may even be endangered, for the battle against espionage is fraught with practical, if unprincipled, considerations. Once a spy is arrested, the attendant notoriety forces his
network to disband and anything we may have learned about it is of no further use. Further, to obtain a conviction in court before a jury, the FBI may be forced to reveal to a ruinous extent the nature and techniques of its counterespionage system. It alerts the enemy, and espionage is a two-way street. It is equally important to us to give a spy the wrong information, as it is for him to get the facts (p. 116).

Root has addressed some of the dilemmas facing the Justice Department as they proceeded with arrests and trials in spy cases. Root also provides a perceptive view of prosecutor Irving Saypol's Rosenberg trial strategy:

Armed with a Harry Gold, an Elizabeth Bentley, a David Greenglass, and a national climate of anxiety, the Justice Department could gamble with odds in its favor on a conviction in the national necessity of setting a grand and terrible example of what dilettante traitors could expect. And it could do it without having to put any of its agents or their informers on the stand.

Saypol's strategy, which obviously he developed once he had confessions from Gold, Greenglass, and Elitcher and the knowledge that he could never get a confession from the Rosenbergs, was to utilize the anxious mood of the times and seek a maximum penalty under a minimum charge. He decided not to charge the
Rosenbergs with espionage, which would be hard to prove and which was threatened by the statute of limitations, but with a **conspiracy** to commit espionage (pp. 116-17).

In order to secure a treason conviction, the government had to prove that a defendant was "levying war against them, or in adhering to their enemies, giving them aid or comfort" and "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court" (United States Constitution, Art. III, Sec. 3). In most, if not all instances of alleged treasonous acts in the Rosenberg case, the only available witnesses were other members of the spy ring, so securing a witness who would testify to treason was almost impossible. The precise charge against the Rosenbergs was based on a violation of Sub-section (a) of Section 32 of the Espionage Act of 1917 (50 U.S.C. 32). This act states: "Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation communicates, delivers, or transmits . . . to any foreign government . . . " (Wexley, p. 272). The formal Rosenberg indictments state: "On or about 6 June 1944 . . . Julius Rosenberg [et al.] . . . did conspire . . . with intent and reason to believe that it would be used to the advantage of a foreign nation, to wit, the Union of Soviet Socialist Republics . . . " (p. 272). The "crucial clause - to the injury of the United States - has been omitted"
(p. 272). Wexley makes the assertion that there was no direct claim that the Rosenbergs ever intended to injure the United States. Wexley also claims that the government omitted this clause due to the fact that the U.S.S.R. was not an enemy but an ally to the U.S. in 1944-1945. (p. 272). Wexley further claims that "hence, there did not exist, even by the government's charge, the slightest suggestion of betrayal. The central concept of treason is betrayal of allegiance" (p. 273).

Charging a defendant with conspiracy is not universally accepted as good practice in the law. Root (1963) discusses why conspiracy charges cause some people to have doubts about their application. Legal literature widely discusses the risks that are inherent in a system that allows second-hand testimony and testimony of a meeting between two individuals with only the word of one of these participants. "A judge may rule out hearsay testimony if it is not shown clearly to be germane, but by the time he does it has homogenized in the jury's mind with all the other testimony" (p. 117). The conspiracy charge, it seems, was the most expedient way to prosecute the Rosenbergs. It also appears to have minimized the release of security information for the government.

Before discussing individual rhetorical acts which took place contemporaneously with the trial, it seems prudent to give a brief overview of the trial. Glynn (1955, pp. 499-501) provides a clear trial summary.
Julius Rosenberg had belonged to Communist organizations for several years. His wife Ethel, had participated in Communist rallies, marches, and protests during the same period. Over a short period of time in the mid 1940s, Julius Rosenberg terminated active membership and activity in all Communist organizations. The Rosenbergs ceased their public participation in Socialist movement activities and they even dropped their subscription to the Daily Worker. Julius Rosenberg stole a proximity fuse from an Army Signal Corps project where he worked. Julius also obtained secret military information from Morton Sobell. Julius Rosenberg was alleged to have passed this information on to Soviet Vice-Consul Anatoli Yakovlev (p. 499).

David Greenglass, Ethel Rosenberg's brother, got a sensitive technician's job at the Los Alamos Atomic Experimental Station. Julius Rosenberg obtained secret information from David through Ruth Greenglass. Greenglass provided additional and more in-depth information when he came home on Christmas leave in December, 1944. "David dictated twelve pages of notes to Ethel Rosenberg who typed the notes and he also drew an sketch of the explosive lense used to detonate the A-bomb" (p. 500). This data allegedly was sent to Yakovlev. David Greenglass and Julius Rosenberg also arranged for a future meeting with an unnamed person by exchanging Jello box top halves for identification.

Harry Gold had confessed to being a Soviet courier. At
the Rosenberg trial, Gold testified he had gotten one half of the Jello box top from Yakovlev and had been sent to see David Greenglass in New Mexico (p. 500).

Julius Rosenberg had counseled Sobell and the Greenglasses to escape to Mexico after Fuchs was arrested and Gold was taken into custody. Rosenberg gave Greenglass $5,000 for the flight. Just prior to their own arrests, the Rosenbergs had secured passport photos for their own departure (p. 501).

Most of this trial evidence was corroborated by other witnesses' testimony, other physical evidence, or by other circumstantial evidence. The only response by the defense was denials. The Rosenbergs refused to answer questions relevant to their Communist affiliations by invoking their constitutional rights.

The Rosenberg case "had all the elements that made for high courtroom drama: Defendants who staunchly maintained their innocence, the possibilities of appearances by celebrated atomic scientists, the notorious 'Red Spy Queen' Elizabeth Bentley, and the public airing of a family feud, already familiar in outline form to readers of the Jewish Daily Forward, which had published a series of articles on the Greenglasses" (Radosh & Milton, 1983, p. 170).

There was also the fact the case was being prosecuted by U.S. Attorney Irving Saypol, "whose reputation as the nemesis of 'Red' defendants had made him the favorite of right-wing journalists and aroused the professional
jealousy of J. Edgar Hoover" (p. 170).

Most of Saypol's reputation rested on "his prosecution of suspected Communists, including Alger Hiss and the eleven Smith Act defendants." This record, "topped off by his role as prosecutor of the Rosenbergs, would result in Saypol being hailed as 'the nation's number one legal hunter of top Communists'" (p. 171).

Saypol is alleged to have thought of the Rosenbergs and their counsel as "little better than agents of the devil" (p. 171). Saypol is quoted as having "menacingly" warned the Rosenberg defense counsel, "If your clients don't confess they are doomed" (p. 171). If this quote is accurate, the Rosenberg trial surely began inauspiciously. Radosh and Milton (1983) further maintain that "From that point on, the prosecutor barely observed minimal formalities of courtroom manners. Saypol's opponents were rarely accorded a courteous word and certainly never conceded a request, however small" (p. 171). This attitude, it seems, signaled events to come.

On the first day of the trial, which was reserved for jury selection, the courtroom was "filled with a crush of curious trial buffs, reporters, and semi-official observers." "Most of the spectators had come in the hope and expectation of seeing the atom spies convicted, but there was also a tiny coterie of Rosenberg sympathizers, mostly women, who made occasional attempts to gain the ear of the
members of the jury pool as they passed in the corridor. In spite of the crowding, the atmosphere inside was anything but circuslike" (p. 172). The New York Times (1951, March 7) noted "an indefinable tenseness pervaded the courtroom . . . The silence was extraordinary" (p. 1). Presiding judge, Irving R. Kaufman conducted the voir dire himself (in accordance with common practice in federal trials). The jury selection process only took a day and a half (Radosh & Milton, p. 172).

The Rosenberg trial began, as most jury trials do, with opening statements. Prosecutor Saypol gave the first opening statement. Very quickly, the tone of the defense, the prosecution, and the judicial handling of the case became evident. Saypol began to describe the facts of the case as he wanted the jury to see them. This seemed fairly ordinary when he stated, "The evidence will show that the loyalty and the allegiance of the Rosenbergs and Sobell were not to our own country, but that it was to communism, communism in this country and communism throughout the world" (Nizer, 1973, p. 48; Wexley, 1955, p. 274). Defense counsel, Emanuel Bloch, immediately interrupted with: "If the Court pleases, I object to those remarks as irrelevant to the charges before this Court and jury and I ask the Court to instruct the District Attorney to desist from making any remarks about communism, because communism is not on trial here. These defendants are charged with espionage [my emphasis]" (Nizer, p. 48; Wexley, p. 274). Judge
Kaufman's decision on this first skirmish between Saypol and Bloch was to open the way for Communism to be made an "unindicted charge" in the trial. The judge's ruling was: "The charge here is espionage [my emphasis]. It is not that the defendants are members of the Communist Party or that they had any interest in Communism. However, if the government intends to establish that they did have an interest in Communism, for the purpose of establishing a motive for what they were doing, I will, in due course, when that question arises, rule on that point" (Wexley, p. 275). The judge realized that he had made an error in his comments and he immediately corrected himself: "... I think I said to the jury before that the charge was espionage. I want to correct that. The charge is conspiracy to commit espionage" (p. 275n). It should also be remarked that chief defense counsel, Bloch, in his objection, made the same error and did not appear to have noticed it; or if he had noticed it, he did not try to correct it. Even though the formal charge was conspiracy, the terms "treason," "espionage," "traitor," and "spying" would be used many times in the course of the trial by the prosecutor, defense counsel, witnesses, and the press in its reports of the case. There were very few formal objections over the use of these terms during the trial. It was formally a conspiracy trial; but informally, judging by the language used, it was being presented by the prosecution and was being reflected by the press as an
espionage or a treason case. The use of the wrong term by
the chief defense counsel, the presiding judge (even though
corrected), and by the prosecutor may have planted in the
minds of some jurors the idea that there was little or no
difference in these terms. After the judge's "green light"
the "charge of treason dominated the entire trial and 'guilt
by association' became the keynote of the prosecution's
summation" (p. 275). King (1987) discusses this rhetorical
strategy; he comments: " . . . a general strategy which is
ethically questionable but highly effective is sometimes
called 'guilt by association' or, still more commonly,
'birds of a feather flock together.' Mere physical
proximity is taken for ideological identity" (p. 28). This
strategy was potent in the Rosenberg case. The weight of
such a strategy is discussed by King: "The effectiveness of
this message would be determined by the nature of the
viewing audience, the moral and political climate of the
time, recent events, the credibility of the message source
. . . " (p. 28). King's general description of this
strategy and of its effectiveness appears to fit the
Rosenberg case quite well.

The New York Times front page headline of 8 March 1951
read "Theft of atom bomb secrets in war stressed at spy
trial." These words were displayed in large, bold letters.
Wexley illustrates how the terms, "traitor," and "spy"
became common in the Rosenberg case press reports (pp. 280-
83). Since most Americans were not in the courtroom, many
of them could have believed the Rosenbergs were being tried for treason or espionage (Radosh & Milton, 1983, p. 173).

Intimidation was another strategy Saypol apparently chose to employ against the defense. It is a matter of protocol to announce to the court, the opposing lawyers, and the jury the list of expected witnesses. Technically, this list does not bind either side to calling all those listed nor does it inhibit either side from calling an occasional "surprise witness." However, if deviation from such a list occurs too frequently or if the deviations appear too flagrant, the presiding judge has the right [which is frequently exercised in federal courts] to openly rebuke the offending counsel. Because such an admonishment could adversely affect the jury in a case, few lawyers abuse this protocol. Mr. Saypol, the prosecutor, announced that there would be 102 prosecution witnesses called to testify (Wexley, p. 284). The list contained such names as J. Robert Oppenheimer, Harold C. Urey, and General Leslie Groves, "the three Americans most responsible for the Los Alamos project" (p. 284). When the trial ended, only 23 of the 102 declared witnesses had been called upon to testify. Judge Kaufman never commented in open court about the uncalled witnesses. Wexley maintains that this witness list had a profound effect on the trial.

The witness list included Sobell's mother and father, his aunt and uncle, and his sister-in-law and brother-in-
law. There were also several intimate friends of the Rosenbergs on the list. The were also the names of some of those prominent in atomic research as well as F.B.I. agents. Wexley maintains that the positive image of the F.B.I. and the scientists' reputation could have caused some members of the jury to be favorably impressed with the prosecution's case (p. 284). Wexley also suggests that some members of the jury may have asked themselves the following question regarding close relatives and friends on the witness list: "Would they be aiding the prosecution if the accused were really innocent?" (p. 284). The jury may well have been disposed to believe that the prosecution had a sounder case than it did. The defense counsel and the defendants were likely startled, confused, and distracted by the magnitude and the quality of the prosecution's witness list. Saypol's strategies of listing many more witnesses than he intended to call and of naming famous people that would not really appear before the jury could have lessened the prosecution's case. When it finally became evident to the jury that some well known witnesses were not to be called and there would be a severely abbreviated witness list, the prosecution needed to show or have shown that such changes were due to a desire for parsimony and not due to falsehood by the prosecution or due to weaknesses in the prosecution's case.

The first government witness was Max Elitcher. He testified openly and "freely" on the "advice of his attorney, O. John Rogge" (Pilat, 1952, p. 278). Elitcher
"described the defendants' social and trade union careerism inside the Communist movement as well as their efforts to entice him into espionage" (p. 279). Elitcher had been one of Julius Rosenberg's "friends," but now he was to betray that friendship in the eyes of the Rosenberg supporters (Meeropol & Meeropol, 1975, p. 388).

A summary of Elitcher's testimony, as it appeared in the Columbia Law Review (1954), is used to describe his testimony because: "(1) It is concise, (2) it is unbiased and reasonably accurate, (3) it is from a highly respected legal periodical, and (4) it is assurance that every important point in the government's case is fully presented" (Wexley, 1955, p. 286).

[Max Elitcher] reported that in June 1944, and September 1945, Julius Rosenberg had solicited his services for espionage activities. Later in 1945, Rosenberg asked Elitcher to continue his employment in the Navy Department because of its fertility as a field for espionage. Elitcher also testified that in July of 1945 [sic!] he had communicated his suspicion to Morton Sobell that he, Elitcher, was being followed. That night, according to Elitcher, Sobell went on what he said was a visit to Julius Rosenberg in order to deliver a 35-millimeter film can purportedly containing secret information (the inference being that Sobell feared apprehension and confiscation of the can because
of Elitcher's suspicion of being followed). Elitcher, although he accompanied Sobell, did not see Rosenberg (Columbia Law Review, 1954, p. 121).

Court testimony also showed that Elitcher's wife had accompanied him to the meeting with Rosenberg when alleged overtures to join in Communist groups were made. The record does indicate that Mrs Elitcher was asked "to leave the room" during their conversation (Wexley, pp. 288-90).

Elitcher's testimony had started the prosecution's case by (1) connecting Julius Rosenberg and Morton Sobell; (2) connecting both Julius Rosenberg and Sobell with espionage-type activities; and (3) connecting the defendants with Communism. Radosh and Milton (1983) argue that the defense could gain nothing from a cross-examination of Elitcher.

After all this, the defense lawyers found nothing in Elitcher's statements that would make it worth their while to summon him back to the stand. . . the story did not contradict anything he had said earlier [to the F.B.I.], so reopening the issue would most likely only result in a rehashing of his already damaging testimony, impressing it still further on the minds of the jury [and judge!] (Radosh & Milton, 1983, p. 178).

Elitcher had received an anonymous note warning him to "watch out for the time bomb" (Wexley, p. 179). Radosh and Milton argue the importance of such an act:

The incident, coming as it did so early in the trial, was a serious embarrassment to Manny Bloch. As he
pointed out to the judge, the defendants had all been imprisoned for months and could hardly be personally responsible for sending the letter to Elitcher. Nevertheless, the threat did nothing to enhance the picture Bloch was trying to present of his clients as innocent people. . . . The jury, naturally, knew nothing about the letter and would not be influenced; but Bloch could not be sure that the same could be said for Judge Kaufman, who would have the ultimate power to press sentence in the event of conviction (p. 179).

The "annonymous threats against Elitcher's life confirmed the public's impression that the first of . . . [the] government's witnesses had riddled the defense" (Pilat, 1952, p. 279).

The next major witness to take the stand was David Greenglass. "Among the spectators there was a ripple of excitement and a craning of necks to see better the plump, wavy-haired prisoner take the stand" (Wexley, 1955, p. 325). "The great court chamber was so silent that the clock tick seemed audible in the brief pauses" (New York Times, 10 March 1951). David Greenglass' testimony lasted for the better part of two full days. Ruth Greenglass followed her husband, David, on the witness stand and she basically echoed his testimony (Radosh & Milton, 1983, p. 197).

Following is a brief summary of the major points in the Greenglass couple's testimony that seemed to have had some
influence on the eventual sentence given to the Rosenbergs.

Julius Rosenberg recruited both David and Ruth Greenglass into espionage activities. David secured "names of important scientists" and gave "information concerning security measures [at Los Alamos] and the nature of his work to Rosenberg. Greenglass, while on leave in New York, drew a sketch of the explosive device used in the A-bomb" and supplied Rosenberg with a list of "potential spy recruits." Ethel Rosenberg was alleged to have typed the dictated notes. The Greenglasses testified about details of the "Jello-box" identification technique set up to allow further spying activities. David Greenglass, again on leave in New York, gave the Rosenbergs further details of the A-bomb which were forwarded to the Soviets. Julius Rosenberg admitted to Greenglass that "he'd stolen a fuse and had transmitted it to the Russians". The Rosenbergs had helped the Greenglasses make plans to go to Russia. According to the Greenglasses, Ethel and Julius Rosenberg were Communists (Wexley, 1955, pp. 326-29).

"David Greenglass' story, told in an undertone, gripped the courtroom in dramatic silence. His sister, Ethel Rosenberg, grew pale; once she covered her eyes with her hands" (New York Times, 11 March 1951, p. 2). Nizer (1973) makes the point that jurors are keenly alert to nonverbal signals in the courtroom and that these cues often take on substantial meaning to a jury (pp. 7-8).

Some of the decisions made by the attorneys likely were
influential in determining the outcome of the trial. The Atomic Energy Commission was greatly concerned about the release of sensitive information in open court. They expressed to Saypol their concern relevant to potential testimony from highly respected scientists on the witness list. After lengthy and heated negotiations concerning this matter, the A.E.C. and the prosecutor's team agreed to let a low ranking A.E.C. member testify about minimal technical information (Radosh & Milton, 1983, pp. 182-86). After Walter Koski, the A.E.C.'s representative, testified to several items favorable to the prosecution's case and relevant to the harmful nature of the secrets Rosenberg gave to the Soviets, chief defense counsel, Bloch, presented no objections (even though it clearly appears the judge "invited" him to do so). "The court: 'Counsel [for the defense] doesn't take issue with that statement?' Bloch: 'No, not at all. I read about it in the newspapers . . .'
" (p. 186). "Whether he knew it or not, Emanuel Bloch, in his lack of rebuttal, had more or less conceded that the implosion-lens sketches were important enough to merit classified status . . . the battle was half lost" (p. 186). The witness had not been challenged as to the technical data nor "had he been asked to substantiate his statements about the value of the sketches to a 'foreign power' by describing the state of Soviet atomic research" (p. 187).

This "small victory" was far less than the surprising
events that came next (p. 187). Mr. Bloch demanded that Greenglass' sketch be impounded "so that it remain secret from the court, the jury, and counsel" (p. 188). Prosecutor Saypol was "flabbergasted by the move" (p. 188). As Radosh and Milton point out, "With a few words, Manny Bloch had managed to do more than the prosecution could ever hope to do to convince the jury that what it was about to hear really was 'the secret of the atomic bomb.' Why else would it be necessary to exclude the press and the public?" (pp. 188-89).

Mr. Bloch had stated after the Greenglass testimony: "I would like to stipulate as an American citizen and as a person who owes his allegiance to this country [sic]. I would like to stipulate it [the highly sensitive nature of the material that Rosenberg had received] first to save the expense. I understand it would save quite an expense to the government to bring all these people here" (p. 189). The suggestion that it would be "unpatriotic to require the state to set forth the full evidence against defendants charged with a capital crime is simply incredible" (p. 189). Radosh and Milton saw Bloch's action as a last hope gesture.

The kindest interpretation of Bloch's admission is that he felt a need for a patriotic gesture at this juncture in the trial and that he believed his clients' case was already lost and he was looking for a chance to win the sympathy of the judge and avert the death penalty he saw in store, at least for Julius Rosenberg (pp.
The next major witness to take the stand was Harry Gold. "Harry Gold's whole account meshed nicely with the Rosenberg-Greenglass history presented by the prosecution" (Pilat, 1952, p. 280). Although Gold's testimony was damaging,

tangling with Harry Gold on the witness stand was like questioning an encyclopedia: it could only provoke a spate of coldly accurate facts. Having read the Brothman trial record and having reached the obvious conclusion, Emanuel Bloch merely waved his hand when Gold finished testifying. "The defense has no cross-examination of this witness,' he said" (p. 281). Failure to cross-examine may well mean that the accused accepts the testimony and cannot contradict it. To forfeit cross-examination is a dangerous tactic . . . (Nizer, 1973, p. 162).

We do not know how the jury interpreted Bloch's decision, but it may have been a damaging interpretation.

The last major witness for the prosecution was Elizabeth Bentley, a self-admitted Communist and an indicted spy conspirator who had escaped prison by agreeing to testify in various cases for the prosecution ("Investigation: Probers", 1948, pp. 19-20; "Investigations: The network", 1948, pp. 15-17). In her testimony, Mrs. Bentley "reported several telephone conversations with a man called
Julius" and further stated that she had accompanied another spy courier to the place where Julius Rosenberg resided (Columbia Law Review, 1954, p. 222). Bentley also painted a picture of local Communists being obedient to superiors' demands and making "threats of expulsion for failure to comply with . . . orders" (p. 222).

After a series of "minor witnesses," the prosecution announced it had concluded its case (Radosh & Milton, 1983, p. 222). Now it was up to the defense to decide whether or not the defendants would testify on their own behalf.

Defendants are not required to testify; however, if they do speak on their own behalf, they are not immune from cross-examination. "Morton Sobell never did take the stand, or call any witnesses in his own behalf" (Pilat, 1952, p. 287). "Not only did Sobell fail to present his own account . . . he waived his right to present any defense whatever" (Radosh & Milton, 1983, p. 255).

The Rosenbergs, however, did take the stand in their own behalf. The decision to let Ethel and Julius Rosenberg testify was a long and arduous one (Nizer, 1973, pp. 195-99). It was finally decided that despite some real risks, the Rosenbergs' desire to speak on their own behalf would prevail (p. 198). Glynn (1955) summarizes the testimony of the Rosenbergs: "The Rosenbergs categorically denied the testimony of the prosecution witnesses. . . . In cross-examination, the Rosenbergs invoked their constitutional rights to silence when asked about Communism" (pp. 500-501).
Fineberg (1953) offers another view of the Rosenberg testimony and he also comments on the perception of some of the Left that there was a similarity between the Rosenberg and Dreyfus cases. The Rosenberg defense did not offer any rebuttal testimony in response to the prosecution's case. The defense chose to use "argumentation" rather than evidence to refute government witnesses (p. 139). Fineberg did not see the Rosenberg defense as very logical and he argues that the "Rosenberg defense crumbled under the lash of truth" (p. 139). In the streets, however, the need for truth and logic was lessened. Fineberg claims that there were several unsubstantiated but repeated assertions of similarities between the Dreyfus and Rosenberg cases. Fineberg maintains that in open court it would have been a "simple matter" of asking the judge whether there were any documents given to the jury that were not known to the defense (p. 140). Since neither the defense counsel nor the press apparently had reason to believe that there were any similarities between the Dreyfus and Rosenberg cases, the question was never raised in court.

Fineberg argues that the Rosenbergs were found guilty because they were not credible witnesses. "They were hard to believe because their tongues were tied by their resolve to insist that they were totally innocent" (p. 140). The Rosenbergs further damaged their own credibility by refusing to answer questions "about a highly important phase of their..."
lives [Communism]" (p. 140).

Julius Rosenberg, at times, seemed to actively join in an adversarial position with prosecutor Saypol. His naive and argumentative responses betrayed a weakness that Saypol was to exploit to the fullest. Even the most innocent of witnesses is well advised not to try to score debating points against his interrogators. But Julius simply could not resist (Radosh & Milton, p. 245).

Julius Rosenberg tried to use the Fifth Amendment provision to selectively shield himself from damaging testimony. He was given some latitude in this matter at the start of his testimony, but eventually the judge and the prosecutor began to lose their patience. Julius Rosenberg seemed to regard the use of the Fifth Amendment as a personal weapon that he could use to fend off hostile questions asked by prosecutor Saypol (p. 245). Saypol was aware of Julius' strategy and made as much use of Rosenberg's maneuvers as he could. Saypol asked questions in such a manner that Julius' responses made it apparent that he was using the constitutional right to silence selectively (p. 246). Radosh and Milton argue that Julius Rosenberg discovered that he had made an error in "resorting to the Fifth Amendment too quickly," but by then there was little he could do to correct the error he had made (p. 246). Julius did not make a sympathetic impression. "... An innocent man in his situation might be expected to show fear, confusion, or anger. Julius impressed the jurors as
Ethel Rosenberg's testimony in her own defense did not reveal anything new. Ethel seemed concerned that the prosecution not be given a chance to "drive a wedge between the testimony of husband and wife" (Radosh & Milton, p. 259). Her testimony consisted entirely of terse denials of lengthy paraphrases of the Greenglasses' testimony (p. 259).

Radosh and Milton argue that Ethel, like Julius, came across in court in a way that likely hurt rather than helped their cause. They argue that while Ethel maintained a willingness to "stand by" her brother in "obvious contrast" to David Greenglass' behavior toward her, she lost much of that statement's impact due to a lack of any display of emotion (p. 260). Radosh and Milton claim that Ethel "barely concealed contempt for the whole proceedings," which likely did not impress the jury when it came time for them to assess her testimony (p. 260).

It is suggested by Radosh and Milton that the jury may have felt sorry for her, a woman "dragged into a serious crime out of loyalty to her husband" (p. 260). It is also claimed that Ethel's behavior on the witness stand and the reaction to her testimony by the press and the courtroom spectators was to be the beginning of "a theory that she, and not Julius, was the moving force behind their espionage" (p. 260).

Neither Ethel nor Julius Rosenberg did very much to
refute the evidence produced by the prosecution. The Rosenbergs also failed to supply reasonable sounding explanations for their actions. Both Ethel and Julius seemed to hope the jury would believe their denials of the vast amount of evidence against them and they seemed to hope that the jury would either forgive or excuse them in their refusals to reveal anything concerning their Communist affiliations or ideology. Several jurors stated in later interviews that they were not convinced by the Rosenberg's testimony (Goldstein, 1975, pp. 30-35).

With the end of the Rosenbergs' testimony, the defense rested its case. The prosecution's case was not yet over. Saypol called a few minor rebuttal witnesses to challenge some points made in the defense. Then Saypol called to the stand Ben Schneider, the photographer that the Rosenbergs went to get passport photographs. He testified that they had ordered passport pictures just prior to the time of their arrests (Nizer, 1973, pp. 278-82; Radosh & Milton, 1983, pp. 264-66; Wexley, 1955, pp 561-72). Once Schneider had finished testifying, both sides rested their cases.

In his summation speech, Bloch thanked Judge Kaufman for his "utmost courtesy" and Saypol's staff for the "many, many courtesies" it had extended. "Bloch's kind words for the judge and the prosecution . . . seemed especially odd in view of the fact that just minutes earlier . . . his father had moved for a mistrial on the grounds that Kaufman's frequent interruptions to interrogate witnesses . . . made
it impossible . . . to receive a fair trial" (Radosh & Milton, 1983, p. 267).

Bloch's summation came from a lawyer who knew he had a losing case. Bloch's appeal was to emotion rather than to reason. Bloch was aware that the Rosenbergs faced death sentences if they were convicted.

Saypol's summation was not striking (p. 269). He charged that "Communist ideology had brought the defendants to a 'worship and devotion' of the Soviet Union and given them the motive to do the 'terrible things' with which they had been charged" (p. 269).

The jury, according to interviews with several jurors, agreed from the start of the jury deliberations that Morton Sobell and Julius Rosenberg were guilty as charged. They also had voted on the first ballot 11-1 that Ethel Rosenberg was also guilty as charged. The lone juror was reportedly reluctant on religious grounds to allow a woman to be put to death. This reluctance soon reportedly changed. It was also reported that the jurors were reluctant to announce a verdict too quickly in fear of being accused of not having considering the matter sufficiently (Goldstein, 1975, pp. 31-34; Nizer, 1973, pp. 334-36; Radosh & Milton, 1983, pp. 272-74; Wexley, 1955, pp. 593-97).

The 30 March 1951 editions of the Chicago Tribune, the Milwaukee Journal, the New York Times, and the St. Louis Post Dispatch all had front-page banners that told of the
guilt of "spies," "traitors," and people who had committed "treason." These terms were, of course, inaccurate as they referred to either the formal charges against the defendants or the jury's verdict of guilt; however, they were the terms that F. Lee Baily and Louis Nizer would later characterize as "pervasive" on various talk-shows in the 1970s. These famous trial lawyers had commented on several occasions that the press in this case lead the public astray with erroneous or sloppy reporting. They blamed the press, in part, for the public's incorrect perception of the charges and of the verdict's meaning in the Rosenberg case. Even until the execution of the Rosenbergs, the majority of the press accounts of the Rosenberg charges still referred to acts of treason and spying rather than to espionage.

**Rhetoric of the Sentencing Period**

Sentencing of those found guilty in court is an integral part of the trial process. The sentence is entered into the court record. Unlike the rest of the court record, however, the sentence in a federal case is not subject to judicial review. The sentence may only be overturned if there are errors discovered in the pre-sentencing portion of the trial that would preclude it from having taken place. In many lengthy, complex, and highly publicized trials, the sentence becomes temporarily deferred, set aside from the rest of the trial proceedings. Such was the procedure in the Rosenberg case. The jury's
verdict was rendered on 29 March 1951 and the sentence was imposed on 5 April 1951. This time interval along with wide media coverage likely gave impetus to the belief, by some, that these were somehow separate events.

Many people were moved to express their opinions on what the verdict ought to be by writing to the judge in the case. The *New York Times* of 5 April 1951 reported: "Judge Kaufman has received hundreds of letters. Most of them urged the death sentence" (p. 6). It seems doubtful that these public letters influenced, to any great extent, the sentencing decision made by Judge Kaufman; however, it was a reflection of the mood of the time, which most likely did contribute to the judge's decision.

Immediately prior to the sentence being delivered, each side in the case was afforded an opportunity to address the court. The judge had already prepared his decision to be read in open court, so none really expected any statement to sway his decision; it was a pro-forma courtesy to the legal staffs. Saypol, for the prosecution, did not, directly advocate the death penalty for the Rosenbergs in his speech. However, his "interpretation of the gravity of their crime left little doubt as to his sentiments: 'I have hesitated to translate these matters into a direct issue of life and death. It would be delusion indeed to believe that the war in Korea is anything but a war inspired by Russia. It is not an *ad hominem* appeal to suggest that it is inferable
that young American lives are being daily sacrificed in Korea in defense of our way of life. These defendants gave their allegiance to forces ... allied to the real enemy in that fight ...." (Schneir, 1965, p. 168).

Saypol reiterated a connection that Assistant U.S. Attorney Myles Lane had made at the arraignment of Ethel Rosenberg (Wexley, 1955, p. 132) - that the Rosenbergs' deeds were inextricably linked with the loss of American lives in Korea (Schneir, p. 168). King (1987) points out relevant to this issue: "... one can change the persuasiveness of an argument or appeal by expanding ... the context in which a group of listeners thinks about it" (p. 29). Lane and Saypol, it seems, chose not to limit the Rosenbergs' deeds to conspiracy or to implied treason or espionage, but they attempted to magnify the sphere of these deeds to the Korean War. "By doing what Kenneth Burke has called 'expanding the circumference' (Keith, 1979, pp. 130-36) one may make a [relatively] small event seem far more critical than it ordinarily appears" (King, p. 29). This expansion of the Rosenberg deeds was also part of the judge's reasoning, as we shall see, for imposing the death sentence.

Bloch, speaking for the defense, told the judge that the defendants still maintained their innocence and he commented that the fact that the U.S. and the U.S.S.R. were allies during the time of the alleged offenses should mitigate the circumstances in determining the sentence.
An eminent scholar of American rhetors, A. Craig Baird (1952), characterized Judge Kaufman as being "mentally acute" and "judicially balanced" during the trial (p. 55). Following is a discussion of the reasoning Judge Kaufman gave in support of his sentence. Included here are the direct, trial-related and scene-driven reasons given by the judge. Although there are allusions to other, more indirect, personal reasons likely contributing to the sentence, these are addressed in the chapter relevant to the "agent."

This discussion of the judge's reasons for his decision on the sentence imposed on the Rosenbergs come from his sentencing speech (Congressional Record, 1951, 97: A1903-4). Judge Kaufman labeled espionage as "a rather sordid and dirty work" and characterized the Rosenbergs' actions as "espionage" in his prepared sentencing speech despite the charge and conviction of conspiracy! Kaufman, further characterizes the Rosenbergs' acts as "however idealistic are the rationalizations of the persons who engage in it [presumably espionage is meant here?] - with but one paramount theme, the betrayal of one's own country" [emphases mine]. The judge went on to say "The punishment to be meted out in this case must therefore serve the maximum interest for the preservation of our society against these traitors in our midst" [emphasis mine]. In these
passages of the sentencing speech, the judge seems to have ignored the narrowness of the charges against the Rosenbergs and appears to be addressing the American public on the same level that the press had covered during the trial. An appellate Court cannot change a sentence, even if the wording of such a decision is inflammatory. Only if the interpretation of or the application of the law was deemed to be in error can the judgment be overturned.

Kaufman referred to the Rosenbergs' offenses as "worse than murder." He alluded to the link of the defendants' deeds to the Korean War as Lane and Saypol had done earlier. Kaufman extended the Rosenbergs' deeds much further than even Lane and Saypol did when he asserted "you undoubtedly have altered the course of history to the disadvantage of our country." The judge's final reason offered in support of his sentence linked religious and security matters. "I feel I must pass such sentence upon the principals in this diabolical conspiracy to destroy a God-fearing nation, which will demonstrate with finality that this nation's security must remain inviolate." In his explication of the reasons for this sentence, Judge Kaufman used some highly charged emotive language. His address seemed predominantly directed toward the general American public rather than to the courtroom audience, the defendants, the press, or to the Left. There were, however, specific passages that could be interpreted to be addressed to each of these other audiences.
The judge did, in his speech, acknowledge a difference in the culpability of Julius Rosenberg and his wife, Ethel. He referred to Julius as the "prime mover" and to Ethel as one who "encouraged and assisted with the cause." Kaufman's address concluded with the pronouncement of death to both the Rosenbergs.

The judge's sentencing speech seemed to be an overt link to the scene: appeals to fear and betrayal; and allusions to spying and national security. Images of national strength, renewed security, and retribution for horrible deeds were evidenced in the speech. The sentencing was an act driven by the scene; it was justified by scenic references and was cloaked in images designed to show that the old scene of betrayal had been cleansed and a new purified scene had emerged through the act. Thus sentencing was an act obligatory for national redemption (Burke, 1950, pp. 31-32).

Rhetoric of the Post-Sentencing Period

Before the formal sentencing, several U.S. newspapers surmised "that the Department of Justice might recommend the death penalty for the convicted spies as a means of persuading them to div- je information [emphasis mine]" (Schneir & Scneir, 1950, p. 175). Schneir quotes an uncited item in the New York Journal-American by Howard Rushmore as saying: "capital punishment was being "carefully considered
A few months in the death house might loosen the tongues of one or more of the traitors and lead to the arrest of other Americans who were part of the espionage apparatus.[emphasis mine]" (p. 175). Many Americans viewed the Rosenberg affair in the context of treason and spying. The press helped to reinforce that perception.

One day after the sentence, Leonard Lyons, New York Post reporter, wrote: "The Rosenbergs still have a chance to save their necks by making full disclosure about their spy-ring - for Judge Kaufman . . . has the right to alter his death sentence" (p. 175). "A few days later, [according to the Schneirs] Lyons added: "Their lives . . . remain in their own hands - if they talk, they still can save themselves" (p. 175). This was the beginning of a "theme" that went on until the executions: "confess or die" (p. 175).

Most of the American press "unreservedly approved the death penalty" (p. 175). Approving phrases were used such as the St. Louis Post Dispatch (1951, April 6, p. 1) calling the sentences "completely justified" The Atlanta Constitution (1951, April 6, p. 1) stated: "[the] sentencing of Ethel and julius Rosenberg to die for stealing atomic secrets for transmission to Russia marks the end of our soft treatment of those who are disloyal." "Throughout the United States during . . . 1951, no publication expressed the view that the Rosenbergs . . . might conceivably be innocent"
Solomon Fineberg, author of *The Rosenberg Case*, admits that he once had doubts concerning the Rosenbergs' guilt, states in relation to one of Mrs. Sobell's post-sentence speeches: "One thing she said . . . that ended all doubt I might ever have as to whether her husband and the Rosenbergs were members of a conspiracy [was] ' . . . Julie and Ethel could save their own skins by talking, but Julie and Ethel will never betray their friends . . .' Mrs. Sobell confirmed my feeling that the Rosenbergs were shielding accomplices" (p. 44).

There were, eventually, dissident voices to be heard. Lucy Davidowicz (1952) recalls the response of the Left. "Julius and Ethel Rosenberg were convicted of atomic espionage [sic], and it was thought that our society had dealt justly with a case of high treason [emphasis mine]. This did not reckon with the Communists who, after a period of absolute silence, suddenly discovered that the trial was nothing less than part of a nefarious anti-Semitic plot by the American government!" (p. 41). Fineberg (1953) discusses the Left's position: "American journalists were fully cognizant of the tremendous propaganda campaign on behalf of the Rosenbergs, for while it raged principally in European cities, it kept appearing as well on the doorstep of every American newspaper. The appeals of many foreigners . . . would have had greater effect on American public
opinion had those outcries been entirely spontaneous" (p. viii). "It is paradoxical that had America kept the Rosenbergs in 'agonized suspense' for only eighteen months, . . . scarcely any impression would have been made on European public opinion" (Glynn, 1955, p. 503).

The verdict was rendered, the sentence imposed; "from this time on, the air was full of appeals . . . Twenty-five different points of law were raised by the Rosenberg attorneys (see United States v. Rosenberg 195 F 2nd 583 for a listing of all the points raised in appeal) in seeking to overturn the verdict. The sentence was reviewed and upheld seven times by the United States Court of Appeals (see Rosenberg v. United states 10 FRD 521, 108 FS 798, 109 FS 108, 194 F.2nd 583, and 200 F.2nd 666). The case was brought to the Supreme Court seven times (see Rosenberg v. United States 344 US 850, 344 US 889, 345 US 965, 345 US 989, 345 US 1003, 346 US 273, and Rosenberg v. Denno). Two appeals to the President of the United States were also made" (Glynn, 1955, p. 502).

An Appellate Court will not reverse a jury verdict on a question of fact . . . The Appellate Court . . . confines itself to errors of law . . . The law is the end result of logic . . . moral standards . . . prevalent mores, religious precepts . . . Therefore, our judicial system is at best an approximation of Justice, not an absolute edict" (Nizer, 1953, pp. 17-19). Therefore, "Do you think the Rosenbergs were guilty" is the wrong question and can only result in a
wrong answer. The question should be: "Do you think there was sufficient evidence warranting the jury . . . to decide [they] were guilty?" (p. 19).

The first appeal of the case (195 F 2nd 583) effectively ended any real hope of a reversal. Not only was there not a single item of substance or procedure questioned by the defense ruled upon in their favor, the chief appellate judge, Jerome Frank stated: "Since two of the defendants must be put to death if the judgment stands, we have scrutinized the record with extraordinary care to see whether it contains any of the errors asserted in the appeal" (Fineberg, 1953, p. 137). The appellate judgment was that not a single motion in the appellants' petition was granted.

In January 1952, "when the first Rosenberg appeal was argued . . . there was small public interest" (Glynn, 1955, p. 503). The appeals process was a long and involved one, but that constitutes another drama, one beyond the scope of this study. It was played in a different scene, with different actors, and for a different purpose. The execution seems more attached to the appeals drama than to the drama described in this study.

Conclusion

The scene described in chapter two of this study, one of fear, insecurity, and distrust, which came to be known as
betrayal, drove the government, through its legal apparatus, the agency, to locate, label, arrest, try, and punish someone who could satisfy the need of a scapegoat (Burke, 1950, p. 32). A scapegoat sufficient to embody the evils attributed to the scene and a trial in which these evils could be driven from the system and smashed was sought (p. 32-34). The scapegoats were the Rosenbergs and the culminating acts of purification were the death sentences (pp. 32).

The act could not have been carried out without the agency and the agency would not have succeeded in accomplishing the government's goals. There was a symbiotic relationship between the act and agency.

The act was chosen by government leaders. The Justice Department was selected as the means to get the Rosenbergs to trial. The remaining factor that was needed to sentence the Rosenbergs was the agent, the judge who would legitimize all the other planning in the case. The next chapter presents arguments that suggest Judge Irving R. Kaufman was the ideal man for the role as agent; he was the right man at the right time.
Notes

1. Britain had no death penalty during the period of the atomic spy trials. The twenty year sentence imposed on Alan Nunn May was the maximum sentence that could be imposed for the crimes that May was charged with.

2. The fourteen year sentence imposed on Klaus Fuchs was the maximum sentence that could be imposed for the crimes that Fuchs was charged with.

3. This information was obtained from the head legal reference librarian, Lance Dickson, at the Herbert Law Center at Louisiana State University; Baton Rouge, Louisiana.

4. Based on discussions with trial lawyer, Bernard L. Goldstein, who was informally familiar with the Rosenberg case.
Chapter Four

The Agent

The agent, according to Kenneth Burke, "is the person or the kind of person who performed the act" (1945, p. xv). "Agent" is the name for the kind of actor groups seek to carry out significant functions for them. The kind of person who is chosen discloses much about the group or society making that choice. Those who are barred from performing particular roles reveal nearly as much. In the Rosenberg event, the style in which the role of agent was played and the characteristics of the individual playing the role were heavily, although not exclusively, determined by the conditions (scene) under which the act took place. The Rosenberg case scene of national betrayal demanded a response. The scene's nature required that the government find a symbol of betrayal that could be identified by all (p. xiv). This betrayal symbol needed to be purged from the American public's consciousness, leaving the country's situation cleansed and purified, what Burke calls redemption (Burke, 1941). To accomplish this, a means publicly seen as workable and acceptable needed to be found. Most government officials believed the U.S. Justice Department
was the government agency most capable of accomplishing this symbolic act. The Justice Department appeared strong and seemed relatively immune to the numerous slanderous attacks made by McCarthy and his followers.

A plan was settled upon to arrest and try Ethel and Julius Rosenberg. A conviction, it was hoped, would be the symbolic vanquishing of the American betrayal and would represent the country's being cleansed and purified, again, what Burke calls redemption (Golden, Berquist, & Coleman, 1983, p. 325). The proper legitimization means, through a trial, would restore the authority and integrity of the government.

The government sought an able and willing judge to preside over such an important and highly publicized case, one who could be counted upon to render a verdict at the successful conclusion of the case that would justify the tremendous security and national image costs and political risks taken by the government. According to Burke, social conditions are said to demand an actor who fits the scene. In a given scene, people do not simply act, but are called upon to perform certain actions (Burke, 1945, pp. 3-7).

Such a jurist, the government believed, was Irving R. Kaufman, a judge in the Southern District Federal Court of New York. This chapter discusses: (1) how Judge Kaufman's upbringing and education made him seem like a positive candidate to preside over the Rosenberg case; (2) how his private and government legal experiences qualified him for
the lead part in the Rosenberg case drama; and (3) how scholarly authors who have studied the Rosenberg trial reported Kaufman's performance as the presiding judge in the case. Particular emphases will be placed on those aspects that may have contributed, in one way or another, to his rendering the death sentences to the Rosenbergs.

Kaufman's Upbringing and Education

Irving Robert Kaufman was born on 24 June 1910 in New York City. He was reared in the city and attended public elementary and secondary schools. He was a good student and graduated from high school at age fifteen (Candee, 1953, p. 306; Lehman, 1953, p. 20). The Kaufman family lived modestly; Irving's father was a manufacturer of tobacco humidifiers (Lehman, p. 84). This pattern of life was to remain Kaufman's lifestyle until the present; he still lives a relatively modest life in New York.

Kaufman continued his education by entering Fordham University, a prestigious Catholic University (Wexley, 1955, pp. 249-50). He was the youngest freshman student and he graduated number one in his class in only three years. This rapid progress in his education is what Wexley calls "the foundation" of "Kaufman's whirlwind career" (p. 249).

Attending Fordham was not only a good way of getting a quality education but that choice also had social and political implications. Wexley points out some of the
political advantages that could be gained from an education at Fordham by "a young Jewish boy."

... at this early age, Kaufman seemed to know what he wanted, because for a politically ambitious young man there was a considerable advantage in attending ... Fordham in a city dominated by the Tammany machine. And for someone like Kaufman there was a double advantage, because with the vast population of Jewish and Catholic voters in New York, choice political posts were parceled out more or less in proportion - so many to Jews, so many to Catholics and, of course, a reasonable few to Protestants (p. 250).

It seems quite likely that Kaufman had astute advice from family friends concerning his choice to go to Fordham.

Kaufman excelled academically at Fordham and was also noted for his ability to "conform" (p. 250). Wexley takes special note of this trait in young Kaufman.

It is worth contemplating this curious phenomenon. As the solitary Jew in his class, there were basically two courses of conduct open to the young student. The natural one would have been to protect oneself with an armor, if not in a religious sense, certainly in a cultural, traditional sense. With this course, there would have been an increase of his feeling of oneness with the Jewish people and its history which was predominantly a struggle against oppression and bigotry. However, we see that he chose rather the more
practical course — to ingratiate himself as one who was "different" from the rest (p. 250).

This ability to get along and to be one of the group rather than being aloof and isolated may well have contributed to his selection to several important and sensitive positions in his career.

Attending Fordham also had the advantage of isolating Kaufman from liberal student groups which existed in the late 1920s. Some of these liberal student groups were later discovered to have had affiliations with other Communist or Socialist groups or to have had sympathies for Communist or Socialist causes. Other groups which were not shown to have had any direct connection with Communist or Socialist causes were labeled as "suspect" by the House on Un-American Activities Subcommittee. Many of those who had innocently belonged to these organizations in their youth found their American loyalty being questioned by McCarthy and his followers in the early 1950s. "Certainly no one can ever accuse him [Kaufman] of having been thus contaminated while at Fordham" (p. 251). In pentadic terms, Kaufman acquired an appropriate past for his future role (Burke, 1945, p. 307).

Upon graduation from the undergraduate program, he began his law studies at Fordham's law school. Kaufman again excelled at his studies and finished his program in accelerated fashion. He completed law school in two years
and was the class's top student. Kaufman's successful and rapid educational advancement and an apparent high personal value upon education may have contributed to his mentioning the Rosenbergs' having received a "free education" in his sentencing speech.

He was just twenty years old and could not take the New York bar exam until he was twenty-one. Kaufman imposed on a friend to help him with this problem. "Much distressed, he urged an attorney friend to petition the New York State Court of Appeals to waive the age requirement in his case" (p. 251). Chief Justice Cuthbert Pound told Kaufman's friend informally, "Tell the young man to slow down a bit. A few months' wait will do him some good" (p. 251).

From his rapid and highly successful advancement through school, it can be inferred that Irving Kaufman was a keenly motivated and ambitious man. His ambitions began to take particular focus while he was in law school. He "spent much of his free time attending trials at the Federal Courthouse just across the way from . . . school." Kaufman proudly recalled that: "The first sight of black-robed judges stirred me and I resolved to become one" (p. 251). To become a judge, Kaufman would have to build a superior legal reputation. Australia's Chief Justice, Herbert V. Evatt, in a letter ten years earlier to President Franklin Roosevelt, outlined his views on the constituents of an exemplary legal career. Evatt identified such a career as including a social outlook, leadership power, knowledge of the Court's
history and practice, and the confidence of the legal profession (Baker, 1969, p. 203). These qualities, Evatt asserted, were necessary in a judicial nominee. It seemed, then, that these were the qualities that Kaufman would have to acquire in order to be nominated to the bench. Kaufman began to look for his first legal position, one in which he could begin to build his legal career.

Kaufman felt very close to his family. The "strongest influence on his life," Kaufman is quoted as saying, was the "understanding, love, and wise guidance" he received from his parents (Candee, 1953, p. 306). This sense of family importance was to become clear in some of the judge's sentencing remarks. Irving Kaufman had three sons when he presided over the Rosenberg case. His close family life values apparently contributed to a focus upon the relationship between Ethel and Julius Rosenberg and their two young sons at the sentencing. Kaufman specifically characterized the Rosenberg parents as having "abandoned" their children and having "placed them in danger" as a result of their illegal activities (Baird, 1952, p. 59). Kaufman's loving and positive upbringing, his highly successful education, and his political astuteness seemed to portend a bright career for the ambitious young lawyer.
Kaufman's Professional Career

Positions Held Prior to Becoming a Judge

At age twenty-one, Kaufman passed the New York State bar exam and was licensed to practice law (Wexley, p. 251). His first legal position was with the firm of a prominent New York lawyer, Louis Rosenberg (no relation to Julius Rosenberg). There, he became involved in cases in the New York State and Appellate courts (Candee, 1953, p. 306). Kaufman left the Rosenberg law firm after three years' experience.

Kaufman married his previous employer's daughter, whom he had met while working with her father. Wexley (1955, p. 252) comments that "... he made no overt move toward her [while employed with her father] lest somebody might think he was trying to get in with the boss." Kaufman, it seems, had developed a sense of propriety at an early age. As in many other areas, he showed an acute understanding of form, custom, and appropriateness.

He was offered the position of Special Assistant to the United States Attorney for the Southern District of New York. This was a prosecutorial position, giving the young attorney experience in both sides of courtroom practice. In this position, Kaufman took part in "a number of well publicized prosecutions" (p. 306). This experience with publicity in legal matters may well have prepared Kaufman for his task as presiding judge in the Rosenberg case which
received more publicity than any other in Kaufman's long career. Within a year at this position, he was given a "permanent appointment" as an Assistant United States Attorney. Here, Irving Kaufman participated in cases that "established novel principles of law" (p. 306). Irving Kaufman's "firm adherence to minutest detail gained him prominence" in his work ("Judge former," 1953, p. 9). After four years' experience in the prosecutor's office, Kaufman returned to private practice in New York City with the prosperous and well known firm of Simpson, Brady, Noonan, and Kaufman (Candee, p. 306).

Upon his return to private practice, Kaufman had defense and prosecutorial experience in State and Appellate courts and had evidently done quite well in his work considering his acceptance as a partner with a well known and lucrative law firm. "Only five years later, before Kaufman was thirty-five years old, he was netting more than $100,000 annually" (Wexley, 1955, p. 252). Kaufman was, by most standards, a highly successful lawyer, but he was also ambitious.

In 1947, Kaufman "accepted an appointment as Special Assistant to Attorney General Tom Clark who was later to be appointed to the United States Supreme Court. There, Kaufman was able to gain familiarity with federal law, federal cases, and lawyers for the federal government. In 1948, "Kaufman was made a Government appeal agent" for the
Selective Service, and through his work in that capacity, was awarded a medal for his service (Candee, 1953, p. 306).

Kaufman was a member of the city court committee, the committee on criminal courts and procedures, and the committee on courts of superior jurisdiction. It is quite possible that those committee duties provided Kaufman with insights into the appeals process and aided him in his later handling of the Rosenberg case in which none of his rulings on procedural or substantive matters were overturned. "He was also chairman of a bar association subcommittee which made recommendations on proposed new Federal criminal rules to the Justice Department and to Congress" (p. 306-307).

By this time he had reached a position of considerable power in the political machine headed by James Farley. This particular role was that of "confidential coordinator of Federal patronage" (Wexley, p. 252). In this position he was part of the nominating process for several key federal positions including federal judgeships. Kaufman undoubtedly made some prudent and useful friendships while in that position.

Kaufman had practiced courtroom law in both the defense and prosecutor roles; he had held sensitive, appointive positions at the State and Federal levels; and he had gained respect and power in political circles all by the age of forty. In addition, he had "amassed a personal fortune" (p. 253). But Kaufman believed that the "capstone of a lawyer's career was being a judge" (p. 253).
Kaufman's noteworthy experience in both the prosecutorial and defense aspects of the law likely was a positive factor in his being considered as a judicial candidate. His work with highly influential officials such as Edward P. F. Eagan, chairman of the New York Athletic Commission; James Farley, later to be named Postmaster General; and Tom Clark, who became an Associate Justice of the United States Supreme Court probably gave Kaufman an advantage in the selection process for judicial candidates. His political visibility and recognition surely must have been a positive factor in his quest for a judicial appointment.

Kaufman's educational success, his professional diligence, and his willingness to assume and perform low paying and sensitive government duties rather than being satisfied with a high paying, more routine private practice showed characteristics that most likely were appealing in a judicial candidate. Irving Kaufman's willing and eager government work may have led many to believe that he was one who would be pro-government as a jurist. The values he had publicly shown in his work could lead one to infer that he was a sensitive, honest, and hard working man. Oliver Pilat (1953, p. 37) characterizes Kaufman's "personal habits" as "ruled by an iron discipline." This is another trait many people might have believed was requisite for a successful judicial nominee.
Judicial Experience Before the Rosenberg Case

Irving Kaufman was appointed to the bench by President Harry S Truman and he took the judicial oath of office in the United States District Court for the Southern District of New York on 1 November 1949 at the age of thirty-nine. He was the youngest judge ever appointed to the federal bench (Root, 1963, p. 130).

Retired federal judge, Delbert Metzger (1953), wrote: "A judge . . . comes to be the product of his environment, his education, his experience, and yes, his prejudices" (p. 21). The judge's evaluation appears consistent with this study. Metzger seems to recognize the importance of the environment (scene) on a judge (agent). He also cites the relationship between education and experience and a judge's decision-making as part of the makeup of a jurist. As the judge points out, both the external environment, the scene, and one's personal makeup, the basic fiber of the agent, greatly influence the act that is rendered. As the agent must be in keeping with the scene, the act and its purpose must be congruent with the social conditions of the situation as well (Burke, 1945, pp. 6-7). The court to which Irving Kaufman was assigned was one of the United States' busiest (Lehman, 1953, p. 84). A judge had to be energetic, quick, and self-assured to be successful.

Lawyers and judges who came in contact with Judge Kaufman "learned in time that he was a master of law and
courtroom procedure, a brisk, attentive jurist who made his decisions with vigor" (p. 84). Kaufman was known as an "active" jurist (Wexley, 1955, p. 251). He did not passively preside over a trial but overtly took part in each case.

Kaufman was a "devout Jew" (Lehman, 1953, p. 20) but his publicly acclaimed experiences at Fordham gave those who might have worried that religion would unduly bias his decisions reason not to be so concerned. Judge Kaufman, although he was comparatively young, began his career as an excellently trained, thoroughly experienced, well thought of, and highly motivated judge. Kaufman was "recommended for the post [as judge] by all the New York bar associations and by the State, Federal, and American bar associations" (Candee, 1953, p. 307).

Kaufman's initial judicial decision involved an appeal by "eleven Communist leaders" to broaden bail jurisdiction pending their Smith Act conviction appeals (Candee, p. 307). Kaufman denied the defendants' appeals. This was the first in a series of trials and proceedings (judicial decisions made without a trial taking place) involving Communists that Judge Kaufman was involved with.

Judge Kaufman presided over the trial of Abraham Brothman and Miriam Moskowitz. Brothman was accused of and convicted for obstruction of justice and Moskowitz was accused of and convicted for conspiring with Brothman to obstruct justice. These charges were brought in connection
with Elizabeth Bentley's courtroom testimony relevant to espionage in 1947. Irving Saypol, the prosecutor in the Rosenberg case, was the prosecutor in the Brothman-Moscowitz case. Elizabeth Bentley and Harry Gold, who testified at the Rosenberg trial, testified against Brothman and Moscowitz (Radosh & Milton, 1983, pp. 153-55). The press, which frequently headlined the Rosenberg case as one involving "spies" or "treason," even though they were tried and convicted of conspiracy charges, had engaged in similar headline practices during the Brothman-Moscowitz trial. The defendants at that trial were accused and convicted of obstruction of justice and related conspiracy charges but the press seemed to ignore the actual charges in favor of more marketable and sensational headlines. The New York Daily News had a banner, "Gold prepares to testify against 2 in atom spy ring" (1950, November 8, p. 1). On the same page was another headline, "Bail cancelled for 2 on trial in atom plot." The New York Herald Tribune of 8 November 1950 announced on its front page, "Two go on trial in atom spy case, lose bail . . ." (Schneir & Schneir, 1965, p. 90). These headlines were typical of those in major U.S. newspapers. Such knowing, repeated misrepresenting of the charges in a case may be cause, in today's judicial practice, for a mistrial or for a change of venue. This was not, it appears, common legal practice in 1950. The matter of the press' misrepresenting the charges was not among the
54 substantive issues raised on appeal in the Rosenberg case and no reports have been found that suggest that these issues were the basis for an appeal in the Brothman-Moscowitz case (108 FS 798). No record has been found that suggests Judge Kaufman attempted to chastise or overtly correct the press accounts of either the Brothman-Moscowitz trial or the Rosenberg, et al. trial. In the sentencing of Abraham Brothman and Miriam Moscowitz after their convictions, Judge Kaufman, who had stated during the trial that the secrecy of documents presented at the trial was "not an issue," "now commented that the obstruction of justice, serious by itself, was laid in the background of espionage" (Schneir & Schneir, 1965, p. 105). Referring to the imposition of sentence as "almost a God-like function," Judge Kaufman stated at the Brothman-Moscowitz sentencing:

... regret that the law under which these defendants are to be sentenced is so limited and so restricted that I can only pass the sentence which I am going to pass, for I consider their offense in this case to be of such gross magnitude. [sic] I have no sympathy or mercy for these defendants in my heart, none whatsoever (p. 105).

Lehnman (1953) claims that Judge Kaufman was assigned the Rosenberg case as a result of the court's "routine rotation" of cases (p. 84). In none of the many books written on the Rosenberg case is such a random selection of the presiding judge mentioned. Several factors make the
contention that this case was assigned in a totally random manner somewhat difficult to believe. These factors include: (1) the expected notoriety of the Rosenberg case; (2) Judge Kaufman's recent experience in related cases involving Communist defendants; (3) his recent appointment to the court; and (4) his successful working relationship with prosecutor Saypol in cases involving Communist defendants. It is difficult to believe that the government and the Chief Judge of the court would relegate a matter of such enormous legal prominence and importance to chance.

Judge Irving R. Kaufman assumed the role as presiding judge in the Rosenberg case having recent courtroom experience with some of the witnesses who would testify against the Rosenbergs. Some authors have expressed reservations concerning the judicial propriety of a judge accepting a case in which he has prior contact with witnesses in other cases (Goldstein, 1975; Meeropol & Meeropol, 1975; Schneir, 1983; Wexley, 1955). The canons of law would require a judge to excuse himself if there were to be a bench trial but not in the case where a jury would evaluate the testimony of the witnesses. Judge Kaufman had, on at least two occasions, expressed very pro-government sentiments in rulings involving Communist defendants. It appeared that the government had a talented, experienced, and pro-government judge to supervise the Rosenberg trial.
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Kaufman's Performance in the Rosenberg Case

In the survey of books written about the Rosenberg case, Irving Kaufman's performance as presiding judge in the Rosenberg case has been characterized in ways consistent with critics' evaluations of the indictments, the trial, and the sentences imposed. There are some who took the stand that there was a government conspiracy against the Rosenbergs (Goldstein, 1975; Meeropol & Meeropol, 1975; Schneir, 1983; Wexley, 1955). These authors contend that Kaufman's jurist role was a planned part of the conspiracy against Ethel and Julius Rosenberg. They accuse the judge of behaviors during the trial that adversely affected the trial's progress and ultimately its outcome (Goldstein, pp. 20-21; Meeropol & Meeropol, pp. 79, 182; Schneir, pp. 133, 143-44, 148-51; Wexley, pp. 221-26, 328-29, 499-501, 538-40). The Rosenbergs' defense attorneys, in numerous appeals to appellate courts, made numerous formal references to specific judicial behavior in an attempt to secure a favorable opinion by an appellate court affirming that Judge Kaufman had adversely affected the fairness of their clients' trial and to secure a judgment that would vacate the verdict and sentence. After repeated attempts to elicit such rulings from the courts of review, it was the unanimous judgment by all appellate panels involved in the issue that there were insufficient grounds for such appeals (Rosenberg, et al. v. United States 344 U.S. 850; 344 U.S. 889; 345 U.S.)
None of the reviewing panels found any palpable errors in the judicial discretions Kaufman exercised during the trial or in the sentencing of the Rosenbergs (Root, 1963, p. 290). Jerome Frank, Judge of the United States Court of Appeals, 2nd Circuit, wrote in his opinion in the Rosenberg appeal of 25 February 1952:

... Defendants, however, tell us that the trial judge behaved himself so improperly as to deprive them of a fair trial. Defendants' counsel ... said that the judge's alleged fault had been "inadvertant," and that the judge had "been extremely courteous to us and afforded us lawyers every privilege that a lawyer should expect in a case." ... Counsel for the Rosenbergs, summing up for the jury, stated that "we feel the trial has been conducted ... with that dignity and that decorum that befits an American trial." These remarks, by a highly competent and experienced lawyer, are not compatible with the complaints now made. We think the judge stayed well inside the discretion allowed him (195 F 2nd 583).

Judge Kaufman was seen by many as a merciful agent in that his role and the style in which he played it was honored by his peers. His behavior was really a "tribal symbol" of how an honorable trial should be conducted under difficult
conditions (Bailey, 1984). Sylvester Ryan, Judge of the United States District Court of New York, wrote in his 10 December 1952 opinion: "I find no evidence to support the claim that the trial proceeded under conditions which deprived the petitioners of the opportunity for a fair trial before an impartial jury" (108 FS 798).

It must be pointed out that the positive remarks about Judge Kaufman's judicial conduct made by the defense lawyers at the time of the closing remarks were likely made in an effort to win a more lenient sentence for their clients in the event that they were found guilty by the jury. This strategy by the defense attorneys had, it turned out, a double edge, for in the appellate petitions where the defense wanted to claim that the judge had not behaved in exemplary manner, the appeals panels suggested that their claims were hypocritical and thus had less weight.

One account of the case, The Rosenberg File, by Radosh and Milton (1983) claims to have taken a "neutral stance" on the issue of judicial conduct and to have examined the Rosenberg case objectively and comprehensively (p. x). This is the stance the authors take at the start of their book. However, by the end of the volume, the authors admitted they were initially strong believers in the conspiracy theory and that as the result of research, they had become believers in the position that justice had been properly carried out (pp. 450-54). The authors come to the conclusion that Kaufman
obeyed the letter of the law but that he too frequently exercised his judicial discretions to the advantage of the prosecution's case (p. xiii).

Fineberg (1953), Nizer (1973), Pilat (1952), and Root (1963) take more pronounced pro-government stances in their books on Kaufman's handling of the Rosenberg case. Nizer argues that a judge needs to be fairer to the jury than to the litigants since it is they, the jury, who must gain necessary insight in order to render a just verdict. Nizer contends that this is what Kaufman strove to accomplish with his rulings (Nizer, pp. 161-67). Nizer also found the fact that no appeals panel had found significant error even though the case had gone through more judicial review than any other case in history compelling. Nizer (pp. 221-223) and Radosh and Milton (p. 287) stress that Judge Kaufman was meticulous in his courtroom preparation. They suggest that his preparation was greatly responsible for the lack of reversals on appeal. Jurors also evaluated the judge's performance in court. "As for Judge Kaufman's conduct of the trial, most of the jurors . . . had nothing but praise" (Radosh & Milton, p. 273).

Admirers and detractors alike seem to focus on Judge Kaufman's active role in the trial. Alexander Bloch had made a motion for a mistrial at the conclusion of the trial stating: "Kaufman's frequent interruptions to interrogate witnesses personally had virtually made it impossible for the defendants to receive a fair trial" (p. 267). The
appellate courts did not concur with that interpretation of Kaufman's active role as a jurist (195 F 2nd 583; 108 FS 798; 109 FS 108; 200 F 2nd 666). Retired United States Supreme Court Associate Justice, Potter Stewart, commented on judges being active in a trial. He argued on the PBS television series, The Constitution: That Delicate Balance, that a trial judge's task is not limited to acting as a referee, but includes guiding and pushing, when necessary, those involved towards truth and justice. Justice Stewart also claimed the more difficult the case, the greater will be the role of the trial judge. It would seem, by Justice Stewart's arguments, that he would approve of, in principle, the active role taken by Judge Irving Kaufman in the Rosenberg trial.

Irving Kaufman, it would appear, took his role as a presiding judge and of imposing sentences very seriously. He also seems to have been a man of passion and humanity despite some of his harsh sentences meted out to various defendants. Following are some of the judge's specific behaviors that exemplify the traits of passion and humanity.

After the jury in the Rosenberg case reached its verdict, Kaufman set aside a full week for deliberation and study before rendering his decision on the sentence for the Rosenbergs (Root, 1963, p. 216). Kaufman studied the court transcript and "probed the issues of the case" (Lehman, 1953, p. 84). There were "three chief considerations" in
deciding the sentences to be imposed. Lehman cites an unspecified "later opinion" of Kaufman's as the source of three reasons (p. 84). They were: (1) The law itself embodied in the 1917 Espionage Act (50 U.S.C. 31-32). The law gave the judge the following discretion: a sentence of not more than 30 years in prison [a person so sentenced could be paroled in ten years under 1951 practice] or death (50 U.S.C. 32); (2) The "magnitude of the crime" (Lehman, p. 84). This consideration was, in great part, a matter of personal interpretation by the judge; (3) The "interest of the parties to the trial." The parties to the trial were the defendants and the United States. The "United States" as it was explicitly and implicitly referred to by the judge in his sentencing speech were the people of America and the institution of government in the U.S. (Baird, 1952). Judge Kaufman's reflections on the fairness to all parties to the case are shown by the following passage: "A judge must be merciful to the individual, given any reason for mercy. He is also bound to protect the large, sometimes vague and always vital rights of society. What sentence would be just and also provide the maximum deterrent effect against such crimes in the future?" (p. 84). Kaufman is reported to have gone to his synagogue several times during his week of deliberations. His temple visits illustrate his exquisite sense of form. America believes in the forensic struggle of the courts, the piety of formal religion, and the gestures of mercy. Kaufman thus represented the ideals of American
justice. The agent was embodied by the great institution. The judge was said to be "still deliberating and bent over the transcript after his family went to sleep" (p. 84). It appears the judge deliberated many long hours and from the many descriptions of his courtroom appearance on the morning of sentencing, was very tired and solemn looking. His deliberations apparently were exhausting.

Mrs. Tesse Greenglass, the mother of David Greenglass and Ethel Rosenberg, requested permission to see the judge on the day prior to the scheduled sentencing. "An older judge, hearing of his intention, stopped him in the courthouse elevator and put an arm around Kaufman's shoulder. 'Don't do it, Irving,' he said; 'You're just putting yourself through a wringer" Kaufman replied, "She's entitled to see me" (p. 84). Kaufman met with Mrs. Greenglass in his private chambers where she reportedly pleaded for the lives of her two children. On Christmas eve, 1952, Kaufman met with Julius Rosenberg's family in his chambers. They, too, pleaded for their child's life (p. 86).

Rabbi Emanuel Rackman, a man who fiercely opposed the Rosenberg death sentences although he believed the two to be guilty of the offenses for which they were tried, was asked by Kaufman to meet with him and did so. Rackman had this to say about Kaufman after his meeting: "I had the feeling that Judge Kaufman had really suffered" (p. 86). He characterized Kaufman's mood as sombre and his burden great.
in search for a just answer. The rabbi said that he may not agree with the judge's decisions, but he knew that the decision was reached in good faith.

Judge Irving Kaufman endured many angry and vicious letters, phone calls, and media attacks. He received a number of death threats and on at least two occasions bombs were discovered near his home and his office. His home and office were constantly under security protection after these discoveries. Security for the judge was maintained long after the executions in fear that his life was still in danger. Kaufman seemed philosophical relevant to these intrusions on his life. He said, "There's never been pressure like this in our courts. It's more than that; it's closer to terror. But the courts must withstand such things or we would close the doors to justice and government" (p. 91).

The judge made a last minute change in the Rosenberg executions on their last day. They had been set to die in the electric chair late in the evening on 19 June 1953. In deference to the Jewish Sabbath, Kaufman moved the time of the executions to an hour before sundown, the beginning of the sabbath. This was done even though neither Ethel nor Julius Rosenberg openly practiced an active faith. This act demonstrated that the judge had a sense of sensitivity for the Jewish community's needs.

Judge Irving Kaufman has been portrayed by a vocal minority as a jurist who entered into a conspiracy against
the Rosenbergs as part of a larger conspiracy by the U.S. government against the Left. Many of the Left who believed this accusation maintained that there was insufficient bases for believing the Rosenbergs guilty of the offenses they were convicted for. After the trial, most Americans believed the judge acted properly in the Rosenberg case and that there was no conspiracy at all. The appellate courts vindicated claims that were made concerning improper courtroom conduct by the judge. Later in his career, Judge Kaufman's work was recognized and he was nominated to the United States Court of Appeals and subsequently he was selected by his peers as the chief Judge until his retirement from the bench in the summer of 1987. Judge Kaufman has exhibited behaviors usually associated with a dedicated, hard working, and compassionate man. President Ronald Reagan awarded Judge Kaufman the Medal of Freedom upon his retirement as a respected jurist.

**Conclusion**

Kaufman's preparation for his career began with the loving upbringing by his parents. Irving, as a child, had received wise guidance and he was aided in making decisions consistent with positive career development. Irving was an exemplary student in all levels of his schooling. He exhibited personal traits of hard work, propriety, and ambition. Kaufman excelled at his varied legal positions.
and earned his appointment to the bench. He assumed the duties of presiding judge in the Rosenberg case as a well prepared jurist and handled the job in a way that was not reversed on a single issue at the appellate level.

Those who saw the death sentence imposed on the Rosenbergs (act) as a logical and acceptable culmination of the use of the U.S. Justice Department (agency) to find a symbolic way to cleanse the climate of fear, anxiety, and betrayal (scene), likely saw Judge Kaufman as an appropriate agent. On the other hand, those who objected to the scene being defined as betrayal, the U.S. Justice Department being used to cleanse America of some of her most pressing symbolic problems, or the act of death sentences probably identified Judge Kaufman as a conspiratorial agent.

This study has argued that the scene is dominant over the other pentadic elements, act, agency, and agent. The agent's record is one demonstrating a cooperative relationship with the agency and one perceived to be in agreement with the government's wishes vis-a-vis the sentence. The next chapter argues that various parties to the Rosenberg case, namely, the judge, the government, and the defendants themselves, had competing explanations of the sentences that were imposed. The reasons given for the death sentences are the purposes.
Chapter Five

The Purpose

The purpose, as posited by Burke (1945, p. xv), is an answer to the question "why." "Purpose is belief in certain values as necessary to community survival. . . . Values, ends, purposes may be described either as pasts or futures. Man lives under immanent symbols, the symbols of promise of things to come" (Duncan, 1962, p. 434). The varied purposes offered for the Rosenberg death sentences reflected values that were underlying these reasons. "Even rationalists assume an 'ideal' act to be an ultimate social good. None of these ideal ends can be proved, but their immanence invests action with meanings because they organize the act in a present" (p. 434). Opposing partisans invoked their ideals of the past believing they would help shape the present and the future, The past "helps us to act in a present" (p. 434). The purpose becomes a justification for the act. Acts which do not achieve national consensus require an explanation. Such explanations usually address the actors' legitimacy and offer their followers a sense of symbolic identity (Preez, 1980, pp. 86-87). Hamlin and Nichols (1973) refer to the purpose as "any phrase that
refers to the function fulfilled by an agency, agent, scene, or act" (p. 98). These "phrases" may be formed during the event or may come after the event is played out. In the Rosenberg case, there are many questions that an inquiry of "why" might address. Previous chapters in this study have addressed some of these questions: (1) the scene and why it was defined as it was, as betrayal; (2) the agency and why it, rather than other means, was chosen in an attempt to cleanse the nation of its many symbolic problems; (3) the act and why it was anticipated by the Department of Justice to be successful in changing American political perceptions and public opinion and (4) the agent and why he, among many other eligible judges, was chosen to manage and control the trial and to ultimately impose the sentences. This chapter examines the question "why" as it explains the reasons behind the death sentences. Why were the death sentences imposed upon Ethel and Julius Rosenberg? The answer may tell us a great deal about America's conception of itself as a community of destiny in 1951.

The reasons why given actions take place are sometimes unfocused in the actor's consciousness and the reasons are not always understood by observers either (Luft, 1970, p. 11). Actions and their antecedents frequently take focus long after events have transpired allowing critics the opportunity to place events in context. There are often many critics engaged in a large hermeneutic struggle over events and their meanings, but an official version usually
comes to prevail. This frequently allows the consequences of such events to help shape the definition and importance of these actions (Grob & Billias, 1982c, viii). Such seems to have been the case with the Rosenberg affair. Many of the reasons for Rosenberg case events were not clearly explained by either the press or government spokesmen at the time of those activities. Several events in the case were not scrutinized until several years after the case's legal resolution. Some of the more thorough case examinations occurred after scholars were allowed information access by the U.S. government due to the Freedom of Information Act. These more enlightened views of the case did not begin until many years after the case was officially closed (Goldstein, 1975; Meeropol & Meeropol, 1975; Nizer, 1973; Radosh & Milton, 1983; and Schneir & Schneir, 1983).

Very little in-depth writing was done concerning the Rosenberg case at the time it was unfolding. This was probably due, in part, to McCarthy era effects as well as to a paucity of scholarly information. Soon after the trial was over, the American public was presented with pro-government versions of the Rosenberg case. There also were interpretations of the case that seemed to contradict many of the pro-government advocates' claims. Several newspapers and magazines were afforded access to cooperative government spokesmen who supplied journalists enough data to make a good case for the government (Johnson, 1951a, b, c, d;
Kilgallen, 1952; Lehman, 1953; Pilat, 1953). There were some Socialists and Communists who tried to promote versions sympathetic to their cause in verbal form (Radosh & Milton, 1983, pp. 326-30), in scholarly journals (Dawidowicz, 1952; Glynn, 1955), and in magazines of a traditional Left orientation (The Daily Worker, National Guardian, Jewish Life), but the average American rarely had contact with these channels of communication. It was not until after the official U.S. government declassification of much of the material relevant to the Rosenberg case that truly incisive examinations of the various alleged purposes were undertaken. The personal justifications of many who actually made vital decisions in the case are, for the most part, lost. Defense lawyers, Alexander Bloch and Emanuel Bloch; prosecution team members, Roy Cohen and Irving Saypol; and Rosenberg trial witnesses, Elizabeth Bentley and Harry Gold, are deceased. The presiding judge in the case is still alive but he has chosen not to discuss the case and he has not made his notes available to scholars. David and Ruth Greenglass and Morton Sobell have not provided scholars with any new written or oral materials that might shed new light upon the events that led to the death sentences imposed upon Ethel and Julius Rosenberg.

In order to avoid unnecessary categorization, groups and individuals who were pro-Rosenberg and/or anti-government in their perspectives will be referred to as "anti-establishment;" and groups and individuals who were anti-
Rosenberg and/or pro-government in their perspective will be referred to as "pro-establishment." Since almost all the literature on the Rosenberg case omits any reference to critics who claimed to be neutral on the subject of the Rosenberg sentence and since the criticism of the sentence seems to occur in a dichotomy with elements differing only in degree, this polar nomenclature seems appropriate for this segment of the study.

This chapter examines how scholars have argued relevant to a justification of the Rosenberg death sentences. The discussion is divided into three segments: (1) a survey of claims offered for consideration by those labeled as "anti-establishment"; especially arguments put forth favoring the "conspiracy" hypothesis which argues the Rosenbergs were government plot victims; (2) a review of arguments forwarded by those labeled as pro-establishment; and (3) an analysis of recent Rosenberg case investigations undertaken after the release of heretofore unavailable information. These most recent studies tend to take a less polar view of the events that led to the death sentences. This study takes the position that some of this more recent Rosenberg case scholarship lends itself to a better understanding of the reasons for events in the Rosenberg case.

Anti-Establishment Interpretations of Purpose

The stances taken by those who argued the position that
the government was wrong in the sentencing of the Rosenbergs varied widely. The most extreme supporters of the anti-establishment case offered a scenario that suggested a well planned plot against Ethel and Julius Rosenberg. According to these supporters, the Rosenbergs were not only innocent of any wrongdoing, but they were "a humble and obscure couple whose souls were as pure as their executioners were vile" (Radosh & Milton, 1983, pp. 420-21). Radosh and Milton also cite an undated Daily Worker article describing the Rosenberg executions as "a brutal act of fascist violence." These same authors also quote Gus Hall, the head of the American Communist Party [in the 1950s] as naming the Rosenbergs "the sacred couple" (p. 421). From these writings concerning the executions, it seems clear that the sentiments raised by these extremely anti-government proponents also apply to the sentence itself. Those who have advocated an extreme pro-Rosenberg interpretation of reality have generally not separated the sentencing and the execution as distinctly as some critics who have taken a less extreme position.

The Rosenberg sons have staunchly insisted their parents were victims of a conspiracy designed to convict Ethel and Julius Rosenberg on purely political grounds. They charge that "the government had moved against their parents in order to discredit radicalism and shore up support for the Cold War" (Meeropol & Meeropol, 1975). Alvin Goldstein, in his book, The Unquiet Death of Julius and Ethel Rosenberg,
echoed the Meeropols' sentiments. Goldstein asserts that the whole case was a U.S. government political maneuver against the Left. The Goldstein book introduction, written by Nat Hentoff, argued: "The government, knowing the Rosenbergs were innocent, proceeded with the trial in order to reassure a worried public that it was being protected against spies and saboteurs and to repress dissent" (pp. 1-4). The Rosenberg case was, according to Hentoff, "a grimly classic illustration of governmental cover-up, a pattern of governmental deception . . ." (p. 4).

Walter and Miriam Schneir also voiced the opinion in their book, Invitation To An Inquest (1953, 1983), that the Rosenbergs were totally innocent of all wrongdoing. The Meeropols stated in their book, We Are Your Sons (1975, 1986), that the Schneirs had written the most complete and authoritative book about their parents' ordeals (pp. iii). Shapiro (1984) cites negative journalistic criticism of the Schneirs' work:

George Will wrote that The Rosenberg File [Radosh & Milton, 1983] had demolished all attempts to prove the Rosenbergs' innocent and had obliterated the Schneirs' Invitation To An Inquest. The American Spectator claimed The Rosenberg File had reduced the Schneirs to "performing seals in defending the implausible." "No honest person. . . .," Glazer wrote, "could any longer believe that the Rosenbergs had been framed by the
American Government" (p. 13).

The Schneirs contend that "the decision to execute the Rosenberg was made at the very highest levels of government and with full knowledge of all the facts [my emphasis]" (Rabinowitz, 1967, p. 72). If someone had all the facts and had full knowledge of the Rosenberg affair, it seems incredible that some probing investigative journalist has not uncovered these facts or that some bureaucrat who was in the government at the time would not have sought to gain attention by revealing these facts.

One line of argument offered in an effort to discredit the Rosenberg death sentences was that Judge Kaufman had determined the sentences before the trial. Excerpts from Gordon Deans's diary were offered as evidence of the judge's premature decision: "He talked to the judge . . . the judge agreed to impose the death sentence if the evidence warrants it" (Meeropol & Meeropol, 1985, p. 368). This diary excerpt from a minor Justice Department official did not provide clear evidence that the reference to "the judge" actually refers to Kaufman. There seems ample reason to believe that the judge may have been screened by the Justice Department prior to the trial in relation to his predisposition to the death penalty. This brief diary quote has been amplified and interpreted by Rosenberg defenders as having definitive meaning and possessing indictable character. This matter was raised in appeal and was not determined to have merit in court. The Meeropols openly admit in the second edition of
their book that their own lawyer severely criticized this line of reasoning. Morton Sobell, a co-defendant in the Rosenberg trial, is quoted as having warned of the folly of such statements (pp. 369-70). Michael Meeropol publicly called Judge Kaufman a "murderer" and brags in his book that he "sidestepped the question" when a reporter asked him to verify his statement the next day (p. 369). It would seem that if Meeropol made such a statement in total seriousness, he would have the courage and show the honesty to admit it. If, on the other hand, the statement was made flippantly, his audience surely has justifiable reason to question the sincerity of his other claims.

Another assertion that the Meeropols (1986) make is "for the most part, the media has been extremely reluctant to go digging around to either confirm or refute the implications" of their version of events that occurred in the early 1950s (p. 384). This position taken by the Meeropols becomes very tenuous when compared side-by-side with the active press probings in the John F. Kennedy, Robert F. Kennedy, and Martin Luther King, Jr. assassinations; the energetic media scrutiny of the Mei Lai massacre in Viet Nam; and the thorough examination of reporters in the Watergate affair. To imply that the press "for the most part" is unwilling to pursue a very promising story and is lazy does not appear to conform with most Americans' beliefs about the media.
These were the most extreme arguments forwarded in an effort to explain why the Rosenberg death sentences were imposed. There were other anti-establishment positions taken that seemed much more reasonable and which, if they had formed the consensus of dissenting opinion, possibly could have inspired some healthy debate over several issues germane to the Rosenberg case. Extremist positions voiced by the Meeropols, the Schneirs, Goldstein, and others could have frightened some people who may have had some serious doubts about the case. This fear could have inhibited them from expressing their uncertainties. The fear of guilt by association was probably strong (King, 1987, p. 28).

Some of the less strident, more reasonable claims made on behalf of the Rosenbergs questioned the death sentences more than they addressed the Rosenbergs' guilt. Much of the moderate anti-establishment rhetoric tended to be ignored due, in part, to many wild claims made by the extremists.

The most frequent objection raised by the moderate anti-establishment spokesmen was that much of the evidence presented against the Rosenbergs was false. Schneir and Schneir (1965) raise this issue often. They maintain that Harry Gold's credibility was questionable. They cite his earlier testimony in the Brothman case as an example of why he should not have been believed in the Rosenberg trial (pp. 135-38). "At the [Rosenberg] trial he was not cross-examined and counsel for the Rosenbergs told the jury 'he told the truth'" (Rabinowitz, 1967, p. 70). The prosecution
offered in evidence a photostatic copy of the Hilton Hotel registration card in support of the allegation that Harry Gold had been to see David Greenglass on a specified day. The defense claimed after the trial that the card was a fake and that there was F.B.I. complicity in the forgery. (Schneir & Schneir, pp. 114-15). "The defense raised no objections and expressly conceded the authenticity of the card" (Rabinowitz, p. 71). Radosh and Milton (1983), Schneir & Schneir (1965), and Wexley (1955) cite various other instances where the Rosenbergs' attorneys (1) tendered ostensibly unwise concessions to the prosecution, (2) failed to thoroughly investigate various matters, and (3) made harmful blunders on behalf of their clients. Since the matter of incompetent counsel was never brought to the attention of an appellate panel either by the defendants or by amicus curiae, no determination of counsel's competence was ever made in judicial review. It appears unfair to criticize the jury for its verdict or the judge for his sentence based upon the poor judgments of defense counsel.

Moderate anti-establishment advocates explained the Rosenberg fates from an essentially symbolic interactionist perspective. They argued that the couple's actions had been assimilated to the prevailing symbology of post-war demonology. The moderates, too, recognized that reality can be symbolically created and they sought to present alternative symbols that would be accepted and understood by the public.
The moderates tended to see the extremists as accepting the Rosenberg case as reality; a situation unalterable except by protest. Weinstein (1972) saw the Rosenberg case in symbolic terms. He describes the case as follows:

Almost from the moment the "facts" emerged in [the] case [it] congealed, first into partisan accounts and then into minor mythologies, in which [the case] became the subject-matter for a simple morality tale. . . . Julius and Ethel Rosenberg . . . achieved, in their own time, the status of icons in the demonologies and hagiographies of the opposing camp (p. 165).

For the ardent supporters of the Rosenbergs as well as for the strong supporters of the government's actions, the Rosenberg case took on an almost religious fervor, an act of faith rather than an examination of facts and needs. At the trial, "prosecutor Irving Saypol and Judge Irving Kaufman clearly indicated their beliefs in the demonic nature of this alleged espionage" (p. 170). Statements attributed to the Rosenbergs and their offenses such as "monstrous crime," "your actions 'dwarfed' the crime of murder," "... a diabolical conspiracy to destroy a God-fearing nation", and the description of the Rosenbergs as "monstrous spies" are examples of statements made by the prosecutor and the judge. These certainly fit the demonology criterion asserted by Weinstein. Other symbolic representations of the Rosenbergs were presented. Leslie Fiedler and Robert Warshow, two anti-Communist intellectuals claim the Rosenbergs "became icons
of deceit" (p. 171). Father Charles Rice also saw the case as highly symbolic and it seems he saw the scene in much the same way as this study has defined it. Father Rice claims that "we were looking for scapegoats" and that people saw the Rosenbergs as betrayers" (Parrish, 1977, p. 806).

The anti-establishment moderates seemed concerned that the system of justice had not remained totally isolated from the scene. They appeared to believe in the mythology that "justice is blind" and to demand that the lawyers and judge refrain from connecting the Rosenberg case to the world around them. This idealistic viewpoint tends to ignore two basic facts: (1) lawyers and judges are men and women themselves who live within the society they serve; and (2) the American system of justice "is not separate from the people; it is for the people that justice functions."

In hindsight, it is likely that some of the decisions made by the Rosenbergs' attorneys were not always in their clients' best interests. However, the Rosenbergs themselves acted in ways that were equally or more detrimental to their case. There were instances in which the mainstream media appeared to act irresponsibly. There were also instances where flagrant errors of judgement seemed to be made by the Left press. There appeared to be a definite domination on the case by the scene. The rules of evidence, venue decisions and appellate reviews are designed to mitigate many of the intrusions of the scene upon the courtroom. The
moderates seemed to be attempting to gain extra safeguards within the system for the Rosenbergs while the extremists seemed to be damning the entire system. The public may have become alarmed over some extremist positions and reflexively ignored the moderates' positions for fear that such positions could be seen as an invitation to the extremists to continue more attacks.

Retired U.S. Supreme Court Associate Justice William O. Douglas (1980) wrote in his book a very incriminating view of Emanuel Bloch's role in the Rosenberg defense:

Bloch filed a brief against vacating my stay though even then he did not rest on the key point made by Fyke Farmer. My own impression was that Bloch never raised the point because the Communist consensus of that day was that it was best for the cause that the Rosenbergs pay the extreme price. That is a harsh thought, but it must be remembered that Stalin was still in power (pp. 79-80).

Radosh and Milton (1983) argue that "Douglas . . . would have been the last to frivolously accuse anyone of being a dupe of Stalin" (p. 407). Radosh and Milton further claim that they give credence to "the belief that Emanuel Bloch preferred to see his clients dead rather than have them saved" (p. 407). These representations of Bloch certainly question whether the Rosenbergs truly received a thorough, honest defense. These questions do raise possible general doubts about the death sentence, but not about Kaufman's
carrying out his judicial duties in this 1951 case. It is not the presiding judge's duty to determine a sentence based upon an evaluation of the defendants' defense; it is his duty to base the sentence upon the severity of the crime and the needs of the society he has sworn to protect. It is the duty of the appellate panels to determine if relief due to counsel's skills or decorum is appropriate.

Not all of the anti-establishment appeals were germane to the case. Wexley (1955) made ad hominem attacks on Judge Kaufman in an effort to sway his audience. Wexley comments on the judge's frequent use of patriotic symbols in his sentencing speech. Wexley then argues that "There is no mention in any of the biographical material of any civilian contribution to the war effort by this highly successful young attorney who prospered so greatly in his private practice during the war years" (p. 252). Wexley also asserts "in view of Kaufman's attitude of superpatriotism during his sentencing of the Rosenbergs, one cannot help suspecting his motives somewhat" (p. 252n). Kaufman's patriotism is easily defended by citing his award of the Selective Service Medal for civilian government work. Ad hominem attacks such as these often have the effect of solidifying support for the person attacked.

In addition to the partisan positions taken by the anti-establishment supporters, there also were vocal pro-establishment position presented.
Pro-Establishment Interpretations of Purpose

Agreement with the government's case, ranging from unqualified acceptance by some to minimal acceptance by others, gave rise to a variety of purported reasons for the imposition of the Rosenberg death sentences. Fewer pro-establishment scholars appear to have taken public stances on the Rosenberg case, especially in the print media. This disparity may have been caused, in part, by a presumption of the government's case. Another reasonable explanation for the less frequent press arguments forwarded by the pro-establishment proponents is that they likely had easier, more frequent, and broader access to other channels of public contact. The anti-establishment advocates were in the minority and therefore had to counter the presumption of the government's positions.

There were a few in the pro-establishment circle that took the position that there was no doubt at all as to the correctness of the sentence ("It Could Never Happen," 1953, pp. 32-33). Here it was stated, "No doubt the Rosenbergs spied" (p. 32). The sentence was reviewed many times by the appellate courts, the U.S. Supreme Court, and by two U.S. Presidents. None of these reviews suggested any serious doubts as to the verdict or the sentence (pp. 32-33). Louis Nizer, a respected trial lawyer, "remained convinced of the Rosenbergs' treachery and [found] nothing to question in either the trial or the subsequent legal efforts to overturn
the convictions" (Parrish, 1977, p. 806). Nizer personally "deplored the death sentences but found the evidence against the Rosenbergs overwhelming" (p. 806). Beir and Sand (1954), Fiedler (1955), Nizer (1973), and Serino (1954) all concurred that every legal safeguard available was afforded the Rosenbergs and that Judge Kaufman's sentence came as a result of the judge's understanding of the trial testimony and his judgment of the appropriate sanction for the offenses the Rosenbergs were found guilty of.

The editors of the *Columbia Law Review* (1954) argue that the death sentence must "shock the sensibilities of men" Weems v United States, 217 U.S. 349, 375 (1910) or "offend a principle of justice rooted in the tradition of conscience of our people" Francis v. Resweber, 329 U.S. 459 (1947). These tests, according to the *Columbia Law Review*, were applied and found to be applicable in the Rosenberg case (p. 240, 240n).

Weinstein (1972) argues, "Certainly the government's charges against the pair, whom it considered 'arch-traitors,' could not have been more overwhelming" (p. 170). Rabinowitz (1967) and Zinn (1980) seemed to see the jury's verdict as just and, as Weinstein did, they failed to make any evaluation of the sentencing. Those who strongly agreed with the sentence tended to view the sentence as a "natural" extension of the verdict. Those who expressed reservations concerning the sentence tended to interpret the
omitted support for the sentence as implicit non-support.

Some Rosenberg affair scholars have focused exclusively upon the sentencing, not addressing the issue of the trial at all. It may be, in these instances, that these scholars accept, or at least do not refute, the verdict in the case. One of the most frequent objections to the death sentence for Ethel and Julius Rosenberg found in the literature is that others got off with far less stringent sentences. In *It Could Never Happen In Russia*, the argument is made: "The difference between the Rosenbergs and the other offenders was that the others testified for the state, told their stories in open court, and helped to corral other spies who might be loose. The Rosenbergs, denying that they knew anything to tell, turned down every offer for a mitigation of their sentence" (p. 32).

Radosh and Milton (1983), Root (1963), Schneir and Schneir (1983), and Wexley (1955) discuss the government's offer of sentence reduction if the Rosenbergs would confess their deeds and supply government agents the names of other spies. Radosh and Milton maintain that the government had agents inside the walls of the execution house up to the actual executions (pp. 416-17).

One argument concerning the offers allegedly made to the Rosenbergs vis-a-vis commutation of their sentence was that the government was willing to be "generous" in response to their confessions and help (Radosh & Milton, 1983, pp. 285-90). Another interpretation of the government's posi-
tion is that they really did not intend to execute Ethel and Julius Rosenberg but government officials believed that such a severe sentence would scare them into confessing and into supplying needed information about other spies. Radosh and Milton contend that the agents' remaining there until the executions took place suggests that they expected one or both of the Rosenbergs to confess (pp. 416-17).

Leslie Fiedler (1953), the famous literary critic, claims that the Rosenberg sentences and their executions were "a parody of martyrdom, too absurd to be truly tragic, too grim to be the joke it is always threatening to become" (p. 45). Fiedler seems to take the position that the Rosenbergs forced the government's and Kaufman's decisions, wanting to die as martyrs rather than to live as confessed spies (pp. 27-32).

There was a range of scholarly opinions by pro-establishment advocates relevant to the Rosenbergs' sentencing. The clash of views on the jury's verdict seemed minimal. Scholarly opinion did not seem to mirror general public sentiment - "the public [generally] agreed with the imposition of the death penalty" (Columbia Law Review, 1954, p. 240). The diversity of opposing opinions regarding the sentencing produced an environment consistent with the argument posited by Shapiro (1984). He argues: We have been taught "that individuals, when confronted with irrefutable evidence that their beliefs are wrong, will often become
even more convinced of their truth. Especially is this true when, as in the Rosenberg controversy, you are dealing with a surrogate religion" (p. 15). Festinger, Rieken, and Schacter (1964), writing about a religious sect analysis, take a similar view:

Suppose an individual believes something with his whole heart: suppose further that he has a commitment to this belief, that he has taken irrevocable action because of it; finally, suppose he is presented with evidence, unequivocal and undeniable evidence, that his belief is wrong: what will happen? The individual will frequently emerge not only unshaken, but even more convinced of the truth of his beliefs than ever before. Indeed, he may even show a new fervor about convincing and converting other people to his view (p. 3).

This perspective might explain why various Rosenberg case arguments gained converts. It may also help explain why some of the arguments have not died with the passage of time. Most of the audience for the 1980s arguments were either too young to be participants in the 1950s or they were not yet born. Vested interests in the original claims lie with a distinct minority. The data revealed as a result of the Freedom of Information Act edict; the distance between the Rosenberg affair and its corresponding rhetoric (Martin, 1982, p. 14); and, until very recently, the dearth of American espionage cases have given current scholars a different perspective from which to examine the Rosenberg
case. This new perspective appears to be less strident, less defensive, and more conciliatory.

Recent Interpretations of Purpose

Many early Rosenberg defense detractors have "relentlessly argued for the justice of the sentence, the enormity of the offense, and the rectitude of the prosecution's conduct in the case," while many early Rosenberg "defenders have ceaselessly argued their innocence and the barbarity of their execution" (Shapiro, 1984, p. 3). Beginning in 1978 and continuing in the years immediately following, tens of thousands of documents relevant to the Rosenberg case were released by the A.E.C., C.I.A., F.B.I., Judge Jerome Frank's literary executor, the Justice Department's prosecutorial offices, and various U.S. military agencies. Two predominantly pro-Rosenberg books written before the government's sweeping information release were republished (Meeropol & Meeropol, 1975, 1986; Schneir & Schneir, 1965, 1983). These books showed little or no change in their focus, direction, or tone. The few additional claims and strengthening of positions that were apparent in these two books seemed to be the product of highly selective portions of the newly released government documents. It appears that the authors were addressing their appeals to an audience already familiar with and in agreement with their stance.

Two other scholars, who, previous to the government's
new information disclosures, were strong advocates of many of the anti-establishment positions, collaborated in the authorship of a new book, *The Rosenberg File* (1983). These two historians, Ronald Radosh and Joyce Milton, conclude, after their very comprehensive analysis of the Rosenberg case, that "Julius, and probably Ethel Rosenberg, had committed treason and that the Rosenberg defenders had harmed the Left by their moral insensitivity, political hypocrisy, and intellectual doublethink" (Shapiro, 1984, p. 10). The Radosh and Milton book is not, however, a pro-prosecution document. It takes a surprisingly balanced view of the case. The authors persuasively present several anti-government arguments. Radosh and Milton argue that (1) the information passed on to the Soviets was of "marginal value;" (2) that Ethel Rosenberg was prosecuted mainly as leverage to get her husband to talk; and (3) that Judge Kaufman had decided on the death sentences before the jury's verdict. They also maintain that (1) the Rosenberg crimes "didn't warrant the death penalty;" (2) Kaufman's and prosecutor Saypol's actions were "particularly reprehensible;" and (3) that the Rosenbergs were "hapless scapegoats in a propaganda war" in which both sides claimed victory (Shapiro, p. 10).

This Rosenberg sentencing study finds the Radosh and Milton arguments, for the most part, to be the most believable, unbiased, and thorough of the comprehensive scholarly works on the Rosenberg case. This study disagrees
with Radosh and Milton on two major issues. First, it seems that the Rosenbergs received a "fair" trial. "Fairness" is a highly abstract term. It is used here to represent "the best the system of justice can do at a given time based upon what the society it serves demands" (see note 1). Justice is not perfect; it is discharged with understood limitations. The Rosenberg case received more formal review than any other case in American history by some of the most respected jurists in the U.S. The reviewing panels consisted of judges from varying political and philosophical vantage points. The defense and amicus curiae arguments were found insufficient to merit an overturning of the jury's verdict. The legality of the sentence, however, was only formally addressed once, in the first appeal of the case. In subsequent appeals, it was ruled that the sentence could not be questioned unless there was a preceding reservation regarding the verdict. The propriety of the sentences imposed on the Rosenbergs became a question for the U.S. President to affirm or reverse. Both Presidents Truman and Eisenhower affirmed the sentence rendered by Judge Kaufman. The second disagreement with Radosh and Milton concerns the question of when the judge decided on his sentence. It appears that insufficient evidence exists to warrant arguing that the judge had "decided on the death sentence before the verdict." It seems clear that Kaufman had discussed the sentencing with various government offi-
cials before the jury's verdict; but the extent of these conversations, the purpose of such exchanges, and whether or not the judge weighed other available outcomes are not yet known to the scholarly community. To reach such a conclusion without more solid evidence to support it appears inconsistent with the many other well-documented conclusions made in the Radosh and Milton study.

Many contemporary Rosenberg case scholars agree with the preponderance of conclusions made in *The Rosenberg File*. Several of these scholars have praised the quality, depth, and fairness of the authors' scholarship (Brinkley, 1983; Brookheiser, 1983; Dershowitz, 1983; Goodman, 1983; Kempton, 1983; the *New Republic*, 1983; Oshinsky, 1983; Weinstein, 1983).

**Conclusion**

Many recent authors have incorporated some of the arguments of the early moderate pro- and anti-establishment scholars into their works. Some of the current Rosenberg case scholarship tends to support positions that are based on evidence and reasoned inferences rather than on dogma and ideology. Much of this scholarship has benefited from recent government information releases. Recent studies relevant to the Rosenberg case have changed, in great part, from being partisan, defensive exercises to being probing searches for understanding. The early partisan work remains useful in that it provides current scholars a picture of the
passions held by opposing rhetors of the early 1950s.

The purposes attributed to the Rosenberg sentences seem linked to several controversial matters. These include: (1) whether the Rosenbergs were guilty of the offenses they were charged with?; (2) did key witnesses in the trial tell the truth?; (3) had the Rosenbergs participated in aiding the Soviets' search for atomic secrets?; (4) did Judge Kaufman determine his sentence under government pressure and did he decide the sentence after the trial?; and (5) was the United States truly in need of a symbolic purging of the betrayal many sensed was besetting the nation? Since there are many explanations offered in response to these questions, there is a variety of reasons given for the sentencing of the Rosenbergs.

The purpose of the Rosenberg sentencing is a synergic product of all the other pentadic elements. The dominating scene (betrayal) demanded a response. The Justice Department sought a symbolic representation of the betrayal in America that could be publicly purged, symbolically cleansing the nation of its problems. The means (agency) chosen was a trial and sentence (act) that would be presided over by Judge Irving R. Kaufman (agent). Each of the pentadic elements provided a piece of the mosaic that comprised the reason why the sentences were imposed.

The last chapter of this study examines the causes or motives for the Rosenberg sentences. There were competing
motives but those of the government are those which have prevailed above all others. This concluding chapter also draws implications from the Rosenberg case and applies these to the current spy case scene.
Notes

1 These comments are based upon personal conversations with Bernard L. Goldstein, a former Chicago criminal trial lawyer for over thirty-five years. Mr. Goldstein was a strong supporter of the American Civil Liberties Union. He was a member of the American Bar Association, the Illinois Bar Association, and the Chicago Bar Association. Mr. Goldstein, a close friend of the author's family, often spoke of the need for the law to keep up with changing times and the need for the courts to "seek the truth" rather than perform a rule-bound "ritual". Bernard Goldstein had a private practice. This was, he often said, was so that the ethics of his practice could be his own and not those of a committee or a vaguely identified firm. He gave a substantial amount of his time and talent to pro bono work.
Chapter Six

Conclusion and Implications

Motives concern "what people are doing and why they are doing it" (Burke, 1945, p. xv). The Rosenberg case dramatic analysis permits the critic to see "what people were doing" in the form: who (agent) did what (act) under what conditions (scene) using what means (agency) for what ends (purpose)? The pentadic perspective clearly shows the scene to have been the dominant pentadic element; that is, the scenic dimension was the major driving force influencing choices that were made. Other pentadic elements were also influential in shaping how the Rosenberg case unfolded, but the scene was the overriding dimension. The names of these pentadic elements are what Burke calls motives. According to Burke (1950), a motive is more an intuitive and philosophical matter than a psychological or sociological one. The name of the Rosenberg trial motive was "betrayal". In this sense, the symbolic encompassing of the scene served as a means of making sense out of the trial and as a rationale for the acts connected with it. Thus, the symbolic acts of the Rosenberg trial were generated and justified by the prior acts of naming. The public consensus was that the
postwar scene was one of betrayal.

Jeremy Bentham (1824) and Kenneth Burke (1950) argue that at times, rhetors choose to mask references to motives. Burke agrees with Bentham when he argues: "That there are usually several motives in any particular act. But where there is such 'conjunct of motives,' the speaker may represent the lot by selecting one motive as significant and neglecting the others" (Burke, 1950, p. 99). Such "eulogistic covering" of an unmentionable motive was called "covering motives" (pp. 99-101). An example of eulogizing a motive in this way is the use of "industry" for the motive, desire for gain (p. 100).

Attention is called to "ways whereby 'vague generalities' can also be used as covering motives (p. 100-101). Significantly abstract masks can be used to cover the actual motive. An example of this masking of motives is the use of the term "order" to cloak the actual motive of "tyranny" (p. 100).

Whether a motive is eulogized or vaguely generalized, the function is the same, to avoid specifying particular motives. Obscuring motives has been an acceptable and common practice at least since the time of Machiavelli.

This chapter argues that there are groups of covered or covering motives. These are the motives of Judge Kaufman, the U.S. government, and the Rosenbergs. Other groups and individuals surely had motives in the case; however, these
motives did not seem to influence greatly what was done and why it was done. This chapter takes the position that there are Rosenberg case implications that can affect current events. Additional research is suggested by this study. This research involves extensions to this study's methodology and a widening of the scope of the present study. This chapter concludes with a note on the importance of this study.

Judge Kaufman's Motives

Judge Irving R. Kaufman was chosen to preside over the Rosenberg case because of his perceived pro-government political perspective and because it was assumed, by those who had authority to determine judicial assignments, that he would pronounce an appropriate sentence should the defendants be convicted. Kaufman received his legal training at a long-established, prestigious law school where he excelled not only in case law but in legal philosophy as well. He must have been aware that he would be involved in a clash of values, for the Rosenberg case was a "symbolic manifestation of a conflict in values" (White, 1976, p. 82).

White argues that judicial "values" are, in part, a measure of the commonality between the jurist and the public he serves.

The legitimacy of judicial decisions rests on the public's willingness to accept the expertise and authority of the judicial office, which is itself based
on the ability of judges to persuade by a process of reasoning in their opinions. Judicial reasons are in essence articulations of values; they persuade by appealing to shared beliefs whose existence may be only dimly perceived by the public at large. A judicial decision is "right" not by virtue of some transcendent quality of logic or reason, but because the values it affirms and appeals to are perceived as important and worthwhile by the general public (p. 82).

The U.S. federal judiciary was generally well thought of in the early 1950s (Gallop, 1985, p. 3). Judge Kaufman's expertise and authority likely were acceptable to the general public, giving his decisions public legitimacy. There were common public values, not shared by the majority of the Left, since they defined the scene so differently. These values included the needs to: (1) rid America of its betrayers; (2) regain government control over national security; and (3) suppress any Soviet influence in America. These public values were likely shared by Judge Kaufman. This perceived value sharing by the public and the judge enhanced the likelihood that his decisions would be seen as "right".

Judge Kaufman wrote that he was concerned that his sentencing decision be in concert with (1) the nature of the offense; (2) the defendants' needs as they were the parents of two young children; and (3) present and future American
societal needs (Lehman, 1951, p. 84). In his sentencing speech, the judge clearly stated that national honor and safety required that the "ultimate penalty" be imposed on the Rosenbergs (Baird, 1952, p. 59). One major covering motive that can be inferred from Judge Kaufman's sentencing speech is punishment, punishment for "crimes worse than murder" (p. 58). A second covering motive that can be gleaned from the sentencing speech is that of a warning to other spies that the government was not going to tolerate their behavior (pp. 58-59).

A third covering motive explaining why Judge Kaufman imposed death sentences on the Rosenbergs is justice. The judge seemed to invoke the term justice in a way suggesting that the death sentences were equitable for the crimes the Rosenbergs committed. A jurist cannot completely segregate himself from the society he represents in court. Franklin (1969) believes Kaufman sided with public sentiment in his sentencing of the Rosenbergs.

The case of the Rosenbergs is one of the causes celebres of the century. Public opinion in America was implacably against them and demanded their execution, while a world-wide campaign clamored for their lives to be spared. This campaign, as may be imagined, was whipped up by Communists and left-wing movements and turned into an anti-American crusade. It caused deep resentment in America, and probably as much as anything was responsible for the Rosenbergs finally going to the
electric chair (pp. 191-192).

The covering motives of "punishment" and "warning," probably eulogized the more unspeakable motives of "revenge" and "intimidation". The death sentences were a way that Americans could symbolically get back at the Soviets, the American Left, and our allies who many Americans believed gave their spies lenient sentences. The people whom the Soviets attracted to spy on their behalf were believed to be rather weak and insecure. Intimidation, it was believed, would reduce the likelihood of their future work. The third publicly offered motive of "justice" probably was a vague generalizing of the motive, "giving the public what it wanted".

The Government's Motives

The most dominant government motives in support of the death penalties for the Rosenbergs were to: (1) regain the power and control over national security and welfare that some of the American public perceived had been lost; (2) blame the Rosenbergs for many of the problems America had experienced; (3) secure necessary information sufficient to locate and convict other U.S. spies; and (4) allay some citizens' fears that the Soviets were making political and ideological inroads in America. Government leaders could not directly impose the death penalties but they were able to influence the process that produced the Rosenbergs' death
sentences.

Among the ways that government leaders influenced the sentences were: (1) selecting a pro-government presiding judge; (2) selecting an experienced, anti-Communist prosecutor to lead the government's case; (3) supplying the press with as much information favorable to the government's case as was available; and (4) arranging, before the jury rendered its verdict, secret meetings between the judge and Justice Department officials to discuss possible Rosenberg sentences.

It is likely that the Justice Department was frustrated in late 1950. It had uncovered evidence of three U.S. spy rings during World War II (Seth, 1974, p. 471). In 1950, all the major spy convictions had occurred in Canada and England. Several other known spies had fled to Russia. The U.S. government had in custody two spies, Harry Gold and David Greenglass, but the information that led to their arrests resulted from May's and Fuchs' confessions. May and Fuchs had bargained with the British government for reduced sentences and guarantees that they would not be extradited to other nations for further trials in exchange for their confessions. Both Gold and Greenglass were willing to talk and give the government further leads on other spies. Their confessions led to the Rosenbergs. With the Rosenbergs, the Justice Department recognized it had an opportunity to gain valuable information; but it also became clear that the Rosenbergs were not likely to talk willingly.
Radosh and Milton (1983) claim that the securing of information was the primary government motive for seeking the Rosenberg death sentences.

The real reasons the federal prosecutors, the FBI, and the AEC wanted the Rosenberg case pursued to the limits of the law had little to do with the precise nature of the crime at hand. There was the expectation, first of all, that Julius Rosenberg could provide the names of other amateur spies in important positions -- though not necessarily connected to atomic research. And secondly, there was the very real desire to frighten other individuals who might potentially lend themselves to such activities in the future (p. 431).

The F.B.I. had secondhand evidence and significant suspicions concerning specific people who were believed active in espionage, but it needed corroboration in order to secure convictions in court. The government's hope for added information from the Rosenbergs remained active even at the death house. Radosh and Milton (1983) claim the government had good reason to want the Rosenbergs to talk:

[An] FBI memorandum neatly summarized what the Bureau still hoped to gain if Julius made a last-minute confession. "If Rosenberg talks," the memo said, meaning Julius, not Ethel, "We can probably prosecute for espionage, William Perl and Michael Sisorovich, . . . we can also possible secure wartime espionage
indictments against Alfred Sarant and Loel Barr ... we can possibly prosecute Ann Sidorovich at least for conspiracy ... (p. 417).

Americans felt betrayed. One response to betrayal is to find a scapegoat to blame. Blaming the Rosenbergs was a symbolic exorcism of problems from national leaders' daily concerns and providing these leaders with fresh agendas. King (1976) argues, utilizing passages from Nietzsche (1969), that blame is a ritualistic way of casting away undesired problems:

The placing of blame is a genteel form of the ancient sacrifice. Resentment must be "diverted" outside the group just as the ancient priest, the diverter of the course of resentment" had to get "rid of this blasting-stuff in such a way" that it did not "blow up the herd and the herdsman." This was his "real feat" and "supreme utility" (p. 133).

High government officials likely believed that the Rosenbergs' arrests and convictions would make the American people more confident that their government was in control of national security. Such a conviction, it could be argued, showed that the Soviets had not infiltrated the government. With the Rosenberg convictions, the U.S. could do what the laws of Canada and Britain forbade: execute atomic spies. J. Edgar Hoover strongly favored executing Julius Rosenberg but not executing Ethel Rosenberg (Radosh & Milton, 1983, pp. 280-82). Hoover believed there likely
would be too many negative symbolic repercussions pertaining to the issues of motherhood and the execution of a woman.

The covering motives for the U.S. government's support of the death sentences were: (1) power, demonstrating that the government had regained strength that some had thought it had lost; (2) blame, a means of shifting public focus away from unsolved problems facing America; and (3) security, a symbolic demonstration that the government could convict and punish Soviet spies; that the U.S. had not succumbed to Soviet influence.

The motive of "power" really masked the fact that the government couldn't do very much about most of the ongoing problems in America but that they needed to have a highly visible symbolic event that would give the illusion that the government was in control. This perceived control, it was hoped, would give the government the legitimacy and backing it needed to begin modest programs of national stabilization. The offered motive of "blame" really masked the act of scapegoating. The Rosenbergs became the symbolic focal point of all the ills in America. The covering motive of "security" really masked the need for the government to diffuse the debilitating statements made by Senator Joseph McCarthy. The Rosenberg sentences would be a refutation of what McCarthy had claimed.
The Rosenbergs' Motives

Ethel and Julius Rosenberg did influence their own death sentences. It is quite unlikely that they set out from the very start to be sentenced to death, but it seems that several behaviors in their own "defense" and others' acts on their "behalf" were designed to encourage their death sentences. The Left, as an organized movement, did almost nothing to aid the Rosenbergs during their trial and little support was offered during the appeals process (Radosh & Milton, 1983, p. 453). It was only after the Rosenberg executions that numerous committees organized by the Left emerged and raised substantial sums of money to further investigate the case (Root, 1963, pp. 109, 235-38, 286-87; Wexley, 1955, p. 209).

The lack of active Leftist support during the trial may have exacerbated an already tenuous courtroom defense, but it was not a significant cause for the imposed sentences. Nor did the lack of support seem to have any real influence on the Rosenbergs' eventual executions. The reduction of their sentences was entirely in the Rosenbergs' control. Publicly known sentence reduction offers had been tendered by the government and these offers were well known to Ethel and Julius Rosenberg as reflected in letters they exchanges before their deaths (Rosenberg, 1954). Radosh and Milton argue that the Rosenbergs envisioned themselves as important to posterity by going to their deaths denying guilt:
Although well aware that they could make a deal for their lives, Julius and Ethel Rosenberg chose to face death rather than betray their ideals and implicate their associates in espionage . . . The Rosenbergs were not admirable people: the portrait that emerges from their letters and other sources is one of rigid, self-righteous ideologues motivated by contempt for their countrymen and, reveling in the knowledge that they were earning for themselves a place in history (p. 452).

Suspicions regarding the eagerness with which some claimed to want to save the Rosenbergs are not just retrospective ideas. Albert Einstein came to mistrust the claims and motives of the Left. The famed physicist had, at one time, been actively involved in the National Committee to Secure Justice campaign to seek help for the Rosenbergs. Einstein later had "growing doubts about the motives of the Rosenberg defense" and these doubts "led him to conclude that the Communists did not want the Rosenbergs to be saved" (p. 391). He soon after ceased affiliation with the Committee.

Radosh and Milton further claim Mr. Block, the Rosenbergs' attorney, seemed indisposed to get a new trial for his clients. They argue that Bloch overtly frustrated attempts by another lawyer, Fyke Farmer, to help in the role of friend of the court. During the appeals period, Emanuel Bloch is reported to have thwarted Farmer's attempts to
secure a new Rosenberg trial. "This was the last thing that either Bloch or the Rosenbergs wanted... recognizing the practical dangers inherent in a new trial, which might well place in jeopardy accomplices who had so far escaped prosecution" (Radosh & Milton, p. 395).

Many of the frequent letters exchanged in the Sing Sing prison death house between Ethel and Julius Rosenberg have been posthumously published (Rosenberg, 1954) and reproduced by their sons (Meeropol & Meeropol, 1975, 1986). These letters tend to show the Rosenberg couple as self-created martyrs. "To say that the Rosenbergs had become secular martyrs of the American Communist Party is no rhetorical exaggeration" (Radosh & Milton, p. 420).

The Rosenberg case brought forth loud, strident, and highly partisan rhetoric from individuals and groups representing polar political positions. Most arguments on important issues provide useful results when the argument has ended. The Rosenberg case argument has not yet ended but much of the viciousness of past contentions has now subsided. There are some lessons to be learned from the Rosenberg case even in its unfinished state:

If the Rosenberg case has an ultimate moral, it is precisely to point up the dangers of adhering to an unexamined political myth. Julius and Ethel Rosenberg and their accomplices were so captive to their blind adulation of Stalinist Russia that they failed to
perceive the true implications of their espionage, much less to comprehend how their actions would discredit the Left in the eyes of their fellow Americans. The Rosenbergs' accusers, on the other hand, were oblivious to the fact that the danger to national security from ideologically motivated amateur spies -- already a vanishing breed by the time of the trial -- was far less than the damage that would be done by allowing American justice to appear to serve as a handmaiden to Cold War politics. Partisans on both sides were convinced that they held a monopoly on truth and that the end justified the means (pp. 453-54).

Various authors have claimed that the Rosenbergs had several noble motives for allowing their defense to be so weak and for not cooperating with the government to reduce their sentences or to escape the electric chair once the sentences were imposed. Goldstein (1975), Meeropol and Meeropol (1975, 1986), Schneir and Schneir (1965, 1983), and Wexley (1955) all assert that the Rosenbergs believed that their loyalty, dedication to their cause, and protection of other spies were more important than their own lives. The Rosenbergs and their supporters allowed these motives to be covered up since they would undoubtedly would not have gained the Rosenbergs any sympathy or support. The Left chose to allow the motives to be covered by the term "scapegoating". Leftist rhetors tried, with the use of this term, to avoid all implications of guilt, claiming that all
the arrest and trial testimony and investigations were part of the scapegoating process and therefore ought be ignored by the public.

The competition between offered motives has consistently favored the judge and the government. Recent case investigations have shown the government's position to be far less than exemplary. The Rosenbergs' supporters have been shown to have had some valid bases for questions and objections (Schneir & Schneir (1965, 1983; Wexley, 1955). However, the root questions of the Rosenbergs' guilt and the sentences' legality have withstood lengthy and probing scrutiny (Columbia Law Review, 1954; Radosh & Milton, 1983). The government's and the judge's views have triumphed and victorious views shadow all others. As King (1976) has so ably put it, "[The victor's] vision of the world seems the only vision. Other views of life may be perspectives, but his view of life is reality" (p. 127).

Implications of the Rosenberg Case

The events that occurred in the Rosenberg case have current implications. The 1980s have witnessed a rise in U.S. espionage cases involving American citizens. This section of the study argues that there are significant ways in which the early 1950s and the late 1980s are similar.

Four 1950s public issues seem to have reemerged in the late 1980s. These issues are: (1) the high percentage of
Americans who favor the death penalty: 68% in 1951 and 72% in 1985 (Gallop, 1985, p. 4); (2) the high American regard expressed for the federal courts (Gallop, 1987, p. 3; 1986, p. 3; 1985, p. 3); (3) press and public officials' revelations of increasing U.S. danger due to accelerated Soviet spying activities in the U.S.; and (4) a rise in Soviet spy arrests and trials (stories relevant to these issues appeared regularly in the New York Times, Newsweek, and Time in both time periods). One major public perception that seems to have changed significantly since the early 1950s is the trust and high positive regard held for the federal investigative agencies like the C.I.A. and the F.B.I.

These issues all have current import and relate to Rosenberg case critics' arguments. These issues have not been fully resolved and they therefore could present similar problems for late 1980s America as they did in the Rosenberg case era. Each of these issues is discussed more fully below.

The Current Rise in Spy Case Arrests

One major thrust in Judge Kaufman's sentencing speech was that there was a "message" being sent to would-be spies that their spying behavior would not be tolerated and that the government was able to find them and punish them. The dearth of U.S. treason and espionage cases for almost twenty-five years seemed to lend credence to the claim that Kaufman's harsh sentences in the 1950s actually had fright-
ened the Soviets and others from carrying out major U.S. spying activities. No major American spy cases have been publicly acknowledged in the U.S. until recently when several serious espionage activities have been disclosed.

The first major U.S. spy case publicly acknowledged since the Rosenberg case was the Christopher Boyce and A. Dalton Lee trial (these defendants were popularly known as "the Falcon and the Snowman"). These two young men stole U.S. military plans from the TRW company and sold them to the Soviets in Mexico. Boyce and Lee received 40 year prison sentences for their crimes (Brower, 1987, p. 132). The Boyce-Lee case broke a twenty-four year hiatus in U.S. domestic spying. This first case was followed by the 1978 William Kampiles case in which a C.I.A. officer spied for the Soviets. He, too, received a 40 year prison sentence for his offenses. In the 1984-1985 period, one termed "the year of the spy" (Gee, 1985, p. 24), there were ten arrests, trials, and convictions of Americans for spying activities in the U.S. These cases included: (1) Richard W. Miller, a former F.B.I. agent who sold counter-intelligence data to the Soviets. His sentence was two life terms plus 50 years in prison; (2) Thomas Patrick Cavenaugh, an aircraft engineer who attempted to sell Stealth Aircraft secrets to the Soviets. For his crimes, he received a sentence of 99 years; (3) John Walker, who received two life sentences plus ten years in jail; John's son, Michael Walker, who received
a 30 year sentence; and John's brother, Arthur Walker, who also received a 30 year sentence; and John's close friend, Jerry Whitworth, all former naval personnel who, as a team, sold naval crypto and sub technology to the Soviets; and (4) Ronald Pelton, a National Security Agency officer who gave the Soviets N.S.A. intercepts of K.G.B. data, for which he received a life sentence. All of these spies were convicted of helping the Soviet Union which seems to have been the major beneficiary of most U.S. spying. Larry Wu-tai Chin, a C.I.A. intelligence officer, and Anne Henderson-Pollard were each convicted of aiding the People's Republic of China in unspecified ways. Mr. Chin died before he could be tried and Mrs. Pollard received a five year jail sentence. Jonathan Jay Pollard was convicted of releasing U.S. surveillance data relevant to Middle-East nations to the Israelis. Mr. Pollard received a life sentence for his spying (Brower, 1987, pp. 131-34).

The U.S. government has had reason to suspect that more espionage problems may be present in their ranks. The U.S. intelligence community has been "working feverishly -- in search of spies inside the C.I.A. itself" (Miller, 1985). The January 1987 Reader's Digest reports that 80 Soviet spies were expelled from the U.S. Embassy in Washington; Soviet consulates in Los Angeles, New York, San Francisco, and Washington; and from the United nations (pp. 47-52).

The past decade has seen a dramatic increase in U.S. spy cases and the American people have become concerned
about this change. Although there have been highly visible
and well publicized efforts to improve relations between
the U.S. and the Soviet Union, spying between the two
nations appears to be on the increase.

Spying seems to many a most heinous crime when your own
country is the one spied upon but the same act is usually
seen as necessary for protection and defense when it is
your nation doing the spying (Knightly, 1986, p. 3). Some
Americans believe spying in peace-time is unnecessary. When
peace-time spying appears to rise in frequency, there is
often a suspicion that peace is very fragile. "The threat
of war becomes more immediate and real."

The threat of war tends to trigger various powerful
emotions such as worry and fear. Citizens in a worried and
frightened mood tend to forcefully demand severe punishment
for those they believe have caused their anxieties. An
apprehended spy in a national climate of concern is more
likely in danger of severe punishment than the same spy
would be if the prevailing climate were more serene. The
early 1950s climate was a major focus of contention in
Rosenberg sentence debates. If the present U.S. sense of
relative security were to percpitously worsen, any spies
convicted may be in more danger of execution. Brower (1987)
claims that many recent spies have done much worse deeds
than the Rosenbergs (p. 132). This is an arguable position,
but the fact that there have been a large number of spy
cases resulting in non-capital sentences seems to validate, at least to some degree, that the scene dictates the sanction. If this is true, it seems we need to take greater care in defining the scene and in pre-determining the sanctions for crimes before the emotion of the trial so as not to repeat the Rosenberg case history.

**Public Death Penalty Support**

Recent public reaction to spying activity has been quite harsh according to the *Harris Survey* (1986). A vast majority of people polled "would advocate in the case of spies . . . giving mandatory death sentences to anyone caught selling or giving secrets to a foreign country" (pp. 1-2).

American legal decisions have lagged behind recent social changes and current public opinion (White, 1976). However, such a lag is not infinite. The system of justice does eventually catch up when changes or opinions become institutionalized or become consistent over time. The courts tend to follow patterns of societal change. The death penalty was favored by most Americans in the early 1950s as it seems to be in the 1980s (Gallop, 1987, p. 3; 1986, p. 3; 1986, p. 3). Immediately after the Rosenbergs' arrests, a demand was made by some in the press that they be executed if they were found guilty; this occurred before the trial began (*New York Post*, 1951a, p. 1). The Schneirs (1965, p. 119) also argue that the scene favored the death
penalty before the case was opened for trial. Such a climate, where the death penalty is sanctioned by the courts and is strongly favored by the people, likely promotes increased capital sentences. The American legal system needs to be vigilant to assure that popular sentiment does not unduly influence sound legal decision-making (White, 1976, pp. 33-34).

Continued High Regard for the Federal Courts

The Gallup polls reflect positive public opinion toward the federal courts in both the early 1950s and the late 1980s (Gallup, 1987, pp. 1-3). One major line of argument registered by opponents of the Rosenberg sentences was the U.S. Supreme Court refusal to review the case's trial history. This refusal was based solely on technical reasons (Columbia Law Review, 1954, pp. 223-234). Those technicalities acted to keep the issue clouded rather than serving to clearly answer objections. Prominent Harvard University constitutional law professor, Arthur Miller, claimed recently that the courts are meant to treat people as individuals, not as a monolith. He also argued that rules of procedure need to assure individuals are protected, not protecting the system from challenge. Miller, it appears, would object to the system's rules inhibiting the Supreme Court from examining the trial record of those appellants facing execution. Care needs to be taken not to rely upon
rules and procedures rather than on a search for the truth, especially in cases involving another's life.

Decreased Trust of the C.I.A. and the F.B.I.

In 1949, 73% of Americans polled reported that they trusted and held in high regard the F.B.I.; in 1970, a similar measure of public confidence was taken and the result was that 71% of the people polled reported that they trusted the F.B.I. (Gallup, 1972, pp. 843, 2259). Several recent C.I.A. and F.B.I. scandals have likely reduced public confidence in these agencies. The Harris public opinion summary (1986) argues that 86% of the people surveyed would favor "an investigation of the F.B.I. and other intelligence agencies to find out why they have been so slow to find and to crack down on spies" (p. 1). The fact that many spies appear to have worked undetected for long periods of time and were not caught until recently "has both taxed the patience of the American people and also has led them to question the thoroughness and effectiveness of [the] F.B.I. and other anti-espionage activity" (pp. 1-2).

Suggestions for Future Research

This Rosenberg case study which focused on the motives for the death sentences suggests several other avenues for further research. The most closely related research seems to be analyses of the Rosenberg appeals and executions. Such analyses could focus upon the extent to which, like the
Rosenberg sentences, the rejected appeals and eventual executions were scene driven. A more rigorous investigation might seek to determine whether there were causal relationships involved in the sentence-appeals-execution series of events.

Another arena of research suggested by this study is whether or not other post-World War II spy cases, both domestic and foreign, were as scenically dominated as was the Rosenberg case. The results of such a study could be vital to defense and prosecuting lawyers, judges, appellate panels, and to legal philosophers as well.

Examinations of highly publicized legal cases other than spy trials to see if they, too, are scenically driven could provide the legal profession insight as to how effectively the justice system is protected from outside influence and whether or not there needs to be further safeguards put into the system. Cases involving terrorism, mass murders, war crimes, and securities violations appear to offer a researcher quantities of data upon which to work.

Many other legal matters that are not as notorious as those listed above seem, at first glance, to be potentially scene driven. These include: divorce, spouse or child abuse, chemical dependency, bankruptcy, and corporate takeovers. Such events invite research into apparent predictable patterns, especially those that could be predicted by communication patterns. Such predictions, if
they were possible, would allow interventions into these problems.

Events outside the legal quarter are also fertile sources of scenic research. Such events as: suicide, school drop-outs, international armed aggression, and marital infidelity may be shown to be scenically influenced. Such findings would surely interest the social scientists.

In the study of events that are act, agent, agency, or purpose driven rather than scene driven, it would be useful to know whether the dominating pentadic element is due to a weak or unique scene or due to a particularly active pentadic element other than the scene, or due to both these conditions. Perhaps, in events that are not scenically driven, a pattern would emerge.

Final Reflections

There are many facets of the Rosenberg case scene that are similar to those of the late 1980s. There are several exigencies of the 1950s that are not present in the 1980s era; however, the possibility exists that the current scene could be fraught with similar danger and betrayal as was the Rosenberg case scene given unforeseen circumstances. U.S. Justice Department officials and other American opinion leaders need to be conscious of the many problems faced as a result of the Rosenberg case so that repetition of these difficulties can be minimized.
Notes

1 The Chief Judge, who commonly is the senior member of the court; the U.S. Attorney General; the U.S. Solicitor General; and the Directors of the C.I.A. and the F.B.I. can have significant influence in trial case assignments. While the Chief Judge is the only one who had direct influence in the Rosenberg case assignment, the others were likely influential. Such influence could be exerted by the timing of other cases, pre-trial publicity, and by professional pleading with the Chief Judge.

2 This assertion is based upon the lack of cited espionage/treason cases in the Reader's Guide to Periodical Literature and the Department of State Bulletin both of which seem to regularly report such cases.

3 This concept was discussed on the CBS TV show, 60 Minutes with Mike Wallace as moderator in the Fall of 1987.

4 Based on an interview on the ABC TV show Nightline with Ted Koppel as moderator in February 1988.
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Dean of the Graduate School

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