Looking at the Law

The Rosenberg Trial:
Uncovering the Layers of History

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The trial of Julius and Ethel Rosenberg on charges of conspiring to spy for the Soviet Union remains one of the defining moments of the Cold War era. The dramatic allegations of stolen atomic secrets and networks of Communist spies riveted the public's attention. The determination of government prosecutors reflected a widely shared belief that the Rosenbergs and their ring of spies had enabled the Soviets to build an atomic bomb, bringing the world to the brink of a new kind of holocaust. The 1951 trial and subsequent appeals demonstrated the burden on the federal courts as they became a principal forum for challenging domestic espionage and suspected Communist subversion. The fate of the Rosenbergs divided public opinion in the United States and in Europe, and the memory of the trial would define political fault lines throughout the Cold War.

Student interest in the trial remains strong today, well after the ideological divisions of the Cold War years have faded. The continuing interest rests in part on the personal drama of the young couple from New York's Lower East Side, betrayed by a brother and sister-in-law and separated forever from their young sons. Even today, images of the couple present unlikely villains in a global contest for destructive weapons. The Rosenbergs' membership in the Communist Party and their involvement in a Soviet espionage ring also reveal to students a very different political culture in which the Communist Party USA went from the height of its influence during the Great Depression to its near banishment from public life in the years immediately following World War II. The legal proceedings offer perspective on recent debates about the reliance on the federal courts to challenge threats to national security. Finally, the Rosenberg case offers teachers and students an unparalleled opportunity to investigate how political change and the revelation of historical sources can fundamentally alter our understanding of the past. The Teaching Judicial History project, a partnership of the Federal Judicial Center and the American Bar Association, Division for Public Education, has developed online resources that will assist teachers in bringing all these aspects of the Rosenberg case into a variety of social studies classrooms.

The Charges

The Rosenberg trial had its roots in the March 1950 arrest in England of Klaus Fuchs, a nuclear physicist who had worked on the Manhattan Project and soon confessed to delivering atomic secrets to Soviet agents. Fuchs's confession led to the arrest of Harry Gold, an American chemist who was the courier between Fuchs and his Soviet handler. Gold's quick confession led to the June 1950 arrest of David Greenglass, an army sergeant working on the Manhattan Project in New Mexico. Greenglass also confessed to espionage and identified his brother-in-law, Julius Rosenberg, and his sister, Ethel Rosenberg, as Communists and Soviet spies who had recruited Greenglass and his wife, Ruth, into an espionage ring.

With the arrest and indictment of Julius and Ethel Rosenberg in July and August 1950, the dominoes stopped falling. The Rosenbergs denied all charges and refused to reveal the names of any associates. Their silence distinguished them from many other suspected Communist spies, and their silence sealed their fate just as is locked prosecutors into the high-stakes gamble they made when they decided to seek the death penalty. Faced with Julius Rosenberg's refusal to cooperate, FBI director J. Edgar Hoover suggested that "proceeding against his wife might serve as a lever in this matter." The lever failed to sway either Julius or Ethel, even up to the last days before their execution.

On January 31, 1951, the Rosenbergs were charged with conspiring between 1944 and 1950 to communicate to the Soviet Union information related to national defense. They were indicted under the Espionage Act of 1917, which made it a crime to provide a foreign nation defense-related information with the intent to injure the United States or to offer advantage to the foreign country. The act authorized the death penalty if
such actions were committed in time of war, and the prosecution argued that this applied to the early years of the conspiracy, even though the Soviet Union was an ally in the Second World War. The charge of conspiracy required the prosecutors to prove only that the defendants shared a plan to commit espionage and that one of them committed at least one overt act in pursuit of that plan. The acts listed in the indictment made clear that the goal of the alleged conspiracy was to deliver to the Soviets information about the construction of an atomic bomb. Morton Sobell, a school friend of Julius; Anatoli Yakolev, a Soviet agent who had left the United States; and David Greenglass were also indicted as part of the conspiracy. Greenglass, who pleaded guilty, served as the most damaging witness against his brother-in-law and sister.

The Trial
The trial began on March 6, 1951, and took place in the federal court in New York City, with Judge Irving Kaufman presiding. In less than a year and a half on the bench, Kaufman had earned a reputation as a strong anti-communist during the trial of two Communists accused of obstructing justice. In delivering the maximum sentence, Kaufman

accused the defendants of trying to “destroy” America. The federal court in Manhattan was the site of several high-profile trials of Communists, and the lead prosecutor in the Rosenberg trial was the U.S. attorney Irving Saypol, who had participated in the prosecution of Communist party leaders on charges of advocating the overthrow of the U.S. government and in the perjury trial of former State Department employee Alger Hiss. Among those assisting Saypol was Roy Cohn, who would soon gain greater notoriety in his work for Senator Joseph McCarthy.

Although government intelligence agencies had intercepted Soviet cables describing Julius Rosenberg’s involvement with a network of Soviet spies within the United States, the prosecutors had no access to this highly classified information, and they based their case on the testimony of a handful of witnesses. While other witnesses described Julius Rosenberg’s involvement with the Communist Party and Soviet espionage, only David and Ruth Greenglass testified that the Rosenbergs had jointly delivered atomic secrets to the Soviets. They further described how Julius Rosenberg had convinced Ruth Greenglass to persuade her husband to steal classified information about the atomic bomb project. They claimed that David returned to New York with drawings of lens-molds used in the bomb and that on the instructions of Julius, they passed to a courier in New Mexico additional stolen information. In what became a central part of the lore about the espionage plot, the Greenglasses claimed that Julius had cut a Jell-O box in half, with instructions that they keep one half and match it up with the other half, with which the courier would identify himself. In the only testimony linking Ethel Rosenberg to the communication of secrets to the Soviets, Ruth Greenglass testified, and David confirmed, that Ethel had typed the notes that would be delivered to a Soviet contact. In his closing arguments, Saypol told the courtroom that Ethel “sat at that typewriter and struck the keys,
Additional Resources

Rosenberg v. United States Case Study, available from the Federal Judicial Center
www.fjc.gov/history/home.nsf/page/tu_rosenberg_documents.html

Rosenberg v. United States, grand jury records, available from the National Archives
www.archives.gov/research/arc/topics/courts/rosenberg-jury.html

Venona cables, available from the National Security Administration
www.nsa.gov/applications/search/index.cfm?q=rosenberg

Rosenbergs’ appeal to President Eisenhower, available from the Eisenhower Presidential Library
www.eisenhower.archives.gov/research/online_documents/rosenbergs.html

blow by blow, against her own country in the interests of the Soviets.”

Julius and Ethel Rosenberg were the only witnesses called by the defense lawyers, and their testimony did themselves more harm than good. On cross-examination, Saypol skillfully manipulated both of them to invoke the Fifth Amendment in ways that made them appear guilty. The lead defense lawyer was Emanuel Bloch, who was well known for representing Communists and leftists. Bloch made frequent tactical errors and never appeared to have a consistent strategy. Bloch’s failure to object to many of the rulings of Judge Kaufman and to arguments of the prosecutors would leave the Rosenbergs with a much weaker case on appeal.

The jury deliberated eight hours before returning their verdict on March 29, 1951, of guilty for the Rosenbergs and Morton Sobell. Judge Kaufman announced that he had not asked the prosecutors to recommend a sentence, so that he could bear full responsibility. Kaufman, in fact, had consulted with the prosecutors, with Justice Department officials, and with other federal judges in New York about the proper sentence. Although several officials and a court of appeals judge advised against the death penalty, Kaufman sentenced Julius and Ethel to die in the electric chair. His sentencing statement was an unsparing condemnation of the Rosenbergs, whom he described as traitors, even though they had not been charged with treason. Kaufman considered the Rosenbergs part of a “diabolical conspiracy to destroy a God-fearing nation” and blamed them for the 50,000 casualties in the Korean War, brought on by Communist aggression emboldened by Soviet possession of the atomic bomb. Kaufman sentenced David Greenglass to 15 years in prison, citing his cooperation with the prosecution. Morton Sobell, who had been charged with communication of atomic secrets, was sentenced to 30 years in prison.

The Appeals
For more than two years, the drama of the Rosenberg case continued in the federal courts. The defendants appealed their conviction, petitioned the trial court for a new trial and a reduction in their sentence, and petitioned the Supreme Court multiple times, all to no avail. The Rosenbergs also petitioned the president to commute their death sentence. In the various appeals and petitions, the defendants and their lawyers argued that pre-trial publicity and the hostility of Judge Kaufman had denied them a fair trial, that David Greenglass had committed perjury with the knowledge of the prosecutors, that the defendants were in effect tried for treason but without the procedural protections required by the Constitution in treason cases, that the death penalty was cruel and unusual punishment because similar defendants received lesser sentences, and that the Rosenbergs should have been sentenced under a more recent law that required a jury’s recommendation for the death penalty.

The appeals process played out against continuing public interest in the case, both in the United States and in Europe. Some of the organized campaigns to spare the Rosenbergs, such as the National Committee to Secure Justice in the Rosenberg Case, were linked to Communists and aimed to cultivate support for the Rosenbergs in Europe at the same time that they organized protests in the United States. Opposition to the death penalty, however, came from many quarters, including the Vatican. A number of U.S. government officials, including FBI director J. Edgar Hoover and leaders of the intelligence agencies, feared that the death penalty would only increase sympathy for the Rosenbergs. The U.S. ambassador to France warned that the execution of the defendants would seriously damage the United States’ reputation in Europe, even among the many who thought the Rosenbergs were guilty.

The legal appeals of the Rosenbergs and their defenders ended in the Supreme Court but with no review of the trial. At one time or another five justices supported hearing arguments on the case, but no individual petition to the Court received sufficient votes to hear arguments. Just days before the scheduled execution and after the Court had adjourned for the summer, Justice William O. Douglas, who had voted to deny several earlier petitions, granted a stay of execution so that the lower courts could hear arguments on the question of the statute under which the Rosenbergs were sentenced. Called back into ses-
sion by Chief Justice Fred Vinson, the Supreme Court, by a vote of 6 to 3 on June 19, 1953, lifted the stay and cleared the way for the execution of Julius and Ethel Rosenberg that evening.

Their deaths brought no closure to the debates over the trial and the penalty. For nearly 40 years, book after book about the case was published, many of them refighting the Cold War battles between those who thought the Rosenbergs innocent victims of anti-communist hysteria and those who remained convinced that Julius and Ethel revealed to the Soviets the key plans to construct an atomic bomb.

**Historical Understandings**

The historical understanding of the Rosenberg trial would change forever, beginning in the 1990s with the collapse of the Soviet Union and the release of classified documents from the Cold War era. Intercepted Soviet cables revealed that Julius Rosenberg was part of an extensive network of U.S. citizens working for the Soviet Union in the 1940s. The information he delivered to his Soviet contacts, however, was valuable but not critical to the development of the Soviet atomic bomb. The cables described Ethel as devoted to the Communist Party and involved in the recruitment of David and Ruth Greenglass, but they indicated that Ethel did not work. The scant evidence that Ethel was involved in the communication of atomic secrets was further undermined by the release of grand jury records that showed that before the trial neither David nor Ruth Greenglass had mentioned Ethel’s role in typing stolen notes. Newly-opened Soviet archives included only handwritten notes of the information stolen from the Manhattan project, and, in 2000, David Greenglass admitted that he had lied under oath when he corroborated his wife’s account of Ethel typing the notes for delivery to the Soviets.

The revelations about the Rosenberg case and the online access to much of the newly-available documentation offer the opportunity to engage students in original historical investigation as they build on the materials from the Federal Judicial Center’s site [www.fjc.gov](http://www.fjc.gov). Like all of the units on historic trials in the Teaching Judicial History project, the Rosenberg Trial unit includes a narrative overview, an analysis of legal questions and arguments, biographies of the principal characters, and a selection of historical documents drawn from the court proceedings and surrounding events. With a solid understanding of the legal case and the public response, students can select and analyze historical documents to craft their own narratives of the Rosenberg trial. For example, on the site of the National Archives, the grand jury testimony of more than 40 witnesses tells

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**Discussion Questions**

- What were the charges brought against Julius and Ethel Rosenberg?
- How was the Rosenbergs’ trial influenced by the context of Cold War?
- Do you think they received a fair trial? Fair sentences? Should Julius and Ethel Rosenberg have received the same verdict and sentence? Was justice served in their case?
- How has the public release of historical documents altered our understanding of the Rosenberg case?
- Why is the Rosenberg case so widely-remembered? What is its significance?
a complicated story of the Rosenbergs' network of Communists in New York City and reveals how prosecutors build a case even before indictment. The intercepted Soviet cables available on the National Security Agency site reveal the inner culture of the spy network. Documents on the Eisenhower Presidential Library site describe the pressures on the president to consider clemency and illustrate the surprising disagreements among administration officials.

In June 2013, at the annual summer institute sponsored by the Federal Judicial Center and the American Bar Association, teachers from throughout the nation met with scholars and a federal judge to explore the history of the Rosenberg case and to develop curriculum activities that reflect changing understandings of the events of the early 1950s and of the bitter legacies of the trial. (A sample of these activities will soon be available on the Teaching Judicial History site, www.fjc.gov/history/home.nsf/page/teaching.html.) By recognizing the perspectives of participants in the trial and of those who wrote its early history, students can learn how the past becomes politicized at the same time that they develop the research and analytical skills to recover the historical context of highly contested events. The Rosenberg trial then becomes not only a compelling story about the Cold War, anti-communism, and the dawn of the nuclear age, but also a case study in the process of historical memory and reassessment.

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