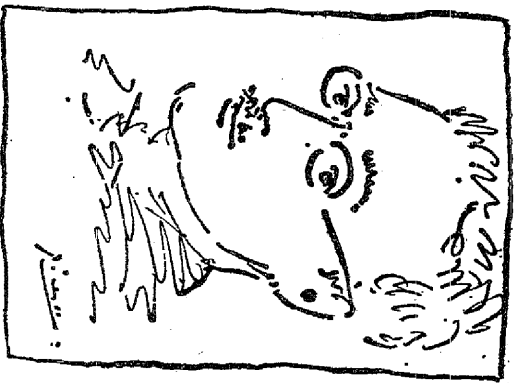
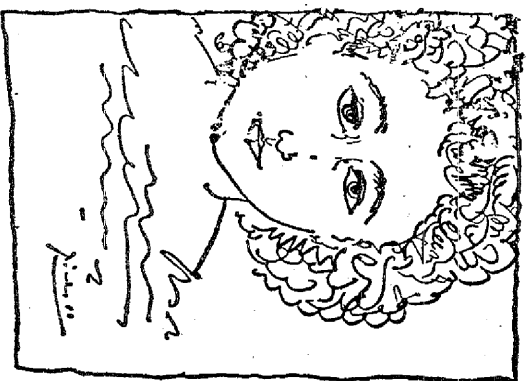


An Open letter to Judge Irving R. Kaufman

18 E



DEAR JUDGE KAUFMAN:

The F.B.I. documents reprinted here were obtained by Michael and Robert Meeropol—sons of Ethel and Julius Rosenberg—as a result of a lawsuit brought under the Freedom of Information Act. They are just a few of the files obtained that involve your actions during and after the trial of the Rosenbergs and Morton Sobell.

These documents indicate that during the trial you abandoned your role as judge and impartial arbiter and, unknown to the defense and public, communicated with the prosecution regarding the sentences of the Rosenbergs and Sobell and in sustaining and justifying the conviction. They reveal that you communicated with the prosecution to vacate the stay of execution. They reflect your improper communication during the appellate process at the time your judicial rulings were being scrutinized. They disclose that under cover of your judicial office, you actively sought to use the FBI and friends in influential positions to investigate and suppress those people who raised critical questions about the trial and those advocating a re-airing of the case.

These documents show that you have violated the U.S. Constitution and your oath of office. They raise the most serious

vacate that stay of execution and to prevent the issue of the legality of the execution being held over until the Fall of 1953, thus making possible an earlier execution date

Such conduct and ex parte communication constituted judicial impropriety and impeded the due administration of justice.

On June 17, 1953, according to document #3, while Justice Douglas was considering a new stay of execution for the Rosenbergs, you very confidentially informed the FBI that on the night before, a secret meeting had been held between Chief Justice Vinson and Attorney General Brownell, at which time Justice Vinson stated he would recall the full Supreme Court from its recess in order to vacate any stay of execution that a Justice might grant.

This document further discloses that you were in ex parte communication with the prosecution and learned of the ex parte meeting between the Chief Justice of the Supreme Court and the Attorney General to foreclose further review by the Supreme Court, thus allowing the execution to proceed.

Document #4 concerns Morton Sobell's motion for an evidentiary hearing and a new trial in 1956. This document discloses that when you re-

questions of judicial misconduct and might well be a basis for impeachment.

After reading thirty of these FBI documents, more than 100 professors of law concluded, in a letter to the House and Senate Judiciary Committee in September, 1976, that the documents, if true, "*reveal a shocking pattern of ex parte contacts with the U.S. Attorney, F.B.I. officials and others in the Department of Justice from the time the original trial of the Rosenbergs and Sobell was pending before him in March, 1951 . . . a judge obsessed with protecting the verdict, judgment and sentence entered in the trial over which he presided and with stifling criticism of that trial—and driven by his obsession to conduct which would not be acceptable from a prosecuting attorney, much less from a judicial officer . . .*"

The documents establish that the defendants were deprived of the rudiments of a fair trial and due process. Had these files been available to the defense before the execution of the Rosenbergs, they could have served as the basis for setting aside the conviction and sentences. The Rosenbergs might well be alive today.

In June, 1976, copies of the documents were delivered to you by attorneys for the Meeropols, who requested that you deny

ceived this motion, and prior to the time of argument, unknown to the defense, you spoke with former Rosenberg prosecutor James Kilsheimer and decided in advance that you would deny the motion without an evidentiary hearing (which you ultimately did after you heard oral argument on the motion.)

Your actions constituted a denial of due process and belies the claim you made of judicial impartiality. Were you not required to disqualify yourself from consideration of the motion?

Document #5 concerns an appeal brought by Morton Sobell before the U.S. Court of Appeals. The memo states that after oral argument was held, you "raised hell" with Judge Thurgood Marshall (now a Supreme Court Justice) when it appeared that Marshall might rule favorably on Sobell's appeal.

Did you, as the memo reflects, ask the FBI to inform the Attorney General about Judge Marshall's reaction because you were concerned that "this might very well be the straw that breaks the camel's back and as a result obtain Sobell's freedom."

Documents #6, 7 and 8 chronicle your role in the FBI campaign to stifle and suppress any critical inquiry into the Rosenberg-Sobell case. The files reveal

or correct the information contained in them. You were also asked to disclose your own files regarding the case. You have ignored these requests.

History, justice and the integrity of our judicial system demand that you answer the following charges and questions they raise:

Documents #1 and #9 concern events that took place at the time you imposed the death sentence for the Rosenbergs. The documents indicate that prior to sentencing you had, unknown to the defense and public, conferred with prosecutor Irving Saypol and his assistant, Roy Cohn, and had obtained the views of the Department of Justice. You then directed Saypol to withhold this information in open court, and falsely stated at sentencing: "Because of the seriousness of this case and the lack of precedence [sic] I have refrained from asking the government for a recommendation. The responsibility is so great that I believe the court alone should assume this responsibility." (Trial Record, p. 1612)

Document #2 concerns a stay of execution granted by the Court of Appeals, after you denied one, so that the Rosenbergs could apply for a hearing before the Supreme Court. The memo reveals that you then suggested to the FBI, and urged the prosecution, to push vigorously to

that you were supplied with FBI data about the writers and producers of a play that criticized the trial. They disclose that you arranged for a letter to be written to the New York Times to criticize the Times' favorable review of the drama and that you took "steps" to help the FBI "refute" *Invitation to An Inquest*, a book critical of the trial, while the FBI arranged for the authors to be denied access to the media.

By what right of judicial office did you use the FBI and other sources to attempt to suppress public inquiry regarding the Rosenberg-Sobell case?

Document #10 speaks for itself. The memo reveals that in May, 1975, you called the New York office of the FBI and asked them to engage in "counter action" to combat the attention received by the activities of the National Committee to Reopen the Rosenberg case.

There are more documents. Even more questions are raised by them. That you sit as Chief Judge of the U.S. Court of Appeals of the Second Circuit makes it even more compelling that the facts be known. You cannot remain silent. You must open your files.

NATIONAL COMMITTEE
TO REOPEN THE ROSENBERG CASE

1264

UNITED STATES GOVERNMENT
Office Memorandum
DATE: May 16, 1956

TO:
MR. A. H. BELMONT
FROM:
MR. C. E. HENDRICH
SUBJECT: MORTON SOBELL,
ESPIONAGE (R)

Supervisor Tom McAndrews, New York Office, informed me on the morning of May 16 that former Special Agent John Harrington has advised him that he was talking with James Killshieimer on the evening of May 15th. Killshieimer handled much of the prosecution of the Sobell case and the various appeals in the case. Harrington was then a Bureau Agent and conducted extensive investigation of the case.

According to Harrington, Killshieimer has indicated that he has insisted to the United States Attorney's office that the arguments on the motion on Monday, May 21st should be kept strictly to the issues raised by the motion and no collateral matters should be gone into by the Government in order to avoid becoming involved in a hearing on the motion. Killshieimer indicated to Harrington that he has been in touch with Judge Kaufman and has pointed out to Judge Kaufman that all of the issues raised in the motion have been previously raised in one form or another and have been "knocked down." Kaufman has indicated that if the motion comes before him, he will deny the motion without a hearing.

Killshieimer has stated that he will review the final draft of the Government's papers and will probably be in court on Monday, May 21st, when the motion is presented.

ACTION:

For your information

Document No. 4

1500

UNITED STATES GOVERNMENT
Memorandum
DATE: December 21, 1962

TO:
Mr. Mohr
FROM:
C. D. DeLoach
SUBJECT: MORTON SOBELL -
ESPIONAGE - R
CASE APPEAL

Judge Irving Kaufman called from New York at 11:00 a.m., 12-21-62. He stated that captioned individual had appealed his case for the 6th time to the Court of Appeals. The last hearing was approximately one week ago. The court, at this time consisted of Judges Swann, Friendly and the new Judge, Thurgood Marshall (formerly Attorney for the NAACP).

Judge Kaufman made reference to the Supreme Court decision in the Gruenwald case in 1957 where the court held it was improper for the prosecutor to question the defendant regarding the fact that the defendant took the Fifth Amendment upon appearing before the Grand Jury. Judge Kaufman indicated that in this particular case Mrs. Ethel Rosenberg, when she was on the stand in 1951, was asked questions concerning her taking the Fifth Amendment before a Federal Grand Jury. Sobell's new appeal that was held approximately one week ago was based on the latter fact.

Judge Kaufman stated that the Gruenwald decision is not good law and in his opinion certainly does not apply to this case.

Judge Kaufman made further reference to the fact that Sunday's "Worker" had a headline "U.S. Attorney Concedes that Conviction of Sobell May Be Illegal." He stated this came about as a result of Judge Marshall's asking a question of Assistant U.S. Attorney [illegible] during the above-mentioned hearing approximately one week ago. Marshall's question was, "If Sobell had been tried last spring (1962) and we had him before us today, wouldn't it be necessary for the Court to reverse the decision, particularly in view of the Gruenwald decision?"

[illegible] replied probably. Judge Kaufman said this was typical of the answers given by inexperienced trial attorneys who handle such cases for the Department of Justice. He indicated he had raised "hell" with Thurgood Marshall inasmuch as he considered Marshall to be somewhat naive and certainly inexperienced on the bench. Judge Kaufman also indicated that in his opinion the stupid answer on the part of AUSA [illegible] would also be featured in "The Nation," "New Republic," and "The National Guardian."

Judge Kaufman was of the opinion that this might very well be the straw that breaks the camel's back and as a result obtain Sobell's freedom. He stated the Bureau might desire to acquaint the Attorney General with this unfortunate situation.

ACTION:

It is suggested this memorandum be forwarded to the Domestic Intelligence Division for appropriate consideration.

Document No. 5

UNITED STATES GOVERNMENT
DATE: October 16, 1965

Memorandum

TO: Mr. Belmont
 TO: Mr. Sullivan
 FROM: W. C. Sullivan
 SUBJECT: JULIUS ROSENBERG;
 ETHEL ROSENBERG;
 ESPIONAGE - R

1-Mr. Belmont
 1-Mr. Mohr
 1-Mr. DeLoach
 1-Mr. Sullivan
 1-Mr. D. E. Moore
 1-Mr. J. A. Sizoo
 1-Mr. Branigan
 1-Mr. Baumgardner

As we know, before and after the execution of the above two subjects for espionage, the Communist Party in this country conducted widespread propaganda in the case. Various liberals from time to time have commented upon the case. Some have shown sympathy for the Rosenbergs and have been critical of the Government's action. Just recently a book was written in this connection by Walter D. and Mariam Schreier called "Invitation to an Inquest." This book has been reviewed by this Division and its inaccuracies accentuated.

On 10/15/65, [DELETION], a very good friend of the Bureau and a Chicago attorney, was in the city. He had called me previously from Chicago to say that he had an important matter to discuss. [DELETION] told me he had been talking to [DELETION], a leading television man in Chicago and [DELETION] explained that the Schreiers had approached him to put on a television program relating to their book.

[DELETION] said it was evident from the conversation that a main purpose of the television program from their viewpoint would be not alone to exonerate the Rosenbergs from all guilt in the field of espionage, but also to attack and to undermine the FBI in its investigations. [DELETION] asked [DELETION] to pass this information on to me. (During the past 6 or 7 years, I have been on [DELETION] television program 3 or 4 times and am rather well acquainted with him.) [DELETION] told [DELETION] he could handle the matter in one or two ways. First, he would be perfectly willing to put the Schreiers on television if the Bureau wanted to have one or two people on who could attack and expose them. Second said [DELETION] if this was not desirable he would refuse to have the Schreiers of his program. [DELETION] has always been cooperative in the past with regard to Bureau matters.

In view of this, I took the liberty of telling [DELETION] to instruct [DELETION] not to permit the Schreiers to go on his television program for no good would accrue from it. [DELETION] will handle this matter. It had to be expedited because [DELETION] wanted an answer right away.

[DELETION] also told [DELETION] that from talking to the Schreiers he got the impression that someone is behind a nationwide effort [ILLEGIBLE] FBI by putting these authors and their book on as many television stations as possible throughout the country.

As I see it, the first thing we should do in this matter is to take careful steps to secure the cooperation of friendly television stations and prevent this subversive effort from being successful. It should be kept off television programs and smothered and forced out of the public eye thereby. However, if this is successful and the authors are going on television around the country then it would be necessary for us to give immediate consideration to ways of refuting and exposing the book, and putting the authors in proper perspective.

RECOMMENDATION:

- (1) That this Division start preparing an exhaustive brief refuting this book to be held in readiness in the event that it is needed urgently.
- (2) That an SAC letter be prepared alerting all field offices to the situation so that they can learn in advance of efforts to put this book and its authors on television programs and be prepared to take steps to prevent it.

ADDENDUM: CDD:mlk, 10/18/65

Steps have already been taken in New York and by various "contacts" of ours to refute the book written by the Schreiers. Judge Irving Kaufman has been furnished certain public source information and is having a lengthy letter written to the Editor of the "New York Times." [DELETION], a syndicated columnist, is also doing this. A number of Catholic publications will also assist in this matter. Nevertheless, I think Mr. Sullivan's recommendation is good and that we should proceed accordingly.

Document No. 6

Definition of Ex Parte—Black's Law Dictionary.

"On one side only; by or for one party; done for, in behalf of, or on the application of, one party only."

Impeachment

"The President, the Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

U.S. Constitution
 Article II, Section 4

UNITED STATES GOVERNMENT
DATE: May 2, 1969

Memorandum

TO: Mr. W. C. Sullivan
 FROM: Mr. W. A. Branigan
 SUBJECT: JULIUS ROSENBERG
 ESPIONAGE - RUSSIA

1-Mr. C. D. DeLoach
 1-Mr. T. E. Bishop
 1-Mr. W. C. Sullivan
 1-Mr. W. A. Branigan
 1-Inspector E. J. Hayes
 1-Mr. J. P. Lee

Memorandum recommends letters be forwarded to the Attorney General and to Judge Kaufman concerning a play entitled "The United States vs. Julius and Ethel Rosenberg" currently showing in Cleveland, Ohio, which is critical of the Government handling of that case.

On April 29, 1969, Judge Irving Kaufman, Circuit Court of Appeals, Second Circuit, telephonically contacted the Director concerning the above-mentioned play. Judge Kaufman was alarmed that the "New York Times" reviewed this play two weeks in a row on April 20 and 27, 1969, which was highly unusual. Judge Kaufman indicated that he understands the play is critical of the Director, the prosecutor, and Judge Kaufman who was the trial judge in the Rosenberg case. The Judge added that he felt the Attorney General should be informed, and the Director advised that he would let the Attorney General know.

This play opened in Cleveland on March 14, 1969, and is scheduled to continue until May 11, 1969. It was observed by an Agent of the Cleveland Office and he noted it assumes the innocence of the Rosenbergs, and as was noted in the reviews, it is propaganda rather than drama. The author is Donald Martin Freed. [DELETION]

The play is directed by Larry Tarrant, a graduate of the University of Wichita, employed as a play director in the Cleveland area for the past five years. No identifiable derogatory information on Tarrant or any of the actors or actresses in Cleveland, New York, or Bureau files.

ACTION:

1. There is attached a letter to the Attorney General furnishing him with information concerning this play and its anti-Government slant.
2. There is also attached a letter to Judge Irving Kaufman furnishing information concerning this play.

Document No. 7

**United States Court of Appeals
 United States Courthouse
 Foley Square, New York, 10007**

Chambers of
 IRVING R. KAUFMAN
 Circuit Judge
 May 7, 1969

Dear Edgar:

Thank you so much for your letter of May 2, furnishing me with the background information of the gentleman responsible for writing the play, "The United States v. Julius and Ethel Rosenberg."

I believe you will be interested in seeing a copy of a letter sent by former Federal Judge Simon Rifkind to The New York Times concerning their extensive reporting of this play.

With my gratitude and affection, I am
 Sincerely yours,
 Irving R. Kaufman
 United States Circuit Judge

Enclosure
 The Honorable John Edgar Hoover
 Director, Federal Bureau of Investigation
 United States Department of Justice
 Washington, D. C. 20535

Document No. 8

**Supreme Court
 of the
 State of New York**

**JUSTICES CH
 NEW YORK COUNTY
 NEW YORK, NY
 March 13, 1975**

IRVING H. SAYPOL
 JUSTICE

Hon. Clarence M. Kelley
 Director
 Federal Bureau of Investigation
 Washington, D.C. 20535

Dear Mr. Kelley:

My daughter, Barbara, now [DELETION] of Beverly Hills, California, an alumna of Smith College, [DELETION], has sent me the enclosed photocopy of an article in the "Smith Alumnae Quarterly", February 1975 by Professor Alan Weinstein, entitled "Opening the FBI Files: An Interim Report." I direct your attention to the last page which she encircled with her comment "I thought you didn't ask for the death penalty. Is this error?"

I've enlightened her. Her question, as you can see, arises from Professor Weinstein's statement that FBI and Justice Department files have provided new insights . . . "that prosecutors in the Rosenberg case originally opposed asking for the death penalty but were overruled by Truman Administration officials in Washington." I don't know the basis for this statement nor do I know what records he speaks about. I do know the facts. The Professor is all wrong and he fabricates.

Preliminarily, when I had the honor of [illegible] Truman's appointment as United States Attorney—the prevailing sentencing practice in criminal cases in the United States District Court for the Southern District of New York began with the prosecutor's recommendation for punishment. This was contrary to the practice in the State Courts where the Judge took no recommendations. As chief [illegible] my predecessor, the late John F. X. [illegible] one of my assigned responsibilities was sentence recommendation. Upon succeeding him in 1949, I raised the subject with the late [illegible] John C. Knox. He requested that I continue the practice of recommending sentence.

In my six years in the office I recommended many such, hundreds, and I can count on my fingers the cases where judges modified my recommendation.

Now, to the point of the Professor's claim. I was never overruled by anybody. No one in Justice or out ever directed me, let alone overruled me on the matter of recommendation of sentence.

I was the only prosecutor in the Rosenberg case. While some of my assistants assisted in preparation for trial and I let four of them examine some of the witnesses, I took the lead. All policy decisions were mine and mine alone. Advice I sought and took, but I repeat, final decision was always mine.

On the matter of the Rosenberg sentences, I had decided to make the recommendations which later were imposed. I made no recommendation at sentence at the direction of the sentencing judge, in these circumstances. The day before sentence he asked for my views. I gave them and he inquired regarding the views of the Department of Justice. I had not solicited any. He asked me to seek these. I flew to Washington, met with the late Deputy Attorney General Peyton Ford and the late Assistant Attorney General in charge of the Criminal Division, James McInerney. They conveyed the views of your predecessor J. Edgar Hoover. There were differences all around among them, but capital punishment for one or both was in not out. I left to return to New York, asked to telephone to Peyton Ford that night for final word on possible reconciliation of their views. I did so but the Washington situation remained at variance. It was at a public function that night that I phoned Mr. Ford in the presence of the judge who was attending the same event. Upon narrating to him the Washington division I was then asked by the judge to refrain from making any recommendation for punishment the next day in the course of my closing statement at sentence.

There you have direct evidence of the facts in contradiction to Professor Weinstein's story.

You may use this in any way to keep the record straight.

Truly yours,
 Irving H. Saypol

Document No. 9

TO: DIRECTOR, FBI
 FROM: SAC, NEW YORK
 JULIUS ROSENBERG
 ESP - R
 (OO:NY)

Date: 5/4/75

The following information is furnished for the information of the Bureau:

On 5/2/75, Federal Judge IRVING KAUFMAN contacted ADIC J. WALLACE LA PRADE of the NYO, and advised as follows:

Judge KAUFMAN expressed concern over an article in the current issue of "Esquire" Magazine regarding the Rosenberg case. He also expressed concern regarding recent activities of the National Committee to Reopen the Rosenberg Case, which organization has subscribed to full page newspaper ads advocating a re-airing of this case. The Judge expressed his opinion that some counter-action should be taken to combat the attention derived from this activity.

Judge KAUFMAN indicated that he is so alarmed over the publicity received by the above committee, that he has requested a Deputy US Marshal to escort him to various affairs where he has been requested as a speaker.

Document No. 10

Who we are...

The National Committee to Reopen the Rosenberg Case (NCRRC) is committed to a thorough public re-examination of the Rosenberg-Sobell case. As part of our program, we are supporting the Freedom of Information Act (FOIA) lawsuit of Michael and Robert Meeropol, the sons of the Rosenbergs. This suit against six government agencies, including the FBI, seeks the release of all government files concerning the case.

Why is it important to reopen a case that is now more than 25 years old?

**Because the government put the Rosenbergs and Morton Sobell on trial for its own political objectives, using the lie that the "secret of the atom bomb" was stolen. In 1966 the government acknowledged there never was a "secret of the atom bomb." In building an atmosphere of national fear and hysteria, the government pushed the convictions based on the political beliefs of the defendants.*

**Because this case was conducted in the name of "national security" and the need to protect government secrets, the same justification used in Watergate to explain illegal government activities, the same excuses used by the FBI and CIA to continue the illegal spying that deprives us of our constitutional rights.*

**Because this case was constructed by the government in order to mold public opinion favoring aggressive U.S. foreign and military policies abroad and repression at home.*

**Because the demands of justice and the claims of history require a public inquiry and an end to this cover-up.*

To date, in defiance of Federal Court orders, the FBI has released fewer than 5% of its Rosenberg-Sobell files. Even this small percentage is revealing; some of the files describe the FBI's attempt to manipulate the media at the time of trial. Others chronicle FBI efforts to control the funds collected for the Rosenbergs' children after the execution; still others reveal that the FBI secretly listened in on meetings between defendants and their attorneys.

The files confirm that the Rosenbergs and Sobell were innocent and were tried and convicted for political purposes; documents indicate that the government knew of its witnesses'

perjuries and, in addition, suppressed evidence of the innocence of the defendants. Had defense attorneys had available this information collected by the FBI they could have exposed the lies and demonstrated the innocence of the Rosenbergs and Sobell.

A portion of these files, published as *The Kaufman Papers*, were released in 1976 but virtually ignored by the media. The NCRRC has been forced to purchase this ad, at great cost, to print some of the documents in order to disclose this evidence of judicial misconduct so that we can ensure an independent and impartial judiciary.

This committee has been joined by groups and individuals who are calling for an investigation into Judge Kaufman's conduct and for the immediate release of all files in the Rosenberg-Sobell case.

**More than 100 Professors of Law have joined Professor Vern Countryman of Harvard Law School and called upon the House and Senate Judiciary Committee to investigate Judge Kaufman's conduct related to the case.*

**The National Lawyers Guild has demanded an impeachment investigation of Judge Kaufman.*

**The American Civil Liberties Union has asked Congress to investigate Judge Kaufman's conduct as part of its call for an inquiry into improper contacts between judges and prosecutors.*

**The California Democratic Council has called for an investigation of Judge Kaufman's conduct regarding the Rosenberg-Sobell case to see if impeachment is warranted.*

**The Organization of American Historians is supporting the principle of the Meerpols' lawsuit that all documents be released and without deletions.*

**The Oregon Democratic Convention, the National Lawyers Guild and the California Democratic Council have all called for the immediate release of government Rosenberg-Sobell files.*

You can join us by writing to your Congressperson to ask for a full inquiry and by filling out the coupon on this page and returning it to us. We are beginning to uncover the truth in this case. To continue, we need your support.

24 YEARS AGO, JUNE 19, 1953: ETHEL AND JULIUS ROSENBERG WERE EXECUTED. "HISTORY WILL RECORD . . . THAT WE WERE VICTIMS OF THE MOST MONSTROUS FRAME-UP OF OUR COUNTRY . . ." "WE DIE WITH HONOR AND WITH DIGNITY—KNOWING WE MUST BE VINDICATED BY HISTORY."

Julius and Ethel Rosenberg
June, 1953

National Committee to Reopen the Rosenberg Case, Dept. 677
853 Broadway, Room 1120, New York, New York 10003.
Lester Baltimore, Chairperson.

- Enclosed is a contribution to help defray the cost of this ad and to help publish ads like it in papers around the country. (Make checks payable to NCRRC.)
- Please send me _____ copy(ies) of the complete Kaufman Papers (\$2 each).
- I have written my Congressperson asking for a full inquiry into Judge Kaufman's conduct (copy of my letter is enclosed).
- I would like more information about NCRRC and the Rosenberg-Sobell case.
- Please put me on your mailing list.

\$250 _____ \$100 _____ \$50 _____ \$25 _____ \$15 _____ \$10 _____ \$ _____

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____