

Trial and Error

THE IMPLSION CONSPIRACY

By Louis Nizer

Doubleday. 495 pp. \$10

By JON R. WALTZ

THE PUBLICATION, with plenty of fanfare, of Louis Nizer's book on the Julius and Ethel Rosenberg espionage trial gives credence to two notions of mine. First, I have a theory (or perhaps it's only an opinion) about the law and lawyers and their ability to get at facts fairly and adequately. It is that for most people the purposes, the actual workings and the flaws of our legal truth-determining machinery can best be demonstrated not in heavy treatises,

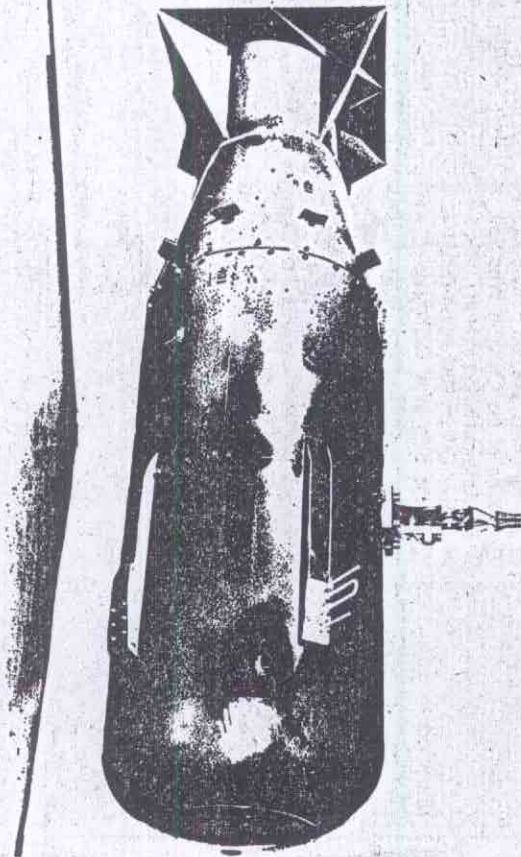
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which are almost invariably too broad, too thin and too tiresome, but in knowledgeable and close dissections of particular litigated matters. That is why, for example, Anthony Lewis's study of Earl Gideon's case, *Gideon's Trumpet*, was worth a hundred books bearing more promissory titles.

The second proposition is that, from a crassly commercial standpoint, a book about an interesting but obscure trial can be written right away, but an author

The second branch is attested by the commercial failure of every contemporary book about the riot conspiracy trial of the Chicago Seven, despite the fact that the case was marvelously absurd and had an outstanding cast of characters.

In 20 years someone will produce a worthwhile and widely read book about the bizarre Chicago case. Meanwhile, Louis Nizer, casting about for a 20-year-old case to write about, has come up



should wait about 20 years before trying to make a best-selling book out of a trial that was thoroughly reported by the news media while it was going on. The first branch of this proposition is supported by Lewis's book and by Truman Capote's engrossing chronicle of the Clutter murders, *In Cold Blood*.

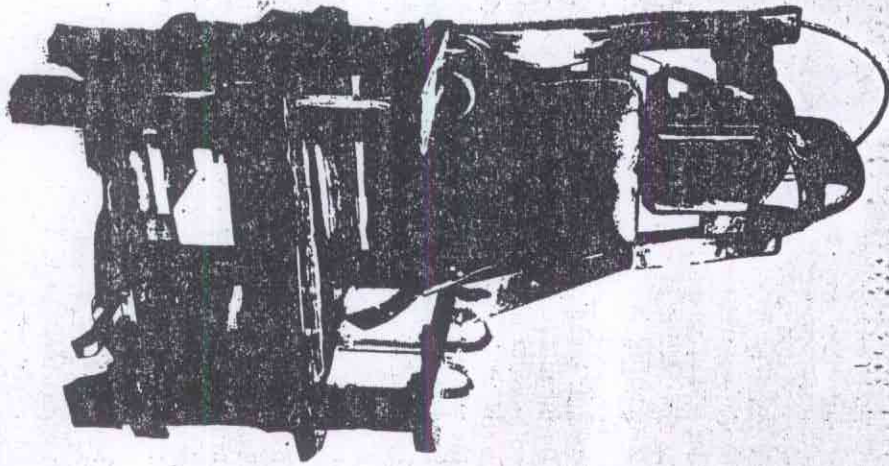
with a balanced, occasionally insightful, and therefore valuable, book on the 23-year-old trial of the Rosenbergs on a charge of having given Russia the secret of the atomic bomb.

Nizer, an accomplished New York trial lawyer, understands how to analyze a trial. He first creates a frame of

reference with a no-nonsense description of how our imperfect yet surprisingly effective adversary trial system functions. Then he identifies the dramatic personae, virtually none of whom, aside from the defendants, could be called to mind by most people today. There was Irving R. Kaufman, a Jew called upon to preside at the trial of Jews for betraying their country—Jews who would be prosecuted by Jews, defended by Jews, and testified against by Jews in a case in which their Jewishness was irrelevant.

There was Irving Saypol, a meticulous lawyer (he read his carefully written-out closing argument to the jury instead of speaking extemporaneously), named to conduct the prosecution with the aid of Roy M. Cohn, who went on to bigger things. There was the inept father-son team of defense lawyers, Alexander and Emanuel Bloch, one of whom gave everything he had—his life—for his clients. There were the jurors, carefully selected to try the accused for espionage and not for being Communists, a neat trick in the '50s. There was the co-defendant, the hapless Morton Sobell, whose name barely came up during the trial that brought him a 30-year prison sentence; the monstrous David Greenglass who, with his wife Ruth, smilingly consigned his own sister to death row; Elizabeth Bentley, the professional ex-Communist who during the McCarthy years acted as a sort of handmaiden to the Grand Inquisitor; Klaus Fuchs and Harry Gold, whose perfidy altered the world's history; and others.

The Rosenbergs' indictment charged them, along with Sobell, Greenglass, and a Russian vice consul, Anatoli



Yakovlev, with conspiring between 1944 and 1950 to transmit atomic bomb data to the Soviet Union. It named Ruth Greenglass and Harry Gold as co-conspirators. David Greenglass and Yakovlev's cases were severed from the Rosenberg-Sobell case. Greenglass pleaded guilty; Yakovlev was beyond the reach

of American justice: Ruth Greenglass was spared prosecution. Gold had already confessed to having conspired with Fuchs, the English atomic scientist, to commit espionage.

Drawing on the court reporters' transcripts, Nizer presents a straightforward narration of the trial, pausing now and then to explain legal points and to make sharply perceptive judgments about courtroom tactics.

The government's case against the Rosenbergs was based almost entirely on a fragile foundation of accomplice testimony, shored up by the testimony of Gold, the convicted spy. The case was tried during the Korean War amidst the near-hysteria produced by the anti-Communist efforts of Joseph McCarthy and a roving band of ardent ex-Communist witnesses.

It was the Greenglasses who supplied the direct evidence against the Rosenbergs. They testified that David Greenglass, while working as a machinist at Los Alamos, had furnished to Julius Rosenberg a drawing and a 12-page verbal description of the atomic bomb, a drawing of a lens mold used in atomic experimentation, and lists of possible spy recruits. They also said that the Rosenbergs had a console table containing hidden microfilm equipment. Harry Gold, who had never met the Rosenbergs, testified that he had visited the Greenglasses in New Mexico on June 3, 1945, at the request of Yakovlev. The witness stated that he had introduced himself with a code phrase, "I come from Julius," and had produced a portion of a Jello boxtop which, in jigsaw-puzzle fashion, matched a piece in the

Greenglasses' possession. Gold had then been provided with atomic data.

Elizabeth Bentley had never met the Rosenbergs, either. She testified in a general way about the nature of the Communist Party and the propensity of its members for espionage, and recalled telephone calls from an unidentified "Julius." Her testimony, posing obvious relevance and hearsay problems, was admitted into evidence. And throughout the three-week trial Judge Kaufman, then a novice judge, injected himself into the questioning of witnesses, usually to the defendants' marked disadvantage. At the prosecutor's insistence, with Kaufman's approval, a large part of the trial was given over to matters of political allegiance.

In due time the jury convicted the Rosenbergs and Sobell. Judge Kaufman sentenced the Rosenbergs to die in the electric chair, and despite frantic appeals to reviewing courts, to world opinion, and to two Presidents, Julius



and Ethel Rosenberg—refusing to concede guilt and sending each other love letters to the very last—were put to death at Sing Sing prison on June 19, 1953.

Nizer's study raises five fundamental questions about the Rosenbergs' trial. Was the government's evidence, if ac-

cepted at face value, sufficient to support convictions? Did government witnesses, particularly the Greenglasses and Gold, perjure themselves and were some items of documentary evidence manufactured? Was the trial unfair because of Judge Kaufman's intermeddling, the prosecution's overreaching, and the saturating evidence of the defendants' Marxism? Did appellate courts fail to provide adequate review? Was the death penalty justified?

The answers can be found in *The Implosion Conspiracy*. Nizer has not foraged much beyond the cold court records, and he has taken some inexcusable liberties with those records by, as he puts it, "reconstructing" imaginary scenes, but the judgments of so astute a trial observer are nonetheless a worthwhile contribution to the expanding literature of the Rosenberg case. (The only book on the case that Nizer does not acknowledge reliance on is the only other truly valuable one, Walter and Miriam Schrier's *Invitation to an Inquest*, now reissued in a Penguin paperback (\$2.95). The Schriers' book is a somewhat strident brief on behalf of the Rosenbergs and Sobell, but they did some first-class investigatory work. Those interested in comprehending this ugly case would do well to pair it with Nizer's calmer one.)

On putting down Nizer's book, I am reminded of what Justice Felix Frankfurter wrote three days after the Rosenbergs were electrocuted. "To be writing an opinion in a case affecting two lives after the curtain has been rung down upon them has the appearance of pathetic futility." And then he added, "But history also has its claims."