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Book Review: The Implosion Conspiracy (1973)

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BOOK REVIEWS

The Implosion Conspiracy. By Louis Nizer,¹ Garden City: Doubleday & Co., 1973. Pp. 495.

*Reviewed by Donald E. Wilkes, Jr.*²

It has been more than twenty years since Julius and Ethel Rosenberg were put to death as convicted spies.³ Now, the shrill protests to the prosecution having been stilled by the passage of time and a generation having grown to maturity without first-hand knowledge of the facts of the case, Louis Nizer, a distinguished New York trial attorney and prolific author,⁴ has written the definitive book on the Rosenberg case.

Numerous other books on the case have appeared, of course, but most of them are polemical, some arguing that the Rosenbergs were the innocent victims of a capitalistic frameup,⁵ others that the Rosenbergs received their just deserts, the only good Red being a dead one.⁶ *The Implosion Conspiracy*, on the other hand, while a popularization, is both scholarly and dispassionate. Drawing on court records, earlier books on the subject, interviews, and his own courtroom experience, Nizer has produced a book which is not only a brilliant analysis of an important judicial proceeding but also a stunning human drama. *The Implosion Conspiracy* is more than a summary of the trial and appellate record in the case. It is in addition a probing examination of the actions and motivations of the persons associated with the trial, including the defendants, the attorneys, the witnesses, and the judges.

Nizer's book focuses in part on the fascinating personalities of two central characters: Julius and Ethel Rosenberg. Born during World War I in New York City and raised in poverty during the harsh days of the depression, it is hardly surprising that both Julius and Ethel turned to radical activity. Julius himself dated his radicalism to a day in 1933 when he listened to a streetcorner orator haranguing a crowd about the unjust imprisonment of a noted radical union leader, Tom Mooney.⁷ Ethel began her

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³ The Rosenbergs were executed in the electric chair at New York's Sing Sing Prison shortly after eight o'clock on the evening of June 19, 1953.

⁴ L. NIZER, *MY LIFE IN COURT* (1961); L. NIZER, *BETWEEN YOU AND ME* (rev. ed. 1963); L. NIZER, *THINKING ON YOUR FEET* (1963); L. NIZER, *THE JURY RETURNS* (1966).

⁵ *E.g.*, J. WEXLEY, *THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG* (1955).

⁶ *E.g.*, S. FINEBERG, *THE ROSENBERG CASE: FACT AND FICTION* (1953).

⁷ Mooney, a radical Socialist and trade union organizer, had been convicted on a trumped-up charge of murder in California in 1917. Accused of having set off a bomb which exploded during the San Francisco Preparedness Day Parade on July 22, 1916, Mooney received a mockery of a trial, the state's case resting on testimony known by the prosecution to be false.

radical activity in 1935, at the age of nineteen, by leading a strike of 150 women workers. Neither their marriage in 1939 nor the birth of two sons in 1943 and 1947 altered their radical outlook.

Despite his employment by the Army Signal Corps in 1940, Julius Rosenberg's radical activities continued; however, he was discharged from this job in 1945 as a result of his participation in the Communist party. Julius then worked for a few months at Emerson Radio Corporation; thereafter, in conjunction with several others (including his brother-in-law, David Greenglass), he operated a machine shop.⁸

Julius and Ethel Rosenberg were arrested by agents of the Federal Bureau of Investigation in the summer of 1950, and the one-count indictment which formed the basis for their trial was returned on January 31, 1951.⁹ The trial itself commenced on March 6, 1951; the verdict of guilty was returned on March 29, 1951; and the Rosenbergs were sentenced to death on April 5, 1951.¹⁰ The United States Court of Appeals for the Second Circuit affirmed the judgments of conviction in February 1952,¹¹ and subsequent attempts to obtain appellate or post-conviction relief were unsuccessful. When the electrocutions took place in June 1953 after President Eisenhower had denied all petitions for clemency, there were thunderous protest demonstrations all over the globe.

The prosecution's evidence tended to prove that for at least six years and possibly longer¹² the Rosenbergs were the top Americans involved in a

Throughout his twenty-three years of imprisonment, Mooney and his supporters waged an unending war to set aside the conviction of murder. In 1939 the Governor of California granted Mooney a full pardon on grounds of innocence and ordered Mooney released. Mooney died in 1942. The best account of the whole affair is to be found in R. FROST, *THE MOONEY CASE* (1968).

⁸ For additional pertinent biographical data see L. NIZER, *THE IMPLOSION CONSPIRACY* 14-24 [hereinafter cited as L. NIZER].

⁹ The indictment charged the Rosenbergs with conspiracy to commit espionage, in violation of 50 U.S.C. § 32 (1946), as amended, 18 U.S.C. § 794 (1970). Superseding indictments of Aug. 17 and Oct. 10, 1950, the 1951 indictment alleged that between June 1944 and June 1950 the Rosenbergs, together with David Greenglass, Anatoli Yakolev, and Morton Sobell, had conspired with each other and Harry Gold and Ruth Greenglass (named as co-conspirators but not defendants) to transmit to the Soviet Union information relating to the national defense of the United States. The indictment specified twelve overt acts in furtherance of the conspiracy.

¹⁰ The only other defendant actually tried and convicted was Morton Sobell, who was sentenced to thirty years in prison. David Greenglass pled guilty and testified against the Rosenbergs in exchange for a promise of leniency. He received a fifteen year sentence and was discharged from prison in 1960. Anatoli Yakolev, a Soviet diplomat and chief of the spy network, was back in the Soviet Union, having been sped there by his embassy. He was never tried.

¹¹ *United States v. Rosenberg*, 195 F.2d 583 (2d Cir. 1952).

¹² Although the indictment alleged that the conspiracy began on June 6, 1944 (approximately the date, according to prosecution witness Max Elitcher, that Julius Rosenberg approached him and asked that he engage in espionage at the Navy Department's Bureau of

massive conspiracy to steal United States military secrets and convey them to agents of the Soviet Union. The list of conspirators was not limited to those named in the indictments; Nizer observes that some of the testimony indicated that Julius Rosenberg had a number of agents throughout the nation.¹³ Their identity was never learned.

It is sometimes said that the Rosenbergs were tried and executed for stealing the secret of the atomic bomb. Strictly speaking, this is incorrect. They were convicted of conspiring to steal information pertaining to national defense, and not all this information related to the atomic bomb. Nevertheless, the theft of the secret of the atomic bomb was the most important accomplishment of the spy ring—indeed, it was the greatest feat of spying in all history—and Nizer, using generous excerpts from the trial record, relates meticulously the prosecution's evidence with respect to this monumental theft.

Briefly stated, that evidence was as follows: In August 1944 Ethel Rosenberg's younger brother, David Greenglass, became an Army machinist at Los Alamos, New Mexico where the government was working in great secrecy and under tight security on the atomic bomb project. Eventually he was promoted to foreman of the project's machine shop. In late 1944 David's wife, Ruth Greenglass, was recruited by the Rosenbergs when she visited their New York City apartment. Knowing that Ruth would soon be visiting her husband in Albuquerque, the Rosenbergs requested Ruth to ask David to turn over information on the project in order to help "our most valuable ally, Russia."¹⁴ Reluctantly Ruth agreed to do so. When given the message, David Greenglass at first refused, but later changed his mind and decided to provide the information. When he returned to New York City on furlough in January 1945, David Greenglass gave Julius Rosenberg a sketch of a high explosive lens mold he had manufactured in his machine shop, along with explanatory markings.¹⁵ Julius Rosenberg then arranged for a courier to visit the Greenglasses in their Albuquerque apartment and pick up more information. He cut a Jell-O box into two parts, giving one part to the Greenglasses and telling them that the courier would identify himself by presenting the other half of the Jell-O box. In June 1945 the courier, Harry Gold,¹⁶ arrived and David Greenglass gave him materi-

Ordinance) and ended on June 16, 1950 (the day after David Greenglass' arrest), evidence was introduced indicating that the Rosenbergs had been engaged in "a higher phase of activity . . . [through] contacts with Russians and others" since at least 1942. L. NIZER at 77.

¹³ *Id.* at 91-92.

¹⁴ *Id.* at 76-78.

¹⁵ Unlike a glass lens, which focuses light, the lens produced from the mold made by Greenglass focused toward a common center the detonation waves of high explosives, creating an implosion. Since an implosion was necessary to trigger a nuclear reaction and hence an atomic explosion, the lens was the key secret of the atomic bomb. *Id.* at 83-88.

¹⁶ Earlier that day Gold had been in Santa Fe where he met with Klaus Fuchs, a British scientist working on the Los Alamos project, and received information on the project. *Id.* at 158.

als on the lens mold and additionally a list of possible recruits. Greenglass also told Gold that the atomic bomb would be exploded within a month.¹⁷ In September 1945, back in New York City on another furlough, David Greenglass gave Julius Rosenberg (in Ethel's presence) a sketch of the atomic bomb and information on recent experiments at Los Alamos.

In this incredibly simple manner the nation's most jealously guarded secret was stolen. The thief who obtained and passed on the information was not a professional spy or foreign agent; he was instead a lowly, twenty-three year old Army enlisted man and machinist. The elaborate security precautions—the isolated test site, the fenced-in compounds, the armed guards—were in vain because the secret was filched by a trusted insider rather than a thief from the outside.

How was the identity of these conspirators discovered? *The Implosion Conspiracy* provides the answer to this question, and it is a sobering one. The spies were caught not because of government security precautions or the diligence of the Federal Bureau of Investigation but because of one of those historical accidents which can spoil the best of plans. After World War II ended, the British occupying Kiel, Germany found a file listing Communist spies. Klaus Fuchs was on the list. When arrested in England, he confessed all, implicating Harry Gold. Gold in turn named the Greenglasses, and they led the authorities to the Rosenbergs. Had it not been for the chance finding of that file in Germany, the implosion conspirators might never have been apprehended.

As Nizer observes in the book's introduction, the trial of the Rosenbergs was in a sense a "political" trial.¹⁸ The defendants were acknowledged Communists charged with providing military secrets to the Soviet Union and were tried at a time when anticommunist feeling was reaching hysterical proportions. One is tempted, therefore, to draw analogies between the Rosenberg trial and the "political" trials of the 1960's and 1970's in which the Department of Justice attempted to utilize conspiracy and other criminal laws to pulverize militant opposition to certain foreign and domestic

¹⁷ Greenglass' prediction was accurate: the first atomic explosion occurred at Alamogordo, New Mexico on July 16, 1945.

In the sixth volume of his history of World War II, Winston Churchill relates the occasion, on July 24, 1945, at Potsdam, when President Truman conversed privately with Soviet ruler Stalin and told him about the atomic explosion which had occurred eight days before. W. CHURCHILL, *TRIUMPH AND TRAGEDY* 669-70 (1953). Watching Stalin intently from five yards away, Churchill saw that Stalin's face remained genial as he received the news. Later Truman told Churchill that Stalin had not even asked a question. As a consequence, Churchill "was certain . . . that at that date Stalin had no special knowledge of the vast process of research upon which the United States and Britain had been engaged for so long, and of the production for which the United States had spent over four hundred million pounds in an heroic gamble." *Id.* at 670.

Gold's testimony demonstrates how wrong Churchill was. Stalin not only had been aware of the atomic bomb project but also knew in advance of the date of the first atomic explosion.

¹⁸ L. NIZER at 12.

policies of the government.¹⁹ Without a doubt there are similarities: the Rosenbergs were charged with conspiracy; government informers were used at trial; and the trial engendered world wide protest.

On closer examination, however, these similarities are seen to be superficial. Informers were used at the trial of the Rosenbergs but they were confessed wrongdoers who turned state's evidence to avoid prosecution or mitigate their punishment; they were not paid infiltrators of the *agent provocateur* type.²⁰ There was no evidence, not even any allegation, of illegal electronic surveillance by the government.²¹ The defendants did not engage in tactics designed to disrupt the courtroom, and the defense attorneys were models of polite and restrained advocacy. The trial lasted less than one month, and the opinion of the court of appeals was announced less than one year after the trial began.²² Even the public demonstrations protesting the trial of the Rosenbergs were different from those associated with the "political" trials of fifteen and twenty years later: they followed rather than preceded the trial itself.

Not surprisingly, Nizer declares the hero of the book to be Emanuel Bloch, trial counsel for Julius Rosenberg and appellate counsel for both Rosenbergs. For three years, Bloch, a New York civil rights attorney, devoted himself completely to the cause of his clients. He took it upon himself to arrange for the care and education of the two Rosenberg children. He faithfully took the children to visit their parents in prison despite the torment of these meetings at which even hardened guards broke down. During the trial he struggled desperately against the vastly superior resources of the prosecution, always conscious that his mistakes might lead to death for his clients. After losing the trial he battled ceaselessly in the appellate courts, writing briefs admirable for their lucidity and logic. When despite his labors his clients died, something in Bloch died too. At the Rosenbergs' funeral Bloch delivered an intemperate oration accusing President Eisenhower, Attorney General Brownell, and Federal Bureau of

¹⁹ Reference is made to the Chicago Seven Trial in 1969-70, the Harrisburg Seven trial in 1972, and the Ellsberg-Russo and Gainesville Eight trials in 1973. "Political" trials also took place at the state level, as witness the trials of Bobby Seale and Ericka Huggins in Connecticut in 1970-71 and the trial of Angela Davis in California in 1972.

²⁰ There was one "professional" witness for the prosecution. She was Elizabeth Bentley, an ex-fascist and ex-Communist whose political views appear to have been controlled by her sexual attachments. She was one of many repentant former Communists who earned substantial fees in the 1950's by writing and lecturing on the evils of Communism.

²¹ At one point in the trial Emanuel Bloch, attorney for Julius Rosenberg, asked to approach the bench for a conference and then inquired whether a conversation a witness was about to testify to had been illegally wiretapped by the government. When the prosecution denied knowledge of any wiretapping, the matter was dropped. L. NIZER at 166.

²² In contrast, the trial of the Chicago Seven lasted five months—from September 1969 until February 1970—and the opinion of the court of appeals was not delivered until November 1972, over three years after the trial had begun. See *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972).

Investigation Director Hoover of "murder" and attributing the executions to "Nazism." Disciplinary proceedings were instituted against him, and he worked feverishly to vindicate himself. On January 30, 1954, crushed by the death of his clients in whose innocence he fervently believed, worn out by years of exertion, harassed by the threat of disbarment, Bloch suffered a heart attack and died. As Nizer puts it: "He died in the service of his clients."²³

If Emanuel Bloch is the hero of the book, Morton Sobell²⁴ is the goat. The only evidence of his participation in the spy ring consisted of (1) testimony by Max Elitcher, a former employee of the Bureau of Ordnance in the Navy Department, that Sobell had requested classified information and made incriminating admissions linking him to the Rosenbergs, and (2) evidence that Sobell had fled to Mexico and lived under several assumed names. Sobell's attorneys made two strategic errors which resulted in a verdict of guilty and a thirty year sentence for their hapless client. They decided not to place their client on the stand, thus denying him the opportunity to deny or explain the evidence against him. And they failed to introduce evidence of Sobell's illegal and forcible deportation from Mexico until the verdict had been returned, and then it was too late.²⁵

The Implosion Conspiracy makes no attempt to answer the question whether the Rosenbergs were guilty or innocent. Instead this question is posed: Was there sufficient evidence for the jury, assessing the credibility of the witnesses, to decide that the Rosenbergs were guilty? This question is answered affirmatively, and impartial consideration of the trial record bears out this conclusion.²⁶ It is true that much of the evidence against the

²³ L. NIZER at 53.

²⁴ See note 9 *supra*.

²⁵ At the sentencing hearing on April 5, 1951, Sobell's attorneys moved to arrest the judgment and for the first time revealed that Sobell had been deported from Mexico in a shocking manner. In support of the motion they filed an affidavit by Sobell alleging that Mexican police officials had unlawfully kidnapped and beaten him, that they had threatened him with death, and that they had expelled him from Mexico into the waiting hands of officials of the United States government. Although the prosecution never challenged the truthfulness of these allegations, the trial judge denied the motion on the grounds that the deportation evidence had not been timely presented. This ruling was affirmed by the court of appeals. *United States v. Rosenberg*, 195 F.2d 583, 602-03 (2d Cir. 1952).

Subsequently, Sobell made numerous unsuccessful attempts to obtain post-conviction relief. See, e.g., *United States v. Sobell*, 142 F. Supp. 515 (S.D.N.Y. 1956), *aff'd*, 244 F.2d 520 (2d Cir. 1957); *United States v. Sobell*, 205 F. Supp. 225 (S.D.N.Y. 1962), *aff'd*, 314 F.2d 314 (2d Cir. 1963); *Sobell v. United States*, 264 F. Supp. 579 (S.D.N.Y.), *aff'd*, 378 F.2d 674 (2d Cir. 1967).

In 1969 Sobell was released from prison after the court of appeals held that he was entitled to credit on his sentence for time served between arrest and imposition of sentence. See *Sobell v. United States*, 407 F.2d 180 (2d Cir. 1969).

²⁶ The complete record in the case, including the pleadings, trial transcript, and record on appeal, was published and widely distributed by the Committee to Secure Justice in the Rosenberg Case, later renamed the Committee to Secure Justice for Morton Sobell.

Rosenbergs was circumstantial. It is true that the most damaging evidence, the testimony of the Greenglasses, was uncorroborated in many parts. It is also true that the Rosenbergs took the stand to deny their guilt and give plausible versions of their activities. But the jury was not unwarranted in finding that the Rosenbergs' guilt had been proved beyond a reasonable doubt. The testimony of David and Ruth Greenglass was quite believable, and cross-examination failed to shake the credibility of these two witnesses. The testimony of the Rosenbergs, on the other hand, was seriously weakened on cross-examination. To the extent that the details of the conflicting stories of the Greenglasses and the Rosenbergs could be corroborated by third parties, the corroboration tended to favor the Greenglasses.²⁷ Finally, the testimony of Harry Gold, a self-confessed spy who had pled guilty and received a thirty year sentence and therefore had nothing to lose by testifying for the government, was devastating to the defense.²⁸

Doubtlessly arising from his extensive trial experience, the author's talent for breathing life into the dead trial record is the strongest feature of *The Implosion Conspiracy*. The events of the courtroom are reconstructed with such verisimilitude that the reader justifiably feels that he is a front row spectator at the trial. Similarly, the author does a brilliant job of analyzing the actions of trial counsel. With respect to each stage of the trial, from voir dire to closing arguments, problems of law and proof facing the attorneys for both sides are explored, alternative solutions to these problems are suggested, and an explanation is offered for the course of action chosen by counsel. Again and again, without captiousness, mistakes of attorneys on both sides are pointed out.

The Implosion Conspiracy has several weaknesses, none of which seriously detracts from the quality of the book. Although he recognizes that the nation's attitude toward the Soviet Union in 1951 was quite different

²⁷ For example, according to the Greenglasses, the Rosenbergs had kept in their apartment a console table which was hollowed out on the inside and used for photographing and micro-filming documents. David Greenglass testified that Julius Rosenberg had told him that the table was a gift from the Russians; according to Ruth Greenglass, Julius had said it was a gift from a friend. Both the Rosenbergs testified that the table was for eating, not photographic purposes, and that it had been bought by Julius at Macy's in 1944 or 1945 for around \$21. The prosecution produced Evelyn Cox as a witness to testify on the matter of the console table. She had been a part-time maid at the Rosenberg's New York City apartment in 1944 and 1945. She testified that Ethel Rosenberg had not told her that the table had been bought at Macy's but instead that the table was a gift to Julius Rosenberg from a friend. She further testified that she never saw the Rosenbergs use the table for eating purposes.

²⁸ Gold testified that he met with Yakolev in a New York City restaurant in May 1945; that Yakolev told him to visit Klaus Fuchs in Santa Fe, New Mexico and then to go to Albuquerque in order to obtain information from David Greenglass; that Yakolev gave him, for recognition purposes, a piece of cardboard which appeared to have been cut from a food package; and that Yakolev told him to greet David Greenglass with the words "I come from Julius." See L. NIZER at 157-59.

from the attitude prevailing in 1943, Nizer fails to emphasize sufficiently the wave of anticommunist hysteria engulfing the nation in 1951 or to assess the probable impact of this national convulsion on the trial of the Rosenbergs. It is difficult to believe that the trial was unaffected by this Red scare. Moreover, the book fails to capture the bias of the trial judge in favor of the prosecution.²⁹ While Judge Kaufman did not display hostility to the defendants comparable to that exhibited by Judge Julius Hoffman in the Chicago Seven conspiracy trial of 1969-1970, a fair reading of the trial record reveals that the judge leaned over backwards to assist the prosecution in presenting its case. In fairness to the trial judge it should be noted that the court of appeals rejected the defendants' contention that the judge, by acting improperly, had deprived them of a fair trial.³⁰

One other flaw is worthy of mention. Because the book is written for laymen, it tends at times to oversimplify or even misstate questions of law. For example, in explaining that the Rosenbergs enjoyed judicial reexamination of their convictions to an unparalleled degree, Nizer notes that 112 judges passed on the applications for review. He adds that only sixteen judges would have permitted further review, and that none of these judges disagreed "on the merits in the sense that they contended that the Rosenbergs were innocent."³¹ This conveys the false impression that the Rosenbergs must have been guilty because none of the reviewing judges thought they were innocent. Actually, the question of guilt or innocence is not an appropriate one for an appellate court, whether on direct appeal from a judgment of conviction or in passing on a petition for post-conviction relief.

Finally, there is a question of psychology which the book does not answer: Why did the Rosenbergs do it? What motivated this young, loving,³² couple of modest means to commit espionage in behalf of a foreign nation they had never visited? Granted that they became political radicals—Communists—because of injustices they saw, why would they fight social wrongs by masterminding a spy ring providing military secrets to the Soviet Union? It is not astonishing that *The Implosion Conspiracy* furnishes no solution to this complex problem. No one can search the heart or fathom the mind of another. Indeed, if someone were to discover the secret of plumbing the soul of other human beings, would he not have discovered a secret even more momentous than the secret of the atomic bomb?

²⁹ United States District Judge Irving R. Kaufman presided over the trial. Appointed to the United States Court of Appeals for the Second Circuit in 1961, Judge Kaufman is now Chief Judge of that court.

³⁰ *United States v. Rosenberg*, 195 F.2d 583, 592-95 (2d Cir. 1952).

³¹ L. NIZER at 493.

³² The letters written by the Rosenbergs to each other while in prison and quoted toward the end of the book show that the couple was deeply in love. Other letters they wrote one another after Julius' arrest are collected in *THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG* (1954).