

McCarthy era lessons for Bush's America

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I. Introduction

In too many ways the political climate in the United States (hereafter U.S.) during President Bush's second term in office reminds me of 1953, the year my parents, Ethel and Julius Rosenberg, were executed. In this essay I'm going to address this in two ways: First by looking at my parents' case as a "capital conspiracy" case (a case in which the defendants face execution even though they have only been convicted of conspiracy), and exploring the potential for similar cases today. Second, by comparing the political climate in the U.S. today with that of 1953. As in the rest of the world it is essential for civil libertarians and death penalty opponents in the U.S. to learn from past episodes of repression, because civil liberties and death penalty cases are inherently political. I consider the death penalty and civil liberties in tandem because both demarcate the boundary between personal sovereignty and governmental power. That is why the expansion of the death penalty often accompanies the contraction of civil liberties.

I believe that my brother, Michael, and I are the only people in U.S. history to have had both their parents executed by the U.S. government. For over a decade I've been speaking against capital punishment as the only attorney in my country with that heritage. In the U.S. a great debate has raged around this issue for the last ten years. But this furor has focused on murder cases. Anti-death penalty forces have often posed the question: "Why do we kill people, who kill people, to show that killing people is wrong?"

But my parents' case was not a murder case. Neither was it a treason nor espionage case, as most media outlets worldwide report to this day. My parents were charged with, convicted of and ultimately executed for "Conspiracy to Commit Espionage." In the U.S. system of jurisprudence that means the government charged and the jury found that Ethel and Julius Rosenberg joined others who planned to commit espionage and took one act in furtherance of their plan. In the political climate of early 2001 this kind of anomalous capital case was primarily of historical or academic interest. But that changed on September 11th 2001. The U.S. government wanted Zacarius Moussawi who was convicted of terrorism-related conspiracy to face execution. Who knows the fate of the detainees at Guantanamo who the U.S. government has designated "enemy combatants," let alone the hundreds,

perhaps thousands, of others the U.S. is holding in secret locations under CIA control worldwide. Suddenly my parents' kind of case has become vitally important.

II. The Rosenberg Case

Two words "political context" explain why my parents were executed even though they were only convicted of conspiracy. The Korean War bracketed their case. My father was arrested in July of 1950, a few weeks after the war began. He was executed, along with my mother, on June 19th 1953, a few weeks before it ended.

It has been feeling like the McCarthy period in the U.S. lately for those who are old enough to remember. For those who are not, the McCarthy period encompassed the late 1940's and early 1950's. This period is also known as the time of the "red scare." Rather than supply a dry history, I prefer to describe two incidents to provide a flavor of the time.

The first one comes from Baseball, which is often called the "national pastime" of the U.S. When I was a child National League baseball teams only played against American League teams in the World Series, but exhibition games in spring were the one exception. During the McCarthy period the Cincinnati Reds team played and won an exhibition game against the New York Yankees. Bleary-eyed sports fans could read small headlines in their newspapers the next morning that read: "Reds beat Yanks 5-2." This caused an uproar. Letters poured into the business office of the Cincinnati ball team complaining that it was bad for morale to have "Reds beating Yanks," even on the sports page, especially when our soldiers were fighting and dying in Korea. More threatening writers questioned the patriotism of a team that called themselves "Reds." Cincinnati took this very seriously, hurriedly called a press conference at which they announced that they were changing their name to the "Cincinnati Red Legs." Everyone still calls them the Reds.

It wasn't all so silly. The commander of the U.S. military base at Subec Bay in the Philippines posted a notice on its main bulletin board that the U.S. Bill of Rights and Constitution were not to be posted on the base because they were "controversial." This was the atmosphere in which my parents were on trial for their lives. Despite the vague conspiracy charge against them and the fact that the words "Atomic Bomb" did not appear in their indictment, the press, the prosecution, the FBI, the Judge, and even then President Truman characterized their case as the trial of master atomic spies. J. Edgar Hoover, the powerful director of the Federal Bureau of Investigation (FBI), called the theft of the secret of the Atomic Bomb the "crime of the century." My parents were sentenced as if they had been convicted of giving the secret of the Atomic Bomb to the Soviet Union. My parents inhabited a place in the U.S. psyche occupied today by Osama bin Laden.

They were tried and found guilty in March of 1951, a bloody month in the Korean War, which saw an average of 1000 U.S. soldiers killed each month for three years. My parents' attorneys worked for over two years to have their sentence overturned. They appealed to the Supreme Court on nine occasions, but the Supreme Court refused to review the case. They submitted clemency petitions first to President Truman and then he passed the buck to President Eisenhower to Ike. Both petitions were denied.

Because the charge against them was conspiracy, the government was not required to produce tangible evidence that anyone had stolen anything or given it to anybody. No such evidence was presented at their trial. Instead, the key government witnesses, David and Ruth Greenglass, received more favorable treatment in return for giving oral testimony that the Rosenbergs were guilty.

David Greenglass, my mother's younger brother and his wife, Ruth, both swore that my father, with my mother's help, recruited David into an atomic espionage ring in 1944. At that time David, a sergeant in the army, was a machinist fabricating components of the Bomb at the army's secret A-bomb facility at Los Alamos, New Mexico. The Greenglasses also swore that they gave sketches and a handwritten description of the Bomb to my father at my parents' New York City apartment while visiting during one of David's leaves from the army, and that my mother was present at the meeting and typed David's handwritten notes. This was the primary "evidence" against my mother.

If this last statement were true then the government of the United States executed my mother for typing. But it was not true. David Greenglass did not break his silence until 2001 when he admitted that he lied when he said he remembered that Ethel was present and did the typing. This revelation, though shocking, surprised neither my brother nor me because we'd known of this perjury from other sources, including the FBI files, for over 25 years.

In return for cooperating, Ruth Greenglass, who testified under oath that she helped steal what the prosecution characterized as the greatest secrets known to mankind, was not indicted and never spent a minute in jail. My mother who swore that she was not a spy (government files indicate the prosecution knew this was true) was executed.

My parents both took the stand in their defense and denied all illegal activity. On cross-examination the prosecution hammered them with questions about their political affiliations. They took the 5th amendment (the U.S. Bill of Rights protection against self-incrimination) refusing to answer questions about their membership in the Communist Party. During the McCarthy period most people, the jurors among them, took this as an admission of Communist Party membership. Most Americans during this period also believed that Communist Party members were spies for the Soviet Union.



Ethel and Julius Rosenberg - 1942.

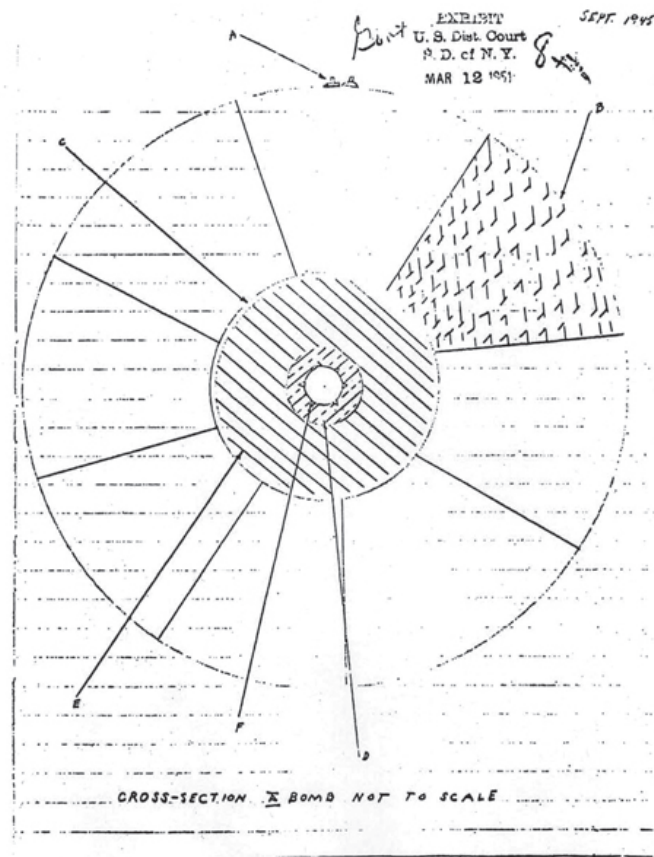
Judge Kaufman's sentencing speech made the political context of their case clear. He justified a death sentence for the crime of conspiracy in part by saying:

"I consider your crimes worse than murder.... I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding fifty thousand and who knows how many millions more of innocent people may pay the price of your treason."

Despite what Judge Kaufman said about "our best scientists" no scientists testified at my parents trial. Instead, a chorus of atomic scientists including such notables as Harold Urey and J. Robert Oppenheimer stated publicly that there was no single atomic secret. Dr. Philip Morrison, who co-holds the patent on one of the first atomic bombs, stated in the 1970's that producing an atomic bomb was "an industry not a recipe."

Until years later none of the atomic scientists even saw the sketches introduced at the trial that Greenglass testified he drew from memory in his prison cell a few days earlier. Upon viewing them Dr. Henry Linschitz, scientific director of the division in which Greenglass worked, swore that the Greenglass material was "too incomplete, ambiguous and even incorrect to

be of any service or value to the Russians in shortening the time required to develop their nuclear bombs.”



The prosecution called this and another sketch “the most important scientific secret ever known to mankind.”

More recent revelations, including the release by the CIA of the “VENONA” transcriptions in 1995, have caused the mass media and many mainstream Rosenberg case “experts” to renew prior conclusions that my parents were guilty. The transcriptions, however, do not point to the Rosenbergs’ involvement in atomic espionage. Julius is never mentioned by name, and the spy code-named “Antenna” and later “Liberal,” who the government claims was Julius Rosenberg, was engaged in military/industrial rather than atomic espionage. Even more remarkably, the key reference to Antenna/Liberal’s wife states that she was not an espionage agent!

The validity of any of this repeatedly reworked secret government material is open to question. If every word of these transcriptions were true, the following summary remains accurate: Neither Julius nor Ethel Rosenberg was a member of an atomic spy ring that stole the secret of the Atomic Bomb.



American Senator Joseph McCarthy (picture) conducted a violent pursuit to supposed communists, which became known as “witch-hunt” and, later, McCarthyism.

Neither committed the crime they were executed for. And the United States government knew all along that Ethel Rosenberg was not an espionage agent.

III. Specific Lessons for Today

There are several chilling parallels between my parents’ case and the “anti-terrorism” cases of today even though a massive political gulf separates my parents, who were secular Jewish Communists, from many of the Moslems the U.S. seeks to prosecute today. This convergence becomes more apparent when my parents’ case is viewed in psychosocial terms. During the McCarthy period federal prosecutors linked the Atomic Bomb, the thing the American public feared the most, to communists, the people the public feared the most, at the height

of the Korean War. Now the same elements of U.S. government bureaucracy are again connecting the public’s greatest fear (weapons of mass destruction in the hands of international terrorists), to the current boogey men (Islamic fundamentalists) during a period of apparently endless war. Thousand of Americans died on September 11th, 2001 and thousands more have died in Iraq and Afghanistan since we invaded and occupied those countries. The same daunting challenges that made it next to impossible to protect the rights of communists and save my parents’ lives in the charged atmosphere of the early 1950’s haunt those who wish to protect the rights of Moslems and save the lives of those who may soon face the death penalty after being convicted of terrorism-related conspiracy crimes.

Death row may come to include co-conspirators because the mass-murders who flew the planes into the buildings are all dead. This will drive the U.S. government to seek revenge on more peripheral figures. Originally the U.S. government called Zacarius Moussai, the 20th hijacker, claiming he would have participated in the September 11th attacks if he had not been in jail for an immigration violation on that date. But at his trial the U.S. prosecutors dropped this line of attack and instead charged that Moussai had information about the attacks that the FBI would have used to prevent

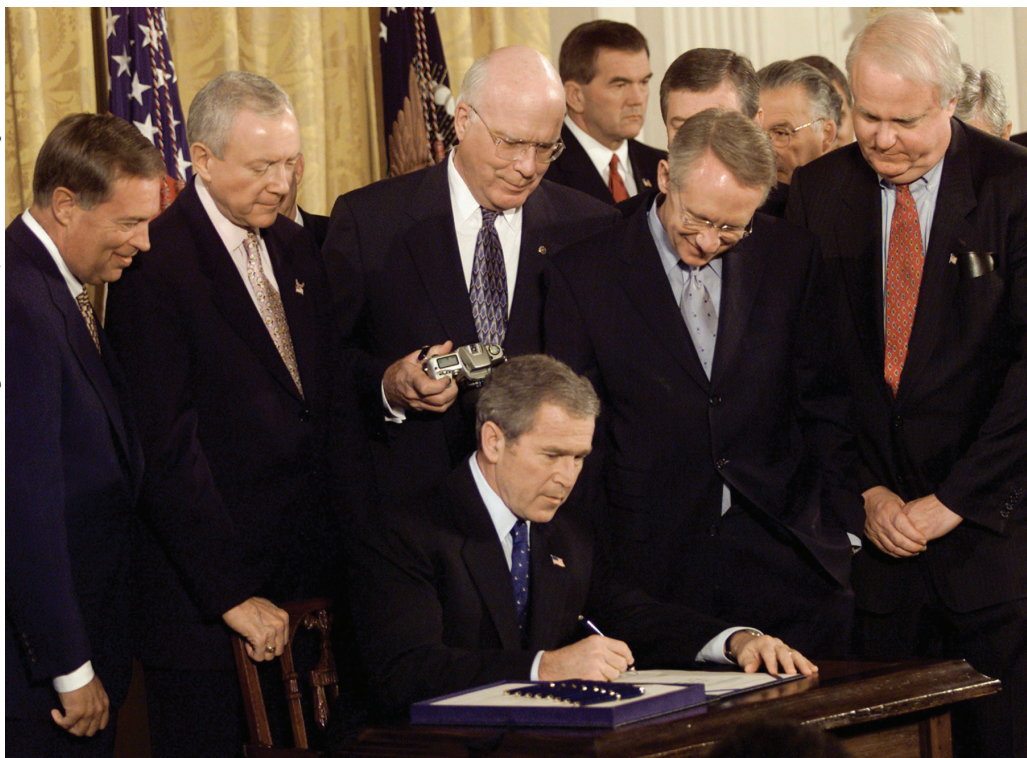
them. That means the U.S. government was seeking to execute someone not for what he did, but because he did not tell his interrogators truthfully what he knew and this caused the death of at least one person during the September 11th attacks. The jury in sentencing Moussau to life imprisonment apparently rejected this effort to extend the death penalty to those who indirectly cause another's death, but nevertheless the judge ruled that this would have been a valid ground for execution if the jury had decided to impose the death penalty.

And Latin Americans should be aware that the U.S. would like to extend the death penalty to their continent as well. The Bush administration seeks to accomplish this by pushing Latin American nations to sign an international counter terrorism accord that could indirectly involve the death penalty. Argentina and Paraguay have already signed agreements with the U.S. that call for extradition of terrorists to the U.S. where, if convicted, they could face the death penalty.

But we have not seen the wave of capital conspiracy cases in the U.S. that I expected in the wake of September 11th. Unfortunately, this has happened because matters are worse, not better, than I feared. Hundreds of Moslem men were detained in immigration sweeps after September 11th, many were treated brutally, few received even minimal due process, some were deported to countries where they faced torture or even death, but none were charged with terrorism. Despite recent calls by the United Nations for its closure, hundreds more have been detained at the U.S. torture facility at Guantanamo Bay, Cuba without charge for years. We don't know if any, other than the three recently reported suicides, have died or been killed there and what will happen to the remainder even if the camp is shut down. We also know almost nothing about what has happened to those detained in secret CIA controlled detention facilities. Despite the photos from Abu Graib, the extent of killing and abuse of prisoners in U.S. military prison camps also remains uncharted.

This explosion of international and secret detentions is the Bush administration's attempt to avoid the U.S. judicial system. And since our government recognizes no international judicial review of our officials, President Bush is placing himself above the rule of law. Bush and his henchman repeatedly say that the old rules no longer apply after September 11th. What they mean is that they establish the new rules and no one else in the world has the right to do anything about whatever rules they set. They say they are accountable to no one.

That's what the Bush administration argued in the *Rasul v. Bush* case, that the New York City based human rights legal organization, the Center for Constitutional Rights, took to the Supreme Court. The Attorney General's office argued that the Supreme Court had no jurisdiction ("power" in lay



President George W. Bush signs the Patriot Act, Anti-Terrorism Legislation, in the White House.

terms) to review what occurred at Guantanamo because Guantanamo was not a part of the United States. In June 2004 the Supreme Court ruled, 6-3, that it did have jurisdiction. The Court in its decision cited the Magna Charta of 1215, which established *Habeas Corpus*, the right of those held by the government to have an independent judicial body determine the legality of their detention. Thus, it could be argued that the Bush administration was attempting to overturn 789 years of legal precedent.

But despite *Rasul*, to date no detainee has had such a hearing. Those who have attorneys have petitioned the courts to determine their status, but Justice Department attorneys have argued that while the detainees have the right to petition the courts under *Rasul*, all such petitions must be dismissed because the detainees have no rights under the U.S. constitution. This absurd argument, which ignores the essence of *Rasul* while paying lip service to it, has delayed meaningful hearings for the detainees indefinitely. In early 2006 the U.S. Senate passed a bill limiting the court's ability to review Guantanamo cases. In June 2006, the Supreme Court in *Hamdan v. Rumsfeld* rejected this limitation of its power when it declared the military tribunals Bush had established to "try" the Guantanamo detainees unconstitutional. In the meantime the detainees languish in legal limbo.

Guantanamo is just one of several means the Bush administration has employed to subvert the rule of law. The President and his group's desire to do this is part of their strategy to run the world. That's an extremely ambitious undertaking, even for a group that has enormous financial and military resources. Such a plan would cost an astonishing amount of money as well as a horrific quantity of blood. The stakes couldn't be higher and small items such as international human rights standards, the U.S. Constitution, the rule of law, and domestic dissent can't be permitted to undermine this plan. This is where the more general lessons of the McCarthy period for today apply.

IV. Lessons for Today – General

Bush signed the USA PATRIOT Act into law six weeks and one day after September 11th, 2001. The Act contains 342 pages of complex and far-reaching legislation that was passed by both houses of congress with little debate. While I won't address its details, a quick survey of its contents shows that it confers vast and unchecked powers on the executive branch of government, most particularly the President, in the name of national security. It codifies the suspension of civil liberties by, among other things, characterizing many forms of dissent as terrorism, permitting massive invasions of personal privacy and expanding the number and types of federal capital crimes. It reserves the harshest treatment for immigrants. The recently passed update to this law makes only a few minor adjustments.

My first reaction when I learned the government had introduced a 342-page bill to congress just a few weeks after 9/11 was how did they throw something like that together so quickly? Obviously they didn't. The bill was a wish list of an administration that was already rabidly pro death penalty and hostile to civil liberties. Once they had an excuse they trotted it out and rammed it through.

They didn't need to start from scratch. The discredited laws of the McCarthy period provided a ready-made blue print. In fact, it seems like they took entire paragraphs from McCarthy period laws, substituted the word "terrorist" for the words "communist" or "subversive," added paragraphs about computers to modernize it and presto... the USA PATRIOT Act.

It is not just the words of the Act that remind me of the McCarthy period. When a few Democrats raised objections on civil libertarian grounds, the administration responded that those who objected were giving aid and comfort to the enemy. That's what was said to silence civil libertarians during the McCarthy period.

This kind of attack creates an expanding climate of fear. The press feeds the fear and doesn't criticize because they also become afraid. I did an interview with a National Public Radio reporter not long after 9/11 in which I stated that I was against seeking the death penalty under all circumstances, including for those charged with conspiracy to commit terror. One of the first

questions the reporter asked me was, “You’re not supporting these terrorists are you?” That question gave me chills, because when people took a stand against my parents’ execution over 50 years ago, the first question they were asked was “you’re not supporting these communists are you?”

V. Conclusions

What can people in the U.S. do about this new political climate that death penalty proponents and authoritarians seek to exploit? They should begin by labeling the death penalty a human rights abuse. Until capital punishment is viewed in that manner those seeking political gain will always call for it to be employed whenever a particularly heinous crime inflames public opinion.

Most Europeans did not call for the reinstatement of capital punishment in their countries after the terrorist attacks on the World Trade Center. There were few if any such calls in Spain after the Madrid train bombings of 2004 or the London subway explosions in 2005. One reason for this is that most Europeans now see the death penalty as a human rights abuse. Since human rights abuses are never acceptable, no circumstance would permit its resurrection in Europe. Moving the U.S. public to this position will not be an easy task since the vast majority of people in the United States do not perceive capital punishment in this manner. It is, however, a goal the anti-capital punishment movement must strive to achieve if it wishes to abolish the death penalty permanently.

Next we must confront those who counsel people to give up their freedoms in order to increase their security. People in the U.S. repeatedly see, hear or read media pundits who presume that the balance between civil liberties and security must be tipped in the latter’s favor while the war on terror rages. Too many U.S. citizens have fallen for this freedom versus security trap. Instead, they should attack the assumption. Where is the proof that giving up freedom will enhance security? The anti-communist witch-hunts of the 1950’s stifled dissent, but did little to improve U.S. national security. Just how does promoting torture and human rights abuses increase our security? History teaches that there will be less freedom, but there will be no more security. In fact, people in nations with a powerful secret police apparatus often live in fear of their own security forces.

The police and intelligence agencies that failed to warn the U.S. before September 11th, for whatever reason, want people in the U.S. to believe it was because they lacked sufficient money and power. That is not the case since they had plenty of both long before 2001. Perhaps these agencies need a new set of priorities. Maybe they could have done a better job of protecting New York and Washington, DC if they spent less time harassing dissenters, or imprisoning 2.2 million U.S. citizens, or executing dozens each year. How ironic, that the U.S., which calls itself “the land of the free,” has

over 25% of the World's entire prison population of 8 million.

It has become the primary patriotic duty of U.S. citizens not to let our government expand the scope of the death penalty and make war on civil liberties and human rights in the name of making war on terrorism. My fellow citizens must not let Bush and others destroy freedom and rule of law in the name of protecting it. If the U.S. government fools anyone, it is only its own citizens who'd rather not know, when it covers up systematic polices that condone torture and foster human rights abuses.

Fear moved millions during the McCarthy period to accept authoritarian policies. The Bush administration has resorted to the same scare tactics. We must learn the lessons of the McCarthy period and confront these tactics directly. The U.S. national anthem concludes: "Oh say does that Star Spangled banner yet wave. O'er the land of the free and the home of the brave."

People in the U.S. need to be reminded that their nation will only remain "the land of the free," if its citizens are brave.

My fellow citizens also need a better grasp of what the phrase "my country right or wrong" means in a democracy. In a democracy you vote your approval when your country is right, but when it is wrong it is not only your right, but also your duty, to voice your disapproval. Fear must not promote silence. That is why dissent is patriotic and why it is most patriotic to fight for the constitutional rights of even those you disagree with. That is why as a secular Jewish left-wing citizen of the U.S. I support the efforts of human rights organizations, such as the New York City based Center for Constitutional Rights, to protect the civil liberties of Moslems in my country. Broadening U.S. citizens understanding of what constitute human rights at home and worldwide is the best way for people in my country to learn the lessons of the McCarthy period.



The Washington Monument.

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