

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF NATIONAL SECURITY)
ARCHIVE, AMERICAN HISTORICAL)
ASSOCIATION, AMERICAN SOCIETY OF LEGAL) 08 Civ. 6599 (AKH)
HISTORY, ORGANIZATION OF AMERICAN)
HISTORIANS, SOCIETY OF AMERICAN)
ARCHIVISTS, AND SAM ROBERTS)
FOR ORDER DIRECTING RELEASE OF)
GRAND JURY MINUTES)

DECLARATION OF BRAD SNYDER

1. I am an associate professor at the University of Wisconsin Law School and a visiting associate professor at the Georgetown University Law Center. I submit this declaration in support of the petition to unseal the grand jury testimony of David Greenglass relating to the indictments of Julius and Ethel Rosenberg.
2. In 2010, I published a *Vanderbilt Law Review* article about the Supreme Court's mishandling of the Rosenberg case. See Brad Snyder, "Taking Great Cases: Lessons from the Rosenberg Case," 63 *Vand. L. Rev.* 885 (2010). The article was based on numerous primary source documents from the Justices' papers and court files, diaries, interviews with participants, and the unsealed grand jury testimony of David Greenglass's wife, Ruth, which was released pursuant to this Court's prior order in this matter.
3. Beginning in June 1952, Julius and Ethel Rosenberg filed the first of several petitions for certiorari before the Supreme Court of the United States. My

article argues that the justices, because of internal conflict and dysfunction on the Court, missed the best opportunity to review the Rosenbergs' case.

4. On June 6, 1953, a few weeks before their executions, the Rosenbergs filed a petition arguing that prosecutors had knowingly used perjured testimony at trial. See *Mooney v. Holohan*, 294 U.S. 103, 112 (1935) (per curiam) (declaring due process violation "if a deliberate deception of court and jury by the presentation of testimony known to be perjured").
5. David and Ruth Greenglass had testified at trial that the Soviets had given the Rosenbergs a hollowed-out wooden table with a lamp underneath to microfilm Ethel's typewritten notes. The table could not be found before trial, but a reporter for the *National Guardian* later discovered it in the apartment of Ethel's illiterate mother. The table was not hollow, and there was no lamp. A Macy's official submitted an affidavit that it was the type of console table sold there in 1944 or 1945 for \$21, just as the Rosenbergs had testified at trial. The console table may seem like a minor point, but it arose several times at trial and during closing arguments. See Trial Transcript at 222-24 (defense counsel Emanuel Bloch's summation); Trial Transcript at 2298-99 (prosecutor Irving Saypol's summation). The Rosenbergs' lawyer Malcolm Sharp later explained that the console table "was important at the trial as a vivid item of testimony which may well have caught the jury's mind in the course of the long and sometimes tedious proceeding. It became, however, more important in another respect: it served as a test of the dependability of the Greenglasses' testimony." Malcolm Sharp, *Was Justice Done?* 111 (1956).

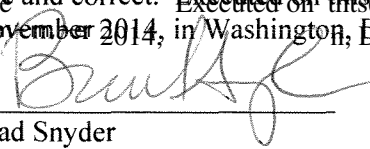
The discovery of a table that confirmed the Rosenbergs' testimony suggested that the Greenglasses were lying. It did not prove that the prosecution knew the Greenglasses were lying, but other new evidence revealed what the government had known and when. The Rosenbergs' lawyers also discovered a handwritten pre-trial statement that David Greenglass had given to his lawyer about what he had told the FBI in his initial interview, a copy of which somehow wound up in France.

6. In their June 12 petition to Justice Robert H. Jackson, the Circuit Justice for the Second Circuit, the Rosenbergs argued in their brief that David Greenglass's "pre-trial story to authorities ... was a very different tale from the trial testimony of the Greenglasses—as different as 'Hamlet' without Hamlet." Petition for Stay to Justice Jackson, at 4, June 12, 1953, National Archives, Washington, D.C., RG-267, Box 607-687 O.F. 1952-4 of 5, Folder 687 O.F. 1952. Justice Jackson thought the petition had merit and recommended that the Court hear oral argument on it. *Id.* at 1. The Court, however, voted 5-4 not to hear oral argument on the petition and not to grant a stay of execution. *Rosenberg v. United States*, 346 U.S. 573, 280 F.2d 17 n.7 (1953). Jackson was furious. See Snyder, *Taking Great Cases*, 63 *Vand. L. Rev.* at 910-13.
7. David Greenglass's grand jury testimony would advance my scholarship in numerous ways. First, it would confirm what Greenglass later told journalist Sam Roberts—that the spy had lied at trial to save his wife and to convict his sister. Second, the grand jury testimony will reveal what evidence the

prosecutors had to charge Ethel at the time of the grand jury deliberations. Third, it will reveal whether Greenglass had discussed the console table with the grand jury. Fourth, it will provide another clue as to whether the prosecutors knew that he was lying at trial. Finally, if his grand jury testimony suggests prosecutorial misconduct, it will confirm that the Supreme Court missed a golden opportunity in early June 1953 to review meritorious constitutional claims in one of the most important trials of the twentieth century.

8. This historical import of the David Greenglass's grand jury testimony is bigger than the guilt or innocence of Julius and Ethel Rosenberg. It is about how the American criminal justice system treats even the most despised and politically unpopular defendants. It is about the role of the Supreme Court in policing the behavior of government prosecutors. David Greenglass's grand jury testimony will help historians answer these questions and more. The case's historical and political significance, the centrality of his grand jury testimony to what the prosecutors knew and when, and his recent death all militate in favor of making an exception to the general rule and unsealing David Greenglass's testimony.

Pursuant to 28 U.S.C. § 1746, I hereby declare under the penalty of perjury that the foregoing is true and correct. Executed on this 10th day of November 2014, in Washington, D.C.:


Brad Snyder