

the time, can do more than arrest this trend temporarily and deflect it into modified forms of organization."<sup>27</sup> There is essential disagreement only concerning the methods to be employed; thus the proposal of the Messina Conference conspicuously avoided making a choice as to the proper means for reaching the proposed objectives. During this uncertain period the Council of Europe should be of great assistance to the cause of European unification, for it provides a continuing forum—and the only one—in which European problems can be discussed collectively by the governmental representatives of the Committee of Ministers as well as by members of the various political parties representing European nations in the Consultative Assembly.

In addition to essays, the present volume of the *Yearbook* contains texts of the constitutive treaties of the European organizations, a general survey of their organizational structure and a valuable list of their official publications. The bibliography, with its references to books and pamphlets and a carefully selected list of articles discussing the problems of European integration, should also be of value. To cover six years in the development of European organization, the editors had to be very selective. Since in the future the *Yearbook* will report on the annual activities of these organizations, it might be feasible to include not only studies of specific problems (e.g., privileges and immunities of European organizations; status of their secretariat members), but in addition studies of problems that, though not strictly European, are pertinent to the operation of these organizations (e.g., NATO and its relation to European organizations; participation of the United States and Canada). The editors may be sure that the *Yearbook* fills a real need and that it makes an important contribution to the understanding of the objectives and work of European organizations.

GERHARD BEBR†

THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG. By John Wexley. New York: Cameron & Kahn, 1955. Pp. xiv, 672. \$6.00

"[I]t is impossible for this writer to pretend utter neutrality. . . ."<sup>1</sup>

CHRONOLOGICALLY, in the world war of wits, the Rosenberg case followed the germ warfare propaganda binge. By now, the Communists have pretty well abandoned, at least in the Western half of the world, their charge that the American forces in Korea resorted to bacteriological warfare. But they are still enlarging on the claim that Julius and Ethel Rosenberg, executed on June 19, 1953, for conspiracy to commit espionage against their native country, were innocent victims of a prosecution frame-up and an unfair trial.

27. P. 178.

†Visiting Lecturer in Law, Yale Law School.

1. P. ix.

From dust cover to appendices, John Wexley's book falls squarely into this propaganda pattern. Its jacket design shows a sorrowing female by Rockwell Kent at his lugubrious best. Its final appendix is a meaningless montage of a Santa Fe Railroad timetable.<sup>2</sup> The book between is filled with such stuff as tasteless remarks about James Forrestal,<sup>3</sup> Judge Irving Kaufman,<sup>4</sup> prosecutor Saypol<sup>5</sup> and FBI chief Hoover,<sup>6</sup> and gooey adulation of defense counsel Bloch;<sup>7</sup> along with such observations as: "[S]ome 10,000 American Youth, whose frozen corpses lay strewn over the wintry wastes of Northern Korea [none down South?] . . . died . . . to defend colonialism."<sup>8</sup>

Typical of Wexley's nonsense is a bathetic rendition of Mrs. Rosenberg's thoughts as she went to the electric chair. She is portrayed as speaking silently to her sons (then aged nine and five respectively):

"Ah, my sweet, precious ones—at least you are innocent. And yet, what have they not done to you? You are already fatherless and I am a widow and soon you will be orphaned. But would you want me at all for your mother if I were to . . . be so corrupt as to play the role of harlot to political procurers!"<sup>9</sup>

In a similar soliloquy, Wexley has Julius Rosenberg liken himself to Jesus Christ.<sup>10</sup>

2. App. 22.

3. "Secretary of Defense James V. Forrestal, former banker and president of the Wall Street firm of Dillon, Read and Co., whose mental illness continued even while he was in office." P. 18.

4. "Oddly enough, although Kaufman was only thirty-one years old at the time of Pearl Harbor, we find no indication in his biographical notes in *Who's Who* of any military service throughout the war. In the same *Who's Who* he is listed as an active member of the City Athletic Club. There is no mention in any of the biographical material of any civilian contribution to the war effort by this successful young attorney who prospered so greatly in private practice during the war years." P. 252.

5. "Even if one studies him only through the pages of the record, one notices his complete lack of distinction as a lawyer. In the course of the trial analysis, examples of the crudeness, surliness and bluster of the ambitious politico depending on the prejudices of the moment to win his case will be seen frequently. Not the least of his coarseness lies in his penchant for tasteless punning." P. 212.

6. "While he [Sobell] was a native American, both his parents happened to be Russian-born and this had almost come to be reason for a Bill of Attainder in the eyes of FBI Director Hoover." P. 147.

7. "His untimely death on January 30, 1954, was mourned throughout the world. It is difficult to assess all of the reasons which led to the creation of this book, but there is little doubt that among the most important was the example of his magnificent courage in the epic fight he made in behalf of truth and justice in the case of the Rosenbergs." P. vi.

"And so it was, on that night of June 16, 1950, that Emanuel Bloch became the attorney for Julius Rosenberg, and a short while later, for his wife, Ethel. And for the next three years and three nights thereafter, he was destined to do little else. In fact, it was his destiny to give his very life in the effort to save theirs." P. 114.

8. P. 229.

9. P. 632.

10. P. 630.

Wexley's analysis of the trial itself rarely rises above this level. His effort is essentially to streamline a very bulky package into a trim, pat shape that will serve for years of propaganda. It is to this end that his treatment of evidence and issues is directed, and this treatment is, as a result, infinitely devious and unfair.

One representative example, which should suffice, is Wexley's handling of the testimony of Ben Schneider, the passport photographer. Before Schneider took the stand on March 27, 1951, the escape route for suspected Soviet agents in North America had been well impressed on the jury. David Greenglass, former foreman of the machine shop at Los Alamos where the atom bomb was fashioned, had testified about instructions given him by his brother-in-law, Julius Rosenberg, to go by the southern route—Mexico, Switzerland, Czechoslovakia and Russia—with numerous passport photos and recognition signals for each stage.<sup>11</sup> Morton Sobell, co-defendant with the Rosenbergs, had been picked up in Mexico after a fruitless effort to elude Mexican secret police by constant dodging and the use of a string of aliases. But the Rosenbergs, first on direct examination and then on cross-examination, had denied any plan to leave the United States. Julius Rosenberg was emphatic in denying that his family had ever had passport photos taken. Then along came Schneider, a pink-faced, balding little man in his fifties—the final, most dramatic witness in the trial.

He had been in his photographic shop, said Schneider, one Saturday in May or June of 1950 when the Rosenbergs appeared. They wanted three dozen passport photos. The normal request for passport photos was three, not three dozen. The Rosenbergs purchased \$9.00 worth of passport photos, several of each pose, individually and in groups. The size and character of the order and the frenzied behavior of the two boys, who almost wrecked the shop, fixed the family in the photographer's mind.

Wexley raises two objections to Schneider's testimony: first, that Schneider's name had not been disclosed to the defense before the trial; and second, that his testimony was worthless as being that of an admitted perjurer. As to the first, Wexley writes: "[T]he name of Ben Schneider had not been made known to the defense among the 102 persons announced originally by the prosecution. This was in clear violation of the statute<sup>12</sup> which provides that all Government witnesses must be named *before* the start of the trial."<sup>13</sup> Elsewhere, Wexley

---

11. Looking backward, it is surprising to note how many allegations against Rosenberg which seemed theatrical and dubious at first have taken on historical solidity. For example, the projected sky platform, whose details were said to have been whispered to Greenglass by Rosenberg a decade ago, is now becoming a reality. The torn Jello box recognition device agreed upon between Rosenberg and Greenglass for a New Mexico pickup of espionage material was derided at first by the late Emanuel H. Bloch, defense counsel, as something out of Buck Rogers. Somewhat later, Hede Massing in her espionage memoirs remarked that she had objected to this type of recognition device because it had become old hat in underground work! MASSING, *THIS DECEPTION* 138 (1951).

12. 18 U.S.C. § 3432 (1952).

13. P. 563.

deplores "the violation of the defendants' constitutional rights"<sup>14</sup> through the sudden production of Schneider.

The trial record reveals that defense attorney Bloch raised at trial the objection that Schneider had not been on the list of government witnesses. Trial Judge Irving H. Kaufman replied: "The cases <sup>15</sup> hold that in rebuttal the witness not on the witness list, who is not known at the time to the Government, can be called."<sup>16</sup> And the fact was that Schneider had not been located by the FBI until the day before he testified.<sup>17</sup> What was a "clear violation of the statute" in Wexley's eyes is then in fact not a violation at all.

Wexley objects secondly to Schneider's testimony as being that of an admitted perjurer. The charge of perjury is based on the fact that on the stand Schneider testified that the last time he had seen the Roenbergs was in May or June of 1950, at his shop. In fact Schneider had seen the Rosenbergs the day before his testimony when he was brought into court by two FBI men to identify Julius Rosenberg.<sup>18</sup> Schneider apparently thought the question as to his previous encounter with the Rosenbergs referred to the period before the commencement of the trial. Wexley, however, jumps to the conclusion that Schneider was a perjurer. This discrepancy was, indeed, made the basis for a motion for a new trial.<sup>19</sup> On argument, before Judge Sylvester Ryan, the Government freely conceded the discrepancy but argued that it did not go to the heart of Schneider's testimony. The motion was denied. Wexley's summary of the matter is this: "Not only was his photographic testimony proved perjurious by an FBI affidavit, but it was later charged by the defense that there had been 'official condonation of [the] false testimony.'"<sup>20</sup> And so, for Wexley, it is proven.

Wexley makes yet another stab at discrediting those passport photos. He went around to the photographer's shop, long after the trial, to gather his own

14. P. 567.

15. See *Goldsby v. United States*, 160 U.S. 70, 76 (1895).

16. Transcript of Record, p. 2124, *United States v. Rosenberg*, Criminal No. 134-245, S.D.N.Y., April 5, 1951.

17. In a popular but I believe careful book on atomic espionage, written by me and published in the spring of 1952, I mentioned that while the Rosenberg trial was in progress, FBI men were looking frantically for a New York City passport photographer rumored to have taken go-away pictures of Julius Rosenberg shortly before his arrest. Two agents finally reached Schneider in a shop located a block away from the Federal Courthouse where the trial was going on. Schneider was reluctant to identify Julius Rosenberg from a photograph. When the FBI men brought him into the courtroom on March 26, 1951, he glanced at Rosenberg on the witness stand, turned to his FBI companions and whispered: "That's the man." Schneider testified the next day. *PILAT, THE ATOM SPIES* 287 (1952).

18. *Ibid.*

19. One weekend late in 1952, Bloch telephoned me at home. He seemed excited. "Will you stand by your book?" he kept demanding. I said I guessed I would. It then developed that on the basis of the discrepancy in Schneider's testimony revealed in my book, Bloch was planning a motion for a new trial.

20. P. 561.

evidence. Here is his description of what he found to reinforce his conclusion that Schneider was a perjurer:

"The interior of the shop awakens suspicion at first glance. For example, the entire fore part is bare except for an empty counter with empty wall shelves behind it. Upon inquiry of the original owner of the store, it was learned that Schneider had once employed a shoemaker in the front, while he ran his photo studio in the rear. However, as Schneider informed this writer, he has preferred to be alone the past six or eight years—having let the shoemaker go because 'pals' dropping in would 'kid' him with remarks such as 'Hey, Benny,—how's about a shine?'"

"On the walls were some stained photos of celebrities and prizefighters as they appeared some 20 years ago; also some fly-specked samples of Schneider's own photography.

"In a small back room which was the studio and was not larger than nine by twelve there was a lighting arrangement of sorts consisting of four or five blackened porcelain sockets fixed to a dust-laden overhead standard, which seemed to contain the first Edison electric lamps. The tiny camera looked like something Brady would have regarded with skepticism back in the 1860s.

"While this writer waited for the photos to be printed (three for one dollar), he asked if he might use the washroom. Whereupon Schneider suggested the tavern at the corner, since he was using his basin for his chemicals. About twenty minutes later, when Schneider emerged from the washroom with the prints, they were still damp and badly scratched. Certainly they did not seem to be the work of a professional. While it is true that this writer entered Schneider's shop with a preconceived opinion of this perjurer, there was precious little about him and his shop that tended to alter it."<sup>21</sup>

What does all this add to the case? Wexley worries poor Schneider like a dog with a bone but he does not upset the evidence in the trial or discover anything new.

And so it goes throughout the book—half truths are taken as whole truths, innuendo is substituted for argument. That the Rosenberg trial presents doubts—factual, legal and ethical—is not denied. What must be denied is that this book fairly states the problems or honestly tries to answer them.

OLIVER PILAT†

A BIBLIOGRAPHY ON FOREIGN AND COMPARATIVE LAW: BOOKS AND ARTICLES IN ENGLISH. Compiled and annotated by Charles Szladits. New York: Parker School of Foreign and Comparative Law, 1955. Pp. xx, 508. \$15.00.

A PAIR of trends in contemporary legal scholarship and librarianship are increasing in their importance and their relevance to current affairs. On the

21. Pp. 570-71.

†Public Information Officer, New York State Department of Audit and Control.