Rosenberg Aftermath: Wild Words Will Not Help, See Page Two

I. F. Stone's Weekly

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Only Rhee's Removal Can Save Peace

Next month may prove to be the most critical July since 1914. A headstrong satellite, secretly abetted by officials pursuing incendiary policies of their own, may again be able to plunge the reluctant great Powers into a war for which they have long been preparing. One difference is that today we have two Serbias—Germany as well as Korea. It is too early to tell whether the East German disorders represent a spontaneous worker uprising—it is difficult to associate spontaneity with the German character—or coordinated action exploiting labor grievances but carefully prepared by a military underground for some crucial moment. The moment for the Reich is crucial; beyond Bermuda looms the possibility of a Big Four or Big Five gathering—and Adenauer's anguished comments reveal how clearly the Germans understand that their bargaining power and recovery depend on the maintenance of East-West hostility. The East German "revolt" may help to upset Churchill's plans for a relaxation of tension.

The importance of the German rising lies in its effect on Moscow and Washington. Here it is strengthening those liberationist delusions so prominent in last year's campaign. Eisenhower, said the June 26 issue of *U. S. News and World Report,* "is beginning to be a little less eager to follow the lead of Sir Winston Churchill" since "German workers showed some disdain for the might of Russia." It reports triumphantly that John Foster Dulles would like to say "I told you so" to the British "who have ridiculed his idea that there is real sentiment in Eastern Europe for liberation from Communist rule." American military officers—according to the same source—have started figuring "how many Russian divisions would be required to police all of the cities of Eastern Europe in event of real trouble with the people of satellite countries." It is on such hashish that the Germans feed their dream of a new American-financed *drang nach Osten.*

The effect on Moscow may be as bad. Churchill in his historic speech calling for an end of the cold war laid great stress on the changes which had occurred within Russia since Stalin's death. He warned against doing anything which might "impede any spontaneous and healthy evolution which may be taking place in Russia." The German disorders followed on the heels of sweeping changes in the East German regime, which included plans for de-communizing and de-militarizing that Soviet satellite in preparation for peaceful unification of the Reich. The violent reaction in East Germany might have been calculated to discredit those forces in the new Russian regime which have advocated more moderate policies at home and abroad. A return to the rudeness and rigidity which were such prominent features of Russian diplomacy under Stalin would serve German purposes by making relaxation of world tension less likely.

A fear that moderation may be taken as a sign of weakness has haunted nations into war before, and may play its part in the equally fateful and even more critical events unfolding on the other side of Eurasia. The release by Syngman Rhee of war prisoners was an affront to the new China, done without any face-saving disclaimers or subterfuges. Rhee boldly took responsibility for his action. It was important to his plans that there be no appearance of accident. The purpose was to inflict a maximum loss of face on the enemy, and to bring into sharp relief the inability or the unwillingness of the American government to control Rhee. According to a United Press dispatch from Tokyo published by the New York Times on June 19, General Mark W. Clark knew that Rhee would not hand over the prisoners, "Dr. Rhee told him so" and "General Clark had notified Washington that he thought Dr. Rhee's first move against the truce agreement might be the release of the 34,000 anti-Communist North Korean captives."

General Clark's explanation last Sunday was as weak as it was wordy. The Chinese can hardly be blamed if they see bad faith. There was at least criminal weakness, a weakness for which a heavy cost in lives may yet be paid. And there is no sign as yet that either Washington or Tokyo HQ is prepared to learn anything from this experience. Rhee showed that he was not bluffing. He wanted this war; he may have started it; he has tried to block a truce every time one seemed possible; and he has said that he would not abide by a truce if it were reached. Our irresolution is his strength. It is folly to believe that a truce can be reached without him *so long as he remains in power in South Korea.* He can prevent the neutral commissioners from landing. He can start the war up again and force the U. S. to support him for inescapable reasons of prestige, strategy and domestic politics. There will be peace only if the U. S. has the resolution to impose martial law, remove Rhee from power and deal directly with those elements in South Korea which want peace, relentlessly smashing the mercenary and terroristic "youth groups" on which Rhee's power largely depends.

At the moment there seems no possibility whatsoever of such drastic action, though Congress is sick of the war; McCarthy and McCarran significantly were the only voices raised in support of Rhee. Those who think Rhee really speaks for South Korea should read the article by a former British official of the United Nations Korean Reconstruction Agency in the June 20 issue of the London *New Statesman.* It reveals the stage-managing and the paid demonstrators which have gone into the anti-truce rallies of the past, and it points out that "it was only the support of the U. S. Army which kept Rhee from being deposed" in his clash with the National Assembly last June: "Even the heads of the Korean Army and Navy opposed him." If Rhee is not removed, the war will go on. If he has his way, Seoul will yet be our Sarajevo.

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Rosenberg Aftermath: Wild Words Will Not Help Peace

The ghost of the Rosenberg case will haunt the United States for a long time to come. The sentence was barbaric. The speed with which it was imposed last week was indecent. It is almost as if the government were afraid that if the Rosenbergs were not killed as quickly as possible the case might blow up in its face. The Attorney General, in the application which led the Supreme Court swiftly to reconvene, said it was important "in the national interests that this case be brought to a final determination as expeditiously as possible." Mr. Brownell never put forward a more dubious proposition.

On the contrary, just because there had been fantastic distortions in the world-wide campaign for the Rosenbergs, it was important in the national interest that the convicted couple be given every right due them under the law, that doubt of their guilt be allayed, and that we show the same "decent respect for the opinion of mankind" we ourselves invoked at an earlier stage of our history. When a campaign for clemency enlists the Pope, when so famous an atomic scientist as Dr. Harold C. Urey questions the verdict, the national interest called for cautious deliberation rather than speed. As it is, the execution will seem a slap in the face to millions the world over. The final touch was moving the execution back a few hours so as not to conflict with the Jewish Sabbath! That the defense was equally hypocritical in exploiting religious sentiments which meant little to the Rosenbergs or most of their supporters does not make the government's action less sickening.

Some forgotten history may throw new light on the terrible events of the past week and on Justice Douglas's courageous last-minute attempt to stay the execution. When the Atomic Energy Act was originally drafted by the McMahon committee, it not only contained no death penalty for atomic espionage but provided that no presecution might be initiated without consultation by the Attorney General with the Atomic Energy Commission. The purpose, as the National Committee for Civilian Control of Atomic Energy protested when this provision was taken out of the bill in the House, was to protect scientists against reckless accusations. "Since atomic energy is a field of sensational publicity value, and subject to possible hysteria," the Committee wrote, "this consultation provision was designed to assure that prosecutions would not be initiated without review by persons having the technical and scientific background necessary to determine the significance of the acts complained of."

In the light of the Rosenberg case, the protest seems prophetic. Had the provision remained in the bill as passed, there could hardly have been all the exaggeration in which the prosecution, the judge and the press have indulged. Whatever Greenglass and the Rosenbergs may have given the Russians, it was hardly the "secret" of the atom bomb. A case in which the Atomic Energy Commission participated would have deflated the charges. Unfortunately protest did not succeed in restoring this provision.

It was also in the House that an amendment by Hatton W. Sumners of Texas added the death penalty to the bill. This passed without debate or roll-call. The Senate conferees objected strongly to the death penalty but the best they could wring from the House was a further amendment specifying that neither the death penalty nor life imprisonment could be imposed except on recommendation of the jury and "only in cases where the offense was committed with intent to injure the United States."

This is where Justice Douglas came in. The application of this law to the Rosenberg case would have upset the verdict. The death penalty had not been recommended by the jury. There had been no attempt to prove intent to harm the United States, since the U. S. and the U.S.S.R. were war-time allies at the time the theft of atomic information is supposed to have occurred. The maximum penalty under the Atomic Energy Act would therefore have been 20 years in jail.

As applied to the Rosenberg case, the question is a difficult one. They were tried and sentenced to death under the Espionage Act of 1917. The overt acts occurred in 1944 and 1945; the Atomic Energy Act was not passed until 1946. But this was a conspiracy indictment and the conspiracy was alleged to have continued until 1950. There is also a doctrine which holds that where a man is tried for a crime, and the penalty is reduced by law before he is tried, he has a right to the lesser penalty, even though the crime was committed before the penalty was reduced.

The government countered with another argument. The Espionage Act, as the *Washington Post* said in an editorial last Saturday, "was in no way limited or changed by the Atomic Energy Act. Consequently, there was no warrant for the stay granted by Justice Douglas." The premise is too sweeping; the conclusion, fallacious. It is true that the section of the Atomic Energy Act which deals with unlawful handling of information says "This section shall not exclude the applicable provisions of any other laws . . ." But it also adds, "except that no government agency shall take any action under such other laws inconsistent with the provisions of this section." What does one do in a case where the Espionage Act calls for the death penalty and the Atomic Energy Act for 20 years in jail? Obviously the question cannot be resolved as easily as the *Washington Post's* formulation would imply.

The authoritative work on the subject, "The Control of Atomic Energy," by James R. Newman and Byron S. Miller, gives a different answer. Newman was counsel and Miller assistant counsel to the McMahon committee in the framing of the Atomic Energy Act. "We do not see," they wrote, "how it is possible to hold other than that when Congress adopted Section 10 of the Atomic Energy Act it intended to prescribe the exact punishment to be applied for all violations involving the unlawful dissemination of restricted atomic energy data." Their opinion in that book published five years ago was that, in saying the applicable provisions of other laws were not to be excluded, Congress "meant to guard against possible omissions rather than to give a prosecutor the option of proceeding under other laws against offenses fully covered by the Atomic Energy Act for the sole reason that under such other laws these offenses bore heavier penalties."

The passage quoted foreshadowed the problem raised before Justice Douglas. "The difference," Newman and Miller

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I. F. Stone's Weekly

• *Editor and Publisher,* I. F. STONE

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Comment

Best news of the week and the most unexpected was the 4-3 Supreme Court decision reversing the conviction of Harry Bridges, and his two associates in the longshoremen's union, Henry Schmidt and J. R. Robertson. It is now 20 years since the government began its long campaign to deport or jail Bridges. Will the government make itself look ridiculous by trying again?

Next best was the Court's 6-1 decision in Barrows v. Jackson giving what appears to be the final death blow to racial restrictive covenants in real estate. Chief Justice Vinson, who seems to be becoming the extreme right wing of this court, was the lone dissenter.

Warning to students: A government employe from out-of-town, visiting with friends in the civil service, passes on and vouches for this story. An FBI-man, during the course of asking a local government employe about a man he was investigating, said: "When I come across applicants from certain big city colleges and I see that they say they did not belong to the American Student Union or the Young Communist League or any other radical organization while they were in college, then I really get suspicious. I ask them, 'Why, didn't you belong?"

Compliment, well, sort of: Two readers have sent in clippings of an editorial from the *Minneapolis Star* of June 6. "Now and then," said the *Star,* "even the wrong-headedest dissenter says something worth listening to. The ultra-Left I. F. Stone does so in writing about the deportation of Cedric Befrage, English editor of the pro-Communist *National Guardian.*" The editorial goes on to quote liberally from our issue of June 30 and concludes by saying, "With Belfrage's refusal to testify we have no patience, and for his departure we have no fears. But what Stone says about the real threat of McCarthyism to the American concept of freedom and justice is profoundly true. Dont shrug it off just because a pinko said it.'

Hat's Off: To Senator Lehman of New York, the Senate's most consistent opponent of "creeping Fascism", for his great Jackson Day dinner speech at Milwaukee last Saturday, taking the offensive against McCarthyism and attacking those who turn "the legislative branch into a series of star chambers, with unchecked power of destruction over the lives and reputations of countless individuals."

And while we're on the subject: McCarthy's resurrection of J. B. Matthews to be his principal assistant in witch-hunting, should serve to alert the clergy to the need for some kind of organization of mutual aid and counter-attack. A taste of what may be coming is provided in Matthews' article in the July *American Mercury,* which begins, "The largest single group supporting the Communist apparatus in the United States today is composed of Protestant clergymen." Note the adjective, "Protestant."

Recommended: Helen Bryan's "Inside" (Houghton Mifflin, $3), an account of her stay in prison for contempt of the House Un-American Activities Committee, by the executive secretary of the Joint Anti-Fascist Refugee Committee. Written with simplicity, humanity and insight, as gripping as a first-rate novel, generally cold-shouldered by the literary reviews for political reasons. You won't put it down once you start reading.

Wild Words Will Not Help Peace

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said of the conflict between the two acts, "can only be resolved by judicial decision." This is how Justice Douglas was trying to resolve them when the full court was hastily convened. Counsel had to argue the merits before the full court on a day's notice, against the background of a demand in Congress for the impeachment of Justice Douglas and pressure for haste from the Attorney General. This was hardly full and fair consideration of such subtle questions, especially in a case where the lives of the appellants were at stake.

Had the stay remained in effect, it would have given the defense time to press on with its petition for a new trial on the basis of new evidence. The motion for a new trial rejected last month by Judge Kaufman contains material which casts doubt on the verdict, notably the production of the console table which figured so strikingly *in absentia* at the trial. This deserved a fuller review than the cursory hearing given counsel for the Rosenbergs in the Circuit Court. It was not in the interests of justice or the good name of the United States to execute sentence before this evidence could be evaluated. The many "reviews" supposedly granted in the case were mainly refusals to review and as Justice Black said, "It is not amiss to point out that this Court has never reviewed this record and has never affirmed the fairness of the trial below."

There were dangerous myths germinated in this case, and it is tragic that there may now be no way finally and definitely to expunge them. One is the myth, which began with Judge Kaufman and runs through President Eisenhower's denial of clemency, that the Rosenbergs somehow gave the Russians the "secret" of the atom bomb; one has only to read the testimony of General Groves in the framing of the Atomic Energy Act to see what nonsense this is.

The other myth arose from the constant effort of the defense to equate the United States with Nazi Germany; to picture the Rosenbergs as the victims of a racist murder and anti-Semitic plot. This fit neatly with Soviet propaganda but it hurt the Rosenbergs more than it helped them; it antagonized the American Jewish community; it was poisonous folly. The final straw was the readiness of those who propagated the "Nazi America" line to believe the worst about the accused Jewish doctors in Moscow and the Joint Distribution Committee before the new Malenkov regime suddenly reversed the verdict.

The haste with which the Rosenbergs were executed after three years is hardly the same kind of haste with which the Czechs shot Slansky overnight, without appeal. In the Soviet bloc, where there has been little justice and less mercy, there is no cause to condemn the treatment of the Rosenbergs. When persons accused of espionage and counter revolutionary activity in the Soviet zone are allowed to agitate and defend themselves, when independent counsel are permitted to defend them and attack the government, then the Communist movement will have grounds for criticism. But by the standards of law and justice in which we purport to believe the Rosenberg case will appear more plainly with the years to have been a shameful episode in cold war hysteria. The contrast with the treatment of the Fuchs and Allen Nunn May cases in England is not flattering to ourselves. It is still not clear just what the Rosenbergs did nor clear beyond a reasonable doubt that they did it.

Their composure was impressive, their conduct in the face of death heroic. They deserve a better tribute than the wild and irresponsible outpourings which marked their funeral. It will be more than a pity if a campaign to clear their name is carried on in the same mood. It will be a downright menace to the fight for peace and a saner world.

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JENNINGS PERRY'S PAGE

A Remarkable Faith Furnished Farmer's Wings

Less than 24 hours before Judge Kaufman summarily turned down his plea for a writ of habeas corpus for the Rosenbergs, styling him "intruder and interloper," my friend and neighbor Fyke Farmer sat in my study 1100 miles from New York explaining his necessity and cherishing his remarkable faith.

He had just sent off two wires. One to Dan Marshall in Los Angeles asking him to join him in the plea. Another to the Rosenbergs' attorneys in New York advising them that he would be in his hotel there after midnight. He had his packed briefcase and his plane reservation. What he did not have, three hours before plane time, was his fare or the means of meeting his hotel bill.

Farmer believes the Rosenbergs to be innocent. At that time, he believed also that Judge Kaufman would listen "fair-mindedly" to his grounds for staying the execution of the Rosenbergs. Only a few days previously he had been present as an observer when the Judge had denied the last defense plea for a rehearing and had been impressed by what he took to be the efforts of the bench to evoke a better presentation of the defense.

Farmer was unnoticed at that hearing. A Times reporter had spoken to him in the corridor; a *Herald-Tribune* man had asked him for some "background." His interest in the case was not considered important. For weeks, he had been trying to persuade the defense attorneys to take up his contention that the Rosenbergs had been illegally sentenced to death, but his points of law had not been pressed in court.

He had been compelled to interrupt the preparation of his own brief, which he was determined to file independently as a last resort, and return home for the wedding of his daughter. The trip had exhausted his funds. His unfinished brief remained in New York; he had unsuccessfully offered it to the Rosenbergs' lawyers. He could not pay the stenographer's fee . . .

The mockingbirds in the trees at my house sang excitedly as the day wore on and the air was refreshed by the coming evening. It was one hour till plane time. My friend's dark eyes kindled with anxiety. It was too late now to call the few people we knew in distant cities who "might help."

"These people ought not to die," Farmer protested, rising and pacing the narrow room. "They are innocent. But right now it is just a question of that—of keeping them from dying. Nobody really wants them to die."

I agreed with him that in all probability the members of the Supreme Court would welcome a presentation of the matter on a valid point of law that would be new in the case, whereby without abandoning any position already taken by the Court they might spare the Rosenbergs and square their own—and the national—conscience. I tried to share his conviction that there "must be a way" of reaching the court with his plea. But it was very late . . .

I have known Farmer for years, the humanity of his views, the headlong sincerity of his drives and the "reckless" optimism of his faith in the essential goodness and rationality of the race. His training is in law. He has no doubt but that in our moments of great resolve we have subscribed to compacts sufficient to bring peace and to insure individual liberties—if only, and simply, we will "just live up to our laws."

Three months ago he was aroused to the possibility of a miscarriage of justice in the Rosenberg case by a letter written by the wife of a member of the faculty at Fisk University. He procured a transcript of the case and studied it day and night. It appeared to him not only that these people were innocent of the crime charged but that their civil rights had been abrogated through the failure of defense counsel to point out fatal errors in their prosecution by the Government.

He had no hesitancy now about "intruding" in the case; he did not weigh decorum against his purpose. There was an effort on the side of justice to be made, and what did it matter that he was an outsider and unknown? What immediately mattered was that the court of first contest was hundreds of miles away, that he had a plane seat and no fare.

Unfortunately I could only wish him well. He left my house cheerfully, knowing where he was going but not how. "You may hear of me," he said. "I'll do my best." I do not yet know

We canvassed the corners where he might hope to obtain even $100. There seemed no real hope in any corner . . .

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