ARTICLES

ALGER HISS'S CAMPAIGN FOR VINDICATION

G. EDWARD WHITE

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INTRODUCTION

On March 12, 1951, Alger Hiss issued a statement to the press, saying, "I am proud of my 15 years of public service, and with a clear conscience I continue to look forward to the time of my vindication." He was about to begin a five-year prison sentence for two counts of perjury, based on jury findings that he had lied about the extent of his relationship with former Soviet intelligence agent Whittaker Chambers and falsely denied passing copies of stolen government documents to Chambers. Hiss's comment came after the failure of his last legal efforts to override his January, 1950 conviction for perjury, when the Supreme Court of the United States denied his petition for certiorari, clearing the way for Hiss to serve a five-year prison term.

After being released from prison in 1954 and publishing a defense of his innocence, *In the Court of Public Opinion*, Hiss found himself in a precarious position as the 1960s opened. An *Esquire* profile of Hiss by Brock Brower captured that position. When he emerged from prison, Brower noted, Hiss rejected the option of quietly disappearing and starting a new life in a remote location. He resolved to remain in the public eye, to frequent some of the same circles in which he had moved in his earlier public life, and to launch his campaign for vindication in those circles. The story Hiss chose to tell about himself and the case, however, was making little headway with the public.

Brower reported that Hiss's personal lawyer, Helen Buttenweiser, admitted that "there has been 'no ground gained' lately" in her search for new evidence that might exonerate Hiss. Moreover, Brower felt that Hiss's detailed compilation of the legal arguments for his innocence in *In the Court of Public Opinion* had bored, rather than convinced, its readership.

Brower may have been accurate in suggesting that at the close of the 1950s...

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2 ALGER HISS, IN THE COURT OF PUBLIC OPINION (1957) [hereinafter HISS, PUBLIC OPINION].


4 Id. at 142.

5 Id. at 140.

6 Id. at 142 (stating that "[t]hrough 424 pages, *In the Court of Public Opinion* grows steadily more wearisome").
most people continued to think that Hiss was guilty of perjury and espionage, and thus the choice for him lay between continuing to search for legal arguments to dispel that perception and confessing his guilt. Brower, however, failed to fully grasp the extent to which the relatively thin evidentiary base of the Hiss case, coupled with its notoriety, had made it a potentially rich ground for extralegal arguments, especially those centering on human motivation, political conspiracy, and the credibility of U.S. government agencies. Those arguments had already begun to surface in the 1950s, and it was on their basis that Alger Hiss was eventually able to propose another explanation for his perjury conviction, that he had been framed by his opponents for partisan reasons. Over time, that explanation fueled his campaign for vindication with considerable energy.

The April, 1976 issue of Harper’s featured an article by Philip Nobile, “The State of the Art of Alger Hiss.” Nobile had lunch with Hiss several months earlier and came to the conclusion that he “could hardly imagine” Hiss’s being a spy for the Soviets. “Even if one grants espionage in the service of a Thirties ally,” Nobile asked regarding Hiss, “what kind of monster would compromise his family and friends to save face?” At the lunch, Nobile found Hiss “[c]alm, rational, and strangely unembittered . . . . Surely he could not be one of history’s arch-deceivers.” Intrigued by “Hiss’s immutable stand,” Nobile “conducted an unscientific poll by letter and phone.” He asked “approximately 100 lawyers, journalists, and various intellectuals” whether they would “pronounce Alger Hiss guilty or innocent.”

The return from Nobile’s survey “approached 50 percent,” and “the new Hiss jury split down the middle.” Nobile concluded that “[r]easonable men differ on Alger Hiss, and they always will.” That conclusion was more revealing than the actual views of respondents to Nobile’s survey, many of whom had already expressed views on Hiss’s guilt or innocence. Nobile was

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7 *Id.* at 141.
8 *Id.* at 145.
10 *Id.* at 68.
11 *Id.*
12 *Id.* at 73.
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 Of those surveyed, Thomas Emerson, Abe Fortas, Lillian Hellman, Arthur Miller, Victor Navasky, and Charles Alan Wright had already indicated they thought Hiss innocent; William Buckley, Sidney Hook, Russell Kirk, Merle Miller, Norman Podhoretz, and Garry Wills had already indicated that they thought him guilty. James MacGregor Burns, Norman Cousins, Anthony Lewis, Norman Mailer, David Riesman, and C. Vann Woodward stated that they were “undecided” on the question of Hiss’s innocence. Ben Bradlee, McGeorge
able to declare, in a national magazine with a centrist liberal perspective, that opinions of Hiss’s guilt or innocence were now in equipoise. Twenty years earlier, no comparable survey could have reached the same conclusion. Moreover, Nobile’s central argument for Hiss’s innocence was not related to any new evidence, but rather on intuitive reactions to Hiss and those who had come to be identified as his enemies.

“Despite the verdict and the Supreme Court’s refusal to review,” Nobile said of the Hiss case, “reasonable doubt persisted with regard to Hiss’s guilt.”

He then listed some of the bases of that “reasonable doubt.” They included “[t]he bizarre personality of [Whittaker] Chambers,” “the perfervid interest of Richard Nixon,” and the fact that “[t]hough Hiss was in the left wing of the New Deal, he did not seem the traitorous sort.”

Even though Nobile admitted that he was “aware of evidence damaging to Hiss that was never introduced in court,” he concluded that he would “vote Hiss innocent.”

“My argument,” Nobile wrote,

turns on psychology. I cannot conceive of a sane person perpetuating a quarter-century of deceit, jeopardizing the welfare of family and the reputation of friends, in a doomed attempt to reverse what that person well knows to be the truth . . . . And Hiss is not crazy. Instead, he is serene. He says he has never done anything in his life that he is ashamed of. If this inner harmony is simply a routine repeated by a deranged player since 1948, then Hiss has deluded me and a large audience of fools.

This Article describes how Alger Hiss managed, over four decades, to enlist a considerable number of persons in his campaign for vindication. To understand how remarkable, in retrospect, Hiss’s campaign was, one needs a firm grasp of several related matters. One needs to become reacquainted with the issues that were contested in the Hiss perjury trials, and with evidence bearing on those issues that was not presented in court. One also needs to digest the body of evidence that has surfaced, between the 1930s and the present, on the question of whether Alger Hiss was an agent, during the 1930s and 1940s, for Soviet military intelligence. In addition, one needs to gain a sense of the changing climate of a segment of American public opinion, reflected by elite commentators, in which Hiss’s campaign for vindication gained momentum over two decades.

Finally, one is required to confront, and seek to explain, the core element that fueled Hiss’s campaign: his repeated, and unequivocal, protestations of his
innocence. From the time he was first publicly accused of committing espionage in the 1940s until his death in 1996, Hiss maintained that, far from being a Soviet agent, he was at no time in his life a member of the Communist Party or sympathetic to Soviet Communism. Moreover, Hiss invited others to examine the details of his life in the 1930s and 1940s, asserting that such examination might well produce evidence which would lead to his vindication. Numerous observers of Hiss’s career have asked why, if he were a Soviet agent, he would have so persistently invited others to search for evidence of innocence they could never find.

This Article takes up each of these related topics. It is intended not only as an exercise in penetrating the mind of Alger Hiss, but also as an effort to understand how Hiss, and his supporters, were able, without discovering any new evidence that pointed toward his exoneration, to transform his status from that of a virtual pariah in the 1950s to a figure, twenty years later, in whose innocence many Americans intuitively believed.

I. Hiss’s 1950 Perjury Conviction

Hiss’s January, 1950 conviction for perjury was based on statements he had made on December 15, 1948 to a federal grand jury in New York investigating charges of espionage activities by Communists in the United States government. The statements were in response to claims made by Whittaker Chambers, in two public sessions before the House Un-American Activities Committee (“HUAC”) in August, 1948, that between 1934 and 1937 he and Hiss had been members of the Communist Party and agents in an underground network whose primary purpose was to infiltrate the agencies of the United States government with persons committed to the ideology of international Communism.

After initially denying, before the same Committee, that he had known Chambers at all, Hiss eventually identified Chambers as “George Crosley,” a journalist he said he had met in Washington in 1934 or 1935 and had known casually until the end of 1936. Meanwhile, Chambers persisted in describing himself and Hiss as Communists and Soviet agents, while Hiss categorically denied being either. By August 25, it was clear that virtually all of Hiss’s and

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22 The summary of the events that led to Hiss’s conviction for perjury, set forth in the remainder of this introduction, rests on several archival and secondary sources. These include: Stenographer’s Minutes, United States v. Alger Hiss (1949) [hereinafter First Trial]; Transcript of Record, United States v. Alger Hiss (1950) [hereinafter Second Trial]; Hearings Regarding Communist Espionage in the U.S. Government: Hearing Before the Special Subcomm. of the House Comm. on Un-Am. Activities, 80th Cong. (1948) [hereinafter HUAC Hearings]; Whittaker Chambers, Executive Session Testimony, Dec. 6, 1948 [hereinafter HUAC Exec. Sess.]; WHITTAKER CHAMBERS, WITNESS 540-46, 559-674 (1952); WEINSTEIN, PERJURY (1997), supra note 1, at 4-48, 369-418; SAM TANENHAUS, WHITTAKER CHAMBERS: A BIOGRAPHY 216-78, 310-13, 355-60, 402-05 (1997). Specific references from those sources are subsequently footnoted.
Chambers’s testimony was contradictory.²³

Hiss then challenged Chambers to repeat his charges in a setting in which he would not be privileged against a slander suit,²⁴ and Chambers responded by stating, on an August 27 radio program, *Meet the Press*, “Alger Hiss was a Communist and may be now.”²⁵ A month later, Hiss sued Chambers for libel. On November 17, in the course of responding to pre-trial discovery requests in the libel suit, Chambers, who had testified that October before the New York grand jury that he had no evidence that Hiss had committed espionage, produced a battery of documents, including sixty-five pages of typed copies of State Department papers, four sheets of memoranda handwritten by Hiss, and three rolls of microfilm. Chambers identified the material as copies of stolen government papers dated between January and April 1, 1938. He indicated that he had obtained nearly all of the material from Hiss. He then for the first time claimed that the network with which he and Hiss had been associated had been engaged in espionage.²⁶

Chambers traced his possession of comparatively large numbers of typed copies of documents allegedly stolen by Hiss, as well as some of Hiss’s handwritten memos, to a change in the procedure employed by the undercover network to which he and Hiss allegedly belonged. In the fall of 1936, after Hiss had joined the State Department, he began to have access to larger numbers of documents in which the Soviets had an interest. Previously, Hiss had brought home, about every seven to ten days, a briefcase of stolen government documents to give to Chambers, who would arrange to have the documents photographed and the originals returned to Hiss on the same day. By 1937, the Soviet handlers of the network had concluded that the number of potentially valuable documents to which Hiss might have had access justified his bringing home stolen documents on a daily basis. In order to allow Hiss to bring home more documents, but to avoid his having to retain them until he could give them to Chambers to be photographed, Hiss was instructed to retype or produce typed summaries of the documents he brought home, to return the originals to his office the next day, and then, when he met with Chambers, to give Chambers several days’ worth of typed copies. The handlers instructed Chambers to have those copies photographed, to deliver the photographs to the Soviets, and to destroy Hiss’s copies.²⁷

Chambers testified that, in the months between January and March, 1938,

²³ *See Weinstein, Perjury* (1997), *supra* note 1, at 39 (“[HUAC] Chairman [J. Parnell] Thomas . . . pointedly observ[ed]: As a result of this hearing, certainly one of these witnesses will be tried for perjury.” (internal quotation omitted)).

²⁴ *Id.* at 33.

²⁵ *Id.* at 52.

²⁶ *Id.* at 153-54.

²⁷ Chambers’s most complete description of the change in network protocol that resulted in Hiss’s producing typed copies of stolen documents, and the reasons for the change, appeared in his 1952 autobiography. CHAMBERS, *supra* note 22, at 428-29.
he began to retain the typed copies of stolen documents Hiss and other agents procured for him (as well as Hiss's handwritten summaries and some microfilm copies of original documents), instead of destroying them after he had them photographed for the Soviets. He did so as part of a plan, begun in the fall of 1937, to break with the Soviet intelligence network and denounce Communist influence in the U.S. government. In his testimony at Hiss's perjury trials, Chambers dated his break with the Soviets at the middle of April, 1938.

In the course of producing the typed copies of documents and the microfilm he had salvaged, Chambers acknowledged that the previous testimony he had given to the grand jury, in which he had stated that he had no evidence that Hiss or any government employee had committed espionage, had been false. He had originally hoped to do as little damage as possible to his former associates in the spy ring, he said, but under the pressure of the Hiss libel suit, and a possible indictment for perjury should that suit succeed, he had been forced to produce what the press came to call the "Pumpkin Papers," a reference to Chambers's having temporarily secreted the microfilm rolls he retained in a hollowed-out pumpkin on his Westminster, Maryland, farm.28

Chambers’s production of the “Pumpkin Papers” changed the dynamics of an episode whose true explanation seemed to rest on which of two persons, who had given incompatible testimony about matters neither could corroborate, was to be believed. Reacting to Chambers’s evidence, the federal grand jury in New York summoned Hiss the last day before their adjournment, asked him whether he had ever given government documents to Chambers, and asked him to confirm his previous public statements that he had not had any contact with Chambers after sometime in 1936, when Hiss said he had seen “George Crosley” for the last time. After Hiss denied having given Chambers government documents, and affirmed that he had no contact with Chambers after 1936, the grand jury indicted him on two counts of perjury.29 Hiss’s

28 First Trial, supra note 22, at 136-38, 219-27.
29 Hiss was not charged with espionage because the statute of limitations on that crime had expired. The indictment against Hiss stated that he had lied about passing stolen government documents to Chambers in 1938. The relevant espionage statutes at the time of Hiss’s indictment are currently codified at 18 U.S.C. §§ 794, 3281, 3282 (2000). Section 794 provides that unlawfully disclosing information affecting national defense to a foreign government is punishable by imprisonment for not more than twenty years, but, if the offense occurred in time of war, the punishment was death or not more than thirty years. Section 3281 provides that no limitations period applies to offenses punishable by death. Section 3282, prior to its amendment in 1954, provided a three-year limitations period for non-capital offenses.

On the evidence available in 1948, any espionage that Hiss committed occurred before the United States entered the war, and therefore any charges under Section 794 were non-capital and the three-year limitations period of Section 3282 controlled. In order for Hiss to have been indicted for espionage, then, the government would have had to produce proof that he disclosed information affecting national defense to the Soviet Union between 1941
eventual conviction for perjury in a second trial (his first trial had ended with the jury unable to render a unanimous verdict) rested on his inability to disassociate himself from the incriminating documents Chambers produced or to convincingly rebut testimony which suggested that he knew Chambers far better and over a more extended time frame than he claimed. The most damaging evidence in the “Pumpkin Papers” consisted of the retyped copies of State Department documents that Chambers said he received from Hiss. Chambers’s assertion that Hiss had been the primary source of those copies was strengthened by additional evidence that suggested that the two men’s relationship had been a close one.

The copies of the typed government documents Chambers produced had a distinctive typeface. The prosecution in the Hiss case compared that typeface with copies of a letter Priscilla Hiss, Alger’s wife, had written to the University of Maryland in 1937, a report she had prepared for the Bryn Mawr Alumnae Association that same year, and a memorandum she had prepared in connection with her son Timothy’s application to a boarding school in 1936. Experts for both sides agreed that the same typewriter produced the Hiss family materials and the documents produced by Chambers.

Hiss never credibly explained how Whittaker Chambers came to possess State Department documents typed on the same typewriter as Hiss family correspondence. Although Hiss managed to raise doubts about whether a Woodstock typewriter—the type once owned by the Hisses and eventually found and produced by the Hiss defense—was the actual machine on which the documents had been typed, that uncertainty was not a great help to him. Some typewriter on which Hiss family correspondence had been typed in 1936 and 1937 was the same machine that had typed the copies of the government documents Chambers produced. To counter this difficulty, Hiss was forced to claim, at the time of his trials, that although the documents had been typed on a Hiss family typewriter, Chambers himself, or some confederate, had typed them. “I am confident that in the future,” Hiss said before being sentenced, “the full facts of how Whittaker Chambers was able to carry out forgery by typewriter will be disclosed.”

Not only was there no evidence supporting that claim, it raised the question of why Chambers would have had access to a Hiss family typewriter if he and Hiss barely knew each other.

Elsewhere in the Hiss trials Chambers had given additional pieces of evidence suggesting that he and Hiss had been close friends and that their friendship had extended beyond 1936. In support of each of Chambers’s claims, the prosecution introduced witnesses or evidence supporting

and 1945. Hiss probably disclosed such information to the Soviets during World War II. See infra Part II.B. Evidence that he did so, however, did not become available until the 1990s.

30 Hiss made the statement on January 25, 1950, before being sentenced by Judge Henry Goddard to five years in a federal prison. Hiss’s statement was reported on page 1 in the Baltimore Sun, January 26, 1950.
Chambers’s testimony, and Hiss’s efforts to refute it were, on the whole, not particularly credible. The cumulative effect of this testimony was to create an impression of Hiss as being evasive about his connections with Chambers, which reinforced the supposition that he was also being evasive about the time frame in which he and Chambers had been close acquaintances.

The perception of the comparative candor of Chambers and Hiss about their past relationship may have been as damaging to Hiss as the evidence that some

31 Three pieces of testimony were particularly damaging to Hiss’s case. Chambers said that in the summer of 1936, Hiss, after buying a second car, had proposed to give his other car, a Ford roadster that Chambers had occasionally used, to the American Communist Party. Hiss denied this, and claimed that he had given the car to Chambers in connection with “George Crosley’s” subletting an apartment from Hiss. The prosecution produced a certificate of title, signed by Hiss and notarized by a fellow employee of the Justice Department, by which Hiss assigned the car to the Chernor Motor Company, and the Company reassigned the car to William Rosen, both on July 23, 1936. The Chernor Motor Company’s invoices for that date revealed no evidence of the transaction, and Rosen, asked at Hiss’s second trial whether he had been a member of the Communist Party in 1936 and whether he had any connection with the car, pleaded the Fifth Amendment’s self-incrimination clause.

Chambers also said that in late 1936 Boris Bykov, the Soviet handler of the military intelligence network for which he and Hiss worked, gave him money to buy Oriental rugs for Hiss and three other Washington-based agents as gratitude for their services. Chambers gave details of the transactions by which the rugs were bought and produced a witness, Columbia University Professor Meyer Schapiro, who helped him buy the rugs. A shipping form for the rugs, dated December 29, 1936 and bearing Schapiro’s name and New York address, was introduced at trial. One of the rugs matched the description of a rug owned by the Hisses. Chambers said that he received the rug from a Washington contact, to whom Schapiro had sent it, and passed it on to Hiss. Hiss admitted receiving a rug from Chambers, explaining that it was in part payment for rent in the subleased apartment. The date of the shipping form suggested that even if Hiss’s explanation for how he received the rug was accurate (which was inconsistent with Chambers’s statement that he had left the subleased apartment in the spring of 1935), he had been in contact with Chambers at least until early 1937.

Finally, Chambers offered evidence that he and Hiss had a close relationship as late as November, 1937, when he claimed the Hisses had loaned him $400 to buy a car. The prosecution was able to show that Chambers had bought the car for $486.75 on November 23, 1937, and that four days earlier the Hisses had withdrawn $400 from their joint savings account. Hiss’s version of the events—that the transactions were coincidental, and that he had withdrawn the money to buy furniture for a new house—was weakened by evidence that he had not signed a lease on any house at the time, that the Hisses had existing checking and charge accounts for furniture purchases, and that Hiss could produce no cash receipts for the furniture. Thus, if the jury believed Chambers’s account of the car purchase, they also were far more likely to accept Chambers’s claim that he and Hiss were still in close contact until Chambers broke from the party, rather than Hiss’s claim that they had lost contact some time in 1936.

of the “Pumpkin Papers” documents had been typed on a Hiss family typewriter. It may well have helped Chambers get over the most difficult hurdle he faced in tying Hiss to the “Pumpkin Papers” documents. Three times before the commencement of the Hiss trials, Chambers had testified to the FBI\footnote{The first interview occurred on May 13, 1942. Weinstein, Perjury (1997), supra note 1, at 302-03. Raymond Murphy, the FBI agent who interviewed Chambers on March 20, 1945, testified at Hiss’s second trial. See 6 Second Trial, supra note 22, at 3323.} and to the House Un-American Activities Committee\footnote{Chambers offered this testimony in his first appearance before the Committee, on August 3, 1948. See HUAC Hearings, supra note 22, at 565 (“In 1937... I resolved to break with the Communist Party.”); see also Chambers, supra note 22, at 546 (“I supposed... that I had... broken with the Communist Party in 1937. I soon realized that date was wrong.”).} that he broke with the Soviets at the end of 1937. At Hiss’s trials, after producing the “Pumpkin Papers” in November, 1948, however, Chambers testified that he broke with the Soviets later, in the middle of April, 1938.\footnote{1 Second Trial, supra note 22, at 260.} All of the “Pumpkin Papers” documents covered a time frame between January and the 1st of April, 1938, and therefore Chambers would have been hard pressed to explain how he could have originally gotten those documents from Hiss if he were no longer working for Soviet intelligence.

At the trials, confronted with the discrepancy in his dates for breaking with the Soviets, Chambers stated that his memory had not been accurate in his earlier testimony. He was not able to produce any independent evidence corroborating that he broke with the Soviets in April, and it seems unlikely that he would have not remembered the precise time of so dramatic a turn in his life.\footnote{In appealing his conviction, Hiss made the argument that Chambers’s earlier testimony that he had defected from the Soviets at the end of 1937 had been accurate, so that he would not have received any stolen documents from Hiss in early 1938. See Brief for Appellant at 43-44, Hiss v. United States, 185 F.2d 822 (1950). The Court of Appeals dismissed this argument, citing evidence Chambers had produced that he had met with Hiss in the spring of 1938. 185 F.2d at 830-31. Moreover, Chambers had taken a job translating a manuscript for Oxford University Press by March 4, 1938, but he claimed that he had put work on that manuscript aside in order to make preparations to move to Florida in April to evade the Soviets. He was able to show that utilities in his Maryland apartment were cut off on April 9. He also produced one set of government documents, State Department cables, dated April 1, 1938. Although none of this evidence demonstrated that Chambers was still an active agent in early 1938, it did suggest that he was still living at an address known to his Soviet handlers, and also raised the question of how he could otherwise have obtained State Department cables, which he was not authorized to possess, in that time period. See 9 Second Trial, supra note 22, at 3629-30.} A more plausible scenario is that Chambers, for his own reasons, had previously wanted to convey the impression that he had broken from the Party earlier than he had. He had not been fully candid in other testimony to the FBI and the HUAC, concealing, for example, that he knew the identities of
American government officials who had engaged in espionage for the Soviets. When he resolved to produce the “Pumpkin Papers” documents, the dates on those documents indicated that he must have received them in the first months of 1938. Consequently he constructed a date of the “middle of April” to break with the Soviets, about the earliest possible date he could have fixed that would have allowed him to still receive documents in the “Pumpkin Papers” collection.36

Chambers’s apparent lapse of memory about the date he broke with the Soviets appeared less troublesome to his credibility, however, because it emerged in a context in which he had repeatedly given specific testimony, corroborated by the “Pumpkin Papers” documents, about his relations with both Hiss and the Soviet intelligence network, and in which Hiss’s conflicting testimony had been far more vague. Hiss was never able to surmount the credibility gap between Chambers’s version of their joint past and his more evasive version. As the jury became convinced that Hiss knew Chambers far better than he claimed, it also began to believe that he had remained acquaintances with Chambers far longer than he claimed. Those conclusions made it far easier to believe Chambers’s claims that Hiss had passed documents to Chambers.

Notwithstanding the corroborating evidence Chambers produced to buttress his account, Alger Hiss’s conviction rested primarily on the jury’s being persuaded that Chambers, despite the disreputable aspects of his past, his unattractive appearance, and his unprepossessing manner, was a more creditable witness than the attractive, polished, confident figure that Alger Hiss

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36 In Witness, Chambers recalled that when he resolved to break with the Soviets he prepared a “life preserver, in the form of copies of official documents stolen by the apparatus” and “secreted copies of Government documents copied in the Hiss household” as part of his collection. CHAMBERS, supra note 22, at 40-41. Before breaking with his network and leaving Baltimore for Florida, Chambers had instructed an intimate friend, Ludwig Lore, to place the documents in a bank vault in Baltimore. After returning from Florida in the fall of 1938, he retrieved the documents from Lore and gave them to his wife Esther’s nephew, Nathan Levine, an attorney who lived in Brooklyn. He told Levine to keep the package for him, and to give it to Esther should something happen to him. For more details on Chambers’s transactions with Lore and Levine in 1938, see TANENHAUS, supra note 22, at 144 (citing an interview with Lore’s widow in the Hiss Defense Files and Nathan Levine’s testimony before the HUAC in 1948).

In November 1948, Chambers wrote in Witness, he visited Levine to retrieve the “life preserver.” It turned out to contain many more papers than he had anticipated. At that point, according to Chambers, he realized for the first time that he had evidence of Hiss’s espionage. CHAMBERS, supra note 22, at 736-37.

If Chambers’s account of his preparation of the “life preserver” is accurate, he may not have been aware of the precise documents he had preserved, and thus may not have realized, until he saw them again in November, 1948, that they covered a span of time between January and April 1, 1938. At this point he realized that would have to revise the date at which he defected from the Soviets.
The ambiguities of the Hiss case began in the relative thinness of corroborating evidence and the contrasting personas of its chief protagonists. As Hiss continued to profess his innocence in the years after his conviction, he was greatly advantaged by the fact that for many the Hiss case seemed to be all about the comparative credibility, and worth, of himself and Whittaker Chambers. Over time, however, a great deal more evidence supporting Chambers's claims, and incriminating Hiss, came to light.

II. HISS AS SOVIET AGENT

The evidence supporting the conclusion that Alger Hiss was an agent of the GRU, the department of the General Staff of the Soviet Army concerned with military intelligence, can be grouped into three sets. The first set, Chambers's "Pumpkin Papers" and other information supplied by Chambers and the prosecution at Hiss's trials, suggested that Chambers and Hiss had a close friendship of long duration during the years that Chambers admitted to being an agent for the Soviets. That set of information, which was the centerpiece of the trials, has naturally received the most attention from commentators on the Hiss case. That information consisted of a comparatively small amount of incriminating evidence, and because much of that evidence was corroborated only by Chambers and denied by Hiss, an assessment of its veracity seemed to require, above all, a comparative assessment of Chambers's and Hiss's credibility.

The framework of the Hiss trials not only served to overemphasize that set of evidence, it served to downplay the significance of the two other sets of evidence, both of which, taken cumulatively, are far more damaging to Hiss than the set most commonly identified with the Hiss case. One set contained additional evidence that Hiss was a Soviet agent. The U.S. government possessed this set of documents but did not disclose them when Hiss was indicted for perjury. The evidence did not come to light either because of its sensitive nature or because its relevance to the precise legal questions raised by Hiss's perjury indictment—whether he knew Chambers later than 1937 and whether he had passed Chambers stolen government documents—was marginal.

37 Soviet intelligence agencies in the 1930s and 1940s had a variety of names, and had changing relationships with one another. For a summary of the changing face of Soviet intelligence in that period, see David J. Dallin, Soviet Espionage 1-9 (1955). For present purposes, it is only necessary to distinguish between two agencies, the NKVD (Narodnyi Komissariat Gosudarstvennoi Bezopasnosti, or People's Commissariat for State Security) and the GRU (Glavnoye Razvedyvatelnoye Upravlenie, or Chief Intelligence Administration). The NKVD was concerned with civilian intelligence in both domestic and foreign relations. Most of its functions were performed, after 1954, by the KGB (Komitet Gosudarstvennoi Bezopasnosti, or Committee for State Security), the more familiar acronym for Americans. The GRU, originally a department of the General Staff of the Army, was concerned with military intelligence. Id. at 3-4. For the purposes of this Article, the names NKVD and GRU will be used to represent the two agencies.
The third set of evidence was not introduced for quite different reasons. Until recently, it was known of only by persons in the intelligence services of the United States and the Soviet Union. It was assembled over a period of time—stretching from the 1930s through the early 1990s—in which the policies of the U.S. and Soviet intelligence services were conducted in a framework of mutual antagonism and international enmity. Consistent with that framework, the intelligence agencies of the Soviet Union and the United States made it their business, for much of the twentieth century, to collect as much confidential information as possible about the intelligence operations of their rivals and to take pains to conceal that information from virtually everyone else, including other agencies of their respective governments. As the Soviet Union became fractured and ultimately disintegrated in the early 1990s, more information from the Soviet intelligence community and its archives found its way to the West, including evidence contained in memoirs produced by former NKVD officials. At the same time, the United States Army declassified an intelligence-gathering project directed at the Soviets that had begun in World War II, when it had temporarily broken the codes of Soviet intelligence operatives in the United States. Those sources revealed a good deal more information about the activities of Hiss as an agent for Soviet military intelligence.

A. Undisclosed Incriminating Evidence Before Hiss's Trials

The first set of ancillary evidence incriminating Hiss consisted of information that came to light between 1939 and December, 1946, when Hiss left the State Department to accept the presidency of the Carnegie Endowment for International Peace. In that period, several accusations that Hiss was a Communist, or a Soviet agent, were communicated to U.S. government officials. Chambers was the source of some of those charges, but not all of them.

In September, 1939, in his first effort to disclose information about his past connections with the Soviets to government authorities, Chambers met with Adolf Berle, then an Assistant Secretary of State concerned with internal security. He named Alger, Donald, and Priscilla Hiss on a list of persons he identified as underground espionage agents. Chambers identified himself only as “Carl,” and asked for immunity from prosecution for his own espionage activity. Berle indicated that he would convey Chambers’s information directly to President Roosevelt, but declined to commit himself on the immunity question. He made extensive notes on the conversation with Chambers, which took place in the company of Issac Don Levine, a journalist whom Chambers had taken into his confidence. Very little came of the interview. Berle, who noted in his diary that he expected “more of this kind of

38 See ADOLF A. BERLE, NAVIGATING THE RAPIDS 1918-1971, at 249-50 (Beatrice Bishop Berle & Travis Beal Jacobs eds., 1973); CHAMBERS, supra note 22, at 463-70; ISAAC DON LEVINE, EYEWITNESS TO HISTORY 193-95 (1973).
thing” in the wake of the 1939 Nazi-Soviet pact and the outbreak of World War II, did not succeed in getting Roosevelt or anyone else to take the charges seriously. He did not make any additional inquiries about Alger Hiss for two years after the interview, and did not show the FBI a copy of his notes until 1943, when it requested a copy after an interview with Chambers. In 1948 testimony before HUAC, Berle did not produce his notes, and recalled that “Carl” had primarily talked about Communist efforts to “develop a group of sympathizers” in U.S. government agencies.

In February, 1942, an FBI agent interviewed Hiss, questioning him about a charge made to the House Un-American Activities Committee that Hiss was on a list of “Communist sympathizers” employed by the federal government. The basis for the charge was Hiss’s purported membership in the Washington Committee for Democratic Action, which HUAC characterized as a radical group. Hiss denied, correctly, belonging to the group (Priscilla Hiss had briefly been a member), and also denied being a member of the Communist Party. The FBI did not follow up on the matter. The FBI also interviewed Chambers that year, acting upon a tip that Chambers was a former Soviet agent “who has more material than you could ever hope to get by running around for a year.”

In that interview, Chambers, then an employee of Time magazine, repeated most of the information he had given to Berle in 1939 and asked the agents if they had a copy of Berle’s notes from the interview. They did not—eventually the FBI requested a copy and received it in 1943—and Chambers, who had never received any assurances from Berle that he would be immune from prosecution, became cautious. He minimized his role in Soviet espionage and did not accuse Alger or Donald Hiss of committing it, although he named them as Soviet agents. His interview was sufficiently unimpressive that J. Edgar Hoover decided that Chambers’s material was essentially “history, hypothesis, or deduction.”

After a three-year interval in which Hiss was not investigated further, suspicions about his affiliations began to surface again in 1945. In March of that year, Raymond Murphy, a State Department security officer, apparently concluding that rumors about Hiss’s Communist connections needed to be

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39 BERLE, supra note 38, at 250 (Diary entry dated Sept. 4, 1939).
40 HUAC Hearings, supra note 22, at 1291-1300 (testimony of Adolf Berle, former Assistant Secretary of State). Berle’s effort to follow up about Hiss was limited to two conversations with Dean Acheson and Felix Frankfurter, the first of which took place in 1941. Id. at 1294-95.
41 WEINSTEIN, PERJURY (1997), supra note 1, at 312 (quoting Statement of Alger Hiss (Feb. 14, 1942)).
42 The tip was from Ludwig Lore, the former member of the Communist party to whom Chambers had confided his intention to defect in 1937. See id. at 282, 302.
43 The FBI interview with Chambers took place on May 13, 1942. A May 14, 1942 report of the interview contained Hoover’s comments. See id. at 303 (summarizing the FBI report concerning the Chambers interview).
ALGER HISS'S CAMPAIGN FOR VINDICATION

investigated in light of Hiss's increased prominence in the government, interviewed Chambers. Murphy had become aware of Chambers's statements about Hiss to the FBI in 1942, and to Berle in 1939, but the FBI had not given the State Department access to those statements. Chambers now repeated his accusations about Hiss to Murphy, naming Hiss as a "top leader" of the Communist Party underground in the 1930s. Murphy circulated a memorandum of his conversation with Chambers, and made it the basis of a March 26, 1945, report on Hiss. In the same time period the FBI revived its interest in Hiss, sending the State Department copies of its 1942 interview with Hiss and Berle's notes, and scheduling a May 10, 1945 interview with Chambers. This time Chambers provided more detail about Hiss, and the FBI interviewers produced a lengthy report, which eventually was circulated to J. Edgar Hoover and the State Department.

By the summer of 1945, both the FBI and internal security officers at the State Department were growing increasingly concerned about Hiss's affiliations, despite the fact that Chambers remained the sole documented source of charges about Hiss. Then, in the late summer and fall of 1945, Hiss was identified as a Soviet agent by two other sources. One was Elizabeth Bentley, a former courier for an American-based political intelligence network organized by the NKVD, who, in the course of defecting from the Soviets, began supplying information to the FBI in August, 1945. In November, 1945, Bentley reported to FBI interviewers that Harold Glasser, an agent in her network, had been "taken away" from it and assigned to another network by "some American in some governmental agency." On making further inquiries about the incident, Bentley said, she learned that the person who had transferred Glasser "was named Hiss and that he was in the U.S. State Department.

At around the same time, the FBI interviewed Igor Gouzenko, a clerk in the Soviet Embassy in Ottawa, Canada, who defected to the Canadian authorities in September, 1945. Gouzenko took with him a number of documents that established the existence of a large Soviet military intelligence network in Canada. Gouzenko told the FBI that he learned from a Canadian-based Soviet military intelligence officer that "the Soviets had an agent in the United States

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44 By 1945 Hiss had become an assistant to Secretary of State Edward Stettinius, had attended the Yalta Conference, and, in March of that year, had been selected as Temporary Secretary-General of the San Francisco conference charged with establishing the United Nations. See id. at 307, 311-13.

45 Murphy's notes on his interview, which took place on March 20, 1945, were introduced at Hiss's second trial. See 6 Second Trial, supra note 22, at 3323.

46 See WEINSTEIN, PERJURY (1997), supra note 1, at 308 (describing the March 26, 1945 report). The report, unsigned but probably prepared by Murphy, was found by Allen Weinstein in FBI files.

47 See id. (citing FBI Files).

in May 1945 who was an assistant to the then Secretary of State, Edward R. Smettenius.49 Hiss was Smettenius's assistant at that time.50

After becoming aware of the Bentley and Gouzenko statements about Hiss, the FBI concluded that he was a security risk. The Bureau submitted a report on “Soviet Espionage in the United States” to President Harry S. Truman in November, 1945, in which it identified Hiss as a possible Soviet agent.51 Hoover supplied summaries of the report to James Byrnes, the Secretary of State, and to Tom C. Clark, the Attorney General. At the same time he asked Clark for authority to install surveillance devices in the Hisses's home and received it.52 Thus began a period, which ended with Hiss’s resignation from the State Department in December, 1946, in which the FBI and State Department concluded that Hiss’s future career as a government official needed to be derailed, but struggled about how to terminate him from the State Department, or even to use the incriminating evidence (all of it hearsay) that had accumulated against him.53

By the spring of 1946, in response to the FBI’s information, Secretary of State Byrnes had resolved to place Hiss on a “pending list” of State Department employees, which meant that he was to be given no further consideration for promotion, and that he might be summarily dismissed if such a decision were compatible with Civil Service regulations.54 The FBI was informed of Byrnes’s decision, and Hoover indicated to Clark that he did not recommend using the evidence about Hiss in a Civil Service dismissal hearing.55 The most incriminating evidence about Hiss, Hoover believed, came from Chambers, Bentley, and Gouzenko, and intelligence considerations cautioned against revealing it. Other evidence was inconsequential. Hoover and Byrnes concluded that Byrnes should inform Hiss that sources in Congress were suggesting that he had Communist affiliations, and that he should schedule an interview with the FBI to clear himself. Hiss asked for an interview with Hoover on March 25, 1946, and was given one with D.M. Ladd, the FBI’s Assistant Director.56

49 WEINSTEIN, PERJURY (1997), supra note 1, at 316 (quoting Summary Report, Soviet Espionage in the United States, at 67 (Nov. 27, 1945)).
50 See supra note 44.
51 See WEINSTEIN, PERJURY (1997), supra note 1, at 16, 17, 66-67 (citing Summary Report, Soviet Espionage in the United States, at 67 (Nov. 27, 1945)).
52 Id.
53 Id. at 316-17 (describing Hiss’s ineligibility for further advancement and the dilemmas faced by FBI and State Department officials).
54 Id.
55 Id. at 317-18.
56 Hoover’s discussions with Byrnes and Clark about Hiss were summarized in an FBI document, “Summary Report, December 10, 1948,” which Hoover prepared after Chambers produced the “Pumpkin Papers.” The document was clearly an effort to establish that Hoover had taken pains to warn officials in the government about Hiss in 1945 and 1946. It also demonstrates that Hoover, Byrnes, and Clark were aware of the difficulties in
In that interview, Hiss denied being a Communist and taking pro-Soviet positions on postwar governance issues. Ladd did not mention any information about Hiss that the FBI had received from Chambers, Bentley, or Gouzenko. Hiss may have been reassured by the interview, but from March, 1946 on the State Department, although stopping short of attempting to terminate him, engaged in a close scrutiny of his activities and a concerted effort to limit his access to sensitive materials. In two March, 1946 memos, a State Department internal security officer told his superior about the information that Chambers, Bentley, and Gouzenko had given to the FBI, and he recommended that Hiss be fired. Although no action was taken, the State Department monitored Hiss’s desk calendar and restricted his clearance to obtain confidential documents.

Meanwhile, the FBI wiretapped Hiss’s home and office phones and checked his business appointments. Hoover also leaked his general suspicions about Hiss to some members of Congress, who asked Byrnes, in July, 1946, about rumors that Hiss and some other employees of the State Department had had adverse security reports. In a July 26 press conference, Byrnes gave a general defense of Hiss but did not mention the security probes currently underway.

In August, Raymond Murphy interviewed Chambers a second time, and throughout the summer and fall Hoover continued to circulate negative information about Hiss to Byrnes, Clark, and President Truman. Eventually, on the advice of his close friend, Under Secretary of State Dean Acheson, Hiss decided to resign from the State Department in December, 1946.

producing confidential, but hearsay evidence against Hiss in a public setting. See WEINSTEIN, PERJURY (1997), supra note 1, at 317-18, 328 (quoting and discussing J. Edgar Hoover, Summary Report (Dec. 10, 1948)).

57 See id. at 318 (citing and discussing Memorandum from D.A. Ladd to J. Edgar Hoover (Mar. 26, 1945)).

58 Id. at 319 (quoting and discussing Memorandum from Robert Bannermann to Donald Russell (Mar. 22, 1946)); id. at 323 (quoting and discussing Memorandum from Robert Bannermann to Donald Russell (Mar. 26, 1946)).

59 Id. at 324 (citing various memoranda in State Department files from May, 1946 through October, 1946).

60 The FBI concluded that some of Hiss’s visitors were persons Elizabeth Bentley had identified as Soviet agents. See id. at 323 (quoting and discussing Memorandum from D.A. Ladd to J. Edgar Hoover (Jan. 28, 1949) (summarizing FBI surveillance of Hiss’s office in 1946 and referring to one person on Bentley’s list, Michael Greenberg, as having asked Hiss to get him a job with the United Nations)).

61 Id. at 324 (quoting and discussing Memorandum, Excerpts from Secretary Byrnes’ Press Conference (July 26, 1946)).

62 6 Second Trial, supra note 22, at 3323.

63 WEINSTEIN, PERJURY (1997), supra note 1, at 317-18, 328 (quoting and discussing J. Edgar Hoover, Summary Report (Dec. 10, 1948)).

64 On October 11, 1945, J. Edgar Hoover had a meeting with Dean Acheson in which he identified Hiss as meeting the description of the highly placed Soviet agent in the State
Thus, at the time Hiss's first trial for perjury opened on May 31, 1949, a number of government officials knew a good deal about Alger Hiss's connections to Soviet intelligence. Not much of what the FBI and State Department had learned, however, came to light during Hiss's first trial. In August, 1948, Adolf Berle had given a version of his September, 1939 meeting with Chambers and Levine to the House Un-American Activities Committee that was far less concrete than the notes he took after that meeting, and he was not called as a witness, nor were his notes introduced. The prosecution also declined to call any FBI or State Department personnel who had interviewed Chambers or Hiss, or produce memoranda about Hiss as a security risk. Nor were any of those internal memos introduced. The Gouzenko and Bentley defections, with their attendant charges about Hiss, were not mentioned.

At Hiss's second trial, the prosecution introduced the FBI's copy of Berle's notes and Raymond Murphy's 1945 and 1946 memoranda on Hiss. Its purpose in doing so was not to suggest that government agencies had become suspicious of Hiss, but to buttress Chambers's credibility by demonstrating that he had named Hiss as a Communist sympathizer on a number of occasions, stretching back to 1939. The prosecution's strategy underscored the fact that no agency of the United States government had strong incentives to reveal any concerns it might have had about Hiss before his perjury indictment. Much of the information that had sparked those concerns had come from defecting Soviet agents, whose identities the FBI and the State Department did not want to disclose, or from internal government sources. This raised the question why, if Hiss had been identified as a security risk, he had remained in high-level positions in the government from 1939 through 1946.

The fact that additional information incriminating Hiss was presented only sparingly at his trials resulted in their being cast in a form in which Chambers

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65 HUAC Hearings, supra note 22, at 1291-1300 (testimony of Adolf Berle).
was featured as Hiss’s chief accuser, and attention was drawn to the irreconcilable testimony of the two men. In fact, by the time Hiss was indicted, Chambers was only one of a number of persons who had supplied information identifying Alger Hiss with undercover espionage on behalf of the Soviet Union.

Disclosing much of that information in the Hiss trials was not something those who possessed it were necessarily willing or able to do. An illustration was a 1948 story about Hiss told by Hedda Gumperz, known in the United States by her married name, Hede Massing, who had been an American-based agent for the NKVD since 1934, and had defected in 1937, fearing for her and her husband Paul Massing’s safety. In 1948, Hede Massing informed the FBI that she and Alger Hiss had both attempted, in 1935, to recruit a State Department employee, Noel Field, for separate Soviet espionage networks. Massing described a conversation she and Hiss had about Field at a Washington dinner party, in which they acknowledged being in friendly competition for Field’s services. Field had himself been named as a Soviet agent by Chambers in his 1939 interview with Berle. Massing’s story presented an opportunity for the prosecution in the Hiss trials to introduce a witness who could corroborate Chambers’s statements about undercover Soviet espionage networks in the 1930s, and who could identify Hiss as being a participant in those networks.

Massing was not allowed to testify at Hiss’s first trial. When the prosecution proposed her as a witness, the defense objected on the ground that since she could not shed any information on whether Hiss had known Chambers or conveyed stolen documents to him, her testimony about any contacts she might have had with Hiss would likely prejudice the jury. Judge Samuel Kaufman agreed. At Hiss’s second trial, however, Judge Henry Goddard gave greater latitude to the prosecution and defense to call “background” witnesses, and Massing repeated the story she had told to the FBI. Hiss, although he admitted knowing Field, denied that he had any knowledge that Field was involved in Communist activities in the 1930s. Massing’s story may have carried more weight with the jury because Field’s sudden departure to Czechoslovakia, a few weeks before the second Hiss trial opened, was public knowledge. It had an air of cocktail party gossip, however, and Massing provided no details about why Hiss might have been interested in recruiting Field.

B. Subsequent Incriminating Evidence

The story that Hede Massing told about Hiss and Field, however, was not only true, but it was also the tip of an iceberg of evidence suggesting that Hiss was a Soviet agent. Beginning in the late 1980s, as the Soviet Union began to disintegrate, information about Hiss from NKVD (KGB) archives began to find its way into the hands of Western journalists and scholars. Some of the information corroborated evidence about Hiss that was either inadmissible or could only be treated as speculation at the time of his trials. Massing’s story
about Hiss and Field, for example, was confirmed, fifty years after she told it at Hiss’s second trial, by a number of documents in NKVD archives.\(^6\)

Massing had been sufficiently disturbed by Hiss’s 1935 conversation with her, and with a subsequent encounter between Hiss and Field, to discuss the situation with her superiors in NKVD intelligence. Although she apparently did not mention doing so to the FBI in 1948, nor allude to her discussions when testifying at Hiss’s second trial, her allusion to the incident involving herself, Hiss, and Field set off a flurry of communications among NKVD personnel in 1936. Those communications were recorded in documents Allen Weinstein, an American specialist on the Hiss case, and Alexander Vassilev, a Russian journalist and former Soviet intelligence agent, found in NKVD archives between 1994 and 1996. The NKVD ran Massing’s intelligence network, and that network had no connection with Hiss’s GRU network. Therefore Massing did not know Hiss’s cover name in Soviet intelligence circles, so she referred to him by his own name. The result was that the documents Weinstein and Vassilev found openly identified Hiss as working for the Soviets in 1935 and 1936.

The communications began with a memorandum, dated April, 1936, that Massing sent to NKVD headquarters in Moscow. It read, in pertinent part,\(^6\) as follows:

> Our friend “Ernst” [a code name for Noel Field] the day before his departure for Europe told me the following story that he will communicate to our friends abroad personally.

> Alger Hiss turned to him approximately a week before [Field]’s departure to Europe [to attend a London conference representing the State Department]. Alger told him that he was a Communist and that he was connected with an organization working for the Soviet Union and that he

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\(^6\) I am using the term “NKVD archives” to refer to collections now typically described as “KGB archives,” following the 1954 change in the name of the principal Soviet state security intelligence agency.

Transcriptions of communications between Hede Massing and various persons in Soviet intelligence in 1936 can be found in two sources, WEINSTEIN, PERJURY (1997), \textit{supra} note 1, and ALLEN WEINSTEIN \& ALEXANDER VASSILEV, \textit{THE HAUNTED WOOD} (1999). Some minor discrepancies exist between the versions of documents rendered in \textit{Perjury} and \textit{The Haunted Wood}. In reconciling discrepancies, I have favored the renderings in \textit{The Haunted Wood} because of its more recent date of publication and because Vassilev, one of its authors, is a native speaker of Russian (the documents in both sources are translations from Russian originals). \textit{Perjury} and \textit{The Haunted Wood} also contain some minor discrepancies in citations giving the archival location of documents, all of which were found in files in the NKVD Archives in Moscow. I have also preferred \textit{The Haunted Wood} versions in resolving archival locations. All the NKVD documents quoted in this section are identified by Weinstein and Vassilev as being in File 36857, Volume 1, NKVD Archives, Moscow. For subsequent documents, I will cite the archival source and the relevant pages in \textit{The Haunted Wood}. 
knew "that [Field] also had connections but he was afraid they were not solid enough, and, probably, his knowledge was being used in a wrong way."

Then he directly proposed that [Field] give him a report of the London conference [Field had attended]. According to [Field], they were close friends; that is why [Field] did not refuse to talk to him about this topic . . . . When Alger, whom I had met through [Field], as you may remember, kept insisting on the report, [Field] was forced to tell him that he needed to consult his "connections."

Evidently, according to [Field], he did not make any promises, nor did he encourage Alger in any sort of activity, but politely stepped back. Alger asked [Field] several other questions . . . . He also asked [Field] to help him get to the State Department. Apparently [Field] satisfied this request.

When I pointed out to [Field] his terrible discipline and the danger he put himself into, . . . he did not seem to understand it. He thought that just because "Alger was the first to open his cards, there was no reason for [Field] to keep a secret." Besides, Alger announced that he was doing it for "us."

Massing was agitated by the story Field told her. It confirmed that Hiss was continuing the recruitment of Field to which he had alluded in 1935, and in the process publicizing his own role as a recruiter for a separate Soviet network. Further, Field and Hiss did not seem constrained by Soviet protocol for intelligence agents, which emphasized complete confidentiality about undercover activities, especially among agents affiliated with different networks. In addition to writing a memo to Moscow, Massing passed the story on to Boris Bazarov, her NKVD superior in the United States. Bazarov's cable to Moscow on April 26, 1936, made it clear that he shared Massing's concerns:

The result has been that . . . [Field] and Hiss have been openly identified [as agents]. . . . And [Massing] and Hiss several months ago identified themselves to each other . . . . I think that after this story we should not speed up the cultivation of [another prospective American agent for the Soviets whom Field and Hiss had discussed.] Apparently, besides us, the persistent Hiss will continue his initiative in this direction [on behalf of his GRU network].

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69 WEINSTEIN & VASSILEV, supra note 68, at 5 (quoting and discussing Memorandum from Hede Massing (Apr. 1936) (first and second alterations in original)).

70 WEINSTEIN, PERJURY (1997), supra note 1, at 182 (quoting Memorandum from Hede Massing (Apr. 1936)).

71 WEINSTEIN & VASSILEV, supra note 68, at 6 (quoting Memorandum from Hede Massing (Apr. 1936) (first through fifth alterations in original)).

72 Id. at 7 (quoting Cable from Boris Bazarov (Apr. 26, 1936) (first alteration in original), in 1 NKVD Archives 22).
The Moscow recipients of Bazarov’s cable were furious. Bazarov received a May 3, 1936 cable in which he was told:

We do not understand [Massing’s] motives in having met with “Lawyer” [the NKVD’s code name for Hiss at the time]. As we understand, this occurred after our instruction that [Hiss] was “the [GRU’s] man” and that one should leave him alone. Such experiments may lead to undesirable results.74

The cable added that in the future Bazarov should take care that none of the agents in his network meet with agents from other networks, singling out Massing in particular, since “her drawbacks include impetuousness.” Moscow admitted that “[i]t is our fault . . . that [Field], who is already our agent, has been left in [Massing’s] charge,” given that Massing was “a person who is unable to educate either an agent or even herself.”75

The final communication in the sequence came from Ishkak Akhmerov, who had replaced Bazarov as the NKVD’s Washington-based controller of the network that included Massing and Field. In a May 18, 1936 cable responding to the May 3 one from Moscow, Akhmerov attempted to put a good face on the encounter between Massing and Hiss, and added some additional information about Hiss’s network. “[Massing] met with [Hiss] only once . . . last winter,” Akhmerov asserted:

She went to this meeting with [Bazarov’s] consent. After you informed us that he had a liaison with the [GRU], we did not meet with [Hiss]. [Hiss], after meeting [Massing] at the flat of [Field] and his conversation with her, undoubtedly informed his command about the meeting. By an accidental coincidence, a brother organization worker connected with [Hiss] knew [Massing] well . . . . This brother worker, whom we know as “Peter,” . . . told [Massing], “You in Washington came across my guy [Hiss]. You better not lay your hands on him.”76

Taken together, the above cables from NKVD archives confirm, with some precision, Hede Massing’s and Whittaker Chambers’s claims that Hiss was an agent for the Soviets in the 1930s. Massing had told the FBI that her conversation with Hiss about their competition for Field had taken place in Field’s apartment in Washington in 1935; Akhmerov’s May 18, 1936 cable referred to its having taken place “last winter.” Massing’s April, 1936 memorandum to Moscow stated that Hiss had told Field that he was a Communist and was connected with an organization working for the Soviet

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73 In the cable, Moscow used the term “neighbors” to refer to the GRU.
74 Id. (quoting Cable to Boris Bazarov (May 3, 1936) (third alteration in original), in 1 NKVD Archives 24).
75 Id. at 7-8 (quoting Cable to Boris Bazarov (May 3, 1936) (second alteration in original), in 1 NKVD Archives 24).
76 Id. at 8 (quoting Cable from Ishkak Akhmerov (May 18, 1936) (first, fifth and ninth alterations in original), in 1 NKVD Archives 25).
Union. Akhmerov’s May 18 cable also indicated that Moscow had identified Hiss with a GRU network; that Massing, who had not known Hiss’s affiliation when she encountered Hiss in 1935, now was aware of it; and that Akhmerov, on learning that Hiss worked for the GRU, had instructed his agents not to have any contact with Hiss. Massing did not even know Hiss’s code name when she complained about him to Moscow in April, 1936.

Thus, Massing’s tale of encountering Hiss and Noel Field’s apartment in 1935, and learning that she and he might be in competition for Field’s services, was amply supported by NKVD documents that surfaced in the mid-1990s. The same documents corroborated Chambers’s accounts of Hiss’s role as an agent during that period in the 1930s. Chambers had said that the network with which Hiss had been affiliated, and for which he had been a courier, eventually became a GRU network. Chambers also said that he and Hiss worked together in that network in 1935 and 1936. According to Chambers, Joszef Peter was the initial coordinator of the network. Akhmerov’s May 18 cable described Peter as “connected with Hiss,” as having learned that Massing’s network “came across my guy,” and as having warned Massing to stay away from Hiss.7

The NKVD communications in April and May, 1936, taken together with additional cables from 1938, also suggest that Hiss’s joining the State Department in September, 1936, at a cut in salary,78 was part of a plan to give him expanded access to information the Soviets could use. Chambers stated that it was part of Joszef Peter’s strategy to place agents in “old line agencies,” such as the State Department, where they might influence policy.79 Massing’s April, 1936 memorandum stated that Hiss had sounded out Noel Field in search of a State Department position, and that Field indicated he would try to help. In 1938, two cables sent to Moscow by Ishkak Akhmerov confirmed that Hiss was continuing to work as a Soviet agent in the State Department, and that he had been encouraged to join the State Department by Peter. The first cable, dated June 28, 1938, addressed another possible complication for the Soviets caused by the connection of Hiss to other Soviet agents.

The agent in this instance was Michael Straight, the son of one of the

7 Peter, in his capacity as the coordinator of underground operations for the American Communist Party, was primarily based in New York. With Chambers’s help, Peter created a “parallel network” featuring Hiss, who had access to confidential government documents since 1934, when he went to work for a Senate Committee, chaired by Gerald Nye, investigating the American munitions industry. That committee was given access to some State Department documents dealing with the sales of munitions involving the United States and foreign governments. See Weinstein, Perjury (1997), supra note 1, at 125-27 (discussing Hiss’s access to confidential State Department materials, and their possible transmittal to Peter). Although Peter was Hiss’s principal controller, he might have passed on information secured by Hiss, and dispatched to New York by Chambers, to the GRU.

78 See Weinstein, Perjury (1997), supra note 1, at 188-89.

79 Id. at 114 (quoting FBI Summary Report, at 72 (May 11, 1949) (interview with Whittaker Chambers, May 1949)).
owners of *The New Republic* and who became a Communist while studying at Cambridge University in the 1930s. Straight was converted to secret work for the Soviets by Guy Burgess and Anthony Blunt, two of the notorious five graduates of Cambridge who spied for the Soviets from the 1930s through the 1940s.\(^8\) An American, Straight was regarded by his British handlers as an ideal agent in place in one of the agencies of the U.S. government, and by January, 1938, he had joined the State Department.\(^8\) Six months later, Akhmerov reported to his Moscow superiors that Straight and Hiss had become acquainted, and that neither knew of the other’s connections to Soviet intelligence.\(^8\)

Even though Akhmerov learned in 1936 that Hiss was working for the GRU, he apparently had not kept close tabs on Hiss in the intervening years, and was not sure of Hiss’s current underground activities. He recognized, however, that if Straight, who had been asked to help recruit government employees for NKVD networks, approached Hiss, a situation comparable to that in which Hiss, Manning, and Field had found themselves in 1936 might arise. Accordingly, Akhmerov reported, when Straight “established contact with Hiss[,] and] mentioned him to me [as] an interesting person who occupied a responsible position . . . a very progressive man[,] I didn’t show my interest in [Hiss].”\(^\)\(^8\) Akhmerov continued, [O]n the other hand, I can’t tell [Straight] to stop seeing Hiss. If I tell him that, he might guess that Hiss belongs to our family. There is another danger: *bratskiy* [the term for underground agents of the American Communist Party, who cooperated with Soviet intelligence] or Neighbors’ resident [the American-based controller of GRU networks] . . . may ask Hiss to start working on [Straight’s] recruitment.\(^\)\(^8\)

The cable indicates that in June, 1938, Akhmerov, as he put it, was “not quite sure who Hiss is connected to.” He also had forgotten Hiss’s cover name. Although he was convinced that should another network seek to recruit

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\(^8\) The principal Soviet controller of the British Soviet agents who came to be known, because of their university affiliations, as the “Cambridge Five” (Anthony Blunt, Guy Burgess, John Cairncross, Donald Maclean, and Kim Philby) published a memoir describing their recruitment and training in 1994. *See* YURI MODIN, MY FIVE CAMBRIDGE FRIENDS (Anthony Roberts trans., 1994). For an account of Blunt’s and Burgess’s recruitment of Michael Straight in Cambridge in the 1930s, and the decision to place Straight within an agency of the U.S. government, see WEINSTEIN & VASSILIEV, *supra* note 68, at 72-75.

\(^8\) See *id.* at 77-78 (quoting Ishkak Akhmerov Memorandum (Jan. 25, 1938), *in* 1 NKVD Archives 53).

\(^8\) See *id.* at 79-80 (quoting Ishkak Akhmerov Memorandum (June 28, 1938) (observing that Straight encountered Hiss in the course of his employment with the State Department, but seemed unaware that Hiss had been recruited for covert work years before), *in* 1 NKVD Archives 73-74).

\(^8\) *Id.*

\(^3\) *Id.*
Straight he "would refuse to cooperate," he encouraged Moscow to "influence the Neighbors' resident if he starts to recruit [Straight] through Hiss."\(^{85}\)

The incident apparently prompted Akhmerov to learn more about Hiss. In a July 31, 1938 memorandum to Moscow he stated that he had been "hunting for Hiss," and in the process had a conversation with Joszef Peter, whom he identified by one of Peter's code names, "Storm." As Akhmerov put it in the memorandum, "'Storm' let out a secret during one of our conversations. Hiss used to be a member of bratskiy organization who had been routed into [the State Department] and sent to the Neighbors later."\(^{86}\) This passage confirms Chambers's assertion that Joszef Peter, whose technical duties included supervision of the entire underground activities of the American Communist Party, concluded that Hiss would be a valuable agent to place in one of the "old line" departments. In 1936, when Hiss joined the State Department, the Soviets dispatched a resident agent, Boris Bykov, to control Hiss's network, and Hiss and Chambers began to work directly with the GRU instead of using Peters as a liaison.\(^{87}\)

Thus, the opening of Soviet archives in the mid 1990s produced documents that not only identified Alger Hiss, by his own name, as a Soviet agent, but provided detailed support for information disclosed about Hiss by Hede Massing and Whittaker Chambers. The memoranda in which Massing and Ahkmerov openly identified Hiss as working for the Soviets in the 1930s are among the most unambiguous pieces of evidence confirming Hiss's status as a Soviet agent, but they represent only a portion of the incriminating evidence that has emerged about Hiss in the years after his conviction for perjury in 1950. Some of that evidence, taken alone, could have been regarded as insubstantial, or the persons who imparted it treated as lacking in credibility. When, however, the evidence emerges from a variety of sources that confirm one another, and when evidence from American defectors and associates of Hiss is corroborated by evidence from previously closed intelligence files in archives of both the United States and the Soviet Union, its cumulative weight becomes decisive. The result is that a series of claims and documents suggesting that Hiss was a Soviet agent, which emerged in the years after his perjury conviction and were regularly received skeptically by defenders of Hiss, take on a different light. Here is a capsule summary of that evidence, presented in chronological order.

Nathaniel Weyl, a former employee of the Agricultural Adjustment Administration, testified to the FBI in 1950\(^{88}\) and to a Senate Committee two

\(^{85}\) Id.

\(^{86}\) Id. at 80 (quoting Ishkak Akhmerov Memorandum (July 31, 1938), in 1 NKVD Archives 83).

\(^{87}\) Chambers told the FBI in 1949 that the first meeting between himself, Bykov, and Hiss took place in early 1937. See Weinstein, Perjury (1997), supra note 1, at 205 (quoting FBI Summary Report #3220, at 95-98 (May 11, 1949)).

\(^{88}\) Id. at 119 (citing Memorandum from Guy Hottel to Director (Nov. 27, 1950), in FBI
years later, that he and Hiss had been members of an underground Communist Party "discussion group" organized by Harold Ware in Washington, where Chambers claimed to have first met Hiss, and to have worked with him in ferrying stolen government documents to Joszef Peter. All the members of the group, including Weyl himself, were active members of the American Communist Party. Hiss had denied being a member of the Ware group, stating that he had only met Ware occasionally at the Department of Agriculture. Weyl subsequently stated that he had never met Chambers or Peter at any Ware Group meetings, and knew nothing of any espionage connected with the group.

The British-based Soviet agent Harold "Kim" Philby, in a memoir published in 1968, written from exile in Moscow, referred to the 1940s and early 1950s in America as "the era of Hiss, Coplon, Fuchs, Gold, Greenglass, and the brave Rosenbergs—not to mention others who are still nameless." All the other names on Philby's list, Judith Coplon, Klaus Fuchs, Harry Gold, David Greenglass, and Julius and Ethel Rosenberg, had been tried for committing espionage for the Soviet Union. In addition, two extensive scholarly reviews of the evidence against Hiss and other persons identified with Communism and

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89 See Hearings on Institute of Pacific Relations, Before the Senate Comm. of the Judiciary, 82d Cong. Part 8 (1952) (testimony of Nathaniel Weyl (Feb. 19, 1952)).
90 Chambers first made those claims in his August 3, 1948 testimony before the House Un-American Activities Committee. See HUAC Hearings, supra note 22, at 563-86 (testimony of Whittaker Chambers). In an interview many years later with Alan Cullison, who assisted Sam Tanenhaus with his book Whittaker Chambers, Weyl described Hiss as "a true believer, a deeply committed Communist." TANENHAUS, supra note 22, at 518 (quoting Interview with Nathaniel Weyl (Dec. 8, 1992)).
91 Hiss's statements about Ware and the Ware group were made in his August 5, 1948 testimony before HUAC. HUAC Hearings, supra note 22, at 650-52.
92 Nathaniel Weyl, I Was in a Communist Unit with Hiss, U.S. NEWS & WORLD REPORT, Jan. 9, 1953, at 22.
93 KIM PHILBY, MY SILENT WAR 189-90 (1968).
94 For a discussion of the other names on Philby's list, see DALLIN, supra note 37, at 478-90. Fuchs, Gold, Greenglass, and the Rosenbergs were involved with the passing of information about atomic research. Coplon worked for the Foreign Agents Registration Division of the Justice Department, which shared information about foreign diplomats and military attaches with the FBI. This gave her access to confidential FBI reports, which she passed on to the Soviets. She was arrested in 1949 after the Venona cryptographers identified her as a Soviet agent and alerted the FBI, which gave her access to false reports, watched her under surveillance, and eventually arrested her in the act of passing the false reports on to her Soviet controller. At Coplon's trial, however, the prosecution was prevented from using Venona transcriptions to incriminate her, and although she was convicted and sentenced to fifteen years, her conviction was ultimately reversed on appeal on the ground that the FBI lacked probable cause to place her under surveillance. For more information regarding Coplon, see id. at 482-85; JOHN EARL HAYNES & HARVEY KLEHR, VENONA: DECODING SOVIET ESPIONAGE IN AMERICA, 158-60 (1999).
Soviet espionage from the 1930s through the 1950s concluded that Hiss had not adequately refuted Chambers's charges against him.95

The next significant pieces of incriminating evidence began to surface in the early 1990s. In 1985, Oleg Gordievsky, who had been a deputy resident of the Political Intelligence division of the NKVD, stationed in London, defected to Britain after learning that the NKVD discovered that he had been an agent for the British Secret Intelligence Service since 1974. Gordievsky had been summoned to Moscow, ostensibly to be briefed on the duties of his new London position, and had been detained in a NKVD sanitarium. He escaped and successfully reached England, where, after officially being granted asylum, he began to cooperate on a book on the history of the NKVD with Christopher Andrew, a journalist whose history of the British Secret Service had been published the year Gordievsky defected. The result was KGB: The Inside Story, which appeared in 1990.96

One reference to Alger Hiss in Andrew’s and Gordievsky’s book produced additional evidence that he had been a Soviet agent. Gordievsky told Andrew that “[e]arly in his career in the [NKVD], Gordievsky attended a lecture in [the NKVD headquarters in Moscow] given by [Ishkak] Akhmerov, by then silver-haired and in his sixties. Akhmerov mentioned Hiss only briefly.”97 Based on this episode, Gordievsky concluded that Hiss was a NKVD-controlled agent, because Akhmerov worked for the NKVD. In a subsequent book on Soviet intelligence, Andrew corrected the error, noting that Akhmerov’s contact with Hiss, a GRU agent, was “very unusual” for a NKVD handler.98 As we have seen, Akhmerov’s contact was solely a product of Hiss’s having come into contact with Massing, Field, and Straight, all of whom were NKVD agents.

In 1992, a Hungarian historian named Maria Schmidt, in the course of doing research in Hungarian government archives for a book on the role of the secret police in Hungary, was given access to previously restricted files of the Interior Ministry in Budapest that contained records of interrogations of Noel Field in 1954 by Hungarian authorities.99 In May, 1949, Field and his wife Herta left the United States for Prague, Czechoslovakia. Their reasons for leaving were

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97 Id. at 287.
twofold: to avoid having to testify at Hiss’s second trial, and because Field, who had been dismissed from a position with the Unitarian Service Commission in 1947 when his alleged links to the Soviets surfaced, needed a job. Czechoslovakian authorities, at the request of Soviet intelligence, enticed Field with the promise of a teaching position at a Czech university, but the promise was a sham. Because of his anti-Nazi activities during World War II, Field had made connections with American intelligence, and he was to be used as a pawn in one of the Soviet-directed “show trials” that surfaced in the last years of Stalin’s tenure.100

After arriving in Czechoslovakia in 1949, Field was arrested, taken to Budapest, and charged by the Hungarian authorities with conspiring to undermine the Hungarian regime. When, in the wake of Stalin’s death, he was released in 1954, he was interrogated by the Hungarian secret service, and gave a full account of his many years as an agent for Soviet intelligence, which he said had begun in 1927.101

In the course of that account, Field discussed his relationship with Hiss. Field was recorded as saying that in the fall of 1935, “Hiss . . . called me to undertake espionage for the Soviet Union . . . . I informed him that I was already doing such work . . . . [I] carelessly told him that I was already working for the Soviet intelligence.”102 This revelation, Field told his Hungarian interrogators, was an “unforgivable indiscretion,” and he had “immediately told Hedda Gumperz [Hede Massing] what had happened. I received a strong rebuke from her.”103 Field’s testimony to the Hungarian secret policy in 1954 thus corroborated Massing’s earlier statements about the 1935 meeting between Field and Hiss.

In 1994, Pavel A. Sudoplatov, the former head of the Administration for Special Tasks in the NKVD during Stalin’s tenure, published his memoirs.104 Sudoplatov described his department as “responsible for sabotage, kidnapping, and assassination of our enemies beyond the country’s borders,” as well as the Soviet espionage effort to obtain atomic secrets.105 He began his memoir as an effort to defend himself against charges of treason for which he had been

100 The defendants at the trial were Lazslo Rajk, the interior minister of the Hungarian Communist government, who was accused of having conspired with Field and (in absentia) Josip Tito, the Yugoslavian Communist leader who had broken with the Soviets in 1948 to smuggle anti-Soviet spies into the top ranks of Communist parties in Soviet bloc nations. Field was described as an “agent of the American espionage organization at the show trial.” See GEORGE H. HODOS, SHOW TRIALS: STALINIST PURGES IN EASTERN EUROPE 1948-1954 38-50 (1987), cited in ANDREW & GORDIEVSKY, supra note 96, at 407-41.
101 WEINSTEIN, PERJURY (1997), supra note 1, at 180.
102 Id.
103 Id.
104 PAVEL SUDOPLATOV & ANATOLI SUDOPLATOV, SPECIAL TASKS (1994).
105 Id. at 3.
temporarily imprisoned in 1958. With the deterioration of the Soviet Union, Sudoplatov’s rehabilitation appeared more likely, and he expanded his memoirs to include recollections of NKVD operations that were not related to his treason charges. He was one of the last surviving NKVD officials able to make sense of some archival documents from Stalin’s early years (he had planned the assassination of Leon Trotsky), and the Russian government, in the early 1990s, hoped that he would be helpful in organizing its Stalin-era archives.

When Sudoplatov’s memoir, Special Tasks, appeared, he indicated that although as an NKVD agent he had little connection with the GRU and its operations, he had been intimately involved with NKVD intelligence gathering in America. In the course of describing the official and unofficial contacts Soviet personnel had with State Department and White House officials during the Second World War and the NKVD’s use of those contacts, Sudoplatov referred to Hiss. “Before any official [contacts]” with the United States, he wrote,

> a list of [American] participants was handed to the [NKVD], in this case to me, which described every person and their possible relationship, plus attitudes, to us. The materials I received for preparing the psychological profiles of all the members of the American delegation to Yalta contained information on their personalities and indicated if they were under our control as agents.

One of the officials we had established confidential relations with was Alger Hiss, a member of the American delegation [to Yalta.] In conversation, Hiss disclosed . . . official U.S. attitudes and plans; he was also very close to . . . our active intelligence operators in the United States. Within this framework of exchange of confidential information were references to Hiss as the source who told us the Americans were prepared to make a deal in Europe [at Yalta].

Hiss was not himself an NKVD agent. Sudoplatov believed, had he been “a paid or controlled agent [of the NKVD. . . . I would have known [about it] or [it] would have been marked [in NKVD files.” Sudoplatov only learned about Hiss’s precise connections to Soviet intelligence in 1993, when,

> I talked with a former colleague who had served as rezident [sic] for GRU . . . in New York and London. According to my old friend, Hiss was a source of agent information . . . in Washington in the early and middle thirties . . . . Probably he was in close contact with people from GRU, because when Whittaker Chambers testified against Hiss we

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106 Id. at xvii.
107 See id. at xvii-xix (discussing Sudoplatov’s reflections on his various encounters and operations as a long-time NKVD agent).
108 Id. at 227.
109 Id.
considered this to be a setback for GRU intelligence activities in the United States.\textsuperscript{110}

Sudoplatov also wrote in Special Tasks that “[w]hen Hiss was accused at the end of the 1940s, his behavior followed instructions he may have learned in the 1930s: never admit anything.”\textsuperscript{111}

In 1995, the U.S. government released some files gathered by a successful code-breaking project during World War II, initiated by the Signal Intelligence Service of the Army, the forerunner of the National Security Agency. The project, eventually called “Venona” by the National Security Agency, successfully deciphered a number of Soviet intelligence documents in a period between 1942 and 1946.\textsuperscript{112} The Soviet coding practices in that period were not foolproof because the number of coded messages required by wartime conditions led Soviet cryptographers to compromise code security to transmit coded messages more swiftly. After the war ended, U.S. cryptographers were able to decipher messages from 1942, when the Soviets relaxed the security of their codes, to 1946, when a Soviet agent employed by the National Security Agency alerted the Soviets to their codes’ vulnerability.\textsuperscript{113}

Beginning in 1947, the NSA began to share information gathered by Venona cryptographers with the FBI and CIA. The information was particularly helpful for identifying the cover names and identities of Soviet agents in the United States. Among the coded messages decrypted by Venona were cables from Soviet diplomats in Washington to intelligence officials in Moscow between 1942 and 1946. The Venona cryptographers’ understanding of Soviet codes in that period was incomplete, and therefore some coded messages could only be partially decrypted.\textsuperscript{114} Two messages from the period suggested that Hiss remained an active Soviet agent during the Second World War.\textsuperscript{115}

Before turning to the contents of those messages, an explanation of why they took so long to surface is in order. The NSA regarded the Venona project as extremely confidential from its outset. Its existence was not shared with most other governmental agencies and information was only shared with the FBI and CIA on a limited basis.\textsuperscript{116} Only in the 1980s, when an FBI official and a retired British counterintelligence officer published memoirs,\textsuperscript{117} and

\textsuperscript{110} Id. at 22-28.
\textsuperscript{111} Id. at 229.
\textsuperscript{112} See generally HAYNES & KLEHR, supra note 94 (detailing the Venona project’s history and findings).
\textsuperscript{113} See id. at 28-39.
\textsuperscript{114} Id. at 35-37.
\textsuperscript{115} Id. at 171-73 (discussing deciphered messages and other evidence that leaves “little doubt that Hiss’s service to Soviet intelligence continued beyond the 1930s and at least until 1945”).
\textsuperscript{116} Id. at 4-5, 35-39.
\textsuperscript{117} See generally ROBERT LAMPERHE & TOM SHERMAN, THE FBI-NKVD WAR: A SPECIAL AGENT’S STORY (Mercer Univ. Press 1995) (1986) (chronicling conflicts between American
other works on Soviet espionage in the Cold War revealed that a secret U.S.
code-breaking project had contributed to the exposure of some Soviet agents,
was there any public mention of Venona.

In the early 1990s, as the Soviet Union collapsed, outside scholars were
granted access to some archives of the Communist Party of the Soviet Union,
which included records of the Communist Party of the United States of
America. Those records revealed that the American Communist Party had
served, during the 1930s and 1940s, as a clearinghouse of information for the
NKVD in its efforts to recruit American-based agents. The records included
numerous cables from Pavel M. Fitin, the head of the NKVD's foreign
intelligence section from 1940 to 1946, to American Communist Party
members asking about prospective agents. While conducting research for a
book about the relationship of the American Communist Party to Soviet
intelligence, two scholars, John Earl Haynes and Harvey Klehr, realized that
some of the agents identified in Fitin's cables had been subsequently charged
with espionage by the U.S. government. They suspected that the identity of
those agents might have been revealed in documents decoded by Venona, and
that names of other prospective agents might be listed in other Venona files.

At this point, Haynes and Klehr made inquiries with various government
officials about Venona, but were only able to confirm that there had been a
code-breaking project whose information was still regarded as classified.
Eventually, with the help of Senator Daniel Patrick Moynihan, Haynes and
Klehr were able to point out the ironic contrast between their having gained
access to classified documents from the 1940s and 1950s in Soviet archives,
but being denied access to information in U.S. archives that might clarify the

and Soviet intelligence agencies from World War II through the end of the Cold War
through the eyes of Lamphere, the first FBI liaison officer with the NSA); PETER WRIGHT,
SPY CATCHER: THE CANDID AUTOBIOGRAPHY OF A SENIOR INTELLIGENCE OFFICER 238-41
(1987) (reflecting on Wright's knowledge of, and involvement with, Venona).

118 See ANDREW & GORDIEVSKY, supra note 96, at 373-75 (discussing Soviet awareness
of the Venona Project as early as 1948); DAVID MARTIN, WILDERNESS OF MIRRORS 39-45
(1980) (analyzing the impact of the Venona project and the ramifications of the Soviet
discovery of the project). In a 1997 edition of their book on Julius and Ethel Rosenberg,
Ronald Radosh and Joyce Milton stated that they knew about the Venona project, although
not by name, in the early 1980s, but their description of the code-breaking activities of the
U.S. government was imprecise. See RONALD RADOSH & JOYCE MILTON, THE ROSENBERG
FILE, at xv (2d ed. 1997).

119 HARVEY KLEHR, JOHN EARL HAYNES, & FRIDRIKH IGOREVICH FIRSOV, THE SECRET
WORLD OF AMERICAN COMMUNISM 6-7 (1995). Firsov was a Russian historian interested in
the history of the Comintern, a “worldwide brotherhood of like-minded revolutionaries,”
whose members consisted of all the Communist parties in different nations. In practice, the
Comintern was an organization dominated by the Soviets who resolved disputes among
Communist parties in other nations in a fashion consistent with perceived Soviet interests.
See id.

120 See id. at 236-38; HAYNES & KLEHR, supra note 94, at 3-4.
meaning of those documents. In 1995, the National Security Agency began to make some Venona documents public.\textsuperscript{121}

The two documents pertaining to Hiss in Venona files that have thus far been made available consist of a cryptic 1943 cable, identifying Hiss by name, and a much more detailed 1945 cable, describing an American GRU agent whose code name was “Ales.”\textsuperscript{122} The first cable, sent by Pavel P. Mikaljov, the Soviet Vice-Consul in New York, to Fitin, was only partially decoded. It appears to be a response to one of Fitin’s periodic requests for information about American-based agents, which included inquiries about the actual names of agents otherwise identified by code names. One portion of the cable read, “The names Matvej, Frank, Gustav, Sandi and Richard are respectively Milton S[c]hwartz, Arthur Moosen, George Gorchoff, Stephan Richa, R[o]binson Borrow.” The next sentence read, “The [GRU]\textsuperscript{123} has reported that [undecipherable] from the State Department by the name of Hiss.”\textsuperscript{124}

A large portion of the cable was not deciphered by the Venona cryptographers, but context suggests it contained additional lists of agents and information about them. Mikajlov’s mention of Hiss in connection with the GRU, and the statement that that branch of Soviet intelligence “has reported” on Hiss, would have been necessary, given his NKVD affiliation and Hiss’s connections with the GRU rather than the NKVD. Mikaljov probably wanted Fitin to know that in addition to the other agents he was identifying, there was another, Hiss, whose cover name he did not know because Hiss was not an NKVD agent. Even in its cryptic form, the cable provided yet another confirmation that Hiss continued to work for Soviet military intelligence during the Second World War.

The 1945 cable was far more detailed. It was sent by Anatoli Gorsky, who was ostensibly attached to the Soviet embassy in Washington, and in that capacity took the name of Anatoli Gromov.\textsuperscript{125} He was identified as “Gromov”

\textsuperscript{121} Id. at 4-7.

\textsuperscript{122} See id. at 170-71. Venona cables are referred to by an “external” message number identifying that cable, supplied by the National Security Agency, by the sending and receiving station, by the date of transmission, and by the agency of transmission. They are available at the Manuscript Division of the Library of Congress, at the National Security Agency’s National Cryptologic Museum in Fort Meade, Maryland, and on the Internet at http://www.nsa.gov.

\textsuperscript{123} The cable used the common code word “Neighbor” to designate the GRU. Id. at 170.

\textsuperscript{124} Venona 1579, Cable from “Mol’er” (Pavel Mikaljov) to “Director” (Pavel Fitin), GRU, New York to Moscow (Sept. 28, 1943), cited in HAYNES & KLEHR, supra note 85, at 170.

\textsuperscript{125} Gorsky, who had previously been the resident handler of Anthony Blunt and the other “Cambridge Five” agents in England, was transferred to the United States, and assigned to Donald MacLean, after Maclean’s position in the British Embassy in Washington gave him access to a great deal of political and military intelligence that he could pass on to the Soviets. He became the resident controller of NKVD Washington-based agents, including Maclean, in 1944. See MODIN, supra note 80, at 101.
by National Security Agency officials decoding Soviet cables.\textsuperscript{126} The NKVD “resident” (station head) in Washington at the time sent a cable to “Moscow” (probably for Fitin’s attention). It referred to a “chat” an official called “A” had recently had with an agent called “Ales.” “A,” other decoded Venona messages suggested, was a derivative of “Albert,” one of the code names of Iskhak Akhmerov, the NKVD controller who had been “hunting” for Hiss in 1938.\textsuperscript{127} Although Akhmerov had no official connection with Hiss, NKVD controllers were authorized to make contact with GRU agents if necessary,\textsuperscript{128} and Akhmerov may have simply wanted to give his NKVD superiors an update on “Ales’s” activities. The agent “Ales” in Gorsky’s cable bore a striking resemblance to Hiss. Akhmerov told Gorsky, according to Gorsky’s cable, that:

1. Ales has been working with the Neighbors continuously since 1935 . . . .
2. For some years past he has been the leader of a small group of the Neighbors’ probationers, for the most part consisting of his relations . . . .
3. The group and Ales himself work on obtaining military information only. Materials on the Bank allegedly interest the Neighbors very little and he does not produce them regularly.
4. All the last few years Ales has been working with [Paul] who also meets other members of the group occasionally.
5. Recently Ales and the whole group were awarded Soviet decorations . . . .
6. After the Yalta Conference, when he had gone on to Moscow, a Soviet personage in a very responsible position (Ales gave to understand that it was Comrade [Andrey] Vishinski [the Deputy Soviet Foreign Minister]) allegedly got in touch with Ales and at the behest of the Military Neighbors passed on to him their gratitude and so on.\textsuperscript{129}

Several references in this cable point to “Ales” being Alger Hiss. “Ales,” in the Cyrillic alphabet, looks like a contraction of “Alger Hiss.”\textsuperscript{130} Oleg

\textsuperscript{126} Andrew & Gordievsky, supra note 96, at 294 (identifying “Gromov” as an alias for Gorsky).
\textsuperscript{127} See Haynes & Klehr, supra note 94, at 340, (discussing decoded Venona cables that used the code names “Mayor,” and “Albert” to refer to Akhmerov).
\textsuperscript{128} In a reorganization of Soviet intelligence in 1939 and 1940, the GRU was told that it should expect to share information with the NKVD if instructed to do so. In 1947, in response to the creation of the U.S. Central Intelligence Agency, the Soviets temporarily combined the foreign intelligence of the NKVD and the GRU in a single agency, the Committee of Information (KI). Andrew & Gordievsky, supra note 96, at 257-381.
\textsuperscript{129} Haynes & Klehr, supra note 94, at 171 (quoting Venona 1822, NKVD Washington to NKVD Moscow (Mar. 30, 1945)).
\textsuperscript{130} See Andrew & Mitrokhin, supra note 98, at 599.
Gordievsky, in his memoirs, remembered Hiss's code name as "Ales."\(^{131}\) Chambers had testified that on Harold Ware's death in 1935 he became the courier of a "parallel apparatus," centering on Hiss, whose information was eventually funneled to the GRU. Hiss's group was independent of the principal Washington-based Soviet groups, which were controlled by Akhmerov and connected to the NKVD. When State Department security officials began to investigate Hiss in 1945, they learned, in the fall of 1946, that Hiss had requested classified reports on atomic energy and Far Eastern military policies that were outside the parameters of his office.\(^{132}\) Hiss was also among four State Department officials who detoured to Moscow, after the Yalta conference, to finalize some of that conference's details with the Soviets.\(^{133}\) The most compelling evidence that Hiss was a Soviet agent lies not in any one of the several sources described above, but in the way they mutually reinforce one another, making the original accusations of Chambers more credible and compelling. The documents unearthed by Weinstein and Vassiliev in *The Haunted Wood* support ones earlier found in FBI files by Weinstein and Tanenhaus. The Venona cables support information previously given to the FBI by Elizabeth Bentley and Ivor Gouzenko, while the reminiscences of Gordievsky and Sudoplatov identify Hiss as engaged in the very espionage activity mentioned in Noel Field's statements to the Hungarian secret police. All of those sources reinforce Chambers, and support Chambers's surmise that Hiss remained a committed Communist up to the time of his perjury trial. The evidence from the sources, taken as a collective mass, reinforces the authenticity of each of the sources by corroborating details the sources supply independently.

A memorandum found in the NKVD archives by Weinstein and Vassiliev will illustrate the way in which a cumulative exposure to separate pieces of information incriminating Hiss can, as the pieces reinforce one another, produce a sense of his complicity that outweighs the sum of its parts. On April 25, 1945, Pavel Fitin sent a memorandum to his superior in Moscow, Vsevolod Merkulov, the Commisar for State Security. In the memorandum, Fitin asked for a decoration of the Order of Red Star for an agent named "Ruble." The memorandum read:

> Our agent Ruble, drawn to working for the Soviet Union in May, 1937, has been passing . . . initially through the military "neighbors" and then through our station, valuable information on political and economic

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\(^{131}\) *Andrew & Gordievsky, supra* note 96, at 285.

\(^{132}\) See *Tanenhaus, supra* note 22, at 519 (citing a November, 1946 State Department internal security report that disclosed Hiss's procurement of "top secret reports he was not authorized to see").

\(^{133}\) None of the other three representatives of the State Department who made that brief visit to Moscow after Yalta—Secretary of State Stettinius, H. Freeman Matthews, and Wilder Foote—was ever suspected of having any connections with the Soviets. *Haynes & Klehr, supra* note 94, at 172.
issues . . . He gives much attention and energy to our work [and] is a devoted and disciplined agent. According to data from Vadim, the group of agents of the military "neighbors" whose member Ruble had been earlier, was recently decorated with USSR orders. About this fact, Ruble learned it from his friend Ales who is the leader of the mentioned group. Taking into account Ruble's devoted work for the USSR for 8 years and the fact that as a result of transfer to our station, [he] was not decorated together with other members of Ales's group, [we] consider it expedient to recommend him for the decoration with the Order of the Red Star. Ask your consent.134

"Ruble" in the memorandum refers to Harold Glasser, a Soviet agent in the Treasury Department, whose cover name was deciphered by the Venona cryptographers.135 "Vadim" refers to Anatoli Gorsky, the NKVD chief resident in Washington who operated under the name of Gromov.136 "Ales" refers to Hiss.137 The memorandum states that Glasser became a Soviet agent in 1937; that he worked for a time for the GRU; and that he had recently been working for the NKVD's Washington station. It goes on to say that Gorsky had recently told Fitin that members of the GRU group with which Glasser had previously been affiliated had received military decorations. Glasser had himself learned about this from his "friend" Alger Hiss. Fitin then suggested that since Glasser knew of the Hiss group's recognition, had been previously associated with that group, and was a valuable agent, he should receive a decoration as well.

When one compares the information in this memorandum with other information about Glasser, Gorsky, and Hiss in the memoirs of former NKVD agents and in the Venona transcripts, the effect of that comparison is to corroborate earlier claims about Hiss made by Chambers and Elizabeth Bentley. Moreover, the comparison reinforces the status of Chambers and Bentley as generally trustworthy witnesses about Hiss, making it more likely that they can be included in a group of sources that have contributed independent, but mutually reinforcing, evidence that Hiss was an agent for Soviet military intelligence.

To illustrate, in his memoirs Chambers told a story about how he first came to know that Harold Glasser was a Communist agent. The story took place in 1937, when Boris Bykov, Chambers's controller at the time, expressed concern that a Treasury Department official who had agreed to cooperate with Soviet military intelligence, Harry Dexter White, was not producing a sufficient flow

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134 WEINSTEIN & VASSILIEV, supra note 68, at 268-69 (quoting File 43702 (Apr. 25, 1945), in 1 NKVD Archives 96-97).
135 HAYNES & KLEHR, supra note 94, at 350.
137 NSA analysts identified "Ales" as "probably Alger Hiss." Id.
of helpful material. White was not a Communist party member, merely politically sympathetic to the Soviets, and Bykov insisted that Chambers find a way to induce White to generate more material. Chambers consulted Joszef Peter about the matter, and Peter identified Glasser, an assistant to White, as a potential contact. Glasser, Peter told Chambers, was working for the American Communist Party’s underground apparatus, but Peter would lend him to the Soviets to provide support for White. “Glasser soon convinced me,” Chambers recalled, “that White was turning over everything of importance that came into his hands. Having established that fact, I simply broke off relations with Dr. Glasser.”

Although the story suggested that Chambers had little contact with Glasser, it confirmed Fitin’s statement that Glasser began to work for Soviet intelligence in 1937.

The next comment in Fitin’s memorandum giving details about Glasser suggested that he had initially been supplying intelligence “through the military neighbors.” We have seen that in November, 1945, Elizabeth Bentley told the FBI that while working as a NKVD courier she had attempted, at Glasser’s request, to get him transferred from the Soviet group for which he was working to the NKVD group with which she was affiliated. “I asked . . . how Glasser happened to leave the group,” she said, and was told that “this unidentified American turned Glasser . . . over to some Russian.” She subsequently identified the American as “named Hiss,” and noted “that he was in the U.S. State Department.” In a later summary of Bentley’s testimony, the FBI added that she was referring to Alger Hiss.

Several previously canvassed sources support Chambers’s and Bentley’s statements about Hiss and Glasser. Hiss had been identified as having been “routed into the State Department” in 1936 and subsequently “sent to the [GRU],” so he would have had direct contacts to Soviet military intelligence at least by 1937. The Fitin memorandum indicated that at one time Hiss and Glasser were members of the same GRU group, that they were friends, and that Hiss was the head of the group. This was consistent with Bentley’s statement, which assumed that Hiss had the authority to secure a transfer of Glasser to his group, and that Hiss and Glasser became acquainted while working together.

The memorandum is also consistent with the decoded cable from Gorsky to Fitin, previously discussed, in which Gorsky, citing a “chat” that Ishkak Akhmerov had with “Ales,” indicated that Hiss’s group had received

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138 CHAMBERS, supra note 22, at 429-30.
139 KLEHR ET AL., supra note 48, at 320 (quoting Statement of Elizabeth Bentley to the FBI (Nov. 30, 1945)).
140 Id. at 321.
141 WEINSTEIN, PERJURY (1997), supra note 1, at 317 (citing Memorandum from D.M. Ladd to Director (Dec. 28, 1948), in FBI Files #1480).
142 WEINSTEIN & VASSILIEV, supra note 68, at 75-80 (quoting Memorandum From Ishkak Akhmerov, in 1 NKVD Archives 11-13).
Chambers's, Bentley's, and Gorsky's testimony (as reported by Fitin) about Glasser's and Hiss's connections in the late 1930s were not only mutually supportive but were also based on independent sources. Chambers had learned about Glasser's status as an agent from Joszef Peter; Bentley had learned about Hiss's "capture" of Glasser from a conversation with Charles Kramer, whom Chambers had identified as a member of the Harold Ware group and an undercover Soviet agent; and Gorsky had learned about Hiss from conversations with Glasser and Iskhak Akhmerov.

From the perspective of the persons who originally possessed and shared the information about Hiss and Glasser, none of the information contained in Fitin's memorandum and corroborated by the canvassed sources would seem on its face to amount to more than the routine details of secret intelligence work. It seems highly unlikely that such persons, all of whom were involved with Soviet intelligence when they first received the information, would be inclined to fabricate, independent of one another, some relatively mundane details about Harold Glasser, Alger Hiss, and their relationship. In fact, the information about Hiss and Glasser is startling only in one respect: It demonstrates that all the sources who contributed it took for granted that Alger Hiss was an agent for Soviet military intelligence. That was, of course, the central fact that Hiss had denied at the time of his trials, had claimed that Chambers had lied about, and would continue to deny for the rest of his life.

III. HISSE'S CAMPAIGN FOR VINDICATION

We have seen that evidence demonstrating that Hiss was a Soviet agent has tended to be centered around two time frames. One extended from the 1930s, when Hiss first became affiliated with Soviet intelligence, through the 1950s, a decade in which Hiss spent four years in prison and Chambers's Witness became a best-seller. The other began with the disintegration and eventual
collapse of the Soviet Union in the late 1980s and continued through the end of
the twentieth century. The interval between those time frames constitutes a
contrasting period in the history of Alger Hiss’s reputation. In that period,
Hiss, continually declaring his innocence, was able to launch a campaign for
vindication that had considerable success. Hiss’s campaign was primarily
oriented toward elite literary circles, especially in the New York metropolitan
area, and by the mid 1970s, as Nobile’s survey revealed, the climate of opinion
toward the Hiss case in those circles had become significantly contested on the
question of Hiss’s guilt or innocence.

Part of the shift in attitudes toward Hiss was a result of his being a
beneficiary of Chambers’s death. In a context in which the evidentiary posture
of the Hiss trials remained nearly constant for two decades after Hiss’s
conviction—defenders of Hiss offered new theories of how Hiss might have
been framed, but no new evidence—Chambers’s death gave Hiss opportunities
to suggest, without contradiction, that Chambers’s version of events was
inaccurate or feigned. There were other, more significant reasons why Hiss’s
campaign for vindication was nearly successful. One reason related to the
nature of the Hiss case as a symbolic event, one which came, over time, to be
associated with changing attitudes about the Cold War and McCarthyism, and
which also came to be seen as somehow relevant to the Vietnam War, and to
Watergate. Another was the extraordinarily skillful way in which Alger Hiss
employed his posture of innocence as an adversarial weapon. Hiss not only
took shrewd advantage of the changing cultural climate in which his case was
discussed, but he also developed techniques for projecting a persona that
convinced others of his innocence. As Nobile put it, Hiss’s efforts to seek
vindication, which included the enlistment of those closest to him in his
campaign, were undertaken by a person who came across as “serene” rather
than “crazy” or monstrous.

The additional factors that served to fuel Hiss’s campaign for vindication in
the 1970s raise two larger issues with which the remainder of this Article is
concerned. One is why the Hiss case remained so much in the public eye, and
was thus susceptible to being affected by other developments in American
culture, in contrast to several other cases in which persons convicted of
espionage for the Soviets, after serving prison sentences, dropped from public

Books and the Arts: God, Man, and Stalin, 174 Nation 502 (1952) (primarily critical);
Harold Phelps Stokes, Whittaker Chambers’ Story, 42 The Yale Rev. 123 (1952) (highly
favorable).

147 For a summary of the evidence incriminating Hiss that appeared in a group of books
published in the late 1990s, see Thomas Powers, The Plot Thickens, N.Y. Rev. Books, May
11, 2000, at 53. Powers concluded that “much additional evidence about Hiss’s
involvement with the Soviets has turned up since the voluminous and explicit claims by
Whittaker Chambers and Elizabeth Bentley in the 1940s, claims which no serious scholar of
the subject any longer dismisses.” Id. at 54.

148 See supra notes 4-11 and accompanying text.

149 Nobile, supra note 9, at 76.
The other is why Alger Hiss, aware that he had committed espionage and lied about it, resolved to seek vindication at all, unlike other former Soviet agents who had been exposed and tried for their activities. Indeed, in the history of Soviet espionage in the United States between the 1930s and the 1950s, Hiss is virtually a unique figure. Of 349 persons identified as having covert relationships with Soviet intelligence by the Venona cryptographers, Hiss was the only one who, after having been convicted and imprisoned on charges related to espionage, mounted a lifelong public campaign to prove his innocence. Both issues will be addressed in connection with the narrative of Hiss’s campaign for vindication that follows and will seek to be resolved in the Article’s conclusion.

A. A Slow Start for the Campaign, 1954-1967

After making his defiant public comment in 1951, Hiss went to a moderate-level security federal prison in Lewisburg, Pennsylvania, where he would spend the next forty-four months. When he was released in November, 1954, he began work on a book he had conceived in prison. After being interrupted by gallbladder surgery, he completed the book, which was published in 1957 as In the Court of Public Opinion. Hiss had initially conceived of the book as a general reflection on “what happens to a society in which [such an injustice as his conviction] is possible,” but when it appeared, it was a dispassionate but adversarial narrative, dealing with incriminating evidence by countering it or ignoring it. Hiss told Meyer Zeligs, a psychiatrist who interviewed Hiss over a period of six years in the preparation of a book on the relationship between Hiss and Chambers, that “[m]y book was written as a lawyer’s brief.

150 These included Judith Coplon, Harry Gold, and David Greenglass. See supra note 94.
151 Of the Soviet agents linked with Hiss by Philby in 1969, none made any efforts to vindicate their reputations. Supporters and family members of the Rosenbergs made posthumous efforts on their behalf, but the Rosenbergs’ situation was complicated by the fact that they were charged with passing information to foreign nations in time of war, a capital offense, and executed after being convicted. RADOSH & MILTON, supra note 118, at xv-xxx (suggesting that evidence from Venona transcripts confirms the Rosenbergs’ status as Soviet agents but arguing that their death sentence was politically motivated).
152 A large percentage of those persons were not prosecuted at all by U.S. authorities. It was also much more common for those who faced prosecution to “defect” and cooperate with government agencies in exchange for immunity from prosecution, than to deny that they had engaged in any covert activity. In this sense Whittaker Chambers was a far more representative member of the community of exposed Soviet agents than Alger Hiss. See HAYNES & KLEHR, supra note 94, app. A at 339-70 (compiling annotated list, “Source Venona: Americans and U.S. Residents Who Had Covert Relationships With Soviet Intelligence Agencies”).
It says all I have to say about the case. I’m not going to write an autobiography.”154 Doubleday, the first publisher he showed the manuscript to, rejected it as “evasive and talking all around the point.”155

In the Court of Public Opinion was virtually devoid of personal comments. The most extended of those came at the book’s conclusion, where Hiss wrote that:

The ordeal of fighting false charges has disrupted my life and has brought pain to me and to my family. But nothing can take away the satisfaction of having had a part in government programs in which I strongly believed. I feel deep satisfaction that I took part in the creative efforts of the New Deal and in the formation of the United Nations. The democratic ideals which motivated me in government service continue to shape my outlook on life.156

Reviews of the book described it as “unfailingly sober and legalistic” and lacking “color and passion;”157 as having a “curiously flat quality,” with no sense of “passionate protest and burning sense of outrage;”158 as “not very interesting;”159 as “imbued with a strong power to tire;”160 and as “heavily legalistic” and “dully written.”161 Most remained unconvinced that Hiss had produced any compelling new evidence or seriously undermined the basis of his perjury conviction.162 One ended by stating that “[t]hose who are convinced of [Hiss’s] guilt might wish that he would write a book which would tell his true story. It would be more enlightening than this.”163 The National Review, although concluding that “Alger Hiss’s sally has been beaten back and his forces are licking their wounds in the fever-swamps of the left-wing press,” found that with the publication of Hiss’s book “there is an ugly stench in the air—the kind of air in which Hiss and his Communists prosper.”164 It was annoyed that Alfred Knopf agreed to publish the book, and wired several people to comment “on the following question: ‘Analyzed from the standpoint

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154 Id. at 403.
155 Id. at 402 n.12 (quoting Kenneth McCormick of Doubleday publishing). McCormick added that “[u]ltimately Alfred Knopf said this book should be published as a document.” Id.
156 HISS, PUBLIC OPINION, supra note 2, at 419.
157 C.J. Rolo, Cause Célèbre, ATL. MONTHLY, July 1957, at 87.
159 Book Review, NEW YORKER, May 25, 1957, at 141 (reviewing In the Court of Public Opinion).
161 Historical Notes: The Alger Hiss Story, TIME, May 13, 1957, at 27.
162 But see Aaron L. Fessler, Hiss, Alger: In the Court of Public Opinion, 82 LIBR. J. 1314 (1957) (“[T]he last word on this case is far from having been heard.”).
163 Kermit Lansner, Alger Hiss Argues his 'Innocence', NEWSWEEK, May 13, 1957, at 40.
164 The Knopf Case, 1957 NAT’L REV., at 488.
of Bolshevik tactical methods, what do you believe to be the primary political objective sought by the appearance of the Alger Hiss book at this time?”

Of those asked to comment, only Richard Rovere, described by the journal as a “[l]iberal critic,” objected to the premise of the question and stated that he could not “imagine any Bolshevik boss in his senses thinking that anything political was to be gained by the publication of this book at this time.”

Even Hiss, Rovere felt, “[e]vidently . . . has little hope of convincing anyone in the court of public opinion, as presently constituted, that he was wronged.”

In contrast, some of the enthusiastic reviews of Chambers’s Witness had described Chambers as “a new author of great talent, master of an unhurried, limpid style,” and the book as a “confession . . . [of] almost classical stature,” and an “autobiography the like of which has not been seen.” “No other book about the great case,” one concluded, “is likely to be so widely read or long remembered.”

When Hiss was released from prison and declared his intention to seek vindication, Whittaker Chambers had his own reaction. He wrote William Buckley:

Alger Hiss is one of the greatest assets that the Communist Party could possess. What is vindication for him? It is the moment when one of the most respectable old ladies . . . in Hartford . . . says to another of the most respectable old ladies . . .: “Really, I don’t see how Alger Hiss could brazen it out that way unless he really were innocent.” Multiply Hartford by every other American community. For the CP, that is victory . . . .

At that moment, confusion is rooted, morale split or sapped, truth poisoned . . . . And all that Alger has to do for this victory is to persist in his denials.

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165 The Hiss Maneuver, 1957 NAT’L REV., at 496. Most of the persons wired by the National Review were former Communists, including Hede Massing. She took the occasion to say:

I knew Alger Hiss as a Communist back in 1935. After meeting him, I told my Russian boss I had for the first time come across a genuine American Bolshevik — so struck was I by his singlemindedness, his internal coldness, and the compulsiveness of his ideology . . . . On reading his book, however, I am dismayed by the realization that that he is himself, first of all, a hater. He is totally lacking in respect for truth, or inclination to decency. He lies uninhibitedly, smoothly.

Id. (comments of Hede Massing).

166 Id. at 497 (comments of Richard Rovere).

167 Id.


169 Howe, supra note 146.


171 Stokes, supra note 146, at 123. But see sources cited supra note 146.

Four years later, Chambers elaborated upon that comment. He wrote Buckley:

Alger has for Americans in general an annihilating contempt, which he has dramatized by getting a considerable body of the most intelligent of them to believe in, and connive at, a lie, which, so far as I can see, has no parallel in history. Why should he not despise such dupes? For his lie which is aimed at their lives, they . . . heroize him.173

Despite Chambers’s concerns, most Americans, during the 1950s and some of the 1960s, did not appear to be sympathetic to Hiss. Robert Drinan’s 1957 review of In the Court of Public Opinion captured the mainstream response. Drinan wrote:

One picks up Hiss’s book with the hope that at last we may understand the razor-sharp mind and soul of Alger Hiss. But little in his book leads to any comprehension of his philosophy or moral outlook. There is no expression of moral aversion to communism and no suggestion of Hiss’s values. He argues his case on a strictly legal and technical plane, a case which he lost once before a jury, twice before a court of appeals and which was twice left undisturbed by the highest court of the land. The court of public opinion is not likely to reverse these decisions.174

Three incidents involving Hiss between 1956 and 1960 serve to confirm that the view expressed by Drinan remained in place at least through the 1950s. The first incident occurred in 1956, when Hiss was included in a group of nineteen public figures who were invited by the Whig-Cliosophic Society at Princeton University to visit Princeton that spring or fall.175 The invitations, to a spectrum of visible figures, such as Vice-President Richard Nixon, Senator Joseph McCarthy, and labor leader John L. Lewis, were issued in March.176 Hiss, who was completing the post-release conditions of his prison sentence,177 accepted immediately, scheduling an April 26, 1956 appearance. He agreed to speak on “The Meaning of Geneva,” an analysis of a disarmament conference involving the United States and the Soviet Union that had taken place the past

173 Letter from Whittaker Chambers to William F. Buckley, Jr. (Dec. 16, 1954), in ODYSSEY OF A FRIEND, supra note 172, at 226. For more on the same theme, see the letters from Chambers to Buckley, dated December 16, 1954, May 9, 1957, January 12, 1960, in ODYSSEY OF A FRIEND, supra note 172, at 93, 172, 281.


176 The invitations were apparently an effort by the Whig-Clio’s officers “to boost sagging attendance” at the Society’s gatherings. Id. at 8-9.

177 Hiss had been released from prison in November, 1954, sixteen months before his five-year sentence formally ended. HISS, RECOLLECTIONS OF A LIFE 183 (1988) [hereinafter HISS, RECOLLECTIONS] (“In my case, the statutory ‘good time’ formula resulted in my serving forty-four months of a nominal sixty-month sentence.”). Thus, he was on parole and not eligible to make public appearances until March of 1956.
summer.\footnote{178} Between the middle of March and early April, Princeton administrators attempted to persuade the officers of the Whig-Clio Society to withdraw their invitation, arguing that Hiss was a convicted perjurer and that he "was using Princeton's prestige to launch his rehabilitation effort."\footnote{179} The students initially resisted, but after the invitation was publicly announced on April 5, 1956, a torrent of adverse alumni reaction ensued, and some officers of the Whig-Clio Society, who conceded they knew comparatively little about the Hiss case, were inclined toward withdrawal. Meanwhile, Princeton administrators consistently distinguished between Whig-Clio's judgment in inviting Hiss, which they described as "rash, stupid, and silly,"\footnote{180} and the principle that student organizations should have autonomy to make their own decisions, which they supported.

In an April editorial, the Princeton student newspaper supported the administration, arguing that it was better for Princeton to host Hiss than to respond to "outside pressure groups," including alumni.\footnote{181} After learning that the Whig-Clio officers still endorsed the invitation, Hiss stated that he was coming on April 26.\footnote{182}

The incident provoked members of Congress and the press to either attack or defend Princeton. On April 20, the Princeton Board of Trustees took up the matter at a regular meeting, and, after unanimously disapproving of the invitation to Hiss, voted twenty-six to four to "leave upon the students' shoulders the responsibility for their action."\footnote{183} Anticipating a crush of media (approximately 500 correspondents, including many from foreign outlets, showed up on the day of the speech), Princeton administrators limited Hiss's speech to twenty minutes, and the subsequent question period to ten minutes. Only 200 students and fifty members of the press were permitted to attend; about 700 more thronged outside. No photographs were permitted, the usual post-speech reception was canceled, and Hiss, at the conclusion of the speech, was ushered out a back door and into a car to take him back to New York. He had been escorted by the police to the speech from the home of Princeton history professor Elmer Beller, where he had had dinner.\footnote{184}

Although the morning of Hiss's speech marked the appearance of papier-

\footnote{178} Fox, \textit{supra} note 175, at 8.
\footnote{179} \textit{Id.} at 9 (quoting an unnamed University official).
\footnote{180} \textit{Id.} at 11.
\footnote{181} \textit{Id.} (quoting an editorial in \textit{DAILY PRINCETONIAN}, Apr. 12, 1956).
\footnote{182} \textit{Id.} at 12 (quoting a conversation between Hiss and Bruce Bringgold, President of Whig-Clio).
\footnote{183} \textit{Id.} at 13 (quoting a resolution passed by the Princeton University Board of Trustees on April 20, 1956).
\footnote{184} \textit{Id.} at 14-15; \textit{see also} HISS, \textit{RECOLLECTIONS}, \textit{supra} note 177, at 188 ("[A]s I walked with two faculty friends to the building where I was to speak, we were forced to pass between lines of irate American Legion veterans and alumni.")
mâché pumpkins containing pictures of Woodstock typewriters scattered on campus lawns and the words “traitor Hiss” painted across the front of Whig Hall, where the speech took place, the speech itself provoked no visible reaction.\textsuperscript{185} Edgar Gemmell, Administrative Secretary in the office of Princeton President Harold Dodds, said that “[Hiss’s] speech was duller than a New York Times editorial,” and a reporter who observed the speech felt that “[t]he story ended when [Hiss] walked in the front door.”\textsuperscript{186}

Nonetheless, the Princeton incident, which Hiss later described as his “initial opportunity to break out of Coventry”\textsuperscript{187} after his jail sentence, reinforced Hiss’s pariah status in the mid 1950s. The controversy about Hiss’s invitation to Princeton, as framed by the participants, centered on whether undergraduate students, when they had exercised the bad judgment to invite a “convicted traitor” to their university, should nonetheless be allowed to do so. As the Princeton administration put it, the justification for not forcing the students to rescind their invitation was that young people will learn more readily from their mistakes if they are given the power to make them. The opposition to Hiss’s appearance from Princeton alumni centered on a concern that Hiss’s invitation by the Whig-Clio Society was sullying an idyllic place.\textsuperscript{188}

There was no contested issue about Alger Hiss’s character in the debate. He was someone who had been found guilty of perjury and was very likely guilty of espionage as well. The contested issue was what a university should do about students who had not fully appreciated the symbolic consequences of associating their university with a “convicted traitor.”\textsuperscript{189}

The Princeton invitation illustrated that at least by the spring of 1956 Hiss had not broken out of Coventry. Yet he persisted in seeking out public attention as part of his campaign for vindication. The apparently quixotic nature of this search in the cultural climate of the 1950s was to play an important part in the deterioration of Alger’s and Priscilla’s marriage. Within six months of Hiss’s release from Lewisburg, strains in his marriage began to appear, and they were initially precipitated by Alger’s determination to keep himself and his case in the public eye.\textsuperscript{190}

“Priscilla,” Hiss wrote in his memoirs, “had been deeply wounded by the trauma of the trials and the resulting invasion of her privacy.”\textsuperscript{191} She had been teaching at the Dalton School, a private school in New York City, but was dismissed after the Hiss case broke. She secured a job at a bookstore, but was relegated to tasks that did not involve contact with the public. “As a result of her difficult times,” Hiss recalled, “Priscilla wanted us to flee the scenes of her
torment. She suggested we change our names and try to get posts as teachers at some remote experimental school impervious to public opinion.”

That suggestion ran squarely up against Alger’s campaign for vindication. The campaign required more than a persistent search for evidence supporting his innocence. It required that the search be conducted in as visible a setting as possible. On this proposal, Hiss noted, “My objectives, my personal needs, were directly to the contrary. As I had done nothing to flee from, I felt that public prejudice should be confronted and faced down.” He asserted that “new evidence helpful toward my ultimate vindication” had already been found by his lawyers, and that “[m]ore evidence would surely be found.”

He had resolved to write *In the Court of Public Opinion* to underscore “the travesty of the HUAC hearings and trials.” The book project, however, “was profoundly distasteful to Priscilla,” and she “distanced herself from my writing and made no offer to take part.”

In the setting of this conflict between the Hisses over Alger’s search for publicity, the 1956 Princeton incident “did nothing to still Priscilla’s fears or to bridge our differences.” The earlier appearance of an article by Alger on the Yalta conference in *Pocket Book Magazine*, in which he argued that claims that the United States had abandoned Poland and China at the conference were “myths,” likewise “did not sit well with Priscilla.” Eventually, Alger concluded, “[w]hat had first seemed to me an understandable difference of outlook, of attitude” between Priscilla and himself on the issue of publicity “became a fixed gulf.”

In the fall of 1958, Priscilla asked Alger to leave, and after the Hisses’s son Tony returned from boarding school for the Christmas holidays, Alger and Priscilla separated.

The collapse of the Hisses’s marriage over the issue of Alger’s determination to remain in the public eye indicates that Priscilla had recognized that the climate of public opinion was generally hostile toward Alger in the years following his return from prison. That perception was largely accurate. The term “convicted traitor,” prominently applied to Hiss in the Princeton debate over his speech, had also been employed by Joseph McCarthy in the 1952 Presidential campaign, in the process of pointing out that Hiss and Adlai Stevenson had been friends. Between 1948, when it

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192 Id. at 187.
193 Id.
194 Id.
195 Id.
196 Id.
197 Id.
200 Id. at 190.
became clear that the Soviet Union would be an adversary rather than an ally of the United States, and 1954, when McCarthy was censured by the Senate but his virulent anti-Communism was adopted by both major political parties, "popular front" liberalism, which anticipated cooperation between persons who wanted to reform the existing capitalist order and persons attracted to more collectivist ideologies, ceased to become a force among supporters of the New Deal. Instead, most domestic liberals adopted anti-Communist and anti-Soviet premises in approaching foreign policy issues. Anti-Communism remained the perspective of both major parties in the 1960 election. Magazines and journals that had identified with radical politics in the 1930s adopted an anti-Communist perspective in the 1950s and early 1960s. Despite some continued support for the idea of Hiss's innocence among several members of the intelligentsia, only The Nation consistently defended him in the decade after he left prison. The Nation's editor in the 1950s and early 1960s, William Carey McWilliams, was a strong supporter of Hiss, and commissioned several favorable articles on Hiss and his side of the Hiss case between 1957 and 1962.

There was another possible dimension to Priscilla Hiss's reluctance to support Alger's campaign to confront and face down public prejudice after his

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202 See MARY SPERLING MCAULIFFE, CRISIS ON THE LEFT: COLD WAR POLITICS AND AMERICAN LIBERALS, 1947-1954 (1978) (discussing the collapse of popular front liberalism between 1948 and 1954 and its replacement by a "redefinition of American liberalism" in which older ideological positions were tempered with "Cold War 'realism'").


204 After Hiss's conviction for perjury in 1950, Eleanor Roosevelt and Walter Lippmann continued to believe that he was innocent, Lippmann telling Richard Rovere that "I know Alger Hiss. He couldn't be guilty of treason." Richard H. Rovere, Walter Lippman, 44 AM. SCHOLAR 585, 601-02 (1975). Another acquaintance of Hiss's, a Columbia philosophy professor, told Sidney Hook, around the same time, that "[e]ven if Hiss himself were to confess his guilt, I wouldn't believe it." WEINSTEIN, PERJURY (1997), supra note 1, at 455, 459.

205 The Nation had close personal ties to Hiss. Its publishers in the late 1940s and 1950s were Freida Kirchwey and George Kirsten. The former was a friend of the Hisses, and the latter was married to a writer, Elinor Ferry, who worked with Helen Buttenweiser, a lawyer who was perhaps the Hisses's closest friend when Alger was in prison and worked with Alger in his efforts to get his conviction reversed. See WEINSTEIN, PERJURY (1997), supra note 1, at 459. For an affectionate portrait of Helen Buttenweiser, see TONY HISS, THE VIEW FROM ALGER'S WINDOW: A SON'S MEMOIR 89-98 (1999).

206 Id. at 459-60, 580 n.31 (noting list of articles in The Nation supporting Hiss, including Fred J. Cook's, New Perspectives on the Strangest Case of Our Time, Nixon Kicks a Hole in the Hiss Case, The Ghost of a Typewriter, and George T. Altman's, The Added Witness).
release from Lewisburg. It may have stemmed from her failure to understand why Alger was determined to seek vindication when he knew that they both had been working for the Soviets. The evidence at Hiss’s trial strongly suggested that Priscilla Hiss had typed the copies of the State Department documents Chambers produced, and subsequent evidence identified the GRU network headed by Alger Hiss as composed of his relatives. Priscilla may have felt that Alger’s continual seeking of publicity would not only subject them both to humiliation, but also would be a fruitless exercise: vindication could never come. “Our disagreement as to our future goals,” Alger recalled, “became irreconcilable.”207 That may have been because Priscilla could not fathom why Alger was mounting his campaign in the first place.

A final indication that Hiss’s campaign had made little headway by the end of the 1950s can be seen in the first profile of him by a major magazine since his conviction, Brock Brower’s The Problems of Alger Hiss in the December, 1960, issue of Esquire.208 Brower had been motivated to interview Hiss because he had concluded that “now, at the remove of a decade . . . it is at least possible to consider Alger Hiss as something besides the Case.”209 Hiss “can perhaps at last be seen,” Brower thought, “as a human being and not simply as a piece of a record.”210 “In fact,” Brower felt, “the one thing to be avoided at this late day is another reading of the Case. It has been read to death.”211

Brower gave a summary of attitudes toward the Hiss case that underscored the uphill battle Hiss’s campaign for vindication faced in 1960. The public could be grouped, Brower felt, into two camps. Brower suggested that “Chambers found the epigram for one camp,” when he quoted Richard Nixon as saying during the Hiss investigations that “[i]f the American people understood the real character of Alger Hiss, they would boil him in oil.” Norman Thomas captured the “other camp” in his comment that “liberals . . . can believe Alger Hiss guilty, but can never forgive Whittaker Chambers.”212 Brower’s two camps apparently agreed on Hiss’s guilt. Brower’s interest in avoiding another reading of the Case seems to have been based on an assumption that although people might attribute Hiss’s behavior to “every human nobility as well as every human frailty,”213 they were unlikely to be receptive to claims that he had been entirely innocent.

Much of Brower’s attention was directed toward why Hiss had continued to adopt what he called a “detached, dispassionate, ever-rationalizing attitude” toward his conviction for perjury.214 It was that attitude that “has kept Alger

207 Hiss, Recollections, supra note 177, at 187.
209 Id. at 140.
210 Id. at 140.
211 Id. at 140.
212 Id. at 140.
213 Id. at 140.
214 Id. at 145.
When Hiss was released from prison in 1954, advice to him, ran two ways: either that he must certainly disappear from public view and start over again somewhere else, preferably abroad under a new name, or that he must certainly appear full-panoplied before the public, knight-errant to his own cause.\footnote{Id. at 141.}

"Neither way suits him at all," Brower concluded. Hiss "exercise[s] a close choice over his few public appearances." Moreover, although "[h]e likes to speak out for causes like the U.N. . . . the public, which used to find him sinister, simply finds him dull." Brower cited Hiss's appearance at Princeton as a "dry" performance in which "[e]verybody went away disgusted." By being "dull and uninformative," Hiss "makes a bad and . . . sometimes damning public impression" by engendering "a vague feeling that the man must be disingenuous if he appears that blank in public."\footnote{Id.}

Brower's article raised two themes: the contrast between Hiss's "distant public manner" and the "affability that seems to inform all dimensions of his private life,"\footnote{Id. at 145.} and the reduced, almost pitiable circumstances in which Brower found Hiss. Eventually Brower returned to the question of Hiss's "troubling silence\footnote{Id. at 140-41.}" about the personal dimensions of his ordeal, but first he quoted persons who agreed that Hiss had become "quite a social catch at New York cocktail parties." They described him as "'charming,' 'a wonderful conversationalist,' 'mentally impeccable,' 'not bitter, not cynical,' and 'a nice comfortable person' with 'a sweetness about him.'"\footnote{Id. at 141.}

Brower also noted that during Hiss's imprisonment, Hiss "found friends among prisoners and guards alike," and that "there were rousing cheers from the bleak prison windows" when Hiss was released.\footnote{Id. at 143.} He mentioned that when Hiss worked in the office of Feathercombs, Inc., a manufacturer of lightweight combs, "[e]veryone . . . either liked him or . . . found a way to get along with him."\footnote{Id. at 143-44.} Brower devoted a fair amount of space in the article to Hiss's mentoring of the president of Feathercombs's troubled adolescent son, who, after "stumbl[ing] over several schools" and "knock[ing] around a few of the dimmer New York night spots as a volunteer crooner," came to work in the advertising department at Feathercombs.\footnote{Id. at 143.}

Although many of the stories Brower told about Hiss's private life portrayed
him as warm, generous, self-effacing, and consistently interested in the welfare of others, Brower also emphasized the pathos of Hiss's existence in 1960. Hiss's resume prior to his conviction, Brower suggested, made him appear to be "that rare individual, Just the Man that Everybody is Always Looking For." At the time Brower wrote the article, however, Hiss was selling stationary for only slightly more than $75 a week. Hiss was living by himself in "a third-floor walk up, a sad building with a tattered green awning over a vacant store front piled high with empty cardboard cartons." Since his indictment for perjury, Hiss had "been more or less broke," all of his savings having gone toward legal expenses. An Act of Congress had cut him off from any government pension. He lost his job with Feathercombs in 1959, and was not able to find another for five months, living on unemployment payments. His life since leaving prison, Brower thought, had been "useful" but in "straitened circumstances."

The sympathy Brower apparently sought to generate for Hiss was qualified, however, by Brower's sense that by "eschewing high drama and [fighting] to keep the Case strictly within a legal framework," Hiss was not helping himself. By giving his case "no independent life outside its legal existence," Hiss may have been seeking to place it within a "familiar . . . enclosure" that was "both more familiar and more favorable to him than the public confessional." Yet, Brower implied, Hiss's silence was troubling because Hiss might well advantage himself by confessing his guilt. Brower quoted a comment made by Chambers, prompted by Hiss's application for a passport in 1959, that

I cannot say . . . that Alger Hiss has paid any effective penalty . . . . There is only one debt, and one possible payment of it . . . in his case. It is to speak the truth. That, to this hour, he has defiantly refused to do. Worse, he has spent much time and contrivance to undo the truth.

Brower did not endorse Chambers's statement, but he did note that Hiss's silence had been described as "almost belligerent" and called it "opting out," and "assuming the role of non-hero." In the end, Brower, despite his interest

224 Id. at 139.
225 Id.
226 Id.
227 Id.
228 Id.
229 Id. at 139-40.
230 Id. at 145.
231 Id.
232 Id.
233 Id. (quoting Whittaker Chambers).
234 Id.
in "perus[ing] . . . character" rather than the record of the case, had difficulty seeing Hiss as other than a convicted perjurer.

B. Supplanting Legalistic Arguments: The Friendship and Fratricide Project

When Hiss first conceived of writing a book about the events leading up to his perjury conviction, he considered taking an approach that sought to emphasize "the limits of court procedures in times of public hysteria." Such an approach, however, ran counter to the pervasive anti-Communism of the 1950s, which made concern about the penetration of U.S. government agencies by persons sympathetic to the Soviet Union seem more like prudence than paranoia. One of Hiss's lawyers encouraged him instead to keep his book "accurate," even if "that would make it dull for anyone who was looking for sensation." The "legalistic" tone of In the Court of Public Opinion was in part a recognition by Hiss that, as his lawyer put it, "most of the people who found it dull would have been satisfied only by a confession of guilt or of covering up for someone else who was guilty." An impassioned plea of innocence was also not necessarily good strategy. The same lawyer told Hiss, "I don't see how one who has been convicted of perjury could [proclaim] . . . his innocence with flourishes and [expect] . . . the public to believe him." Thus, Hiss's reluctance to go beyond legalistic defenses of his innocence in the 1950s may have not simply been, as Brower thought, the product of Hiss's reluctance to move beyond the familiar discourse of his profession. Hiss also may have felt that not much was to be gained, in an atmosphere in which most members of the public thought him guilty, from assuming the roles of martyr or knight-errant.

Not all observers of the Hiss case in the 1950s thought him guilty, though. In the years in which Hiss was working on In the Court of Public Opinion, two other books raised serious doubts about the basis of his perjury conviction. The authors of both books continued to see the Hiss case as turning on the comparative credibility of Hiss and Whittaker Chambers. In 1953, the Earl of Jowett, former Attorney General and Lord Chancellor of England, published The Strange Case of Alger Hiss, in which he combined an attack on the practices for admitting and commenting on evidence in American trials with a suggestion that Hiss could well have been framed. If Alger or Priscilla Hiss had typed copies of stolen documents on a Hiss family typewriter, Jowitt suggested, only an "utter fool" would have allowed that typewriter to remain in circulation. Thus, the fact that the typewriter was found raised the distinct

235 Id.
236 ZELIGS, supra note 153, at 402.
237 Id. at 403 (quoting Robert M. Benjamin, Hiss's attorney).
238 Id. (quoting Robert M. Benjamin, Hiss's attorney).
239 Id.
241 Id. at 271-72.
The only issues that should properly have been considered in the case, Jowitt argued, were those formally raised by the indictment: whether Hiss had known Chambers after 1936 and whether Hiss had turned over copies of stolen government documents to Chambers. Jowitt noted that Chambers and Hiss (along with Priscilla) had given conflicting accounts of their relationship and of Hiss’s involvement with the documents, and therefore the Hiss case turned on which account was credible. Jowitt felt that Hiss had been hurt by the introduction of evidence about his alleged connections with Communists in the 1930s, which Jowitt thought was not relevant. Under English practices, Jowitt noted, the judges would have excluded some of that evidence and commented on the marginal relevance of other evidence. This may have had an impact on the relevance of evidence regarding the transactions involving the rug, the transfer of a car, and the alleged loan from the Hisses to Chambers.

Jowitt also implied that there were some features of the Hiss case that could be explained if one assumed that Whittaker Chambers, or a confederate, typed the copies of the stolen documents in order to fabricate a charge against Hiss. In addition to the perversity of Hiss’s not destroying the Hiss family typewriter if Priscilla or he had typed government documents on it, Jowitt noted that Chambers repeatedly denied that he had any evidence that Hiss had committed espionage and then suddenly reversed himself and produced the “Pumpkin Papers.” Jowitt also suggested that if Chambers and Hiss were as closely acquainted as Chambers claimed, Chambers might have had easy access to a Hiss family typewriter.

These speculations all had the effect of attributing motives to Chambers that would have impeached the reliability of his testimony. They also served to bolster the credibility of Hiss, whom Jowitt portrayed as a scapegoat, rather than a confederate of Chambers in espionage, and as the more credible of the two witnesses. As a scapegoat, Hiss became a more credible witness because his protestations of innocence could be seen as evidence of his bewilderment at the charges made against him. Jowitt’s conjectures were thus consistent with the explanation for Hiss’s conduct advanced by Helen Buttenweiser to Brock Brower in 1960:

If [Hiss] is completely innocent he can’t know what’s happened. He can’t understand why he was attacked. He went into the first trial with the firm conviction that his word would be taken. He saw it as a credible story versus an incredible story. He simply can’t get over the fact that he

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242 Id. at 277-82.
243 Id. at 119.
244 Id. at 199-206.
245 Id. at 57-58.
246 Id. at 277-78.
wasn’t believed.\(^\text{247}\)

*The Strange Case of Alger Hiss* indicated that there was a potential defense for Hiss that transcended “legalistic” arguments. Jowitt implied that Whittaker Chambers, an unreliable and possibly unstable character, had the means and opportunity to frame Hiss, and that, amid anti-Communist paranoia rampant in America at the time of the Hiss trials, U.S. government agencies had incentives to appear zealous in the pursuit of alleged Communists in the government.\(^\text{248}\) That defense, however, has some difficulties. It assumes a closer relationship between Hiss and Chambers than Hiss was willing to acknowledge, and provides no explanation for why Chambers, ten years after he broke with the Soviets, suddenly decided to betray Hiss. The defense does have the distinct advantage, from Hiss’s point of view, of highlighting the fact that in the Hiss case issues centering on the credibility of the protagonists had been run together with issues raised by the alleged penetration of Communists into the U.S. government. Jowitt suggested that those issues should not have been run together, and that Hiss may have suffered, and Chambers may have benefited, from their not having been adequately separated.

In addition to raising those questions, *The Strange Case of Alger Hiss* offered the possibility that Chambers, on his own, might have been able to generate documents whose typeface appeared to match that of Hiss family correspondence. Jowitt did not provide any details on how Chambers might have accomplished such a feat.\(^\text{249}\)

The second book supporting Hiss that appeared in the 1950s, Fred Cook’s *The Unfinished Story of Alger Hiss*, supplied some of those details. It also reaffirmed Jowitt’s contention that the Hiss case, which was properly about the comparative credibility of Hiss and Chambers, had been caught up in the anti-Communist paranoia in U.S. government circles.\(^\text{250}\) For Cook, the “unfinished” dimension of the Hiss case lay in the fact that some of its participants had both the incentive to frame Hiss and the technical and human resources to forge documents.\(^\text{251}\) Cook argued that Chambers, acting either on his own, with the cooperation of other Soviet agents, or with the FBI, could have stolen government documents, typed copies of those documents on a typewriter whose characteristics came close to duplicating those of the Hiss family typewriter, and then “planted” that typewriter where it could be found.

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\(^{247}\) Brower, *supra* note 208, at 140 (quoting Helen Buttenweiser).

\(^{248}\) Jowitt singled out the House Un-American Activities Committee. See Jowitt, *supra* note 240, at 139-49.

\(^{249}\) Jowitt did write that “[i]t certainly would not have been difficult to get access to the typewriter once it had left the house which Hiss occupied,” and that “[i]f anyone knew when [Hiss] was away, it might not have been difficult to enter his house.” He added, however, that “there is no positive evidence . . . that . . . Chambers ever did, in fact, have access to the typewriter.” *Id.* at 277-78.


\(^{251}\) *Id.* at 153-63.
and produced in court.\footnote{Id.} This argument is essentially an elaboration of one that was unsuccessfully advanced by Chester Lane, one of Hiss’s lawyers, in moving for a new trial in 1952.\footnote{See Weinstein, Perjury (1997), supra note 1, at 467-68. Hiss gave a summary of Lane’s argument, quoting extensively from Lane’s new trial motions, in In the Court of Public Opinion. Hiss, Public Opinion, supra note 2, at 365-85.} Cook, however, elevated the political stakes of that argument by suggesting that Chambers, with the possible support of the Soviets or the FBI, may have had the resources to construct such a typewriter and the incentive to frame Hiss.\footnote{Cook, supra note 250, at 130, 176.} Cook also asserted that the Hiss case turned on credibility, but that it was not only Hiss’s and Chambers’s credibility at issue. As Cook put it, “Either Alger Hiss was a traitor to his country and remains one of the most colossal liars and hypocrites in history, or he is an American Dreyfus, framed on the highest level of justice for political advantage.”\footnote{Id. at 2.}

Cook and Jowitt, taken together, injected extra-legal factors into an analysis of the Hiss case. In their view, the case, from its outset, had human and political dimensions that had not been fully explored. It was “strange” and “unfinished” in that satisfactory explanations for Hiss’s and Chambers’s conduct required a far more adequate understanding of their relationship than could be gleaned from the unsatisfactory evidentiary bases of the Hiss perjury trials.

Among the extra-legal factors Jowitt discussed was Chambers’s motivation in coming forward to accuse Hiss of being a Communist, and subsequently of having committed espionage, after so many years of silence. At one point Jowitt discusses the testimony of the two psychiatrist witnesses called by the Hiss defense at the second trial, Carl Binger and Henry Murray, both of whom described Chambers as a “psychopathic personality” prone to pathological lying.\footnote{Jowitt, supra note 240, at 223.} Although Jowitt felt that neither Binger nor Murray should have been allowed to express an opinion on Chambers’s credibility, and that the evidence on which their characterization of Chambers as “psychopathic” was slender, he noted that Witness contained a “wealth of material which was not known to Drs. Binger and Murray” and that Jowitt found extraordinary. On the basis of “all the new circumstances revealed in Witness,” Jowitt said, “I should be profoundly interested to hear the opinion of distinguished American psychiatrists and psychologists” on Chambers.\footnote{Id. at 223-24. Exactly what Jowitt meant by “all the new circumstances revealed in Witness” providing fruitful material for psychiatrists was unclear. He singled out only two pieces of information about Chambers as possibly raising psychological issues, and only one had been newly supplied in Witness. That was Chambers’s attempt to commit suicide by asphyxiating himself with gas fumes while he slept. See Chambers, supra note 22, at 773-76. Jowitt felt that “[a]nyone who can attempt suicide in the way which is described in
psychiatrist, published Friendship and Fractricide, a book that sought to respond to Jowitt’s request to hear the opinions of American psychiatrists and psychologists on Chambers’s Witness. In the preface, Zeligs noted that he “first began to think about writing a book” on the Hiss case in 1958, after reading Jowitt’s Strange Case of Alger Hiss and Chambers’s Witness. Zeligs wrote that he was “moved by [Jowitt’s] special appeal to American psychiatrists to help solve the riddle of this important event.” Then, in 1957, In the Court of Public Opinion appeared, placing Chambers’s life “in apposition” to Hiss’s, which made “the mystery . . . even more intense” for Zeligs. Finally, after reading Cook’s The Unfinished Story of Alger Hiss in 1958, Zeligs concluded that “the human enigma of the case, by far the deepest area of its mystery, remained untouched and unexplored.” He believed that the Hiss case could be clarified by an exploration of “the personal lives” of Hiss and Chambers and “the psychological motives and forces that underlay the legal and political contradictions of the case.”

Zeligs also had a hunch about Whittaker Chambers. Dr. Carl Binger, one of

Witness must be quite out of the run of ordinary mortals.” Jowitt, supra note 240, at 46.

The other piece of information that Jowitt found suggestive was Chambers’s story about taking a trip with the Hisses in the summer of 1937. Chambers had not been able to corroborate the story at Hiss’s trials, raising, for Jowitt, the question why Chambers would “invent such a bizarre story.” Jowitt mentioned the trip twice in The Strange Case of Alger Hiss. The first time he concluded that if the story had been invented by Chambers, that in itself was not necessarily evidence that he had a “psychopathic personality,” because “experience taught him that witnesses do sometimes tell long and detailed stories which on examination prove to be mere figments of the imagination.” Id. at 86-87. Later in the book, however, Jowitt wrote that “I saw no possible answer to [why] Chambers would invent the story until [I] read the doctors’ evidence [that Chambers was a pathological liar].” Id. at 223.

Jowitt did not mention that Chambers repeated the trip story in Witness. Jowitt noted that the trip became important because one of the details Chambers remembered about the trip, that he and the Hisses had seen the play She Stoops to Conquer near Peterborough, New Hampshire, could not be corroborated. Id. at 114-16. August 10 was the only date the play was performed in the Peterborough area, id. at 112, and there was no evidence that the Hisses or Chambers stayed in the tourist home where Chambers remembered lodging on or around that date. Id. at 115. Other details of the trip that he provided were accurate, but they did not establish that he had taken the trip with the Hisses. See Chambers, supra note 22, at 431.

Zeligs, supra note 153.

Jowitt, supra note 240, at 223 (noting Jowitt’s interest in hearing the opinions of American psychiatrists and psychologists on Chambers’s Witness); Zeligs, supra note 153, at ix (remarking on Jowitt’s interest).

Zeligs, supra note 153, at ix.

Id.

Id. at x.

Id.

Id. at xi.
the defense’s psychiatrist witnesses, gave Zeligs a copy of Chambers’s 1929 translation of the novel *Class Reunion*, by Franz Werfel, which Binger had discussed in his testimony. Binger had suggested in Hiss’s second trial that there were some “extraordinary analogies” between the plot of *Class Reunion* and Chambers’s relationship with Hiss.265 The protagonist in *Class Reunion* is haunted by the memory that he had once sought to falsely accuse a classmate, of whom he was jealous, of altering a grade report. Binger indicated that Chambers might have been similarly jealous of Hiss, and his accusations might have been similarly false. Zeligs, after comparing Chambers’s translation of *Class Reunion* with the original German, was prepared to go even further. He concluded that Chambers had “effectively altered the original meaning” of some of the passages in *Class Reunion* “by means of deletions and insertions.”266 “I felt I was definitely on the track of certain factors in this human equation,” Zeligs said in his preface to *Friendship and Fratricide*, “that had not been examined in the literature on the [Hiss] case.”267

Zeligs thus set out to arrange a series of personal interviews with Hiss, Chambers, and other participants in the Hiss case, with the goal of producing “an analytic biography” of the two men through which he could explore his hunch.268 Hiss fully cooperated with Zeligs, giving Zeligs access to his defense files and spending “many hours in discussion of [Hiss’s] life,”269 but Chambers, and his friends, associates, and lawyers, refused to share information with Zeligs.270 Chambers then died in July, 1961, about two years after Zeligs had begun his research.271

Although Zeligs’s research was conducted with his *Class Reunion* hypothesis in mind, he later claimed that “it [was] especially important to maintain a proper equidistance in my investigation and analysis” of Hiss and Chambers.272 “Only in this way,” he felt, “could [he] . . . avoid the danger of bias in so personalized a study.”273 Though Zeligs’s goal may have been to “maintain careful analytic neutrality,” one of his subjects had been fully supportive of Zeligs’s project, and the other had refused to have anything to do with it.274 Moreover, Zeligs designed his book as a test of the hypothesis that the Hiss case was essentially about Whittaker Chambers’s jealousy of Alger Hiss.

Zeligs’s research did not result in a successful resolution of the “human

265 *Id.* at x.
266 *Id.* at xi.
267 *Id.*
268 *Id.* at xii.
269 *Id.*
270 *Id.* at xiii.
271 *Id.*
272 *Id.* at xiv.
273 *Id.*
274 *Id.*
enigma” of the Hiss case, but its appearance confirmed that, by the mid 1960s, Alger Hiss had resolved to contribute to defenses of his innocence that went beyond “legalistic” arguments. Although Hiss had told Brower that “I’m not going to write an autobiography—nothing that interesting about my life . . . I hold certain strong views about privacy,”275 Hiss quickly departed from that posture with Zeligs. Over five years, Zeligs “engaged [Alger] Hiss in a close and continuous correspondence in which [he] put to him every type of question, the responses to which [he] felt were necessary both for background information or directly quoted documentation,” and held “more than one hundred hours of conversation” with Hiss.276 Zeligs wanted a “first-hand, living picture” of Alger Hiss, and Hiss was amenable.277 Hiss talked to Zeligs about the suicides of Hiss’s father and elder sister,278 the resentment Hiss felt toward his mother,279 the anguish Hiss experienced when his brother Bosley died at the age of twenty-six from Bright’s disease,280 Hiss’s courtship of and marriage to Priscilla,281 and their separation.282

At the close of his book, Zeligs observed, “Though Hiss has learned a great deal about psychological causation, and his understanding of himself and of Whittaker Chambers has deepened, he looks back on the trials in the same detached lawyer-like way.”283 Zeligs felt that Hiss continued “to measure himself against his ideal of ‘objectivity,’” and that it was Hiss’s “insistence on maintaining his rational distance on the events in which he was fatally entangled [that] caused the greatest misconceptions” about him.284 It resulted in his being perceived as cold, or evasive, and thus “cost him his public life.”285 For Hiss, “the subject of his innocence” was “a very matter-of-fact, easily expressed matter,” Zeligs concluded.286 This was both the basis of Hiss’s being misunderstood and his “abiding optimism that history will prove him innocent.”287

In his preface Zeligs acknowledged that the “opposite attitudes” of Hiss and Chambers toward his book, and the “unexpected death” of Chambers as the book was in progress, had created an “imbalance” in his portrait of the two

275 Brower, supra note 208, at 140.
276 ZELIGS, supra note 153, at 137 n.5.
277 Id.
278 Id. at 139-42, 174-76.
279 Id. at 143-44.
280 Id. at 167-71.
281 Id. at 180-83.
282 Id. at 411-12.
283 Id. at 412-13.
284 Id. at 413.
285 Id.
286 Id.
287 Id. at 414.
Those comments understated the extent to which Hiss and his supporters had engaged themselves in the shaping of Zeligs’s book. In his acknowledgments Zeligs said that he owed “a special debt to the members of the Hiss defense counsel and to Hiss’s present attorney, [and that w]ithout their help and encouragement . . . and the development of a working relationship which extended beyond the bounds of friendship, this project could not have been accomplished.”289 Zeligs thanked all the members of the Hiss defense team, but especially Helen Buttenweiser, who “gave generously of her time and energy from beginning to end,”290 and attorney John Lowenthal, who was to emerge as Hiss’s primary legal representative later in Hiss’s life.291 Zeligs wrote that Lowenthal “became involved with this project and [was one of Zeligs’s] . . . staunchest and severest critics,” making “cogent criticisms of several working drafts.”292

It seems very likely that when Meyer Zeligs first approached Hiss and Chambers with requests that they cooperate with his “analytic biography” of their relationship, Hiss and Chambers were able to discern the likely shape of Zeligs’ project. Zeligs was planning to construct an explanation for the Hiss case rooted in the tangles of a personal relationship that he believed had, for psychological reasons, provoked jealousy in Chambers. Hiss, also for psychological reasons, had not anticipated that response and had been utterly bewildered by Chambers’s attack. Hiss’s lack of preparedness, Zeligs felt, came from his “lack of comprehension of psychic forces,” an “emotional blind spot” that caused Hiss to take an overly simple and sanguine view of human relations.293

Moreover, when confronted with evidence that others may have wanted to damage him, Hiss tended to “counter the aggressions of others by increasing his ‘objectivity.’”294 He reacted “with saintliness rather than anger toward those that have hurt . . . him.”295 In Zeligs’s view, Hiss’s cautious, “legalistic” style in responding to the charges against him was not evidence of evasiveness. It was, instead, an effort to try to make sense of, in an “objective” fashion, the “guile and deceit” he had not fathomed in others.296 “[F]rom a close study of [Hiss] . . . as a person,” Zeligs suggested, “one senses a lack of those very attributes of character—shrewdness and cunning—which characterize his public image.”297

288 Id. at xiv.
289 Id. at 448.
290 Id.
291 Id. at 449.
292 Id.
293 Id. at 281.
294 Id. at 284.
295 Id. at 283.
296 Id. at 279.
297 Id.
Any doubts on the part of Hiss’s supporters that Zeligs’ interpretation of the Hiss-Chambers relationship would point in the direction of Hiss’s innocence would have been dispelled by two letters Zeligs wrote to lawyers representing Hiss in 1960 and 1961. In the first letter, written to Helen Buttenweiser on May 19, 1960, Zeligs indicated that he would like copies of the Hiss trial transcripts, and that Hiss had suggested that he contact Buttenweiser.298 Zeligs wanted the transcripts, he indicated, as part of a “clinical and factual psychoanalytic investigation.”299 Buttenweiser made the transcripts available to him, and in his preface Zeligs said that he had received them “through the courtesy of an interested colleague.”300 Among the testimony from the transcripts that Zeligs quoted in *Friendship and Fratricide* was Binger’s analysis of *Class Reunion*. In referring to Binger’s testimony, Zeligs said that he found “it difficult to understand how the reliability and credibility of Chambers could have been accepted or given serious courtroom consideration once his clinical picture had been portrayed . . . . The testimony of Dr. Carl Binger . . . was scholarly indeed.”301

Zeligs not only reinforced Binger’s conclusions, he went beyond them. Zeligs constructed an explanation of Chambers’s conduct that rested on his associating Hiss with Chambers’s older brother, Richard, who had committed suicide;302 the homosexual attraction Zeligs believed Chambers felt toward both Hiss and Richard;303 and Hiss’s spurning of Chambers, leading to Chambers’s need to expiate his guilt by plotting revenge against Hiss.304 Chambers’s “revenge” culminated when he released, in 1948, the information incriminating Hiss which he had falsified many years earlier.305 Zeligs’s explanation was designed to emphasize Chambers’s instability, to provide him with a motive for framing Hiss, and above all to undermine his credibility as a witness. As Zeligs put it:

The many episodes in . . . [Chambers’s] itinerant and vagabond existence were linked in a long chain of clinical evidence . . . to show Chambers’s sociopathic personality, his amoral behavior, and his unreliability as a witness . . . . [S]uch historical material was relevant and essential to the case. For the central issue boiled down to the single fact: one of the two,

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298 *WEINSTEIN, PERJURY (1997)*, supra note 1, at 527 (quoting Letter from Meyer A. Zeligs to Helen Buttenweiser (May 19, 1960)). Allen Weinstein apparently saw this letter and the letter Zeligs wrote to Claude Cross, see infra note 307 and accompanying text, in the Hiss Defense files. See *WEINSTEIN, PERJURY (1997)*, supra note 1, at 588.

299 *Id.* at 527.

300 *ZELIGS*, supra note 153, at xii.

301 *Id.* at 385-86.

302 *Id.* at 81-102, 217.

303 *Id.* at 212-20.

304 *Id.* at 231-35.

305 *Id.* at 81-102, 210-20.
Thus, the Hiss defense knew early on in Zeligs's project that he intended to supply some extra-legal arguments supporting Hiss. They also knew, more fundamentally, that Zeligs believed Hiss to be innocent. On March 13, 1961, less than two years into his research, Zeligs wrote to Claude Cross, who had represented Hiss at his second trial, "I can readily appreciate your strong sentiments about Mr. Hiss's innocence and [I] must say that I share the same conviction." Zeligs's posture was also known to supporters of Chambers. In an interview with one of Chambers's close friends, Herbert Solow, on May 11, 1962, Solow told Zeligs, "Hiss is surely aware you think he is innocent." When John Chabot Smith sought to summarize a battery of arguments for Hiss's innocence in his 1976 authorized biography, *Alger Hiss: The True Story*, he said that "as [Zeligs's] research progressed he became convinced that Hiss was innocent, and stepped out of his role as psychiatrist to argue the case."

The failure of Zeligs to produce anything like a detached, analytical portrait of the Hiss-Chambers relationship was emphasized by Meyer Schapiro in a 1967 review in *The New York Review of Books*. Schapiro was a longtime friend of Chambers, who had helped Schapiro buy a rug for Hiss in 1936, so he was not an impartial reviewer. The contrast Schapiro drew between Zeligs's posture of professed "careful analytic neutrality" toward Hiss and Chambers and his contrasting treatment of his two subjects in *Friendship and Fratricide* was nonetheless telling. Schapiro wrote:

Here are the pictures of the two men that result from Dr. Zeligs's study: Chambers was a pathological liar, an imposter, a psychopath, a paranoic, an overt homosexual, a fratricide, a forger guilty of framing his friend Alger Hiss, and in the end a suicide.

The neutral "portrait in depth" of [Hiss] shows him to be a kind cultured gentleman, loyal to friends and family, warm but reserved, scrupulously logical and accurate, strict in the performance of duties, and so impersonal and disinterested in pursuing truth as to weaken his effectiveness in self-defense and to make his book strangely unemotional.

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306 Id. at 385.
307 WEINSTEIN, PERJURY (1997), supra note 1, app. at 527 (quoting Letter from Meyer Zeligs to Claude Cross (Mar. 13, 1961)).
308 Id. (quoting Interview by Meyer Zeligs with Herbert Solow (May 11, 1962)). Zeligs confirmed that he had had an interview with Solow on that date in ZELIGS, supra note 153, at 463. Solow's secretary transcribed the interview, and Solow's widow, Sylvia Salmi Solow, gave Allen Weinstein access to it. See WEINSTEIN, PERJURY (1997), supra note 1, at 589.
though it concerns a frame-up.\textsuperscript{311}

Schapiro then proceeded to catalog the flaws in Zeligs's portrait of the Hiss-Chambers relationship. Zeligs's characterization of Chambers was "largely conjectural."\textsuperscript{312} He took "Hiss's innocence for granted," and assumed that Chambers was guilty of framing Hiss.\textsuperscript{313} Zeligs sought to "confirm Chambers's crime" by an exploration of Chambers's unconscious, while at the same time demonstrating Hiss's innocence through his outward behavior.\textsuperscript{314} His view of Hiss and Chambers could not be proved, so he "assume[d] it in his 'analysis'" of the two men's relationship.\textsuperscript{315} Although Zeligs freely engaged in psychoanalytic speculation about Chambers, his analysis of Hiss lacked any comparable speculation. In sum, the thesis of \textit{Friendship and Fratricide} was a combination of "errors, wild guesses, confusions, and bad faith."\textsuperscript{316} "I would respect Dr. Zeligs more," Schapiro said, "had he stated on the first page that he believed in the innocence of Hiss. But not much more—the book would still be shoddy, a misuse of psychoanalysis."\textsuperscript{317}

Zeligs's account of Hiss, Schapiro concluded, was "designed to show that he was a good man incapable of the double life of government official and underground Communist" that Chambers accused him of leading.\textsuperscript{318} In contrast, his view of Chambers was marked by a "readiness to suppose that any sign of guilty feeling in Chambers is an evidence of crime—fratricide, forgery, and frame-up."\textsuperscript{319} For Schapiro, the unevenness of Zeligs's portraits meant that \textit{Friendship and Fratricide} "should not be taken as an example of psychoanalytic method."\textsuperscript{320} Instead, it was a misuse of that method that "exceeds anything I have read in wild applications of Freud's concepts to biography and history."\textsuperscript{321}

Despite the clumsy and uneven quality of Zeligs's depiction of the Hiss-Chambers relationship, despite the unsupported nature of much of his speculation about Chambers, and despite the fact that he dropped his posture of "careful analytic neutrality" for one in which he became enlisted in making a case for Hiss's innocence, \textit{Friendship and Fratricide} was an important event in Alger Hiss's campaign for vindication. With Chambers dead, the record of the Hiss case supposedly complete, and his effort in \textit{In the Court of Public Opinion} to marshal legal arguments for his innocence not resonating with the

\textsuperscript{311} Id. at 5.
\textsuperscript{312} Id.
\textsuperscript{313} Id.
\textsuperscript{314} Id.
\textsuperscript{315} Id.
\textsuperscript{316} Id.
\textsuperscript{317} Id.
\textsuperscript{318} Id. at 7.
\textsuperscript{319} Id. at 6.
\textsuperscript{320} Id.
\textsuperscript{321} Id.
public, Zeligs’s book represented the moment when Hiss began to alter his campaign strategy.

Throughout the 1950s and early 1960s Hiss had taken the position that *In the Court of Public Opinion* represented all he had to say about the case and that he had no intention of writing an autobiographical account of his life comparable to *Witness*. In resolving to talk about himself and to share information with Zeligs, however, Hiss concluded he could make a stronger case for his innocence if he could convince the public that he was not the sort of person who could possibly have been a traitor or a liar. Although Whittaker Chambers had described Hiss as such, Whittaker Chambers was himself a confessed Communist and liar, and Whittaker Chambers was dead. Hiss knew that his case continued to be perceived as turning on credibility issues. Why not use the characteristic all previous observers of the case had noted about him—what Zeligs had labeled his credo of objectivity—as a surrogate for his credibility and, ultimately, for his innocence?

Thus, it is possible to see Hiss’s new willingness to share personal information about himself with someone interested in his case, beginning sometime after his 1960 interview with Brower, as a recognition that his best chance for vindication lay in convincing others that, compared to Chambers, he was the more personally resonant and thus potentially the more credible figure. The success of that strategy with Zeligs may have convinced Hiss that his campaign for vindication needed to emphasize the human dimensions of his conviction as well as its legal dimensions.

The broadening of Hiss’s campaign required a twofold emphasis, which he was to pursue throughout the next decade. First, it meant convincing prospective supporters, as he had convinced Zeligs, that Hiss continued to maintain his innocence because honesty and integrity were essential parts of his character. His professed innocence, like his original denials of any complicity, was a point of honor with him. He would continue in the role of one who, as Helen Buttenwieser had put it to Zeligs, “went into the first trial with the firm conviction that his word would be taken,” because he saw his confrontation with Chambers as “a credible story versus an incredible story.”

This last comment highlights the second emphasis of Hiss’s expanded campaign. It was to contrast his integrity with the mendacious partisanship of his opponents, who were themselves so lacking in character that he had not even been able to fathom, let alone defend against, their assaults. Hiss’s expanded campaign would emphasize human qualities that might serve to persuade others of his integrity, or make them inclined to believe in his opponents’ lack of it. The campaign would also include attention to the social and political dimensions of his case. Hiss would seek to show that from its outset his case had been partisan and that he had been a scapegoat for powerful enemies and a victim of the fallout caused by America’s sudden, and painful.

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322 ZELIGS, supra note 153, at 413 (quoting Helen Buttenweiser).
confrontation with a perceived Communist threat within its borders.

C. *The Campaign Gains Momentum, 1971-1978*

1. Reassessing the Cold War

By the close of the 1960s, the time was ripe for the Hiss case to take on additional dimensions. The divisions precipitated by the war in Vietnam had ushered in a critique of monolithic, bi-polar “Cold War” models of foreign policy that lumped all varieties of Communism together and divided the world into Manichean blocs of good and evil. Richard Nixon, whose career in politics had been boosted by the Hiss case and who had emerged from apparent oblivion to win the Presidency in 1968, found his administration just as baffled by the ambiguities of the Vietnam conflict as that of his predecessor. Apparently massive ideological divisions separated the generations holding power from the generation being asked by its elders to participate in the Vietnam War. In this context, scholars began to historicize the period in which anti-Communism had been the dominant domestic and international perspective in American politics. As “Cold War” attitudes and “McCarthyism” came to be historicized, the Hiss case came to be seen as a product of the distinctive anti-Communist ideology of the late 1940s and 1950s.

In 1969, Earl Latham characterized the Hiss case as the most visible symbol of the central issue defining American domestic politics in the late 1940s and 1950s, the “Communist Controversy in Washington.” Latham noted that the issue of Communists in the federal government dominated American political discourse from the 1948 election through 1954, when McCarthy was censured by the Senate and then died. Latham claimed that the protagonists in the Hiss case, in which the impeccably credentialed Hiss was convicted primarily on the testimony of the far less impeccable Chambers, helped make the case, along with the issue of Communists in government, particularly evocative and controversial. “It is not too much to say,” Latham claimed, “that the testimony of these two and the sensations of the Alger Hiss case produced such a violent agitation that most subsequent debate has been structured by the commitments of choice that their statements forced.” Latham felt that without the Hiss case, the entire debate about Communists in the federal government “might have been... somewhat more tractable.” Latham made these comments in a work whose purpose was to achieve appropriate scholarly distance on Cold War anti-Communism.

In a 1971 article in *The American Scholar*, Allen Weinstein echoed

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323 EARL LATHAM, supra note 95.
324 Id. at 10.
325 Id.
326 Id. at 15-16.
Weinstein called for a “thoroughly researched reassessment of the Hiss case” in order to get beyond “partisan accounts dispensing either pro-Hiss or pro-Chambers versions.” The question of “vindicating Hiss’s guilt or innocence,” Weinstein concluded, reflects a writer’s judgment concerning an entire range of public issues, such as the meaning and merit of the cold war, the treatment of domestic Communists, the response by intellectuals to their own radical pasts, the true extent of Communist infiltration into government during the New Deal, and the proper role of congressional committees in investigating subversion.

Weinstein’s claim that in evaluating Hiss writers were implicitly passing judgment on those issues was part of an effort to historicize the Cold War years. During the time interval in which Hiss was indicted, tried, sent to prison, released, and labeled a “convicted traitor”—from 1948 to at least 1956—none of the public issues Weinstein had identified was significantly contested in mainstream American political discourse. The merit of a Cold War against international Communism and its principal symbol, the Soviet Union, was taken for granted. Domestic Communists were assumed to be threats to the security of the United States government. The majority of intellectuals who had been attracted to some variety of popular front radicalism in the 1930s became anti-Communist and anti-Soviet in their attitudes. Behind the indictments of Hiss and a few other government employees charged with perjury or espionage lay the assumption that a number of Communists had joined the government during the New Deal, and thus Congress, along with federal investigative agencies, needed to closely scrutinize the attitudes and careers of government employees. It was that assumption that Weinstein felt should be reexamined.

Weinstein’s reassessment of the Hiss case was thus conceived as part of a proposed study on “the cold war and American society.” The historian “who combs through the [Hiss case’s] records,” Weinstein noted, “finds

327 Allen Weinstein, Reappraisals: The Alger Hiss Case Revisited, 41 AM. SCHOLAR 121 (1971) [hereinafter Weinstein, Reappraisals].
328 Id. at 132.
329 Id. at 121.
330 Id. at 122.
331 Weinstein was not alone among American historians and political scientists in holding this point of view in the late 1960s and early 1970s. For other examples of scholarship seeking to historicize the Cold War years, see ROBERT GRIFFITH, THE POLITICS OF FEAR: JOSEPH MCCARTHY AND THE SENATE (1970); LATHAM, supra note 323; MICHAEL PAUL ROGIN, THE INTELLECTUALS AND MCCARTHY (1967); Nelson Polsby, Toward an Explanation of McCarthyism, 8 POL. STUD. 250-71 (1969). For an effort to link the Hiss case to the emergence of a militant anti-Communist version of conservative political ideology in the late 1950s, see George Van Dusen, The Continuing Hiss: Whittaker Chambers, Alger Hiss and National Review Conservatism, 11 CITHARA 67 (1971).
himself in the middle of a battleground."  

This was because facts "that would establish Alger Hiss’s legal guilt or innocence" became "enveloped by [the] larger quest for the meaning of the Hiss case itself," as reflected in the implicit judgments about the issues Weinstein had identified. The case’s record was dominated by the incompatible testimony of its protagonists, and therefore its analysis turned on assessments of their credibility. Those assessments, which began with "the assumption that either Alger Hiss or Whittaker Chambers was a complete perjurer," were necessarily affected by writers’ judgments about the Cold War-connected issues Weinstein had cataloged.

Weinstein’s 1971 article indicated that he was planning to study the Hiss case as a means of examining the impact of the Cold War on American society. As his investigation of the case evolved, however, that inquiry became subordinated to two other concerns. Weinstein began looking at the Hiss case by abandoning the assumption, made by almost all previous students of the case, that either Hiss or Chambers was lying throughout in his testimony. Instead, Weinstein sought to approach the case from the perspective that both witnesses had made inaccurate statements, and thus all efforts to render their testimony as incontrovertible truth were partisan. Although his original rationale for taking this point of view was that it would more readily disclose the extent to which the Hiss case had become closely connected to Cold War politics, his stance, as he put it, required him to first "establish the facts where possible," and only secondarily to "expose the inconsistencies of partisan accounts." In order to "prevent either of [the] partisan versions [of the case] from hardening into myth," it was necessary "to confront the case itself."

In his American Scholar article Weinstein summarized his state of mind about Hiss as he began a reappraisal of the Hiss case:

"On the basis of the evidence presented by Whittaker Chambers, there appears to be reasonable doubt that Alger Hiss was a member of the Communist party at the time when they knew one another. Furthermore, reasonable doubt exists, especially in light of Chambers’s February or March, 1938 break with the party, that Hiss stole government documents dating through April, 1938. On the other hand, Hiss’s personal ties with Chambers seem to have been closer than [Hiss] ever acknowledged. Moreover, Hiss’s complete vindication must await some plausible alternative explanation of the Woodstock documents and their origins. . . . Hiss’s guilt seems to me still unproved beyond a reasonable doubt, [but] it would be equally difficult, in the light of available evidence, to prove him innocent . . . . And no completely impartial observer can consider

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332 Weinstein, Reappraisals, supra note 327, at 122.
333 Id.
334 Id.
335 Id. at 132.
336 Id.
him vindicated at this stage of the inquiry.\footnote{337}

Weinstein felt that the ambiguities remaining in the Hiss case required a more searching effort to understand why Chambers and Hiss seemed to have made inaccurate statements about their past relationship. He noted, however, that “the executive files of HUAC,” the “relevant FBI records,” and “the grand jury records” in the Hiss case were each closed to the public.\footnote{338} Given the unreliability of the principal witnesses’ testimony and the incompleteness of the record, Weinstein concluded, “the ‘complete’ story of [the Hiss case] may never be known,” and if that story remained incomplete, connections between the Hiss case and the Cold War era of American politics could not be accurately drawn.\footnote{339}

Shortly after completing his 1971 article, Weinstein resolved to launch a thorough investigation of the Hiss case. In 1972, with the support of the American Civil Liberties Union, he filed a Freedom of Information suit to obtain FBI and Justice Department files on the case.\footnote{340} He also made an effort to contact “individuals close to either Hiss or Chambers,” and, between 1973 and 1977, was able to interview more than forty persons who had previously declined to cooperate with researchers. Among those who cooperated with him were Meyer Schapiro and the widow of Herbert Solow, with whom Chambers had been in close touch during his years as a Soviet agent in the 1930s, and Alger Hiss, five of his lawyers, Donald Hiss, Alger’s son Anthony and Alger’s stepson Timothy Hobson.\footnote{341} Even Priscilla Hiss participated in a “series of luncheon meetings.” Although she said at the first of those meetings that “[a] curtain has descended,” and “I don’t remember the period. I don’t want to remember it,” Weinstein found her comments “instructive.”\footnote{342} Moreover, Alger Hiss gave Weinstein access to his defense files.\footnote{343} The only principal figures in the Hiss case that Weinstein was unable to gain access to were Whittaker Chambers and J. Edgar Hoover, both of whom had died before he began his research, and Richard Nixon and Esther Chambers, who both declined to see him.

Weinstein’s success in getting persons identified with both sides of the Hiss case to share information with him was partly a result of the apparently open-ended, uncertain conclusions about Hiss’s innocence Weinstein had drawn in his 1971 article. It was also a consequence of a renewed interest in reexamining the case itself that had surfaced in the 1970s. In the introduction to the first edition of \textit{Perjury} in 1978, Weinstein discussed the contrast

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\footnote{337 Id.}
\footnote{338 Id.}
\footnote{339 Id.}
\footnote{340 \textsc{Weinstein, Perjury: The Hiss-Chambers Case}, at xvii (1978) [hereinafter \textsc{Weinstein, Perjury} (1978)].}
\footnote{341 Id. at xvi-xxi.}
\footnote{342 Id. at xx.}
\footnote{343 Id.}
between the climate of opinion during the years in which Hiss's campaign for vindication made slow progress and that in which the research for his 1978 book was conducted. "For over two decades after his release from prison," Weinstein noted,

[the symbolic lines were sharply drawn. For some, Alger Hiss's close association with New Deal radicals and with the wartime policy of Soviet-American entente corroborated his guilt. For over two decades after his release from prison, Alger Hiss tried to renew interest in the case. His efforts proved unsuccessful.]

In the 1970s, "thanks to the Watergate crisis and the downfall of his former nemesis, Richard Nixon," Weinstein felt, "Hiss regained public prominence." A "new generation of Americans, unfamiliar with the complex facts of the case, responding both to the renewed publicity and to a post-Watergate penchant for conspiracies, hearkened to the claims of innocence expressed by Hiss." Their receptiveness to Hiss's protestations of his innocence was shared by "many of the active left-liberals growing up in the Silent Fifties," who were "well disposed to believe Hiss's version of events," and those of Hiss's contemporaries who had been "politically and temperamentally disposed to support [him]," and who took his innocence to be "a matter of faith, if only because Chambers, Nixon, Hoover, and others on the anti-Communist right were his political enemies."[347]

Ironically, not long after gaining expanded access to information about the Hiss case, Weinstein himself emerged as a participant in partisan debates about Hiss's innocence. That did not occur, however, for about five years after he first signaled his interest in reassessing the case in his American Scholar article. In the time interval during which Weinstein sued to gain access to FBI and Justice Department files on Hiss and began interviewing persons enlisted on both sides of the case, Alger Hiss, in the wake of reassessments of the Cold War years, began to make some headway in his campaign for vindication.

At the end of the 1960s, Hiss began to get a different set of invitations to lecture on college and university campuses, not as a controversial "convicted traitor" but as a "link," for "a generation born since 1950, smothered by catastrophe and bad news," to an "earlier time when working politicians and administrators offered an evolutionary alternative to the complete collapse of the system."[348] There were initially more offers from English institutions than American ones,[349] but in an interview in 1974, Hiss listed Harvard, Johns

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344 Id. at xvi.
345 Id.
346 Id.
347 Id. at xvi-xvii.
349 In his memoirs, Hiss stated that as early as 1967, the New School for Social Research in New York had asked him to give four public lectures on the New Deal, and that in 1968, and again in 1972, he had given lectures and seminars at five English universities. He also
Hopkins, Columbia, New York University, Brandeis, Wesleyan, the University of Virginia, Kenyon, Trinity, the New School for Social Research, and the New England College of Law as places that had recently invited him to speak, typically on the economic philosophy of his New Deal contemporaries.\textsuperscript{350}

The year 1972 was to produce broader evidence that an altered public perspective on Hiss as a symbol of the Cold War era was emerging. That year, in the space of a few months, Hiss saw \textit{In the Court of Public Opinion} issued in paperback by Harper & Row, recovered his federal pension, and was the subject of two favorable profiles in New York-based magazines. The paperback decision was based on an assumption that “there may be a good market for [it] on campuses.”\textsuperscript{351} The recovery of his pension came from the American Civil Liberties Union’s successful challenge to a 1954 Congressional statute making any government employee convicted of perjury in a case involving national security ineligible for a government pension. The statute was declared unconstitutional as applied to Hiss in March, 1972, resulting in his becoming eligible to receive back payments based on his eleven years of government service.\textsuperscript{352} Hiss discussed the reinstatement of his pension and the publication of the paperback with Thomas Moore, who wrote a profile of him for \textit{Life Magazine} in April, 1972.\textsuperscript{353} Moore described Hiss as “mellow,” “back in the headlines,” and “full of surprisingly warm regard for the world.”\textsuperscript{354} There had been a “swing of the pendulum back to a liberal-progressive trend in politics during the last decade,” Hiss said to Moore, and Hiss believed that the “court’s decision on [his] pension” was “one small step in his eventual vindication.”\textsuperscript{355} “By the time I am 80,” Hiss told Moore, “I expect to be respected and venerated.”\textsuperscript{356} Moore added that in the course of making that statement Hiss “[lit] up a pipe given him by actor Zero Mostel, who was once blacklisted for left-wing activities.”\textsuperscript{357}

The last comment reflected Hiss’s willingness to identify himself with persons and attitudes associated with political radicalism in the 1970s. He described himself as having a sympathy with young persons who distrusted the “Establishment” and stated that his outlook had evolved from that of a New

\textsuperscript{350} SMITH, \textit{supra} note 309, at 435. Hiss noted that after receiving more invitations to visit academic institutions, he “expanded [his] list of lecture topics by adding Yalta, the United Nations, the beginning of the cold war, our Far Eastern policy, Justice Holmes, the McCarthy era, and the American press.” HISS, \textit{RECOLLECTIONS}, \textit{supra} note 177, at 199.

\textsuperscript{351} Thomas Moore, \textit{Parting Shots}, \textit{LIFE MAG.}, Apr. 7, 1972, at 78A.

\textsuperscript{352} See HISS, \textit{RECOLLECTIONS}, \textit{supra} note 177, at 200.

\textsuperscript{353} Moore, \textit{supra} note 351.

\textsuperscript{354} Id.

\textsuperscript{355} Id.

\textsuperscript{356} Id.

\textsuperscript{357} Id.
Deal liberal to something more resembling a late 1960s member of the New Left. In a 1975 interview, he told Allen Weinstein that he had renewed connections with political radicals he had known in the 1930s. On one occasion, the *Esquire* columnist Robert Aurthur reported running into Hiss at a party frequented by “tired old leftos,” whose political orientations had been “formed during the Depression” and who saw “Franklin Roosevelt [as] our savior [and] the New Deal the hope for a new world.” “[F]or me,” Aurthur reported, there had been “only one person of interest” at the event, “Alger Hiss.” This was because “we are all stunned by the disastrous events of the past few years, and those who thought they had the answers—or at least could ask the right questions—are now rendered helpless.” But not Hiss: “[h]e is, incredibly, optimistic…. full of hope…. You listen, and, recognizing the brilliance as well as the courage and determination, you are almost ready to go along.”

Aurthur was sufficiently inspired by his encounter with Hiss to ask him to lunch with the idea of doing a profile of “a man who’d been mangled in the awful crunch of a whole society shifting from left to right.” He noted some of the recent events that had made Hiss “very jocular” at the party: the court decision on his pension and his “experiences at colleges around the country.” “Young people and Hiss would seem today,” Aurthur thought, “to be inseparable.” Hiss’s optimism was “clearly rooted in the behavior of today’s youth.” He was “deeply respectful, almost in awe, of the young activists.”

He gave a “flat, emphatic ‘No!’” to the question whether he “admire[d] anyone working within the political establishment today.” Hiss was visiting campuses “not just as a survivor, but a reminder,” of a time when “there was positive action by dedicated men” in government. He was pleased that a new generation had made “a link… between Hiss and an earlier time.” That was, he told Aurthur, “all part of the vindication.”

The theme of Aurthur’s profile was made clear in its concluding paragraphs.

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360 Id.
361 Id.
362 Id.
363 Id.
364 Id.
365 Id.
366 Id.
367 Id.
368 Id.
369 Id. (referring to President Franklin Roosevelt’s first Administration).
370 Id.
371 Id.
Aurthur reported:

I . . . mentioned that I had a copy of *Life* in which there appeared to be a friendly piece, and Hiss laughed.

"The last time my picture appeared over a friendly article in a Luce publication was in 1945," he said . . . . "That was a long time ago."

Well, I said, maybe times are changing. "Yes," [Hiss] said, "maybe they are."372

At this point Aurthur recalled a memory of his from 1949. He had been "a young father pushing his fifteen-month-old son . . . in a stroller along University Place in Greenwich Village" and "Alger Hiss [was] at the apex of his troubles."373 Hiss and Aurthur encountered each other at a red light and, after patting Aurthur's son on his head, Hiss leaned down and "chuck[ed] my kid under one of his several chins."374 The light changed, and Hiss moved on. "'That man is innocent,'" Aurthur said to his son.375 Maybe others, Aurthur implied, would come to that realization as the shadow of the Cold War passed.

2. Hiss Takes the Offensive, 1973-1976

a. *I Call on Alger*

"[T]here has always been a kind of breathless public waiting," Brower had written in 1960, "for Hiss to 'make a move.'"376 In 1973, Hiss took a step in that direction. Buoyed by the increasing difficulties of the Nixon administration and the changing attitudes he noted toward the mainstream anti-Communism of the Cold War years, Hiss arranged to have a conversation with his son Tony, an aspiring writer in New York, for an issue of *Rolling Stone* magazine. The conversation appeared in September, 1973.377 Two months earlier, *The New York Times*, noting that Richard Nixon had opened his 1962 memoir, *Six Crises*, with an account of his role in the Hiss case, had invited Hiss to write an op-ed column, entitled *My Six Parallels*. The *Times* represented Hiss as "presently engaged in an effort to convince individuals with information about his case to come forward," and noted that *In the Court of Public Opinion* had recently been reprinted.378

In *My Six Parallels*, Hiss discernibly shifted his analysis of his trials from the "legalistic" emphasis of *In the Court of Public Opinion* to one designed to

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372 Id. at 29.
373 Id.
374 Id.
375 Id.
376 Brower, supra note 3, at 145.
cast his conviction in partisan political terms.\textsuperscript{379} He drew connections between "a series of incidents in recent political trials, together with disclosures seeping out of the Watergate swamp," and "my Congressional hearings and trials that began 25 years ago."\textsuperscript{380} Both situations featured "[t]apping of telephones and bugging of dwellings," the FBI having tapped Hiss's home telephone and allegedly placed eavesdropping devices in his apartment.\textsuperscript{381} The chief prosecution witness in the case against Daniel Berrigan "had a record of... tall tales and was... under the thumb of the prosecution"; Chambers "could have been indicted at the pleasure of the Department of Justice."\textsuperscript{382} Leaks and "[t]endentious and prejudicial press stories" from official sources had taken place in the Berrigan case just as they had during Hiss's trials. In the indictment of Daniel Ellsberg for disclosing confidential information there was a notorious "[d]elay in producing Government documents as ordered by the court"; similar delays had occurred in response to requests by his attorneys for documents such as Chambers's passport file.\textsuperscript{383} Howard Hunt, one of the Watergate burglars, had admitted forging a document on a typewriter; "[i]n my case it was only after my conviction that my counsel... discovered that the [typewriter produced at his trials]... had been tampered with to make its typing conform to the typeface irregularities of the [Hiss family typewriter]."\textsuperscript{384} Just as President Nixon had met with the judge presiding over the Ellsberg case "to discuss the possible appointment of the judge as Director of the F.B.I.," Congressman Nixon had attempted to influence the outcome of Hiss's second trial by attacking the fitness of Judge Samuel Kaufman, who had presided over the first trial.\textsuperscript{385}

"[T]hese parallels," Hiss argued, "illustrate... that political trials are 'particularly susceptible to unwise and even abusive uses.'"\textsuperscript{386} He noted "the imbalance between the vast power of the Federal Government" and "the limited resources of an individual defendant."\textsuperscript{387} He added that "safeguards of individual rights" were "of late... patently in jeopardy in our country."\textsuperscript{388} He concluded that he had "fresh optimism" that "the present climate of opinion" would "facilitate speedy action" in a suit by "the American Civil Liberties Union... for release of all the FBI files in my case."\textsuperscript{389} "My hopes," he said,
“as they always have been, are for vindication.”³⁹⁰

Hiss’s Times column sounded the themes he intended to pursue in his conversation with Tony. I Call on Alger was an effort to make Alger Hiss appear as another victim of a political trial, one engineered by Chambers, Nixon, and Hoover’s FBI in the midst of a Cold War climate of hysterical anti-Communism. The article’s opening remarks made this abundantly clear:

[Tony:] Let’s start with this. Do you have any advice for any of the Watergate people if it turns out that they have to go to jail?

[Alger:] Don’t you have to have any introductory material? Why are you interviewing me? Why does anybody want to hear what I have to say? Then you refer to the fact that I was involved in an appearance before a committee quite different from the Watergate committee... and that those hearings developed into a case most people who read... Rolling Stone may never have heard of.... Some aspects of what happened then may be relevant to what’s going on today. Some of the same things have happened in the Ellsberg case, in the Berrigan case.... And that’s why you’re interviewing me about it....

[Tony:] Could be. But you’re not just interested in pointing out historical parallels but in establishing that you got a bum rap.

[Alger:] No, but I thought I’d give some background. I was going to say that because of the big change in the political climate, the fact is that now people don’t put up with what they used to put up with, and aren’t as driven and led as they were then on the subject of hysteria....

[Tony:] Talk has been going around Washington recently that all the recent political trials, beginning with the Hiss case, were fixed.

[Alger:] Yeah, and that there’s a certain unpleasant similarity about them—that they’re all contrived for political purposes. But the big difference, I think, is the difference in public opinion, so that the juries now aren’t led by the nose. At the time when my case came up, the Cold War was already well under way, there was a great deal of hysteria....

I think some of it has to do with the amount of education, widespread education throughout the country. There are more college students.... People can’t learn something and then forget it.... The sophistication of most young people is way and above what it was 25 years ago when my case first started.... In the late Forties and early Fifties people were frightened. They were frightened of the government; they were frightened of having independent or dissident thoughts. This just couldn’t occur today—the whole McCarthyite furor of the Fifties just couldn’t be repeated. We’ve seen what’s happened in these contrived cases....

³⁹⁰ Id.
whereas in the Forties and Fifties all the contrived cases were gotten away with by the prosecution.391

This dialogue might be more accurately described as a monologue. Tony Hiss’s role in the conversation was to ask his father questions. When he asked his first question, Alger, in effect, suggested that he ask another. The “conversation” was designed to bring out the steps in an argument Alger wanted his audience to absorb:

Step One: Watergate was the latest example of a tendency on the part of government officials to use their power for partisan political ends.

Step Two: Among the ways in which those officials used power was in “contrived” “political trials” designed to punish persons who were symbols of opposition or dissidence. Recent examples of such trials were those of Daniel Ellsberg and Philip Berrigan, dissidents who had escaped conviction because juries had discerned the “political” dimensions of their prosecutions.

Step Three: Alger Hiss’s trial was the first twentieth-century example of a contrived political trial.

Step Four: Hiss had been convicted, as opposed to Ellsberg and Berrigan, because juries in the 1940s and 1950s were unsophisticated about the political motives of government officials, unduly deferential to the government, and fearful of being labeled dissenters.

Step Five: In contrast, current members of the American population, more of whom had college degrees, were more sophisticated, more independent in their thinking and more likely to attribute partisan political motives to government officials.

Step Six: This context for the Hiss case would incline many current Americans to suspect that Alger Hiss had gotten a bum rap.

Crafting this argument was the essential purpose of the dialogue recorded in I Call on Alger. Along the way, Alger said that the House Un-American Activities Committee was “practically a court—prosecutor and judge all at once;”392 that he and his fellow New Dealers “were not . . . concerned with career or advancement,” but with “help[ing] farmers . . . and people trying to organize unions” during the Depression;393 that he had no interest in continuing in government service after the beginning of the Cold War;394 and that he had been singled out as a target by Chambers and HUAC because he was a “minor lieutenant[]” of Roosevelt’s (two other more prominent targets, Harry Dexter White of the Treasury Department and Lawrence Duggan of the State

391 Tony Hiss, supra note 377, at 49-50.
392 Id. at 50.
393 Id.
394 Id.
Department having died), because he had been associated with the United Nations, "a target of the reactionaries," and because "I'd been at Yalta." Tony then asked his father about the Watergate hearings and about one of the prominent figures of the HUAC hearings, Richard Nixon. Alger was quick to call the Watergate hearings, conducted by a Senate committee chaired by Sam Ervin, "a good hearing" in which the committee members "don't badger a witness," and "emphasize when testimony is hearsay." As for Nixon, Alger was "not particularly interested in talking about him," but Tony followed up: 

"[I]n your own effort to demonstrate publicly that the charges against you were unfounded, his very presence is one of the few elements of continuity from 25 years ago. He's still on the scene . . . . This focuses a certain amount of attention on you.

[Alger responded:] I welcome the fact of that public attention. In that sense Mr. Nixon is sort of a press agent for me. I now have a chance to state my own position simply because of the fact that Nixon was one of my initial tormentors. But, much more than that, I welcome this particular opportunity because I think the whole atmosphere of Watergate is more conducive to truth telling than anything we've had at any time since my trial. The people who know about the dirty tricks in my case will now come forward . . . . This is one reason I've been responding to the opportunity for interviews, which I haven't had until recently—until, as you say, the accident, if you can call it that, of Nixon's Waterloo, or Watergate, has brought my name again before the public. Before, I couldn't get an interview if I tried. So this seems to me an opportunity for me to make an appeal to those who may know to come forward, because I still am following every lead and working for the vindication I'm eventually going to get."

Both Alger and Tony then invited "anybody out there [who] has something . . . to tell about the facts in [the Hiss case]" to get in touch with them. The premise of that appeal was the same premise driving the argument at the core of I Call on Alger. Watergate had revealed the partisanship and corruption of governmental officials, the "dirty tricks" they could play on their political opponents. Those "dirty tricks" were therefore likely to have been present in the Hiss case, especially because Nixon and Hoover were prominent "tormentors" of Hiss. Some members of the Nixon

395 Id.
396 Id. at 52.
397 Id.
398 Id.
399 Id. at 53.
400 Id.
administration had cooperated with journalists in “truth telling,” and therefore persons who knew about chicanery in the Hiss trials might be emboldened by “the whole atmosphere of Watergate” to reveal how Hiss had been framed for partisan reasons.  

From what is now known about Hiss’s complicity as a committed Soviet agent from at least 1935 through 1945, his choice to enlist his son in a conversation in which he crafted the argument described above, and made an appeal for more information about his case, seems particularly worthy of analysis. In the conversation, Hiss stated openly that the Watergate scandal and Nixon’s notoriety had enhanced his opportunities to bring his case before the public. Yet in the years during which Hiss had been disinclined to go beyond a “legalistic” analysis of his case, Hiss had repeatedly stated that he had chosen not to make public protestations of his innocence that raised emotional, partisan issues. Now, in 1973, he raised those issues, emphasized the political atmosphere of his trials, and indicated that Nixon’s downfall had given him the opportunity to do so. He thus implied that, had a different atmosphere existed in the 1950s and 1960s, one in which more public outlets existed for him to make extra-legal arguments, he would have advanced those arguments and enlisted others to help him as he had enlisted Tony. He insinuated that what Brower and Zeligs had seen as a puzzling but deeply characterological disinclination to lash out at his enemies had simply been a necessary strategy.

If Hiss’s escalation of his campaign for vindication in the early 1970s was a strategic effort to take advantage of changing attitudes about governmental officials and Cold War ideology, the question remains why Hiss centered his campaign on a public invitation to others to search out and bring forward additional information about his case. If he knew better than anyone else the extent of his commitment to Soviet military intelligence in the 1930s and 1940s, why encourage members of the public to seek out information that might incriminate him? The characterological dimensions of Hiss’s strategy are best left unaddressed until more details of his escalated campaign for vindication are in place. One can, nonetheless, at this juncture, attempt a rough sketch of Hiss’s calculus in deciding, in the 1970s, to widen his campaign to include publicizing both the human qualities others found attractive in him and the allegedly partisan, corrupt motives of those who had sought to make him a scapegoat. He might have calculated that the campaign involved some risks, but they were outweighed by its promise of success in the altered post-Watergate climate of opinion.

Consider some risks of which Hiss was unaware when he signaled the escalation of his campaign in My Six Parallels and in his conversation with Tony. He did not know that in addition to Chambers, Gouzenko and Bentley had also identified him as a Soviet agent. He did not know that the FBI had followed up two comparatively innocuous interviews with him with internal

401 Id.
memoranda identifying him as a security risk. He knew that some officials in the State Department had questioned him about security issues, but he did not know that much of the FBI's information had been transmitted to State Department officials. He did not know that the NKVD archives contained some documents identifying him, by name, as an agent for the GRU, nor that the Venona cryptographers had decoded other documents making comparable identifications. He knew that Chambers had given a detailed account of their relationship in the 1930s and had produced stolen documents seemingly typed on a Hiss family typewriter, but he and his lawyers had devoted twenty-five years to discrediting Chambers and suggesting that the documents could have been forged.

The argument was designed to support the discrediting of Chambers and the dissemination of the "forgery by typewriter" theory by inflating the partisan atmosphere of his trials, the political chicanery of Nixon, the questionable investigative practices of Hoover, and the comparative naifveté of Americans in the late 1940s and 1950s. It may have seemed, at one time, that the idea that government officials could conspire to make a scapegoat of a public figure for partisan reasons and plant untrustworthy evidence in the process, was too fanciful to be credited. Yet Nixon and his confederates had done just that. In the 1970s, a concerted, politically motivated scapegoating of Hiss by Chambers, HUAC, and the FBI seemed more plausible.

So in 1973, Hiss may well have reasoned that it was as likely that his appeal for more information about his case would turn up additional evidence of the partisan investigative tactics of the FBI under Hoover or of Nixon in Congress, as it would reveal additional evidence of his espionage activities. He may have concluded that if his case continued to be perceived largely as a comparative test of his and Chambers's credibility, his version, maintained intact for twenty-five years, might come to be increasingly accepted while the credibility of his antagonists was undermined by Watergate. He was not only hoping, as Chambers had suggested, that if he continued to "brazen it out" people would become convinced he must be innocent. He was hoping that his innocence would become more credible as his "tormentors" came to be perceived as corrupt politicians capable of politically motivated scapegoating.

b. The Reinstatement of Hiss's Law License

Hiss also took advantage of the post-Watergate climate to restore his license to practice law. Nearly twenty years after Hiss had been released from prison, Claude Cross, one of the attorneys that had defended him at his perjury trial, encouraged him to apply for reinstatement to the Massachusetts Bar, of which Cross was a member.402 Hiss had initially been admitted to practice in Massachusetts in 1930. He had lost his license, based on having been convicted of a felony, after the Supreme Court's refusal to hear his

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402 Transcript, Board of Bar Overseers Hearing, Jan. 7, 1975, Supreme Judicial Court, Commonwealth of Massachusetts, 146 [hereinafter Overseers Transcript].
unsuccessful 1951 appeal from his perjury conviction. Hiss had not considered applying before Cross proposed it because Hiss had felt his petition would have no chance of success.\textsuperscript{403} In November, 1974, however, John F. Groden of Cross's law firm (Cross having recently died) filed a petition for reinstatement on Hiss's behalf.\textsuperscript{404} On the surface, the petition raised no visible opposition. Neither the Attorney General of the United States, the Massachusetts Bar Association, the Committee on Grievances of the Association of the Bar of the City of New York (Hiss had also been a member of the New York Bar when convicted and had lost that license as well), nor the Clerk of the Supreme Court of the United States expressed any interest in being heard in response to Hiss's petition. Nor did Thomas F. Murphy, who had prosecuted the Hiss case and was now a federal judge in New York.\textsuperscript{405}

Hiss's petition was referred to the Board of Bar Overseers, a group of Massachusetts attorneys appointed by the Supreme Judicial Court of Massachusetts. The Board scheduled a hearing for January 7, 1975. The standard for readmission was a demonstration of the requisite "moral qualifications, competence and learning in law required for admission to practice law" in Massachusetts and a showing that a candidate's resumption of the practice of law would "not be detrimental to the integrity and standing of the Bar, the administration of justice, or to the public interest."\textsuperscript{406}

Hiss produced several character witnesses. His old friend and law school classmate, Harvard law professor Richard Field, testified that Hiss's government service had given Hiss expertise in the areas of administrative law and foreign affairs, and that Field's belief in Hiss's innocence was not affecting his testimony.\textsuperscript{407} Robert Von Mehren, who had represented Hiss at his perjury trials, testified that Hiss's ability to endure "moral, intellectual, and psychological strain" during those trials along with his subsequent success at jobs that were less intellectually stimulating and demanding than the practice

\textsuperscript{403} Id.
\textsuperscript{404} Id. at 7.
\textsuperscript{405} See \textit{In re} Hiss, 333 N.E.2d 429, 440 n.26 (Mass. 1975). Although the disinclination of any of those persons to oppose Hiss's petition for reinstatement might have been to his advantage, their non-appearances were largely predictable. Neither the Attorney General of the United States nor a federal district judge based in New York was likely to intervene in a proceeding involving the Massachusetts bar twenty-one years after the subject of that proceeding had completed a federal sentence for perjury. To do so would have suggested partisan animus toward Hiss. Nor were the City of New York's Bar Grievances Committee and the Massachusetts State Bar Association likely to take formal positions on a matter being heard by a committee designated by the Massachusetts bar to entertain such petitions. Finally, it was hard to imagine what the Clerk of the Supreme Court of the United States could have contributed to the proceeding.
\textsuperscript{407} Id. at 60, 66.
of law constituted evidence of his moral "stamina." Helen Buttenweiser, who identified herself as Hiss's personal lawyer, argued that disbarment for life was a particularly severe punishment for someone convicted of a crime who had served his sentence. Hiss also produced his employer at the time, Tillie K. Novick of S. Novick & Son, the stationary supplier for whom Hiss had worked since 1960, and submitted affidavits recommending his reinstatement from Erwin Griswold, former Dean of Harvard Law School and Solicitor General of the United States, Charles Horsky, a partner at Covington & Burling who had worked with Hiss in the Department of Justice, and retired Supreme Court Justice Stanley Reed.

The Boston Bar Association filed an amicus brief urging that Hiss be reinstated. The brief argued that guilt in a criminal matter was a "mixed question of law and fact" about which "honest men may differ," and that having a "conclusive presumption that every convicted criminal who insists on his innocence must be a liar" was undesirable. That argument highlighted the fact that Hiss's petition was not accompanied by an admission of guilt. On the contrary, it reasserted his innocence. In his testimony at the hearing, Hiss confirmed that he continued to believe in his innocence, and that he had not had "a complete change in moral character." He said that he sought reinstatement in order to engage in consulting work in the fields of international law, constitutional law, and federal legislation.

On April 4, 1975, the Board of Bar Overseers unanimously concluded that Hiss's petition should be denied. The crux of their argument was as follows:

When the disbarment is wholly based upon the conviction of the petitioner of an offense which is clearly a "serious crime" (perjury), which conviction has not been reversed, and the petitioner has not been pardoned, the task of a petitioner such as Mr. Hiss, who continues to assert his innocence, to satisfy this Board of his present good character, becomes logically impossible for him to meet [under the standards for reinstatement] . . . [S]o long as Mr. Hiss's conviction stands, and so long as he continues to deny the guilt of an offense of which he was convicted, . . . the Board finds that . . . the petitioner has not satisfied us that his readmission would not be detrimental to the standing of the Bar, the administration of justice or to the public interest.

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408 Id. at 81, 88.
409 Id. at 105, 114.
410 Id. at 46.
411 See In re Hiss, 333 N.E.2d at 439-41, 440 n.27.
413 Overseers Transcript, supra note 402, at 148.
414 Id. at 128.
415 In re Hiss, 333 N.E.2d at 435 (quoting The Board of Bar Overseers' Report
Groden appealed the Overseers' decision to the Supreme Judicial Court of Massachusetts, which heard the appeal on May 9, 1975. He argued that the Overseers' reasoning placed Hiss "on the horns of a hopeless dilemma." He was forced to either "accept the finality of his disbarment and . . . retain his self-respect and personal integrity," or to "falsely admit that he was guilty of the original charge," and thus "[falsely] claim that he has since repented" and had undergone "the required complete change of his moral character." Groden also pointed out that the Maryland Court of Appeals had reinstated a lawyer, Maurice Braverman, who had been disbarred eighteen years earlier after being convicted for advocating subversive activities. Braverman had continually maintained his innocence. In response, Robert DeGiacomo, representing the Overseers, sought to distinguish Hiss's conviction from Braverman's conviction on the ground that the jury's finding that Hiss had committed perjury amounted to a finding that he had committed espionage. Therefore, reinstating Hiss, without an acknowledging from him of his guilt, would amount to readmitting an unrepentant perpetrator of espionage to the practice of law in Massachusetts.

On August 5, 1975, the Supreme Judicial Court ("SJC") unanimously reversed the Board of Bar Overseers. In an opinion written by Chief Justice Joseph Tauro, the court accepted Groden's argument that the Overseers, by conditioning reinstatement on an admission of guilt, placed Hiss in "a cruel quandary." Hiss was forced to "stand mute and lose his opportunity," Tauro suggested, or "cast aside his hard-retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law." The rule announced by the Overseers would result in "[h]onest men . . . suffer[ing] permanent disbarment." Moreover, Tauro asserted, "[d]isbarment is not a permanent punishment imposed . . . as a supplement to the sanctions of the criminal law . . . ." Tauro cautioned, however, that nothing in the court's opinion "should be construed as detracting one iota from the fact that in considering Hiss's petition [the court] consider[ed] him to be guilty as charged.

The decision to reinstate Hiss received some favorable editorial comment.
The New York Times said that the SJC had “acted on broad humane principles which do credit to both the court and the law.” It noted the “stark contrast” between the SJC’s “measured judgment” and “the atmosphere which permeated the country in the cold war period when Mr. Hiss was charged, tried, and convicted.”

The Christian Science Monitor took a similar stance, calling Hiss’s reinstatement “a step toward closing one more chapter in this country’s cold-war period.” Its editorial proclaimed that “[j]ustice ha[d] been tempered with mercy” in the decision, making it evident that government in the 1970s had become “more accountable and accessible.” Several newspapers, and all the major television networks, ran stories on the reinstatement decision.

In his memoirs, Hiss recalled the day that he appeared to take the oath for readmission. Hiss wrote, “My enjoyment was completed by the large portrait of Holmes in the courtroom looking benignly down on the scene.” He had been told, he added, “that all seven judges of [the SJC] believed me to have been innocent,” even though “[i]t was . . . beyond their power to upset my conviction.”

c. Gaining Access to Government Files

Shortly before the SJC announced its decision to reinstate him, Hiss learned that he would be able to gain access to some previously closed government documents, including documents Chambers had allegedly secreted in a pumpkin on his Westminster, Maryland farm. Hiss was one of the beneficiaries of a series of lawsuits by the American Civil Liberties Union (“ACLU”) on behalf of persons seeking a broader interpretation of the Freedom of Information Act. The political issue raised by the lawsuits was whether the U.S. government’s practice of keeping classified files closed to the public, including persons engaged in historical research, could survive the Watergate scandals. On July 17, 1973, that issue seemed resolved when Attorney General Elliot Richardson ordered the Justice Department, pursuant to the Act, to provide those engaged in historical research with access to

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425 Editorial, Lawyer Hiss, N.Y. TIMES, Aug. 6, 1975, at A34.
426 Editorial, Lawyer Hiss, CHRISTIAN SCI. MONITOR (Boston), Aug. 7, 1975, at 28.
428 HISS, RECOLLECTIONS, supra note 177, at 200-01.
certain files that were more than fifteen years old.\footnote{430}

One of the plaintiffs in the lawsuit that prompted Richardson's decision was historian Allen Weinstein, who was seeking information about the Hiss case, particularly from FBI files.\footnote{431} Weinstein and the ACLU dropped their suit after Richardson's order, but by January of 1974 Weinstein had only received seventeen pages of the FBI's files on Hiss, which allegedly amounted to 53,000 pages. Moreover, the files that Weinstein received had been heavily edited and had material deleted.\footnote{432} Weinstein and the ACLU reinstated their suit.\footnote{433} Then, on June 5, 1975, Hiss along with historian William Reuben, economist Stephen W. Salant and political scientist Peter H. Irons, announced that they filed a separate suit for access to FBI files. Among the documents Hiss requested were copies of the five rolls of microfilm Chambers had secreted in the pumpkin on his farm.\footnote{434}

On June 25, 1975 Attorney General Edward Levi, who had succeeded Richardson, ordered the "pumpkin papers" to be released to Hiss.\footnote{435} On July 31, the Department of Justice executed the order.\footnote{436} Only two of the microfilm rolls contained documents that the prosecution had made use of during Hiss's trials. Of the other three rolls, one was blank and the other two contained copies of Navy Department documents, allegedly stolen from the Bureau of Standards, some of which seemed to have no intelligence value.\footnote{437} Meanwhile, in August, 1975, Deputy Attorney General Harold Tyler ordered the FBI to make a minimal number of deletions on released files because of their historical significance.\footnote{438}

On March 18, 1976, Hiss announced that some of the FBI files he had examined contained evidence indicating that the FBI had known that the Woodstock typewriter produced in court was not the Hiss family typewriter, and that the Catletts were in possession of the Hiss family typewriter by 1937.

\footnotetext[430]{See Lesley Oelsner, 25 Years Later, the F.B.I. Will Tell What it Knew, N.Y. Times, Nov. 18, 1973, § 4, at 3.}
\footnotetext[431]{Id.}
\footnotetext[432]{Lesley Oelsner, Historian Gets a Few F.B.I. Hiss Files, N.Y. Times, Jan. 28, 1974, at 53.}
\footnotetext[433]{A Professor Sues to Get F.B.I. Files, N. Y. Times, Dec. 6, 1974, at 35.}
\footnotetext[434]{Michael T. Kaufman, Hiss Seeking to Discredit 'Pumpkin Papers', N.Y. Times, June 6, 1975, at 11.}
\footnotetext[435]{Lesley Oelsner, Levi is Releasing Microfilm to Hiss, N.Y. Times, June 26, 1975, at 31.}
\footnotetext[436]{Records on Hiss Released by F.B.I., N.Y. Times, Sept. 4, 1975, at 38.}
\footnotetext[437]{Peter Kihss, Hiss Says F.B.I. Files Support Some of his Claims of Innocence, N.Y. Times, Mar. 19, 1976, at 1, 10 [hereinafter Kihss, Claims of Innocence] (noting that the other two microfilm rolls in the "pumpkin papers" contained copies of the typed State Department documents, and Hiss's handwritten summaries of some documents, that Chambers produced during the Hiss trials).}
He also claimed that two of the “pumpkin papers” microfilms were of documents “kept on open shelves at the Bureau of Standards library,” to which any member of the public had access. Finally, he charged that the FBI files revealed that document experts retained by his defense lawyers had had their tax returns scrutinized, and may have “changed their opinions” because of pressure from government officials.\textsuperscript{439} His claims were the first wedge of an effort to have his 1950 conviction for perjury overturned on the basis of new evidence that he had not received a fair trial. All of that evidence was in FBI files.\textsuperscript{440}

The occasion of Hiss’s comments was a press conference announcing the publication of John Chabot Smith’s \textit{Alger Hiss: The True Story}.\textsuperscript{441} The comments were not simply efforts to support Smith’s book, in which Smith argued that Hiss was innocent of espionage and had been made into a scapegoat.\textsuperscript{442} They were made in response to an article, appearing in the \textit{New York Times} on the morning of March 18, reporting that Allen Weinstein, in a forthcoming review of Smith’s book, would be claiming that his investigation of new evidence about the Hiss case confirmed Whittaker Chambers’s account of his relationship with Hiss, and supported the jury’s finding that Hiss had passed stolen government documents to Chambers.\textsuperscript{443}

d. Cooperating With Biographers

The fact that Hiss’s claims about the FBI files, Smith’s biography, and the \textit{New York Times} article previewing Weinstein’s findings emerged simultaneously was not a coincidence. It was a consequence of several years of effort on the part of Hiss to cooperate with writers whom he believed to be sympathetic to his campaign for vindication. Hiss had supplied Meyer Zeligs with a wealth of personal information in the preparation of \textit{Friendship and Fratricide},\textsuperscript{444} despite having stated earlier that his personal life was of no particular interest and that \textit{In the Court of Public Opinion}\textsuperscript{445} represented all he had to say about the Hiss case. And in the early 1970s, as his campaign seemed to be gaining momentum, Hiss eagerly cooperated with additional prospective biographers who seemed friendly to his cause. Thus when John Chabot Smith signaled that he was embarking on a biography of Hiss in early 1974, Hiss began conversations with him which extended from April of that

\textsuperscript{439} \textit{Kihss, Claims of Innocence, supra} note 437.

\textsuperscript{440} \textit{See infra} notes 672-92 and accompanying text (discussing Hiss’s \textit{coram nobis} petition to overturn his conviction, which he eventually filed in 1978).

\textsuperscript{441} \textit{Kihss, Claims of Innocence, supra} note 437.

\textsuperscript{442} \textit{See SMITH, supra} note 309.

\textsuperscript{443} Peter Kihss, \textit{Professor Says Alger Hiss Lied About his Links With Chambers,} \textit{N.Y. Times}, Mar. 18, at 1, 74 [hereinafter Kihss, \textit{Professor Says Alger Hiss Lied}]; \textit{see also} Kihss, \textit{supra} note 437.

\textsuperscript{444} \textit{ZELIGS, supra} note 153.

\textsuperscript{445} \textit{HISS, PUBLIC OPINION, supra} note 2.
year to July, 1975. Smith noted that he and Hiss talked “repeatedly . . . for periods ranging from a couple of hours to a full day at a time” in that time interval. Smith also received cooperation from a phalanx of Hiss relatives, friends, and lawyers, including Donald, Tony, and Priscilla Hiss, Timothy Hobson, Richard Field, John Lowenthal, William Marbury, Helen Buttenweiser, and Claude Cross. Expectations about the view that Smith was likely to take of the Hiss case were also illustrated by the fact that Thomas F. Murphy, the prosecutor in the Hiss trials, and Richard Nixon declined to respond to Smith’s requests for interviews.

While Alger Hiss was talking to Smith, he was also talking, less frequently, to Allen Weinstein, who recorded seven interviews with Hiss between September, 1974 and March, 1976. Weinstein also interviewed Donald Hiss, Priscilla Hiss, Dr. Timothy Hobson, Hermann Field, William Marbury, and Claude B. Cross. Most of those interviews took place in 1974 and 1975, when Weinstein’s had not yet determined whether he believed Hiss was innocent. Weinstein and Smith both mentioned that Helen Buttenweiser had provided access to Hiss’s defense files in her possession. Additionally, Marbury and Cross gave Weinstein access to their files. Hiss was also quite accommodating to Zeligs, permitting many of the interviews and disclosures.

In the mid 1970s, Hiss was not simply content to aid others whom he hoped would document his innocence. He also sought to develop a more extended version of his 1973 conversation with his son, Tony; this time, in the form of a memoir. Laughing Last aimed to “tell . . . what no one else has told before—the private life of a man whose public life has been so melodramatic [and whose] private life has been the one piece of the puzzle that hasn’t been available before.” Although Tony claimed that “frankly it took me a while to persuade [Alger] this story is worth the telling,” the memoir bore the marks of a purposive enterprise: a book designed to humanize Alger Hiss to the public, and to his son, at the same time.

John Chabot Smith’s Alger Hiss: The True Story was the first of Hiss’s cooperative ventures to be published. It combined an unequivocal statement of Hiss’s innocence with a post-Watergate version of the argument Hiss had put

446 SMITH, supra note 309, at 444.
447 Id. at 445.
448 WEINSTEIN, PERJURY (1978), supra note 340, at 645.
449 Id.
450 See id. at 645-46.
451 See id.; SMITH, supra note 309, at 444.
452 WEINSTEIN, PERJURY (1978), supra note 340, at 645.
453 See ZELIGS, supra note 153, at 448-49.
455 Id. at 2.
forth in *I Call on Alger*. As Smith summarized that argument, “It was precisely because Roosevelt and his policies could be attacked through Hiss that Richard Nixon made such a spectacle of Hiss before the HUAC and hounded him into jail.” Lest there be any doubt about the connections Smith wanted drawn between Hiss’s ordeal and the machinations revealed in the Watergate affair, he quoted from a 1973 article in *The Nation* that had concluded, “The Hiss case cries aloud for fresh and thorough examination, for here is where it all began; here was the genesis of the unscrupulous power that has brought the nation to the disgrace of Watergate.”

The portrait of Hiss as a person in *Alger Hiss: The True Story* was less vivid than, but essentially similar to, the one Zeligs had drawn. Hiss was idealistic, highly protective of Priscilla and his children, and had a tendency to assume others were similarly altruistic, sometimes to his detriment. For example, Hiss sincerely “believed in maintaining friendly relations with the Soviet Union during and after World War II,” and when “hostility toward the Soviet Union and all Communists everywhere” came to be “considered the necessary cornerstone of American policy,” Hiss “blundered into” a changed climate “without understanding.” Although Smith provided comparatively little evidence of Hiss’s altruism, he discussed two unknown stories demonstrating this altruism. In revealing the new evidence, Smith suggested that it helped to clarify “many things that happened at Hiss’s perjury trials.”

The evidence involved two family secrets. One was that Priscilla, three months before marrying Alger in December, 1929, had an abortion. The other was that Timothy Hobson, Priscilla’s son from a previous marriage who had been raised by her and Alger, had been discharged from the Navy in 1945 after a homosexual encounter. On the basis of this information, Smith hypothesized that Alger, concerned about protecting Priscilla and Timothy from the consequences of having that information revealed, had discouraged his lawyers from having Priscilla testify extensively at the trials, and had forbidden them from calling Timothy as a witness. Both Priscilla and Timothy could have given testimony that would have helped Hiss, Smith suggested, but Hiss put their interests ahead of his.

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456 See SMITH, supra note 309, at 438 (“[W]hatever Chambers did and whatever Nixon and the FBI knew about it at the time, Hiss had nothing to do with it; he wasn’t a Communist and he didn’t give Chambers any of the incriminating documents.”).
457 Id. at 440.
459 Id. at 439-40.
460 Id. at 71.
461 Id. at 70-71 (“[M]any things that happened at Hiss’s perjury trials were influenced by Hiss’s knowledge of this secret and the way he protected it.”).
462 Id. at 151.
463 Id. at 287-88.
Had Priscilla testified more extensively, Smith felt, Hiss might not have been convicted. Priscilla "was the one accused of typing Chambers's so-called pumpkin papers," Smith noted. "If she could prove she hadn't done it, her husband would almost certainly be acquitted...." As Timothy's testimony would also have been helpful. Timothy was prepared to testify that he had been confined to the Hiss's Washington house, with his leg in a cast, during some months in 1938 when Chambers had allegedly made several visits to the house to pick up stolen documents. He had never seen Chambers. But, according to Smith, the lawyers working for Hiss found Priscilla so anxious, and "Hiss so protective" of her, that they gave up trying to prepare her as a witness, and her testimony was ineffective.

As for Timothy's testimony, Alger "refused to even consider" allowing him to be called as a witness.

Smith's account was designed to convey the impression that Alger's naïveté and selflessness had resulted in his not allowing Priscilla and Timothy to help him. Hiss, Smith claimed, had believed that any jury would recognize his innocence and doubt Chambers's credibility, and had not wanted to expose Priscilla and Timothy to any embarrassment. Hence he acted against his own interest. But Smith had difficulty showing how Hiss's attitude toward Priscilla and Timothy played any significant role in the outcome of his trials. He suggested that since "Hiss's lawyers never fully understood why Hiss was so protective toward Priscilla," they concluded that "maybe Priscilla had been mixed up in Chambers's spy plot after all...." Smith then claimed that "the press and public watching... at the trial, and no doubt the jury too," reacted similarly.

But Priscilla did testify at both trials, and denied ever having typed any of the documents Chambers had produced. Whatever conclusions lawyers for Hiss might have drawn from her anxiety and from Alger's protectiveness of her, there was no reason to think that the press or the jury would have been aware that Priscilla had been a reluctant witness, or that Alger had discouraged his lawyers from making extensive use of her. She had in fact tried to "prove" that she had not typed the documents, making the unconvincing assertion that her typing was rudimentary (the prosecution produced evidence that she had taken a typing course). There was also no particular reason to think that Timothy Hobson's testimony would have been decisive. Even if Timothy had testified that he had not seen Chambers at Hiss's Washington house, the jury might not have found his account more credible than Chambers's. Timothy had been eleven years old at the time of Chambers's visits and was recalling the episode eleven years later. His stepfather was the defendant in the case and his mother was implicated in espionage. Furthermore, there was no witness to

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464 Id. at 288.
465 Id. at 289.
466 Id. at 286-87.
467 Id. at 289.
468 Id. at 290.
corroborate Timothy’s testimony. At the same time, if Hiss’s lawyers had known that evidence of Timothy’s homosexual encounter would likely emerge if he were called as a witness, they might not have called him. Hiss knew about that risk because the FBI had interviewed Timothy before the trial and signaled that they were aware of the reason behind his Navy discharge. Although Timothy’s sexual preferences should have had no bearing on the credibility of his testimony, Alger Hiss might have reasoned that it was far better to keep the circumstances of Timothy’s discharge private than to assume that a jury would ignore them in assessing Timothy’s testimony. His lawyers, had they known about the FBI interview, might well have agreed.

Thus, Smith’s suggestion that Hiss’s defense was affected by Alger’s knowledge of Priscilla’s abortion and Timothy’s homosexual encounter fails to hold up under scrutiny. One wonders, in fact, why Smith chose to attach great importance to the family secrets, and why Alger Hiss chose to reveal them. Hiss had alluded to the two incidents in his conversations with Meyer Zeligs, but Zeligs had stated in *Friendship and Fratricide* that Priscilla had had a “major operation” in the fall of 1929 and that Timothy had “failed to complete Naval Officer’s training because of an acute emotional upset.”

The decision by Alger to disclose the family secrets through Smith reportedly infuriated Priscilla and illustrated the extent to which Alger had departed, by the 1970s, from his previous posture that his private life was of no concern to the public.

*Lloughing Last*, as Tony Hiss’s preface indicated, gave even greater attention to Alger’s private life, discussing his attitudes toward his mother, siblings, professional friends and acquaintances, his courtship and marriage to Priscilla, their separation, and his relationships with women after leaving Priscilla. Although Tony was the narrator of *Laughing Last*, and some of the book consisted of his reactions to the story of his father’s life, Alger was the principal source of the information disclosed in the book, and was frequently quoted directly. *Laughing Last* was evidence that Alger Hiss had come to believe, by the 1970s, that his campaign for vindication would develop even more momentum if the public learned more about his personal qualities. The book also reflected the relationships within the Hiss family at the time.

In the time period in which Alger and Tony began having the conversations reported in *Laughing Last*, Priscilla and Alger, now separated for over fifteen years, became deeply estranged. In contrast, Tony had entered into a close friendship with his father, once a source of tension for Tony during his life as an adolescent and young adult. Between 1948, when Tony was seven, and

469 ZELIGS, supra note 153, at 182.

470 Id. at 406.

471 WEINSTEIN, PERJURY (1978), supra note 340, at 599 (“[Priscilla] could not believe that Smith had learned from Alger Hiss the facts . . . about her abortion.”).

472 See TONY HISS, supra note 454, at 2-3 (“Up to now people have had to try to explain what happened in public on the basis of what they guessed had happened in private.”).
1963, when he graduated college from Harvard, his father was indicted and convicted for perjury, sent to prison, and labeled a traitor to his country. On his return from prison, Alger and Priscilla’s marriage began to deteriorate. When Tony was seventeen, his parents separated. Tony remembered being under stress much of that time. He “started seeing a shrink a couple times a week,” and confided to his father that he “kept having urges to jump in front of subway trains and jump off the balcony of Carnegie Hall.” After his father went to prison, Tony recalled, he “started to get fat,” “started staying up every night sweating over [his] homework,” and “dragged [his] feet whenever it was time to go home from school or whenever [Priscilla] told [him] to do anything.” “I was angry at Al,” Tony concluded, “for leaving me to live with a lot of men [in prison], and I also felt that [Priscilla] was somehow stronger than Al, because she was still there and he wasn’t.”

In the summer of 1958, Tony and his parents took a trip to Canada. Tony remembered, “I would talk to first one and then the other [of my parents] privately and ask them to be nice to each other, just like I was a little United Nations.” That fall, Alger told Tony that his parents were planning to separate, but that the actual separation would not take place until after the Christmas holidays when Tony returned to his Vermont boarding school. “My marks [at the Putney School] were good until Al told me he was leaving home,” Tony noted, “after which I didn’t study much.” He had already been accepted to Harvard, where, after matriculating in 1959, he “started getting up after lunch” and “failed two courses.”

A position as a feature writer on the Harvard Crimson gave Tony some focus in college. It also helped him secure a job with The New Yorker after his graduation in 1963. His “troubles” at Harvard had been a source of contention for Alger and Priscilla, Tony reported his father recalling. “I came to think,” Tony quoted Alger as telling him, “that she exaggerated your troubles—maybe even relished them, because if you were in trouble then she could help you. She was constantly saying what terrible shape you were in. Then I’d come up and see you, and you were fine.” The “feelings in my own memory” about his time at Harvard, Tony noted, were that “[w]hen dad would come visit me at the college the future would often tend to look like a more reliable proposition than when mom was up for a visit.” Nonetheless, after leaving Cambridge to start with The New Yorker, Tony recalled, “I moved back to [Priscilla’s]
When Tony returned to live with Priscilla in 1963, he reported, his mother "alternated between cursing [Alger] for leaving and making plans for what she’d do after he came back." Tony saw his father "every week or two for lunch," and Tony "was usually half to three quarters of an hour late," and "picked fights with [Alger] and was rude to his friends." Tony later realized, "I was jealous of [Alger’s] not being at [the Hiss family apartment,] and I was also still operating under the assumption that [Priscilla] held the reins of power." During the time he lived with Priscilla he was troubled by fears that he might be impotent, and confessed to Alger, "I thought I was a fairy."\textsuperscript{483}

Then, over the next five or six years, Tony recalled, "for some reason my life started to change." He developed a heterosexual relationship, "started working at [his] job, instead of seeing how many weeks [he] could sleep through not picking up my paychecks," traveled, founded a magazine with a photographer friend, "bought new clothes and wore aviator glasses instead of hornrims," grew a mustache, and "got a driver’s license—to [him] a miracle." Tony added, "I moved out on [Priscilla], realizing, finally, that it hadn’t killed Al to do so," and "finally started to get to know my dad." He had come to associate a heightened self-confidence both with the pursuit of stereotypically masculine activities and with a closer relationship with Alger. They "got to be good friends," Tony noted, "I even show[ed] up on time when we had lunch."\textsuperscript{484}

*Laughing Last* was thus the product of Alger Hiss’s efforts to humanize himself to a potentially receptive public and Tony Hiss’s decision to identify with his father rather than his mother. Consequently, both Alger and Tony had an incentive to portray Priscilla as a burden that had been lifted from their lives. For Alger—who had been confronted with Priscilla’s opposition to continued publicity, with their contrasting attitudes toward Tony as an adolescent, and with her negative reaction to both the Zeligs and Smith books—describing Priscilla as a demanding, high-strung, vulnerable person whom he constantly sought to placate or protect may have produced a certain amount of emotional relief. It also enabled him to portray himself as altruistic and selfless. For Tony, this description of his mother may have helped him detach himself from the "reins of power" he had associated with her.\textsuperscript{485}

The result of their combined efforts was a double-barreled critique of Priscilla. Tony, as narrator, alternated between flippant descriptions of troubling incidents in Priscilla’s life and lengthy quotations from Alger that emphasized the emotional burden Priscilla placed on him. Two examples are illustrative. The first is a passage summarizing five pivotal years in the courtship of Alger and Priscilla, 1924 through 1929. In those years Priscilla

\textsuperscript{482} Id. at 175.
\textsuperscript{483} Id. at 176-77.
\textsuperscript{484} Id. at 177.
\textsuperscript{485} Id. at 176.
first met Alger on a summer vacation in Europe; renewed acquaintances with him on a visit to Baltimore in 1925; became engaged to and married Thayer Hobson, a Yale undergraduate she had met while attending graduate school; had a child, Timothy, in 1926; was separated from Thayer in 1927; divorced him in 1929; and met Alger again in New York in the spring of that year. At that time she was involved in a relationship with a married man, the journalist William Brown Meloney, and became pregnant. Meloney’s wife also became pregnant, and after Meloney broke off the relationship with Priscilla, she had an abortion. Meanwhile, she and Alger corresponded while he was in Europe in the summer of 1929, and on his return Alger began visiting her in New York. Eventually Priscilla and Alger were married in December, 1929, and Alger assumed the care of Timothy Hobson.

Tony Hiss described those events in Laughing Last as follows:

Al went to Europe the summer before his junior year ... and on board ship ... he met a girl, Priscilla Fansler .... He was nineteen and she was twenty. She was demure and pretty, and her plans for the summer seemed uncertain—she talked vaguely about living in a sleeping bag on the south downs of England. This made Al feel “worldly wise” and “avuncular” ... The next winter, when the Fansler girl was a grad student in English at Yale, she came down to Baltimore ... One night the girl, ... Al, and some others all went off to a dance in a taxi. The Fansler girl sat on Al’s lap, and he suddenly discovered ... that she turned him on—at which moment she announced she’d just gotten engaged to another man, a Yalie named Thayer Hobson. The following spring, she did marry this other guy, went off to Paris, had a son, came back to New York, he divorced her, she had an affair, she got pregnant, she had an abortion, and after all of this ... Al turns up again, still single, and she tells him he can stick around if he’ll marry her right away, so they get married in December 1929.

In the excerpt, Tony devoted more attention to Priscilla’s sitting on one man’s lap as she announces her engagement to another, and to her giving Alger an ultimatum about their relationship, than to any of the emotional turmoil she must have encountered in the preceding string of events. In contrast, he presented an account of the emotional turmoil Alger encountered by being married to Priscilla that occupied seven pages of the book. The account tracked, and elaborated upon, the Hiss family secrets John Chabot Smith had revealed in Alger Hiss: The True Story.

Tony Hiss began the account by noting:

486 See Weinstein, Perjury (1997), supra note 1, at 66-71; Zelig, supra note 153, at 180-83.
487 Id. at 135-42.
488 See supra notes 456-71 and accompanying text.
I have found it very interesting to discover, in talking to people associated with the case, how many people on all sides of the case thought that the real truth was that Al was innocent but was covering up for something [Priscilla] had done . . . .

John Smith . . . came up with one explanation for this widespread belief, namely, that Al was covering up, not for any Commie crimes by [Priscilla], but by suppressing that old abortion of hers and at the same time making sure Tim’s gay episode didn’t get on the record. John’s story is true enough—as far as it goes . . . .

. . . .

Al was participating in a sort of cover-up for [Priscilla’s] feelings. The charges of disloyalty to the country for which he was on trial were always uppermost in Al’s mind during his trials—he considered the charges “bullshit” and assumed that a courtroom examination of them would clear them up immediately. He was more concerned about being personally loyal to [Priscilla].

“Loyalty was always a key word,” Tony suggested, in the marriage of Alger and Priscilla. At this point, for the next six pages, Tony developed connections between loyalty, a value cherished by Alger, and the hysterical reaction the indictment and trial precipitated in Priscilla. The pages are filled with direct quotations from Alger Hiss. Alger described Priscilla as having gone “into a panic”; as “react[ing] with great anxiety”; as “being overanxious and on occasion hysterical for more than an hour or two at a time”; as having gone “into a type of collapse” and as in a state of “constant, . . . ‘free floating,’ anxiety that it was impossible to calm.” “God, it was burdensome to go over her anxieties at length,” Alger summarized.

“But [a]t the same time,” Alger continued, as far as I was concerned, it was essential before anything else that she be supported through this very terrifying experience.

This was the priority. Loyalty is a very big thing in my life. I’d been brought up on stories of the Knights of the Round Table, and then loyalty is an old southern tradition . . . . She was dependent on me, and I had to support her. It was on my mind all the time.

Thus Alger Hiss sought to reinforce Smith’s supposition that his first priorities, during his indictment and trial, were to protect and reassure Priscilla rather than to support his own defense.

490 TONY HISS, supra note 454, at 135-37.
491 Id. at 137.
492 Id. at 140.
493 Id. at 137.
494 Id. at 139.
495 Id. at 140.
Tony then took that supposition to another level. He asked Alger whether "maybe he went to jail to get away from [Priscilla]."\textsuperscript{496} Alger said in response to Tony:

[Priscilla] definitely did the best she could during the huge strain of the trial . . . . In retrospect, with all the recent disclosures of FBI telephone tapping, bugging, and even burglaries, her concern about the difficulty of obtaining any privacy in our talks doesn’t seem paranoid at all. On this point I was the one to be faulted for my everlasting assurance that we were in the best hands—the courts—and everything would work out O.K. Perhaps by the time I went in I could see certain advantages to a period of separation in which we each could think through the emotional problems that the trial had exacerbated. I was not altogether horrified.\textsuperscript{497}

Alger’s answer was an artful summation of the themes he wanted to emphasize for the readers. It reinforced the theory that he had been naive during the time of the hearings and his trials, thinking that because he was innocent a closer investigation of his case would reveal his innocence to others. Alger’s answer reasserted the burdens that Priscilla’s emotional state placed on him. It connected his trial to the Watergate disclosures. Finally, Alger’s answer suggested that the strains created by his having to remain loyal to Priscilla might have caused him to look upon jail as a release.\textit{Laughing Last} was Alger Hiss’s fullest effort to advance an extra-legalistic defense. If one starts from the premise that he believed, in the 1970s, that something like vindication was close at hand, but also knew that he had not only committed perjury but espionage, one can get a sense of how tempting the prospect of vindication must have been for him. \textit{Laughing Last} was a response to that temptation. In \textit{Laughing Last}, Alger enlisted his son in a campaign aimed at endearing himself by disparaging Priscilla. Alger Hiss was prepared to appear as a man who retained the chivalric attitudes of the Knights of the Round Table in the twentieth century and trusted that truth would invariably emerge in the courtroom, so long as he appeared as a loyal, wronged innocent. He was prepared to portray Priscilla as a hysteric, to his son as well as to the general public, even though he knew that one reason Priscilla might have "gone into a panic" on hearing that Alger was about to be indicted was they both had worked for Soviet military intelligence.

It may be that Alger Hiss’s resentment at Priscilla’s reluctance to mount a public defense had been reinforced as he and Tony began to discuss the mutual relief they felt from being away from Priscilla. It may be that his use of a critical portrait of Priscilla as part of his defense strategy in \textit{Laughing Last} was a kind of revenge. Yet Alger had used Tony to fashion that portrait as well. In choosing to reconnect with Tony through the medium of a new narrative about himself and the Hiss case—a narrative that began with \textit{I Call on Alger} and that

\textsuperscript{496} Id. at 142.  
\textsuperscript{497} Id.
culminated in *Laughing Last*—Alger had chosen to enlist Tony publicly in his campaign for vindication. In so doing, Alger was asking Tony to demonstrate his own version of loyalty. And what of Alger’s loyalty? *Laughing Last* suggested that Alger’s loyalty lay, above all, to the campaign.

IV. THE UNEXPECTED INTERVENTION OF ALLEN WEINSTEIN

Meanwhile, as *Alger Hiss: The True Story* and *Laughing Last* were taking shape between 1974 and 1976, Hiss’s third cooperative project with a biographer was turning sour. On March 10, 1976, Hiss and Allen Weinstein met for what would be their last interview. Weinstein, who had started his research in 1972, began to reassess his position on the Hiss case. The interview opened with a “few minutes of uneasy conversation,” Weinstein recalled. The uneasiness may have been a product of comments Weinstein had made in a February 1, 1976 article in the *New York Times*, in which he analyzed FBI files on the Hiss case that had just been released to him on a court order.

“For two decades,” Weinstein said, “Hiss sought vindication, but few Americans paid much attention until the Watergate crisis broke; as the Federal Bureau of Investigation and Mr. Nixon lost credibility, Mr. Hiss’s victimization seemed more plausible.” But after Weinstein had reviewed “[t]he latest installment of FBI files,” he concluded that “the records weaken the argument that Mr. Chambers somehow framed Alger Hiss.”

Weinstein continued:

The bureau’s files show that, far from engaging in “forgery by typewriter,” J. Edgar Hoover mobilized the agency’s full resources into a frantic search for the Woodstock on which both the Baltimore documents and the samples of the Hisses’ correspondence were typed. [Meanwhile] Mr. Hiss’s lawyers finally traced the machine through the family of a former maid to whom Mrs. Hiss had apparently given the Woodstock in 1938.

The F.B.I. files show that when the defense introduced [the typewriter] at the first trial, Mr. Hoover hit the roof and ordered an extensive postmortem. Agents filed long reports ... [that] pointed out, correctly, that the maid’s sons, who were given the typewriter by the Hisses, deliberately withheld this information from the bureau, presumably to protect their former employers. The family in question, the Catletts, went instead to Mr. Hiss’s brother, Donald, who informed the defense lawyers.

The newly revealed evidence regarding the bureau’s search for the Hiss

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500 *Id.* at 10.
Weinstein's article also mentioned additional information, gleaned from FBI files, that tended to incriminate Hiss and to confirm Chambers's testimony. The information, which had not been disclosed at Hiss's trials, included Bentley's and Gouzenko's 1945 disclosures that Hiss had ties with the Soviets. Weinstein concluded that although "[p]ersuasive answers . . . for the unresolved questions that remain about the Hiss case" could only be obtained when "all the FBI data have been correlated with other newly available evidence," a "preliminary look" at the FBI files "fails to bear out the most commonly raised conspiracy claims" made by Hiss and his defenders.502

In the March 10 interview with Hiss, Weinstein felt compelled to go further. "When I began working on this book four years ago," he reportedly told Hiss, "I thought I would be able to demonstrate your innocence, but unfortunately, I have to tell you that I cannot, my assumption was wrong." Weinstein then recalled the remainder of the interview: "Hiss shifted slightly, looked beyond [me] and said: 'I'm not surprised.' Later he added: 'I've always known you were prejudiced against me' . . . I realized I'd never speak to him again. I offered my hand, but he stepped away. He wouldn't even look at me."503

Thus began a new phase in Allen Weinstein's participation in the Hiss case. In 1972, Weinstein had felt that Hiss's guilt had not been proven beyond a reasonable doubt. He was also perplexed by a "central mystery" in the evidence that called into question the credibility of Chambers's testimony. Specifically, Weinstein believed that Chambers's break with the Soviets had taken place "before mid-March, 1938," yet Chambers had produced "State Department documents allegedly stolen by Hiss but dating through April 1, 1938."504 By 1976, Weinstein had come to believe that he had cleared up that

501 Id.
502 Id.
503 Hiss: A New Book Finds Him Guilty as Charged, supra note 498, at 28. Philip Nobile provides a fuller account of Weinstein's final interview with Hiss, in which Weinstein told Nobile that "[f]or at least a full half hour, I tried to get eye contact with Alger Hiss, but he refused," and that when Weinstein left, "I said goodbye and offered my hand, but he stepped away and disappeared without saying goodbye or shaking hands." Philip Nobile, Interview: Allen Weinstein: Who is he and What has he Got on Alger Hiss, POLITICKS, Feb. 28, 1978, at 4-5 [hereinafter Nobile, Interview: Allen Weinstein].
504 Weinstein, Reappraisals, supra note 327, at 131. This characterization of Weinstein's stance toward the Hiss case when he first began the research for Perjury is confirmed by the conversation he had with Philip Nobile:

Nobile [for POLITICKS]: You believed in Hiss's innocence for two years into your book project. What evidence did you have to support that belief in this early period?

Weinstein: I was living off accumulated evidence from an earlier article I wrote in 1971, in which I argued for Hiss's essential innocence, or at least that reasonable doubts existed as to Hiss's guilt on the espionage count, and that there was not sufficient evidence to support the notion that he had been a Communist. Beginning
mystery. He had also concluded, based on his examination of Hiss’s defense files, FBI files, and other evidence he secured from persons connected with Hiss and Chambers, that Chambers’s version of events was far more accurate than Hiss’s.505 After meeting with Hiss, Weinstein, who was aware of the forthcoming appearance of Smith’s book, began publicizing the central arguments he would make in his own study.

Weinstein’s decision to participate in a debate about Hiss’s innocence while his book was in progress ushered in a three-year period, stretching from the spring of 1976 through the summer of 1979, in which Hiss’s campaign for vindication entered its most visible stage. When that period ended, Hiss and his most fervent supporters remained defiant in their maintenance of his innocence, and Weinstein’s critics had managed to shift attention from the question of Hiss’s guilt to the soundness of Weinstein’s research. But when the partisan furor precipitated by Weinstein’s reassessment of the Hiss case had subsided by the 1980s, one obvious conclusion remained: If Hiss, in cooperating with Allen Weinstein’s research requests in the early 1970s, had thought that by so doing he would add increased momentum to his campaign for vindication, his strategy had backfired.506

To be sure, the appearance of *Perjury*, and the critical reaction to it in some

with the assumption that my book research would reinforce this analysis—especially once the Freedom of Information Act enabled me to see the FBI files—I proceeded. I was confident that the files would probably show some kind of conspiracy against Hiss. My working assumption was that the Bureau knew a great deal more about the case than it was telling, and that most of what it knew would be in Alger’s Hiss’s favor.


505 In the same interview, Nobile asked:

**Nobile:** Can you trace the stages in your growing disbelief in Hiss? What evidence ultimately tipped the case against him?

**Weinstein:** Certainly by mid-1974, I had begun to have some very serious questions about the completeness of Hiss’s account. By then I had gone through most of the defense files and uncovered a number of memos that seemed to confirm Chambers’s account of events rather than Hiss’s . . . .

[Most of this material had been buried in the defense files, in part because Hiss’s chief investigative officer at the time, Edward McLean, kept his meticulous records together long after he disassociated his firm from the defense efforts.]

*Id.* at 26-27.

506 Nobile continued:

**Noble:** Why do you suppose Hiss allowed you total access to his defense files? This is not the act of a guilty man.

**Weinstein:** Given the fact that I had published an article which had argued for his innocence, and given the fact that I had made it clear when I was starting out that my premise was that he seemed to be innocent, why not cooperate fully with me? I expected to be finding evidence that would help clear him. Also, I doubt that he thought any truly incriminating material was still there.

*Id.* at 27.
circles, dramatically increased public awareness of Hiss's campaign for vindication. Additionally, Weinstein's dogged insistence on defending himself against critics and his tendency to allow himself to be drawn into distracting partisan exchanges, had played into the hands of Hiss supporters who wanted to undermine Weinstein's findings. Yet, despite all the partisan smoke, Weinstein's findings in *Perjury* were damaging to Hiss's campaign. The evidence Weinstein had uncovered and summarized made it harder than ever for Hiss to declare himself an innocent victim. When Hiss turned eighty, six years after *Perjury* appeared, the widespread respect and veneration he had forecast in 1972 had not materialized.

A. Weinstein's Initial Challenge to the Hiss Campaign

Shortly after his interview with Hiss, Weinstein publicized his view that the jury had rightfully convicted Hiss of perjury. His decision to do so, in advance of his book's publication, was a consequence of a flurry of activity about the Hiss case prompted by Smith's *Alger Hiss: The True Story*. As that book neared publication, and a March 18, 1976 press conference was scheduled at the Overseas Press Club in New York to announce the event, Robert Silvers, the editor of the *New York Review of Books*, contacted Weinstein about reviewing Smith’s book. Weinstein reluctantly agreed and submitted a draft of his review before the March 18 press conference. On receiving the draft, the *New York Review* released a copy to the *New York Times*, which had been planning an article on Smith’s book. On the morning of the press conference, in a front page article, the *New York Times* quoted Weinstein as stating that, following the release of the FBI material, people “who once believed in Alger Hiss may now be persuaded that he stole the documents.”

The *New York Times* article mentioned several pieces of evidence allegedly incriminating Hiss that Weinstein had obtained from the Hiss defense files, FBI files, and other sources. Those included the December 28, 1948 letter from John F. Davis to Edward McLean, stating that on December 7, 1948 Alger Hiss had asked Davis to check on the whereabouts of a typewriter he remembered having given to Perry Catlett. On three separate occasions between December 10 and December 15, 1948, Hiss had denied to the grand jury that he had any knowledge of the typewriter's whereabouts. Weinstein charged, “Hiss deliberately misled the FBI, the grand jury and two trial juries” about the typewriter.

The Hiss defense files also revealed that Hiss had retained several typewriting and handwriting experts who had concluded that the documents Chambers produced had been typed on a Woodstock typewriter, that they had

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508 Kihss, *Professor Says Alger Hiss Lied*, supra note 443, at 1.

509 Id. at 74 (quoting Weinstein).
been typed on the same machine used by Priscilla Hiss to type earlier correspondence, and that Priscilla Hiss had typed the stolen documents. Because of this information, the Hiss defense did not challenge the prosecution's claim that the stolen documents and Hiss family correspondence had been typed on the same typewriter. The experts also concluded that various handwritten corrections on the stolen typed documents were in the handwriting of either Alger or Priscilla Hiss. The New York Times reported Weinstein as saying that this evidence was "troubling to the defense," because "the interlinear corrections on the various typed documents [linked] the [Hisses] even more closely to the material [Chambers had produced]."

Furthermore, Weinstein produced interviews from the FBI files with three persons who testified that they had belonged to the same Soviet military intelligence network as Chambers and gave details of the network that corroborated information Chambers had supplied. He also found, in State Department files, a memorandum commenting on the fact that a January, 1938 telegram from the U.S. Ambassador in Moscow to Secretary of State Cordell Hull was known to have immediately found its way into Soviet hands. A handwritten version of the telegram, in Alger Hiss's handwriting, was among the stolen documents Chambers produced.

Finally, the New York Times reported that Weinstein had obtained copies of letters written by Chambers to his friends Meyer Schapiro and Herbert Solow in November, 1938, which demonstrated that Chambers had the intention of holding back some stolen documents and warning Soviet agents that if they pursued him he would use the documents to expose them. Those letters, plus a notarized memorandum written by Solow in November, 1938 and several undated letters from Chambers to Schapiro throughout 1938, convinced Weinstein that he had solved "the central mystery" of the case. By consulting Solow's memorandum, which summarized Chambers's break with the Soviets in 1938, and matching the time frame outlined in that memo with the undated letters Chambers had written to Schapiro, Weinstein concluded that although Chambers had decided to break with the Soviets in 1937, he had not executed his plan until early April, 1938, and the stolen documents he retained between January and April 1, 1938—most of which happened to have been supplied to him by Hiss—were part of his defection strategy.

The Times reporter for the article, Peter Kihss, was able to secure a preliminary reaction from Hiss to Weinstein's claims, even though Hiss was

510 Id. (quoting Weinstein).
511 Id. (reporting that the FBI interviewed Henry Julian Wadleigh, Franklin Victor Reno, and William Edward Crane, verifying Chambers's account of the Soviet network).
512 Id.
513 Id. (reporting that Chambers withheld evidence to protect himself from Soviet reprisal).
514 Id.; see WEINSTEIN, PERJURY (1997), supra note 1, at 277-90 (describing Chambers's process of collecting documents from Hiss through 1938).
“at Boston University . . . to give a lecture” on the evening of March 17, when the story broke, and “had not seen the Weinstein article.” Tony Hiss agreed to “relay a request” from the New York Times for Alger’s comment, and then reported that his father thought Weinstein’s statements “terribly thin stuff and childish.” Tony added that his father thought that Weinstein’s comments amounted to “foolishness” and that Weinstein was “obviously no lawyer.” He also mentioned that, although there had been “problems” with the typewriter experts for his defense, “the art of typewriter examination in those days just wasn’t anything.” Finally, Tony Hiss noted that a week before Alger had accused Mr. Weinstein of having “biased views.”

On March 19, the New York Times, again on the front page, ran an article featuring Hiss’s appearance at the Overseas Press Club and his comments on Weinstein’s forthcoming review of Smith. At the press conference, Hiss declared, “I never handed Whittaker Chambers any State Department documents. I never engaged in espionage and I was never a member of the Communist Party or involved in any of its activities.” He also announced, as previously noted, that the newly released FBI files contained some evidence pointing toward his innocence. Smith was also reported in the New York Times article as calling for Congress to “use its investigative powers to undertake a new study” of the Hiss case in light of recently disclosed evidence.

Peter Kihss had been a colleague of John Chabot Smith’s at the Herald Tribune and had been “impressed by [Hiss’s] tough line against Communism while at the Carnegie Endowment.” The draft of Weinstein’s New York Review essay, Kihss said to Weinstein, “sickened” him. “Weinstein came to a strong conclusion,” Kihss subsequently told two other reporters, “though not all the stuff he wrote about had much to do with Hiss . . . . I’m sorry the way it came out in the New York Review. They were trying to smother Smith.” Kihss added that he had “told the desk [at the New York Times] he wasn’t the best man for the present assignment, but his advice was not heeded.” “I sure wouldn’t want to send anyone to jail on Whittaker Chambers’s word,” he noted. As Philip Nobile was preparing his survey on the “the state of the art of

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515 Kihss, Professor Says Alger Hiss Lied, supra note 443, at 74 (quoting Tony Hiss reportedly relaying comments on behalf of his father, Alger).
516 Kihss, Claims of Innocence, supra note 437, at 1.
517 Id.
518 Id. at 10. Among the exculpatory evidence Hiss claimed was uncovered were a report indicating that the Woodstock typewriter had been given to the Catlett family in January, 1938 and an FBI telegram claiming that the typewriter found by the Hiss defense team was not the family machine. See id.
519 Id.
520 See Tierney & Nobile, supra note 507, at 8.
521 Id. (quoting Peter Kihss).
Alger Hiss’ Campaign for Vindication

Alger Hiss” for publication, the full version of Weinstein’s New York Review essay appeared. In addition to containing the points that the New York Times summarized, the review drew far more definite conclusions about Hiss and Chambers than Weinstein had previously been prepared to advance. Weinstein stated that “the new evidence in the case—as well as the old record Smith often ignores—demonstrates that . . . Hiss has been lying about his relations with Chambers for nearly thirty years.”522 The evidence he had assembled, Weinstein claimed, “confirms Chambers’s story that he took part in a Soviet intelligence network during the 1930s.” It confirmed that “the stolen documents [Chambers] produced in the Hiss case were among those he intentionally withheld . . . before he defected in 1938.” And it confirmed that “Chambers actually wrote . . . warning letters to Soviet agents” and that he had held back copies of stolen U.S. government documents to protect himself from Soviet reprisals.523

Moreover, Hiss’s “defense files . . . have produced . . . some of the most damaging evidence against him.”524 They included interviews between Hiss’s lawyers and members of the Ware group, who knew both Hiss and Chambers in connection with that group (but were obviously not called as witnesses), and memoranda indicating that the Hiss defense was aware of the connections between Hiss family letters and the typed copies of stolen documents produced by Chambers as early as November, 1948.525 Weinstein placed considerable emphasis on Hiss’s lack of candor about the Woodstock typewriter’s whereabouts, given that Hiss knew, at the time he misled the grand jury, that the typeface on the copies of stolen documents Chambers had produced looked very much like the typeface of Hiss family correspondence. That evasion, Weinstein felt, was a particularly revealing index of Hiss’s credibility. As he put it:

Far from having heard from Donald Hiss in January 1949 that the Catletts had been given the machine, Hiss told this to John F. Davis [on] December [7, 1948]. In talking to many of Hiss’s friends who generously staked their own funds and reputations on his innocence, I have found none who seemed aware of this crucial evidence.526

A week after Weinstein’s review of Alger Hiss: The True Story appeared, Weinstein again offered his views about the Hiss case in a public forum. In St. Louis, he participated in a panel discussion on the case at the annual meeting of the Organization of American Historians. The other members of the panel were Irving Younger, a law professor who had written a 1975 article analyzing the Hiss trial transcripts and concluding that Hiss was properly convicted of

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523 Id. at 15.
524 Id.
525 Id. at 16.
526 Id. at 19.
perjury (and implicitly guilty of espionage); and Peter Irons, a political scientist who had read the Hiss defense files and the recently released FBI files. Irons challenged Weinstein’s conclusions, calling several of Weinstein’s assertions “flatly wrong,” and others extrapolations from evidence “legitimately subjected to a different interpretation.” Irons expressed interest in seeing “the notarized memo [of Hebert Solow] dealing with Mr. Chambers’s break with the Soviet underground,” which Weinstein had used to solve the “central mystery” of how Chambers could have gotten access to stolen documents in the early months of 1938 if he had defected from the Soviets in 1937. Weinstein responded that after his book was published he would donate the materials he used as evidence to a public archive.527

B. Weinstein’s Critics

Alger Hiss’s dismissal of Weinstein’s March 18 comments could have been anticipated. But Peter Irons’s attack before an audience of a thousand at the Organization of American Historians’s convention, and the New York Times’s coverage of that session, which gave as much space to Irons as to Weinstein, signaled that whatever the comparative merits of Smith’s and Weinstein’s irreconcilable conclusions about Alger Hiss, the fierce partisanship associated with Hiss’s legacy was still abundantly present in the 1970s. If anything, despite Weinstein’s foreshadowing of his findings, Hiss’s legacy appeared more than ever in equipoise. Weinstein’s forays in March and April generated a number of critical responses, to which he vigorously and publicly responded. The controversy demonstrated how much momentum Hiss’s campaign had gained. By the summer of 1976, the question of Alger Hiss’s innocence had become something of a media event, and Allen Weinstein had found himself in the unusual position of defending a book he had not yet published.

On April 1, 1976, I. F. Stone wrote a column in the New York Times in which he claimed to present “a new scrap of evidence to the renewed controversy over the Hiss case.”528 Stone, at the time, was a contributing editor to the New York Review of Books. The evidence consisted of the fact, known to Hiss since the summer of 1975, that one of the five rolls of microfilm in the “Pumpkin Papers” Chambers produced was blank, and two contained

527 Alden Whitman, Historian Challenged on Report That Hiss Lied About Chambers, N.Y. TIMES, Apr. 9, 1976, at 20. (quoting Peter Irons and Allen Weinstein). In the 1997 edition of Perjury, Weinstein noted that he had not been able to follow through with this plan:

When Perjury’s original edition was published in 1978, my intention was to deposit the 60,000 pages of material used in preparing the book at the Harry S Truman Library. A lawsuit apparently encouraged by supporters of Alger Hiss against the author, his publisher, and The New Republic Magazine—subsequently settled without trial—made it advisable to retain the files accumulated through personal research. The author has deposited the FBI files used in his research at the Truman Library.

WEINSTEIN, PERJURY (1997), supra note 1, at 532.

inconsequential documents such as Navy Department memos on the painting of fire extinguishers. Stone then sought to tie the evidence to Weinstein’s review of Smith:

Prof. Allen Weinstein [mounted an] attack on Alger Hiss in the *New York Review of Books* in which Weinstein accused Hiss of lying about his relations with Whittaker Chambers . . . .

I live in Washington and was not at Alger Hiss’s news conference of March 18 in New York. Hiss held it to answer Professor Weinstein’s article, an attack on Hiss that made page 1 headlines. Hiss told the press that no one had ever had a chance to examine three of the five microfilms until “the Government turned them over to [him] last summer under the Freedom of Information Act.”

Stone indicated that he had seen a photostat of one of the inconsequential documents, and that it represented, in his view, “a tantalizingly loose thread. Firmly pulled, it might unravel the melodramatic web woven a quarter century-ago around the notorious pumpkin papers.”

If the prosecution in the Hiss case knew that the documents were inconsequential and the FBI knew that they were available “on the open shelves of the Bureau of Standards library,” Stone suggested the government’s hints that Chambers’s pumpkin papers contained copies of undisclosed top-secret material “had distinct elements of a stage-managed fraud.” Stone called for “full investigation” of “these new revelations” that he believed to be “too important to be lost sight of.”

Stone’s intervention in the Hiss case proved to be something of an embarrassment for him. In a response that appeared in the *New York Times* on May 3, Weinstein pointed out that on August 1, 1975, the *New York Times* had run a story on the release of the Pumpkin Papers to Hiss and reported the fact that two of the five rolls of microfilm apparently had contained only technical Navy Department data. He also noted that although some of the data was on operations with no intelligence value, some of it dealt with “aircraft fuel systems” and “radio transmitters.” Further, Stone’s column, and Hiss’s press conference, had not mentioned the other two microfilm rolls of Chambers’s pumpkin papers, which contained copies of confidential 1937-1938 State Department documents, nor that Hiss’s lawyers knew, in 1949, that there were Navy Department documents as well as State Department documents

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529 *Id.*
530 *Id.*
531 *Id.*
532 Allen Weinstein, Letter to the Editor, *A Reply to J.F. Stone*, *N.Y. Times*, May 3, 1976, at 31 (implying that Stone had overlooked Weinstein’s previous acknowledgement that the two rolls of microfilm were of no intelligence value). Weinstein’s reply was dated April 17, 1976.
533 *Id.*
copied on Chambers's microfilm rolls. In short, Weinstein charged:

Last year's press release by Hiss has now become Stone's warmed-over "revelation." Neither Stone nor Hiss has yet attempted to analyze and rebut the findings described in my New York Review article, only to denounce it . . .

Hiss and those of his friends who have closed their minds to the possibility of Hiss's guilt will continue to grasp at documentary straws, however flimsy. But I.F. Stone, who has prided himself in the past on the careful assessment of evidence, might wish in future writings on the Hiss case to restrain his evident anger and stick to the facts.\(^5\)

Weinstein was correct about Stone's "anger" over his New York Review essay. When contacted after Weinstein's response appeared, Stone described Weinstein as "arrogant, cruel, unfair and a Zola in reverse." He also indicated that, being a contributing editor to the New York Review, he was upset to be associated with Weinstein's attack on Hiss.\(^5\)

Weinstein next faced a barrage of criticism from more people reacting to his New York Review essay. Robert Sherrill, the Washington correspondent for The Nation, devoted most of his review of Smith's book in the New York Times Book Review to attacking Weinstein, suggesting that he had made very little use of the newly released FBI files and had not fully investigated the issue of whether the FBI itself had used a fake typewriter to frame Hiss.\(^5\)

In letters to the New York Review, Athan Theoharis, Stephen Salant, and David Levin questioned Weinstein's conclusions about the timing of Chambers's break from the party; suggested that Hiss might have simply been following instructions when he wrote out summaries of State Department documents; and argued that Weinstein had greatly exaggerated the significance of Hiss's having given misleading information about the status of the Hiss family typewriter.\(^5\)

The common thread of the criticisms was that Weinstein had become a partisan, convinced of Hiss's guilt, and was forcing his conclusions on evidence that did not necessarily support them. Weinstein responded to the criticisms in detail, bringing out some evidence in the newly released FBI files, which he had not relied upon in his review of Smith.\(^5\) He also pointed out that none of his critics made a systematic effort to defend the various

\(^{534}\) Id.

\(^{535}\) Tierney & Nobile, supra note 507, at 8-9 (quoting and reporting on I.F. Stone's reaction to Weinstein's response).

\(^{536}\) See Robert Sherrill, Innocent, a New Book Says—Guilty, Another Will Say—and the Trial Goes on, N.Y. TIMES BOOK REV., Apr. 25, 1976, at 31-32.


\(^{538}\) For example, in his response to Professor Theoharis, Weinstein quoted from Herbert Solow's notarized November, 1938 memorandum which contained a summary of Chambers's defection from the Soviets. Id. at 34.
conspiracy theories Smith had advanced in support of the proposition that Hiss had been framed.\footnote{Id. (arguing that none of the critics “challenge directly [Weinstein’s] discussions of the . . . conspiracy theories”).}

Weinstein might have added, in responding to his critics, that none of them had supplied any additional evidence from the newly released FBI files or elsewhere that tended to exonerate Hiss. Their quarrels with Weinstein centered on Weinstein’s interpretations of evidence he had discovered. Most of that evidence came from the Hiss defense files, which Smith had access to; most of it had not been disclosed at theHUAC hearings and Hiss’s two trials; and Alger Hiss and his lawyers had been aware of a good deal of it. Weinstein was clearly more knowledgeable than any of his critics about that evidence, and none of his critics attempted to defend Smith.

This raises the question of why critics had been provoked to attack Weinstein’s \textit{New York Review} essay. Weinstein seems to have grasped the principal reason: they were offended by “the timing and tone” of his review.\footnote{Id. (asserting that the critics’ real problem with Weinstein’s work was not substantive, but presentational).} Weinstein’s timing was felt to be unfortunate by his critics because Weinstein, in attacking Smith, had relied on evidence that he had not yet fully disclosed in print. Weinstein’s tone was regarded as unfortunate because he had abandoned the apparent objectivity of his \textit{American Scholar} essay for a posture which summarily declared Hiss to be a liar and Chambers to have largely told the truth.

Weinstein’s \textit{New York Review} essay, and his response to critics, amounted to a modification of his original purpose in reassessing the Hiss case, to prevent “partisan versions from hardening into myth.”\footnote{See Weinstein, \textit{Reappraisals}, supra note 327, at 132.} Weinstein may have intended the research that he eventually presented in \textit{Perjury} to have the status of a detached, factual accounting of the truth about Alger Hiss. The adversarial posture in which he presented his pre-publication findings, however, made it easier for Hiss supporters to label him a partisan. As a result, when \textit{Perjury} finally appeared in the spring of 1978, Weinstein’s narrative of the relationship between Hiss and Chambers, and of Hiss’s involvement with the Soviets—while taken by some reviewers as definitively settling the question of Hiss’s guilt—was severely attacked by other reviewers. Then, when Weinstein continued his pattern of aggressively defending his views, the politicization of the Hiss case was extended into yet another decade.

\section*{C. \textit{Perjury} and Partisanship}

By \textit{Perjury}’s publication in March of 1978, the Hiss campaign was still in high gear. \textit{Laughing Last} had appeared, and Alger Hiss’s lawyers were in the last stages of filing a \textit{coram nobis} petition in the United States District Court for the Southern District of New York. The petition asked, largely on the basis
of evidence in government files released to Hiss under the Freedom of
Information Act, that Hiss’s 1950 conviction be set aside. Early reviewers of
Perjury were aware, as Time put it, that “Hiss lately has been winning new
sympathizers,” and that Weinstein’s conclusions “will not go unchallenged.”
A visible challenge was soon to come, drawing Weinstein deeper into partisan
skirmishes.

1. Early Reactions to Perjury

Despite their awareness that the Hiss case engendered partisan reactions,
most early reviewers, writing from diverse ideological perspectives, were
impressed with the depth of Weinstein’s research and were inclined to accept
Weinstein’s conclusions. George Will, in Newsweek, found Perjury
“stunningly meticulous, and a monument to the intellectual ideal of truth
stalked to its hiding place.” “The myth of Hiss’s innocence,” Will asserted,
“suffers the death of a thousand cuts, delicate destruction by a scholar’s
scalpel.”

Christopher Lehmann-Haupt, in the New York Times, said that
“the immediate impact of ‘Perjury’ is highly impressive, and, to say the least,
extremely damaging to Alger Hiss.”

Garry Wills, in The New York Review of Books, concluded that “[s]o far as any one book can dispel a large historical
mystery, this book does it, magnificently.”

Finally, Alfred Kazin, in Esquire, stated that “[a]fter [Perjury], it is impossible to imagine anything new
in the case except an admission by Alger Hiss that he has been lying for thirty
years.”

At the same time, however, those reviewers, and others, recognized that the
altered climate of opinion toward the Hiss case in the 1970s would likely result
in Perjury’s not ending partisan debates about Hiss’s innocence. Irving Howe,
in the New York Times Book Review, called Perjury “lucidly written,
impressively researched, closely argued,” and “formidable.” But at the same
time he predicted that “[c]ontroversy over Alger Hiss’s guilt or innocence goes
on and on. It will continue to do so.”

Kazin suggested that, “[a]lthough Perjury is so exhaustive . . . that it should put the case to rest, Alger Hiss will
survive it.”

Wills believed that “the dogged and infectious air of innocence
around Hiss will continue to give people pause.” Hiss’s supporters will still
run up against the “problem,” Wills noted, of “how [Hiss] could have lied to

542 Hiss: A New Book Finds Him Guilty as Charged, supra note 498, at 28 (“For three
decades, Hiss has waged a campaign for vindication, and next month he intends to ask the
courts again for a new trial on the ground that the prosecution withheld vital evidence from
him in 1949.”).

547 Irving Howe, Alger Hiss Retried, N.Y. TIMES BOOK REV., Apr. 9, 1978, at 1.
548 Kazin, supra note 546, at 22.
his friends in the first place and maintained the lies with assurance—even with
serenity—for over a quarter of a century.” *Perjury* “[did] not try to explain
Alger Hiss, just to deal with the evidence for certain acts having occurred.”

T.S. Matthews, who had worked with Chambers at *Time* in the 1940s, noted
in *The New Republic* that the puzzle of Hiss’s motivation had combined with a
change in perceptions about the Hiss case, the integrity of U.S. government
agencies, and the Cold War to make the process of reading *Perjury* more
complicated. Recalling the climate of opinion in which Hiss was tried, Matthews observed:

Now the tide has turned in Hiss’s favor. A British reporter recently
cabled from New York: “Today, Alger Hiss is a respected figure in
intellectual circles and most American liberals believe that he was
deliberately framed.” Hiss intends to bring suit to have the evidence in
his case reviewed. His State Department pension has been restored and
he has been re-admitted to the Massachusetts bar.

But *Perjury*, Matthews felt, “is now part of the Hiss Case . . . . [B]efore Hiss
can be exonerated this book will have to be refuted.” If Weinstein “has
correctly reviewed [the Hiss] case,” Matthews felt, “Alger Hiss would do well
to let sleeping dogs lie.” For his own part, Matthews was inclined to believe
that Weinstein’s conclusions about Hiss were correct. Yet then, he concluded,
“What Hiss is I have no idea; he seems to me simply—incredible.”

Hiss had no intention of letting sleeping dogs lie. Four months after *Perjury*
appeared, his attorneys submitted the *coram nobis* petition. Nor was his
longtime ally, *The Nation*, this time in the person of its new editor, Victor
Navasky, inclined to abandon his defense. On the heels of *Perjury*’s
publication, Navasky’s *The Case Not Proved Against Alger Hiss*, a savage
attack on Weinstein, appeared in the April 8 issue of *The Nation*. Navasky’s
strategy in critiquing Weinstein was similar to that of the critics who had
responded to Weinstein’s *New York Review* essay. He did not introduce any
new evidence tending to exonerate Hiss; instead, he claimed that Weinstein’s
research had been sloppy and his stance partisan. His tone, however, when
compared with Weinstein’s earlier critics, was far harsher and more personal.
Navasky’s essay can be seen as an effort to redirect the focus of discussions of
the Hiss case from the question of Hiss’s guilt and innocence to the question of
Allen Weinstein’s integrity as a scholar. As Navasky might have suspected,
Weinstein could not resist debating that question. The result was a minor
media event.

551 *Id.* at 27-28.
552 *Id.* at 28-29.
553 Victor Navasky, *The Case Not Proved Against Alger Hiss*, THE NATION, Apr. 8, 1978,
at 393-401 [hereinafter Navasky, *The Case Not Proved*].
2. Victor Navasky’s Attack

In *The Case Not Proved Against Alger Hiss* Navasky gave an overview of his reaction to Weinstein’s stance in *Perjury*:

After reading and rereading *Perjury*, I [concluded that] whatever his original motives and aspirations, Professor Weinstein is now an embattled partisan, hopelessly mired in the perspective of one side, his narrative obfuscatory, his interpretations improbable, his omissions strategic, his vocabulary manipulative, his standards double, his “corroborations” circular and suspect, his reporting astonishingly erratic . . . . His conversion from scholar to partisan, along with a rhetoric and methodology that confuse his beliefs with his data, make it impossible for the nonspecialist to render an honest verdict in the case.554

That description of Weinstein as a scholar was by far the harshest that had yet appeared, and was in stark contrast to the portraits of him in other early reviews of *Perjury*. In an essay published four years after his attack on Weinstein, Navasky provided some clues to his decision to undertake it. 555

In December of 1977, Navasky recalled, he had completed arrangements to take over the editorship of *The Nation* and was working on a book “tangentially related to the Hiss case.”556 He had read Weinstein’s previous writings on the case, including his *New York Review of Books* essay, and had concluded that the publication of *Perjury* “was going to be an important event in the political culture.” He thus attempted to get a set of advance galleys from Alfred Knopf, the publisher. When the galleys arrived, Navasky read them with some “suspicion,” and some “irritation.”557 The first source of his irritation was that the galleys contained no footnotes, which eventually arrived much closer to the publication date of the book. This frustrated Navasky’s efforts to match up Weinstein’s claims with his supporting evidence.558 Two other reasons for Navasky’s irritation with Weinstein, however, made it even more likely that he would prepare an extensive, critical review of *Perjury*.

One source of Navasky’s irritation was a 1973 letter written by Weinstein to the Justice Department, requesting access to materials on the case of Julius and

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554 Id. at 394.
556 The book was *Naming Names*, a highly critical study of HUAC’s investigation, between 1951 and 1953, of Communist infiltration into the motion picture industry. “The purpose of the [HUAC] hearings,” Navasky wrote, “was clearly punitive, yet the procedural safeguards appropriated to tribunals in the business of meeting out punishment were absent . . . . And, of course, the targets from the entertainment business had committed no crime.” Id. at xiv.
558 Id. at 218-19.
Ethel Rosenberg. Weinstein had identified himself as a scholar who believed the Rosenbergs were guilty, “unlike some other writers whom he proceeded to name with quite reckless abandon.” Weinstein’s letter, containing the names of the writers, was made public as an exhibit in Weinstein’s 1973 Freedom of Information Act lawsuit. Navasky was one of the writers Weinstein identified, “despite the fact,” Navasky noted, “that at that time I had written nothing about my views on the Rosenbergs’ innocence or guilt.”

The other reason for Navasky’s irritation was that he learned that Weinstein had attempted to prevent files regarding the Hiss case from being made available to “someone close to Hiss.” Navasky became aware of Weinstein’s attempt to conceal the letters when Navasky requested some materials related to the papers of Herbert Solow from the Hoover Institution at Stanford University. Weinstein had used some of those materials to support his claim that Chambers broke from the Soviets in 1938 rather than in 1937. Weinstein had written two letters to Sylvia Solow, the widow of Herbert Solow, in 1975 and 1976. After Ms. Solow’s death, Herbert Solow’s papers were given to the Hoover Institution. In one letter, Weinstein said that he wanted to use the letters in some articles written in advance of his book “to deflect attention from the inevitable Hiss defense potboilers which will doubtless begin appearing . . . in the wake of Hiss’s renewed efforts to prove his innocence.” In the second letter, Weinstein asked Silvia Solow to “consider removing the file marked Hiss-Chambers case or Hiss Case from Herbert’s files” in order to prevent Hiss partisans from “us[ing] the file (against your wishes, I assume).”

The two incidents convinced Navasky that “the image Weinstein was presenting in advance publicity for the book,” that of “truth-seeking scholar who . . . had been forced by the weight of the evidence to reverse his initial belief in Hiss’s innocence,” was false. Navasky concluded that Weinstein was a determined partisan who was not loath to prevent others from gaining access to evidence on which he had based conclusions about the Hiss case. Accordingly, Navasky decided to mount his own partisan investigation of Weinstein. “With the help of the Nation’s staff and network,” which included longtime Hiss defenders such as Carey McWilliams, Fred Cook, and William A. Reuben, Navasky “conduct[ed] an elementary source check with some of Weinstein’s more spectacular interview-finds, to see whether they were quoted accurately and in context, and to examine some of the key documents he cited.” The results of that “source check” were the centerpiece of Navasky’s April 8, 1978 review of Perjury in The Nation.

559 Id. at 220-21.
560 Id. at 221-22 (quoting excerpts from Weinstein’s correspondences to Sylia). Navasky referred to Herbert Solow as “a minor figure in Perjury on whom Weinstein places considerable reliance.” Id. at 221.
561 See id.
562 See Navasky, The Case Not Proved, supra note 553, at 394.
Navasky’s April 8, 1978 critique of Perjury charged that Weinstein’s “rhetoric and methodology” were deficient in two related respects. First, Weinstein had either misrepresented or incompletely represented the contents of the sources he used to support his conclusions. In addition, Weinstein had filled in the gaps created by his imperfect use of sources by relying excessively on Whittaker Chambers’s own accounts of what he, Alger Hiss, and others had done. As Navasky summarized his critique:

[Weinstein] has transposed Witness from the first to the third person... Much more of Perjury than one might deduce from the footnotes draws on material in the earlier book. Such a narrative strategy gives us Chambers’s version of events sometimes in his own voice, sometimes in Weinstein’s voice, and sometimes imputed to other characters in the drama, without our ever being quite sure which is which, but all of it adding up to a psychological structure that lends Chambers a perhaps undeserved credibility, and in which any inconsistencies in Chambers’s story are concealed or glossed over. The problem is compounded by Weinstein’s failure to flag contested claims as they arise.

To demonstrate Weinstein’s alleged misrepresentations of evidence, the Nation staff contacted seven persons Weinstein had interviewed. Six responded. Each of those, Navasky later noted, “claimed he [sic] was misquoted or misunderstood.” Navasky further claimed that in five of those six cases the information which the source denied having furnished to Weinstein “turned out on close inspection to have been contained in... Witness, in Chambers’s testimony, or in FBI interviews with Chambers.” Chambers, Navasky concluded, “was being used to corroborate Chambers—and in ways which were often invisible to the reader.” Navasky ended his review by suggesting that “[i]t would be a tragedy if... this unfair book were to deprive Alger Hiss, now 73, of a fair hearing on his upcoming coram nobis petition to set aside the verdict of the trial.”

Navasky provided a chart, entitled “Weinstein Miscasts the Characters,” comparing Weinstein’s characterizations of evidence supplied by interviewees or found in other sources with what “research [by The Nation] shows.” The polemical effect of Navasky’s charges was impressive. His review, however, produced no new evidence exonerating Hiss. He had simply contacted a

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564 See Navasky, The Case Not Proved, supra note 553, at 394.
565 Id. at 395. Witness was Whittaker Chambers’s memoir. See CHAMBERS, supra note 22.
566 Navasky, Transformation of Historical Ambiguity, supra note 555, at 222. The sources Navasky contacted were Donald Hiss, Karel Kaplan, Sam Krieger, Maxim Lieber, Nadia Ulanova, Paul Willert, and Ella Winter. Ulanova did not respond. See id. at 222-38, 242 n.16; Navasky, The Case Not Proved, supra note 553, at 396-97.
567 Navasky, Transformation of Historical Ambiguity, supra note 555, at 222-23.
568 Navasky, The Case Not Proved, supra note 553, at 401.
569 Id. at 398-99.
number of people, most of whom had provided information to Weinstein linking Whittaker Chambers to the Soviet underground in the 1930s, who may well have been surprised that their information was now being used to establish Hiss’s connections with underground Soviet networks. To this Navasky added some claims that Weinstein had failed to note that several of his interviewees had qualified the statements he attributed to them in Perjury. Only one of the misrepresentations Navasky accused Weinstein of making, however, related to an issue that might have borne on Hiss’s guilt: Weinstein’s claim that Alger Hiss had known of the whereabouts of the Hiss family Woodstock when he stated that he had no idea what had happened to it. The only new information Navasky presented on that issue was a response by Donald Hiss, who Weinstein had suggested was also involved in concealing the whereabouts of the typewriter. Donald Hiss told Navasky that Weinstein, when he interviewed him in connection with Perjury, had not even asked him about the typewriter. However, Weinstein based his conclusions about Donald Hiss on documents in the Hiss defense files and FBI files, not on that interview.

Navasky’s charges that Weinstein had misrepresented or not fully represented evidence primarily related to details regarding Whittaker Chambers’s participation in a Soviet intelligence network in the 1930s. Chambers’s participation in that network was not an issue disputed at Hiss’s trials. Nonetheless, Navasky thought it significant that “Weinstein has aligned himself with those cold-war intellectuals who presumably sleep better at night secure in the knowledge that there was an internal Communist menace,... which might have justified the cold-war repression with which they

570 One example was Maxim Lieber, whom Weinstein had described as “Chambers’s sometime associate in the underground.” Lieber, after confirming some of the details Chambers provided about the Soviet network with which he and Chambers were associated, was reported by Weinstein as saying that “[s]ome things are romanticized in Witness, but most of it—as I know of the incidents—is true.” WEINSTEIN, PERJURY (1978), supra note 340, at 62, 129. Navasky reported Lieber as telling him that Weinstein “made all these things up out of whole cloth . . . I never read Witness.” Navasky, The Case Not Proved, supra note 553, at 399. Yet, when Michael Kernan of the Washington Post reached him in connection with a story on Navasky’s attack on Perjury, Lieber said, “Weinstein came to see me under false colors, representing himself as very friendly to Hiss. I never would have said a single word to him if I’d known he was friendly to Chambers.” Lieber insisted to Kernan that “I never read the book ‘Witness.’” Michael Kernan, A Literary Skirmish Over Hiss, WASH. POST, Apr. 6, 1978, at B1.

571 See Navasky, The Case Not Proved, supra note 553, at 400.

572 See id. at 397.

573 WEINSTEIN, PERJURY (1978), supra note 340, at 391-93.

574 Navasky, The Case Not Proved, supra note 553, at 397.

575 See WEINSTEIN, PERJURY (1978), supra note 340, at 632 (citing material in the Hiss defense files and FBI files to support the conclusion that Donald Hiss knew the whereabouts of the Woodstock typewriter).
collaborated and/or helped rationalize.”  

Perhaps Navasky meant to suggest there really was no Communist menace because the espionage network Chambers admitted to joining was a figment of Chambers’s imagination. If so, he provided no supporting evidence for the suggestion.


Navasky, with Weinstein’s unwitting cooperation, also managed to escalate the human dimensions of his attack on Weinstein. In the course of its “source check,” The Nation sought copies of documents that remained in Weinstein’s possession. After Navasky’s review appeared, Weinstein announced that he was planning to write a response, and invited “Navasky, Hiss, or anybody else” to examine his research files.  

The Nation immediately offered Weinstein space to reply and subsequently asked to review his files. The result was a confrontation that precipitated a lawsuit, and an episode leading some commentators to endorse Navasky’s claim that Weinstein’s was merely a partisan.

In the April 29, 1978 issue of The New Republic, Weinstein published a five-page response to Navasky. He denied that he had misquoted any of the sources Navasky identified, listed “just ten of Navasky’s many distortions of my research,” and concluded that Navasky’s “accusatory smokescreen cannot conceal from the careful reader the total absence of real evidentiary ‘fire.’” Unfortunately, in order to reach this conclusion, the “careful reader” was forced to deal with a mass of details about discussions between Weinstein, his sources, and other persons that could only have been captivating to Weinstein.

The New Republic itself appeared distressed at the form the Navasky-Weinstein exchange was taking. “We publish here, with some reluctance,” The New Republic editorialized, “Weinstein’s reply to...Navasky.” “Our reluctance does not derive from any reason to doubt the quality of Weinstein’s research or his conclusions, which we find convincing.” The magazine was “just somewhat reluctant to impose upon non-addicts yet another round in this increasingly arcane dispute.”  

Weinstein, in The New Republic’s view, was

576 Navasky, The Case Not Proved, supra note 553, at 394.
577 Kerman, supra note 570 (quoting Weinstein).
580 Id. at 17-18.
581 Id. at 20.
582 Id. at 21.
too caught up in minutiae.” Had The New Republic anticipated the legal consequences of some of the “minutiae” Weinstein supplied in his response, however, it might not have found the controversy so arcane.

In the course of his response Weinstein referred to the six persons he had interviewed who had “recanted their stories” to Navasky. Three of those interviews, he said, were on tape. One of the three was Samuel Krieger, a former member of the Communist Party of the United States who had recruited Chambers in the 1920s. In Navasky’s review of Perjury, he quoted Krieger as stating that Weinstein had misrepresented some details of two interviews he had had with Krieger in August, 1974. Among the details was a statement in Perjury that, “during the Gastonia, [North Carolina] textile strike of 1929,” Krieger, using the name “Clarence Miller,” was “jailed by local authorities,” and subsequently “fled to the Soviet Union, where he lived for a time in the 1930s.” After making that statement, Weinstein wrote, “Interviews with Sam Krieger, August 14-15, 1974.” When contacted by Navasky, Krieger denied being involved in the textile strike or fleeing to the Soviet Union. He added that he did not tell Weinstein that he “was the Clarence Miller . . . of the textile strike, who subsequently fled to the Soviet Union.” In Perjury, Weinstein quoted Chambers as saying that “I later learned [that Krieger] used the alias, Clarence Miller.”

In his New Republic response to Navasky, Weinstein wrote the following about Krieger:

The third recanter is Sam Krieger. He too is on tape, and his words also are quoted verbatim, where they appear in Perjury, from the two interviews in 1974. Krieger denies having told me that he posed as Clarence Miller during the Gastonia, N.C. textile strike, and later fled to the Soviet Union. But I never say in the book that he told me that. I learned these crucial facts from FBI documents and from conversations with two people who had been contacted by an émigré Russian woman whose mother had lived with “Clarence Miller” in the Soviet Union during the 1930s. In 1975 this woman visited Krieger and identified him as Clarence Miller.

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583 The New Republic’s editorial comments introduced Weinstein’s “Perjury,” Take Three. See Weinstein, “Perjury,” Take Three, supra note 579, at 16-17. The editors expressed disappointment with Navasky’s review of Perjury, stating: “Few things are ever certain in the world, but if Victor Navasky customarily refused to reach a conclusion about any public issue before there was more evidence to consider than is now available about the Hiss case, he would be mentally paralyzed.” Id. at 17.

584 Id.

585 Navasky, The Case Not Proved, supra note 553, at 393.

586 WEINSTEIN, PERJURY (1978), supra note 340, at 100.

587 See Navasky, The Case Not Proved, supra note 553, at 396.

588 WEINSTEIN, PERJURY (1978), supra note 340, at 100.

589 Weinstein, “Perjury,” Take Three, supra note 579, at 19.
In May of 1978, about a month after Weinstein published his response, Samuel Krieger sued Weinstein, *The New Republic*, and *Perjury*’s publisher Alfred Knopf for $3 million. Weinstein never mentioned, either in *Perjury* or *The New Republic*, why the “Clarence Miller” he identified as Sam Krieger had fled to the Soviet Union. Unfortunately for Weinstein, the “Clarence Miller” who was jailed in connection with the Gastonia textile strike had been convicted of murder. Thus Krieger, if he was that “Clarence Miller,” was subject to arrest. This prompted Krieger to launch a defamation suit. Discovery for that suit revealed some information damaging to the defendants. Neither Knopf nor *The New Republic* had verified the accuracy of Weinstein’s statements in *Perjury*, or in his response to Navasky, even though it was standard practice in such cases. More significantly, Weinstein could not produce evidence that Sam Krieger was the “Clarence Miller” identified with the Gastonia strike. For his part, Krieger admitted that his name in the Communist Party was “Clarence Miller,” but he denied any connection with Gastonia and denied that he had visited the Soviet Union in the 1930s. Weinstein’s *New Republic* statements did not hold up in the face of Krieger’s denials.

Weinstein said he learned that Krieger was the Clarence Miller who had escaped from Gastonia to the Soviet Union “from FBI documents” and “from conversations with two people who had been contacted by an émigré Russian woman whose mother had lived with ‘Clarence Miller’ in the Soviet Union in the 1930s.” The “FBI documents” turned out to be a “Personal History of Whittaker Chambers” contained in a May 11, 1949 FBI “Summary Report.” According to the report, Chambers had identified Sam Krieger’s Communist Party name as “Clarence Miller” and discussed Krieger’s role in recruiting him. Weinstein identified the “two people” who had been contacted by the Russian émigré as Isaac Don Levine and Levine’s wife. The Levines’ memory of their conversation with Weinstein, however, differed. They recalled that it was Weinstein who suggested to them that Sam Krieger was Gastonia’s “Clarence Miller.” Finally, Weinstein was unable to produce the émigré Russian woman who had allegedly visited California in 1975 and identified Krieger as a “Clarence Miller” who had once lived in the Soviet Union.

The worst blow to Weinstein’s defense was a letter the FBI sent to Krieger in April, 1979, as his lawsuit was about to proceed to trial. The letter stated that in 1952 the FBI had investigated the whereabouts of Gastonia’s “Clarence Miller.”
Miller.” Because the FBI was aware of Chambers’s statement that Krieger, had used the alias “Clarence Miller,” it looked into the possibility that Krieger was their fugitive. Its investigation, relying on persons who were able to identify a photography of Gastonia’s “Clarence Miller” and on a comparison of fingerprints taken at the time of the fugitive’s arrest with those of Sam Krieger, established that Gastonia’s “Clarence Miller” and Sam Krieger were two different persons. Weinstein, The New Republic, and Knopf settled the suit with Krieger for $17,500, an erratum statement in subsequent printings of the 1978 edition of Perjury, and an apology in The New Republic.

In the June 7 and 14, 1979 issue of The New Republic, Weinstein issued a statement, complying with the judgment in the Krieger defamation suit. After quoting the paragraph in his response to Navasky that had initiated the lawsuit, he wrote:

These statements about Sam Krieger were erroneous . . . .

Although Mr. Krieger did use the name “Clarence Miller” as a pseudonym in the Communist Party in the 1920s, Mr. Krieger was not the “Clarence Miller” who was involved in the Gastonia strike; nor did Mr. Krieger later flee to the Soviet Union; nor did the émigré Russian woman referred to in my April 28, 1978, article ever visit Mr. Krieger or identify him as Clarence Miller or as anyone, as I believed when writing the article . . . .

I regret any distress caused Mr. Krieger by this misidentification and by the statements in The New Republic article . . . .

The New Republic followed this statement with a paragraph stating that it too regretted any distress caused to Krieger.

The Krieger lawsuit must have been particularly galling to Weinstein because Krieger, of all the interviewees Navasky listed as claiming that Weinstein had misquoted them, had supplied Weinstein with the strongest support for his explanation for why those interviewees had done so. Weinstein maintained that these interviewees recanted their statements simply because they had “disagree[d] with [his] conclusions about the Hiss-Chambers case,” Weinstein claimed. The New Republic itself concurred, noting:

[I]f there is a pattern in the recantations Navasky has produced, it seems to be this: people who told Weinstein details about Whittaker Chambers’s Communist background, thinking these would be used to impeach Chambers and vindicate Hiss, changed their minds when they saw

595 See id. at 31, 77.
596 Id. at 31.
598 Id.
599 Weinstein, “Perjury,” Take Three, supra note 579, at 17.
Weinstein had spun a web of fact from their information that trapped Hiss as well.\footnote{Id. (editorial preface).}

Weinstein and The New Republic saw Krieger as a clear example of the disgruntled Hiss partisan.

In his response to Navasky, Weinstein indicated that he had recorded Krieger as saying, in the 1974 interviews, that “Hiss’s statements” at his trials about his relationship with Chambers “were very unconvincing,” and that Hiss had not admitted to what Krieger described as “a much, much closer relationship with Chambers.”\footnote{Id. at 19.} Yet after Weinstein published a 1975 article on the Hiss case, he noted, he received a letter from Krieger, part of which he quoted. Krieger had written Weinstein that he was “distressed”:

[The article] wasn’t decisive enough in branding (Hiss’s) conviction a frameup. Don’t the “files” confirm this conclusion? I do hope that the two days we spent in tape recording will help to prove that Alger was framed and a victim of McCarthyism. Otherwise, I was given a bum steer and my time and trouble was for nothing.\footnote{Id. (quoting Krieger).}

A year after Weinstein quoted the letter from Krieger, Alexander Cockburn contacted Krieger for an article on the lawsuit in The Village Voice. In the article, Cockburn mentioned that “[t]o this day, Weinstein has not produced the tape of his original interview with Krieger,” and that “[a]s interrogatories and depositions piled up” in Krieger’s lawsuit, “it became clear that Weinstein was standing on slippery ground.” He described Krieger as being “vindicated” by the settlement he would receive, and quoted him as “hop[ing] this will be a help to Alger and stop other eager beaver ‘historians’ from rushing to write history to win the plaudits of the powers that be.”\footnote{Cockburn, supra note 590, at 31, 77. Cockburn had been one of the journalists contacted by Philip Nobile in his 1976 survey about Hiss, and had stated that he believed Hiss to be innocent. See Nobile, supra note 9, at 67.}

Cockburn also made a comment on the effect of the Krieger lawsuit on the authoritativeness of Perjury:

Weinstein’s scholarship and research procedures—at least on the basis of what he made of his interview with Krieger . . . and on the admissions he makes in his deposition—have been plainly damaged by the whole affair . . . . We may . . . hope that Weinstein’s repeated offer to place his files on record for scholars to examine will soon come to pass. So far, after many promises over the last three years, he has done nothing of the sort. He has let no one have so much as a glimpse of them.\footnote{Cockburn, supra note 590, at 77.}
review of *Perjury*. In that confrontation, Weinstein was again provoked to confront his critics in the press; the result, again, was to focus attention on the integrity of Weinstein's research rather than on the question of Hiss's guilt or innocence.

4. *The Nation*’s Effort to Inspect Weinstein’s Files

Navasky’s critique of Weinstein in the April 8, 1978 issue of *The Nation* became available on April 1. By April 6, the *New York Times* and the *Washington Post* had run articles in which Weinstein stated that he intended “to write a thorough article about Navasky’s criticism,” and that he “invite[d] Navasky, Hiss, or anybody else to examine his thousands of documents, his tapes and notes, [or] his original 1,600 page manuscript.” In the *Washington Post* article, Weinstein added that he would “meet [Navasky] any time,” and Navasky could “bring along all the experts he wants, including Hiss.”

Weinstein noted that William F. Buckley’s television program, “Firing Line,” had invited Navasky to debate the question of Hiss’s guilt or innocence, and that Navasky had refused. When the *Washington Post* contacted Navasky, he said that he would not debate whether Hiss was guilty or innocent because he did not know where he would “come out about Hiss.” Navasky maintained, however, that he would be “happy to be part of a discussion with Allen Weinstein on the question of his scholarship.”

Navasky’s response captured the strategy animating his critique of *Perjury*. He claimed to be agnostic about the question of Hiss’s innocence, a position *The New Republic* labeled as “hypocritical” and “fundamentally ludicrous.” “If Navasky believes Hiss was framed,” *The New Republic* elaborated, “let him say so and say why. It’s absurd to suggest there’s not enough to go on” in light of “the enormous amount of information available about the [Hiss] case.”

Agnosticism, combined with a focus on “the question of [Weinstein’s] scholarship,” allowed Navasky to attempt to cast himself in the posture for which he had ridiculed Weinstein: the seeker of truth. The image also enabled Navasky to pressure Weinstein into submitting his research materials to the critical scrutiny of the *The Nation*’s staff, some of whom had followed

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606 Kernan, *supra* note 570 (quoting Weinstein).
607 *Id.* (quoting Weinstein).
608 *Id.*
609 *Id.* (quoting Navasky).
610 Weinstein, “*Perjury*,” *Take Three*, *supra* note 579, at 17 (editorial preface). Navasky, however, told Philip Nobile in 1976 that he thought Hiss was innocent. Nobile, *supra* note 9, at 74.
611 See Navasky, *The Case Not Proved*, *supra* note 553, at 393, 394 (noting that Weinstein presents himself as a “truth-seeking scholar,” but asserting that Weinstein “was not quite as scholarly as he appears”).

the Hiss case closely over the years.

Thus on April 21, a few days after Weinstein’s reply in the New Republic, Navasky, according to an account of the incident he gave four years later, asked Weinstein to examine his archives so that he could prepare a response. Weinstein said that he was not able to accommodate Navasky immediately, but that he would write him. On April 25, Navasky received a letter from Weinstein which invited him and his staff to “inspect [Weinstein’s] files” on Sunday, April 30, between 10 A.M. and 1 P.M. Weinstein requested that Navasky write Weinstein in advance detailing the items Navasky wished to inspect. Weinstein added that he had “declined requests from other journalists and scholars” seeking access to his files, that he planned to deposit them in the Harry S. Truman Library, and that “despite [Navasky’s] distortions and unprofessional attitude,” Navasky was “free to take notes of the material . . . .” Weinstein noted that he was asking for a list of specific items “to prevent a time-consuming ‘fishing expedition’ by [Navasky] on behalf of third parties unconnected with [The Nation].”

Navasky’s response was an April 26 letter in which he charged Weinstein with “retreat[ing] from the recent offer you made . . . via the media to give us unrestricted access to your files at our convenience.” He added that Weinstein “must know, with your scholarly background, that three hours hardly permits a serious examination of complicated and extensive materials.” Nonetheless, Navasky accepted Weinstein’s offer to inspect the files on April 30; indicated that two associates would accompany him; and gave a list of materials, which primarily included transcripts of the interviews Weinstein had had with persons mentioned in Navasky’s April 8 article. Then, on April 27, Weinstein’s editor at Alfred Knopf, Ashbel Green, called Weinstein, and asked for a copy of the April 22 issue of The Nation, in which Navasky had run an editorial criticizing Weinstein’s response in The New Republic. In that conversation Green learned that The Nation was planning to send Weinstein a telegram augmenting its request for materials and announcing that Robert Sherrill would be accompanying Navasky and Philip Pochoda, another staff member of The Nation, on the April 30 visit.

The additional materials Navasky requested centered on two central issues in the Hiss case. One request was for access to Weinstein’s interviews with Meyer Schapiro and Herbert Solow, as well as letters from Chambers to Solow and Schapiro, related to the timing of Chambers’s break with the Soviets. The other request was for “[m]aterials on Weinstein interviews with all possessors of [a] Hiss typewriter.” Unlike the earlier materials Navasky had requested,

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613 See id. at 239-40 (quoting a letter from Navasky to Weinstein sent on April 26, 1978).
614 Id. at 239-41.
615 Id. at 241.
these were not primarily related to issues taken up in Navasky’s critique of Perjury. They were, in contrast, materials central to Weinstein’s argument that Hiss was involved in espionage.

Contacts between Chambers, Schapiro, and Solow in 1938, described in Solow’s November, 1938 memorandum and the undated letter Chambers had written to Schapiro, were crucial evidence for Weinstein in establishing that Chambers remained affiliated with the Soviets in the spring of 1938 and had held back copies of stolen documents to prevent reprisals. Without that evidence, the only source claiming that Chambers had remained an agent in the spring of 1938 was Chambers himself, and in earlier testimony Chambers had said that he defected from the Soviets in 1937.

The files related to Chambers, Solow, and Schapiro in 1938 were important to Weinstein, and they were not available in any public depository. Moreover, they were not exactly airtight confirmations of the timing of Chambers’s break. The Solow memorandum, written on November 12, 1938, purported to summarize Chambers’s activities earlier that year, but had been prepared by one of Chambers’s close friends at a time when Chambers was undertaking a dramatic and potentially dangerous shift in allegiances. The letters Chambers wrote to Schapiro were not dated, and the approximate dates, Weinstein said, were arrived at by comparing the letters with letters Chambers wrote to Solow, who had “retained the postmarked envelopes in most cases.”

Solow was dead, as was his widow. Schapiro, another close friend of Chambers, provided Weinstein access to the letters Chambers wrote Schapiro.

As for the second group of new materials Navasky requested, files on Weinstein’s interviews “with all possessors of [a] Hiss typewriter,” it must have been difficult for Weinstein to imagine how he could have responded. He had only interviewed three persons who were known to have been “possessors of [a] Hiss typewriter,” namely, Alger Hiss, Priscilla Hiss, and Donald Hiss. There may have been other possessors of a Hiss family typewriter, especially if some conspiracy theories about the framing of Hiss were to be believed. The FBI, or Richard Nixon, the House Un-American Activities Committee, or Whittaker Chambers himself might have secretly typed copies of State Department documents on a Hiss family typewriter. Weinstein had not indicated that he had interviewed any of those persons; and, of course, he had sought to debunk conspiracy theories about the Hiss case. Thus, Navasky’s request might have appeared to Weinstein to be an effort to find out what unrevealed information he might have had pertaining to a Hiss family typewriter.

When Navasky, Sherrill, and Pochoda showed up at Weinstein’s house in Washington on April 30, they were met at the door by Weinstein’s wife, Diane Gilbert Weinstein. She informed them that, the previous evening, Weinstein

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616 WEINSTEIN, PERJURY (1978), supra note 340, at 625 n.28.

617 Id. at 575-89 (discussing six conspiracy theories put forth by those who believed Hiss was innocent).
had sent them a telegram withdrawing his offer to let them examine specified files. The telegram read, in part, “Found your letters, telegrams, and article. Since they violate conditions I set, meeting canceled. All my files will be deposited later this year at Truman Library.” According to Navasky’s account of the meeting, he and the others asked to speak to Weinstein, but Diane Weinstein “decline[d] on his behalf.” Navasky subsequently reported that “three and a half years later the relevant tapes and files still had not been deposited.” In the 1997 edition of Perjury, Weinstein noted that:

When Perjury’s original edition was published in 1978, my intention was to deposit the 60,000 pages of material used in preparing the book at the Harry S Truman Library. A lawsuit apparently encouraged by supporters of Alger Hiss against the author, his publisher, and The New Republic magazine—subsequently settled without trial—made it advisable to maintain the files accumulated through personal research.

Weinstein subsequently gave his own version of Navasky’s attempts to inspect his files. Encounter magazine devoted space in its March, 1979 issue to “Arguments (New & Old) about the Hiss Case,” precipitated by a highly favorable review of Perjury by Sidney Hook in its August, 1978 issue. Two letters critical of the Hook review, and of Perjury, initiated the discussion. One of the letters referenced Samuel Krieger’s lawsuit and Navasky’s effort to gain access to Weinstein’s data. A letter authored by Margaret Stern stated:

When Navasky and his witnesses showed up, however, Mrs. Weinstein met them at the door and said that Navasky had broken the agreement—in what way, was not specified—and that Weinstein would not let him hear the tapes [of the interviews Navasky had requested]. The inference is inescapable that the tapes do not back Weinstein up.

Weinstein was invited to “clarify” the matter. He pointed out that his dispute with Navasky was not merely about Navasky’s allegations in his April

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618 Navasky, Transformation of Historical Ambiguity, supra note 555, at 241; see also infra notes 625-31 and accompanying text (relating Weinstein’s version of these events).
619 Navasky, Transformation of Historical Ambiguity, supra note 555, at 227.
620 WEINSTEIN, PERJURY (1978), supra note 340, at 532.
621 Arguments (New & Old) About the Hiss Case, ENCOUNTER, Mar. 1979, at 80 (hereinafter Arguments (New & Old)).
622 Sidney Hook, A Historian’s Verdict: The Case of Alger Hiss, ENCOUNTER, Aug. 1978, at 48. Hook opened his review by writing, “Only someone who is relatively expert on the details of the Alger Hiss trials and on the climate of opinion prevailing at the time in the United States can appreciate the scope of Allen Weinstein’s labors and the immensity of his achievement.” Id.
623 See Arguments (New & Old), supra note 621, at 80, 82. The letters were by Eric Jacobs, an editor of the London Sunday Times, and Margaret Stern, a resident of London. Id. at 80, 82-83.
624 Id. at 82 (letter from Margaret Stern).
625 Id. at 83 (letter from Allen Weinstein).
8, 1978 review of *Perjury*, but about the manner in which those allegations found their way into print. After contacting several of Weinstein’s interviewees who claimed to have been misrepresented, Navasky made no effort, prior to publishing his review, to contact Weinstein and review his research. Navasky, in an April 22 editorial in *The Nation*, had called that argument a “non sequitur,” indicating that *Perjury* had been “ampley footnoted,” and if “the book’s sources can’t survive a minimal fact-check no amount of *ex parte* communication from the author can save it.” Once Navasky had seen an early copy of Weinstein’s *New Republic* response to his April 8 attack, Weinstein noted, he insisted that Weinstein “show him all of [his] documentation immediately so that [Navasky], in turn, could respond.”

In the course of negotiating with Weinstein for access to his files, Navasky, according to Weinstein, sent him “various letters and telegrams,” as well as “the galley proofs for a long editorial . . . from the forthcoming *Nation*, a piece filled with additional invective against me.” In addition, Weinstein wrote, Navasky’s “letter and telegraphed addenda . . . listed so many and such broad requests for information from my files that I would have been busy for days filling them.” “For myself,” Weinstein concluded,

the situation posed no difficulty. Navasky having thus violated the conditions I set for his . . . access to my research files, and given both the scurrilous tone of his attacks and the fact that he deemed it unnecessary to delay them until he had inspected my evidence, my wife and I, decided that Navasky would not be allowed in our home.”

In “subsequent issues of *The Nation*, *The Village Voice*, and a few other publications,” Weinstein noted, “Navasky and his friends chronicled the episode with familiar inaccuracy.” The episode, in his view, “has taken on near-mythic proportions among the friends of Alger Hiss.”


Much of 1978 and 1979 had been taken up with the partisan skirmishes over Weinstein’s scholarly integrity that Navasky may have hoped to precipitate when he prepared his original *Nation* review and made an effort to inspect Weinstein’s files. John Chabot Smith said that Weinstein’s purpose in *Perjury* was “to support the prosecution’s case against Hiss wherever doubt is cast upon it,” and sketched another conspiracy to frame Hiss, this one involving the

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626 *Id.* (charging that Navasky billed his review “an investigation” yet failed to investigate either the author or his research).
628 *Arguments (Old & New)*, supra note 621, at 84 (letter from Allen Weinstein).
629 *Id.* at 84-85. Weinstein asserted that he “feared a fishing expedition” and “asked Mr. Navasky to limit his requests.” *Id.* at 84. Thus, Navasky’s broad, wide-ranging requests were in violation of this condition. *See id.* at 84-85.
630 *Id.*
631 *Id.* at 83.
systematic circulation of false claims by Bernard Baruch, James Byrnes, and J. Edgar Hoover alleging that Hiss was a Communist.\textsuperscript{632} Sidney Zion believed that Weinstein had still not solved the "central mystery" in the Hiss case—whether Chambers broke with the Soviets in 1937 or 1938.\textsuperscript{633} David Levin noted a pattern in \textit{Perjury} of Weinstein’s “fail[ing] even to ask questions that occur promptly to a reader less sure of Hiss’s guilt;” such as why Hiss had given away the family typewriter, and then identified its origins to the FBI, when he could have thrown it away and concealed that fact.\textsuperscript{634}

Levin’s “skeptical reading” of \textit{Perjury}, he conceded, was “motivated by previous commitment to doubts of Hiss’s guilt,”\textsuperscript{635} as were the other critical responses that appeared in 1978 and 1979. The responses nonetheless demonstrated the effectiveness of Navasky’s decision to attack Weinstein’s use of evidence, rather than to focus on Hiss’s guilt or innocence. A telling example of the success of Navasky’s strategy was \textit{New York Times} correspondent Christopher Lehmann-Haupt’s reaction to Navasky’s review of \textit{Perjury}.\textsuperscript{636} In his own April 7, 1978 review, Lehmann-Haupt first noted that “the immediate impact of ‘Perjury’ is highly impressive and, to say the least, extremely damaging to Alger Hiss.” He then added:

> [T]he famous case may not quite be settled yet. Unfortunately for Professor Weinstein’s argument, the first reader who has taken the trouble to look beyond the contents of ‘Perjury’ to the evidence on which it is based, has found that the author may not be quite the impartial arbiter of history he claims to have been.

In the April 8 issue of The Nation magazine, the editor, Victor Navasky, raises serious questions about Weinstein’s objectivity and backs them up with at least a dozen major examples of Mr. Weinstein’s distortion of the record he has unearthed . . . .

As Mr. Navasky himself concludes, these apparent flaws in “Perjury” do not by themselves prove that Hiss is innocent. They only suggest that Professor Weinstein, like other commentators he himself assails for partisanship, has somewhat along the line been seduced into factiousness.\textsuperscript{637}

\textsuperscript{635} \textit{Id.} at 732.
\textsuperscript{636} See Lehmann-Haupt, \textit{supra} note 544.
\textsuperscript{637} \textit{Id.} Lehmann-Haupt claimed that Navasky’s research struck at the core of Weinstein’s assertions in \textit{Perjury}. \textit{Id.} Specifically, Lehmann-Haupt stated that Navasky undermined Weinstein’s claim of the “Woodstock cover-up.” \textit{Id.}
Lehmann-Haupt then drew the very conclusion Navasky had hoped his audience might reach after reading his attack on *Perjury*: “Instead of finally settling an ideological battle that has been fought intermittently for 30 years now,” Lehmann-Haupt wrote, “‘Perjury’ appears to be just another incident in the war.”

Other commentators were far more inclined to accept Weinstein’s findings, but some of them confessed to being enlisted in the partisan skirmishes. The National Review, which had been friendly to Chambers and antagonistic to Hiss since the 1950s, was particularly pointed. On April 28, 1978, it ran an editorial stating that The Nation’s “attachment” to Hiss “since its Stalinoid days” had been “remarkable,” pointing out accurately that a former editor of The Nation, Frieda Kirchway, had been involved with Hiss’s legal defense and that, since the Hiss trials, The Nation “ha[d] devoted two dozen . . . articles (including two whole issues) to vindicating Hiss.” As for Navasky’s critique of Weinstein, the National Review said:

Victor Navasky contends that Weinstein distorted information from interviews with at least six sources. How does Navasky know? Why they *told* him. He did not even bother to ask Weinstein for a look at transcripts of the interviews, or for a hearing of those that were taped, [before publishing his critique] . . . . Navasky deplores Weinstein’s “conversion from scholar to partisan,” . . . while assuming the veracity of six highly partisan accounts . . . . The whole piece . . . has served, like Hiss’s dogged lies, to deter the uniformed from embracing Weinstein’s conclusions. A good opposition knows what can be salvaged even in defeat.

In another editorial two weeks later, the National Review added that Weinstein was preparing a “rebuttal to Navasky,” and noted Weinstein’s claim that “Navasky never checked any of [the charges that Weinstein had misquoted his interviewees] with me prior to rushing his magazine into print.” The editorial described Navasky’s attack as “a frantic search for epistemological loopholes for the sake of those true believers in Hiss’s innocence” and predicted that although “The Nation over the years has invested a great deal of moral and intellectual capital in the idea of Hiss’s innocence. Navasky has given it a try, but bankruptcy seems to impend.”

Two weeks later the National Review ran an essay by D. Keith Mano, airing some of the frustrations of a “Seventies conservative” about the partisanship in which *Perjury* had become enmeshed. Perjury, in Mano’s view, was an

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638 Id.
640 Editorial, *Weinstein Fires Back*, NAT’L REV., May 12, 1978, at 577. The National Review remarked that Weinstein is “a tough cookie.” Id. The editorial also repeated Weinstein’s assertion that key interviews on which he based *Perjury* were taped and other assertions were supported by Hiss defense files and FBI records. Id.
"irrefutable" demonstration of Hiss's guilt. Yet, "it is refuted already." Mano noted that Irving Howe, in the *New York Times Book Review*, had acknowledged that Weinstein had "significantly added to the evidence pointing to Hiss's participation in an espionage apparatus," but stopped short of concluding that "Hiss did what Chambers said he had done."642 "Poke the Hiss mimosa at any place," Mano suggested, "and all the leaves close."643

Mano advanced an explanation for the inability of "articulate Left-liberal folk," who, "for better or worse," had counseled acceptance of Hiss's guilt. "Before Weinstein," Mano suggested,

we spoke of a "rehabilitated" Hiss: campus lecturer, victim-hero, amateur innocent. But it wasn't Hiss, it was the groundsill of our thought that had undergone a drastic warp—thought "rehabilitated" by Left intellectuals in order to discharge their irritating post-Hiss guilt . . . . There are no traitors now, just, well, men with differing points of view.644

Mano meant his comments about the "post-Hiss guilt" of "articulate Left-liberal folk" to be taken as evidence that that class of persons, although not having "the subversive strength of [Hiss]'s convictions," were "gullible" and "foolish."645 But in the same month that Mano's article appeared, John Kenneth Galbraith, one of the more articulate Left-liberals of the twentieth century, sounded the same theme.646 Galbraith began his essay, entitled "Alger Hiss and Liberal Anxiety," by noting that "[f]or anyone born after 1940, the Hiss case must be a major puzzle," because "[b]oth the prosecution and the persecution were led by Richard Nixon." "With such an enemy," Galbraith continued, "it's hard to suppose that Hiss could have done much that was wrong."647 Moreover, Whittaker Chambers was an incredible "choice for historical eminence" because he was "dangerously romantic," "given to self-dramatization," "incapable of accepting discipline," and "often described as a little crazy."648

In Galbraith's view, Weinstein had produced a "definitive" account of Hiss's guilt. He had demonstrated that "[t]o have Nixon as an accuser does not make one whole."649 Weinstein confirmed for Galbraith his earlier impression, which he believed was shared by "numerous other liberals," that "to believe Hiss truthful was to strain credulity too far."650 Weinstein's achievement

642 *Id.* at 658 (quoting from Howe, *supra* note 547, at 1).
643 *Id.*
644 *Id.* at 660.
645 *Id.*
647 *Id.*
648 *Id.* at 44-45.
649 *Id.* at 46.
650 *Id.* at 45. Galbraith did not respond when Nobile asked his views on Hiss's guilt or innocence in 1976. See Nobile, *supra* note 9, at 73.
raised, but did not answer, the “other [major] question” about the Hiss case: “Why did the case cause such an enormous fuss?” Communists, Galbraith recalled, “were not remarkable in the 1930s,” but “their numbers were insignificant.” Dozens of other spies “have since been arrested without achieving any similar distinction.” Hiss, Galbraith wrote, “spied at a time when there were almost no secrets .... Much of what he passed on to Chambers for the Russians could ... have been had by listening to ... the evening discussions of [government employees].”

In Galbraith’s view:

[Had Hiss] agreed that he knew Chambers and told of his strong Communist sympathies in the dark days of the thirties, of his fear of Hitler and fascism, of his consequent and questionable help to the Soviets in pursuit of those convictions, there would have been a major four-day furor. But when it subsided, he might still have been resting innocuously at Carnegie Endowment.

Instead, Galbraith argued, Hiss found himself, in 1948, caught “in transition from the fashionable radicalism of the thirties to the ... foreign-policy establishment views of the war and Marshall Plan years.” Thus, Hiss chose to agree “that the behavior of which he was accused was terrible, unforgivable,” and he “denied his past.” This was what “gave the Hiss case its impact.” At a personal level, it forced Hiss to sustain his denial “by further improvisation .... Both Alger Hiss and Richard Nixon ... succumbed to the ruthless geometry of covering up the cover-up of a cover-up.” At a cultural level, Hiss’s assertion that to have had “a remotely procommunist thought” was “treasonable and otherwise wicked “made “[a] whole generation of liberals” feel “vulnerable.” Most mid twentieth-century liberals, Galbraith felt, “had something in their past—friends, suspect organizations, support for Loyalist Spain, sympathy for the Soviet experiment, a strong commitment to the wartime alliance [with the Soviet Union] and the hope that it would last.” The Hiss case endured, in Galbraith’s view, because “thousands of intellectuals, reflecting on their past sympathies, actions, or organizations, found themselves personally involved with it.”

D. Weinstein’s Place in the History of Hiss’s Campaign

Although neither Mano nor Galbraith specifically addressed how the cultural dimensions of the Hiss case affected Allen Weinstein’s intervention in it, they had provided an explanation for the difficulties Weinstein’s intervention ended up causing him. Weinstein began *Perjury* as a reassessment of the Hiss case which would demonstrate the case’s connections to the Cold War ideology. He ended up producing a book that addressed, and sought to resolve, the issue that was most central to contemporary observers of

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651 Galbraith, *supra* note 646, at 46.
652 *Id.* at 47.
653 *Id.*
the case: whether Whittaker Chambers or Alger Hiss had been lying. Once Weinstein shifted his focus, he necessarily became something of a partisan because of the cultural setting in which he conducted his research.

As Weinstein gathered his material, Hiss's campaign for vindication picked up speed, especially after the Watergate revelations and Nixon's resignation. *I Call on Alger*, with its culturally-inspired argument, appeared. Hiss secured reinstatement to the Massachusetts Bar. Hiss himself was granted access to FBI files pertaining to his case. Smith's effort to declare Hiss's innocence proceeded toward publication. Nobile's 1976 survey demonstrated that a fair sampling of commentators had come to believe in Hiss's innocence. Weinstein could hardly have failed to notice that in light of Hiss's "rehabilitation," the view of the Hiss case that he was developing would be controversial.

Taking note of Nixon's fall, public concerns about the integrity of U.S. government agencies, and Smith's forthcoming book, Weinstein made a decision to begin to disclose some of his findings before his book was completed. He began by presenting portions of the material he had gathered on Hiss that bore on contemporary issues, such as Nixon's or the FBI's roles in the Hiss case. Weinstein was initially cautious about revealing his conclusions on Hiss's guilt or innocence. As Smith's book approached publication and was expected to give the Hiss campaign yet another boost, however, Weinstein apparently felt that he needed to publicize his alternative views about Hiss. The result was his *New York Review* essay, which, given the nature of Hiss's campaign, assured that Weinstein would become a partisan target.

At that point, Weinstein made another decision: he would respond, in increasing detail, to his partisan critics while his book was still pending. He may simply have been provoked by the tenor of the criticism; in addition, he may have recognized that by shifting the emphasis of *Perjury* he had become a defender of Whittaker Chambers and an opponent of Alger Hiss. Thus, he was bound to be labeled partisan. Yet Weinstein went further. He vigorously counter-attacked his critics and welcomed opportunities to debate others and defend his views. For all of Navasky's strategic provocation of Weinstein, Navasky's conclusion that Weinstein seemed more a partisan than a truth-

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655 See supra notes 402–28 and accompanying text.
656 See supra notes 429-43 and accompanying text.
657 See supra notes 456-71 and accompanying text.
658 See supra notes 9-21 and accompanying text.
659 The first three articles in which Weinstein disclosed some of his findings about the Hiss case featured the connection of Hiss to Richard Nixon or to the FBI. See, e.g., Weinstein, *Files Show Bumbling*, supra note 499; Alan Weinstein, *Nixon v. Hiss*, ESQUIRE, Nov. 1975, at 73-80, 144, 147, 151, 152; Weinstein, *Smoking Guns*, supra note 438.
660 Weinstein, *Was Hiss Framed?*, supra note 522.
seeker was a fair inference from Weinstein's conduct. Weinstein originally sought to historicize the Hiss case and its protagonists. His aim was to prevent partisan views from becoming myth. In the process, however, Weinstein himself proved incapable of avoiding partisan conflict. Faced with the growing momentum of Hiss's campaign, he was unavoidably, but belligerently, enlisted on the side of Whittaker Chambers, Richard Nixon, and the FBI of the late 1940s. His stance assured that he would be also be associated with the legacy of Chambers, Nixon, and the FBI of the 1970s.

In 1979, historian David Hollinger attempted to carve out a kind of resting place for Perjury in the history of the Hiss case. Hollinger confirmed that in shifting the emphasis of his project, Weinstein had eschewed an opportunity to carry out the “reassessment” his 1971 article had proposed. He seemed disappointed by Weinstein's shift of emphasis, suggesting that by plunging into the questions of Hiss’s guilt and innocence that occupied the juries in 1949 and 1950, Weinstein had missed a chance to place the Hiss case in a deeper historical framework. But Hollinger’s reaction confirmed that the Hiss case was not capable of being fully historicized by the late 1970s. For although the appearance of Perjury in 1978 presented Alger Hiss’s campaign for vindication with the most formidable set of difficulties it had encountered since it began to gain momentum in the 1960s, one of the campaign’s principal messages—that the Hiss case had been a deeply partisan event—had become sufficiently entrenched that Perjury itself was bound to be seen as partisan.

Hollinger’s review of Perjury distinguished what he thought historians would regard as significant in the Hiss case from the aspects upon which Weinstein focused. Historians were interested in analyzing “the political uses to which [the Hiss case] was put by various individuals and groups during the Cold War”; the “social values for which the confident, well-connected Hiss became a symbol”; the “insights into the American anti-Communist mentality that can be gleaned from Witness, Chambers’s influential and apocalyptic autobiography”; the “parameters of Soviet intelligence during the period”; and whether “Hiss could be shown to have been framed with the aid of, or even with the knowledge of, the FBI, members of Congress, or other powers in American politics.” Had Perjury addressed any of those issues in detail, Hollinger felt, “a distinctive element would be added to our picture of the McCarthy era.” All those issues, however, were “clearly peripheral” to Weinstein’s principal concern, “was Hiss guilty or innocent?”

Moreover, Hollinger felt, Weinstein, in the course of concluding that Hiss was guilty, had adopted the stance of an advocate rather than a historian. Weinstein had not made a completely “honest and thorough effort to think out a scenario . . . according to which Hiss’s denial of having passed the

662 Id. at 134-35 (likening Weinstein’s purpose to be “virtually at one with the jury’s”).
663 Id.
664 Id. at 135.
documents to Chambers can be believed.” According to Hollinger, Weinstein’s narrative of the Hiss case contained a “disquieting nervousness” that resulted in the reader’s being “made to feel less in command of the evidence than pressured into believing in its lack of ambiguity.” Hollinger felt that Weinstein had assumed the role of a “juror who knows the evidence points very much in one direction and wants to convince him or herself that it is all right to take the final step: to vote for conviction.” In Hollinger’s view, Weinstein had “eschew[ed] the opportunities . . . of the historian in order to accommodate the perspective of legal culture.”

Hollinger charged that Weinstein honed in on “[b]its of flashy, quotable new material” from interviews with former contacts of Hiss or Chambers that, in Hollinger’s judgment, “incriminates [sic] Hiss much less decisively than Weinstein implies.” Weinstein “[made] much of his interview . . . with the legendary ‘J. Peters,’ whom a number of ex-Communists identified as the head of the ‘underground.’” The “barrenness” of the interview, Hollinger quipped, was “downright embarrassing” because Peters denied ever having been a Soviet agent. Hollinger added that Weinstein was also “distressingly uncritical of information” he received from a Czech historian, Karel Kaplan, about Noel Field’s identification of Hiss as a Soviet agent to Hungarian secret police. Weinstein’s evidence that persons in the “Ware Group” were interested in making contacts with Hiss was more useful for “establishing Chambers’s veracity on facets of underground life” than for showing “Hiss’s participation in espionage.” In short, Perjury was “weakened by an overall tendency to exaggerate the weight of particular pieces of evidence against Hiss.”

The “disquieting nervousness” Hollinger associated with Weinstein’s too strenuous insistence on the incriminating nature of some of his evidence was “not necessarily” evidence of Weinstein’s having “a prior bias against Hiss.” Instead, it might have been a result, Hollinger suggested, of “a misguided belief on Weinstein’s part that the viability of his work depend[ed] on a refusal to ‘waffle’ [on the question of Hiss’s guilt or innocence.]” “[U]pon realizing that Chambers’s story could be supported in so many more particulars than could Hiss’s,” Hollinger speculated, “Weinstein seems to have decided that his best remaining option was to go all the way . . . to complete his project . . . [by writing] the most formidable and consistent argument possible for the claim” that Hiss was guilty as charged. As a result, Weinstein’s perspective on the Hiss case became “continuous with that of the early Cold War.” According to Hollinger, Weinstein “follow[ed] closely the trail of contemporary investigators and [took] its clues . . . consistently from Chambers.”

Hollinger very likely gave an accurate description of Allen Weinstein’s

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665 Id. at 140.
666 Id. at 138.
667 Id. at 138-39.
668 Id. at 139-40.
669 Id. at 141 (claiming that Weinstein failed to find a voice of his own in Perjury).
changing attitude about the reassessment of the Hiss case he had begun in 1972. Hollinger was also on solid ground in claiming that some of Weinstein’s new evidence on the Hiss case was not itself particularly decisive on the question of Hiss’s guilt: it was most persuasive to those predisposed to believing Hiss was guilty. The most revealing feature of Hollinger’s review, however, was his evident disappointment that Weinstein had not carried out the project of historicizing the Hiss case.

Hollinger was correct in suspecting that Weinstein, at the outset of his reassessment of the Hiss case, believed that the keys to his project lay in the uncertainty that Hiss had ever committed espionage and in the prospect that Chambers, and other rabid anti-Communists in the Cold War period, had wanted to make Hiss into a symbol of their fears. When Weinstein began his reassessment, Alger Hiss had been out of jail for twenty years and was beginning to attract considerable public sympathy. He continually professed his innocence; he was cooperating fully with efforts to look deeper into his case; and he could list among his enemies Whittaker Chambers, Richard Nixon, J. Edgar Hoover, and the fanatical anti-Communists on the House Un-American Activities Committee. If closed government files could be released, it would have been a great opportunity to show that Alger Hiss had been framed, or at least that government officials had wanted to make him a scapegoat enough that they had concealed evidence undermining his chief accuser. Even if no such evidence existed, it would still have been an opportunity to show that a highly ambiguous case—one where reasonable doubt about Hiss’s complicity existed—had been brought (and Hiss convicted) because of the paranoid anti-Communism of the times.

As Weinstein began to investigate previously undisclosed evidence about the Hiss case, however, he found himself presented with another opportunity: he would reaffirm, and strengthen, the case for Hiss’s guilt. Instead of applauding Weinstein for reaching the conclusion his evidence demanded, Hollinger criticized him for failing to conduct the reassessment he had first planned. Hollinger complained that Weinstein had set out to distance himself and his readers from the period of the Hiss case, but had then reentered it with a vengeance, too readily replicating the voice of a juror at the Hiss trial, an actor “of the early Cold War.”

In one passage, Hollinger revealed his own expectations about a reassessment of the Hiss case in the 1970s. “A book arguing that Hiss was innocent,” he wrote, “would be a much more exciting achievement than a book merely agreeing with the verdict of a jury; had Weinstein come across more indications of Hiss’s veracity on salient matters, there is little reason to doubt that he would have argued for Hiss’s innocence.” But Weinstein had not come across more evidence exonerating Hiss. Instead, he had come across more evidence incriminating Hiss and lending plausibility to Chambers’s
account. Perhaps this was not an "exciting achievement," but Weinstein had concluded that the more "exciting" reassessment of the Hiss case wasn't supported by the evidence.

Thus, Hollinger's review ended up being more revealing of the strength of Alger Hiss's campaign for vindication than of Allen Weinstein's enlistment in partisan debates about the Hiss case. To be sure, Weinstein had assumed, at times, a strident, contentious, and defensive tone in defending the conclusions he reached in *Perjury*. Additionally, Hollinger and other critics fairly pointed out his tendency to claim too much from some of his sources. But why should Americans in the late 1970s have found it more "exciting" to learn that Alger Hiss was innocent than to learn that he was guilty all along? Why was it not "exciting" to discover, notwithstanding Hiss's persistent denials of any complicity, or the dubious reputations of some of his accusers, or the distorted judgment exhibited by some rabid anti-Communists in the late 1940s and 1950s, or Hiss's "rehabilitation" in the years since Weinstein's *American Scholar* article had appeared, that Hiss had been a Soviet agent for almost all of his tenure in government service? Hollinger's reaction was a powerful testament to the achievements of Alger Hiss's campaign for vindication.

V. EPILOGUE: THE QUESTION OF HISS'S MOTIVATION

A. The Coram Nobis Petition

As the 1970s passed into the 1980s, much of Alger Hiss's energy was directed toward his *coram nobis* petition to have his conviction set aside. The basis of his petition, submitted on Hiss's behalf on July 27, 1978 by Victor Rabinowitz, was that new evidence in documents made available to Hiss under the Freedom of Information Act had revealed prosecutorial misconduct that deprived Hiss of a fair trial.\(^672\) Specifically, the petition alleged that the prosecution had had improper contacts with one of the Hiss defense investigators, Horace Schmahl;\(^673\) that it had wrongfully suppressed three statements by Whittaker Chambers to the FBI which could have been used by the Hiss defense to contradict testimony Chambers gave at the Hiss trials;\(^674\) that it had wrongfully suppressed evidence that the typewriter produced by the

\(^{672}\) *See In re Hiss*, 542 F. Supp. 973, 976-77 (S.D.N.Y 1982); *see also In Re Alger Hiss: Petition for a Writ of Error Coram Nobis* (Edith Tiger ed., 1979) [hereinafter *CORAM NOBIS PETITION*] (including Alger Hiss's *coram nobis* petition).

\(^{673}\) *CORAM NOBIS PETITION*, supra note 672, at 20-22, 26-28 (claiming that Schmahl gave FBI agents information about Hiss's defense strategy).

\(^{674}\) *Id*. at 40-44 (claiming that the statement, if not concealed, "would have made a material difference in the conduct of the defendant's case"). The statements were a long summary of FBI interviews with Chambers between January 3 and April 18, 1949, a March 28, 1946 statement by Chambers to the FBI, and a handwritten statement delivered by Chambers to the FBI on February 15, 1949 describing homosexual incidents in his life. *Id*. at 40, 43-44.
Hiss defense at the first trial could not have been the typewriter originally brought by Priscilla Hiss's father, that two government witnesses, Edith Murray and George Roulac, had been improperly coached, and had given perjured testimony that the prosecution knew to be false; and that the prosecution had made an improper argument to the jury in summation.

Arguments were not heard on the petition until September, 1980, and on July 15, 1982, Judge Richard Owen rejected each of Hiss's grounds, concluding that none of his claims raised any reasonable doubt about his guilt. "The trial was a fair one by any standard," Owen declared, and he had not been presented with any evidence that required a hearing. The jury verdict in 1950, he concluded, "was amply supported by the evidence—the most damaging aspects of which were admitted by Hiss—and nothing presented in these papers places that verdict under any cloud." Hiss appealed to the Court of Appeals for the Second Circuit, which summarily affirmed Owen's decision on February 16, 1983. Hiss then filed a petition for certiorari with the Supreme Court of the United States, which in turn denied the petition on October 11, 1983. At the age of 79, Alger Hiss had finally exhausted his legal remedies.

In 1988, Hiss published his memoirs, *Recollections of a Life*. In discussing his coram nobis petition, Hiss conceded, "I have run out my string in court. I have no longer any basis for hoping to correct the false verdict, . . . at least during my lifetime." But since "subsequent history has adjudged many verdicts false," Hiss resolved to add "a few words" about the petition, and his

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675 *Id.* at 92-96.
676 Edith Murray, who cleaned for Whittaker and Edith Chambers when they occupied an apartment in Baltimore in 1935, testified at Hiss's second trial that she had seen Alger and Priscilla Hiss visit the Chambers's apartment in the fall of 1935. *Id.* at 101-08. George Roulac, a sergeant in the Army, testified that in 1938 he had lived for a time with the Catlett family at 2728 P St., N.W. in Washington, and that he had seen a typewriter there in April or May, 1938, which he subsequently identified as the Woodstock typewriter produced by the Hiss defense. *Id.* at 109-14.
677 *Id.* at 103-14. The petition claimed that the prosecution admitted to interviewing Roulac on a daily basis from November 1 until and including November 30, 1949, but Roulac was permitted to testify falsely that he had been interviewed only three or four times. *Id.* at 112-13.
678 *Id.* at 115-16. The prosecution in summation indicated to the jury that similar typing errors had been made on the copies of the stolen State Department documents Chambers produced and copies of Hiss family correspondence. *Id.* at 116. The petition claimed that since experts could not conclude that this evidence meant the typewriters were the same, it was improper for the prosecution to encourage the jury to make that inference. *Id.* at 116.
680 Hiss v. United States, 722 F.2d 727 (2d Cir. 1983).
682 HISS, *RECOLLECTIONS*, supra note 177.
case in general, “for future historians.”

He began, “From the start, my case has been peculiarly ‘political’ in the sense that most people who judge it do so based on their political sentiments, fears, and desires rather than an appreciation of the facts.” “Fortunately,” he claimed, “the new material in my coram nobis petition supercedes much of the previous official record and eliminates a good deal of the complexity.” He then proceeded to summarize, and elaborate upon, the arguments in his petition, devoting particular attention to the argument that the government knew that the Hiss defense had found and produced the wrong typewriter and concealed that knowledge. He linked that argument to his repeated assertion that he had given the Hiss family typewriter away in 1937, and thus the copies of 1938 documents Chambers produced could not have been typed on it. The “wrong” typewriter that served as an exhibit at his trials, he suggested, may have actually been used by Chambers or the government to forge the documents. His central point, however, was that the jury was mislead by the prosecution into thinking it was the Hiss family typewriter.

Hiss departed from the characteristically matter-of-fact tone of his comments about the case in characterizing how all the judges who heard his coram nobis petition reacted to the “two typewriters” argument. He described Richard Owen as “a former assistant United States attorney whom President Nixon had appointed to the bench,” whom his lawyer had asked “to step aside” so that the petition could be heard by “a scrupulously fair and unbiased judge.” He expressed outrage that Owen had readily adopted the “cynical” argument of the government that the prosecution’s case “rested only on [a] comparison of documents, not on the typewriter.” That argument was cynical, he said, because the prosecution had invited the jury to use the typewriter to compare its typeface with that on the Hiss family correspondence and the stolen documents. But no proof that a second typewriter existed was offered at Hiss’s trials, so Owen agreed with the earlier conclusion that the “two typewriters” argument was irrelevant to Hiss’s conviction. Hiss concluded, “It is almost unbelievable that Owen would thus ignore my demonstration from FBI documents that it was malfeasance by the government that had deprived me of that very proof.”

Hiss also claimed, citing a critique of Owen’s opinion by William Reuben, that the opinion contained “over one hundred errors of fact, ranging from significant to trivial.” He did not “attribute Owen’s denial of my petition to his shoddy workmanship,” however, but to that fact that “he had decided against

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683 Id. at 217.
684 Id.
685 Id. at 218-22.
686 Id. at 216.
687 Id. at 224.
688 Id.
me even before he read the petition.” So, Hiss claimed, had the panel of Second Circuit judges who heard his appeal from Owen’s ruling. They were “among the recently appointed conservative ‘stiffening’ of the appellate court.” They “treated [Victor Rabinowitz, representing Hiss in the appeal,] with vociferous rudeness and hostility.” Hiss also believed that the circuit judges were particularly hostile to the “two typewriters” argument, “loudly demand[ing] to know where that appeared in the record [of the original trials], . . . angrily repeating their demand again and again but giving Rabinowitz virtually no chance to answer.” The judges, according to Hiss, “even raised the pretext that Priscilla’s father might have owned two Woodstocks.” Hiss was “more shocked by this outburst of unreasoning hostility than I had been by the verdict thirty-three years earlier.”

He particularized:

When jurors are swayed by public fears, the pillars of justice are not shaken. But those pillars are undermined when appellate judges . . . are so inflamed by their prejudices that they brush aside the government’s concealment of exculpatory evidence, evidence that, had it been timely disclosed, would have resulted in a different verdict. It was the most depressing experience of my life.

With this passage, one gets a glimpse of underlying conviction that Alger Hiss very rarely revealed in his public statements. The outrage with which he characterized the judges’s rejection of his “two typewriters” argument, coupled with the extremely tenuous nature of that argument, suggests that Hiss had placed high hopes that the argument might prevail in the 1980s, and had come to believe that it might have resulted in his acquittal in the 1949 or 1950 trials. But what did that argument amount to? Although Hiss asserted that he had given away the Hiss family typewriter in 1937, he was never able to prove it. One of the Catletts testified that he had taken the typewriter to a repair shop shortly after receiving it, and that shop had not opened until the fall of 1938. Although Hiss subsequently claimed that Chambers’s copies of stolen government documents could have been typed on another typewriter, he did not make that argument at either trial, because his own experts had conceded that the typeface on the Hiss family correspondence was the same as that on the stolen documents. Therefore, Hiss’s argument at his trials was not that there was a second typewriter, but that Chambers had somehow gained access to the Hiss family typewriter. Unfortunately for Hiss, he was never able to produce any evidence supporting that claim.

The “second typewriter” argument originated when Hiss’s defense lawyers

689 Id. at 224-25 (citing William A. Reuben, Footnote on an Historic Case: In re Alger Hiss, THE NATION INST., 1983).

690 Hiss’s appeal was assigned to Judges Van Graafield, Meskill, and Timbers. Id. at 225.

691 Id.

692 Id.
came to believe that techniques existed for duplicating a typeface. The argument seemed to gather strength when FBI files revealed that the Bureau was not convinced that the typewriter produced by the Hiss defense was the same one originally owned by Thomas Fansler. Even after gaining access to FBI documents, though, all Hiss was able to show was that the FBI had some doubt about the provenance of the typewriter and that some people now believed that typefaces could be duplicated. Even if one assumes that the jurors in Hiss’s trials would have been convinced that duplication was possible and that the Woodstock produced was not the Hiss family typewriter, they would still have had to make another series of assumptions in order to exonerate Hiss.

Whoever framed Hiss in this manner would have had to satisfy four criteria. Specifically, that person must have (1) had access to at least some correspondence on a Hiss family typewriter; (2) had the technological ability to duplicate a typeface, a feat no experts at the time believed was possible; (3) had access to the stolen State Department documents; and (4) had the ability, after copying the documents on another typewriter, to plant that typewriter where the Hiss defense would find it and believe it to be the Hiss family typewriter. Only Whittaker Chambers, persons to whom he might have given stolen documents, or other State Department officials would have satisfied criterion (3) above. Only Chambers or his confederates would have satisfied criterion (1). Thus, the assumptions rest on surmises about the ability of Chambers or his confederates to satisfy criteria (2) and (4). The Hiss defense produced no evidence whatsoever, at any stage in legal proceedings stretching from 1949 to 1983, supporting any of those surmises (other than perhaps the surmise about the technology of typeface duplication, where the evidence was merely speculative). Yet Hiss, in his memoirs, was prepared to assert that had “evidence” of the FBI’s doubts concerning the identity of the Woodstock typewriter produced at his trials “been timely disclosed,” he would have been acquitted.

Finally, for two reasons that were obvious to Hiss and his lawyers, the “two typewriters” argument was unambiguously irrelevant to Hiss’s conviction. First, the argument was not made at Hiss’s trials, because experts for both sides had concluded that the Woodstock typewriter produced in court was the Hiss family typewriter. Second, the jury’s guilty verdict was not based on a belief that both the stolen documents and the Hiss family correspondence had been typed on that typewriter. Instead, they convicted Hiss because they believed that Whittaker Chambers had received the stolen documents from Hiss. So even if the argument should have been made—assuming one believes that Hiss’s experts were pressured or intimidated by the prosecution—Owen and the Second Circuit judges were correct in concluding that the identity of the typewriter produced in court was not a basis for Hiss’s conviction.

Hiss’s elaboration of the “two typewriters” argument in his memoirs and his heated characterizations of the judges who ignored it in passing on his coram nobis petition can thus be seen as an emotional investment in an elaborate
fantasy whose purpose was to distract observers from the much simpler truth underlying the Hiss case. These pronouncements are evidence of the lengths to which Alger Hiss, then eighty-four, was prepared to go in order to maintain a story of innocence first told in the 1940s. Thus, his claims seem only to be a part of a constructed diversion, directed not only to the narrator’s audience but to himself.

B. Volkogonov’s “Exoneration”

After his coram nobis petition was denied, Hiss conducted his campaign for vindication more quietly. He revealed in his memoirs that macular degeneration had affected his eyesight, and, having remarried after Priscilla’s death in 1984, he gave up lecturing and stayed largely out of public view.693 In an interview for the Washington Post Magazine in 1986, Hiss told David Remnick that “the enmity has risen against me once more.”694 In the 1980s, the Reagan administration took public steps to lionize Chambers, awarding him the Presidential Medal of Freedom posthumously in 1984 and making the Westminster, Maryland farm on which some of the “Pumpkin Papers” had been briefly hidden a national historic landmark.695 Remnick opened his profile of Hiss by quoting Delmore Schwartz’s 1949 journal entry: “Alger Hiss charmed everyone because he was so corrupt that he could tell anyone a lie and he could brazen out any lie.”696 Remnick himself experienced Hiss’s “terrible evenness” as Hiss “maintain[ed] his ‘complete innocence of the charges.’” “So cool,” Remnick felt. “No one wants to believe that such a man could be a spy.”697 Remnick left convinced that the Hiss case “will end in ambiguity.” That was “the triumph of Alger Hiss’s dotage.” By persisting in the narrative of his innocence, Remnick felt, Hiss was maintaining “the possibility of martyrdom,” and continuing to “win friends, loyal defenders.” Although Remnick felt that Hiss was “probably not” a martyr, he thought that by helping keep the prospect of his eventual vindication alive Hiss had made himself “more important than he ever could have been as a loyal servant to Franklin Roosevelt or to the Communist Party.”698

As Hiss aged, he continued his campaign for vindication. In August, 1992, assisted by his devoted supporter, John Lowenthal, Hiss sought to take advantage of the increased openness in the former Soviet Union by sending requests to a number of Russian officials for information in Soviet archives.699

693 See id. at 200.
695 See WEINSTEIN, PERJURY (1997), supra note 1, at 503.
696 Remnick, supra note 694, at 23.
697 Id. at 27.
698 Id. at 30.
One such official was General Dimitri Volkogonov, an adviser to President Boris Yeltsin on the state of Soviet archives. According to a later statement by Volkogonov, Hiss asked him to investigate NKVD archives “to prove that [Hiss] was never a paid, contracted spy” for the Soviets. If Volkogonov described Hiss’s request accurately, Hiss had asked for proof he knew he was likely to obtain. He never received any documented compensation for his espionage activities (other than a Bokhara rug), and he did not have any formal “contract” with Soviet intelligence. Nor was he associated with a NKVD network. Furthermore, the NKVD and GRU had separate archives and typically did not share information with one another. Hiss may not have anticipated, however, the extent to which Volkogonov was prepared to accommodate his request. In September, 1992, Lowenthal followed up Hiss’s letter with a visit to Moscow where he met with Volkogonov. Volkogonov agreed to conduct a search and then provide Lowenthal with a response in October. Volkogonov later said that Hiss, in an August, 1992 letter, wrote that he “was 88 and would like to die peacefully.” According to Volkogonov, Lowenthal pressed him to provide Hiss a letter confirming that he had never been a “paid, contracted” Soviet agent, for “humanitarian” reasons. When Lowenthal returned to Moscow and received a one-page letter from Volkogonov on October 14, he asked Volkogonov if he could elaborate on his comments on videotape. Volkogonov did so, allowing Lowenthal to return to the United States with what appeared to be something approaching vindication for Hiss.

In the letter and his videotaped comments, Volkogonov went well beyond the precise request that Hiss had made. He said that after studying “a great amount of materials,” he had found “[n]ot a single document . . . [that] substantiates the allegation that Mr. A. Hiss collaborated with the intelligence services of the Soviet Union.” Hiss, Volkogonov asserted, “had never and nowhere been recruited as an agent of the intelligence services of the U.S.S.R,” and “was never a spy for the Soviet Union."

Schmemann, supra note 699.

Id.; Gertz, supra note 699 (“The search [through NKVD archives] was a ‘humanitarian’ effort to try to clear the 87-year-old Mr. Hiss before he dies, the general said.”).

See Margolick, supra note 699 (chronicling Lowenthal’s mid-October trip to Moscow); Gertz, supra note 699 (reporting on General Volkogonov’s videotaped comments).

Frank, supra note 699.
Volkogonov declared, had been “a result of either false information or judicial error.” The allegations of espionage against Hiss were “completely groundless.” Nor had Volkogonov found any evidence that Chambers was a Soviet agent. He had “found only that he was [a] member of . . . the American Communist Party.” “You can tell Alger Hiss,” Volkogonov concluded, “that the heavy weight should be lifted from his heart.”

Volkogonov’s videotape and letter resulted in a momentary triumph for Hiss and his supporters. Hiss held press conferences and released statements, on October 29 and 30, announcing that Volkogonov’s findings constituted the “vindication” he had sought. He told the New York Times that Volkogonov’s announcement was “what I’ve been fighting for for 44 years,” and called it “a final verdict on the thing.” “I can’t imagine a more authoritative source than the files of the old Soviet Union,” he added. John Lowenthal also commented, noting that Volkogonov’s search had been “comprehensive.” “This man is a professional historian who has spent decades in the archives,” Lowenthal said of Volkogonov. “He would not lightly render an official opinion without being sure of his research.”

To the Washington Post, Hiss described himself as “overjoyed,” and took the opportunity to suggest that “J. Edgar Hoover acted with malice [toward me] trying to please various people who were engineering the Cold War.” The Post also solicited Victor Navasky’s reaction. Navasky said that Volkogonov’s statement was “very powerful . . . . It’s a major development in the [Hiss] case.” Navasky added that an editorial in next week’s Nation would state that the magazine “await[ed] with glorious anticipation the consternation that General Volkogonov’s apparent vindication of Hiss . . . will cause in the neoconservative and far-right communities.” Volkogonov, Navasky suggested, was “not just a Russian general; he’s in charge of all military intelligence, and they did an exhaustive search.”

The New York Times and the Washington Post also reported the criticisms of some skeptics. Two Soviet scholars, the New York Times noted, “said it was beyond the powers of even the most highly placed Russian official to reach into every nook and cranny of Soviet intelligence.” “There are archives within archives within archives,” one stated. “To say there is no evidence in any of the archives is not very responsible on [Volkogonov’s] part.”

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704 Margolick, supra note 699 (reporting that General Volkogonov, in his statements, considered Hiss to have been a victim of the Cold War).

705 Id.

706 Frank, supra note 699.

707 Margolick, supra note 699.

708 Id.

709 Frank, supra note 699.

710 Margolick, supra note 699 (reporting the comments of Professor Alexander Dallin of Stanford University and Professor Robert C. Tucker of Princeton University).

711 Id. (quoting Richard Pipes, a Soviet scholar at Harvard University).
Weinstein, the *Washington Post* reported, asked whether there was “any new evidence,” as opposed to “new assertions,” and wondered whether Volkogonov had “looked at military intelligence files” as well as NKVD files.712 Weinstein, who was hoping that the collapse of the Soviet Union would result in expanded access for Western scholars to Soviet-era files, told the *New York Times* that Volkogonov’s statement “means that every serious scholar has to take a fresh look” at the Hiss case and other incidents of Soviet espionage in the West. “But we can’t take Volkogonov’s word alone,” Weinstein added. “We have to see all the documents.”713 In a subsequent column in the *Washington Post*, Weinstein noted that Volkogonov’s review of archives had taken place within a strikingly short time frame and that “[w]e do not even know whether the general has read single book or article . . . on the [Hiss] case, despite having pronounced its closure so confidently.”714

By late November Volkogonov had retreated from his earlier claims about Hiss. In a letter to a Moscow newspaper, he gave more details about Hiss’s request and his response.715 The letter alluded to Hiss’s statement that he “wanted to die peacefully,” indicating that Hiss’s request had been limited to NKVD archives and that Hiss had asked only for evidence that he was not a paid and controlled agent. “I only looked through what the NKVD had,” Volkogonov said in the letter. “What I saw gives no basis to claim a full clarification . . . . I only said I found no evidence.”716 Lowenthal had “pushed me hard to say things of which I was not fully convinced.” Volkogonov’s search was limited to “two days swallowing dust,” and his motive in writing the letter and assembling the videotape for Hiss and Lowenthal was “primarily humanitarian.”717

Volkogonov’s clarification took some time to appear in American media. The letter had appeared in the Moscow *Nezavisimaya Gazeta* (“Independent Gazette”) on November 24, 1992. It was rebroadcast by the Federal Broadcast Information Service, in Washington, on December 3. The first American newspaper to report Volkogonov’s comments was the *New York Times*, on December 17.718 Whereas all the major television networks had reported Hiss’s October 29 announcement that Volkogonov had vindicated him, none

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712 Frank, supra note 699.

713 Margolic, supra note 699.

714 Weinstein, *Reopening a Mystery*, supra note 699. Weinstein pointed out that, at the same time General Volkonogov was immersed in searching for records of Alger Hiss, he told the *Moscow Times* that he was devoted to researching whether American prisoners of war or soldiers missing in action were brought to the Soviet Union. *Id.*

715 See Will, supra note 699 (providing an account of General Volkogonov’s letter written to *Nezavisimaya Gazeta* (“Independent Gazette”), a Moscow newspaper); Perlmutter, supra note 699.

716 Gertz, supra note 699.

717 Will, supra note 699.

718 Perlmutter, supra note 699.
reported Volkogonov’s retraction. George Will commented in January, 1993 on the sequence of events surrounding Volkogonov’s retraction. After noting that “Volkogonov’s retreat was not reported by ABC or CBS or NBC or CNN or most of the other media that had disseminated the ‘exoneration’ story,” Will berated “Hiss’s continuing mendacity,” and his “cold persistence in exploiting American amnesia,” an “affliction that was made worse by slipshod journalism.”

By persisting in the narrative of his innocence, Hiss had managed to make a report of his purported exoneration sufficiently credible to the electronic media that it was immediately disseminated, and a subsequent clarification of the report sufficiently unexciting that it was widely ignored. An even more revealing feature of the incident, for present purposes, is how it can help us understand Hiss’s motivation behind his campaign for vindication. In sending a carefully-worded letter to Russian officials, and dispatching Lowenthal to follow up on his request up, Hiss appeared once again to be engaging in one of those strategic diversions that characterized his campaign. He and Lowenthal now had access to Soviet archivists in a comparatively friendly atmosphere, and the precise request Hiss made—to confirm that NKVD archives would contain no evidence that he was a paid, contracted agent for the Soviet Union—was one he knew could easily be fulfilled. Hiss and Lowenthal might also have speculated that former Soviet Union officials had no incentive to confirm that Hiss, or Chambers for that matter, had been Soviet spies. Thus, the request seemed another way in which Hiss could embroider the narrative of his innocence at comparatively little risk.

Then once Volkogonov responded with far more sweeping assertions of Hiss’s innocence—claims that Hiss knew were false—Hiss responded by publicizing those claims. This seems a far more risky strategy, akin to Hiss’s deciding to openly confront Chambers before a Congressional hearing (he could very probably have avoided any legal difficulties by declining to appear), allowing biographers access to his defense files, or encouraging suits to open previously closed FBI files. Moreover, the strategy backfired, at least among close observers of the Hiss case, because the categorical statements Volkogonov issued about Hiss’s innocence provoked informed persons to pursue the matter more closely. When that occurred, Volkogonov not only qualified his earlier statements, but stated that Lowenthal, on Hiss’s behalf, had pressured him to make them.

Hiss’s willingness to endorse and publicize Volkogonov’s sweeping exoneration of him was consistent with his statement that he would have been acquitted had a jury been exposed to the “two typewriters” argument. Even conceding that the general public might not have known that it would have been impossible for Volkogonov to have conducted an exhaustive search of all the relevant archives in a period of less than two months, why should a statement by a former Soviet official, unaccompanied by any documents, serve

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719 Will, supra note 699.
to prove Hiss’s innocence? In offering such a statement as evidence that he was finally vindicated, Hiss was engaged in yet another effort to infuse his narrative of innocence with a claim that bordered on the fantastic; a claim that was bound to stimulate further inquiries.

C. Exploring Hiss’s Motivation

There thus appears, in Hiss’s campaign for vindication, a distinctive blend of shrewdness and otherworldliness. Hiss’s campaign combined carefully calculated evasions of the truth with comparably calculated efforts to take advantage of political and cultural atmospheres in which he thought his narrative of innocence might flourish. His campaign, however, also included erratic, uncalculated risks, exaggerated claims that seemed inconsistent with an image of Hiss as a consummate strategist. A streak of recklessness, or an inability to gauge his own vulnerability, ran throughout Hiss’s efforts for vindication.

Once it became clear that Chambers had defected from the Soviets, Hiss chose to give away his family typewriter rather than to destroy it. After having been accused of being a Communist, and subsequently of committing espionage, he refused to describe Communist Party membership, or Soviet espionage, in anything but condemnatory terms. He acted as if by publicly denying charges against him, or by confronting Chambers, he could lay the charges entirely to rest. He dared Chambers to repeat the charge that he was a Communist outside a privileged setting, and then brought a libel suit that forced Chambers to produce copies of documents typed in the Hiss household. All the while, he knew that he and Chambers had been operatives in a Soviet military intelligence network, and that he had stolen State Department documents and passed typed, handwritten, or photographed copies of them on to Chambers.

This reckless behavior served to make Hiss’s supporters all the more convinced that he was innocent. Only an innocent person or a corrupt monster, his supporters came to say, would assert his innocence so fervently and so blithely expect others to believe it. Why else, his supporters would argue, would Hiss invite others to look more closely into his case and enlisting those closest to him in his campaign? And Hiss, concluded those who lunched with him, interviewed him, and came to at least a state of ambiguity about his innocence, did not act like a corrupt monster. More than any other factor, this distinctive mix of calculation and recklessness kept Hiss’s campaign for vindication alive for so long. The improvident Volkogonov “exoneration” was yet another example.

Several observers of the Hiss case, in the course of concluding that Hiss spied for the Soviets and falsely denied doing so, have speculated about his motivations for participating in espionage and, having been exposed and punished, for choosing to craft a life-long narrative of professed innocence. They have found explaining the motivations for espionage a much easier task, but the two are related.
In seeking to explain Hiss's decisions to participate in Communist circles, and ultimately to spy for the Soviets, some commentators have pointed to the economic instability of the early 1930s, which produced "doubts as to the excellence and success of capitalism" and made Communism seem an "obvious answer" for those who sought "an uncluttered, unfearful, forthright" political and economic ideology. In the "milieu... in which 'a new world' was desired... but also one in which the vision of that 'new world' was disastrously lacking in democratic or liberal or plebian values," the "Stalin dictatorship could be regarded as just a larger T.V.A." The airing of collectivist solutions to social problems was a routine part of the discourse of New Deal Washington. The Soviets, from 1933 to at least 1937, were seen as allies rather than enemies, and security for government programs and plans was minimal. "Much of what [Hiss] passed on to Chambers for the Russians," John Kenneth Galbraith recalled, "could have been had by listening to any of the evening discussions that were compulsive in those days with those who were saving the country."

Being ideologically attracted to Communism, or even being a Communist Party member, was not, of course, the same as spying for the Soviets. In explaining this additional step taken by Hiss, some commentators have tended to emphasize the particular appeal someone such as Hiss would have had to Soviet recruiters. Weinstein, for example, stressed that Hiss, because of his elite educational credentials, intelligence, and attractive persona, seemed a good prospect to rise to a position of responsibility within the government, and thus was one of a "select handful of rising New Deal bureaucrats" to whom the Soviets offered the prospect of "dual lives as romantic conspirators." Weinstein noted that as soon as Hiss left the AAA to take a post with a Senate committee investigating the munitions industry, Joszef Peter, the controller of the Ware Group, created a separate intelligence "apparatus" headed by Hiss. "Hiss's exposure to a select group of radical friends in Washington during the 1933-35 period," Weinstein stated, "moved him into the Communist orbit," where he came to Peter's attention.

Weinstein's explanation presupposes, however, a willingness on Hiss's part to cross the line from ideological sympathizer to participant in espionage. In seeking to make sense of that move, most commentators have suggested that Hiss could only have crossed the line if he had been deeply committed to the ideals of Soviet Communism. Thus, Sidney Hook, who himself flirted with

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720 Galbraith, supra note 646, at 44-47.
721 Howe, supra note 547.
722 Galbraith, supra note 646, at 46.
723 WEINSTEIN, PERJURY (1978), supra note 340, at 228.
724 Id. at 142.
725 See Nobile, Interview: Allen Weinstein, supra note 503, at 3 (quoting Weinstein as saying that "Hiss's circle included a number of youthful Communists as well as liberals... ").
Communism in the 1930s, called Hiss "a 'true believer', a species of fanatical Communist (even if formally not a member), case-hardened by his experience, sustained by the hope, and sometimes by the conviction, that someday he will be honoured as a hero of the New Order when it spreads throughout the world." Garry Wills described Hiss as a "principled believer" in Communism whose "energetic protestations of literal innocence drew on deep conviction that he was working for the country's (and the world's) ultimate good." Murray Kempton, a rough contemporary of Hiss's who had briefly joined the Communist party, noted that he and Hiss shared a youth of "shabby gentility" and "the condition of having our fathers die when we were almost infants." Kempton speculated that Hiss's attraction to Communism, like his own, was connected to the sense of personal and social "deprivation" that the simultaneous loss of affluence and a parent created. Richard Rovere thought that if Hiss "was like other Communists of the period, he probably felt that by serving the interests of Soviet foreign policy he was serving more than just another nation-state." Finally, Irving Howe suggested that Hiss's untiring profession of innocence might be "the result of a genuine persuasion that he has done no wrong, . . . that whatever he may have done he had to do in behalf of some higher truth."

In these explanations, Hiss's narrative of innocence appears as part and parcel of his deep, romantic commitment to the ideals he associated with the Soviet state. He becomes, as Wills put it, one who adopted the "strategy of total and universal forgetfulness" in order to "retain the integrity" of being a "secret foe," serving "his own gods." Such explanations go part of the way, but not all the way. Thomas Powers captured the limit of these explanations:

What continues to astonish and bewilder me now is why Hiss lied for fifty years about his service in a cause so important to him that he was willing to betray his country for it. The faith itself is no problem to explain; hundreds of [other Americans who served as Soviet agents] shared it enough to do the same, and thousands more shared it who were never put to the test by a demand for secrets. But why did Hiss persist in the lie personally? Why did he allow his friends and family to go on

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726 Hook, supra note 622, at 55. As support for his assertion, Hook explains that Hiss refused to take a lie detector test and refused to be injected with scopaline (the "truth serum"). Id. "A person sincerely convinced that he has spoken the truth . . . is unlikely to refuse an opportunity to be tested together with his accuser [Chambers]." Id.
727 Wills, supra note 545, at 30.
730 Howe, supra note 547.
731 Wills, supra note 545, at 30.
carrying the awful burden of that lie?\textsuperscript{732}

Here, once again, one sees the difference between Hiss and other exposed American spies for the Soviets. Some, although escaping conviction, quietly dropped out of sight. Others lost their lives. None save Hiss was able to enlist so large a number of persons, over so long a span of time, in the belief of his innocence. But then no other Soviet spy attempted to create the detailed narrative of innocence that accompanied Hiss’s campaign for vindication, let alone to invite so many others to examine that narrative. In the same article in which David Remnick noted that “if [Hiss] has been lying, it is has been with an eerie cool,” he quoted John Lowenthal as saying that “[a]nyone who has known Alger must entertain it: ‘Might he be lying to me, his good friend.’”\textsuperscript{733}

By taking advantage of his ability to widen the circle of his potential friends and admirers, Hiss was also taking the risk that that circle might someday see him as having sought to manipulate their good auspices.

Thus the ultimate question about Alger Hiss’s narrative of innocence, if one assumes that it was a sham from beginning to end, is not why he would have fashioned it in the first place, but why he would have sought to elaborate upon it over the years, extending it to include new data and enlisting successive generations of persons, including family members. Hiss was well aware of the innate attractiveness of his campaign to some observers, and when he sensed that external circumstances might result in the number of those observers widening, he vigorously pursued them. In escalating his campaign for vindication, however, he virtually guaranteed that someone—such as Allen Weinstein, whom Hiss called at one point a “small-time professor from a small college who’s trying to get to the big time through me”—would take a closer look at his narrative of innocence.

Hiss’s motivation for pursuing his campaign for vindication until his death was the product of a complex jumble of elements. The elements produced a distinctive quality to Hiss’s campaign, and to his narrative of innocence, that did not invariably work to his advantage. In Hiss’s narrative of innocence, one sees a mixture of fascination with secrecy—to the point that he embroidered quite implausible stories rather than make the slightest admission of any connection with Communism or the Soviets—and a willingness to regularly take risks, both in the form of inviting greater scrutiny into the circumstances of his life and in the form of seeking to continually widen the scope of his campaign (including gestures such as the ill-fated Volkogonov “exoneration”). In seeking a fuller understanding of this distinctive mixture of elements, one needs to consider comments made by those who knew the details of Hiss’s life, and Hiss himself, particularly well. Allen Weinstein and Tony Hiss provide examples.

In the 1978 \textit{Politicks} interview that took place as the first edition of \textit{Perjury}
was about to be published, Philip Nobile asked Weinstein to "speculate about Hiss's motives for risking everything—career, friends, and his good name—in order to spy for the Soviet Union." Weinstein did not directly address the question. Instead he described a "secret corner" in Hiss's life—where "[a]t critical moments... he hid unpleasant realities behind evasions that helped maintain his self-esteem." For example, Weinstein said that, while serving as a law clerk for Justice Holmes, he married Priscilla despite Holmes's rule prohibiting such marriages. Hiss claimed he never knew about the rule; Weinstein found this claim dubious, stating, "I have evidence he knew the rule damned well." Another example involved Hiss denying knowledge of his sister's bouts with mental illness (she spent periods in mental institutions before eventually committing suicide in 1929) even though he had visited her during her confinement. These were examples, Weinstein felt, of Hiss's not being "credible" in order to "avoid confronting the less pleasant realities." "[W]hen forced to the wall," Weinstein thought, Hiss "retreats into... his 'secret corner,' content to allow others to believe him or not."

Weinstein accurately captured Hiss's capacity to develop a "secret corner" of his life, but he did not, at least in his response to Nobile, tie the "secret corner" to Hiss's motives for "risking everything." It is possible, however, to make that connection. Hiss's "secret corner" might have included dimensions of his life that, as Weinstein put it, helped him to maintain self-esteem, but which he felt would not reflect well upon him if they were revealed. Hiss would thus deflect inquiry into those dimensions not only because they contained unpleasant information (he had sought to evade Holmes's rule, his sister had been mentally ill and, like his father, had committed suicide), but because the preservation of secrets itself, especially secrets about activities that gave him pleasure but might seem dishonorable to others, gave him a sense of power, self-control, and self-confidence. Seen in this fashion, Hiss's decision to spy for the Soviets and his decision—even after going to jail for perjury—to categorically deny that he had, emerged from a common origin. They were both efforts to perpetuate the "secret corner" of his life that helped sustain him. To spy in the first place gave him a sense of power, but to admit that he had would have stripped him of that sense of power by publicly associating him with a disreputable activity. Thus, he castigated Communist sympathizers and spies for the Soviets, while at the same time taking pleasure in his efforts to shield others from the awareness that he himself was both.

And in the process, as Nobile pointed out, Hiss "risk[ed] everything." But taking risks, and believing that he would be capable of keeping others from penetrating his secret world, were also fundamental elements of Hiss's personality. In several passages in The View From Alger's Window, which is centered on Hiss's four years in federal prison, Tony Hiss attempted to talk

735 Id. at 28.
736 See id.
737 TONY HISS, supra note 205.
about his father’s defining characteristics. He began by suggesting that there were “two Algers.” One was the “outward” and “publicly presented” Alger, who was “stilted, careful, cautious, polished, punctilious, and so lawyerly.” The “world got to see” that Alger. The other was “the inmost Alger,” which contained an “essence that [Hiss] had kept private for so long that it seemed suspect and deliberately hidden,” was “effervescent,” “playful,” “wise, gentle, kind” and “frighteningly vulnerable.” The vulnerability came from a “maddeningly obtuse, hopelessly naive” side to his temperament. Hiss’s inner characteristics combined, Tony felt, in a tendency to protect “anyone he came across [from feeling], even for a moment, any of the pain and abandonment he’d grown up with,” and in not having a “sense of danger—he couldn’t even acknowledge that it existed.”

The outer Alger was a shell, Tony felt, that buried his playful inner feelings, and served at the same time to “clothe the feelings of unworthiness” that “suicide survivors” experience. But it contributed to some others assuming “that [the shell was] hiding something shameful or even criminal,” and it did not serve to protect Alger from his own lack of a “sense of evil.” He could sense the potential vulnerability of others, and seek to protect them, but he had difficulty believing that he might “get into terrible trouble.” The result was that “even as he nurtured others, he was often still out of his depth, so that his good qualities could never help him take effective action on his own behalf.”

Tony then gave a capsule summary of his father’s campaign for vindication, and Weinstein’s intervention in it: “Twenty years after leaving Lewisburg, when, with Nixon’s downfall, the world seemed ready to listen to Alger’s story, he opened his heart and all of his files and papers to a historian who then wrote a book re-blackening his name . . .”

In Tony Hiss’s portrait, Alger’s cautious, measured, unemotional defense of himself is a protective shell that invites suspicion, whereas his lack of a sense of danger is a form of naïveté. The shell prevents him from being appreciated for the warm, generous, effervescent figure that he was, and when he seeks to open “his heart and all of his files” to someone who might capture his inner qualities and communicate them to the world, Allen Weinstein betrays him. A friend had “warned him against trusting this man,” but Alger Hiss’s diminished capacity to appreciate risks had let him down. He was, Tony felt, “so brilliant

738 Id. at 43.
739 Id. at 43, 225.
740 Id. at 225.
741 Id. at 134-35. Tony Hiss used the above-quoted words in describing a friend of his who had died suddenly. Like Alger, his friend had a parent who committed suicide. According to Tony Hiss, his friend “irresistibly reminded [him] of Alger.” Id. at 134.
742 Id. at 135, 143.
743 Id. at 225-26.
744 Id. at 226.
and so dumb, so brave and so foolhardy, so caring and so oblivious.  

One could apply the same qualities Tony associated with his father to support a different set of conclusions. The cautious, precise, polished way in which Hiss sought to construct the narrative of his innocence can be seen as a mechanism for keeping others—and himself—at a distance from the passionate, dangerous, and self-fulfilling secret world that Hiss experienced in conjunction with his public one. The genuine concern he repeatedly exhibited for the welfare of others could also have stoked the fire of his ideological commitment to end poverty, hunger, and an artificial class structure. The risks Hiss took in seeking to prolong, and extend, the course of his narrative of innocence might have been an exhibition of the sort of resigned fearlessness associated with surviving the suicide of one’s father. But in taking these risks, Hiss might have been exhibiting not so much naïveté, but passionate desperation.

At bottom, Alger Hiss’s campaign for vindication, with its increasingly embroidered narrative of innocence, seems best understood as a determined struggle to preserve a secret existence in order to gain self-fulfillment. That self-fulfillment could have come at two levels. If people ended up believing that he had been innocent, Hiss would not merely have been exonerated, but, as he consistently put it, vindicated. His vindication would demonstrate the power of the ideological convictions that drove him to proceed secretly to make a better world. It would also demonstrate his own power to shape his own life, including its legacy. Far from being abandoned and vulnerable, he would have been able to invent himself.

V. CONCLUSION

If this explanation of Hiss’s protracted narrative of innocence, and campaign for vindication, is accurate, the “central mystery” of the Hiss case, and its ambiguous legacy, need to be understood differently. The central mystery of the Hiss case is not the one that appears on the surface, a byproduct of the comparative credibility of Hiss and Whittaker Chambers. It does not center on speculations such as why Hiss chose to give away the typewriter rather than to destroy it, or why Chambers reversed himself on the question of Hiss’s participation in espionage and changed his account of the precise time when he defected from the Soviets. Those speculations proceed from the assumption that Hiss may well have been innocent and Chambers may well have been lying. Instead, Chambers’s account, although imprecise and inaccurate in some details and overly-dramatized, was essentially accurate; and Hiss’s account was a collection of evasions, half-truths, and sweeping lies.

If one starts from the proposition that Chambers was telling something close to the truth, and Hiss was telling various sorts of falsehoods, the “mystery” of the Hiss case takes on a different meaning. If ambiguity about the Hiss case remains, it does not center on the question of Hiss’s innocence or guilt.

745 Id. at 226-27.
Instead, it centers on the question of Hiss's motivation in proclaiming his innocence and in seeking to enlist others in his campaign for vindication. For most close observers of the Hiss case, Hiss's motivation remains the central mystery. "Hiss remains the enigma, even now," Weinstein said to Philip Nobile in 1978.46 Ambiguity has been a savior to him," David Remnick wrote of Hiss in 1986.47

The analysis of Hiss's motivation offered in this Article suggests that it is possible to see Hiss's decision to spy for the Soviets, and his subsequent decision never to admit that he had, as parts of the same element in his character. Thus, an explanation for Hiss's sustained narrative of innocence need not rest on the conclusion that he was innocent. The narrative can be seen as logically, and psychologically, connected to Hiss's decision to participate in espionage. Both decisions were efforts to gain, and to maintain, self-esteem. Participation in secret espionage activities was a way in which Alger Hiss could demonstrate his deep commitment to the ideals of Communism as he understood them, and, in addition, his own ability to control the terms of that commitment. The covert nature of his espionage for the Soviets required him, as a professionally trained agent, to deny that he was. His success as an agent was not just a function of the degree of his access to materials the Soviets valued and the amount of material he was able to transmit, but of his ability to convince others that he was above suspicion. Fashioning a narrative of innocence was part of Hiss's job as an agent well before Chambers and others began to identify him with Soviet intelligence. The better a liar Hiss was, the more likely he was to be, and remain, an effective agent for Soviet ideals.

Thus, from the outset, Hiss's narrative of innocence was bound up in the satisfaction he took from furthering the ideals of Soviet Communism and in the additional satisfaction he took from controlling the access of others to the secret life that inspired him. The more he could enlist others in furthering and embellishing the narrative of his innocence, the more he would be fulfilling his commitment. That was why Hiss needed to counter, deny and evade Whittaker Chambers's account of their lives together in the 1930s. It was also why, after his conviction, not merely exoneration but vindication was so important to Hiss. With vindication, his secret life would be preserved, and his deep commitment to the Soviets appreciated by those who shared his loyalties. The great importance of vindication, coupled with a tendency to take desperate risks in search of it, produced the distinctively prolonged, and frayed, narrative of innocence that Hiss sought to sustain until his death.

What, then, remains mysterious and ambiguous about the Hiss case? A remaining mystery, which this Article has addressed, is how Hiss, with virtually no new evidence that pointed toward his exoneration, was able to perpetuate, and extend, the scope of his campaign for vindication. Even after

47 Remnick, supra note 694, at 36.
the first edition of Perjury appeared, a widespread sense of uncertainty about Hiss’s innocence—the ambiguity to which Remnick referred in 1986—persisted; so that when Volkogonov “exonerated” Hiss in 1992, most American television networks comfortably reported the statements of one Russian official indicating that Hiss had been innocent after all.

The remarkable capacity of a certain segment of American public opinion to believe that Hiss’s continued protestations of his innocence meant that he was innocent has given the Hiss case its ambiguity. But the ambiguity is not centered in the actual question of Hiss’s innocence. It can best be understood by making a sharp distinction between Hiss’s motivation in mounting his campaign for vindication and the motivation of those he successfully enlisted in it. Alger Hiss wanted to keep a lie alive, and convince others to believe it, to demonstrate to himself that he had lived a successful and masterful life in the pursuit of ideals he found inspiring. “My goals still seem to me bright and attainable,” Hiss wrote in the last paragraph of his memoirs. “In any event, I subscribe to the view that the way the journey is traveled counts for more than the goals reached . . . . I have pursued my goals ‘in mine own ways.’ In that I am content.”

The audiences that gravitated to his campaign had a different motivation. For various reasons, they wanted to believe in the innocence of the figure who crafted the narrative and directed the campaign. The persona that Hiss projected, in the course of his campaign for vindication, was resonant with overlapping circles of late twentieth-century Americans. Hiss was a product of elite academic institutions. He was identified with Justice Oliver Wendell Holmes. He was associated with the birth of the United Nations. His narrative of innocence projected feelings of sorrow and bewilderment, but not of bitterness. He was consistently described as serene, graceful, courteous, concerned with the feelings of others, loyal, capable of achieving objectivity and detachment on his case, even though he believed it to have been deeply political and partisan. His enemies were the unstable Whittaker Chambers, the megalomaniacal Richard Nixon, the fanatical anti-Communist right wing, and the corrupt J. Edgar Hoover.

He was also one of numerous Americans who had been optimistic about the prospective path of the Soviet Union in the 1930s, only to be sharply disillusioned when the Soviet bloc replaced the Axis as America’s chief antagonists after World War II. If he, despite his denials, had been intellectually sympathetic to Communism, or had seen the Soviet vision as inspiring for a time, so had many others. If he had been in the left wing of the New Deal, seeking to experiment with collectivist solutions to the problems of farmers and industrial laborers in the Depression, many other Americans similarly felt that only thoroughgoing reforms could alleviate the economic crisis of the 1930s. If he had believed that the United States and the Soviet Union would cooperate to further world peace through the United Nations, so

748 Hiss, Recollections, supra note 177, at 226.
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had most Americans at the close of the World War II. If any of the above attitudes made him a candidate for the rancor of Joseph McCarthy and his followers, McCarthyism itself had come to be perceived as a symbol of the excesses of the domestic politics infected with Cold War hysteria.

Hiss was thus a figure with dimensions that could appeal to numerous segments in American public opinion in the period between the mid-1960s and the end of the 1970s, when his campaign for vindication gained its greatest momentum. As Hiss's resonance increased, the Hiss case became increasingly perceived as partisan. The initial significance of the Hiss case had been that the disreputable Whittaker Chambers, rather than the impeccable Alger Hiss, had been believed, "proving," at least to most of the public, that there really were Communists in the government, and thus making anti-Communism the dominant perspective of American domestic and international politics. As Hiss emerged from obscurity and picked up support for his campaign, however, his case looked more like a "cold war" confrontation between the right and the left; a partisan event resembling the "political" trials of the late 1960s and early 1970s. By 1976, the Hiss case was perceived of as quintessentially partisan, and the question of Hiss's innocence seemed more in equipoise. Even Weinstein's effort to lay definitively to rest any doubts about the propriety of Hiss's conviction was labeled partisan, and Weinstein himself plunged into partisan debates. In this context, the Reagan administration's efforts to lionize Chambers perpetuated the image of the Hiss case as a symbolic lightning rod for partisans.

The Hiss case became partisan as the persona Hiss projected in his campaign for vindication became a surrogate for his innocence. Hiss's professed innocence was credible because others perceived him as a symbol of one or another sets of resonant attitudes or activities. Hiss was more than happy to project that persona. But his goals remained the same as when he had launched the first effort in his campaign: the cautious, legalistic defense of In the Court of Public Opinion,749 resonating only with a comparatively small number of persons. In that book, in his cooperation with the projects that became Friendship and Fratricide,750 Alger Hiss: The True Story,751 and Laughing Last,752 and in his memoirs,753 Hiss sought to keep a lie alive and to enlist others in it. There was no mystery, nor ambiguity, about his goals.

Similarly, there was no essential mystery or ambiguity about the Hiss case. The purported mystery about Hiss's motivation, and the purported ambiguity about the case, have been a product of the investments of others in Hiss because of the cultural resonance of Hiss's persona. As Hiss's innocence or guilt became partisan symbols in the Hiss case, the case came to be perceived

749 Hiss, Public Opinion, supra note 2.
750 Zeligs, supra note 153.
751 Smith, supra note 309.
752 Tony Hiss, Laughing Last, supra note 454.
753 Hiss, Recollections, supra note 177.
as intractably ambiguous. But it need not be thought of as such, any more than Hiss's campaign for vindication need be thought of as unending. Both the reality and the partisan gloss of the Hiss affair can be thought of as episodes in a finite time frame. When audiences that have been exposed to Alger Hiss's narrative of innocence combine some reflection upon that narrative with some reflection upon their own participation in Hiss's campaign, the frame will come more sharply into focus.