

Michigan Law Review

Volume 77 | Issue 3

1979

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Terry A. Cooney
University of Puget Sound

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Recommended Citation

Terry A. Cooney, *Trials Without End: Some Comments and Reviews on the Sacco-Vanzetti, Rosenberg, and Hiss Cases*, 77 MICH. L. REV. 834 (1979).

Available at: <https://repository.law.umich.edu/mlr/vol77/iss3/35>

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TRIALS WITHOUT END: SOME COMMENTS AND REVIEWS ON THE SACCO-VANZETTI, ROSENBERG, AND HISS CASES

*Terry A. Cooney**

I

Twentieth-century American liberals have been, on the whole, optimistic. It is not that they have declared everything to be fine, ignoring social, economic, and political problems both large and small. The list of liberal reform causes, the pantheon of concerned individuals, the public traditions of journalistic and academic muckraking, and most of all the shift in American liberalism toward support for the positive use of governmental power, all make implausible a view of the liberal as Pollyanna. Yet in a deeper sense it is precisely the nature and extent of liberal activism which manifest a basic optimism. Liberals have assumed that the social and political structure of the United States is fundamentally sound and virtuous, and, therefore, worthy of preservation and improvement. Moreover, they have assumed that this structure is susceptible to popular pressures, open to reformation. Imperfections and injustices, when discovered, could be dealt with satisfactorily through an activist politics leading to structural emendation. Liberals have been confident of their access to power and of their capacity for successful political competition. The combination of faith in the system and faith in their ability to change the system has given them a confidence, a sense of belonging, an optimism, not shared by other groups in America to either the left or the right.

Law has played an important part in the liberal approach to the world, constituting a central element of that system deemed worthy of support. Liberalism, it has often been claimed, substitutes the rule of law for the rule of men. Celebrating the rule of law as an ideal allows liberals to reject the exercise of power without limits, to oppose a system based on the authority of individuals, to deny on the level of ideals the existence of a social hierarchy. Law presumably gives persons "equality," it constrains the aggressions of power, it provides predictability. The procedures of the law are, ideally, neutral, and that neutrality

* Assistant Professor of History, University of Puget Sound; B.A. 1970, Harvard University; Ph.D. 1976, State University of New York at Stony Brook.—Ed.

gives rise to decisions that represent some consistent measure of justice. The legal system has been attractive to liberals not only for its ideals, but for its malleability. Open to challenges based on reason—that tool which liberals continue to insist is mightier than raw power—the law could, liberals have believed, be molded by those educated and articulate groups who made up the liberal core. And indeed some of the greatest liberal accomplishments of this century have been legal in nature.

The liberals' version of the law had much in common with their ideal notions of science—and each contained characteristic flaws. In the early twentieth century, "science" held enormous prestige among reform-minded folk. Though sometimes pushed to the point of caricature, scientific method provided a basic justification for mainstream political reforms. Regulatory commissions and agencies, for instance, were expected to administer in the public interest by determining "fair and just" regulations through the application of scientific method. This approach would presumably guarantee neutrality and equity in all cases. Like law, science was systematic, predictable, impartial, and rational.

Yet these ideals of law and science were being undermined even as they were becoming ascendant. By the 1920s, both science and law as defined by their ablest practitioners were undergoing fundamental changes. The assurance of nineteenth-century science that the universe was gradually being stripped of its mystery—an assurance expressed in the promulgation of "laws"—had given way to the rather less definite tones of the "theory of relativity" and the "uncertainty principle." In the legal sphere, Justice Holmes's *The Path of the Law* and Brandeis's sociological briefs had in different ways eroded claims to absolute justice and had placed the law clearly within a social context, subject to its shifting winds. At the very least, these developments demanded that liberals reconsider their unquestioning faith in the rationality and impartiality they glorified.

Emphasis on scientific method and faith in the legal system, moreover, reflected a central weakness in liberal assumptions—the means were adequate only when the ends were generally agreed upon. Variations of this problem were discussed in the teens by individuals as different as Woodrow Wilson and Randolph Bourne, but one ignored his own insights once in office and the other, as an opponent of World War I, had precious little influence on most contemporaries. Scientific method as an ideal could give a regulatory commission or a city manager some sense

of how to proceed, but it could do little to specify positive goals. Equipped, perhaps, to make decisions when a consensus existed as to the general nature of the public interest, commissioners were usually not prepared to resolve adversary situations for which they had been given few guidelines. The legal system as liberal ideal faced similar difficulties. When a consensus existed on the virtues of the system and its procedures, or when desired change was agreed upon, there were few problems. But when concrete interests became involved, when the ideal of neutrality was threatened by the intrusion of social issues, when the courts like the commissions seemed subject to political and private pressures, the liberal ideal of law was in trouble. The assumption of a general consensus left liberalism vulnerable to challenge, and reality proved a nettlesome source of liberal insomnia.

II

Few events led to more sleepless nights in the 1920s than the Sacco-Vanzetti case. Expecting the legal system to act impartially and to deliver justice, many liberals came to doubt that it had done either. Assuming their influence would be felt, some discovered a system neither as rational nor as responsive as they had anticipated. Forced to doubt the liberal ideal of the law, those not able to accept the eventual verdict of the system at the least suffered a shock to their optimism and faith, and at most rejected liberal ideals on their way to radicalism. For all involved, the case taught concrete lessons about the legal process with a power Holmes and Brandeis could not approach.

On April 15, 1920, as a paymaster and his guard were walking down the main street of South Braintree, Massachusetts, carrying in two boxes the payroll of a shoe factory, they were shot and killed by several men with pistols; two assailants on the street were quickly joined by three others in a car in which all five escaped. Police were already investigating a bungled attempt at a similar robbery in nearby Bridgewater, and the two cases were quickly connected as the authorities searched for a gang with a car, the members of which, according to witnesses, looked Italian. The speculations of Chief Stewart of Bridgewater led him to one Mike Boda, the owner of a car being repaired at a local garage, for whom the police lay in wait. When four Italians called for the car, the police were notified but arrived after the men had gone their various ways, having been told they should not take the car without license plates. Two of the men who had boarded a nearby streetcar were intercepted, arrested, and immediately suspected

of both the Bridgewater and South Braintree crimes because of their presence at the garage with Boda. These men were Sacco and Vanzetti.

When arrested, both men were carrying pistols; Vanzetti had in his possession several pamphlets and four shotgun shells (the Bridgewater bandits had used a shotgun), and Sacco carried an announcement of a radical meeting at which Vanzetti would speak and a total of thirty-two cartridges of four different makes, including six Winchesters of a kind no longer manufactured. Both men lied about their activities of that evening, as they later admitted. These facts would play a major role in the coming trial. The tell-tale Winchester shells matched a bullet taken from the guard's body, and their lies were used to demonstrate "consciousness of guilt," an argument on which the judge relied heavily in rejecting later motions for a new trial.

Defenders of Sacco and Vanzetti offered explanations of the men's behavior which convinced those ready to believe. Many Italians carried guns in 1920; it was a dangerous time. As the owner of a fish-peddler's pushcart, Vanzetti had a business to protect. Moreover, they feared persecution as anarchists and radicals. Attorney General Palmer's raids and deportations were at their peak, and two days before they were arrested, Sacco and Vanzetti learned that a comrade named Salsedo had fallen to his death from a New York building where the authorities had held him incommunicado. On the night of their arrest, Sacco and Vanzetti had been seeking the use of Boda's car to hide radical literature and warn friends. They had lied fearing persecution as radicals, unaware that they were suspected of a much more serious offense.

Sacco had a solid alibi for the day of the Bridgewater crime, but Vanzetti, who was self-employed and not so clearly covered, was charged. Several customers testified that on the day of the crime he had been selling eels for a special feast, but these witnesses were not believed, apparently because they were Italians; clearly vacillating and biased witnesses to the attempted robbery identified Vanzetti. Sloppy police techniques, a weak defense, and a hostile climate helped achieve a conviction. Vanzetti thus went as a convicted felon to his murder trial with Sacco; together, they faced the same judge who had presided over Vanzetti's first trial, the same prosecutor, and a presumption of guilt.

Three issues would dominate later discussions of the murder trial in Dedham. First, problems with witnesses were numerous. Initially negative or vague identifications became assured by the time of the trial. Conflicting testimony among prosecution wit-

nesses was brushed aside. After the trial, new witnesses were discovered, while several of the original ones changed their minds at least once. Despite the seemingly large role of witnesses, Judge Thayer ruled on motion for a new trial that the testimony of witnesses was not crucial to the verdict and, therefore, not a sufficient basis for a new trial. Ballistics testimony created a second and ongoing controversy. Experts contradicted each other. One later claimed he had been led by the prosecutor into making a statement that implied the opposite of his actual findings. During and after the trial, virtually all of the experts who conducted tests for either side fell into some sort of disrepute. A third subject of controversy was Judge Webster Thayer himself. Indiscreet at the very least in making such comments as, "Did you see what I did with those anarchist bastards?", Thayer was to Sacco and Vanzetti sympathizers the devil-force of the whole proceeding, prejudicially calling attention to politics and ethnicity, leading the jury to its verdict, sentencing the defendants to death, and denying all motions for a new trial.

The year of Sacco and Vanzetti's convictions, 1921, saw mass demonstrations in Europe against the verdict and a good deal of activity on the part of their defense committee and other supporters in the United States. Thereafter, the case simmered quietly for five years, unnoticed outside a few restricted circles. A new phase of the case began only after the Supreme Judicial Court of Massachusetts rejected Sacco and Vanzetti's appeal in May 1926, setting the case on a clear path toward its climax in executions. The decision was predictable for lawyers, if not for others. Massachusetts law allowed review only of questions of law, not of fact. And as Sacco and Vanzetti's lawyer had predicted, Judge Thayer had followed the required legal forms and kept the technical aspects of the trial in good order. Over the next fifteen months the legal structure which allowed this result would become one of many points of attack as the Sacco-Vanzetti case became the greatest international legal cause célèbre since Dreyfus.

American liberals and intellectuals were somewhat slow to respond to Sacco and Vanzetti, but as they became aroused in 1926 and 1927, they found in the case marvelous symbols of those things they admired or despised. Whether couched in political, social, or cultural terms, a good many by the mid-twenties were expressing their dissatisfaction with the conservatism and materialism of national politics and the national mood. Those soured on World War I could easily sympathize with the draft evasion of Sacco and Vanzetti. The red scare of 1919-1920, which some

claimed had entrapped the prisoners, seemed now a sign of American parochialism, as did the visible anti-immigrant biases of the period. For those who cared to stress the point, Sacco and Vanzetti were also workers. In short, they were ideal liberal clients, a challenge to the dominant society in a number of convenient ways, yet helpless in their imprisonment and particularly in need of the humanitarian and righteous aid the liberal longs to deliver. For many sympathizers, however, the case meant not triumph but frustration. The range of responses charted the varieties of liberalism in the twenties.

Katherine Anne Porter, as one of the last survivors of the experience, offered her reminiscences in 1977 in *The Never-Ending Wrong*. Her claim that she writes primarily from her original notes on the case is confirmed by the episodic nature of her account, its occasional confusion and disorientation, and its general lack of clear organization and purpose. Yet occasional striking glimpses of the behavior and attitudes of the protesters of 1927 make Porter's efforts worthwhile.

Sacco and Vanzetti, it seems, were greater victims because seen in terms of the liberal-radical dream of the worker gaining culture and civilization. Not only was Sacco's "small son . . . named Dante," but these were "Italian peasants, emigrants, laborers, self-educated men with an exalted sense of language as an incantation. *Read those letters!*" Porter herself appears the very model of a polite liberal whose world was remade by the case. She testifies to liberal optimism, since the victims' "friends from a more fortunate destiny had confidence in their own power to get what they asked of their society, their government." And she acknowledges a pretrial idealism, now presumably rejected: "It is quite obvious now that my political thinking was the lamentable 'political illiteracy' of a liberal idealist—we might say, a species of Jeffersonian." The essential meaning of the case for Porter came to rest in the belief that the ideals of the law had not been upheld, that mistakes had been made not through forgivable misjudgment but through malevolence, that the rule of men had overridden the rule of law. Thus, she can speak with the passion of the disillusioned of

our shared will to avert what we believed to be not merely a failure in the use of the instrument of the law, an injustice committed through mere human weakness and misunderstanding, but a blindly arrogant, self-righteous determination not to be moved by any arguments, the obstinate assumption of the infallibility of a

handful of men intoxicated with the vanity of power and gone mad with wounded self-importance.¹

Was this confrontation with an ugly reality, this undermining of liberal ideals, part of a radicalization of Porter and her ilk? The evidence of her recollections would give pause to any tempted by this conclusion. Though the attempts of Communist groups to make pragmatic political use of the case were undoubtedly distasteful, Porter is overly preoccupied with condemning such efforts. Though she briefly recognizes a good deal of harshness in some police behavior, she seems to remain proud that "I never saw a lady—or a gentleman either—being rude to a policeman in that picket line, nor any act of rudeness from a single policeman," and apparently Porter remains unconscious of the ironies in her belief that "the whole police system existed to protect and befriend *me and all my kind*." She reports, "I did not know then and I still do not know whether they were guilty," and evinces a certain indifference to the facts of the case by applying in her "Afterword" Vanzetti's alibi for the day of the Bridgewater crime to the South Braintree murders.² All of this leads toward a strong sense that Porter's liberalism had been shocked and perhaps educated, but not fundamentally changed. It also suggests that her real interest, and perhaps the interest of others, lay in their own reactions, their own sense of the world. The issues raised for intellectuals, for liberals, and for liberalism—questions of power and influence as well as of belief—largely superseded the matter of guilt or innocence.

Two short books written in the months before Sacco's and Vanzetti's executions, and still readily available, deserve mention. John Dos Passos, who turned journalist to write *Facing the Chair*, identified himself before his involvement in the case as a radical. There is much talk of worker unity and classes in this book, with its marvelously biting subtitle (*Sacco and Vanzetti: The Story of the Americanization of Two Foreign Born Workmen*), and there is much humanity and honest passion. Something of the more idealistic and more innocent radicalism of the twenties, and something perhaps of the values that would in a decade lead Dos Passos away from radicalism, come through in his final appeal for action: "The conscience of the people of Massachusetts must be awakened. . . . All that is needed is that the facts of the case be generally known. . . . Tell your friends,

1. K. PORTER, *THE NEVER-ENDING WRONG* 10; 9; 10-11; 13; 43 (1977) (block quotation at 43).

2. *Id.* at 25 (emphasis added); 32; 58-59.

write to your congressmen, to the political bosses of your district, to the newspapers. Demand the truth about Sacco and Vanzetti."³ He spoke of frame-ups and class antagonism, but Dos Passos could still believe in the ideals of moral conscience, reason, and public awareness as sources of justice.

Felix Frankfurter wrote a different kind of essay in *The Case of Sacco and Vanzetti* (1927). As befitted a member of the Harvard Law faculty, Frankfurter addressed the legal questions in the case, analyzed the testimony of witnesses and Judge Thayer's prejudice, castigated the climate of 1920, and reviewed the various motions and appeals passed on—or over—by Thayer. Frankfurter maintained an even tone in reminding his readers of the liberal canon: "Perfection may not be demanded of law, but the capacity to correct errors of inevitable frailty is the mark of a civilized legal mechanism." Here there was none of Dos Passos's sense of class antagonism, nor of Porter's sense of individual malevolence. Frankfurter saw human error and "extraordinary circumstances," remedying which would simply "reveal confidence in our institutions and their capacity to rectify errors."⁴

Porter, Dos Passos, and Frankfurter represent three of many variations of opinion about the case. Each person involved gave at least some energy to the cause, some gave most of a year or more of their lives. Yet a strong feeling remains that even for these three deeply engaged people, even for those whose liberal assumptions were sharply jolted, the Sacco and Vanzetti case did not really represent any watershed in their lives. Perhaps these folk and others achieved a somewhat more complex sense of social forces, an awareness of the limits of their ideals. Perhaps, as Malcolm Cowley claimed, a feeling of unity among liberal intellectuals developed at the time of the Sacco-Vanzetti case that provided a stimulus for those who moved left in the thirties. At least, the names Sacco and Vanzetti became part of a litany, along with Tom Mooney and the Scottsboro boys, for people antagonistic to the prejudices of American society and to its allocation of power. The reactions of liberals and intellectuals remained, however, more a reflection of forces and opinions existing before 1926 than signs of a new order.

If this is accepted, it comes as no surprise that Arthur Schles-

3. J. DOS PASSOS, *FACING THE CHAIR: SACCO AND VANZETTI: THE STORY OF THE AMERICANIZATION OF TWO FOREIGN BORN WORKMEN* 126-27 (n.d.).

4. F. FRANKFURTER, *THE CASE OF SACCO AND VANZETTI* 108-10 (1927).

inger, writing twenty years later, should praise a review of the case for demonstrating once again that the old liberal ideal of the law was seriously limited by reality. Writing in the "Introduction" to Louis Joughin and Edmund M. Morgan's *The Legacy of Sacco and Vanzetti*, Schlesinger commented:

This book is based upon a recognition, myths to the contrary notwithstanding, that judicial processes do not take place in a social void; that judges are men, not gods; that strict observance of legal forms does not necessarily assure the accused of a fair trial; and that judges and court systems are themselves judged by the society they are designed to serve.⁵

In terms of the effect of the Sacco and Vanzetti case, it is not clear whether the recognition of limitations to the liberal ideal of law, or the persistence of "myths," is the more profound consequence.

Joughin and Morgan's work remains a valuable survey of the case and of intellectual responses to it. This is perhaps the best source of general information on defense organizations and their politics, and on the verse, plays, and novels based on the affair. The problem with Joughin and Morgan is that it is more a catalogue than an interpretation. Their book is a place to begin to develop an understanding of the reactions to the case, but it is certainly not a place to stop.

David Felix, in *Protest: Sacco-Vanzetti and the Intellectuals* (1965), promises more. Unfortunately the promise is largely empty. Felix reviews the case and concludes that the trial was fair, the defendants were guilty, and the intellectual sympathizers were led astray by their own sense of suffering as intellectuals and by their attraction to the legend of innocence betrayed. Felix treats complex motivations simplistically, adopts a condescending tone, and generally leads the reader to believe that he does not understand intellectuals. Comments such as his claim that the case was "the only significant intellectual occurrence in the United States between the first World War and the depression"⁶ raise questions about his understanding of the period as well. Felix had a good idea for a book; a great deal remains to be done in evaluating the intellectual and cultural significance of Sacco-Vanzetti. But his particular effort should be read for its occasional insights only by one who has the history of the case and some knowledge of intellectuals well in hand.

Perhaps the best place to start on the Sacco-Vanzetti case

5. L. JOUGHIN & E. MORGAN, *THE LEGACY OF SACCO AND VANZETTI* at xvi (1948).

6. D. FELIX, *PROTEST: SACCO-VANZETTI AND THE INTELLECTUALS* 247 (1965).

remains Francis Russell's well-known *Tragedy in Dedham*.⁷ Russell's historical essays tend to be quite readable and generally entertaining, almost journalistic in style. *Tragedy in Dedham* covers the case itself quite thoroughly, presenting the evidence with accuracy and balance, and surveying the questions, challenges, and alternative explanations of the South Braintree crime. Sacco and Vanzetti's partisans continue to advance.⁸ Russell is weaker in covering technical legal matters, which he treats with uncharacteristic brevity. He also refuses to use footnotes, which can only infuriate the reader who questions the relation between his evidence and his conclusion on a particular point, or who is simply curious. Most controversial is Russell's conclusion that Sacco was guilty, Vanzetti innocent—a possibility which was bound to crop up eventually in a notorious case with two defendants. Relying primarily on third-hand comments from a presumed "insider," on new ballistics tests, and on impressionistic judgments of personality, Russell presented an argument which he has been defending ever since. The 1961 ballistics tests which he believes showed Sacco guilty, for instance, have been called into doubt by the demonstration that the experts conducting the tests were deeply committed to participants in and conclusions of the original trial. It is unlikely that Russell's book changed many minds.

There is, then, no definitive book on Sacco and Vanzetti. While endless sparring continues over the question of their innocence or guilt, and while speculation with its usual fertility spawns a plethora of "explanations" for the crime or the convictions, relatively little academic effort has been devoted to considering the implications of the case or to examining in any depth its significance for particular groups. It is assumed that the case has major importance; it is assumed that its importance for liberals was great; but few can readily discuss with any precision why they believe these things to be so.

7. F. RUSSELL, *TRAGEDY IN DEDHAM: THE STORY OF THE SACCO-VANZETTI CASE* (1962).

8. The most important of the alternative scenarios revolves around the Morelli gang of Providence, which presumably pulled the job without the aid of either Sacco or Vanzetti. See *id.* at 283-90. Frankfurter gave a good deal of attention to this possibility. See F. FRANKFURTER, *supra* note 4, at 99-102, 111. The latest and probably the longest explanation of the Morelli thesis may be found in H. EHRMANN, *THE CASE THAT WILL NOT DIE: COMMONWEALTH VS. SACCO AND VANZETTI* 404-39 (1969). Ehrmann was the junior counsel for the defendants during the last two years of their lives.

III

Twenty years after the deaths of Sacco and Vanzetti, a new postwar period and a new red scare formed the background for other trials that sought to rival the earlier case in fame. The espionage trial of Ethel and Julius Rosenberg tempts one to draw parallels with Sacco-Vanzetti, as Rosenberg supporters occasionally tried to do, but such an exercise entertains more than it enlightens. The Rosenberg trial simply lacks the resonance of the famous cause of the twenties. The Rosenbergs touched few of the basic chords of political liberalism. They were rather poor, but since Julius was an engineer, they were hardly oppressed workers. They were Jews in the wake of Hitler, but the judge and the attorneys at their trial were also Jewish. When the subject of their ethnic identity has been raised at all, it has usually been to speculate that Judge Kaufman may have been harder on them as wayward coreligionists. Most promising for any claim to liberal sympathy or martyrdom were their Communist ties and the implication that in a period of Cold War and the deterioration of civil liberties, they were persecuted for their radicalism. Yet this too was a weak reed at a time when liberals often accepted the harshest repression of Communists if carried on with a bit of decorum; the Rosenbergs' identity as radicals would win them support only after the contemporary mood had passed. What made the Rosenberg case a celebrated cause was not their symbolic status, nor their conviction over strong claims of innocence, but the death penalty.

The Rosenbergs' problems grew out of the confession of a German-born British scientist, Klaus Fuchs, in February, 1950, that he had given information on the atomic experiments at Los Alamos to the Soviet Union. In May, an American named Harry Gold admitted that he had served as a contact for Fuchs in 1944-1945. In June, David Greenglass, who had been an army machinist working at Los Alamos, confessed to handing materials over to Gold in 1945. In July 1950, Julius Rosenberg, Greenglass's brother-in-law and sometime business partner, was charged with having recruited Greenglass as a spy, and in August, Ethel Greenglass Rosenberg was arrested and accused of being part of the conspiracy. The Rosenbergs were tried in March 1951 along with Morton Sobell, a former classmate of Julius and a somewhat tangential figure in the case; all three were found guilty.

The basic conflict at the trial lay between the testimony of David and Ruth Greenglass and that of Julius and Ethel Rosenberg. According to the Greenglasses, Julius and Ethel had ap-

proached Ruth to ask David to contribute to world peace by sharing information with America's ally, the Soviet Union, and in the process had told Ruth and David for the first time that David was working on the atomic bomb. David began to provide information for which the Greenglasses were given money. At one point, Julius reportedly cut the side of a Jello box irregularly, giving one half to the Greenglasses and saving the other as an identifying device for a contact person. This second half came to light again in the hands of Harry Gold, to whom Greenglass gave more information. With the approval, even encouragement, of Julius's defense attorney, Emmanuel Bloch, the materials transferred by Greenglass were shrouded in great secrecy at the trial. Such secrecy probably fostered in the jury the belief that swept most of the country, that the "secret" of the atomic bomb had been given to the Soviets, making possible their 1949 detonation of a nuclear device. The Rosenbergs denied all and continued to maintain their innocence through more than two years of appeals carried as far as the Supreme Court and President Eisenhower. While in prison they wrote to each other a touching set of letters, arousing sympathy for themselves as husband and wife and for their two children. International furor without a strong domestic parallel failed to deter their execution at Sing Sing Prison on June 19, 1953.

Several books have argued the Rosenbergs' innocence, necessarily concentrating on claims of perjury by the Greenglasses and Gold and suggesting a federal conspiracy to frame the Rosenbergs. The strongest of these defenses is probably Walter and Miriam Schneir's, *Invitation to an Inquest: Reopening the Rosenberg "Atom Spy" Case*.⁹ Serious and thorough, the Schneirs went beyond a study of the record and did extensive research of their own to raise troubling questions about the case. They attack the limited material evidence. The photostat of a hotel card, used to show that Gold was in the right place at the right time to pick up secrets from Greenglass, is revealed to have two dates on it and clerk's initials of questionable authenticity. Photographs, introduced as passport pictures at the trial to substantiate claims that Julius Rosenberg was urging and aiding the Greenglasses to flee the country, are declared by the photographer to be the wrong type of pictures for a passport. In both cases, the Schneirs imply that the FBI was involved in deception or forgery.

The Schneirs emphasize the unstable characters of the wit-

9. W. SCHNEIR & M. SCHNEIR, *INVITATION TO AN INQUEST: REOPENING THE ROSENBERG "ATOM SPY" CASE* (1965).

nesses and the suggestibility of Gold and Greenglass. Their evidence demonstrates that the men's stories became clearer and more consistent as they heard each others' versions and retold their own. The Schneirs outrun their evidence, however, in asking the reader to believe in an FBI conspiracy to create a series of meetings and a relationship between these individuals that had no reality whatsoever. The authors leap from suspicions and questions to unsupported inferences and conclusions in dealing with both the witnesses and the material evidence. They almost ritualistically—for this kind of study—declare that they began their investigations with an open mind, but their book is a brief for the defense which sees only one side of the case with a critical eye.

Indirectly, the Schneirs do raise serious questions about the Rosenbergs' counsel. Why did the defense attorneys not see the two dates on the hotel card in evidence? Why did they never question the unusual passport photographs? Why did they not cross-examine Harry Gold, whose testimony had been badly undermined in a previous trial? Why did they encourage a sense of great importance and secrecy surrounding the materials allegedly passed by Greenglass? No one doubts the sincerity and integrity of Emanuel Bloch, the leading defense attorney. These questions are, therefore, rather frustrating for defenders of the Rosenbergs, since possible mistakes by counsel afford little basis for claiming an unfair trial or a conspiracy to convict. Yet such inadequacies combined with the Schneirs' arguments do cast a pall over the case for anyone clinging to even a partial ideal of full and fair justice.

The Schneirs' book was understandably attractive to Robert and Michael Meeropol, the grown children of Julius and Ethel Rosenberg. In *We Are Your Sons*,¹⁰ they present a story of their parents as accused conspirators and of their own lives before and after being orphaned. Beyond being a vehicle for autobiography, this book assembles the most complete collection in print of the Rosenbergs' letters and is chiefly valuable for doing so. Because these letters are expected to evoke a sympathy generally unrelated to the "facts" of the case, it is interesting to read them in concert with Leslie Fiedler's "Afterthoughts on the Rosenbergs."¹¹ In this essay Fiedler is as usual extreme, revealing much

10. R. MEEROPOL & M. MEEROPOL, *WE ARE YOUR SONS: THE LEGACY OF ETHEL AND JULIUS ROSENBERG* (1975).

11. In L. FIEDLER, *AN END TO INNOCENCE* (1955).

about a certain kind of liberal Cold War mentality. But particularly on the letters, he is also, as usual, provocative and interesting. The mind moved by the letters to deep emotion, and the mind attracted by Fiedler's analysis, were equally genuine contemporary representatives of liberalism.

The Meeropols do not stop with their stories and the letters. A final section of the book purports to explain why the Rosenbergs were accused. Having offered no new evidence or solid argument, Michael asks readers to accept as a premise that the whole case was a "frame-up." Frequently referring to New Left sources, many of which are solid enough in themselves, Michael constructs a pretentious essay unconvincing to anyone not already convinced of the unlimited maliciousness of capitalism in general and the American government in particular. Beyond the letters, *We Are Your Sons* has little to offer on the Rosenberg case.

Perhaps the best-known treatment of the Rosenbergs is Louis Nizer's *The Implosion Conspiracy* (1973). Nizer extensively reviews the trial itself, with some evaluation, and it is for this review that one might go to the book. As a history of the case, *The Implosion Conspiracy* is seriously deficient. One doubts Nizer's overblown claims before one gets past the introduction. Charging others with obvious bias, Nizer claims he had "no difficulty being objective" since he had "nothing to overcome."¹² This same man expresses what can only be called a conservative view of the Cold War (Russia did it) and vents his distaste for those who question the legal system in any serious way. To call a trial "political" is "demagogic" to Nizer. Asking whether the Rosenbergs were guilty is "a wrong question"; the right question is whether the jury, viewing the witnesses themselves, could find enough evidence to vote "guilty."¹³ From very early in the book it is clear that Nizer, on the basis of his assumptions alone, can reach only one conclusion.

The lawyer-author also touts his "research" for several pages. It comes as somewhat of a surprise to discover that this seems to boil down to a careful reading of the trial record and a few secondary sources, a narrow basis indeed for a full-scale treatment. Nizer announces on his first page that the "hero" of the trial, in his eyes, is defense attorney Emanuel Bloch. Yet Nizer is aware of the many criticisms of Bloch and adds some of his own. He seeks to explain away most of the apparent lapses as

12. L. NIZER, *THE IMPLOSION CONSPIRACY* 9 (1973).

13. *Id.* at 12, 9.

decisions made quickly under pressure and as reasonable in context. The damaging propensity of Julius and Ethel to take the fifth amendment on all manner of questions approaching their Communist views Nizer attributes to their "Communist credo," which led them to insist that this was a proper course.¹⁴ Nizer the objective reporter assumes much, apparently creating appropriate scenes and dialogue on occasion, but he offers no footnotes, no bibliography.

Why was Bloch the hero? "Because his dedication and emotional involvement in the cause are a shining example of the lawyer in his noblest role."¹⁵ The reader cannot help wondering if many clients would not prefer a lawyer less noble and more astute. Naming Bloch the hero is even more disingenuous because Nizer has another hero for which he reserves his plumpest purple prose—the legal process itself. He revels in explaining points of both substantive law and procedure—he assumes his readers are arm and arm with ignorance. Moreover, he tirelessly insists both directly and indirectly that the "Anglo Saxon" legal system is the greatest the world has ever known and that the Rosenbergs could exercise every right and received every advantage. Contrary to the spirit of his introductory comment that "our judicial system is at best an approximation of justice,"¹⁶ Nizer busily glorifies the legal process throughout his narrative. The time and space could better have been spent considering the questions of the Schneirs and others. Nizer avoids the most difficult aspects of the whole affair.

On at least one central point virtually all serious students of the case agree—the death penalty was extreme. That the anti-communism and Cold War mentality of the period influenced the sentencing of the Rosenbergs is indisputable after even a cursory look at Judge Kaufman's sentencing statement, which contains the following lines:

I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country.¹⁷

14. *Id.* at 198.

15. *Id.* at 1.

16. *Id.* at 8.

17. *Id.* at 356.

Such extravagant and prejudiced speculation immediately preceded the imposition of the only nonmilitary penalty of its kind in American history. If the Rosenbergs had received a thirty-year sentence along with Morton Sobell, it seems doubtful that their case would have stirred significantly more indignation than his.

New documents being opened to scholars are helping to fill out the public's knowledge of the case, though without startling revelations that will cause any major change in sentiment. Most observers have for a number of years accepted the post-trial claims of Rosenberg defenders that the secrets handed over by Greenglass were actually insignificant and could not have hastened the production of a Soviet bomb. This issue is really not terribly important to the question of guilt or innocence, though an impression that the Greenglass materials were vital could not have helped the Rosenbergs with the jury and most certainly hurt them with the judge. Recently declassified documents of the Atomic Energy Commission have led one researcher to suggest that perhaps the importance of the Greenglass secrets has been downplayed too glibly. Robert M. Anders has demonstrated at least that the AEC took Greenglass very seriously; and Anders has argued himself that the secrets were indeed significant.¹⁸ While not justifying Judge Kaufman's sentence, such new information tends to reduce the likelihood that there was a widespread and cynical government conspiracy to frame the Rosenbergs.

The story of the Supreme Court review of the Rosenberg case has also been filled out by the papers of circuit court judge Jerome Frank, the files of Supreme Court Justices Harold Burton and Felix Frankfurter, and FBI documents forced to light under the Freedom of Information Act. Michael E. Parrish has identified seven substantial issues raised on appeal by Rosenberg lawyers, traced their history in the courts, and concluded in sympathy with Frankfurter that the high court acted with distressing haste.¹⁹ Judge Kaufman and chief prosecutor Saypol do not fare well in this account, but once again the chief issue seems to be the death penalty, not guilt. Parrish closes his account with an image of Frankfurter lecturing his Supreme Court colleagues "on their own fallibility as men and judges,"²⁰ a familiar message for those who had read his essay on the Sacco and Vanzetti case

18. Anders, *The Rosenberg Case Revisited: The Greenglass Testimony and the Protection of Atomic Secrets*, 83 AM. HIST. REV. 388 (1978).

19. Parrish, *Cold War Justice: The Supreme Court and the Rosenbergs*, 82 AM. HIST. REV. 805 (1977).

20. *Id.* at 842.

twenty-five years before.

The defenders of the Rosenbergs carry a great burden; claiming innocence, they must demonstrate the likelihood of it. Insinuations or declarations that a government conspiracy existed do not suffice in the absence of stronger evidence than has yet come to light. Scholars like Parrish point the way to more productive research, to considering what this case can reveal about the workings of institutions and the attitudes of significant groups in the early 1950s.

IV

Yet the question of innocence or guilt will continue to fascinate, and nowhere more than in the case of Alger Hiss, who still lives and now approaches the courts once more. The punishment Hiss suffered was slight compared to that meted out to Sacco, Vanzetti, and the Rosenbergs. This fact only underlines the great symbolic significance of the case as perceived at the time and, for somewhat different reasons, today. Judgments on the guilt or innocence of Alger Hiss are often taken as judgments on whole groups of people, on whole periods in the history of American liberalism. What strange chemistry could produce such an affair?

The basic ingredients were Whittaker Chambers and Alger Hiss. On August 3, 1948, testifying before the House Committee on Un-American Activities, Whittaker Chambers named Alger Hiss as one member of a Communist apparatus in Washington, D.C., in the mid-1930s. Chambers had been telling his story off and on for several years to the State Department, to the FBI, to whomever seemed interested. But in 1948, Chambers' accusations and his list of names made the newspapers, threatening particularly the reputation of Hiss, who was then the President of the Carnegie Endowment for International Peace. Hiss requested and received the opportunity to testify before HUAC two days after Chambers, at which time he denied knowing any person named "Chambers" and insisted he had never sympathized with communism or associated with Communists. Further testimony led to a confrontation in a hotel room between Chambers and Hiss—orchestrated by young Congressman Richard Nixon somewhat to the disadvantage of Hiss—where Hiss identified Chambers as a man he had known briefly and casually in the mid-thirties as a journalist named "Crosley." Challenged by Hiss to repeat his accusation without the protections of congressional immunity, Chambers did so on the national radio program, *Meet the Press*, on August 27. A month later, after a delay that has

given rise to much speculation, Hiss filed suit for defamation in a Baltimore federal court.

To this point, Chambers had accused Hiss only of having been a Communist and had denied that espionage had occurred. As a result of questioning in connection with Hiss's lawsuit, and perhaps fearing he was more likely to be indicted for perjury than Hiss, Chambers altered his story and produced, first, copies of State Department documents and, later, microfilms of additional material, most of which he claimed Hiss had handed over to him. On December 15, 1948, Hiss was indicted for perjury—with the clear message that the charge would have been espionage if feasible—by a federal grand jury in New York. Hiss was tried once between May and July of 1949 in a trial which ended in a hung jury with an eight (guilty) to four vote. A second trial from November 1949 to January 1950 led to a conviction and a five-year sentence.

Hiss had been charged with two counts of perjury: first, that he had indeed given government documents to Chambers; second, that he did see and converse with Chambers after 1936, particularly in the first three months of 1938, the period from which most of the documents came. A broader issue at the trials and later was the nature of the relationship between Hiss and Chambers. The basic confrontation was between the stories of these two men; evidence of a longer and friendlier relationship gave Chambers credibility, while Hiss attempted to minimize the number of contacts. Defenders of Hiss portrayed Chambers as a chronic and pathetic liar. The documents they explained as unimportant, as obtained from sources other than Hiss, as gathered from trash or unguarded papers, or as forgeries. Since each detail of Chambers's story and of Hiss's alternative version impinges on the matter of credibility, since any unexplained document could provide a telling link, arguments about the case became enormously detailed and complex. The passion with which they are today pursued once again suggests that much more was, and is, at stake than the reputation of one man.

Alistair Cooke, in one of the earliest and most balanced treatments of the case, recognized and squarely faced the larger implications of the Hiss-Chambers confrontation in titling his book, *A Generation on Trial*.²¹ How could Hiss become the representative of a generation? Though he had a somewhat unstable family background which is often overlooked, Hiss had, by his college

21. A. COOKE, *A GENERATION ON TRIAL: U.S.A. v. ALGER HISS* (1950).

years, taken on the image of a highly civilized and highly privileged golden boy. A big-man-on-campus at Johns Hopkins, Hiss went on to Harvard Law School where he won election to the *Law Review* and was an academic and social success. His teacher and friend, Felix Frankfurter (to whom Hiss was close during the Sacco-Vanzetti affair), obtained for Hiss a much-prized clerkship with Justice Oliver Wendell Holmes, Jr. After a few years of private practice, Hiss joined the staff of the New Deal's Agricultural Adjustment Administration, became counsel for the Nye Committee, and moved briefly through the Justice Department on his way to the State Department in 1936. Advancing in responsibility, he became part of the American delegation to the Yalta conference and presided over the 1945 United Nations organizational meeting in San Francisco.

When, as President of the Carnegie Endowment, Hiss was accused by Chambers, his name was not a household word. Yet what Cooke labelled the "craving for a full-blooded New Dealer" quickly began to transform a successful but minor office-holder into a "more representative Rooseveltian figure than he was." Conservative Republicans on HUAC and elsewhere, frustrated in a fifth presidential election as the case progressed, wished to bind together the heresies of Communism and the New Deal to make clear the muddle-headedness of liberals and the dangers of their rule. Some of Hiss's supporters, in response, felt that indeed liberalism and the New Deal, and their own political judgment, must be upheld:

Many Democrats and old New Dealers felt that Hiss was a gallant protagonist of the younger liberal crowd that went to Washington in the New Deal's first crusade. They feared, as the others hoped, that a verdict against Hiss would be a verdict against the New Deal. Whatever Hiss or his lawyers might say later, the House Committee thus succeeded, before he ever came to trial, in making a large and very mixed public identify Hiss with what was characteristic of the New Deal.²²

It is in this sense that Cooke saw a "generation on trial," to the obvious discomfiture of many liberals and the probable disadvantage of Hiss.

Cooke's essay is valuable in another sense as well. His coverage of the HUAC hearings and of the trials has an immediacy newer books cannot match. The reader learns from Cooke that the Committee was apparently favorably impressed with Hiss at

22. *Id.* at 8; 9; 10 (block quotation at 10).

first, but watches this mood turn rapidly as Chambers provides more details and as Hiss seems to become forgetful and evasive. Unknowingly, Hiss confirms a Chambers recollection that he had once sighted a prothonotary warbler. Hiss tells of leasing—Chambers said loaning—an apartment and giving a car to a man he claimed barely to know. Suspicions increase. Cooke is critical of the Committee's behavior in many ways and raises doubts about the American legal process. Yet on the whole this is not a highly evaluative book, nor is it an analysis of the evidence for each side. It is a solid contemporary account of the testimony and personalities involved in the Hiss case which might be the best place for a reader to begin a relationship with the whole affair.

Numbers of later books have argued for Hiss's innocence. The reader can easily immerse himself in works ranging from speculative psychology to fantasy. The most recent effort on Hiss's behalf to achieve wide attention is John Chabot Smith's *Alger Hiss: The True Story*.²³ Smith's problem is to explain, first, why Chambers would present such a story about Hiss if it were not true, and, second, where Chambers got the documents he produced in 1948, which included four memoranda in Hiss's hand, other pages with his notes or initials, and copies of official documents typed by Priscilla Hiss on the family's Woodstock (according to most experts).

Smith's answer to the question of motive derives from an analysis of Chambers's personality presented at Hiss's second trial by defense psychiatrist Carl Binger and developed most fully in Meyer A. Zeligs's book, *Friendship and Fratricide* (1967). Emphasizing Chambers's unusual family background of mental instability, this explanation labels him a "psychopathic personality" and insists that he harbored a strong desire for revenge against Hiss, a desire obscurely rooted in some sense of having been slighted. Perhaps psychiatry can make a case for what an individual might have been capable of—though in this instance it does so from a rather limited body of information—but it cannot judge the facts of the case nor eliminate the details of Chambers's story. Moreover, this analysis of Chambers's life assumes a contrast with an exemplary Hiss family, ignoring the suicides of Alger's father and sister and the early death of a favorite brother. It would seem superficially that Hiss might be as good

23. J. SMITH, *ALGER HISS: THE TRUE STORY* (1976).

a prospect for bizarre behavior as Chambers.

To explain the documents, Smith invokes a variety of notions. Earlier hypotheses reapplied here include the possibility that someone else provided Chambers with some of the documents, and Hiss's own claim of "forgery by typewriter" which implies a conspiracy. Smith adds his own visions of Chambers pulling notes out of Hiss's wastebasket, playing musical typewriters in the mid-thirties, and snatching papers from the State Department before they were burned. There are scraps of evidence, mostly circumstantial, to suggest that some parts of the scenarios Smith envisions were at least possible. But to cover all of the types of documents Chambers produced, Smith's entire argument must be accepted, and this stretches credibility far beyond the breaking point.

The Smith version of the "true story" was constructed with substantial aid from Hiss and with complete access to the defense files. Since the book's publication, Alger Hiss has given it high praise. Smith does not pretend to make a balanced analysis; his is a work of partisan appeal. With this understanding, *Alger Hiss: The True Story* can be read with profit by Hiss-Chambers aficionados as a statement of defense positions which remains relatively free of cant and bathos.

Smith's book was dated, to a degree, almost as soon as it came out by the release of some thirty-thousand pages of FBI records on the case and some thousands more pages of Justice Department materials. These new materials provided one source of new information for Allen Weinstein's *Perjury: The Hiss-Chambers Case* (1978), which now dominates discussion of the affair whether favorable or hostile to Hiss. In concluding that Hiss was indeed guilty, Weinstein has led some reviewers to praise his work with smugness and others to approach their typewriters with malice in their hearts. The returns are not entirely in on Weinstein's book, nor will they be for some time; the challenges raised to his argument, and the examination of the hundreds of new points Weinstein introduces, will provide the agenda for Hiss-Chambers work for years to come. *Perjury* may be railed against, but it cannot be ignored.

Weinstein brings to his task a scholarly sense of thoroughness and documentation too often absent from the average journalistic treatment. He uses not only those tens of thousands of documents obtained by filing a Freedom of Information Act lawsuit, but also Hiss's defense files, to which he was allowed free access, and notes from dozens of interviews conducted in the United States and

abroad. Weinstein's research makes his treatment of nearly every significant point in the case fresh and substantial. Though he finds Hiss guilty, Weinstein does not follow his many predecessors in addressing merely one side of the case. He identifies many flaws in the stories of both Hiss and Chambers and evaluates the bulk of the arguments advanced by Hiss's accusers and defenders over the years. (An appendix provides a brief summary and critique of conspiracy theories developed by Hiss's advocates.) This is a solid volume providing substantial support for Weinstein's conclusion.

Precisely because Weinstein has an important argument to make, precisely because the evidence he has uncovered deserves careful attention, precisely because he has a firm grasp of scholarly techniques and understands the scholar's obligations, *Perjury* remains a bit disappointing—because it is strained. Weinstein overplays a case that needed no exaggeration. Extensive research must influence through the quality of argument and documentation, not by being ballyhooed in the introduction. A conclusion should rest on its merits, not be buttressed by a claim that the researcher began with a belief in innocence and was convinced by the evidence of guilt. (This claim is less than convincing in Weinstein's case to those who know his previous work.) Arguments from particular bits of evidence should respect the limitations on proof, not move along a rhetorical sliding scale from possibility to certainty, from single example to established pattern. Weinstein notes in a general statement the case's "occasionally contradictory, sometimes spotty pattern of evidence,"²⁴ but in the heat of argument he too frequently loses the humility and the caution such a pattern should engender.

In a 1972 *American Scholar* article, Weinstein raised some serious questions about the case against Hiss.²⁵ Interestingly, many of those very questions have been raised by disparate reviewers who find insufficient response to them in *Perjury*. In 1972, Weinstein was much impressed with two circumstances suggesting possible FBI involvement in building a case against Hiss: first, Chambers testified to a four-hundred dollar loan from Hiss in 1937 only after the FBI had examined Hiss's bank records, which showed a four-hundred dollar withdrawal; and second, a number of sources have suggested that the FBI recovered Hiss's famous Woodstock typewriter, though it was seemingly first dis-

24. A. WEINSTEIN, *PERJURY: THE HISS-CHAMBERS CASE* 564 (1978).

25. Weinstein, *The Alger Hiss Case Revisited*, 41 *AM. SCHOLAR* 121 (1971-1972).

covered by the defense (implying, to some, possible FBI involvement in the forgery of documents). Perhaps Weinstein found these considerations no longer troubling after further study, but he slights any explanation of them in his book. Weinstein was also troubled in his article by the rather amazing coincidence that the one man named by Chambers as a Communist who protested and filed suit was the same man against whom Chambers could produce three types of documents to support his accusation. Why were the bulk of Chambers's documents those presumably from Hiss, not from others? *Perjury* does not fully address this issue. Finally, the 1972 Weinstein called the question of the date of Chambers's break with the Party the "central mystery" of the case, since it is vitally relevant to the credibility of Chambers's documents. *Perjury* accepts a later date for the break than Weinstein's article asserts, but the book fails to deal adequately with any evidence that might have justified this shift.

Weinstein has not closed discussion on the Hiss case. He had little time to review newly released government documents, and more such documents will be available to future researchers. Already, some of those Weinstein interviewed have rejected his version of what they said—nothing new in this kind of situation. In early 1979 the text of Hiss's appeal for yet another review of his case will appear in paperback. Partisans will not surrender because it gets cold in the mountains. Yet it remains clear that Weinstein has created a major challenge for Hiss defenders. Sniping in reviews and articles will never win the day nor substitute for the kind of comprehensive and deeply researched treatment Weinstein has presented.

The problem remains—why has someone with a solid case overstated individual arguments almost systematically? Excepting the usual privilege to argue one's strongest case, not that of opponents, there are perhaps two reasons that tempted Weinstein toward polemic—one more intellectual and political, the other more personal and social. The first has to do with the fact that though the Hiss case is still an important symbol for liberal intellectuals, the issue is no longer defending the New Deal. For younger journalists and academicians, the issue has much more to do with whether there was in reality any threat from internal Communist espionage. Was there any justification for liberal anticommunism? Was there a greater threat from government agencies serving the interests of a corporate state than from the Soviet Union? American behavior during the Cold War is under serious scholarly attack. Moreover, the figure of Richard Nixon

is a twisting thread linking the Hiss case and the seventies. After Watergate, why not frame-ups and cover-ups in the forties? Why not, particularly, a blindly anti-Communist J. Edgar Hoover run wild?

The Watergate connection is not terribly difficult to handle; as an example it may weaken Hiss's case, not strengthen it. Watergate revealed as much as anything the ineptness of both planners and operatives in many instances, not the almost perfect efficiency in evil required to pull off a complex frame-up. FBI documents on the Hiss case create a similar impression; much bureaucratic floundering lay beneath the legend of the Bureau. Weinstein seems angered that the Watergate mood might have given Hiss greater support and sympathy, and perhaps this added to the subtle passion of his argument. But the larger issues remain those involved in the intellectual struggle over the nature of the Cold War and of the American system. The bitterness of some critics, and perhaps Weinstein's own inflation of his argument, may suggest an acute consciousness of the new symbolism of the Hiss case.

A second reason for the tendentiousness of *Perjury* may have to do with matters more personal and social. As Weinstein points out, the case stimulated a resumption of the thirties' "internecine warfare between 'Popular Fronters' and 'anti-Stalinists.'"²⁶ Among intellectuals, that warfare opposed, on one side, a good many older-American middle-class writers and critics who joined the Popular Front after 1935 in glorifying a nativist and popular cultural tradition, and, on the other side, a group of more generally ethnic and urban intellectuals who had become anti-Stalinists by 1937 and who sought a more cosmopolitan culture in which they could share. Hiss stood in close affinity with the first group and raised the hackles of the second. Weinstein suggests that in criticizing Hiss many of the anti-Stalinists struggled with their own sense of guilt for earlier associations with Communism. Perhaps one could go further and suggest that tensions between second-generation intellectuals seeking access to the larger culture, and the established genteel groups that traditionally controlled American culture, contributed in some degree to attitudes toward Hiss.

In Lionel Trilling's *The Middle of the Journey* (1947)—a novel, which Weinstein cites, written before the case broke—the

26. A. WEINSTEIN, *supra* note 24, at 514.

character modeled on Whittaker Chambers is less than sympathetic, but the least attractive personalities are those of a fellow-traveling couple who coincidentally seem much like the Hisses. Weinstein quotes, without seeming to notice the suppressed sharpness, Trilling's later comment that "The educated, progressive middle class, especially in its upper reaches, rallied to the cause and person of Alger Hiss, confident of his perfect innocence, deeply stirred by the pathos of what they never doubted was the injustice being visited upon him."²⁷ Even in Trilling, one of the least combative and least "alienated" of his group, one may find evidence that he is not entirely disappointed to see one of the mighty fallen, one of the "ins" out. Weinstein himself is perhaps a late bloom on the same bush, just as pleased to find that his evidence damns a minor representative of a privileged caste.

V

The histories of the Sacco-Vanzetti, Rosenberg, and Hiss cases involve many issues, but perhaps none so consistently as the question whether persons of whatever class, group, or belief can receive a fair trial in America. The liberal ideal of equality before the law has, for some, been shaken by each of these cases. Basic divisions have appeared among liberals between, for instance, those who primarily worried whether the trials had been fair and those who worried whether the convicted could in some way have been innocent. Recently, the discussion has moved to a new level, as some scholars challenge the liberal ideal of law itself, denying that equal justice is the regular product of the legal system and suggesting that the frame-up better reflects the reality of biased institutions. The doubts instilled by these cases and the challenge of solid criticism from the left have perhaps already played at least a minor role in making liberal thought more aware of social structure, more complex, and more sophisticated.

Yet these cases have something to teach not only liberals, but the bright young scholars influenced by radical ideas as well. At their best, radical ideas are marvelous and subtle tools, which allow the student to see a problem in exciting new ways. Too often, however, they lead to simplistic views about such matters as the nature of liberalism and its functioning in American society. The Sacco-Vanzetti, Rosenberg, and Hiss cases are intract-

27. *Id.* at 522 (quoting Trilling, *Whittaker Chambers and 'The Middle of the Journey,'* N.Y. REV. BOOKS, April 17, 1975, at 18, 23).

able reminders of the complexity of historical situations. The reactions to these cases, immediately and over time, suggest that liberalism is not a monolithic set of beliefs to be neatly packaged in a formula, but a diverse webbing that scholars must continually struggle to understand.