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# UNITED STATES v. HISS: ITS SIGNIFICANCE FOR CRIMINOLOGY

Robert C. Sorensen

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## INTRODUCTION

The case of *United States v. Hiss*<sup>1</sup> highlights some fundamental questions for criminology. Two books<sup>2</sup> and thousands of newspaper and magazine articles describe events from first accusations on capitol hill to the United States Supreme Court's denial of Alger Hiss' appeal for writ of certiorari.<sup>3</sup> That each happening has been recorded is important. But it is equally vital that we inquire as to whether or not this series of events is related to patterns of conduct in society, and that we ponder its possible implications for our theories of criminal behavior.

A few writers have asserted that the prosecution of Hiss was politically inspired and designed to frighten the American people from thinking as they pleased. This writer believes that Hiss was fairly tried, that the government was exceedingly deliberate in its effort to ascertain the true facts before Hiss was arrested, and that Hiss was effectively defended by substantial counsel.

However, *United States v. Hiss* directly and indirectly occasions four problems for criminology which we shall explore in the following order:

1. Isolating and measuring criminal behavior of a covert (undercover) nature;
2. Probing the relationship between criminal behavior and its historical context;
3. Educating individuals to comprehend society's definition of so-

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1. 185 F. 2d 822. See also, for memorandum decisions regarding the introduction of certain evidence, 88 F. Supp. 559 and 9 F. Rules Decisions 515.

2. SEEDS OF TREASON. By RALPH DE TOLEDANO and VICTOR LASKY. New York: Funk and Wagnalls Company, 1950. Pp. 270, and A GENERATION ON TRIAL. By ALISTAIR COOKE. New York: Alfred A. Knopf, Inc., 1950. Pp. 341. The authors of these two books have, to some extent, filtered ideas and events surrounding the case through their own peculiar brands of prejudice and skepticism. In any event, they have proposed a series of *why* questions which demonstrate the exciting frontiers which the sciences of man and society have yet to cross. Further consideration will be given these books throughout this paper.

3. 71 S. Ct. 532. Meanwhile a motion for a new (third) trial was filed in his behalf on January 24, 1952. See "Hiss Asks Retrial of 'New Evidence'," New York TIMES, January 25, 1952.

cially acceptable behavior and to channelize their differences with prevalent folkways into legally acceptable and psychologically satisfying channels of communication and action;

4. Distinguishing between non-criminal opinion, behavior deviation and criminal disloyalty.

#### I. THE ISOLATION AND MEASUREMENT OF COVERT CRIMINAL BEHAVIOR (THE CONCEALED CRIME)

"Perhaps treason, as practiced in our time, is one of those realities which only fiction, and great fiction at that, can make real—intelligible in all its dimensions—to the non-conspiratorial mind."<sup>4</sup>

One commentator remarked of Hiss: "He appears to have been a true undercover man and, what else may be said about his generation of intellectuals, it has shown itself to be pretty well united in its abhorrence of the underground man and of the political systems that bring them into being."<sup>5</sup>

There is need to recognize the problem of isolating and measuring covert criminal behavior. The manner of analyzing criminal behavior committed in conditions of absolute secrecy deserves substantial consideration by the criminologist. By conditions of absolute secrecy, I have reference to those crimes which no one, except the perpetrators, realizes are even being committed. The concealed (secretly committed) crime is usually the most carefully planned and often involves areas of behavior which are the most vital. The crime of a single espionage agent, in days of world wide tensions and scientific research in which ideas and formulae are weapons, assumes considerable significance. The success of this species of criminal undertaking hinges upon foisting the deception upon society that no crime is being committed.

The concealed crime, well planned, is seldom revealed by the presence of such tangible clues as missing papers, a body, etc. In preventing or discovering the commission of a concealed crime—so far as the actual commission of the crime itself is concerned—one deals with a few well executed maneuvers generally undertaken and successfully completed in what may be characterized as a ruse. In the successful ruse, one element of a situation is varied while all others remain exactly the same. Those elements of the situation which are controlled to remain exactly the same are precisely those with which we are most familiar and which have been repeatedly associated with the situation as we have always

4. ROLO, *Readers Choice*, ATLANTIC MONTHLY, May 1950.

5. ROVERE, *THE NEW YORKER*, Dec. 23, 1950.

known it. The factors which are varied are inevitably those with which we lack familiarity or constant contact and do not miss so far as their orthodox form is concerned. It is in the course of varying these particular factors of the situation that the concealed crime is committed. The most successful and the greatest number of the practitioners of this art have been the confidence men. Unfortunately any discussions of this subject have been limited to descriptions of these ruses with little effort to analyze the social facts of life which make these ruses possible and the personality characteristics of both offender and victim. Nor have techniques of ruse manipulation yet been standardized.

Studies in social psychology and collective behavior can make a valuable contribution at this point. A concealed crime once committed can be viewed in terms of its behavior dynamics which leave ripples of human behavior long after the deed is perpetrated. Human preparations and behavior residues exist to be detected and measured. In the instant case, certain State department papers were allegedly secretly borrowed and copied—apparently, so the courts have determined, with the knowledge if not with the cooperation of Hiss. Although it was a concealed crime leaving no tangible clues (the temporary absence of the papers from where they normally belonged was concealed by a ruse technique), the following problems appear to have existed as behavior residues:

1. Did not many friends of Hiss exert a tremendous pressure upon him to act against Chambers?
2. What, if we can overlook the platitudes, were Chambers' psychological gains from his public recantation and by the strategy and timing of his accusations?
3. Were there pressures of these times and of his personal life which might have dissuaded Hiss from revealing some facts and caused him to distort others?
4. Why should Hiss have assumed that Chamber's memories would never be etched in newsprint? Did Hiss believe that the "pumpkin papers" were non-existent or reposing in quarters where they could never be used against him?

These are sample questions regarding the personality behavior of Messrs. Chambers and Hiss which no one has yet answered. Assuming the validity of the findings in the courts, they reveal the extent to which quirks of human behavior can be extremely revealing so far as the commission of a crime is concerned. For example: so long as Hiss was not aware of the fact that the pumpkin papers could be used against him, he conducted himself so as to risk exposure. Or to put it in another

vein, the more successful Hiss became in concealing his deviate behavior, the more fantastic his dilemma became for the more demanding were his friends (and the number grew to include President Truman who is yet reminded of his "red herring" remark) that he seek vengeance against the source of the accusations made against him. So long as Chambers was through with the American communist party, Hiss could never hope to be freed from the shadow of his part in a concealed crime until death and destruction overtook Chambers and his communications.

This is not to suggest that America should institute a police system over human behavior to prevent the commission of concealed crimes—a system of thought and mobility control which Soviet Russia has very effectively utilized to prevent and discover the commission of concealed crimes against the police state. But these hypotheses do justify the criminologist's increasing interest in the criminal's relationships with other offenders and with members of society. Rather than concentrate alone upon the characteristics of the criminal and the physical, tangible clues of his crime, we might concern ourselves more with what can be discovered in terms of his relationships with other people. For it is in this area that the origins and impacts of covert crime will be discovered.

## II. UNDERSTANDING CRIMINAL BEHAVIOR AND ITS HISTORICAL CONTEXT

The task of defining criminal behavior becomes increasingly difficult when society must view and judge the acts of others torn from their historical context. Public sentiment normally takes stock of an accused offender in terms of its conception of the man at the time he allegedly committed his crime. The only exception to this rule appears to manifest itself when a concealed crime of one year is discovered in another. Public sentiment, unable to manage an ex-post-facto sort of empathy with such an individual, sees the man and his newly discovered crime in the light of how it views crimes similar to that of which he is accused at the moment. The accused is thus not seen as one who might have been different at the time and who may or may not have changed from the past to the present. Instead, he is characterized with those traits which today's times and customs encourage us to attribute to him.

Interestingly enough, both *Seeds of Treason* and *A Generation on Trial* are guilty on this count, each in its own fashion. *Seeds of Treason*, in assuming the guilt of Hiss from the very outset, views the entire career of this "calculating careerist" and "venom filled unregenerate" in

terms of Soviet Russia's role in the world today. In hindsight, Chambers is praised and Hiss is damned. Again, in hindsight, the authors interpret the historical context of the alleged crimes in terms of today's events; they indict the Roosevelt administration for tolerating communists fifteen years before. This is the popular thing to do; unfortunately it is also the easiest. The authors did not undertake to demonstrate why they, among others, did not write these portions of the book at the time they say it was happening. Could they not also have attempted to explain the behavior which they refer to as coddling, and proposed safeguards for protecting our government from future infiltration by partisans of a foreign power?<sup>6</sup>

On the other hand, Mr. Cooke in *Generation on Trial* suggested a distressing conjecture, one of sympathy for any government official who would pass papers to a foreign power in the name of the anti-fascism of another generation. Mr. Cooke attempts many a conjecture so it is not my purpose to characterize every statement he has made as his own belief. But to suggest that those who were opposed to or even battling against fascism in the thirties were obligated to or did have sympathy for the Stalinist way of life in the sense that they willingly cohabitated with paid representatives of the Stalin regime does a disservice to the large number of liberals who reject totalitarianism of any stripe. At the time that Hitler and Mussolini were rising in ascendancy, no such resort was considered either popular or sound, nor did many feel the urge which Mr. Cooke implies when he suggests that had Hiss said "... he had done all this, that he had passed papers proudly to confound the Nazis, to quicken the day of deliverance to enslaved populations he could have been a greater Wadleigh."<sup>7</sup> And to observe that Hiss may have merely been guilty of "trading in the loyalty of his oath of office for the true glory of being in the advance guard of the resistance to Fascism"<sup>8</sup> does little justice to Hiss or to our comprehension of the principles at issue if the sole consideration is the oath itself and the paper on which it was written. Whether Hiss is innocent or was tricked into believing that the pumpkin papers no longer existed in a fashion that would ever trap him, his defense certainly suggested nothing of the

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6. SEEDS OF TREASON was a quickie in that it was published while the Hiss case was still a sizzling public issue, so perhaps it could not be expected to undertake the formulation of many constructive proposals. Several of its sources of information are not identified, sometimes undoubtedly from necessity, but we are not always informed when speculation rather than fact is responsible for an arbitrary assertion.

7. *Op. cit.*, footnote 2, 341.

8. *Op. cit.*, footnote 2, 170.

speculations described above. He has never accepted the role thus offered him.

Not generally recognized by most observers of the proceedings was the use given the reasoning employed in the above named conjecture by the prosecution to protect the credibility of its witness Wadleigh whose confession of stealing documents was neatly utilized to break down one facade of the undercover crime—that a man such as Hiss was incapable of committing such a crime. Observes Bendiner: "As Wadleigh insisted on the witness stand, he was convinced that his own transmission of papers to Chambers 'could not be used against us, but could be used against Germany and Japan.' Shielding Wadleigh from the defense counsel's tactics, Mr. Murphy himself put the matter rather neatly. 'Wadleigh' he said, 'only wanted to stop the rise of fascism; we all came to hate it, but he saw it earlier.'" Adds Bendiner: "So perhaps did Alger Hiss."<sup>9</sup>

In examining the two principals, we discover that Chambers was confessing a concealed crime while Hiss was not. There were few depths to which Chambers was unwilling to plunge himself that he might satisfy the wishes of those who would spare him no pain—either the prosecution or the defense. In the first trial, Stryker (counsel for Hiss) put the question to Chambers as to whether or not he "had no shame and no conscience" about a variety of alleged moral violations the defense was outlining. "I mean to indicate," replied Chambers on the witness stand, "that I was a communist, and that my conscience didn't bother me." Such expansive confessions have produced, it would appear, a kind of adulation for Chambers and people of like positions regardless of their past behavior which is unique in public reaction to criminal behavior. Changing conceptions of credibility deserve thoughtful consideration as society depends increasingly upon the veracity of ex-communists. We have no insights into the stars to which each such individual has hitched his destiny and we should know that the desire of anyone to confess can be motivated by considerations other than truth or fact alone.

If we can pursue one step further the question of public sentiment's conception of the relationship between criminal behavior and its context, I should like to inquire as to whether or not the confessions of Chambers and others would possess the aura of authority and credence in times when tension and hysteria were at a minimum? Would the public have been so sure of their professed sincerity and devotion to

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9. BENDINER, *op. cit.*, footnote 18, 125.

riding America of communists? Does today's forgiveness for the confessed communists result from our emotional hope that they will assist us to wage a substitute war against a totalitarian nation, to drop bomb-laden headlines, to shell with an artillery of accusations and to take prisoners at congressional hearings?<sup>10</sup>

The temper of these times, encouraged in part by cases such as the one under consideration, bear careful inspection for the definition of criminal behavior and our understanding of it.

### III. EDUCATION FOR LEGALLY ACCEPTABLE BEHAVIOR

The psychological dilemma which faces many human beings is seen in the following observation: "Our teaching is often more effective than we would have it be, for many of our children see that we are two-timers and four-flushers when it comes to the concrete application of our teachings. Thus it is that they search for better ways of doing things than their elders have displayed . . . For these ideals [have been] usually presented in a concrete enough way to leave no doubt."<sup>11</sup> And Rebecca West is compelled to observe, although she has no sympathy for treason: "National life itself must frequently exasperate [a man], because it is the medium in which he is expressing himself, and every craftsman or artist is repelled by the resistance of his medium to his will. All men should have a drop or two of treason in their veins, if the nations are not to go soft like so many sleepy pears."<sup>12</sup>

Acting consistently with the statement of the law, society, the prosecution, Hiss' counsel and the jury were preoccupied solely with the question of whether or not Hiss was guilty or innocent; the whys were irrelevant. Almost none of Hiss' relationships with society other than his alleged collaboration with Communists emerged in the hearing or court transcripts—the exceptions being a few glowing good-character testimonials. Chambers' early life was emphasized only in an effort to destroy or defend the credibility of his testimony. Even when psychiatric testimony was admitted into evidence in the second trial, its perspective was contemporary and, though stated in an authoritative fashion, had not even been prepared with the assistance of intimate conversations with the parties supposedly under observation.<sup>13</sup>

10. For some keen insights into the impact of a collision between reality and personality in the garrison state, see STANTON & PERRY (eds.), *PERSONALITY AND POLITICAL CRISIS* (1951).

11. REV. PHILIP SCHUG, *The Hiss Case—An American Tragedy*, a sermon delivered in Lincoln, Nebraska, All Souls Unitarian Church, February 5, 1950.

12. *THE MEANING OF TREASON* (1945).

13. STROM, *Evidence—Courtroom Psychiatric Diagnosis—Valid or Invalid?*, 30 NEBRASKA

It is not the purpose of this paper to elaborate upon this writer's conceptions of needed changes in our educational system. Yet I would advocate the criminologist's increasing interest in the study of two related phenomena: First—the extent to which our society's inconsistency between ideal and action contributes to the criminal behavior of many individuals. Second—the method by which we may teach individuals how to utilize the ideals they pursue—in short, how to teach citizenship skills as well as citizenship ideas.

In case history after case history, Sutherland<sup>14</sup> has pointed to the amazement of individuals who discovered that their ideals of honesty seemed unusable when it came to earning a living, winning a promotion, or obtaining prestige in the community. Over and over again comes the dulling realization that ideals merely have their place. A universe of ideals becomes an aggregate of stars which can be conveniently viewed or dimmed or lost to sight depending upon the emotional climate in which one lives. Sutherland's theories of differential association deserve especial attention in this regard, for I suspect that people who have suffered from the *frustration of like ideals* begin their association under circumstances similar to those who *share given ideals*. The strength and possible results of this differential association, once obtaining, override the intervention of all but the strongest forces.

Criminology should give more investigation to the frustrations which must emerge from one's inability to translate his ideals into action. We are told that our public servants must be the best, yet few of us know how to participate actively in a political campaign. We are taught that we must be just, yet few of us know how to organize a community social action project. Everywhere we are taught what it *means* to be an American citizen. Seldom are we taught how to *be* American citizens. Citizens, in the actual sense, are made, not born. If citizens are not taught those skills which they can exercise in the socially and legally acceptable channels, where do we expect them to gravitate when the sleek appeals to social consciousness emerge from an American communist party. Also, individuals who have been the victims of racial and/or socio-economic discrimination may often turn to situations which dazzle any recruit and through which they can obtain the psychological satisfaction of expressing themselves regardless of how they may appear to other members of the community. Faith, allegiance, and loyalty to

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L. REV. 513 (1951), Comment 59 YALE L. J. 1324 (1950), BENDINER, *The Ordeal of Alger Hiss*, THE NATION, Feb. 11, 1950, 123. In the second trial, Dr. Carl Binger, a psychiatrist, testified that Chambers was a "psychopathic personality with a tendency toward making false accusations." NY TIMES, Jan. 6, 1950, 1.

14. WHITE COLLAR CRIME (1948).

“legal” ideals, criminological research may discover, may exist in proportion to the extent that one has the ability to reconcile his learned ideals with those he feels are dominant in society. Criminology can gain much from psychology and psychiatry regarding what it means for an individual to feel hostile toward a society which appears to be violating the ideals he believes that society taught him.

#### IV. THE DISTINCTION BETWEEN NON-CRIMINAL OPINION/ BEHAVIOR DEVIATION AND CRIMINAL DISLOYALTY

The authors of *Seeds of Treason*, ardent partisans of Hiss' guilt, assert that the credibility of many accusations and the circumstances under which they were offered were considered suspect by many. Pure and simple naivety was by no means the only responsible factor. For example: “But though the scatterbrained Texan (then chairman of the House un-American Activities Committee) issued a public statement that he would soon hear testimony from the head of the OGPU in America, he seemed much more interested in pursuing hapless liberals and belaboring fellow-travelers than in busting open the spy ring.”<sup>15</sup> This is a pity, for espionage or treason are hardly areas of behavior in which we should assume that all who accuse are vengefully crying “wolf” and that all who are accused are innocent victims of partisan politics. Membership in the political party of the “ins” rather than the “outs”, a “foreign” name, a minority political outlook, a reputation for liberalism or fearlessness—all have been signals for cowardly name calling and gutter sniping which only a legislative body will tolerate and immunize from libel suits.<sup>16</sup> Such irresponsibility has created the very species of doubt that has played directly into the hands of all of those who do conspire against our nation's best interests in behalf of a foreign power. The communists are well aware that our traditions of civil

15. DE TOLEDANO, *op. cit.*, footnote 2.

16. SORENSEN, *Assassins at Large*, CHRISTIAN REGISTER, August 1950, 11. For several viewpoints on this problem see CARR, *The Un-American Activities Committee*, 18 U. OF CHICAGO L. REV. 598 (1951); *Defamation Immunity* (Note) 18 U. OF CHICAGO L. REV. 591 (1951); PAUL AND MANDEL, *A Remedy for Smear-By-Congress*, NEW REPUBLIC, February 27, 1950, 122; FUHR, *Congressional Immunity from Libel and Slander*, 30 NEBRASKA L. REV. 107 (1950). For a bill recently introduced in Congress on this subject, see Senate Rep. No. 2108, 81st Congress, 2nd Session, 169. For documentary evidence of this problem, see hearings before subcommittee of the U. S. Senate Committee on Foreign Relations, 81st Congress, 2nd session, pursuant to S. Res. 231 (resulting from the McCarthy accusations); hearings before the House Committee on Lobbying Activities, 81st Congress, 2nd session, pursuant to H. Res. 298; ANDREWS, WASHINGTON WITCH-HUNT (1948), CLAPPER AND GLOCK, *Trial by Newspaper*, SCIENTIFIC AMERICAN 180 (February 1949), LATTIMORE, ORDEAL BY SLANDER (1950). The reader should also examine DAVIS, CHARACTER ASSASSINATION (1950) for examples of name calling. Unfortunately Mr. Davis omits almost all mention of those character assassins whose efforts are employed by the American Communist party and its multitude of “front” organizations.

liberties engender suspicion of what may be the most sincere and truthful accusations if they are considered in an atmosphere of bigotry and star chamber proceedings.<sup>17</sup>

Neither judicial precedent nor legislative policy determination has yet offered any standardized procedures or criteria of evidence by which the criminologist may undertake to examine the difference between deviation and disloyalty.

In 1943, the United States Supreme Court made this pointed observation: "If there is any fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."<sup>18</sup> Our past legal and philosophical definitions of loyalty have observed that loyalty "is an appreciation of the rich and diverse contributions that can come from the most varied sources. . . . It is a realization that America was born of revolt, flourished on dissent, became great through experimentation. . . . Every effort to confine Americanism to a single pattern, to constrain it to a single formula, is disloyalty to everything that is valid in Americanism."<sup>19</sup>

The federal courts have indicated in the cases of the communist party leaders that a government once established by revolution cannot tolerate the proposal of its overthrow in the teachings of individuals who would prefer a new political and economic order.<sup>20</sup> And the same high court has confirmed the government's legal right to deprive an employe of a job if the government is satisfied that her loyalty is in doubt—though no opportunity of knowing or facing the accusers is presented the accused.<sup>21</sup> On the other hand, the Supreme Court has challenged the authority of the Attorney General to designate some organizations as subversive without a hearing.<sup>22</sup> The court was never unanimous and the members often traded majority and minority positions. With the exception of certain cases involving self incrimination, the federal appellate courts have not ruled against the interests of the House Un-American Activities Committee.<sup>23</sup> The United States Supreme Court "has

17. The success with which certain communist front groups have exploited such episodes as the Scottsboro case is well known.

18. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943).

19. COMMAGER, *Who Is Loyal to America?* HARPERS MAGAZINE July 1947, 198.

20. *Dennis et al v. United States*, 71 S. Ct. 857, 184 F. 2d 280.

21. *Bailey v. Richardson*, 71 S. Ct. 669, 182 F. 2d 46.

22. *Joint Anti-Fascist Refugee Committee v. McGrath, Att. Gen. of the United States, et al*, 71 S. Ct. 624, 177 F. 2d 79.

23. See CARR, *The Un-American Activities Committee and the Courts*, 11 LOUISIANA L. REV. 282 (1951) and MORGAN, *Congressional Investigations and Judicial Review: Kilbourn v. Thompson Revisited*, 37 CALIFORNIA L. REV. 556 (1949).

shown great reluctance to review the cases that have raised the most serious constitutional issues concerning the work of the Committee. . ."<sup>24</sup>

Of what relevance is this problem to criminology?

1. Strangely enough, the standards of loyalty which some would fasten upon our society provide protective confusion amongst which our criminal subversives can very effectively carry on their work. Outward obedience, professed conformity, generous use of our culture's sacred symbols, the taking of oaths—all of these establish effective props and facades for the individual who is criminally disloyal but who has no compunctions about falsifying his loyalty.

It is in relationship to this subject that the discussion of the concealed crime and ruse manipulation becomes significant. Consider the ruses by which Hiss was adjudged to have accomplished his mission. Here was a genteel and conservative who bore absolutely no resemblance to most peoples' hysterically stereotyped conceptions of an espionage agent. His hobbies, his clubs, his religion, his sobriety, his known associations, were well in his favor. Some young people of his generation signed petitions, waved red banners, talked about communist literature and thronged the bookshops in which it was sold. Hiss did none of these things.

Our definitions of the criminal may deserve re-examination. How many instances are there in which those who are found guilty of having committed criminal behavior are criminals by almost no other accepted definition? And how many crimes are committed under cover of casting suspicion upon those who are guilty of no crimes?

2. It is important for research in criminology to consider the question whether or not any person is prosecuted because his opinions have differed from those of the majority in his society in given issues and whether or not an individual is protected by the law from penalties for thinking on the side of the minority. This does not apply to Hiss.

There is considerable basis for concern by criminologists regarding the accuracy of criminal statistics. Complaint is made of the many cases which are never recorded because parents or friends intervene, because prosecuting attorneys lack the evidence or moral courage to file charges, because witnesses die or disappear or change their minds. But seldom is any effort made to analyze the nature and impact of factors such as these which bias the probabilities of some cases *in the direction* of their becoming court statistics:

a) Does the prosecution want to impress the community?

24. CARR, *op. cit.*, footnote 28, 282-283.

- b) Does the prosecution want to rid the community of some individual's "nuisance value"?
- c) Does the prosecution want to "teach a lesson" to some individual or organization?
- d) Does the prosecution want to act in response to what it believes is community pressure?

These questions are not posed simply with regard to those who may be innocent of the crimes of which they are accused. We are also concerned with those instances in which a charge is filed although the prosecution would prefer not to, where a more serious charge is filed against individuals of one race or persuasion than against all others even though the crime at issue is exactly the same, in which a charge is filed on the basis of what is normally considered a technicality, or where far more effort is given to the attempted conviction of one person than to another. When Hiss was "flushed out" in congressional hearings and later called by a grand jury, there is no question but what he was tried for espionage although the law did not permit his being tried on this count. The technicality of a perjury charge enabled the government to try Hiss on evidence which dealt with events long past for which the statute of limitations (because of the time lag) prohibits a man being tried on an espionage charge.

3. Criminology in America may eventually need to deal with the problem of isolating and defining the phenomena of thought control—intimidating individuals to profess opinions they do not actually possess. Criminal law already specifies no punishment for one forced to commit a crime against his will. Involuntary servitude is prohibited by our Constitution. We now have laws governing some areas of behavior which prohibit the *penalizing* of an individual for not conducting himself in a fashion consistent with some one else's opinions. State divorce statutes and judges permit of "mental cruelty" complaints. The federal labor-management relations act forbids an employer from forcing an employee to refuse membership in a union; a contract is invalid if at least one party was intimidated into signing it. On the other hand there are laws which require one's action in the public interest regardless of the individual's will. One may be drafted to serve his country in time of need and required to assume a portion of his government's debt. Such decisions, when made by the majority of the electorate and legislators, are binding upon the minority. The conscientious objector may be excused, but he must pay the price of violating the law.

In *West Virginia State Board of Education v. Barnette*<sup>25</sup> in which the necessity of one's saluting the American flag in violation of his religious scruples was at stake, the court decided: "a person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn."<sup>26</sup> And the courts now say that certain classes of statements of imputation are actionable *per se* as defamatory statements so far as they involve serious crime, a woman's unchastity, the possession of certain loathsome diseases, and conduct affecting an individual in pursuit of his livelihood.<sup>27</sup> The plaintiffs have often suffered such indignities for their failure to conform to someone's words and beliefs, another example of how the courts do interest themselves so far as some efforts at thought control are concerned.

Hiss was not so intimidated. But the opinions of individuals even remotely connected with him have often been attacked solely on this basis.

#### CONCLUSION

It should be emphasized that none of the many questions discussed herein are intended either to defend or criticize either party to the case of *United States v. Hiss*. The man and those like him, the temper of the times, the trust we want to extend and the things we want to fear, the necessity to ferret out true subversives—all grow out of the Hiss case. It only occurs to me that criminology, with its increasing emphasis upon a working collaboration of the various sciences, can contribute something valid toward greater understanding of the four problems touched upon in this paper.

25. *Op. cit.*, footnote 23.

26. Compare the above with the court reasoning concerning the primary election law requirement of Florida that a candidate for nomination execute an oath that he did not vote for the nominee of any other political party in the previous general election. A candidate, unable to comply with the requirements of the oath and therefore unable to sign it failed legal qualification as a candidate for office in *Mairs v. Peters*, Fla., 52 So. 2d 793 (1951).

27. The opprobrium which greets one accused of criminal behavior is matched, so far as libel judgments are concerned, by the hate which greets that person accused of being a communist. See *Remington v. Bentley*, 88 F. Supp. 166 (S.D.N.Y. 1949) and *Wait, Torts—Slander Per Se—Calling a Man a Communist*, 12 OHIO STATE L. J. 1944 (1951).

The Supreme Court has declared that one may not conspire to teach communism in the United States as it had previously been taught. *Dennis et al v. United States*, 71 S. Ct. 669, 184 F. 2d 280. With ten individuals already convicted and other indictments having since been handed down for this specific offense, the courts protect the individuals from having to identify themselves with the communist party on the basis that they should not be forced to incriminate themselves. Whether membership in the communist party, *per se*, is tantamount to violation of the Smith Act remains to be tested by the courts.

28. For some penetrating insights in this regard, see *BRANSTEDT, DICTATORSHIP AND POLITICAL POLICE: THE TECHNIQUE OF CONTROL BY FEAR* (1945) and *HUNTER, BRAIN WASHING IN RED CHINA* (1951).