

Dear Jim,

Buckley's column Star 8/10/75 on Hiss

8/20/75

Beginning with the 4th paragraph from the end this silly political self-indulgence can be of great help to Hiss if he and his lawyers do not lack the imagination.

He libels Hiss in calling him a Communist.

In the course of suing for libel Hiss can get the vindication he seeks.

The timing is magnificent. The government has already said it is releasing all it can.

And if that were to be relevant, Buckley can't claim to have had access even if, as I doubt, there is anything remotely credible on this.

Comparing this with Buckley's previous writings would show what a reasonable court could call malice.

Now that Hiss has been reinstated in the bar and is not since his jail term in any sense a controversial figure he could even allege damage from calling him a liar.

This is in the present, not the past

Best,

8-10-75 WS

William F. Buckley Jr.

That mindless court order reinstating counsellor Hiss

Hard on the heels of a dispatch from this quarter detailing the irrefutable logic of the conviction of Alger Hiss comes the order from the Massachusetts Supreme Judicial Court reinstating Mr. Hiss to the practice of law in Massachusetts. The opinion of the chief judge, Mr. Joseph Tauro, is a beacon of confusion. If it sets the tone of Massachusetts justice, one can conclude that that is the only state in which Alger Hiss is fit to practice law.

When last November Hiss applied for reinstatement, the State Board of Bar Overseers heard the appeal, meditated on it, expressed "personal sympathy" for Hiss, commending his "upright and persuasive bearing," but concluded that he could not be readmitted — "so long as the petitioner asserts his innocence."

But the Supreme Judicial Court said that to reason thusly was to suspend Hiss in a "cruel quandary." "Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess to a criminal act he honestly believes he did not commit."

Now that happens to be a revolutionary doctrine, always assuming that Judge Tauro uses words with the kind of care judges are supposed to give to the use of words.

I happen to believe that disbarment for life is too severe a punishment to administer to anybody for almost any crime. It has the effect of all but depriving a man of the means of earning his living.

If Judge Tauro had said that Hiss had suffered enough as a penalty for the sins he committed in lying in 1948, I'd have agreed with him. But carried away by his compassion, Judge Tauro ended in a rhetorical overdrive that propelled him into sheer mindlessness.

Hiss does not "honestly believe" he did not commit a crime. To suggest as the judge did that Hiss does so believe, is to suggest that Hiss is incapacitated from the practice of law in virtue of his utter inability (a) to recall his own activities during the '30s, and (b) to weigh the evidence furnished against him at his own trial. Does Judge Tauro believe that Hiss "honestly believes" that the federal courts, and the Federal Bureau of Investigation, and presumably even the president of the United States, concerted to frame Alger Hiss? Because that is exactly what Hiss alleges in effect. If he honestly alleges that, then he is qualified not to practice law in

Massachusetts, but to stroll in the gardens of cuckooland, always assuming there is a difference.

Why didn't Judge Tauro at least take the precaution of asking Hiss if he would submit to a truth rest? That way he could have discovered whether Hiss "honestly" believed himself to be guilty. There is, to be sure, the difficulty that if the test had been negative, Judge Tauro would have been required to ponder the question whether a criminal who believes himself to be non-criminal has any business practicing law in Massachusetts.

We get to a higher order of complication. Marxian ethics is very clear on the subject of truth and non-truth. Truth is defined as that which enhances the revolutionary struggle. If Mr. Hiss is still a Communist, and one supposes that this is the most plausible explanation for his behavior, then he doesn't believe that he was guilty. Stalin never believed himself to be guilty. Nor, as a matter of fact, did Hitler. They were all struggling to arrive at a "higher truth."

There is a further point, neglected by Judge Tauro: If Hiss honestly believes himself to be innocent, and if the word "honestly" is used in the conventional, extra-ideological sense, then he honestly believes that the courts in this country are entirely corrupt. Every argument on the basis of which Hiss has asserted his innocence has been thoroughly examined by Judge Tauro's peers in the federal court system, and unanimously the verdict has been that Hiss was fairly tried.

And this leads one to a final point: In being summoned to compassion for Alger Hiss, why is no thought given to his victims? If Hiss is innocent, then Judge Tom Murphy is a swine. To say nothing of Whitaker Chambers. Yes, he is dead these many years, but his widow is not, nor his two children. Mrs. Chambers, a reclusive woman of great idealism and tenderness, testified in detail about her friendship with Hiss and his family, and supplied many of the details that gave circumstantial strength to a case finally settled by irremovable proof. Hiss's maintenance of his own guilt necessarily suggests a foul complicity by Mrs. Chambers among others in his conviction.

Judge Tauro manifestly gave no thought to these ethical parsings of his decision. Well, it is better, after all, that his decision, given the result, should have been thoughtless rather than considered.