

## To the Bag

Over the years, the original definition of “Philadelphia lawyer” has eroded to a less noble meaning. Lost are both Hamilton’s bravery and his eloquence; only his mastery of legal technicalities has been preserved.

“*Philadelphia lawyer*. A lawyer of great ingenuity in the discovery and manipulation of subtle legalisms.”<sup>†</sup>

“*Philadelphia lawyer*. A lawyer of outstanding ability at exploiting legal fine points and technicalities.”<sup>‡</sup>

Nothing to do with “Philadelphia’s position as America’s center of learning and culture,” as *Black’s 9th* would have it.

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## WHITE ON VASSILIEV AND HISS: A REJOINDER

To the *Bag*:

Discussions of the guilt or innocence of Alger Hiss elicit impassioned advocacy, and in the heat of the fray reputations are apt to be unjustly besmirched. I write in support of my late brother, John Lowenthal, Hiss’s friend and lawyer for 55 years, who has, in my view, been gratuitously vilified in this journal. In 2000 Lowenthal published an essay critical of Allen Weinstein and Alexander Vassiliev’s *The Haunted Wood: Soviet Espionage in America* (1999).<sup>\*</sup> Vassiliev sued the journal’s publisher for defamation in Britain’s High Court. In June 2003 the jury ruled against the plaintiff. Vassiliev’s reputation had indeed suffered, but the critical allegations were “fair comment.”

G. Edward White contends that Vassiliev lost *despite* the fact that Lowenthal’s statements were shown to be untrue: “The defendants

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<sup>†</sup> *The American Heritage Dictionary of the English Language* 984 (American Heritage Publishing Co., Inc., 1969).

<sup>‡</sup> *The Random House Dictionary of the English Language* 1453 (Random House Inc., 2d Edition, 1987).

<sup>\*</sup> John Lowenthal, “Venona and Alger Hiss,” 15:3 *Intelligence and National Security*, 98-130 (2000).

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prevailed because they were able to convince the jury that although Lowenthal's comments about Vassiliev and his research methods were false and lowered Vassiliev's reputation, they were 'expressions of opinion.'<sup>†</sup> Not only were Lowenthal's comments false, White implies, but they were seen to be false by the jury. To the contrary, the jury found that given the information available to Lowenthal, a fair-minded reader would think his criticisms reasonable. Judge David Eady's summation dwelt so substantially on the evident veracity of Lowenthal's allegations that "somewhere in the middle of it" Vassiliev "started realizing that I had lost the case," judge and then jury agreeing with the defense that "the words complained of are true in substance and in fact."<sup>‡</sup>

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## TROUBLE SPOTS REMOVED

To the Bag:

Orval Overall once said of his Chicago Cubs teammate, Mordecai "Three Finger" Brown, that "when it comes to smoothing over internal troubles, and patching up trouble spots on a ball club, Brown is a thirty-three degree diplomat." While I never would present myself as an expert on either Brown or Chief Justice Roberts, I don't hesitate to suggest that Overall's quote connects Brown to Roberts as smoothly as Evers connected Tinker to Chance.

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<sup>†</sup> G. Edward White, "Alexander Vassiliev & Alger Hiss, part II," 2d ser., 13:1 *Green Bag*, 85-100 (Autumn 2009), 97.

<sup>‡</sup> *Vassiliev v. Frank Cass & Co.*, Summing up and Verdict, High Court of Justice, Queen's Bench Division, Royal Courts of Justice, 13 June 2003, HQ01X03222, [http://homepages.nyu.edu/~th15/Vassiliev v Cass](http://homepages.nyu.edu/~th15/Vassiliev%20v%20Cass); Alexander Vassiliev, "Introduction: How I Came to Write My Notebooks, Discover Alger Hiss, and Lose to His Lawyer," in John Earl Haynes, Harvey Klehr, & Alexander Vassiliev, *Spies: The Rise and Fall of the KGB in America*, li-lii (2009).