

# NEW LIGHT ON THE HISS CASE

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This is the latest chapter in the unfinished story of Alger Hiss—the tale of the car that wasn't. It is also the story of seemingly manufactured evidence, of indication piled upon indication that this pivotal, watershed prosecution of our time—the case on which Richard M. Nixon's reputation was founded; the case that formed the base for the witch-hunting of Joe McCarthy—was the product of a carefully concocted scenario.

For those who need a refresher course about a trial that was the sensation of its day, here is the essential background and the reasons why the car that wasn't reveals so much about a prosecution that was as badly tainted as the recent Pentagon Papers trial of Daniel Ellsberg.

Alger Hiss had been a brilliant, rising young State Department star in the Washington of Franklin Roosevelt. He was almost perfectly type-cast as the dangerous Eastern intellectual—a product of Johns Hopkins University and Harvard Law School, a protégé of Felix Frankfurter and Oliver Wendell Holmes—when Republicans in the Presidential campaign of 1948 began to push the thesis that equated intellectuals and liberals with traitors and Communists.

Hiss became the principal target. Whittaker Chambers, then a senior editor of *Time* and self-portrayed as a former courier for a Soviet spy ring, charged that Hiss had belonged to a Communist cell in Washington in the mid-1930s. In the early stages of his attack, Chambers also testified repeatedly under oath that Hiss had never been involved in espionage; but, after Hiss sued him for libel, Chambers' story changed—and so did many supposedly hard and fast details.

During pretrial depositions in Baltimore on the Hiss libel suit, Chambers suddenly produced copies of a number of State Department documents that, he testified, had been typed by Hiss and his wife, Priscilla, on an old Woodstock typewriter the Hisses once had owned. Alger Hiss, who according to Chambers' earlier versions had never been a spy, now in this recast recital had been a spy for years.

This 180-degree reversal of a position earlier maintained under oath required some radical alteration in essential details. One of the most important involved the date of Chambers' break with communism and the date of his association with Hiss. There had seemed at first to be little conflict between the stories of Hiss and Chambers about the time they had known each other; even Nixon, when questioning Hiss at one House Un-American Activities Committee hearing, acknowledged that there had been no association between the two men after January 1937. But the documents that Chambers subsequently produced and that he swore all came from Hiss were dated as late as April 1, 1938—and so Chambers' original story that he had broken with communism in 1937 and hadn't seen the Hisses since the

end of 1936 changed accordingly. He now maintained that he had seen Hiss constantly, almost up to the new date that he fixed for his break with communism—April 15, 1938.

It is obvious to a trial lawyer that any prosecutor, forced to rely upon a witness whose various accounts, all told under oath, collide with one another so irconcilably, faces a difficult problem. To convince a jury that the latest version is the true version, it is almost essential to support the final version with some kind of documentary evidence that does not depend upon the chancy words of the witness. It was at this point in the development of the Hiss case that the car that wasn't surfaced as an item of vital corroborative evidence.

The basic transaction, according to the prosecution, was this: On November 23, 1937, Chambers traded in an old Ford car for \$325 at the Schmidt Motor Co. Inc., in Randallstown, Md. and, with an additional \$486.75 in cash, purchased a new Ford. How had Chambers, who at the time had been living a relatively penniless existence, obtained the cash? When in 1949 Hiss was brought to trial in Federal Court on perjury charges for denying under oath that he had ever been a Communist or a spy, Whittaker Chambers, who admitted he had worked for weeks, five days a week, with FBI agents in advance of trial, suddenly made the claim that Hiss had given him \$400 in cash to buy the car. The reason? Just one good Communist helping another.

This testimony was offered only *after* FBI agents had obtained Hiss's bank records from the Riggs National Bank in Washington. These showed that on November 19, 1937, just four days before the supposed car purchase, Hiss had withdrawn \$400. Strangely enough, though the House committee in 1948 had figuratively gotten down on its collective knees and pleaded with Chambers to recall every tiny detail of his association with Hiss, Chambers had never remembered this unforgettable beneficence until *after* the FBI had latched on to Hiss's bank records.

In both the first and second Hiss trials (the first ended in a hung jury; the second in a conviction for perjury), the government sought to back up Chambers' testimony about this crucial car transaction with a piece of documentary evidence. This consisted of a *photostat* (reproduced on page 681) of a single page purportedly taken from the ledger of the Schmidt Motor Co. In both trials, defense counsel accepted this single sheet of photostated paper as legitimate evidence, without requiring from the government any further proof, without insisting that the entire original ledger be subjected to examination.

One has to pause and marvel at this bland acceptance of a key bit of documentation in a trial that should have been a fiercely fought adversary proceeding. For the importance of this ledger sheet can hardly be exaggerated; if it stood the test in court, it gave important credibility to Chambers' wildly changing scenario, and it conveyed an element of conviction to his account of an association with Hiss at the time the State Department

## EDITORS' FOREWORD

Leaving his office one afternoon in the fall of 1957, Raymond A. Werchen, a member of the New York bar since 1940, picked up a newsstand copy of *The Nation* for September 21 which featured an article by Fred J. Cook ("Hiss: New Perspectives on the Strangest Case of Our Time," later published in book form as *The Unfinished Story of Alger Hiss*). Werchen had never met Hiss and had no special interest in the case, but after reading the article he decided to examine the transcript on appeal and was immediately struck by what seemed to him weaknesses in the government's case. As time permitted, he continued to study the case and conducted a series of investigations, including an inspection of the premises in which the famous "dumbwaiter" was located and a visit to Maryland to examine records in the state's motor vehicle department. From his long and detailed critique of the evidence, Fred J. Cook, at the request of *The Nation*, has prepared this condensation.

In an editorial introduction to Mr. Cook's 1957 article, we offered this comment:

The cases that refuse to die are those in which, because of the nature of the charges and the political clamor they create, the public itself becomes implicated. It is as if not twelve men, but a whole nation, sits in the jury box. Charge and countercharge, the personalities involved, become part of the moral and social history of the times; and even when justice is finally done, the cases are remembered as testaments to a people's persistence in the pursuit of justice as a paramount national ideal.

All such cases, and the Hiss one followed the pattern, carry with them the clear and appalling implication that if the court verdict was wrong, a government agency, federal or state, might be compromised; and that majority opinion, in a moment of passion, has sanctioned injustice. Inevitably, in such instances, the final verdict—the verdict not of twelve but of 170,000,000—comes slowly; it is only as passions subside that reappraisal of the evidence is possible.

Mr. Cook's pioneer reappraisal of 1957 raised serious questions about the legitimacy of the prosecution and the fairness of the verdict. But while it served to revive and stimulate interest in the case, the time had not yet come for a general popular assessment. Since then other studies, notably *Friendship and Fratricide: An Analysis of Whittaker Chambers-Alger Hiss* by Meyer A. Zeligs (1967), have reinforced doubts first voiced by Mr. Cook and raised other issues as well. And more studies, in addition to Mr. Werchen's, are under way, including forthcoming books about the case by Joan Worth, an English writer, William Reuben, and John Lowenthal of the Law School, Rutgers University. In the past the public has not been prepared to reassess the government's case, but now that some of the miasma of the cold-war years has lifted, a more open-minded attitude is emerging. In the wake of Judge Byrne's dismissal of the case against Ellsberg and Russo because of "improper government conduct shielded so long from public view," the public should be willing for the first time since 1953 to face "the clear and appalling implication" that government agencies might have been compromised in the prosecution and trial of Alger Hiss.

The possibility of a definitive re-examination of the case hinges on release of the FBI file and other papers.

As we pointed out some time ago ("The Hiss File," December 18, 1972), President Nixon promised on June 1, 1972, in response to many requests, "to lift the veil of secrecy from needlessly classified documents" more than ten years old; later he issued an order to this effect, but federal bureaucrats have shown a marked reluctance to implement the order. So a group of scholars has initiated, with the assistance of the American Civil Liberties Union, two court actions to make certain materials available for historical research. One of these actions was brought in the name of Allen Weinstein, of Smith College, who seeks to force release of all documents concerning the Alger Hiss-Whittaker Chambers investigation from 1933 to 1953. Twenty years have elapsed since the Hiss case was tried; government files and documents bearing on the case should now be open to inspection by scholars, investigators and newsmen. It should be emphasized that when Hiss was tried the rule in the *Jencks* case had not been handed down. Under that ruling a defendant is entitled to inspect materials such as reports by FBI agents and their interviews with government witnesses and possible wire taps. As the law now stands, if a defendant requests such material, the trial judge goes over it *in camera* and decides which portions of it are pertinent to his defense. Where there is reason to believe, as the Werchen-Cook study indicates, that the government may have been guilty of wrongdoing, the new rules requiring the government to produce exculpatory material, which proved so helpful to Ellsberg and Russo, become of paramount importance. These rules were not available to Hiss.

The conviction of Alger Hiss was a key event—perhaps the single most important event—in setting in motion the witch hunt which provided much of the domestic political support for cold-war policies. To place the case in proper perspective, one need merely note that the national reputation of President Nixon was largely based on the role he played in initiating the prosecution and in securing the conviction of Hiss. At the time of the trial, majority opinion was simply not prepared to believe that extralegal methods might be used by federal agencies to secure convictions in cases thought to involve "national security" or to be of major importance in the "fight against communism." In the wake of Watergate and the Ellsberg case the public should be somewhat more sophisticated.

If Ellsberg marks the beginning of the end of the cold war and its "dirty tricks," it can be said that the Hiss case marked the inception. It was merely the first of a series of federal prosecutions which were by-products of the domestic cold war and the hateful attitudes it engendered. President Nixon was then the accuser—a fact in which he takes inordinate pride—a kind of Public Prosecutor, as it were; now he is busily denying that he participated in the planning or the cover-up of "the sordid affair" that is Watergate. But it was the President—this much we know—who ordered the special inquiry into alleged "leaks" of information which culminated in the disclosures of shameful governmental intervention in the Ellsberg case. By impugning the good faith of the Department of Justice, the CIA and the FBI, these disclosures have called in question the integrity of the judicial process. In the atmosphere that prevails today—an atmosphere contaminated by evidence of governmental misconduct at the highest levels—the persistently voiced doubts about the methods used to secure the indictment and conviction of Alger Hiss take on new significance.

documents presumably were passed. Yet the defense failed to attack a document that even today, on the face of it, calls loudly for attack.

A careful examination of this ledger photostat, introduced in the second trial as Exhibit 40, reveals a host of incongruities. First and most noticeable is the fact that the entry dealing with the supposed Chambers car deal of November 23, 1937 is juxtaposed on the page with another entry that seems to show it is suspiciously out of sequence. The Chambers entry appears on the right-hand side of the photostated page. It is in handwriting that appears markedly different from that of the other entry, on the left-hand side of the page.

Moreover, the left-hand entry, labeled "Ward transaction," bears the notation that it took place on October 30, 1937 (the posting is simply "10/30"), and bears a folio number "265," apparently a reference to a cash-book or journal that was not produced at either trial. Yet the Chambers transaction, which allegedly took place three weeks later, appears on the same page and bears a folio number "335"—a skipping of seventy numbers which seems a highly unlikely feat to have been performed on a single ledger page in which entries would be made in sequence.

There are other, tenuous indications that the Chambers entry was probably made up and filled in on a blank section of this ledger page at a much later date. While the Ward transaction was simply recorded as taking place on "10/30," the Chambers entry, which begins in similar style "11/23," adds the year—"11/23/37"—as if for emphasis in recording the cash payment. Again it seems an unlikely interpolation if entries had been made in sequence, and it differs from the handling of the entire "Ward transaction."

The suspicion this nurtures is reinforced by an error in the Chambers entry that it seems unlikely a Ford dealer would have made in 1937. The Ford that Chambers was supposed to have purchased is described as a "Fordoor." That spelling was never used by the Ford company, whose models in the 1930s were identified by the acronyms, "Tudor" and "Fordor," to distinguish between two-door and four-door sedans. By the late 1940s these terms had gone out of use on newer models, opening a pitfall of unfamiliarity.

Another intriguing indication that this mysterious "335" Chambers entry was postdated lies in a similar error in giving Chambers' 1937 Baltimore address. It appears in the photostat as "2124 Mt. Royal Ave." The correct address in the 1930s was "2124 Mt. Royal Terrace," a correction that Mrs. Chambers herself made when questioned about the address at the second trial. However, there is in Baltimore today a "West Mount Royal Avenue"—a change of street names—with the passing of time that could easily explain the error in the photostat.

With suspicions aroused by such discrepancies in the photostated ledger page, it became necessary to check the Maryland Department of Motor Vehicles to see what the records there showed about this car transaction. Maryland, a so-called title registration state, maintains a permanent title registry of all licensed motor vehicles. In

the Chambers transaction with the Schmidt Motor Co., there were two cars to be checked on—the 1934 Ford which Chambers supposedly turned in and the 1937 "Fordoor" which he allegedly purchased. The ledger photostat gave the motor vehicle identification numbers of these cars.

Noted on the photostat was a \$3.75 fee for the title registration of the new car. Subsequently, in contesting Hiss's appeal from his conviction, the government came up with another document—an affidavit signed February 29, 1952 by a man named Stoker, an employee of the Ford dealer, affirming that he had attached new Maryland license plates to Chambers' 1937 car on April 1, 1938. In other words, the car had been registered and twice licensed in the state of Maryland. Surely, a record of it must exist.

A fee was paid for a search of the records. After a considerable wait, a girl clerk returned and said: "We have no record, sir, of a title registration in this state for this vehicle."

Here, then, was the car that wasn't. But what about the trade-in vehicle? Certainly there must be substantiating evidence for Chambers' story where that was concerned. Another fee was paid. And the trail of this vehicle turned out to be almost as murky as that of the car that wasn't.

The 1934 Ford, vehicle identification number 18-1011772, turned out, according to the records, to have been first title-registered in Maryland on August 2, 1937. It was re-registered in January 1938, and again in 1946. None of the names appearing on the 1938 and 1946 documents suggests any connection with Chambers as vendor or vendee. Neither his name nor any of his known aliases appears on the records. And the document for the August 2, 1937 registration is missing. The fact that the car was registered then is known from an entry on the re-registration of January 1938, but that bare notation, which names no owner, is all that exists in the records.

There is another reason to suspect the legitimacy of this supposed car transaction—the price. A 1937 de luxe Ford listed for about \$765. Furthermore, the new 1938 models had been introduced, as is customary, in September or October. Thus, if Chambers truly purchased a car in November, he should have been buying a previous year's model at a knock-down price. It must be remembered also that a recession was under way in November 1937, and a buyer with a late-model trade-in and cash in hand was in an ideal position to bargain. All of this should have brought the price of Chambers' "Fordoor" down to about \$640 or \$650—not the \$800 he is alleged to have paid in late November. Again, it would seem, these realities that should have been so apparent at the time were not so obvious to someone fabricating the record more than a decade later.

If Chambers' account is to be believed, he owned the 1934 car until November 23, 1937 when he traded it in. Why, then, the August 2nd registration? Could it be that Chambers disposed of the car *at that time*—a time that would conflict irreconcilably with his later contention of a November transaction and a November gift of \$400 from Hiss? If so, the gap in the Maryland motor

vehicle records becomes more understandable. In the Hiss case, records (notably those dealing with the manufacture and serial number of the old Hiss Woodstock typewriter) had a way of disappearing once the FBI got its hands on them.

All of this—the absence of documentary support for Chambers' account of the transfer of the 1934 vehicle, the absence of any registration showing that his November "Fordor" even existed—blows a huge gap in the array of documentary corroboration so vital to the prosecution in propping up the otherwise suspect and ever-shifting tales of Whittaker Chambers.

There are other gaps. One involves Chambers' account of the manner in which he hid the documents he allegedly received from Hiss. When he broke with the Communist Party in 1937 or the spring of 1938, depending upon which version of his story is to be believed, he had tried to sell an account of his life with communism to a major magazine. Failing in this, according to him, he had put the documents in an envelope and turned them over for safekeeping to his nephew,

Nathan Levine, whose parents lived at 260 Rochester Avenue, Brooklyn.

Chambers' account of this packet defies belief on more counts than one. He later wrote in *Witness* that he had stored the documents because he considered them a "life preserver" in case his life was threatened. But then he turns around and insists that he had virtually forgotten about the contents of this all-important "life preserver"; he recalled it only as a small envelope that contained a few scraps of handwritten notes by Hiss and possibly "something of Harry White's." In trouble in the libel action which Hiss had brought against him in Baltimore, told by his attorney that if he had anything on Hiss he had better produce it, Chambers went to Levine's home on Sunday, November 14, 1948, and asked for his papers back.

There now took place an unusual scene that once again raises an issue of credibility and suggests that Chambers' trial testimony was warped to fit the needs of the prosecution. To a trial attorney, one point is obvious: Why didn't Chambers simply ask Levine to go and get the documents for him? Why was it necessary

EXHIBIT  
U. S. Dist. Court  
S. D. of N. Y. *Ref 1239*  
JUN 9 1949  
*Esther Chambers*  
*2124 Mt Royal Ave*

*George W. East*  
*Burgess Hiss, Balt. Co., Md.*

|                           |        |        |                        |       |        |
|---------------------------|--------|--------|------------------------|-------|--------|
| 54-342432                 | FX-604 | FS-977 | 18-4095821             | FS819 | FX 741 |
| 1 60 Ford Fordor          |        | 64200  | 1 1937 Del Fordor      |       | 800.00 |
| 1% Sales Tax              |        | 642    | Titles Trans           |       | 375    |
| Title & Trans.            |        | 275    | 1% Sales Tax           |       | 800    |
|                           |        | 65117  |                        |       | 811.75 |
| 10-30 By Cash 265         |        | 2417   | Trade in               |       |        |
|                           |        | 62700  | 1934 Ford Sedan        |       |        |
| Trade in: '33 Chev. Coach |        | 27200  | 18-1011772             |       | 32500  |
|                           |        | 35000  |                        |       | 48675  |
| 10-2 Cash 265             |        | 35000  | 11/23/37 By Cash (335) |       | 48675  |
|                           |        |        | 2 gal Anti-dr          |       | 2.00   |
|                           |        |        | 11/23/37 By Cash (335) |       | 2.00   |

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for Chambers to be physically present to witness the retrieval of his papers from the cache where, he said, Levine had hidden them years previously? Again, it would seem, the purpose was corroboration—to insure by the dovetailing stories of Levine and Chambers, one supporting the other, that a jury would be convinced these were the original, bona fide papers that Chambers had squirreled away, not some that might have been concocted to meet the exigencies of the libel case or to fuel the witch hunt that was then beginning.

The trouble is that the stories of Levine and Chambers do not quite dovetail. There is a small but significant discrepancy, overlooked by the defense at the time of trial, that suggests Chambers was not present at the moment of historic retrieval as he testified he was. In both Hiss trials, Chambers testified that he went to the second-floor bathroom with Levine and watched what happened.

*Q.* And did he then reach up onto a shelf, or top of a closet which had been converted from a dumbwaiter shaft?

*A.* He stood on the *bathtub* and reached into a window in the dumbwaiter shaft. (*Emphasis added.*)

*Q.* And he then pulled out an envelope covered with dust?

*A.* That is right.

Levine's testimony was that he went into the bathroom, opened the window "and stepped on the *ledge* and took from *above* the back of the linen closet in the dumbwaiter shaft the envelope. . . ." (*Emphasis added.*)

This may seem a small discrepancy, but it is one that assumes unexpected significance when one visits the house at 260 Rochester Avenue. This is the fourth house in from Lincoln Place in a row of seven attached houses built in 1908 and 1909. The interior houses are divided from one another by solid body walls. Light and air are admitted to the interiors of these central houses by air shafts that run from basements to roofs and are capped by skylights.

On the second floor of No. 260 a hall runs from the stair landing to the west side of the house. On the north side of this hall are a pantry and a bathroom, separated by a 3-foot space, which is itself divided in half, the inner half having once housed the dumbwaiter and the outer half being the air shaft. Windows in the pantry and bathroom face each other across the 3-foot shaft. The space formerly housing the dumbwaiter has been converted into a linen closet. The hiding space for Chambers' mysterious documents was on a shelf of the old dumbwaiter *above* the linen closet. This shelf can be reached only by someone climbing out the bathroom window and perching himself upon window ledges out in the open ventilating shaft.

It could be done in one of two ways. The more precarious would be to climb out, place both feet on the bathroom window ledge, and then, hanging on to the sash with one hand, reaching with the other over an incomplete barrier that divides the closet-dumbwaiter section from the ventilating shaft proper. Another method, giving the searcher for hidden documents a better balance, is to climb out and place one foot on the bathroom window ledge, the other on the ledge of the pantry window. This gives better balance and allows one to reach over the barrier and search freely among the accumu-

lated dust and dirt on the long-unused shelf of the dumbwaiter.

Whichever method is used, no one who has actually witnessed this tricky maneuver—no one who has ever seen a man straddling the ventilator shaft, poised above the pit—could ever possibly have given Chambers' description that Levine stepped up on the bathtub and drew out the papers. The bathtub has nothing to do with it: it is simply impossible to reach anything above the linen closet by standing on that tub.

What all of this means is that Chambers could not have been present at the supposed recovery of his papers, and it casts serious doubt, along with other circumstances, on the validity of those papers. Levine testified that he never saw the contents of the envelope that he handed to Chambers. He had dragged out a lot of dust and dirt along with the envelope, and he occupied himself with cleaning up the mess while Chambers went to the kitchen and opened up the find. Levine later saw Chambers there, but he never, according to his testimony, saw what Chambers had.

As for Chambers, as he later reported in *Witness*, he was absolutely stunned—a reaction that in itself seems stunning on the part of a man who, in all these years, had placed such great importance on the contents of his "life preserver." Yet, if we are to believe Chambers, he had had no idea that the mass of documents he now found so providentially placed in his hands even existed. "Good God," he quotes himself as exclaiming, "I did not know that this still existed." There was, perhaps, more than one reason for his astonishment. As the Hiss defense demonstrated belatedly on appeal, the dirt-encrusted envelope could not have contained all the copied State Department documents and rolls of microfilm that Chambers insisted had fallen into his lap sitting there in Levine's kitchen. The thing was a physical impossibility; the envelope retrieved from the dumbwaiter shaft, had it contained all Chambers testified it did, would have been more overcrowded than Noah's Ark.

What one sees in all of this is a case that has the odor of the manufactured. When item after item in a prosecution's case fails to hold still for examination, when item after item turns out to be not quite what it was represented to be, when the struggle for corroboration becomes self-defeating, one can be almost certain that one is dealing with spurious testimony and faked evidence.

This conviction is strengthened when one studies the testimony offered by the prosecution to support Chambers' charge that the State Department documents he had produced had been typed on the old Woodstock typewriter that had once belonged to the Hisses. What most persons have failed to realize is that, once again, the defense offered no countervailing testimony. The *only* witness who testified about the typing characteristics found in the documents was an FBI agent produced by the prosecution; and his testimony, unknown to the jury or the retrial judge, changed significantly between the first trial and the second.

On appeal, Hiss's new attorney, the late Chester Lane, was to raise a new issue, contending that forgery by typewriter (contrary to the opinion of most experts at

the time) is entirely possible. He had a machine constructed that, according to a skilled document expert, reproduced the typing of the so-called Baltimore documents. The courts on appeal refused to consider this evidence—and much else produced by Lane's later investigation, even documentary evidence indicating that Chambers was out of the Communist Party in 1937 as he had originally said—on the narrow legalistic grounds that the defense had had an obligation, had it used proper diligence, to bring all of this evidence out during the trials and so could not use its own failure to do so as a basis for reopening the case.

The ruling pointed up the fatal failure of defense attorneys in both trials to come to grips with the central issue of the case—the documents and the Woodstock typewriter that allegedly produced them. Without the documents, the government's case rested on the dubious word of Chambers; and so the validity of the documents and every aspect of the manner in which they had been typed, secreted and belatedly produced should have been the central point of fierce contention in a properly fought adversary proceeding.

Yet at the very opening of the second trial, Hiss's defense attorney in effect sanctified the government's position. In his opening statement to the jury, Claude B. Cross conceded everything a zealous prosecution could have hoped for. Here are some excerpts from this opening:

The evidence will be that *all of these documents*, typewritten documents 5 through 47, except Exhibit 10, were typed on a Woodstock typewriter that once belonged to Hiss. . . . [Emphasis added.]

Now, as to the typewriter, we say that the Hisses did not type those documents. . . .

As to whether it was on the Woodstock typewriter, the Government produced a witness at the first trial who said in his opinion it was done on the Woodstock typewriter . . . and there is no cross-examination of that witness. I tell you, in frankness, that we have consulted some experts and they say that in their opinion it was typed on the Woodstock typewriter. That is an opinion. What the fact is as to who actually typed it only the person who typed it knows. . . .

Thus what the defense did at the outset was convert the core question—what typewriter had produced the documents, a very difficult proposition for the prosecution to prove—into the question of who had done the typing, an impossible one for the defense to answer.

The defense made this colossal concession in apparent ignorance of the fact, which should have been apparent had it studied the first trial record adequately, that the government expert's testimony had not been as forceful or conclusive as the defense itself now represented to the jury that it had been. In fact, the government expert in the first trial had not even identified the machine on which the documents had been reproduced as a Woodstock; that identification came only in the second trial after the defense, in its opening, yielded the point.

In the first trial, the FBI expert, Ramos C. Feehan, testified that he had compared the typing of four documents admittedly written on the Hiss Woodstock in the mid-1930s with the typing of the Baltimore State Department documents produced by Chambers. He based his analysis on just ten characters on the keyboard, con-

tending that he found characteristics that matched in the two sets of documents. In his first trial testimony, he conceded, however, that there were "variations," and he explained that these might have been caused by differences in the paper, the ribbon, or typing pressure. Some of these variations were of such a nature, however, according to Feehan's own testimony, that it seems unlikely they could be traced to such simple causes.

Typical was Feehan's description of the vagaries that showed up in the typing of letter "r." He testified:

. . . Sometimes, it appears all right, upright as it normally should appear, and other times it is off its footing and leads to the right, and the "r" in the word "investors" is leading to the right. It is off its footing and the "r" in the word "honor" is leaning a little bit to the right.

It has to be considered significant that, in the second trial, Feehan's expert testimony changed in a small, but radical respect. The second time around there was no mention of "variations," no reference to letters that were upright in one place and leaning to the right in another. Feehan's second trial testimony made it appear to judge and jury that the characteristics he had found and compared in the documents were absolute and unvarying, with no exceptions whatsoever. This has to be considered little short of deception.

Feehan did mention at the retrial, but not at the first trial, that certain characters had defects from miscasting at the time of manufacture or by becoming broken through wear or use. This, had the defense had the wit to take advantage of it, only raised another and more difficult question. How could a character basically flawed through miscasting or wear produce a perfectly formed imprint on some of the documents? Not even hard pounding can produce such an imprint if the metal is not there on the key that makes it.

Yet this "expert" testimony was not really challenged by the defense until Chester Lane raised the whole issue of forgery by typewriter on appeal. In connection with this, Lane questioned the validity of an expert analysis based on only ten characters of a keyboard that contained eighty-four. He contended that the only valid analysis would have to be based on *all* of the idiosyncracies produced by a typewriter across the entire board.

Confronted with this challenge, the government flip-flopped. It produced an affidavit from Feehan who declared that he had *not* relied on just a ten-character analysis, the basis of his testimony in two trials: that, on the contrary, he had studied the whole eighty-four characters produced by the Woodstock. He declared: "I examined and compared each typewritten character appearing on the Baltimore documents #5 through #9 and #11 through #47 with the known standards, taking into consideration style of type, alignment, horizontal and vertical spacing, footing, variations and defects. A Spencer binocular microscope . . . [was] used in my examination." Further on in his affidavit, Feehan repeated: "*I examined each and every character of typewriting appearing on the questioned and known documents. . . .*" (Emphasis added.)

This last statement, impressive on its face, conjures up an image of tireless diligence that would be phenomenal even in an FBI agent. On the 64 pages of the dis-

puted documents there are 93,267 typewritten characters; in the 8 pages of the standard documents there are 8,535 characters. If Mr. Feehan is to be taken at his word, then, he read the 64 pages of the disputed documents 8,535 times, and on each reading stopped, whenever a given typewritten character appeared, to compare it "for type, alignment, horizontal and vertical spacing, footing, variation and defects" with the test character from the standard documents being used in that particular reading. At each stopping point he viewed the corresponding characters through a microscope.

It is not only diligent; it is patently impossible. A professional editor, reading carefully but with no stops, will take approximately forty-five minutes to read a 64-page manuscript. To read such a manuscript 8,535 times will, therefore, take him 384,085 minutes, or 6,400 hours, or 800 eight-hour working days with no recess for lunch. That is considerably more than two years of solid work, with no time off for weekends or holidays. But Feehan, if he did all this before the first trial, as he said he did, would have had only about thirty weeks between the time Chambers first produced his documents on November 17, 1948 and the beginning of the first trial on June 16, 1949.

As a proffered expert, Feehan must have realized the significance of the language he used in providing the informational basis of the affidavit. For since he conceded *variations* in the typewritten characters, he had to contend, as stated in the affidavit, that he had examined *and* compared each imprint of a typewritten character appearing in the standard documents with the corresponding imprint of that typewritten character in the Baltimore documents. Any contention that his examination was limited merely to eighty-four typewritten characters in the standard keyboard would be an obvious fraud on the court. It should be emphasized that by using the phrase *typewritten* characters rather than *typewriter* characters, he must have intended to refer to imprints on the typewritten page and not to the characters on the keyboard.

It was to answer the objection of the defense in the motion for a new trial that a meaningful comparison could not be made on the basis of but ten characters that Feehan insisted, in his affidavit, on the comprehensive, character by character, microscopic examination. Unfor-

tunately, it did not occur to the defense to test the assertion with a little grade-school mathematics.

What disturbs and disappoints one most is the uncritical acceptance of Feehan's March 3, 1952 affidavit by the judge of the lower court who presided at the trial and the judges of the Court of Appeals and the U.S. Supreme Court who upheld him in denying a new trial. One explanation lies perhaps in the atmosphere of the times. The FBI as an institution was regarded with awe, and almost any assertion made by one of its experts carried with it an implication of infallibility. This almost universal readiness to accept the FBI's word had its insidious effect upon the mental processes of defense attorneys during the trials and of the appeals courts afterward. Added to this was the witch-hunt atmosphere of the times, a current that no segment of the American power structure, neither the courts nor a partisan press, showed any disposition to oppose. It was a time when Communists were thought to lurk under every bed and Republican orators were implying by innuendo that Harry Truman had been a traitor. Thus, it was not a time to employ critical faculties, not a time to dissent, not a time to swim against the tide and cry for justice.

It is perhaps quite different now. The anti-Communist paranoia that swept the land produced in the end, as was inevitable, the folly and tragedy of Vietnam. The current Watergate scandal has shocked the nation with the spectacle of a burglary ring operating out of the White House and forging documents for political purposes to implicate President John F. Kennedy in the assassination of Ngo Dinh Diem. In a time when government on the loftiest levels has not scrupled to resort to forgery in an attempt to denigrate the memory of a murdered President, it is no longer inconceivable that similar tactics should have been used by the same political forces in the prosecution of Alger Hiss. The story of the car that wasn't and the shifting sands of evidence concerning the vital documents are just two indications that a manufactured case was palmed off on the American people. The Hiss case cries aloud for fresh and thorough examination, for here is where it all began; here was the genesis of the unscrupulous power that has brought the nation to the disgrace of Watergate. □

## OAS: DEATH BY MALIGN NEGLECT

**PENNY LERNOUX**

*Bogotá*

Plaza Cátia, at the edge of Caracas, has changed very little since President Nixon's visit in 1958. Traffic is still forced to flow round the dingy square where he was stoned by angry university students because, for all their inventive highway engineering, the Venezuelans have yet to unplug the Cátia bottleneck between the airport freeway and the entrance to the city. During Sunday afternoon traffic jams, motorists inching round the plaza gaze dully at the same

rundown theatre and bars that provided the backdrop for Nixon's first confrontation with those noisy, uncontrollable Latin Americans.

Many hemisphere observers think that the then Vice President's unpleasant experience in Venezuela engendered a disdain for the nations of the south that has since become so painfully obvious as to threaten what little is left of inter-American relations. Although Nixon's Administration has made an occasional attempt to disguise its boredom by trotting out the war in Vietnam as an excuse, Arthur Schlesinger is only too correct in his description

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