

The Case of Alger Hiss

*It hasn't much to do with perjury or even with the defendant;
at the bar of public passion the ghosts of the New Deal are on trial*



Two trials were conducted at the same time in the same courtroom: one against Alger Hiss, indicted for perjury; the other against the ghost of liberalism in the 1930's. The first was a judicial trial, following the rules of law; in the second, emotions imposed *their* rules of evidence. Retroactive passions and present-day fears made the case of Alger Hiss a simultaneous, double-feature performance. Men and women stood in line for hours outside Judge Samuel Kaufman's courtroom, munching sandwiches out of paper bags, waiting for the doors to open, while other men and women reached hungrily for the bold headlines, fretfully expecting some fantastic disclosure, as if at any moment new pumpkins stocked with new stores of secrets might be discovered somewhere.

A lawsuit is always a theatrical ceremony, a ritualistic public re-enactment of the felony to allow the sentinels of justice, who were caught off guard when the crime was committed, belatedly to demonstrate their power. A trial, like a good tragedy, purges the emotions, first by this re-enactment, then by the punishment of guilt. In this particular trial, emotions were not purged, but fanned.

In Judge Kaufman's court practically everybody—the defendant, the main witnesses, the lawyers—overacted, each of them truer to type than life ever seems willing to permit. It was as if all the leading characters had worked so hard at rehearsal that, at the moment of actual performance, their words sounded strained and improbable. As in a play conceived by a

pedantic and slightly obsessed playwright, virtue could not be so virtuous, nor vice so vicious, nor forensic rhetoric so rhetorical.

The spectators' minds were alternately absorbed by the trial and wandering away from it, trying to figure out from what was said the things that were left unsaid. Some people—mostly inveterate haters of the New Deal—had long since conducted their own

Chambers



trial according to a fairly uniform pattern. They passionately took the prosecution's contention for indisputable fact: Not only was Alger Hiss guilty, but so was the whole group to which he belonged. According to these people, the case was clinched, because, in their opinion, there had always been connivance between what they considered the eternal enemy, Soviet Russia, and at least a large number of New Dealers. The trial was better than guilt by association: It was at the same time the forcible establishment of the associa-

tion and the proclamation of its guilt.

In their over-rehearsed, over-played performance, the main actors were remarkable. Lloyd Paul Stryker was always at the center of the stage—strutting, sneering, posturing defense attorney. His opponent, Assistant United States Attorney Thomas Murphy, provided the perfect contrast: the mighty-muscled, walrus-mustached vaudeville cop, persevering but not too bright. Alger Hiss was the ever-courteous and smiling Eagle Scout whose shining virtue had been called in question; Whittaker Chambers, the mysterious man-of-a-thousand-faces, appeared this time as the homespun dairy farmer. A comparable performance was given by nearly everybody who came to the bar—all the supporting actors, the bit players, and the Greek chorus of celebrities who chanted an affirmation of the integrity of their Orestes, who was still pursued by the Furies of the House Committee on Un-American Activities.

The plot of the drama was obscure: Alger Hiss was not charged with espionage—the Statute of Limitations ruled that out; he was accused of lying when he said he was not a spy. Specifically, he was charged with having committed perjury on December 15, 1948, before a Grand Jury, when he denied having furnished restricted State Department documents to Whittaker Chambers—a denial that Hiss had made dozens of times previously and continues to make. For good measure, he was also indicted on a second perjury count for saying that he had not seen Whittaker Chambers after January 1, 1937; this was in effect a repetition of the first count, since the Bill of Particulars that went with it cited the specific times Hiss saw Cham-

bers as the occasions when he allegedly delivered the papers during the first three months of 1938.

The evidence that the prosecution brought forward consisted mainly of the testimony of Whittaker Chambers. A plump, jowly man with graying hair, who wore a black suit and a black tie, Chambers was self-conscious but dead-ly earnest. His deep voice was cracked, tired, almost inaudible as he told his version of the facts.

Supporting Chambers's testimony were the films of State Department documents he had pulled out of a pumpkin on his farm last December, almost certainly typed on a Woodstock typewriter that once belonged to Hiss.

That was all of the directly relevant evidence introduced against Hiss at the court of justice. At the court of emotions, all those who had already found Alger Hiss guilty of treason looked for different evidence. Wasn't there a clear connection between giving state documents to a Russian colonel in a Brooklyn movie theater and, a few years later, accompanying President Roosevelt to Yalta?

The curse of overstating and over-acting was shared by both sides. Mrs. Chambers, who had nothing to contribute directly about the issues in the case, was put on the stand to show that considerable intimacy had existed between the Hisses and the Cham-berses. Mrs. Chambers, like Shake-speare's *Mistress Quickly*, had the gift of total recall. She was a stark little woman playing a parlor game, trying to recall the pattern on some wallpaper she had seen fourteen years earlier and proudly fetching up the fact that "Mrs. Hiss doesn't like ice cream." Unfor-tunately for her husband and Mr. Mur-phy, some of her recollections contra-dicted certain other evidence and even her own previous testimony. About all she really proved was her unfaltering loyalty to Mr. Chambers. Asked whether some of her husband's actions were inconsistent with "decent citizen-ship," Mrs. Chambers, who always wore a big black hat, stiffened angrily, pointed her finger dramatically toward the heavens, and made the pronounce-ment: "I resent that—my husband is a decent citizen—and a great man!" At this point there was muffled, uneasy laughter from the audience.

Mr. Murphy marched a platoon of

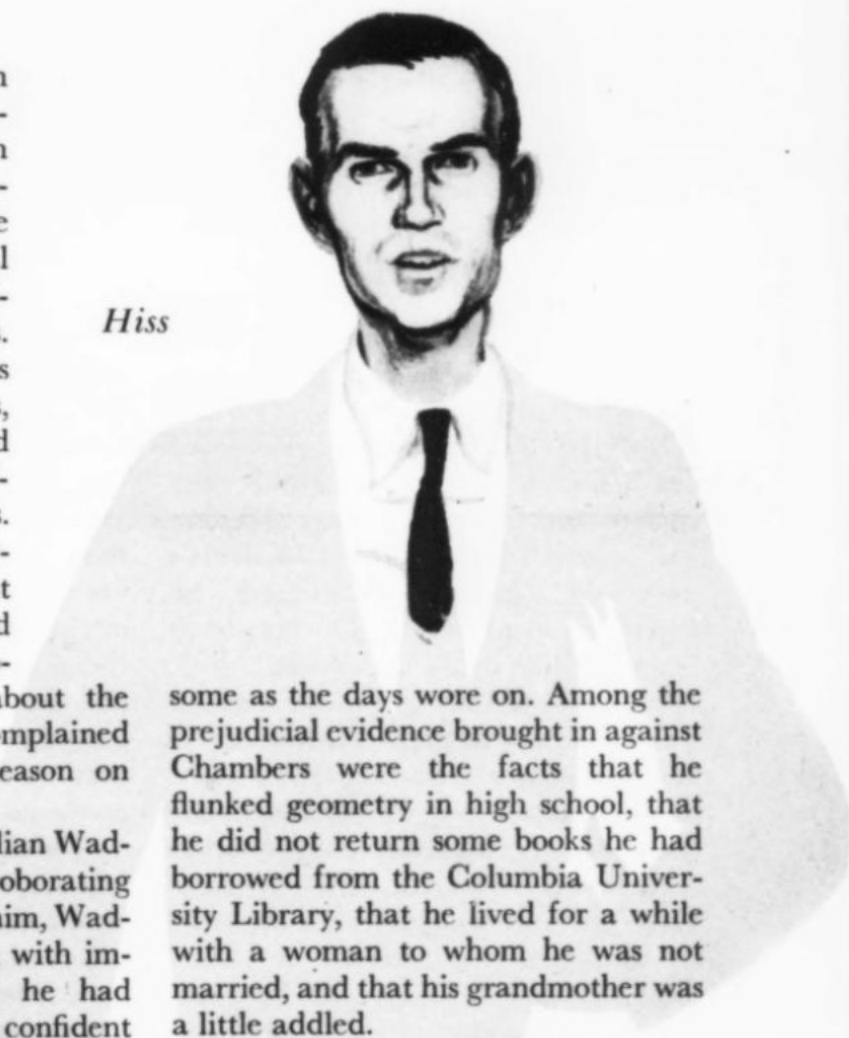
FBI agents into the courtroom to support parts of the narra-tive. These men—to whom Stryker referred contemptu-ously as "FBI's"—were notable for their standardized physical appearance and their uni-formly excessive politeness. Stryker lit into the "FBI's" as if they were public enemies, trying to imply that they had threatened violence and of-fered bribes to the witnesses. It was their exhaustive re-search, he insinuated, that had provided both Mr. and Mrs. Chambers with the sub-stance of their testimony about the Hiss household. Murphy complained disconsolately, "It's open season on the FBI."

The testimony of Henry Julian Wad-leigh was singular. Corroborating Chambers's testimony about him, Wad-leigh very blandly described, with im-peccable diction, the part he had played in the espionage work, confident that the Statute of Limitations pro-protected him. Here was a tasty tidbit for the ghouls, full substantiation of their claims about flirtations and even as-signations between the bright young men of the New Deal and the minions of international Communism. But Wadleigh, of course, yielded himself too easily; the pack wanted a victim who, like Hiss, would fight. Wadleigh slipped almost unnoticed into the vir-tuous garment of an anti-Communist and went his way in peace, deriving considerable self-esteem for having done his bit to aid justice, as well as royalties for a serialized account of his salvation in the *New York Post*.

No one could ever surpass Lloyd Paul Stryker in overacting. The robust, rosy-cheeked barrister was after every last drop of sympathy for the handsome defendant, who looks—or looked—much younger than his forty-four years. Hiss wore glasses the first day, but never after that; the strategists must have decided he looked more boyish without them.

With disgust dripping from his rich voice, Stryker tried to build up an emo-tional horror towards Chambers, the man he called a "moral leper." Stry-ker's insistence that Chambers had failed to follow the dictates of middle-class morality all his life got very tire-

Hiss



some as the days wore on. Among the prejudicial evidence brought in against Chambers were the facts that he flunked geometry in high school, that he did not return some books he had borrowed from the Columbia Univer-sity Library, that he lived for a while with a woman to whom he was not married, and that his grandmother was a little addled.

Of course, the main thing against Chambers was his admitted former allegiance to the dark power of Com-munism. Stryker leaped on that: "If I knew he had engaged in a criminal conspiracy over a period of years—to *tear down that flag*—I wouldn't be-lieve him no matter if the FBI erected a stack of Bibles as high as the building and he swore on it."

Chambers admitted that in his tes-timony on Hiss, before Congress and the Grand Jury, he had perjured him-self nine times. But even some of the facts he insisted upon remained du-bious. One such was the matter of a trip to Peterboro, New Hampshire. Chambers testified that Mr. and Mrs. Hiss drove him in their car to visit the late Harry Dexter White at Peter-boro early in August, 1937. He re-remembered that they stayed at an inn called Bleak House, which belonged to Professor Samuel Morrison of Har-vard, and that they had attended a summer stock production of "She Stoops to Conquer" the evening of August 10. All the details were clear in his mind.

The defense lit into this story. They presented Mrs. Lucy E. Davis, the operator of Bleak House, who said that no trio resembling the Hisses and Chambers had registered at Bleak House during the early part of August,

1937, and that she always insisted most particularly that every guest register. Mr. J. Kellogg-Smith, proprietor of a children's camp at Chestertown, Maryland, where Hiss's stepson, Timothy Hobson, used to spend the summer, testified that Hiss was at the camp every day of the first two weeks of August, 1937, taking care of his stepson, who had broken his leg. The fact that Harry Dexter White is now dead was made to seem suspiciously convenient for Chambers. Even the FBI was unable to support Chambers's story. If Chambers fabricated the Peterboro trip, might he not have fabricated the whole accusation?

In Anglo-Saxon law, the defendant is not required to prove his innocence. The prosecution must prove his guilt. But it certainly helps if the defendant is able to offer a plausible explanation

Stryker

of the situation. Hiss's staff had no plausible explanation of one very important point: the travels of the Woodstock typewriter. Raymond Sylvester Catlett, who worked for the Hisses as a yard boy in the 1930's, testified that Mrs. Hiss had given him the famous Woodstock some months before the papers could have been typed by anyone, and that the machine thereafter stayed in his house. No one suggested that Mr. Catlett had done the typing, and the prosecution tried instead to show that the defense witness's memory may have been faulty, and that he might have received the machine after the documents were typed. None of this, of course, is proof that Hiss did have the typewriter, certainly not proof that he did the typing and gave the papers to Chambers.

Hiss's defense decided to question Chambers's fitness to accuse, rather than to insist coldly that under our law a defendant's guilt must be proved. It would be an understatement to say that by the time Stryker began to make his summation to the jury, he had exhausted the usefulness of this technique. In identifying Alger Hiss with Home, Mother, and the Flag, and gasping at the depravity he claimed to see in Whittaker Chambers, Stryker temporarily deafened the ears that might have detected insincerity in Chambers's testimony. In his summation, Stryker hammered the matter of "reasonable doubt" to a meaningless pulp, and sidestepped the damaging circumstantial evidence against Hiss. All he said was, "Whether these documents were on that typewriter, I don't care," and, "Where, when, and how he [Chambers] got them [the papers]—I don't know." His reluctance to provide any remotely tenable hypothesis made one wonder if such speculation had been forbidden by Alger Hiss, for one reason or another. Eight of the jurors interpreted this reluctance as a sign of the defendant's guilt, but the other four must have felt that even an innocent man might have his reasons for simply denying the charge and saying no more. Among these reasons there might have been the conviction that the law was on his side.

Murphy's summation was a masterpiece. He pretended to offer a rational alternative to Stryker's spellbinding, but what he really did was to gather up all the emotional forces that Stry-

ker had set in motion and turn them against the defendant. This was a rare feat for Murphy, after his uninspired performance during the rest of the trial, but like his brother, "Fireman Johnny" Murphy, who used to be a relief pitcher for the Yankees, Thomas Murphy was capable of a good showing in the late innings. He summed up the evidence that supported Chambers's story: (1) Chambers had in his possession copies of State Department documents; (2) the dates of the documents all fall in the first three months of 1938; (3) all except one of the papers were copied on the Woodstock. How did Chambers get them, Murphy demanded, if Alger Hiss hadn't furnished, transmitted, and delivered them?

Judge Kaufman, a meticulously dressed man who displayed an increasingly grave look as the trial progressed, has been criticized for showing partiality to the defense. He did, it is true, sustain many of the defense's objections, but that might be explained by the fact that Stryker, who has been trying cases a few decades longer than Murphy, may know the law a little better, as well as by the fact that the defense is traditionally given the benefit of the doubt in criminal cases.

Judge Kaufman's principal mistake was his insistence on behaving as if he were presiding over a lawsuit in which only ascertainable facts, not opinions and passions, were to be considered. One of the things he said that his critics may or may not see fit to hold against him was: "Circumstantial evidence, to be sufficient in this case, must not be merely consistent with the guilt of the defendant; it must be inconsistent with any reasonable hypothesis of innocence." He also explained the perjury laws: To convict there must be two witnesses or one witness and independent corroboration.

Perhaps he thought there was only one trial at his bar, the trial of Alger Hiss for perjury, and that he was the presiding officer of that trial. He was the only one of the performers who did not overact. Even the jurors, as soon as they decided that they could reach no decision, felt that at last the time had come to have their say, and several of them did not hesitate to share with the press their opinions about how a judge should behave and about how a

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Kaufman and Murphy

trial ought, ideally, to be conducted.

There is an intermission now, for the emotions need a rest in the torrid summer of 1949. But Attorney General Tom Clark has announced that the trial will be resumed in the fall, when the docket of the District Court is less crowded.

Will it be the second trial of Alger Hiss for perjury, or the next act of this great public drama—The Case of Alger Hiss? For the two things are far from identical: Indeed the relationship between them becomes more and more remote. This invariably happens whenever a case in a court of law becomes the object of public passion. The guilt or innocence of Captain Dreyfus or of Sacco and Vanzetti came to have little significance in *L'Affaire Dreyfus* or the Sacco-Vanzetti case.

Alger Hiss will have to go to court, and of course attend all of the sessions dedicated to him. But at the same time the case that bears his name is more and more removed from him. In the people's minds the image of Alger Hiss is already as depersonalized as a rogues' gallery picture. Little attention has been paid to the two contradictory positions this young man has held: General Counsel of the Nye Committee—the farthest point that isolationism has ever reached—and Secretary General of the San Francisco Conference—the summit of militant internationalism.

The Hiss case, started by the House Committee on Un-American Activities as part of a general attack on New Dealers, has now, because of its morbid features, caught the public imagination. It has been, one must admit, a striking success for the committee. The case does not need to be inflated now

by new revelations from former Communist couriers. The excitement of the public is enough to keep it going. The case will carry itself along—with a live man attached.

Actually, neither Alger Hiss nor the New Deal is on trial, but justice. The ritual of justice cannot be exposed to tests like this one. The trial of law is designed to settle individual cases and is always centered on the individual who is to be proved innocent or guilty. It can never try a crowd or a mob. It cannot work when the aroused imagination or the passion of the crowd overflows in the court. Justice, the blindfolded goddess, cannot be exposed to the bellowing of the mob. Perhaps the members of the hung jury felt something like this in their tired bones while lingering around the courtroom, like students still keyed up after an examination, on the night of Friday, July 8.

Will it then start over again? Are we going to see again the pictures of Mr. and Mrs. Whittaker Chambers, Mr. and Mrs. Alger Hiss? Perhaps Mrs. Whittaker Chambers, in the fall or winter, will not wear the same big black hat. Mrs. Alger Hiss may or may not wear the same white gloves. All of us will once again talk for hours and hours, passionately and inconclusively, about Hiss and Chambers and the Woodstock typewriter. The same nightmarish orgy of gossip will start over again, so that once more large masses of decent, normal men and women will talk and feel with the frenzy of a mob.

Or perhaps there is something we can do about it. Each one of us could refuse to be drawn into the mob. The newspapers and the radio would

render a unique public service to the nation if they would give a minimum and inconspicuous coverage to the second Hiss trial. We don't need to hear again about Whittaker Chambers's teeth, or the wallpaper and decorations in the various Georgetown houses in which the Hisses lived at various times. We can look at something else, talk of someone other than the unfortunate, worn-out protagonists of this case, Mr. and Mrs. Whittaker Chambers, and Mr. and Mrs. Alger Hiss.

—R. K. B., M. A.

Nine instances of conflicting testimony were charged up to Alger Hiss yesterday by Thomas F. Murphy, Assistant United States Attorney . . . From William R. Conklin's story in the *New York Times*, Tuesday, June 28, 1949.

Alger Hiss, testifying in his own defense against a perjury indictment, stuck to his story yesterday through four hours of cross-examination in United States District Court. Assistant United States Attorney Thomas F. Murphy was unable to draw from Mr. Hiss any statement inconsistent with what he had told Chief Defense Counsel Lloyd Paul Stryker . . . From John Chabot Smith's story in the *New York Herald Tribune*, Tuesday, June 28, 1949.

"Whether they knew it or not, the interest that drew them there was purely psychological—the expectation of some essential disclosure as to the strength, the power, the horror, of human emotions. Naturally nothing of the kind could be disclosed. The examination . . . was beating futilely round the well-known fact, and the play of questions upon it was as instructive as the tapping with a hammer on an iron box, were the object to find out what's inside. However, an official inquiry could not be any other thing. Its object was not the fundamental why, but the superficial how, of this affair."

—Joseph Conrad, *Lord Jim*