

The Hiss-Chambers Libel Suit

William L. Marbury

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Torts Commons](#)

Recommended Citation

William L. Marbury, *The Hiss-Chambers Libel Suit*, 41 Md. L. Rev. 75 (1981)
Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol41/iss1/10>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

THE HISS-CHAMBERS LIBEL SUIT*

WILLIAM L. MARBURY**

On the 3rd day of August, 1948, The Baltimore Evening papers carried scare headlines announcing that at a hearing before the Un-American Activities Committee of the House of Representatives, Alger Hiss, then President of the Carnegie Endowment for International Peace, and his brother, Donald, then a partner in the Washington law firm of Covington and Burling, along with Harold Ware, Lee Pressman and a number of others had been identified by a man named Whittaker Chambers as members of an "apparatus" of the Communist Party which operated in Washington, D.C. during the years 1934 to 1938. The next morning I wrote to Donald Hiss as follows:

"Dear Donie:

If you and Alger are party members, then you can send me an application."

I sent a copy of this letter to Alger Hiss, saying:

"I know that you will have received offers from hundreds of friends who can do much more for you than I. However, if there is any service that I can render, just let me know."

I suppose that my acquaintance with Alger Hiss must have begun when he was a very small boy. His mother, Mrs. Charles Hiss, a widow who lived in our neighborhood in Baltimore, used to shepherd her flock to Memorial Episcopal Church every Sunday, where they occupied the pew right in front of the Marbury family. My sisters remember that the two youngest Hiss boys used to wriggle and occasionally scuffle with one another, to their older sisters' great annoyance.

One of my sisters graduated from Bryn Mawr College in 1921 and went to work in the library of the Johns Hopkins University. About a year later Alger Hiss entered the freshman class along with my first cousin, Jesse Slingluff, Jr., and both joined the Alpha Delta Phi Fraternity. From time to time I heard from my sister and from Jesse of Alger Hiss's shining career as an undergraduate. My brother-in-law, who

* This article was delivered as an address to the Fourth Circuit Judicial Conference held at Hot Springs, Virginia, on June 24, 1977, and was originally published in 76 MARYLAND HISTORICAL MAGAZINE 70 (1981). The Maryland Law Review wishes to thank the Maryland Historical Magazine for granting permission to reproduce this article.

** Of Counsel, Piper & Marbury, Baltimore, Maryland; A.B., University of Virginia, 1921; L.L.B., Harvard Law School, 1924.

was also a classmate and fraternity brother, has recently told me that Hiss was by all odds the most admired member of the class, not only for his intellectual accomplishments but even more for his good manners and personal charm. I was myself then a student at the Harvard Law School, so that I did not see very much of him until after my graduation in 1924, but I did run into him occasionally during holiday seasons.

I first came to know Alger Hiss really well during the summer of 1926, when both of us spent a week at an old-fashioned house party in upstate New York. He had then just graduated from Johns Hopkins, having won many honors — indeed, one of his classmates told me that the undergraduates all claimed that the college administration treated Alger as if “he had a mortgage on Gilman Hall,” where the offices of the university were located. Before the house party was over, I understood why he was so highly regarded by his classmates.

During Alger’s law school years we always met during holidays when he returned to Baltimore, and by the time he had graduated in 1929 we had become close friends. On one occasion we drove down together from New England to Baltimore. During that all-day drive I think we discussed almost every conceivable topic, disagreeing only on the merits and demerits of Victor Hugo as novelist.

Every year Professor Frankfurter selected two students from the graduating class to serve as law clerks, one to Justice Holmes and the other to Justice Brandeis. In 1929 the Holmes appointment fell to Alger Hiss. Sometime in October or November of that year I saw him in Baltimore at his mother’s home, and he confided that he was planning to marry. It turned out that the girl was Priscilla Fansler, who had been at Bryn Mawr College with my sister. She had been married to Thayer Hobson, a New York publisher, had borne a son and had recently been divorced.

A digression is in order at this point. Priscilla was only one of Alger Hiss’s feminine interests. There was a great deal of the knight-errant in his make-up, and the girls to whom he attached himself from time to time were almost always in some sort of difficulty. His friends were at times quite concerned for fear that he would involve himself with someone who was unstable in order to rescue her from her troubles. Priscilla Hobson was clearly in trouble, although apparently not unstable. I have heard that when she told him that she was planning to marry Thayer Hobson, he went to Philadelphia, rode up on the old B&O train with her to Jersey City and rode backward and forward on the ferry for two hours during a driving rain, trying to persuade her not to go through with the ceremony. All to no avail; he came down with

pneumonia, and she went ahead with the wedding. According to reports which I have since heard, her marriage to Hobson was brief and stormy, ending with his abandoning her and her child in order to get a Mexican divorce. She was, therefore, clearly a damsel in distress, and that Alger Hiss should come to her rescue was strictly in character.

On December 11, 1929, Alger Hiss and Priscilla Hobson were married in the Washington apartment that he was sharing with Charles Willard, who was then working on the staff of the Wickersham Committee. Jesse Slingluff and I were among the few invited guests. Somewhat to my astonishment, Priscilla, who during her college years had professed to be a Quaker, consented to be married by a Presbyterian minister.

The next summer, when I was recovering from a surgical operation, Alger and Priscilla invited me to spend a week at their cottage at Montserrat, north of Boston. Alger was obliged to be away during most of the day, attending to Justice Holmes, who was spending the summer at Beverly, nearby. The old man's eyesight was not very strong, and Alger's principal job seemed to be to read aloud to him. Because of Alger's absence I saw a good deal of Priscilla, and I carried away an impression of a rather self-assertive woman, who had no intention of letting Alger "steal the show." It almost seemed as if she resented the attention which his friends paid to him. Like Anthony Trollope's Mrs. Proudie, she would interrupt him when he was asked for his opinion and answer for him.

As soon as his term as law clerk ended, Alger went to work with the firm of Choate, Hall & Stewart in Boston. I had hoped to persuade him to come to Baltimore, but I got the impression that he felt it wiser that his mother and Priscilla should not be too near one another. Mrs. Charles Hiss was a rather masterful character in her own right, and Priscilla was not exactly the type of a submissive daughter-in-law. I had two classmates who were practicing law with that firm, and both gave enthusiastic accounts of Alger. Neither of them, however, seemed to find Priscilla easy to get along with. She later told me that she was very unhappy in Boston, that her only real friend was Marian Frankfurter, and that both of them felt completely overshadowed by their husbands in the society of Cambridge.

After they had lived in Cambridge for about a year, Priscilla determined that she could stand it no longer and abruptly moved down to New York. She and Roberta Fansler had together gotten a grant from the Carnegie Fund to write a report on the history of the teaching of art, and she insisted that she could not do the necessary research in Cambridge. Alger was heavily involved in preparing for the trial of an

important case for the Gillette Company and felt obliged to continue where he was for the time being. For several months he commuted to New York on weekends but finally gave this up and resigned his position at Choate, Hall & Stewart in order to move to New York.

After Alger moved to New York, he became associated with the firm of Cotton & Franklin. It was during this period that I sent him briefs which I had written in two cases, and we corresponded about them. One of the cases had to do with labor questions. At that time Alger was much interested in labor law and told me that he had joined a group of young lawyers who were getting out some sort of periodical on that subject. At about this time Alger sent me a letter introducing one of the group, Lee Pressman, who planned to file a stockholders' suit in Maryland against a large holding corporation. Pressman came to see me and explained what he had in mind. He wanted me to act as local counsel, but before I would undertake it, I insisted on getting information on a number of points. I never heard anything further from him, and it is my recollection that the suit was never filed in Maryland.

In 1933 Jerome Frank, later a Judge of the Court of Appeals for the Second Circuit, was appointed counsel for the Agricultural Adjustment Administration, which was then being organized pursuant to one of the early New Deal laws. He asked Alger Hiss and Lee Pressman to be his assistants, and they both accepted. Their first job was to assist in the recruiting of a staff of lawyers, and Alger Hiss suggested John Lewin and John Yost of the Baltimore bar. Both of these men had been in his fraternity at Johns Hopkins, and both were very able lawyers. Both agreed to leave their practice and go to work for the AAA.

During my visits to Washington, I saw Alger from time to time. I gathered that there was bitter feuding in the AAA, with Chester Davis acting as a bridge between two factions. Secretary Wallace seemed to lean first toward one side and then toward the other. I was told that Alger was the only lawyer whom everyone trusted and that as a result he was overworking himself and had again contracted a case of pneumonia. I remember that I shocked him deeply by saying that in my opinion his health was more important than any work that he was doing. He thought this very cynical.

In 1934 Senator Nye was conducting an investigation of the munitions industry — what nowadays would be called the military-industrial complex. The investigation was designed to prove that wars are the product of weapons — an idea which seems to have as many lives as the proverbial cat. At the request of Senator Nye, Alger Hiss was temporarily lent to the Committee and served as its counsel. In that

capacity he attracted a good deal of notoriety by his cross-examination of some national figures, notably Mr. Bernard Baruch.

Toward the end of July, 1935, I saw Alger and Priscilla at the home of my sister, Mrs. Wethered Barroll, on the Eastern Shore of Maryland. I was spending the weekend there, and Alger and Priscilla came up from Chestertown in order to see me. At that time the constitutionality of the Agricultural Adjustment Act was before the Supreme Court. The Solicitor General, Mr. Stanley Reed, was overwhelmed by the flood of litigation which the New Deal legislation had provoked, and when Alger Hiss offered his services to prepare the brief in support of the Act, he accepted eagerly. However, in order to make the appointment, it was apparently necessary for Alger to get endorsements from his Senators. He was at that time still a registered voter in Maryland, and he asked me if I could get the endorsements of Millard Tydings and George Radcliffe. This I was able to do. In the course of my letter to Senator Radcliffe, I said: "I should like to add that this is not a perfunctory letter. I have known Mr. Hiss intimately for many years, and there is no one who stands higher in my esteem and affection."

In the autumn of 1935 I became engaged to be married. A few weeks before the wedding was scheduled to take place, I received a call from Miss Perkins, who was then the Secretary of Labor. She told me that her General Counsel, Charles Wyzanski, was leaving and that Professor Frankfurter had suggested my name. I reminded Miss Perkins of the Biblical ruling that a newly-married man was always excused from military service for a year so that he might "comfort his wife" and told her that I hardly felt it would be an auspicious time to try to succeed Charlie Wyzanski, who had worked at his job for at least 18 hours a day. Subsequently, Charlie told me that Lee Pressman had been a leading candidate for the job but that Alger Hiss had suggested my name in preference to his. It should be noted that it has since been established that Lee Pressman was at that time a member of the Communist Party.

I was married to Mrs. Natalie Jewett Wheeler on December 3, 1935. As my father had recently died, there was no wedding reception. However, Alger and a few of my other close friends were invited to the church ceremony, and I remember that both he and Priscilla were there.

During the years immediately following our wedding, our friendship with the Hisses continued to be close. My wife had known Alger for many years before our marriage. Her brother had been his classmate and fraternity brother, and she had always been very fond of him. I am sure that we dined with the Hisses in Washington on at least one

occasion, and I remember that they came to dinner with us in Baltimore. When our second child, a daughter, was baptized, I asked Alger to be her godfather, and he came to Baltimore for that purpose and spent the night in our home.

By that time Alger had transferred to the State Department. While he was still in the Solicitor General's office, he was assigned to work on a case involving the constitutionality of the Trade Agreements Act under which reciprocal trade treaties were to be negotiated with foreign nations. Francis B. Sayre, who as Assistant Secretary of State was then responsible for the implementation of the Act, had worked with Alger on the brief in that case, and after the Supreme Court had upheld the Act asked Alger to come to the State Department as his assistant.

I had a number of talks and correspondence with Alger about neutrality matters during 1938 and 1939. My position was quite isolationist and his was the opposite. I remember his saying that he did not think that war would be the end of our civilization and that we must stand for collective security even at the risk of another war. At the time of the repeal of the Neutrality Act I had some correspondence with him. This was shortly after the war in Europe had begun, and a letter from him shows that he was not following the Communist Party line at that time.

During the summer of 1940 I began to work part time for Judge Robert P. Patterson, who had just been appointed Assistant Secretary of War. This was the period of the Hitler-Stalin Pact, when followers of the Party line were accusing Great Britain and France of an imperialist attack on Germany. Alger Hiss was a strong advocate of aid to Great Britain and France.

In March, 1942, I began to work at the War Department full time. I managed to stop in to see Alger from time to time, although we were both so busy that when we were not at work we could hardly find time for enough sleep, much less social contacts. However, during the summers of 1943 and 1944 I lived at the home of Judge Patterson in Georgetown. Alger was living right around the corner, and I used to drop in quite frequently and chat with him and with Priscilla. We often talked about Russia. I remember that on one occasion I expressed strong views as to the ruthless and tyrannical character of the Soviet government, which provoked some mild protest from Priscilla. Alger expressed his entire agreement with what I had said.

During this time I dropped in to see Alger at the State Department occasionally, and we went to lunch together. He was, for the greater part of the time, with the Far Eastern Division, where he came into

contact with General Lucius D. Clay, with whom I was working in the War Department. I remember hearing him express admiration for General Clay's ability in discussion. He said that he talked like a trained lawyer. Apparently they were having some controversy on the subject of Chinese currency. I also remember discussing with Alger his move in 1944 to the Office of Special Political Affairs in the State Department. At that time the war was far from over, and I expressed some surprise that he should be interested in working on post-war problems at such a time. He said that collective security had always been his principal interest.

At the Office of Special Political Affairs, Alger was working with Leo Pasvolosky on the preparatory work for the Dumbarton Oaks Conference, where the foundations of the United Nations Organization were laid. Alger took a prominent part as Secretary of the Conference. Thereafter, he accompanied Ed Stettinius, who was Secretary of State, to the Yalta Conference and was given the responsibility of representing the United States delegation in the discussions relating to the organization of the United Nations.

Shortly after the death of President Roosevelt, Alger told me that he expected to resign from the State Department. I expressed surprise at this, and he said that he looked forward to a change in political climate around the State Department which would be so drastic that he would probably not want to stay. At that time I was on a committee appointed by President Conant of Harvard to help find new members for the faculty of the Harvard Law School, and I asked Alger whether he would be interested. He said that he had no interest in teaching but would like to go into the private practice of international law.

In June of 1945 the conference was held at San Francisco, where the organization of the United Nations was finally agreed upon. Alger acted as Secretary of the conference, and his performance in that capacity was outstanding. Dr. Isaiah Bowman, the President of Johns Hopkins University, was one of the delegates at the conference. He had been an adviser to the State Department throughout the war period and had come to know and admire Alger. I served with Dr. Bowman for many years on the Board of Trustees of the Peabody Institute of Baltimore, and he told me that Alger had made a tremendous impression at San Francisco, that he was respected and liked by all the delegates, "including the Russians," and was prominently mentioned for the post of Secretary General of the United Nations Organization.

After he got back from San Francisco, Alger showed me an entire book of photographs of Hiss in action taken by Time-Life photographers, one of which appeared on the cover of *Life Magazine*. The re-

sult was that his name was on everyone's tongue in Washington. I was especially impressed by the fact that he did not attempt the social circuit but kept steadily at work. When we met he would direct the conversation to my activities rather than his own.

In September, 1945, I resigned from the War Department and returned to the practice of law in Baltimore. About a year later Alger Hiss told me that he planned to resign from the State Department. He gave as his reason the changed atmosphere in the Department under Mr. Justice Byrnes, who had been appointed by President Truman to succeed Ed Stettinius as Secretary of State. What he did not tell me was that Justice Byrnes had sent for him and informed him that some members of Congress were saying that he was a Communist. Justice Byrnes told him that the Congressmen gave the FBI as their source, and at his suggestion Alger went voluntarily to the FBI and was interviewed by J. Edgar Hoover's deputy.

On February 22, 1947, the Johns Hopkins University conferred an honorary degree on Alger Hiss in recognition of his outstanding contribution to the organization of the United Nations. He was also invited to speak at the annual meeting of the John Hopkins Alumni Association. While he was in Baltimore I had lunch with him, and he told me that he had been offered and had accepted the presidency of the Carnegie Endowment for International Peace. John Foster Dulles was then Chairman of the Board of Trustees of the Endowment, which included among its members John W. Davis and Arthur Ballantine. Alger spoke of his plans for the Endowment and his hope to concentrate its resources in support of the work of the United Nations.

At the time of that conversation I had just been asked by Dean Acheson, who had returned to the State Department to serve as Under Secretary under General Marshall, whether I would accept appointment as a deputy to Senator Warren Austin, who was the United States representative at the United Nations. The principal function of the deputy was to represent the United States on a committee of the United Nations which was discussing the control of atomic energy. Mr. Bernard Baruch, who had been serving as deputy, had gotten tired of butting his head against a stone wall and had announced his intention to resign. I was worried about the fact that it would take me away from the practice of law, which I had only recently resumed. I discussed this with Alger, and he expressed doubt whether it would ever be possible to reach any agreement with the Russians. He said that Baruch and John Hancock, who was working with him, had been too stiff-necked with them and that they were thoroughly suspicious of our motives. At the same time he would like to see me try it and suggested that I ask for an

assistant so that I would not have to be full time at the job. I told him that I did not think that this would work, and I subsequently declined the appointment, which was given to Major General Frederick Osborne of New York, who got nowhere with this assignment.

Shortly thereafter Judge Patterson told me that he was resigning as Secretary of War to return to the practice of law in New York. During the course of the conversation I mentioned Alger Hiss's name, and the Judge thereupon said, "There has been a terrific uproar in the State Department about that fellow. Jimmy Byrnes says that some Congressmen have been charging that he is a Communist. Byrnes looked into it and found that it is all based on a story told by one man, and it all comes down to a question of veracity as between this man and Hiss." I asked him if he knew who the informant was, and he said that Jimmy Byrnes had not mentioned his name. I then said that if it were a question of veracity, I would have implicit faith in Alger Hiss. Judge Patterson replied that the Assistant Secretary of War, Howard Petersen, later the President and Chief Executive Officer of the Fidelity Philadelphia Trust Company, had said exactly the same thing. About a year later Judge Patterson came to Baltimore to address the Baltimore City Bar Association. At that time he told me that Alger Hiss had been working with him on a committee organized by Clark Eichelberger in support of the European Recovery Program (The Marshall Plan), to which the Soviet Union was bitterly opposed. Judge Patterson said: "Hiss is a good man."

Which brings us back to August 3, 1948, when Whittaker Chambers appeared before the House Un-American Activities Committee and charged that Alger Hiss and his brother, Donald, had been members of a Communist apparatus during the years of 1935 to 1937. The day after I wrote the two letters which I quoted in full at the beginning of this paper, I got a telephone call from Alger Hiss. He said that he had asked and been granted the privilege of appearing before the Committee to reply to the charges made by Whittaker Chambers and would like to have me accompany him as counsel.

I said I would be glad to go with him, and we arranged to meet at the offices of Covington & Burling on the following morning. There I found Joe Johnston from Birmingham, Alabama, who had been a classmate of Alger's at the Harvard Law School and who had been one of my principal assistants in the War Department. Alger told us that to the best of his knowledge, he had never seen Whittaker Chambers. Together we prepared a brief statement for him to make and then rode up to the Capitol. Alger read his statement and then submitted to questions from the Committee.

Chambers in his testimony before the Committee had claimed to have known Alger and Priscilla Hiss as friends. Alger flatly denied that he had ever heard of Whittaker Chambers except that sometime in 1947 he had been asked by two FBI interviewers whether he knew him. He said to the Committee, "So far as I know, I have never laid eyes on him." When shown a photograph, he said, "I would not want to take oath that I have never seen that man. I would like to see him and then I think I would be better able to tell whether I have ever seen him."

On the whole, Alger handled himself very well before the Committee, and at the end of the hearing Mr. Rankin of Mississippi, who had the reputation of being its most bigoted member, came down and shook his hand. Richard Nixon, then a delegate from California and a member of the Committee, later claimed that at the end of the hearing the rest of the Committee was prepared to drop the Hiss investigation altogether and that he persuaded them not to be so precipitate.

The day after the hearing I left for upper New York State, where I expected to spend the rest of August on vacation. Forty-eight hours after my arrival I received a telephone call from William H. Draper, Jr., then the Under Secretary of War, asking me to come to Washington. On the following day I met Draper and several representatives of the State Department, who explained that they were organizing the United States delegation to the Second Session of the Signatories of the General Agreement on Tariffs and Trade, commonly called "the GATT," which was to be held at Geneva from August 15th to the middle of September. The State Department had agreed that the War Department could have a representative on the delegation to press for most favored nation treatment for the occupied areas of Germany and Japan, and that was the job which they were asking me to undertake. I left the country on August 11th with a clear conscience as far as the Hiss case was concerned because I was thoroughly convinced that we had heard the last of the House Un-American Activities Committee. I was wrong; I should not have gone, especially as I did not have time to let Alger know about it.

While I was in Geneva I was in contact with people from the State Department, most of whom had known and admired Alger Hiss. We were all stunned when a late arrival from Washington reported that the Thomas Committee had reopened public hearings, that Hiss had been confronted by Chambers, and that the general impression was that Hiss had equivocated as to their past relationship. As time passed, more and more ominous reports began to come in about the progress of the investigation, and even the Swiss newspapers carried articles on the subject. I remember sitting up one night in my hotel room drafting and

redrafting a letter to Alger expressing my dismay at having deserted him in his time of trouble, but explaining that I did not see how I could return until I had finished the job which I had undertaken for the War Department.

A few weeks later I went to Berlin to consult with General Clay. During the course of dinner at his residence, the Hiss case was mentioned, and I was astonished to hear him say that he had not been surprised by Chambers' charges since in his contacts with Hiss over Chinese matters, Hiss had consistently taken a position which would have been helpful to the Chinese Communists.

I returned from Geneva on September 12th and went immediately to Cambridge for a meeting of the Harvard Corporation. Together with Mr. Grenville Clark, who was a senior member of the Corporation, I spent the night at the residence of President Conant. Most of the talk was about the Hiss case. I learned that Alger in his last appearance before the Committee had challenged Chambers to make his accusation under circumstances where he could not claim the privilege of a witness under subpoena from a Congressional Committee. Chambers had responded by stating in a radio interview that to his knowledge Hiss was once a member of the Communist Party and might still be one. Both Mr. Conant and Mr. Clark felt that this left Hiss no alternative except to bring a libel suit against Chambers. They said that his failure to do so had already been taken as an admission of the truth of Chambers' charges and they feared that a flood of similar charges against political and academic figures would soon follow, which would have a very serious impact on our foreign policy and on academic freedom generally. Mr. Clark was especially emphatic in urging me to get in touch with Alger immediately and urge upon him the importance of bringing suit promptly.

While I was in Cambridge I had a talk with Judge Wyzanski, who told me that Alger had been advised not to sue Chambers. When I got back to my office I found a letter from Alger saying that in my absence he had employed Edward McLean of the firm of Debevoise, Plimpton & McLean of New York City to represent him and that he was planning to bring a libel suit against Chambers if he could get "enough unprivileged material" to justify such a suit. He asked me to let him know as soon as I got back to Baltimore.

I called him on the telephone and in the course of the conversation asked about the libel suit. He said that he wanted to bring it immediately but that Mr. Davis and Mr. Ballantine had advised him to go slow and that Ed McLean agreed. I said that in spite of the eminence of those gentlemen I felt differently, and he asked me to come to New

York and discuss the matter with them. He said that Mr. Dulles was also opposed to his bringing the suit, but that he was out of the country and could not be reached. I told him that I wanted time to read over the record of the hearings before the Thomas Committee and after doing so would be glad to come to New York.

In the meantime Alger sent me more than sixty letters and copies of statements for publication which friends of his had sent to him during my absence. These letters were from an extraordinary variety of people, all expressing complete confidence in his integrity, among them Judge Robert P. Patterson, who had been Secretary of War; Will Clayton, who had been Under-Secretary of State; and Devereux Josephs, who was President of the New York Life Insurance Company and who had been president of one of the Carnegie Funds. I noted that Eleanor Roosevelt, who had worked with Alger as a delegate to the first conference of the United Nations, had given a very thoughtful and perceptive interview on his behalf to the Christian Science Monitor. I was especially interested in letters from Francis B. Sayre, Leo Pasvolksy and Stanley Hornbeck, who had been Alger's immediate superiors in the State Department. Alger had been working for Hornbeck during the time when he had been meeting with General Clay on problems relating to China, and I was, therefore, especially interested in what Hornbeck had to say. I quote the entire letter, which was dated September 2, 1948:

Dear Alger:

In pursuance of what I volunteered to you when we talked last week, I want you to know that, having known you well for ten years and having had a very close association with you in the Department of State during the years from 1939 to 1944 — when you were my assistant and one of my 'sparing partners' — I should be glad to testify in any form that I have never known or thought of your having been engaged in any doubtful or questionable activities, or of your having given indication of radical leanings or sympathies; that I at no time have suspected you of being a communist or a 'fellow traveler'; that, short of conclusive proof, I would not now believe that you ever were either of these or that you ever have been knowingly a member of any 'corp' chosen, favored or used by Communists in service of communist, subversive or disloyal purposes; that I have never in any connection found you to have been other than truthful; and that I consider you a gifted, high-principled, devoted and loyal citizen.

With cordial regards and all best wishes, I am,

Yours ever,

(signed) Stanley K. Hornbeck

As Hornbeck was known throughout the Department for his anti-Communist views, I found this very reassuring.

However, I found that my associate, Franklin Allen, who had been following the Thomas Committee proceedings, was very much disturbed by the developments that had taken place in my absence. He presented me with a summary of the proceedings before the Committee and suggested that I take the time to read the transcript of the hearings, which I did. There was no doubt that in his appearances before the Committee in my absence Alger had handled himself very badly. He had adopted a rather arrogant attitude and had repeatedly fenced with the members of the Committee. He had written a letter to the Chairman which reeked with hurt pride and indignation, and had grudgingly admitted association with Chambers under the name of George Crosley, but only after examining his teeth and asking him to read aloud some passages from a document.

Richard Nixon had shown himself to be a skillful prosecutor. At a secret session he had examined Chambers and had developed a number of details which indicated that there had indeed been a close relationship between the Chambers and Hiss families. When Alger was called back to the stand, Nixon examined him in turn on all these points and demonstrated that Chambers had been generally pretty accurate in a number of his assertions with regard to the Hiss household and the habits of the Hiss family. For example, Chambers had said that he and Alger were both bird watchers and that Alger was very proud of the fact that he had once seen a prothonotary warbler along the old C&O Canal in Georgetown. Without knowing of Chambers' testimony, Alger, in response to a question from a member of the Committee, testified that he was a bird watcher and that he had seen a prothonotary warbler in that vicinity. Chambers also mentioned an Oriental rug which he had purchased with funds supplied by his superiors in the Communist underground, at whose instruction he claimed to have given the rug to Alger in recognition of his services.

Chambers said that the Hisses had never known him under any name except that of "Karl," which he said was his party name. When finally confronted with Chambers, Alger had admitted knowing him under the name of George Crosley as a free-lance journalist who was down on his luck. He acknowledged that he had sublet his apartment in Washington to Chambers in 1935 and said that Chambers had never paid the rent but had at one time produced an Oriental rug, which Alger assumed to be in part payment of Chambers' indebtedness. Alger said that at the time he rented his apartment to Crosley he had also "thrown in" an old Ford automobile for which the Hiss family no

longer had any use. Chambers had testified that in 1936 Alger had delivered an old Ford to a dealer who was a party member and who had agreed to turn it over to another member of the party. The certificate of title was produced and showed that Alger had signed a transfer in 1936, not in 1935.

While there thus seemed some very disquieting evidence in the record, it was, nevertheless, apparent that the issue was still primarily one of veracity between Chambers and Hiss. Bear in mind the fact that Chambers did not accuse Hiss of espionage. On the contrary, when asked that specific question at his first appearance before the Thomas Committee, he replied that the objective of the apparatus to which Hiss belonged was not espionage but rather infiltration of the government, although espionage was certainly one of its eventual objectives. In 1935 membership in the Communist Party was not illegal, and it was well known that a number of people, particularly in academic circles, were party members. For this reason alone Chambers' lurid story of conspiratorial secrecy seemed incredible on its face. While I was reluctant to advise an action which would be opposed by Alger's Board of Trustees, it seemed to me inevitable that if he failed to sue Chambers, his reputation would be so irretrievably destroyed that the Endowment would have to dispense with his services anyhow.

Accordingly, I went to New York and spent an entire day in interviews, the first with Alger and Priscilla Hiss at their apartment, where I spent the night, then with Mr. Davis and with Mr. Ballantine, and finally with Judge Patterson. I warned both Alger and Priscilla that if there were any skeletons in the closet of either one of them, they would certainly be discovered if suit were filed, and they both assured me there was no cause for worry on that count. However, I found my interview with Priscilla somewhat mystifying. I had asked to see her alone after Alger had left for the office, and we talked for nearly an hour. I got the impression that she felt that in some way she was responsible for the troubles which had come to Alger. However, she stoutly supported Alger's story of his association with "George Crosley" and flatly denied that either she or Alger had ever been connected with a Communist Party apparatus.

I am afraid that in my meeting with Mr. Davis and Mr. Ballantine I spent most of my time trying to persuade them to withdraw their objections to the filing of the suit. I did secure from them what I took to be a commitment that if the suit were filed, no action would be taken to remove Alger as President of the Endowment until the case had been tried. In my interview with Judge Patterson I tried to state the issue as

neutrally as possible and was much comforted to find that he was in agreement with my position.

Alger Hiss then had to make the decision as to whether to be guided by my advice or by that of Ed McLean. One of McLean's worries arose out of the fact that the New York courts appeared to draw a distinction between an accusation that a man had once been a member of the Communist Party and a charge that he still was a member. Chambers in his broadcast had been careful not to assert that Alger was still a Communist. It seemed to me, however, that coming immediately after the congressional hearings, Chambers' broadcast amounted to a charge of perjury and was therefore clearly libelous.

McLean also was troubled by the fear that a libel suit would not come on for hearing until too late to do any good. However, I pointed out that since Chambers was then living with his family on a farm in Carroll County, Maryland, we could probably make venue stick in Maryland and also establish diversity of citizenship, which would confer jurisdiction on the federal court here in Baltimore. At that time our federal district court would try any case that was at issue within 60 days if the parties did not seek delay.

A meeting was scheduled to be held in my office on Monday, September 22nd, to reach a final decision as to whether to bring suit. Alger arrived accompanied by a lawyer named Harold Rosenwald, who had known him at the Harvard Law School and who had volunteered his services during the congressional hearings. No sooner had the meeting begun than Alger announced that he had made up his mind and that he wanted suit brought immediately. I again warned about skeletons in the closet and mentioned the case of Oscar Wilde, but Alger brushed this aside, saying that he had nothing to hide. After discussion it was agreed that suit should be brought in Baltimore and that my partner, Charles Evans and I should appear as counsel and have primary responsibility for the trial of the case. Charlie had been Deputy State's Attorney for Baltimore City for a number of years and had a wide trial experience, primarily in criminal cases. Ed McLean agreed to continue as counsel and offered to prepare a draft of the complaint.

A general discussion followed as to what should be included in the complaint, and all agreed that it should be kept as brief and simple as possible. We believed that Chambers could not afford to raise any technical defenses and would be bound to defend on the ground that the statements which he had made before the Thomas Committee and in the broadcast were true. The question of the amount of damages gave us much concern. Alger was not looking to profit by his lawsuit but wanted public vindication. I thought that a jury might well hesitate

to inflict heavy damages on Chambers and if we claimed a large sum and got a relatively small verdict, we would fail in our primary purpose, so we agreed to claim only \$50,000, which would be substantial enough to hurt but would not bankrupt Chambers. Such were the times that we believed that \$50,000 would be enough to cover the costs of the trial.

On September 27, 1948, suit was filed in the United States District Court for the District of Maryland. Immediately after the suit was filed, Chambers handed a statement to the Associated Press in which he said, "I welcome Mr. Hiss's daring suit. I do not minimize the audacity or the ferocity of the forces which work through him." This language seemed to us to be clearly libelous, and we promptly filed a supplementary complaint seeking an additional \$25,000 damages.

There followed a period of frenzied activity. Grenville Clark wrote long letters making recommendations as to strategy and tactics. Thomas Eliot wrote from Boston to say that he had once been panhandled by a man who looked like Chambers and used a name something like Crosley. A publisher named Roth (who later became famous when the Supreme Court undertook to define obscenity), volunteered that Chambers had offered for publication a number of pornographic poems under the pseudonym George Crosley. At least three different people stated that they knew that Chambers had been under treatment for mental disorders. One of them named as his psychiatrist the famous Dr. Kubie. All of these reports had to be run down. All proved to be unfounded.

At the same time we were conducting an investigation of Chambers to develop any facts which might bear upon his credibility. Because of the impact of the Thomas Committee hearings on the public mind, the burden was really on Alger Hiss to prove that the charges made by Chambers were false. True, the Maryland law of libel as it then stood did not impose that burden on plaintiffs, but nevertheless it seemed quite clear to all of us that Alger Hiss would never get a verdict in his favor unless he was able to convince the jury that he was not and never had been a member of the Communist underground. So that we were up against the lawyers' *bête noir* — proving a negative.

We hoped to accomplish this in two ways: First, by proving that Alger's character and conduct throughout his life had been totally inconsistent with Chambers' story and, second, by establishing that Chambers was unworthy of belief. In that connection we proposed to show first that throughout his career Alger had earned and won the trust of men and women whose integrity and judgment commanded respect and that he had frequently and effectively opposed the Commu-

nist Party line during his career as a public servant. On the second point, we hoped to be able to prove that a number of the statements made by Chambers to the Thomas Committee were untrue and that his character and conduct throughout his life made his testimony unreliable. In the end, we hoped that the jury would see the issue as one of veracity between a valuable public servant of spotless reputation and a renegade Communist who, on his record, could not be believed under oath.

Thus, the case called for a thorough examination of Chambers' entire life history, including a study of everything that he had ever written, as well as a check on the details of the story which he had told to the Thomas Committee. On the Hiss end, it involved the interviewing of a large number of people. I myself interviewed 25 different individuals, including Dean Acheson, Chester Davis, Stanley Hornbeck, Leo Pasvolsky, Charles Wyzanski, Ed Stettinius and others with whom Alger had worked over the years. I even wrote to Jim Bruce, then Ambassador to Argentina, to ask his help in getting information from a colleague who was then the Ambassador to Paraguay. At the same time I was meeting constantly with Alger, Ed McLean, Harold Rosenwald (on whose judgment Alger seemed to rely greatly), Hugh Cox, who was representing Donald Hiss, and Spencer Gordon of the office of Covington & Burling, who was an expert on the law of libel. I was also in frequent communication with John F. Davis, a young lawyer who was later Clerk of the Supreme Court of the United States and who, in my absence, had represented Alger before the Thomas Committee. At my request, Davis conducted a number of inquiries in the District of Columbia in an effort to develop facts which would corroborate some of the statements made to me by Alger and Priscilla. None of these inquiries produced anything of particular value.

In the meantime, I was preparing to examine Whittaker Chambers on oral deposition, and to that end conferences were held to discuss strategy, and I was inundated with advice as to how the examination should be conducted. In the end, I decided to go on the theory that everything Chambers had ever said or done might be of interest, beginning with his boyhood and moving on from there.

One subject, however, I definitely did not intend to get into, and that was Chambers' homosexual activities, which it now appears that he confessed to the government before he took the witness stand at the criminal trials in New York. Early in October, Charlie Wyzanski had written to report that, according to John Cowles, the gossip among newspapermen was that Chambers was a homosexual. Harold Rosenwald called my attention to the fact that Chambers had translated a

novel called *Class Reunion*, in which a character with a history much like that of Chambers succeeds in destroying the shining career of a former classmate of the same sex because of unrequited love, of which the injured party is quite unaware.

In the course of one of our discussions, I brought up this subject with Alger. At that time he told me, in strict confidence, what has now been proclaimed to the whole world, that his stepson, Timothy Hobson, had been discharged from the Navy because of a homosexual episode. He said that he had reason to think that the Thomas Committee knew of this and would not hesitate to bring it out if the subject of Chambers' abnormality were ever brought up. He added that there had been rumors of a homosexual relationship between Timmy and Chambers, which were outrageous, but because of Timmy's vulnerable record, neither he nor Priscilla would allow Timmy to testify, as he was eager to do.

On November 4, 1948, I began the examination of Whittaker Chambers at my office in Baltimore. Chambers was represented by Richard F. Cleveland and William D. Macmillan of the firm of Semmes, Bowen and Semmes. For two days we reviewed his life's history, and an extraordinary story it was. Much of it you will find outlined in a book which Chambers later published under the title of *Witness*. Among the interesting facts brought out in his testimony were the following: that he had at different times used a variety of aliases; that he had been forced to withdraw from Columbia University for publishing in the college newspaper an article which, by the standards of that age of innocence, was considered to be both pornographic and blasphemous; that he had written and published a lesbian poem; that he had taken books from the Columbia Library and not returned them until it was discovered that he had accumulated nearly a roomful; that he had lived in a house in New Orleans that was also occupied by a prostitute known as "One-eyed Annie"; that he had made false affidavits in order to obtain a job with the Railroad Retirement Board; and that he had written a letter to Mark Van Doren in which he boasted that he had gained readmission to Columbia by lying to the Dean about his intentions.

Speaking generally, Chambers confirmed everything of a derogatory nature which our investigation had turned up, with the exception of a neighborhood report that he and his brother had entered into a suicide pact. The brother actually did commit suicide, but Chambers testified that he had done everything in his power to persuade him not to do so. He said that when this occurred, he had been so grief stricken that he was physically unable to move for several weeks. When I indi-

cated some surprise at the violence of his reaction, he looked at me sternly and said, "Have you never felt grief?" He specifically reiterated the testimony which he had given before the Thomas committee that he had no evidence that Hiss had committed any act of espionage.

At the end of the second day of testimony, it was apparent that in the absence of some written evidence which would corroborate Chambers' story, no jury would ever believe it. Chambers himself stated in *Witness*, at page 734, that he "had realized from the tone and the maneuvers at the pretrial examination how successfully the Hiss forces had turned the tables with the libel suit."

Accordingly, I made demand on him to produce anything whatsoever which he had in his possession in the way of written evidence which would substantiate his story, and particularly any communications from Alger or Priscilla Hiss. Chambers says, at page 735 of *Witness*, "This time Cleveland warned me that if I did have anything of Hiss's I had better get it."

According to the story which he later told on the witness stand in New York, and embellished in his book, he had a vague recollection that he had at one time turned some papers over to his wife's nephew in New York for safekeeping. He, accordingly, went to New York and asked for the papers and was delivered a dusty envelope. To his utter amazement, he discovered that the envelope contained what appeared to be copies of documents, which he claimed that Hiss had delivered to him from time to time during the year 1938. There were also two rolls of developed microfilm, three cylinders of microfilm which had never been developed and four memoranda in Alger Hiss's handwriting.

In *Witness* he says that he extracted the films and then delivered the rest of the papers to Cleveland for safekeeping. He felt that he needed time to make up his mind whether to destroy the papers and the films and commit suicide or whether to allow Cleveland to produce them at the deposition. (Incidentally, according to the story which he tells in *Witness*, he did, at a later stage of the proceedings, attempt suicide but bungled the attempt.) For this reason he says that he decided not to come back to my office for further oral examination on November 16th but sent his wife instead to give her testimony, while he sought divine counsel as to where his duty lay. He then made up his mind to retain all his films for the time being, without telling Cleveland that he had done so, and to tell Cleveland to introduce in evidence the typewritten papers and the handwritten notes which he had entrusted to him.

In the afternoon of November 17th Chambers appeared in my office and, with a flourish, produced a package of papers. Four of the

papers were handwritten memoranda. The balance appeared to be typewritten copies of communications received by the State Department in Washington from various foreign service officers overseas during the first three months of 1938.

I immediately objected to these papers being introduced until I could examine them. Macmillan then agreed to mark them for identification only. He said that he had already made photostatic copies of all the papers, which he was prepared to hand over to me after they had been marked to correspond with the markings placed on the originals. He then proceeded to mark for identification 47 exhibits and the corresponding photostatic copy of each. While this was going on, I examined the handwritten memoranda and found that they appeared to be in Alger's handwriting and purported to summarize documents, some of which might well have had a secret or restricted classification.

Chambers then launched into an explanation of how the papers had come into his possession. He said that either in August or the early fall of 1937 Alger had attended a meeting in New York which Chambers had arranged with a Russian Colonel Bykov, who went by the pseudonym of Peter and who spoke no English. Through Chambers as interpreter, Peter asked Alger whether he would be willing to turn over to Chambers for transmission to him copies of documents which came across Alger's desk at the State Department. Alger agreed to do this, and thereafter there was a fairly constant flow of such material, which Alger would bring home in his briefcase and which Priscilla Hiss would copy on her typewriter. In some cases where it was not feasible to bring home documents which appeared to be of special interest, Alger would make notes of their contents in his own handwriting.

In a book just published called *Alger Hiss: The True Story*, the author says, at pages 243 and 244:

. . . When Marbury saw Hiss's handwriting on the little scraps of notepaper he recognized it at once and was so shocked he frankly didn't know what to do next. . . .

While this effort on the part of the author to read my mind after thirty years is to a large extent an essay in fantasy, it is certainly true that I was shocked when I recognized what seemed to be Alger's handwriting. There was of course, always the possibility of forgery, but barring that it was obvious that the handwritten memoranda really meant the end of the libel suit. I had spent most of my professional life as a litigator and had participated actively in the defense of some fairly important libel cases, and I was fully aware of the devastating effect that these memoranda would be certain to have on Alger's suit.

I was also conscious of the need for careful handling of a situation which might well result in a criminal prosecution of Alger.

It seemed clear to me that it would be unwise to attempt to proceed further with the examination of these papers until I had a chance to consult with Alger. For all I knew, the documents might have been sheer fabrications, which Alger could immediately identify as such by examining the photostatic copies. I, accordingly, said that I would need time to examine the original papers, and it was agreed that in the meantime they should be kept in the safe deposit box at Semmes, Bowen & Semmes, subject to our right of inspection. Cleveland then turned over to me the photostatic copies, which I handed to Harold Rosenwald and told him to take them to Alger at once. In the meantime I proceeded for the rest of the afternoon to examine Chambers on other points.

As soon as the examination was ended, I called Alger on the telephone and told him what had happened. I had an engagement the following day to meet Ed Stettinius in his office in New York, and I made an appointment to see Alger at the Carnegie Endowment immediately thereafter. In the meantime Charlie Evans and I discussed what we ought to do. The documents together with Chambers' explanation of them were certainly proof that Chambers had engaged in espionage. They also proved that he had lied to the Thomas Committee when he had denied any participation in such activities. If Chambers were indicted for perjury, then the libel suit would become academic. Clearly the Department of Justice had far greater resources than we to find out whether these typewritten papers were copies of genuine documents of a classified nature. They were also in a far better position to investigate and determine how Chambers had gotten possession of them. Moreover, Charlie Evans felt strongly that we were under an obligation to tell the Department of Justice what had happened.

When I talked to Alger on the following day, he had already been shown the photostats by Harold Rosenwald. He confirmed that at least three of the handwritten memoranda appeared to be in his own handwriting. He said that he had probably made them for his own use in reporting to Mr. Sayre and that anyone could have pilfered them from his desk. He denied ever having seen the typewritten papers before, although he acknowledged that the contents appeared to be similar to that of papers which had passed over his desk. He said he could not imagine how Chambers could have gotten hold of them. I said that in view of that statement it seemed to me that he could have nothing to lose by turning the papers over to the Department of Justice, and he agreed entirely. While I sat at his desk, he tried to call the Attorney

General in Washington but found that he was out of town. He then agreed that I should call him on the following day.

I returned to Baltimore that night and the following morning tried to reach the Attorney General by telephone but found that he had left his office and was not expected to return. I then spoke to Phil Perlman, who was the Acting Attorney General, and asked him whether he could arrange to see McLean and me on the following day. Perlman said that he would get in touch with the head of the Criminal Division of the Department of Justice and tell him to call me.

I then called Cleveland and told him that I had been instructed by Hiss to bring the papers to the attention of the Attorney General. Cleveland suggested that we meet to discuss the matter and shortly thereafter arrived at my office with Macmillan and with Harold R. Medina, Jr., of the Cravath firm in New York City, who said that he was representing Time, Inc. Cleveland suggested that we should take the matter up with Judge Chesnut, who agreed to see us at one o'clock. At the conference Cleveland said to Judge Chesnut: "Your Honor, this is more Mr. Marbury's idea than it is ours but we have no objection to it, provided that there is no unreasonable delay in the trial of the libel suit." Judge Chesnut then gave his approval.

While waiting to see Judge Chesnut, I had received a call from a Mr. Campbell, who indicated that he was head of the Criminal Division of the Department of Justice and that he had been instructed by the Attorney General to come to Baltimore immediately. I suggested that he wait until after the conference with Judge Chesnut was over. Immediately upon returning from Judge Chesnut's office, I called Campbell and made arrangements for him to come to my office on that same afternoon. He arrived, accompanied by two associates. Cleveland, Macmillan and Medina arrived shortly thereafter.

I explained the circumstances to Campbell and gave him the photostatic copies of the original papers which had been produced at the deposition on the afternoon of November 17. Cleveland told Campbell that the originals were in his possession and had been placed in a safe deposit box. Campbell then asked that the taking of further depositions be suspended for a period of two weeks and that the utmost secrecy be preserved in the meantime so as to enable the Government to make as complete an investigation as possible. He agreed that at the end of two weeks he would get in touch with me and let me know what the Government intended to do. At his request, the reporter was called into the conference and asked not to write up his notes until further notice.

During the following week I heard nothing from Campbell, and I began to have a great deal of concern about what might happen if, in

fact, the papers turned out to be copies of genuine State Department documents. In that event, it seemed to me that it would be quite likely that Alger and not Chambers would be indicted. After thinking the matter over, I called Alger and said that I wanted to see him and Priscilla together. They were planning to visit the Eastern Shore of Maryland and agreed to come over to Baltimore to my house for lunch on Sunday, November 28. Their little son, Tony, came with them.

After lunch I talked to Alger and Priscilla and said that I feared that Alger would be indicted and might be convicted. Priscilla looked stunned. Alger said that he knew that he was innocent and had confidence that the truth would prevail. I told him that even so, they had better prepare for the worst. I suggested that he should think about what lawyer he would like to have defend him in case he were indicted, and he asked me to discuss it with Ed McLean and Judge Patterson. I suggested that he and Priscilla make every effort to locate papers written on her typewriter so that they could be compared with the papers which Chambers had produced, since this would be the best possible way of establishing that Chambers was lying.

On Wednesday, December 1, I went to New York and had a talk with Ed McLean and Harold Rosenwald. Ed and I then went to see Judge Patterson. He was very much shocked by the developments and advised us to try to line up Lloyd Stryker, who was then New York's best known criminal lawyer. On December 3, I wrote Alger a letter in which I reported on my visit to New York, in the course of which I said:

As you no doubt know, I spent several hours with Harold and Ed McLean on Wednesday. We had a full discussion of all phases of this matter and arrived at a tentative program of action. We also had a brief conference with Judge Patterson and got his advice on what to do in case there should be any action by the New York grand jury. Incidentally, I may say that his reaction to the new developments in the case confirmed my feeling that I did not overdraw the picture when I talked to you and Prossie on Sunday.

I am troubled by the fact that your inability to explain what became of the typewriter which Prossie had in 1938 might be construed as an attempt to cover up something. This inference could be rebutted by the voluntary production on your part of papers which were typed by her on that particular machine. I think that she should make every effort to locate some such papers. Perhaps the manuscript of the book which she was writing on the history of the teaching of art could be located.

In the meantime, articles had begun to appear in the press. Bert Andrews talked to me on the telephone and asked whether there had

been any developments in the libel suit, to which I replied that I could not comment on the subject. Apparently, he got similar replies from Cleveland and an ambivalent statement from Chambers that his counsel had advised him that he was under a court order not to say anything. All this was reported in an article which he wrote for the *Herald Tribune*.

On December 1st a columnist writing in the *Washington Post* reported that there had been developments in the libel suit which had shown who was lying. He compared the developments to the dropping of a bombshell. On the same day a report appeared that someone in the Department of Justice had issued a statement saying that the grand jury proceedings in New York were at a stalemate and that the Hiss-Chambers inquiry was about to be dropped. I promptly called Mr. Campbell, who told me to pay no attention to that statement and assured me that there would be an announcement very shortly.

On December 3rd, on the very day that I wrote the letter to Alger Hiss describing my visit to Judge Patterson, the Department of Justice announced that new evidence had been produced which would be laid before the New York grand jury. That same evening, I got a call from Mr. Frank Johnstone at the office of the Federal Bureau of Investigation in Baltimore, who said that he wanted to interview Mr. Hiss in Baltimore on the following day. I reached Alger at midnight, and he agreed to come to Baltimore immediately. The following morning he arrived, and we went to the FBI office and remained nearly all day, during the course of which he was served with a subpoena to appear before the grand jury in New York.

During the long interview with Mr. Johnstone, a number of questions were asked about the typewriter. Some of those questions related directly to whether any copies of State Department documents had ever been made by Priscilla Hiss. Alger denied that there was any possibility of this. When asked whether he had owned a typewriter, he said that his wife had owned an old office machine which was given to her by her father, and which had been disposed of some time in 1938. At the end of the interview, Alger signed in my presence a statement, from which I quote the following:

During the period from 1936 to some time after 1938, we had a typewriter in our home in Washington. This was an old-fashioned machine, possibly an Underwood, but I am not at all certain of the make. Mrs. Hiss, who was not a typist, used this machine somewhat as an amateur typist, but I never recall having used it. Possibly samples of Mrs. Hiss' typing on this machine are in existence, but I have not located any to date, but will endeavor to do so. Mrs. Hiss disposed of this typewriter to either a secondhand type-

writer concern, or a secondhand dealer in Washington, D.C.; some time subsequent to 1938, exact date or place unknown. The whereabouts of this typewriter is presently unknown to me.

I remember that while we were talking about the typewriter I said that we were extremely anxious to locate it, since we were confident that we could then demonstrate that the papers which Chambers had produced in my office had not been written by Priscilla Hiss. Of course, if it turned out that they had been written on that typewriter, then Alger would indeed be in serious trouble, and my recollection is that I said so and that Alger did not demur to this.

After signing the statement, Alger left for New York. The following morning I ran into Mr. William Curran, then Baltimore's leading criminal lawyer, who said, "I thought there was something in the Hiss case, but this business about the pumpkin has reduced the whole thing to a farce." I had no idea what he was talking about, so I immediately bought a newspaper and learned, to my astonishment, that Chambers, in the presence of members of the staff of the Thomas Committee, had opened a pumpkin on his farm, from which he had produced microfilm which contained photographs of secret State Department documents, which he said Alger Hiss had handed over to him.

The circumstances which led up to this deliberately sensational scenario have been the subject of a number of accounts. After reading them all, I think it is reasonably clear that Chambers had become convinced that the Department of Justice intended to suppress the papers which had been turned over to Mr. Campbell in my office. Through a lawyer named Vazzano, he dropped a hint to the chief investigator for the Thomas Committee that he had some valuable information. On December 1st the investigator came to the Chambers' farm. Chambers told him that he had produced some documentary evidence at the Baltimore deposition but wasn't allowed to talk about it. That same night, after a meeting of the Thomas Committee, Nixon signed a subpoena and the investigator was instructed to serve it on the following day.

In the meantime, Chambers went out into the garden on his farm, opened a pumpkin which was lying there, and inserted the microfilm which he had withheld when he delivered the typewritten papers to Cleveland on November 16th. When the Thomas Committee, accompanied by a cameraman, arrived at 10 o'clock at night on December 2nd, with the subpoena, Chambers took them into the garden and solemnly went through the farce of opening the pumpkin in their presence and extracting the films. At the same time he turned over to them a set of photostatic copies of the typewritten papers which had been produced at the deposition, completely disregarding Judge Chesnut's

instructions. The next day the Committee investigators prepared press releases, accompanied by photographs of the pumpkin, which were made available to the media for publication on December 4th. The resulting nationwide publicity must have exceeded even Chambers' wildest hopes.

A day or two later, a telephone call came in from McLean in New York. He said that among some papers which had been handed to him by Priscilla Hiss back in October he had found two documents which had been typed by her in 1933. Our experts, who had been employed to look at the papers which had been produced at the deposition, had announced that the newly-discovered papers were undoubtedly written on the same typewriter — a Woodstock — and had probably been written by the same typist. When I heard this, I felt certain that Alger Hiss would be indicted.

However, the FBI knew nothing about this and were still searching for the typewriter. Apparently they had interviewed every secondhand dealer in the District of Columbia without success. Finally, they located some other papers which Priscilla Hiss had typed on her Woodstock and compared them with the typewritten papers which Chambers had produced at the deposition on November 17th. Independently they reached the same conclusion that our experts had reached, and on December 14th reported this to the Department of Justice. Mr. Campbell, who up until that moment had planned to ask the New York grand jury to indict Chambers for perjury, turned completely around and asked for an indictment of Alger.

On December 15, 1948, the last day of the term of the New York grand jury, Alger Hiss was indicted on two counts, first, that he had lied on December 15th, when he denied under oath that either he or Priscilla in his presence had ever turned over to Chambers any State Department documents; and, second, when he denied having seen Chambers after January 1, 1937, until the Thomas Committee hearing in 1948.

Thereafter my role became a very subsidiary one in the unfolding Hiss-Chambers drama. While the indictment did not technically abort the libel suit, it was perfectly clear that it would be impossible to try the libel suit until the criminal trial had been disposed of. That was now the responsibility of Ed McLean and Lloyd Stryker, who had both agreed to represent Alger at the New York trial. I turned over all the records which I had to them and awaited their instructions.

The first request was that I serve notice that the plaintiff intended to resume the oral examination of Chambers. This seemed to me to be of doubtful propriety, since the Federal Rules of Criminal Procedure at

that time made no provisions for pre-trial examination of a prospective witness. However, I agreed to file the notice and took the matter up with Cleveland and Macmillan. They stated that they had no objection but that the Department of Justice might object and, therefore, suggested that the matter be presented to Judge Chesnut. This was done and, to my surprise, he filed an opinion on December 31, overruling the objections of the Department of Justice and holding that the plaintiff could proceed with his examination. Judge Chesnut's opinion made it clear that the suspension of the taking of the deposition on November 17th should be regarded as temporary and that the plaintiff was free to proceed under the civil rules as if no criminal indictment were pending.

Under the circumstances, it seemed to me that the counsel who were going to try the criminal case should take charge of the further examination of Chambers. Accordingly, on February 17th McLean proceeded with the examination of Chambers. By that time the original documents had been turned over to the Department of Justice by Cleveland, so that they were no longer available for examination in Baltimore. Furthermore, the Department of Justice refused to make the originals available to McLean on the ground that our right to examine them, which had been agreed to at the time that the taking of the depositions was suspended, had been lost. McLean had asked the New York court to require the government to make these papers available but the court refused to do so. This ruling was, of course, inconsistent with that of Judge Chesnut, but McLean and Stryker decided not to attempt an appeal at that time.

The taking of Chambers' deposition was not completed until March 25th. In the meantime, our office investigated a number of matters at McLean's request, and reports were sent in by us from time to time. The case came on for trial in New York, and the prosecutor, Mr. Thomas Murphy, made the cardinal error of saying that the central question in the case was whether Chambers or Hiss was telling the truth. Stryker seized upon this and devoted his entire case to showing that Chambers had repeatedly lied throughout his life, whereas, Hiss had a spotless reputation for integrity and reliability. Stryker played down the importance of the typewritten papers, which he conceded had been written on the Hiss Woodstock. These tactics were successful in persuading four jurors that there was a reasonable doubt as to Alger's guilt, and the jury hung.

At the second trial a Boston lawyer named Claude Cross succeeded Stryker as the leading counsel. Our office continued to run various errands at his request, and I agreed to appear as a witness for Alger. My testimony related primarily to my past associations with Al-

ger and was essentially that of a character witness. This time Murphy pitched his case primarily on the typewritten documents which had been introduced at the Baltimore deposition. The jury voted unanimously for conviction. There followed an appeal to the Court of Appeals for the Second Circuit, which affirmed the conviction (185 F.2d 822), and a petition for certiorari was denied. Judges Augustus Hand, Swan and Chase sat on the panel of the Second Circuit which affirmed the Hiss conviction. A more respected group could not have been found in the federal judicial system, and it was, accordingly, with some astonishment that I read the remarkable statement which appeared in the first volume of Justice Douglas' autobiography that: "In my view no court at any time could possibly have sustained this conviction."

On March 22, 1951, Alger Hiss went to prison. At that time he was represented by Chester T. Lane, who wrote to me suggesting that I request that the libel suit be dismissed without prejudice, and Cleveland responded by moving that the case be dismissed with prejudice for want of prosecution. Judge Chesnut heard the matter in chambers and, after consideration, entered an order on April 6, 1951, dismissing the case with prejudice. That was the end of the Hiss-Chambers libel suit.