

Alger Hiss: Pleading His Cause—Still

By Megan Rosenfeld

HIS VOICE, weakened by emphysema, is a soft counterpoint to the thundering traffic on the New York streets outside. But Alger Hiss is insistent; he may be 76, he may be gray and a little slower from two strokes, but he keeps talking. The past becomes the present. The Hiss case is not over.

"I am sometimes asked why I persevere," said Hiss, who retains the somewhat preppie aura that caused people to describe him as a classic Easterner. He has been interviewed so many times in the 32 years since a slightly seedy ex-communist editor at Time magazine named Whittaker Chambers accused him of being a communist spy that he sometimes asks the questions himself.

"I think it's partly because I am a lawyer, and lawyers go by records," he said. "To me it's instinctive. If you have been wronged, you want to set the wrong right. I want to correct an error in the history books."

His most recent effort to clear his name is a petition to have his 1950 perjury conviction set aside. Last month his lawyers argued in a federal court in New York that documents they obtained under the Freedom of Information Act showed that the trial was unconstitutional; the government argued that the petition distorted the facts of the case and the documents.

When Hiss and his lawyers came out of the courthouse, there were about 70 reporters and cameramen waiting for him, he said.

Still news after all these years.

Still a name that evokes strong reactions, particularly from those who lived through the period, the beginning of the Cold War, and the case, the curtain-raiser of the McCarthy era. "It was like the Vietnam war in the way it divided peo-

ple emotionally," said a government man who followed the case closely.

"The Hiss case holds within it all the turmoil, deceit, treachery, anguish and pathos of this Cold War generation," wrote Murray Marder in this newspaper in 1953. "Like the era that brought it to life, it admits of no simple account."

Whatever the ultimate verdict on his guilt or innocence, Alger Hiss is a living piece of history. Mary C. Daly, the assistant U.S. attorney who argued the government's case last month, was 2 years old during the first trial. The judge mispronounced his name. Richard Nixon, who as a freshman member of the House Committee on Un-American activities pursued Hiss with extraordinary zeal, had been on "The Today Show" for a week before the hearing, newly public after years of disgrace. Alger Hiss gets requests for his autograph and gives lectures at colleges, where students ask respectfully, "What was it all about, anyway?"

Hiss still lives in New York, not far from the Greenwich Village apartment he moved to in 1947 and where he returned after his release from jail in 1954. He divides his time between working on his case, tending to a few clients (he was reinstated to the Massachusetts bar in 1975) and working at the printing firm where he has been a salesman since 1960.

He lectures about once a month at a college, donating his \$2,500 fees to the National Emergency Civil Liberties Committee (NECLC) which has handled his case since 1975.

"The worst [time] was the breakup of my marriage," he said, amid clacking typewriters and ringing telephones in the NECLC offices. "This was after I came back from jail. Priscilla had had to bear the brunt of hostility and publicity while I was in jail. She was working at the time and had a very tough time of it. She was working for Doubleday, and they didn't want her to

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Alger Hiss, above, talks to reporters outside federal court in New York. At right, Whittaker Chambers, the man who accused Hiss of being a communist; AP photos.

Handwritten text on a tilted document, likely a memorandum or letter, written in cursive. The text is partially obscured by the circular portrait of Hitler.



Hiss in 1948, right, denies Whittaker's accusation. The handwriting in the document at left, which speaks of Britain's postwar plans in the months before World War II broke out, was said to belong to Hiss.



HISS, From LI

meet the public, so they put her in the basement doing bookkeeping. All of this is galling. She had been teaching at Dalton School and they thought—I can understand it—that because of the sensationalism of the trial it wasn't good to have her as a teacher.

"When I came back she wanted me to change my name and see if we could get jobs teaching at some small country school. For me this was impossible, because I had done nothing wrong. She wasn't saying I had, she just wanted to escape. She has a strong sense of privacy. It didn't work. The relationship deteriorated."

They separated—Priscilla Hiss refused to give him a divorce—and for the last 20 years Hiss has shared an apartment and a small home on Long Island with a woman who also has such a strong sense of privacy that he won't reveal her name.

When Hiss got out of jail, having served three years and eight months of a five-year sentence (he got time off for good behavior; parole was denied), he had an impressive resumé—aside from a conviction for perjury. One of the reasons his case was so astounding was that he was such a Golden Boy—Phi Beta Kappa at Johns Hopkins, a graduate of Harvard Law School, secretary to Oliver Wendell Holmes, law clerk to Felix Frankfurter. He'd held several prestigious jobs in the Roosevelt administration, was integrally involved in the conferences at Dumbarton Oaks and San Francisco that led to the founding of the United Nations, and was an aide to the secretary of state at the Yalta conference. When he was accused, he had recently become the \$20,000-a-year president of the Carnegie Institute for World Peace.

His first post-jail job offer? With a small artist management group—if he could learn typing and shorthand. His son Tony, in a memoir called "Laughing Last," said his father was great at shorthand, but lousy at typing.

He wrote a book, "In the Court of Public Opinion," and read books. After

an article appeared in The New York Times in 1937 saying he was looking for a job, he was offered a position with the Feathercombs factory. They made a comb of piano wire imported from Sweden, made up in Japan, and rhinestoned in New York. The combs were supposed to hold the hair back better than bobby pins. Hiss got the job partly because the owner figured he could hire him "cheap." He got \$6,000 a year. He left after two years.

He was on unemployment for a while in 1959, and then in 1960 got a job with a printing company as a salesman, where he still works. "It took advantage of my notoriety," he said wryly. "I was always able to get in to see people."

He sold "job lot printing": books, pamphlets, price lists and letterhead, as well as stationery supplies such as pads, pencils, rubber bands and paper clips.

A former State Department aide to an assistant secretary of state selling rubber bands? A onetime president of an international institute hustling letterhead printing?

"I was glad to earn a living at it," he said. "I built up a business. One of the people I first worked with said he'd never seen anyone cover the town so thoroughly since the Depression . . . But of course it didn't take all my interest and activity. But, you know, New York has marvelous museums; you know every salesman has an hour or two between appointments, and I did the museums pretty thoroughly. There were concerts, many of them free. I got to know the inside of every church of any architectural interest. I did a lot of walking—it wasn't always easy to get places by subway or bus. I got to know the city pretty well . . . I read. I kept in touch with legal developments."

"So I think my intellectual life was not too different from what it would have been. Actually I probably had more leisure to pursue cultural interests than if I'd been a high-powered attorney. I've never felt sorry for myself."

There have been at least 13 books written about the Hiss case, a novel, a

play; Hiss appears as a character in other novels and books as well. A former law professor at Rutgers University, John Lowenthal, has made a two-hour, 45-minute documentary on the case (which opens here Dec. 5) and the number of newspaper and magazine articles on the subject would sink a small boat.

Yet after all these years there is no consensus on whether or not Hiss was guilty of passing secret State Department documents to Chambers when he was a communist agent. Those who believe him guilty are as convinced as ever that he is, and those who think he was framed are equally adamant.

"A lot of people don't come to any answer," Lowenthal said. "There is no question that what we call hard evidence will never be buttoned up to anyone's total satisfaction. The minutiae of detail only leads to unanswered questions. Ultimately it goes back to the credibility, personality and character of the people involved."

The case has become an American Rashomon, each detail filtered through a different perception, each theory plausible depending on the conviction of whoever is telling the story, and the truth is tormentingly elusive. There are many truths, there is no truth.

Alistair Cooke, who covered the Hiss trial and wrote a book about the case, wished it were possible to award the Scottish verdict of "not proven."

But all agree that the case is unique and historically important.

It came, as William Manchester wrote in "The Glory and the Dream," at a time when the urgency of the New Deal and World War II had given way to increasing prosperity and new political currents. The despair of the Depression, which radicalized many like Hiss, was becoming a memory—by the late '40s, "a third of the nation was no longer in want," as Manchester put it.

In 1948, the year Hiss was accused by Chambers of having been a communist when he worked for the government, the Soviet Union invaded Czechoslovakia. In 1949, the year he was tried, the

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United States signed the NATO alliance, communist forces triumphed over Chiang Kai-shek in China, and the United States learned that Russia had the bomb.

Communists became a threat, not the idealistic "bleeding hearts" of an earlier era.

The Republicans, after the bitter Truman-Dewey campaign of 1948, seized upon these issues "to put the heat on Truman," as the chairman of HUAC put it several years later. The Democrats, Nixon said, were responsible "for the unimpeded growth of the communist conspiracy in the United States."

The Truman administration, on the defensive, became zealous. Loyalty oaths were instituted. "... the anti-communist terror was pathological," Manchester wrote.

"During the loyalty program's five years the FBI screened over 3,000,000 Americans and conducted 10,000 full field investigations. Preliminary indictments were filed against 9,077, of whom 2,961 were arraigned before regional boards and 378 were given notice."

Some writers say that in addition to this climate, the HUAC, which hosted Chambers' initial accusations, was losing credibility and needed to land a big fish in order to survive.

Briefly, what happened was that in August 1948, Chambers fingered Hiss, in testimony before HUAC, as one of several mid-level to high-ranking government officials who had been members of a secret communist group in Washington during the New Deal. Chambers, a free-lance writer and translator, had been a communist courier, and after breaking with the party in 1937 or 1938 (the date is one of the points of contention) decided to name

Hiss. He got a job as a book reviewer at Time, which under Henry Luce was vehemently anti-communist, and eventually became a senior editor. He left Time after the Hiss case began.

Hiss denied Chambers' allegation before HUAC, and challenged Chambers to repeat it outside the committee so that he could sue him for libel. Chambers did so three weeks later on "Meet the Press"; Hiss filed the libel suit a month later.

In the course of pre-trial examination, Chambers produced papers allegedly typed by Priscilla Hiss—the typewriter she supposedly used later became a key piece of evidence—and notes in Hiss' handwriting to buttress his claims; he also had several rolls of film that he hid for a time in a pumpkin on his Maryland farm. These were the "Pumpkin Papers."

Hiss was indicted for perjury, for saying that he didn't know Chambers (who had used many pseudonyms when he was an agent) and for denying that he gave secrets to the Russians. The first trial resulted in a hung jury; the second in a conviction. His appeals denied, Hiss went to jail. His attorneys continued to press for a new trial, but were unsuccessful. They gave up until 1974, when the Freedom of Information Act made it possible for them to request the material from the FBI they now say proves that Hiss had an unfair trial.

Ironically, it was Nixon's Watergate that led to the changes in the FOIA that gave the Hiss case a new lease on life.

In Lowenthal's film, Robert Stripling, who was HUAC's counsel, says that Nixon had an intense personal dislike of Hiss that began when Hiss introduced himself saying, "You went to Whittier, didn't you? I went to Harvard." Hiss denies this anecdote. "I knew he went to

Duke Law School, which is a very fine school. I would never have said anything like that."

The new appeal—which Hiss' attorneys expect will end up in the Supreme Court—is based on a little-used "petition for a writ of error—*coram nobis*." The idea, according to Yale law professor Thomas I. Emerson, originated in 16th-century England and was "designed to allow a litigant to reopen a case on the ground that an error of fact had occurred."

Hiss' petition claims that his constitutional rights were violated because:

- A detective hired by Hiss' lawyers was telling their plans to the FBI.
- The FBI knew the typewriter introduced by the defense at the trial could not have belonged to the Hisses and withheld this information.
- The prosecution withheld a pre-trial statement by Chambers to them that revealed numerous inconsistencies in his testimony.
- The only witness who testified to seeing Hiss and Chambers together, a maid who worked for Chambers, was coached by the FBI and lied on the witness stand with their knowledge.
- The prosecutor (now a federal judge) lied in giving instructions to the jury about the typewriter evidence.

In Lowenthal's film, two jurors who voted to convict Hiss, one from the first trial and one from the second, said they would have voted differently if they had been shown the new evidence. Lowenthal found five jurors who were still alive; two would not be interviewed, he said.

"The plaintiff's petition distorts the facts of the case and the FBI documents on which he bases his claim," said assistant U.S. attorney Daly. "Even if everything he claims were true, it would not entitle him to the relief he requests. For example, he says the prosecutor lied in his summation. The facts don't support that. Even so, it would not be enough to set aside the conviction." The *coram nobis* route, she said, was a "last resort."

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HISS, From L6

Golden Apples?" Hiss said. "She was a goddess who ran very fast—I forget who beat her, Apollo I think, who beat her with the trickery of dropping golden apples. They were so beautiful she would stop and pick them up, and lost the race . . . They [the FBI] would give us 2,000 pages which we would have to stop and examine. They dragged their feet; I think they were waiting to see if perhaps I wouldn't be around anymore. It's a personal case—if I die, the case is over."

Some files have been destroyed and others were illegible. Still others were useless because most of the information was blacked out. But still they feel confident that what they have recovered will prove their case.

In 1954, just before Hiss got out of jail, his younger brother Donald (a lawyer recently retired from Covington and Burling) told a reporter: "Alger won't write his own story, and I agree with him. I'd rather be shot as a traitor than make a spectacle of myself."

Alger Hiss did tell his story, but the book he wrote is dry and legalistic, not a tale of personal woe. He is old-fashioned in that way; a courtly gentleman given neither to displaying emotion nor to talking about it. His son's book, which is very personal, "embarrassed" him. One senses that he has evaluated, in a rational way, which personal thoughts he must reveal publicly in order to appear logical and doles them out accordingly.

Thus he will talk briefly about the breakup of his marriage; his lack of bitterness; his optimism.

" . . . I certainly didn't feel any fear," Tony Hiss quoted his father as saying. "Maybe that's partly a phobia against fear. Dr. Rubenfine, my analyst, says I have a phobia against fear and don't get afraid even when I should get afraid. I'm also cocky and always optimistic . . ."

That optimism seems to be as durable and dominant as his case is complicated. It must be in his blood. As a case study of a man whose career was ruined, whose family was tormented, who was sent to jail for something he says he did not do, and who was abandoned by some he thought were friends or

at least allies, Hiss is a remarkable testament to positive thinking.

"I haven't missed out on the things I care most about," he said. "I've lost no friends. The foundering of my marriage—that happens to many people. You have a sense of despair and depression, but that's not saying the world isn't treating you right. Nothing that's happened to me do I hold the world responsible for. It was an accident, like somebody shot by a sniper.

"Since Chambers was not a balanced person, you can't hold him responsible. He was used by others . . . I also think Americans have very little sense of the tragic sense of life and of history. I find myself more at home with my French and British friends in this area of value. We [Americans] think without having to state it that the world was created to make us happy . . . An artist friend of mine from Virginia used to say his mother gave him this advice: Never force anything mechanical, and never fail to accept the inevitable. I think that's good common sense.

"I agree that the pursuit of happiness is an inalienable right. But that doesn't mean we'll find it, or that we should be angry if it isn't there. The pursuit of happiness has become trivialized. Today it's the pursuit of gaiety, of a jet set, discotheque type of life. I think the purpose, the search, the goal of life, is the pursuit of satisfaction, and satisfaction is the pursuit and the use of one's powers as fully as one can. There should be some goal other than self-seeking. There should be a cause larger than oneself."