

Hiss's Son's Book Links 2 Jurors To Relatives Employed by F. B. I.

By PETER KIHSS

Two jurors who voted to convict Alger Hiss of perjury in a celebrated trial in 1950 had relatives working for the Federal Bureau of Investigation. The bureau noted during the trial that prosecutors had wanted this "kept quiet."

An F.B.I. report on the jurors' connections—a footnote in history—has become available under the Freedom of Information Act. It was made known by the former State Department official's son, Tony Hiss, who will refer to it in a book on his father, "Laughing Last," to be published by Houghton Mifflin next February.

On learning of the report, one Hiss trial defense lawyer, Harold Rosenwald, said in Boston that it indicated a knowing use of jurors "prejudiced in favor of the prosecution." He contended this should have voided prosecution—with "no right" to any new trial—if disclosed at that time.

However, other lawyers, who preferred not to be identified, said there was no formal requirement that law-enforcement affiliations be disclosed by prospective jurors.

The issue is frequently raised during a Federal judge's screening of jurors in the Southern District—but at the judge's discretion. Otherwise, it would appear to be up to a defense lawyer to propose such a question.

Supporters of Alger Hiss have been digging through F. B. I. documents in a continuing effort to demonstrate that he told the truth when he denied giving State Department documents to a self-described Communist spy courier, Whitaker Chambers, through April 1, 1938.

2 Others 'Predisposed'

Tony Hiss said that two others of the 12 jurors who voted to convict had been "likely to be predisposed to be favorable to the prosecution."

One, he said, was the wife of the bailiff in the court of a judge who had ruled against a defense motion to change venue. The other he described as an "awed" woman member of a church in which the Federal trial judge, Henry W. Goddard, was a vestryman; Judge Goddard's rulings and charge had been pictured as "prejudicial" in the unsuccessful Hiss appeal.

Such backgrounds, if known, would have been grounds for defense challenges while the jurors were being chosen, according to Mr. Rosenwald.

The second Hiss trial ran from Nov. 17, 1949, to Jan. 21, 1950. An F.B.I. document dated Nov. 21, 1949, reported Alan H. Belmont, New York City division chief, as saying that "two members of the jury in this case have relatives working in the bureau."

Mr. Belmont named one as the mother of a former New York bureau clerical employee who had resigned to get married; he said she was also "related very distantly" to a current clerical employee. He named the other as the wife of a New York agent's second cousin.



Alger Hiss

Associated Press

The report said Mr. Belmont had made this information available to Thomas F. Murphy and Thomas J. Donegan, the prosecutors, "who expressed appreciation upon receiving it and requested that it be kept quiet."

Alger Hiss's own 1957 book, "In the Court of Public Opinion," had referred to Judge Goddard's disclosure during the trial that one juror was a bailiff's wife. The defense, Mr. Hiss wrote, "waived the right" to dismiss her because a new trial

would have meant more cost and delayed anticipated vindication.

Mr. Rosenwald said Judge Goddard, in an unrecorded discussion in chambers, had asked Hiss lawyers, "Is there anything you want me to do about this?" He said the late Claude Cross, chief defense counsel, had replied, "We'll leave the matter to you," without consulting his associates.

Mr. Rosenwald contended that there was "no doubt that the prosecution knew the identity," and that this could have been analogous to deliberate use of perjured testimony that could cause dismissal of a case—without any retrial.

Robert B. von Mehren, another surviving Hiss trial lawyer, also recalled the disclosure, but thought it could only have led to a mistrial.

On the other woman's background, Alger Hiss, said his appeal counsel, the late Chester T. Lane, had learned after the conviction, that she was "a communicant of the church where Judge Goddard was on the vestry, and she regarded him with awe and tremendous respect—he was God to her."

Approached by Mr. McCarran

The F.B.I. documents obtained by the Hiss researchers include a report by Louis B. Nichols, then assistant F.B.I. director, dated June 13, 1949. This was during the first trial, which lasted from May 31 to July 8, 1949, ending in a mistrial when eight jurors voted to convict and four to acquit.

Mr. Nichols reported that "a newspaper contact" had told him that the judge in that trial, the late Samuel H. Kaufman, had been approached by Senator Pat McCarran, a Nevada Democrat.

The informant was quoted as saying that "Senator McCarran had pointed out to Judge Kaufman nine instances wherein there was bias on the part of the judge in the Hiss-Chambers case," including allowing a psychiatrist to watch a witness, and granting the defense access to grand jury testimony.

The informant, Mr. Nichols reported, "stated further that McCarran told Judge Kaufman that he hoped it would not be necessary for the Senate Judiciary Committee to make inquiry as to how the judge functions in the Hiss-Chambers case."

Tony Hiss's book is primarily an affectionate story of the private life and personality of his father. A child during the trial, he is now 35 years old and a writer for The New Yorker magazine. Alger Hiss is now in the printing and stationery business.