

## Let Bygones Be Bygones?

By C. DICKERMAN WILLIAMS,  
*member of the New York law firm of  
Maclay, Morgan & Williams and a  
close student of the Hiss case.*

UNLIKE Whittaker Chambers's book "Witness," Alger Hiss's "In the Court of Public Opinion" is not an autobiography. It begins with the evening of August 2, 1948, when a reporter told Hiss that Chambers would name him as a Communist at a Congressional hearing the following day; and carries the story through the denial of Hiss's motion for a third trial.

Mr. Hiss has written with obvious care. His examination of the court record and available material has been microscopic. The style is somewhat legalistic, and the ordinary layman will not find it easy going.

As is, I suppose, inherent in the situation, the book is tense and lacks detachment. It would be far more persuasive if Mr. Hiss, realizing that many of his readers would approach it with considerable reserve, had faced squarely some of the questions that inevitably occur. For instance, if he knew Chambers so very slightly as he maintains he did, and there were no friends or employer to vouch for Chambers, how does it happen that he let Chambers have his furnished apartment and car on such favorable terms? And why does he pounce so ferociously on relatively minor discrepancies between Chambers's testimony at the Congressional hearings in August 1948, and that at the trials, while brushing aside similar discrepancies in his own testimony on the ground that in August he had not had an opportunity to refresh his recollection?

Another characteristic of the book would seem to impair its value as a study of the case, if not as a brief. Among brief-writing lawyers, there are two schools of thought. One school simply ignores the evidence of the adversary; the other presents that evidence and attempts to rationalize it consistently with the writer's thesis. It is quite evident from "In the Court of Public Opinion" that Mr. Hiss belongs to the first school. Inconvenient facts are largely dealt with by the simple process of omission. A striking illustration of this technique is his treatment of the testimony by Dr. Carl A. L. Binger that Chambers was "psychopathic." Dr. Binger's affirma-

tive testimony is adequately set forth, especially his extraordinary theory that Chambers's translation of Werfel's novel "Class Reunion" somehow showed that Chambers had falsely concocted his evidence against Hiss. But Mr. Hiss in no way describes Thomas Murphy's cross-examination of Dr. Binger, generally regarded as one of the most devastating in any great American trial, except to say that on prosecution's cross-examination, Dr. Binger "maintained" his diagnosis.

AGAIN, at the very start of the book, Mr. Hiss says that when told by a reporter on the evening of August 2, 1948, that Chambers at a hearing on the following day would call him a Communist, he "saw no reason why I or any one else should pay much attention." The implication is that he was then so secure in his innocence that he was unconcerned that he should be publicly described as a Communist. Only far later in the book and in the most partial and cryptic fashion does he reveal that rumors of his Communist affiliations had been so serious in 1946 that he had had a special conference on the subject with Secretary of State Byrnes and an interview, at his own request, with Assistant Director Tamm of the FBI; that the matter had been discussed between him and Mr. Dulles in 1947 at the time of his employment by the Carnegie Endowment; that, also in 1947, he was questioned by the FBI about his alleged Communist affiliations, and specifically about Chambers, among others; that the matter had been the subject of a further conference with Mr. Dulles in March 1948; and that he had been summoned before a Federal Grand Jury investi-

gating Communist infiltration, also in March 1948. But this background is not put in context with the assertion that he received so calmly the news of Chambers's prospective testimony.

Mr. Hiss's account of his indictment by the Grand Jury is similarly incomplete. The term of the Grand Jury expired on Wednesday, December 15, 1948. On Friday, December 10, the foreman reported that the Grand Jury was unable to find an indictment. Mr. Hiss argues at some length that the change in the Grand Jury's attitude was due to improper pressure from the Un-American Activities Committee, especially Vice President Nixon, its most active member in this affair, and from Assistant Attorney-General Alexander M. Campbell, who was in charge of the Criminal Division of the Department of Justice. He does not disclose that on Monday, December 13, the FBI, independently of the Hisses, found a long letter typed by Mrs. Hiss. The typing matched that of the "Baltimore Documents," that is, the copies of the secret State Department papers, so-called because they were first produced by Chambers at Baltimore. It seems more probable that it was this fact, together with the other evidence, including the evasiveness that the Hisses had shown about their typewriter, that led the Grand Jury to reverse its position of a few days earlier and to indict. At least the reader might think so if provided with the additional information.

In emphasizing the publicity which his case received Mr. Hiss develops a subject that concerns many thoughtful people. Can a defendant have a fair trial after charges against him have been sensationally broadcast? The issue does not, of course, concern

If Japan repeats another incident like the 'Perry' incident, Treasury machinery is all ready to enlarge Japanese imports into U.S. & freeze her dollar balances. This was done at the Paris talks. It remains unknown whether Treasury.

We have just agreed to purchase 50 million more of dollars for China. As China has those will have left (almost all in London) or about 100 million of dollars. Her dollar balances are almost all gone.

—Wide World.  
Memo alleged to be in the handwriting of Harry Dexter White, released by the House Un-American Activities Committee.

Hiss alone. As the late Supreme Court Justice Robert H. Jackson said:

But always, since I can remember, some group or other is being investigated or castigated here. At various times it has been Bundists and Germans, Japanese, lobbyists, tax evaders, oil men, utility men, bankers, brokers, labor leaders, Silver Shirts and Fascists. At times, usually after dramatic exposures, members of these groups have been brought to trial for some offense.

Indeed the problem arises whenever a prosecution is preceded by publicity, whether or not by way of Congressional investigation. My personal experience has been that courts are able to free themselves from the effect of publicity. After living with a case in a courtroom for days, seeing the principals, hearing the witnesses, and having the benefit of the lawyers' analyses, a judge and jury are little affected by the bedlam outside. Participants in highly publicized events tend to take pride in their superior knowledge. And in the Hiss case the published comment was sharply divided; his defense, according to my recollection, got far more space in the press than that given, say, Dave Beck's. Nevertheless the subject is rightly controversial.

The number and variety of officials Mr. Hiss more or less accuses of misconduct are considerable. Vice President Nixon and his associates are, of course, fair game. But what could be the motivation for unfairness on the part of Assistant Attorney General Campbell, a Fair Deal Democrat? Mr. Murphy was also a Democrat and, from the fact of his appointment, presumably a Democrat *persona grata* to the Truman Administration.

It is Mr. Hiss's criticism of the judiciary that is most dubious. Judge Henry W. Goddard, who presided at the second trial, was at the close of a long and honorable career. Mr. Hiss contrasts his rulings most unfavorably with those of Judge Samuel H. Kaufman at the first trial. He neglects to say that Judge Goddard made at least one important ruling in favor of the defense on a point on which Judge Kaufman had ruled adversely, the admission of Dr. Binger's testimony. Although it is true that this testimony boomeranged, at the time the ruling was made it was considered a great victory for the defense.

Mr. Hiss's indignation with Judge Harrie B. Chase, who wrote the opinion of the Court of Appeals, is another example of his techniques of emphasis and omission. Judge Chase is a Vermonter, unknown to the gen-

eral public in New York or Washington. His fellow judges, who fully concurred in his opinion, were Judge Thomas W. Swan and Judge Augustus N. Hand. Judge Swan, a former Dean of the Yale Law School and a member of the Yale Corporation, is widely known. The late Augustus Hand, cousin and colleague of Judge Learned Hand, achieved national stature. Their concurrence is not mentioned, although Mr. Hiss does take the trouble in another part of the book to identify Judge Augustus Hand as the author of an opinion the principle of which he thinks was disregarded by Mr. Campbell. One is compelled to suspect that Mr. Hiss believed that the people likely to read his book would be less impressed by his criticism of Judge Chase if they knew it was equally applicable to Judge Swan and Judge Augustus Hand, but did not hesitate to avail himself of the prestige of Judge Augustus Hand to buttress his complaint against Mr. Campbell.

The principal contribution made by Hiss's book to the literature of the case is its exposition of the thesis presented by lawyers whom Mr. Hiss later employed to apply for a new trial—that the typewriter introduced as evidence at both trials by defense counsel as the Hiss typewriter and conceded to be the typewriter on

which the Baltimore Documents had been copied was "a deliberately fabricated job . . . planted on the defense." The book quotes at great length from the motion papers, especially the affidavits of Chester T. Lane, the lead counsel on this application, and of various experts in typewriter, engineering, metallurgy, and document examination. Most dramatic was the production in open court of a fabricated typewriter. Its typing could be barely, if at all, distinguished from the papers unquestionably typed by Mrs. Hiss, called the "Standards" at the trials, or from the Baltimore Documents. Under all the circumstances, with the benefit of samples of typing from Mr. Lane's fabricated machine, two expert document examiners believed it possible that the typewriter found by defense counsel and identified by defense witnesses as the Hiss typewriter had not typed the Baltimore Documents. The project had been arduous and time consuming; Mr. Lane had had frequent setbacks because many experts in typewriter engineering and document examination had refused to assist; after a year he had succeeded.

Dr. Daniel Norman, a metallurgical analyst, declared that the typewriter "is not a machine which has worn normally since leaving the factory,"  
(Continued on page 44)



## Your Literary I. Q.

Conducted by John T. Winterich

### "VAULTING AMBITION"

Ambitions are of all kinds—worthy, unworthy, and indifferent. Fanni Gross of Asheville, North Carolina, presents a mixture of fictional ambitions and asks you to identify the characters, and also the names of the books in which they appear and of the authors of those books. Answers on page 44.

1. He aspired to the presidency of the United States until he was told that his dead son had been a traitor in the Second World War.
2. Carried away with his success in erecting high towers on churches, he outdid himself when he put the highest of all atop his new home.
3. This son of a first-rate butcher was bent upon advancing from "not quite a gentleman" to "the correct article in the ways of society."
4. Fifty years of public life not being enough for this insatiable politician, he put forth a final effort to be re-elected mayor of his city at the age of seventy-two.
5. He was perfectly willing to deceive, betray, or even rob a dying old woman in order to obtain some fifty-year-old manuscripts of a deceased American poet.
6. He ardently set out to improve the world by reviving ancient customs of romantic chivalry.
7. His father having failed in his ambition to outwit nature in the creation of life, this young engineer took up where his father left off and managed to overpopulate the world with assembly line humans.
8. His heart set on becoming a dramatic motion-picture actor, this Illinois store clerk tried to imitate his idol, but the effect was so ludicrous he was offered the career of a great comedian.
9. He fought famine and scurvy in Alaska in order to get the gold he craved.
10. She scrimped and saved to buy a typewriter so she could support herself, thereby escaping from her too-successful overbearing husband.