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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

:

v. : **AFFIDAVIT**

:

C 128-402

ALGER HISS, :

Defendant. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MYLES J. LANE, being duly sworn, deposes and says:

1. I am the United States Attorney for the Southern District of New York, and in that capacity I am in charge of the above entitled case. This affidavit is submitted in opposition to the motion of the defendant for a new trial on the grounds of newly discovered evidence.

2. While I recognize that this court is fully familiar with the facts of this prosecution, I will, for the purpose of completeness, review briefly the pertinent details.

3. The defendant was indicted by a Grand Jury for the Southern District of New York on December 15, 1948. The indictment charged that the defendant twice perjured himself while testifying before that Grand Jury. Count One charged that the defendant perjured himself when he testified before that jury that he had not turned over to Whittaker Chambers any documents or copies of documents of the State Department. The second count charged that the defendant committed perjury

when he testified that he had not seen Chambers after January 1, 1937.

4. A series of pre-trial motions were made by the defendant and various orders were submitted and signed providing the defendant with opportunities of inquiry into the details of the prosecution's case. The indictment was brought to trial for the first time on May 31, 1949, before the Honorable Samuel H. Kaufman and resulted in a disagreement of the jury on July 8, 1949.

5. The defendant next moved for a change of venue on the grounds of public prejudice in this district, and after the submission of voluminous supporting papers, this motion was denied by the Honorable Alfred C. Coxe. The indictment was brought to trial again on November 17, 1949, before the Honorable Henry W. Goddard. On January 21, 1950, a jury found the defendant guilty on both counts and on January 25, 1950, the defendant was sentenced to five years on each count, the sentences to run concurrently.

6. On October 13, 1950, the Court of Appeals for the Second Circuit heard extended argument by the defendant's counsel in support of his appeal from the conviction. That court affirmed the conviction and denied a petition for rehearing. Finally, on January 27, 1951, the Supreme Court of the United States denied the defendant's application for certiorari.

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7. The affidavit of Chester T. Lane, submitted in support of the present motion, refers to the testimony of Whittaker Chambers as nothing more than charging statements of a witness. That affidavit further attempts to describe Chambers as not worthy of belief and suggests that his story is fiction. The trial jury by its verdict rejected these arguments of the defense, and for all purposes the statements of Chambers regarding the criminal activities of the defendant must be accepted as fact, as indeed they are. The jury cast aside these many unsubstantiated theories of the defense and found that the defendant was a liar, perjurer and a Communist spy.

8. On January 24, 1952 the defendant served upon me a paper captioned, "A notice of a hearing on a motion", together with supporting papers, petitioning the court for a new trial on the grounds that he possessed newly discovered evidence which, if it had been presented to the trial jury, would have resulted in an acquittal. Those papers announced that "a hearing" on the motion would be had on February 4, 1952. The arguments were formulated in an affidavit by Chester T. Lane. For purposes of convenience to all concerned, I will deal with the contentions of the defendant under number classifications identical with that affidavit.

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SUMMARY OF ARGUMENT IN OPPOSITION

This motion is frivolous. Further the motion for a new trial was not made by the defendant within the time specified by Rule 33 of the Federal Rules of Criminal Procedure. For that reason this motion is also untimely. The final judgment of conviction was entered on January 25, 1950, while the motion made by the defendant was effected on February 4, 1952. This subject is considered in more detail in our memorandum of law. Suffice it to say here the Government submits that this court is without jurisdiction to entertain this motion. The motion also lacks merit as will be demonstrated herein.

Before demonstrating the lack of merit of the contentions raised here, it would appear fitting to set forth facts establishing that the alleged proofs proposed are in no sense newly discovered. Where appropriate, peculiar facts will be set forth demonstrating that the particular item could have been produced at the second trial if due diligence had been exercised by the defense, but for all contentions the following should be considered. There was a time interval of more than two years from the date of the indictment on December 15, 1948, to the completion of the second trial on January 21, 1950. In addition to that period of time for inquiry and investigation, it is conceded that

the defendant had done some investigating as early as the initiation of the depositions in Baltimore in November, 1948. It is a matter of record that the defendant had considerable assistance in the investigations he conducted before the conclusion of the second trial. He has had the services of at least sixteen qualified attorneys. He had the assistance of a psychiatrist and a psychologist of high repute. He had the services of an expert in the analysis of paper content as well as the opinions of handwriting and typewriting experts. In the light of these factors, it is apparent that the defendant would have discovered all evidence of assistance to him by January 21, 1951, if due diligence had been exercised by him. This is particularly so when it is recognized that by the first trial the defendant was thoroughly informed of the Government's evidence, and, with a few exceptions, knew the content of the prosecution's case.

I. BALTIMORE DOCUMENTS WERE NOT TYPED ON HISS MACHINE

The defendant suggests that the Baltimore papers produced by Chambers were not typed on the Woodstock typewriter, heretofore conceded to be his. To begin with, this contention is totally irrelevant since the conclusion of both the defendant's and the Government's experts was only that the

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Baltimore documents were typed on the same typewriter that produced the known standards of typing. The known standards were typed by a member of the Hiss household during the pertinent time period. It is highly questionable whether the proof here tendered by the defendant would even be admissible. This theory of the defense affects only one of the several corroborating proofs supporting Count 1 and Count 2, and hence does not even attack the other bases of conviction, all sufficient of themselves to establish the required corroboration, e.g., Mrs. Esther Chambers, the handwritten notes, the prints from the microfilms, the rug, and the loan of $400.

II. THE TRIAL EXHIBIT UUU WAS NOT THE HISS MACHINE

Here again the defense suggests as evidence requiring a new trial information not relevent to the prosecution's case. The trial exhibit was not a basis for the conclusion of the document examiner, and indeed its whereabouts was not even known to the Government until after the examiner had testified at the first trial. We have the aggravating factor here that the defendant seeks a new trial, on the ground that an exhibit he produced was not what he said it was. Again, even assuming all possible theories of the defendant in this

regard are sound, it does not attack the other corroborating proofs which are independently sufficient.

III. EDITH MURRAY

The defendant produces affidavits of two individuals, one to the effect that the affiant did not see Edith Murray work for the Chambers' family at their 903 St. Paul Street, Baltimore, apartment in 1935 and 1936. The other swears he never saw Miss Murray at the 1617 Eutaw Place residence of the Chambers in 1936. Even assuming the affidavits submitted had any prima facie value, it must be conceded that at best they would constitute an attempt to attack the credibility of a witness and as such would be insufficient, under the precedents, to warrant a new trial. Moreover, the opportunities of observation of the two affiants of the defendant were obviously inadequate; so that on their face the affidavits do not even constitute impeachment. Further, the general character and hist/ry of one of these affiants will be developed at length herein. I advise the court that persuasive evidence of a serious perjury has come to my attention, and under my responsibilities as a United States Attorney I may be compelled to submit this matter to a grand jury. I promise that no action will be taken in this regard until this motion is ultimately disposed of by the court.

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IV. THE TIME OF CHAMBERS' BREAK WITH THE COMMUNIST PARTY

Considerable effort is expended by the defendant in an attempt to establish that Chambers left the Party sometime before April 1, 1938, on the theory that if that were so he could not have received the State document dated April 1, 1938, from the defendant. The statements culled from the many pages of testimony by Chambers, indicating a break in 1937 or early 1938, are obviously approximations by him which set the date of break some months ahead of the actual rupture. Certainly even the defendant would not now seriously argue that Chambers left the Communist Party in the year 1937. The correspondence referring to the translation by Chambers for the Oxford University Press, which correspondence was accumulated by the defendant through the services of a former Tass agent, is relied upon by the defendant because it indicates the translation was obtained before April, 1938. Chambers has, of course, testified that he obtained this translation at the time he broke from the Party. It is apparent that in his approximations of when he obtained the translation, made a decade later, Chambers antedated the occurrence by a few weeks. Additional affidavits will be discussed herein to establish beyond question that Chambers and his family did not leave the Baltimore area for Florida

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until at least two weeks after April 1, 1938, and that the break occurred approximately April 15, 1938, as Chambers stated in both trials. In any event, this contention of the defendant is again solely of an impeaching nature and therefore, under our precedents, would not warrant a new trial.

V. LEE PRESSMAN

The name of Lee Pressman was never mentioned by Whittaker Chambers at any time during his lengthy appearance on the witness stand at the second trial. In all probability any testimony by Chambers in regard to Pressman and his possible membership in a Communist cell with the defendant would not have been rejected by the trial court as not relevant. The statement of Pressman before the House Un-American Activities Committee on August 28, 1950, does not conflict with any testimony of Chambers at the trial, hence does not impeach his testimony in any respect.

I. BALTIMORE DOCUMENTS WERE NOT TYPED ON HISS MACHINE

1. The first alleged ground for a new trial is the contention that the Baltimore documents produced by Chambers possibly were not typed on the Woodstock possessed by the defendant in 1938 but were typed on a second machine constructed by Chambers in such a fashion that it produced typing identical with typing produced by the Hiss machine.

Throughout these affidavits the government will refer to the Woodstock owned by Hiss in 1938 as the Hiss machine and will refer to the machine allegedly constructed by Chambers as the fabricated machine.

2. There is no information in the sworn statements submitted in support of this contention which could not have been presented in the course of the first or second trials. All of the evidence under this contention, such as it may be, could have been produced certainly at the time of the second trial if the defense had exercised due diligence in its investigation. That this new theory would have contradicted other contentions of the defendant raised at the second trial is no reason for failing to require the usual rule of due diligence from this defendant.

3. Chester T. Lane, in evolving this theory presupposes from the very beginning that the defendant was innocent of the offenses charged (p. 9, par. 2). From this unsubstantiated starting point he then proceeds to the conclusion that the Baltimore documents could not have come from the Hiss machine, notwithstanding the fact that all the experts contacted by either the prosecution or defense had agreed that the Hiss machine was the source. It should be

noted in evaluating all the supporting papers that in this proceeding it is Chester T. Lane who is a combined typing-engineer and document examiner. He would have this court set aside the result of an extended trial, which result has been affirmed, after a considered appeal and a denial of certiorari, on the grounds of his expert opinions, although he must himself concede that he has no experience or training in the field.

4. Under this heading, the defendant goes no further than to say that Ramos C. Feehan, as well as the defendant's own experts, might have been in error when they concluded that the Baltimore documents were typed on the same machine that produced the known standards of typing.

5. It is first to be noted that the defendant does not even contend here that the opinion of Feehan in this regard was erroneous. It is only suggestive at best that the bases of the opinion might have been unsound because in his testimony Feehan referred only to ten points of identity. An examination of the attached affidavit of Ramos C. Feehan (EX.) will demonstrate to the court that even this suggestion is without substance, for the conclusion of Feehan proceeded from a most thorough and complete analysis and comparison of the Baltimore documents with the known standards. It is sorely apparent that this contention of the defendant considered in its most complimentary aspect would not produce such proof as would be likely

to produce an acquittal at a new trial and for this reason is insufficient.

6. In his affidavit (p. 9, par. 2) Chester T. Lane admits that this new approach of the defense absndons the theory set forth at both trials, which was that the Baltimore documents were typed on the Hiss machine but were typed by Chambers, who in some unexplained fashion, gained access to the machine. As a corollary of this now obsolete theory, the defense attempted to prove that the Hiss machine had been given to the Catlett family on or about December 29, 1937, when the Hiss family moved from 29th Street to Volta Place in Georgetown. This theory was disproved by the prosecution, but certainly was a more plausible explanation than is now proposed. Its rejection by the jury would lead a fortiori to a rejection by any jury of the now proposed contention.

8. By his affidavit Chester T. Lane theorizes that Mr. Chambers constructed a typewriter which would produce typing identical with specimens obtained from the Hiss machine. It is nowhere suggested, however, how Chambers obtained specimens of the Hiss machine, and I advise the Court that it was only with great difficulty that the FBI obtained such specimens. Mr. Lane concedes that many experts advised him that such a typewriter could not have been constructed, and he submits the unqualified opinion of no expert which states that such a machine can be built

(p. 10, par. 3). In an effort to construct such a machine for the defense, Lane has had the services for at least one year of Martin K. Tytell, and even at this time Tytell will say only that he believes he has constructed a machine to meet the defense specifications. This product of Tytell was produced by him with the aid of his associates, and with himself, an expert in this esoteric field. Mr. Tytell states:

> "I am a typewriter expert, with many years of specialized experience in the creation of unique typewriters for foreign language and other purposes." (Ex. 1A)

8. In addition to this trained background and the help of his associates, it may reasonably be assumed that Mr. Tytell had the help of specialized equipment and tools. Mr. Chambers, on the other hand, the supposed creator of a similar machine, has had no experience or training whatsoever in the field and would have no equipment for such a venture. If the defendant now contends that Chambers constructed the machine with the assistance of some experts in the field, it leads to the refutation that such a procedure would have left traces to prove that that occurred. Although the defendant has effected great investigation in this field, he not only has not produced any such traces, but does not even allege that they exist.

9. The entire proposition becomes even more fantastic when it is suggested that Chambers did not mention

the Baltimore documents in August of 1948 before the House Committee, because they did not then exist, but were produced between that date and November 17, 1948. Under this alternate theory, Chambers would have had to obtain the necessary typing specimens, constructed the typewriter, obtained the original State Department documents, typed them and substituted his fabricated machine for the Hiss machine, all in the period of approximately three months.

10. The defendant submits an affidavit of Evelyn S. Ehrlich who describes herself at some length as a detector of spurious prints. Accepting for purposes of argument that the opinion of Miss Ehrlich is of some value, her final conclusion states only that,

> ". . . It is entirely possible that the so-called Hiss machine now in Mr. (Chester) Lane's possession is not the machine which was used to type the Hiss standard."

This conclusion has no relevancy since the opinion of Feehan was based not on any comparison with Trial Exhibit UUU, but only on an analysis of the Baltimore documents together with the known standards. The opinion of expert Ehrlich can in no sense be considered as likely to produce a verdict of acquittal.

11. In closing this phase of the argument, I refer to the affidavit of Elizabeth McCarthy (Ex. 1-B, p. 2, par. 3). The defendant's own expert document examiner there concedes that even after all this work and effort of Tytell

and his associates, it is possible for a document examiner to distinguish between known standards from the Hiss machine and specimens from the fabricated machine. As to this contention it is apparent that the defendant has failed to produce any evidence which would lead to an acquittal at a subsequent trial.

II. THE TRIAL EXHIBIT UUU WAS NOT THE HISS MACHINE

1. Foremost in consideration of this contention is the fact that the argument is totally irrelevant to any consideration of the opinion of Feehan or of the defendant's experts consulted before the trial, that the Baltimore documents and the known standards were produced by the one typewriter. I respectfully note to the court that the trial Exhibit UUU was not produced by the defense until after the testimony of Feehan at the first trial. The opinion of Feehan was not based on any specimens taken from the trial exhibits,

but was based upon known standards obtained from the typewriter in the Hiss home in early 1938, as compared with the typed Baltimore documents. The opinion of Feehan at the second trial had the same foundation. Hence, even assuming for purposes of argument that the trial exhibit was a fabricated machine and not the Hiss machine, the soundness and completeness of the Government's evidence is not effected one iota. The defense seeks a new trial on a theory that the exhibit was not the Hiss machine after, as they must concede, they produced the machine and testified to its authenticity by tracing its history through the hands of several defense witnesses. In any event the arguments and affidavits here submitted by the defendant do not present evidence which could not have been discovered before the conclusion of the second trial if due diligence had been exercised and which evidence would not be likely to produce an acquittal at any third trial. Indeed there is a serious question whether the proof now offered under this contention would be admissible as relevant to the issues in the case.

3. In this instance, again we have the defense abandoning a defense theory which it attempted to develop at both the first and second trials. We respectfully call attention to the authorities which condemn this practice as one not to be rewarded by the granting of further new trials.

4. In evolving a theory that Chambers constructed a machine which the experts say cannot be built, various reasons why such a construction would have been necessary for Chambers are proposed. All these suggested reasons presuppose always, without apparent or actual foundation, that Mr. Chambers had some motive for implicating Hiss. No motive is articulated, however, and the contention that Chambers was a psychopathic personality, so desperately pursued at the second trial, appears also to have been abandoned. No motive is suggested for explaining why Chembers would have gone to such incredible lengths to implicate an allegedly innocent man.

5. As part of this argument, Chester T. Lane suggests that the trial exhibit is not the Hiss machine, because it is in workable condition, while the Hiss machine was not. In fact the evidence shows that the trial exhibit UUU bore the precise physical defects attributed to the Hiss machine by several witnesses. After Mrs. Hiss testified on direct examination (R. 2356) that the machine was not very serviceable (to explain why she disposed of it to the Catletts) she stated in cross examination (R. 2364) that the keys stuck and the ribbon did not work properly. Ex. UUU bore these defects. Mrs. Hiss did not testify that no typing whatsoever could be done on the machine. Raymond Catlett, a son of Clydie Catlett, testified that when his family received the machine from Priscilla Hiss (R. 1598) the carriage roller was broken and the carriage would not shift. He then

identified the trial exhibit as the machine he possessed and pointed out the precise defects on the trial exhibit to which he referred. Thus it is apparent that the testimony of those most familiar with the Hiss machine identified the trial exhibit as the machine which emanated from the Hiss home in 1938, and pointed to those defects which demonstrated that identity.

6. In his affidavit, Chester Lane concedes (p. 13, par. 3) that the evidence Hiss produced on this issue does not go far to demonstrate with any certainty that the trial exhibit is not the Hiss machine. The defendant attempts to establish by a series of sworn and unsworn statements that the base structure of the trial exhibit, because of its date of manufacture as contrasted with the alleged date of manufacture of the type facing thereon, could not have been a regular Woodstock product but must have been a makeshift construction of Mr. Chambers'. Suffice it to say that all the statements produced by the defendant establish clearly that there are insufficient records to show with any degree of certainty precisely when the type facing or base of trial Exhibit UUU were produced by the Woodstock Company. Indeed, the statements given to the defendant's representatives were contradictory and in at least one instance secondhand (Exhibit 2-A). The record of the purchase of the original Hiss machine by Thomas Fansler

has not been forthcoming, and without such evidence it would be virtually impossible to fix the exact date of the purchase of Exhibit UUU. No evidence of substance has been presented in this regard.

7. I turn now to the alleged statements of Mr. O. J. Carow, as set forth on pages 15, et seq., of the affidavit of Chester M. Lane. Mr. Carow states that agents of the Federal Bureau of Investigation visited him at a time before the first trial. Carow is reported to have stated that he recalls being questioned by the agents as to the number of the missing Hiss typewriter and his recollection is that the agents were looking for a number other than 230099, the serial number of Ex. UUU. The defense then argues that this other number then mentioned by the agents must be the true number of the Hiss machine and that the knowledge of the existence of this other machine is possessed by the Bureau. This is of course absurd upon analysis since when the agents called upon Mr. Carow they did not know the number of the Hiss machine. They had had no opportunity to examine Exhibit UUU. The defense concedes that the records of the Woodstock Company are such that it is impossible to trace in that fashion the serial numbers of the Hiss machine. It was not until the defense produced Exhibit UUU that the Bureau had a serial number with which to investigate it. When the agents spoke to Carow, they had no serial number, as indeed they could have no serial number, but were investigating in regard to an entire series of

numbers on the theory that the sought-for typewriter was somewhere within that area.

8. The affidavit of Mr. Karl J. Connelly, attached hereto, unequivocally states that the Federal Bureau of Investigation has no knowledge of any Woodstock typewriter pertinent in any way to this prosecution other than Exhibit UUU.

9. In closing, I quote from the defendant's motion Exhibit 2-G, which is a letter of Document Expert Donald Doud, explaining his conclusions after having worked for the defendant for some time. He states:

> "In your (Chester T. Lane) letter of January 9, 1952 you asked me to submit an affidavit on two unrelated points with which you hope to establish the theory that typewriter 230,099 (Trial Ex. UUU) was a fraudulently made up machine in support of the Government's case against Alger Hiss. I have worked conscientiously and diligently on this matter but no evidence I have gathered to date has given me any reason to believe that theory and I cannot subscribe to a statement tending to imply that evidence I have gathered supports that conclusion."

Mr. Doud further states that in his expert opinion the suggestion that Chambers constructed the trial exhibit to produce type identical with the Hiss machine is an almost impossible task and one which he thinks could not be accomplished by anyone, expert or inexpert. We have by this letter the opinion of the defendant's own expert that their entire theory is based on an impossible foundation. That theory should be rejected by this court because there is no evidence whatsoever to support it, hence it could not conceivably produce a verdict of acquittal.

In regard to the question of due diligence, I respectfully note to the court that this theory of forgery by typewriter is not of recent concoction, but was expressed by the defendant at the time of sentence on January 25, 1950, indicating the consideration of that theory at that time.

III. EDITH MURRAY

1. In the direct examination of Mrs. Chambers at the second trial the defense was forewarned of the Government's contention that Mr. and Mrs. Chambers had a negro maid while living in Baltimore in 1935 and 1936. As early as November 1948, at Baltimore Mrs. Chambers told the defense of Edith Murray, told them her first name and described her contacts with Mrs. Hiss. Again on cross examination Mr. and Mrs. Hiss were both asked if they visited the Chambers' apartment in Baltimore in 1935 and 1936 and were cautioned by the prosecuting attorney that they should carefully weigh their answer to that question. In this way the defendant was put on guard that he would have to meet proof indicating that he had visited the Chambers' home in Baltimore. Further, the mere fact that evidence is submitted in rebuttal does not eliminate the legal requirement of due diligence in the obtaining of answering proof. In the light of all the factors here, it is apparent that the defendant should be required to have produced any evidence impeaching Edith Murray at the second trial. The defense did not request any adjournment

or other opportunity to meet the testimony of Edith Murray. See United States v. Rosenberg, (C.A. 2, Feb. 25, 1952). It cannot now seek a new trial on that ground.

2. As its third contention the defense produces two affidavits which at best would serve only as attempted impeachments of the testimony of Edith Murray. By authority, it is well established that such evidence is not sufficient as a matter of law to obtain a new trial. Hence, accepting arguendo these two allegedly impeaching affidavits at face-value, the defendant has not produced adequate evidence under this contention to entitle him to a new trial.

3. The affidavit of William R. Fowler (Ex. 3-B) states in substance that he was the beau of the housekeeper's niece, at 903 St. Paul Street, Baltimore. He informs the court that before his marriage he frequently dined at 903 St. Paul Street with his intended in-law, and that subsequent to his marriage he dined there approximately four times a week. Mr. Fowler further assures the court that the dinner table of his intended was a source of complete and thorough information on the activities of the entire household. It is the testimony of Mr. and Mrs. Chambers and has not previously been contradicted that they, with their first child, were tenants at 903 St. Paul Street during part of the time that Mr. Fowler dined there. It was further the testimony of the Chambers

and of Edith Murray that Edith Murray worked as a day-maid for the Chambers while at that address. The defense submits the affidavit of Mr. Fowler with the allegation that not only was Edith Murray not a maid for the Chambers at 903 St. Paul Street, but that according to Mr. Fowler's recollection, the Chambers did not live there at all.

4. I respectfully call the court's attention to the following factors in evaluating this affidavit of Mr. Fowler, which even if totally acceptable as to conclusion, would not warrant a new trial. The precise times when Mr. Fowler was at the St. Paul Street house are not set forth, nor can they be set forth, and similarly the precise dates and times when Edith Murray was at that house are not set forth. Therefore, it is entirely possible that though both visited that house, they would not have seen one another. Secondly, no reason is set forth why the presence of Miss Murray at the house, even if then known to Fowler, would have impressed him so that he would have recalled the fact, including the detail of names, to this date. The dependence of Mr. Fowler upon the gossip discussed at the dinner table is hardly to suggest worthwhile recollection. Even assuming that Mr. Fowler was produced at the first trial and gave the evidence such as was contained in his affidavit, it is inconceivable that it would have produced a verdict of acquittal.

5. The Government submits herewith the affidavit of Louise T. Fowler, the wife of William Reed Fowler. Mrs. Fowler states that subsequent to her marriage on August 18, 1934, she and her husband visited 903 St. Paul Street ". . . not more often than once every three weeks." Even the defendant must concede that Chambers was not at 903 St. Paul Street and was not even in Washington before late 1934 or early 1935. Chambers stayed at the defendant's apartment in the summer of 1935 and was at the defendant's P Street house into the late summer of 1935. It is therefore obvious that Chambers and his family were at 903 St. Paul Street after the marriage of Mr. and Mrs. Fowler. By the sworn statement of Mrs. Fowler she and her husband visited 903 St. Paul Street at that time no more than once every three weeks. This is additional evidence that the attempted impeachment by Mr. Fowler is without force.

6. The second affidavit submitted by the defendant in support of this contention is the sworn statement of Louis J. Leisman, who identifies himself as the janitor of the apartment house adjoining 1617 Eutaw Place, in Baltimore, where Chambers resided in 1936. Both Mr. and Mrs. Chambers and Edith Murray have testified that Miss Murray served on occasion as a maid for the Chambers at the Eutaw Place apartment. It is this testimony that the Leisman affidavit is submitted to impeach. (Will develop Leisman when all reports are in.)

IV. THE TIME OF CHAMBERS' BREAK WITH THE COMMUNIST PARTY

1. As Point IV of its motion, the defense contends that Chambers left the Communist Party before April 1, 1938, and not in approximately mid-April, 1938, as Chambers testified at both trials. From this premise the defense argues that Chambers' story is a fabrication because at least one of the Baltimore documents is dated April 1st, and that if Chambers left the Party before that date, he could not have obtained it from the defendant as he testified. From this conclusion the defense then proceeds to the ultimate conclusion that the entire story of receiving documents from the defendant is a fabrication.

2. In substantiation of this general theory, the defense points to early statements of Chambers to the effect that he left theCommunist Party in 1937. It is apparent from an examination of those statements that the answers there given were given as an approximation with no need for any great specification of date of break and without opportunity for any considerable thought by Chambers as to the precise date of break.

3. At both trials Chambers was asked for a close approximation of the date of his break at a time when

considerable importance was attached to that date. He fixed the break as of on or about April 15, 1938. In giving this testimony, Chambers, as a collateral circumstance, referred to the fact that it was about then that he obtained a translation from the Oxford University Press.

4. The defense now submits considerable documentary evidence indicating that the arrangements for this translation were made in early March, 1938, and that correspondence ensued between Chambers and the Press Company into the summer of 1938. All this evidence is directed toward this one answer of Chambers at the second trial. "Mr. Chambers: I stayed at the Old Court Road for about a month, I believe, until I had obtained a translation to do."

5. At best, the proof submitted by the defendant on this issue indicates that in his offhand statement as to the time of obtaining this translation, Chambers erred by approximately one month. This is at best an impeachment on a collateral matter and is not such evidence as would entitle the defendant to a new trial. To the contrary, even as is

conceded in the affidavit of Chester T. Lane, the evidence produced by the defendant on this issue goes far to corroborate the testimony of Chambers regarding his activities immediately before and after his break with the Party. Certainly it establishes beyond doubt that his early statements of a break in 1937 were rough approximations containing a margin of error totally unintended to deceive.

6. The affidavit of Paul F. Hlubb, attached hereto, establishes that as late as April 12, 1938, Mrs. Chambers ordered the furnishing of gas and electric service for a room in a house on Old Court Road, Baltimore. The affidavit of Mr. Hlubb follows the utility record of the Chambers' family during this period in Baltimore and indicates that the Chambers had and paid for gas and electric service at their Mount Royal Terrace apartment in Baltimore until April 9, 1938.

7. The affidavit of Andrew J. Ludwig, also submitted here, establishes that Mrs. Chambers paid rent on March 14, 1938, for the Mount Royal Terrace apartment and was entitled to occupy the same into the end of April, 1938.

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8. The affidavit of Lloyd Stoker establishes that on April 1, 1938, Mrs. Chambers brought the family car to a repair shop in Pondelltown, Maryland, a suburb of Baltimore. The Chambers automobile was brought to the service shop for such repairs as would be necessary before a long trip such as Chambers made approximately one month later.

9. This evidence, it is submitted, establishes conclusively that Chambers was in the Baltimore area at least until mid-April, 1938; and was at his Mount Royal Terrace home until after April 1, 1938. The totality of proof on this issue establishes conclusively that the contention of the defendant is without substance and in no event warrants the granting of a new trial. Certainly the exercise of due diligence would have produced all the evidence now suggested by the defendant before the termination of the second trial.

V. LEE PRESSMAN

1. As its final contention, the defense points to testimony of Lee Pressman given before the House Committee on Un-American Activities on August 28, 1950. This testimony is put forth apparently as impeachment of the trial testimony of Mr. Chambers. Accepting the statement of Pressman that Alger Hiss was not a member of his small Communist group in Washington as fact, it does not contradict any trial testimony of Chambers. At no time during the trial was Chambers asked or permitted to identify Pressman as a member of the

same Communist group as the defendant. Chambers at no time stated at either trial that he had knowledge that Hiss and Pressman attended simultaneously meetings of any Communist group.

2. The prosecution in its direct questioning of Chambers at no point introduced the subject of Lee Pressman. For these reasons it is apparent that any statement of Pressman, denying that he had knowledge of Hiss's membership in the Party, would be of no value whatsoever in determining the issues in this prosecution or in evaluating the testimony of witnesses. At best, it would be a subject for attempted impeachment of extra-judicial testimony of Chambers. It is clearly not sufficient to warrant granting of a new trial.

CONCLUSION

The opposing affidavits submitted by the Government in opposition to this motion for a new trial are prepared in the knowledge that the court presided at a second trial of lengthy duration and is well-grounded in the facts concerned. I respectfully submit that the supporting papers submitted by the defendant are on their face inadequate to warrant the granting of a new trial; even accepting all allegations as fact, they indicate insufficient proof, as the defendant's counsel concedes, to call for the setting aside of a judgment arrived at only after extended litigation and appeal.

Moreover, I submit that the affidavits submitted in opposition to this motion fully establish that the defense possesses

no evidence sufficient to warrant a new trial or to warrant the conducting of a hearing on the papers submitted. This motion should be denied without hearing and without further submissions of sworn or unsworn statements. There is before the court, with the papers submitted by the defendant and the opposing papers of the Government, full and adequate evidence upon which this court can arrive at a considered decision that no new trial should be here granted, even as was done in

Finally, as is developed in the memorandum of law submitted by the Government, this motion must be denied because it was not made within the two year period provided by Rule 33 of the Federal Rules of Criminal Procedure.

Sworn to before me this

day of March, 1952. _____

74-1333-5340