

# The President of the United States of America

TO UNITED STATES DEPARTMENT OF JUSTICE and  
 JOHN F. X. MCGOHEY  
 United States Attorney for the Southern District  
 of New York  
 United States Court House  
 Foley Square, New York

(L. S.)

**GREETING:**

WE COMMAND YOU, that all business and excuses being laid aside you appear and attend before the United States District Court for the Southern District of New York at a time and place to be specified in an order of said Court to be entered pursuant to defendant's notice of motion for the production of certain documents and other objects before trial dated Feb. 14, 1949 ~~on the~~ day of ~~193 1st~~ ~~at~~ ~~the~~  ~~Court~~ to testify and give evidence in a certain action now pending undetermined in the District Court of the United States for the Southern District of New York, between the United States of America against Alger Hiss

Defendant, on the part of the Defendant and that you bring with you and produce at the time and place aforesaid, ~~the~~ the papers, documents and other objects designated in appendix B attached to said notice of motion and attached hereto and made a part hereof,

now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premises. And for failure to attend, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damage sustained thereby to the party aggrieved, and forfeit Two Hundred and Fifty Dollars in addition thereto.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the District Court of the United States for the Southern District of New York, at the Borough of Manhattan, City of New York, the 14th day of February 1949.

Attorneys for Defendant  
 IEB VOISE, PLIMPTON & McLEAN

Kisseloff-25387  
*[Handwritten signature]*

Clerk.

APPENDIX B

PAPERS, DOCUMENTS AND TANGIBLE OBJECTS  
TO BE PRODUCED BY THE UNITED STATES  
AND INSPECTED BY DEFENDANT

1. All papers and documents produced by Whittaker Chambers on or about November 17, 1948 during his examination before trial in the libel action pending in the United States District Court for the District of Maryland entitled Alger Hiss, Plaintiff, against Whittaker Chambers, Defendant, which papers and documents were marked Exhibits Numbers 1 to 47, inclusive, in said libel action, and which papers and documents are described in greater detail in the affidavit of William L. Warbury annexed hereto.

2. A complete set of prints or other reproductions made from certain rolls of microfilm found by agents or employees of the Committee on Un-American Activities of the House of Representatives in a pumpkin on the farm of Whittaker Chambers in Westminster, Maryland on or about December 3, 1948.

3. Any and all papers and documents and any and all copies, reproductions, photographs or summaries of documents, in addition to those referred to in Items 1 and 2 hereof, as a thing directly or indirectly from the State Department or any other department or agency of the United States Government, allegedly furnished, transmitted or delivered to Whittaker Chambers by any person.

4. The rolls of microfilm found by agents or employees of the Committee on Un-American Activities of the House of Representatives in a pumpkin on the farm of Whittaker Chambers in Westminster, Maryland, on or about December 3, 1948 and the containers and wrappings in which said films were found.

5. Any and all documents in the possession of the United States, photographs of which were contained upon the rolls of microfilm above referred to.

6. All letters, memoranda and papers of any nature claimed to have been typewritten by the defendant or by any other person on any typewriter at any time owned by, or in the possession of, the defendant or the defendant's wife or any member of defendant's family.

7. All letters, memoranda and other papers of any nature claimed to contain any handwriting of the defendant or of the defendant's wife.

8. All typewriters claimed at any time to have been owned by, or in the possession of, the defendant or the defendant's wife or any member of defendant's family.

9. All letters, memoranda and other papers of any nature, whether typewritten or handwritten, purporting to have been written or that may have been written at any time in whole or in part by Whittaker Chambers or by his wife.

10. All reports, analyses and studies made by experts or technicians, whether employed by the United States or not, relating in anywise to the age, quality or other characteristics of the paper or ink of any of the documents above referred to, to the handwriting or typewriting appearing upon any of said documents, or relating in any way to the microfilm above referred to or to prints or reproductions made therefrom.

11. All written statements and affidavits, whether signed or not, made at any time by Whittaker Chambers to the Department of Justice, the Federal Bureau of Investigation, the State Department, the Committee on Un-American

Activities of the House of Representatives, or any other branch or agency of the United States Government, concerning any matter relevant to the issues in this action.

Kisseloff-25390

74-1533-1941

Received  
February 15, 1949 - 4:45 P.M.

Mary Cassidy Sartorius  
U.S. Attorney's office,  
S. D. of N. Y.

and \$2.00 subpoena fee  
on behalf of  
U.S. Attorney John F. McGohey

74-1533-1941

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA, :  
 :  
 -against- : C 128-402  
 :  
 ALGER HISS, : NOTICE OF MOTION  
 :  
 Defendant. :  
-----x

PLEASE TAKE NOTICE that upon the annexed affidavit of Edward C. McLean verified February 15, 1949, the indictment herein, and all the proceedings heretofore had herein, the undersigned will move this court at Room 318 in the United States Court House, Foley Square, Borough of Manhattan, City of New York on the 21st day of February, 1949 at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard:

1. For an order, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, permitting the defendant to inspect the minutes of all proceedings before the Grand Jury of the United States for the Southern District of New York which occurred from December 6, 1948 to December 15, 1948, inclusive, and directing the United States Attorney for the Southern District of New York to make available to defendant a copy of said minutes, upon the ground that matters occurred before the said Grand Jury which may constitute grounds for a motion to dismiss the indictment; and

2. In the alternative, for an order, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure,

permitting the defendant to inspect the minutes of certain of the proceedings before the aforesaid Grand Jury, to wit:

(a) the testimony given by the defendant,

before said Grand Jury on December 7, 8, 9, 10, 11, 13, 14 and 15, 1948, and all proceedings before the said Grand Jury occurring at the time of the giving of such testimony;

(b) the testimony given before said Grand

Jury by Richard Nixon on or about December 12, 1948 and all proceedings before the said Grand Jury

occurring at the time of the giving of such testimony,

on the ground that matters occurred before the said Grand Jury which may constitute grounds for a motion to dismiss the indictment; and

3. For an order extending defendant's time within which to move to dismiss the indictment herein until fourteen days after entry of the order determining this motion; and

4. For an order granting defendant such other and further relief as may be just and proper.

Dated: New York, N.Y.  
February 15, 1949

Kisseloff-25393  
DEBEVOISE, PLIMPTON & McLEAN

By EDWARD C. McLEAN  
A Member of the Firm  
Attorneys for the Defendant  
Office and P. O. Address:  
20 Exchange Place  
Borough of Manhattan  
City of New York, 5

TO: ALEXANDER M. CAMPBELL, ESQ.  
Assistant Attorney General

RAYMOND P. HEARTY, ESQ.  
Special Assistant to the Attorney General

THOMAS J. DONEGAN, ESQ.  
Special Assistant to the Attorney General

JOHN F. X. MCGOHEY, ESQ.  
United States Attorney for the Southern  
District of New York

United States Court House  
Foley Square  
New York, N. Y.

Kisseloff-25394



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA :  
 :  
 -against- :  
 ALGER HISS, :  
 :  
 Defendant. :  
 :  
----- x

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

EDWARD C. McLEAN, being duly sworn, deposes and  
says:

I am an attorney at law and a member of the firm  
of Debevoise, Plimpton & McLean, attorneys for the defendant  
in this action. I make this affidavit in support of  
defendant's motion for an order permitting him to inspect  
certain minutes of the Grand Jury which returned the  
indictment herein against the defendant on December 15, 1948.

The indictment contains two counts, each for the  
crime of perjury allegedly committed by defendant on  
December 15, 1948. The first count alleges that on or  
about December 15, 1948, the Grand Jurors duly impanelled  
and sworn in the United States District Court for the  
Southern District of New York were conducting an investiga-  
tion pertaining to possible violations of espionage laws  
of the United States and other federal criminal statutes,  
and that it was material to that investigation to ascertain  
whether United States statutes had been violated by the  
unlawful abstraction or removal of secret, confidential or

restricted documents, writings, sketches, notes or other papers by persons employed by the United States Government, or by the furnishing, delivery or transmittal of any such documents, writings, sketches, notes or other papers to any unauthorized persons. The indictment alleges that the defendant, a witness before said Grand Jury, testified under oath that he had not turned over to one Whittaker Chambers any documents of the State Department or of any other government organization, or any copies of such documents. The indictment charges that the said testimony of defendant was false in that the defendant "being then and there employed in the Department of State, in or about the months of February and March 1938, furnished, delivered and transmitted to one Jay David Whittaker Chambers, who was not then and there a person authorized to receive the same, copies of numerous secret, confidential and restricted documents, writings, notes and other papers, the originals of which had theretofore been removed and abstracted from the possession and custody of the Department of State."

The second count of the indictment, after re-alleging the allegations of the first count pertaining to the Grand Jury investigation, alleges that defendant further testified as a witness before <sup>Kisseloff-25396</sup> the Grand Jury that he thought that he could say definitely that he had not seen said Whittaker Chambers after January 1, 1937. The indictment charges that that testimony was untrue in that "the defendant did in fact see and converse with the said Mr. Chambers in or about the months of February and March 1938."

Defendant pleaded not guilty to each count of the indictment on December 16, 1948. At the arraignment, defendant's time for the making of motions, including

a motion for a bill of particulars, was extended to December 30, 1948. That time was thereafter further extended to March 7, 1949, by successive orders of this court, dated respectively December 22, 1948, January 10, 1949 and February 9, 1949.

Certain facts which occurred prior to the indictment in this action which have relevance to the issues raised by this motion may be briefly summarized as follows:

In August 1948, certain hearings were held in Washington, D.C. by the Committee on Un-American Activities of the House of Representatives which was then engaged in investigating the subject of Communism. On or about August 3, 1948, one Whittaker Chambers, also known as Jay David Whittaker Chambers, testified before that House Committee and in the course of that testimony stated in substance that Alger Hiss, the defendant in this action, in 1935 had been a member of a Communist "apparatus". Mr. Chambers testified on this subject before the House Committee on a number of occasions subsequent to August 3 but at no time in his testimony before the House Committee did he assert or claim in any way that Mr. Hiss had ever furnished to him any official documents or copies thereof. Mr. Hiss voluntarily appeared before the House Committee on August 5, 1948 and testified on that occasion and on subsequent occasions before the Committee that the charges made against him by said Whittaker Chambers were entirely untrue.

Thereafter, on or about August 27, 1948, said Whittaker Chambers in the course of a broadcast on a radio program known as "Meet the Press" over radio station WOL in the City of Washington, District of Columbia, repeated

his charge that Alger Hiss had been a Communist. Thereafter, on or about September 27, 1948, Mr. Hiss began an action for libel against Mr. Chambers in the United States District Court for the District of Maryland based upon the defamatory statements made by Mr. Chambers in the course of that radio broadcast.

After issue had been joined in the libel action, the attorneys for Mr. Hiss, plaintiff in that action, who were William L. Marbury of the Baltimore firm of Marbury, Miller & Evans and your deponent, began an examination before trial of Whittaker Chambers on the issues raised in the libel action. On or about November 17, 1948, in the course of that examination before trial, Whittaker Chambers produced certain handwritten and typewritten papers purporting to be copies or summaries of documents in the files of the State Department. Chambers testified in substance that these documents were typed in Alger Hiss's home on a typewriter owned by Alger Hiss.

On November 18, 1948, Mr. Hiss, upon being advised of the testimony given by Chambers on the previous day, directed his attorneys to turn over the documents produced by Chambers to the United States Department of Justice. On November 19, 1948, <sup>Kisseloff-25398</sup> Mr. Hiss's attorneys informed representatives of the Department of Justice of the production of these documents by Chambers, and the photostatic copies of the documents were delivered to the representatives of the Department of Justice on that day. I am advised and believe that the original documents so produced by Chambers were delivered to the Department of Justice within a day or two after November 19, 1948.

On or about December 3, 1948, representatives of the Un-American Activities Committee of the House of Repre-

representatives visited the farm of Whittaker Chambers at Westminster, Maryland and were led by Mr. Chambers to a pumpkin lying in a field on his farm from which Mr. Chambers produced and delivered to the representatives of the Committee five rolls of microfilm. These were subsequently developed by agents of the Committee and are said to contain photographs of documents purporting to be from the files of the State Department and other government departments.

Thereafter, beginning on or about December 6, 1948, representatives of the Department of Justice began the presentation of evidence to the Grand Jury of the Southern District of New York as to the circumstances under which Chambers claimed to have come into possession of the microfilm and the documents which he had produced in Baltimore on November 17, 1948. That Grand Jury had originally been impanelled on June 16, 1947, pursuant to order of this court dated June 2, 1947, and had served continuously since that date. Its maximum period of service of eighteen months, pursuant to Rule 6(g) of the Federal Rules of Criminal Procedure, was due to expire on December 15, 1948. Between December 6 and December 15, 1948, the Grand Jury conducted an intensive investigation on this subject. I am informed and believe that Chambers testified before the Grand Jury on a number of occasions during that period, that many other witnesses were called, and that various documentary evidence was introduced.

The defendant Alger Hiss testified before the Grand Jury on December 7, 8, 9, 10, 11, 13 and 14, 1948. I am advised by the defendant and believe that during the course of his several appearances before the Grand Jury on the dates mentioned above, the defendant was fully interro-

gated concerning the charges which had been made against him by Chambers, charges which the defendant repeatedly denied. Defendant was asked in detail about his dealings with Chambers. He was asked several times when he had last seen Chambers. Defendant testified that to the best of his recollection, he had not seen Chambers after the year 1936. Defendant was also asked several times whether he had ever transmitted any official documents or copies thereof to Chambers. Defendant testified that he had not.

On December 14, 1943, I was present at an interview between defendant and Alexander Campbell, Assistant Attorney General in charge of the Criminal Division of the Department of Justice. This interview took place in a room adjacent to the Grand Jury Room in the United States Court House. Mr. Campbell in my presence stated to the defendant, "The F.B.I. has cracked this case. You are going to be indicted."

Thereafter, on the morning of December 15, 1943, the defendant again testified before the Grand Jury and was further interrogated with respect to a number of matters in issue, including the question of when the defendant had last seen Chambers and the question of whether defendant had ever turned over any copies of official documents to Chambers. Defendant's answers, in substance, were the same as those he had previously given. Risseloff 25400

After testifying on these subjects at some length on the morning of December 15, defendant was excused and left the Grand Jury Room. Thereafter, at about 10:30 P.M. on December 15, at the very end of the morning session, defendant was again recalled to the Grand Jury Room for approximately fifteen minutes, during which he was asked the questions and gave the answers which appear in the indictment in this action.

That indictment was handed up by the Grand Jury to the United States District Court for the Southern District of New York at approximately 5:00 P.M. on the afternoon of December 15. The Grand Jury was thereupon discharged by the court, its term of service having expired on that day. It thus appears that between the time of defendant's final appearance before the Grand Jury at noon on that day and 5:00 P.M., the indictment had been voted, prepared, typed and signed.

The transactions under investigation by the Grand Jury allegedly occurred some ten years ago. Manifestly, prosecution of any charge of violation of the espionage laws or any other federal statute based upon these alleged transactions was barred by the statute of limitations long prior to December, 1948. Deponent submits that it is apparent from the foregoing facts that by the present indictment, the Grand Jury has attempted to do indirectly what it could not do directly. Being barred by the statute of limitations from charging the defendant with the offense of transmitting copies of official documents to an unauthorized person, it proceeded to indict the defendant for perjury based on his denial that he had committed that offense. Moreover, deponent <sup>Kisseloff-25401</sup> submits that it is equally apparent that the questions which defendant is alleged in the indictment to have answered falsely, were asked defendant not for the purpose of eliciting information, but for the deliberate purpose of eliciting the very answers which were in fact obtained and which the Grand Jury had every reason to believe that the defendant would give in view of his similar testimony on the same subjects during the preceding week. It is defendant's contention that the answers given

by him on December 15 could not have obstructed or impeded the Grand Jury's investigation, inasmuch as that investigation had already been completed, that the Grand Jury had already determined to indict, and that defendant was called before the Grand Jury on December 15 for the sole purpose of laying a foundation to indict him for perjury for denying the commission of an offense for which he could not be indicted directly because of the statute of limitations. Under these circumstances, it is defendant's contention that the allegedly false answers set forth in the indictment were not given with respect to a material matter, within the meaning of the perjury statute. In order properly to support a motion to dismiss the indictment on this ground, it is necessary that defendant be permitted to inspect the minutes of the proceedings of the Grand Jury during the period from December 6 to December 15, 1948, which deponent believes will substantiate the contentions set forth above.

In addition to moving for an inspection of the minutes of all proceedings of the Grand Jury from December 6 to December 15, defendant also moves, in the alternative, for the inspection of the minutes of a portion of these proceedings, i.e. the minutes of defendant's own testimony and the minutes of the testimony given by Richard Nixon. <sup>Kisseloff-25402</sup> Defendant's request for the inspection of these portions of the Grand Jury record rests not only upon the grounds set forth above, but also upon the following additional grounds.

With respect to defendant's own testimony, it is apparent that the indictment has been based upon a few questions and answers selected out of many on the same subject. Count I of the indictment reveals this on its face for the first question begins, "Mr. Hiss, you have probably been asked this question before, but I'd like to



ask the question again." Manifestly, the government had some reason for choosing these particular questions and answers for inclusion in the indictment. Presumably, they were selected because it was considered that they were more favorable to the government's contention than other answers previously given by the defendant. Under these circumstances, fairness requires that the defendant have the opportunity to examine his entire testimony, so that the particular answers referred to in the indictment may be read in the context of all the testimony on the subject. This is particularly true as to the second count, where defendant's answers amount to no more than a statement of his best recollection, i.e. "I think I can say definitely I did not see him."

With respect to the testimony of Mr. Nixon, the relevant facts are these:

Mr. Nixon, a member of Congress from California, was in 1948 and still is, a member of the House Committee on Un-American Activities. He was an active participant in the hearings of the Committee at which Chambers and the defendant testified. On October 19, 1948, Mr. Nixon spoke at the New York Herald Tribune Forum on "Loyalty and Civil Liberties." Near the end of ~~Kisseloff 25403~~ session, Mr. Bert Andrews, the moderator, brought up the Hiss-Chambers controversy. Mr. Andrews stated, "All of us know that one of the two lies." He then asked Mr. Nixon for his opinion. Mr. Nixon's answer, as quoted in the press, was as follows:

"Well, I must admit that I have been very close to the case and I want to preface everything that I say with that obviously I would have some bias \* \* . From the testimony that we have heard to date, the credibility of Mr. Hiss has been substantially impaired; the credibility of Mr. Chambers has stood up on the items where corroborative testimony was available. That is the conclusion that I would reach on the testimony to date." (New York Herald Tribune, October 20, 1948.)

After Chambers produced the microfilm from his pumpkin, a considerable public clamor arose. The House Committee resumed its investigation of the Chambers-Hiss controversy, and various charges were made to the effect that the Department of Justice was endeavoring to hush up the entire affair. Mr. Nixon lent his support to this contention by stating in a wireless message sent from a steamship on or about December 2, 1948, as quoted in the press:

"Will reopen hearings if necessary to prevent Justice Department cover up."  
(New York Herald Tribune, December 3, 1948)

On December 13, 1948, at 2:15 P.M., Mr. Nixon appeared before the Grand Jury. A few minutes earlier, at 1:40 P.M., he announced to the press that:

"The indictment of Chambers for perjury without anybody else would constitute a white-wash because it would be impossible to bring out the truth regarding other people." (New York Times, December 14, 1948)

It is apparent from his public utterances (1) that Mr. Nixon believed that Mr. Hiss should be indicted, (2) that he believed that it was unwise to indict Chambers for perjury lest it impair his effectiveness as a witness against Mr. Hiss, (3) that he was afraid that the Department of Justice might seek an indictment of Chambers instead of Hiss. Inasmuch as Mr. Nixon made public announcement of these opinions only a few minutes before he appeared before the Grand Jury, there is reason to believe that he may have repeated and elaborated upon these ideas during the course of his Grand Jury testimony. If he did so, deponent believes that such conduct would in itself constitute a basis for the dismissal of this indictment. It would amount to the exertion of undue pressure upon the Grand Jury by a member

of a coordinate branch of the government. An inspection of the minutes of Mr. Nixon's testimony is, therefore, requested in order to provide the basis for a motion to dismiss on this ground.

Defendant's time within which to move to dismiss the indictment will expire on March 7, 1949. In order to protect defendant's rights to make such a motion, an extension of that time is requested until fourteen days after the entry of the order determining the present motion.

WHEREFORE, deponent respectfully requests that defendant's motion for an inspection of the Grand Jury minutes be granted in its entirety.

Sworn to before me this  
15th day of February, 1949.

EDWARD C. McLEAN

(Seal)

AURELIA ALLISON

AURELIA M. ADDISON  
Notary Public, in the State of New York  
Residing in Kings County  
Kings Co. Clerk's No. 16, Reg. No. 219-A-0  
N. Y. Co. Clerk's No. 44, Reg. No. 321-A-0  
Nassau County Clerk's No. 3-A-50  
Westchester County  
Commission Expires March 30, 1950

Kisseloff-25405

*Spec.*  
*M. Monaghan, Asst. R.G.*

*OK to Mr. G. J.*

44-1383-1949

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: [Illegible]

[Illegible]

[Illegible]

**DEBEVOISE, PLIMPTON & McLEAN**

ATTORNEYS FOR

20 EXCHANGE PLACE,

BOROUGH OF MANHATTAN,

CITY OF NEW YORK,

NEW YORK.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

C 128-402

-against- :

NOTICE OF MOTION

ALGER HISS, :

Defendant. :

-----x

PLEASE TAKE NOTICE that upon the annexed affidavits of Edward C. McLean and William L. Marbury verified on February 14, 1949 and February 3, 1949 respectively, the indictment herein, and all the proceedings heretofore had herein, the undersigned will move this court at Room 318 in the United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 21st day of February, 1949 at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for

1. An order, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure directing the United States to furnish, at a time to be specified in the said order, a bill of particulars of the matters and items specified in Appendix A attached hereto and made a part hereof; and

2. An order, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, directing the United States to permit the defendant herein to inspect and copy or photograph, at a time and place to be designated in said order, the papers, documents and tangible objects specified in Appendix B attached hereto and made a part hereof; and

3. an order, pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, directing the United States to produce before this court at a time prior to the trial to be specified in said order the papers, documents and tangible objects specified in the subpoena, a copy of which is annexed hereto as appendix C and made a part hereof;

And for such other and further relief as may be just and proper.

Dated: New York, N.Y.  
February 14, 1949

DEBEVOISE, PLIMPTON & McLEAN

By 31 Edward C. McLean

A Member of the Firm  
Attorneys for Defendant  
Office and P.O. Address:  
20 Exchange Place  
Borough of Manhattan  
City of New York, 5

TO: ALEXANDER W. CAMPBELL, ESQ.  
Assistant Attorney General

RAYMOND P. NEARBY, ESQ.  
Special Assistant to the Attorney General

THOMAS J. DONEGAN, ESQ.  
Special Assistant to the Attorney General

JOHN P. X. McGOHEY, ESQ.  
United States Attorney for the Southern  
District of New York

United States Court House  
Foley Square  
New York, N. Y.

APPENDIX A

ITEMS AND MATTERS IN THE INDICTMENT  
WITH RESPECT TO WHICH A BILL OF PAR-  
TICULARS IS SOUGHT

Count I

1. With respect to the allegation in Paragraph 4 of the indictment that defendant had been "duly advised of the nature of the investigation then and there being conducted" by the Grand Jury, state:

(a) the time when defendant was so "duly advised";

(b) the place where defendant was so "duly advised";

(c) the person or persons who so "duly advised" the defendant;

(d) the substance of the advice so given to the defendant.

2. With respect to the allegation in Paragraph 4 of the indictment that defendant "in or about the months of February and March 1938 furnished, delivered and transmitted to one Jay David Whittaker Chambers, who was not then and there a person authorized to receive the same, copies of numerous secret, confidential and restricted documents, writings, notes and other papers,"

Kisseloff-25409

(a) identify each and every copy of a secret, confidential and restricted document, writing, note or other paper which defendant furnished, delivered and transmitted to said Jay David Whittaker Chambers, and annex a true copy thereof.

(b) State the time when defendant furnished, delivered and transmitted to said Jay David Whittaker Chambers each copy of a secret, confidential and

restricted document, writing, note or other paper.

(c) State the place where defendant furnished, delivered and transmitted to said Jay David Whittaker Chambers each copy of a secret, confidential and restricted document, writing, note or other paper.

(d) State the manner in which and means by which defendant furnished, delivered and transmitted to said Jay David Whittaker Chambers each copy of a secret, confidential and restricted document, writing, note or other paper.

(e) State the names of the person or persons who were present when defendant furnished, delivered and transmitted to said Jay David Whittaker Chambers each copy of a secret, confidential and restricted document, writing, note or other paper.

(f) State with respect to each copy of a secret, confidential and restricted document, writing, note or other paper furnished, delivered and transmitted by defendant to said Jay David Whittaker Chambers:

(i) the name of the person or persons who made said copy;

Kisseloff-25410

(ii) the place where said copy was made;

(iii) the time when said copy was made;

(iv) the manner in which said copy was made, whether by handwriting, typewriting, photostating, photographing or otherwise.

3. With respect to the allegation in Paragraph 4 of the indictment that "the originals" of the secret, confidential and restricted documents, writings, notes and other papers "had theretofore been removed and abstracted



from the possession and custody of the Department of State," state:

(a) the time when each of said originals was removed or abstracted from the possession and custody of the Department of State.

(b) the person or persons who removed or abstracted each of said originals from the possession or custody of the Department of State;

(c) the particular office of the Department of State from which each of said originals was removed or abstracted;

(d) the manner in which each of said originals was removed or abstracted.

(e) Specify which of said originals were secret, which were confidential, and which were restricted.

#### Count II

4. With respect to the allegations in Paragraph 2 of Count II of the indictment that defendant was "duly advised of the nature of the investigation then and there being conducted", state:

(a) the time when defendant was so "duly advised";

Kisseloff-25411

(b) the place where defendant was so "duly advised";

(c) the person or persons who so "duly advised" the defendant;

(d) the substance of the advice so given to the defendant.

5. With respect to the allegation in Paragraph 2 of Count II of the indictment that the testimony of the

defendant therein quoted was given with respect to a "material matter" state the respects in which it is claimed that said testimony was material to the investigation being conducted by the Grand Jury.

6. With respect to the allegations in Paragraph 2 of Count II of the indictment that defendant "did in fact see \* \* \* the said Mr. Chambers in or about the months of February and March 1938," state:

(a) each and every date in or about the months of February and March 1938, on which defendant saw said Chambers.

(b) the place at which defendant saw said Chambers at each time specified in response to Paragraph 6(a) hereof.

(c) the person or persons who were present when defendant saw said Chambers at each time specified in response to Paragraph 6(a) hereof;

7. With respect to the allegation in Paragraph 2 of Count II of the indictment that defendant "did in fact \* \* \* converse with the said Mr. Chambers in or about the months of February and March 1938," state:

(a) each and every date in or about the months of February and March 1938, on which defendant conversed with said Chambers.

(b) the place where defendant conversed with said Chambers at each time specified in response to Paragraph 7(a) hereof.

(c) the person or persons who were present when defendant conversed with said Chambers at each time specified in response to Paragraph 7(a) hereof.

18

(d) the substance of the conversation between defendant and said Chambers at each time when defendant conversed with said Chambers as specified in response to Paragraph 7(a) hereof.

8. (a) State whether it is claimed that at any of the times when defendant saw or conversed with said Jay David Whittaker Chambers in or about February and March 1938, specified in response to paragraphs 6 and 7 hereof, defendant furnished, delivered or transmitted to said Chambers any copies of secret, confidential and restricted documents, writings, notes and other papers as alleged in Count I of the indictment.

(b) If so:

(i) specify each of the times specified in response to paragraphs 6 and 7 hereof at which defendant furnished, delivered and transmitted to said Chambers copies of secret, confidential and restricted documents, writings, notes or other papers;

(ii) identify the copies of secret, confidential and restricted documents, writings, notes or other papers furnished, delivered and transmitted by defendant to said Chambers at each of said times.

Kisseloff-25413

APPENDIX B

PAPERS, DOCUMENTS AND TANGIBLE OBJECTS  
TO BE PRODUCED BY THE UNITED STATES  
AND INSPECTED BY DEFENDANT

1. All papers and documents produced by Whittaker Chambers on or about November 17, 1948 during his examination before trial in the libel action pending in the United States District Court for the District of Maryland entitled Alger Hiss, Plaintiff, against Whittaker Chambers, Defendant, which papers and documents were marked Exhibits Numbers 1 to 47, inclusive, in said libel action, and which papers and documents are described in greater detail in the affidavit of William L. Marbury annexed hereto.

2. A complete set of prints or other reproductions made from certain rolls of microfilm found by agents or employees of the Committee on Un-American Activities of the House of Representatives in a pumpkin on the farm of Whittaker Chambers in Westminster, Maryland on or about December 3, 1948.

3. Any and all papers and documents and any and all copies, reproductions, photographs or summaries of documents, in addition to those referred to in Items 1 and 2 hereof, emanating directly or ~~indirectly~~ from the State Department or any other department or agency of the United States Government, allegedly furnished, transmitted or delivered to Whittaker Chambers by any person.

4. The rolls of microfilm found by agents or employees of the Committee on Un-American Activities of the House of Representatives in a pumpkin on the farm of Whittaker Chambers in Westminster, Maryland, on or about December 3, 1948 and the containers and wrappings in which said films were found.

5. Any and all documents in the possession of the United States, photographs of which were contained upon the rolls of microfilm above referred to.

6. All letters, memoranda and papers of any nature claimed to have been typewritten by the defendant or by any other person on any typewriter at any time owned by, or in the possession of, the defendant or the defendant's wife or any member of defendant's family.

7. All letters, memoranda and other papers of any nature claimed to contain any handwriting of the defendant or of the defendant's wife.

8. All typewriters claimed at any time to have been owned by, or in the possession of, the defendant or the defendant's wife or any member of defendant's family.

9. All letters, memoranda and other papers of any nature, whether typewritten or handwritten, purporting to have been written or that may have been written at any time in whole or in part by Whittaker Chambers or by his wife.

10. All reports, analyses and studies made by experts or technicians, whether employed by the United States or not, relating in any way to the age, quality or other characteristics of the paper or ink of any of the documents above referred to, to the handwriting or typewriting appearing upon any of said documents, or relating in any way to the microfilm above referred to or to prints or reproductions made therefrom.

11. All written statements and affidavits, whether signed or not, made at any time by Whittaker Chambers to the Department of Justice, the Federal Bureau of Investigation, the State Department, the Committee on Un-American

Activities of the House of Representatives, or any other  
branch or agency of the United States Government, concerning  
any matter relevant to the issues in this action.

Kisseloff-25416

APPENDIX C

THE PRESIDENT OF THE UNITED STATES OF AMERICA  
TO UNITED STATES DEPARTMENT OF JUSTICE and  
JOHN F. X. McGOHEY  
United States Attorney for the Southern District  
of New York  
United States Court House  
Foley Square, New York

GREETING:

WE COMMAND YOU, that all business and excuses being laid aside you appear and attend before the United States District Court for the Southern District of New York at a time and place to be specified in an order of said Court to be entered pursuant to defendant's notice of motion for the production of certain documents and other objects before trial dated February 14, 1949 to testify and give evidence in a certain action now pending undetermined in the District Court of the United States for the Southern District of New York, between the United States of America against Alger Hiss, Defendant, on the part of the defendant and that you bring with you and produce at the time and place aforesaid, the papers, documents and other objects designated in Appendix B attached to said notice of motion and attached hereto and made <sup>Kisseloff-25417</sup> a part hereof, now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premises. And for failure to attend, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damage sustained thereby to the party aggrieved, and forfeit Two Hundred and Fifty Dollars in addition thereto.

WITNESS the HONORABLE JOHN C. KNOX, Judge of the District Court of the United States for the Southern

District of New York, at the Borough of Manhattan, City of  
New York, the 14th day of February, 1949.

WILLIAM V. CONNELL

Clerk

Attorneys for Defendant

LEBEVOISE, PLIMPTON & McLEAN

Kisseloff-25418



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA :  
 :  
 -against- :  
 :  
 ALGER HISS, :  
 :  
 Defendant, :  
 :  
----- X

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

EDWARD C. McLEAN, being duly sworn, deposes  
and says:

I am an attorney at law and a member of the firm  
of Debevoise, Plimpton & McLean, attorneys for the defendant  
in this action. I make this affidavit in support of  
defendant's motion for:

1. A bill of particulars, pursuant to Rule 7(f)  
of the Federal Rules of Criminal Procedure;
2. A discovery and inspection, pursuant to Rule 16  
of the Federal Rules of Criminal Procedure; and
3. The production, ~~pursuant to~~ Rule 17(c) of  
the Federal Rules of Criminal Procedure, prior to the trial  
of this proceeding, of certain papers, documents and other  
objects.

The indictment contains two counts, each for the  
crime of perjury allegedly committed by defendant on  
December 15, 1948. The first count alleges that on or  
about December 15, 1948, the Grand Jurors duly impanelled  
and sworn in the United States District Court for the  
Southern District of New York were conducting an investiga-  
tion pertaining to possible violations of espionage laws

of the United States and other federal criminal statutes, and that it was material to that investigation to ascertain whether United States statutes had been violated by the unlawful abstraction or removal of secret, confidential or restricted documents, writings, sketches, notes or other papers by persons employed by the United States Government, or by the furnishing, delivery or transmittal of any such documents, writings, sketches, notes or other papers to any unauthorized persons. The indictment alleges that the defendant, a witness before said Grand Jury, testified under oath that he had not turned over to one Whittaker Chambers any documents of the State Department or of any other government organization, or any copies of such documents. The indictment charges that the said testimony of defendant was false in that the defendant "being then and there employed in the Department of State, in or about the months of February and March 1938, furnished, delivered and transmitted to one Jay David Whittaker Chambers, who was not then and there a person authorized to receive the same, copies of numerous secret, confidential and restricted documents, writings, notes and other papers, the originals of which had theretofore been removed and abstracted from the possession and custody of the Department of State."

The second count of the indictment, after re-alleging the allegations of the first count pertaining to the Grand Jury investigation, alleges that defendant further testified as a witness before the Grand Jury that he thought that he could say definitely that he had not seen said Whittaker Chambers after January 1, 1937. The indictment charges that that testimony was untrue in that "the defendant

did in fact see and converse with the said Mr. Chambers in or about the months of February and March 1938."

Defendant pleaded not guilty to each count of the indictment on December 16, 1948. At the present, defendant's time for the making of motions, including a motion for a bill of particulars, was extended to December 30, 1948. That time was thereafter further extended to March 7, 1949, by successive orders of this court, dated respectively December 22, 1948, January 10, 1949 and February 9, 1949.

Certain facts which occurred prior to the indictment in this action which have relevance to the issues raised by this motion may be briefly summarized as follows:

In August 1948, certain hearings were held in Washington, D.C. by the Committee on Un-American Activities of the House of Representatives which was then engaged in investigating the subject of Communism. On or about August 3, 1948, one Whittaker Chambers, also known as Jay David Whittaker Chambers, testified before that House Committee and in the course of that testimony stated in substance that Alger Hiss, the defendant in this action, in 1935 had been a member of a Communist "apparatus". Mr. Chambers testified on this subject before the House Committee on a number of occasions subsequent to August 3 but at no time in his testimony before the House Committee did he assert or claim in any way that Mr. Hiss had ever furnished to him any official documents or copies thereof. Mr. Hiss voluntarily appeared before the House Committee on August 5, 1948 and testified on that occasion and on subsequent occasions before the Committee that the charges made against him by said Whittaker Chambers were entirely untrue.

Thereafter, on or about August 27, 1948, said Whittaker Chambers in the course of a broadcast on a radio program known as "Meet the Press" over radio station WOL in the City of Washington, District of Columbia, repeated his charge that Alger Hiss had been a Communist. Thereafter, on or about September 27, 1948, Mr. Hiss began an action for libel against Mr. Chambers in the United States District Court for the District of Maryland based upon the defamatory statements made by Mr. Chambers in the course of that radio broadcast.

After issue had been joined in the libel action, the attorneys for Mr. Hiss, plaintiff in that action, who were William L. Marbury of the Baltimore firm of Marbury, Miller & Evans and your deponent, began an examination before trial of Whittaker Chambers on the issues raised in the libel action. On or about November 17, 1948, in the course of that examination before trial, Whittaker Chambers produced certain handwritten and typewritten papers purporting to be copies or summaries of documents in the files of the State Department. Chambers testified in substance that these documents were typed in Alger Hiss's home on a typewriter owned by Alger Hiss. Kesseloff-25422

On November 18, 1948, Mr. Hiss, upon being advised of the testimony given by Chambers on the previous day, directed his attorneys to turn over the documents produced by Chambers to the United States Department of Justice. The annexed affidavit of William L. Marbury verified February 3, 1949 sets forth in detail the steps which were immediately taken by him to comply with Mr. Hiss's instructions in this respect. On November 19, 1948, representatives of the Department of Justice were informed by Mr. Marbury

of the production of these documents by Mr. Chambers and photostatic copies of the documents were delivered to the representatives of the Department of Justice by Mr. Marbury on that day. I am advised and believe that the original documents so produced by Mr. Chambers were delivered to the Department of Justice within a day or two after November 19, 1948 and that they have ever since remained and still are in the possession of the Department of Justice. For convenience, the handwritten and typewritten papers produced by Whittaker Chambers on November 17, 1948 as aforesaid are sometimes referred to hereinafter as the "Baltimore papers".

On or about December 3, 1948, representatives of the Un-American Activities Committee of the House of Representatives visited the farm of Whittaker Chambers at Westminster, Maryland and were led by Mr. Chambers to a napkin lying in a field on his farm from which Mr. Chambers produced and delivered to the representatives of the Committee five rolls of microfilm. Prints from these films were subsequently made under the direction of the House Committee. I have been advised by Mr. Richard Nixon, a member of that Committee, that one of the four ~~rolls~~ <sup>rolls</sup> was light-struck or damaged in some other way so that it was blank, and no legible prints could be obtained therefrom. Prints were obtained from each of the four other rolls. I have been advised by Thomas J. Donegan, Special Assistant to the Attorney General and Raymond P. Whearty, Special Assistant to the Attorney General that a complete set of prints made from the four rolls of microfilm were obtained from the House Committee by the Department of Justice early in

December 1948. I verily believe that the prints are still in the possession of the Department of Justice. I am advised and believe that the prints made from the microfilm purport to be photographs of official documents from the files of the State Department and other government departments. The microfilms and the prints made therefrom are sometimes hereinafter referred to for convenience as the "pumpkin papers".

The Grand Jury of the Southern District of New York which was in session in December 1948 and which had been in session since June 16, 1947, conducted an investigation of the circumstances under which Whittaker Chambers claimed to have come into possession of the Baltimore papers and the pumpkin papers. Alger Hiss, the defendant in this action, testified as a witness before the Grand Jury on a number of occasions from December 7 to December 15, 1948. On the latter day, the indictment in this action was handed up.

The allegations of the indictment are phrased in vague and general terms. A bill of particulars is essential in order to enable the defendant to prepare for trial and to prevent surprise. For example, the first count of the indictment alleges merely that the defendant transmitted to Chambers "copies of numerous secret, confidential and restricted documents, writings, notes and other papers." No details whatever are given. Defendant cannot tell from the indictment whether he is charged with having transmitted to Chambers the Baltimore papers, or the pumpkin papers, or both, or part of each. He cannot tell whether the government will contend that he delivered to Chambers other papers having no relation to either of the foregoing groups.

It is impossible for the defendant to prepare his defense without being apprised of the true nature of the charges against him.

Similarly, Count II of the indictment alleges merely that the defendant "did in fact see and converse with the said Mr. Chambers in or about the months of February and March 1938." The indictment gives no details as to when the alleged meeting is claimed to have taken place, or as to where it took place, or as to what the alleged conversation consisted of. It is impossible to tell from the face of the indictment whether it is the government's claim that the alleged conversation between the defendant and Chambers took place at the time of the transactions alleged in Count I, or whether the government is basing Count II upon some wholly separate and distinct alleged conversation. Unless the government is required to specify its claim, defendant will be left wholly in the dark as to the nature of the charge that he is called upon to meet.

The documents and objects of which an inspection is sought, as listed in Appendix B, are highly material to the preparation of defendant's defense. Deponent verily believes that the request for their inspection is reasonable and proper, as appears from the following.

Kisseloff-25425

Item 1 of Appendix B refers to the "Baltimore papers". If the government claims that defendant transmitted some or all of those papers to Whittaker Chambers in February and March 1938, then the physical characteristics of the original documents become of paramount importance. Defendant cannot properly prepare for trial unless he is afforded an opportunity to have the documents examined by an expert well in advance of trial. It is important to study the appearance

and type of the paper, the type and age of the ink, the handwriting upon the handwritten documents and the typewriting upon the typewritten ones. The scientific and technical study which must be made as a preliminary to expert testimony on such subjects requires time for its successful completion. It cannot be done adequately upon a hasty inspection of the documents at the trial.

Item 2 of Appendix B relates to the "pumpkin papers", i.e. the prints made from the rolls of microfilm. Although the House Committee on Un-American Activities has furnished deponent with copies of some of these prints, the set so furnished deponent is concededly incomplete, inasmuch as many of the prints have not been released for publication by the Committee. It is essential that defendant have an opportunity to examine the complete set of prints. Such an inspection is necessary, not only to apprise the defendant of the contents of the documents so photographed, but also to ascertain whether the prints reveal markings or notations on the microfilm which would aid in revealing the source from which the documents were obtained.

Item 3 of Appendix B relates to all papers and documents in addition to those referred to in Items 1 and 2 allegedly furnished to Whittaker Chambers. <sup>Kisseloff-25426</sup> Until a bill of particulars has been granted, defendant has no way of knowing whether the government will claim that any such additional documents were transmitted to Chambers. If such claim is made, however, defendant should be entitled to inspect them for the same reasons as apply to the papers already referred to.

Item 4 of appendix B relates to the roll of microfilm itself. The age and characteristics of this film may have a very important bearing upon the issues in



this case. The government, of course, has had every opportunity to inspect the film and to have it examined by experts. Defendant has not had that opportunity and cannot properly prepare his defense without it.

I have been advised by Mr. Richard Nixon, a member of the House Committee on Un-American Activities, that prints made from certain portions of the microfilm were partially illegible, due to some defect in the film. Consequently, the entire contents of the documents photographed upon those portions of the microfilm could not be ascertained from the prints themselves. Enough of the contents of those documents was shown upon the prints, however, to enable the Committee to identify the documents which had been photographed upon the microfilm. The Committee thereupon obtained from the various government departments having custody of them, copies of the entire documents, so that all their terms and provisions could be ascertained. It is reasonable to believe that the originals of such documents, or true copies thereof, are now in the possession of the Department of Justice. Under Item 5 of Appendix B, defendant asks permission to inspect these documents, since in these instances, inspection of the prints alone would not be sufficiently informative.

In view of the assertion made by Plaintiff Chambers in the Maryland libel action, an assertion which he will doubtless repeat in the present action, that certain of the Baltimore papers are in defendant's handwriting and that the remainder of the Baltimore papers were typed upon defendant's typewriter, it is obvious that expert testimony on matters of handwriting and typewriting will be necessary in this case. Deponent has been informed and believes that an intensive search has been made by the Department of Justice throughout the country for samples of the handwriting of

defendant and his wife and for samples of typewriting purporting to have been done upon any typewriter possessed at any time by defendant or members of his family. Deponent has been informed of a number of instances in which letters, memoranda and other documents purportedly emanating from defendant or his family have been seized by the government from third persons. Deponent verily believes that such documents are now in the possession of the Department of Justice, and it is to be anticipated that expert testimony concerning them will be offered by the government at the trial. In order to afford defendant an opportunity to prepare for trial and to meet this testimony, it is essential that he be permitted to have an expert inspect such samples now in the government's possession, and any others which the government may acquire from third persons prior to the trial. Examination of such documents and their comparison with the other papers asserted by Chambers to have been written by defendant or to have been typed on his typewriter is a process which will require expert study which cannot be undertaken on the spur of the moment in the midst of a trial. Adequate opportunity in advance of trial for such study is necessary. Items 6 and 7 of Appendix B relate to such matters.

Kisseloff-25428

Deponent has also been informed and believes that the government has conducted an intensive search with a view to securing any and all typewriters at any time in the possession of defendant or his family. Such typewriters will, of course, be an important item of evidence in this case and if the government now has obtained any of them, or should obtain any of them prior to the trial, defendant should be entitled to have his expert inspect them for the same reasons indicated above. This is covered by Item 8 of Appendix B.

In view of the critical significance to this case of the handwritten and typewritten "Baltimore papers" produced by Whittaker Chambers, it is an essential part of the preparation of defendant's defense to cause a thorough expert study to be made of the handwriting and typewriting of Chambers and his wife. To that end, samples of their known handwriting and typewriting must be subjected to expert examination. If the Department of Justice has obtained such samples, or if it should obtain some prior to the trial, they should, in all fairness, be as available to the defendant's expert as to the government's. Accordingly, inspection of such material is requested in Item 9 of Appendix B.

I have been informed by Mr. Nixon that experts of the Eastman Kodak Company and the Dupont Company have examined the microfilm at the request of the Department of Justice. Manifestly, reports of that inspection have been made by those experts to the government. I have also been advised by Raymond P. Whearty, Special Assistant to the Attorney General, that experts of the Federal Bureau of Investigation have also examined the microfilm and that they have inspected the paper and ink of the "Baltimore papers" and have examined specimens of defendant's handwriting and of typewriting purporting to have been done on typewriters possessed by the defendant. It is apparent that government experts will testify at the trial as to their findings as a result of such examinations and studies. Deponent verily believes that at the trial defendant would be entitled to require the production of the reports and studies made by the government experts in order to form a basis for their cross examination. Under Item 10 of Appendix B, defendant asks that these reports and studies

be produced for defendant's inspection at a reasonable time in advance of the trial. An inspection in advance will expedite the trial by eliminating the delay which would inevitably ensue if defendant's counsel and experts had had no opportunity to examine these documents until after the trial had begun.

The government's principal witness, Whitaker Chambers, has admittedly made a number of statements to various government agencies, prior to the institution of the present prosecution in December 1948, which relate to the subject matter in this case. Chambers has testified in the course of his deposition in the libel action that on various occasions he gave written statements to representatives of the Federal Bureau of Investigation and to representatives of the State Department. Chambers has also testified before the House Committee on Un-American Activities in executive session, and his testimony so given has not been made public. It is apparent that the statements and testimony given by Chambers prior to November 17, 1948 were inconsistent with the testimony which he gave on November 17 in the libel action in which he has presumably given since that date before the Grand Jury. On November 17, 1948, in the course of his deposition in the libel action, ~~in the~~ <sup>Kisseloff-29430</sup> Chambers testified that the alleged activities which he then referred to, i.e. the alleged furnishing of documents to him by the defendant, had never been mentioned by him before. In response to the specific question as to whether he had ever informed the Committee or the Federal Bureau of Investigation of these alleged transactions, he testified, "I have never informed anyone of this activity."

In Item 11 of Appendix B, defendant asks that the government produce for defendant's inspection at a reasonable time before trial these prior inconsistent statements and testimony given by Chambers to various government agencies on this subject. Deponent verily believes that defendant would be entitled to an inspection of such statements and testimony at the trial as a basis for the cross examination of Chambers. Inspection of this material in advance of the trial will facilitate and expedite the trial and avoid the delay which would otherwise arise if inspection did not take place until the trial itself.

Deponent verily believes that an inspection of the documents and articles described in Items 1 to 9 inclusive of Appendix B is authorized by Rule 16 of the Federal Rules of Criminal Procedure. Each of these groups of documents is material to the preparation of defendant's defense, for the reasons set forth above. Deponent verily believes that each group of documents was either obtained by the government from the defendant himself, as in the case of the Baltimore papers, or was obtained by the government from third persons by seizure or Grand Jury process.

Moreover, production of these documents and articles in advance of trial is also <sup>Kisseloff-25431</sup> authorized by Rule 17(c). In so far as it relates to Items 1 to 9 of Appendix B, this application is based upon each of these rules.

As to the documents specified in Items 10 and 11 of Appendix B, the application is based upon Rule 17(c).

The indictment in this action is based upon transactions alleged to have occurred ten years ago. As in the case of all stale claims, the lapse of so much time has made the preparation of defendant's case unusually

difficult. Witnesses have died, files and records have been lost, recollections have been impaired.

Moreover, the government's case depends in very large part upon the properties and characteristics of physical objects, documents and papers which the government has had ample opportunity to examine and study with all the large technical resources available to it, but which thus far the defendant has not been able to see at all. Under the circumstances, deponent submits that a proper case exists for the generous exercise of the court's discretion in order to enable the defendant to make adequate preparation for his defense against the serious charges that have been made against him, charges which the defendant denies in their entirety.

WHEREFORE, deponent respectfully requests that defendant's motion for a bill of particulars and for a discovery and inspection and production of documents be granted.

Sworn to before me  
this 14<sup>th</sup> day of February,  
1949.

*Edward C. Van Lan*

AURELIA M. ADDISON  
Notary Public, in the State of New York  
Residing in Kings County  
Kings Co. CTS No. 16, S.C. No. 19-A-0  
N.Y. Co. CTS No. 44, E.C. No. 321-00  
Nassau County Clerk's No. 3-A-50  
Westchester County  
Commission Expires March 30, 1950

Kisseloff-25432

STATE OF MARYLAND:  
:  
CITY OF BALTIMORE: SS:

I, M. CELESTE BARLOW, a Notary Public in and for the City of Baltimore, State of Maryland, do hereby certify that on this 3rd day of February, 1949, before me personally appeared the undersigned, WILLIAM L. MARBURY, of Baltimore, Maryland, who did make the following affidavit:

My name is William L. Marbury. I am an attorney at law with offices in 1000 Maryland Trust Building, Baltimore, Maryland. I represent Mr. Alger Hiss in the suit which he filed against Mr. Whittaker Chambers in the United States District Court for the District of Maryland, Civil No. 4176. On November 4, 1948, I began an oral examination of Mr. Chambers, pursuant to notice served upon him, in accordance with the Rules of Civil Procedure applicable to proceedings in the Federal Courts. This examination continued throughout November 4 and 5 and was resumed on the afternoon of November 17. On the date last mentioned Mr. Chambers produced certain handwritten memoranda and a number of typewritten papers. The handwritten memoranda were marked by the reporter by whom the deposition was being transcribed as Exhibits Nos. 1 to 4. The typewritten papers were marked as Exhibits Nos. 5 to 27 and were identified as follows:

<u>Number</u>	<u>Description</u>
5	Paper headed "American Consulate, Yokohama, Japan, January 6, 1938, signed by Richard F. Boyce
6	Paper headed "Voluntary Report", date of completion, Jan. 6, 1938, date of mailing, Jan. 7, 1938.

<u>Number</u>	<u>Description</u>
7	Paper headed "New Economic Organization of Manchukuo"
8	Batch of thirteen typewritten pages
9	Typewritten paper, "Europe, January 5", starting "Bullitt cabled from Paris"
10	Paper dated 1/7/38, starting "Reliable source reports"
11	Typewritten paper "Far East, January 22, Tsingtao", and three additional pages
12	Batch of papers, dated Feb. 7, 1938, "The Significance of the Establishment", etc.
13	Paper dated Feb. 9, 1938, beginning "Yokohama reports"
14	Paper headed "Far East, February 11", beginning with "Lockhart, U.S. Consular at Peiping"
15	Typewritten paper dated Feb. 11, 1938, addressed to "Mr. Secretary", and typewritten at the end "S.K.H."
16	Paper headed "Berlin", dated Feb. 12, 1938, addressed to the Secretary of State, typewritten at the end, "Gilbert"
17	Paper, "Tokyo", dated Feb. 12, 1938, addressed to the Secretary of State, signed "Grew"
18	Paper headed "Vienna", dated Feb. 13, 1938, to the Secretary of State, signed "Wiley"
19	Paper, "Berlin", dated Feb. 14, 1938, Secretary of State, signed "Gilbert" Risseloff 25434
20	Paper headed "Gray, Peiping, dated February 14, 1938, Secretary of State, signed in typewriting "Lockhart"
21	Paper headed "Gray, Chefoo", dated February 14, 1938, Secretary of State, signed "Allen"
22	Paper headed "Vienna", dated Feb. 14, 1938, to the Secretary of State, and signed "Wiley", consisting of two pages
23	Paper headed "Vienna", dated Feb. 15, 1938, Secretary of State, signed "Wiley"
24	Paper headed "Paris", dated Feb. 15, 1938, to the Secretary of State, signed "Bullitt" consisting of two pages



<u>Number</u>	<u>Description</u>
25	Paper dated Feb. 15, 1938, in upper left-hand corner "Telegram sent", and signed "Hull"
26	Paper, "Paris, dated Feb. 15, 1938, Secretary of State, signed "Bullitt"
27	Paper headed "Gray, London", dated Feb. 16, 1938, Secretary of State, signed "Johnson"
28	Paper, "Paris", dated Feb. 16, 1938, Secretary of State, signed "Bullitt", consisting of two pages
29	Paper, "Paris", dated Feb. 16, 1938, Secretary of State, signed "Bullitt"
30	Paper headed "Vienna", dated Feb. 16, 1938, Secretary of State, signed "Wiley", consisting of two pages
31	Paper headed "Austria, Germany", Feb. 16th, (no year date)
32	Paper headed "Special, Gray" in upper right-hand corner, dated Feb. 17, 1938, Secretary of State, signed "Caldwell"
33	Paper, "Gray, Tokyo", dated Feb. 17, 1938, Secretary of State, signed "Grew"
34	Paper, "Berlin", dated Feb. 17, 1938, Secretary of State, signed "Gilbert"
35	Paper, "Paris", Feb. 17, 1938, Secretary of State, signed "Bullitt"
36	Paper dated February 18, 1938, beginning with "German domination of Central Europe", signed by initials "F.B.S."
37	Paper, "London, No. 257", March 28th, (no year date), signed "Kennedy" Kisseloff-25435
38	Paper headed "Germany", March 26th, (no year date), not signed
39	Paper dated March 26th, "Lane, U.S. Minister at Belgrade", not signed
40	Paper beginning March 28th, no year date, "Phillips, U. S. Ambassador at Rome", not signed
41	Paper writing, March 28th (no year date), reading "U.S. Consul at Tampico, Mexico", not signed

<u>Number</u>	<u>Description</u>
42	Paper headed "Far East", March 28th (no year date), beginning "Grew, U. S. Ambassador, Tokyo cabled"
43	Paper beginning "Rome, 77", March 29th, Noon, (no year date), signed "Phillips"
44	Paper headed March 29th, (no year date), beginning "Carr, U. S. Minister at Prague, cabled"
45	Paper, "Warsaw, No. 38", March 29th, 4 P.M., (No year date), signed "Biddle"
46	Paper headed "Japan", beginning with words "On March 30th", (no year date), "The Department cabled to the U.S. Legations at Costa Rica", not signed
47	Paper headed "England", beginning with words "On March 29th", (no year date), "Kennedy, U. S. Ambassador, London, cabled", not signed

By agreement of counsel, the originals of these exhibits were retained by counsel for Mr. Chambers, with the understanding that they should be subject to inspection by counsel for Mr. Hiss at any time. Photostatic copies were furnished counsel for Mr. Hiss.

On November 18, 1948, I saw Mr. Alger Hiss in New York City and showed him the photostatic copies of the papers which had been produced by Mr. Chambers. After consulting Mr. Edward C. McLean, who was associated with me as counsel in the libel suit, Mr. Hiss requested me to bring these papers to the attention of the Attorney General of the United States as soon as possible. Kisseloff-25436

On the following morning I tried to reach the Attorney General by telephone but found that he had left his office and was not expected to return and then spoke to the Acting Attorney General, Mr. Philip B. Perlman, and told him that certain papers had come to light in connection with the Hiss-Chambers libel suit which should have the immediate attention of the highest

officials of the Department of Justice. I asked Mr. Perlman whether he could arrange to see Mr. McLean and myself the following day. Mr. Perlman stated that he would get in touch with Mr. Alexander M. Campbell, Head of the Criminal Division of the Department of Justice, and tell him to call me. I then called Mr. Richard F. Cleveland, one of the counsel for Mr. Chambers, and told him that I had been instructed by my client to bring these papers to the attention of the Attorney General. Mr. Cleveland suggested that counsel for Mr. Chambers and Mr. Hiss meet to discuss the matter. Shortly thereafter he arrived at my office with his associate, Mr. William D. Macmillan, and with Mr. Harold R. Medina, Jr., of New York City, who stated that he was representing Time, Incorporated. Mr. Cleveland stated that there was no objection on their part to having these papers brought to the attention of the Department of Justice but suggested that the matter should be first taken up with Judge Chesnut. A conference was then arranged with Judge Chesnut which was held at 1:00 P.M. on Friday, November 19. At that conference I told Judge Chesnut what had taken place, including the instructions which I had received from my client. Mr. Cleveland stated to the court that his client had no objection to the proposed course of action, provided that there would be no unreasonable delay in the trial of the libel suit. My recollection <sup>Kisseloff 25437</sup> is that his exact words were: "Your Honor, this is more Mr. Marbury's idea than it is ours, but we have no objection to it." Judge Chesnut then indicated that he saw no objection to the matter being brought to the attention of the Department of Justice.

While waiting to see Judge Chesnut I had received a call from Mr. Campbell, who indicated that he had been instructed by the Attorney General to come to Baltimore immediately. I suggested that he wait to hear from me until after the conference

with Judge Chesnut had been concluded. Immediately upon returning from Judge Chesnut's office, I called Mr. Campbell and made arrangements for him to come to my office on that same afternoon. He arrived in the middle of the afternoon accompanied by two associates. Mr. Cleveland, Mr. Macmillan, and Mr. Medina arrived shortly thereafter. I explained the circumstances to Mr. Campbell and turned over to him the photostatic copies of the original papers which had been produced on the afternoon of November 17. Mr. Cleveland told Mr. Campbell that the originals were in his possession and had been placed in a safe deposit box. Mr. Campbell then requested 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, a reporter was called into the conference and asked not to write up his notes until further word was received from the Department of Justice.

Exactly at the expiration of two weeks, the Attorney General made public announcement of the fact that important evidence which had been produced in the Hiss-Chambers libel suit would be laid before the Grand Jury in New York City.

According to my present recollection, that statement appeared in the press on the afternoon of Friday, December 3. That same evening Mr. Frank Johnstone called me from the office of the Federal Bureau of Information in Baltimore and requested me to make arrangements to have Mr. Hiss in Baltimore on the following day for an interview. I reached Mr. Hiss at midnight, and he agreed immediately to come to Baltimore. I went with him to the offices of the Federal Bureau of Information on the follow-

ing morning and remained there all day. During the course of that day he was served with a subpoena to appear before the Grand Jury in New York on Monday morning.

S/S William L. Marbury  
William L. Marbury

IN WITNESS WHEREOF I have hereunto affixed my hand and notarial seal this 3rd day of February, 1949.

(Notarial Seal) /s/ Mary Celeste Barlow  
Notary Public

(Certificate of Clerk of the Superior Court of Baltimore City attached.)

Kisseloff-25439

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA  
FOR THE DISTRICT OF COLUMBIA

*M. Donegan, Spec. Asst. R.G.*

UNITED STATES OF AMERICA

*John H. McLaughlin*

vs.

DEBEVOISE, PLIMPTON & McLEAN

ATTORNEYS FOR

Defendant,

20 EXCHANGE PLACE,

BOROUGH OF MANHATTAN,

CITY OF NEW YORK,

NEW YORK.

74-1333-1940

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