

Wilson Case Presents Test For 'Graymail' Procedures

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THE UPCOMING trials of former CIA agent Edwin P. Wilson for his alleged criminal activities on behalf of the Libyan government will present the first major test of the federal government's procedures for protecting itself against "graymail" — the threat that a defendant will reveal national security information at trial.

Mr. Wilson's lawyer, Herald Price Fahringer of New York, says he will challenge the Classified Information Procedures Act of 1980 on Sixth Amendment grounds. The law requires defense attorneys to disclose to the trial judge any classified material they plan to use in a case.

Accompanying regulations issued by Chief Justice Warren E. Burger outline complex security precautions that the courts may take, including authorization to obtain, "by any lawful means, information about the trustworthiness of persons associated with the defense [for presentation] to the court for the framing of an appropriate protective order."

"It's the only instance in the law where you have to get the judge's approval of your defense," Mr. Fahringer says. "The issue is whether our national security is so important that you can't defend yourself."

Mr. Wilson was seized last June after a ruse led him away from his refuge in Libya into the hands of federal agents. A 20-year veteran of the Central Intelligence Agency, he is charged with smuggling arms, training terrorists and conspiring to kill on behalf of the Libyan government.

Trials to Begin Soon

His first trial, on charges of smuggling arms with two co-defendants, is scheduled to begin Oct. 27 in U.S. District Court in Houston. *U.S. v. Wilson*, H-82-139. A second trial, on a gun-running indictment, is slated for Nov. 15 in U.S. District Court in Alexandria, Va. *U.S. v. Wilson*, 82-212-A. Still another trial — in which Mr. Wilson, fugitive former CIA operative Frank Terpil and a third defendant are charged with arms violations and conspiracy to murder a Libyan dissident — is scheduled to begin Nov. 22 in federal court in Washington, D.C. *U.S. v. Wilson*, 80-200. (Mr. Fahringer, who protests that the trial dates are too close together, is trying to change their scheduling.)

Under the provisions of the classified procedures act, judges at the Wilson trials will be required to review any classified information Mr. Fahringer proposed to introduce, and decide either to allow it in, suppress it or circumvent the problem by ordering stipulations or a government-prepared summary of the secret material.

Under the regulations, all defense filings will be sealed and materials

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relating to the case — including typewriter ribbons used to type pleadings and other papers — will be kept in secure locations, such as a courtroom vault or the offices of the CIA or the Department of Justice.

Though it was passed in 1980 after an outcry over the dismissal of serious charges against several former government officials who had access to secret information — including former CIA Director Richard Helms and former FBI Director L. Patrick Gray — the act was apparently not invoked in a criminal case until earlier this year, when its procedures were followed in U.S. District Court in Baltimore in the case of a man charged with impersonating a CIA agent. *U.S. v. Joliff*, N-800461.

Defense attorney Henry Weil challenged both the act and the regulations on constitutional grounds, but in both instances Judge Edward S. Northrop ruled against him.

Under Wraps

As Judge Northrop interpreted the regulations, Mr. Weil and his associates, paralegals and secretary had to pass background checks to handle classified information. Mr. Weil says he had his papers typed at CIA

headquarters in Washington, and "all the papers, pleadings and what have you had to be channeled through [an agency] security officer."

Asst. U.S. Attorney Catherine Blake, a prosecutor in the case, says she kept her papers, typewriter ribbons and documents "in a secure vault in the Baltimore District Court."

'Highly Sensitive' Information

Judge Northrop did rule, however, that some "highly sensitive" information could be used by Mr. Weil in open court. The government moved to substitute stipulations for the needed evidence, but before that issue was resolved, the prosecution asked for a dismissal of the charges because "evidence developed since the indictment . . . makes it appear that while the defendant was not acting on behalf of the CIA, further criminal prosecution would not be in the interests of justice," according to its request for dismissal. The statement was careful to add, however, that "national security considerations . . . played no part in the decision to seek this dismissal."

Judge Northrop dismissed the case on Oct. 8.

"The Joliff case really was the first opportunity for these [procedures] to work," says Allan Adler, legislative counsel of the Center for National Security Studies, an ACLU-sponsored group based in Washington. "But the Wilson case will be a much bigger test. That's a case where there's politically sensitive information involved."

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