

CE



STATINTL

M. 603,574
S. 1,283,785

MAY 1 1966

The Law

The Spy Story That Came Into Court

By FRED P. GRAHAM

Special to The New York Times

WASHINGTON, April 30—In the popular novel and film, "The Spy Who Came in From the Cold," a British agent rigs a trial in an Iron Curtain country to frame and eliminate an important enemy official. No moral is drawn from this, and despite the fact that the court appears to be earnestly trying to do justice, there is no suggestion of outrage at the result.

This week, however, when the Central Intelligence Agency threw a legal monkey wrench into a trial Baltimore's Federal District Court, the implications struck closer to home.

For the first time in anyone's memory, an admitted American intelligence agent appeared as a witness in an American court of law. The result was so unsatisfactory that it raised fundamental questions as to whether the espionage activities of the Government can be reconciled with our system of justice.

Slander Suit

The incident began in 1963, when Kurt Raus of Washington, an Estonian emigre leader, began publicly to label another expatriate Estonian as a Soviet agent. This man, Erik Heine of Toronto, claiming he wished to vindicate his position as an anti-communist hero, filed a \$100,000 suit against for slander.

The suit appeared to be a petty squabble between two member of the Estonian community until 10 days ago, when it was discovered that Richard Helms, deputy director of the Central Intelligence Agency, had quietly submitted affidavits to Federal District Judge Roszel C. Thomsen, asking that the case against Mr. Raus be dismissed.

His reason: Mr. Raus has "absolute immunity" from suit because his slanderous statements were made in his capacity as an agent of the C.I.A., pursuant to his superiors' orders to discredit Mr. Heine as "a dispatched Soviet intelligence operative, a K. G. B. agent." The C.I.A.'s stated purpose for spreading this story was "to protect the integrity of the agent foreign intelligence sources" within the Estonian community.

The C.I.A. invoked two controversial 1959 Supreme Court decisions, in which a sharply divided court had expanded the sweep of governmental immunity. The Constitution gives Congressmen absolute immunity for any speech or legislative action done in session, and the high court had previously extended the same immunity to judicial officers and cabinet-rank officials of the executive branch.

But in the two 1959 cases, the Supreme Court stretched the privilege further, to excuse an acting director of the Office of Rent Stabilization and a Navy captain who was commanding officer of the Boston Navy Shipyard.

But even these fears were based upon an assumption that the Government would always act with honorable motives and a sense of fair play. They reckoned without the C.I.A.'s special claim to operate outside the conventional rules.

On Thursday, when Mr. Raus appeared before Judge Thomsen in Baltimore, these contradictions turned the proceedings into a fiasco.

Supported by a five-man team of attorneys that included Lawrence R. Houston, the C.I.A.'s general counsel, Mr. Raus maintained his refusal to answer questions. He

was backed by an affidavit from C.I.A. director W. F. Raborn, who also said Mr. Raus's testimony might compromise U. S. intelligence secrets. His lawyers added

Both sides have said they will appeal if they lose so the Supreme Court may have an opportunity to re-examine its governmental immunity doctrine in the light of cold war morality.