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## BID FOR NEW TRIAL OF SPY IS WEIGHED

### Lawyer for Soviet Agent Says Mexican's Link With C.I.A. Would 'Taint' Legality

By **ROBERT LINDSEY**

Special to The New York Times

LOS ANGELES, April 6 — The attorney for Andrew Daulton Lee, a convicted Soviet spy, said today that he was investigating the feasibility of seeking a new trial for Mr. Lee because of charges that the Mexican official who questioned him after his arrest in 1977 had worked for the Central Intelligence Agency.

The lawyer, Kenneth Kahn, contended that if the allegations were true the arrest was legally "tainted."

Mr. Lee was arrested in front of the Soviet Embassy in Mexico City on Jan. 6, 1977. According to court documents, he subsequently admitted his espionage activities to Miguel Nassar Haro, an official of Mexico's Directorate of Federal Security.

Ten days ago, William H. Kennedy, the United States Attorney in San Diego, said that the C.I.A. had identified Mr. Nassar as its "most important source in Mexico and Central America." Mr. Kennedy told a reporter that the Justice Department, because of Mr. Nassar's connections with the intelligence agency, was impeding his office's investigation of a major stolen car operation in which he said Mr. Nassar was involved. Mr. Kennedy was dismissed Monday by President Reagan for disclosing Mr. Nassar's link to the agency.

#### 'Miranda Warning' Cited

Mr. Kahn asserted that if Mr. Nassar was a C.I.A. agent, his client's arrest and trial, and that of an associate in the espionage operation, Christopher John Boyce, was legally flawed because Mr. Nassar had not advised Mr. Lee that he had a right to remain silent and to see a lawyer before discussing his espionage activities. The so-called "Miranda warning" is required under a ruling by the United States Supreme Court.

Mr. Kahn asserted the United States Government would be required to give such a warning.

Mr. Lee, who is 30 years old, was arrested by Mexican policemen after he was detected throwing an object into the Soviet Embassy compound. Later, when he was searched, he was found to be carrying strips of microfilm regarding a classified space satellite project undertaken for the C.I.A. by Mr. Boyce's California employer, the TRW Systems Group.

After initially being questioned by Mexico City policemen, Mr. Lee was turned over to officials of the Directorate of Federal Security, who questioned him for more than four days. According to court documents, Mr. Lee, who asserted that he had been tortured, admitted selling C.I.A. secrets supplied by Mr. Boyce to Soviet agents for more than 21 months, although he insisted that he thought he was doing so as part of a plot to disseminate "misinformation" to Russian agents.

This defense was rejected by jurors at his trial, and he was sentenced to life imprisonment. Mr. Boyce was also convicted of espionage and was sentenced to 40 years. Mr. Boyce escaped from prison in January 1980, but was recaptured 19 months later and, last week he pleaded guilty in Boise, Idaho, to committing a series of bank robberies while he was a fugitive.

Mr. Kahn said that he was researching the case before deciding on the strategy he would follow in seeking a new trial, but he said a preliminary check of case law had convinced him that "if the party doing the questioning was an agent of the United States," Mr. Lee "had a right to be Miranda-ized."

"If he was not Miranda-ized," Mr. Kahn continued, "any subsequent statements, any subsequent search warrants based on his statements, are tainted, and since Chris Boyce's arrest was based on what Daulton said in Mexico City, I would have to say that Chris also has a right to a new trial."

Legal specialists familiar with the case said today they were doubtful that Mr. Kahn would find a court willing to reverse the conviction of two Soviet spies, both of whom admitted their espionage activities. Others familiar with the case noted that it appeared Mr. Nassar may not have begun his relationship with the C.I.A. until January 1977, and that when he interrogated Mr. Lee, he may not yet have been affiliated with it.