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CIA Aide Takes Stand, Denies B26 Case Role

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BUFFALO, N.Y.—The top legal officer of the Central Intelligence Agency—in an unprecedented action—has denied under oath that the CIA had anything to do with the shipment of seven B-26 bombers to Porgugal last year.

But defense attorneys for two men accused of plane smuggling rested their case yesterday afternoon without calling either defendant to the stand in his own defense.

This ruled out a direct confrontation before the testimony of Lawrence R. Houston, general counsel of the CIA, and John Richard Hawke, a bearded, 29-year-old, ex-Royal Air Force pilot who has insisted in several newspaper and magazine interviews that he flew the planes across the Atlantic for the CIA.

As the jury receives the case tomorrow, the evidence of CIA involvement will be limited, in the words of Federal District Judge John O. Henderson, to "theories . . . a lot of surmise . . . a saga" from what he called "two book writers."

Hawke's attorney, Edwin Marger, is expected to argue in his summation to the jury that the CIA engages in clandestine operations only when they can be secret and plausibly deniable—and that Hawke trusted in friends who assured him he would be working for the CIA in flying the planes to Porgugal.

Marger began yesterday's court session with an effort to have the judge brand Houston—

who was subpoenaed for the defense at government expense—as a "hostile witness." This would have meant that his answers would not have been binding on the defense.

"I rule that he is not hostile," Henderson replied. "He has brought his files. Every inference he has created is that he is cooperating with you. You have not established that he is hostile in any kind. Not in any way have you established his hostility."

Houston, a tall, thin, scholarly looking man, appeared to be enjoying himself in his unaccustomed role as he discussed secret CIA documents casually in open court.

Of the four documents he brought with him—which he described as the complete CIA file on the case—only two were entered in evidence. Both were "intelligence information cables" in which raw, unevaluated information about the plane shipments was passed on to other intelligence agencies in the summer of 1965.

The failure of the defense to enter the other two documents into evidence thus cut short a full description of the CIA's knowledge of the case.

Henderson, who had examined all of the CIA documents, commented, however, that "the records indicate that, rather than promoting this operation, the information gathered by the CIA resulted in the arrest of these defendants."

One of the aspects of the case that has proved most embarrassing to the government was not permitted by the judge to be

presented to the jury. Marger attempted to introduce in evidence a quote from a speech by Mrs. Eugenie Anderson, a U.S. permanent representative to the United Nations, on Dec. 18, 1965, in which she said the planes had been illegally exported "without the knowledge of the United States government."

The two CIA documents introduced in evidence appear to show that the CIA was informed of the shipment before the first plane took off and that this information was widely disseminated within the government early in the operation.

The second CIA document also reported the agency had received information that the "French government has agreed to look the other way during this transaction." Hawke has claimed outside court, however, that he flew all the planes directly to Portugal from the United States.

After the jury had been dismissed yesterday, Edward Brodsky of New York, attorney for the other defendant, Count Henri Marin de Montmarin, renewed his argument for dismissal of the indictment against his client.

In a highly technical argument, Brodsky said that the regulations requiring an export license for shipment of war materials overseas were not valid because the secretary of state had promulgated the regulations and, at the same time, delegated to two subordinates all of his power to issue such regulations.

Henderson said he would give the argument very serious consideration.

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