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THE BERRELLEZ CASE THE BLACK ART OF GRAYMAIL

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On February 8, the Government announced that it was dropping perjury charges against Robert Berrellez—and thereby hangs a tale: or, more precisely, a piece of mail.

A while ago, a bulky, brown envelope arrived at the offices of *The Nation*. The envelope had no return address and there was no explanation of who had sent it, or why. It contained sealed transcripts of a closed-court hearing that took place in Washington last October. The hearing was part of the perjury prosecution of Robert Berrellez, a high I.T.T. official who was stationed in Chile at the time of the election of Salvador Allende.

It is alleged in the transcripts that Berrellez, who was I.T.T.'s director of inter-American relations in Santiago, lied, at the behest and with the aid of the C.I.A., before Senator Frank Church's 1973 Senate subcommittee investigating the links between the C.I.A. and I.T.T. in Chile.

Subsequent investigations have established the authenticity of the transcripts, but the identity of their sender remains a mystery. The Berrellez case raises a number of important questions about the use and abuse of the "national security" defense in criminal cases involving the intelligence community. The case also lays bare a profound issue of justice: how can the Government proceed against a defendant whose defense threatens to expose in open court information the Government rightly or

wrongly believes conceivable that *tion* as part of : proposed new la ment prosecution whether we are lishing the docu

set: we feel that the issues raised by the material transcend the more remote and speculative harm that might result from their publication.)

The facts of the Berrellez perjury case are these: While Berrellez was working for I.T.T. in Chile, the C.I.A. allegedly assisted and encouraged the corporation in channeling hundreds of thousands of dollars into the campaign fund of Salvador Allende's opponent in the 1970 Presidential election. In testimony before Senator Frank Church's Subcommittee on Multinational Corporations in 1973, Berrellez denied having any knowledge of the C.I.A. and I.T.T. operation.

In March 1978, the Justice Department charged Berrellez with perjury. The Government further contended that Berrellez lied when he claimed that a C.I.A. agent was not the source of certain top-secret information he cabled back to I.T.T. headquarters in New York. Finally, the Justice Department charged that Berrellez's perjury was committed with the complicity of various C.I.A. and I.T.T. officials—named and unnamed—none of whom have been indicted.

Among those cited in the original Government indictment were former I.T.T. Latin American public relations director Harold Hendrix; Jonathan G. Hanke, a C.I.A. office director in Chile, and Hernan Cubillos, who is currently the Foreign Minister of Chile. Cubillos's name was stricken from the revised indictment issued last October, and charges against Hendrix were dropped after he agreed to testify for the prosecution. The Justice Department has said that all of the co-conspirators acted "for their own purposes," but in the transcripts received by *The Nation*, defense attorney Patrick Wall claims to have evidence proving that the perjury was suborned by C.I.A. officers acting on higher orders.

When the Berrellez case went to trial before Federal District Judge Aubrey E. Robinson Jr. in Washington on October 23, 1978, the Justice Department asked for a closed hearing because of the sensitive evidence Wall claimed he would present in his defense arguments. They also requested, "on national security grounds," a protective order designed to circumscribe the areas the defense attorney could touch upon in the trial. According to *The Nation* documents, Federal attorney John Kotelly told the Judge that the