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Wilson's Case Could Define The Power of Spies on Trial

By PHILIP TAUBMAN

WASHINGTON — If the case of Edwin P. Wilson, the former American intelligence agent accused of illegally aiding Libyan terrorists, goes to trial later this year, the issue of classified information is certain to play a pivotal role in the proceedings. In pretrial hearings and motions, Mr. Wilson's attorney, Herald Price Fahringer of New York, has threatened to introduce as evidence national security secrets which he says will "shake the C.I.A. to its foundations." The Justice Department is expected to present its initial response early in September in papers due to be filed in Federal court here.

Not long ago, such threats would have posed serious, even insurmountable, problems for prosecutors handling a criminal case involving sensitive national security information. The prospect that classified information would be revealed in the course of a public trial often outweighed law enforcement interests, hampering and in some cases actually blocking prosecution.

The defense tactic, called *graymail* because of its similarity to blackmail, was the bane of the Justice Department. Former Attorney General Griffin B. Bell, in "Taking Care of the Law," a recently published book about his service in the Carter Administration, describes the problem of *graymail* as "appalling."

Theoretically, that should no longer be the case. In 1980, Congress enacted the Classified Information Procedures Act. The legislation established special guidelines for dealing with sensitive information in criminal cases, including closed pretrial hearings to determine whether such evidence would be relevant and admissible. In addition, if a judge rules that the material should be admitted, the law gives the Government the right to appeal before deciding whether to modify or drop prosecution.

The Wilson case promises to be the first major test of the new law. Before leaving Government employment in 1976, Mr. Wilson had worked as an American intelligence agent for 22 years. Mr. Wilson specialized in creating and operating fictitious companies used by intelligence agencies to launder money and disguise covert operations. He was involved in the U-2 spy plane project and the Bay of Pigs invasion of Cuba in 1961.

In 1976, according to the Justice Department, Mr. Wilson and another former C.I.A. employee, Francis E. Terpil, reached an agreement with Col. Muammar el-Qaddafi, the leader of Libya, to sell their expertise in intelligence and military matters to help train terrorists. The two former agents were first indicted by a Federal grand jury in 1980 on charges of illegally shipping explosives to Libya and conspiracy to commit murder. Mr. Wilson was apprehended two months ago. Mr. Terpil remains a fugitive, reportedly living in Beirut.

Mr. Wilson's lawyers say they will contend that the C.I.A. sanctioned and supported Mr. Wilson's operations in Libya. The intelligence agency has repeatedly denied any official involvement in the scheme, but Wilson associates have claimed that several senior agency officials were aware of the Libyan venture when it began and asked participants to collect information about Libya and its sponsor, the Soviet Union.

Mr. Fahringer has said his client has evidence of just such complicity. If so, it is likely to include classified documents and information about the operations of the C.I.A. Even if Mr. Wilson lacks such hard evidence about an agency role in Libya, he may possess other sensitive information acquired during his career. Even a partial reconstruction of his Government service, for example, would likely involve sensitive subjects such as the methods used to operate intelligence-gathering networks.

The identities of current and former covert agents could also be relevant to his case. Few issues concern the C.I.A. more, and President Reagan recently signed legislation that makes the naming of agents a crime.

It was such concerns that scuttled criminal cases before enactment of the *graymail* law. Mr. Bell, in his book, cites one: "We had to drop the prosecution of two International Telephone and Telegraph Corporation executives for testifying falsely about helping the C.I.A. in Chile because a judge balked at accepting a proposed Government protective order on national security material."

Perhaps the best known case involved Richard Helms, the former Director of Central Intelligence who faced potential charges of perjury for misleading a Senate committee about his agency's covert involvement in Chile in the early 1970's, when the C.I.A. tried to block the election of Salvador Allende. Though Mr. Bell denies in his book that *graymail* was a factor, the Carter Administration agreed to let Mr. Helms plead no contest to misdemeanor charges.

Earlier this year, the Justice Department delayed prosecution of a former Mexican Government official suspected of involvement in a car theft ring in California because the C.I.A. said the man had been an important intelligence source. Though the suspect was eventually indicted, the United States Attorney in San Diego, William H. Kennedy, was dismissed by President Reagan when he complained in public about the delay.

The Wilson case, C.I.A. officials say confidently, should not produce such problems. An internal investigation of his activities has convinced them he has no startling secret information that would compromise or embarrass the agency. Federal prosecutors and investigators still examining his ties to former senior agency officials say they are not so sure.

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STUDY OF PROTESTS REPORTED IGNORED

Johnson Got C.I.A. Findings on Antiwar Movement in 1967

TOLEDO, Ohio, Aug. 7 (AP) — The Central Intelligence Agency told President Johnson in 1967 that there was no Communist-controlled or foreign-inspired link to the protests against the Vietnam War but he refused to believe it, a historian says.

A 23-page unsigned C.I.A. report, recently declassified from "top-secret — sensitive" status, was obtained from the Johnson Presidential library in Austin, Tex., by Charles DeBenedetti of the University of Toledo.

The report, submitted to Johnson in November 1967 by Richard Helms, then Director of Central Intelligence, stemmed in part from a march on the Pentagon a month earlier, the historian said.

About 100,000 protesters took part in the demonstration to oppose United States involvement in Vietnam.

Mr. DeBenedetti, who specializes in the history of the antiwar movement, said the report was mentioned by Congressional committees investigating intelligence-gathering practices but was never made public before he obtained it last September.

He said in a paper that the intelligence agency's information to Johnson was colored by "the agency's bureaucratic interest in aiding the Administration in its aim of discrediting the antiwar opposition."

Among the conclusions reached in the C.I.A. analysis was that while many antiwar leaders had close Communist associations "they do not appear to be under Communist direction."

"In any case," the analysis said, "their purposes insofar as the war in Vietnam is concerned coincide with the Communists'."

Noting contacts between antiwar leaders and the North Vietnamese Government in Hanoi, the report said that "Moscow exploits and may feed influence" peace groups through its front organizations but that indications "of covert or overt connections between these U.S. activists and foreign governments are limited."

The analysts concluded, "On the basis of what we now know, we see no significant evidence that would prove Communist control or direction of the U.S. peace movement or its leaders."

The importance of the analysis, Mr. DeBenedetti said, is that Johnson "ignored it because it did not suit his political purpose, which was to establish foreign control of the antiwar movement."

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CBS, Vietnam and the Num

New York City

In her article ["The Vietnam Numbers Game," *The Nation*, June 26] attacking the *TV Guide* story "Anatomy of a Smear" I wrote with Sally Bedell, Frances FitzGerald dismisses as "trivial" the journalistic lapses we uncovered in CBS's "The Uncounted Enemy: A Vietnam Deception." Ironically, while trying to defend the show, FitzGerald herself succumbs to one of its many distortions.

In her examination of "the story contained in the broadcast," FitzGerald says that Gen. William Westmoreland's chief of intelligence Gen. Joseph McChristian, was succeeded in mid-1967 by Lieut. Col. Daniel Graham (whom the documentary accused of engineering a cover-up to assist the alleged Westmoreland-led "conspiracy"). McChristian's successor was not Graham but Gen. Phillip Davidson. During the period covered by the program, Davidson was the highest-ranking military intelligence officer in Vietnam, and therefore a key witness who might have been able to challenge CBS's assertions. However, the CBS show did not even include an interview with Davidson. His name was uttered only once (by Westmoreland) in the entire ninety-minute documentary.

By excluding Davidson and his second-in-command, Col. Charles Morris (whom CBS producer George Crile inexplicably interviewed only after the show had been completed, a few weeks before the program aired), the documentary misled even Vietnam War expert FitzGerald about Graham's role within the MACV intelligence structure. The truth is, not a single intelligence officer interviewed on camera in the CBS show was in Daniel Graham's chain of command.

"Trivial" indeed! *Don Kower*
Staff Writer, *TV Guide*

Washington, D.C.

... In the June 26 *Nation* there appeared an article by Frances FitzGerald defending CBS's documentary "The Uncounted Enemy: A Vietnam Deception" and blasting Gen. William Westmoreland and *TV Guide*'s early June article "Anatomy of a Smear." Given the timing of her piece, FitzGerald must have responded very quickly to *TV Guide*. Given its substance, she must not have been objective enough even to read the *TV Guide* article.

FitzGerald's article is so full of it is difficult to know where to start. Let us begin with one point she any cub reporter could have deter

untrue. She identifies me as "head of military intelligence in Vietnam in 1967" and states that I was successor to Gen. Joseph McChristian in Vietnam as chief of intelligence.

Baloney: I was a lieutenant colonel, and lieutenant colonels do not replace generals.

McChristian's successor was the able and blunt Gen. Phillip Davidson, who was never even interviewed by CBS in its so-called documentary, although no such "conspiracy" as it inveighed against could have occurred without Davidson playing the key role. He is not mentioned in FitzGerald's sadly defective piece—a fact which suggests that, she didn't even read *TV Guide*'s case against CBS, Mike Wallace, George Crile and company. Had she done so, she would have known that it was Davidson, not I, who succeeded McChristian. *TV Guide* devoted several paragraphs to this matter.

There are other gross errors. FitzGerald states that the main forces of the Vietcong (VC) were "guerrillas." Nonsense. They were regular units. If FitzGerald finds Communist generals more reliable than American generals, she will find that North Vietnamese generals make the same point in their memoirs.

She states that the Central Intelligence Agency had "its own totals" of VC strength. Nonsense. There is ample documentary evidence that the C.I.A. agreed with military intelligence on strength figures throughout the war. True, one analyst at the C.I.A.—the one CBS paid to put its documentary together and who was rehearsed carefully for his part in the show—had different figures. This man, Sam Adams, though 12,000 miles away from Vietnam at the time, concluded that there were 600,000 enemy soldiers, not the 285,000 estimated by everyone else—including the C.I.A. This fact was brought out by George Carver, who was in charge of C.I.A. estimates on Vietnam and who is another man never interviewed for the CBS documentary.

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