

U.S. Drops Case Against ITT Aide To Protect Data

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By Charles R. Babcock
Washington Post Staff Writer

The Justice Department yesterday dropped its perjury and conspiracy case against International Telephone and Telegraph Corp. official Robert Berrellez because of fears that national secrets would be disclosed at a trial.

Prosecutor John Kotelly announced the decision at a two-minute hearing before U.S. District Court Judge Aubrey E. Robinson Jr. He also said the department was reconsidering its position on a companion case against Edward J. Gerrity Jr., a senior vice president of ITT, and would decide within 10 days.

Gerrity and Berrellez, an ITT public relations official, were charged with lying to Senate subcommittees in 1973 about ITT's involvement with the Central Intelligence Agency in trying to prevent the election of Marxist Salvador Allende as president of Chile in 1979. Allende won but was killed in a coup later.

The government's attempted prosecution of the alleged ITT-CIA interference in the Chilean election has been plagued with national security problems. The department dropped three of the six counts against Gerrity last summer because of such complications.

And, in the fall of 1977, former CIA director Richard M. Helms and allowed to plead "no contest" to a misdemeanor charge of failing to testify "fully and accurately" to the Senate multinational corporations subcommittees investigating the Chilean affair.

Sen. Frank Church (D-Idaho), who was chairman of the subcommittee

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and now heads the Foreign Relations Committee, said in a statement yesterday that the decision to drop the Berrellez case was "outrageous."

Church said the department's action was based on spurious national security grounds. He noted that the case is six years old and said a trial "might have embarrassed major corporations, the CIA and the Nixon administration."

"But after all the revelations about Chile through congressional investigations what conceivable national interest is involved that outweighs the demands of justice? I can find none," Church said.

He added that the decision will harm Congress because future witnesses who testify under oath will not be held accountable.

Justice Department officials insisted yesterday that the decision in the Berrellez case doesn't mean the government is reluctant to pursue prosecutions complicated by national security issues.

"We're going to push national security cases," Philip B. Heymann, head of the department's criminal division, said in a phone interview. "We would like a statute to make the job easier."

Terry Adamson, a spokesman for Attorney General Griffin B. Bell, said that the department successfully has prosecuted several espionage cases involving national secrets in recent years.

"We regret the action we were forced to take today," Adamson said. "But we don't view this particular setback as calamitous to future national security prosecutions."

The Berrellez case was hamstrung after Judge Robinson refused to approve a proposed prosecution "protective order" to rule on the relevancy of possible national security information



Robert Berrellez, one of two officials accused of lying about ITT role in Chile.

before—rather than during—public testimony as is usually the case.

Heymann argued last October that the unusual order was needed so the government could protest in advance if Berrellez's defense attorney, Patrick A. Wall, sought to bring up any evidence referring to the location of CIA officers or stations or agency relations with Chileans.

Justice appealed Robinson's refusal to the U.S. Circuit Court of Appeals here. The appeals court turned down that so-called "mandamus" petition last month on the technical grounds that it could not review the lower judge's rulings until the trial was over.

"That was a real Catch 22," Adam-

son said. "To get the court of appeals review we wanted we would have had to go through the disclosure at trial we were trying to prevent."

Adamson said the department did consider asking the full court of appeals to consider the case, but rejected that approach because "it's virtually impossible" to get such a hearing on a procedural question before a final decision in a trial.

Several department officials said yesterday they were considering seeking legislation to solve the problem raised in the Berrellez case. This could include procedures to take such preliminary district court rulings to an appeals court for a decision on the merits, or setting up procedures to allow the prosecution of sensitive information, they said.

Sen. Joseph Biden (D-Del.) and Sen. Birch Bayh (D-Ind.), both members of

the Senate Intelligence Committee, have suggested such legislation to prevent what Biden refers to as "gray-mail." This is a practice where a defense attorney fishes until he finds some sensitive material that the government decides cannot be disclosed at a trial, thus forcing it to drop the case.

Top Justice Department officials interviewed yesterday insist they did not—as Church charged—drop the case to save the CIA from embarrassment.

"We go behind every assertion of national security by the intelligence community," Adamson said. "We just don't blindly accept its claim. There are careful, sometimes painful negotiations."

Deputy Attorney General Benjamin R. Civiletti agreed, saying the process "is often tedious and hotly debated" between the department and the intelligence agencies. "It's not simply X says this is 'national security' and Y blindly follows."

Civiletti, who headed the criminal division during the ITT-Chile investigations, said the cases had been carefully tailored to allow for prosecution without giving up national secrets.

Heymann added: "I have no doubt Judge Robinson was proceeding in complete good faith. But he couldn't give us the order we thought we needed, and we couldn't play it that loose."

Similar claims of national security defenses have been raised in the upcoming trial of three former top FBI officials accused of approving illegal break-ins in search of the radical Weather Underground in the early 1970s. Defense attorneys are seeking evidence in pretrial discovery proceedings to show that the group was directed by foreign powers, and that, therefore, it could be argued that any warrantless surveillance was permitted on the basis of national security.

Adamson said yesterday that he didn't think the Berrellez case decision carried over to the case because "it's a different case with different facts."