

# The Prosecutor, The Foreman, And the Jury

## George Case Deadlock Suggests U.S. Faced Unforeseen Obstacles

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By George Lardner Jr. and Walter Pincus  
Washington Post Staff Writers

Iran-contra prosecutors still think they have a strong case against former CIA spy chief Clair E. George, but their failure to win over even a majority of the jurors at his first trial suggests they may face bigger obstacles than they realize.

According to sources familiar with the prosecution's view, the mistrial declared Wednesday was an aberration brought about by a jury foreman who played a major role in persuading most of his fellow jurors that the government had not proved George guilty on any of the nine counts brought against him.

"The foreman [Steven C. Kirk] was very articulate, educated and forceful," one source said. "You've got to consider that there was an unusual set of dynamics here. Often when you get a hung jury, you start out with someone [like Kirk] who has strong convictions."

But some defense lawyers who have been following the case said it has a fundamental flaw. They said independent counsel Lawrence E. Walsh is trying to make a convicted felon out of a basically decent, hard-working, patriotic public servant who got no payoff or personal gain from his disputed actions.

"A jury focuses on individuals," said Robert S. Bennett, lawyer for former secretary of defense Caspar W. Weinberger, who is being prosecuted by Walsh's office on charges of obstruction, perjury and lying about the Iran-contra affair to Congress and to Walsh's investigators.

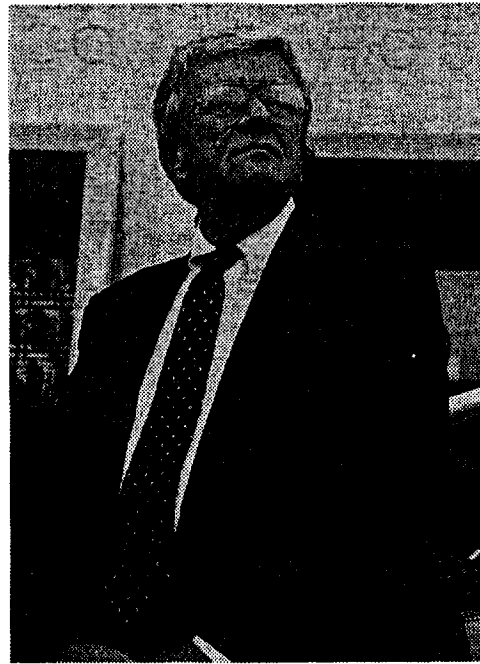
"Jurors ask themselves, 'Is this a good guy or a bad guy? . . . Is this someone we should make a criminal?'" Bennett said.

"The fundamental flaw in Walsh's cases is that he is pursuing decent, honorable Americans for highly questionable crimes. Juries have to understand, and a good lawyer lets them know, they are making a decision that affects a person forever."

George, a veteran of 33 years in the CIA before his retirement in 1987 as deputy director for operations, has been accused in six counts of lying to several congressional committees and a federal grand jury about the Iran-contra affair and obstructing their investigations of the scandal.

U.S. District Judge Royce C. Lamberth declared a mistrial in the case Wednesday when the jurors said they were unable to reach a unanimous verdict on any count after four weeks of testimony and six days of deliberations. The judge scheduled a new trial to start Oct. 19.

Foreman Kirk said in an interview that from the first tally last Thursday, a majority of jurors always voted 'Not guilty' on every count. Kirk himself was



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Retrial on nine Iran-contra counts of perjury and obstruction is set Oct. 19 for ex-spy chief Clair George.

impressed with the portrayal of the CIA—by prosecution witnesses and George—as an agency that tried hard to live within the restrictions imposed by Congress in the mid-1980s on military aid to the contra rebels in Nicaragua.

"I'm surprised that professionals in the CIA did their best to get their field officers to obey" the rules laid down by Congress, said Kirk, a former law student who is a fund-raising consultant for charitable organizations and described himself as a liberal Democrat.

He said the jurors did not believe that the CIA intended to cover up what the Reagan White House was doing covertly to keep the rebels supplied with arms during this period.

CIA officials "just wanted to make it clear the CIA was not involved" in the supply network, Kirk said. And because no evidence was presented that CIA officials were conspiring to cover up what they knew, Kirk reasoned it made no sense that George was trying to do so on his own.

Sources familiar with the prosecutors' thinking said they saw the case in much simpler terms. In the prosecution's view, when George had been asked questions about what he knew of individuals involved in the contra network and the covert arms-for-hostages dealings with Iran, he lied.

Throughout the trial, George expressed genuine indignation over having been indicted for doing what he, and the agency, had always done. Agency officials were accustomed to telling Congress only as much as they wanted to tell, using semantics and cleverly crafted responses to avoid saying more.

The jury was divided over the question of whether this amounted to criminal conduct in George's case, with a majority saying it did not. As Kirk put it, "was George navigating the narrows" or was he committing a crime? Kirk said that in his view, the prosecution was "nit-picking," a phrase George used repeatedly in his courtroom testimony.