

C.I.A. Defends Agent in Court (Two-part headline; the other on FBI.)

Plaintiff Linked to Soviet

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BALTIMORE, April 20—The Central Intelligence Agency has publicly identified one of its agents in order to defend him in a slander suit.

The agent, Juri Raus, has been sued in the Federal District Court here by a man he accused of being a Soviet agent.

The case is regarded by lawyers on both sides as one that breaks new legal ground. It is an amalgam of international intrigue and the open assertion of the protection provided by the American courts.

The crucial point in the legal strategy of the lawyers retained by the C.I.A. is that Mr. Raus is, or was, a paid undercover operative of the agency and that he committed the slander, if one was committed, on the orders of his superiors as an official act.

By making this assertion, Mr. Raus's lawyers seek to have Chief Judge Roszel C. Thomsen grant them a summary motion dismissing the \$110,000 damage claim brought by Berik Heine, of Toronto, Canada.

Mr. Raus, who is ostensibly a \$10,000-a-year engineer in the Bureau of Public Roads in Washington, has publicly labeled Mr. Heine as agent of the K.G.B., the Soviet secret police.

The lawyers' argument is that Mr. Raus's charge against Mr. Heine was "privileged" because it was made by a "Government official" who merely discharged his assigned duties.

In two closely decided rulings in 1959, the Supreme Court extended to "policymaking" lower officers of the Government the traditional immunity from suit held by Cabinet officers and other top officials. One question in the case here is whether Mr. Raus fits the "policymaking" requirement and is therefore immune from suit.

Insists on Fair Trial

The dispute is further complicated by a maze of other legal and procedural details. All of them seem oddly, often wildly, at variance with the accepted public conception of direct, undeliberated, even brutal action in the underworld of international intelligence.

Judge Thomsen is insisting that Mr. Heine, whether or not he is a Soviet agent, must have as full and fair a trial of his damage claim as the law—and

At a hearing here March 11, the latest in nearly 18 months of unnoticed and unpublicized public litigation in the case, Judge Thomsen addressed Paul R. Connolly, a top Washington trial lawyer representing Mr. Raus.

"You are not going to persuade this Court that there is anybody in this country who does not have some rights," he declared.

This was only one of Judge Thomsen's tart comments to Mr. Connolly and E. Barrett Prettyman Jr., a former special White House assistant who is co-counsel for the C.I.A. agent. He made the remarks when the two lawyers told him that they could not and would not expand on an affidavit by Richard Helms, deputy director of the intelligence agency.

Absolute Privilege Claimed

The Affidavit said:

"On those occasions specified in paragraphs 5, 6 and 7 of the complaint, the defendant, Juri Raus, was in possession of information furnished to him by the Central Intelligence Agency, and when he spoke concerning the plaintiff on such occasions he was acting within the scope and course of his employment by the agency on behalf of the United States."

The motion for dismissal filed by Mr. Raus's lawyers says, "Under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, even under a showing of actual malice, any possibility of recovery by the plaintiff."

Accordingly, the lawyers contend there can be no trial to determine the truth or falsity of the charges and that the suit must be dismissed on a motion.

Security Grounds Cited

In effect, the agency, through Mr. Raus, concedes leveling the charges against Mr. Heine and is saying that it refuses to provide proof of its charges on grounds of "privilege" and national security.

Another point in Mr. Raus's defense strategy is that Mr. Heine's suit, which raises opportunities for discovery of information under the Federal Rules of Civil Procedure, is "contrary to the interests and public policy of the United States."

At one point, Judge Thomsen commented, "If further information were revealed, it might expose the entire U. S. counter-espionage apparatus."

It is uncontested that Mr. Raus charged on three separate public occasions in 1963 and 1964 that Mr. Heine was a "Soviet agent or collaborator and not the heroic Estonian freedom fighter that his deposition on file in the court here asserts he is.

Implies He Sought Data

The court transcript plainly implies the C.I.A. believes that, in joining Estonian emigre groups, Mr. Heine was collecting information on Estonian immigrants in this country, and

it simply selected Mr. Raus to "expose" him.

The C.I.A. in Washington said today that it would have no comment on the trial, its security implications, or Mr. Helm's affidavit.

At the March 11 hearing, however, Judge Thomsen remained adamant in his dissatisfaction with the Helm affidavit as ground for dismissal. The judge scheduled a further hearing here April 28 to see if Mr. Connolly and Mr. Prettyman could produce further information from Mr. Helm in court.

"This is a kind of backhanded statement that he [Raus] was employed by the agency," Judge Thomsen declared.

At another point, he said, "I am not going to accept some flat letter from the head of an agency that 'we are not going to say any more.' Somebody is going to say that on the witness stand here."

Objects to Any Subpoena

Mr. Connolly, however, told the court that any attempt to subpoena Mr. Helm as a witness would be met with an immediate motion to quash the subpoena under the doctrine of executive privilege. That doctrine immunizes top Government officials from appearances in court.

In a slightly amended affidavit on April 4, Mr. Helm said, "For a number of reasons, including his past history and his position as national commander of the Legion of Estonian Liberation, the defendant [Mr. Haus] has been a source to this agency of Foreign intelligence information pertaining inter alia to Soviet Estonia and to Estonian emigre activities in foreign countries as well as the United States."

The amended affidavit went on, "The Central Intelligence Agency has employed the defendant from time to time—concurrently with his duties on behalf of the Bureau of Public Roads—to carry out specific assignments on behalf of the agency."

Escaped to Canada

A 924-page deposition is on file here from Mr. Heine, a 46-year-old Estonian now living in Rexdale, Ont., a Toronto suburb. He maintains that, from 1940, when the Russians seized Estonia, until 1950, when he was sentenced to death by a Soviet court, he lived under almost continuous Soviet persecution.

The deposition says that Mr. Heine fled a Soviet prison and escaped to Canada. Among Estonian groups in the United States, his deposition says, he was regarded as an unquestioned Estonian patriot.

Mr. Raus, 36 years old, at first defended his accusations against Mr. Heine as privileged on the basis of Mr. Heine's offi-

cial role as national commander of the Legion of Estonian Liberation, a voluntary émigré group in this country with no official status.

The C.I.A. was not mentioned in the court papers here until nearly 13 months of litigation had passed.

Explaining this delay, Mr. Connolly and Mr. Prettyman said that the agency had forbidden them to employ their present defense line until it became apparent that the initial defense would not stand up in court.

The suit, originally filed in November, 1964, was regarded for months as merely a routine dispute between two competing leaders of Estonian émigré groups.