

Memorandum

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Subject

Duty to Disclose Possibly False Testimony

Date

February 10, 1983

To

Mark H. Richard  
Deputy Assistant Attorney General  
Criminal Division

From

Kim E. Rosenfield, Attorney  
Office of the Attorney General  
Criminal Division

SUMMARY OF CASES

1. Failure of prosecutor to correct testimony which he knows to be false violates due process, whether the falsehood bears on credibility of witness or guilt of defendant, if it is in any way relevant to the case.

Napue v. Illinois, 360 U.S. 264 (1958)

2. Suppression of material evidence by the government requires a new trial, irrespective of good or bad faith.

Brady v. Maryland, 373 U.S. 83 (1962)

3. Prosecutor has duty to correct false testimony, even if falsehood was inadvertent or caused by another government officer. New trial required if the false testimony could "in any reasonable likelihood have affected the judgment of the jury", though not required "whenever a reading of prosecutor's files after trial has disclosed evidence possibly useful to defense but not likely to change verdict."

Giglio v. United States, 405 U.S. 150 (1971)

1. Revelation depends on character and materiality of information withheld by prosecutor. Different standards apply in three different situations: (All involve information known to prosecution and not known to defense.)

a. Prosecution knew or should have known of perjury. Standard: any reasonable likelihood the false testimony could have affected judgment of jury.

b. Pretrial request for specific evidence. Standard: omitted evidence is exculpatory and material to guilt or innocence.

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disclose -  
but no  
new trial needed  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	H-82-139
	)	
EDWIN P. WILSON,	)	
	)	
Defendant.	)	
	)	

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DECLARATION OF CHARLES A. BRIGGS,  
EXECUTIVE DIRECTOR, CENTRAL INTELLIGENCE AGENCY

Charles A. Briggs hereby declares and says:

1. I am the Executive Director for the Central Intelligence Agency (CIA), and have been since June 1982. As Executive Director, I am the third-ranking official of the CIA, subordinate only to the Director and Deputy Director of Central Intelligence. My primary responsibilities include overall management of the CIA and advising the Director and Deputy Director with respect to matters affecting Agency management.

2. On 8 November 1982, the Chief of the Information Management Staff, Directorate of Operations, was authorized by me to have access to all records of the CIA for the purpose of searching those records, as well as reviewing the results of any previously conducted searches, for material that in any way

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...ertain to Mr. Edwin P. Wilson or the various allegations concerning his activities after 28 February 1971, when he resigned from the CIA.

3. The search revealed that Mr. Edwin P. Wilson terminated his employment relationship with the CIA on 28 February 1971, and was not reemployed thereafter in any capacity.

4. According to CIA records, with one exception while he was employed by Naval Intelligence in 1972, Mr. Edwin P. Wilson was not asked or requested, directly or indirectly, to perform or provide any services, directly or indirectly, for CIA.

5. I have been informed that Mr. Edwin P. Wilson has alleged that C-4 explosives were shipped to the Libyan Arab Republic in 1977 either directly or indirectly at the CIA's authorization. CIA did not learn that such a shipment had been made until in or about mid-1980, when the information came to the CIA's attention as a result of an investigation conducted by the Department of Justice. CIA records in existence in 1977 contained no information about such a shipment, and if such a shipment had been authorized by the CIA there would have been created and retained a variety of records to document such a shipment and its authorization.

6. CIA possesses no records pertaining to any CIA contact with, or tasking of, Mr. Edwin P. Wilson, or anyone else, to ship C-4 explosives to the Libyan Arab Republic in 1977. In this regard, CIA records from 1 March 1971 through 31 December 1977 were checked with respect to "Around World Shipping," "Aviation Technical Services," "Consultants International, Inc.," "J.F.C.

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Enterprises," "Shay Company," and "J.S. Brower and Associates." That search reveals that none of these entities was tasked by CIA to do anything nor were any of these entities CIA proprietaries.

7. There exists within the CIA an Interagency Source Registry (ISR), in which are recorded the identities of agents of other agencies of the U.S. Intelligence Community. Mr. Edwin P. Wilson is not registered in the ISR as an agent or source of any agency of the U.S. Intelligence Community after April 1976, when his employment with Naval Intelligence terminated.

8. During the period 1977 through 1979, the activities of the CIA were governed by the following provisions of the Hughes-Ryan Amendment (22 U.S.C. 2422):

No funds appropriated under the authority of this chapter or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

Under the above provisions, a Presidential Finding would have been a condition precedent to the shipment of C-4 explosives to the Libyan Arab Republic, whether the shipment was to assist in obtaining intelligence information or for other intelligence, counterintelligence, or covert action purposes. Any such Presidential Finding would be on file at the CIA. After a thorough and diligent review of the appropriate records within the CIA, no Presidential Finding with respect to the Libyan Arab

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Republic from the period 1977 through 1979 was located. Consequently, any shipment of twenty (20) tons of C-4 explosives to the Libyan Arab Republic was not authorized and would be contrary to law.

I hereby declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 3<sup>rd</sup> day of February, 1983.

  
CHARLES A. BRIGGS

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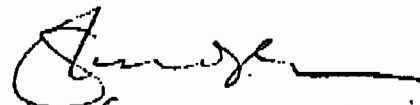
Honorable Ross Sterling —

Dear Judge Sterling —

This jury has been led to believe that the statement (in letter form) by a high-ranking CIA official that said Mr. Edwin Wilson was not a member and had no affiliation with the CIA was submitted into evidence by the prosecution Friday February 4, 1983.

We do not have this exhibit in our possession. If permissible, we would like this document.

Respectfully,



Lawrence S. Givens - Foreman

5 FEB 1983

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Ross N. Sterling