

GAG ORDER IS UPSET ON C.I.A. DOCUMENTS

Appeals Court Reverses Ruling on Disclosing Spying Activities

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WASHINGTON, Jan. 22 — The United States Court of Appeals for the District of Columbia has overturned a year-old gag order that prevented a group of antiwar activists from making public certain information about spying activities by the Central Intelligence Agency. The information was obtained as part of a \$1 million lawsuit against the Government and a number of present and former officials.

The decision, handed down Friday, not only clears the way for a possible release of the documents but also asserts that such protective orders may not be placed on information obtained in the pretrial discovery process without a precise showing that harm will result.

"This is a very important decision because it affirms that the discovery process is protected by First Amendment principles," permitting free speech, Mark H. Lynch, a lawyer for the American Civil Liberties Union, which was involved in the case, said today.

Specifically, a majority of the three-judge panel ruled that while such protective orders were permissible in some cases, the constitutional guarantees of free speech required that they not be imposed without "a specific showing that dissemination of the discovery materials would pose a concrete threat to an important countervailing interest."

Not a Security Matter

In this case, the Justice Department did not assert that the documents, which had been heavily censored by the C.I.A. before their release to the plaintiffs, would cause "national security" problems if they were made public. But the Government attorneys in the case — David J. Anderson, Elizabeth Gere Whitaker, Gordon W. Daiger and Larry L. Gregg — argued that publication of the documents might harm the chances for a trial "in an uncolored and unbiased climate."

In a 48-page opinion for the majority, Judge David L. Bazelon criticized the Government for presenting this argument "without providing any evidence to support this conclusory allegation."

He also criticized the trial judge, Federal District Judge June L. Green, saying that she had made "no evaluation of the First Amendment interests at stake." He termed her ruling "indisputably deficient" because it "prohibits political expression, yet it is silent as to its reasons, rests on no express findings, and is unsupported by any evidence."

In a dissent from the majority ruling, Judge Malcolm R. Wilkey said that Judge Green's action was proper because it could logically be concluded that release of discovery material by the plaintiffs

could "interfere with a fair trial by exacerbating the already hostile climate of opinion" toward the defendants.

The case concerns a civil suit brought by 10 individuals and seven organizations, involved in activity against the Vietnam War. The suit said the individuals and the groups believed they were targets of improper or illegal Government spying programs.

Judge Green's order prevented the plaintiffs from making the documents they received available to the press, but The New York Times reported in an article, published on Feb. 22, 1977, that the documents showed that the C.I.A. had apparently used friendly foreign intelligence agencies to help it obtain information about American citizens traveling abroad.

The account in The Times said that its information about the documents had not been obtained from anyone covered by the court's gag order.