

JL: Snapp book; CIA/Secrecy/Withholdings under FOIA

12/17/77

Although you will have seen today's Post story I'm attaching a copy to call two marked parts to your attention.

The story is probably straight, accurate citation of sources. The content is the malarky. I have believed and said from the first that there would be no suit vs. Snapp and Random House over his book. This is not because it is not actionable, as the sources, thus the story, suggest. It is quite actionable. The reason is political, not legal or factual.

It is because of the unseriousness with which the CIA has withheld from us that I call these things to your attention, on the chance you can find use for them.

I'm a little more than 1/2 way through the book. I am satisfied that within human limitations and Snapp's belief it is an accurate book and that he intends accuracy.

It also is a very long book, loaded with detail. It is this detail that assures there is a basis for legal action. As example, Snapp discloses that the CIA had a spy high in Hanoi political circles and that it participated in other plots against the southern regime. Both qualify for high classification. I have no recollection of either having been reported earlier. The nature of the information he uses from both sources is such that either government could figure out who had access to it thus who the spy was.

Failure to prosecute thus means that the CIA recognizes, DJ with it, that for purposes of suit disclosing that we had spies and that specific information came from these spies does not meet the requirements of the Act on protection of installations, sources and methods.

There is more that could be used in civil or criminal suits. Much more.

The reasons in addition for no action have to do with Snapp and what his doctrine is in the book. Neither will the CIA litigate if it has any choice. Nor will DJ.

Snapp is not a liberal. He is of the right, far enough right to have been a Wallace supporter. Thus there has not been a peep from the Congress, which would have rent the welkin had Snapp been any kind of liberal. The content of the book discloses the CIA's total lack of concern for protection of its sources or ever records and its failure to punish those responsible for it. I believe some were promoted.

Emphasis on the Snapp/CIA contract is a diversion. The reality is that Snapp has published what spies seek out and enemies use. About that the government could do something even without basing it on the contract. In the interpretation the same CIA and DJ use on us he has disclosed sources and methods. Thus they have redefined it to within reason as they never do with us, to mean that disclosure has to be in the dictionary meaning, letting out what is new. It means that having a plant or source does not meet the requirement of the laws. What does or can lead to identification can meet the legal requirements but not the fact of having agents. That is not a secret source or method. Not since the walls of Jericho tumbled down.

This is true of all kinds of interceptions, as of communications.

The book also discloses the frivolity of classifying and declassifying. Classification was used to keep secret what the enemy knew, as a means of propaganda. Declassification was used regularly so that the declassified information could become propaganda. For the propaganda purpose information well within the requirements of the CIA Act was released, with the resultant disclosure of the identification of the source.

With sources and methods violated, in the sense used in all FOIA cases, and with the admission that they did not dare test classification, there is no case. The suit would, from the book alone, be a major destruction of all these false pretenses by means of which what everyone except the American people knows has been and remains withheld from the people.

Legal Action Unlikely Over

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Despite the official outcry over publication of renegade CIA officer Frank Snepp's unauthorized account of the fall of Vietnam, Justice Department and Senate Intelligence Committee sources believe there is little likelihood of either federal legal action against or a full-scale investigation into his allegations.

Snepp, the 34-year-old former intelligence analyst for the Central Intelligence Agency in Vietnam, spent two days last week in staff interviews and more than three hours testifying in a closed session Wednesday before the Intelligence Committee. Informed sources said the questioning of Snepp by the committee was often sharp and after the conclusion of the session there was little inclination on the part of the senators to pursue a full investigation.

"We do not want to fight the war all over again," said a committee source.

The committee also reached the conclusion according to one source, that there is little in Snepp's book "Decent Interval" that could be construed to violate the CIA's intelligence sources or methods.

In interviews Snepp has said he attempted not to reveal the names of clandestine officers mentioned in the book. As for the oath that requires all CIA employees to let the agency have prior review of their published material, Snepp has said he decided to break it only after a senior CIA official leaked his own version of the end to the war to the press.

While a formal CIA review commit-

tee is still going over Snepp's book line by line looking for possible security breaches, the Senate committee's decision signals the probability that no federal legal action will be taken against by the Justice Department.

On Nov. 25 CIA Director Stansfield Turner requested that the Justice Department look into the possibility of initiating legal action against the former CIA officer.

However, Justice officials familiar with the Snepp matter said last week that a federal court ruling on an earlier unauthorized book on the CIA essentially narrowed their jurisdiction to matters of violations of official classified material.

That decision, by the Fourth U.S. Circuit Court of Appeals in 1972, was made on a book by former CIA officer Victor L. Marchetti and John Marks. The court ruled that Marchetti, who had taken the prior-review oath, was bound by it after CIA attorneys enjoined publication of his book. The intelligence agency was allowed to make 162 deletions in the book.

Snepp's publisher, Random House, went to great trouble to cloak the Vietnam book in secrecy in order to ensure its publication before the CIA could obtain an injunction against it similar to the one obtained in the case of the Marchetti-Marks book.

A CIA spokesman noted last week that since Snepp was no longer employed by the agency sanctions under the prior-review oath—that is firing or demotion—no longer applied.

"Turner went to the Justice Department," the spokesman said, "because this just seemed to be the last straw and he wanted some way to put a stop to these books which violated the oath." Turner has spoken out sharply against former intelligence agents who have published without clearance from the agency and, like former CIA Directors George Bush and William E. Colby, has sought to rally congressional support for legislation to employ criminal sanctions against ex-employees who violate the oath.

Turner also testified before the Senate Intelligence Committee last week during a closed-door session, and sources said he touched on the need for stricter legal sanctions against unauthorized publications by current or former CIA employees.

The issue is a particularly touchy one at this time since the CIA is conducting a highly controversial manpower cutback of more than 800 of its clandestine branch members. The cutback has generated considerable emotion among many CIA employees, including threats by some to publish once they are fired.

Since Turner's request for a Justice Department review of the Snepp matter, Justice attorneys have had several informal sessions on what to do, including one over breakfast recently with Attorney General Griffin B. Bell.

"It's really a terrible case," said one

Justice official. "We can't really win no matter what we do."

If the major purpose in initiating legal action against Snepp is to deter other similarly unauthorized books and articles, the Justice official said, a failure to show that the Snepp book disclosed classified material could backfire.

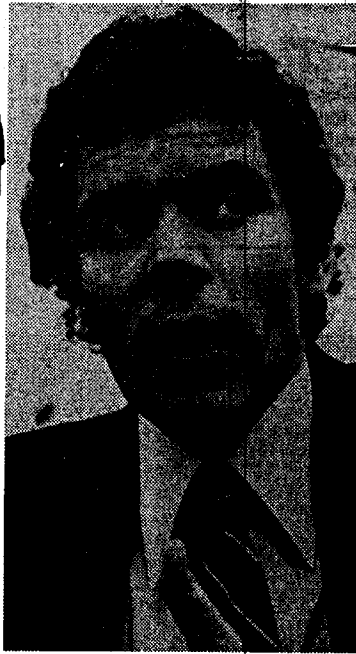
"Even if a court ruled in our favor it would be hard to show damages if no classification was violated," the official said. "If the court awards \$1 in damages, is that any deterrent?"

Justice officials also fear that a court suit against Snepp might be likely to draw widespread publicity and subsequently boost the book's sales.

There is one recent case, involving publication of an unauthorized book by ex-CIA agent Joseph Smith entitled "Portrait of a Cold Warrior," that was deliberately ignored by the CIA for just that reason, according to an agency official.

On the other hand, federal legal officials said they are aware that by looking the other way on the highly publicized Snepp book they could open themselves to a flood of similar ventures. "You can't decline too many cases like this," said one official, "or people will see you don't mean what you say about a contract."

CIA Book



FRANK SNEPP
... wrote account of fall of Vietnam