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Frank W. Snepp talks to reporters outside Richmond court as his companion, Stephanie Cook, looks on.

Snepp Appeals Ruling on Book About Vietnam

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RICHMOND—The 4th U.S. Circuit Court of Appeals wrestled yesterday with the question of how former Central Intelligence Agency officer Frank W. Snepp had harmed the government by writing a book that contains no secrets and came up with con-

tradictory answers.

U.S. District Court Judge Oren R. Lewis decided last summer that Snepp violated his contract with the CIA by publishing "Decent Interval" without agency approval of the manuscript. Lewis ordered him to give the government his profits from the book—\$60,000 at the time of the order—and told him not to write anything else about the CIA without submitting it to the agency first.

As the appeal of the Lewis decision was being argued before a three-judge appeals court panel yesterday, Judge J. Dickson Phillips clearly was troubled by the government's admission that Snepp's book about the fall of Saigon in the Vietnam war contains no classified information.

"With the government conceding that there has been no divulging of classified information . . . what is it we are trying to get at here?" Phillips asked.

Justice Department lawyer Robert E. Kopp argued in his answers to Phillips that "it is irrelevant that no classified information is in the book."

Kopp said Snepp should be penalized for failing to submit his manuscript to the CIA even though no secrets were compromised. He said Snepp should be treated as an investment trustee who has deliberately mishandled funds committed to his care in a way that subjected an investor to undue risks. In such a case, he said, it is irrelevant whether the investor suffers any actual loss.

Snepp's lawyer, American Civil Liberties Union attorney Mark H. Lynch, urged the court to reject Kopp's theory of harmful risk to the government.

"This is not a securities case," he said in rebuttal. "This case involves information about the workings of the government. It goes to the core of the free flow of information that is protected by the First Amendment. You don't award damages for activities protected by the First Amendment without a finding of harm or malice."

Judge Lewis took the unequivocal position during the Snepp trial that "this is not a First Amendment case." He ruled that Snepp's failure to submit his book for approval caused the CIA "irreparable harm and loss." He said the unauthorized publication "impaired CIA's ability to gather and protect intelligence."

CIA Director Stansfield Turner and former director William E. Colby testified at the trial that the unauthorized publication might cause intelligence sources, including foreign governments, to distrust the agency's ability to keep confidences. In their appeal briefs, Snepp's lawyers label this conclusion "speculative."

Lewis's peremptory manner of handling the Snepp case caused controversy at the time of the trial and formed the basis for part of Snepp's appeal. Lynch argued briefly that Lewis should have submitted some of the issues to a jury, including the question of whether there were discrepancies in two secrecy agreements signed by Snepp while he was with the CIA.

The first agreement explicitly required agency approval of books written by agents and the second was silent on the subject. Lynch argued that the second agreement superseded the first, but Lewis ruled it did not and that Snepp was still bound by his 1968 agreement to submit manuscripts for approval.

Judge Harrison L. Winter questioned attorneys at length on the question of which secrecy contract, if not both, applies to Snepp and commented at one point, "It's almost impossible to resolve."