The Snepp Case

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THE DECISION OF Judge Oren R. Lewis in the case of Frank W. Snepp III and his book, "Decent Interval," was anything but a surprise. Given the views the judge had expressed during the trial, it was almost a certainty that he would rule that Mr. Snepp violated his contract with the Central Intelligence Agency by failing to submit his manuscript for pre-publication review. And given his own personal outrage at what Mr. Snepp had done, Judge Lewis may well believe he let Mr. Snepp off lightly by only confiscating the profits from the book: $60,000, so far.

Mr. Snepp's lawyer says the decision will be appealed. It should be. There are serious questions in this case that deserve more careful judicial scrutiny than they have received. Mr. Snepp is challenging the legal right of the government to require some of its employees to sign such prior-review contracts before they go to work. He is also contending that he did not violate the terms of the contract as they had previously been interpreted and applied to the publication of non-secret information.

Those points are the legal essence of the case. But what is involved is much larger. The government is attempting to establish that such contracts, signed by all employees of the CIA and a few other agencies, are enforceable in court. If they are, the government hopes that will be a deterrent sufficient to discourage other ex-agents from writing, without clearance, about their experiences. If they aren't, the government will try to think up other ways to block publication of similar books.

In that sense, Mr. Snepp is a guinea pig. He was not totally alone in believing he could write his book without fear of retribution so long as he did not reveal any secrets—and no one has argued that he made any such revelations. Other ex-CIA employees had done similar things in the past. Whether that point has legal merit in determining what the contract actually means is now up to the Court of Appeals, but it seems to be a strong argument at least in terms of reducing the penalty Judge Lewis imposed. A more just penalty, if Mr. Snepp loses on appeal, might be to have his lawyers paid out of the book's profits, with the government taking what is left. That would leave Mr. Snepp neither richer nor poorer because of his error, if he made one.

Beyond the legal issues of this particular case, however, are some major issues of public policy. Should some, but not all, former government employees be allowed to write about their experiences so long as they do not disclose classified information? Should some, but not all, of these employees be able to determine for themselves what is and is not classified? Should some, but not all, employees have to submit their manuscripts for review to the very agency they are criticizing or embarrassing? We are thinking, for example, of books by former presidents, Cabinet officers and some lesser but still high-ranking officials that relied on classified information to an extent far greater than did Mr. Snepp.

What is needed is a general overhaul of the laws barring the disclosure of classified information and a re-ordering of the arrangements government makes with individuals in sensitive positions. The government's true interest is in protecting legitimite secrets, not in suppressing embarrassing information. In the case of the CIA, the vital interest is in protecting the sources of intelligence and the methods of gathering it, not in blocking publication of material critical of its own semi-public operations. The danger of the Snepp case is that if the government is upheld on the legality of these contracts, it will forget about the need to find a better balance than now exists between the protection of real secrets and the publication of critical comment.