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The Trial of Frank Snepp

THE OUTCOME of the lawsuit the government has under way against former CIA agent Frank Snepp is not as open and shut as Federal Judge Oren R. Lewis has made it sound. The government may well win the case, even on appeal, but the issues raised by Mr. Snepp deserve a lot more careful judicial consideration than they received from Judge Lewis.

Those issues all revolve around the "contract" Mr. Snepp signed with the CIA in 1963 in which he agreed to submit any manuscript he wrote for its review prior to publication. He did not do that with his recent book on the fall of Saigon, and the government is suing him for breach of contract. The case is, as they say in judicial circles, one of first impression—the CIA has not attempted previously to enforce such a contract. There are serious legal questions about the validity of the contract and its application to non-classified information. And there are other questions having to do with the understanding Mr. Snepp (and other CIA agents) had of their contractual obligations—and the effect on their understanding of the agency's failure to enforce the contract against other ex-employees.

None of these issues, and others that Mr. Snepp's

lawyers tried to raise, seemed to interest Judge Lewis. He brushed aside the need for evidence ("It won't make any difference") and appeared openly scornful of Mr. Snepp (whom he repeatedly referred to as "Mr. Shepp") when he testified in his own defense. The brief trial ended farcically with the judge saying that he 1) wanted to study all the evidence before reaching a "definitive decision" and 2) thought Mr. Snepp's action was "a willful, deliberate breach of contract and a willful, deliberate breach of trust."

Judge Lewis, no doubt, was right to handle some aspects of this case abruptly. His refusal to grant Mr. Snepp a jury trial, for instance, was predictable, since there are few, if any, issues of fact to be decided. But his general handling of the trial was injudicious, to put it mildly. His comment on Wednesday—"I have gone five steps beyond what I would have ordinarily done [in allowing defense testimony] because this is an important case"—raises questions about the way in which he handles routine cases, and even about whether he ought to be spending years as a senior judge (on call for his assignments) doing something other than filling in on the bench.