U.S. Court Clears Way for Release of CIA Documents

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A federal appeals court has overturned a 1977 "gag order" instructing anti-war activists and their attorneys not to disclose information from documents turned over to them by the CIA as part of their $1 million suit against alleged CIA snooping on their activities.

Yesterday's ruling could speed the public disclosure of documents on domestic spying as well as other files obtained through lawsuits.

The U.S. Court of Appeals in a 2-1 decision overruled U.S. District Court Judge June L. Green, who on Feb. 14, 1977, granted a government motion to prevent public disclosure of the documents, which were provided to American Civil Liberties Union attorneys on Dec. 30, 1976, through pre-trial information "discovery" requests in the case.

The documents pertain to a CIA counter-intelligence program, code named Operation Chaos, against anti-war activists in the late 1960s and early 1970s. A commission headed by then-Vice President Nelson A. Rockefeller later concluded that such activities were beyond the proper scope of the CIA's mandate.

OPERATION CHAOS, according to the Rockefeller Commission report, resulted in the opening of 13,000 files on 7,200 American citizens.

ACLU attorney Mark H. Lynch said the CIA documents, which he said have been "in a locked file drawer for two years" since Green's order, contain some information about Operation Chaos which has been yet come to light through the Rockefeller Commission or congressional investigations.

However, a story based on some of the documents appeared in the New York Times a week after the gag order. It is not known how the Times obtained the documents, but ACLU attorneys in the case denied releasing them and the Times reporter said in the story that the information did not come from anyone covered by the judge's order to the plaintiffs and their attorneys.

According to the Times story, the CIA made use of friendly foreign intelligence services to help it obtain information through means including "surreptitious entry and purloining of documents" about U.S. citizens travelling abroad. The documents were heavily censored by the CIA before being released to the plaintiff's attorneys and the names of the foreign agencies assisting the CIA, for example, were deleted.

THE COURT MAJORITY, in an opinion written by Judge David L. Bazelon, said that in most cases attorneys have a First Amendment free speech right to disclose files obtained through discovery. The ACLU attorneys had planned to hold a news conference regarding the documents before the government obtained its gag order.

The appeals panel majority said Green erred because her ruling "prohibits political expression, yet is silent as to its reasons, rests on no expressed findings, and is unsupported by any evidence."

The 48-page decision also criticized the government's justification for keeping the documents secret.

"To justify such a restriction on political expression, the government does not contend that it is neecessry to protect national security or the privacy of third parties. Rather, counsel for the defendants merely asserted that the intended news release would be 'prejudicial to adjudication of these issues . . . in an uncolored and unbiased climate,' without providing any evidence to support this conclusory allegation."

But the court said the government must be given the oportunity to seek a new gag order under the strict standards of its ruling, which would require the CIA to prove that public release of the documents would cause "substantial and serious" harm to the CIA position in the lawsuit. Justice department attorneys in the case could not be reached yesterday for comment.