

Bell Contempt Citation Is Overturned In Case Over Confidential FBI Files

3/20/79
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Special to The Washington Post

Attorney General Griffin B. Bell's contempt of court citation for refusing to turn over confidential FBI informant files was overturned yesterday by the 2d U.S. Court of Appeals in New York.

Speaking for a three-judge panel, Judge James L. Oakes said that the contempt citation, in a controversial case involving the Socialist Workers Party, was too drastic a penalty.

The lower court judge, Thomas P. Griesa, was ordered to find lesser sanctions, with the appellate court suggesting that summaries of the disputed files—"without compromising the identity of the informants"—might suffice.

Leonard Boudin, attorney for the SWP, which is seeking the files in connection with a \$40 million damage suit over alleged FBI spying, said yesterday that he would recommend that his clients appeal the decision to the Supreme Court.

He said the appeals court failed "in any real degree to analyze the weakness of the government's key position the pledge of informant privilege . . . While not totally inadequate, the opinion is lacking in analysis of this important question . . . From a public point of view I think it requires Supreme Court review."

Griesa held Bell in contempt of court last July after the attorney general balked at his order to turn over informant files. Bell said then he had to resist because informants are such an important source of information in

criminal and counter intelligence cases. The "ultimate effect" of Griesa's order, he said, "would be to cause incalculable harm to the nation's ability to defend itself against its enemies, foreign and domestic."

The case has become celebrated because of Bell's tough public stance on the informant issue. His contempt citation was the first against the nation's chief law enforcement officer.

In his 19-page opinion yesterday, Oakes noted that the case was "extraordinary." He said, "It is, so far as we know, the first case brought by a political party against the government itself for damages as well as injunctive relief for allegedly illegal surveillance of that party."

The SWP and an affiliate, the Young Socialist Alliance, filed the suit in 1973, charging that the FBI used some 1,300 informants to spy on the small radical party over the previous 35 years.

Oakes said that the importance of the government's informant privilege claim had been emphasized in a previous ruling on the same case. In that instance, the court of appeals refused,

on technical grounds, to overturn Griesa's order that the informant files be made available. But it warned against disclosure "for which there is no substantial need."

The contempt citation in the SWP case is also important, Oakes said, because it was against the attorney general. "Although we unequivocally affirm the principle that no person is above the law . . . we cannot ignore the fact that a contempt sanction imposed on the attorney general in his official capacity has greater public importance with separation of power overtones and warrants more sensitive judicial scrutiny than such a sanction imposed on an ordinary litigant," he wrote.

Because of the unusual circumstances, Oakes concluded, the appeals court granted the government's request for a rare "writ of mandamus" ordering Griesa to seek other sanctions besides the contempt citation.

Griesa had argued in holding Bell in contempt that the 18 disputed informant files were a "unique and essential body of evidence" for the SWP.