

Snepp Breached Contract, Judge Says

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By Fred Barbash
Washington Post Staff Writer

U.S. District Court Judge Oren R. Lewis held yesterday that former CIA agent Frank Snepp committed a "willful breach of the highest public trust" by publishing his book on the American evacuation of Vietnam without Central Intelligence Agency authorization.

Moreover, Lewis said in an informal ruling against Snepp, "he never said he was doing it in the Pentagon Papers, to save the country. He did it for money."

Lewis withheld a formal ruling for a few days on the civil case and a

judgment on what penalties to impose on the author of "Decent Interval," a highly critical account of what Snepp calls the "botched" evacuation.

The CIA and the Justice Department are seeking punitive damages, the proceeds from the sales of the book (about \$60,000 so far) and an order barring further unauthorized disclosures by Snepp.

Mark Lynch, an American Civil Liberties Union lawyer representing Snepp, said he would appeal the decision, setting up another possible test of the CIA's authority to censor the writings of its former employees.

Snepp said afterward that if he

loses the case on appeal, "I think we'll have a system where former employees cannot criticize the CIA. If the American people want a CIA that marches in bureaucratic lock step, they're going to get it."

Snepp had argued, in part, that the secrecy agreement signed by all CIA employees requires prepublication screening only if classified information is being disclosed. There were no such secrets in Snepp's book, the government has agreed.

But government witnesses, including CIA Director Stansfield Turner, said that under the secrecy agreement

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the CIA has the power to decide whether secrets are being divulged. By refusing to submit his book, Snepp never gave the agency the opportunity.

Agreeing, Lewis said yesterday that if the CIA is deprived of this control, "they may as well go out of business If all CIA agents are allowed to tell whatever they want to tell whenever they want to tell it to whomever they want to tell it, then the CIA isn't going to get much information."

The Snepp case is the second major CIA effort to bolster what it complains is its diminishing ability to keep secrets because of books and news leaks.

The agency moved successfully against former intelligence officials Victor Machetti, of the CIA, and John D. Marks, of the State Department, and won in the 4th U.S. Circuit Court of Appeals the right to censor parts of their book, "The CIA and the Cult of Intelligence." That decision applied only to disclosures of classified information, however.

The agency has allowed several books to be published without prepublication review, however. That fact, Snepp and his lawyers contended shows that the agency is just as concerned about embarrassment in its censorship as it is about secrets.

"I think the agency would have torn my book to shreds" despite the absence of classified data, Snepp said after the decision. "And that is not what the secrecy agreement is about."

Lewis' assertion that the book was written for money, Snepp said, "is just absurd. I did this book because I believed it would help improve the CIA."

Because of Lewis' belief that Snepp and others like him are in it for money, the judge said he thought that the "nominal damages" normally exacted in a breach-of-contract case "would not be a deterrent."

He termed Snepp's earnings "ill-gotten gains," the legal phrase normally reserved for funds received by someone who breaches a business or financial trust called a fiduciary trust. Such gains are often forfeited in civil cases.

Throughout the 1½-day-long non-jury trial, Lewis had made little effort to conceal his personal view of what Snepp, whom he generally referred to as "Shepp," had done, lecturing him angrily when he took the stand and saying at one point that "it won't make any difference" what the evidence is.

Yesterday, Lewis defended his actions and accused The Washington Post of distorting them, although he did not cite specifics. He said The Post suggested incorrectly that "I was being arbitrary" and that "I already had the decision written."

"I have gone five steps beyond what I would have ordinarily gone [in allowing defense testimony] because this is an important case," he said.