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U.S. Judge Rebuffs CIA On Secrecy

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The Central Intelligence Agency has received a major setback in a court battle to keep its cloak over its covert activities.

In a ruling made public yesterday, U.S. District Court Judge Albert V. Bryan Jr. held that the CIA had exceeded its classification authority in ordering 168 deletions in a forthcoming book, "The CIA and the Cult of Intelligence."

After having gone through the manuscript deletion-by-deletion, Judge Bryan reduced the number of national security excisions to 15. On originally reviewing the draft the CIA said 339 omissions would have to be made on national security grounds prior to publication.

In his ruling Friday, Judge Bryan said the CIA had "failed to meet the burden of proving classification."

The American Civil Liberties Union greeted Bryan's ruling as having a "profound impact on secrecy in government."

"It is the first time that any court has ever held that the government's asserting certain material is classified is not sufficient to prove it is classified," said ACLU attorney Melvin L. Wulf, who participated in the court arguments.

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The book was written by two former government intelligence officers, Victor L. Marchetti of the CIA and John D. Marks of the State Department's Office of Intelligence and Research. Both men have been out of the government since 1969.

It was a case in which the government for the first time sought to exercise prior restraint on security grounds over a manuscript written by former government employees.

In 1972 Judge Bryan upheld the right of the CIA to prior review of the Marchetti manuscript, which at that time had not yet been written.

When the book was finished, with the assistance of Marks, it was submitted to the agency for clearance and came back in September, 1973, with the original 339 deletions.

Marchetti, Marks and the publisher, Alfred A. Knopf, Inc., challenged the classification actions in a countersuit during which Judge Bryan heard testimony in a closed courtroom from CIA Director William E. Colby and his four top deputies.

The final result was the Friday ruling which held, in essence, that a fact could not be classified simply by a CIA official declaring it to be so.

Judge Bryan said that the decisions on what was classified in the manuscript by each CIA deputy director seem "to have been made on an ad hoc basis as he viewed the manuscript, founded on his belief, at that time, that a particular

item contained classifiable information which ought to be classified."

Such a basis of decision, the judge said, "is not sufficient, and cannot suffice if the First Amendment rights of these plaintiffs or others like them are to survive."

The judge said that the government should have been able to produce documents or evidence of other affirmative actions to demonstrate that material in the CIA book was, in fact, classified.

Both the government and the authors have a basis for appeal. The CIA will presumably seek to again make the

omissions it ordered in the manuscript. The authors may ask to reopen the question of whether their respective oaths of secrecy did not violate their First Amendment rights.

The CIA declined yesterday to comment on the decision. But the decision, if left standing, could strip away sanctions of secrecy covering many operations it is seeking to keep out of the public domain.

CIA Director Colby has indicated that he has drafted legislation which would provide explicit congressional sanctions and stiffer penalties to buttress the agency's system of classification should the case be lost in court.

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