

Judge Gesell: On the CIA and Privacy

...The following is excerpted from a decision by U.S. District Court Judge Gerhard A. Gesell, refusing to restrain publication of the name of a particular CIA official in the Senate Select Committee Report on assassination. (The Committee later voluntarily deleted the name from its report.)

The Court finds there is no right of privacy in the Plaintiff. A former Government official has no right of privacy vis-a-vis the Congress where his official conduct is under review and he has, personally, volunteered to cooperate with the Committee.

No other Constitutional right is present. We are not concerned with Plaintiff's right of free speech; nor are we concerned with any other right other than the right of privacy.

To the extent that there may be some residual of a right to privacy extant, the Court, of course,

must weigh the value of that right to the individual against the public interest. The Court finds that the public interest greatly outweighs any private interest of the Plaintiff.

We are dealing first with a matter of major public concern. We are dealing with a Committee which is charged, among other things, with responsibility to examine into whether the Executive Branch has established adequate internal controls; and it is in this area that the conduct of Plaintiff is brought under particular review.

This is not, as the Court views it, a case of exposure for the sake of exposure alone. There is no actual threat of any criminal prosecution. The Court is obliged, on the record before it, to accept the bona fides of the Select Committee in its reasoned determination that the disclosure of the name will serve a legislative purpose. The Court cannot substitute its judgment for that of the Committee on a matter such as this unless it has before it such clear facts that by no reasoned stretch of the imagination can it be said that no

proper legislative purpose will be served. There are no facts of this kind before the Court.

With some hesitancy, the Court feels obliged to call attention to the increasing concern among citizens of this country and among many members of the Judiciary with the tendency of some Committees of Congress to move far into the areas which our Constitution preserved for grand juries and to engage in legislative trials. A question of very delicate balance is involved in each case and the ultimate responsibility, of course, except in the most egregious situation, must rest with the Congress and the resort to the polls is perhaps the only cure for many excesses.

Extraordinary situations create extraordinary conditions. It is the Court's view that this particular subject of assassination by Government officials, intended or successful, is an area that warrants substantial latitude to the Congress to bring forward to all members of the Congress and to the public the grave issues which undoubtedly the report is well directed to.