

ACLU sues Army, FBI for secret documents

Congress attempted to reduce the ability of the Executive branch of the government to hide information from the public by passing the Freedom of Information Act on Independence Day, 1966. That law provided that files should be made available on request unless they met certain criteria, principally that they must be kept secret if secrecy would be in the interest of the national defense.

In 1969, ACLU-NC sued the Department of Defense for Professor Julius Epstein who was at that time a researcher at the Hoover Institution on War, Revolution and Peace at Stanford University. Epstein had requested a file known as "Operation Keelhaul" from the U.S. Army but was denied. The "Keelhaul" file is a report on the repatriation of about one million Jewish and anti-communist refugees back to Russia after World War II.

Epstein, who has studied these refugees since the early 1950's and is publishing a book on the episode, claims the Allies knowingly cooperated with the Soviets by forcing the refugees to return against their will to Russia where they were either executed or died in slave labor camps.

Denying access to the file, the District Court and the Ninth Circuit Court of Appeals in San Francisco ruled that the Defense Department was justified in withholding the file because an Executive Order of the President declared the report crucial to national defense. Epstein believes that the real reason was that the government did not want everyone to know that after fighting Hitler because he represented all things undemocratic, our army helped Stalin commit equally repugnant crimes against humanity.

Following the renewed interest in government secrecy raised by the release of the Pentagon Papers, the Executive Order protecting the Keelhaul documents was revoked. The Army's

defense in the 1969 case was thereby substantially weakened.

Last month, National ACLU filed twin lawsuits in federal court in Washington, D.C. to again try to implement the Freedom of Information Act. ACLU-NC Legal Director Charles Marson explained that the suits have been re-opened in Washington because that court has had the most experience with the government's resistance to releasing information.

Along with the Epstein complaint, National also filed suit for Professor Allen Weinstein, a historian and director of the American Studies Program at Smith College. Weinstein seeks access to the "Hiss-Chambers" file from the Federal Bureau of Investigation. The document contains all of the FBI's records of its investigation of Alger Hiss and Whittaker Chambers between 1933 and 1952.

Looking beyond his own scholarly pursuits, Weinstein commented, "I view this suit as part of a larger effort by historians to open up unnecessarily restricted files to competent researchers. Our professional organizations have taken a keen interest in the whole problem of government restrictions on scholarship."

Both the Army and the FBI are claiming that the Freedom of Information Act does not apply to the requested documents.

Marson pointed out that "it is now clear that none of these documents is at all vital to national defense and that the Army and FBI are only attempting to keep information that would be embarrassing to the government from the public."

He emphasized that the public's "right to know" is crucial to the maintenance of open government, and if these suits succeed, they will represent a blow to the indiscriminate use of 'Top Secret' classifications to thwart public scrutiny of the government's actions.