

Judge Backs Publishing of C.I.A. Book If 27 of 339 Sought Deletions Are Made

APR 2 1974 NYTimes

By LESLEY OELSNER

By The Associated Press

WASHINGTON, April 1—A judge has ruled that a controversial manuscript about the Central Intelligence Agency may be published if the authors and publisher delete 27 items. The Government demanded 339 deletions.

Judge Albert V. Bryan Jr. of the United States District Court in Alexandria, Va., thus rejected to a large degree the Government's contention that publications would injure the national defense. He based his decision partly on the guarantees of the First Amendment, saying that these should not be left to the "whim" of a Government official.

'Secrecy' Contract

However, he rejected the contention of the authors and publishers that the First Amendment protected them against any deletions.

He thus relied on a decision he made in 1972 in the case—substantially upheld by the Court of Appeals—supporting the Government's right to review the manuscript before publication.

One of the authors, Victor Marchetti, is a former C.I.A. official, and Judge Bryan had ruled that Mr. Marchetti's right to write about the agency was governed by a "secrecy" contract he signed when he joined the agency.

While calling Judge Bryan's latest ruling a substantial victory, lawyers for the authors and the publisher, Alfred A.

Knopf, Inc., of New York, said they planned to appeal.

"It leaves open a lot of First Amendment issues," Floyd Abrams, the lawyer for Knopf, said today.

Melvin L. Wulf of the American Civil Liberties Union, representing Mr. Marchetti and his co-author, John Marks, a former State Department employee, said that the A.C.L.U. would try to get all restrictions removed.

The Government is also expected to appeal, because Judge Bryan's opinion, if upheld, could have broad ramifications on the manner in which the Government tries to administer its classification system.

Irwin Goldbloom, a Justice Department attorney who represents the Government, said that, while a decision to appeal was up to the Solicitor General, it was likely that the department would both appeal and ask for a stay of Judge Bryan's ruling pending that appeal.

14-Page Opinion

Judge Bryan, in a 14-page opinion and two lengthy appendixes filed Friday but not announced until today, took a tough stand on the burden of proof that the Government must bear if it wants to sustain censorship based on the fact that information is "classified."

Deputy directors of the C.I.A. testified during the trial that the items the Government wanted deleted—a list reduced to 168 by the time the trial began last month—were classified information before the writing of the book, entitled "The C.I.A.: The cult of Intelligence.

Under the previous rulings in the case, this was one of the tests to be used in deciding what censorship was permissible.

But, Judge Bryan rejected C.I.A. aides' testimony regarding 140 items and parts of two other items, saying they did not provide evidence that there had been the type of "affirmative action" envisioned by the Executive order that describes that act of classification of information.

"Although this is here denied by them, the decision as to each item here in question by an individual deputy director seems 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," the judge said.

'Public Domain'

Judge Bryan conceded that the result of his decision "may be to release some sensitive information." But, he said, "it is not too much for the public and these plaintiffs to expect" that actual classification, according to prescribed procedures, be made.

"The ipse dixit of the deputy directors after receipt of a manuscript is not sufficient, and cannot suffice if the First Amendment rights of these plaintiffs or others like them are to survive," he said.

The authors and publisher had contended that many of the items in the book were already in the "public domain" and thus not covered by the secrecy contract.