Spy Wars
Experts Fear That U.S.
Loses Espionage Battle
With the Soviet Union

They Say Russians Penetrate
CIA Security; New Reins
Could Further Hurt U.S.

Moles in a Hall of Mirrors

BY DAVID IGNATIUS
STAFF WRITER \(\rightarrow\) \(\rightarrow\) THE WASHINGTON POST
WASHINGTON—The Central Intelligence Agency's station chief in Katmandu, Nepal, some years ago liked to invite his local counterpart in Soviet military intelligence over to the house for dinner.

It wasn't idle socializing. The CIA officer was trying to recruit the Soviet official to spy for the U.S. The Russian, a military officer named Pecherov, happily accepted the invitations. For Mr. Pecherov was also trying to recruit the CIA's man. In the end, the Katmandu affair proved to be a stalemate.

Every day, around the world, such espionage games are being played out between U.S. and Soviet intelligence services. These spying operations can become crucial when a U.S.-Soviet crisis arises, such as the current commotion over Soviet troops in Cuba. But even when relations are calm, both sides are quietly working to place "moles," penetration agents, within the opposing spy service, and to pry loose the other side's most vital secrets.

What concerns many U.S. intelligence experts is growing evidence that the Russians have been winning this covert war. They cite examples of an aggressive Soviet espionage effort that over the years has compromised U.S. spy-satellite technology, penetrated CIA security and subverted the agency's operations. These experts contend that new controls on U.S. counterintelligence, such as have been discussed by Congress, could further weaken U.S. defenses against Soviet spies.

"I'm worried that the thread will keep unravelling until there isn't any sweater left," says former CIA director Richard Helms.

Dangers of Soviet Intelligence

Current CIA officials won't discuss the Soviet spy threat in any detail. But former intelligence officials describe a series of cases that, in their view, illustrate the dangers of Soviet intelligence to U.S. security:

The KGB's recent success stories lead some U.S. intelligence people to wonder whether the CIA and the FBI are equal to the challenge. Both U.S. agencies have been battered by public criticism in the last several years for past misdeeds, and more-especially at the CIA—by saying, what's more, many intelligence officials fear that the public's aversion to the agencies' use of dirty tricks and secret snooping could lead Congress to curtail the powers and budgets the agencies will need to combat the Soviets.

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The Soviet threat is further complicated by what former intelligence officials contend is a dire situation for U.S. intelligence as a result of the KGB's "illegal" agents. These are planted by the KGB to confuse and demoralize U.S. intelligence. The CIA, of course, tries to stop such agents by using "legal" KGB officers, who typically are in the U.S. under Soviet diplomatic cover. The "illegal" agents usually hold passports from various countries.

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to reach a final conclusion. The case file on
him remained open, one former intelligence
official says, waringly that he doubts the
case will be resolved "until the KGB has a
freedom of information act." Meanwhile
any judgments about Sasha's true identity
must hinge on the interpretation of a
strange series of interlocking cases.

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with extreme caution.

(Despite these suspicions, the U.S. al-
lowered Igor in 1966 to pretend to "recruit" as
a Soviet agent a Russian naval officer who
had defected to this country in 1969 and was
living here under the name Nicholas Shad-
rin. The CIA and the FBI hoped that the
controlled Igor-Shadrin relationship would
yield information about KGB operations in
the U.S., but the gambit ended in disaster in
1972 when Mr. Shadrin disappeared in Vi-
enna while making contact with his Soviet
handlers.)

Hall of Mirrors

As these spy tales suggest, the world of
intelligence sometimes resembles a hall of
mirrors, where it is impossible to tell
image from reality.

One intelligence expert says that it
wasn't until 1966, for example, that U.S. offi-
cials had conclusive evidence that a Russian
based in Istanbul who headed a supposedly
anti-Soviet network during World War II
and passed voluminous military information
to the German high command--was actually
a KGB agent. If so, the Russians apparently
were willing to jeopardize thousands of their
soldiers to preserve the credibility of this
agent--so that he could plant false informa-
tion at a crucial moment.

The suspicion about Soviet intelligence
activities can sometimes get out of hand,
however. Some former CIA officials contend
that happened during the 1960s, when a
search for Soviet moles within the CIA
nearly paralyzed the agency's own intelli-
gence-gathering operations.

The web of internal suspicion had be-
come so tight at the agency by the late
1960s, one CIA official remembers, that di-
rect permutation was required from the head
of the agency's clandestine service simply
to arrange a letter drop for an agent in Mos-
cow. "We were so convinced that everything
was controlled by the KGB that we never
had the heart to start anything," this official
recalls. The Russians, he says, were viewed
as "10 feet tall" and "too smart for us."

Former CIA Director William Colby
argues that excessive counterintelligence
worries were hindering the CIA's effective-
ness. "Every director was doubted, every
potential agent was doubted," he remem-
bers.

Despite all the intrigue and suspicion,
there apparently are certain rules to be fol-
lowed in the spy business. Howard "Rocky"
Stone, the CIA officer who tried to recruit
his Soviet counterpart in Kabul, discov-
ered that such rules can be enforced when
necessary. While he was stationed in Nepal,
Mr. Stone took a vacation with his wife to
Bombay, India, to attend a Catholic Eccla-
ristic conference. When he arrived in Bom-
bay, he found his name plastered across the
cover of an Indian magazine called Blitz,
which identified him as a U.S. "master spy."

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Mr. Stone discussed the matter with Rich-
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The Soviet ‘Forgery Offensive’

The decision by Iranian militants to show the world an alleged "secret" document that they said had been purloined from files in the occupied U.S. Embassy adds an ominous new factor in the battle of American intelligence against Soviet forgeries aimed at discrediting the United States.

Whether the militants have what they claim to have or whether the alleged CIA assignments for the two new staffers at the U.S. Embassy in Tehran are bogus, the surfacing of the document compounds the problem of identifying and exposing proliferating Soviet forgeries. These forgeries are, now known to have drawn both President Carter and Vice President Walter Mondale into their worldwide operations.

The Soviet forgery game was analyzed early this year in a classified government document called "the forgery offensive," which opened with this flat assertion: the dangerous Soviet game of lying about the United States is undergoing an "appreciable upsurge."

"The political purpose of these forgeries, their technical sophistication and intelligence reporting all point to the Soviet Union, its various East European allies and Cuba as being the responsible parties," the document said.

The study containing that charge against Moscow was followed in late summer by a second analysis, limited to "official use only" and published by the Defense Intelligence Agency—a major breach of the U.S. intelligence community. It proclaimed that Moscow has "continually employed forged documents to implement foreign policy, support political objectives and to lend substance, credibility and authenticity to their propaganda claims."

The United States has never played the forgeries game against Russia or any other country. One reason could be that in an open society forgeries would almost surely be exposed by those opposing the practice—by politicians, for example, who in the past have taken pride in exposing undercover operations by the CIA, regardless of foreign policy objectives.

The Soviets have a closed society and no known scruples against dirty tricks of any kind. But the efforts—described as being "of suspected Soviet origin"—to put false words in the mouths of the president and the vice president of the United States touched a new low. The falsification of Jimmy Carter's spoken word came in December 1977, in the form of a bogus press release from the United States Information Agency (now the International Communications Agency). It purported to be a verbatim report on a speech Carter gave in the "American perspective series."

Newspapers in Greece—and almost certainly in other countries where the forgery never surfaced—received the phonies. In Athens two newspapers published it. In his "speech," Carter flayed the Greeks for letting down NATO, demanded far higher defense spending by Greece and made demeaning remarks about this major Mediterranean ally.

The forgery involving Mondale came just over a year ago when Xeroxed copies of an interview he allegedly gave to a European journalist named "Karl Douglas" were mailed to Paris-based correspondents of several newspapers.

In the "interview," the vice president cast aspersions on Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin. Mondale, according to the bogus "interview," called Sadat not the master of his own house (implying the then-pending treaty with Israel would not be adhered to) and claimed that Begin was suffering from a "terminal illness."

Both these efforts were crude, and neither one did American policy much, if any, damage. But they illustrate this point: there is no limit to the Soviet effort in "disinform" governments and peoples of the world about the perfidy of the United States by exploiting all techniques of forgery and black propaganda. Moreover, other attempts to undermine the United States have had conspicuous success.

In 1978, in an altered version of a genuine State Department document known as "Airgram A7050," dated Dec. 3, 1974, U.S. embassies in Europe were ordered to collect information "on ways to bribe European officials and to develop other covert means by which to damage or eliminate foreign trade competition" with the United States. The timing was calculated to cash in on the uproar in the United States over bribery accusations against U.S. corporations.

This forgery, American intelligence now believes, was "an eminent Soviet forgery success" despite some sloppy discrepancies, such as bad punctuation in the covering letter that came with funny copies of the alleged airgram.

With superpower competition now heating up, partly under the stress of the Iran crisis, top intelligence officials have ordered the anti-forgery watch put on overtime duty. But for every forgery discovered, there probably are half a dozen that go undiscovered. The whole world is a forgery market and it is inconceivable that the United States will not be damaged in the days of heated rivalry that lie ahead with an adversary who plays by only one rule: the rule to win.

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STAR
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Catholic Bishops, Church Council Oppose Return of Military Draft

By Jim Castelli
Washington Star Religion Writer

The nation's Catholic bishops and the National Council of Churches, in separate statements, have opposed a return to the military draft.

The bishops' statement was issued by the administrative board of the U.S. Catholic Conference, the bishops' civil action arm. The NCC statement was issued by its executive committee.

The bishops supported the present standby draft system, which would require the president to get congressional approval before conscription could begin.

In their statement, the bishops said they have "no objection in principle" to draft registration, but added that "convincing" reasons must be advanced before registration begins.

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Mr. Snepp snipped

Two years ago Mr. Frank Snepp III drew on his experiences as a CIA agent in Vietnam to publish—with prior screening—a book about the fall of Saigon called Decent Interval. A lingering climate of hostility to the CIA—and a lazy-minded tendency to confuse the issues—made it inevitable that his defiance of contractual obligations to the CIA would be defended as a daring, even admirable, exercise of First Amendment rights.

The U.S. Supreme Court doesn’t see it that way. Its brisk and unceremonious disposition of Mr. Snepp’s appeal from a conviction in the lower courts, in an unsigned opinion delivered without benefit of oral argument, is a clear sign of changing climates. The collapse of Iran and the Soviet invasion of Afghanistan have reminded those who needed reminding that there’s a dangerous world out there—in which it is foolish to treat its intelligence needs and practices casually.

The Supreme Court recognizes and reaffirms that the CIA must be empowered to prevent its employees from bolting from the fold with their memoirs and briefcases overflowing with unscreened agency information. It also recognizes that the CIA must have effective means of penalizing disregard of its covenants with agents. Mr. Snepp unquestionably—and apparently unashamedly—did so. When he joined the CIA in 1968, and again when he left it in 1976, he signed agreements to seek “prior approval of the agency” and “the express written consent of the Director...or his representative” before publishing “any information concerning intelligence or the CIA that has not been made public by CIA.” The obligation was clear. Yet Mr. Snepp went right ahead and published his book without clearance. His profits are reportedly in excess of $115,000.

None of the three courts, incidentally, has found that a contractual obligation of the kind Mr. Snepp was under may be waved aside on a pleading of First Amendment rights. The controversial point in the case was the penalty. The trial judge held that Mr. Snepp’s profits, having been gained in violation of a trust, belong to the government. That judgment was overturned by the Fourth Circuit Court of Appeals. It is now reinstated by the Supreme Court.

The three dissenters are troubled, however, by that “uninhibited...exercise in lawmaking.” They contend that the proper recourse for the CIA was to sue for punitive damages. The Court, apparently on its own motion, rejected that argument as unrealistic, saying that “proof of (wrongful) conduct necessary to sustain an award of punitive damages might force the government to disclose some of the very confidences that Snepp promised to protect...When the government cannot secure its remedy without unacceptable risks, it has no remedy at all.” This may be “lawmaking” by the high court; but of the force of the sustaining argument there can be no doubt.

The Snepp case, we say again, has given rise to much confusion, not to say nonsense—primarily a confusion between a case involving the enforcement of a lawful contract (which it is) and a case involving Mr. Snepp’s constitutional “right” to publish unimpeded (which is what Mr. Snepp’s ingenious lawyers sought to make it). But a First Amendment defense of Mr. Snepp’s behavior closely approximates what is often cited as the classic case of chutzpah—the case of the boy who murdered his parents and then threw himself on the mercy of the court pleading that he was an orphan. No one compelled Mr. Snepp at gunpoint to join the CIA, or to sign away his right to publish without prior clearance. But having done so, he will be expected to face the legal consequences.

No intelligence service conducted on the lax and permissive principles implicit in Mr. Snepp’s defense would be other than an incontinent shambles, valueless to the nation it served. In most other countries, including Great Britain, Mr. Snepp’s violation of his terms of employment in the intelligence service would have brought him more than the confiscation of his ill-got gains, possibly even imprisonment.

He is lucky, though he is out a good bit of money, to live under American law.
In defense of confiscation

The U.S. Supreme Court ruled this week in the Frank Snepp-CIA case even as the Senate began work on a "charter" for the legal domestication of CIA work, and when *The Brethren* has spotlighted the techniques of judicial review.

These circumstances are pertinent, for in ruling on the enforceability of CIA contracts with former agents the Court brushed the issues with which the Senate must grapple; and the Court also, according to some critics, flouted strict constructionism to penalize Mr. Snepp.

As yesterday's comment suggested, we don't agree with that criticism. But since it sprang from sharp disagreement within the Court, and since it is even said that the Court "showed contempt for the rule of law," a second look may be appropriate.

Let us focus, this time, on the dissenters' condemnation of the Court's confiscation of Mr. Snepp's royalties. Here, a gentlemanly disagreement among the justices over the law of trusts, which was the legal heart of the matter, has been magnified into a charge that the Court ruled lawlessly.

Yet Mr. Justice Stevens, who wrote the dissent, and Justices Brennan and Marshall, who joined him, agreed that if Mr. Snepp had disclosed classified information, the forfeiture of his profits would be appropriate. Since the CIA had not charged him with a breach of classified information the dissenters thought the remedy excessive and unjust.

The government, however, did not flatly declare that Mr. Snepp's book had revealed no "information concerning intelligence or CIA" — only that "for purposes of this action" that was not the contention.

Was this conditional clause insignificant? The dissenters assume so; we do not. While it's anyone's guess, the CIA and the Justice Department may have been trying to avoid revealing "for purposes of this action" what it seemed to them is the national interest to conceal. Yet the dissenters drew from the conditional stipulation the startling conclusion that "by definition, the interest in confidentiality that Snepp's contract was designed to protect has not been compromised." They do not really know that. They know only that no compromise of that "interest in confidentiality" had been charged.

The dissenters' broad interpretation of the government's plea is question-begging. It carries us swiftly back to the quandary that bothered the Court — that a "remedy" risking the disclosure the CIA seeks to avoid is no remedy.

Another frailty of the dissenters' position, as the Court's unsigned opinion noted, is that "the dissent (divides in two) Snepp's 1968 agreement and treats its interdependent provisions as if they imposed unrelated obligations." Mr. Snepp not only agreed not to publish classified information without clearance, he agreed to clear all information "relating to the Agency, its activities or intelligence activities generally" before publishing.

If you assume, as we do, that the Agency is better situated than former agents to judge when disclosure could cause harm, the inclusiveness of the contract is all-important. Yet the dissenters — speaking of "lawmaking" — gratuitously distinguish between classified information and more general information, ignoring that in some ways the disclosure of the latter could be as compromising as the disclosure of the former. What a former agent imagined to be harmless information could lay a trail to undercover sources, or to foreign intelligence agencies cooperating with the CIA.

Justice Stevens and the other dissenters indicated, oddly, that they would be at ease if the Court confiscated book profits in response to a breach of classified information, but not in response to the other kind of disclosure. How or why they distinguish between the two, in the light of a trust relationship explicitly restraining both, is not blindingly clear. That is why the dissenters think it "in essence, a disagreement about the law of trusts. And on that question Mr. Justice Stevens has six votes against him.

Of course — to take passing note of more fundamental objections to the Court's decision — the Supreme Court may be no better than Congress at balancing the needs of a working intelligence system against the claims of openness, free speech and constitutionality. It may be a sad illusion in any case that the nation can have it both ways — that it can function effectively in the shadowy, extra-legal world of foreign intelligence and indulge the publishing whims of former agents. Not even the most ingenious legislative or judicial acrobatics, we suspect, could quite square that circle.
For the Record

For the Record

From the satirical Hungarian weekly Ludas Matyi, by Sandor Nolfo.

Kovacs knows as much about foreign policy as a chicken about the ABCs. I can't drum into his stupid head what the international situation is. He tells me:

"I just don't understand this Iranian thing. After all, these are religious fanatics.""You fool, it's not important what kind of fanatics they are. The important thing is that objectively they serve progress."

"You mean we must like these fanatic Moslems?"

"Yes, we must like them."

At this the anti-dialectical blockhead shouts:

"Then long live all the fanatical Moslems in Iran! And in Afghanistan!"

"What did you say? We weren't talking about Afghanistan."

"But I just read that the religious fanatics there are also rebelling. So we should like them, too."

"Them we don't have to like, because they objectively want to turn back the wheel of history. They want an Islamic Republic."

"Like in Iran?"

"Iran is one thing, Afghanistan is another. The Iranians are positive Moslem fanatics, the Afghans are negative Moslem fanatics."

I see I have him convinced. He bows his head.

"You see what a simpleton I am? I cannot grasp such clear things. For example, take this boxer."

"Which boxer?"

"Ali Amre. Who's already out."

"What's the problem here?"

"Is he positive or negative?"

"Positively. He was a harmful chisel, but for a while he was objective...."
By Fred Barbash

WASHINGTON Post Staff Writer

The Supreme Court's government secrecy opinion, issued Tuesday to help the CIA solve a problem with leaks, may also help to solve a similar problem at the Supreme Court.

In the view of many lawyers, the opinion in the Frank Snepp case gave the government broad new powers to restrict release of information not only by intelligence operatives, but also by a wide variety of government employees, including people who work at the Supreme Court.

And it is court employees, particularly clerks, who have been blamed for a series of leaks in the past two years, some of which produced the bestselling book, "The Brethren."

Many lawyers also feel the court acted with unusual haste, unusual reach and with a phrase at the end of the opinion that reflected unusual vehemence. The opinion, the court said, requires Snepp to "discharge the beneficence of his faithfulness."

As the remedy is swift and sure, it is tailored to deter those who would place sensitive information at risk.

"Whether it was the court's purpose or not," said Gerald Hollingsworth, general counsel and vice president of Random House, Snepp's publisher, "the justices have seemingly fast-tracked the court to reach its own employees leaking its own secrets."

The case was promoted by Snepp's publication two years ago of "Decent Interval," a book based on his experiences as a CIA officer in Vietnam. Though the government did not allege that the book revealed secret information, it pursued Snepp for not submitting his manuscript for prepublication screening by the CIA. He was required to do so under a secrecy agreement he signed as a CIA agent.

The government had tried to sell all of Snepp's earnings from the book (now about $115,000) and to enjoine any further violations of the prepublication screening requirement. It won all it sought, including an extension of the injunction to cover anyone acting "in concert" with Snepp, in this case Random House.

Since Random House is preparing to publish further Snepp writings, according to Hollingsworth, the company now believes that for the first time a publisher has been placed under "prior restraint" against putting out a book.

The court's approval of the District Court's orders in the case went well beyond the CIA, lawyers pointed out, and secrecy agreements by employees.

Government employees with access to "sensitive information" have a trust relationship with their employers, the court said. The trust is not just to national security secrets.

"Without reliable prepublication review procedures no intelligence agency or responsible government official could be assured that an employee's sensitive information might not constitute on his own—innocently or otherwise—that it should be disclosed to the world," the majority said.

The remedy imposed, the confusion of earnings, "is the natural and customary consequence of a breach of trust."

At the court, law clerks and some other employees are privé to the secretive memos and conversations which lead to decisions by the justices.

Bob Woodward and Scott Armstrong, authors of "The Brethren," say they rely on hundreds of interviews with clerks to describe those secret deliberations over a seven-year period at the court. Previous leaks, notably an advance on a major Supreme Court opinion to ABC reporter Tim O'Brien, have also been attributed to court employees.

Though there is no law governing secrecy among court employees, Chief Justice Warren Burger has said that one is not required to solve the problem.

In his dissent in the Pentagon Papers case in 1971, Burger wrote: "No statute gives this court express power to establish and enforce the utmost security measures for the secrecy of our deliberations and records. Yet I have little doubt as to the inherent power of the court to protect the confidentiality of its internal operations by whatever judicial measures may be required."

The Snepp opinion may have been the first judicial measure, some lawyers believe. "A clerk is in a position of trust in dealing with sensitive information," said American Civil Liberties Union lawyer Mark Losh, who represented Snepp. "I think there's no question that the decision could apply to them."

"I see the decision as in part a reaction to confidences improperly breached" in "The Brethren," said Bruce Fein, an American Enterprise Institute court expert.

"I can't say that conclusively. But in the procedure used by the court, the decision reflected a kind of instinctive hostility" unusual for the justices. "Procedurally, the court chose to issue its unsigned opinion without amigos from either side. According to Eugene Gressman, coauthor of a book on Supreme Court practice, the common is a major case but unique. It is said, "unfair."

Wake up in the morning and you've lost your case without ever having had the chance to argue it."

In addition, the court gave the government more than it or anyone had asked for. The Fourth U.S. circuit Court of Appeals had overturned the seizure of Snepp's earnings and harshly a penalty. The government was the Supreme Court that it must sneak the appeal of the rest of the lower court decision, it should reject the government's appeal of the earnings seizure decision. The court disregarded the government's request for the action of Justice John Paul Stevens, in a dissent along with Justices William Breyer and Thurgood Marshall, that wrote "unprecedented. He subscribed to the decision in general as an "uninhibited...exercise of lawmaking."
By Fred Barbash
Washington Post Staff Writer

Supreme Court's government

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In defense of confiscation

The U.S. Supreme Court ruled this week in the Frank Snepp-CIA case even as the Senate began work on a "charter" for the legal domestication of CIA work, and when The Brethren has spotlighted the techniques of judicial review.

These circumstances are pertinent, for in ruling on the enforceability of CIA contracts with former agents the Court brushed the issues with its usual lighted the techniques of judicial review.

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As yesterday's comment suggested, we don't agree with that criticism. But since it sprang from sharp dissidence within the Court, and since it is even said that the Court "showed contempt for the rule of law," a second look may be appropriate.

Let us focus, this time, on the dissenters' condemnation of the Court's confiscation of Mr. Snepp's royalties. Here, a gentlemanly disagreement among the justices over the law of trusts, which was the legal heart of the matter, has been magnified into a charge that the Court "showed contempt for the rule of law," a second look may be appropriate.

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Yet Mr. Justice Stevens, who wrote the dissent, and Justices Brennan and Marshall, who joined him, agreed that if Mr. Snepp had disclosed classified information, the forfeiture of his profits would be appropriate. Since the CIA had not charged him with a breach of classified information the dissenters thought the remedy excessive and unjust.

The government, however, did not flatly declare that Mr. Snepp's book had revealed no information concerning intelligence or CIA — only that "for purposes of this action" that was not the contention.

Was this conditional clause insignificant? The dissenters assume so; we do not. While it's anyone's guess, the CIA and the Justice Department may have been trying to avoid revealing "for purposes of this action" what it seemed to them in the national interest to conceal. Yet the dissenters drew from the conditional stipulation the startling conclusion that "by definition, the interest in confidentiality that Snepp's contract was designed to protect has not been compromised. They do not really know that. They know only that no compromise of that "interest in confidentiality" had been charged.

The dissenters' broad interpretation of the government's plea is question-begging. It carries us swiftly back to the quandary that bothered the Court — that a "remedy" risking the disclosure the CIA seeks to avoid is no remedy.

Another frailty of the dissenters' position, as the Court's unsigned opinion noted, is that "the dissent (divides in two) Snepp's 1968 agreement and treats its interdependent provisions as if they imposed unrelated obligations." Mr. Snepp not only agreed not to publish classified information without clearance, he agreed to clear all information "relating to the Agency, its activities or intelligence activities generally" before publishing.

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Justice Stevens and the other dissenters indicated, oddly, that they would be at ease if the Court confiscated book profits in response to a breach of classified information, but not in response to the other kind of disclosure. How or why they distinguish between the two, is the light of a trust relationship explicitly inextricably restraining both, is not blindingly clear. That is why the disagreement is, in essence, a disagreement about the law of trusts. And on that question Mr. Justice Stevens has six votes against him.

Of course — to take passing note of more fundamental objections to the Court's decision — the Supreme Court may be no better than Congress at balancing the needs of a working intelligence system against the claims of openness, free speech and constitutionality. It may be a fond illusion in any case that the nation can have it both ways — that it can function effectively in the shadowy, extra-legal world of foreign intelligence and indulge the publishing whims of former agents. Not even the most ingenious legislative or judicial acrobatics, we suspect, could quite square that circle.
By RICHARD EDER
T
HE recent Supreme Court decision curtailing the right of former Government employees to write about their experiences has left publishers and constitutional lawyers seriously disturbed; it has left Frank Snepp both gagged and broke.

All professionals have their powerful mysteries: medicine has psychiatry, journalism has unattributable sources, and the legal profession has injunctions and equity jurisprudence. When the Supreme Court decided three weeks ago that Mr. Snepp had violated his contract with the Central Intelligence Agency, his former employer, by publishing his account of the last days of the United States presence in Vietnam, without clearing it with the agency, it applied a punishment not out of law but equity: it forced him to tie up with an injunction to his book.

The court did not grant Mr. Snepp's request to be heard in appeal. Instead, it issued an opinion confirming, in effect, an original Federal District Court judgment against him two years ago. It permanently enjoined him from circulating any of his writing arising from his years in the C.I.A., unless it was first cleared by the agency. It went on to punish his failure to clear his book, "Deepest Interval," with something considerably beyond the normal legal remedy for a breach of contract. Such a remedy, as recommended by the intermediate Circuit Court of Appeals, would have been an order for a new, lower-court trial to determine damages.

Background of Other Cases

Instead, the Supreme Court applied a punishment based on equity jurisprudence. More than simply breachng a contract, it held, Mr. Snepp had breached a position of trust - even though classified material was not the issue. Therefore, he must pay to the Government not a specific sum to be determined, but all present and future profits from his writing for the last two years and has virtually completed two other manuscripts: a novel about the C.I.A. and the assassination of President Kennedy, and an account of his legal difficulties.

His publisher, Random House, has lost him $12,000 for living expenses, in expectation of being shown the manuscripts. These were lying on the table in a borrowed apartment when Mr. Snepp was in town the other day, but he cannot let Random House even see them, lest alone publish them. The injunction requires Mr. Snepp to let the C.I.A. see them first and make whatever deletions it decides upon, before showing them to anyone else. Thus, Mr. Snepp cannot continue to sell into the audience that his publisher would provide if it could look at his manuscripts.

Submission to C.I.A. Plundered

"I absolutely never intended," said the author, who was the C.I.A.'s principal analyst and briefer in Saigon before the Vietnam War, "I've spent the last five years writing; I couldn't get out and get a real salary as a college professor, so I wrote to Random House with the advances on the book. Now the novel is ready and I can't even submit it. This must be the first novel in American history that is being brought to market without a publisher.

Mr Snepp intends to submit his novel to the C.I.A. review again next week. Or, with which, the Government had against his first book - it has dealt with the C.I.A. agencies he doubts that the C.I.A. would bill him for his food.

To the publishing world, the decisions of the Supreme Court are highly disturbing. The Free Press Committee of the American Publishers is expected to file a new suit, which it plans to have before a memorandum from the associational counsel, Henry R. Kressel, Inc.

"The entire opinion, from front to end, including several affirmances..."

By HILTON KRAMER
W
ORKING in a style of meticulous, mirror-bright Realism, the American painter Barkley Hendrick concentrates for the most part on producing portrait figures of young blacks. A large, uncommonly interesting portrait painting attempts a far more complex pictorial structure than the palette is dominated by cool, grayish-green and off-white tones.

In an interesting departure from his usual practice, Mr. Hendrick has drawn from the artist's native Phila dephia, and much attention is lavished on the studio setting. Of course, he also admits, something of a fetish of this painting - his only other portrait, the one of Mr. Hendrick's father, also allows himself. and is all the world is judging of. In portrait this is the most beautiful painting of the show.

In addition to the portrait as well as a selection of recent collages and photographs, colored, traces of a time at a time in execution, usually on a display, delicate. But to be a photograph Mr. Hendrick himself changes and composition of the show. He feels, turned the full width. Except for one photograph of people standing at the right of the exhibition, Mr. Hendrick also some sense of the whole.

The exhibition will be through March 30.
NYork Times, Tuesday, March 11, 1980

**Headlines by Hendricks**

In a style of furious, mirror-bright trim, the American artist Barkley Hendricks gives the most part on art figures of young black men and women. These paintings are on exhibit at Museum in Harlem, at 125th Street.

Subjects are often black and white, but the presence of light and color is evident in the vivid chromatic elements of the clothing and skin tones against it. This pictorial strategy is not without its slick side—and Mr. Hendricks can be as slick as any Realist now painting—but it is particularly effective where the palette is dominated by blacks, pearly grays and off-whites.

In an interesting departure from this pictorial scheme, there is one painting of a female figure on a couch in which the woman and the background fill the entire space. From the design of the rug in the foreground to the pattern of the woman's dress along the upper pane, the painting attempts a far more complex structure than Mr. Hendricks usually allows himself and is all the more interesting because of it. In some respects, this is the most thoughtful painting in the show.

In addition to the paintings, there is also a selection of recent watercolors, collages and photographs. The watercolors, though at times a shade hesitant in their execution, are done with an appealing delicacy. But to collage and photography Mr. Hendricks has not, one feels, turned the full weight of his talents. Except for one hand-tinted photograph of people standing in Washington Square, the photographs tend to be commonplace and 'be collages slight. It is in the paintings that Mr. Hendricks remains something of a virtuoso.

The exhibition will be on view through March 18.
The CIA's Case Against Snepp

MY TURN/GEORGE A. CARVER JR.

On February 19, the Supreme Court issued a 6-3 decision in Snepp v. U.S., No. 78-1871 that generated a predictable firestorm of press criticism. (One New York Times columnist termed it "lawless," a sign of "disorder in the court.") Much of this impassioned criticism, however, has been flawed by factual error or a misunderstanding of the questions at issue.

The case involves a former Central Intelligence Agency officer, Frank Snepp, who was stationed in Saigon at the time it fell and who subsequently wrote a book about Vietnam entitled "Decent Interval." The government took Mr. Snepp to court because he did not submit his manuscript to the CIA for security review prior to its publication—arguing that in so doing, Mr. Snepp violated the secrecy agreement he had signed in initially accepting CIA employment, as a condition of that employment.

Mr. Snepp's basic defense, argued by the American Civil Liberties Union, was that his secrecy agreement did not apply because nothing in his book was "classified." The Supreme Court ruled unambiguously in the government's favor, endorsing the government's contention that the question of whether or not "Decent Interval" contained any classified material was irrelevant in this action; that this was a breach-of-contract case, not one raising First Amendment issues; and upholding a lower-court ruling that for breaching his contract, Mr. Snepp had to forfeit all earnings derived from his book.

Appeals: The issues raised by this case are complex and important. Though not a lawyer, I have considerable familiarity with all sides of all of them. From 1966 to 1973, I was special assistant for Vietnamese affairs to three successive directors of Central Intelligence; for the following three years, I was deputy for national intelligence to two. In that latter capacity, I was a member of the CIA's highest appellate board (under the director), considering appeals on, among other things, recommended declassifications in manuscripts submitted for prepublication review by current or former employees. I am now retired and on the other side of the fence, earning much of the money needed to support my family by writing.

I have known Frank Snepp and his work for many years. We have often disagreed, but our disagreements have always been within a context of reciprocal professional respect and personal regard. He and the ACLU, in fact, had me subpoenaed—from overseas—as a defense witness in this case, and voluntarily bore the expense of my round-trip travel. Frank Snepp cannot be legitimately faulted for writing or publishing "Decent Interval." His mistake lay in not submitting his manuscript for prepublication review, as required by the secrecy agreement he had signed—voluntarily—since no one is obliged to work for the CIA.

Despite mythology to the contrary, CIA prepublication security review of employees' manuscripts is not "censorship" as that term is normally understood. As I know from my own experience on both sides of this fence, such review focuses on one thing only: the exposure of information that, in the agency's institutional opinion, needs to be kept classified to protect sensitive intelligence or intelligence sources and methods—not on criticism, accuracy, personal opinions or anything else.

As the government argued and the Supreme Court ruled, whether or not anything in "Decent Interval" still required the protection of classification was irrelevant. I think several passages in it should have been considered classified, and would have so ruled had I been officially reviewing Mr. Snepp's manuscript; but since I did not review the manuscript officially, this is a strictly private, personal opinion. That, however, is precisely the central point here involved. No former agency employee, yet alone any journalist, has any private right to determine what is or is not properly classified. The right to make that determination is institutional, vested by statute in the United States Government.

Ruling on classification is not censorship. Any claim that it is, or that our government's exercise of this legitimate, legally sanctioned right has a "chilling effect" on former government employees' exercise of their private rights of free expression as protected under the First Amendment is hogwash—as I also know from my own experience. Since retiring last September, I have published several articles and signed a book contract. All my manuscripts have been or will be submitted for prepublication security review in compliance with the secrecy agreement which I freely signed (as did Frank Snepp). Honoring this obligation, however, has been no bar to remunerative productivity, nor, as anyone who reads my published prose will see, has it been any impediment to criticizing the U.S. Government or its policies.

We are unlikely to survive this self-ridden and now thermonuclear era without good intelligence, and our nation cannot have good intelligence without an effective ability to protect legitimate intelligence secrets. Prepublication screening of CIA employees' or former employees' manuscripts—for this purpose—is essential, for legitimate secrets can hardly be protected if every employee or former employee assumes a private right to make declassification determinations individually and unilaterally.

Remedies: I would be more than prepared to go to the mat with the agency and the government and fight tooth and nail, in the courts if necessary, if I were ever to feel that any CIA prepublication review of my prose was being expanded beyond what I considered legitimate classification determinations into anything I considered illegitimate censorship. This has not happened, however, and there are ample remedies available to me, as an American citizen, if it ever should.

Even though I now earn a major portion of my living with my pen and typewriter, I applaud the Supreme Court's "Decent Interval" decision. It was wise, sound, just—and necessary to protect me as an American citizen and to protect our country.

George A. Carver Jr., a retired CIA officer, is currently a senior fellow at Georgetown University's Center for Strategic and International Studies.
Griffin B. Bell

Secrecy After the Snepp Case

The legal principle underlying the case of the United States v. Frank Snepp is a simple one, but it may well be the glue that preserves our intelligence agencies from the ravages of a purported absolutism, described under the euphemism of "the public's right to know."

Continued disclosures by ex-agent Philip Agee, books by Snepp and others, had alarmed intelligence officials in the United States and abroad, American and allied. The CIA and related American intelligence agencies were more and more viewed as existing in an unstable environment.

Now that the Supreme Court has sustained the principle that the CIA may contractually require its employees to clear any publication concerning the agency, careful consideration should be focused on how the government is to operate with this right.

Clearly, the government's successful action against Snepp, a former CIA agent who had signed at least two agreements with the CIA to submit matters proposed for publication concerning the agency for clearance—and who had represented personally to Adm. Stansfield Turner that he would—was one of the more significant recent steps to buttress our nation's intelligence capacity. The rush to disclose by ex-employees and officials had reverberated throughout the international intelligence community. Our longtime allies seriously questioned our ability to maintain their confidence and trust, and sources questioned our ability to protect them. Our own operatives in the field were endangered by the disclosures of their ex-colleagues.

We are beyond the day of Le Carré-like cloak and daggers in furnishing adequate and timely intelligence to the president and his advisers for responding to the social, political and economic complexities of today's world. Protecting our intelligence secrets, and the sources and methods by which we derive them, is the cornerstone of an effective CIA.

But in embracing the principle of the Snepp case, there is no lessening of our nation's resolve or ability to channel the activities of our intelligence agencies in a proper and lawful manner, to live within those safeguards and established bounds that prevent proscribed activities both at home and abroad.

In a significant article on the First Amendment and a responsible press, which caused much comment on those pages (September 5, 1977), the late Alan Barth, a discerning First Amendment advocate, wrote:

"There are many matters, it must be recognized, that governments—including the governments of democracies—ought and must keep secret... But the responsibility for guarding them is a government responsibility. It is not a responsibility of the press. Nor should the press be considered in any sense a partner or agent of the government in discharging this responsibility."

The eminent British jurist and scholar Lord Scarman put it well when he observed that while freedom of the press, including the right of the public to be informed, is a transcendent right, it is a right subject in some instances and to some extent to the security of the nation, the security of the individual, property rights, the right of privacy and the right of the individual to reputation.

In foreign intelligence and counterintelligence there is no danger of covering up the agency's involvement in wrongdoing if one wishes to report it. Specifically, there are internal agency and executive branch mechanisms for disclosures, including taking the matter to the intelligence oversight board or to the president himself. In addition, our shared system of checks and balances between the executive and legislative branches provides—a through the congressional oversight function of the Senate and House intelligence committees—additional means for the "whistle blowers'" redress—all without public disclosure of matters that should be protected.

Beyond a possible criminal sanction in a clearly definable arena, such as publishing the names of CIA agents abroad, no statutory scheme, given the limitations in definition, can be as effective, fair or limited as the simple contractual preclearance requirement. Nor is the argument persuasive that the contract should distinguish between classified and nonclassified data. The relevance of whether the matter is classified, nonclassified or classifiable is better left to the agency review process. Moreover, this across-the-board formula facilitates application of the clearance requirement to all levels of the agency, as it should, whether the proposed author is a former head of the agency or the lowest-level agent.

Now that the contract principle is firmly in place, the government's own responsibility is to see that such contracts are carefully and narrowly drafted to ensure the reasonableness of the basic contract in relation to the job and trust imposed, as well as to ensure the reasonableness of the agency's response. This importance includes the speed of the review process and the basic fairness of the review to exclude only from publication those matters that are and should be truly secrets. For the most part, the greatest burden is on the reviewing agency to ensure this. But because of the understandable reluctance of the courts to undertake a review of the fairness of the agency review process, to mention the outright difficulty, consideration should be given to the creation of a special review panel inside the executive branch, but apart from the agency itself, to review any appeals of the employee from the agency's own review. This addresses the important concern of keeping secret those things that should be, and necessarily that which is merely embarrassing or disconcerting. Resort to the courts as is presently the case could then be had.

The contractual principle of the Snepp case should be limited to those engaged in foreign intelligence and counterintelligence. That many governmental agencies employ persons who hold positions of trust and confidentiality does not sufficiently distinguish the very special character and national needs of our foreign intelligence operations.

The issues in the Snepp case were not those of the First Amendment, but rather whether the government might exercise its responsibilities in foreign intelligence by conditioning the employment of those who seek to enter into its employment on a publication-preclearance process. The courts, on every level, found such a condition to be valid and reasonable. The required forfeiture of profits was no more than an application of the ancient maxim that one should not profit from his own wrongdoing. The legal principles involved and the lack of disputed facts rendered the case so simple as to warrant summary disposition in the Supreme Court. The nation is the better for the decision.