

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WENDY LEE
c/o Mark S. Zaid, Esq.
Krieger & Zaid, PLLC
1133 21st Street, N.W.
Suite 800
Washington, D.C. 20036

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505

Defendant.

* * * * *

Civil Action No: 02-_____

COMPLAINT

Plaintiff Wendy Lee brings this action against defendant Central Intelligence Agency for injunctive and declaratory relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, the Central Intelligence Agency’s internal regulations and the First Amendment to the Constitution of the United States. The Central Intelligence Agency has unlawfully imposed a prior restraint upon Wendy Lee by wholly infringing her right to publish her memoirs.

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate in the District under 5 U.S.C. § 703 and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff Wendy Lee (“Lee”), which is a pseudonym, was formerly affiliated with the Central Intelligence Agency and is required by virtue of a secrecy agreement to submit all writings for prepublication review. She is a citizen of the United States and resides in the United States.

4. Defendant Central Intelligence Agency (“CIA”) is an agency as defined by 5 U.S.C. § 701. Its actions have prevented Ms. Lee from publishing her manuscript.

FACTS

5. Ms. Lee was formerly affiliated with the CIA. According to the CIA, her association and work for the CIA was and allegedly remains classified. Upon information and belief, some or all of the activities she has undertaken or participated in are not classified and have already been cleared for release by the CIA in other manuscripts and books.

6. In or around June 2002, Ms. Lee properly submitted, pursuant to one or more secrecy agreements, three chapters of her untitled memoir to the CIA’s Office of Prepublication Review (“PRB”) for prepublication review.

7. By letter dated June 17, 2002, the CIA notified Ms. Lee that reviews “usually take thirty or fewer days...” Her review was assigned PRB Reference Number 9682-02.

8. By letter dated July 11, 2002, the CIA notified Ms. Lee that “after careful review, we cannot approve any portion of your manuscript that discusses your association with and work for your former employer. We weighed several factors, including the possibility of a change in your current status and your stated intention to write using a pseudonym. The most important consideration, however, was given to the impact such disclosures would have on ongoing programs.” The CIA additionally notified Ms. Lee that it was willing to reconsider its decision upon submission of any evidence or arguments.

9. Thereafter, Ms. Lee requested that the CIA reconsider its decision based on

evidence she submitted, particularly on the basis that other manuscripts authored by former employees which discussed the same or similar information were cleared by the CIA for publication.

10. By letter dated August 5, 2002, the CIA notified Ms. Lee that it affirmed its original decision for two reasons: “You cannot disclose in any form your association with and work for your former employer. I understand you have requested a change in status. Even if you are successful in changing your status, however, you still cannot discuss the topics in your current draft. You are correct in asserting that some publications discuss the same unit you do, but none of the works you cite disclose details. Your disclosures go far beyond what these authors discuss and would have a significant and detrimental effect on this unit’s work.”

11. Beginning early October 2002, Ms. Lee’s undersigned attorney, Mark S. Zaid, who possesses a SECRET clearance and executed a secrecy agreement with the CIA to represent Ms. Lee for this case, requested access to the draft memoir chapters and an opportunity to discuss the dispute with CIA officials. To date, Mr. Zaid has not been granted access nor an opportunity to attempt to negotiate an amicable resolution to this dispute.

12. To date, the CIA has yet to issue a decision regarding Ms. Lee’s request for her change of undercover status.

13. Additionally, in August 2002, Ms. Lee separately submitted a screenplay to the CIA for prepublication review. Although nearly six months have passed, the CIA has yet to issue a decision regarding publication of this document.

FIRST CAUSE OF ACTION
(FIRST AMENDMENT - RIGHT TO PUBLISH -
CLASSIFICATION CHALLENGE)

14. Ms. Lee repeats and realleges the allegations contained in paragraphs 1 through 13 above, inclusive.

15. Ms. Lee properly submitted, pursuant to one or more secrecy agreements, her draft memoirs to the CIA in July 2002.

16. The CIA has identified classification concerns in the manuscript and denied Ms. Lee the right to publish any portion of her draft memoirs.

17. The CIA has failed to show that Ms. Lee's First Amendment right to publish is outweighed by the government's interest in efficiently carrying out its mission by minimizing harms that are real, not merely conjecture.

18. The CIA has failed to demonstrate the existence of substantial government interests that would enable it to prohibit the publication of Ms. Lee's memoirs. Moreover, they have imposed unreasonable restrictions on Ms. Lee's activities that are protected by the First Amendment.

19. The CIA's restrictions imposed upon Ms. Lee have been unduly vague and were not narrowly confined to avoid infringement of her First Amendment rights. They have unnecessarily restricted speech that does not serve to protect any substantial government interest.

20. Most importantly, the CIA has not produced explanations with reasonable specificity that demonstrate a logical connection between the information to be deleted and the reasons for classification. The reasons for classification are neither rational or plausible. Thus, they cannot support their attempt to censor Ms. Lee's memoirs.

21. Because the CIA has impermissibly infringed upon Ms. Lee's right to publish the information contained within her manuscript, they have violated Ms. Lee's First Amendment rights. Thus, Ms. Lee has suffered actual adverse and harmful effects, including, but not limited to, possible civil or criminal penalties, a delay in being able to report in a timely fashion on credible news stories, and/or lost or jeopardized present or future financial opportunities, which impairs her ability to serve the public.

SECOND CAUSE OF ACTION
(FIRST AMENDMENT - REFUSAL TO PERMIT
REVIEW OF MANUSCRIPT BY COUNSEL)

22. Ms. Lee repeats and realleges the allegations contained in paragraphs 1 through 13 above, inclusive.

23. Ms. Lee properly submitted, pursuant to one or more secrecy agreements, her draft memoirs to the CIA in July 2002.

24. The CIA has identified classification concerns in the manuscript and denied Ms. Lee the right to publish any portion of her draft memoirs.

25. Ms. Lee's undersigned counsel possesses the requisite security clearance needed to review her submitted memoirs, as well as a need-to-know the contents in order to adequately represent her interests through administrative and litigative proceedings. Ms. Lee has made a proper determination that her attorney possesses a "need-to-know" the contents of her memoirs.

26. Since October 2002, Ms. Lee's counsel has requested access to the submitted memoirs. To date, the CIA has declined to make the documents available.

27. The CIA's refusal to allow Ms. Lee's counsel to review her submitted memoirs violates her First Amendment rights.

28. Because the CIA has impermissibly infringed upon Ms. Lee's First Amendment rights, she has suffered actual adverse and harmful effects, including, but not limited to, possible civil or criminal penalties, a delay in being able to report in a timely fashion on credible news stories, and/or lost or jeopardized present or future financial opportunities, which impairs her ability to serve the public.

THIRD CAUSE OF ACTION
(ADMINISTRATIVE PROCEDURE ACT - DELAY OF FINAL DECISION;
VIOLATION OF FIRST AMENDMENT)

29. Ms. Lee repeats and realleges the allegations contained in paragraphs 1 through 13 above, inclusive.

30. Ms. Lee properly submitted, pursuant to one or more secrecy agreements, a copy of her draft screenplay to the CIA in August 2002.

31. The CIA has now had the screenplay in its possession for four months. Ms. Lee has not been notified of any CIA decision regarding the publication of this document even though the CIA was required to respond within thirty days.

32. The CIA has unreasonably delayed issuing a final and timely decision regarding the proper classification level of Ms. Lee's screenplay. Nor have they articulated any reasonable basis with any specificity to allow Ms. Lee to "cure" any perceived concerns, should they exist.

33. The CIA, its officers and employees, committed and undertook actions that were arbitrary, capricious and/or an abuse of discretion pertaining to Ms. Lee, including, but not limited to, unreasonably delaying the classification process surrounding the review of her screenplay. These acts are unwarranted by the facts, unsupported by substantial evidence, in violation of internal regulations and federal statutes, contrary to constitutional right, power, privilege, or immunity, or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, thereby causing Ms. Lee to suffer legal wrongs under the Administrative Procedure Act.

34. As a result, Ms. Lee has suffered adverse and harmful effects, including, but not limited to, mental distress, emotional trauma, and lost or jeopardized present or future financial opportunities.

FOURTH CAUSE OF ACTION
(ADMINISTRATIVE PROCEDURE ACT - DELAY OF FINAL DECISION;
VIOLATION OF FIRST AMENDMENT)

35. Ms. Lee repeats and realleges the allegations contained in paragraphs 1 through 13 above, inclusive.

36. In or around July 2002, Ms. Lee requested that the CIA change her cover status so that she would gain greater flexibility to publish her writings. Indeed, this was

recommended by the PRB.

37. To date, the CIA has failed to timely render a decision regarding Ms. Lee's cover status.

38. The CIA has unreasonably delayed issuing a final and timely decision regarding the cover status of Ms. Lee.

39. The CIA, its officers and employees, committed and undertook actions that were arbitrary, capricious and/or an abuse of discretion pertaining to Ms. Lee, including, but not limited to, unreasonably delaying a decision regarding the lifting of the cover status of Ms. Lee. These acts are unwarranted by the facts, unsupported by substantial evidence, in violation of internal regulations and federal statutes, contrary to constitutional right, power, privilege, or immunity, or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, thereby causing Ms. Lee to suffer legal wrongs under the Administrative Procedure Act. Additionally, this delay infringes upon Ms. Lee's ability to freely talk and/or write about her life thereby violating the First Amendment of the Constitution.

40. As a result, Ms. Lee has suffered adverse and harmful effects, including, but not limited to, mental distress, emotional trauma, and lost or jeopardized present or future financial opportunities.

WHEREFORE, plaintiff Wendy Lee requests that the Court award her the following relief:

(1) Issue a permanent injunction to block the CIA from restraining the publication of Ms. Lee's untitled memoirs;

(2) Enjoin the CIA from initiating civil or criminal proceedings against Ms. Lee for future publication of any information within her memoirs;

(3) Declare that Ms. Lee possesses a First Amendment right to publish the information within her memoirs;

(4) Declare that Ms. Lee's attorney is entitled to review her submitted publications;

(5) Declare that the CIA violated the Administrative Procedure Act and its internal regulations governing prepublication review;

(6) Require the CIA to immediately issue a written decision regarding its position on the publication of Ms. Lee's screenplay;

(7) Require the CIA to immediately issue a written decision regarding its position on Ms. Lee's cover status;

(8) Award Ms. Lee the costs of the action and reasonable attorney fees under the Equal Access to Justice Act or any other applicable law; and

(9) grant such other relief as the Court may deem just and proper.

Date: February 3, 2003

Respectfully submitted,

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Attorney For Plaintiff