

ACLU To Take Marchetti Case To Supreme Court

The government's injunction against unauthorized publication by author Victor L. Marchetti of classified information relating to his experiences as an employee of the Central Intelligence Agency contains a threat of broad-scale censorship, according to the American Civil Liberties Union, which has asked the Supreme Court to review the case.

The immediate effect of a recent U.S. Court of Appeals decision upholding a government-sought injunction against the former CIA employee will, among other things, "introduce a systematic scheme of censorship which will surely result in the denial of the fundamental right of the American people to be supplied with information about the conduct of their government," the ACLU said in an August 21 petition to the High Court.

Marchetti, who was hired by the CIA in 1955 and resigned in 1969, published several articles and a novel, "The Rope Dancer" (*Grosset & Dunlap*), in 1971 dealing with CIA-related experiences. He had other articles and books drawing on his intelligence background in the works when the government took action against him last April.

The government said Marchetti was bound by secrecy agreements with the CIA not to disclose anything relating to the agency or his work there without prior authorization by the Director of Central Intelligence.

A U.S. District Court judge issued a temporary restraining order against disclosure of such information in future articles, books or radio and television appearances.

After losing a bid to dissolve the restraining order, Marchetti appealed to the U.S. Appeals Court for the Fourth Circuit. That three-judge court sitting in Richmond, Va., on September 11 remanded the case to the District Court "for the purpose of revising the order to limit its reach to classified information." Marchetti is entirely within his First Amendment rights to publish materials which are not classified or which have been placed in the public domain by prior disclosure, the Appeals Court said.

The ACLU, acting on behalf of Marchetti, has taken issue with the Appeals Court on several grounds. In its petition for Supreme Court review, the

ACLU said that the CIA prohibition constitutes a prior restraint forbidden by the First Amendment. The ACLU also challenged the authority of the Federal courts to impose such restrictions on publication and asserted that Marchetti had been denied due process of law by the government's "intolerable degree of control" over his defense.

"The court must also confront the prospect that approval of an historically forbidden prior restraint on behalf of the CIA today," the ACLU petition said, "will yield an argument by the government tomorrow that similar restraints may be imposed against employees of the State Department and the Department of Defense (including members of the Armed Forces), and, the day after tomorrow, against employees of the Departments of Health, Education and Welfare, and Housing and Urban Development."

In other words, "this case has a critical bearing upon the continuing right of American citizens to know what their government is doing," the ACLU asserted. "The Constitutional prohibition against prior restraints is of critical importance because a prior restraint, as opposed to a system of subsequent criminal sanctions, cuts off at the very source the

ability of citizens to secure access to information."

Furthermore, the ACLU said, the ruling of the lower courts "allows the CIA a completely free hand to designate material as classified and surrenders any judicial responsibility for determining whether the designation is reasonable or even capricious."

The Appeals Court took the position that while the First Amendment limits the extent to which the government may impose secrecy requirements on its employees, the government does have authority to make binding contracts against disclosure of "secret information touching upon the national defense and the conduct of foreign affairs."

While the public has a right to know, there are some circumstances in which the government has a duty to withhold, the three-judge court said in its unanimous decision. "Although the First Amendment protects criticism of the government, nothing in the Constitution requires the government to divulge information."

"Since information highly sensitive to the conduct of foreign affairs and the national defense was involved" in the Marchetti case, the court said, "the law would probably imply a secrecy agreement had there been no formally expressed agreement, but it certainly lends a high degree of reasonableness to the contract in its protection of classified information from unauthorized disclosure."

SUSAN WAGNER