Muzzling Mr. Marchetti Post 6-16-72

Free Speech, Security and the CIA

By Alan Barth

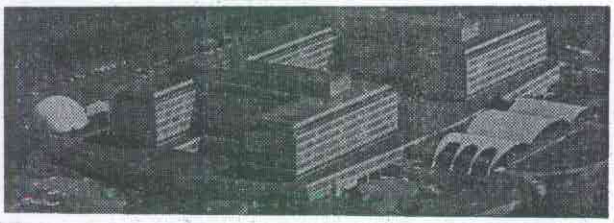
UNDAUNTED by its experience in the case of the Pentagon Papers, the administration is back in court again trying to impose a prior restraint on publication. And again, of course, it is trying to justify its censorship in the name of national security.

This time, the administration has a new angle. Its attempt to suppress the Pentagon papers failed because the government was unable to sustain its burden of proving that publication would do "grave and irreparable injury" to the United States.

In the current case, however, the government has rather neatly managed to evade that burden by seeking to suppress something that has not yet been written. The menacing material exists only in the mind of a writer to whom the government imputes an intention to write something that would expose its secrets. What the administration is trying to do, in short, is to apply to the field of publication one of its favorite law-and-order gimmicks; it is trying to impose a kind of preventive detention in the realm of ideas.

The case in point—which has received all too little attention in the press—involves a man named Victor L. Marchetti who was employed by the Central Intelligence Agency for about 15 years until his resignation in the fall of 1969. In the course of his employment, he rose to the grade of GS-15, holding a variety of positions including that of Special Assistant to the Deputy Director.

Emerging from the cloistered atmosphere of the CIA, Mr. Marchetti undertook to earn a living as a writer. In 1971 he published a novel titled "The Rope Dancer," a more or less romantic tale about an organization called the National Intelligence Agency, one of the employees of which turns some classified documents over to agents of the Soviet Union. Mr. Marchetti also appeared on a number of television and radio shows, gave interviews to the press and published an article in the Nation magazine, the purport of which may be divined, perhaps, from its title: "CIA: The President's Loyal Tool." Moreover, he entered into a contract with Alfred A. Knopf, Inc. for a non-fiction book about the CIA, not yet begun.



UPI (1967 photo)

CIA Headquarters, Langley: ". . . Almost a vow of perpetual silence, as though anyone emerging from the CIA must thereupon enter a Trappist monastery for the remainder of his natural life."

Whatever the artistic merits of Mr. Marchetti's literary efforts, they did not win much favor at the CIA. The director of that agency, Richard Helms, went into court and obtained from U.S. District Court Judge Albert V. Bryan on May 19 a permanent injunction ordering the author to "submit to the Central Intelligence Agency, for examination 30 days in advance of release to any person or corporation, any manuscript, article or essay, or other writing, factual, fictional or otherwise, which relates to or purports to relate to the Central Intelligence Agency intelligence, intelligence activities, or intelligence sources and methods," and forbidding release of any such material "without prior authorization from the Director of Central Intelligence." Obviously, this gives Mr. Helms complete power as a censor.

Like other employees of the CIA, Mr. Marchetti had put his signature, solemnly witnessed, on October 3, 1955, when he began employment, to a "Secrecy Agreement." In addition, on Sept. 2, 1969, when he left the CIA, Mr. Marchetti signed another document—this one called a "Secrecy Oath"—which even more categorically pledged him to reticence. "I will never," the oath intoned, "divulge, publish, or reveal by writing, word, conduct or otherwise, any information relating to the national defense and security and particularly information of this nature relating to intelligence sources, methods, and operations, and specifically Central Intelligence Agency operations, sources, methods, personnel, fiscal data, or security measures to anyone . . without the express written consent of the Director of Central Intelligence or his authorized representative."

Here is an oath of secrecy so sweeping that it amounts almost to a vow of perpetual silence, as though anyone emerging from the CIA must thereupon enter a Trappist monastery for the remainder of his natural life. For a pledge never to publish "any information relating to the national defense and security" is a renunciation of any participation whatever in the political process. It is, in point of fact, the renunciation of a major part of an American's birthright—the freedom of expression guaranteed by the First Amendment to the Constitution.

It is a very serious constitutional question whether a man can waive so basic a constitutional right—any more than he could put himself, by contract, into involuntary servitude for life in contravention of the terms of the 13th Amendment. In any case, so vague and so needlessly sweeping a renunciation of constitutional safeguards seems utterly foreign to the character of American law and its insistence upon ascertainable standards.

It may be that Mr. Marchetti is vulnerable on the basis of what he has already published to a suit by the CIA for breach of contract. It may even be that what he has spoken and written lays him open to criminal prosecution for violation of the Espionage Act or some other statute adopted by Congress for the protection of information vitally affecting the national security.

Such actions would, of course, entail a trial by jury—an adversary proceeding in which the defendant would have a chance to justify his conduct and the government would be obliged to assume the burden of proving that his words, spoken or written, actually violated the terms of his contract or actually did substantial injury to the United States.

It is a radically different thing, however, for the government to forbid words before they have been uttered on the mere assumption that they are going to be injurious or to allow a single executive official to foreclose publication on the basis of his unchecked judgment that the words will, in some fashion, breach security. The difference is the difference between responsibility and censorship.

Classification of official information in the name of security is far too frequently employed as a device for covering up governmental error or inefficiency or misconduct to warrant treating mere classification by itself as a touchstone of publishability.

Disclosure of classified material sometimes vitally serves national security and the national interest. To let any public official arbitrarily foreclose it—in his own absolute and unchecked discretion, without judicial review or effective appeal of any sort—is to imperil the freedom that makes self-government possible.

To treat the Marchetti case as involving nothing more than the enforcement of an ordinary commercial contract—which is the way Judge Albert Bryan treated it—is to mistake form for essential substance. The expression of ideas cannot be enjoined in America. For to imprison ideas is to dam the democratic process.

The Marchetti case, like the case of the Pentagon Papers, tests the reach and the reality of the First Amendment. Recognizing this, the American Civil Liberties union has entered the case as Marchetti's counsel. The Association of American Publishers has submitted an amicus brief in support of the same view. Every medium of communication ought to be equally aroused. For the silencing of a writer means a control of publication.

The paramount issue in this case is the right of the people to be informed about matters of public interest. When that right is restricted, all other rights are in jeopardy.