

The CIA Responds on the Marchetti Case

On June 16, 1972, you published an article by Mr. Alan Barth, entitled "Free Speech, Security and the CIA," which discusses the case of Victor L. Marchetti. This is a case in which the government has obtained an injunction requiring Mr. Marchetti to comply with his contractual undertaking that he would submit any material having to do with intelligence for review by the Central Intelligence Agency as to whether it contained classified information relating to the national security.

Mr. Barth cites the injunction order in part, but by omitting certain parts he distorts the impact of the order and thereby also distorts the nature of the case. In enjoining Mr. Marchetti from further breaching the terms and conditions of his secrecy agreement, the order has two provisos:

"Provided, however, that this Injunction shall not apply to any information, the release of which has been authorized in accordance with the terms and conditions of the aforesaid contract, and Provided, further, that this Injunction shall apply only with respect to information obtained by said defendant by reason of his employment under the aforesaid secrecy agreement and which has not been placed in the public domain by the United States."

The Order then continues:

"Further ordered:

"That the defendant shall 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, for the purpose of avoiding inadvertent disclosure of information contrary to the provisions and conditions of the aforesaid secrecy agreements, and such manuscript, article, essay or other writing shall not be released without prior authorization from the Director of Central Intelligence or his designated representative."

The language immediately above was quoted by Mr. Barth, but he omitted the ital-

icized portion, which is an important limitation on the scope of the injunction as the secrecy agreements apply to the publication of classified information. Under this injunction and under Mr. Marchetti's contractual undertaking, he is free to write about intelligence and he is free to criticize the Central Intelligence Agency. He has done so repeatedly in the past without any action having been taken against him. However, according to the evidence before the court he submitted to six publishers and a national magazine a draft article and a concept paper for a book without any consultation with the Agency. These contained a number of highly classified items which he has acknowledged he learned of through his employment with the Central Intelligence Agency. At this point the government felt it necessary to take steps to protect itself.

In our view, the evidence established that if published the items in question would have a serious adverse impact on intelligence sources and methods, intelligence operations, and international relations. This is the type of information which Mr. Marchetti specifically undertook not to divulge as a condition of his employment when he entered on duty with the Central Intelligence Agency in October 1955 and, as he stated in that secrecy agreement, "I take this obligation freely, without any mental reservation or purpose of evasion."

There are numerous restrictions imposed by law on government employees which limit their freedom of action, including freedom of speech. The Hatch Act is one well-known example. If such limitations can be imposed without the consent of the employee, how much more logical it is that the government can expect compliance with a voluntary undertaking in the very limited field of national security.

Mr. Barth has tried to turn this case into one of broad censorship over freedom of speech, but the record does not bear him out.

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