

Appeals Court Supports C.I.A. In Blocking Article by Ex-Aide

By LES LEDBETTER

The United States Court of Appeals for the Fourth Circuit has upheld a lower court ruling restraining a former agent of the Central Intelligence Agency from publishing books or articles about his former employer without prior authorization from the Director of Central Intelligence or a designated representative.

The three-judge panel ruled in the case of Victor L. Marchetti, who left the agency in 1969 after 14 years, serving his last three years as executive assistant to the deputy director.

The judges ruled unanimously that Mr. Marchetti would not be deprived of his right to speak and write about the intelligence organization as long as he did not "disclose classified information obtained by him during the course of his employment which is not already in the public domain."

Articles Blocked

The Government brought its action against Mr. Marchetti to block an article he had submitted to Esquire magazine last March. It contended that the article contained classified information concerning intelligence sources, methods and operations.

In the opinion last Monday, Chief Judge Clement F. Haynsworth Jr. wrote for the court, "Marchetti by accepting employment with the C.I.A. and by signing a secrecy agreement did not surrender his First Amendment rights of free speech. The agreement is enforceable only because it is not a violation of those rights."

The court added that Mr. Marchetti could seek judicial review of any CIA disapproval of a manuscript for publication.

The attorney for Mr. Marchetti denounced the newest setback for his client as permitting "an extraordinary burden to be imposed upon First Amendment rights and is in direct conflict with the Supreme Court's opinion in the Pentagon papers case."

"We shall of course take the case to the Supreme Court im-



Victor L. Marchetti

mediately," said the attorney, Melvin L. Wulf, legal director of the American Civil Liberties Union.

On June 30, 1971, by a vote of six to three, the Supreme Court refused to restrain publication of the Pentagon papers by The New York Times and The Washington Post because the Government did not prove that its reasons for wanting the articles stopped outweighed the constitutional guarantee of freedom of the press.

Referring to the question of restraint prior to publication, the appeals court said, "Because we are dealing with prior restraint upon speech, we think the C.I.A. must act promptly to approve or disapprove any material which may be submitted to it by Marchetti. Undue delay would impair the reasonableness of the restraint, and that reasonableness is to be maintained if the restraint is to be enforced."

Mr. Marchetti wrote a novel, "The Rope Dancer," published by Grosset & Dunlap, shortly after leaving the C.I.A. In the hypothetical adventure story, the "National Intelligence Agency" distorts facts to fit the desires of the President and plots to overthrow the Government of Colombia.

He also published an article in the April 3, 1972, issue of The Nation entitled, "C.I.A.: The President's Loyal Tool," which criticized the agency and its activities.