Justices Let Stand Censorship Order Over a C.I.A. Book

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WASHINGTON, May 27—A court order under which a former Central Intelligence Agency employe must submit all his future writing about the C.I.A. to the agency for prepublication censorship was left untouched today by the Supreme Court.

With only Associate Justice William O. Douglas dissenting, the Justices declined to review a ruling barring Victor L. Marchetti, co-author of "The C.I.A. and the Cult of Intelligence," from restoring to his book some material the agency struck from the manuscript as classified.

The ruling left standing a decision by a Federal appeals court, which maintained on two occasions that the former agent had waived his right to invoke the First Amendment guarantee of press freedom when he signed contracts with the C.I.A. agreeing never to reveal information he had received under its aegis.

Mr. Marchetti's lawyers had told the Supreme Court that

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this was the first case in which a writer was required by a permanent court injunction to submit any proposed books or magazine articles to a government agency for advance clearance and possible censorship.

Ordinarily, in an effort to enforce the constitutional guarantee of press freedom, the courts have been very reluctant to impose such "prior restraint" on books amd newspapers, preferring to allow publication and let the authors and publishers take the legal consequences, if any.

Outside Sources Alleged

Mr. Marchetti, together with his co-author, John D. Marks, and his publisher, Alfred A. Knopf, went to court to force restoration to the book of information they maintained was not properly classified for security purposes or had been obtained by the author outside his former agency employment.

When Mr. Marchetti became a C.I.A. agent in 1955 and when he left the agency in 1969, he signed agreements not to reveal information he had learned during his employment. In 1971, learning that he was planning a book, the Government went to court to enforce those agreements.

A Federal District Court ruled that Mr. Marchetti had waived his constitutional press freedom rights when he signed the C.I.A. secrecy agreements. The United States Court of Appeals for the Fourth Cicruit affirmed this ruling, and the Supreme Court refused today to review that decision.

Subsequently, after the C.I.A. struck about 170 passages, ur about 10 per cent of the book, the lawsuit on which the high court ruled today was started in an effort to renew Mr. Marchetti's contentions that both the secrecy agreements and the censorship had violated his First Amendment rights.

The district court ruled generally in his favor, finding that the Government had failed to prove proper classification on much of the information at issue and that some other items were publishable because they did not fall within the C.I.A. secrecy agreements.

But the appeals court reversed, refusing to allow restoration of any of the stricken material and concluding that security classifications on information were presumed to be correct and that it would be too burdensome if private citizens were able to force the Government to prove otherwise in court.

It was this decision that the Supreme Court declined to disturb today. As it customary when the high court refuses to accept a case, there was no opinion by the majority.

The ruling would not affect the publication in London earlier this year by another former agent, Philip B. F. Agee, of his book "Inside the Company—C.I.A. Diary," since the Government could not bring him within the jurisdiction of the United States courts to attempt to enforce his secrecy agreements.

However, Stonehill Books has announced plans to publish the Agee book here, and this action could touch off another court case. The London publisher was Penguin Books.

Should Mr. Marchetti violate the continuing injunction he would be subject to contempt of court proceedings and possible fine or imprisonment.

DISABILITY INSURANCE

In another decision, the Justices agreed to decide whether a private disability insurance plan, to which employes contribute, discriminated illegally on the basis of sex by excluding pregnancy benefits for women without any explanation while covering all kinds of male disability.

Last year, in a case involving California, the high court ruled that a public disability benefits plan was not discriminatory for failure to provide pregnancy benefits, even though it reimbursed men for time lost on the job as a result of ailments that women rarely, if ever, experience.

In today's case, brought by two claims department employes of the Liberty Mutual Insurance Company in Pittsburgh, a Federal District Court ruled for the employes, saying that the practice violated Federal civil rights laws. The Court of Appeals for the Third Circuit affirmed.

BANK RECORD SUBPOENAS

Dividing 8 to 1, the Justices also upheld the right of a Congressional committee to subpoena bank records of a group under investigation for lowering armed forces morales, over objections that this amounted to obtaining a confidential membership list.

With Justice Douglas again dissenting, the high court held that this kind of Congressional activity was immune from judicial interference because of the constitutional provision that members cannot be "questioned in any other place" for their legitimate legislative acts.

In a concurring opinion, three Justices agreed that the Senate Internal Security Subcommittee had the right to subpoena bank records of the United States Servicemen's Fund, an anti-Vietnam war group that attempted to reach members of the armed forces through coffeehouses and underground papers.

The three concurring justices — Thurgood Marshall, William J. Brennan Jr. and Potter Stewart—argued however, that today's ruling did not completely immunize Congressional subpoena power from judicial review under all circumstances.

In his dissent, Mr. Douglas declared: "No official, no matter how high or rajestic his or her office, who is within the reach of judicial process, may invoke immunity for his actions for which wrongdoers normally suffer."

News of the Suprems Court's action in the C.I.A. censorship case drew dissappointed reaction yesterday among publishers and booksellers at the

American Booksellers Association convention here.

Anthony Schulte, axecutive vice presidnt of Alfred A. Knopf, Inc., h publishing conecern, said, "I am extremely disappointed." He said that officials of the company would meet with lawyers on Thursday to determine what steps if any they could take.

Richard H. Noyes, president of the booksellers association said his group had consistently maintained a "position categorically and totally against any form of censorship by nybody."

"We hope the United States Supreme Court will recognize this in time and will rargue this in time and will reargue censorship cases," he said. "We're convinced that the problems of this world do not stem from what people do read and see; rather, they are the result of what the young and old have not seen or read or understood."

Meanwhile, Melvin L. Wulf, legal director of the American Civil Liberties Union, called the Court's action "an insult to the First Amendment and an abdication of the Court's responsibility to decide at least those constitutional cases which affect the nation's life in a fundamental way."

Mr. Wulf, who served as counsel for Mr. Marchetti in the case, called it "deplorable" that four Justices, the minimum required to accept a case for review, would not vote to hear the dispute.

"The inevitabference," he declared, "is that their minds le in are closed to any argument which would dare question the awesome power now vested in the C.I.A. in direct derogation of the First Amendment. A Supreme Court which declines to consider a question of that magnitude puts its reputation in serious jeopardy."