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McCurry

FRANKLIN FERRISS
JUDGE OF THE CIRCUIT COURT
OF ST. LOUIS COUNTY
CLAYTON, MISSOURI 63105

February 21, 1980

Chief Justice Warren E. Burger
Supreme Court of the United States
Supreme Court Building
Washington, D. C. 20510

Dear Mr. Chief Justice:

I enclose herewith a clipping from The St. Louis Post Dispatch that I believe will interest you and the other members of the United States Supreme Court.

I have been a circuit judge in St. Louis County for 25 years. However, this is the first time that I have ever addressed a letter to any member of our highest Court. I am motivated to write the letter because, Mr. Chief Justice, you have repeatedly pointed out the ever increasing load being carried by the federal courts. I am not a federal judge, but I know intimately the increasing load on the state courts, and furthermore, I am acquainted with every federal judge in the St. Louis area, and there is no question about the increasing, and sometimes crushing load, on the federal judiciary.

It is my strong conviction that the United States Supreme Court, itself, can do much to ease the heavy load on the federal judiciary by placing greater reliance on the legal learning and the judicial temperament of the state court judges, particularly the state supreme court judges. If the federal judiciary inclines to the view that the final decision of a state supreme court must be reviewed by the federal district courts whenever the petitioner claims a violation of his Constitutional rights, I see no end to the increase in Federal Court litigation. Furthermore, we all know that if a defendant has been denied a federal constitutional right by a state supreme court, he has right to appeal from such decision to the United States Supreme Court.

The United States Supreme Court decision in cases like the McCurry case will have no personal effect on me. However,

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it could have an overwhelming impact on the federal judges of our country and on the backlog of litigation in some federal courts.

Yours most sincerely,

Franklin Ferriss

FF:vmr
Enc.
cc: Associate Justice, William J. Brennan, Jr.
Associate Justice, Potter Stewart
Associate Justice, Byron R. White
Associate Justice, Thurgood Marshall
Associate Justice, Harry A. Blackmun
Associate Justice, Lewis F. Powell, Jr.
Associate Justice, William H. Rehnquist
Associate Justice, John Paul Stevens
Honorable William Webster, Director, FBI

...urt Backs CIA On Book On Vietnam

From News Services

...HINGTON — The federal ...ent is entitled to all profits ...CIA agent Frank ...n a unauthorized book he ...in 1977, the Supreme Court ...ay.

...-3 vote, the justices ruled that ...reached two CIA secrecy ...ts when he wrote a book ...itical of the U.S. withdrawal ...h Vietnam.

...court rejected Snepp's ...s against restrictions on free ...

...ecrecy pacts, one signed by ...fore he went to work for the ...telligence Agency in 1968 and ...igned when he resigned in ...ired him to get prior agency ...for publication of any CIA-...formation.

...did not seek agency clearance before publishing his book, "Decent Interval."

Snepp, now living in the Washington suburb of Arlington, Va., said later he had not submitted the book for agency review because he feared the CIA would try to suppress material so critical of the government.

Both sides acknowledged there was no classified or secret information in the book. But the government maintained the publication had caused intelligence sources to lose confidence in the agency's ability to maintain control over confidential information.

The Supreme Court returned the case to lower courts to reinstate the opinion of U.S. District Judge Oren Lewis that Snepp had "willfully, deliberately and surreptitiously" breached his contract for "personal financial gain."

The Supreme Court ruled that a federal appeals court erred in refusing to impose a "constructive trust" on the book's profits — now amounting to more than $100,000 — for government use.

"A constructive trust . . . protects both the government and the former agent from unwarranted risks," the court said in an unsigned opinion.

It is a "natural and customary consequence of a breach of trust," the opinion said.

Observers of the case say the decision will allow the government more latitude in controlling publications by former government employees.

Dissenting justices, John Paul Stevens, William Brennan and Thurgood Marshall said the court's action "granted the government unprecedented and drastic relief."

Snepp, who served in Vietnam for 4½ years and was there during the final U.S. evacuation in 1975, currently is under orders from other courts not to publish any work related to his experience unless he first seeks CIA permission.

He also faces the possibility of defending himself from a government suit seeking financial damages.

In seeking Supreme Court review, attorneys for Snepp tried to draw a distinction between his case and those in which attempts were made to disclose "classified" information.

Decisions against Snepp in lower courts, his appeal said, "might well encourage other departments and agencies to adopt this secrecy device to restrict the flow of information to the public."

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...gh Court To Review Prisoner-Rights Issue

...na Shirk

...ch Washington Bureau

...NGTON — In an important ...s case out of St. Louis, the ...Court has agreed to decide ...prisoner can be barred from ...fede... court to determine ...is ... rights have been ...mply because a state court ...y said that they were not.

...rt said today that it would ...October judgment of the 8th ...urt of Appeals that held that ...District Court in St. Louis ...have dismissed a suit by ...cCurry that claimed that his ...unlawfully searched by St. ...e.

...her Missouri case involving ...rights, the court refused to ...the state's request that it ...an 8th Circuit ruling that ...n evidentiary hearing on a ...ht by Clovis Carl Green Jr., a ...t the Missouri Penitentiary, who is said to be the most prolific "jailhouse lawyer" in the country. The court also refused to consider Green's request for a review of other aspects of the same case.

The McCurry case and the Green case reflect the growing concern of many lawyers and judges over the increasing volume of litigation brought by prisoners in the state and federal penal systems.

According to City Counselor Jack Koehr of St. Louis, the McCurry case is of "serious national importance" because the appellate court's decision opened the way for "innumerable state prisoners to seek relitigation of claims of unlawful search and seizure."

"It does not require clairvoyance to envisage the impact" of the appellate court's ruling, Koehr said in his petition to the court. "Police officers who have seen their actions pronounced lawful by state courts will suddenly find themselves enmeshed in civil litigation in federal courts, with the specter of civil liability for those same actions looming large."

The McCurry case stems from an April 1977 search of McCurry's St. Louis residence by six or seven undercover police officers, including Marvin Allen and Steven Jacobsmeyer, who were named in McCurry's suit.

Based on an informant's tip, the officers went to McCurry's house to make a heroin purchase. After two of the officers asked to buy heroin, McCurry said "wait a minute," and came back shooting, wounding two of the officers.

A gun battle ensued, and McCurry and his father surrendered. But the police rushed into the house, searched it, and seized evidence that was later submitted in court.

At McCurry's request, the trial court suppressed some of the evidence discovered during the search, but admitted that which had been in plain view. McCurry was subsequently found guilty of one count of illegal possession of heroin and two counts of first-degree assault.

In July 1978, McCurry, alleging the search was illegal, sued in federal district court seeking $1 million in damages from the individual police officers who had participated in the search. The district court dismissed the suit, citing the legal doctrine of collateral estoppel. Under that doctrine, a legal question cannot be raised in a second court if it has been decided in a previous one.

But the federal appeals court reversed that ruling, and remanded the case for further proceedings. And it essentially threw out the doctrine of collateral estoppel because of what it described as "the special role of federal courts in protecting civil rights."

Green's case involves his attempts to get a trial on his claim that his constitutional rights were violated while he was imprisoned at the Moberly Training Center for Men in 1976. Green contended that as a minister with the Human Awareness Universal Life Church he should have been allowed to wear long hair and a beard as symbols of God's love, to take part in conjugal visits with women, and to hold regular banquets at the prison.

Missouri Attorney General John D. Ashcroft asked the Supreme Court to overturn the appeals court's ruling that Green was entitled to an evidentiary hearing on these claims. Ashcroft also appealed to the court to "apply more lawyer-like rules of construction to those inmate litigators with lawyer-like skills, and tremendous litigation experience, who file lawsuits more for harassment and entertainment than because they have meritorious complaints."

The court gave no reason for refusing to review the Green case.

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...PAGE ONE

...e order had been scheduled to ...Feb. 15.

...adoption of the Hyde ...nt, the federal government ...paying for about 300,000 ...a year. The number has now ...to ... than 2,000, the ...Ab... Rights Action ...ys.

...the Supreme Court ruled that ...rticipating in the Medicaid ...are not obliged to pay for ...peutic" abortions. But the ...ft unanswered whether states ...when such operations are ...necessary.

...n-financing controversies ...long after the Supreme Court ...most abortions in its ...1973 decision.

...r actions, the Supreme Court ...

...ed to consider whether a self-...former guard at a Nazi ...tion camp can keep his ...citizenship. The justices will ...rgeal by Fauder Fedorenko that saved the National Association for the Advancement of Colored People from financial ruin. The justices refused to force the civil rights group to pay a group of Port Gibson, Miss., merchants $1.25 million in damages while the NAACP appeals the money award.

The case dates back to 1966, when a coalition of civil rights groups and several black Mississippi residents organized a boycott of white-owned businesses in the Port Gibson area to protest against alleged racial discrimination in hiring.

— Refused, by a 6-3 vote, to take up a six-year dispute over competition between Eastman Kodak Co. and Berkey Photo Inc. The refusal means that the dispute now returns to a federal judge in New York City for further proceedings.

Justices Harry A. Blackmun, Rehnquist and Powell voted to hear arguments in the case, but four votes are needed to grant a review. Berkey, awarded $87 million from Kodak before seven months of testimony in 1977 and 1978, found Kodak guilty of numerous counts of monopolizing the instant-loading camera, film and color-print paper markets.

— Left intact a ruling that bars public school officials from disciplining students for things they write or say off-campus. The justices, without comment, refused to hear arguments that the suspension of four Granville, N.Y., high school students who published a sexually satirical newspaper was justified.

A federal appeals court had ruled that the suspension for five days in 1979 violated the students' freedom of expression.

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