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Loyal Opposition: The CIA and the Limits of Free Speech

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It was April 1975 and CIA operative Frank Snepp had gone missing. Or so the agency told his family. Snepp's father, famously stoic and distant, locked himself in a dark room and wept when he learned of his son's fate. 12,000 miles away countless South Vietnamese families also mourned for lost loved ones. Many of them, allies in the American war against Ho Chi Minh, wondered what would become of them once the American evacuation of Saigon was complete. The fleeing Americans left behind scores of collaborators whose fate, like that of Frank Snepp, was unknown.

But it soon turned out that Snepp was not missing. The CIA had been mistaken; he had made it out on one of the last helicopters to leave Saigon. While Frank Snepp returned home, his Vietnamese associates suffered a less kind fate. As with countless other Americans baptized in the fires of Vietnam, Snepp's pain intensified after he left the battlefields behind. For years, memories of his lost friends and colleagues haunted him. And then there was his stormy relationship with his father. In a way the mistake about his whereabouts had reunited the estranged pair, but the tension between them continued. That difficult relationship paralleled the one he had with his superiors at the CIA; each was to haunt him for years to come. The latter would entangle him in a legal contest that brought him national notoriety, gathered powerful enemies against him, and challenged the rights of Americans under the First Amendment.

Frank Snepp was an unusual candidate to take on the CIA. He was raised in the Southern tradition of chivalry, patriotism, and an appreciation of hierarchy and authority (if he found deference to these occasionally difficult to muster). He signed on with the Central Intelligence Agency brimming with love of country and a desire to defeat Communism. But, as detailed in his first book, *Decent Interval*, after a few years on the ground in Vietnam, Frank Snepp became convinced that the United States could not win.[1] And he was deeply concerned that the local population that had colluded with the United States would meet a horrible end if the agency did not work to protect them. He tried on various occasions to communicate this concern to his superiors, but his pleas went unanswered.

After a long struggle Snepp decided to go public with the story of how the U.S. government had betrayed the South Vietnamese.[2] He was driven both by his own sense of guilt, and by anger at what he viewed as the "institutional disgrace" of the agency's behavior in Vietnam (p. 130). In 1977 Snepp published *Decent Interval*, a withering indictment of the devastating failure of State Department and CIA officials to protect their South Vietnamese collaborators.[3] Snepp charged that American officials had failed to destroy documents identifying South Vietnamese allies; had heartlessly deserted these partners; and had deceived Congress about U.S. prospects for victory. Snepp specifically faulted U.S. Ambassador Graham Martin with deliberate and cynical deception of Congress. Martin, Snepp argued, spread "horror stories in the press about an impending Communist bloodbath" in order to shore up congressional support for South Vietnam (p. 131). The agency reacted to the book with outrage and set out to silence Snepp. *Irreparable Harm* details the CIA's efforts to prevent him from publishing future accounts without CIA approval, and to garnish his revenues from the book.

Published in 1977, *Decent Interval* created an uproar in the intelligence community. Shortly after the book's release, Snepp appeared in a *60 Minutes* interview in which he laid out his argument against the CIA. Following the interview sales of his book skyrocketed, and within a week it was a bestseller. In the aftermath of the interview, CIA Director Stansfield Turner embarked

upon a campaign to discredit Snepp, and to rail against information leaks. In *The Washington Post* Turner attacked Snepp for violating an alleged promise to "surrender (the) manuscript," and disputed Snepp's claim that he had ever brought his concerns to his superiors. Turner charged that *Decent Interval*, like the *Pentagon Papers*, posed a threat to national security. Potentially, the "Ellsberg-Snepp syndrome," he warned, would lead to chaos: "any of our 210 million citizens is entitled to decide what should and should not be classified information" (pp. 137-138).

Why had Turner reacted so strongly? Given the political context, the agency's unease was well founded. Snepp's account came at a time of increasing public cynicism about government generally, and about covert CIA activities specifically. Several years earlier, Congress had responded to revelations of illicit CIA operations by forming the Senate Select Committee on Intelligence, or the Church Committee. By the time of Snepp's exposé, the committee's investigation of CIA actions in Chile and elsewhere had created a crisis of legitimacy for the agency.[4] *Decent Interval* was yet another bombshell, and further emboldened the CIA's critics. Journalist Seymour Hersh embraced Snepp's account as further proof of the folly of America's Vietnam policy. Conservative thinker and former CIA operative William F. Buckley, Jr., proved an unlikely Snepp ally. Although uneasy about revealing "CIA habits," Buckley found in them evidence that "the fall of Vietnam could have been averted … if Richard Nixon had not been hounded from office" (p. 141).

The agency repeatedly attempted to persuade the Justice Department to intervene and halt the publication of Snepp's book. The department refused. At the insistence of the CIA, Attorney General Griffin Bell brought suit against Snepp. Importantly, the Justice Department did not accuse Snepp with breaching security. The government could not prove that Snepp had divulged any secret information because he hadn't. Indeed, as the person responsible for briefing the press in Vietnam, Snepp was well aware of what could not be divulged, and "knew as well as anyone what had been kept secret and what hadn't" (pp. 153-54). The government's case therefore rested on the charge that Snepp had violated his confidentiality agreement with the agency. Snepp charges that the government wanted not only to silence him, but to "reduce (him) to penury" (pp. 158-59). Lacking any proof that he had indeed imperiled national security, the government argued that the mere "appearance of a breakdown in security" could hinder U.S. international intelligence operations (p. 160).

Assigned to the case was septuagenarian judge Oren R. Lewis. One observer contended that the hard-bitten Lewis, known as "Roarin' Oren," made "Genghis Khan look like a civil libertarian" (p. 177). Notoriously unpredictable and an ardent Republican, Lewis had gained infamy by jailing Norman Mailer and meting out harsh punishment to anti-war activists. His appointment to the case understandably struck fear in the defendant.

Snepp alleges that Lewis's handling of the case was questionable at best, and that his political views clouded his judgment. At the summary judgment hearing, Roarin' Oren, impatient with the ramblings of one of the defense attorneys, sneered, "You sound like someone from the ACLU!" (p. 180). Over the course of the proceedings it became obvious that Lewis had made up his mind that Snepp was guilty. At one point he assured the prosecution that clearly Snepp had committed a "willful breach of contract and a willful, deliberate breach of the highest trust that you can have, to divulge information … and particularly to do it for money" (p. 261). In short, Snepp argues, Lewis made a "shambles" of the trial (p. 304).

Not surprisingly, then, Judge Lewis found for the prosecution. He imposed a gag order on Snepp, and ordered all "ill-gotten gains" from sales of *Decent Interval* repaid to the federal government. *The Nation* decried the decision as unwarranted, and cautioned that it represented "a significant increase in the power of the government to suppress dissent" (p. 271). For Snepp the decision proved that the CIA's ability to trounce civil liberties was great indeed: "No matter how clean you are," he contends, "the Agency starts screaming 'national security!' and everybody just assumes you've sold out the country" (p. 283).

Not content to accept the court's decision, Snepp and his legal team, which included ACLU attorney Mark Lynch and Professor Alan Dershowitz, submitted their case for the consideration of the Supreme Court. Their timing could hardly have been worse. In November of 1979, as the Snepp brief awaited decision by the Court, student protesters overran the American embassy in Teheran. Among those taken hostage were several CIA officers, along with sensitive materials and the names of "local spies and collaborators." Snepp alleges that the "paroxysm of rage" that ensued made it impossible for an alleged turncoat like himself to get a fair hearing. To make matters worse, several weeks later Bob Woodward published *The Brethren*, a controversial "inside" account of the Supreme Court.[5] Woodward's unflattering depiction was "the last nail in the coffin" for the case, Snepp

contends (p. 336). This charge deserves more attention. It also underscores a problem with the book. Snepp devotes much time to the women in his life, and not enough to what he argues was the pivotal, even decisive, political context. As the defendant, Snepp may have been convinced of the odds against him no matter the political context. Given what we know about the struggle over government autonomy during the 1970s, it seems that he may well have a point. But he needs to prove it.

The makeup of the Court is another potentially important part of the context. Sitting on the Court was William H. Rehnquist, a former assistant attorney general under Richard Nixon. At the Justice Department, Rehnquist had defended government secrecy privileges, and had helped to prosecute Daniel Ellsberg. And Snepp unearthed evidence from Justice Thurgood Marshall's papers that Justice Lewis F. Powell, Jr., convinced a majority of the Court of Snepp's guilt. Powell's own CIA background prejudiced him against the renegade agent, Snepp argues. This presents another missed opportunity, for Snepp devotes only seven pages (of a nearly 400 page book) to a discussion of Marshall's papers and what they revealed about the Court's handling of his case. And again, it may well be that Snepp's position as the defendant has colored his perception of his chances for a fair hearing. Without an adequate analysis of the facts and supporting evidence, however, his judgment about the Court's bias bears little weight.

In 1980 the Court summarily refused to reconsider Snepp's case; indeed, the Court decided the case on the papers filed to persuade the Justices to hear the case rather than allowing full briefs and oral argument on the merits. The agency's gag rule stood, as did the garnishment of his earnings.[6] The Court's ruling considerably curtailed the right of government employees to criticize the agencies for which they worked. Notably, in finding in favor of the CIA the Supreme Court reversed the argument made in the *Pentagon Papers* case a decade earlier.[7]

The Supreme Court's decision in *Snepp* had profound implications for the discretion of the federal government to suppress free speech. Anthony Lewis reminds us in his foreword to this edition that "all Americans lost some of their freedom as a result of the case: in particular their right to criticize the Government effectively" (p. xii). Just a few years later, President Ronald Reagan's administration used the *Snepp* decision to expand its censorship authority. His successors followed suit, giving credence to Snepp's contention in these pages that "the ripple effects" the case led to an expansion of presidential power. Federal judges, for example, "became increasingly solicitous of the president" in cases involving national security. Further, Snepp argues, they have been more amenable to increasing executive authority, "even in constitutionally dubious ways, without any law to justify it." And the decision's use as a weapon with which to "eviscerate the Freedom of Information Act," demonstrates its extensive reach (p. 361). In all, Snepp contends, the ruling against him severely curtailed the public's right to know> about the workings of its government.

In the end, this is a riveting story, powerfully and emotionally, if not a bit melodramatically, rendered. Snepp does much that could potentially alienate readers. At times he borders on self-pity: on the release of his book, a self-interested media "couldn't have cared less about the tragedy it chronicled," and merely sought "a juicy secret" to tempt viewers, he charges (p. 142). And, surprisingly, he is often the only clear-thinking individual in the lot: even members of the Senate Intelligence Committee were "too well coached by the Agency to come to their own conclusions" when he testified before the committee in December 1977 (p. 147). More than once he portrays himself as long-suffering: his enemies produced "doctored snapshots" of him, and he reacted with "simple bemusement … I couldn't imagine anyone taking such nonsense seriously" (p. 144). And there is, finally, more than a little of the man about town in his portrayal of himself: for example, Snepp features a secretary whose "wonderfully sculpted body seemed lifted from classical statuary" – and whom he subsequently bedded (p. 27). Passages such as these may make good copy, but they leave Snepp open to charges that he is more interested in self-promotion than matters of constitutional import. That isn't to say that this proclivity to romanticize himself makes Snepp wholely unlikable. On the contrary, it is clear that underlying all of it is his genuine remorse about the betrayal of the South Vietnamese.

And Snepp does raise some important questions in this book. The complications of free speech with regard to national security are certainly timely issues, permeated by questions of loyalty and responsible citizenship. The Central Intelligence Agency and the military, which both suffered long declines in public esteem, are currently enjoying a renaissance. Snepp's story, then, might well serve as a reminder to those who would entrust them with greater power. As his experience shows, when the public abdicates its right to know, the result has often been the abuse of power. Snepp himself is reluctant to make this claim. He remains very much the patriotic American who first landed in Vietnam, delighted that "nothing would ever matter so much as what I did

here" (p. xv). He was right, of course, but not in the way in which he expected.

Notes

[1]. Frank Snepp, *Decent Interval: An Insider's Account of Saigon's End Told by the CIA's Chief Strategy Analyst in Vietnam* (New York: Random House, 1977).

[2]. In the years following his departure from South Vietnam, Snepp was vexed by the belief that to divulge agency secrets would be traitorous. He reasoned, and his colleagues warned, that if he published an account of his experiences he would be no better than Philip Agee, a disillusioned CIA veteran who published sensitive information including the names of many agents (pp. 11-12). *See* Philip Agee, *Inside the Company: CIA Diary* (New York: Stonehill, 1975). The CIA had stifled Victor Marchetti, another agency defector, who subsequently revealed the agency's inner workings in *The CIA and the Cult of Intelligence*, which he cowrote with John Marks (New York: Alfred A. Knopf, 1974). At the behest of Richard Nixon, the Justice Department obtained a court order requiring Marchetti to submit the manuscript to the CIA for censorship. *United States v. Marchetti*, 466 F.2d 1309, 1318 (4th Cir.), cert. denied, 409 U.S. 1063 (1972). Subsequently, their publisher sued to have that court order amended. On this litigation, *see The Consequences of "prepublication review": a case study of CIA censorship of 'The CIA and the Cult of intelligence'* (Washington, D.C.: Center for National Security Studies, [1983]). Snepp deplored what both Agee and Marchetti had done.

[3]. Among those Snepp charges with purposefully hoodwinking the American public and Congress are Secretary of State Henry Kissinger, CIA Station Chief Tom Polgar, and Ambassador Graham Martin. The otherwise voluminous literature on America's involvement in Vietnam is in need of further scholarship on the CIA's role. Larry Berman's most recent work provides an excellent account of the duplicity that undergirded the Nixon administration's dealings with America's South Vietnamese collaborators. And although Berman doesn't discuss the agency in detail, many of the themes of his book are nonetheless apropos of CIA activities during that conflict and its aftermath. See Larry Berman, *No Peace, No Honor: Nixon, Kissinger, and Betrayal in Vietnam* (New York: The Free Press, 2001). The ever-cantankerous Christopher Hitchens offers the most recent indictment of Kissinger in *The Trial of Henry Kissinger* (New York: Verso, 2001). It is a characteristically polemical, yet informative and entertaining work.

[4]. David F. Schmitz contends that this crisis wasn't just about legitimacy, but extended to pecuniary matters. The federal government worried about such revelations leading to "restrictions on aid placed by the Congress." Schmitz details U.S. support of undemocratic regimes, often carried out by the CIA, in *Thank God They're on Our Side: The United States and Right-Wing Dictatorships, 1921-1965* (Chapel Hill and London: University of North Carolina Press, 1999), 296.

[5]. Bob Woodward and Scott Armstrong, *The Brethren: Inside the Supreme Court* (New York: Simon and Schuster, 1979).

[6]. Snepp v. United States, 444 U.S. 507 (1980).

[7]. New York Times v. United States (Pentagon Papers Case), 403 U.S. 713 (1971).

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