

EXCURSUS I

Theodore Jacqueney on Contracts, Censorship, and the First Amendment

Frank Snapp's *Decent Interval* (Random House, 1977), the ex-CIA operative's account of the collapse of South Vietnam, has become a landmark civil liberties case. The Justice Department is suing Snapp, seeking both a lifetime injunction to stop him from further speaking or writing on subjects in his book and money damages from the book's profits.

The government does not allege that Snapp disclosed secrets. Snapp uses pseudonyms in quotation marks in place of agents' names throughout the book. Even CIA Director Stansfield Turner told *Newsweek* that Snapp was "very circumspect" in not revealing agents' names or intelligence sources and methods.

The government is suing Snapp because he violated a signed contract not to reveal information he learned in CIA service without prior agency approval. Attorney General Griffin Bell says that his department sued Snapp to determine whether such contracts are enforceable. This is the first time that the U.S. Government has tried to ban a book or stop a speech for reasons that it acknowledges are other than violations of national security or classified information.

The suit should be dropped and such contracts voided. If Richard Nixon, Henry Kissinger, and H.R. Haldeman have First Amendment rights to publish books based on knowledge gained in government without having had, as a condition of employment, to sign contracts to obtain official review of their work, why not Frank Snapp?

Snapp served nearly five years in Vietnam with the CIA, in his last years there in a unique dual role as both the agency's chief strategic analyst and as a top agent handler. Snapp says that after Hanoi's victory he was refused permission by superiors to undertake a thorough internal CIA "after action" report and ordered to sign an internal memo whitewashing the U.S. failure to evacuate Vietnamese to whom it owed succor. Realizing that he could not obtain CIA permission to publish his views if they would not permit an internal study, Snapp decided to resign and write the truth as he saw it, without CIA review.

Decent Interval is Frank Snapp's highly personal indictment of disgraceful bungling of the U.S. departure from Vietnam. About 68,000 of the approximately 90,000 Vietnamese to whom the CIA and other U.S. agencies had obligations were shamefully abandoned, he charges. Snapp argues that his friends and colleagues were abandoned because then Secretary of State Henry Kissinger and U.S. Ambassador to Saigon Graham Martin put off evacuation of Vietnamese until it was too late, lest it demonstrate a lack of confidence in the Saigon government. Moscow and Hanoi exploited this

crackpot logic in well-orchestrated diplomatic messages to dupe American officials into believing that North Vietnamese troops would stop short of complete military victory. The desertion of CIA comrades was compounded by repeated derelictions of duty by a variety of officials who failed to destroy a massive number of documents identifying CIA agents and collaborators, Snapp alleges.

Having Snapp's charges on the record for public review, and safeguarding the rights of other government employees to publicize their knowledge of government malfeasance as long as they do not violate legitimate national security legislation, seems more in the national interest of a democracy than making impregnable those government contracts aimed at preventing the release of information without permission of top officials. Many allegations that Snapp makes merit further public review. Choosing at random:

- In 1973, upon U.S. military advice, Saigon generals swiftly imposed strict new ammunition and matériel quotas to troops in the field, gravely reducing fighting capabilities and morale, despite their knowledge that supplies were not as short as American military officers supposed. The Saigon generals therefore could continue to siphon off and sell the same quantities of vital supplies to which their incomes were accustomed. Saigon fell not because of U.S. aid cuts but because of shoddy leadership at top government and army levels, Snapp concludes.

- As Congress began to reduce aid to the Nguyen Van Thieu regime, U.S. officials worked to foster illusions in Saigon that the cut aid could be restored, strengthening Thieu's intransigence. (Congress had undertaken these aid reductions at least partially to influence a more flexible negotiating stance or, as a last resort, to encourage other Saigon leaders more favorable to a compromise peace. U.S. officials deliberately subverted this congressional intent.—T.J.)

- U.S. Ambassador Graham Martin, CIA station chief Thomas Polgar, and other U.S. officials in Saigon and Washington repeatedly exposed secrets jeopardizing deep penetration agents by leaks to members of Congress and the press to influence aid votes and score public relations points.

- U.S. strategists were completely deceived on Hanoi's troop movements by bogus radio intelligence intercepts. They ignored well-placed agents in Hanoi's ranks who informed the CIA that these marvelous technological intercept gadgets were producing planted information. (This disclosure is immediately relevant to current intelligence community debate on technological versus human information-gathering—T.J.)

- Ambassador Martin repeatedly rejected or delayed evacuation pleas from other officials, and he did not even authorize a full-scale evacuation plan until eleven days before Saigon collapsed. A small band of civilian and military officers who organized evacuations in spite of embassy leadership, and frequently in defiance of the apathy and even the

orders of superiors, merit the most credit for saving Vietnamese. Only the U.S. military, not the civilian agencies, evacuated most of their Vietnamese employees. Other pro-U.S. embassies behaved as shamefully as ours, Snapp charges, singling out the Taiwanese for abandoning Vietnamese staff and large numbers of Taiwanese citizens and agents.

• Top CIA officials William Colby and Theodore Shackley "cooperated with the South Vietnamese police" to jail unjustly the charismatic Third Force legislator Tran Ngoc Chau by "painting him as a subversive and a Communist agent." (Chau had become an outspoken advocate of a peace settlement with Communist participation in a coalition government and was arrested on charges of maintaining contact with a Communist brother, although the contacts had been encouraged by U.S. officials. After serving more than four years in Saigon government prisons, Chau refused Thieu's offer to release him to the Communists because, he said, he believed in democracy and freedom and therefore was as opposed to the Communists as to Thieu—T.J.) As Saigon collapsed, young American officials tried to evacuate Chau, but Shackley, then head of the CIA's East Asia Division, cabled orders from the U.S. that Chau was to be left behind. Chau has been imprisoned by Hanoi since June, 1975.

The great failing of Snapp's book is that he does not come to grips with the savage and systematic police state oppression perpetrated by the Saigon regime, for which his CIA was more responsible than any other U.S. agency. Some of the very people he most wanted evacuated from Vietnam are those CIA comrades responsible for the most ferocious human rights violations by the South Vietnamese regime.

Paradoxically, Snapp criticizes the lack of "liberal voices" and "concerned humanitarians" who fail to protest the holocaust in Cambodia, and he writes vividly of the hundreds of thousands suffering now in Hanoi's vast gulag archipelago of reeducation prisons. This is decent human rights advocacy, and Snapp should continue to speak and write on the subject. But as I read his criticism of "liberals" I could not help thinking how many of us who now campaign against human rights abuses by the regimes in Hanoi and Phnom Penh were once equally active in working against human rights violations by the government in Saigon. On that subject we heard no voice raised by Frank Snapp.

Snapp is outraged, for example, that four hundred Police Special Branch officers were left behind. I testified before two congressional subcommittees in 1971 that the Police Special Branch was far more feared by the people than the already feared Viet Cong. Snapp is also bitter that thirty thousand specially trained Phoenix Program operatives were abandoned. His concern for the victims of the Phoenix Program is limited to remarks about how, when the jails were overcrowded, Phoenix agents "sometimes took the law, such as it was, into their own hands." Snapp rarely mentions the countless numbers of non-Communist political opponents of

the Thieu regime, or simply targets of financial or sexual shakedowns, or even utterly random victims of arrest sweeps and false detentions, who were terrorized, tortured, and killed by the CIA-supported police apparatus. And so, in a book on how Vietnam fell, the author does not recognize that a regime based on Mafia-style corruption and Gestapo-style repression could not motivate or sustain sufficient support by its officers or soldiers or citizens or allies from the democracies.

To be fair, Snapp occasionally focuses on Thieu's repression. He reveals that in February, 1975, eighteen journalists, detained because their newspapers printed accusations by a popular Catholic priest attacking Saigon regime corruption and police state practices, were tortured extensively to extract false confessions of Communist affiliations. This was done to justify their imprisonment to a visiting U.S. congressional delegation. The CIA knew the truth but kept it from the members of Congress in Saigon, Snapp says. If Snapp himself, who was then the embassy's chief briefer, disclosed the torture of these journalists to the touring members of Congress, he does not reveal it in his book.

In short, the Justice Department should leave Frank Snapp alone so that other Snapps can write their books. At the same time, it must be recognized that, if Frank Snapp was one of the best and the brightest the CIA had, he was not enough less myopic than those above him.

Today, Saigon-style, U.S.-supported police states bludgeon the people and the body politic, from South Korea to Taiwan to the Philippines to Iran. The Carter administration has stirred new winds of hope amongst those who struggle and suffer for human rights and democratic liberties in these countries, opposing both their present, American-backed rightist tyrannies and the threat of future, leftist tyrannies, just as Third Force democrats once did in Vietnam. The Carter administration has not yet focused enough on the unheard voices of other Third Force democrats who oppose tyrannies on the basis of such liberal democratic advocacy as free speech, free press, and free elections; just as Frank Snapp and his former superiors failed to focus on such Third Force democrats in Vietnam; just as such people and their cause rarely appear in Snapp's book, and never with sympathy. To this end, U.S. foreign policy employees must be encouraged to make America's international efforts reflect the principles for which it stands at home, inside the government when possible, outside the government, publishing their books, when necessary.

Theodore Jacqueney worked in Vietnam for the U.S. State Department's Agency for International Development, resigning in disagreement with U.S. support for Nguyen Van Thieu's 1971 reelection. He later publicized Thieu regime repression and political prisoner abuses as a newspaper editorial page editor and as head of an ex-AID employees' Vietnam issues protest group. He is now an Associate Editor of Worldview.