"The mere fact that Agee is also engaged in criticism of the Government does not render his conduct beyond the reach of the law."

HAIG v. AGEE

453 U.S. 280, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981).

In 1974, Philip Agee, who for some years had been an agent for the CIA, announced in London he was launching a "campaign" to "fight the United States CIA wherever it is operating" and his intent "to expose CIA officers and agents and take the measures necessary to drive them out of the countries where they are operating." He then went to various countries, recruited collaborators, trained them in techniques of clandestine operations, and repeatedly identified persons whom he claimed were working for the CIA. In 1979 the Secretary of State revoked Agee's passport. Agee brought suit through an attorney (he himself remained in West Germany after having been expelled from Britain) in a federal district court to enjoin the Secretary from carrying out the revocation. He admitted the facts as alleged by the Secretary but claimed that revocation of his passport violated his rights to criticize the government and to travel freely. The district court issued the injunction and the court of appeals affirmed. The Secretary of State sought and obtained certiorari.

[Much of the discussion within the Supreme Court concerned the authority over passports that Congress had delegated to the executive. We reprint only those portions of the opinions dealing with the constitutional issues.]

Chief Justice **BURGER** delivered the opinion of the Court....

III

Agee also attacks the Secretary's action on three constitutional grounds: first, that the revocation of his passport impermissibly burdens his freedom to travel; second, that the action was intended to penalize his exercise of free speech and deter his criticism of Government policies and practices; and third, that failure to accord him a prerevocation hearing violated his Fifth Amendment right to procedural due process.

In light of the express language of the passport regulations, which permits their application only in cases involving likelihood of "serious damage" to national security or foreign policy, these claims are without merit.

Revocation of a passport undeniably curtails travel, but the freedom to travel abroad with a "letter of introduction" in the form of a passport issued by the sovereign is subordinate to national security and foreign policy considerations; as such, it is subject to reasonable governmental regulation. The Court has made it plain that the *freedom* to travel outside the United States must be distinguished from the *right* to travel within the United States. This was underscored in Califano v. Aznavorian (1978):

> Aznavorian urges that the freedom of international travel is basically equivalent to the constitutional right to interstate travel recognized by this Court for over 100 years. Edwards v. California [1941]; Twining v. New Jersey [1908]; Williams v. Fears [1900]; Crandall v. Nevada [1868]; Passenger Cases [1849] (Taney, C.J., dissenting). But this Court has often pointed out the crucial difference between the freedom to travel internationally and the right of interstate travel.
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> "The constitutional right of interstate travel is virtually unqualified. United States v. Guest (1966); Griffin v. Breckenridge (1971). By contrast the 'right' of international travel has been considered to be no more than an aspect of the 'liberty' protected by the Due Process Clause of the Fifth Amendment. As such this 'right,' the Court has held, can be regulated within the bounds of due process." [Citations omitted.] Califano v. Torres [1978].

It is "obvious and unarguable" that no governmental interest is more compelling than the security of the Nation. Aptheker v. Secretary of State [1964]. Protection of the foreign policy of the United States is a governmental interest of great importance, since foreign policy and national security considerations cannot neatly be compartmentalized.

Measures to protect the secrecy of our Government's foreign intelligence operations plainly serve these interests. Thus, in Snepp v. United States (1980), we held that "[t]he Government has a compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." The Court in United States v. Curtiss-Wright Export Corp. [1936] properly emphasized:

> [The President] has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results.

Not only has Agee jeopardized the security of the United States, but he has also endangered the interests of countries other than the United States– thereby creating serious problems for American foreign relations and foreign policy. Restricting Agee's foreign travel, although perhaps not certain to prevent all of Agee's harmful activities, is the only avenue open to the Government to limit these activities.

Assuming, arguendo, that First Amendment protections reach beyond our national boundaries, Agee's First Amendment claim has no foundation. The revocation of Agee's passport rests in part on the content of his speech: specifically, his repeated disclosures of intelligence operations and names of intelligence personnel. Long ago, however, this Court recognized that "[n]o one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops." Near v. Minnesota (1931), citing Z. Chafee, *Freedom of Speech* 10 (1920). Agee's disclosures, among other things, have the declared purpose of obstructing intelligence

operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that Agee is also engaged in criticism of the Government does not render his conduct beyond the reach of the law.

To the extent the revocation of his passport operates to inhibit Agee, "it is an inhibition of *action*," rather than of speech. Zemel [v. Rusk (1965)] (emphasis supplied). Agee is as free to criticize the United States Government as he was when he held a passport– always subject, of course, to express limits on certain rights by virtue of his contract with the Government. See *Snepp* ....

On this record, the Government is not required to hold a prerevocation hearing. In Cole v. Young [1956], we held that federal employees who hold "sensitive" positions "where they could bring about any discernible adverse effects on the Nation's security" may be suspended without a presuspension hearing. For the same reasons, when there is a substantial likelihood of "serious damage" to national security or foreign policy as a result of a passport holder's activities in foreign countries, the Government may take action to ensure that the holder may not exploit the sponsorship of his travels by the United States. "[W]hile the Constitution protects against invasions of individual rights, it is not a suicide pact." Kennedy v. Mendoza-Martinez (1963). The Constitution's due process guarantees call for no more than what has been accorded here: a statement of reasons and an opportunity for a prompt postrevocation hearing....

Reversed and remanded.

Justice **BLACKMUN,** concurring ....

Justice **BRENNAN,** with whom Justice **MARSHALL** joins, dissenting ....

I suspect that this case is a prime example of the adage that "bad facts make bad law." Philip Agee is hardly a model representative of our Nation. And the Executive Branch has attempted to use one of the only means at its disposal, revocation of a passport, to stop respondent's damaging statements. But just as the Constitution protects both popular and unpopular speech, it likewise protects both popular and unpopular travelers. And it is important to remember that this decision applies not only to Philip Agee, whose activities could be perceived as harming the national security, but also to other citizens who may merely disagree with Government foreign policy and express their views ....

Editors' Notes

(1) In 1978 Frank W. Snepp, III, a former CIA agent, published *Decent Interval* (New York: Random House), a critical analysis of earlier American policy in Vietnam. He had not submitted the manuscript to the Agency for review as his contract of employment had required. On the other hand, the government conceded the book contained no classified information that had not already been published elsewhere. Six justices, without hearing oral argument or having briefs on the merits, treated the case solely as a matter of breach of contract and ordered Snepp to give the government all royalties the book earned. Snepp v. United States (1980). Stevens,

joined by Brennan and Marshall, dissented. Perhaps the reason the Court missed the basic issue of free criticism of public policy was that Snepp came up just after publication of Bob Woodward and Scott Armstrong, *The Brethren* (New York: Simon & Schuster, 1979), which purported to be an inside history of the Burger Court and had been heavily based on gossip (some of it true) provided by young law clerks who had, without doubt, betrayed their justices' trust.

(2) CIA v. Sims (1985) held that Congress had given the CIA very broad exemption from the obligation to disclose information under the Freedom of Information Act.