

INTRODUCTION

*If there be time to expose through discussion the falsehood and fallacies,
to avert the evil by the processes of education, the remedy to be applied
is more speech, not enforced silence.*

JUSTICE LOUIS BRANDEIS, 1927

MY EARLIEST MEMORY OF THE FIRST AMENDMENT dates back to my boyhood town of Westport, Connecticut. The fervor of the American Revolution was kept alive in Westport by old Connecticut Yankees, and there was no one more fervent than the very old proprietor of the general store where I picked up the bundles of newspapers for my paper route. The old man had been impressed by the battles of the American Revolution that had been fought in our town, and he took it as his duty to impress them in turn on the minds of the youngsters of Westport.

On cold winter afternoons we warmed ourselves by a woodstove and listened to his lectures about how the American revolutionaries had died for freedom on Compo Hill. It didn't require a great leap of imagination for an eighth grader like myself to visualize being in the thick of battle. On my paper route every day I passed by a big-bore memorial cannon and a worn green statue of a gallant Minute Man standing where the volunteer soldiers stood on April 25, 1777, the day three thousand British troops landed on the beach and then marched inland to raid a colonial armory. Nervous farmers and store clerks, carpenters and militia men from nearby towns crouched behind stone walls, waiting until the king's men were a stone's throw

away. I can still remember the old man's words: "Our boys were outnumbered three to one, but they didn't sneak away to fight another day. No sir, they let the redcoats have it right between the eyes."

The thrill for the old man, though, was not just in the heroic stand of the young volunteers but in the whole idea of sacrificing your all for the freedoms that distinguish Americans. "You know why our boys fought that war?" he would say to us. "It was so Americans can say any damn thing they please!"

Many people who grew up in America tell similar stories. One of the fundamental lessons passed on from generation to generation is that Americans have the greatest of all freedoms, the freedom to express ourselves in open and public debate. Imagine my surprise, then, a few years later, when I found myself in trouble with the law for publishing a newspaper.

The year was 1970, and I was nineteen. Two friends had driven with me in a 1954 Cadillac to Beloit, Wisconsin, where my brother, James, a Vietnam veteran, was attending college on the GI Bill. All four of us were disillusioned with U.S. policies in Vietnam, so we decided to launch our own newspaper, *The People's Dreadnaught*. It was one of more than five hundred periodicals that popped into existence all over the country in the Vietnam era to give voice to the antiwar movement. During the next several months, I learned the hard way that suppression of free speech and the free press did not end with the defeat of the redcoats.

One memorable incident occurred across the state line in Loves Park, Illinois, where I was hawking copies of the *Dreadnaught*. I walked into an auto parts store, and, while I was handing a copy to the man at the counter, three men sitting on crates gave me the hard eye. I left the store and was half a block up the street when the three men caught up with me. They identified themselves as police officers and asked me if I had the police chief's permission to sell newspapers. Politely I told them about the First Amendment. The next thing I knew a blue Plymouth swooshed to the curb, and I was hustled into the back seat. At the police station, after the chief interrogated me in front of a semicircle of officers, he began flipping through the code book, trying to find a violation of the law with which to charge me.

Disorderly conduct? Disturbing the peace? Finally he settled on selling obscene materials. I almost laughed. “Do you know that grandmothers are buying our paper?” I told him. Obscenity was an interesting charge, though, given that particular issue of the *Dreadnaught*. It contained an article about the massacre of Vietnamese civilians in the village of My Lai and another article about the binding and gagging of Black Panther leader Bobby Seale at a Chicago trial of antiwar activists. Was it possible that my conduct as a purveyor of news was somehow more obscene than the conduct of trigger-happy soldiers or the conduct of a dictatorial judge?

The charges were dropped, but soon I was arrested again, this time at our newspaper office in Beloit. A raiding party of ten police officers tried to pry open the front door with a tire iron, and when that failed they kicked it open. Ostensibly they were looking for an AWOL soldier, but it was me they took downtown and booked. Although the charges again were dropped, this pattern of harassment by the police continued. In addition, I was approached by young longhaired strangers who tried to insinuate themselves into my life and encouraged me to commit crimes—buy drugs, vandalize government buildings, and so forth. That I did not fall for these ploys has to be attributed to a little good sense and a lot of good luck, because it was not until later, after my brother and I had filed a lawsuit against the authorities in Beloit, that I came to understand that these indeed were traps, set by undercover police officers.

The lawsuit accused the police of violating our civil rights “under the color of law.” It would take five years for a jury to be impaneled, by which time we had long since been forced by the police onslaught to fold the *Dreadnaught*. During the course of the lawsuit, however, I got an education far different from the one I had received back in Westport. I learned that editors at scores of other underground newspapers had experienced similar treatment at the hands of local and state authorities. I learned that local cops who proved themselves effective tormentors of underground editors were rewarded by federal authorities. The police captain who led the raid on our office was promoted to a position with the intelligence unit of the Internal Revenue Service. I learned that this IRS unit was specifically assigned to target

the dissident antiwar press and furthermore that the IRS was connected to two larger surreptitious operations, one run out of the Central Intelligence Agency (code-named MHCHAOS) and the other out of the Federal Bureau of Investigation (code-named COINTELPRO).

The jury awarded us \$2,500, but our lawsuit was most valuable for what I learned about the cynical contempt in which some agents of the government hold the First Amendment. In the process I also learned about the Freedom of Information Act (FOIA), a law enacted to open up the tax-supported activities of federal agencies and departments to better scrutiny. The attorneys who had handled my case (from the Madison firm of Greenberg, Karp, and Heitzman) happened to be among the early FOIA experts because of their work with Les Aspin, then a Wisconsin congressman. Through them I picked up several pointers, and I soon realized the FOIA might provide a way for me to learn more about the attempts to sabotage not only the *Dreadnaught* but all the underground papers. In short order I filed FOIA requests for documents from the CIA, the FBI, and various other agencies.

While the concept of this book can be traced to my days in Westport, it is more precise to say that the book itself began with those FOIA requests. Federal government lawyers contested the requests through more than a decade of litigation, but the information that I eventually obtained is the underpinning for much of this text. The harassing, delaying, and stonewalling tactics of the government were also instructive. I did not expect to receive carte blanche access to the most sensitive internal workings of government operations, since the FOIA does not entitle anyone without a security clearance to have such access, but the lengths to which CIA and FBI lawyers went to impede my requests were so beyond the pale as to constitute of themselves a form of suppression. To start with, I was told I had to pay an advance deposit of \$30,000 to the CIA and \$1,100 to the FBI for search fees, even though I had supplied file numbers (obtained from heavily censored files previously released) for many of the periodicals in question.

This outlandish set of fees was just the beginning: clearly I was being told to get lost. However, the treatment of my FOIA requests only served to further convince me that the government had something to hide. This indeed proved to be the case.

Along with finding out all I could about the CIA's and FBI's domestic espionage operations, it became my goal to face down the counterintelligence men who carried them out. Crisscrossing the country, traveling at times with only a bag and my thumb, I did manage to talk to some of them. These interviews are also part of this book, as well as an unusual series of interviews of a CIA records officer that I was allowed to conduct at the Agency's headquarters. These interviews came about as a result of a court order. In 1979, while investigating the disruption of the dissident press during the Vietnam War—citing the Freedom of Information Act—I requested documents from the CIA on its operations affecting some five hundred antiwar newspapers. When this request was refused, I sued (*Mackenzie v. Central Intelligence Agency*, No. 82 1676 [D.D.C. 1982]). In an attempt to settle the dispute, Judge John H. Pratt ordered the Vaughn procedure. In these oral sessions, Louis Dube, information officer of the CIA Directorate of Operations, read aloud or paraphrased a stack of unexpurgated CIA reports, in the presence of other witnesses. I took shorthand notes, as I was not allowed to inspect the documents myself. It cannot be known what elements of the documents Dube omitted, but the quotation marks enclose the precise language he used in the Vaughn interviews. All information attributed to Dube was obtained in this manner; most of these CIA documents have not been published before. As for documents not directly produced through the FOIA litigation, many thousands of pages—for instance, a number of classified government papers and a sealed court transcript never before published—were turned over to me by other researchers. The accumulated store of documents has filled up a large portion of my garage.

By the time I embarked on this investigation I was already so disillusioned that it never occurred to me I could be taken by surprise again. Yet it soon became clear that the suppression of antiwar newspapers undertaken by government authorities in the late 1960s and

early 1970s could not be dismissed as isolated, aberrant cases of cops and spies run amok. Rather, it revealed a fundamental and radical change in the relationship between the American government and the American people. The government-sanctioned suppression of dissent, even after it became the subject of scandalous headlines and of special congressional inquiries, even after it was officially called off, had an afterlife whose consequences to the First Amendment were just as dire. Suppression was being replaced by censorship.

Suppression and censorship are flip sides of the same coin, of course, and perhaps it was predictable that one would lead to the other. Not only is suppression unappealing to the American sensibility, but it often crosses the line into criminality, and the natural instinct of the counterintelligence officers associated with Operations MHCHAOS and COINTELPRO was to try to cover their tracks. They had every incentive to devise new methods of hiding their misdeeds. What surprised me, though, was the extent to which many other federal officials were dedicated to the proposition that censorship is an American virtue. It is one thing for professionals trained in skulduggery to prefer the secret life; it is quite another for people high up in policy positions in government to do so. Somehow they had missed out on the lesson taught by the old Connecticut Yankee.

The major villains of the censorship story are a succession of policymakers from the Johnson administration through the Nixon and Bush periods and on into the Clinton era, including several of the presidents themselves. In a sense, theirs is a spy story—not action-packed, like in the movies, but featuring sleight of hand and subterfuge and far truer to reality. Incrementally over the years they expanded a policy of censorship to the point that today it pervades every agency and department of the federal government. So gradual was the change that most guardians of the First Amendment—working members of the fourth estate and dues-paying members of the civil liberties community—scarcely noticed. Some journalists and some civil libertarians who were aware of the seismic shifts chose—for reasons difficult to comprehend—not to stand up in opposition and thus by their silence became complicitous.

If I sound judgmental, it is because of the Battle of Compo Hill. The volunteer infantrymen who freed us from British tyranny knew instinctively that the freedoms of speech and press are necessary for the people to be sovereign. Those who control information can control debate and by controlling debate can force policies upon us. The free exchange of ideas must be preserved if Americans are to be able to choose those policies for themselves.

It is in the spirit of the freedom-loving Minute Men that this book is written.

San Francisco
1993