Growing up in the United States, we are taught that this is a country blessed with freedom of speech. We learn that this is so because our Constitution contains a Bill of Rights, which went with the First Amendment and its powerful words:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The belief that the First Amendment guarantees our freedom of expression is part of the ideology of our society. Indeed, the belief that expression is part of the ideology of our society is deeply entrenched in the country's beliefs, and it is strongly engrained in the minds of the people. We can see this in the minds of the makers of opinion in this country. We can see this in the minds of those who have strong beliefs that are supported by the Constitution.

In 1877, from newspapers, television, radio, from the pulpits and classrooms, from the halls of Congress, and in the statements made by the President, we heard praise of the genius of our Founders. They created, with a sureness and originality so great and pure that I can't help but perceive the wisdom and the greatness of God, the first political system that insured that power flows from the people to the state, not the other way around.

That same year, the newspapers carried large advertisements for "The Constitution Bowl," an exhibit at the official Centennial on the Bicentennial, to be made of "a lot of fine ivory china," the official flowers of the thirteen original states, and "an exquisite and worthy of the occasion." It was available for $5. A beautiful bowl indeed. And it was a perfect representation of the Constitution—elegant, but empty, capable of being filled with good. It had by whoever possessed the power and the resources to fill it.

So it has been with the First Amendment. The First Amendment was adopted in 1791 as part of the Bill of Rights, in response to criticism of the Constitution when it was before the public for ratification. Needing one of the thirteen states to ratify it, the Constitution was approved by very small margins in these crucial states. Virginia, Massachusetts, and New York avoided ratification unless a Bill of Rights would be added, and so it was. Even since then it has been hailed as the bedrock of our freedoms.

As I am about to argue, however, to depend on the simple existence of the First Amendment to guarantee our freedom of expression is a serious mistake, one that can cost us not only our liberties but, under certain circumstances, our lives.
The Sedition Act provided that "if any person shall write, print, utter, or publish . . . any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the U.S. or the President of the U.S., with intent to defame . . . or to bring either of them into contempt or disrepute" such persons could be fined $2,000 or jailed for two years.

The French Revolution had taken place nine years earlier, and the new American nation, now with its second president, the conservative John Adams, was not as friendly to revolutionary ideas as it had been in 1776. Revolutionaries once in power seem to lose their taste for revolutions.

French immigrants to the United States were suspected of being sympathizers of their revolution back home and of spreading revolutionary ideas here. The fear of them (although most of these French immigrants had fled the revolution) became hysterical. The newspaper Gazette of the United States insisted that French tutors were corrupting American children, "to make them imbibe, with their very milk, as it were, the poison of atheism and disaffection."

The newspaper Purson's Gazette said the country was swarming with "French spotters of Sedition . . . enough to burn all our cities and cut the throats of all the inhabitants."

In Ireland, revolutionaries were carrying on their long struggle against the English, and they had supporters in the United States. One might have thought that the Americans, so recently liberated from English rule themselves, would have been sympathetic to the Irish rebels. But instead, the Adams administration looked on the Irish as troublemakers, both in Europe and in the United States.

Russian Harrison Gray Otis said he "did not wish to invite border of wild Irishmen, nor the turbulent and disorderly of all parts of the world, to come here with a view to disturb our tranquility, after having succeeded in the overthrow of their own governments." He warned that the new immigrants with political ideas "are hardly landed in the United States, before they begin to cavil against the Government, and to pant after a more perfect state of society."

The Federalist party of John Adams was opposed by the Republican party of Thomas Jefferson. It was the beginning of the two-party system in the new nation. Their disagreements went back to the Constitution and the Bill of Rights, to battles in Congress over Hamilton's economic program. The tensions in the country were heightened at this time by an epidemic of yellow fever, with discontented citizens rioting in the streets.

Jefferson, a former ambassador to France, was friendly to the French Revolution, while Adams was hostile to it. President Adams, in the developing war between England and France, was clearly on the side of the English, and one historian has called the Sedition Act "an internal security measure adopted during America's Half War with France."

Republican newspapers were delivering harsh criticism of the Adams administration. The newspaper Aurora in Philadelphia (edited by Benjamin Bache, the grandson of Benjamin Franklin) accused the president ofappointing his relatives to office, of squandering public money, of wanting to create a monarchy, and of moving toward war. Even before the Sedition Act became law, Bache was arrested and charged on the basis of common law with libeling the president, exciting sedition, and provoking opposition to the laws.

The passage of the Sedition Act was accompanied by denunciations of the government's critics. One congressman told his colleagues, "Philosophers are the pioneers of revolution. They . . . prepare the way, by preaching indolence, and weakening the respect of the people for ancient institutions. They talk of the perfectability of man, of the dignity of his nature, and entirely forgetting what he is in decision perpetually about what he should be."

The statement about what man "is," could have been taken straight from Machiavelli.

The atmosphere in the House of Representatives in those days might be said to lack some dignity. A congressman from Vermont, Israel Beekman, Matthew Lyon, got into a fight with Congressman Griswold of Connecticut. Lyon spat in Griswold's face. Griswold attacked him with a club, Lyon fought back with fire tongs, and the two grappled on the floor while the other members of the House first watched, then separated them. A Bostonian wrote angrily about Lyon: "I felt grieved that the saliva of an Irishman should be spat upon the face of an American."

Lyon had written an article saying that under Adams "every consideration of the public welfare was swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." Tried for violation of the Sedition Act, Lyon was found guilty and imprisoned for four months.

The number of people jailed under the Sedition Act was not large—but it is in the nature of oppressive laws that it takes just a handful of prosecutions to create an atmosphere that makes potential critics of government fearful of speaking their full minds.
It would seem to an ordinarily intelligent person, reading the simple, straightforward words of the First Amendment—"Congress shall make no law... abridging the freedom of speech, or of the press."—that the Sedition Act was a direct violation of the Constitution. But here we get our first clue to the inadequacy of words on paper in ensuring the rights of citizens. Those words, however powerful they seem, are interpreted by lawyers and judges in a world of politics and power, where dissenters and rebels are not wanted. Exactly that happened early in our history, as the Sedition Act collided with the First Amendment, and the First Amendment turned out to be poor protection.6

The members of the Supreme Court, sitting as individual circuit judges (the new government didn't have the money to set up a lower level of appeals courts, as we have today) consistently found the defendants in the sedition cases guilty. They did it on the basis of English common law. Supreme Court Chief Justice Oliver Ellsworth, in a 1799 opinion, said, "The common law of this country remains the same as it was before the Revolution."7

That fact is enough to make us pause. English common law? Hadn't we fought and won a revolution against England? Were we still bound by English common law? The answer is yes. It seems there are limits to revolutions. They retain more of the past than is expected by their fervent followers. English common law on freedom of speech was set down in Blackstone's Commentaries, a four-volume compendium of English common law. As Blackstone put it:

The liberty of the press is indeed essential to the nature of a free state, but this consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he please before the public; to forbid this is to destroy the freedom of the press; but if he publish what is improper, mischievous, or illegal, he must take the consequences of his own temerity.8

This is the ingenious doctrine of "no prior restraint." You can say whatever you want, print whatever you want. The government cannot stop you in advance. But once you speak or write it, if the government decides to make certain statements "illegal," or to define them as "mischievous" or even just "improper," you can be put in prison.

An ordinary person, unsophisticated in the law, might respond, "You say you won't stop me from speaking my mind—no prior restraint. But if I know it will get me in trouble, and so remain silent, that is prior restraint." There's no point responding to common law with common sense.

That early interpretation of the First Amendment, limiting its scope to no prior restraint, has lasted to the present day. It was affirmed in 1971 when the Nixon administration tried to get the Supreme Court to stop the publication in the New York Times of the Pentagon Papers, the secret official history of the U.S. war in Vietnam.9

The Court refused to prevent publication. But one of the justices held up a warning finger. He said, we are making this decision on the basis of no prior restraint, if the Times goes ahead and prints the document, there is a chance of prosecution.

So, with the doctrine of no prior restraint, the protection of the First Amendment was limited from the start. The Founding Fathers, whether liberal or conservative, Federalist or Republican—from Washington and Hamilton to Jefferson and Madison—believed that sedition could not be tolerated, that all we can ask of freedom of speech is that it does not allow prior restraint.10

Well, at least we have that, a hopeful believer in the First Amendment might say: They can't stop free expression in advance. It turns out, however, that such optimism is not justified. Take the case of a book, The CIA and the Cult of Intelligence, written by Victor Marchetti, a former CIA agent, and John Marks, a journalist. The book exposed a number of operations by the CIA that did not seem to be in the interests of democracy and that used methods an American might not be proud of. The CIA went to court asking that the publication of the book be stopped, or at least, that some 250 passages, affecting "national security" (as Marchetti and Marks said, embarrassing the CIA) be deleted from the book.

The judge then invoke no prior restraint and say, We can't censor this book in advance; take action later if you like? No, the judge said, I won't order 25 deletions from the book; I'll only order 106 deletions.

Another bit of surgery on any citizen's innocent assumption that the First Amendment meant what it said. The book was published in 1975 with the court-ordered deletions. But the publisher left blank spaces, sometimes entire blank pages, where the deletions were made. It is, therefore, an interesting book to read, not only for what it tells about the CIA, but what it tells about the strength of the First Amendment.11

Or take the case of another CIA agent, Frank Snepp, who wrote a book called Decent Interval, a sharp critique of the actions of the U.S.
government and the CIA during the last-minute evacuation of American forces from Saigon in 1975. Snepp’s book was not stopped from publication, but the CIA sued Snepp for violation of his contract, in which he had agreed to submit his writings for CIA approval before publication. Snepp argued the agreement only applied to material classified secret and he had not used any classified material in his book.

The Supreme Court ruled six to three (in an atmosphere of secrecy—no briefs were submitted, no oral argument took place) that even without an agreement the CIA had a right to stop publication because “the government has a compelling interest in protecting the secrecy of information important to our national security.” Because the book was already published, the Court ruled that all its royalties must go to the U.S. government. Any citizen who reads *Decent Interval* can decide whether Snepp in any way hurt “national security” by what he wrote or if that scary phrase was once again being used to prevent a free flow of ideas.11

**Free Speech and National Security**

The powerful words of the First Amendment seem to fade with the sounds of war, or near war. The Sedition Act of 1918 expired, but in 1917 when the United States entered World War I, Congress passed another law in direct contradiction of the amendment’s command that “Congress shall make no law . . . abridging the freedom of speech, or of the press.” This was the Espionage Act of 1917.

Titles of laws can mislead. While the act did have sections on espionage, it also said that persons could be sent to prison for up to twenty years if, while the country was at war, they “shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the U.S.”12

This was quickly interpreted by the government as a basis for prosecuting anyone who criticized, in speech or writing, the entrance of the nation into the European war, or who criticized the recently enacted conscription law. Two months after the Espionage Act was passed, a Socialist named Charles Schenck was arrested in Philadelphia for distributing 15,000 leaflets denouncing the draft and the war. Conscription, the leaflets said, was “a monstrous deed against humanity in the interests of the financiers of Wall Street . . . Do not submit to intimidation.”

Schenck was found guilty of violating the Espionage Act, and sentenced to six months in prison. He appealed, citing the First Amendment: “Congress shall make no law . . . “ The Supreme Court’s decision was unanimous and written by Oliver Wendell Holmes, whose reputation was that of an intellectual and a liberal. Holmes said the First Amendment did not protect Schenck:

> The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic . . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

It was a clever analogy. Who would think that the right of free speech extended to someone causing panic in a theater? Any reasonable person must concede that free speech is not the only important value. If one has to make a choice between someone’s right to speak, and another person’s right to live, that choice is certainly clear. No, there was no right to falsely shout fire in a theater and endanger human life.

A clever analogy, but a dishonest one. Is shouting fire in a crowded theater equivalent to distributing a leaflet criticizing a government policy? Is an antiwar leaflet a danger to life, or an attempt to save lives? Was Schenck shouting “Fire!” to cause a panic, or to alert his fellow citizens that an enormous conflagration was taking place across the ocean? And that they or their sons were in danger of being thrown into the funeral pyre that was raging there? To put it another way, who was creating a clear and present danger to the lives of Americans, Schenck, by protesting the war, or Wilson, by bringing the nation into it?

Also prosecuted under the Espionage Act was Socialist leader Eugene Debs, who had run against Wilson for the presidency in 1912 and 1916. Debs made a speech in Indiana in which he denounced capitalism, praised socialism, and criticized the war: “War throughout history have been waged for conquest and plunder . . . And that is war in a nutshell. The master class has always declared the war; the subject class has always fought the battles.”

Debs’s indictment said that he “attempted to cause and incite insubordination, disloyalty, mutiny and refusal of duty in the military forces of the U.S. and with intent so to do delivered to an assembly of people a public speech.” Debs spoke to the jury:
I have been accused of obstructing the war. I admit it. Gesellmann, I abhor war. I would oppose war if I stood alone. . . . I have sympathy with the suffering, struggling people everywhere. It does not make any difference what flag they were born, or where they live.

He was convicted and sentenced to ten years in prison, the judge denouncing those "who would strike the sword from the hand of this nation while she is engaged in defending herself against a foreign and brutal power."

When the case came to the Supreme Court on appeal, again Oliver Wendell Holmes spoke for a unanimous court, affirming that the First Amendment did not apply to Espionage Debs and his speech. Holmes said Debs made "the usual contrasts between capitalistic and laboring men . . . with the implication running through it all that the working men are not concerned in the war." So, Holmes said, the "natural and intended effect" of Debs's speech would be to obstruct recruiting. Altogether, about 2,000 people were prosecuted and about 900 sent to prison, under the Espionage Act, not for espionage, but for speaking and writing against the war. Such was the value of the First Amendment in time of war.

Socialist leader Kate Richards O'Hare was sentenced to five years in prison because, the inditement claimed, she said in a speech that "the women of the United States were nothing more nor less than brood sows, to raise children to get into the army and be made into fertilizer."

A filmmaker was arrested for making the movie The Spirit of '76 about the American Revolution, in which he depicted British atrocities against the colonies. He was found guilty for violating the Espionage Act because, the judge said, the film tended "to question the good faith of our ally, Great Britain." He was sentenced to ten years in prison. The case was officially called U.S. v. Spirit of '76. The Espionage Act remains on the books, to apply in wartime and in "national emergencies." In 1965 the Kennedy administration proposed extending its provisions to statements made by Americans overseas. Secretary of State Rusk called Ambassador Henry Cabot Lodge in Vietnam, saying the government was concerned about American journalists writing "critical articles . . . on Dien and his government" that were "likely to impede the war effort."

Free speech is fine, but not in a time of crisis—so argue heads of state, whether the state is a dictatorship or is called a democracy. Has that not proved again and again to be an excuse for stifling opposition to government policy, clearing the way for brutal and unnecessary wars? Indeed, is not a time of war exactly when free speech is most needed, when the public is most in danger of being propagandized into sending their sons into slaughters? How ironic that freedom of speech should be allowed for small matters, but not for matters of life and death, war and peace.

On the eve of World War II, Congress passed still another law limiting freedom of expression. This was the Smith Act of 1940, which extended the provisions of the Espionage Act to peacetime and made it a crime to distribute written matter or to speak in such a way as to cause "insubordination or refusal of duty in the armed forces." The act also made it a crime to "teach or advocate" or to "conspire to teach or advocate" the overthrow of the government by force and violence.

Thus in the summer of 1941, before the United States was at war, the headquarters of the Socialist Workers party was raided, literature seized, and eighteen members of the party were arrested on charges of "conspiracy to advocate overthrow of the government of the United States by force and to advocate insubordination in the armed forces of the U.S." The evidence produced in court against them was not evidence of the use of violence or the planning of violence, but their writings and teachings in Marxist theory.

Their crime, it appeared was that they were all members of the Socialist Workers party, whose Declaration of Principles, said the judge who sentenced them to prison, was "an application of Marxist theories and doctrines to social problems in America." The judge noted that in the raid of their headquarters a "large number of communistic books were seized." The appeal of the party to the federal courts lost, and the Supreme Court refused to take the case. The Communist party, a bitter rival of the Socialist Workers party and a supporter of World War II, did not criticize its prosecution. After the war, it was itself prosecuted under the Smith Act, and its leaders sent to prison. Here, again, the evidence was a pile of seized literature, the works of Marx, Engels, Lenin, and Stalin.

The First Amendment, said the Supreme Court, did not apply in this case. The "clear and present danger" doctrine laid down by Holmes was still a principle of constitutional law, and now Chief Justice Vinson gave it a bizarre twist. He said that while the danger of violent overthrow was not "clear and present," the conspiracy to advocate that in the future was a present conspiracy, and so, the conviction of the Communist leaders must stand.
The First Amendment was being subjected to what constitutional experts call "a balancing test," when the right of free expression was continually being weighed against the government's claim about national security. Most of the time, the government's claim prevailed. And why should we be surprised? Does the Executive Branch not appoint the federal judges and the prosecutors? Does it not control the whole judicial process?

It seems to me that the security of the American people, indeed of the world, cannot be trusted to the governments of the world, including our own. In crisis situations, the right of citizens to freely criticize foreign policy is absolutely essential, indeed a matter of life and death. National security is better in the hands of a democracy, challenging citizenry than with a secretive, unaccountable government. Still, the courts have continued to limit free debate on foreign policy issues, claiming that national security overrides the First Amendment.

For instance, in the spring of 1986 a debate on problems in the Middle East was scheduled in Cambridge, Massachusetts, between Harvard Law School professor Alan Dershowitz and Zuhdi Terzi, a Palestinian Liberation Organization (PLO) observer at the United Nations. The State Department went into court to prevent Terzi from traveling from New York to Boston to participate in the debate, claiming that Terzi's appearance would hurt the U.S. government's policy not to recognize the PLO. The federal district court in Boston refused to stop Terzi, but the U.S. Court of Appeals accepted the government's argument, ordered Terzi to stay away, and the debate did not take place. Various court decisions have upheld the right of the government to bar many authors and writers from entering the United States because of their political views and activities, for example, the Nobel Prize-winning novelist Gabriel García Márquez and the Italian playwright Dario Fo. Their books could be read, but their voices could not be heard.

A Latin-American journalist Patricia Lara, a citizen of Colombia, was kept from entering the United States in 1996 to attend a journalistic awards ceremony at Columbia University. What was revealed in the legal proceedings was that the Immigration and Naturalization Service had a "lookout book" containing the names of 40,000 people who were to be kept out of this country on grounds of national security. Poet Margaret Randall gave up her American citizenship to live for seventeen years in Mexico, Cuba, and Nicaragua, but then married an American citizen and wanted to regain her citizenship and return to the United States. The Immigration and Naturalization Service insisted she could not return. In court, it quoted from five of her books, saying, "Her writings go beyond mere dissent ... to support of Communist dominated governments." In short, she was being kept out because of her ideas. (After a long battle in the courts, she won her case in 1989.) Again for reasons having to do with national security, the First Amendment has been declared to have "a different application" for men in the military service. This was the language used by Supreme Court Justice William Rehnquist in the Court's decision in affirming the court-martial conviction of Howard Levy, an army doctor who served during the Vietnam War. Levy had been charged under the Uniform Code of Military Justice as guilty of conduct "subversive of good order and discipline" in the armed forces. As a physician stationed at Fort Jackson, South Carolina, Levy had supposedly said the following to enlisted men:

The United States is wrong in being involved in the Vietnam war. I would refuse to go to Vietnam if ordered to do so. If I were a colored soldier and were sent I would refuse to fight. Special Forces personnel are liars and thieves and killers of peasants and murderers of women and children.

Freedom of speech is supposed to protect even the strongest of words, but these words were too strong for Justice Rehnquist, who saw them as hurting the necessary discipline of the armed forces. He said, "The fundamental necessity of obedience ... may render permissible within the military that which would be constitutionally impermissible outside it."

Earlier in the Vietnam War, an army lieutenant named John Dipple had tried to pin the Declaration of Independence to the wall of his barracks. He was not permitted by the commander of the base, and the army's legal office in Washington advised Dipple that he had no First Amendment right to do this.

Another Supreme Court decision, in 1986, ruled that a base commander in the military had a right to approve any written material circulated or posted on the base, saying, "While members of the military services are entitled to the protections of the First Amendment, the rights of military men must yield somewhat to meet certain overriding demands of discipline and duty."

As popular protest asserted itself powerfully during the Vietnam War and helped bring it to a close, in the higher reaches of government,
democracy itself came to be looked on with suspicion.

In 1937 Samuel Huntington, a Harvard political scientist and adviser to presidents, wrote a report for the Trilateral Commission, a group of powerful men from government and business in the United States, Japan, and Western Europe. Huntington pointed to the present movement in the midst of the sixties, saying, "The essence of the democratic surge of the 1960's was a general challenge to existing systems of authority, public and private." Huntington worried about the United States losing its dominant position in the world and wrote of "an excess of democracy." He said there might be "desirable limits to the expansion of political democracy." 17

**Police Powers and the First Amendment**

As we have seen, the national government can restrict freedom of speech in relation to foreign policy, through judicial reinterpretations of the First Amendment. But what about state laws restricting freedom of the press or speech? For over a century, the First Amendment simply did not apply to the states, because it says, "Congress shall make no law." The states could make whatever laws they wanted.

And they did. In the years before the Civil War, abolitionists began to print antislavery literature, the states of Georgia and Louisiana passed laws declaring the death penalty for anyone distributing literature "exciting to insurrection" or with "a tendency to produce discontent among the free population ... or insubordination among the slaves.”

When in 1868 the Supreme Court had to decide if the Bill of Rights applied to the states, Chief Justice Marshall said that the intent of the Constitution was that it should not. Indeed, James Madison had Founding Fathers was that it should not. 18 And in 1868, James Madison had meant to payment from government and forbidding the states from interfering with the free exercise of religion, and the Senate defeated it. Madison’s intent seemed finally to become part of the Constitution.

Madison’s intent seemed finally to become part of the Constitution. When in 1890 the Twelfth Amendment was proposed to the states, Chief Justice Marshall said that the intent of the Twelve Amendment was to prevent any state from depriving persons of liberty, including freedom of speech, of the rights guaranteed by the Constitution. When the Amendment was submitted to the states, the Supreme Court ruled unanimously that the Amendment did not apply to the states.

Public speaking in a highway or public park,” that the Fourteenth Amendment did not affect the “police powers” of the state. 19 This was a localized version of the national security argument for limiting freedom of speech, and it prevailed until 1935. In that year, 170 years after the ratification of the Constitution, the Supreme Court finally said that the states could not abridge freedom of speech, because of the Fourteenth Amendment. 19 However, this still left freedom of speech as something to be balanced against the "police powers" of the state. In the years that followed, the balance would sometimes go one way, sometimes another, leaving citizens bewildered about how much they could depend on the courts to uphold their rights of free expression.

For instance, in 1949, after Chicago police arrested Father Terminiello, an anti-Semitic preacher who had attracted an angry crowd around his meeting hall, the Supreme Court ruled that the Terminiello had a First Amendment right to speak his mind, and the fact that this opposition should not be used as an excuse to stop his speech. It said that one "function of free speech under our system of government is to invite dispute." 20

Shortly after that, however, Irving Feiner, a college student in Syracuse, New York, was making a street corner speech from a small platform, denouncing the mayor, the police, the American Legion, and President Truman, when one of his listeners said to a policeman standing by, "You get that son-of-a-bitch off there before I do." The policeman arrested Feiner, and the Supreme Court upheld the arrest, saying this was not free speech but "incitement to riot," although the tumult and excitement around Terminiello’s speech had been far greater than in Feiner’s case.

The uncertainty continues. In 1965 the Supreme Court overturned the arrest of 172 black students assembled peacefully on the grounds of the South Carolina state capital to protest racial discrimination. 21 But three years later, when a group of civil rights activists demonstrated peacefully on the grounds of a Tallahassee jail, the conviction was upheld. Justice Hugo Black said for the majority that people do not have a constitutional right to "protest whenever and however and wherever they please." 22

The right to distribute leaflets on public streets has been affirmed by the Supreme Court on a number of occasions, even when the street was privately owned, as in 1968 when the Court upheld the right of Jehovah’s Witnesses to distribute their literature in a company town. 23 It affirmed this conclusion (that when privately owned areas are open to
public use, the First Amendment protections are not surrendered) in the 1968 case of union members distributing handbills about their labor dispute at a shopping mall.

Four years later, however, when a group of people were arrested in a shopping mall for distributing leaflets against the Vietnam War, the Court said they were properly arrested. What was the difference between this case and the other? The union people, the Court said, were expressing themselves about an issue connected with the shopping center. But the Vietnam War had nothing to do with the shopping center, so those people had no First Amendment right to express themselves. For a long time, the public has been led to believe in the magic word precedent. The idea is that the courts follow precedents, that if a decision has been made in a case, it will not be overturned in similar cases. Lawyers and judges understand however, what laypeople often do not, that, in the rough and tumble reality of the courts, precedent has as much validity as a Pong-Pong ball. All a court has to do is to find some difference between two cases and it has grounds for giving a different opinion.

In other words, judges can always find a way of making the decision they want to make, for reasons that have little to do with constitutional law and much to do with the ideological leanings of the judges. I would suspect that the decision against the Vietnam leafletters had much more to do with the justices’ feelings about the war than with the fact that the shopping mall was not itself involved in the war.

What of the First Amendment rights of highschool students? Here again we find such conflicting decisions as to make us very dubious about the strength of the First Amendment. In the sixty’s, the Supreme Court said that school officials in Iowa could not prohibit students from wearing black arm bands to protest the Vietnam War. It said, “We do not confine... First Amendment rights to a telephone booth or the four corners of a pamphlet or to supervised and ordained discussion in a school classroom.”

We might have expected after this (if we had retained our innocence about the power of precedent) that the Court would not allow highschool officials to censor student publications. But in 1968, it ruled that a high-school principal in a suburb of St. Louis could cut out two pages of a student newspaper to eliminate stories on teenage pregnancy and the effects of divorce on children.

The Court, straining to show the difference between this and the Iowa black arm band case, said, “The question whether the First Amendment requires a school to tolerate particular student speech...is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech.” As it had done in the case of soldiers speaking their minds, the Court found that students were not the same as ordinary citizens in their rights. “The public schools do not possess all of the attributes of streets, parks, and other traditional public forums.” So the First Amendment, shaky enough for ordinary citizens, is even more feeble when the issue is the right of free speech of soldiers, foreigners, and high-school students.

To this list of groups exempt from the usual protections of the First Amendment we must add another: prisoners. In a decision that at first glance looked like a rejection of the right of prison authorities to read and censor the mail of prisoners, the Supreme Court said that the state of California could not do this... except when the prison officials decided it was necessary for reasons of security. In other words, it left the issue up to the same people who wanted the censorship in the first place.

The point in all this recounting of cases is that citizens cannot depend on the First Amendment, as interpreted by the courts, to protect freedom of expression. One year the Court will declare, with inspiring words, the right of persons to speak or write as they wish. The next year they will take away that right.

A cloud of uncertainty hovers over how the Supreme Court will decide free speech cases. Nor is there any guarantee, if you decide to exercise your right of free expression by speaking in public or distributing literature, that the Supreme Court will even hear your case on appeal. It does not have to take appeals in free speech cases, and your chance of getting a hearing in the Supreme Court is about one out of eighty.

A young black man named Charles McLaurin learned this by hard experience in the year 1965. That summer, he addressed a group of fifty black people in front of the courthouse in Greenville, Mississippi, protesting the arrest of several young black people who had been demonstrating against racial segregation. It was a peaceful meeting, in which McLaurin criticized the conviction and urged that blacks register to vote to deal with such injustices. A police officer told McLaurin to move on. He said he had a right to speak and continued. He was arrested, charged with disturbing the peace and resisting arrest, found guilty by
It wasn’t until I began to teach constitutional law in the South, in the midst of the struggle against racial segregation, that I began to understand something so obvious that it takes just a bit of thought to see it, something so important that every young person growing up in America should be taught: Our right to free expression is not determined by the words of the Constitution or the decisions of the Supreme Court, but by who has the power in the immediate situation where we want to exercise our rights.

One of those immediate situations is the street. Another is the workplace.

**Free Speech on the Job**

As we have seen, for more than a hundred years it was only Congress that was forbidden by the First Amendment to curtail freedom of speech and press. Then in 1953 the Supreme Court wrote freedom of speech into the Fourteenth Amendment and ruled that states could not violate that freedom. But nothing in the Constitution says that private employers may not limit the free speech of their employees.

Not many Americans distribute political pamphlets or speak on street corners, but most Americans work for employers, in situations where to speak their full minds might result in losing their jobs. And while political speakers might have recourse to the courts—weak as that protection is—speakers on the job have no constitutional support.

In 1971 a man named Louis McIntire, who had worked for sixteen years as a chemical engineer with the DuPont Corporation in Texas, published a novel cowritten with his wife that satirized a chemical company. After the book came out, he was fired. He could sue for damages, but he had no constitutional right to his job.

David Ewing, an editor of the Harvard Business Review, discussing this case in *The Nation* wrote, “Corporate employees do not enjoy, and have never enjoyed, such basic guarantees of the Bill of Rights as free speech, free press and due process of law—at least, in activities that concern their employers.”

Stoughton Lynd, a distinguished young historian and a professor at Yale University, visited North Vietnam shortly after the United States began its massive intervention there. He was a strong opponent of our government’s actions. Shortly after he returned from his trip, he lost his job at Yale and, despite his impressive record as scholar and teacher, had...
such difficulty getting another teaching position anywhere that he left the profession and, in his forties, went to law school.

It was clear that his statement on the war, his opposition to American policy, his visit to North Vietnam, and his writings had resulted in his being, in effect, blacklisted in his chosen profession. We had been colleagues together at Spelman College, and when I was a professor at Boston University, I suggested to a member of the history department that they consider Stoughton Lynd to fill a vacant faculty position. A senior member of the department said to me, "Oh, Lynd. I was on his doctoral committee at Columbia. A brilliant young man. But no, there's no point in proposing him. He will never make it through the administration."

When Lynd had finished law school and went to work for a firm of labor lawyers, he wrote a little booklet addressed to working people to give them simple advice on labor law. The booklet started off with the suggestion, "You don't need a labor lawyer." When the booklet appeared, Lynd was dismissed from his job with the labor firm.

Chuck Aitchison, a forty-year-old quality-control inspector for a construction company that built a nuclear energy plant in Texas, spoke out publicly in 1978 about numerous violations of safety regulations at the plant, and at one point walked the highway picking up beer cans to sell for scrap aluminum. The Bill of Rights could give him no protection."

With no constitutional protection, employees sometimes look to the National Labor Relations Board (NLRB) to protect their rights, but this has proved a very thin line defense against the power of employers. In the mid-1980s, a truck driver in Michigan was fired from his job because he insisted on inspecting his rig after it was involved in an accident where its brakes malfunctioned. He appealed to the NLRB, which is supposed to protect members of labor unions against "unfair labor practices." But the NLRB said the truck driver, because he was not a union member, could be legally dismissed from his job."

Private colleges and universities do not fall within the scope of the First Amendment, and so their employees are without constitutional protection for their freedom of speech. Arlyn Boudreau, a nurse for twenty years, had worked for seven years with the Boston University Health Clinic when she and several other workers there began to protest the health and working conditions at the clinic. She and another worker were called in by the clinic director and told that they could either resign and get severance pay, or be fired without pay. They refused and were fired.

The official reason given for firing Mrs. Boudreau was "insubordination." Webster's Dictionary defines subordinate as "placed in a lower class or rank; inferior in order, nature, importance; submissive to authority." She refused to be submissive to authority, insisted on speaking her mind, and was without a job.

Standing in front of the clinic on a picket line protesting the situation, she said, "It's the first time I've been on a picket line in my life. I feel like such a radical I can't believe it. My three daughters, aged 17, 19, and 20, they all came out to picket too." It was 1973, and the nation was getting ready to celebrate the bicentennial of the Declaration of Independence. Mrs. Boudreau kept her independence, although she didn't keep her job."

In reality, the difference between working for a private institution, with no constitutional protection, and working for a public institution, where the First Amendment is supposed to operate, is insignificant. In either case, the power of the employer in the immediate situation is the critical factor, and what legal redress there is must be exercised at the expense of thousands of dollars and years of time, and still remain uncertain."

The writer Jonathan Kozol sought in a public school in a black district of Boston. Presumably, his freedom of speech was covered by the Fourteenth Amendment ("nor shall any state deprive any person of life, liberty, or property, without due process of law") because the Supreme Court in 1971 interpreted this clause to cover freedom of speech. But one day in the 1960s Kozol recited something to his class by the black poet Langston Hughes called "Ballad of the Landlord."

The poem begins:

Landlord, landlord,
My roof has sprung a leak.
Don't you member I told you about it
Way last week?

The poem goes on to describe the man complaining about the steps, broken down too, whereupon the landlord threatens to cut off his heat, to evict him, to throw his furniture out in the street. The man threatens to hit the landlord. Then come the last stanza.
Police! Police!
Come and get this man!
He's trying to ruin the government
and overturn the land!

Copper's whistle!
Pistol blast!
Arrest.

Press gang.
Iron cell.
Headlines in press.

MAN THREATENS LANDLORD
TENANT HELD NO BAIL
JUDGE GIVES NEGRO 90 DAYS IN COUNTY JAIL

Jonathan Kozol was removed from his teaching job by the school committee, which said in its report: "It has been established as a fact that Mr. Kozol taught the poem 'Rabid of the Landlord' to his class and later distributed mimeographed copies of it to his pupils for home memorization."

It is a special irony that in schools and colleges—supposed to be special places for the free dissemination of ideas—it can be dangerous to express yourself. The power of the high-school principal or the school board or the university president or the board of trustees is far more important than the words of the First Amendment.

At Boston University, under the dictatorial power of its president, John Silber in the 1970s and 1980s, faculty who spoke their minds were in danger of losing their jobs or their pay raises.

On one occasion, a professor was fired for publicly challenging the university's policies. The professor was a member of the Fighting for Solidarity, a group of faculty and students who had organized to protest against the university's policies.

A new governing board was elected in 1986, and on the first day of classes, the president announced that there would be no more 'confrontations' in the faculty meetings. The president also announced that all professors would have to sign a statement saying that they would not participate in any protests or demonstrations against the university's policies. The faculty was outraged and decided to file a complaint with the National Labor Relations Board.

Then the university announced that they were going to fire all the professors who had signed the statement. The faculty was shocked and outraged. They called a meeting of all the faculty members to discuss what to do next.

Finally, the faculty decided to go on strike for the first time in the university's history. They refused to teach or attend classes until the university rescinded the firing orders. The university was forced to negotiate with the faculty and eventually agreed to rescind the firing orders.

The strike lasted for several months, and during that time, the university was forced to operate on a reduced schedule and with minimal staff. The faculty was able to win a significant victory, and the university was forced to make significant changes to its policies.

The victory was a significant one, and it set a precedent for faculty members who wanted to stand up for their rights and the rights of their students. The faculty's victory showed that it was possible to win against powerful institutions, and it inspired other faculty members to stand up for their rights.

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the courtroom—freedom of speech is restricted by the power of the people who dominate those institutions.

Secret Police in a Democracy

In our country, so proud of its democratic institutions, a national secret police has operated for a long time, in a clandestine world where the Constitution can be ignored. I am referring to the Federal Bureau of Investigation and the Central Intelligence Agency. It was a CIA official Ray Cline who, when there was talk of the CIA's activities violating the First Amendment, told Congress, "It's only an amendment."14

We might comfort ourselves with the thought that the FBI and the CIA are not as fearsome as the KGB of the Soviet Union or the death squads that have operated in right-wing dictatorships supported by the United States—El Salvador, for instance. The scale of terror is not comparable. A radical critic of American foreign policy is not likely to be picked up in the middle of the night, immediately imprisoned, or taken out and shot. (Although it is sobering to recall that the FBI conspired with Chicago police in 1969 to murder the black leader Fred Hampton in his bed.)

But should citizens who cherish democracy use the standards of totalitarian states to measure their freedom? We want something better than to be able to say we're not as bad as those countries.

The actual apprehension of dissidents is on a much smaller scale in our country compared to theirs. But the mere existence of organizations secretly collecting information on citizens must have a chilling effect on the free speech of everyone. The FBI, according to a Senate report of 1976, has files on 500,000 Americans.

However, the FBI goes far beyond the collection of information. We learned this from a mysterious raid in 1971 on FBI offices in the town of Media, Pennsylvania (its perpetrators have not yet been found). The FBI files were ransacked and then leaked to a small radical magazine that published them. Many of the documents were headed with the word Cointelpro, and only later was it discovered what that stood for: Counter Intelligence Program. The Senate committee investigating the FBI in the mid-seventies wrote in its report:

Cointelpro is the FBI acronym for a series of covert action programs directed against domestic groups. In these programs, the Bureau went beyond the collection of intelligence to secret action designed to "disrupt" and "neutralize" [the FBI's words] target groups and individuals. The techniques ... ranged from the trivial (mailing reprints of Reader's Digest articles to college addresses) to the degrading (writing anonymous poison-pen letters intended to break up marriages) and the dangerous (encouraging gang warfare and falsely labeling members of a violent group as police informers)."

The program began in 1956, according to the Senate committee, ending in 1971 because of the threat of public exposure. (The raid on the Media office took place on March 8, 1971; the FBI decided to terminate Cointelpro April 27, 1971.) The Senate report said,

In the intervening 15 years the Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence.

Again, the excuse of national security. James Madison, back in 1798, had warned against this in a letter to Thomas Jefferson: "Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger real or pretended from abroad."15

In a totalitarian state, we assume that the head of state is aware of the operations of his secret police. In a country like the United States, however, the higher officials may claim that they don't know what is going on. Former Attorney General Katzenbach said he didn't know, but couldn't have stopped it anyway. Officially, the attorney general is higher in rank than the director of the FBI, but the FBI has a power that attorneys general, and even presidents, have been afraid to touch.

It should not be thought that the president or the attorney-general strongly disapproved of these activities, illegal as many of them were. J. Edgar Hoover's successor Director Clarence Kelley told the Senate committee "the FBI employees ... did what they felt was expected of them by the President, the Attorney General, the Congress, and the people of the United States." How the FBI knew what "the people" wanted is not clear. But the bureau did have a fairly good idea of what the president wanted and what would get support in Congress.

There is a long record, at least from 1973 to 1977, of illegal opening of citizens' mail by the FBI. There is also a long record of illegal
members of radical groups, whose names were put on a "Security Index," which at one time listed 15,000. The people on this list were to be picked up and detained without trial in case of a "national emergency." In 1970 Congress passed an Emergency Detention Act, which provided for a set of detention centers (perhaps more accurately, concentration camps) for those people on the Security Index. Although the Act was repealed in 1971, the FBI continued its index. 

When the former head of the FBI's Racial Intelligence Section was asked if during the fifteen years of COINTELPRO anyone in the FBI never gave it a thought, he replied, "No, we never gave it a thought." 

As part of the COINTELPRO the FBI in 1970 tried to discredit Jean Seberg, an actress (famous for her part in the French film "Breathless") who was a sympathizer of the Black Panther party. The FBI suggested she be "neutralized." Seberg was in her seventh month of pregnancy when she read in a newspaper that she had become pregnant by a member of the Black Panther party. It was a false story planted by the FBI. The shock of the story led to premature labor, and the child was born dead. She tried to commit suicide, according to her husband, every year on the anniversary of her baby's death, and in 1979 she did kill herself.

It is hard to tell how many people lost their lives as a result of COINTELPRO, but documents from FBI files, obtained under the Freedom of Information Act, indicated that in the late 1960s and early 1970s, when the FBI was trying to break up the Black Panther organization, nineteen Black Panthers across the nation were killed by law enforcement officials or by one another in internal feuds (some of which were provoked by the FBI).

One of those deaths was that of Fred Hampton, the Chicago Black Panther leader. It turned out that his personal bodyguard, William O'Neal, was an FBI infiltrator, who gave his FBI contact, Roy Mitchell, a detailed floor plan of the apartment occupied by Fred Hampton and others. In a predawn raid, Chicago police fired hundreds of bullets into the apartment, and Hampton, asleep in his bed, was killed. There was an FBI memorandum from the Chicago field office on December 8, 1969 (a few days after the raid):

Prior to the raid, a detailed inventory of the weapons and also a detailed floor plan of the apartment were furnished to local authorities. The raid was based on the information furnished by the informant.

break-ins, "black bag jobs," sometimes called "surreptitious entry." The report of the Senate committee concluded:

We cannot dismiss what we have found as isolated acts which were limited in time and confined to a few petty men. The failure to obey the law and, in the words of the oath of office (of the president), to "preserve, protect and defend" the Constitution have occurred repeatedly throughout administrations of both political parties going back four decades."
Although the COINTELPRO was declared suspended in 1971, the FBI continued to keep tabs on organizations that were carrying on nonviolent political activities, but in opposition to official government policy. In 1978 it was revealed (in documents given to the Center for Constitutional Rights under the Freedom of Information Act) that the FBI had infiltrated and kept records on hundreds of organizations in the United States that were opposed to President Reagan's policies in Central America. There were 3,500 pages of files. The excuse was that the FBI was concerned about terrorism. But the records showed a concern for what these organizations were saying, in speech and in writing. A dispatch from the FBI field office in New Orleans in 1981 said:

It is imperative at this time to formulate some plan of action against CISPES (Committee in Support of the People of El Salvador) and specifically against individuals who defiantly display their contempt for the U.S. government by making speeches and propagandizing their cause."

What happens to members of the secret police who engage in illegal acts? Hardly anything. If there is a particularly flagrant set of actions that are exposed to the public, there may be a token prosecution of one or two minor figures. But they certainly will not be sent to prison, as would ordinary people who interrupted mail or broke into people's homes.

We have as evidence the case of Mark Felt and Edward Miller, two FBI agents, who were the only FBI men prosecuted despite the evidence of thousands of illegal acts brought out by the Senate committee investigating the FBI. Felt and Miller were convicted of authorizing nine illegal break-ins at homes of friends and relatives of members of the Weather Underground (a radical offshoot of the sixties student movement).

There was no evidence that any of these friends and relatives had broken the law, but FBI agents broke in, photographed personal papers, including diaries, statements of political philosophy, and love letters. None of this turned up evidence that helped them find members of the Underground. Felt and Miller could have received maximum prison sentences of ten years. They were not sent to prison, but were fined $5,000 and $3,500, respectively.

The most striking evidence that the FBI was not acting against terrorism or for national security, but was in fact interfering with the First Amendment rights, was its harassment of Martin Luther King.
resources we have for reaching large numbers of people. A poor person, however smart, however eloquent, truly has very limited freedom of speech. A rich corporation has a great deal of it.

The writer A. J. Liebling, who wrote about freedom of the press, put it this way, "The person who has freedom of the press is the person who has the nerve to write a letter to a newspaper, hoping the editor will publish it. It takes more and more money to own a newspaper, and even if you owned one, it is harder and harder to prevent it being taken of 80 percent of the daily newspapers in the United States were independently owned. Forty years later only 36 percent were independent, the rest owned by outside corporations. And fifteen huge corporations own half of the nation's newspaper business."

Three television networks (CBS, ABC, and NBC) control about three-fourths of the prime time on television. With 90 million homes, these networks enormous influence on the American mind. Ten publishing companies have half of the $10 billion in book sales. Four giants dominate the movie business.

Mergers and consolidations have created huge media empires, in which ordinary business corporations have bought up publishers, television stations, and newspapers. For instance, International Telephone and Telegraph (IT&T) merged with ABC television in the mid-sixties, creating the world's largest media firm, worth $8 billion. Ben Bagdikian, dean of the Graduate School of Journalism at the University of California, Berkley, and author of The Media Monopoly, summarized the situation: "When 20 men and women, chief officers of their corporations, control more than half the information and ideas that reach 210 million Americans, it is time for Americans to examine the institutions from which they receive their daily picture of the world."

Not only is the usefulness of the First Amendment dependent on wealth, but when occasionally a state legislature tries to remedy the situation, the corporations plead the First Amendment. This is what happened in 1977 when the Massachusetts legislature tried to require that newspapers and corporations could not spend money to influence public referendum. The idea behind the law was that corporations could so dominate the debate that a public issue be made freedom of speech on that issue meaningless for people without money.

The corporation lawyer, arguing before the Supreme Court, said,
we do not have sufficient information about what is happening in the country on in the world and do not know what our government is doing at home and abroad? Without such information, having the freedom to express ourselves does not mean much.

It is very difficult for the ordinary citizen to learn very much about what is going on, here or in other countries. There is so much to know. Things are so complicated. But what is, in addition to these natural limitations, there is a deliberate effort to keep us from knowing? In fact, that is the case, through government influence on the media, through self-censorship of the media (being prudent, as Mark Twain said), and through the government's lies and deceptions.

There is no democratic conscience at work when the government insists that it must manipulate the press on behalf of its foreign policy objectives. An editor of Strategic Review (A. G. B. Metcalfe, also chairman of the board of trustees of Boston University), a right-wing publication dealing with military strategy, delivered a stern warning to the media in 1998:

In a free democracy where every act, every appointment, every policy is subject to public questioning and public pressure, the mass media have a special responsibility for not impairing, in the name of free speech, the credibility of our duly elected leadership upon whose success in a dangerous world the maintenance of that freedom depends... This is a matter which—in the same of the First Amendment—has grown completely out of hand.

It's the old argument of national security. It goes like this: We are in a dangerous conflict with a ruthless foe; our leaders are taking care of this in the conflict, so don't criticize them too much. Sure, we have a free press, but it must behave responsibly. Trust our leaders.

Metcalfe is a private citizen, but undoubtedly he reflects some of the thinking in the highest circles of the government. Rather than trust the press to be responsible on its own, our government, for a long time, has tried to use the press as an adjunct to official policy. Sometimes it fails, sometimes it succeeds. Here are a few examples of how it was done.

In 1994 the U.S. government was secretly planning to overthrow the democratically elected government of Guatemala, which had decided to take back land from the United Fruit Company. A New York Times correspondent there, Sidney Gruson, thought it was the job of the press to report what it saw. His reports became troublesome. CIA Director
Allen Dulles contacted his old Princeton classmate, Julius Ochs Adler, business manager of the Time, and Gruson was transferred to Mexico City.

In late 1960 the editor of The Nation magazine, Carey McWilliams, was informed by a Latin American specialist at Stanford University, just returned from Cuba, that Cuban exiles were being trained in that country by the United States for an invasion of Cuba. McWilliams wrote an editorial on this and sent copies to all the major news media. He was told that it was a CIA operation. The Associated Press (AP) and United Press International, including the Associated Press (API) and United Press International, including the Associated Press (API) and United Press International, including the Associated Press (API) and United Press International, including the Associated Press (API) and United Press International, including the Associated Press (API) and United Press International. Nine days later, the New York Times reported that the president of Guatemala denied reports of any pending invasion.

The press went on to play the role of judge to the government, even though the evidence of a U.S.-sponsored invasion began to grow. Time magazine (which later confirmed that it was a CIA operation) first talked of Castro's "continued steady little melodrama of invasion," the United States ambassador to the United Nations James J. Wadsworth, who said the United States was not ready, said the United States was not ready, said the United States was not ready.

The White House asked the magazine New Republic not to print a story about the invasion preparations, and it complied. Arthur Schechtman, Jr., later referred to this as "a patriotic act which left me slightly uncomfortable."

Four days before the invasion began, Kennedy told a press conference, "There will be no under any conditions an intervention in Cuba." Kennedy knew that the CIA was using Latin Americans for the invasion. But he also knew that American pilots were flying some of the planes in the invasion. Four of those pilots were killed, but the circumstances of their deaths were withheld from the public.

By the time of that press conference, the evidence of U.S. involvement in Guatemala was clear, yet the press did not challenge the government's claim. Kennedy.

When the Times Latin American correspondent Tad Szulc prepared a story that the CIA was behind the invasion plans, and that the invasion was imminent, big guns of the Times—publisher Hoyt D. Brown, editor Tad Szulc, and columnist James Reston—got on the phone. "The Times" ran a column by Tad Szulc that the CIA and then got together to edit Szulc's story to eliminate references to the CIA and to the imminent of the invasion. Instead of a headline running over four columns, it was given a one-column headline.

In their 1965 essay on the press and the Bay of Pigs, Victor Bernstein and Jesse Gordon wrote:

The press had a right to be angry. It had been tied to, again and again, by President Kennedy, Allen W. Dulles, Dean Rusk, and everyone else. . . . But it is not the duty to be satisfied. Not the duty to swallow everything that officials said. On the contrary, the American reporter, American-equipped expedition was landing at the Bay of Pigs, Secretary Rusk told a group of newsmen: "The American people are entitled to know whether we are intervening in Cuba or intend to do so in the future. The answer to that question is: no." Where was the editorial statement that should have greeted this egregious lie?

The general manager of the Associated Press, retiring in 1964, said, "When the President of the United States calls you in and says, "This is a matter of vital security, you accept the injunction.""

The slavishness of the major media (with a few heroic exceptions) to the power and the bullying of government goes a long way toward nullifying that right declared in the First Amendment, "the freedom of the press." More instances of government influence on the media include the following.

1. When CBS correspondent Daniel Schorr managed to get a copy of the House of Representatives report on the CIA in 1976 (a report suppressed and withheld from the public), he was investigated by the Justice Department and then fired by CBS.

2. At one time the CIA secretly owned hundreds of media outlets and also used the services of at least five individuals who worked for news organizations in this country and abroad, including Newsweek, Time, the New York Times, United Press International, and various English-language newspapers all over the world.


4. In 1991 a new one-hour series titled Today's FBI began on national television. The program got official approval and support from William Webster, the director of the FBI, who was given veto power over all the scripts.

5. A CBS television show on the Vietnam War called Tour of Duty was given free use by the Pentagon of all sorts of military facilities,
prove that the Cubans, with the aid of the Soviet Union, were suddenly sending large amounts of arms to El Salvador—a claim that turned out to be a great deception—CBS correspondent Diane Sawyer and others reported it without a critical examination. It was an attempt to portray the rebellion in El Salvador as a foreign operation rather than arising from the terrible conditions in that country. National Wirewatch, a newsletter for editors of wire-service dispatches, criticized the wire services for “feeding in lock-step fashion” the “party line from Washington on Communist infiltration.”

In general, according to Washington Post writer Mark Hertsgaard, during Reagan’s presidency the press, although claiming objectivity, “was far from politically neutral—largely because of the overwhelming reliance on official sources of information.” Hertsgaard said the press and television were “reduced . . . to virtual accessories of the White House propaganda apparatus.” The role of a critical press was especially important at that time, because the supposed opposition party, the Democrats, “were a pathetic excuse for an opposition party—timid, divided, utterly lacking in passion, principle, and vision.”

All this is not just a recent phenomenon. During World War II, the U.S. government put all sorts of pressure on the black press to support the war. Attorney General Francis Biddle pointed to news stories in the black press about racial clashes between white and black soldiers and said this hurt the war effort; he threatened to close down the black newspapers.

The evidence is powerful that the government has tried, often successfully, to manipulate the press. But, as Noam Chomsky has said, “It is difficult to make a convincing case for manipulation of the press when the victims proved so eager for the experience.”

In short the First Amendment without information is not of much use. And if the media, which are the main source of information for most Americans, are distorting or hiding the truth due to government influence or the influence of the corporations that control them, then the First Amendment has been effectively nullified.

Nevertheless, it would be wrong to say that in the United States we have no freedom of speech, no freedom of the press. There are totalitarian countries all over the world in which one can say that. In the Soviet Union, before Gorbachev’s glasnost policies opened things up, such a flat statement would have been accurate. Here the situation is too complicated for that.
Perhaps the difference between totalitarian control of the press and democratic control of the press can be summed up by the observation of Edward Herman and Noam Chomsky in their book *Manufacturing Consent*: In Guatemala dissident journalists were murdered; in the United States they were fired or transferred. 

By reading the mainstream press carefully (the inner pages, the lower paragraphs, the quick one-day mention) it is possible to learn important things. Occasionally, there is a burst of boldness, as when the *New York Times*, the *Washington Post*, and the *Boston Globe* printed, in defiance of the government, the Pwaran Paper’s, revealing embarrassing facts about the Vietnam War. From time to time, honest, courageous pieces of reporting appear in the big newspapers. A dissident media exists in the United States. Its editors and writers are not jailed. But they are staved for resources, their circulations limited. On the air, there is a glimmer of independence in cable television, which, of course, has only a small corner of the viewing population. There are small local radio stations (for example, WBAI in New York and Radio Pacifica on the West Coast) that run programs not heard on national radio.

Public radio and television teeter between constant caution and occasional courage. The *MacNeil-Lehrer NewsHour*, the leading news program of national public television, concentrates on caution. It loads its programs with establishment spokesmen and cannot discuss any major issue without bringing in government officials and members of Congress. It is open to ultraregressives, but not to radicals. For instance, it has never put on the air the leading intellectual critic of American foreign policy, a man who is a world-renowned scholar, Noam Chomsky. It would be as if, throughout the post–World War II period, Jean-Paul Sartre had been blacklist in France and could not be heard by any mass audience. Courage was shown by Bill Moyers, who interviewed Noam Chomsky in two extraordinary sessions on public broadcasting.

We misleads ourselves if we think that “public television,” because it has no commercial advertising, is therefore free. It depends on government funding, and it worries about corporate donations. Here is an Associated Press dispatch that appeared in the *New York Times* under the headline “Public Broadcasting Head Eyes Donors.”

William Lee Hanley Jr., the new chairman of the Corporation for Public Broadcasting, wants to make educational radio and television programs such a good investment for American businesses that they will readily donate more money.”

The problem with free speech in the United States is not with the fact of access, but with the degree of it. There is some access to dissident views, but these are pushed into a corner. And there is some departure in the mainstream press from government policy, but it is limited and cautious. Some topics are given big play, others put in the back pages or ignored altogether. Subtle use of language, emphasis, and tone make a big difference in how the reading public will perceive an event.

Herman and Chomsky in *Manufacturing Consent* document this with devastating detail. They point out how the American press paid much attention to the genocide in Cambodia (which deserved attention, of course), but ignored the mass killings in East Timor, carried on by Indonesia with U.S. military equipment. They note the very large attention given to Arab terrorists and the small attention given to Israeli terrorism. They comment on the sensational coverage of the break-ins of Democratic party headquarters (Watergate) and the very tiny coverage of the much more extensive series of break-ins by the FBI of the headquarters of the Socialist Workers party.

There is difference of opinion in the American mainstream press, but it is kept within bounds, just as there is difference between Republican and Democratic parties, but also within bounds. It is a party pluralism that gives us a choice between Democrats and Republicans, *Time* and *Newsweek*, CBS, ABC, and NBC, MacNeil-Lehrer and William Buckley.

On a very small scale, I get a taste of American freedom of the press—in its positive side and its limits—back in the mid-1970s. The *Boston Globe*, in the more open atmosphere created by Vietnam and Watergate and the increased skepticism of government, invited me and young Boston radical Eric Mann (he had spent time in prison for trashng the offices of Harvard’s Center for International Affairs) to alternate in writing a weekly column. We were to be the left counterpart of George Will and William Buckley, conservatives whose columns appeared regularly on the *Globe’s* Op-Ed page.

And indeed, our columns appeared, uncensored, for more than a year. Probably no big-city newspaper in the country went as far as the *Globe* in opening its pages to radical views. But then two things happened. A column by Eric Mann critical of Israel was not run. When we went to the *Globe* building to protest, the person who regularly received our
column explained to us sadly that the Globe had to think about its Jewish advertisers.

Not long after that, on Memorial Day 1956, I submitted my column as usual. It was not a traditional Memorial Day statement, celebrating military heroes and past wars, but a passionate (I would like to think) statement against war. It certainly did not fit in neatly with the usual Memorial Day pictures of veterans with caps and flags and the tributes to patriotism. The column didn’t get printed. When I inquired, I was told that, in fact, no column of mine would appear again. There was a new editor of the op-ed page, who explained that the page needed less political material and more family columns. Buckley and Will, I noted, continued to appear. They seemed to constitute a family.

**Lies, Deception, Secrecy**

When the government acts in secrecy, free speech is thwarted, and democracy undermined. With World War II over, the two victorious nations, the United States and the Soviet Union, immediately became rivals in a race for world power. The cold war was on. In such an atmosphere, the openness of a democratic society was bound to suffer.

The National Security Council was created in 1947 to consult with the presidents on foreign policy. Established with it, presumably to feed it information and advise it, was the Central Intelligence Agency. The National Security Council Report #46, prepared in early 1950 under the direction of Secretary of State Dean Acheson, called for a larger military establishment. It also said that people had to "distinguish between the necessity for tolerance and the necessity for just suppression." It worried about the "excess of tolerance degenerating into indulgence of conspiracy.""

The mood of the government became the mood of vigilance, which might be expressed this way: We are good. Our enemy is evil. We mustn’t tie our hands with the law, the Constitution, democratic procedures, or the ordinary rules of decency. In 1954 Lieutenant General James Doolittle, appointed by President Eisenhower to head a commission to advise him on foreign policy matters, reported back that what was needed was an aggressive covert psychological, political and paramilitary organization more effective, more unique and, if necessary, more ruthless than the one employed by the enemy. No one should be permitted to stand in the way of the prompt, efficient, and secure accomplishment of this mission. There are no rules in such a game. Hence any acceptable norms of human conduct do not apply."

The commission was just putting into frank language what the United States, like other imperial powers in the world, had been doing throughout its history. Long before there was a "Communist threat," there was something different now in the language of the Doolittle Commission—the word covert. It is always a tribute to the citizenry when a government must do its dirty deeds in secrecy. The phrase covert operations was defined in the National Security Council Memorandum #46 of March 19, 1954, as "all activities ... which are so planned and executed that any U.S. Government responsibility for them is not evident to unauthorized persons and that if uncovered the U.S. Government can plausibly disclaim any responsibility for them."

When the Doolittle Commission made its report, covert actions had already begun. The CIA had already tried to influence elections in Italy (that had to be secret; wasn’t this country always talking about “free elections”? In 1953 the CIA successfully engineered a coup in Iran to friendly our oil corporations. And in the very year of the report, the United States was preparing to overthrow the government of Guatemala.

The excuse for covert action is that telling the truth will endanger the country, while secrecy will save lives. But secrecy may result in the taking of people’s lives, behind the backs of the public, which if it knew what was happening, might stop it. People were killed in the coup that shut back on the throne of Iran; many more were killed by the secret operations in Guatemala resulted in the invasion of Cuba, thousands died. Secrecy did not save lives.

Not to save lives in Vietnam. The secret underwriting of the elections that were to take place in 1956 to unite Vietnam led to the war over a million lives. What if the American public had been told that the government record was secret? In the Pentagon Papers—that the South Vietnamese government whose independence we were supposedly defending was “essentially the creation of the United States”? And that “only the Viet Cong had any real support and influence on
a broad base in the countryside? Perhaps the movement to stop the war would have started sooner and saved countless lives.

The covert actions in Chile that overthrew the democratically elected government of Salvador Allende in 1973 was, in part, a conspiracy between the CIA and IT&T, according to a 1975 Senate report. It led to a murderous regime whose death squads killed thousands of Chilenos and engaged in torture and mutilation. Suppose the American people had known that our government was interfering in an honest election and putting a military dictatorship in place? Might there not have been a public protest, and perhaps a change in policy?

Is it not that one of the purposes of the First Amendment, to enable the free flow of information, so that policies in the interests of the citizenry can be pursued, so that a few people at the head of government cannot secretly, with no accountability to the public, do things that later make the citizenry ashamed of its own government?

It was the World War II experience that led influential American journalist Walter Lippmann to distrust public opinion, and, therefore, to support government secrecy: "The unhappy truth is that the prevailing public opinion has been destructively wrong at the critical junctures. The people have imposed a veto upon the judgments of informed and responsible officials." Years later, when the United States began military action in Vietnam, Lippmann knew it was wrong. His old words must have haunted him. Because he knew it was wrong, he must have known it was happening in Vietnam, was right in wanting out, and the "informed and responsible officials" were continuing an unpeckingly brutal war.

A huge mythology has been built up in the public mind about secrecy. Perhaps it is the fascination of spy stories or the childhood delight in secrets. But most of the secrets nations make a big fuss about are either not secret at all (the secret is the atomic bomb could not be secret for long), or, if disclosed, would hardly make any difference in the world situation. The cold war atmosphere after World War II has produced a kind of hysteria about secrecy. It led to the execution of the Rosenbergs for allegedly passing atomic information to the Soviets when such information could not have made any significant difference to the Soviet making of an atomic bomb.

Similarly, the press went wild over the "pumpkin papers"—documents supposedly stolen by Alger Hiss and given to Whittaker Chambers—but there was nothing of value, no important secrets, in those famous pumpkins, although they contributed to Hiss spending four years in prison.

The arms race, the fascination with nuclear weapons, has led to secrecy that is dangerous to the public. From the New York Times:

The Department of Energy said today that it was responsible, along with its predecessor, the Atomic Energy Commission, for keeping secret from the public a number of serious reactor accidents that occurred over a 26-year period at the Savannah River Plant in South Carolina. The Energy Department said the failure to disclose the problems illustrated a deeply rooted institutional practice, dating from the days of the Manhattan Project in 1945, which regarded outside disclosure of any incident at a nuclear weapons production plant as harmful to national security.

The Iran-Contra Affair

Covert action and "plausible denial" once again became prominent news stories during the second Reagan administration. A dispatch in the foreign press led to disclosures that were enormously embarrassing to the White House. It is not a tribute to the American press that aside from a few isolated stories here and there, it did not do the kind of investigative work that would have exposed the "Iran-Contra" affair earlier.

The root of the situation was the Nicaraguan Revolution of 1979, in which the rebel Sandinistas overthrew the Somoza regime, a family dictatorship that was long the darling of the U.S. government. The revolutionaries were named after the Nicaraguan rebel Sandino, who in 1920s and 1930s had led a guerrilla force against the dictatorship and against the occupation of Nicaragua by the U.S. Marines. Sandino signed a truce, then was fired to a spot where he was executed by the National Guard based by Colonel Somoza, who established the Somoza dynasty in Nicaragua.

The Sandinistas, a coalition of Marxists, left-wing priests, and asserts nationalists, set about to give more land to the peasants and to expand education and health care among the very poor and long-oppressed people of Nicaragua. Almost immediately, the Reagan administration began to wage a secret war against them, hoping to get rid of
a government that would not play ball as submissively as the Somoza
did.

The covert war against Nicaragua consisted of organizing and train-
ing a counterrevolutionary force, the contra, many of whose leaders
were former National Guard officers under Somoza. The contra
seemed to have no popular support inside Nicaragua and so were based
in Honduras, a very poor country dominated by the United States and
dependent on U.S. economic and military aid. From Honduras, they
moved across the border into Nicaragua, raiding farms and villages;
killing men, women, and children; and committing many atrocities.

When one of the contra’s public relations people, Colonel Edgar
Camorro, learned what they were doing—essentially acts of terrorism
against poor Nicaraguan farmers—and saw that the CIA was behind
the whole operation, he resigned, telling his story to the newspapers. He
also testified before the World Court:

We were told that the only way to defeat the Sandinistas was to use the
tactics the Agency [the CIA] attributed to Communist insurgents the-
where: kill, kidnap, rob and torture. . . . Many civilians were killed in cold
blood. Many others were tortured, mutilated, raped, robbed, or otherwise
abused. . . .

When I agreed to join . . . in 1982, I had hoped that it would be an
organization of Nicaraguans, controlled by Nicaraguans. . . . [It] turned out
to be an instrument of the U.S. government, and specifically of the CIA. . . .

One of the reasons for the secrecy of Reagan’s operations in Nicara-
guas was that public opinion surveys showed that the American people
were not in favor of U.S. military operations in Central America. He
decided he could do certain things openly, like strafing the Nicar-
guans economy with an embargo, which the law permitted him to do if
he declared the situation a national emergency.

But other actions were to be taken secretly. In 1984, the CIA, using
Latin American agents, put mines in the harbors of Nicaragua to blow
up ships Secretary of Defense Caspar Weinberger told ABC news.

“The United States is not mining the harbors of Nicaragua.” The
deceptions multiplied after Congress, responding perhaps to commit-
sence, public opinion, and the memory of our embroilment in Vietnam,
passed the Boland Amendment in October 1984, making it illegal for the
United States to support “directly or indirectly, military or paramilitary
operations in Nicaragua.”

The Reagan administration decided to ignore this law and to find
ways to fund the contras secretly, by looking for “third-party support.”
The friendly government of Guatemala was used to get arms surrepti-
tively to the contras. Honduras was used, as always, for the final
states and, therefore, so dependable, was also used. All of this was illegal,
but the only ones prosecuted were several of example of plausible denial, where an operation is conducted by under-
cover means, so that the president can simply deny he was involved and no one
can prove it.

At Reagan’s news conference November 19, 1986, when asked about
the disclosure that weapons had been sent to Iran (supposedly a bitter
he said four ten that the shipment to Iran consisted of a few token
condone shipments by third parties, that weapons had not been traded
dialogue with Iranian moderates (the purpose was to help the contras).

In October 1986 when a transport plane that had carried arms to the
contras was downed by Nicaraguan gunfire and the American pilot
fell. Secretary of State Schulz lied (“no connection with the U.S.
organization at all”). There was so much nonsense being told the public
that even the president New York Times became irritated and wrote in an
more of the truth from Managua than Washington.”

The whole Iran-Contra affair is a perfect example of the double line
of defense of the American establishment. The first defense is to lie. If
will publicize, but they will not get to the heart of the matter.

Neither the House-Senate committee that once the scandal was out in the open nor the press nor the trial
of the critical questions: What is United States foreign policy all about? How are the
administration to overthrow a government that, whatever its faults, is a great
improvement over the terrible governments the United States has sup-
ported there over the years? What does the scandal tell us about democ-
ercy, about freedom of expression, about an open society?

Out of the much-publicized scandal came no powerful critique of secrecy in government or of the erosion of democracy by actions taken in secret by a small group of men safe from the scrutiny of public opinion.

The media, in a country with a First Amendment, kept the public informed only on the most superficial level.

There are scholarly pundits who shake their heads sadly at the idea that the public should be told the truth about foreign policy operations. In the midst of the Iran-Contra affair, Harvard professor James Q. Wilson came forward to warn that too much was being exposed. Wilson, a member of Reagan's Foreign Intelligence Advisory Board, wrote in the New York Times, "We may disagree over foreign policy, but hardly any American interests are served by extensive leaks about every sensitive operation we may wish to undertake." Wilson did not like the Democratic party acting like an opposition party, as if it were a true two-party system. He had little to fear. The leaks of Democratic opposition were revealed by a leading Democrat, Sam Nunn of Georgia who, as the investigation was getting under way, said, "We must, all of us, help the President restore his credibility in foreign affairs."

But Wilson seemed to deplore the fact that some Democrats were somewhat critical. He looked back nostalgically to a "bipartisan consensus" (the equivalent of the one-party system in a totalitarian state). What he worried about most was "a lack of national resolve to act like a great power."

Machiavelli would have agreed.

Taking Our Liberties

If the government deceives us and the press more or less collaborates with it—to keep us from knowing what is going on in the most important matters of public life and death, we and peace—then the existence of the First Amendment will not help us. Unless, of course, we begin to act as citizens, to put life into the amendment's promise of freedom of expression by what we do ourselves. British novelist Aldous Huxley (Brave New World) once said, "Liberties are not given; they are taken."

We, as citizens, want freedom of expression for two reasons. First, because in itself it is fundamental to human dignity, to being a person to independence, to self-respect, to being an important part of the world, and to being alive. Second, because we badly need it to help change the world and to bring about peace and justice.

We should know by now that we cannot count on the courts, the to assemble, and to petition. We cannot count on the government or the critical citizens. And we cannot count on those who own the media to give us the opportunity to reach large numbers of people.

Therefore, it seems Huxley is right; we will have to take our liberties. Historically, that has always been the case. Despite the Sedition Act after the American Revolution, in which some people were jailed for criticizing the government, hundreds of other pamphleteers and writers insisted, at the risk of prison, on writing as they pleased. They took their liberty.

We need to remind ourselves of individuals who have insisted on their freedom to speak their minds. Emma Goldman was a feminist and anarchist of the early twentieth century whose views on patriotism, (agreeing with Samuel Johnson, "the last refuge of a scoundrel"), on preparedness for war ("violence begets violence"), on marriage ("it has "what a love if it is not free") and on birth control ("a woman should decide for herself whether or not she wants a baby") outraged many people and certainly the authorities.

She lectured all over the United States, and wherever she went, the police were there to stop her. In one month, May 1909, police broke up eleven meetings at which she spoke. She was arrested again and again.

In San Francisco, she spoke to 5,000 people on patriotism: the crowd stood between her and she and police, and the police retreated. When she came back to San Francisco the following year, the police broke up the meeting, using their clubs on members of the audience.

In East Orange, New Jersey, police blocked the entrance to the lecture hall. She spoke to her audience on the lawn. In San Diego, a mob kidnapped her lover and manager and tarred and feathered him. She insisted on coming back to San Diego to speak the next year.

When she lectured on birth control and the use of contraceptives, she was repeatedly arrested. But she refused to stop.

She opposed U.S. entrance into World War I, as most Socialists and anarchists did. She knew she was in danger for encouraging young men to resist the draft, but she continued to speak. She was tried and impris-
ned for two years, and when she came out of prison she was deported from this country. But she continued to speak her mind on American events—the Tom Mooney case and the case of Stecco and Vanzetti—lingering thoughts across the ocean, during her long exile in Europe.  

In the decade before World War I, the Industrial Workers of the World (IWW), a radical trade union, was organizing all workers—skilled and unskilled, men and women, native born and foreign—into "One Big Union." IWW organizers, going to speak in cities in the far west to miners and lumberjacks and steel workers, were arrested again and again. They refused to stop. They engaged in what they called "Free Speech Fights," when one of them was put in jail, hundreds of others would come into that town and speak and be arrested until the jails could not hold them and they were released. But they refused to be silent.

This is always the price of liberty—taking the risk of going to jail, of being beaten and perhaps being killed.

There is another risk for people speaking and organizing in the workplace: loss of one's job. Historically, the only way workers, subject to the power of a foreman or an employer, could have freedom of expression, was to join with other workers and form a union so that they could collectively defend themselves against the power of the employer.

Freedom of the press depends on the energy and persistence of people in developing their own newspapers, magazines, and pamphlets, to say things that will not appear in the mainstream press. Throughout American history, these little publications, pressed for money, have managed to form a kind of underground press.

The Populist Movement of the late nineteenth century spread literature throughout the farm country, north and south. The Socialist press of the early twentieth century was read by 7 million people. Black people, taking a cue from the fine abolitionist newspaper printed by a black man in 1829, developed their own newspapers, because they knew they could not depend on the orthodox press to tell the truth about the race situation in the United States.

When in 1918 journalist J. F. Stone decided he could not count on having an outlet in the regular press, he published his own little four-page newspaper, *J. F. Stone's Weekly* contained information unavailable elsewhere, which Stone, in Washington, D.C., put together by reading obscure government documents and the *Congressional Record*; it soon became a famous source of reliable facts. The first rule of journa-

ism, Stone declared, is that "governments lie," and so alternate sources of information are desperately needed if we are to have a democracy.

The movements of the sixties—the black movement, the antiwar movement, the women's movement, and the prisoners' rights movement—produced an enormous underground press. There were 200 underground high-school newspapers alone.


Underground newspapers sprang up during the war in cities all over the country. In early 1969 J. Edgar Hoover instructed his field offices to target these publications. FBI agents raided and ransacked the offices of newspapers in San Diego, Philadelphia, Phoenix, Jackson, and other places. Advertisers were persuaded to withdraw. One landlord after another agreed to evict newspapers from their offices. The Underground Press Syndicate and Liberation News Service became targets of FBI infiltrators.

By 1971 these attacks badly crippled the underground press. But slowly it made its way back and today around the country community newspapers continue to print material not found in the regular media.

In the past few years, a new form of free speech has become important: "whistle-blowing." A whistle-blower is a person who risks his or her job with the government or with a large corporation to expose truths that have been kept under wraps.

For instance, Pentagon employee A. Ernest Fitzgerald embarrassed his employer in 1969 by telling Congress that a transport plane ordered by the air force would cost $2 billion more than it expected to pay. Fitzgerald was dismissed from the Pentagon, then reinstated but given lesser assignments.

Dr. Jacqueline Verrett, of the Bureau of Foods of the Food and Drug Administration, granted an interview with a television reporter. She was told never to speak to the press again. She was warned (in her words), "not to answer my phone but to get someone else to answer it and say I wasn't there."

Nevertheless, Fitzgerald and Verrett continued to speak their minds. So did others. A safety engineer with the Ford Motor Corporation exposed the fact that Ford, to save money, had chosen a gas tank that was prone to rupture under stress. Peter Faulkner, an engineer,
exposed faults in a nuclear device made by General Electric. He was called in to discover why he had such “deep-seated hostility.” Then he was fired. But he published a book about his experience.116

It takes courage to divulge information embarrassing to the govern- ment, especially when there are laws that can be used to imprison you for doing that. Daniel Ellsberg faced 30 years under the Espionage Act for photocopying the 7,000 pages of the Pentagon Papers and sending them to the newspapers, to expose the truth about the war in Vietnam. But he went ahead.

It is impossible to judge the impact of those papers on the public, but it is reasonable to assume that the several million people who read the Times, the Washington Post, and the Boston Globe learned things about the war they had not known before. This, along with all the other disclosures about the war going on at the time, helped turn public opinion against the war. But Ellsberg, and codefendant Tony Russo, had to risk prison to make the First Amendment come alive.

During the Vietnam War, with the government lying and with the press slow in getting past official propaganda, a whole network of techniques was developed to spread information about the war. There were teach-ins on college campuses, alternative newspapers, rallies, picket lines, demonstrations, petitions, ads in newspapers, and graffiti on walls.

In Southeast Asia an alternative news organization was created—Dispatch News Service—which acts out news items revealing what the government was keeping secret, like the story of the My Lai massacre.

The thousands of acts of civil disobedience during the war were acts of communication, small works of art, appealing to the deepest feelings of people. Art plays a crucial role in any social movement, because it intensifies the movement’s messages. It tries to make up for the lack of money and resources by passion and wit. It communicates through music, drama, speech, demonstrative action, drawings, posters, songs, surprises, sacrifices, and risk.

During the Vietnam War, a very successful commercial artist (Sey- mour Chwast) turned his talents to the anti-war movement, and produced a poster with a simple design and eight large words printed on it: WAR IS GOOD FOR BUSINESS. INVEST YOUR SON.

It was chilling and powerful. It was just part of the work of hundreds of thousands of people all over the country, speaking to millions of people in many different ways, bringing life to the First Amendment and an end to a war.
As parts of the world's oceans are polluted and face the possibility of irreversible damage within 15 years according to scientists, an ocean pollution conference here yesterday suggested that the ocean's "deep waters" are the key to solving the problem.

John V. Sculthorpe of the University of Washington, convening the conference, said: "There exists no longer any virgin, uncontaminated land or ocean in the entire environment, including the high Arctic and the sediments of the deep oceans."


51. See the chapter on European social welfare programs in Harrell Becton, The Cost of Human Neglect (M.E. Sharpe, 1981).


54. Between 1958 and 1988, according to the World Bank, the foreign debt of sub-Saharan Africa increased from $12 billion to $47 billion. An official of the British relief organization Oxfam was critical of the World Bank for putting pressure on these nations to use their resources for cash crops for export instead of food for their own people. New York Times, Nov. 11, 1984.


59. John Rawls, "Justice as Fairness: Political not Epistemological," in Philosophy and Public Affairs (Summer 1978), first in a series he plans to make in his book. He says his intention was practical, that his conception of justice is supposed to serve as a basis of "informal and voluntary agreement between citizens viewed as free and equal persons." He talks about "public agreement in judgment on the reflection ... few agreements, reconciliation through public reason ... social cooperation in the basis of mutual respect ... given a desire for free and uncoerced agreements, a public understanding." Through all this, there is no indication that such an understanding can only be reached "free and uncoerced" among that necessity of the population that constitutes the lower and middle classes and has a pressing need for economic justice. There is no recognition that conflict and struggle are inevitable in the attempt to achieve justice, even if we try to mediate that conflict as much as possible, to shorten the struggle by reaching "a public understanding" among a large enough part of the population to overwhelm the resistance of the rich and powerful.

60. Alec Nove, professor of economics at the University of Chicago, in his book The Economics of Planned Socialism, (George Allen & Unwin, 1976), has tried to work on a common sense approach to a social economy. He believes only is important—that is, small enterprises wherever possible. He also thinks no one need get paid more than two or three times anyone else. He says, "We should envisage the degree of inequality which is necessary to elicit the necessary effort by free human beings... There seems as good reason to make some individuals many times richer than others in order to elicit the necessary incentive effect." pp. 215-216.


62. Reeve Vrooman and Lynn Cannon, The American Perception of Class (Temple University Press, 1976) make an important distinction. They say it is true that the working class in the United States has been unsuccessful in forming its own political party or in making any radical changes in the economic structure of the country. But, they note, this is no proof of the lack of class consciousness. What is does prove is the lack of strength of American workers against the enourmous power of the capital class. After a great deal of research into the self-perceptions of American workers, the authors found "impressive evidence documenting the class consciousness of American workers was already on the record." S. Scott Terkel, Working (Pantheon, 1975), xi, xiii.

63. For an account of the early popular actions in the New Deal period see Maurice Halberstam, Seeds of Revolt (Houghton, 1974). For the strike of the New Deal period, see Irving Bernstein, The Union Makes a Fights (Houghton Mifflin, 1960).

64. See the discussion of this in Peter Irons, The New Deal Lawyers (Princeton University Press, 1962).


CHAPTER EIGHT: Free Speech


4. Miller, Crisis in Freedom, 74.

5. Ibid., 76.

6. For an analysis of the early interpretations of the First Amendment, see Levy, Freedom of Speech and Press.


10. We should note that when Thomas Jefferson became President in 1801, although the Sedition Act had expired, prosecutions of critics of government for sedition had continued. Jefferson had written to Madison back in 1800 that he accepted the common law interpretation of sedition as "a false fact." For Jefferson's attitude to civil liberties, read Leonard Levy, Jefferson and Civil Liberties (Quadrangle, 1971), although Levy offended many hearts of Jefferson by his criticism.


12. Speck pointed out that former Secretary of State Henry Kissinger, former CIA head William Colby, and other former CIA men of high rank were not prosecuted for
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failing to let the CIA see their manuscripts in advance. Frank Snepp, Declassified Internal (Vantage, 1989).


14. Schonbrun v. U.S., 391 U.S. 77 (1968). In a later case, Abrams v. U.S. (1940), Holmes and Justice Louis Brandeis disagreed from the majority decision to uphold Abrams’s conviction. Holmes wrote in his opinion: “I think we should be eternally vigilant against attempts to check the expression of opinions that we loathe.” Why Schenck’s leaflets were a “clear and present danger,” and Abrams’s leaflets were not, remains a mystery.

15. See the biography of Delos by Ray Ginger, The Branding Cross (Karger University Press, 1945), 36.


17. Peterson & Fite, 34.

18. For an account of this case, see H. C. Peterson and Gilbert C. Fite, Opponents of War 1917-1945 (University of Washington Press, 1972), 78-97.


20. Ibid.

21. Dennis v. U.S., 341 U.S. 490 (1951). In later decisions, the Court seemed less ready to consider radicals for merely teaching and advocating doctrines of violent revolution. And ten years later, in Brandenburg v. Ohio, 395 U.S. 444 (1969) the Court ruled that a state can prosecute only for speech that advocacy immediate unlawful acts and when the advocacy is likely to have an immediate effect. But, as Straubinger Lynd pointed out in his article “Brandenburg v. Ohio: A Speech Test for All Seasons?” there was no assurance, knowing the erratic behavior of the Supreme Court, especially in times of international tension, that it would hold to this test of “imminent action.” University of Chicago Law Review (Fall 1977).

22. See The Dealer (May 1968), published by the Civil Liberties Union of Massachusetts.


29. Davis v. Massachusetts 167 U.S. 41 (1900). In Massachusetts it was Oliver Wendell Holmes, sitting on the Supreme Judicial Court of Massachusetts, who wrote the decision against the man Davis, who wanted to speak on the Boston Common without having to get permission from the mayor.


45. Jonathan Kozol, Death at an Early Age (Bantam, 1979). The text of the Langston Hughes poem is on page 131.

46. Helen Epstein, who wrote an article on Silber that appeared April 23, 1979 in the New York Times Magazine, reported that faculty members were afraid to give their names in speaking to her about Silber.


48. This quotation and other material in this section is drawn from the Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Book 1 (1976). (Hereafter cited as Church Committee report.) This was the Senate committee sometimes known as the Church Committee, headed by Senator J. Howard Maguire, Republican from South Dakota.


50. Church Committee report, Book 3, 189.

51. Church Committee report, Book 5.


54. The Emergency Detention Act was part of the 1970 Internal Security Act. Detention plans actually began before World War II. In 1948 J. Edgar Hoover had proposed a law that would have been known as the Detention Bureau Act. This was explained in The United States, Political Repression in Modern America (Schacterman, 1974).

55. Church Committee report, Book 1, 140.

56. Organizing Note (a newsletter on the activities of the FBI and other national security organizations), Sept. 10, 1979.


58. Church Committee report, 235.


62. The Church Committee report deals with the campaign against Martin Luther King on pp. 434-435.

63. See David Garrow, The FBI and Martin Luther King (Penguin, 1983).

64. Ibid.


the freedom of speech we practice is a creature of enterprise... the abuses in which we engage are more serious than the end, form rather than content, supported rather than overcome, and that they are limited in scope, depth, and meaning by cultural biasing... We are not as free as those who hold the raw power.


73. Strategy Review (Summer 1975). This view by a private person was similar to that expressed by William Westmoreland, who was commander of U.S. forces in Vietnam during the war, and who on March 20, 1975 (according to a USA dispatch on that date) told a college audience in Nebraska that the armed forces could not win without public support and therefore should control the new media to win.

74. Harrison Salisbury, Without Fear or Favor: The New York Times and Its Times (Times Books, 1972), based on his many years as a correspondent for the Times, has a good deal of information on the way Times editors and publishers played ball with the U.S. government.

75. The details of the press blackout on the Bay of Pigs preparations are told by Victor Bernstein and Jesse Gordon, "The Press and the Bay of Pigs," Columbia University Forum (Fall 1975).


80. In These Times, Feb. 3-9, 1976.

CHAPTER NINE  Representative Government: The Black Experience

4. John Locke, Second Treatise of Government, of which there are many editions. One of them is Peter Laslett, ed., Locke's "Two Treatises of Government" (Cambridge University Press, 1960).
6. This point is made in John Dunn, The Political Thought of John Locke (Cambridge University Press, 1969).
7. Federalist No. 10.
8. Federalist No. 43.
10. Various statements of black defiance to this and other periods of American history can be found in Herbert Aptheker, A Documentary History of the Negro People in the United States (Citadel, 1971).
19. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969). The Nixon administration had tried to delay court-ordered desegregation of thirty-three Mississippi school districts, and the Supreme Court was unanimous in insisting that segregation must be ended "at once."