

Stealing Liberty With a Fountain Pen: *Censorship in the Reagan Years*

by Gary T. Marx

Liberty Denied: The Current Rise of Censorship in America by Donna A. Demac (New York, PEN American Center, 1988)

Woody Guthrie in one of his more memorable lines sang that "some men will rob you with a gun and some will use a fountain pen." That observation could also be applied to government's robbing citizens of their civil liberties.

They can do this with tanks in the streets and armed guards or by withholding information and manipulating culture. President Reagan offered an example of the latter—the swipe of his pen on little noticed executive orders served to rob the American people of aspects of our right to know. His actions helped create a climate in which freedom of expression became more precarious, public discourse narrowed and censorship in a variety of forms increased.

The Reagan administration's efforts to stifle dissent, to censor, and to shape public opinion by withholding information reveals an executive branch which had little faith in its citizens and which failed to understand the importance of free and open communication for democracy, business, science and art. Control of people's lives through the withholding of information and the shaping of public attitudes is less immediately painful than direct coercion, yet it is no less a threat to democracy. Indeed it may be a greater threat since it is often invisible and taken for granted. Its silent, shady growth invites despotism.

Even when seen, limitations on freedom of expression and access to information are often dismissed as exceptions, or justified on grounds of national security or cost cutting. Certainly there are times when information must be protected. But as Donna A. Demac makes clear in *Liberty Denied: The Current Rise of Censorship in America*, the orgy of restriction seen in this last decade went far beyond any legitimate need.

The virtue of Demac's important book is to show us the pattern of recent censorship. The author is a lawyer, writer and educator who has published extensively on issues of public access to information. She performs an invaluable service in documenting the increase in censorship in so many diverse areas. She helps us to see the forest and to realize that with enough bad apples the problem becomes the barrel itself.

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Consider these examples:

- changes in the Freedom of Information Act that make it more difficult for citizens to obtain government information
- changes in the classification system so that federal officials have the authority to reclassify information already in the public domain and to restrict unclassified documents.
- subjecting hundreds of thousands of federal officials and employees of government contractors to secrecy agreements, pre-publication reviews, and routine polygraph and drug testing
- threatening newspapers with criminal prosecution for publishing "sensitive" but unclassified information
- the curtailment or elimination of federal information collection and publication programs providing scientific, technical and statistical data
- export controls restricting the dissemination of unclassified scientific and technical data
- travel and publication restriction on academic researchers
- restraints on contacts between U.S. and foreign citizens
- new FCC restriction on radio and television programs
- massive surveillance programs directed against groups that dissent from the administration's Central America policies
- court rulings that serve to increase libel suits directed at journalists, broadcasters, publishers and film producers
- a Supreme Court ruling that gives school principals broad authority to censor student newspapers
- the banning of books, films, and classroom materials in schools (among those most frequently banned—*The Catcher in the Rye*, *The Adventures of Huckleberry Finn*, *The Canterbury Tales* and 1984!)
- expansion of private surveillance groups monitoring the speech of teachers and those in mass media

Demac locates such actions in their historical context. She hopes that awareness of earlier First Amendment battles will enhance our understanding of what is at stake and what we must protect. Her clearly written and balanced book is accessible to high school and college students, as well as the general public. It should be widely used in communications; library science, history, political science and sociology courses that deal with freedom of expression in any of its forms.

Liberty Denied includes chapters on censorship in various guises and contexts—schools and libraries; corporations and media; libel suits; pornography; surveillance of political dissent; secrecy in government; bureaucratic restriction on access to government information; government controls on the press, media and travel and restriction on academic and scientific research.

Indicative of the new restrictions on information is Executive Order 12356 issued by President Reagan in 1982. This reversed the trend of the four previous administrations toward increasing the circulation of government information. Executive Order 12356 modified the prior classification system by establishing a presumption in favor of classification when officials are in doubt. It also eliminates a previous requirement of automatic declassification after a prescribed length of time, extends new authority to reclassify information already in the public domain, and extends federal classification to nongovernment sponsored basic research.

Administrative censorship can also be seen in decisions about what information government routinely collects and distributes. One way to limit public information is simply not to collect it. As a result of budget cutting, deregulation and paperwork reduction, Americans are now denied access to a vast array of information they previously had. The Office of Management and Budget is a major force behind this. Its actions and related actions of dozens of executive branch agencies have made it harder for public groups to gain access to documents from regulatory agencies; scaled back data-collection programs in areas such as industry compliance with environmental laws; privatized federal agency libraries; and eliminated thousands of federal publications.

Current threats tend to be more subtle than those of the past when unpopular speakers were denied a pulpit or their press was closed down. Many recent actions seem to violate the spirit rather than the letter of the law, or they involve changing the letter of the law to require censorship. They also serve to undercut the ethos which underlies the Freedom of Information Act. Victor Hugo captured this when he wrote of the "first and foremost" right of all is "the right of informing one's mind before one votes." In our information rich society the meaning of the First Amendment has expanded to include the right to have access to information, as well as the right to express opinions. Indeed, in a complex technological society, the latter right is empty and unproductive if we are denied adequate information on which to form intelligent opinions.

If the trends Demac notes are to go unchecked, America will become a much less free, dynamic and internationally competitive society. Unleashed from democratic controls, secrecy becomes addictive, censorship expands, and the appetite for surveillance becomes insatiable.

In his introduction to the PEN sponsored study Arthur Miller notes that current book banning, official secrecy, and

other forms of censorship suggest that as a society we are "still struggling to define what freedom entails." In a dynamic society that struggle will continue and reasonable people may disagree as to where the lines should be drawn (e.g. current disagreements about publishing pornography or about whether the government or the private sector should make available government collected data of narrow interest). But for starters the current administration could reverse the past harm by several simple steps. What can so easily be taken away by executive order can also be easily given back.

Donna Demac's book convincingly and sparingly documents the problem. In an article that should be read as an accompaniment, John Shattuck and Muriel Spence ("A Presidential Initiative on Information Policy," Benton Foundation, Washington, DC, 1988) tell us what to do about it. They call for a new presidential initiative with respect to information policy. This should have as its cornerstone the free and open communication of information, except where there is a demonstrable case for the contrary. They propose changes in seven areas including the classification system, export controls on unclassified scientific data, national security directives, prepublication review, and the Freedom of Information Act. Many needed changes could be brought about via new Executive Orders. The President must also set a strong moral and educational tone in showing that free and open communication lies at the heart of the American system.

We must restore and strengthen the tradition of free speech and access to information that eroded during the 1980s. But it is also important to extend the Bill of Rights to areas such as the work place, where there is minimal protection of freedom of speech. Connecticut stands almost alone with its 1983 law recognizing the speech rights of private sector employees. It is also important to see that new information technologies involving satellites, fiber-optics and the merging of the telephone and the computer be used to enhance democratic communication. It would be tragic if the hard won freedoms gradually built up over several hundred years were undermined by a technological endrun which (while not altering the legal environment) could also result in the new information tools—by default—being available only to the rich and powerful.

Of course by historical and comparative standards the United States remains a very free society. But this has not been achieved by self-congratulation, or blind faith in authority. As Thomas Jefferson wrote, "every government degenerates when trusted to the rules of the people alone. Even under the best forms, those entrusted with power have, in time and by slow operation, perverted it into tyranny." As the masthead of the Sun Flower County, *Mississippi Freedom Newspaper* proclaimed, "Freedom Is a Constant Struggle." The free flow of information is a vital ingredient in this. □