

THE FREE SPEECH MOVEMENT

64. Let Sleeping Dogs Lie

I participated in a few marches and demonstrations, and did the obligatory public incineration of the draft card. Most of my time, though, was spent behind a printing press. The revolution ran on paper and ink and the Berkeley Free Press was where it all came from. The anti-war and civil rights movements kept us running at full capacity.

In response to the difficulties of addressing the nonstudent, nonactivist population (preaching to the saved was fun but what we wanted was to win some souls from Satan) we came up with a clever technique. What piece of paper will no one throw away, will people actually pass along to someone else, regardless of political inclination? You got it. Money, banknotes, the old mazoola, scratch, gelt, yenom. We ordered up dozens of rubber stamps saying "Get out of Vietnam," and simply stamped both sides of every bill that went through our hands. The idea caught on, and it was the unusual Dead President that wasn't the grudging bearer of this message. As a further protest, it was common to see ordinary U.S.-flag postage stamps affixed upside-down, as a symbol of distress.

In the middle of summer 1966, I drew the unwelcome attentions of the government when, quite gratuitously, I sent a letter to my draft board that began:

Gentlemen: Please remove my name from your mailing list, as I am no longer interested in your organization.

And continued in much the same vein for several pages. I really don't know why I did this. It seems unreasonable in retrospect, but this was about the time that I was doing my best to win the "all-time most civil rights arrests" award, and getting busted for possession of a smart mouth and failure to kiss ass was more or less my style.

I had registered for the draft when I turned eighteen, and had gone

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to the Oakland draft board for a preliminary physical. The result was that I was classified 4-F, because of my poor eyesight. As a student, I hadn't bothered to get reclassified 2-S, figuring that a 4-F was good enough. Of course, the Army can draft anybody, anytime, for any reason, but the need for half-blind rabble-rousers is so limited that I felt myself safe.

I guess that the letter was the last straw, or perhaps it merely drew me to their attention, but a month or so later I received the official communication that turns the blood to icewater:

Greetings from the President of the United States. You have been selected . . .

Drafted. Reclassified 1-A and drafted, sure as God made little green apples. Shit, oh dear.

My draft physical (which I passed with flying colors, even though I couldn't count my fingers at arm's length without my glasses on) ended with an intelligence test. The Army Alpha is cleverly designed, consisting of four sets of basic questions, increasing in difficulty and contrived to show just about everything that the Army wants to know about how well educated you are and where your intellectual strengths might lie. The four types of questions concern mathematics, diagrams of exploded boxes that indicate spatial conceptualization, word skills, and comparison of objects or ideas—the "A shoe is to a foot as a glove is to a: 1) hand 2) arm 3) head 4) leg" kind. There are twenty-five of each kind of question, making a hundred questions all told. I believe that there is a time limit of an hour. I got them all correct but one, further arousing the mistrust of the sergeant in charge.

After the test, the group of conscripts was asked to sit at school desks and write a short essay. I am not at all sure what we were asked to write about, perhaps it was the Army, or patriotism, or America. I took the

opportunity to vomit out a Niagara of vitriol, revealing in excessive detail my feelings about the war, the Army, the draft, the president and the government in general. I was still writing long after everyone else had gone. The same suspicious sergeant took the thick sheaf of papers from me, and said that they would be contacting me in the near future.

Sure enough, Army Intelligence called me up in about a week, wanting to chat. On the advice of my attorney, Art Wells, we met in his office. They would ask questions, and as soon as I would climb up on the soap box, Art would shut me up.

I had recently finished reading C. Northcote Parkinson's humorous

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but deadly accurate book analyzing the nature of bureaucracies, *Parkinson's Law*, wherein he gives useful advice about how to get things from them when they wish to obstruct and, more important, how to avoid giving them something when you don't want to. In this case, the thing they wanted that I didn't want to give them was me. Basically, his advice was: write the bureaucracy a letter, and time the response. This reveals the period in which the letter will sit on somebody's desk, along with your file. When the letter has been answered, the file will be returned to its proper place. Next, write them another letter, and if the time for a response is just about the same, you have discovered the period of time that your file is moving around within the office. Now, start writing letters within the period of response. Subject matter is unimportant, as they must respond to everything, without regard to content. Since your file now is kept in constant motion and never gets back into the filing cabinet where it belongs, but is always in transition from one department to another, *sooner or later, they will lose it!* When you stop getting replies, stop writing immediately, and you will essentially have ceased to exist, as far as they are concerned. I did just that. I wrote letters like,

Dear Sirs:

As I am not the sole surviving son of a veteran killed, wounded or missing in action, I request a deferment for this reason.

Thank you for your attention to this matter.

Dear Sirs:

As I am not currently the sole support of my family, I request a deferment for this reason.

Thank you for your attention to this matter.

Dear Sirs,

As I am not currently enrolled in an accredited four-year college or university, I request a deferment for this reason.

Thank you for your attention to this matter.

Dear Sirs,

As I am not an ordained minister of the Gospel, Catholic priest, or rabbi, I request a deferment for this reason.

Thank you for your attention to this matter.

And so on and so forth, *ad nauseam*.

My correspondent was a seriously dumb young woman named

Debby Dirt or something like that, with big, loopy, subliterate handwriting—the kind that has little circles over the lowercase *i*'s, and happy faces in them if she is cheerful or wants to seem so. This poor child was the officer in charge of my case, and had a hell of a time figuring what I was up to.

Dr. Jerry Rosenfield wrote a letter to the draft board that stated, in essence, that I would make one damned piss-poor soldier, that inducting me into the armed services would be to court a resounding failure, that they had better try it on somebody else. I do not remember that there was a response.

Sure enough, after some time of this, they lost my file, and I heard nothing whatever from them until late 1972. By then the war was over, and my ass was saved. The file had, apparently, fallen (or been pushed) down behind a filing cabinet. I guess now with everything on computers, this trick won't work anymore. But it might!

Paul Richards: Years later I asked Aubry Grossman, a left-wing lawyer who defended many of the draft resisters, "Aubry, you know, I went against the draft, and I fought for years, and all of a sudden they stopped coming after me. Why?" He said, "Well, in late '68 or early '69, a decision was made within government circles to stop prosecuting war resisters. Basically it was because the judges' kids were not going, either." There was a crescendo of resistance within the bowels of the system. Tons of conscientious objector forms; legal appeals that the government had to fight at great cost; the system was breaking down. That's how you got your file lost. You know what that means? It means that we owe our lives to the peace movement.¹

Tom Weller got drafted too, but took a different tack. When the rank of dewy-cheeked boys was asked to stand forward, thereby indicating that they were entering the armed services of their own free will and volition, it was the fashion not to do so. So much so, that, at least at the Bay Area draft boards, the draftees were told in advance that if they did not wish to stand forward, a second officer would come in and deal with them later. Tom did not stand forward, but explained that he would be glad to, that he had no objections whatever to the Vietnam conflict, or war or fighting in the Army, but as long as he was being deprived of his liberty and happiness, with a chance at the brass ring of death thrown in for nothing, all he wanted was to be given a jury trial, and to be represented by a lawyer. This stopped them cold in their tracks. The ACLU jumped on the case with cries of glee, and really got their claws in. The

case went before the U.S. Supreme Court, generating mountains of briefs and a whole shelf of handsomely bound books, stamped in gold on the cover and spine *The People of the United States v Thomas William Weller*. Tom's lawyers were the big guns, running rings around the wimpy U.S. Attorney's office. Just when things were getting really interesting, the war ended and the case fell into desuetude.

Tom Weller: My draft case was a legal masterpiece. I got Peter Franck in on the deal at the outset. He planned a campaign that would push all the right buttons, plug all the loopholes. Most draft cases, after all, were the haphazard result of some poor bozo just standing up for his beliefs as best he knew how. Mine was a well-oiled machine.

Insofar as there was a legal crux to the case, beyond just a desire to a) avoid the draft and b) screw the bastards, it was the question of due process in the draft board procedure. The system had been set up during World War I to give the draft some kind of decent human face. The theory was that your friends and neighbors—a local bunch of plain folks constituted as the draft board—would review cases on an informal, nonadversarial basis, with an eye to preventing hardship and injustice. This was probably a good idea, and worked fine as long as there was a political consensus.

Clearly, as soon as you start demanding a lawyer, a transcript, *habeas corpus*, *e pluribus unum*, or whatever, the whole thing is up the spout.

So we peppered these poor folks for years with letters, demands, appearances, objections and whatnot. By the time they finally told me to shut up and go to war, there was an apparent mountain of denied rights and procedural errors, all carefully engineered by Peter to overcome the specific problems or omissions that had defeated previous objectors.

When the time came to take that final nonstep forward, everything had been politely arranged in advance between my lawyers and the government's. The patriotic lads who had taken that step into their country's service were herded off by a sergeant, who

remarked, "You goddamn monkeys get your fucking asses through that door, right now!" The officer said to me, the traitorous hippie shirker, "Please come this way, Sir." It hardly seemed fair, I thought. I was taken to be interviewed by the FBI man, a kindly, pipe-smoking gent who could have had a career playing Santa Claus.

Some weeks later I got a letter from Cecil Poole, the then U.S. Attorney, asking me to come down at such-and-such a time to be arrested. All very civilized. Later, when the case came before the Court of Appeals, Poole was *amicus curiae* on my behalf, and bought us all lunch.

The case went to the Federal Court, then up to the Supreme Court,

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then back down to the Court of Appeals, apparently just because everybody was tired of doing it in the usual order.

The United States of America v Thomas William Weller sounded like a mismatch, and it was. They didn't have a chance.

The American Civil Liberties Union sent out its big guns. I remember when my attorney entered the courtroom. He had flowing silver hair and, for Christ's sake, a cape. It couldn't have been more impressive if he'd ridden in on a white horse.

The U.S. attorney was a skinny kid in a Penny's corduroy coat. He approached with tiny eyes agleam. Claspng the great man's hand, he said in a tremulous voice, "I've always dreamed of meeting you, Sir." I took this for a good sign.

The Court of Appeals took the case under consideration, and finally they mislaid it. Or something. They never made any decision. Can they do that? I don't know, but that's what they did.²

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