

Preface

This book grew out of an undergraduate seminar I was asked to teach in the winter of 2000. The request was that I teach a seminar on the subject of the cold war and the Constitution to a group of elite American Studies majors. I agreed, thinking that I could simply combine many of the important free speech cases from the era with some of the key historical works about the period. When I began to examine the state of historical scholarship concerning the so-called McCarthy era of the late 1940s and early 1950s, I quickly realized that my task would not be nearly as simple as I had assumed it would be. I discovered that at various points in the 1990s, previously unknown documents had been revealed that effectively turned the state of historical scholarship on the subject upside down. The view that I had grown up with—that all the talk about espionage on the part of American communists had been grossly exaggerated by anticommunists, simply as a fig leaf to cover what amounted to little more than the persecution of those who held unpopular political views—now seemed to have been totally inaccurate. It now appeared that the Communist Party of the United States had, in fact, been run completely by the Soviet government in Moscow and that American communists had been heavily involved in espionage or the facilitation of espionage.

Although these revelations no doubt challenged many of the most basic assumptions I held about the McCarthy era, my many years as a scholar of free expression made me realize that the insights of free speech theory were relevant to a full understanding of the period. Yet to date, none of the current group of historians to have spoken on the subject has ever sought to add that theoretical perspective. That is exactly what I intend to accomplish with the publication of this book.

My goals here are threefold. First, I hope to reshape the modern historical debate about the McCarthy era by adding the perspective of free speech theory. Second, I hope to use the McCarthy era as a type of First

Amendment laboratory, and in that way enable me to rethink many fundamental issues of free speech theory in light of the insights derived from synthesizing First Amendment thought with the insights of historians of the era. Finally, I hope to fuse two distinct areas of scholarship in a manner that will benefit both forms of intellectual inquiry.

I should make clear at the outset that although history plays an important role in this book, I am not a trained historian, and I do not purport to provide newly discovered historical information to an already crowded field. To the extent the book describes historical events, then, it does so by drawing on the works of the many great historians who have recently written on the subject. However, I do consider myself to be an experienced constitutional scholar and free speech theorist, and it is by blending my insights from that perspective with the valuable recent work of professional historians that I hope and expect to make my contribution.

There are many people without whom this book would not have been possible. They deserve special thanks. Initially, I should note that although all but one of the chapters in this book were written especially for the book, two of the chapters were published as articles, coauthored with former law students. Chapter 5 is a modified version of the article, Martin H. Redish & Christopher McFadden, *HUAC, the Hollywood Ten, and the First Amendment Right of Non-Association*, 85 *Minnesota Law Review* 1669 (2001). Chapter 6 is an expanded and modified version of the article, Martin H. Redish & Kevin Finnerty, *What Did You Learn in School Today?: Free Speech, Values Inculcation, and the Democratic-Educational Paradox*, 88 *Cornell Law Review* 62 (2002). Both Chris McFadden and Kevin Finnerty deserve substantial credit for the portions of the chapters that are derived from their respective coauthorships. Also, Scott Watson contributed significantly to the shaping of Chapter 4. A version of that chapter was published in the *Cincinnati Law Review*. All articles are reproduced with the permission of the respective law reviews. I should also note that portions of Chapter 3 are derived from Martin H. Redish, *The Role of Pathology in First Amendment Theory: A Skeptical Examination*, 38 *Case Western Reserve Law Review* 618 (1988).

The book benefited from several workshops that I conducted or symposia to which I contributed. In particular, I was helped significantly by input from the faculties of Emory Law School, the University of Minnesota Law School, the University of Illinois College of Law, Northwestern University School of Law, and the University of Cincinnati College of Law, where I spoke about Chapter 4 as the 2004 Robert S. Marx Distinguished Lecturer.

The book also benefited substantially from the tireless work of Northwestern Law students who helped me with research over the last several

years, including Andrea Ellman, Ellen Endrizzi, Ethan Hastert, Betsy Judelson, and Andrew Mathews. My administrative assistant, Ingrid Hoffius, made the book possible with her many hours of efficient work. Also, Dean David Van Zandt of the Northwestern University School of Law, who provided me with substantial research support and encouragement as I toiled over the pages that are to follow, was enormously helpful to me.

Finally, my most special thanks are reserved for the three people in this world that I love and admire most, my wife Caren, and my daughters Jessica and Elisa. Here's hoping that none of them will ever have to live through another period in American history like the one described in this book.