

Back around 1985, I developed interest in subliminal recording as an adjunct to my study of hypnosis. It turned out there was a local man who was well educated on subliminal recording, and he contacted me wanting to do a rather involved environmental recording project. I had a 16-track recording studio at the time, and so I proposed that I do the recording project for him in exchange for his teaching me everything he knew about subliminal recording. We did the recording project and went on to experiment with recording and relaxation techniques.

My interest in subliminal recording specifically issued from having studied the work of Robert Monroe, who used so-called difference tones (happy to explain some of this stuff if you are interested . . . if I get off track here this piece will go on forever . . .) to entrain the two hemispheres of the brain using a technique Monroe called hemi-sync. The purpose of hemi-sync was to tap into the increased suggestive condition evident when the brain's neurological hardware operated at the theta state (i.e., that dreamy, misty mental state we experience when falling asleep or awakening), or around 4-7 Hertz, by aligning both hemispheres of the brain to operate in that frequency range.

I was reading everything I could find on the subject and was trying to imagine ways to harness it. Did a lot of research about the work of Georgi Lozanov and Ivan Barzakov, Bulgarians who during the Cold War and in alignment with efforts by the Soviet military tried to use brain-wave-state manipulation and other techniques (e.g., concert reading, super/optimized learning) to augment performance of soldiers, among other applications. I attended a seminar Barzakov put on in San Francisco, and I was transfixed by what he was doing with his work, which he called *Optimal Learning* and which was basically super learning sans the Soviet military's spin on it.

I theorized that creating a relaxation tape with environmental sounds, underpinned with entraining elements (I used a recorded clip of a human heartbeat starting at 70 beats per minute (BPM) and then used a drum machine to program the retardation of the cadence over the first ten minutes of the program to about 50 BPM) and hemi-sync tones, I could overlay spoken affirmations or verbal relaxation guidance to result in a very effective audio relaxation or affirmative program. I visualized creating a cassette tape for a medical doctor, with the basic track under his/her voice reading Harvard Dr. Herbert Benson's *Relaxation Response* or similar relaxation program, then having the physician be able to hand out or sell the cassettes to his/her patients served by relaxation therapy. The fact that the physician would hand the cassette to the patient helped assure the effectiveness of the program. The man who taught me the basics of subliminal recording techniques and I then started a company named Bio-Acoustics Research to produce these audio relaxation recordings for physicians. It was the start of an interesting business.

Then just after starting Bio-Acoustics Research, we got a call from a lawyer in California, who got wind of our name and wondered if we could help him with a case he thought involved subliminal lyrics in a record. Turns out the lawyer was Tom Anderson, the guy who had made

tens of millions representing owners of Pinto automobiles with exploding gas tanks in a class-action case against Ford Motor Company.

Anderson was now representing the parents of a troubled young California man, John McCollum, who committed suicide allegedly as a result of having listened to Ozzy's "Suicide Solution" song on his *Blizzard of Ozz* LP. The lawsuit named Ozzy, his publishing company and CBS Records. To win the case, Anderson needed to rise above the freedom-of-speech protections of the First Amendment to the U.S. Constitution, and his legal tactic was to propose that the Founding Fathers did not foresee such technology as might allow protected speech to be delivered in such a way that the listener did not have constructive knowledge of the existence of the speech. Essentially, Anderson was trying to turn subliminal lyrics, if they existed, into a consumer-protection issue requiring their being banned or at least their being required to be disclosed, and he needed expert evidence to get past the defendants' motion to dismiss the case. Of course, the defendants screamed bloody murder and denied everything, loudly, with plenty of media power behind them. There was potentially a lot of money at stake, both in terms of damages directly from the case and from dealing with industry ramifications in the event Anderson won the case.

We accepted the job of examining the song, were paid a lot of money to do so, and we assembled a team of audio experts to help us dissect the tune. We found a section of the song in which there was obviously some kind of lyrical element, but it was not clear what was being sung. Some theorized that the words incited the listener to commit suicide, but whatever was in the song was buried in and disguised by the rest of the tracks. While the team was diving more deeply into the acoustics, I was doing some basic research and discovered that the copyrighted lead sheet for the song included notation in that section of the song saying, "vocal adlib." That was enough to prove the defendants' intention that there was to be verbal content, and the fact that it was buried enough in the track to disguise it rose to the level Anderson needed to make his case. When this hit the news, I was flooded with requests for interviews from all over the world. It was really a pretty big deal, and it pitted the rock 'n roll world against the conservatives, Christians and others in a visceral and nasty argument. The news media was largely unkind to me, with notable exceptions.

Anderson's case was being heard in a California Superior Court, meaning a state-level court, and the judge decided against Anderson. I was flown down to Los Angeles to be ready to testify, but the judge's decision from the bench granting the motion to dismiss obviated my appearance, and that was that.

Then I got a call from a rural-Georgia lawyer, Ben Mills, who was representing parents whose son, Michael Waller, had also committed suicide in a similar situation involving the same song. Mills was suing in federal court in Macon, and he at least got his case to the point of discovery. That was significant, for it meant that Mills would have the right to examine documents and materials (in this case recording materials) relevant to the case. He asked me what I needed to really see what the lyrics said, and I told him I would need the original, multi-track master tape.

The judge granted the request, subject to all kinds of supervision and chain-of-custody constraints protecting the defendants' master, which had to be flown in (as in hand-carried by one of the CBS corporate attorneys) from the UK.

I hired Cherokee Studios in Los Angeles for this purpose, logging the session under my personal name, rather than in the name of Bio-Acoustics Research. When I arrived at Cherokee, there was a total mash of news media there, and it was difficult to get into the facility. When I did get in, the owner/manager grabbed me and was extremely angry. Turns out that Ozzy recorded at Cherokee often, something I did not know. Obviously, I was not very popular around there that day. I had to have Mills duke it out with Cherokee's lawyer to force the session to proceed, which it did after lots of elbows and shoves. Cold as ice is the only way I can describe the atmosphere, and literally every moment was being filmed by several large movie cameras recording my every move on the board. I isolated the lead vocal track and immediately dialed-in on the subject section of "Suicide Solution." The lyrical content turned out to be nasty Gaelic/Cockney slang (e.g., "Get your flaps out!"). There was no content seeming to induce the listener to take his/her own life.

The case proceeded in Macon, where I was cross-examined for hours by a very agitated David Bass, a fashionable Hollywood-type lawyer who with Howard Weitzman represented CBS and Ozzy. You would recognize Weitzman's face, for he was often on the news representing high-profile people, including, briefly, O.J. Simpson. The constitutional issue (i.e., Does freedom of speech cover even speech which cannot be consciously understood by the listener?) was never resolved as a matter of law, for the unmasked lyrics were, in fact, innocuous. No one knows how the case would have been decided had the unmasked lyrics encouraged suicide.

Of course, Ozzy and CBS definitely and often lied about there not being any subliminal lyrics in the record, an untruth I was able to prove conclusively. So far as I know they were never taken to task for lying about it. From a business perspective, all this notoriety and the oddly salacious nature of it boosted sales, a fact Ozzy and CBS cultivated.

I had to sign a protective order to not disclose any details of my examination of the master, outside the closed courtroom testimony, for twenty years. This is probably the first time I have actually written out the story.

In the years after these cases were decided, I was courted by the Parents Music Resource Center (PMRC) back in Washington, D.C., which was the pet project of Tipper Gore, wife of then-Tennessee Senator and later Vice President Al Gore, and other tight-ass wives of senators. I was invited to be one of the speakers at the National Press Club, along with Surgeon General C. Everett Koop, at one of several PMRC runs against the music industry, the most visible result of which were lyrics warning labels forced upon the industry for albums, cassettes and CDs. As a matter of business, the industry complained loudly at the insult of having this thrust upon them, but, in truth, they were delighted, for the lyrics warning labels boosted sales of everything with the labels.

My personal position in this was quite difficult. Most people who knew anything about the matter thought I was one of the subliminal-lyrics witch-hunters, but the exact opposite was true. I was the one who actually proved that the lyrics were trash but clearly not harmful, but I was constrained from sharing the whole story by the protective order. Ozzy and CBS were full-on liars and were never shown to be such by the news media, at least as far as I know. Ozzy and CBS continue to enjoy sales of the remarkably terrible *Blizzard of Ozz* CD, and Ozzy continues to be relevant as a celebrity (or oddity, as you may choose), if not as a musician. I find these outcomes disheartening.

One coincidentally funny part of this story relates to CBS and me. As part of the judge's orders in the federal case in Georgia, CBS was to pay me for all of my expenses (e.g., renting Cherokee Studios, my travel costs to and accommodations in Macon to testify at trial and my time), which they did. The same day that check arrived, I had another check from CBS, this one for royalties for a song I had appear in a *CBS Movie of the Week*, *Vestige of Honor*. That was a very satisfying laugh, I must say.