

Freedom or Safety? You Decide. Should Violent Speech Be Free Speech?

In 2005, a Virginia jury convicted 42-year-old Muslim scholar Ali al-Timimi of a number of offenses, including the crime of incitement, conspiring to carry firearms and explosives, and soliciting others to make war against the United States. The U.S.-born Islamic spiritual adviser had spoken frequently at the Center for Islamic Information and Education—also known as the Dar al Arqam Islamic Center—in Falls Church, Virginia. Prosecutors told jurors that al-Timimi had verbally encouraged his followers to train with terrorist organizations and to engage in violent Jihad, or holy war, against America and its allies. Al-Timimi lived much of his life in the Washington, D.C., area and had earned a doctorate in computational biology from George Mason University. As a teenager he spent two years in Saudi Arabia with his family, where he became interested in Islam.

Following conviction, al-Timimi was sentenced to life in prison without the possibility of parole, plus 70 years—a sentence meant to guarantee that he would never leave prison.

The al-Timimi case raises a number of interesting issues, among them the question of when violent speech crosses the line from free expression into criminal advocacy. The First Amendment to the U.S. Constitution guarantees the right to free speech. It is a fundamental guarantee of our democratic way of life. So, for example, the speech of those who advocate a new form of government in the United States is protected, even though their ideas may appear anti-American and ill considered. In the 1957 case of *Roth v. United States*, the U.S. Supreme Court held that “the protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”

It is important to remember, however, that constitutional rights are not without limit—that is, they have varying applicability under differing conditions. Some forms of speech are too dangerous to be allowed, even under our liberal rules.

Freedom of speech does not mean, for example, that you have a protected right to stand up in a crowded theater and yell “Fire!” That’s because the panic that would follow such an exclamation

would likely cause injuries and would put members of the public at risk of harm. Hence the courts have held that although freedom of speech is guaranteed by the Constitution, there are limits to it. (Shouting “Fire!” in a public park would likely not be considered an actionable offense.)

Similarly, saying, “The president deserves to die,” horrific as it may sound, may be merely a matter of personal opinion. Anyone who says “I’m going to kill the president,” however, can wind up in jail because threatening the life of the president is a crime—as is the act of communicating threats of imminent violence in most jurisdictions.

Al-Timimi’s mistake may have been the timing of his remarks, which were made to a public gathering in Virginia five days after the September 11, 2001, attacks. In his speech, al-Timimi called for a “holy war” and “violent Jihad” against the West. He was later quoted by converts with whom he met as referring to American forces in Afghanistan as “legitimate targets.”

Critics of al-Timimi’s conviction point to a seeming double standard under which people can be arrested for unpopular speech, but not for popular speech—regardless of the degree of violence it implies. They note, for example, that conservative columnist Ann Coulter has suggested in writing that “we should invade (Muslim) countries, kill their leaders and convert them to Christianity,” but she was never arrested for what she wrote.

YOU DECIDE

Should al-Timimi’s advocacy of violence be unlawful? Why or why not? Might we have more to fear from the suppression of speech (even speech like al-Timimi’s) than from its free expression? If so, how?

References: “Virginia Man Convicted of Urging War on U.S.,” *USA Today*, April 27, 2005; Jonathan Turley, “When Is Violent Speech Still Free Speech?” *USA Today*, May 3, 2005; and Eric Lichtblau, “Administration Continues Eavesdropping Defense,” *New York Times*, January 24, 2006, <http://www.nytimes.com/2006/01/24/politics/24cnd-wiretap.html> (accessed August 28, 2008).