

02-08-1999 Is It Terrorism or Just Free Speech?

“Wanted” posters and a Web site listing names and addresses of “baby butchers” amount to illegal threats, and the anti-abortion activists who created them must pay \$107 million in damages a federal jury says. “The jury saw the posters for what they are – a hit list for terrorists,” said Gloria Feldt, president of Planned Parenthood, which joined several abortion doctors and a clinic in suing the activists. – AP, Portland, 2/3/99

In the legal case the issue was whether a “reasonable” person would find the material threatening. This was the standard of proof required by the judge in this case. The Supreme Court has in the past used another, more liberal standard (from the perspective of the terrorists anyway) that the speech in question must be likely to cause “imminent lawless action.”

In philosophy there is an old saying that goes something like this, if a thing walks like a duck, looks like a duck, and sounds like a duck then it is duck. Which is to say that if a reasonable person would take a thing to be a duck, one might safely conclude that it is a duck.

If fanatical terrorists are threatening medical professionals with the claim that these medical professionals ought to be eliminated then these fanatical terrorists are not merely engaging in constitutionally protected free speech. If it sounds like a threat and is taken by an outside observer to be a threat, and thus acts like a threat, then it is a threat.

Some alleged First Amendment scholars have claimed that the ruling goes too far. The claim is that the principle of the Constitution is that we as a society must tolerate all political speech including that we might find offensive. In short, one has a Constitutionally protected right to believe and say things that any sane person would find absurd or disturbing. But where is the line between being disagreeable and being a terrorist?

One has to wonder about the people who find this a difficult question. If the purpose of one’s speech is a dialogue about political questions then it is protect free speech, if one’s purpose is to force changes in other people’s behavior through an implicit or overt threat of violence then one is a terrorist. Terrorizing doctors is not a free speech issue and maintaining a database with personal information and encouraging others to use that information for nefarious purposes – i.e. murder – is clearly threatening.

Look at it this way. These terrorists also disagree with politicians who support the right of women to control their own fertility -- politicians like Bill Clinton. And if the terrorist enterprise in question maintained a database that included a call to eliminated the president and had information about his movements that would allow a particularly dedicated terrorist to act on that threat what would happen? The Secret Service would, quite reasonably, shut the web site down and arrest everyone involved for threatening a government official.

There is no Constitutionally protected right to threaten the president. So where is the gray area in this case? Saying that abortion is wrong and should be outlawed is political speech. Suggesting that doctors who provide abortions should be killed is not. How can this be clearer?

It cannot be clearer than that, but right wing politicians and the people who support them are very clever and slippery. They will try to make a case that putting out "Wanted" posters is not a threat. These same people, and even some liberals who might be well intended, will also argue that sending people unsolicited swastikas in the mail is free speech. The right wing works with terror and fear. Without fear there would never be support for right-wing politics. And so they will always argue for an absurd standard of proof that allows their violent side to threaten people.

The other side of all this is that we, as Americans, also have a right to live without threats. The freedom of speech carries with it a duty to use that right for legitimate purposes. Those who intentionally misuse this right to free speech are a threat to the democratic character of the nation and we all thus have a corresponding duty to stop them.

Our Freedom of Speech is the cornerstone of our democracy, which is why it is first in the Bill of Rights. Those who abuse this right are a threat not just to those being terrorized but are a threat to the very fabric of democracy. It is good and just that these anti-choice fanatics are stopped.

Hopefully this case will eventually put a stop to their organized activity and someday provide the legal framework for stopping the maniacs who use the cover of the First Amendment to distribute racist propaganda as a way of threatening people.