

PRO-LIFE SPEECH IS SPECIAL

The decision by a federal jury to make abortion opponents pay \$107 million in damages for a website bearing “wanted” posters of abortion doctors raised more issues than it resolved. The Oregon jury took aim at the Nuremberg website, accusing it of taking aim at abortion doctors, the effect of which was to create a “hit list” on the Internet. Whether this ruling will survive an appeal is unknown, but it is not too early to assess the legal and social impact of the jury decision.

The practice of putting the name, address, license plate number and photo of abortion doctors on the Internet, and crossing off the names of slain doctors, was seen by jurors as going beyond free speech. The judge did not ask the jurors to decide whether the “wanted posters” actually threatened the lives of abortion doctors: all he asked was whether a “reasonable person” might conclude so, especially given the harsh words and graphics. While almost everyone agrees that the website was despicable, whether it was illegal is another issue.

“I think it shreds the First Amendment,” was the judgment of Christopher Ferrara, an attorney for the American Catholic Lawyers Association who defended several of the defendants. Ferrara pointed out the problem with the decision this way. “If these posters are threatening, then virtually any document that criticizes an abortionist by name is threatening. I think the effect on political protest will be devastating.”

The ACLU has traditionally taken the most absolutist interpretation of the First Amendment of any legal organization. But in this instance, it took a position that attempted to have it both ways: it was disturbed by the possibility that this ruling would thwart free speech generally, but it nonetheless thought it wise that the jury determine whether the Nuremberg Files website amounted to an

unlawful threat.

What was most unusual about the Oregon chapter of the ACLU's legal brief was its insistence that making judgments about speech must be placed in context. From its own news release on the subject, it said "Specifically, the ACLU noted that...threatening statements could not be divorced from their context, and that the context in this case included a pattern of violence against abortion providers, some of whom were murdered after their names appeared on 'wanted' posters."

This is not an indefensible position to take, but it is highly inconsistent with the ACLU's record. When assessing the free speech rights of violent anti-war protesters and child pornographers—even Nazis—the ACLU never takes context into consideration. But when it comes to the free speech rights of pro-lifers, the ACLU applies a new set of rules, one that seeks to link the speech of anti-abortion protesters to the crazed behavior of a few militants within their ranks. This was never done to the Black Panthers, the Weathermen or any other left-wing group.

Robyn Blumner, a former ACLU official from Florida, wrote a syndicated column on this issue blaming civil libertarians for exercising a double standard. She recalled how the Supreme Court once absolved the NAACP from the charge that it was responsible for violence directed at those blacks who broke a Mississippi boycott of white-owned businesses; the fiery speeches of Charles Evers, the high court ruled, were not sufficient to hold him culpable for the death of one black man and the beating of another. But as Blumner wryly notes, it's a good thing that our new standard for speech—invented to punish pro-lifers—wasn't operative during the civil rights movement.

It could also be said that had this new standard been around in 1992 when singer Ice-T delivered the song "Cop Killer," he could have been cuffed for cops murdered on duty. Earlier, in the 1970s, rock star Ted Nugent implored his fans to riot,

which they dutifully did, thus raising the question whether he would have been arrested had the new standard been in place.

While the ACLU was wrestling over the free speech rights of pro-lifers, it was defending the right of pornographers to use the Internet. The ACLU went into court to challenge the Child Online Protection Act, a bill that seeks to shield minors from pornography. Making Internet users type in their adult ID or credit card number before accessing certain sites was declared by the ACLU as a violation of the First Amendment. Never once did it cite any concern for the context in which this obscenity is delivered; it was simply a straight First Amendment case. On February 1, a federal judge from Philadelphia granted the civil libertarians their wish by blocking enforcement of the law.

So we are left with the result that the Nuremberg Files, despicable though they are, are illegal, but pornography on the Internet, despicable though it is, is legal; more than that, minors may legally access the pornography. This raises the question whether there is more at work here than fidelity to the constitution.

Students of the First Amendment always emphasize how judgments regarding the legality of any speech must be "content neutral." The latest judicial treatment of the free speech rights of pro-life protesters, especially when coupled with restraints on speech at abortion clinics, makes fallacious the claim that content doesn't matter. It does if it's anti-abortion speech.