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Hentoff: O'Reilly being found 'guilty by snippet'

Following the cold-blooded murder of late-term abortionist Dr. George Tiller, Mike Hendricks of the Kansas City Star, like many other outraged commentators, declared that anyone who had, in the past, criticized Tiller's practice thereby became "an accomplice" to the killing (Wall Street Journal, June 3). Especially guilty, said others on the inflamed Internet, were those who had called him "a baby killer."

I, a pro-lifer, have indeed criticized Tiller for, in thousands of cases, having aborted fetuses so close to viability -- or actually viable -- that he was committing infanticide. Some were healthy, but the mother was depressed or anxious. I may have called him "a baby killer," as I certainly have President Obama for his series of votes as an Illinois state senator to deny medical care to live babies born after a botched abortion.

However, being a pro-lifer, I am absolutely opposed to killing any human beings, including a late-term abortionist. That's why I'm also opposed to the death penalty. I agree with the largest national pro-life organization, the National Right to Life Committee, which responded to the assassination, saying it "unequivocally condemns any such acts of violence regardless of motivation."

A special target for having incited the murder of Tiller -- according to contributors to the Huffington Post, Daily Kos, Air America and other Web sites -- is Bill O'Reilly.

Selected excerpts from his TV and radio shows are shown to indict the proudly contentious Mr. O'Reilly -- along with Fox News as a co-conspirator. A key illustration of his alleged involvement in the murder is his having said in 2006: "If I could get my hands on Tiller!" But O'Reilly immediately added: "Well, you know. Can't be vigilantes. Can't do that. It's just a figure of speech."

In his syndicated column (New York Post, June 3), O'Reilly wrote: "No matter what you think about abortion, it is a sad day for the country when vigilantism takes a life." He has also called the killing of Tiller "An anarchist act that will assure the collapse of any society."

I have often criticized Mr. O'Reilly, urging that he take a remedial course on the Constitution, very much including the Bill of Rights. He and I were at odds on the Bush-Cheney revisions of the Constitution. But unlike the American Civil Liberties Union, which used to be quite disinclined to have its officials appear on his program (forgetting that the best answer to bad speech is more speech), I was his guest once, and I survived.

This righteous rush to accuse O'Reilly, as some have, of "having blood on his hands" comes from antagonists who are clearly and vigorously exercising their own free-speech rights. So I take this as "a teaching moment" for remembering an essential American civics lesson from Justice Oliver Wendell Holmes:

"If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought -- not free thought for those who agree with us but freedom for the thought that we hate."

I've long been trying, without success, to convince the top of the ACLU's chain of command that the ACLU's official support of "hate speech laws" -- adding more prison time for crimes "perceived" to be motivated by hate -- is contrary to the ACLU's initial founding in order to protect free thought and speech.

With regard to the charge that Bill O'Reilly was an accomplice in the murder of Tiller, a New York University Constitutional law professor whom I've long known and respected, Burt Neuborne, a former national ACLU legal director, was quoted in The New York Times (June 2) as noting that while this kind of laying blame debate isn't new, "the ability to technologically call up snippets of speech" is.

For example, within nine hours of the murder of Tiller, Salon magazine catalogued and made available on its Web site references to Tiller on 29 shows of "The O'Reilly Factor" from 2005 to 2009.

Says Neuborne: "In every complex political setting, there's a tendency to single out the loudest of the other side and claim that what they're doing is not political speech but is incitement," he said. "It's important not to allow that to happen. It would have a dramatic (negative) effect on the ability to speak vigorously."

Salon, Daily Kos, Air America and the other Web sites happily engaging in guilt-by-snippets-of-speech-association could have performed a public education service by adding the news for many of its contributors of a 1969 Supreme Court decision, *Brandenburg v. Ohio*.

The leader of a Ku Klux Klan klavern was convicted in a lower court of advocating violence by pledging that because the then president, Congress and the Supreme Court were giving preference to blacks, he and his hooded followers would go to Washington to take care of these officials depriving him and other whites of their rights.

Reversing the conviction, the Court unanimously ruled that violence can be lawfully advocated in speech, unless the speaker is engaged in "inciting or producing IMMINENT lawless action": addressing people immediately ready and willing to -- at a specific place and time -- commit the violence, for example, to that doctor at 7 p.m. "Let's get that doctor at 7 p.m.!"

Under that Supreme Court decision, calling someone "a baby killer" is not in itself incitement. Neither is charging O'Reilly with "having blood on his hands." It's too bad civics classes have largely disappeared from our public schools so that at least our students would know how the Constitution teaches them why they are Americans.

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