

## Franklyn Haiman's Approach to the Problem of Incitement

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Franklyn Haiman changed the way I thought about the First Amendment forever. In his book *Speech and Law in a Free Society*, he provides clear and rational analysis of thorny issues such as the Nazis' bid to march through Skokie, Illinois (96-97), the attempts of parents to "kidnap" their own children back from religious cults (220), and the genre of "how-to" articles, such as *The Progressive* magazine's intended article on how to make a hydrogen bomb in 1979 (399-404).

But Franklyn Haiman's influence on my attitude toward First Amendment law was probably the greatest when it comes to the question of incitement. Let us first consider three recent cases in which a speaker may have incited violence in real life; second, let us apply Franklyn Haiman's approach to these cases.

- Pittsburgh, Pennsylvania, April 4, 2009: Richard Poplawski hears Glenn Beck say that President Barack Obama is going to take away everyone's guns. Poplawski posts Beck's video on the white supremacist web site Stormfront. When police are called to Poplawski's house for a domestic dispute, Poplawski shoots and kills three police officers.
- Wichita, Kansas: May 31, 2009: Dr. George Tiller has a clinic where women have access to abortions, but Bill O'Reilly on FOX News repeatedly refers to Dr. George Tiller as "Tiller the Baby Killer." O'Reilly also compares Dr. Tiller to the Nazis and al-Qaeda. Scott Roeder, an anti-abortion follower of Bill O'Reilly shoots and kills Dr. George Tiller while Tiller is serving as an usher at church.
- Oakland, California, July 18, 2010: Byron Williams listens as Glenn Beck demonizes the American Civil Liberties Union (ACLU) and the Tides Foundation. Williams plots the mass murder of ACLU and Tides Foundation employees in San Francisco. The police stop him for speeding near Oakland, where he shoots and injures two police officers. Williams later tells police that he had been acting on Glenn Beck's comments about the ACLU and the Tides Foundation.

Considering these real-life situations, we might want police to arrest Bill O'Reilly and Glenn Beck for inciting their followers to commit violence. But wait a minute. If we hold Bill O'Reilly and Glenn Beck responsible, are we assuming that the *magic bullet* theory of communication still applies?

Franklyn Haiman reminds us that listeners *should* be capable of judging a speaker's message and rejecting the call to violence: "Where is the lack of capacity on

the part of the listeners to decide not to act as the speaker urges? Where is the control of will that can be described as triggering the inevitable chain of events?" (Haiman, 1980, 279).

Haiman draws on Supreme Court Justice Louis Brandeis' concurring opinion in *Whitney v. California* (1927). Brandeis wrote: "If there be time to expose through discussion the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence" (*Whitney v. California*, 1927, 376-377).

Haiman also reminds us to take a good look at the U.S. Supreme Court's test for incitement outlined in *Brandenburg v. Ohio* (1969); this test requires proving that speakers *intend* that their listeners should commit violence after hearing the speech. Of course, Bill O'Reilly and Glenn Beck would no doubt deny that they *intended* for Poplawski, Roeder or Williams to commit murder or injure police officers. And we know that the magic bullet theory is far too simplistic; we now have theories such as the two-step (or multi-step) flow or selective perception, which take interpersonal relationships into account in explaining the complex causes of human behavior.

Haiman again emphasizes that unless they are deceived, coerced or mentally deficient, human beings are *not* inanimate objects who are "triggered" by others; they are *not* piles of kindling waiting for a spark to ignite them. They should *not* be relieved of responsibility for their own behavior by the buck being passed to someone else who may have planted an idea in their minds (Haiman, 1981, 277-278).

It has been 30 years since Franklyn Haiman published *Speech and Law in a Free Society*. Because Haiman was (and still is) a visionary, his principled defense of freedom of expression is as important and as relevant today as it was in 1981.

When I rely on Franklyn Haiman's provocative ideas in teaching my mass media class, we always have a really fun, dynamic class discussion. So I will simply close with a huge "Thank you so much, Franklyn Haiman!" There are no words to express how grateful I have been for all of your ideas and insights for these 30 years.

#### *Works Cited*

*Brandenburg v. Ohio*, 395 U.S. 444 (1969).

Haiman, Franklyn S. *Speech and Law in a Free Society*. Chicago: The University of Chicago Press, 1981.

*Whitney v. California*, 274 U.S. 357 (1927).