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The First Amendment As/And Harassment

Posted By [Timothy Zick](#) On October 1, 2007 @ 12:30 pm In [First Amendment](#) | [2 Comments](#)

My book, *The People Out of Doors*, chronicles a variety of legal contests arising from restrictions on public expression. These contests raise fundamental First Amendment issues relating to, among other things, access to public places, the value of public expression, and the policing of public expressive activity. As the case of the [tasered Florida student](#) ^[1] recently demonstrated, the Internet has opened a new window on public protest. Today, both protesters and authorities come to public protests and demonstrations armed with camcorders and other recording devices. In this [video](#) ^[2], "Reverend Billy" (a/k/a William Talen) is arrested in Union Square Park in Manhattan for conveying (through a megaphone) *the words of the First Amendment*. Reverend Billy and other protesters shown in the video had gathered in the park to protest proposed legal restrictions on the "[Critical Mass](#)" ^[3] bike rides in Manhattan and other proposed public assembly regulations. As is typical at Critical Mass events, the police were out in force. As shown in the video, police ultimately arrested Reverend Billy. He was charged with two counts of second degree harassment — for allegedly shouting the words of the First Amendment within close range of officers and refusing to cease that activity when ordered. The video is likely to play a central role at the trial, should there ultimately be one.

Putting aside the rather ironic nature of the charges themselves — recitation of the First Amendment itself *as harassment* — the arrest of Reverend Billy highlights some fundamental First Amendment principles. I have no doubt that this expression was annoying to the officers on the scene. Of course, the fact that the expression was deemed "annoying" or, as the prosecutor described it at a [recent hearing](#) ^[4], "obnoxious," is not a valid reason for prohibiting or punishing it. As the Supreme Court said in [Terminiello v. Chicago](#) ^[5], speech "may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." The speaker was not charged with violating any noise ordinance, or disturbing the peace, or impeding the flow of pedestrian or vehicle traffic, or "improper assembly" (one of the subjects he was in fact protesting); or uttering fighting words, or interfering with police operations. He was charged with "harassment," which under [New York Law](#) ^[6] requires that the person follow another with intent to annoy, harass, or alarm, or engage in conduct with no legitimate purpose other than to threaten, intimidate, or coerce another. The harassment law seems a very odd fit; among other things, uttering the First Amendment does serve a legitimate purpose — particularly at a protest rally.

There is, however, something more troubling about this arrest than the substance of the charge. I find the comments sections following videos like these edifying, in part because they provide some barometer (however selective) of the public's tolerance for this sort of expression. Most of the commenters seemed to find Reverend Billy's expression extremely annoying. Some invoked the general public's "right" not to hear it. Others commented that regulating such speakers is a waste of scarce police resources. One citizen even opined that Reverend Billy deserved some "jailhouse justice." On the other hand, a smaller number of commenters supported Reverend Billy's expressive activity and criticized his arrest. (I would welcome reactions from this site's readers.) The comments seem to suggest a lack of knowledge of, and respect for, principles such as the one above from Terminiello. My own research (at least anecdotally) suggests little and indeed waning public tolerance for unconventional and "annoying" expression — at least when conveyed in public places. One of the more striking things about this episode, aside from the content of expression, is that the speaker stands accused of harassing not his fellow citizens but law enforcement officers. Should we require that officers at the scene of a protest rally have a thicker skin than, say, the ordinary citizen? Put differently, is the state, as the object of protest, entitled to the same protection from "harassment" as the general public?

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[1] tasered Florida student:

http://www.concurringopinions.com/archives/2007/09/student_tasered.html#comments

[2] video: <http://www.youtube.com/watch?v=u8H4YATaX1k>

[3] Critical Mass: http://en.wikipedia.org/wiki/Critical_Mass

[4] recent hearing: <http://www.nytimes.com/2007/09/26/nyregion/26billy.html>

[5] Terminiello v. Chicago: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=337&invol=1>

[6] New York Law : [http://wings.buffalo.edu/law/bclc/web/NewYork/ny3\(b\).htm](http://wings.buffalo.edu/law/bclc/web/NewYork/ny3(b).htm)

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