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Stolen Valour Act

Richard Gaines, Lincoln Memorial University - Duncan School of Law
THE STOLEN VALOR ACT:
Patriotism and The Law

When practicing law in the constitutional field, sometimes patriotism comes in strange forms. The Stolen Valor Act is an attempt by our Congress, no doubt also by many good meaning people who lobbied for the act, to restrict the false claims of people who misrepresent they received our Nation's highest medals of honor. Title 18 U.S.C.A. § 704 made it a crime for anyone who claims, in any way, that they have been awarded a decoration or medal authorized by Congress when in fact they have not. The statute also enhances penalties for persons who claim falsely that they received the Congressional Medal of Honor, with lesser enhancements for those who falsely claim that they have received the Air Force Cross, the Navy Cross, or a Purple Heart. The statute made these claims punishable by six (6) months in prison, or for the enhancement, one (1) year.

In times of war or peace, a statute like this is meant to shore up the patriotism of our veterans and attack those who would falsely claim honors in which they never received. Xavier Alvarez was such a person: a California resident, and a habitual liar. Alvarez was a board member on the Three Valley Water District Board of Chirnmore, California. During his first public meeting, he stated the following: "I am a retired Marine of twenty-five (25) years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy." All of these claims were false. None of these claims were made for the purposes of gaining employment, or benefits, or any kind of pecuniary gain at all. They were made purely in an attempt to gain respect.

Alvarez was charged with a violation of 18 USC § 704(b). Alvarez pled guilty in the United States District Court for the Central District of California, but he preserved his right to appeal his claim that the Stolen Valor Act violated the First Amendment of the United States Constitution.

Anyone who practices law, and many who do not, know that the First Amendment is a strange piece of jurisprudence. Our forefathers, foreseeing the day that this country would need a vent, made freedom of speech the First Amendment. The First Amendment often protects things that are directly in contravention to many of the very beliefs that make this country great. Hate speech, symbols of slavery, and criticism of our leaders or our warriors during war are all protected by the First Amendment. In my criminal defense practice, I defended the Fourth, Fifth, Sixth, and Eighth Amendments, generally, but rarely did I ever get a chance to use the First Amendment in the defense of the criminally accused. Mr. Alvarez had that chance.

The United States Court of Appeals for the Ninth Circuit, in a divided panel, found the act invalid under the First Amendment, and reversed Mr. Alvarez's conviction. The Court refused to hear the case en banc in 2011. As is often the case, another circuit, the Tenth Circuit, found that The Stolen Valor Act was, in fact, constitutional. United States v. Strandlof, 667 F.3d 1146 (2012). As any Supreme Court scholar knows, a Federal Circuit split is perhaps the surest way for the United States Supreme Court to take a Writ of Certiorari, and in fact, the Court did.

It was without dispute that Mr. Alvarez made false statements regarding his possession of a Congressional Medal of Honor. Neither side argued that point. Instead, the question was whether his lie was protected speech. The government argued that false speech was not protected under the First Amendment. The government cited some examples, including 18 USC §1001, which makes a crime a false statement or communication to government officials in communications concerning official matters. It can be difficult to prove, but it is a tool the government knows very well. The government also argued that perjury was not protected speech. A false statement made under oath is not protected under the law. As the Supreme Court pointed out, however, perjury is not a crime because the statements are false, but because the false statement undermines the "function and province of the law and threatens the integrity of judgments." Finally, the government pointed to statutes that make a crime for a person to attempt to represent that they are government officials or government agents. The Supreme Court found that unconvincing. In United States v. Alvarez, 132 S.Ct. 2537 (June 28, 2012), the United States Supreme Court found that the Stolen Valor Act was unconstitutional in the section that prohibits persons who claim falsely that they have been awarded a decoration or medal authorized by Congress for the Armed Forces of the United States.

The Supreme Court acknowledged that the government has a strong, compelling interest in protecting persons who received our Nation's highest medals. The Court refused, however, to grant the government the broad powers the Stolen Valor Act appears to provide it. Stating that the compelling interests "do not satisfy the government's heavy burden when it seeks to regulate protective speech," the Supreme Court found that "the remedy for speech that is false is speech that is true...[t]his is the ordinary course in a free society. The response to the unreasonable is the rational; to the uninformated, the enlightened; to the straight out lie, the simple truth." Alvarez, 132 S.Ct. 2550. The Supreme Court also stated that when the government seeks to regulate protective speech, the restriction must be the "least restrictive means available, effective alternatives," and that the community's expression of outrage toward Alvarez was a societal self-enforcement of the lies of Mr. Alvarez. The Stolen Valor Act is an example of one of those things that sounds like a good idea. As a son of a retired Air Force colonel, and now as a law professor who sees many students going to war on a semester basis, my first reaction to hearing about the Stolen Valor Act when it enacted was "that's a darn good idea." Why should we allow somebody who's never served or taken arms to claim that they have? Why should we allow someone to claim that they have the Congressional Medal of Honor when they don't? These lies dishonor the men and women who have received these medals and honors. Whether the Supreme Court was right or wrong on a moral sense, or even in my opinion, is not really the point. The First Amendment is the first bulwark of the society to protect itself against government intrusion. The staunchest conservative and the libertarian democrat all agree on that, if nothing else. While I hate there are people lying about honors and going unpunished in the legal system, I firmly believe that the greater protection should go to the First Amendment and that we should keep that amendment as strong as possible. Sometimes patriotism is hard to find in the legal field, and in this case, it appears ironic. But you don't have to look very hard to find it here as well.

Postscript:
On September 14, 2012, the House of Representatives passed an amended version of the Stolen Valor Act, narrowing the restriction to those who lie about service medals to gain a benefit or pecuniary award. The Senate has yet to act on this bill.
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