

**Hypo 1: The Education of Ali Al-Timimi (paraphrased from the *Atlantic Monthly* article by the same name)**

Ali Al-Timimi is an American-raised Muslim who preaches in a well-attended Washington D.C. mosque.

Five days after 9/11 Ali and seven of his (more militant) worshippers gathered for dinner in the apartment of Yong Ki Kwon, a Korean-born convert, to discuss how they should proceed in light of the apparent backlash against Muslims. Ali explained that the 9/11 attacks augured the imminence of the end of days. Muslims, he said, had a duty to repent their sins.

He then advised his listeners that they and their families might best leave America (following the precedent of the Prophet Muhammad, who fled with his disciples from Mecca to the safety of Medina). Ali also reviewed the Islamic doctrine of jihad as holy war, and pointed out that his listeners could serve the faith as mujahideen in Kashmir, Chechnya, or Afghanistan. Witnesses split over whether Ali had declared that jihad in Afghanistan was a duty or simply an Islamic option.

On the night of Kwon's party, most Americans assumed that President Bush would soon open a front against Osama bin Laden and the Taliban regime. But Bush had not yet announced his plans. U.S. troops were neither present nor assigned to Afghanistan at the time he spoke.

Ali spoke for only an hour or so, after which Kwon drove him home. When Kwon returned, the agenda of the dinner guests shifted to the logistics of jihad. By coincidence, one of the guests had already made arrangements to visit his family in Karachi. Three of the others, Kwon among them, agreed to meet him at a militant camp in Pakistan. Over the next few days Kwon and the two others went to the Pakistani embassy to obtain visas for the trip.

The four then flew together to Pakistan. Kwon and one other worshipper spent several weeks sightseeing, shopping, relaxing on the beach, and visiting with family. They eventually all met up at the designated militant camp, where they underwent some training in the use of AK-47s, machine guns, and rocket-propelled grenades. Within a few more weeks, all apparently had lost their ardor for jihad and returned home. None reached Afghanistan; none fired a shot at an American.

Ali was then prosecuted and convicted of soliciting others to levy war against the United States and inducing others to use firearms in violation of federal law. He was sentenced to life in prison. You are the law clerk to the judge overseeing Ali's appeal. What is your recommendation?

## **Hypo 2: Harry Hothead**

Fed up with what it calls the United States government's continued "aiding and abetting of the brutal, sexist, and suppressive regime in Saudi Arabia," the Coalition Against Repressive Regimes (CARR) has stepped up its program of protests.

Last Saturday, CARR held a rally on the public streets in front of the Saudi Arabian embassy compound in Washington, D.C. About 200 demonstrators including members of CARR's more militant wing (linked in a recent Washington Post investigative report to violent acts against Saudi Arabian diplomats overseas) were responding spiritedly (but peacefully) to a variety of energetic speeches.

Then Harry Hothead took the rostrum.

Harry urged the crowd to "act swiftly and surely to avenge the blood of our Saudi sisters spilled in the streets of that brutal country." Despite a warning by the D.C. Police officials that he was close to violating the law, Harry continued speaking. He pointedly emphasized that the Saudi Arabian diplomats "sitting at their desks just beyond those fragile windows with the shades drawn" were "indispensably involved in the repressive acts that have led our sisters to be treated like garbage." Harry did not get much farther because the D.C. police arrested him for violating a D.C. ordinance that makes it a crime "[t]o incite others to engage in imminent lawless activity in circumstances likely to produce such activity." Although the crowd protested loudly when Harry was led away, no violence or lawless action ensued.

Harry was prosecuted and convicted of violating the city ordinance. You are the law clerk to the judge hearing Harry's case on appeal. What are your recommendations? What are the key facts of the case?