

BITS OF RIBBON AND STOLEN VALOR

BY MICHAEL J. DAVIDSON

NAPOLEON IS REPORTED TO HAVE SAID: “A SOLDIER WILL FIGHT LONG AND HARD FOR A BIT OF COLORED RIBBON.”¹ THE FRENCH GENERAL BELIEVED IN THE VALUE OF AWARDS IN ENCOURAGING BRAVERY ON THE BATTLEFIELD. MORE IMPORTANT, HE ALSO RECOGNIZED THE VALUE OF MILITARY AWARDS AS A WAY TO RECOGNIZE MILITARY HEROISM AND SACRIFICE PUBLICLY.

American military medals and decorations also serve the important function of publicly honoring the service, sacrifice, and superior performance of the award recipients. “To those who’ve earned them, and perhaps more so to their families, those pieces of cloth and metal are priceless symbols of service and sacrifice, of time spent away from children, of foregone opportunities, and in some cases, of the ultimate sacrifice.”² Such awards generate laudation not only within the military community but also among the American public. Even those who have never served in the military value these medals and decorations and appreciate what they represent.

Unfortunately, there are individuals who claim military awards and honors that they never earned. In 2009, the Federal Bureau of Investigation (FBI) investigated approximately 200 cases involving “stolen valor.” One FBI agent with extensive experience investigating such cases opined that these impostors “do it for the unearned recognition and respect . . . [t]hey get access to people, places and events they would never have except that they are representing that they earned awards for valor in combat.”³

Others claim military honors for financial gain. In 2003, although only four living Medal of Honor recipients resided in Virginia, 642 Virginians claimed on their tax forms to be recipients of the Medal of Honor, probably because Virginia provided various benefits to Medal of Honor recipients, including tax-free military retirement income.⁴ Others who have falsely represented themselves have received corporate awards, veterans’ benefits, Social Security benefits, disability ratings, promotions, scholarships and tuition, and contracts reserved for companies owned by disabled veterans.⁵ Speaking in support of the Stolen Valor Act of 2005, one member of the U.S. House of Representatives described how a former Marine had falsely claimed combat experience and receipt of several medals



for heroism to obtain \$66 million in security contracts from the military.⁶

Until 2006, federal law enforcement authorities could only pursue those who illegally wore or sold unauthorized military awards. In 2006, however, Congress enacted the Stolen Valor Act, which made it illegal to falsely claim, verbally or in writing, to be the recipient of military awards and decorations. That legislation is currently under attack as an infringement of the First Amendment.

A Brief Overview of Military Medals and Decorations

During the American Revolution, Congress authorized a limited number of commemorative or special medals to be awarded on an individual basis, but it was not until 1782 that the American military possessed a decoration of general application: the Badge of Military Merit. “[E]ver desirous to cherish a virtuous ambition in his soldiers, as well as to foster and encourage every species of military merit,” General George Washington issued an order establishing the badge—a heart-shaped swatch of purple cloth or silk worn over the left breast—to be awarded for singular acts “of unusual gallantry . . . of extraordinary fidelity, and essential service . . .”⁷ Significantly, with regard to military awards, Washington also noted the following: “Should any who are not entitled to these honors have the insolence to assume the badges of them, they shall be severely punished.”⁸ However, the Badge of Military Merit fell into disuse until the award was revived in 1932 as the Purple Heart medal, which is now awarded to any service

member who is killed or wounded in an armed conflict.⁹

The Medal of Honor is the nation's highest military decoration. It was established during the Civil War, and, because that medal was the only official decoration for valor available at the time, it was awarded liberally. Thomas Custer, the younger brother of the famed George Armstrong Custer, earned two Medals of Honor during a four-day period for capturing Confederate flags. The most egregious misuse of the Medal of Honor involved the 27th Maine Volunteer Infantry; all 864 members of the regiment were awarded the Medal of Honor simply for re-enlisting.¹⁰

Concerned about strengthening the integrity of the Medal of Honor, Congress established an Army Board of Review, which examined the existing 2,625 awards and revoked 911 of them in 1917.¹¹ Among those whose Medal of Honor was revoked was Civil War-era Doctor Mary Walker, the only woman recipient.¹² In modern times, awarding the Medal of Honor is extremely rare. Since the Vietnam War, only 10 service members have received the Medal of Honor, and only two have been living recipients: Staff Sgt. Salvatore Giunta and Sgt. First Class Leroy Petry.¹³

Recognizing the need for other medals during World War I, Congress created two additional awards for bravery in combat: the Distinguished Service Cross and the Navy Cross. Congress also created the Silver Citation Star, which became the Silver Star medal in 1932. During World War II, Congress added the Air Medal and the Bronze Star.¹⁴ Currently, the American military has a wide variety of awards and decorations. In addition to awards for bravery, members of the armed forces may earn medals for meritorious performance, campaign medals, ribbons, combat and skill badges, and unit awards, among others.

The Uniform Code of Military Justice

Members of the armed forces who illegally wear unauthorized decorations are subject to court-martial under the Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 801–946. This form of misconduct strikes a strong emotional cord among current and former members of the American military. One highly decorated combat veteran posited that there is “no greater disgrace” than an experienced service member wearing an unearned award or decoration.¹⁵ Indeed, as evidenced by recent news reports of courts-martial for decoration-related offenses, the military takes this offense quite seriously.¹⁶

Article 134 (113) of the UCMJ makes it a crime to wrongfully wear certain unauthorized “insignia, decoration, badge, ribbon, device, or lapel button upon the accused’s uniform or civilian clothing ... to the prejudice of good order and discipline in the armed forces or ... of a nature to bring discredit upon the armed forces.” Upon the conviction of the accused (military defendant), the U.S. Manual for Courts-Martial, pt. IV, ¶ 113(e) (2008), provides that a military court may impose a sentence not to exceed a bad conduct discharge, total forfeiture of pay and allowances, and six months’ confinement.

Although such prosecutions have been relatively infre-

quent, Article 134 of the UCMJ has served as the usual basis for court-martial convictions for the unauthorized wearing of military insignia.¹⁷ To illustrate, in *United States v. Avila*, 47 M.J. 490 (C.A.A.F. 1998), an Army staff sergeant was convicted of violating Article 134 for “wrongfully wearing the Bronze Star” In *United States v. Hudson*, 23 C.M.R. 693, 694 (C.G.C.M.R. 1957), the Coast Guard convicted a seaman for the unauthorized wearing of award ribbons.

Prior to the UCMJ becoming law in May 1950, the Army prosecuted such offenses under the Articles of War. Reported courts-martial indicate that the Army has prosecuted similar offenses since at least World War II. In *United States v. Renfrow*, 5 B.R. 243 (E.T.O. 1944), a soldier pleaded guilty to, among other offenses, wrongfully impersonating and holding “himself out to be the recipient and lawful holder of the Purple Heart ribbon with Oak Leaf clusters.” Similarly, in *United States v. Baker*, 20 B.R. 189 (1943), a lieutenant was convicted of, among other offenses, wearing the unauthorized aviation badge of a combat observer.

The Federal Criminal Code Prior to 2006

Since 1923, federal law has criminalized the “unauthorized wearing, manufacture, or sale of medals and badges.”¹⁸ In 1948, Congress enacted 18 U.S.C. § 704, which is the federal offense that most directly targets the unauthorized wearing of military decorations. The version of 18 U.S.C. § 704(a) in effect prior to 2006 provided the following:

Whoever knowingly wears, manufactures, or sells any decoration or medal authorized by Congress for the armed forces of the United States, or any of the service medals or badges awarded to the members of such forces, or the ribbon, button, or rosette of any such badge, decoration or medal, or any colorable imitation thereof, except when authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

If the decoration or medal was the Medal of Honor, then the maximum period of imprisonment increases to a year. 18 U.S.C. § 704(b). Individuals who improperly wore medals that they had not earned have been successfully prosecuted under this version of the statute.¹⁹ Similarly, companies and individuals have been prosecuted for the unauthorized sale of military medals.²⁰

Stolen Valor Act of 2005

Concerned that existing law was inadequate to protect military medals and decorations, Congress enacted the Stolen Valor Act of 2005. The legislation included three specific findings:

1. Fraudulent claims surrounding the receipt of the Medal of Honor, the distinguished service cross, the Navy cross, the Air Force cross, the Purple Heart, and other decorations and medals awarded by the President or

- Armed Forces of the United States damage the reputation and meaning of such decorations and medals.
2. Federal law enforcement officers have limited ability to prosecute fraudulent claims of receipt of military decorations and medals.
 3. Legislative action is necessary to permit law enforcement officers to protect the reputation and meaning of military decorations and medals.

Pub.L. No. 109-437 § 2, 120 Stat. 3266 (2006).

Significantly, Congress expanded 18 U.S.C. § 704 to make it a criminal offense to “falsely represent ... verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, [or] decoration.”

Since passage of the act, individuals have been convicted of illegally wearing military medals and decorations²¹ as well as falsely claiming to be the recipient of such awards, which is also prohibited under the act.²² Unless the offense was committed in conjunction with other crimes, however, most defendants convicted of violating § 704 have rarely been incarcerated.²³

The expanded reach of the Stolen Valor Act has come under attack recently, calling into question its constitutionality. At least four courts have addressed such challenges, with mixed results. In *United States v. Alvarez*, 617 F.3d 1198, 1217 (9th Cir. 2010), *rehearing en banc denied*, 638 F.3d 666 (9th Cir. 2011), the U.S. Court of Appeals for the Ninth Circuit held that the act was “facially invalid under the First Amendment” and unconstitutionally applied. After the district court denied a motion to dismiss the indictment as unconstitutional, the defendant pleaded guilty to “falsely verbally claiming to have received the Congressional Medal of Honor, in violation of the Stolen Valor Act (the Act), 18 U.S.C. 704(b), (c), reserving his right to appeal the Act’s constitutionality.” Alvarez had never spent a single day in the armed forces, but, at a 2007 joint meeting of two water district boards, as the newly elected director of one board, he introduced himself as a retired Marine, recipient of the Medal of Honor, and survivor of numerous wounds.²⁴

The appellate court first reviewed First Amendment jurisprudence as well as its presumptive protection of all forms of speech—including some forms of falsehood—that gives “breathing space” to freedom of speech, in order to protect speech that actually matters. Next, the court determined that the speech addressed by the Stolen Valor Act, as presently drafted, failed to fit into “those ‘well-defined’ and ‘narrowly limited’ classes of speech that are historically unprotected by the First Amendment,” including defamation and fraud. Here, the court determined that the act criminalized “speech itself *regardless of any defining context* that assures us the law targets legitimate criminal conduct,” such as “laws focused on criminal conduct-like perjury or tax or administrative fraud or impersonating an officer”²⁵

The court then applied strict scrutiny analysis, which

requires the United States to show that the law is narrowly tailored in order to achieve a compelling governmental interest,” noting that such a law “is not narrowly tailored when less speech-restrictive means exist to achieve the interest.” Characterizing the government’s interest in preventing fraudulent claims about receipt of military honors as “noble,” an apparently sympathetic court determined that the government had failed to prove that the Stolen Valor Act’s speech restriction was narrowly tailored to achieve that interest. The court opined that the harm associated with “Alvarez’s lie, deliberate and despicable as it may have been,” could be remedied by the preferred remedy of “more speech”—that is, public notice and correction—or by simply “redrafting the Act to target actual impersonation and fraud.” The court also dismissed as incomprehensible and insulting the argument that the false claims of military impostors would somehow adversely affect the battlefield heroism of the armed forces.²⁶

In a spirited and lengthy dissent defending the Stolen Valor Act, Judge Bybee took issue with the majority’s interpretation of First Amendment jurisprudence. First, the dissenting judge argued that false statements of fact generally do not enjoy First Amendment protection and further rejected a presumption that *all* speech is protected, positing the following: “The First Amendment does not protect all ‘speech’ but rather ‘the freedom of speech,’ which *does not include* those categories of speech traditionally considered outside of First Amendment protection.” The general rule denying First Amendment protection to false statements is then “subject to certain limited exceptions where First Amendment protection is necessary ‘to protect speech that matters ... and to ensure that the ‘freedoms of expression ... have the breathing space that they need to survive.’”²⁷

Applying his interpretation of relevant First Amendment case law to the case under review, Judge Bybee posited that Alvarez’s statements were “simply a lie” that was “*excluded* from the limited spheres of protection carved out by the Supreme Court for false statements of fact ... ,” unworthy of constitutional protection, and accordingly strict scrutiny analysis of the Stolen Valor Act was inappropriate. Finally, concluding that the act was not facially unconstitutional, the dissenting judge reasoned that any potential overbreadth in the act was eliminated by susceptibility to limiting construction or, alternatively, was simply not substantial.²⁸

Similarly, in *United States v. Strandlof*, 746 F. Supp. 2d 1183 (D. Colo. 2010), the court determined that the act was “unconstitutional as a content-based restriction on First Amendment speech that is not narrowly tailored to serve a compelling government interest.” Like *Alvarez*, the case involved a false verbal claim, rather than the unauthorized wearing of a military award. Strandlof, who represented himself as a Naval Academy graduate and a Marine Corps veteran of the war in Iraq, was charged “with falsely representing himself to have been awarded a Purple Heart on four different occasions in 2006 and 2009, and falsely representing that he had been awarded a Silver Star on one occasion in 2009.”²⁹

The court rejected, as contrary to First Amendment jurisprudence, the government's position that Standlof's false statements enjoyed no constitutional protection "because the defendant was not conveying a political message, speaking on a matter of public concern, or expressing a viewpoint or opinion" It was not the lack of relative value of the speech that would take it out of the First Amendment's protective shadow, the court reasoned, "but rather when it is 'intrinsically related' to an underlying criminal act." Sua sponte, the court also volunteered that the act was not a valid restriction on fraudulent speech because the act did not "require that anyone have been actually misled, defrauded, or deceived by such misrepresentations."³⁰

Determining the act to be a content-based restriction on speech, the court applied strict scrutiny analysis and found that the government had failed to establish a compelling government interest that the act was narrowly tailored to serve. First, the court rejected as sufficiently compelling the government's argument "that the Act 'serves a compelling interest of protecting the sacrifice, history, reputation, honor, and meaning associated with military medals and decorations.'" Characterizing the government's alternative argument as "unsubstantiated," "shocking," and "unintentionally insulting to the profound sacrifices of military personnel," the court rejected the government's compelling interest argument that "[d]iluting the meaning or significance of medals of honor, by allowing anyone to claim to possess such decorations, could impact the motivation of soldiers to engage in valorous, and extremely dangerous, behavior on the battlefield."³¹

However, at least two federal courts have upheld the constitutionality of the Stolen Valor Act. In *United States v. Perelman*, 737 F. Supp. 2d 1221 (D. Nev. 2010), the court, proceeding on less controversial legal ground, rejected a First Amendment challenge to the Stolen Valor Act's prohibition on the unauthorized *wearing* of a military medal, distinguishing this case from the *Alvarez* ruling on that basis. The defendant, charged with the unauthorized wearing of the Purple Heart medal, in violation of 18 U.S.C. §§ 704(a) and (d), argued "that the clause 'except when authorized under regulations made pursuant to law' violates the First Amendment as an unlawful prior restraint on free speech, because it allows the government unfettered discretion to authorize, or to refuse to authorize, someone to wear a military medal depending upon the individual's purpose for wearing the medal." Noting first that the statutory prohibition on wearing unauthorized medals "remained virtually unaltered since 1928," the court then determined that the "regulations" referred to in § 704 were those military regulations addressing the authority and criteria for military awards, and such regulations were not drafted with the intent to regulate speech. Further, the court reasoned that § 704's prohibition on unauthorized wearing of military awards did not pose a threat to "viewpoint based censorship of speech" because no government official was vested with discretion as to whom to allow to wear unearned medals, the statute did not require governmental permission to engage in constitutionally protected speech, and the statute

prohibited the wearing of unearned awards regardless of why an individual wanted to wear them.³²

Because § 704's prohibition on the unauthorized wearing of military awards only had the potential for an "incidental effect on speech," the government was required only to establish that it was acting within its constitutional power, that the act furthered "an important or substantial governmental interest," which was "unrelated to the suppression of free expression," and the incidental restriction on free speech was "no greater than is essential to the furtherance of that interest." Here, § 704 was designed to protect the reputation and meaning of the military medals program, whose purpose is to foster mission accomplishment by recognizing and encouraging superior performance, which is within the government's constitutional powers of making laws that are needed to raise and support armies. Motivating military personnel through the awards program is an important interest unrelated to the suppression of speech, and § 704(a)'s prohibition on wearing unauthorized medals was necessary to preclude the undermining of the medals program.³³

Finally, in *United States v. Robbins*, 759 F. Supp. 2d 815 (W.D. Va. 2011), basing its ruling on First Amendment grounds, the court denied the defendant's motion to quash his indictment under the Stolen Valor Act. In material issued for his campaign for a local office, Robbins, a member of the Veterans of Foreign Wars (VFW), claimed that he had received the Vietnam Service Medal and Vietnam Campaign Medal and wore both of these medals, in addition to the Combat Infantryman's Badge, on his military uniform when attending events as a member of the VFW honor guard. In fact, Robbins had served in the Army for a brief three-year period, none of his service was overseas or in a combat zone, and he was not entitled to any awards related to service in Vietnam.³⁴

Specifically declining to follow *Alvarez* and *Strandlof*, the court noted that falsity is a recognized category of speech generally excluded from constitutional protection, unless the protection of falsehoods is necessary to protect "speech that matters." Also, the court determined that the act should be read to require *knowing* false statements rendered with an *intent to deceive* to preclude the suppression of mistakenly false speech and to protect those "who utter protected false statements in fiction, in parody, or as rhetorical hyperbole," limiting punishment to "only outright lies, not ideas" Thus limited, the court opined that "the speech restricted by the Stolen Valor Act is not 'speech that matters' and falls outside the protection of the First Amendment."³⁵

In addition, the court upheld the constitutionality of the portion of § 704 prohibiting the unauthorized wearing of medals. Following the same standard that was articulated in *Perelman*, the court determined that regulation of the military is within the government's constitutional power to raise and support armies, that preventing the unauthorized wearing of military medals furthers a substantial government interest in honoring military award recipients and "preserving the respect and novelty of legitimate military decorations," that § 704 is unrelated to free speech sup-

pression, and that any incidental restrictions on speech are no greater than what is essential to further the statute's purpose.³⁶

Conclusion

Although the expanded scope afforded to 18 U.S.C. § 704 by the Stolen Valor Act is under attack on First Amendment grounds, the portion of the statute existing prior to 2006 remains on solid legal footing. As indicated by the *Perelman* and *Robbins* rulings, the long-standing prohibition on the unauthorized wearing of military medals and decorations, contained in both the Uniform Code of Military Justice and the federal criminal code, appears safe from serious constitutional challenge.

Similarly, falsely claiming to be the recipient of military awards in order to obtain a financial benefit fraudulently should raise few constitutional concerns. Indeed, in *Alvarez*, the court specifically noted that the defendant had not made “false statements in order to obtain benefits,” characterizing laws focused on such misconduct as “uncontroversial” and “rais[ing] no constitutional concerns ...”³⁷

Criminalizing the simple act of lying about entitlement to military awards and decorations, however, is of uncertain constitutionality. At first blush, such speech appears to have no redeemable social value. In addition, it is far from clear that such speech is linked to other forms of speech that actually matters and is thus deserving of protection. However, if the Stolen Valor Act's expanded reach is subject to strict scrutiny analysis, then, if *Alvarez* and *Strandlof* are any indication—the act is not likely to survive judicial challenge. Like the movie of the same name, the effort to criminalize lying about receiving awards of valor may prove to be a bridge too far. **TFL**

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Endnotes

¹Carl H. Middleton, GREAT QUOTATIONS THAT SHAPED THE WESTERN WORLD 255 (2007).

²Juan Garcia, Assistant Secretary of the Navy for Manpower and Reserve Affairs, *What Would General Washington Think?* PROCEEDINGS 54 (Nov. 2010).

³Christen Davenport, *Exposing Falsified Valor*, WASH. POST, at A1, A8 (May 10, 2010).

⁴Edward Colimore, *Exposing Military Fakes*, WASH. TIMES at A2 (March 9, 2004).

⁵Emily Babay, *Ex-Md. Resident Charged With Lying About Military Service*, WASH. EXAMINER at 8 (Jan. 14, 2011) (national “hero of the year” award from a gun manufacturer); Garcia, *supra*, note 2, at 55 (VA and Social Security benefits, disability); Joe Gould, *2 Fakers Sentenced to Prison*, ARMY TIMES at 25 (Oct. 11, 2010) (contract); *Major Faker Gets 5 Months*, ARMY TIMES, at 5 (Mar. 3, 2008) (Army Reservist lied about awards to obtain promotion to

major); *see also* U.S. Attorney's Office, Eastern District of North Carolina, Press Release, *Former PFC Found Guilty of Stolen Valor, VA Fraud Charges* (Apr. 21, 2011) (VA compensation), available at www.justice.gov/usao/nce/press/2011-apr-21_02.html; Department of Defense, Office of Inspector General, Press Release, *Military Imposter Receives Prison Sentence* (Sept. 21, 2006) (tuition), available at www.dodig.mil/IGInformation/IGInformationReleases/LisaPhillips_092106%20.pdf.

⁶152 CONG. REC. H8820 (daily ed. Dec. 6, 2006) (statement of Rep. Sensenbrenner).

⁷Col. Frank C. Foster (Ret.) and Lawrence H. Borts, A COMPLETE GUIDE TO UNITED STATES MILITARY MEDALS 1939 TO PRESENT at 5 (5th ed. 2000).

⁸152 CONG. REC. H8821 (daily ed. Dec. 6, 2006) (statement of Rep. Salazar).

⁹Foster and Borts, *supra*, note 7, at 5, 21.

¹⁰Editors of the Boston Publishing Company, ABOVE AND BEYOND: A HISTORY OF THE MEDAL OF HONOR FROM THE CIVIL WAR TO VIETNAM at 52 (1985); Foster and Borts, *supra*, note 7, at 16.

¹¹Evans Kerrigan, AMERICAN MEDALS AND DECORATIONS at 13 (1990).

¹²Kimberly Largent-Christopher, *A Controversial Doctor of Distinction*, WASH. TIMES at B5 (May 14, 2009) (President Carter reinstated the Medal of Honor in 1977).

¹³Julian E. Barnes, *Soldier Given Highest Honor*, WALL ST. J. at A6 (July 13, 2011); John Ryan, *The Symbol of Sacrifice*, ARMY TIMES at 4 (Oct. 25, 2010).

¹⁴Kerrigan, *supra*, note 11, at 14; Foster and Borts, *supra*, note 7, at 21.

¹⁵Col. David H. Hackworth (Ret.), *Why Medals Matter*, NEWSWEEK at 28 (May 27, 1996).

¹⁶Joshua Stewart and Mark A. Faram, *Fired Over Medals*, NAVY TIMES at 16 (May 23, 2011) (Navy Command master chief being investigated for wearing unauthorized awards), at 18 (noting summary court-martial conviction of sailor for “two counts of wrongfully wearing awards”); Joe Gould, *6-Month Term for False Valor*, ARMY TIMES at 18 (March 21, 2011) (“numerous unauthorized awards and decorations”); *Sailor Gets 2 Years for Medal Offenses*, WASH. TIMES at B3 (Jan. 25, 2008) (unauthorized wearing of Bronze Star and Purple Heart); *see* Edward Colimore, *Exposing Military Fakes*, WASH. TIMES at A2 (March 9, 2004) (Navy captain faces court-martial “for the unauthorized wearing of a Silver Star ... , a Distinguished Flying Cross; a Purple Heart; a parachutist qualification badge; and Special Forces Medical Corps insignia”); *cf.* Michelle Tan, *Chest Full of Lies*, ARMY TIMES at 18, 19 (July 30, 2007) (soldier charged with claiming awards but eventually received an other than honorable discharge in lieu of court-martial).

¹⁷*United States v. Sosebee*, 35 M.J. 892 (A.C.M.R. 1992); *United States v. Coleman*, 32 M.J. 508 (A.C.M.R. 1990); *see Driving-School Mogul Slips Past Regulations*, TRIBUNE NEWS (May 25, 2011), available at www.thenewstribune.com/389/ (link to court-martial records, including a conviction for violation of Article 134 for wearing unauthor-

VALOR continued on page 31

⁵*Doran v. Salem Inn Inc.*, 422 U.S. 922 (1975) (holding that, even though nude dancing may deserve First Amendment protection, the governmental interest in regulating the sale of liquor outweighs such protection); *see also Kleinman v. City of San Marcos*, 597 F.3d 323 (5th Cir. 2010).

⁶*Miller v. California*, 413 U.S. 15, 23 (1973) (emphasis added).

⁷*Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995).

⁸*Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

⁹*Kaplan v. California*, 413 U.S. 115 (1973).

¹⁰*Bery v. City of New York*, 906 F. Supp. 163, 169 (S.D.N.Y. 1995).

¹¹*Id.*

¹²*Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir. 1996).

¹³*Id.*, 689, 696.

¹⁴*Id.*, 689, 695.

¹⁵*Id.*, 689, 697.

¹⁶*Id.*

¹⁷*Mastrovincenzo v. City of New York*, 313 F. Supp. 2d 280, 292 (S.D.N.Y. 2004).

¹⁸*Mastrovincenzo v. City of New York*, 435 F.3d 78, 81–82 (2d Cir. 2006).

¹⁹*Id.*, 90.

²⁰*Id.*, 93–95.

²¹*White v. City of Sparks*, 500 F.3d 953 (9th Cir. 2007).

²²*Id.*

²³*White v. City of Sparks*, 341 F. Supp. 2d 1129, 1139 (D. Nev. 2004).

²⁴*White, supra*, note 21, 953.

²⁵*Gaudiya Vaishnava Society v. City and County of San Francisco*, 952 F.2d 1059, 1060 (9th Cir. 1990).

²⁶*Id.*, 1059, 1063.

²⁷*White, supra*, note 21, 953, 955.

²⁸*Hurley, supra*, note 7, 557.

²⁹*Kleinman, supra*, note 5, 323, 324–325.

³⁰*Id.*, 323, 326.

³¹*Id.*, 323, 329.

VALOR continued from page 24

ized awards and decorations between 1987 and 1990).

¹⁸*United States v. Perelman*, 737 F. Supp. 2d 1221, 1234 (D. Nev. 2010) (formerly 10 U.S.C. § 1425).

¹⁹*See Man Apologizes for Claiming to be Medal Winner*, CHICAGO TRIBUNE at 6 (May 21, 1997) (“found guilty ... of wearing the [Medal of Honor] without authorization”).

²⁰*Company Fined \$80,000 for Selling Bootleg Medals*, ARIZ. REPUBLIC at A10 (Dec. 4, 1996) (unauthorized sale of 300 Medals of Honor); *cf.* Nick Adde, *Other Than Honorable: Medal Sales Prosecuted*, ARMY TIMES at 30 (Dec. 11, 1995) (individual arrested and charged “with selling two unissued Medals of Honor to an undercover agent”).

²¹Press Release, USAO E.D.N.C., *supra*, note 5 (Navy Cross, Silver Star, and Purple Heart); Gould, *supra*, note 5 at 25 (one wore the Distinguished Service Cross, the second wore the Purple Heart); Freeman Klopott, *Man Gets 10 Days in Jail for Posing as Navy Veteran*, WASH. EXAMINER at 8 (April 9, 2010) (man wore the Silver Star and Purple Heart, among others).

²²U.S. Attorney’s Office, Western District of Washington, Press Release, *Sumner Man Pleads Guilty to False Claims of Military Medals* (Dec. 17, 2008) (written claim to the VA of receipt of Bronze Star and Purple Heart as part of VA compensation claim), available at www.justice.gov/usao/waw/press/2008/dec/bennest.html.

²³Lt. Col. Gary D. Solis (Ret.), *Stolen Valor on Trial*, PROCEEDINGS 52, 53 (Nov. 2010) (“Imprisonment, even for brief periods, has been rare.”).

²⁴*United States v. Alvarez*, 617 F.3d at 1199, 1200 (9th Cir. 2010).

²⁵*Id.* at 1202, 1209–1211 (defamation), 1211–1213 (fraud),

1213 (emphasis in original).

²⁶*Id.* at 1216–1217.

²⁷*Id.* at 1218–1219, 1220, 1221 n.1 (emphasis in original), 1222 (citations omitted).

²⁸*Id.* at 1231–1232, 1235, 1241 (emphasis in original).

²⁹*United States v. Strandlof*, 746 F. Supp. 2d at 1185–1186 (D. Colo. 2010); *see also Solis, supra*, note 23, at 54.

³⁰*Strandlof, supra*, note 29, at 1186, 1187, 1188.

³¹*Id.* at 1188–1191.

³²*Perelman, supra*, note 18, at 232, 1235, 1236 (distinguishing *United States v. McGuinn*, 2007 WL 3050502 (S.D.N.Y. Oct. 18, 2007) (unpublished); *citing United States v. Avila*, 47 M.J. 490, 492 (1998), 1237).

³³*Perelman, supra*, note 18, at 1238 (citing *United States v. O’Brien*, 391 U.S. 367 (1968)).

³⁴*United States v. Robbins*, 759 F. Supp. 2d at 816, 817 (W.D. Va. 2011).

³⁵*Id.* at 817–818, 819 (emphasis in original).

³⁶*Id.* at 821–822.

³⁷*Alvarez, supra*, note 24, at 1213.