

History teaches us that group libel laws are used to oppress minorities, not to protect them. For example, none of the anti-Semites who were responsible for arousing France against Captain Alfred Dreyfus was ever prosecuted for group libel. But Emile Zola was prosecuted for libelling the military establishment and the clergy of France in his magnificent "J'Accuse!" and had to flee to England to escape punishment.

Why should someone who detests the Nazis and the KKK support defense of their right to speak?

In a society of laws, the principles established in dealing with racist views necessarily apply to all. The ACLU defended the right of Father Terminiello, a suspended Catholic priest, to give a racist speech in Chicago. In 1949, the U.S. Supreme Court agreed with our position in a decision that is a landmark in the history of free speech. Time and again, the ACLU was able to rely on the decision in *Terminiello v. Chicago* in defending free speech for civil rights demonstrators in the deep South. The Supreme Court cited its own decision in *Terminiello* in its leading decisions on behalf of civil rights demonstrators, *Cox v. Louisiana* and *Edwards v. South Carolina*. Similarly, the Supreme Court's decision in 1969 in *Brandenburg v. Ohio* upholding free speech for the KKK was the principal decision relied upon by a lower court the following year in overturning the conviction of Benjamin Spock for opposing the draft.

The principles of the First Amendment are indivisible. Extend them on behalf of one group and they protect all groups. Deny them to one group, and all groups suffer.

Doesn't providing racists and totalitarians with a legal defense give publicity to their cause and their ideas that they would otherwise not receive?

It is the attempts by communities to prevent such people from expressing themselves that gives them the press coverage they would ordinarily not receive. If providing a legal defense for their constitutional rights results in a continuation of the publicity, that is an unavoidable consequence of the events that were set in motion by the original denial of First Amendment guarantees. A fact that seems little understood by those who take a restrictive view toward speech they do not like is that attempts at suppression ordinarily increase public awareness in the ideas they are trying to stamp out.

But doesn't the ACLU have more important things to do with its limited resources than to defend racists and totalitarians?

The ACLU has many important jobs to do and it devotes its resources to a wide range of civil liberties concerns — sexual equality; racial justice; religious freedom; the freedom to control one's body; the constitutional rights of students, prisoners, mental patients, service personnel, juveniles, the elderly; and the right of privacy for all of us. Thousands of court cases are undertaken each year by the ACLU to protect these rights.

But among the most important freedoms we are dedicated to defending are those of speech, press and assembly, for they are the bedrock on which all other rights rest. We are involved in only a handful of cases each year to defend free speech for racists or totalitarians. Even though this is only a tiny fraction of the ACLU's work, we think it is important.

We cannot remain faithful to the First Amendment by turning our backs when it is put to its severest test — the right to freedom of speech for those whose views we despise the most.



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Why the ACLU defends free speech for unpopular groups

“He that would make his own liberty secure, must guard even his enemy from oppression, for if he violates this duty, he establishes a precedent that will reach to himself.”

—Thomas Paine

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Why does the ACLU defend free speech for unpopular groups such as Nazis, Ku Klux Klan (KKK) members, and others who advocate racist or totalitarian doctrines?

Because we believe that the constitutional guarantees of freedom of speech and press would be meaningless if the government could pick and choose the persons to whom they apply. The ACLU's responsibility — since its founding in 1920 — has been to make sure that all are free to speak, no matter what their ideas.

In what circumstances does the ACLU defend the rights of such people?

The ACLU defends the right of such persons to make speeches in which they express their beliefs; to print and distribute written material; to hold peaceful marches and rallies; to display their symbols, and to be members of groups which promote their doctrines.

Has the ACLU always defended such people?

Yes. Always. The ACLU's very first annual report describes a case in which the ACLU defended free speech for the KKK. We have been defending free speech for these groups — and all others — ever since.

ACLU defense is needed when the views of some people are unpopular and the government interferes with their ability to express their views peacefully. In times and places where the views of civil rights activists, pacifists, religious and political dissenters, labor organizers and others have been unpopular, the ACLU has insisted on their right to speak.

Throughout the history of the ACLU, we have adhered to Voltaire's principle that "I may disapprove of what you say, but I will defend to the death your right to say it."

But does the First Amendment protect even those who urge the destruction of freedom? Does it extend to those who advocate the overthrow of our democratic form of government or who espouse violence?

In 1969, in an ACLU case involving a KKK leader who had urged at a rally in Hamilton County, Ohio that Black Americans be sent back to Africa, the United States Supreme Court unanimously established the principle that speech may not be restrained or punished unless it "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (*Brandenburg v. Ohio*)

In this, and in earlier cases involving advocates of draft resistance in World War II, the Supreme Court made it clear that before a speaker can be suppressed there must be a clear and present danger that the audience will act illegally and do what the speaker urges — not just believe in what is advocated.

When Nazis or others like them choose to demonstrate in places like Skokie, Illinois, where hundreds of survivors of the concentration camps live, are they not creating a clear and present danger of violent reactions?

Speaking or marching before a hostile audience is not the same as inciting a sympathetic crowd to engage in illegal acts. The audience is not being urged to become violent and do bodily harm to the demonstrators. Hostile crowds must not be allowed to exercise a veto power over the speech of others by themselves creating a clear and present danger of disorder. Otherwise any of us could be silenced if people who did not like our ideas decided to start a riot.

It is common practice for speakers and demonstrators to carry their messages to hostile audiences — perhaps in the hope of making conversions, perhaps to attract attention, or perhaps to test the potential for restraint or for ugliness in their adversaries.

In hundreds of cases, the ACLU has defended the right to speak even when the speakers were so unpopular that opponents reacted violently. The Wobblies carried their unionization message to Western mining towns. That message was so unpopular that some of them were lynched. Jehovah's Witnesses distributed their tracts in Roman Catholic neighborhoods. They were stoned. Norman Thomas spoke in Mayor Frank Hague's Jersey City. He was pelted with eggs and narrowly escaped serious violence. Civil rights activists in the 1960s chose to demonstrate in Mississippi and Alabama. Some of them were murdered. Opponents of the Vietnam War picketed military bases. Many of them were beaten. Martin Luther King, Jr. marched in the most racist neighborhoods of Chicago. And there was racial violence.

The duty of government is to permit speech and to restrain those who would disrupt it violently. Opponents of a point of view must be free to have their say, but not to make any public place off-limits for speech they don't like.

But isn't a demonstration in an intensely hostile area the same as falsely shouting "fire" in a crowded theater?

Speaking or marching with offensive messages in public places is not at all the same as falsely shouting "fire" in a crowded theater. The members of the crowd are not in a tightly enclosed arena where a panic would almost certainly follow a sudden and unexpected cry of danger before any contrary view could be heard. They have come to the scene freely, probably knowing what to expect, and they may freely turn away if they are upset by what they see or hear. Just as speakers have a right to express

themselves, listeners have a right to ignore them or, if they choose, to hold peaceful counter-demonstrations.

Hasn't the Supreme Court said that certain kinds of communication — like hurling epithets at another person — are so likely to lead to fighting that the speaker, and not the audience — is responsible? Isn't the display of a swastika or the burning of a cross the same as such "fighting words?"

The Supreme Court has made it clear that speech can be punished as "fighting words" only if it is directed at another person in an individual, face-to-face encounter. The Court has never applied this "fighting words" concept to nonverbal symbols displayed before a general audience (like the display of a swastika or a peace symbol or the burning of a cross or of an effigy of a political leader).

Why do the ACLU and the courts believe that prior restraints on free speech are so much worse than punishments after a speech has been made?

Prior restraints not only prevent entirely the expression of the would-be speaker, but they also deprive the public of its right to know what the speaker would have said.

When the Nixon Administration tried to impose a prior restraint on the Pentagon Papers, they told us that publication would injure the national security. When the Pentagon Papers were published, we discovered that they exposed misdeeds by the government, but did no damage to national security.

If the purpose of the First Amendment is to insure a free flow of ideas, of what value to that process are utterances which defame people because of their race or religion? Can't we prohibit group libel that merely stirs up hatred between peoples?