

Wonkette

New York Times Not Mad, Just Disappointed That Bari Weiss Isn't Running The ACLU

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A favorite hobby over at the *New York Times* is creating outrage about things on the Left so they can go "Look! Both sides!" And, well, here we are again!

In the last four days, the *New York Times* has published not one but two pieces about the ACLU allegedly abandoning its free speech bonafides. On Sunday, the *Times* published a feature (not an opinion piece, but something purporting to be a real, journalistic article) about the organization written by Michael Powell.

At first glance, Powell's piece makes it look like the ACLU is in the midst of a civil war — and free speech is on the losing side. Powell's piece quickly made the rounds. A lot of people, mostly right-wingers and the usual "look at me, I'm edgy!" contrarians but also lefties, jumped at the chance to attack the ACLU for abandoning its commitment to free speech. The next day, the outlet published a follow-up op-ed that argued forcefully in favor of defending people who say terrible things.

And you know what? They would be right. That is, if this were a thing that was actually happening. Instead, Powell seems to be irked that the ACLU is mostly focusing on the *state* infringing upon freedom of speech, rather than whatever bad "white fragility" thing a private school asked its parents to think about. Did the *Times* bring back Bari Weiss to edit this thing?

Tellingly, while complaining about the ACLU's alleged neglect of the First Amendment, Powell names exactly zero times the ACLU has compromised its free speech ideals. Rather than dig into even a single case the organization ignored or time the organization brought a case antithetical to free speech (doubtlessly because he couldn't find one), he uses random anecdotes that often have nothing to do with free speech.

The ACLU of Virginia represented Unite the Right protesters in Charlottesville after their permit was rescinded. After Heather Heyer's murder, tensions were high within the organization. (I was there at the time.) Powell talks about Charlottesville and the response to it ... but focuses mainly on the dissent within the organization, hardly stopping to acknowledge the fact that the ACLU

did, in fact, represent those abhorrent people in their free speech case. The article gets into random tweets from state ACLU affiliates; tweets, of course, are neither self-executing nor official policy statements. (And can I just say that I'm kind of shocked that a piece calling ACLU affiliate tweets "erratic" didn't include anything from my stewardship of the ACLU-WV's Twitter account?)

Despite clear cherry-picking, Powell just doesn't have facts to back up his assertions. The entire article is full of anecdotal non-sequiturs meant to make the organization look bad, and few of them are on topic. In an article ostensibly about free speech, Powell takes time to discuss the salary of the national executive director, complain about the ACLU's opposition to Kevins Kavanaugh's SCOTUS nomination, and bitch about a commercial with Stacey Abrams. He talks about a free speech event at William & Mary that was shut down by BLM protesters — an event where ACLU of Virginia executive director Claire Gastanga planned to talk about the importance of free speech after Charlottesville and said "Good, I like this" when the protesters appeared — as an example of "dissent from within." He is SHOCKED, JUST SHOCKED that civil liberties lawyers were devastated after Trump won the 2016 election and were proud to fight all of the horrors that came next.

Here's one example of something that Powell evidently decided was relevant:

"The A.C.L.U. embraced dormitories set aside for Black and Latino students and argued that police forces were inherently white supremacist. "We need to defund the budgets," Mr. Romero said last year. "It's the only way we're going to take power back."

How does this have anything to do with compromising on free speech? It doesn't. It's just that Michael Powell doesn't like the ACLU's racial justice work very much. (Also, someone really needs to tell the *Times* to stop it with the periods in acronyms like ACLU and LGBTQ. tyia)

But I think my personal favorite part is when Powell takes the time — in his piece about the importance of "free speech" — to whine about how a staffer wasn't punished for being mean to Chuck Grassley on her personal Twitter account.

This March, Senator Chuck Grassley of Iowa — who survived a bout with the coronavirus — was conducting confirmation hearings for a former A.C.L.U. lawyer who was nominated to serve as associate attorney general. Rebecca McCray, an A.C.L.U. editor, listened to the sharp tone of Mr. Grassley, a Republican, as he grilled the nominee and felt a flush of anger.

She tweeted: "Tried to watch Vanita Gupta's confirmation hearing but got too angry Chuck Grassley survived COVID."

Mr. Romero quickly apologized to Mr. Grassley's staff and took no action against his staffer. Asked about Ms. McCray, he responded, "She is highly valued by me."

The article is also notable for the stories it fails to tell. Powell chooses to ignore basically all of the First Amendment work the organization has done in recent years — including a Supreme Court case that was just argued at the end of April. When police and DHS stormtroopers were

beating up, arresting, and disappearing protesters last summer, the ACLU was there. In its most recent annual report, the ACLU noted that it had filed 43 legal actions against the Trump administration on free speech and privacy, and detailed:

"The ACLU filed more than a dozen lawsuits in 18 cities to defend protesters' rights, including in St. Louis, Missouri, where video captured an officer hitting a fleeing man with his patrol SUV and then appearing to kick the man while he was on the ground. And on behalf of protesters who were abducted, beaten, and gassed by federal agents in Portland, Oregon, we sued Trump, the Department of Homeland Security (DHS), the U.S. Marshals Service, DHS officials, and the federal agents that violated the protesters' rights. We also challenged the Trump administration's flagrant abuse of D.C. protesters to clear the way for a presidential photo-op."

Michael Powell's problem isn't that the ACLU hasn't been doing free speech work. It has. It's that a lot of the ACLU's recent free speech cases haven't been on behalf of bigots and terrible rightwing nutjobs.

It's not exactly shocking that a lot of recent free speech cases involve causes like BLM that the ACLU otherwise agrees with — WE JUST LIVED THROUGH FOUR YEARS OF DONALD TRUMP. How quickly Michael Powell seems to have forgotten the First Amendment catastrophes we just experienced and the work the ACLU did to curtail them.

And, of course, that's not the only free speech work the ACLU did. Around the country, the ACLU is fighting attempts to do things like criminalize protesting, ban public schools and universities from talking about racism and sexism, and stop diversity training. In recent SCOTUS arguments, national legal director David Cole represented a cheerleader who was kicked off the team for saying "fuck cheer" in a snap.

I love free speech! These critiques would be fair if justified. But it's not. Powell just doesn't seem to like it when the ACLU is able to advance the cause of free speech and agree with the speech it's defending at the same time.

Taking a principled stance, of course, doesn't mean *only* defending speech you disagree with, but I guess no one ever told Michael Powell that not every First Amendment case needs to be on behalf of terrible people. Yes, the ACLU has represented the KKK, Nazis, and NAMBLA. It has also represented the NAACP, draft resisters, labor unions, John Scopes, and Allen Ginsberg. That's what the ACLU is — and always has been.

Powell's concern trolling also blatantly ignores recent times the ACLU has teamed up with conservatives on speech issues. In the last four years, the ACLU represented or argued on behalf of Milo Yiannopoulos, the NRA, Americans for Prosperity, and the Thomas More Society on free speech issues. It co-authored Supreme Court briefs with the Cato Institute, American Conservative Union, R Street, and the Rutherford Institute. It didn't love Donald Trump's social media bans nearly as much as the rest of us.

David Cole wrote a piece in response to the *Times* the same day Powell's article was published, pointing out recent ACLU free speech cases where the organization defended speech most of its

members probably disagree with. ACLU staffers who support the organization's free speech work were none too pleased with Powell's take and many took to social media to share their thoughts. In a fantastic [Twitter thread](#), attorney Carl Takei took Powell and his assertions to task:

Takei was far from alone. ACLU Justice Division Director and Deputy National Political Director Udi Ofer also [tweeted](#) his commentary.

And ACLU lawyers Heather Lynn Weaver and Josh Block [pointed out](#) that free speech and racial justice have always been important to the organization — and have always been intertwined.

Spoiler alert: They're right. When speech is criminalized, it's rarely racists and rightwing conservatives who are punished. BIPOC and others from marginalized communities are the ones most hurt by hateful speech. But they are also the first groups to be targeted in crackdowns on free speech. Just take a look at American history if you don't believe me.

I'm going to let you in on a little secret: The ACLU doesn't expect its staff to agree on every issue. In fact, I would be shocked if there were a single person within the organization who personally agrees with everything the ACLU does. Engaging in heated internal debates about organizational policies is not a bad thing. And staff feeling comfortable dissenting and expressing their viewpoints is, actually, part of being an organization that values speech.

So, yes. The ACLU defending free speech, even when that speech is abhorrent, is important.

And that's exactly what it's doing.