

Did Portland Violate the First Amendment by Selectively Tolerating Violence?

Portland and its police may have violated the First Amendment by allowing members of the left-wing group Antifa to physically attack people, such as [a conservative journalist and an elderly man](#). Police are not allowed to permit attacks on disfavored speakers, or permit violence by ideologically favored groups, while otherwise enforcing the law. That violates the First Amendment. Police have no duty under the Constitution to protect the public at all. But if they do, they can't selectively withhold protection from people with disfavored views, or selectively permit violence by a group they ideologically sympathize with.

A federal appeals court made that clear in [Dwares v. City of New York](#) (1993). It allowed New York City police to be sued because they allowed flag burners to be attacked, when they likely would not have permitted such attacks on anyone else. Such viewpoint discrimination was forbidden by the First Amendment.

In Portland, police did nothing as Antifa attacked people nearby. For example, Antifa members viciously [attacked journalist](#) Andy Ngo on Saturday at a Portland rally. They assaulted him with fists and milkshakes that may have contained caustic quick-dry cement, sending him to the emergency room. Other video of [Antifa shows](#) "a group of masked thugs beating an elderly man in Portland with a crowbar and macing him."

Andy Ngo is a photojournalist and editor at conservative-

leaning *Quillette*. As Reason Magazine's Robby Soave [notes](#), an "antifa mob beat up a journalist ... who posed no physical threat to them and was only there to document their activities – on a public street. This is indefensible, and yet there are tons of progressive-leaning people currently [defending it](#), or at [the very least rationalizing and making light of it](#)." It is unfortunate that some progressive journalists have chosen to [minimize or excuse](#) this violence, [because](#) it was aimed at a journalist for a conservative-leaning publication. (Ngo himself is a gay Vietnamese-American).

In response to these beatings, people [have argued](#) that the City of Portland needs to be sued for allowing (or directing) the police to not protect the innocent. They have criticized the City of Portland and its left-wing mayor, who sympathizes with Antifa, for doing nothing. In response, other people have pointed out that police have no constitutional duty to enforce the law. For example, one [lawyer noted](#) that “the Supreme Court upheld that officers have no legal duty to protect you.”

That's true, but it is also irrelevant. It is true that Portland police have no duty to protect *anyone*. But once they protect anyone, they can't *selectively deny* protection to victims of a left-leaning group like Antifa. Such ideological discrimination is forbidden. Portland does try to protect people attacked by right-wingers, and it generally does try to protect members of the general public against non-political violence when there is an obvious risk of it. It needs to give victims of left-wing violence the same protection.

There is no exception to constitutional protections for conservative victims, nor is there a “punch a Nazi” exception to the Constitution. For example, in [*Hernandez v. City of San Jose*](#) (2018), the Ninth Circuit Court of Appeals ruled that a city could be sued for increasing the risk that Trump supporters would be attacked.

Progressive journalists should

stop [minimizing](#) Antifa [violence](#) when it is aimed at conservatives, because Antifa violence can happen to progressives, too. Being progressive doesn't necessarily save people from Antifa's wrath. In 2018, a progressive Washington Post columnist had her cell-phone [knocked out of her hand](#) by Antifa while covering a rally, and was told to F* herself. Antifa did this to her even though she shares Antifa's antipathy to conservatives, and even though the Washington Post's own "media columnist," Margaret Sullivan, had [defended](#) Antifa in a 2017 column.

Antifa also attacks people overseas, as part of its "struggle against capitalism," [notes](#) Fredrik Segerfeldt in Reason Magazine. He describes an Antifa attack in Sweden on a supporter of free markets:

It is a cold and dark January night in the Swedish town of Eskilstuna. Fredrik Nyqvist and a friend are walking home from the founding meeting of the local section of the minuscule Libertarian Party.

Suddenly, four men in black clothes and facemasks show up, knocking the two unconscious. One of the offenders later bragged about jumping on Fredrik's head, causing injuries that kept him hospitalized for days.

The two libertarians had no way of identifying the perpetrators and assumed it was just a regular criminal incident. They could not know they had just become victims of political terrorism. But they would soon find out.

At his home a couple of days later, a third party member received a note from a group claiming responsibility for the attack, and was warned:

We hereby give you a chance to terminate all political activities. Failing to do so, you may be the next one to be physically reminded of the consequences of pursuing anti-working class policies.

Segerfeldt says that Antifa attacks such people [because their](#) “beliefs in the rule of law, property rights, and markets are anathema” to Antifa.

As CNS News [notes](#), “Antifa thugs have repeatedly [beaten or threatened](#) journalists and regular citizens on the street who dare to capture them on tape.”

But newspapers like the Washington Post have sometimes foolishly minimized Antifa’s violence and extremism. They claim its violence has been given too much media coverage, such as the “[club-wielding protesters shown endlessly on TV](#).” A Washington Post column by Margaret Sullivan [complained](#) that Antifa members had been wrongly stereotyped as violent thugs, by those who believe that Antifa members are “the left-wing equivalent of neo-Nazis.” Instead of focusing on Antifa’s violence, the press should “explain the group’s ideology, tactics or goals.” She argued that the media [should not dwell](#) on violent acts committed by Antifa members, because that would play into a conservative meme about violent leftists.

Sullivan [defended](#) Dartmouth Professor Mark Bray, who said Antifa’s violence is a “[legitimate response](#)” to the Right. She [lamented](#) the fact that Bray was “publicly” criticized “by his university president” for defending its violent activities.

Washington Post columnists like Sullivan are not much troubled by Antifa’s violence, especially when it is aimed at ordinary citizens, rather than the media. Journalists yawned when an Antifa goon was given probation by a liberal judge after [attacking seven people](#) from behind. The Antifa thug hit his victims so hard with a heavy metal bike lock that one victim had a piece of his “helmet broken off,” and another suffered a “head laceration that required five staples to fix.”

As Jerome Woehrle has [noted](#):

Sullivan's downplaying of violent thuggery is worrying, because she is representative of the Post and the liberal media. She is the epitome of the journalistic establishment as the Post's designated "media columnist." Before joining The Post, she was the New York Times public editor and previously the chief editor of the Buffalo News. She was a member of the Pulitzer Prize board from 2011 to 2012, and was twice elected as a director of the American Society of Newspaper Editors, where she led the First Amendment committee.

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