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"Murder the Media"

Press Freedom, Violence, and the Public Sphere

Joseph Blocher

The U.S. Justice Department recently estimated that the January 6 riot inflicted roughly $2.7 million in damages to the Capitol building and Capitol police.[1] Presumably, only a minuscule amount of those damages – perhaps a few dollars' worth of strong solvent or paint – are attributed to addressing the words "MURDER THE MEDIA" that were scrawled in permanent marker on the Capitol's Memorial Door. "Elders" of the far-right group the Proud Boys had left the ominous message in homage to their social media channel by the same name.[2] Yet the actual damages of this threat to the press and, by extension, the public, are surely much more significant. How, though, does one fully account for the damage that threats and violence against the media inflict, or for its causes?

On January 6, at least eighteen journalists were assaulted;[3] some later shared harrowing accounts of their experiences.[4] Outside the building, tens of thousands of dollars of press equipment was destroyed by a mob that posed for pictures with its handiwork.[5] Threats or harm to journalists are hardly limited to that day and place. A few years earlier and less than an hour's drive away in Maryland, five employees of the Annapolis Capital Gazette were murdered by a man who had unsuccessfully

[1] *Twenty-four Months Since the January 6 Attack on the Capitol*, U.S. Att'y's Office D.C. (Jan. 4, 2023), https://www.justice.gov/usao-dc/18-months-jan-6-attack-capitol.

[2] Spencer S. Hsu & Rachel Weiner, *Proud Boys Who Scrawled 'Murder the Media' at Capitol Plead Guilty*, Wash. Post (Sept. 9, 2022), https://www.washingtonpost.com/dc-md-va/2022/09/09/proud-boys-murder-media-capitol-jan6/. The Memorial Door is dedicated to two officers who died defending the Capitol against an armed intruder in 1988. *Id.*

[3] *Charges – and Punishments – for J6 Rioters Who Hurt Journalists, Damaged News Equipment*, U.S. Press Freedom Tracker, https://pressfreedomtracker.us/blog/charges-and-punishments-for-j6-rioters-who-hurt-journalists-damaged-news-equipment/ (last visited Dec. 8, 2023).

[4] Nicholas Fandos et al., *'Senate Being Locked Down': Inside a Harrowing Day at the Capitol*, N.Y. Times (Jan. 7, 2021), https://www.nytimes.com/2021/01/07/us/politics/capitol-lockdown.html.

[5] *'Murder the Media': What the Jan. 6 Attack on the Capitol Meant for US Journalists*, Committee to Protect Journalists (Jan. 6, 2023), https://cpj.org/2023/01/murder-the-media-what-the-jan-6-attack-on-the-capitol-meant-for-u-s-journalists/.

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sued the paper after it reported on his alleged harassment of a former classmate.[6] Fifteen journalists have been killed in the United States in recent decades,[7] and one recent report counted 142 assaults on journalists in the United States in 2021 alone.[8] Highlighting the nation's failure to protect journalists, Reporters Without Borders recently declared that the United States is "no longer a champion of press freedom, either at home or abroad."[9]

Against that broad backdrop, this chapter has two aims. The first is to argue that the press as an institution is entitled to special solicitude under the First Amendment, not only because it is textually specified in the Constitution[10] or because it serves important roles, such as checking public and private power,[11] but because it can contribute to the marketplace of ideas in ways that a healthy democracy needs. In other words, the press as an institution can provide an important link between the First Amendment's epistemic and democratic values.

The chapter's second goal is to provide a rough and preliminary sketch of the relationship between press freedom, violence, and public discourse. Some elements seem straightforward enough. Violence and harassment obstruct the press's function,[12] including its traditional role in constituting and shaping public discourse.[13] But other elements of the relationship are more complex. Distrust, disinformation, violence, and press degradation exist in a mutually reinforcing ecosystem. And even as violence shapes the media, the media shapes the social conditions,

[6] Lynh Bui et al., *Jarrod Ramos Admits Killing Five in Capital Gazette Newsroom Attack*, Wash. Post (Oct. 28, 2019), https://www.washingtonpost.com/local/public-safety/jarrod-ramos-admits-guilt-in-capital-gazette-shooting-that-killed-5/2019/10/28/39bcd226-f990-11e9-ac8c-8eced29ca6ef_story.html.

[7] Margaux Ewen & Lara Shane, *Crimes against Journalists Are on the Rise and Are Seldom Punished*, Freedom House (Nov. 2, 2022), https://freedomhouse.org/article/crimes-against-journalists-are-rise-and-are-seldom-punished; *The Free Flow of Ideas: Freedom of the Press, the Journalists on the Frontline*, UNESCO (May 11, 2023), https://www.unesco.org/en/threats-freedom-press-violence-disinformation-censorship.

[8] Kirstin McCudden, *Another Record Year for Press-Freedom Violations in the U.S.*, Colum. Journalism Rev. (Jan. 12, 2022), https://www.cjr.org/analysis/2021-press-freedom-prior-restraint-arrests.php.

[9] Megan Specia, *In Turnabout, Global Leaders Urge U.S. to Protect Reporters amid Unrest*, N.Y. Times (Aug. 10, 2020), https://www.nytimes.com/2020/06/04/world/attacks-press-george-floyd.html.

[10] Potter Stewart, '*Or of the Press*', 26 Hastings L.J. 631, 633 (1975) (calling the press "the only organized private business that is given explicit constitutional protection").

[11] Mills v. Alabama, 384 U.S. 214, 219 (1966) ("The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs. Thus, the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.").

[12] Erin C. Carroll, *Obstruction of Journalism*, 99 Denver L. Rev. 407 (2022) (detailing "how violence obstructs journalism . . . on at least three levels: the story, the beat, and the pipeline").

[13] *Cf.* Robert C. Post, Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State 18 (2012); Robert Post, *Participatory Democracy and Free Speech*, 97 Va. L. Rev. 477, 482, 486 (2011).

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understanding, and practice of violence in return. Journalism, albeit in different ways than legal interpretation,[14] "takes place on a field of pain and death," to repurpose Robert Cover's famous phrase – not only in describing it but in making it real. This, it should go without saying, is no excuse for violence *against* media members. The point is, rather, that a healthy press can be a bulwark not only for knowledge and democracy but against the kinds of private and public violence that threaten both.

The First Amendment, and constitutional law more broadly,[15] must grapple with violence – not merely its rhetorical reliance on violent metaphors,[16] but the ways in which interpersonal violence shapes democratic institutions and the public sphere. As Erin Carroll observes: "Violence against journalists is a means of controlling the boundaries of legitimate public discourse."[17] And as Reva Siegel and I have argued elsewhere,[18] if a democracy cannot establish the boundaries of violence, then violence will end up establishing the boundaries of democracy – including the freedom of the press.

5.1 KNOWLEDGE, DEMOCRACY, AND THE PRESS

Many of the First Amendment's paradigmatic scenes involve a lone speaker[19] – sometimes wise and eloquent, sometimes horrible and profane – and the freedom of speech is of course an individual right, exercised to a variety of autonomous ends. But free speech is ultimately embedded in social practices and can only be understood and analyzed in terms of the social values it serves. As for what those values are, some point to the role of speech in protecting or enabling democracy, others to

[14] *Cf.* Robert M. Cover, *Violence and the Word*, 96 YALE L.J. 1601 (1986) ("Legal interpretation takes place in a field of pain and death.").

[15] *See, e.g.*, Farah Peterson, *Our Constitutionalism of Force*, 122 COLUM. L. REV. 1539, 1549–50 (2022) ("[I]t is nonetheless impossible to fully account for the ordering of our society or for the interpretation of the textual Constitution without also understanding that violence has at times fueled the Constitution's evolution and defined the limits of constitutional amendment by more formal means.").

[16] Erin C. Carroll, *The Violence of Free Speech and Press Metaphors*, WASH & LEE L. REV. (forthcoming 2024) (identifying and exploring the use of violence metaphors in free speech law and scholarship).

[17] Carroll, *supra* note 12, at 419. *See also* Erin Carroll, *Obstruction of Journalism: A New Way to Combat Violence Against Journalists*, COLUM. JOURNALISM REV. (Jan. 13, 2022) ("The impact of violence against journalists radiates. It can alter the scope of news and information in our public sphere. That is, in fact, its goal. It is meant to frighten, shame, intimidate and, ultimately, to silence.").

[18] Joseph Blocher & Reva Siegel, *Guns Are a Threat to the Body Politic*, THE ATLANTIC (March 8, 2021).

[19] Kathleen M. Sullivan, *First Amendment Intermediaries in the Age of Cyberspace*, 45 UCLA L. REV. 1653, 1653 (1998) (noting the First Amendment's "frequent individualist rhetoric – including depictions of lone speakers on soapboxes and of buyers and sellers in a marketplace of ideas").

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epistemic goals like the pursuit of truth in the marketplace of ideas, and others to speaker autonomy or other principles.[20]

In the context of press freedom, democracy seems to be the value most often invoked by judges, scholars, and for that matter journalists themselves – consider "Democracy Dies in Darkness," which The Washington Post adopted in 2017 as the first official motto in its 140-year history.[21] And the socially embedded nature of speech is probably also easiest to recognize in the context of democracy, which is itself a collective exercise. It thus seems perfectly natural – whether or not one considers the Fourth Estate to be the fourth branch of government – that many people accept that the press has an important institutional role to play in a well-functioning democracy by, among other things, holding government actors to public account.

Can the same be said for the institutional press under an *epistemic* account of the First Amendment – one that emphasizes the pursuit of truth and other cognitive values instead of the participatory and political stakes of democracy as such? Given the enormous influence of the marketplace of ideas metaphor,[22] it would be a significant loss for advocates of press freedom if the answer were no. Considering the significant anxiety that many people feel about our current "post truth" era[23] and the collapse in trust of knowledge institutions,[24] it seems especially urgent to articulate a role for the press in combatting disinformation and providing reliable expertise.[25]

My argument here, drawing on prior work, is that epistemic theories of the First Amendment can indeed provide a strong case for the recognition and protection of press freedom. And the role of the institutional press in the pursuit of truth, knowledge, and other epistemic values can in turn be connected back to the value of democracy itself.

[20] Though I have often written about epistemic theories of the First Amendment and will discuss them here, I count myself among those who think there is no single free speech value.

[21] Paul Farhi, *The Washington Post's New Slogan Turns Out to be an Old Saying*, Wash. Post (Feb. 24, 2017), https://www.washingtonpost.com/lifestyle/style/the-washington-posts-new-slogan-turns-out-to-be-an-old-saying/2017/02/23/cb199cda-fa02-11e6-be05-1a3817ac21a5_story.html.

[22] William P. Marshall, *In Defense of the Search for Truth as a First Amendment Justification*, 30 Ga. L. Rev. 1, 1 (1995) ("The most influential argument supporting the constitutional commitment to freedom of speech is the contention that speech is valuable because it leads to the discovery of truth."); *see also* Kent Greenawalt, *Free Speech Justifications*, 89 Colum. L. Rev. 119, 130 (1989) ("The most familiar argument for freedom of speech is that speech promotes the discovery of truth.").

[23] Amy B. Wang, *"Post-Truth" Named 2016 Word of the Year by Oxford Dictionaries*, Wash. Post (Nov. 16, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/11/16/post-truth-named-2016-word-of-the-year-by-oxford-dictionaries/ ("It's official: Truth is dead. Facts are passe.").

[24] Tom Nichols, The Death of Expertise: The Campaign against Established Knowledge and Why It Matters (2017).

[25] *See* RonNell Andersen Jones & Lisa Grow Sun, *Freedom of the Press in Post-Truthism America*, 98 Wash. U. L. Rev. 419 (2020).

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To get there as a matter of First Amendment theory, it is helpful first to reject or at least modify the individualistic, atomistic conception of the marketplace of ideas that many accounts of free speech seem to adopt and, to be fair, that Justice Holmes might have had in mind when he helped launch the metaphor with his dissent in *Abrams*.[26] It is important instead to understand the marketplace of ideas and any production of truth it encourages as a set of social practices, governed by norms and rules that go beyond individualized and idealized transactions of thought.

Though there may be other good reasons to reject the market metaphor entirely, this particular conceptualization is entirely in keeping with economic theory. Economists, at least since Ronald Coase, have emphasized that the market is populated and constructed not only by individuals but by *institutions*, which Douglass North (one of the architects of New Institutional Economics, or NIE) described in his Nobel Prize lecture as "the humanly devised constraints that structure human interaction. They are made up of formal constraints (e.g., rules, laws, constitutions), informal constraints (e.g., norms of behavior, conventions, self-imposed codes of conduct), and their enforcement characteristics."[27] As fellow Nobel laureate Oliver Williamson explained:

> Students of the NIE eschew hypothetical ideals – which work off of omniscience, benevolence, zero transaction costs, full credibility, and the like – and deal instead with feasible organizational alternatives, all of which are flawed.[28]

A rich literature chronicles some ways in which these institutions can facilitate property rights and markets.[29]

The recognition of institutions and their role in economic exchange has a rough parallel in accounts of free speech that center the importance not only of broad speech values and discrete speech acts but of the social practices[30] and non-state actors[31] that enable and shape them. This is especially evident in "institutional"

[26] *See* Abrams v. United States, 250 U.S. 616, 624–31 (1919) (Holmes, J., dissenting); Pnina Lahav, *Holmes and Brandeis: Libertarian and Republican Justification for Free Speech*, 4 J.L. & Pol. 451, 455 (1988).

[27] Douglass C. North, *Economic Performance Through Time*, 84 Am. Econ. Rev. 359, 360 (1994) (reprinting North's 1993 Nobel Prize acceptance speech)

[28] Oliver E. Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead*, 38 J. Econ. Lit. 595, 601 (2000).

[29] *See, e.g.*, James M. Acheson, The Lobster Gangs of Maine (1988); Robert C. Ellickson, Order without Law (1991); Barak D. Richman, Stateless Commerce: The Diamond Network and the Persistence of Relational Exchange (2017).

[30] Robert Post, *Recuperating First Amendment Doctrine*, 47 Stan. L. Rev. 1249, 1278–79 (1995).

[31] Jack M. Balkin, *The Future of Free Expression in a Digital Age*, 36 Pepp. L. Rev. 427, 432 (2009) ("A system of free speech depends … on an infrastructure of free expression … [which] includes the kinds of media and institutions for knowledge, creation, and dissemination that are available at any point in time.").

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approaches of the First Amendment.[32] In the words of Fred Schauer, who penned some of the most influential articles in that vein,[33] "An institutional understanding of the First Amendment is structured around the principle that certain institutions play special roles in serving the kinds of values that the First Amendment is most plausibly understood to protect."[34] The list of institutions that play such "special roles" is commonly thought to include universities and, of course, the press.

In *Institutions in the Marketplace of Ideas*,[35] I attempted to pull together these two threads: the NIE on the one hand and the institutional First Amendment on the other. What NIE scholars advocated was attention to the social practices (i.e., institutions) that constitute an economy, rather than assuming away the messiness and focusing on an idealized process of exchange. Trust and social norms, for example, can facilitate trade even in the absence of formal law. Free speech theory can do the same, since "if the marketplace of ideas is the animating purpose of the First Amendment, it can be served by institutions as well as by individuals."[36] In other words, there are institutions that facilitate the marketplace of ideas through the equivalent of lowering transaction costs and should receive some special solicitude as a result.

Of course, there is deep disagreement about which institutions serve First Amendment values and how. In *Free Speech and Justified True Belief*, I focused more directly on that problem, suggesting that the underlying epistemic value of the First Amendment could be understood not as "truth" but as "knowledge" – roughly defined, in keeping with basic epistemology, as justified true belief.[37] Doing so could help clarify the underlying debate in the era of "fake news" and "alternative facts," which is not really about the importance of truth but about where it is to be found. Indeed, one of the central perversities of disinformation is that people in its grip firmly believe in the importance of truth and that they are in possession of it. The challenge, then, is to re-center the question of *justification*: the institutions and habits of mind that are valuable in forming true beliefs.

[32] *See, e.g.*, Paul Horwitz, First Amendment Institutions (2013); Randall P. Bezanson, *Institutional Speech*, 80 Iowa L. Rev. 735 (1995) (arguing that only useful institutional speech should receive First Amendment protection); Frederick Schauer, *Towards an Institutional First Amendment*, 89 Minn. L. Rev. 1256, 1278 n.97 (2005); Symposium, *Constitutional "Niches": The Role of Institutional Context in Constitutional Law*, 54 UCLA L. Rev. 1463 (2007). For contemporary cautions and critiques, *see* Dale Carpenter, Response, *The Value of Institutions and the Values of Free Speech*, 89 Minn. L. Rev. 1407 (2005); Scott A. Moss, *Prisoners and Students and Workers – Oh, My! A Cautionary Note About Excessive Institutional Tailoring of First Amendment Doctrine*, 54 UCLA L. Rev. 1635, 1639 (2007).

[33] *See, e.g.*, Frederick Schauer, *Principles, Institutions, and the First Amendment*, 112 Harv. L. Rev. 84, 85–86 (1998); Schauer, *supra* note 32.

[34] Frederick Schauer, *Is There a Right to Academic Freedom?*, 77 U. Colo. L. Rev. 907, 925 (2006).

[35] Joseph Blocher, *Institutions in the Marketplace of Ideas*, 57 Duke L.J. 821 (2008).

[36] *Id.* at 887.

[37] Joseph Blocher, *Free Speech and Justified True Belief*, 133 Harv. L. Rev. 439 (2019).

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This is a question of epistemology, to be sure, but one focused on social practices and institutions, including the press:

> The institutional press improves the marketplace of ideas by serving as a clearinghouse for information. This, too, lowers search costs and makes ideas more easily accessible for consumption or rejection by individual idea consumers. The American press has played a particularly important role in explaining and distributing information about other institutions whose functioning would otherwise be impossible for the average citizen to follow. Without active and critical reporting about government, for example, it would be impossible for citizens to cast informed votes, and the politicians they elect could hardly claim to be triumphant in the marketplace of ideas.[38]

The point is that the press as an institution can play an important role in advancing the search for truth (or knowledge), and that doing so is – along with other press functions – important to the preservation of a healthy democracy. It can, along with other speech institutions, like universities, help bridge the gap between democratic and epistemological approaches to free speech.[39] As Robert Post notes, the First Amendment relies on "democratic competence," which is the "cognitive empowerment of persons within public discourse, which in part depends on their access to disciplinary knowledge."[40] And as Justice Powell recognized:

> No individual can obtain for himself the information needed for intelligent discharge of his political responsibilities . . . [The press] is the means by which the people receive that free flow of information and ideas essential to intelligent self-government.[41]

There are, of course, complications with any self-consciously institutionalist account, but those complications do not seem different in difficulty – nor perhaps even kind – from those that one finds elsewhere in free speech law.[42] There is admittedly no simple or objective way to identify the kinds of social practices that contribute to knowledge. But neither is there a way to identify which acts count as "speech" in the first place. It might also be difficult to separate the "press" from other speakers – a challenge that seems to have deterred many from the attempt.[43] But the question should presumably be one of activity (i.e., when is one engaged in

[38] Blocher, *supra* note 35, at 857 (internal citation omitted).

[39] Joseph Blocher, *Public Discourse, Expert Knowledge, and the Press*, 87 WASH. L. REV. 409, 413 (2012).

[40] POST, *supra* note 13, at 34; *see also* NICHOLS, *supra* note 24, at 216 ("[T]he collapse of the relationship between experts and citizens is a dysfunction of democracy itself.").

[41] Saxbe v. Washington Post Co., 417 U.S. 843, 863 (1974) (Powell, J., dissenting).

[42] Carpenter, *supra* note 32, at 1408 (critiquing institutional approach on various grounds noting that "the possible line-drawing difficulties do not seem that much more difficult than other line-drawing problems in the First Amendment").

[43] *See* First Nat'l Bank v. Bellotti, 435 U.S. 765, 801 (1978) (Burger, C.J., concurring) ("[A] fundamental difficulty with interpreting the Press Clause as conferring special status on a limited group is one of definition.").

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journalism) rather than identity (i.e., is one a journalist),[44] which is on par with other challenging-but-foundational First Amendment inquiries, like whether one is speaking as a professional or as a public employee on a matter of public concern.

In any event, it is worth noting that those who *attack* the press – physically and otherwise – seem to have little difficulty separating traditional media from others. Those who scrawled "MURDER THE MEDIA" were not fazed by definitional difficulties and line-drawing, even if scholars and judges are. It is like a twist on a horror movie trope: Instead of the bad guys being invisible to all but the protagonists, the protagonists are invisible to all but the bad guys.

5.2 THE SURPRISINGLY COMPLICATED RELATIONSHIP BETWEEN THE PRESS AND VIOLENCE

Threats to press freedom come in many forms. Some are subtle or structural: judicial disregard,[45] changes in the media market,[46] or the proliferation of disinformation and misinformation online,[47] for example. The threat of violence, by contrast, is the proverbial wolf that comes as a wolf:[48] the apparent opposite of reasoned speech or, for that matter, democratic self-government. But the fact that its incidents are so visceral does not make it any less complex. Violence is not only a threat to journalism – though it certainly is that – but is shaped by it in return. Only by considering the relationship holistically can we understand how it shapes the boundaries of public discourse.

Though violence against the press has not been the subject of much extended scholarship,[49] it is nothing new in the United States.[50] The 1837 murder of abolitionist newspaper editor Elijah Lovejoy is one prominent example,[51] as is the attack

[44] *Cf.* Floyd Abrams, *The Press Is Different: Reflections on Justice Stewart and the Autonomous Press*, 7 Hofstra L. Rev. 563, 580 (1979) ("In the great preponderance of cases, a court has little difficulty knowing a journalist when it sees one."); Robert D. Sack, *Reflections on the Wrong Question: Special Constitutional Privilege for the Institutional Press*, 7 Hofstra L. Rev. 629, 629 (1979) ("[A]ll citizens exercising the press function, including, but not limited to, journalists employed by the 'institutional press,' warrant . . . protection.").

[45] RonNell Andersen Jones & Sonja R. West, *The U.S. Supreme Court's Characterizations of the Press: An Empirical Study*, 100 N.C. L. Rev. 375 (2022).

[46] *See, e.g.*, Martha Minow, Saving the News: Why the Constitution Calls for Government Action to Preserve Freedom of Speech (2021); Luke Morgan, *The Broken Branch: Capitalism, the Constitution, and the Press*, 125 Penn St. L. Rev. 1 (2020).

[47] Yochai Benkler et al., Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics (2018).

[48] *Cf.* Morrison v. Olson, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

[49] John Nerone, *Violence Against Journalists*, Oxford Bibliographies (Sept. 22, 2021), https://www.oxfordbibliographies.com/display/document/obo-9780199756841/obo-9780199756841-0266.xml (noting that despite current coverage and monitoring, "general works on violence against journalists are relatively rare") (collecting sources).

[50] *See generally* John Nerone, Violence against the Press: Policing the Public Sphere in US History (1994).

[51] *Id.* at 107.

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on Ida B. Wells-Barnett, whose printing press was destroyed by a white mob in Memphis in 1892.[52] As John Nerone notes in his excellent historical account of anti-press violence in the United States, "Violence was common when minorities claimed the press as a voice of their own."[53]

Broadly speaking, anti-press violence subsided for much of the twentieth century, coinciding with – and perhaps facilitated by – the rise of a less explicitly partisan, more homogenized, and more commercialized mass media.[54] But recently, there has been a disturbing resurgence in anti-press violence around the world, with more than 2,000 journalists killed in the past 30 years alone, 15 of them in the United States.[55] Killings are only one particularly horrific part of the story. The U.S. Press Freedom Tracker reports that in 2020 (which saw a spike in anti-press violence by private and public actors), more than 100 journalists were arrested or criminally charged in relation to their reporting, and roughly 300 were assaulted.[56] At least fifty journalists have sued law enforcement officers or other officials for violence and other mistreatment during coverage of protests following the murder of George Floyd.[57] Violence and threats against the press disproportionately target women and minorities,[58] and they are facilitated by the rhetoric of people like the former president, who regularly decries the "fake news," calls journalists "enemies of the people,"[59] and says the media should "pay a big price."[60]

[52] Brent Staples, *How the White Press Wrote Off Black America*, N.Y. Times (July 10, 2021).

[53] Nerone, *supra* note 50, at 15.

[54] *Cf.* Jennifer E. Moore & Michael J. Socolow, *Violence against the Media Isn't New – History Shows Why It Largely Disappeared and Has Now Returned*, The Conversation (Sept. 10, 2018), https://theconversation.com/violence-against-the-media-isnt-new-history-shows-why-it-largely-disappeared-and-has-now-returned-102756 ("Does the end of the depoliticized mass audience era of journalism directly correlate to what seems to be a return of violence against the media?").

[55] Ewen & Shane, *supra* note 7.

[56] Kimberly Harris, *Journalists under Attack While Reporting on Protests*, UOregon School of Journalism and Communication (Dec. 11, 2022), https://journalism.uoregon.edu/journalists-under-attack-while-reporting-protests (reporting that more than 350 journalists reported arrests, assaults, or preventions from documenting protests between May and December, 2020); Katherine Jacobsen, *In 2020, U.S. Journalists Faced Unprecedented Attacks*, Comm. to Protect Journalists (Dec. 14, 2020) https://cpj.org/2020/12/in-2020-u-s-journalists-faced-unprecedented-attacks/.

[57] Stephanie Sugars, *Supreme Court Ruling Limits Paths for Journalists to Hold Federal Officers Accountable*, U.S. Press Freedom Tracker (June 23, 2022), https://pressfreedomtracker.us/blog/supreme-court-ruling-limits-paths-for-journalists-to-hold-federal-officers-accountable/.

[58] Silvio Waisbord, *Mob Censorship: Online Harassment of US Journalists in Times of Digital Hate and Populism*, 8 Digit. Journalism 1030, 1032–34 (2020). *See Also Threats that Silence: Trends in the Safety of Journalists*, UNESCO, https://www.unesco.org/reports/world-media-trends/2021/en/safety-journalists (last visited Dec. 18, 2023) ("Numerous reports and studies confirm that threats inordinately affect women journalists and those who represent minority groups.").

[59] Michael Safi et al., *"I'm Getting Shot": Attacks on Journalists Surge in US Protests*, The Guardian (June 5, 2020), https://www.theguardian.com/media/2020/jun/05/im-getting-shot-attacks-on-journalists-surge-in-us-protests.

[60] Matt Novak, *Trump Accuses Media of 'Treason' in Escalation of Social Media Threats*, Forbes (Sept. 24, 2023) https://www.forbes.com/sites/mattnovak/2023/09/24/trump-accuses-media-of-treason-in-escalation-of-social-media-threats/.

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Violence *against* the press is a threat both to journalists and to democracy itself, and like other such threats, addressing it is both difficult and urgent. But it would be a mistake to see the connection in only one direction. When it comes to identifying and protecting the press function, as the organizers of this convening have challenged us to do, some of the most difficult phenomena to address are those that are simultaneously symptoms and causes. Distrust, misinformation, and the like are reasons for the press's current predicament and are also *results* of it. Violence must be understood in the same way.

Violence has its own ecosystem, of which the press is not just a victim but also a constitutive part. The ways in which the press reports on violence generally – or violent incidents specifically – shape how society understands, responds to, and practices that violence. For example, whether people perceive violent crime to be an increasing problem, and whether they see law enforcement as the appropriate response, will naturally be informed by what they learn from media sources. The same is true of police violence and other phenomena.

One area where the press's role has been especially prominent is in the coverage of firearm violence, as some experts have suggested that reporting "does more harm than good,"[61] especially when it comes to coverage of mass shootings, which "tests the skill of reporters and the judgment of news organizations."[62] In the words of one report, "media coverage tends to follow a clear pattern, peaking around mass shootings and fading with the next breaking news event."[63] This can undermine public support for regulatory approaches that address the full range of gun violence,[64] given that mass shootings account for just a tiny proportion of the nation's nearly 50,000 gun deaths per year. One researcher notes that while mass shootings account for about 1 percent of US gun deaths, they "soak up about 95 percent of the oxygen in terms of the national conversation of gun violence."[65]

[61] Jessica Beard, *How Media Reporting on Firearm Violence Does More Harm than Good*, It's All Reporting, https://itsalljournalism.com/579-how-media-reporting-on-firearm-violence-does-more-harm-than-good/ (last visited Dec. 18, 2023).

[62] Frank Ochberg & Bruce Shapiro, *Covering Mass Killings*, Dart Center for Journalism & Trauma (Jan. 9, 2011), https://dartcenter.org/content/covering-mass-killings.

[63] Jessica Weiss, *How the Trace Changed Reporting on Guns in America*, *Arnold Ventures*, Arnold Ventures (Apr. 14, 2022), https://www.arnoldventures.org/stories/how-the-trace-changed-reporting-on-guns-in-america.

[64] Afea Tucker, *These Philadelphia Researchers Want Journalists to Tell Better Stories about Gun Violence*, The Trace (Feb. 23, 2023), https://www.thetrace.org/2023/02/crime-news-reporting-harm-victims/.

[65] Shealeigh Voitl, *Not Shooting Straight: Corporate Media Gives Mass Shootings Blanket Coverage, While Missing Community-Level Gun Violence*, Project Uncensored (April 20, 2023), https://www.projectcensored.org/not-shooting-straight-corporate-media-gives-mass-shootings-blanket-coverage-while-missing-community-level-gun-violence/; Cydney Hargis, *The Media's Guide to Covering Gun Violence*, Media Matters for America (June 9, 2022), https://www.mediamatters.org/cnn/medias-guide-covering-gun-violence ("Outlets repeatedly choose to focus on the least common type of gun violence and on the small minority of people

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Perhaps even more troubling, some research has found that mass shooters are significantly incentivized by the prominence of such events[66] – suggesting perhaps that media coverage is both a symptom and a cause. The same might well be true of gun use and gun displays more broadly. Charles Homans describes recent media coverage of armed militiamen in Richmond, Virginia, noting that journalists appeared to outnumber their subjects and that the latter were "waiting with transparent eagerness for reporters to swarm around them and feigning reluctance when they did."[67]

To be clear, the point is not to blame the press for the nation's gun violence problem. The point, rather, is to recognize and emphasize the importance of a well-functioning press in addressing it. That is entirely consistent with – indeed, provides supportive evidence of – the institutional account in Section 5.1. A press that develops and respects internal norms and best practices about reporting on gun violence is precisely the kind of norm-governed institution whose norms deserve deference, just like scholarly disciplinarity helps justify special First Amendment solicitude for universities.

It would require far more detailed work to know whether and how journalists follow desirable professional practices when reporting on gun violence, but it is evident that the profession is trying to develop such practices.[68] *A Journalist's Guide to Reporting on Mass Shootings*, for example, draws attention to the "Columbine Rule," which one journalist summarizes as, "a lot of what you find out in the first 48 hours turns out to be bullshit."[69] Other practices include focusing on gun violence beyond mass shootings, as well as not naming shooters. (The Buffalo and Uvalde shooters remain largely anonymous as compared to those from earlier shootings at Parkland and Charleston.)[70]

who don't support any regulation while mostly ignoring stories of states that have successfully implemented gun violence prevention laws, giving viewers an upside-down view of the crisis.").

[66] Sherry Towers et al., *Contagion in Mass Killings and School Shootings*, PLOS One (July 2, 2015), https://doi.org/10.1371/journal.pone.0117259 (finding "significant evidence that mass killings involving firearms are incented by similar events in the immediate past").

[67] Charles Homans, *Out of the Barrel of a Gun*, N.Y. Times (Jan. 26, 2021), https://www.nytimes.com/interactive/2021/01/26/magazine/armed-militia-movement-gun-laws.html.

[68] *See, e.g.*, The Initiative for Better Gun Reporting, https://ibgvr.org/ (last visited Dec. 18, 2023) (reporting on "Better Gun Violence Reporting Summit" in Philadelphia); Kyle Pope, *It's Time to Rethink How Journalism Covers Guns and Mass Shootings*, Colum. Journalism Rev. (March 29, 2021) (partnership between Columbia Journalism Review and Dart Center for Journalism and Trauma).

[69] Laura Wides-Muñoz, *A Journalist's Guide to Reporting on Mass Shootings*, NBCU Academy (Aug. 3, 2023), https://nbcuacademy.com/mass-shootings-media/.

[70] Lucy Wescott, *'Trauma Makes Its Way Back to You': Four US Journalists on Covering Mass Shootings*, Comm. to Protect Journalists (May 21, 2023), https://cpj.org/2021/05/trauma-makes-its-way-back-to-you-four-us-journalists-on-covering-mass-shootings/ ("The challenge I've had reporting on gun violence is doing it in a way that, when you're talking to people and you're crafting questions and interviewing them, making sure you're not retraumatizing them.").

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Of course, to do so well also requires significant time and resources, which only some newsrooms or organizations are able to commit. The Trace was founded in 2015 as the "only American newsroom dedicated to full-time coverage of gun violence"[71] and has contributed extraordinary journalism to a range of gun-related issues, including the NRA investigation that ultimately led to the organization being sued for violation of nonprofit laws.[72] Other newspapers have launched "projects" focused on state and local gun violence.[73] These developments should be celebrated and supported, just as violence against journalists must be condemned and prevented.

It is far beyond the scope of this brief chapter to fully map the ways in which violence and the press are intertwined or how the boundaries of public discourse are shaped in part by their relationship. But the discussion has hopefully illuminated two major concepts essential to that broader project. First, the press can play an important and overlapping role in furthering the First Amendment's epistemological and democratic values. Second, as violence against the press becomes more rhetorically and viscerally prominent, it is all the more urgent that we grapple with the complicated relationship between the two.

[71] Team Trace, *The Most Memorable Gun Violence Journalism of 2021*, The Trace (Dec. 23, 2021), https://www.thetrace.org/2021/12/best-gun-violence-journalism-2021/.

[72] Weiss, *supra* note 63.

[73] *See, e.g.*, *The Missouri Gun Violence Project*, Missouri Independent, https://missouriindependent.com/tag/missouri-gun-violence-project/ (last visited Dec. 18, 2023) (two-year project focusing on gun death in Missouri, including suicides); *Dispatch Reporters Unraveled the Plague of Gun Violence in Columbus: Here's How They Did It*, Columbus Dispatch (Oct. 5, 2023), https://www.dispatch.com/story/news/local/2023/10/05/heres-how-reporters-traced-a-weekend-of-gun-violence-in-columbus/70867114007/ (describing Under Fire, a yearlong project examining gun violence in Columbus, Ohio, including the deployment of twenty-eight journalists to cover gun violence over an 80-hour period).

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