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Reconstructing the First Amendment

Teaching Disenfranchised Perspectives on Press Freedom

Meredith D. Clark

In journalism education, the First Amendment's guarantee of press freedom is typically taught as a cornerstone of American democracy. Yet this approach too often fails to grapple with the historical and ongoing realities of racial inequality and the experiences of marginalized communities, particularly Black Americans, in relation to press freedom. The traditional emphasis on teaching journalists to be strictly "objective" often leads the press to report in ways that perpetuate the status quo and fail to hold those in power accountable.

The prevailing standards in journalism education, moreover, tend to give educators conflicting directives. Taken at face value, these standards seem to encourage journalism educators to teach the First Amendment as a neutral principle that protects press freedom and encourages journalists to strive for objectivity and balance in their reporting. However, the standards also tell educators to emphasize the profession's multicultural history and to promote communication that empowers and centers the voices of marginalized communities – an approach that might require journalists to take a more active stance on issues of social justice. Recent debates over "journalistic objectivity" on issues of Black protest, editorial witnessing, and journalistic authority during the Movement for Black Lives have illustrated how these principles can clash with each other in newsrooms.

In this chapter, I argue for a critical reexamination of how the First Amendment and press freedom are taught in journalism classrooms. I draw on historical analysis, legal case studies, and contemporary examples to advocate for a "reparative journalism" approach. By centering the voices and experiences of those who have been systematically excluded from the full protections of the First Amendment and by interrogating the complex relationship between race, power, and the press, this approach seeks to develop a more inclusive, historically grounded, and forward-looking vision of journalism's role in society. Ultimately, this chapter contends that reckoning with the racial dynamics of press freedom is essential, not only for journalism education but also for the practice of journalism itself, as a means of fulfilling its democratic purpose and holding power to account.

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19.1 WHAT IS REPARATIVE JOURNALISM?

Two hundred fifty years of slavery. Ninety years of Jim Crow. Sixty years of separate but equal. Thirty-five years of racist housing policy. Until we reckon with our compounding moral debts, America will never be whole.

—Ta-Nehisi Coates, "The Case for Reparations"[1]

Scholars have extensively written about and debated the merits of reparations in a number of countries and contexts. Coates' 2014 essay, "The Case for Reparations," brought the conversation out of scholarly and legislative domains and planted it more firmly into public discourse. Decades of reports on the topic have attempted to quantify the impact of stolen wages and physical and psychological assaults on Black families, but most attempts to map the complicity of systems that have normalized Black subjugation focus on the obvious players of education, government, labor, law, medicine, and property ownership.[2] Media, particularly the news media, binds all of these together. As we read and listen to news reports, we develop a sense of our shared social reality, an understanding of who we are and how the world works. So influential is the news media that the founders of the Black press in the United States used their very first editorial in 1827 to condemn other publishers for their role in positioning Black people as deviant and irredeemable.[3] More than 150 years later, the Kerner Commission, tasked with identifying the cause of race riots in inner cities throughout the country, also implicated the news media for its failure to present a full and accurate picture of what Black life was like and warned that should our social systems continue down the same path, we would move toward "two Americas, one Black and one White, separate and unequal."[4] The compounding moral debt that Coates spoke of has quietly accumulated in journalism and journalism education as well. In the years before, during, and after World War II, the practice moved from one of vocation to occupation, professionalized through the creation of post-secondary degree programs that were generally exclusive to white males. The country's oldest journalism program, the University of Missouri, repeatedly denied

[1] Ta-Nehisi Coates, *The Case for Reparations*, Atl. (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/.

[2] Randall Robinson, The Debt: What America Owes to Blacks (2001); Rashawn Ray & Andre M. Perry, *Why We Need Reparations for Black Americans*, Brookings Inst. 1–5 (Apr. 15, 2020), https://www.brookings.edu/articles/why-we-need-reparations-for-black-americans/; William Darity, Jr & A. Kirsten Mullen, From Here to Equality: Reparations for Black Americans in the Twenty-First Century (2022); Ruti G. Teitel, Transitional Justice (2000).

[3] *Freedom's Journal*, PBS, https://www.pbs.org/blackpress/news_bios/newbios/nwsppr/freedom/freedom.html (last visited June 30, 2024).

[4] National Advisory Commission on Civil Disorders, Report of the National Advisory Commission on Civil Disorders 1 (1968), https://www.hud.gov/sites/dfiles/FHEO/documents/kerner_commission_full_report.pdf (last visited June 30, 2024).

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Lucile Bluford, a Black woman, entry to its graduate program.[5] The school went so far as to temporarily shutter the program (ostensibly because of the demands on students and faculty being called to serve in World War II) and to create a separate program at Lincoln University in order to maintain segregation.[6]

From antebellum days to the Civil Rights Movement and beyond, newspaper publishers used their platforms to fix Black people as subhuman in the American imagination. Pre-Emancipation-era papers bankrolled themselves by selling slave ads.[7] Outlets such as the Raleigh News & Observer and the Wilmington Morning Star incited race riots to silence the Black press.[8] News editors refused to hire and promote Black staffers, only reluctantly moving to do so after being publicly shamed by the Association of Newspaper Editors in the 1970s. Until 2019, the Associated Press Stylebook, considered the "Journalist's Bible," lacked guidance on identifying and naming racism and racists.[9] The addition of the entry was prompted by the largest racial justice movement in American history.[10] If there is an American institution thought to contribute to democratic ideals while directly denying Black people and other marginalized folks equal treatment, it is journalism. If there is an American institution in need of a commitment to reparative work with Black communities, it is journalism. For the purpose of this chapter, I focus on Pablo de Greiff's articulation[11] of three goals that define the concepts of reparations: recognition of harms, restoration of civic trust, and the development of social solidarity. Reparative journalism education must first admit how and where our pedagogies and practices have contributed to harm. It must focus on strategies for restoring civic trust by identifying places where we have caused this segment of the public to rightfully doubt our commitment to equity. And we must use the classroom as a space to model a nonexclusive understanding of how journalists and members of the public outside of the newsroom must share in a right to free expression as a means of building solidarity.

[5] *The Legacy and Leadership of Lucile Bluford*, Kansas City Pub. Libr. (June 29, 2022), https://kclibrary.org/news/2022-06/leadership-and-legacy-lucile-bluford.

[6] *Id.*

[7] Jordan E. Taylor, *Enquire of the Printer: Newspaper Advertising and the Moral Economy of the North American Slave Trade, 1704–1807*, 18 Early Am. Stud. 287 (2020), https://www.jstor.org/stable/27077808.

[8] Jennifer L. Larson, *Early African American Perspectives on the Wilmington Race Riots of 1898*, Documenting the Am. S., https://docsouth.unc.edu/highlights/riots_1898.html (last visited June 30, 2024).

[9] Dorie Truong, *AP Stylebook Update: It's OK to Call Something Racist When It's Racist*, Poynter (Mar. 29, 2019), https://www.poynter.org/reporting-editing/2019/ap-stylebook-update-its-ok-to-call-something-racist-when-its-racist/.

[10] Gabriel R. Sanchez, *Americans Continue to Protest for Racial Justice 60 Years After the March on Washington*, Brookings Inst. (Aug. 25, 2023), https://www.brookings.edu/articles/americans-continue-to-protest-for-racial-justice-60-years-after-the-march-on-washington/.

[11] Pablo de Greiff, *Justice and Reparations*, in The Handbook of Reparations 451 (Pablo de Grieff ed., 2006), https://doi.org/10.1093/0199291926.003.0013.

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As a point of disambiguation, note that the concept of reparative journalism should not be conflated with media reparations, the economic program advanced by policy coalition Media 2070.[12] Reparative journalism is a complement and refers to a set of educational and vocational values, norms, and practices iteratively applied to address the wounds from prior eras while building a responsible apparatus for the social construction of news in the twenty-first century. The framework demands recognition of the foundational flaws in the construction of American social systems, with a central focus on the impact of anti-Black racial hierarchy as reflected in the adoption of chattel slavery, the imposition of Jim Crow and segregation, and the retrenchment of white supremacy as normative in contemporary culture. Thus, this chapter sets forth the operationalization of a particular educational practice: teaching the First Amendment in the twenty-first century with a commitment to recognizing how and where it intersects with anti-Black racism.

The organizing principle of reparative journalism is that social institutions that shape the construction of reality in the United States must directly confront how the legacy of slavery has shaped the institution's norms, customs, and values and resituate its practices by centering the perspectives of the vulnerable. In practice, this means acknowledging the presence and influence of racial discrimination in journalism. For instance, our contemporary news media workforce, which has for decades struggled to attract, retain, and promote non-white journalists, is characterized by the exclusion of Black students in journalism schools (and, more broadly, most institutions of higher learning) during the period in which the journalism evolved from a vocation to a profession.[13]

I articulated its core commitments in 2020:

Reparative journalism must be visionary, rather than reactionary.
Reparative journalism must be grounded in the history of the ignored.
Reparative journalism must be critically intentional.
Reparative journalism must be comprehensive.
Reparative journalism requires alternative funding and production models.
Reparative journalism requires the redistribution of power.
Reparative journalism will require an unfathomable commitment of time – more than any of us may have in this life.[14]

[12] Joseph Torres et al., Media 2070: An Invitation to Dream Up Media Reparations (2020), https://mediareparations.org/essay/.

[13] Federica Cherubini & Ramaa Sharma, *Changing Newsrooms 2023: Media Leaders Struggle to Embrace Diversity in Full and Remain Cautious on AI Disruption*, Reuters Inst. for the Study of Journalism (Dec. 5, 2023), https://reutersinstitute.politics.ox.ac.uk/changing-newsrooms-2023-media-leaders-struggle-embrace-diversity-full-and-remain-cautious-ai; Peregrine Frissell et al., *Missed Deadline: The Delayed Promise of Newsroom Diversity*, Asian Am. Journalists Ass'n's Voices (July 27, 2017), https://voices.aaja.org/stories/philadelphia-2017/missed-deadline-the-delayed-promise-of-newsroom-diversity.

[14] Meredith D. Clark, *The Year Journalism Starts Paying Reparations*, NiemanLab, https://www.niemanlab.org/2020/12/the-year-journalism-starts-paying-reparations/ (last visited June 30, 2024).

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If news media creators – from student journalists working in campus media to veterans working on investigative stories and features – were to adhere to these commitments, it would shift news narratives from their focus on political and social elites and move the plight of marginalized people into the center. A vision of reparative journalism is one that covers the political economy of poverty from the perspective of those who live it rather than the policymakers who decide how their lives unfold. The framework requires that such reporting be grounded in history. Thus, it would begin by working backward through the federal, state, and local reforms and customs that have created nearly intractable inequalities in our society.

The Accrediting Council for Education in Journalism and Mass Communication (ACEJMC), formed in 1945, is the largest accrediting body for journalism programs in the United States. To date, 120 programs have some level of accreditation through the organization.[15] Although ACEJMC does not prescribe particular curriculum or pedagogical approaches, it sets forth several criteria for evaluating the rigor of programs. The first three criteria are stated here as a clear articulation of a schema for understanding why critical examination and reinterpretation of the First Amendment are necessary for contemporary journalism education. Alongside eight other core competencies, graduates of ACEJMC programs should have the ability to:

- apply the principles and laws of freedom of speech and press, in a global context, and for the country in which the institution that invites ACEJMC is located;
- demonstrate an understanding of the multicultural history and role of professionals and institutions in shaping communications;
- demonstrate culturally proficient communication that empowers those traditionally disenfranchised in society, especially as grounded in race, ethnicity, gender, sexual orientation, and ability, domestically and globally, across communication and media contexts.[16]

A purposive search and brief review of syllabi from media law, media ethics, and related courses that satisfy the First Amendment criteria from ACEJMC-accredited schools reflects a pattern in the literature assigned and modules taught about the First Amendment, including the Speech and Press Clauses. A journalism law and ethics class at a mid-size public university in the Northeast is described as "a foundation course in personal freedom and professional protection" that will equip students to "understand the foundation for freedom of expression" and link judicial values to "the work of mass media professionals and the free expression of citizens."[17]

[15] *Accrediting Standards*, Accrediting Council on Educ. in Journalism and Mass Commc'ns, http://www.acejmc.org/policies-process/accrediting-standards/ (last visited June 30, 2024).

[16] *Principles of Accreditation*, Accrediting Council on Educ. in Journalism and Mass Commc'ns, http://www.acejmc.org/policies-process/principles/ (last visited July 1, 2024).

[17] Syllabus on file with author.

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Another course from a large public university in the Southeast "analyzes media policies and practices with respect to their political and practical generation, Constitutional foundation, ethical enactment and social impact, including such topics as government regulation of the media, the influence of pressure groups, media influence, and libel and privacy laws."[18] A third course, Media Law and Ethics, at a large private university on the West Coast vows "students will learn about their legal rights and obligations" and that the course will teach them "how to publish information without violating defamation and invasion of privacy, how to gather information to avoid legal and/or ethical trouble and how to deal with subpoenas . . ." with a goal of "keep[ing] you and your employer out of trouble."[19] The common theme among the syllabi is clear: The First Amendment is being taught as a tangible license of rights and responsibility with an emphasis on market risks and demands. The descriptions rest on key assumptions about the First Amendment and its application: that this law confers legible power to the journalism profession and extends an egalitarian privilege to the masses; that all enjoy these privileges equally; and, foundationally, that the intention of the law was entered into the historical ledger under an expression of collective sentiment. That is, that commitment to pluralist democracy, as articulated in the preamble to the Constitution, was developed from a place of altruism and justice for all.

Nothing could be further from the truth.

In the examples that follow, I encourage educators to teach about the abolitionist press as the first real challenge of the First Amendment and to connect the threat of abolition in the pre-Civil War era to contemporary threats to First Amendment freedoms. I then use the foundational *New York Times Co. v. Sullivan* case to illustrate how traditional journalism education erases critical insight into how First Amendment law was weaponized in attempts to silence Black liberation workers. I close with a brief provocation of how contemporary conceptions of who is a journalist, and thus protected by the First Amendment, have implications for anyone who bears witness to civil rights violations and publishes them in the social media age.

19.2 PRESS FREEDOM, ABOLITIONISM, AND THE FIRST RECONSTRUCTION

Reparative journalism education must first acknowledge the *potential* for harm in our failure to critically interrogate the development and application of the First Amendment in a historical context. Students of the First Amendment must first develop a basic understanding that the rights guaranteed by the Constitution did not legally apply to anyone other than white men until the ratification of the Thirteenth,

[18] *Id.*
[19] *Id.*

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Fourteenth, Fifteenth, and later the Nineteenth Amendments. Some courses addressing the First Amendment note that its robust protections for speech were not fully established by the Supreme Court until the mid-twentieth century, as the Court gradually came to recognize the importance of protecting dissenting views, including those of Communists and antiwar activists.

Thus, a consideration of the dire, dangerous conditions in which early Black publishers worked would further enrich students' understanding of the complicated history of the incomplete protections of the First Amendment. Periodicals including Freedom's Journal, The Colored American, The North Star, and The People's Advocate risked physical safety and economic ruin to provide Black communities with news and information in the service of racial uplift as a means of uplifting a nation and the nation.[20] Abolitionist allies such as Elijah Lovejoy – who was eventually martyred for the cause – were run out of town, their presses repeatedly destroyed.[21] Black writers, like David Walker, were subject to bounties for violating Black codes by encouraging the formerly enslaved to fight for their freedoms.[22] The early existence of the Black press highlighted tensions between the existence of the First Amendment and its practical accessibility for non-whites.

William M. Carter Jr.'s work on the First Amendment and the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments – the Second Founding – offers a framework ripe for exploration by historians, journalism scholars, and journalism educators committed to researching and teaching critical perspectives on press freedom.[23] As Carter writes, the question of the abolitionist press presented one of the earliest tests of the nation's commitment to free speech and press freedom in the pre-Civil War era:

> The Sedition Act of 1798 sparked the nation's first sustained controversy regarding the First Amendment's guarantee of freedom of speech. The national controversy over slavery presented the second such major free speech moment. Legislators and judges, public intellectuals, the popular press, and ordinary citizens discussed and debated whether abolitionist speech represented such a danger that it could be suppressed consistent with state and national guarantees of free speech.[24]

Revisiting and focusing on press freedom and the Second Founding as part of our pedagogy on the First Amendment would require students to engage with centuries-old assumptions about institutional and personal freedoms and rights that have proven ephemeral in recent years. Recent Supreme Court decisions have radically

[20] Benjamin Quarles, Frederick Douglass (1948).
[21] *Today in History – November 7*, Libr. Cong., https://www.loc.gov/item/today-in-history/november-07 (last visited June 30, 2024).
[22] David Walker, Appeal to the Coloured Citizens of the World (Great Neck Publishing 2017).
[23] William M. Carter, Jr, *The Second Founding and the First Amendment*, 99 Tx. L. Rev. 1065 (2021), https://texaslawreview.org/the-second-founding-and-the-first-amendment/.
[24] *Id.* at 1083.

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changed the scope of various constitutional rights that were long thought inviolable.[25] How should our understanding of press freedom, and its defense, change in an era when it is no longer inconceivable that a court may rescind rights without warning? How secure is our ongoing ability to access the full promise of the First Amendment, especially when current legal challenges threaten to plunge us back into states' rights doctrines? What might a more judicially limited grant of press freedom mean for the publication of journalism that is out of favor with the ruling class, including journalism that is community-run or self-published? How might all of this change how students conceive of the role of the journalist in the future?

A classroom discussion on these questions might draw upon the tradition of Cone's Black Liberation Theology, where one's "heart, mind, body, and soul are where the dispossessed are."[26] Students might be invited to see how the journalist shares a sense of precarity with Black people in America: the ever-present threat of dispossession. This commonality is a point of invitation to consider the First Amendment from the vantage point of Black journalists and, more specifically, Black people in America. This sense of positionality moves our consideration beyond mere acceptance of the First Amendment and requires an interrogation of its development and application, including how it is taught.

19.3 *NEW YORK TIMES CO. V. SULLIVAN*: THE FIRST AMENDMENT AND THE SECOND RECONSTRUCTION

No course on media law, media ethics, or the First Amendment is complete without a mention of *New York Times Co. v. Sullivan*, the Supreme Court case that clarified the watchdog function of the press.[27] Most who have taken a course about free expression could probably recall with little effort that the case sets forth a high bar for holding publishers liable for defamation and perhaps even define what "actual malice" is without having to look it up. They might even be able to recall that Birmingham Police Commissioner L. B. Sullivan sued the paper over an ad, claiming the text portrayed him in an unflattering light. But what often goes unmentioned in the journalism classroom is the racialized nature of the case.

Beneath the text of "Heed Their Rising Voices," the advertisement placed by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South in The New York Times on March 29, 1960, were the names of activists, celebrities, and clergy members seeking moral and financial support for Committee

[25] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022); Mary Ziegler, *If the Supreme Court Can Reverse Roe, It Can Reverse Anything*, Atl. (June 24, 2022), https://www.theatlantic.com/ideas/archive/2022/06/roe-overturned-dobbs-abortion-supreme-court/661363/.

[26] James H. Cone, A Black Theology of Liberation: 50th Anniversary Edition (Orbis Books 2020).

[27] 376 U.S. 254 (1964).

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to Defend Martin Luther King and the Struggle for Freedom in the South.[28] The Revs. Ralph Abernathy, Joseph Lowery, Solomon S. Seay, and Fred L. Shuttlesworth's names were listed among the signatories of the statement, although the ministers testified in court that they were added by Bayard Rustin without their knowledge or consent.[29]

Sullivan sued The Times and the ministers and was initially granted a $500,000 judgment (about $5.25 million in 2024 dollars).[30] The lawsuit was part of a repertoire of suppressive actions designed to curb the reach of communications that shed light on the struggles for integration in the South. At the time, news organizations, including The Times, faced civil suits that numbered in the millions of dollars, as powerful segregationists and their allies attempted to leverage market forces to silence the national press coverage by bankrupting them.[31] But if the target were simply the news outlets themselves, why name four ministers?

Scholars Samantha Barbas[32] and Aimee Edmondson[33] have both written extensively about the racial and socioeconomic implications of the *Sullivan* case for the four Alabama ministers who were named as co-defendants with The Times but whose experiences are often lost to history. Resituating *Sullivan* from a reparative journalism standpoint requires educators to consider the impact of the case and its outcomes on the most vulnerable individuals and groups involved. While the libel suit brought against The Times was part of a larger strategy designed to bankrupt news organizations in the North, their corporate structures delayed and shielded them from economic and social harms in ways that left individuals unprotected. As Barbas writes, by 1964, national news organizations were confronting more than $288 million in damages from libel suits brought by segregationists.[34] But in between *Sullivan*'s initial decision in an Alabama courtroom and the Supreme Court ruling, The Times' co-defendants' personal property was seized as an outcome of being convicted of libel.[35]

The ministers' inclusion was both a matter of legal maneuvering – necessary to keep the lawsuit in Alabama's jurisdiction – and an indication of how the law can be weaponized to suppress the speech of marginalized Others. Considering *Sullivan* through this lens is not only valuable for offering a more complete history of the

[28] *Id.* at 256–57.

[29] *Id.* at 260; *see also* Garrett Epps, *The Civil Rights Heroes the Court Ignored in* New York Times v. Sullivan, Atlantic (Mar. 20, 2014), https://www.theatlantic.com/national/archive/2014/03/the-civil-rights-heroes-the-court-ignored-in-em-new-york-times-v-sullivan-em/284550/.

[30] *Id.* at 256.

[31] Aimee Edmondson, In Sullivan's Shadow: The Use and Abuse of Libel During the Civil Rights Movement (2019); *Sullivan*, *supra* note 27, at 278 n.18 and 294–95.

[32] Samantha Barbas, Actual Malice: Civil Rights and Freedom of the Press in New York Times v. Sullivan (2023).

[33] Edmondson, *supra* note 31.

[34] Barbas, *supra* note 32; *see also* Samantha Barbas, *New York Times v. Sullivan: Perspectives from History*, 30 Geo. Mason L. Rev. F. 1 (2023).

[35] Barbas, *supra* note 32, at 127–28.

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case's circumstances and significance in the Civil Rights era but also for studying the parallels between that moment and the present political era.

A reparative approach to teaching media law prompts us to map various modes and loci of power in *Sullivan*. Jennifer Brandel explains multiple considerations for power-mapping exercises.[36] We might consider historical and contemporary forms of power: the channels, flow, and means of justifying power, and classic definitions of hard or soft power – that is, the binary of force versus enticement. "What if every news story, no matter the form, helped people understand the foundational and systemic structures that are keeping things as is, creating conflict, or enabling new power to flow and, therefore, create new realities?" Brandel asks.[37] Reparative journalism encourages an expansion of the question such that racial hierarchies and the practices of domination that enforce them are considered part of this power analysis. Thus, teaching on the case would encourage students to abandon so-called color-blind thinking and consider why Sullivan named not only The New York Times as the injurious party in the lawsuit but also four other Alabamans known to be at the forefront of the antisegregation movement.[38] A recognition of power beyond the scope of the free press in this case would prepare students to anticipate strategies of domination that use the law and other levers of control to compound oppression. Ideally, this lens would encourage news workers to investigate similar contemporary legal, statutory, and executive actions for what they are – a means of fixing historically marginalized and comparatively subjugated peoples to new forms of oppression and control.

Discussing *Sullivan* in this context also invites consideration of the protections and resources available to the corporate press that do not extend to the individual, a useful framework for thinking about current debates over who qualifies as a journalist and what infrastructure must be in place for them to enjoy press protections. These questions should direct our attention to news workers and publishers who do not enjoy the protections of permanent employment with a corporate news organization. We might consider how press freedom differs for a media startup versus a legacy publication or for a staff writer versus a freelancer. What short- and long-term material risks do individuals outside of traditional news media structures face when they engage in advocacy as part of their First Amendment rights? Each of the ministers' vehicles was seized and sold by the state of Alabama, with the intention of not only causing financial hardship but also creating obstacles to their participation in racial justice work.[39] Ultimately, Shuttlesworth and Lowery would leave the state of Alabama and pursue their work elsewhere.[40]

[36] Jennifer Brandel, *A Sneak Peak at Power Mapping, 2073's Top Innovation*, NiemanLab, https://www.niemanlab.org/2020/12/an-sneak-peak-at-power-mapping-2073s-top-innovation/ (last visited June 30, 2024).
[37] *Id.*
[38] Anthony Lewis, Make No Law: The Sullivan Case and the First Amendment 12 (1992).
[39] Barbas, *supra* note 32, at 128.
[40] *Id.*

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A power analysis of the motivations, techniques, and function of social values and institutions involved in the *Sullivan* case will help underscore that the decision to bring the suit was not simply a matter of Sullivan attempting to defend his reputation but an attempt by segregationists and sympathizers to intimidate civil rights activists into silence by wounding or chilling the press. Threats to press freedom often emerge first as threats to the most vulnerable in society. Thus, the implications of the case have enduring relevance for those who struggle against authoritarian regimes, be they informed by racism, nationalism, theism, or other organizing themes.

19.4 THE COMPLEX RELATIONSHIP BETWEEN JOURNALISM AND SOCIAL CHANGE

Mainstream journalists and publishers often position press freedom, and the act of engaging in journalism, as vital to democracy and portray the press as part of the vanguard of movements for social change. In this telling, journalists work tirelessly to fulfill two proverbial goals: to "give voice to the voiceless" and to "speak truth to power."[41]

A reparative journalism approach to teaching about press freedom would critically examine this depiction of the press, its work, and its successes. Again, a consideration of the history of race and journalism in the United States would provide a useful frame. Scholars have shown that only within the last two decades have news organizations begun to seriously examine and acknowledge their amplification of narratives that fixed Black people at the bottom of the country's racial hierarchy.[42] The fantasy of being "a voice for the voiceless" extends to the position journalists imagined they have taken with respect to freedoms for those included in aforementioned groups as well.[43] But as John Nerone noted in an essay about journalism's hegemonic crisis, news workers reshaped their collective orientation to the ideal of racial equality only *after* political elites began to understand and respond to its implications for the future of electoral politics.

> Journalism's hegemony in the domain of news has a relationship within the hegemonic order in the larger society, in other words. The example of the Civil Rights movement is the best available case in US history that journalism can challenge the hegemonic order, but even in that case the decisive nature of journalism's intervention is unclear. Granted, by the 1960s national news

[41] *SPJ Code of Ethics*, Soc'y Pro. Journalists, https://www.spj.org/ethicscode.asp (last updated Sept. 6, 2014).

[42] Nisha Sridharan & Angeline Taylor, *Sorry Seems to Be the Hardest Word: Reinforcing Institutional Identities Through Newspaper Apologies for Racist Past*, 24 Journalism Stud. 2053 (2023).

[43] Lewis Raven Wallace, The View from Somewhere: Undoing the Myth of Journalistic Objectivity (2019).

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> organizations had overwhelmingly come to embrace a post-segregationist order, but this was only after the national political parties had changed their positions in response both to a mass popular movement among African-Americans, a Supreme Court-led change in the judicial order, and a new calculation of electoral realities that showed the possibility of winning national power while slighting southern white dead-enders. But granting the Civil Rights movement exceptional status, it remains an exception that proves the rule. In the normal run of modern history, journalism's hegemony over news has worked to support the general hegemonic order. The people and interests who run things did so more effectively because journalism made it seem natural.[44]

In order to propel our students toward a reparative journalism consideration of the First Amendment, we must consider the enduring impact of racial subjugation within the country's institutions, including the Fourth Estate. We must also interrogate how effectively journalists have historically "spoken truth to power," as opposed to supporting existing systems, as Nerone noted.

The concept of "fearless speech," introduced by Mary Anne Franks, provides a framework for the latter discussion.[45] In a 2018 essay, Franks draws upon Michel Foucault's articulation of the Greek concept of parrhesia, or fearless speech, and his argument that it emphasizes candor, mortal risk, and a commitment to the social duty of truth-telling above all that might be gained from engaging in more flattering or complementary speech. Contemporarily, fearless speech is that which refuses to exchange the ability to win favor and influence others (which seems to be the currency of the twenty-first century) for the responsibility of upholding unflinching truths. We may, perhaps, find examples of fearless speech in difficult spaces, such as confronting the realities of surveillance, war, and genocide in Gaza. We may also find examples of fearless speech in journalism, but asking students to consider the response of institutions – including media organizations – to the fearless speech of individual journalists offers a fruitful path for discussion.

The contestation over journalistic works such as Nikole Hannah Jones' reporting on the re-segregation of US public schools via school choice, charter schools, and redistricting policies is an example of fearless journalistic speech that confronts structural oppression.[46] The 1619 Project, an in-depth narrative exploration of the indelible effect of chattel slavery on multiple American institutions, might similarly be deemed an example of fearless speech.[47] The project, designed to contest hegemonic and unchallenged narratives about American history, was met with

[44] John Nerone, The Media and Public Life: A History 322 (2015).

[45] Mary Anne Franks, *Fearless Speech*, 17 First Amend. L. Rev. 294 (2018).

[46] Katie Robertson, *Nikole Hannah-Jones Denied Tenure at University of North Carolina*, N.Y.Times (July 15, 2022), https://www.nytimes.com/2021/05/19/business/media/nikole-hannah-jones-unc.html.

[47] *1619 Project*, N.Y. Times Mag., https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html (last visited June 30, 2024).

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censorial response by lawmakers at the federal and state levels. In July 2020, Senator Tom Cotton (R-Ark.) filed S.4292, the "Saving American History Act," during the 116th Congressional Session, which would have expressly prohibited elementary and secondary schools from teaching the project's curriculum under threat of withdrawn federal funding.[48] The bill's text was echoed in bills introduced in Arkansas, Iowa, and Mississippi in 2021.[49] Had Cotton's bill passed and been signed into law, schools would have been forced to consider the cost of engaging with the curriculum, as the restrictions demanded that no school that taught 1619 content receive federal funding for professional development.[50] Additionally, the bill would have required that the secretaries of agriculture, education, and health and human services create a formula to prorate decreased federal funding for any school that implemented the curriculum.[51] These measures could arguably have had a "chilling effect" on the speech of teachers, students, and support staff, pushing them to err on the side of caution and reject the curriculum outright rather than risk the loss of a school's federal funding.[52] According to the National Center for Education Statistics, US public school districts received anywhere from 5 percent to 20 percent of their annual revenue from federal sources as of 2021.[53]

In keeping with a reparative journalism framework, educators would also consider the political and social context of threats against fearless speech, such as the proposed bans on the 1619 Project curriculum. Each of these measures was introduced during a period in which federal and state governments were considering legislation to ban teaching antiracism and critical race theory (CRT).[54] The CRT

[48] Saving American History Act of 2020, S. 4292, 116th Cong. (2020); Bryan Armen Graham, *Tom Cotton Calls Slavery "Necessary Evil" in Attack on New York Times' 1619 Project*, The Guardian (July 26, 2020, 5:54 PM), https://www.theguardian.com/world/2020/jul/26/tom-cotton-slavery-necessary-evil-1619-project-new-york-times.

[49] Harmeet Kaur, *Bills in Several States Would Cut Funding to Schools that Teach the 1619 Project. But They Mostly Aren't Going Anywhere*, CNN (Feb. 10, 2021, 7:29 PM), https://www.cnn.com/2021/02/10/us/1619-project-school-funding-cut-bills-trnd/index.html.

[50] Press Release, Senator Tom Cotton, Cotton Bill to Defund 1619 Project Curriculum (July 30, 2020), https://www.cotton.senate.gov/news/press-releases/cotton-bill-to-defund-1619-project-curriculum (announcing Senator Cotton introduced a bill that would "prohibit the use of federal funds to teach the 1619 Project by K-12 schools or school districts. Schools that teach the 1619 Project would also be ineligible for federal professional-development grants.").

[51] *Id.* ("Under the bill, the Secretaries of Education, Health and Human Services, and Agriculture would be required to prorate federal funding to schools that decide to teach the 1619 Project – determined by how much it costs to plan and teach that curriculum.").

[52] Jonathan Friedman & James Tager, *Educational Gag Orders: Legislative Restrictions on the Freedom to Read, Learn, and Teach* (Nov. 2021), https://pen.org/report/educational-gag-orders/.

[53] *Public School Revenue Sources*, Nat'l Ctr. Educ. Stat., https://nces.ed.gov/programs/coe/indicator/cma/public-school-revenue (last updated May 2024).

[54] Leah M. Watson, *The Anti-"Critical Race Theory" Campaign – Classroom Censorship and Racial Backlash by Another Name*, 58 Harv. Civil Rights–Civil Liberties L. Rev. 487 (2023); Taifha Natalee Alexander, *Tracking the Attack on Critical Race Theory in Education*, U.S. News & World Rep. (Apr. 11, 2023, 3:21 PM), https://www.usnews.com/opinion/articles/2023-04-11/tracking-the-attack-on-critical-race-theory-in-education.

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Forward Project, housed at UCLA Law School's Critical Race Studies Center, tracked more than 560 government-related measures of this sort.[55] The documents range from carefully worded executive orders, including one signed by President Trump in September 2020 that outlawed the teaching of "divisive concepts"[56] on race and gender; to state-level legislation, such as the Stop WOKE Act[57] signed into law by Florida Governor Ron DeSantis in April 2022; to district policies, such as the Temecula Valley Unified School District's anti-CRT resolution approved in December 2022.[58]

Considering the rules and guidelines that are applied within institutions to manage media employees provides another useful starting point for a discussion of the meaning of fearless speech in journalism. Such examples include the perennial conflicts around student journalism, including administrative budget cuts that restrict funding and ultimately impact the ability of student journalists to do their work.[59] In 2018, for instance, the student government association at Wichita State University cut the student newspaper's budget by two-thirds following reporting on the university administration's business affairs.[60] Similar cuts were aimed specifically at student journalists' salaries in 2007 when the student legislature slashed The Missouri Miner's budget at the University of Missouri at Rolla.[61] The Student Press Law Center has designated such actions as Red Flags, highlighting the ways in

[55] Taifha Alexander et al., CRT Forward: Tracking the Attack on Critical Race Theory (2023), https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf.

[56] Exec. Order No. 13,950, 85 Fed. Reg. 60,683 (Sept. 28, 2020).

[57] Press Release, Governor Ron DeSantis, Governor DeSantis Announces Legislative Proposal to Stop W.O.K.E. Activism and Critical Race Theory in Schools and Corporations (Dec. 15, 2021), https://www.flgov.com/2021/12/15/governor-desantis-announces-legislative-proposal-to-stop-w-o-k-e-activism-and-critical-race-theory-in-schools-and-corporations/ (initial announcement); Press Release, Governor Ron DeSantis, Governor Ron DeSantis Signs Legislation to Protect Floridians from Discrimination and Woke Indoctrination (Apr. 22, 2022), https://www.flgov.com/2022/04/22/governor-ron-desantis-signs-legislation-to-protect-floridians-from-discrimination-and-woke-indoctrination/ (news that it was signed into law).

[58] Vania Patino, *Anti-CRT, Parental Notification Policies at Temecula Valley Unified School District Lawsuit Heads to Court*, Spectrum News 1 (Jan. 23, 2024, 2:45 PM), https://spectrumnews1.com/ca/la-west/education/2024/01/23/anti-crt-policy-at-temecula-valley-unified-school-district-headed-to-court.

[59] *Tag: Red Flag*, Student Press L. Ctr., https://splc.org/tag/red-flag/ (last visited June 30, 2024).

[60] Madeline Deabler, *How Threats to The Sunflower's Funding Have Closely Followed Coverage of the University, Innovation Campus*, Sunflower (Feb. 26, 2018), https://thesunflower.com/25077/opinion/how-threats-to-the-sunflowers-funding-have-closely-followed-coverage-of-the-university-innovation-campus/; Gabriel Greschler & Taylor Potter, *Wichita State University President John Bardo Approves Major Cuts to Student Paper, The Sunflower*, Student Press L. Ctr. (Mar. 2, 2018), https://splc.org/2018/03/sunflower-proposed-funding-cuts/.

[61] Brian Hudson, *Missouri Newspaper Threatens University with Lawsuit to Restore Funding*, Student Press L. Ctr. (Feb. 14, 2007), https://splc.org/2007/02/missouri-newspaper-threatens-university-with-lawsuit-to-restore-funding/.

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which budget cuts may amount to censorship if undertaken disproportionately and in response to coverage.[62]

The reactive media codes of conduct that police and silence journalists are another point of entry for operationalizing fearless speech. On matters of journalism ethics and public critique of issues, educators could point to the examples of The New York Times writers Jazmine Hughes and Jaime Keiles, who were forced to resign after signing a protest letter about Palestinian genocide in Gaza.[63] Arguments, of course, will be made about the appropriateness of allocating university funding to support student media or about requiring journalists to adhere to an organization's code of conduct, but both serve the same function: They are disciplinary measures that manufacture the illusion of the journalists' consent to self-censor under penalty of material expulsion from the organization. Certainly, journalists who wish to engage in conduct that counters the cultural demands of an organization, be it a university's journalism program or a corporate newsroom, are free to do their work elsewhere. But the inability to "stand on business" while maintaining one's professional standing and having equal access to resources exposes the charade of free speech as we've conceived it vis-à-vis the First Amendment.

A discussion of fearless journalistic speech might also ask students to critically examine the different levels of protection enjoyed by the press as opposed to "citizen journalists," even in cases where the First Amendment rights are theoretically the same. This discussion might invite students to consider the different levels of risk incurred by those engaging in fearless speech. For example, the right to record police activity in public spaces has been widely recognized by courts as a right shared by everyone, not only the press. And in the past decade, two incidents of police brutality that sparked nationwide protests and debate were initially recorded and shared not by professional journalists but by individuals recording on their smartphones: Ramsey Orta, who filmed the NYPD officers who put Eric Garner in a stranglehold that killed him, and Darnella Frazier, whose recording of George Floyd's police murder sparked some of the largest protests ever seen in the United States. In both cases, their First Amendment right to record the incident was clearly protected by law. But in both cases, the resulting attention upended their lives, made them fear for their safety, and made them potential targets for retaliation by police.[64] (Classroom instructors might also consider linking these examples back to the *Sullivan* case and its consequences for the four Alabaman civil rights activists named as defendants.)

[62] *Tag: Red Flag*, *supra* note 59.

[63] Amy Goodman & Juan González, *NY Times Writers Jazmine Hughes & Jamie Keiles Resign After Signing Letter Against Israeli War on Gaza*, Democracy Now! (Nov. 14, 2023), https://www.democracynow.org/2023/11/14/nyt_magazine.

[64] Chloé Cooper Jones, *Fearing for His Life*, Verge (Mar. 13, 2019, 10:00 AM), https://www.theverge.com/2019/3/13/18253848/eric-garner-footage-ramsey-orta-police-brutality-killing-safety; Giulia McDonnell Nieto del Rio, *Darnella Frazier, the Teenager Who Recorded George Floyd's Murder, Speaks Out*, N.Y. Times (July 7, 2021), https://www.nytimes.com/2021/05/25/us/darnella-frazier.html.

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19.5 CONCLUSION

The interpersonal domain of oppression prompts us to consider how we teach journalists to conceive of themselves and their roles in the field. The notion of a fearless speech orientation acknowledges warnings that the First Amendment rests on an ephemeral foundation. For if we were to reconceptualize our responsibilities as journalists from the perspective of those who, by their own expression, would benefit from having their messages amplified and, at times, clarified by our profession, we would move toward recognition that there are few truly voiceless individuals in our society and that the pursuit of broad press protections, rather than those limited to a specific professional class/designation, is in our collective best interest. It follows that people from structurally marginalized social positions are among those who need protection the most. The rest of society will undoubtedly benefit.

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