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Everything Old Is New Again: Attacks on *New York Times v. Sullivan* and the Weaponization of Libel Law

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Free press advocates have lamented the recent uptick in the number of lawsuits news organizations from the Wall Street Journal to CNN are facing for their critical coverage of government and political leaders. But history reminds us that these attacks are not new despite the First Amendment's purported protection of freedom of expression. Even before the Constitution was ratified, printer John Peter Zenger faced seditious libel charges for criticism of Britain's colonial leaders. During the Civil Rights Movement, segregationists turned to libel laws to discourage news coverage of their violent efforts to avoid integration. Not long after Watergate brought down President Nixon, conservative political groups launched high-profile attempts to bring the watchdog press to heel. This Essay analyzes these key lawsuits and the historical moment in which they arose in an effort to glean key litigation and advocacy strategies to help news organizations rebut current attempts to weaponize libel law and erode press freedom.

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Everything Old Is New Again: Attacks on *New York Times v. Sullivan* and the Weaponization of Libel Law

AMY KRISTIN SANDERS*

INTRODUCTION

Disdain for the press is nothing new—particularly when it comes from government officials and political leaders. Yet many journalists and attorneys believe the current attacks on the press signal something different than previous run-ins. Just before President Donald Trump’s second inauguration in January 2025, veteran media attorney Laura Handman told PEN America, a leading advocate for the protection of free expression:

This is certainly not the first time we’ve seen a surge in attacks on the press. Watergate was obviously one time. And the number of federal subpoenas to reporters in leak investigations was very high in the Obama years, surprisingly. What is different is the weaponization of libel to go after critics, and what’s surprising is to see government officials using the weapon of libel. That’s not that common, and it’s been much more common now.¹

Put under a microscope, these present-day attacks resemble earlier attempts to muzzle government critics, including the independent press. This Essay examines several prominent historical attacks on freedom of expression, drawing conclusions from history to inform modern-day litigation and advocacy strategies that journalists and attorneys alike can employ. It seeks to further remind government officials and political leaders of the historical importance of an independent press by documenting the potential future consequences of silencing critics.

I. A BRIEF HISTORY OF SEDITIOUS LIBEL

In the United States, the weaponization of libel law by government officials and political leaders harkens back to the pre-First Amendment days when our nation was an amalgam of British colonies in which seditious libel laws discouraged citizens from criticizing the government for fear of

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¹ Mina Haq, *Media Defense Lawyers On Their Biggest Fears During a Trump Term, How Journalists Can Defend Themselves and Why They Still Have Hope*, PEN AM. (Jan. 16, 2025), <https://pen.org/media-defense-lawyers-on-their-biggest-fears-during-a-trump-term-how-journalists-can-defend-themselves-and-why-they-still-have-hope>.

criminal sanction. Few journalism or law students complete their degrees without studying the trial of colonial printer John Peter Zenger, whom New York Governor William Cosby accused of sedition in an attempt to prevent the publication of the *New-York Weekly*.² Although the *Zenger* case often marks the beginning of the sedition conversation in American jurisprudence, legal scholar Zechariah Chafee, Jr., documented trials dating back to the sixteenth and seventeenth centuries in England, noting that “in the latter prosecutions for seditious words also took place frequently.”³ Chafee observed that the demise of the licensing regime in England and Colonial America gave rise to the growth of seditious libel prosecutions:

[T]he law covering seditious libel, which consisted of written or printed matter found by the court to have been published with a seditious intent, became the chief weapon of the government against the advocacy of political reforms; and successful prosecutions were frequently directed against what would now be considered mild anti-administration editorials.⁴

Truth was not a defense to sedition charges—“[t]he greater the truth the greater the libel”⁵—ensuring prosecutors were almost guaranteed to get a conviction. Because of this, John Peter Zenger’s trial marked a notable outlier. Although it did not completely do away with sedition prosecutions, it portended a change that would take place.

II. THE JOHN PETER ZENGER TRIAL: JURY NULLIFICATION AND CHANGING NORMS

The story of John Peter Zenger is a bit of a hero’s tale among defenders of a free press. Yet many fail to appreciate the depth of the tribulation Zenger faced, instead remembering the case for its ultimate outcome: a victory for the colonial printer and freedom of the press. Upon deeper examination, though, John Peter Zenger’s ordeal serves as a reminder of the heavy toll that government attempts to silence the press can take.

Governor Cosby’s attempts to prosecute Zenger and shut down the newspaper he printed were unyielding. Although two grand juries were empaneled, both refused to indict the printer. But Cosby and his allies remained undaunted. Cosby unsuccessfully attempted to order the public burning of copies of the newspaper. His administration then charged Zenger by information—a common process today that was highly unpopular in the

² *Crown v. John Peter Zenger, 1735*, HIST. SOC’Y OF THE NY CTS., <https://history.nycourts.gov/case/crown-v-zenger> (last visited Mar. 15, 2026). For a firsthand account of the trial, see generally THE TRYAL OF JOHN PETER ZENGER, OF NEW-YORK, PRINTER, WHO WAS LATELY TRY’D AND ACQUITTED FOR PRINTING AND PUBLISHING A LIBEL AGAINST THE GOVERNMENT (1738), https://history.nycourts.gov/wp-content/uploads/2018/11/History_Tryal-John-Peter-Zenger.pdf.

³ ZECHARIAH CHAFEE, JR., FREE SPEECH IN THE UNITED STATES 498 (1946).

⁴ *Id.* at 499.

⁵ *Id.* at 500 (citation omitted).

colonial era—and Zenger was arrested on a bench warrant in November 1734. Unable to post bail, Zenger remained in jail awaiting his trial. During this time, Zenger’s wife Anna famously continued his printing business, though the depth of her involvement is quite contested.⁶

In the colonial era, seditious libel trials were often a foregone conclusion, as truth was not permitted as a defense to the charge.⁷ As a result, the jury merely decided whether the defendant was responsible for the publication of the statements.⁸ Then, the court would determine whether the statements were libelous, leaving little room for concerned juries to acquit government critics with whom they might be sympathetic.⁹ Because of these challenges, Zenger’s attorneys had very little room to maneuver. Attorneys James Alexander and William Smith, who had happened to establish the contrarian independent newspaper Zenger was charged with printing, argued that Cosby’s 1733 removal of Chief Justice Lewis Morris had been improper, so the appointment of Chief Justice De Lancey was invalid as a result.¹⁰ It was Cosby’s removal of Morris after he issued a dissenting opinion in a case involving Cosby that spurred Alexander and Smith to launch the *New-York Weekly Journal*.¹¹ Chief Justice De Lancey was reportedly so angered by this argument that he yelled, “You have brought it to that point that either we must go from the bench or you from the bar.”¹² In April 1735, the court ordered that Alexander and Smith no longer be permitted to appear before the Supreme Court of Judicature, leaving Zenger without counsel.¹³

When the court eventually appointed counsel for Zenger, it was a young, loyalist attorney named John Chambers. Despite his perceived fealty, Chambers challenged the juror rolls and attempted to empanel an impartial jury. During the five months Chambers was given to prepare his case, Zenger’s allies managed to convince well-known Philadelphia attorney Andrew Hamilton to step in as the colonial printer’s counsel. At the trial, Hamilton engaged in a risky legal maneuver by admitting that Zenger had published the articles—which was sufficient under the law for the jury to

⁶ See generally Vincent Buranelli, *The Myth of Anna Zenger*, 13 WM. & MARY Q. 157, 157–68 (1956) (discussing whether and to what extent Anna Zenger may have been involved in the work of the *New-York Weekly Journal*).

⁷ See CHAFEE, *supra* note 3, at 378 (asserting that truth was not necessarily a defense).

⁸ *Id.* at 500 (asserting that while the courts looked to the jury to determine whether the defendant published the material, the question of whether the material was seditious was reserved for the judge).

⁹ *Id.*

¹⁰ MATURIN L. DELAFIELD, WILLIAM SMITH, JUDGE OF THE SUPREME COURT OF THE PROVINCE OF NEW YORK: WILLIAM SMITH, THE HISTORIAN, CHIEF JUSTICE OF NEW YORK AND OF CANADA 264, 265–66. (1881).

¹¹ *The New York Weekly Journal and the Arrest of John Peter Zenger*, NAT’L PARK SERV., <https://www.nps.gov/feha/learn/historyculture/the-new-york-weekly-journal-and-the-arrest-of-john-peter-zenger.htm> (last updated May 28, 2015).

¹² DELAFIELD, *supra* note 10, at 266.

¹³ *Id.*

make a finding of guilt.¹⁴ Hamilton's legal strategy rested instead upon appealing to the jury's sensibilities:

[T]he Question before the Court and you, Gentlemen of the Jury, is not of small nor private Concern, it is not the Cause of a poor Printer, nor of *New-York* alone, which you are now trying: No! It may in its Consequence, affect every Freeman that lives under a British Government on the Main of *America*. It is the best Cause. It is the Cause of Liberty¹⁵

The action likely irritated Chief Justice Delancy, who instructed the jurors to decide only the issue of whether Zenger published the articles. As juries have been known to do, they disregarded the instruction and found Zenger not guilty after a brief deliberation.¹⁶ According to Zenger's account, which many believe was written by Hamilton, "[T]here were three Huzzas in the Hall which was crowded with People" ¹⁷ After being released from prison the following day, Zenger returned to his print shop.

Hamilton implored the jury not to look singularly at Zenger's case but to engage in collective action that would serve the best interests of the colonists as a whole.¹⁸ Throughout history, this kind of collective action has been a powerful tool against authoritarianism. But uniting a population against tyranny requires citizens to look past their own existence in instances where they have been unaffected and imagine what could happen. Chafee noted that the shift in public opinion that Zenger's trial evidenced did not occur overnight or without setbacks.¹⁹ At times when jury pools ardently supported the idea of strong government, sedition convictions would increase.²⁰ When that support eroded and citizens felt the oppression of government, convictions would dwindle: "[The pushback against sedition] did not happen until they were reinforced by new political ideals, which were rapidly developing under the influence of the Liberals and Bentham in Great Britain, and of Jefferson, Madison, and the Bills of Rights in the United States."²¹

This shift, Chafee noted, aligned with a growing appreciation that newspapers and community discussion were an essential component in a self-governing society: "Sedition was not merely tried differently; it became defined differently . . . by a tremendous shift of the line that separated permissible from punishable speech. Most expression of ideas and facts of

¹⁴ *Crown v. John Peter Zenger*, *supra* note 2.

¹⁵ THE TRYAL OF JOHN PETER ZENGER, *supra* note 2, at 29.

¹⁶ *Crown v. John Peter Zenger*, *supra* note 2.

¹⁷ THE TRYAL OF JOHN PETER ZENGER, *supra* note 2, at 30.

¹⁸ *Id.* at 29.

¹⁹ CHAFEE, *supra* note 3, at 504–05.

²⁰ *Id.*

²¹ *Id.* at 505.

public significance became lawful, and the long series of sedition prosecutions came to an end.”²²

Nonetheless, our nation’s history of sedition prosecutions at its founding, including the passage of the Alien and Sedition Acts in 1798, continue to color the relationship between the government and the press.

III. NEW YORK TIMES V. SULLIVAN: WHEN THE RISK OF INACTION DEMANDS ACTION

As the Civil Rights Movement unfolded in the South, the institutional press—largely headquartered north of the Mason-Dixon line—proved to be a thorn in the side of segregationists. Journalists covering the police brutality against peaceful protestors shared their stories in newspapers and radio and television broadcasts across the country. The images they aired and published could not be ignored:

In the hands of journalists, cameras became tools to expose the cruelty of segregation and discrimination to the wider world. But often, journalists had their cameras and film taken and destroyed in an attempt to keep from the world’s eyes the reality of life for Black people in the South. Photographs from the Civil Rights Movement documented the everyday inequalities and the violent tactics employed to stop protestors. These images forced all Americans to notice—and to choose sides.²³

As media scrutiny of government officials intensified, these powerful Southerners looked for ways to quiet their critics.

With the number of national news outlets increasing coverage of the South and the growing influence of the mass media among the public, Southern segregationists feared a shift in public opinion. Around the same time, civil rights leaders were capitalizing on the media visibility in an attempt to pressure the South to respect the Court’s decision in *Brown v. Board of Education* and to end the Reconstruction Era policy of “separate but equal” in public education.²⁴ In the South, segregationists urged their neighbors to boycott the media and even physically attacked journalists who covered the Civil Rights Movement.²⁵ By the time the *New York Times* published the “Heed Their Rising Voices” advertisement, nearly two decades had passed since Florida Governor Millard Caldwell had

²² *Id.*

²³ *Ordinary Objects*, U.S. CIV. RTS. TRAIL, <https://civilrightstrail.com/ordinary-objects> (last visited Feb. 19, 2026).

²⁴ Michelle Kelley, *Freedom Song: Interviews from Eyes on the Prize: America’s Civil Rights Years, 1954-1965*, AM. ARCHIVE OF PUB. BROAD., <https://americanarchive.org/exhibits/eotp/5-5-media> (last visited Feb. 19, 2026).

²⁵ Samantha Barbas, *New York Times v. Sullivan: A Civil Rights Story*, 12 TEX. A&M L. REV. 1, 6–7 (2024).

successfully sued *Collier's Magazine* for defamation,²⁶ winning nearly \$240,000 in 1947. Segregationist politicians throughout the South deployed strategic litigation efforts against news organizations in a bid to silence them—and nearly succeeded.

Although *New York Times v. Sullivan* is undoubtedly the most notable of the defamation lawsuits against media defendants covering the Civil Rights Movement, it certainly was not the only lawsuit. Law professor Samantha Barbas documented the segregationists' attempts to use libel law to quiet their critics:

Segregationists resented this influx of journalists, which they likened to an 'invasion.' They feared the power of the press to influence public opinion toward integration, with good reason. During the 1950s, the mass media were more influential than ever. . . . Reporters who covered civil rights protests were beaten and assaulted, and journalists' cameras were smashed. Libel suits became another weapon in this war on the press.²⁷

L.B. Sullivan's lawsuit against the *New York Times* involved an ad that the newspaper published on behalf of the Committee to Defend Martin Luther King and the Struggle for Freedom in the South.²⁸ *Montgomery Advertiser* editor Grover Hall Jr., who despised the *Times* for its pro-integration coverage,²⁹ convinced Alabama officials, including the eponymous Sullivan, to sue for defamation even though none of the officials were named.³⁰ Under the strict liability standard, and without truth as a defense, the *New York Times* stood little chance of defending itself against the \$500,000 lawsuit. The lawsuit ignited a series of additional lawsuits from segregationist public officials who all had the same goal: to run northern newspapers out of the South and prevent coverage that could sway public opinion in the South. Barbas noted that “[b]y 1964, southern officials had brought 17 libel suits against media outlets seeking damage awards of more than \$288 million.”³¹ To put the monumental nature of the lawsuits in perspective, the sum amounts to nearly \$3 billion today. If the northern news organizations intended to continue operations on a national scale, a fight would be inevitable.

Because the minor factual misstatements in the ad prevented the *Times* from being able to use truth as a defense, the newspaper's loss at trial was a foregone conclusion. On appeal in the Alabama Supreme Court, Sullivan was again victorious as the high court affirmed the trial court's verdict and

²⁶ *Caldwell v. Crowell-Collier Publ'g. Co.*, 161 F.2d 333, 334–35 (5th Cir. 1947).

²⁷ Samantha Barbas, *How the Civil Rights Movement Rewrote Freedom of the Press*, 45 HUMANIS., (2024), <https://www.neh.gov/article/how-civil-rights-movement-rewrote-freedom-press>.

²⁸ *New York Times Co. v. Sullivan*, 376 U.S. 254, 257 (1964).

²⁹ Barbas, *supra* note 25 at 16.

³⁰ *Id.* at 14, 16.

³¹ *Id.* at 24.

damages award.³² The loss left the *Times* no choice but to appeal to the U.S. Supreme Court, even though the stakes were high—the risk of inaction would be crippling to its operation. Ultimately, the Supreme Court, in a unanimous decision written by Justice William Brennan, ruled in favor of the northern newspaper.³³ In his book *Make No Law*, journalist Anthony Lewis captured the enormous import of the opinion:

No one could have guessed it would become a landmark of freedom. But that is what happened The Court used to the full its extraordinary power to lay down the fundamental rules of our national life. It made clearer than ever that ours is an open society, whose citizens may say what they wish about those who temporarily govern them. The Court drew fresh meaning from those few disarmingly simple words written into the Constitution in 1791, in the First Amendment[.]³⁴

Under the actual malice standard, public officials—those elected and appointed to government office—would be required to prove that a news organization or other defendant acted with reckless disregard for the truth to prevail in a defamation lawsuit.³⁵ Rather than relying on the negligence standard used in many tort claims, the Court demanded a much higher level of fault, which provided an unprecedented level of protection to criticize public officials. The decision raised the bar significantly, making it necessary for public official plaintiffs to prove the defendant knew or should have known that the statement was false and published it anyway.³⁶ Ruling in favor of the *New York Times*, the Court remanded the case back to the Alabama Supreme Court.³⁷ Justice Brennan staked the Court's opinion on the important role that free speech plays in a democratic society: "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."³⁸

The colonial history of seditious libel clearly influenced the Justices' decision to provide constitutional protection for criticism of the nation's leaders. With its newfound First Amendment protection in tow, it would not be long before the institutional press began to throw its weight around.

³² *Id.* at 25.

³³ See *New York Times Co. v. Sullivan*, 376 U.S. 254, 292 (1964) (holding that the First Amendment requires public officials to prove actual malice to prevail in a libel action).

³⁴ ANTHONY LEWIS, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT* 7–8 (1991).

³⁵ *Sullivan*, 376 U.S. at 279–80.

³⁶ *Id.* at 283–87.

³⁷ *Id.* at 292.

³⁸ *Id.* at 270.

IV. WESTMORELAND V. CBS: PICKING A POLITICAL FIGHT WITH A POWERFUL PRESS

In the wake of *Sullivan*, investigative journalism thrived under the actual malice standard. From the *New York Times* reporting on the Pentagon Papers to the *Washington Post* breaking the Watergate scandal, news organizations flexed their watchdog muscles, knowing the First Amendment would protect them from defamation lawsuits unless they acted with reckless disregard for the truth. For many, these prominent stories holding government to account represent journalism at its best: “The publishing of the Pentagon Papers and the media’s coverage of the Nixon Watergate scandal still represent a high-water mark in the struggle between raw political power and democratic values.”³⁹ Contemporaneously, Law Professor Vincent Blasi argued in favor of what has become known as “the checking value.”⁴⁰ In looking at the history of First Amendment jurisprudence, Blasi noted the distinct lack of press cases among the early defining precedents had begun to change:

Partly as a result of the tensions generated by the civil rights movement and the Vietnam War, several large and well-established news organizations began, within the confines of their standards of professionalism, to challenge various manifestations of governmental and social orthodoxy. In the process, these organizations too became First Amendment claimants, thereby adding another powerful constituency to the ranks of those regularly asserting free-speech and free-press claims.⁴¹

From these cases, Blasi examined the role of the First Amendment—often articulated in cases brought against the press—in effectuating democratic values:

One basic value seems highly relevant to these newer claims, yet has not been accorded a central place in our articulated theory of the First Amendment. This is the value that free speech, a free press, and free assembly can serve in checking the abuse of power by public officials.⁴²

As examples of this, he pointed to peace marches and protests after the failed Tet Offensive and “the crimes and abuses of Watergate.”⁴³ In closing his article, Blasi gave a nod to Justice Black’s opinion in *New York Times v.*

³⁹ Charles Lewis, ‘Kindred Souls’ Exposing Abuses of Power: Journalism in the Information Age, THE CONVERSATION (June 18, 2013, 12:14 PM), <https://theconversation.com/kindred-souls-exposing-abuses-of-power-journalism-in-the-information-age-15287>.

⁴⁰ Vincent Blasi, *The Checking Value in First Amendment Theory*, 2 AM. BAR FOUND. RSCH. J. 521, 528 (1977).

⁴¹ *Id.* at 524–25 (citation omitted).

⁴² *Id.* at 527.

⁴³ *Id.*

United States, which continues to be the most prominent articulation of the checking value in First Amendment jurisprudence:

The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell.⁴⁴

Given such a profound responsibility, the press was no doubt going to come into conflict with government officials and political actors. If anything, the victories in *Sullivan* and the *Pentagon Papers*⁴⁵ cases had left journalists feeling a bit heady.

Two high-profile lawsuits would quickly bring the legacy media organizations back down to earth. In rapid succession, General William Westmoreland, who held the top military command position in Vietnam, and then-Israeli Defense Minister Ariel Sharon filed record-setting defamation lawsuits against major news organizations. Westmoreland sued CBS News in September 1982, alleging \$120 million in damages after CBS aired a documentary, *The Uncounted Enemy: A Vietnam Deception*, that argued Westmoreland's actions limiting the number of troops in Vietnam left American forces susceptible to the Tet Offensive.⁴⁶ In June 1983, Ariel Sharon sued *Time* magazine for \$50 million after it published a February 21, 1983, cover story titled, "*The Verdict Is Guilty: An Israeli commission apportions the blame for the Beirut massacre.*"⁴⁷ Both pieces represented the classic brand of watchdog journalism that had gained steam largely bolstered by landmark legal victories in the *Sullivan* and *Pentagon Papers*

⁴⁴ *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring).

⁴⁵ Taken in conjunction with *Sullivan*, the Supreme Court's decision in *New York Times v. United States*, colloquially known as the Pentagon Papers case, represents the high-water mark in First Amendment protection for the press. In that case, the Court issued a per curiam opinion in which it ruled that prior restraints against the press are presumptively unconstitutional and would only be permissible where the government is able to meet its heavy burden of justifying such a restraint. *Id.* at 714.

⁴⁶ *Westmoreland v. Columbia Broadcasting System*, No. 82 Civ. 7913 (S.D.N.Y., filed Nov. 30, 1982).

⁴⁷ *Sharon v. Time, Inc.*, 599 F. Supp. 538, 542 (S.D.N.Y. 1984). *Sharon v. Time* was ultimately unsuccessful after a jury in the Southern District of New York found that Mr. Sharon had not successfully proved that *Time* had published with actual malice. Linda A. Malone, *Sharon vs Time: The Criminal Responsibility Under International Law for Civilian Massacres*, WM. & MARY L. SCH. FAC. PUBL'NS 41, 49–50 (1986). For a detailed analysis of the *Sharon* case, see Linda Malone's article cited in the previous sentence. *Id.* Sharon then sued *Time* in Israeli court. Thomas L. Friedman, *Time Magazine and Sharon Settle the Libel Suit He Filed in Israel*, N.Y. TIMES (Jan. 23, 1986), <https://www.nytimes.com/1986/01/23/nyregion/time-magazine-and-sharon-settle-the-libel-suit-he-filed-in-israel.html>. That case was ultimately settled, with *Time* admitting some details in the article were "erroneous" and agreeing to pay some of Sharon's legal fees. *Id.*

cases.

The *Westmoreland* case, in particular, bears a striking resemblance to the politically charged defamation lawsuits of today. The conservative public-interest law firm Capital Legal Foundation brought the lawsuit on behalf of Westmoreland in South Carolina state court. Eventually, it was removed to federal court and transferred to the Southern District of New York. A number of conservative organizations, including the John M. Olin Foundation and the Smith Richardson Foundation, funded the litigation.⁴⁸ The goal of the lawsuit was simple: attempt to overturn the *New York Times v. Sullivan* actual malice standard and kneecap a major U.S. media organization.

In the complaint, Westmoreland's legal team accused CBS of asking biased and slanted questions for its *60 Minutes* segment, selectively editing interviews (for example, giving a two-minute excerpt of a ninety-minute interview and portraying that selection as representative), and selectively choosing subjects to interview that supported CBS's point of view.⁴⁹ They claimed CBS edited the interview tapes dishonestly and took statements out of context. The jury trial lasted eighteen weeks.

Just before reporter Mike Wallace was set to testify and the case was given to the jury, the parties settled; Westmoreland agreed to dismiss the case without payment, retraction, or apology from CBS.⁵⁰ Both sides agreed to pay their own legal fees—estimated at \$6 million for CBS and \$3 million for the general—and Westmoreland and CBS released simultaneous public statements. In the joint statement, the news station clarified that it had never intended to say that “General Westmoreland was unpatriotic or disloyal in performing his duties *as he saw them*.”⁵¹ The statement also announced, “General Westmoreland respects the long and distinguished journalistic tradition of CBS and the rights of journalists to examine the complex issues of Vietnam and to present perspectives contrary to his own.”⁵² After more than four months of trial, neither party truly prevailed given the significant legal fees each side had accrued.

⁴⁸ See David Margolick, *Westmoreland v. CBS: Legal Drama Intensified by 2 Contrasting Lawyers*, N.Y. TIMES (May 31, 1984), <https://www.nytimes.com/1984/05/31/nyregion/westmoreland-v-cbs-legal-drama-intensified-by-2-contrasting-lawyers.html> (noting the Olin Foundation and the Smith Richardson Foundation as “prime financial backers”).

⁴⁹ *Westmoreland v. Columbia Broadcasting System*, No. 82 Civ. 7913 (S.D.N.Y., 1982).

⁵⁰ See Mike Moravitz, *Westmoreland vs. CBS: The Military, the Media, and the Vietnam War*, GEORGE MASON UNIV., <https://mason.gmu.edu/~mmoravit/clioiiwebsite/westmoreland/settlement.html> (last visited Apr. 2, 2026) (“Most observers concluded that the settlement favored CBS because it did not contain an explicit apology for the broadcast or any monetary compensation..”).

⁵¹ *Texts of Statements on the End of Westmoreland's Libel Suit Against CBS*, N.Y. TIMES (Feb. 19, 1985), <https://www.nytimes.com/1985/02/19/movies/texts-of-statements-on-the-end-of-westmoreland-s-libel-suit-against-cbs.html> (emphasis added).

⁵² *Id.*

It turned out that the motivating factor behind Westmoreland's lawsuit was not money. Several years later, Iowa Law Professor Randall P. Bezanson and his colleagues would confirm that Westmoreland's motives did not differ much from most libel plaintiffs. Bezanson's unprecedented Iowa Libel Research Project studied more than 700 reported defamation cases between 1974 and 1984 and included in-depth interviews with libel plaintiffs, media defendants, and their attorneys.⁵³ Among the research's key findings was the discovery of a legal landscape that bore out significant success for media defendants:

- (1) About seven out of every ten libel cases involve members of the news media;
- (2) Over one half of cases involving the media are the result of stories that deal with plaintiffs' business or professional activities;
- (3) Less than one-fifth of cases involving the media are the result of stories that focus on the plaintiffs' moral conduct;
- (4) Public figures or public officials are the plaintiffs in about sixty percent of cases brought against the media;
- (5) The constitutional privilege of negligence or malice is the central legal issue in nearly ninety percent of the libel cases brought against the media;
- (6) Plaintiffs win only ten percent of the cases pressed to judicial resolution, while the media wins ninety percent.⁵⁴

The cases examined in the Iowa Libel Research Project were decided on the heels of the Supreme Court's 1974 decision in *Gertz v. Welch*, the last of the *Sullivan* progeny cases, which clarified the First Amendment required even private figure plaintiffs to prove a level of fault higher than strict liability to succeed in a defamation case.⁵⁵ Further, any plaintiff seeking punitive damages would be required to prove actual malice. Nonetheless, Bezanson found that plaintiffs were not dissuaded from taking legal action:

[P]laintiffs view the lawsuit as an instrument for self-help, regardless of its judicial outcome. . . . [T]he act of suing represents a legitimization of their claims of falsehood. Indeed, many plaintiffs may believe they have no other means of

⁵³ Randall P. Bezanson, *The Libel Suit in Retrospect: What Plaintiffs Want and What Plaintiffs Get*, 74 CALIF. L. REV. 789, 789–90 (1986) [hereinafter *The Libel Suit in Retrospect*].

⁵⁴ RANDALL BEZANSON, GILBERT CRANBERG & JOHN SOLOSKI, *LIBEL LAW AND THE PRESS: MYTH AND REALITY* (1987).

⁵⁵ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347, 350 (1974).

recourse, and therefore feel that litigation is the only way to set the record straight.⁵⁶

Even today, many libel plaintiffs seem intent on controlling the narrative, and headline-grabbing damage demands are one way to ensure a lawsuit gets widespread attention.

V. MODERN ATTACKS ON FREE SPEECH: PRESIDENT TRUMP'S BULLY PULPIT

In many ways, the legal landscape has changed dramatically in the two decades since Bezanson, known for his landmark study of libel litigation in the 1980s, wrote his 2003 book *How Free Can the Press Be?* In the Introduction, he wrote:

By most standards, the number of judicial decisions is remarkably small. This is likely because Americans share a common understanding of the press and its need for freedom, or “breathing room,” as the Court puts it. Conventions about the way we deal with the press have built up over hundreds of years and have become, in effect, social habits to which Americans naturally conform. The infrequency of press cases may also reflect another fact of life. The press itself is a very powerful social, economic, and political force, a force to be challenged only with trepidation and great, great care.⁵⁷

The proliferation of the internet, social media platforms, and now, AI-generated content have upended the legacy media landscape that, to a great extent, remained dominant even in the early 2000s. As UC Davis Law Professor Ashutosh Bhagwat detailed, the institutional press has seen a dramatic erosion in its gatekeeping function.⁵⁸ At the start of the twentieth century, daily newspapers, including those owned by Hearst, Pulitzer and Ochs, dominated the delivery of news. But the rise of commercial radio shortly after World War I and the popularity of President Roosevelt's Depression-era Fireside Chats offered the news to mass audiences for free. When commercial television emerged on the scene after World War II, the Big Three networks (ABC, CBS, and NBC) quickly established their presence as the dominant source of news for Americans, and the slow decline of newspapers began.

⁵⁶ *The Libel Suit in Retrospect*, *supra* note 53, at 791 (citation omitted).

⁵⁷ RANDALL P. BEZANSON, *HOW FREE CAN THE PRESS BE?* 1–2 (2003) [hereinafter *HOW FREE CAN THE PRESS BE?*].

⁵⁸ Ashutosh Bhagwat, *The New Gatekeepers?: Social Media and the “Search for Truth”*, 3 J. FREE SPEECH L. 41, 42, 48–49 (2023), <https://www.journaloffreespeechlaw.org/bhagwat3.pdf>.

Even as newspapers closed their doors, Americans shared a common agenda⁵⁹ thanks in part to the dominance of television. Families gathered around the television to get their news and information from Edward R. Murrow and then Walter Cronkite, but newspapers remained relevant given their ability to report in greater depth than their broadcast counterparts. Even after the CNN's launch in 1980,⁶⁰ subscription-based cable services—dominated by their round-the-clock news channels—never overtook broadcast television as Americans' top source of news. Only in 2025 did social media and streaming video platforms overtake television as Americans' top choice for news.⁶¹

The changes in the way audiences consume news and information, along with economic turbulence among legacy media, not only created an environment ripe for the spread of misinformation;⁶² it also shifted the balance of power between government officials and the press. Unlike the era when President Roosevelt needed radio stations to air his Fireside Chats to the American people or when President Reagan relied on broadcast television to cut into prime-time programming to deliver his historic Challenger address, today's government officials employ social media platforms to speak directly to voters without the mediation of the institutional press. President Trump's use of Twitter during his first term was so monumental that the *New York Times* documented his more than 11,000 Tweets during the first two and a half years of his presidency.⁶³ Even then, the reporters found that President Trump used social media to attack someone or something in more than half his posts,⁶⁴ confirming a very real feeling that his rhetoric was different than that of his predecessors.

It was no secret that Donald Trump had an anti-press agenda. Even before he took office, then-candidate Trump announced he wanted to “open up” libel laws so that he could go after his critics, including the press.⁶⁵ Not long after his inauguration, President Trump referred to the press as the

⁵⁹ Communication professors Maxwell McCombs and Donald Shaw theorized that news media tell audiences what topics they should think about based on their coverage of issues and events. Maxwell E. McCombs & Donald L. Shaw, *The Agenda-Setting Function of Mass Media*, 36 PUB. OP. Q. 176, 177 (1972). Their “agenda-setting” theory was based on a study that examined media coverage of the 1968 presidential election and public opinion. *Id.* at 177, 182.

⁶⁰ *Defining Moments from 40 Years of CNN*, CNN (May 31, 2020), <https://www.cnn.com/2020/05/30/world/gallery/cnn-history>.

⁶¹ *For the First Time, Social Media Overtakes TV as Americans' Top News Source*, NIEMAN LAB (June 16, 2025), <https://www.niemanlab.org/2025/06/for-the-first-time-social-media-overtakes-tv-as-americans-top-news-source>.

⁶² For more about the relationship between journalistic gatekeeping and the spread of misinformation, see generally Patrick Ferrucci & Toby Hopp, *Reshaping the Spheres: Gatekeeping as an Ethical Normative Imperative*, JOURNALISM PRAC. (2024).

⁶³ Michael D. Shear, Maggie Haberman, Nicholas Confessore, Karen Yourish, Larry Buchanan & Keith Collins, *How Trump Reshaped the Presidency in Over 11,000 Tweets*, N.Y. TIMES (Nov. 2, 2019), <https://www.nytimes.com/interactive/2019/11/02/us/politics/trump-twitter-presidency.html>.

⁶⁴ *Id.*

⁶⁵ Michael M. Grynbaum, *Trump Renews Pledge to 'Take a Strong Look' at Libel Laws*, N.Y. TIMES (Jan. 10, 2018), <https://www.nytimes.com/2018/01/10/business/media/trump-libel-laws.html>.

“enemy of the [American] people,” a refrain that would become commonplace in his remarks at rallies, on social media, and in interviews.⁶⁶ Journalist and Harvard professor Marvin Kalb argued Trump—like previous authoritarian leaders—used the demeaning rhetoric to delegitimize the press in the eyes of the public. The Committee to Protect Journalists (CPJ) catalogued more than 1,300 tweets made by President Trump in the first two years of his first term that “were critical, insinuating, condemning, or threatening” about the press.⁶⁷ CPJ also found that President Trump routinely adopted the term “fake news” into his tweets after he was elected, using it in more than half the tweets where he criticized the press.⁶⁸

The president’s public pummeling of the press, which coincided with a significant economic downturn in the media industry, quickly undermined the institutional press Bezanson had called “a very powerful social, economic, and political force, a force to be challenged only with trepidation and great, great care.”⁶⁹ Public opinion polling in 2018 found that 77% of American respondents believed traditional print and TV news reported “fake news,” with 31% saying it happened regularly and 46% saying it happened occasionally.⁷⁰ In addition, President Trump has been quite successful in getting attendees at his campaign events and rallies riled up against the press, with repeated documentation of crowds verbally harassing the press and attempting to physically assault journalists.⁷¹ Two days before the 2024 presidential election and after he was injured by gunfire at a campaign event, Trump suggested he would condone violence against the press: “I have this piece of glass here, but all we have really over here is the fake news. And to get me, somebody would have to shoot through the fake news. And I don’t mind that so much . . . They’re my glass. See? Those people [the press] are my glass.”⁷²

⁶⁶ MARVIN KALB, *ENEMY OF THE PEOPLE: TRUMP’S WAR ON THE PRESS, THE NEW MCCARTHYISM, AND THE THREAT TO AMERICAN DEMOCRACY* 1 (2018).

⁶⁷ Stephanie Sugars, *From Fake News to Enemy of the People: An Anatomy of Trump’s Tweets*, COMM. TO PROTECT JOURNALISTS (Jan. 30, 2019, 10:00 AM), <https://cpj.org/2019/01/trump-twitter-press-fake-news-enemy-people>.

⁶⁸ *Id.*

⁶⁹ HOW FREE CAN THE PRESS BE?, BEZANSON, *supra* note 57, at 2.

⁷⁰ ‘Fake News’ Threat to Media; Editorial Decisions, Outside Actors at Fault, MONMOUTH UNIV. POLLING INST. (Apr. 2, 2018), https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_040218.

⁷¹ See Heather Timmons, *Watch: A Furious Tampa Crowd Screams at the Press, Just as Trump Intended*, QUARTZ (July 20, 2022), <https://qz.com/1345622/video-of-a-trump-rally-crowd-harassing-the-press-in-tampa> (reporting that Trump rally attendees have mocked and booed the press while holding signs disparaging the media); Katie Herchenroeder, *Trump Calls Journalists “Enemy of the People” During Pennsylvania Rally Minutes Before Man Storms into Media Section*, VANITY FAIR (Aug. 31, 2024), <https://www.vanityfair.com/news/story/trump-rally-man-attacks-journalists?srsltid=AfmBOorefpvkRazpW7XCbIKSxqJmoj1mhDbUwhvyb4jfn3shals9HD6q> (describing how a man attempted to climb over the partition separating the crowd from the press at a Trump campaign rally).

⁷² Julia Reinstein, *Trump Campaign Defends His Remarks About Violence Toward Journalists*, ABC NEWS (Nov. 3, 2024, 5:31 PM), <https://abcnews.go.com/Politics/trump-campaign-defends-remarks-violence-journalists/story?id=115449625>.

In the years that followed, libel lawsuits against the press have increased,⁷³ with President Trump himself being party to a number of those lawsuits. By 2025, he had defamation lawsuits pending against the Wall Street Journal, the New York Times, the BBC, the Des Moines Register, and the Pulitzer Prize Board.⁷⁴ In addition, Trump Media & Technology Group has defamation lawsuits pending against nineteen media companies.⁷⁵ Noted media scholars Kathy Kiely and Lyrissa Barnett Lidsky argued that a desire to win in court was not necessarily driving Trump's litigious streak: "Instead, Trump appears to use lawsuits as a strategic weapon designed to silence his enemies and critics—who sometimes seem to be one and the same in his eyes."⁷⁶

Using the threat of a defamation lawsuit to chill free expression today differs only slightly from the threat of seditious libel that existed in colonial America or the methods the segregationists employed during the Civil Rights era to target northern news outlets. Instead of facing prison time, today's defamation defendants find themselves facing steep damages demands with the potential to bankrupt them. President Trump's most recent libel lawsuit against the BBC demanded \$10 billion in damages for a documentary that the BBC argues never aired in the United States.⁷⁷ Some media defendants, concerned about the ramifications of the lawsuits, preemptively settled with Trump. In December 2024, ABC's parent company Disney agreed to donate \$15 million to Trump's presidential library to settle a defamation case involving George Stephanopoulos⁷⁸—a case some legal experts believe ABC could have won. The New Jersey Law Journal Editorial Board called ABC out after the settlement, noting the damage such a precedent could have on the journalism industry: "Unless news organizations—most of which are in dire financial straits—stand firm using established law that will protect them, we fear that it will simply encourage more groundless legal actions and demands against publications large and small."⁷⁹

⁷³ Jane E. Kirtley, *Uncommon Law: The Past, Present and Future of Libel Law in a Time of "Fake News" and "Enemies of the American People"*, 2020 U. CHI. LEGAL F. 117, 117 (2020).

⁷⁴ Angela Fu, *The Numbers That Defined the Trump Administration's Attacks Against the Press in 2025*, POYNTER (Dec. 22, 2025), <https://www.poynter.org/reporting-editing/2025/united-states-press-freedom-donald-trump>.

⁷⁵ *Id.*

⁷⁶ Kathy Kiely & Lyrissa Barnett Lidsky, *Trump Lawsuits Seek to Muzzle Media, Posing Serious Threat to Free Press*, THE CONVERSATION (Jan. 12, 2026, 8:14 AM), <https://theconversation.com/trump-lawsuits-seek-to-muzzle-media-posing-serious-threat-to-free-press-272850>.

⁷⁷ Jill Lawless & Brian Melley, *The BBC Seeks to Dismiss Trump's \$10B Defamation Lawsuit in a Florida Court*, ASSOCIATED PRESS (Jan. 13, 2026, 6:54 AM), <https://apnews.com/article/trump-bbc-defamation-lawsuit-62d3dd4df76c16c6f5612052d2a22a82>.

⁷⁸ Brooks Barnes, *Inside Disney's Decision to Settle a Trump Defamation Suit*, NY TIMES (Dec. 18, 2024), <https://www.nytimes.com/2024/12/18/business/media/disney-trump-abc-lawsuit.html>.

⁷⁹ The Law Journal Editorial Board, *ABC's \$16M Settlement with Trump Sets Bad Precedent in*

The ABC settlement may well have represented the canary in the coal mine for news organizations. Seven months later, CBS News' parent company, Paramount, settled a "widely derided" lawsuit against 60 Minutes for \$16 million.⁸⁰ Much like in his current lawsuit against the BBC, Trump claimed the way a segment was edited—common practice in broadcast journalism—had harmed his reputation.⁸¹ In this case, the interviews 60 Minutes had edited was with Kamala Harris, and it aired shortly before the November 2024 presidential election. Industry insiders and attorneys alike quickly speculated that Paramount had settled the lawsuit in an attempt to curry favor with the Trump administration while its proposed merger with Skydance was pending before the FCC.⁸² Not even a month later, the FCC approved the merger.⁸³

Journalists, attorneys, and watchdog groups, are alarmed by these settlements, and fear they will embolden politically charged lawsuits.⁸⁴ When news organizations have been willing to fight back against government officials who have sued for defamation, they have largely been successful. After a protracted legal battle with Sarah Palin, the New York Times prevailed in a libel lawsuit dating back to 2017.⁸⁵ In the lawsuit, Palin claimed an editorial⁸⁶ wrongly suggested that she incited a shooting that injured Congresswoman Gabrielle Giffords and killed six people, including a federal judge.⁸⁷ In August 2025, a federal judge dismissed former Representative Devin Nunes' defamation lawsuit against Rachel Maddow

Uncertain Times, N.J.L.J. (Jan. 24, 2025, 5:52 PM), <https://www.law.com/njlawjournal/2025/01/24/abcs-16m-settlement-with-trump-sets-bad-precedent-in-uncertain-times/?slreturn=20260114153415>.

⁸⁰ Katie Fallow, *Paramount's Trump Lawsuit Settlement: Curtain Call for the First Amendment?*, KNIGHT FIRST AMEND. INST. (July 9, 2025), <https://knightcolumbia.org/blog/paramounts-trump-lawsuit-settlement-curtain-call-for-the-first-amendment>.

⁸¹ David Folkenflik, *Trump Administration Approves Sale of CBS Parent Company Paramount After Concessions*, NPR (July 24, 2025, 8:04 PM), <https://www.npr.org/2025/07/24/nx-s1-5477530/paramount-cbs-skydance-sale-fcc-approves>.

⁸² *Id.*; see also Fallow, *supra* note 80 (theorizing that Paramount's settlement was motivated by its concern that Trump's FCC would otherwise reject Paramount's pending merger).

⁸³ Folkenflik, *supra* note 81.

⁸⁴ See, e.g., Brian Stelter, *Analysis: Trump's Bizarre \$10 billion BBC Lawsuit Has Even More Holes Than His Other Media Actions*, CNN (Dec. 19, 2025), <https://www.cnn.com/2025/12/16/media/trump-bbc-lawsuit-libel-media-10-billion> (noting how President Trump has normalized suing news outlets in order to discourage these organizations from speaking out against him); Fallow, *supra* note 80 (discussing how Trump's actions have often successfully suppressed his critics); The Law Journal Editorial Board, *supra* note 79 (describing the dangers of normalizing presidential suits against news outlets); Kiely & Lidsky, *supra* note 76 (explaining how President Trump's lawsuits endanger the First Amendment).

⁸⁵ Katie Robertson & David Enrich, *Palin Loses Libel Retrial Against New York Times*, N.Y. TIMES (Apr. 22, 2025), <https://www.nytimes.com/2025/04/22/business/media/sarah-palin-new-york-times-jury-deliberations.html>.

⁸⁶ See The Editorial Board, *America's Lethal Politics*, N.Y. TIMES (June 14, 2017), <https://www.nytimes.com/2017/06/14/opinion/steve-scalise-congress-shot-alexandria-virginia.html> (showing the editorial that was the subject of Palin's lawsuit).

⁸⁷ Adam Klawonn, *What Motivated Giffords' Shooter?*, TIME (Jan. 9, 2011, 12:00 AM), <https://time.com/archive/6916936/what-motivated-giffords-shooter>.

for a 2021 segment on her MSNBC show.⁸⁸ The judge said Nunes, a longtime Trump supporter and current Trump Media and Technology Group CEO, presented no clear and convincing evidence of actual malice, the standard required of public official or figure plaintiffs by *Sullivan* and its progeny.⁸⁹ Earlier in 2025, the Eighth Circuit rejected Nunes' appeal in a defamation case against journalist Ryan Lizza and *Esquire Magazine* over an article suggesting Nunes and his family used undocumented labor at their NuStar dairy farm.⁹⁰ Even President Trump has lost high-profile defamation cases in court. Most recently, a federal judge in July 2023 dismissed his \$475 million defamation lawsuit against CNN.⁹¹ The federal judge—a Trump appointee—found CNN's statements calling President Trump's efforts to overturn the 2020 election “The Big Lie” to be opinion, rather than factual, statements. Four months later, a three-judge appellate panel that included two Trump appointees upheld the trial court decision.⁹² According to *Politico*, the lawsuit was one of “at least 10 lawsuits Nunes filed beginning in 2019 against media organizations, journalists and critics he accused of defaming him.”⁹³

VI. PUTTING IT ALL TOGETHER: PROTECTING THE PRESS AND PUBLIC DISCOURSE IN THE SECOND TRUMP ERA

Looking back across history, several important lessons emerge that can help guide attorneys, journalists and free speech advocates in their fight against the current government crackdown on freedom of expression and criticism of the government. This is not the first time that democratic values in the United States have come under fire. Many of the current challenges have presented themselves at earlier periods in history. The defining aspect of this moment in time seems not to be the unique nature of the methods used to silence critical public discourse, but rather the Trump administration's ability to engage in this battle simultaneously on myriad fronts.

Public sentiment matters. If Zenger's trial teaches us anything, it teaches us that how the public views the press and the government colors how they

⁸⁸ Nunes v. NBCUniversal Media, LLC, No. 22-CV-1633, 2025 WL 2199115, at *1–2, *12 (S.D.N.Y. Aug. 1, 2025).

⁸⁹ Jonathan Stempel & Nick Zieminski, *Trump Media CEO Nunes Loses Defamation Lawsuit Over Rachel Maddow Show*, REUTERS (Aug. 4, 2025), <https://www.reuters.com/legal/government/trump-media-ceo-nunes-loses-defamation-lawsuit-over-rachel-maddow-show-2025-08-04>.

⁹⁰ Nunes v. Lizza, 126 F.4th 1361, 1363 (8th Cir. 2025).

⁹¹ Mike Schneider, *Donald Trump's Defamation Lawsuit Against CNN Over 'the Big Lie' Dismissed in Florida*, ASSOCIATED PRESS (July 30, 2023, 2:57 PM), <https://apnews.com/article/trump-cnn-defamation-florida-lawsuit-dismissed-4aa93cf5264405fbb6b0b87bbf21f695>.

⁹² Trump v. Cable News Network, Inc., No. 23-14044, 2025 WL 3213203, at *1 (11th Cir. Nov. 18, 2025).

⁹³ Josh Gerstein, *Judge Tosses Devin Nunes Suit Over Esquire Article*, POLITICO (Apr. 26, 2023, 10:06 AM), <https://www.politico.com/news/2023/04/25/devin-nunes-libel-suit-esquire-hearst-00093844>.

view government attempts to silence the press. Data from an October 2025 Gallup poll evidences a continued decline in public “trust in newspapers, television and radio to report the news fully, fairly, and accurately.”⁹⁴ Only 28% of respondents expressed a “great deal” or “fair amount” of trust in the media, marking an all-time low. In just five years, that number has fallen from 40%. Perhaps more telling is that during the 1970s era of Watergate reporting, Gallup’s polling revealed that up to 72% of respondents “expressed confidence in reporting.”⁹⁵

To win back public trust, the mainstream media—and media attorneys—need a better understanding of the trust gap. Appealing to today’s juries (and the public at large) demands a keen appreciation of the complex socio-political climate that has developed in the United States. Although polling indicates a decline in trust across all respondents, the differences based on party affiliation are dramatic. Perhaps unsurprisingly, Republicans remain the most skeptical of the mainstream media, with only 8% indicating confidence. Around one-quarter of Independents and slightly more than half of Democrats report they trust the media.⁹⁶

Political affiliation alone cannot explain the trust gap. Multiple surveys suggest that younger Americans have significantly less trust in the mainstream media than their older counterparts.⁹⁷ Among Democrats, only 38% of the demographic between ages 18 and 29 reported trusting the mainstream media, compared to 69% of their fellow Democrats who are 65 or older.⁹⁸ Among Republicans, those in the middle age brackets trust the news less than their older and younger counterparts, with only 6% of 30- to 49-year-olds and 8% of 50- to 64-year-olds having a “[g]reat deal/[f]air amount” of trust in the media. The same trend holds, albeit less dramatically, for Independents, with 42% of those who are 65 or older reporting trust in the media, while trust among the middle age groups is nearly half that amount.⁹⁹

The rural/urban divide has long played a role in trust as well, with news organizations regularly accused of “helicopter journalism.”¹⁰⁰ When reporters make quick trips to rural destinations with the goal of covering breaking news—often tragedy—and fail to establish meaningful connections, it can further erode the public’s trust in news organizations.

⁹⁴ Megan Brenan, *Trust in Media at New Low of 28% in U.S.*, GALLUP (Oct. 2, 2025), <https://news.gallup.com/poll/695762/trust-media-new-low.aspx>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ E.g., *id.*; Kirsten Eddy & Elisa Shearer, *How Americans’ Trust in Information from News Organizations and Social Media Sites Has Changed Over Time*, PEW RSCH. CTR. (Oct. 29, 2025), <https://www.pewresearch.org/short-reads/2025/10/29/how-americans-trust-in-information-from-news-organizations-and-social-media-sites-has-changed-over-time>.

⁹⁸ Brenan, *supra* note 94.

⁹⁹ *Id.*

¹⁰⁰ Amalia Medina, *Rural Reporting Needs Trust, Common Ground*, KNIGHT CTR. FOR ENV’T JOURNALISM (June 27, 2024), <https://knightcenter.jrn.msu.edu/2024/06/27/rural-reporting-needs-trust-common-ground>.

Even more, the failure to accurately depict rural communities can advance harmful stereotypes that further partisan and other ideological divides. Done responsibly, reporting on rural issues can help disparate groups discover the similarities they face in shared challenges, like public health or climate change. Tim Marema, who edits a national rural news platform called *The Daily Yonder*, noted, “[W]e get people who live in other types of places that may have similarities and differences a chance to see where they might fit and how they can relate to that community.”¹⁰¹

Media organizations and their attorneys have a vested interest in doing what they can to restore the public’s trust in journalism. At its very foundation, that begins with working to ensure every story is accurate and all sources are fairly represented. It requires corporate commitments to getting the story right over getting the story first. It demands a commitment to timely corrections when mistakes are made. But perhaps more importantly, it necessitates a concentrated effort at better understanding one particular group of Americans—namely, rural voters who have supported and may even continue to support President Trump. Journalism has long been criticized for being elitist, and reformers have frequently called on the news industry to do better. The disconnect between journalists and their audiences has not gone unnoticed. Media professor Daniel Kreiss wrote:

Ironically, even as the economic fortunes of the news media have declined precipitously, as a social group the status of journalists has increased

[J]ournalists are highly educated, urban, and cosmopolitan elites when compared with the publics they serve. Despite the economic precarity of the news industry and the fortunes of individual journalists, the college graduates pursuing their media careers entrepreneurially in economically viable and cosmopolitan cities are precisely those people who have more successfully navigated the global economy than those living in post-traumatic rust belt cities and rural areas wracked by opioid addiction, and they are disproportionately more likely to continue doing so.¹⁰²

A better understanding of the general public will help news organizations improve their coverage and regain audiences. Journalists Heather Bryant and Denise-Marie Ordway have called for reporters to “[c]onsider prioritizing journalism *for* and *with* people over coverage *about* people.”¹⁰³

¹⁰¹ *Id.*

¹⁰² Daniel Kreiss, *The Social Identity of Journalists*, 20 *JOURNALISM* 27, 27–28 (2019) (emphasis omitted) (citing SILVIO WAISBORD, *REINVENTING PROFESSIONALISM* 14 (2013); JUSTIN GEST, *THE NEW MINORITY: WHITE WORKING CLASS POLITICS IN AN AGE OF IMMIGRATION AND INEQUALITY* vii (2016)).

¹⁰³ Denise-Marie Ordway & Heather Bryant, *Covering Poverty: What to Avoid and How to Get It*

VII. STANDING UP TO THE SCHOOLYARD BULLY: LESSONS FROM TUSSELES WITH TRUMP

In the wake of their decisions to settle lawsuits many deemed frivolous, ABC and CBS faced significant criticism. Despite this, when FCC Chair Brendan Carr threatened ABC over remarks late-show host Jimmy Kimmel made in the wake of Charlie Kirk's murder, the network suspended him.¹⁰⁴ The suspension came on the heels of Carr telling a right-wing podcast host, "We can do this the easy way or the hard way These companies can find ways to change conduct to take action on Kimmel or, you know, there's going to be additional work for the FCC ahead."¹⁰⁵ Station owners Nextstar and Sinclair quickly announced compliance and an indefinite suspension, and ABC swiftly followed suit. All three had actions pending before the Commission or federal antitrust regulators.¹⁰⁶

Unlike the defamation settlements, which received bad press in the major newspapers and some scrutiny online among press freedom advocates and media lawyers, the Kimmel suspension reverberated among the general public. Public outcry pressured ABC to allow him back on the air roughly one week after he was suspended.¹⁰⁷ A number of Hollywood stars publicly condemned ABC's decision even as it garnered public praise from President Trump. In a public display of collective action, David Letterman, Ben Stiller, Jamie Lee Curtis, Wanda Sykes, Jean Smart, Henry Winkler and other well-known celebrities voiced their support for Kimmel and called for him to be reinstated.¹⁰⁸ Even Nexstar and Sinclair, who initially continued to preempt Kimmel's show, eventually caved under public pressure.¹⁰⁹ Thanks in part to the controversy, the late-show host saw a 14% year-over-year increase in audience.¹¹⁰

Much like the jury's decision to find John Peter Zenger not guilty of seditious libel in 1735, the public's outcry during the Kimmel suspension

Right, THE JOURNALIST'S RES. (Sept. 4, 2018), <https://journalistsresource.org/economics/covering-poverty-avoid-get-right>.

¹⁰⁴ David Folkenflik, *Jimmy Kimmel's Suspension Shows Power of FCC's Brendan Carr*, NPR (Sept. 19, 2025, 1:27 PM), <https://www.npr.org/2025/09/19/nx-s1-5546764/fcc-brendan-carr-kimmel-trump-free-speech>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Sarah Whitten & Gabriel Cortés, *Jimmy Kimmel Returns After ABC Suspension: 'Never My Intention to Make Light' of Charlie Kirk's Murder*, CNBC (Sept. 23, 2025, 6:45 PM), <https://www.cnn.com/2025/09/23/jimmy-kimmel-returns-abc-disney-kirk.html>.

¹⁰⁸ Patrick Smith, Rebecca Cohen & Rebecca Keegan, *Hollywood Stars, Unions and Fans Erupt with Outrage After ABC Pulls Jimmy Kimmel Off Air*, NBC (Sept. 18, 2025, 6:16 AM), <https://www.nbcnews.com/news/us-news/jimmy-kimmel-hollywood-reacts-pulled-off-air-charlie-kirk-abc-disney-rcna232069>.

¹⁰⁹ Chloe Veltman, *Sinclair and Nexstar Restore 'Jimmy Kimmel Live!' to Their Local TV Stations*, NPR (Sept. 26, 2025, 4:45 PM), <https://www.npr.org/2025/09/26/nx-s1-5554473/jimmy-kimmel-sinclair-disney-abc-preempt-restore-nexstar>.

¹¹⁰ Eboni Boykin-Patterson, *Trump's Favorite TV Target Proves Him Wrong with Ratings Win*, THE DAILY BEAST (Jan. 13, 2026, 1:08 PM), <https://www.thedailybeast.com/obsessed/jimmy-kimmel-proves-trump-wrong-with-late-night-ratings-win>.

suggests the people are often more powerful than those who govern them. Moving forward, as the Trump administration's attacks on press freedom will undoubtedly continue, solidarity between the press and the public is likely to be one of the most effective means of countering government encroachments on the First Amendment. Whether it is formal attempts to silence dissent through lawsuits and sanctions against critics or a reliance on soft power through regulatory pressures, the Trump administration is keenly aware that unpopular actions run the risk of alienating voters in the midterm elections. As the midterm elections grow closer, the public's ability to successfully push back against censorial actions should only increase.

CONCLUSION

History proves attacks on press freedom, particularly through the weaponization of libel law, are nothing new in the United States. Government officials and political allies have long tested the strength and fortitude of journalists who seek to hold them accountable. But the institutional press that secured landmark legal victories in *Sullivan* and the *Pentagon Papers* case no longer exists. Corporate interests, like those that motivated Paramount to settle the case against CBS News, play a significantly larger role today in legal decision-making as the 1980s and 1990s saw media conglomerates grow to include more than just news organizations. Even in situations where news organizations are likely to prevail, business interests weigh heavily on litigation strategy. An organization's more profitable entertainment interests and shareholder demands often find themselves in conflict with the traditional journalistic value of independence. As the economics of journalism have declined, corporate owners are often less willing to roll the dice on a lengthy trial if they believe they can settle for a fraction of the damages demand. Although these financial calculations may make sense on an annual balance sheet, the long-term wounds they inflict on a democratic society are incalculable. Only time will tell whether CBS and ABC were wise to settle their lawsuits with President Trump. Given the Trump administration's continued attacks on the press, it seems likely that both news organizations will have lost far more than money.

It is clear, from other attacks on journalism, that news organizations are going to have to continue to fight against incursions on their First Amendment press freedoms. At the moment, the Associated Press is battling the revocation of its White House press credentials.¹¹¹ The New York Times has sued the Pentagon over new requirements for access that threaten its

¹¹¹ David Bauder, *AP Sues 3 Trump Administration Officials, Citing Freedom of Speech*, ASSOCIATED PRESS (Feb. 21, 2025, 10:11 PM), <https://apnews.com/article/ap-lawsuit-trump-administration-officials-0352075501b779b8b187667f3427e0e8>.

ability to report independently.¹¹² The Chicago Headline Club successfully sued the Department of Homeland Security over attacks on journalists covering immigration raids, obtaining a preliminary injunction against the Border Patrol, which eventually resulted in Commander Gregory Bovino and other federal immigration officials leaving Chicago.¹¹³ Media attorney Robert Balin remains optimistic despite the many battles in which news organizations find themselves embroiled:

[T]he First Amendment is going to be doing some heavy lifting in the not-so-distant future. This is the time for media lawyers to be fighting good fights, and I suspect we're going to have a couple good fights ahead of us. I'm not pessimistic. I'm actually optimistic about the ability of the First Amendment. I don't want to look at the world through rose-colored glasses. I recognize that we are under a lot of stress, but I think there are reasons to be hopeful as well.¹¹⁴

¹¹² Erik Wemple, *New York Times Sues Pentagon Over First Amendment Rights*, N.Y. TIMES (Dec. 4, 2025), <https://www.nytimes.com/2025/12/04/business/media/new-york-times-pentagon-lawsuit.html>.

¹¹³ Igor Studenkov, *Chicago Headline Club Takes the Win, Dismisses Homeland Case, Vows to File New Suit If Federal Agents Try Again to Violate Press Freedoms*, CHI. HEADLINE CLUB (Dec. 2, 2025), <https://headlineclub.org/2025/12/02/chicago-headline-club-takes-the-win-dismisses-homeland-case-vows-to-file-new-suit-if-federal-agents-try-again-to-violate-press-freedoms>.

¹¹⁴ Haq, *supra* note 1.