

PRESS FREEDOMS

in the United States **2020**



A REVIEW OF THE U.S. PRESS FREEDOM TRACKER
MAY 2021

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Press Freedoms in the United States 2020

A REVIEW OF THE U.S. PRESS FREEDOM TRACKER

By the Reporters Committee

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TABLE OF CONTENTS

Overview	4	Prior Restraints	20
Physical Attacks on Journalists	8	Denials of Access	21
Arrests of Journalists	12	Chilling Statements	25
Equipment Damage	14	Conclusion	27
Subpoenas and Legal Orders	16		

The Tracker data referenced herein is current as of May 3, 2021, the date of publication.

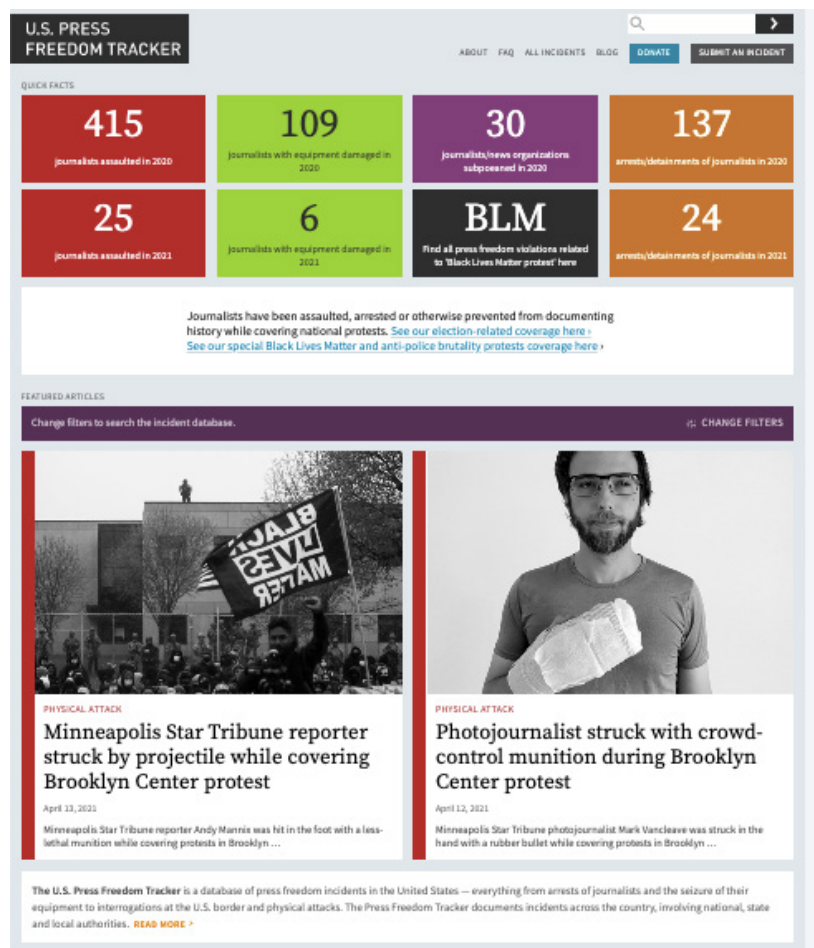
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About the Tracker and this Report

In 2017, as the U.S. news media faced increasing hostility led by attacks from politicians, the Reporters Committee for Freedom of the Press joined with more than two dozen press freedom groups to launch the **U.S. Press Freedom Tracker**, a project aimed at documenting incidents impacting press freedom in the country. The Tracker's advisory board, led by the Committee to Protect Journalists, includes the Reporters Committee, the Knight First Amendment Institute at Columbia University, Reporters Without Borders, Index on Censorship, and the Freedom of the Press Foundation, which also manages the day-to-day operation of the Tracker.

The importance of the Tracker and its role documenting press freedoms in the U.S. came into sharp focus in 2020 — only the fourth year of its existence — when the country faced a wave of protests, and journalists covering those protests were [arrested](#) and [attacked](#) in record numbers. While the Tracker does not capture every press freedom incident, it strives to document the number of times journalists in the U.S. were arrested, assaulted, subpoenaed, detained at the border, or subjected to prior restraints or equipment searches or seizures. Certain categories — such as subpoenas and border stops — are particularly difficult to monitor and more likely to be under-reported. The Tracker also highlights particularly egregious denials of access and statements by public officials that appear aimed at chilling the work of journalists.

The Reporters Committee annually surveys the Tracker's data to assess what it means for the legal rights of reporters in the United States and to inform our work providing legal support to journalists and newsrooms. This report covers press freedom incidents in 2020, with a few exceptions where relevant updates occurred in early 2021.¹



¹ Special thanks to Kirstin McCudden, managing editor of the Tracker, and Stephanie Sugars, the Tracker's full-time reporter, for their tireless work collecting the data that informs this report.

Overview

ATTACKS, ARRESTS & EQUIPMENT DAMAGE

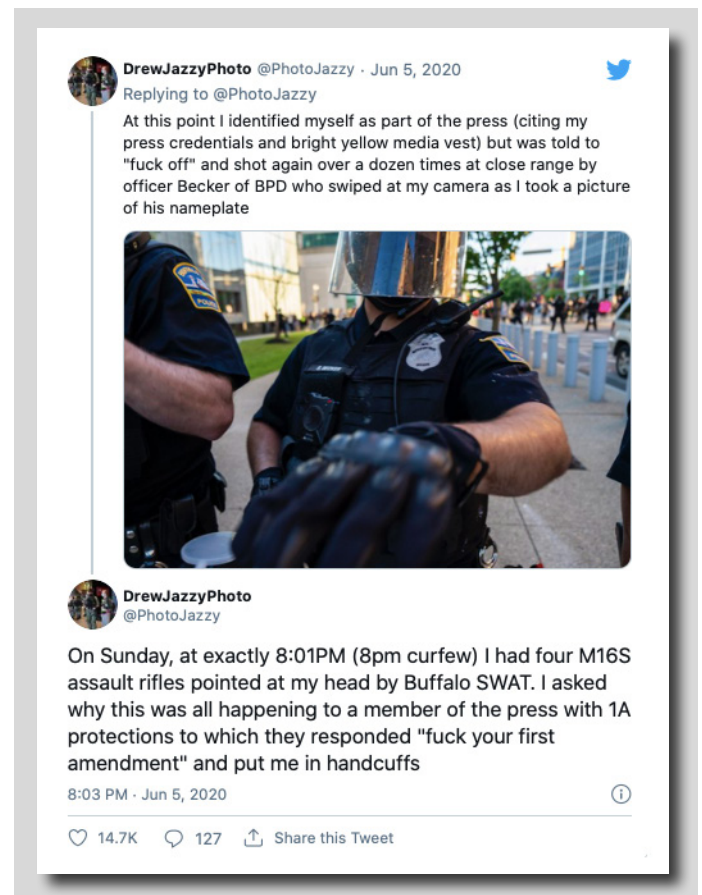
Journalists faced record violence and arrests at protests

Protests have long been one of the most dangerous places for journalists to report the news. Since the Tracker started documenting press freedom violations in 2017, demonstrations have consistently ranked as the most common place for journalists to be [attacked](#) or [arrested](#). That trend continued in 2020 — but at new and shocking levels.

Ignited by the May 25 murder of George Floyd by a Minneapolis police officer, protests for racial justice and against police brutality erupted across the country, marking a tumultuous moment for press freedom in the U.S. As journalists reported on these historic demonstrations (collectively referred to as [Black Lives Matter](#) protests by the Tracker), they faced a record number of attacks ([400](#)) and arrests ([129](#)) — more than [11](#) and [15](#) times the number reported for 2019, respectively. The press freedom incidents that occurred during these protests, which included [damaged equipment](#), represented the vast majority — at least 82% ([517](#)) — of the total number of incidents documented by the Tracker in 2020 ([625](#)).

While private individuals assaulted [many](#) journalists, law enforcement was responsible for 80% of these attacks. In cities across the country — from Portland to Miami, Minneapolis to Los Angeles — police officers shot journalists with various forms of projectiles, like rubber-coated bullets, which [can be lethal](#) at close range. They caused serious injuries to reporters, [permanently blinding](#) one of them. Police also sprayed tear gas, fired pepper balls and used their batons and fists. Officers often ignored journalists' press credentials and [flouted news media exemptions to local curfew ordinances](#). Police also detained reporters during mass arrests — and, in at least one case, even handcuffed a [TV news journalist](#) as he reported live, on-air.

The violence reached its peak over the summer, affecting journalists across the industry, from freelancers and photographers to videographers and traditional newspaper reporters. Collectively, their accounts told a tale of overly aggressive policing that disregarded fundamental First Amendment rights. "[F*ck your First Amendment](#)," a Buffalo police officer reportedly told a freelance photojournalist as officers pointed guns at his head.



Whether or not journalists were deliberately targeted — in almost [200 cases](#), it appeared they were — the effect was largely the same: Journalists were impeded or outright prevented from reporting news about one of the most important social movements in recent history.

Even after a federal judge in Oregon issued orders in July and August barring law enforcement, including federal agents, from targeting journalists engaged in lawful newsgathering with the use of force and arrest during demonstrations, the attacks [continued](#).

Many of the journalists who were attacked while covering protests in 2020 were also arrested. The vast majority were either never charged with crimes, or their charges were dropped. However, [one reporter in Iowa](#) was forced to stand trial on charges of failing to disperse and interference with official acts. A jury acquitted her of all charges in March 2021.

Reporters Committee attorneys responded to the crisis by updating our [guide for covering protests](#), running legal trainings for journalists, and providing free legal help to a [record number of reporters calling](#) our Legal Hotline. Reporters Committee attorneys filed friend-of-the-court briefs in protest-related [civil rights suits](#) and [subpoena cases](#), and sent [letters to government officials](#), denouncing the assaults and urging them to adopt protocols to reduce future attacks on the press.

SUBPOENAS

Journalists again reported a record number of subpoenas to the Tracker, some related to protest coverage and leak investigations by NYPD and DHS

2020 marked the third consecutive year that the number of subpoenas reported to the Tracker increased, renewing concerns that journalists may be facing these legal threats more frequently. In at least four cases across the country — in [Seattle](#), [Cleveland](#), [Memphis, Tennessee](#), and [Rochester, New York](#) — state and local prosecutors attempted to subpoena journalists and news outlets for materials and testimony related to their protest coverage, though these attempts were largely unsuccessful.

Federal officials within the Department of Homeland Security again subpoenaed a member of the news media, demanding disclosure of a journalist's source in connection with a leak investigation. ICE quickly dropped the [subpoena](#) in the most recent case — targeting BuzzFeed — after the outlet reported on it. In 2018, DHS [attempted](#) to compel an immigration law journal to disclose a source, also without success.

Troublingly, the New York City Police Department subpoenaed [two journalists'](#) records as part of its own leak investigations in 2020, echoing DHS's efforts and that of the [Department of Justice](#) and [San Francisco police](#) in recent years. Although the NYPD ultimately withdrew the first subpoena, which [attempted to compel](#) Twitter to disclose account information for a New York Post journalist, a freelance journalist learned in July that phone records had been [subpoenaed](#) from AT&T in connection with the reporter's work for the Daily Mail.

PRIOR RESTRAINTS

The Trump administration and a Trump family member tried — and failed — to prevent publication of three books about former President Trump

Although 2020 saw a drop in prior restraint cases, three lawsuits over the summer involved [unsuccessful efforts to block the publication of books](#) about former President Donald Trump. In June, the Trump administration unsuccessfully [tried to block](#) the distribution of a book by John Bolton about his time as the president's former national security adviser. Two weeks later, the president's brother, Robert Trump, [sued](#) his niece, Mary Trump, and her publisher to stop publication of her book about the president. Although a judge temporarily blocked publication, an appellate court quickly [vacated the prior restraint](#). The Reporters Committee filed friend-of-the-court briefs in [both cases](#). And in July, a federal judge in New York [ordered the release](#) of the president's former lawyer, Michael Cohen, from prison, finding that the government had returned him to prison in retaliation for writing a book about the president.

DENIALS OF ACCESS

Despite COVID-19, many courts, including the U.S. Supreme Court, live-streamed proceedings, but federal, state, and local officials excluded journalists from press briefings in apparent retaliation for their coverage

2020 began with the Senate [restricting press coverage](#) to an historic impeachment trial, despite efforts by the [Reporters Committee](#) and others to loosen these rules.

While some courts — in [North Carolina](#) and [Pennsylvania](#), for example — improperly restricted public access due to the COVID-19 pandemic, many, including the [U.S. Supreme Court](#) offered a live feed of their proceedings, something the Reporters Committee has long [encouraged](#).

Federal officials again excluded — or threatened to exclude — specific news outlets or reporters from press events in apparent retaliation for their coverage, raising First Amendment concerns. The State Department, which had limited a briefing call in 2019 to only "[faith-based media](#)," removed an NPR reporter from an official trip abroad in early 2020, while the Vice President's office [reportedly threatened](#) to bar a Voice of America reporter from future travel on Air Force Two due to that reporter's tweet. Rep. Devin Nunes (R-Calif.) [refused](#) to allow his hometown newspaper to attend a water forum with the Interior Secretary, and the Office of the Director of National Intelligence [excluded](#) The New York Times from a press briefing. State and local officials — in [Florida](#) and [Minnesota](#), and in [Knox County](#) and [Memphis](#), Tennessee — also denied journalists access to COVID-19 briefings or media advisories in apparent retaliation for their questions or coverage.

CHILLING STATEMENTS

Former President Trump set a new record for anti-press tweets, while state legislators repeated his attacks, and DHS compiled “intelligence reports” about journalists

In his last year in office, President Trump [mocked](#) a reporter for being hit with a less-lethal munition, calling it a “beautiful sight,” and set a [personal record](#) for anti-press tweets: [632](#) in 2020, including a record number of “fake news” claims ([300](#)). State politicians repeated these attacks, including a Tennessee lawmaker, who introduced bills to declare CNN and The Washington Post “[fake news](#)” and to condemn the “mainstream media” for “[sensationalizing](#)” the COVID-19 pandemic.

Troublingly, DHS continued to surveil the news media in 2020, this time compiling “[intelligence reports](#)” on two journalists in connection with stories concerning DHS’s response to protests in Portland. In 2019, DHS was widely criticized for [tracking](#) journalists covering the southern border, using a secret database.

THE GOOD NEWS

No new border stops or federal leak prosecutions

Perhaps due to the COVID-19 pandemic and less international travel in 2020, the Tracker did not record any new cases of border agents detaining journalists. In 2019, the Tracker documented multiple instances of Customs and Border Protection officials [detaining](#) journalists, [searching their devices](#), and asking [harassing questions](#).

According to available information, the Trump administration also did not initiate any new leak prosecutions against journalists’ sources in 2020, a [troubling trend](#) in the first three years of Trump’s term.

BUT, there were troubling developments in ongoing leak matters

The new administration under President Joe Biden has continued to pursue a [historic criminal prosecution](#) against WikiLeaks founder Julian Assange, which includes charges based solely on the act of publicly disclosing government secrets — the first time such a legal theory has advanced beyond the grand jury stage. Following an extradition trial in fall 2020, a court in the United Kingdom [declined to extradite](#) Assange, finding a strong risk he would attempt suicide were he in U.S. custody. The judge, however, addressed and agreed with the government’s substantive legal arguments, including the claimed ability to use the spying laws to punish “pure publication.” That decision is on appeal, and the Biden Justice Department has indicated it will [continue the extradition effort](#).

Additionally, two defendants in unauthorized disclosure cases pled guilty in 2020. Natalie Edwards [changed her plea](#) to guilty on one count of violating bank secrecy laws and is awaiting sentencing. Henry Frese, charged under the Espionage Act, [pled guilty](#) and was sentenced to 30 months in prison (after the government sought a nine-year sentence, which, if handed down, would have been, by far, the longest in a civilian court for a journalistic source, almost four years more than the current longest, that of [Reality Winner](#)). And John Fry, also charged under bank secrecy laws, was sentenced in January to [five years probation](#) after pleading guilty in 2019.

Physical Attacks on Journalists

**BY THE
NUMBERS**

2020: **438**

2019: **35**

2018: **35**

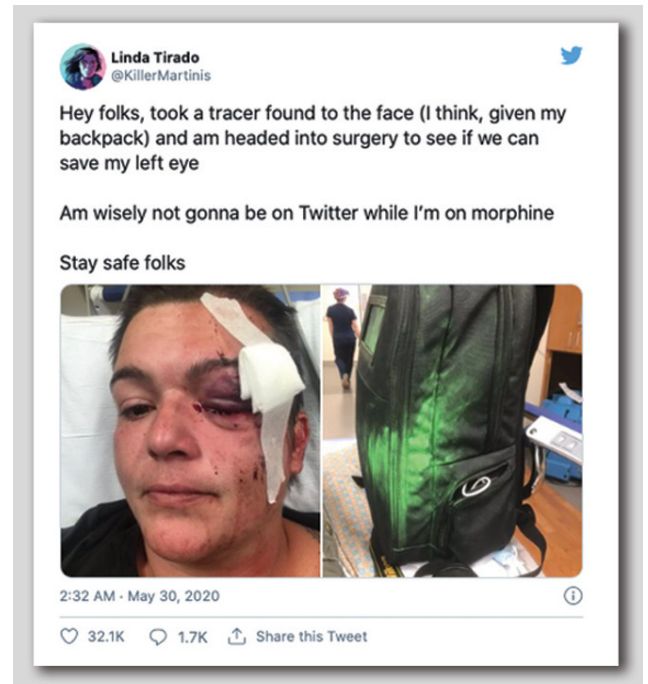
2017: **50**

As of press time, the Tracker documented **438** physical attacks on journalists in 2020. This is **more than three times** as many attacks as it recorded over the previous three years combined. Of those attacks, which affected **416** journalists, more than 91% occurred during Black Lives Matter protests. **Sixteen** assaults occurred at protests related to the 2020 election.

The resulting harm ranged from minor injuries to serious wounds requiring hospitalization. On May 30, in Phoenix, Arizona, freelance photographer Thomas Machowicz [suffered a head wound, concussion, and bruised lung](#) after police shot him with three rubber projectiles. The day before, in Minneapolis, freelance photojournalist Linda Tirado was [permanently blinded](#) in her left eye by a rubber bullet fired by a police officer. Tirado filed a civil rights suit against the city and police officials and scored an early victory in February 2021, when a federal judge denied a motion to dismiss the case, calling Tirado's experience "[serious and troubling](#)."

Police were responsible for the vast majority of attacks on journalists – and frequently targeted them

Law enforcement officers were responsible for **321** — or **80%** — of the **400** total assaults on journalists during Black Lives Matter protests in 2020, affecting **324** journalists. At least **195** of these journalists appeared to be deliberately targeted by police. Neither clearly visible press credentials nor cries of "Press!" or "We're the media!" prevented such attacks. Roberto Roldan, a reporter for VPM News, said a police officer in Richmond, Virginia, [fired pepper spray into his face](#) after he identified himself as a member of the news media. Moments later, another officer tackled him to the ground, despite a press badge around his neck. Richmond Mayor Levar Stoney later [tweeted](#) that Roldan's treatment was "absolutely unacceptable" and would be investigated.





In New York City, [police repeatedly hit Tyler Blint-Welsh of The Wall Street Journal in the face](#) with riot shields and pushed him to the ground, even though he was wearing a visible press credential issued by the New York City Police Department. “Lost my glasses and my ankle is in searing pain,” he tweeted after the May 31 attack. “I’m just sitting here crying. This sucks.”

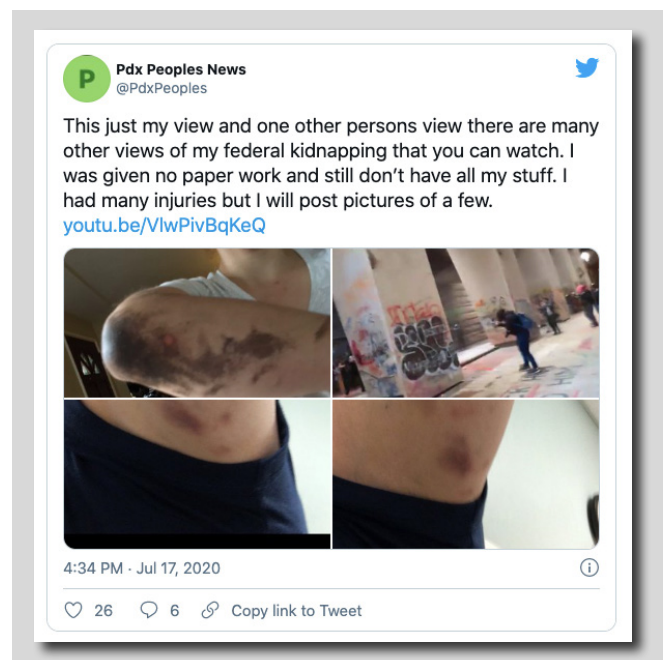
The Reporters Committee sent a [letter to New York City’s mayor and police commissioner](#) calling for police to stop targeting journalists and noting that this clearly violates the First Amendment.

Journalists in Portland were attacked by federal agents – even after a federal judge ordered them to stop

More than a quarter of all assaults against journalists during Black Lives Matter protests happened in Portland, Oregon, and many involved federal agents. Although demonstrations generally slowed in other parts of the country after peaking in June, clashes between law enforcement and protesters continued through the summer and fall in Portland. The violence prompted the ACLU Foundation of Oregon to file a [class-action lawsuit](#) on behalf of journalists and legal observers targeted by law enforcement while covering protests in the city.

That lawsuit resulted in a federal judge issuing a [temporary restraining order in late July](#) and [preliminary injunction in August](#) that prohibited federal agents from arresting, threatening to arrest, or using force against journalists or legal observers at protests absent probable cause to believe the person committed a crime other than failing to disperse. In early July, [federal officers assaulted and detained independent journalist Ari Taylor](#) while she was filming an altercation between law enforcement and protesters. Taylor called her arrest a “federal kidnapping” and said agents dragged her by the arm and leg across broken glass, causing injuries that required hospitalization. [Videos](#) posted on [YouTube](#) captured the assault, including one with [Taylor’s own footage](#).

Later in July, [at least eight journalists were struck by crowd-control projectiles fired by federal officers](#). “Feds approaching and just got shot in hand trying to film,” Rebecca Ellis, a reporter for Oregon Public Broadcasting [tweeted](#). “Don’t think that TRO worked.”



After the federal defendants appealed the preliminary injunction, the U.S. Court of Appeals for the Ninth Circuit [upheld](#) the district court's order pending its decision on the merits of the appeal. The Reporters Committee filed multiple [friend-of-the-court briefs](#) in the case, arguing that dispersal orders must be narrowly tailored to accommodate newsgathering and cannot constitutionally be applied to journalists who have not committed an unlawful act other than failure to disperse.

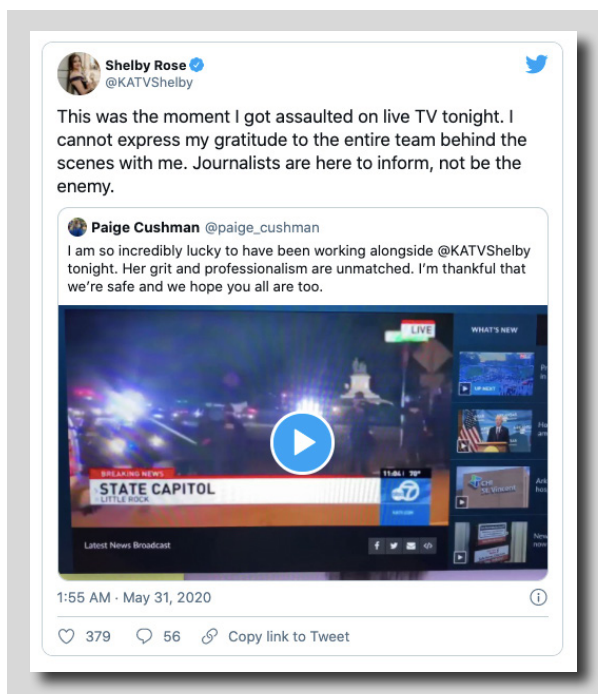
Members of the public also attacked journalists at protests

The Tracker recorded [89 attacks](#) against journalists by private individuals in 2020, [67](#) of which — or 75% — occurred at Black Lives Matter protests. While it is impossible to know what motivated these attacks, journalists appeared to be specifically targeted in most of them ([47](#)). Many journalists told the Tracker that the anti-media sentiment at protests was palpable, and individuals there took issue with being filmed or photographed.

“Put the fucking camera down!” a man yelled at New York Post reporter Kevin Sheehan before [hitting the journalist in the head with a wooden board](#) during a protest in New York City on July 12. A few days later, an individual [assaulted CBS Chicago reporter Marissa Parra](#) during a demonstration in Grant Park, after protesters shouted at her to stop recording and tried to block her camera. Parra said her attacker pushed her to the ground and tried so hard to take her phone that “her fingernails dug into my skin enough to draw blood.”

On May 30, a group of individuals at a protest in Washington, D.C., [chased a Fox News crew](#) out of a park across the street from the White House. “A crowd of about 50 people surrounded us, a number of them stopped throwing things at the Secret Service [officers] and started beating on us,” Fox News correspondent Leland Vittert told the Tracker.

The same day, in Little Rock, Arkansas, a woman [assaulted KATV reporter Shelby Rose](#) as she reported live, on air from the scene of demonstrations. And in June, unknown assailants [beat freelance writer George Chidi and threatened him with a pistol](#) while he reported on a protest in Atlanta, Georgia, sparked by the June 12 fatal police shooting of Rayshard Brooks. Other journalists attacked by private individuals were [sprayed with mace](#), [punched in the eye](#), and even [held at gunpoint and threatened with a crowbar](#).



HOW CAN YOU STAY SAFE?

- Limit the use of one-person news crews when covering events in the field.
- Be aware of your surroundings and keep an eye out for potential threats.
- Learn more about staying safe while covering protests with the Reporters Committee's [Police, Protesters, and the Press guide](#) and [tip sheet](#), the National Press Photographers Association's [guide](#) for covering "high profile" news stories, CPJ's [safety advisory](#) and [guide](#) to legal rights, and NABJ's [resources](#).
- If you are a journalist and are physically attacked while gathering or reporting the news, please report the incident to the Tracker [online](#) or via email (tips@pressfreedomtracker.us).



A police officer shouts at Associated Press videojournalist Robert Bumsted, Tuesday, June 2, 2020, in New York. (AP Photo/Wong Maye-E)

Arrests of Journalists

**BY THE
NUMBERS**

2020: **139**

2019: **9**

2018: **11**

2017: **38**

Journalists were arrested or charged with a crime at least **139** times in 2020, more than a **15-fold** increase over the previous year. **All but 10** of those arrests occurred at Black Lives Matter protests. Five journalists were detained more than once.

Journalists reporting on the demonstrations faced a variety of charges, from failure to disperse to disorderly conduct. In **66** cases, journalists were detained but not ultimately charged with a crime. In **56** cases, prosecutors dropped the charges. As of press time, charges appeared to remain pending against **10** journalists. **One** journalist was acquitted of all charges after trial, and **no journalists** have been convicted of a crime.

An Iowa journalist was forced to stand trial to defend herself against criminal charges

On May 31, police [pepper-sprayed and arrested Des Moines Register journalist Andrea Sahouri](#) as she covered a Black Lives Matter protest in Des Moines, Iowa. Sahouri, who said she was “just doing my job as a journalist,” was charged with failure to disperse and interference with official acts. Prosecutors in Polk County, Iowa, refused to dismiss the charges against her — even after a coalition of nearly 150 media organizations, including the Reporters Committee, [urged him to do so](#). Sahouri’s case went to trial in March 2021, and a jury [acquitted](#) her.

The highest number of arrests took place where the protests began: Minneapolis

Police arrested at least [one journalist in 40 cities](#), according to the Tracker. But the highest number of arrests (**20**) took place in Minneapolis, Minnesota, where Black Lives Matter protests first erupted in the wake of George Floyd’s death.

On May 29, CNN correspondent Omar Jimenez and two members of his news crew were [among the first journalists in the city to face arrest](#) — in Jimenez’s case while reporting live, on camera. While Minnesota Gov. Tim Walz apologized for the journalists’ arrests shortly after they were released, police continued to arrest members of the news media in the following days.



Police detained many journalists using a controversial ‘kettling’ technique

A total of [22](#) journalists were detained by police using a controversial technique used to control crowds. Known as “kettling,” the tactic involves law enforcement corralling a large group of people into a confined space, followed by indiscriminate mass arrests. Reporters covering demonstrations are often at serious risk of being swept up in these kettles, even though they are merely reporting on the protests.

Many journalists were arrested for breaking curfew orders, despite exemptions for press

Nineteen journalists were charged with violating curfew orders imposed by cities, counties, and states during the demonstrations. While most of the orders included exemptions for members of the news media — [carve-outs the Reporters Committee tracked over the summer](#) — some did not. And even in places where the exemptions existed, journalists were still arrested, in some cases prompting apologies from government officials. In Minneapolis, for example, [police arrested four VICE Media journalists](#) on May 30 and charged them with violating the city’s curfew ordinance despite its media exemption. The next day, Joel Franco, a social media producer with WSVN 7News, was similarly [arrested and charged with violating curfew](#) while reporting on protests in downtown Miami. The city’s curfew ordinance exempted the news media, a point Miami’s mayor later clarified during a press conference in which he acknowledged that Franco’s arrest “was a mistake.”

Many journalists who were arrested were also assaulted by law enforcement

Of the journalists arrested in 2020, [38](#) were also assaulted. Josie Huang, a reporter for National Public Radio member station KPCC, was violently arrested on Sept. 12. Even though she was wearing press credentials and repeatedly identified herself as a member of the news media, [police officers tackled Huang to the ground and cited her for obstruction](#) as she tried to record deputies arresting a peaceful protester in Los Angeles. The Reporters Committee and a coalition of 65 media organizations [called on the Los Angeles County Sheriff’s Department to drop all charges against Huang](#). The Los Angeles County district attorney’s office subsequently said it would not prosecute her.

TIPS FOR AVOIDING ARREST:

- Wear press credentials prominently and identify yourself as a member of the press to law enforcement.
- Always be polite, respectful, and professional when interacting with law enforcement. Comply with orders from police officers, but you can calmly discuss your rights if you feel it would be appropriate.
- Pay attention to your surroundings and keep a safe distance from police to avoid interfering with their ability to do their jobs.
- Review the Reporters Committee’s [Police, Protesters, and the Press guide](#) and [tip sheet](#), the National Press Photographers Association’s [guide](#) for covering “high profile” news stories, CPJ’s [guide](#) to legal rights, and NABJ’s [resources](#).
- If you are a journalist and are arrested while gathering or reporting the news, please report the incident to the Tracker [online](#) or via email (tips@pressfreedomtracker.us).

Equipment Damage

**BY THE
NUMBERS**

2020: **110**

2019: **12**

2018: **5**

2017: **10**

The Tracker recorded **110** cases of equipment damage in 2020, affecting **83** journalists. Roughly **86%** of these [occurred during Black Lives Matter protests](#). The damaged equipment included cameras (**39**), cellphones (**20**), and other gear journalists need to report the news. The Tracker also reported **19** damaged news vans and other vehicles, **16** of which were vandalized during Black Lives Matter protests. **Five** news buildings were also damaged in 2020.

Equipment damage typically resulted from attacks by police and individuals at protests

Journalists' equipment was often damaged as they were being assaulted by police or private individuals at protests. In many cases, the damage prevented or impeded journalists from covering the demonstrations.

On June 1, while reporting on Black Lives Matter protests in Philadelphia, independent [photojournalist Joe Piette was shot in the hand with a projectile fired by law enforcement](#). The shot injured his hand and destroyed the camera he was using. In Pittsburgh, KDKA TV photojournalist Ian Smith was beaten by a group of individuals while he covered the aftermath of a peaceful protest on May 30. The journalist told the Tracker his attackers were upset that he had been filming a police car that had been set on fire. They then surrounded him and began punching and kicking him while chanting "Kill him, kill him." Smith said the assailants also grabbed his camera and "[smashed it into 1,000 pieces](#)."

Police searched and seized journalists' equipment at protests

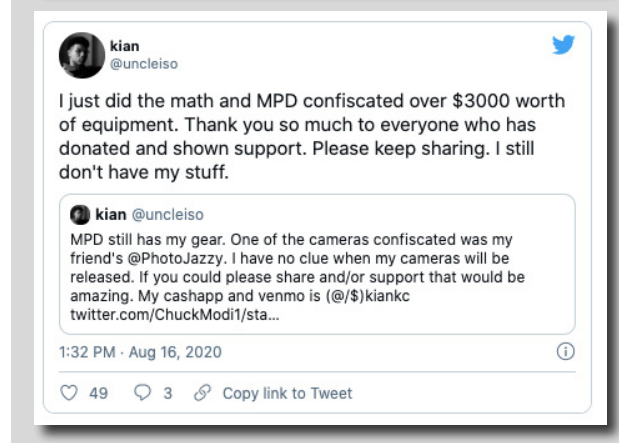
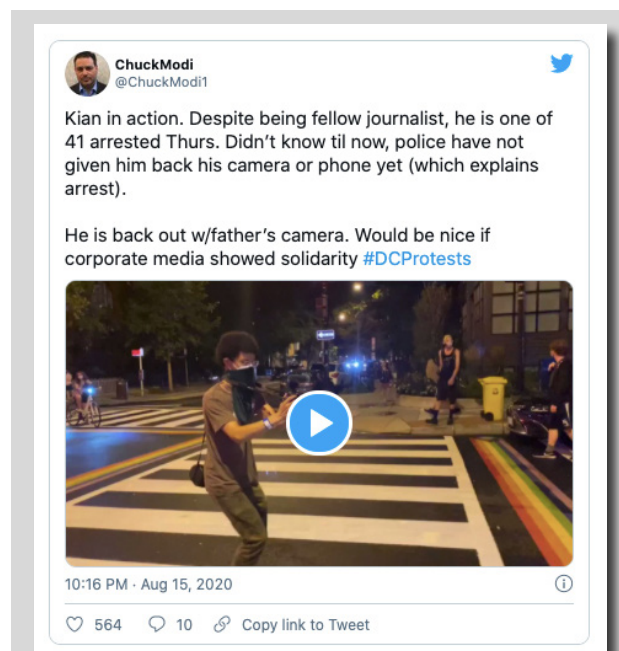
The Tracker documented **21** cases in which law enforcement searched or seized journalists' equipment during Black Lives Matter protests. That's what happened to independent videojournalist Hiram



Photo: Brynn Anderson/AP

Gilberto Garcia as he was covering demonstrations in Austin, Texas, on July 17. After police violently arrested him on charges of interfering with public duties and resisting arrest — charges that were later dropped — Garcia said [police confiscated multiple pieces of equipment](#), including his GoPro camera, external microphone, and other accessories. When the equipment was eventually returned, he said the microphone was broken and a cord was missing.

In Washington, D.C., police arrested freelance journalist Kian Kelley-Chung as he photographed the aftermath of an altercation between a protester and the police on Aug. 13. During the arrest, D.C. officers [confiscated the journalist's two cameras and a cellphone](#) — valued at [more than \\$3,000](#). Although Kelley-Chung was arrested for felony rioting, prosecutors declined to bring charges. But police failed to return Kelley-Chung's equipment for over two months. He used his dad's camera to continue documenting the demonstrations. "They thought they could stop me ... they can't stop me," Kelley-Chung said in a [video interview](#). "I'm going to continue to be out here." Weeks later, federal prosecutors (the U.S. Attorney's Office in D.C. prosecutes cases for the D.C. police) sent a letter to Kelley-Chung asking if he would voluntarily turn over data from his cameras in order to assist an investigation. Kelley-Chung objected through his attorney, prompting prosecutors to send a follow-up letter requesting preservation of the recordings but conceding he was not obligated to produce them at that time. The journalist's equipment was returned to him the next day. Kelley-Chung filed a civil rights suit against the city and police, which [settled](#) in mid-April 2021 for an undisclosed amount.



Subpoenas and Legal Orders

BY THE NUMBERS	2020: 31	2019: 29
	2018: 26	2017: 8

2020 was the third year in a row that the number of subpoenas reported to the Tracker increased. This trend is notable because subpoenas can impose a significant financial, emotional, and professional burden on journalists and news outlets and take time away from reporting the news. If journalists refuse to comply with a subpoena to protect a source or sensitive work product, they can risk jail time or hefty fines.

Although the year saw some victories for the press — including [two subpoenas](#) that were quashed by state courts in Virginia (one involving Reporters Committee attorneys) — other courts around the country issued orders upholding subpoenas where non-confidential information was at stake. In New York, a state court ordered a journalist to testify during an upcoming [murder trial](#) about her interviews with the defendant. In Chicago, a federal judge ordered a CBS affiliate to [produce outtakes](#) to defendants in a civil rights case involving police misconduct, demonstrating the need for a [federal shield law](#). And in D.C., a federal judge [ordered](#) a Fox News reporter to testify about communications with her source, the defendant in a libel suit, and a decision to [retract her story](#), though according to court records, she later came to an agreement with the subpoenaing party, and the court vacated its [troubling decision](#).

Disturbingly, some of the subpoenas issued by government entities in 2020 included a “gag provision” aimed at preventing any reporting on the subpoena. Gag orders are a form of prior restraint and only permissible on the press under [extraordinary circumstances](#). Fortunately, in these cases, it appears the gag provisions were not enforced and either [disregarded](#) or [vacated](#). In some cases, publicizing the subpoenas seemed to result in public pressure leading to their withdrawals, as in the [BuzzFeed](#) and [Cleveland Plain Dealer](#) cases described below.

State and local law enforcement subpoenaed journalists and news outlets – largely unsuccessfully – in connection with their protest coverage

In at least four cases, journalists and news outlets covering the wave of protests in 2020 later faced subpoenas from state and local prosecutors for their testimony, photographs, and video recordings. Compelling journalists to share these materials often runs afoul of [state shield laws and the First Amendment](#) and undermines the independence of

journalists by giving the impression that they are an arm of law enforcement. This could expose journalists to [even greater violence](#) at protests from demonstrators who fear that documentation of their conduct may later be used against them by law enforcement. [Dozens of journalists](#) have reported being assaulted by private individuals, and in many of these cases, journalists said they believed they were [harassed](#) for photographing or filming individuals at the protests.

The most high-profile of these cases occurred in June, when the Seattle Police Department [sought](#) to force the city's five major news outlets to turn over all of their unpublished photos and video footage taken in a specific area during a racial justice protest. The news outlets objected, invoking the state's shield law, and the Reporters Committee filed a [friend-of-the-court brief](#) in support. The state trial court found that the law enforcement interest in investigating arson and firearm thefts during the protest overcame the state's shield law and [ordered](#) the news outlets to turn over their work product. However, after an emergency appeal, the Washington Supreme Court [issued a stay](#) of the trial court's order pending appeal. The government then [abandoned](#) its subpoena, noting the materials would be of little use after so much time had passed.

The Cleveland Plain Dealer also received a broad subpoena in June from county prosecutors in Ohio, seeking all videos, photos, and audio depicting any "[potential criminal activity](#)" captured by its reporters during protests on May 30 as well as interviews with individuals who may have described illegal activities. The Plain Dealer [reported on](#) the subpoena and turned over only the materials it had already published. After threatening to fight any effort to force the news outlet to disclose additional materials, prosecutors backed down and withdrew the subpoena.

In August, a judge allowed the Tennessee Bureau of Investigation to [subpoena](#) the Commercial Appeal, a daily newspaper in Memphis, for photographs and videos taken by its reporters during a protest in July. After the news outlet filed a motion to quash the subpoena, invoking the state's shield law, state prosecutors dropped the subpoena and lifted an accompanying gag order.

In December, a photojournalist at the Democrat & Chronicle in Rochester, New York, [testified before a grand jury](#) about images she had captured while reporting on local protests earlier in the year. The reporter indicated that she would [verify](#) that she had taken the images but would invoke the state's shield law with respect to any questions beyond that.

Federal officials at DHS and ICE again tried – and failed – to compel journalists to disclose their sources in connection with leaked documents

For the second time in less than three years, federal officials within the Department of Homeland Security issued a [subpoena](#) (including a gag provision) demanding disclosure of a journalist's source, prompting renewed concerns about government overreach. On Dec. 1, Immigration and Customs Enforcement, an agency within DHS, [subpoenaed](#) BuzzFeed News seeking the identity of its sources in connection with its reporting on the agency's plans to implement a Trump administration policy expanding fast-track deportations

of undocumented immigrants. BuzzFeed [reported](#) on the subpoena, despite the gag “request” and quoted a former head of the agency who called the move “[embarrassing](#)” and an improper effort “to intimidate the press.” A week later, ICE officials [said](#) they would not enforce the subpoena.

In October 2018, DHS [unsuccessfully attempted to compel](#) the editor of an immigration law journal to identify the source of a leaked internal memo from ICE about changes to the administration’s approach to asylum claims. And in 2017, ICE’s sister agency, Customs and Border Protection, [unsuccessfully tried to subpoena](#) Twitter, seeking the identity behind an account that had been critical of the Trump administration.

NYPD secretly subpoenaed two journalists’ records as part of leak investigations, echoing similar efforts by [DHS](#), [DOJ](#) and [San Francisco police](#) in recent years

In February, the New York Post reported that the New York City Police Department had [subpoenaed](#) Twitter in December 2019 for account information about the Post’s police bureau chief Tina Moore, in connection with a leak investigation. The subpoena, which cited an [obscure provision](#) of the Patriot Act, appeared to focus on the source of [crime scene photos](#) Moore had tweeted in mid-October. Legal experts called the subpoena an “[abuse of authority](#).” Twitter notified Moore and reported that it [did not comply](#) with the subpoena. After attorneys for the Post contacted the NYPD, it [withdrew](#) the subpoena. NYC Mayor Bill De Blasio called the subpoena “[a mistake](#),” and NYPD Commissioner Dermot Shea [apologized](#), noting it was “wrong” and there were “other avenues” available.

But just five months later, in July, news reports revealed that the NYPD had [subpoenaed](#) a second journalist’s cellphone records as part of an investigation into leaked information about the arrest of actor Cuba Gooding Jr. the previous year. A New York-based freelancer who works for the Daily Mail received a letter stating that phone records had been subpoenaed and used to question a police officer about his alleged contact with the freelancer. The journalist’s telecom provider, AT&T, refused to provide a copy of the subpoena to the reporter. An NYPD official said the subpoena was issued before the department [changed its regulations](#) on acquiring journalists’ phone and social media records earlier in 2020.

The NYPD’s actions continue a troubling trend in recent years. In addition to [DHS’s](#) efforts described above, in 2018, the Justice Department secretly seized the phone and email records of [a New York Times reporter](#) as part of an investigation into the disclosure of classified information to journalists. And in 2019, San Francisco police [unlawfully](#) seized a [freelance journalist’s](#) phone records during an investigation into his sources within the police department.

WHAT TO DO IF YOU RECEIVE A SUBPOENA:

- A subpoena is a notice that you must provide certain documents or appear at a deposition or court proceeding to answer questions. You must not ignore it. If you fail to comply, you could be held in contempt and fined, imprisoned, or both.
- Do not comply with the subpoena without first consulting a lawyer. As soon as possible, contact your in-house counsel. If you need help finding an attorney, contact the Reporters Committee's [hotline](#) for journalists.
- If you need financial assistance to help cover legal costs, you can apply to the [Press Freedom Defense Fund](#) (pressfreedom@firstlook.org).
- Never destroy the materials sought in the subpoena, as this could subject you to criminal and civil penalties.
- RCFP's [Privilege Compendium](#) provides an overview of the legal protections that may be available to you, but this does not substitute for legal advice.
- If you feel comfortable doing so, please [report your subpoena to the Tracker](#).



Photo: Engin Akyurt

Prior Restraints

BY THE NUMBERS

2020: [2 cases](#)

2019: [7 cases](#)

2018: [5 cases](#)

2017: [1 case](#)

Although 2020 saw a drop in the number of [prior restraint orders issued by courts](#), there were three historic, yet unsuccessful, efforts over the summer to prevent the publication of various books about former President Trump. In June, the Trump administration [tried to stop](#) the publication and dissemination of a book by John Bolton about his time as the president's former national security adviser.

The Reporters Committee and four media organizations filed a [friend-of-the-court brief](#) arguing that the case was governed by the holding in the Pentagon Papers decision, barring prior restraints even in the national security context, save in the most extreme circumstances. A federal judge in D.C. [denied](#) the government's motion, concluding

that a prior restraint would be ineffective because the book had already been broadly disseminated. The court found, however, that Bolton had "likely jeopardized national security by disclosing classified information" and that the government's "prepublication review process" was not unconstitutional.



Photo: Evan Vucci/AP

Two weeks later, the president's brother, Robert Trump, [sued](#) his niece, Mary Trump, and her publisher, Simon & Schuster, to stop publication of her tell-all book about the president. A New York state court judge granted an order temporarily preventing publication of the book based on Robert

Trump's claim that it violated a nondisclosure agreement Mary had signed in connection with a financial settlement following her grandfather's death two decades earlier. Mary Trump and Simon & Schuster appealed that decision, and the Reporters Committee filed a [friend-of-the-court brief](#) in support. An appellate court quickly [vacated the prior restraint](#) against Simon & Schuster, and the trial court subsequently vacated the injunction against Mary Trump.

In July, a New York federal judge [ordered the release](#) of the president's former lawyer, Michael Cohen, from prison, finding that he had been returned to prison, from home confinement, in retaliation for plans to publish a book about Trump in violation of the First Amendment.

Denials of Access

In 2020, the Tracker highlighted [11](#) of the most egregious times members of the press were denied access to “government events” that were traditionally open to or attended by the press.

2020 began with the Senate restricting press coverage to an historic impeachment trial

In January, Senate officials [imposed rules](#) that required reporters covering former President Trump’s first impeachment trial to remain in “press pens” outside the Senate chamber and banned electronic devices in that chamber, permitting only Senate-controlled cameras. The Reporters Committee, joined by 57 media organizations, sent a [letter](#) to Senate leadership asking for reconsideration of these restrictions. While some of these restrictions were similar to rules imposed during the Clinton impeachment, RCFP attorneys stressed the [greater impact](#) they have in today’s digital age.

Some courts denied public access due to the COVID-19 pandemic, but many, including the U.S. Supreme Court, offered a live feed of their proceedings

The Tracker recorded two court proceedings, one in [Pennsylvania](#) and the other in [North Carolina](#), where the judge cited the COVID-19 pandemic as the basis for denying access to members of the press. In December, a North Carolina judge [barred](#) members of the press from attending a hearing in the case of a white woman accused of assault for driving her car at two 12-year-old Black girls. When Tom Boney, Jr., publisher of the Graham-based weekly Alamance News, attempted to deliver a letter from his attorney requesting a hearing to challenge the courtroom closure, the judge threatened him with contempt of court and had deputies remove him in handcuffs. After an emergency appeal, and a [friend-of-the-court brief](#) filed by the Reporters Committee, the state court [re-opened](#) its proceedings to the public.

However, despite initial closures during the [pandemic](#), many courts across the country adopted policies to safely afford the public access to court hearings, consistent with the public’s [right of access](#), such as allowing audio and video live-streaming and limiting capacity so attendees could follow social distancing guidelines. The U.S. Supreme Court, for example, allowed a [live audio feed](#) of its arguments, which were conducted by telephone conference, starting in May 2020. The Reporters



Photo: Michaela Potter

Committee [urged](#) the Court to continue live audio access for the term beginning in October 2020, which it did. The Reporters Committee also published [resources](#) monitoring restrictions on access to public records and courts and outlining best practices.

State and local officials denied journalists access to COVID-19 briefings or media advisories in apparent retaliation for their questions or coverage, depriving the public of important reporting during the pandemic

Florida Gov. Ron DeSantis, the Minnesota Department of Health, and local officials in Knox County and Memphis, Tennessee, deprived certain journalists of access to press briefings in the first half of 2020. Troublingly, these moves appeared to be in retaliation for the reporter's questions or coverage, in violation of the First Amendment. The judge in the Minnesota case [explained](#) that once the government grants public access to the news media for press conferences, it may not revoke such access for arbitrary reasons or due to the viewpoint of the journalist.

In the early days of the pandemic in March, Florida Gov. Ron DeSantis's office [barred](#) the Miami Herald's Tallahassee bureau chief, Mary Ellen Klas, from attending a press conference on the health crisis merely because she had requested "social distancing" at these briefings. The Miami Herald pointed out in an editorial that denying Klas the ability to ask serious questions of the governor's office ultimately deprived Floridians of [vital information](#) about the pandemic.

Just a month later, in April, the Minnesota Department of Health denied journalist Scott Johnson, co-founder of the digital-only outlet Power Line, access to a daily COVID-19 press briefing. After Johnson filed suit, asserting that he was denied access due to his conservative perspective and reporting, a federal judge [agreed](#) and encouraged the parties to settle. They did in November 2020, and the Department of Health reinstated Johnson's access.

In May, the health department in Knox County, Tennessee, [barred](#) a reporter from the Knoxville News Sentinel from participating in a press briefing about the county's COVID-19 response, in apparent retaliation for an article published the day before on the county's failure to explain the criteria used to evaluate the county's reopening readiness. Fortunately, the reporter was allowed to participate in the next health department press briefing.

Also in May, Wendi Thomas, editor and publisher of MLK50: Justice Through Journalism, [represented by Reporters Committee attorneys](#), [sued](#) the city of Memphis, Tennessee, over her exclusion from a media advisory list, which alerts journalists about newsworthy events, including how to join daily press briefings during the pandemic. This appeared to be in retaliation for her coverage, which a city spokesperson claimed was "not objective." The city subsequently said it eliminated the media advisory list altogether.



Photo: Andrea Morales

Wendi Thomas, editor and publisher of MLK50: Justice Through Journalism

In 2020, federal officials again excluded specific news outlets or reporters from press events in apparent retaliation for their coverage, in violation of the First Amendment

In recent years, the White House has retaliated against journalists for asking questions — for example, denying CNN’s Kaitlan Collins [access](#) to a Rose Garden event, [suspending](#) the press credentials of CNN’s Jim Acosta after asking Trump why he had stoked fears of a migrant “invasion,” and [barring](#) four print reporters from covering a dinner between U.S. and North Korean leaders due to “shouted questions” at a press spray.

Although the White House attempted to suspend the White House press credentials of two reporters — [Acosta](#) in 2018 and [Brian Karem](#), a correspondent for Playboy and regular CNN contributor, in 2019 — in both cases, the courts [sided with the journalists](#) challenging the constitutionality of those suspensions. In June 2020, a federal appeals court in D.C. [affirmed](#) a lower court’s ruling that the White House could not suspend Karem’s press pass for a purported violation of previously unarticulated standards of professionalism. This ruling made clear that White House officials may not arbitrarily deny or suspend journalists’ access without clear standards and advance notice of those standards in accordance with the right to due process.



Photo: Alex Brandon/AP

Radio host Sebastian Gorka yells at Playboy reporter Brian Karem after President Donald Trump spoke about the 2020 census in the Rose Garden of the White House.

The State Department similarly came under fire for excluding members of the press, first in 2019, when it permitted only “[faith-based media](#)” to participate in a briefing call with then-Secretary of State Mike Pompeo, and again in January 2020, when the State Department [removed an NPR reporter](#) from an official trip abroad in apparent retaliation for her colleague’s interview with Pompeo, which the secretary had publicly criticized the day before. NPR sent a [letter](#) to the State Department addressing the incident.

Similarly, at the end of April, Vice President Mike Pence’s office [reportedly threatened](#) to bar Voice of America reporter Steve Herman from future travel on Air Force Two after he disclosed in a tweet that Pence’s office had informed journalists in advance of a trip to the Mayo Clinic that they would need to wear face masks in accordance with the clinic’s policy. Pence had been criticized after he was photographed at the clinic as the only person not following the mask guideline, and his wife Karen Pence had claimed he had been unaware of the guideline. A spokesperson for Pence [reportedly walked back](#) the threat to Herman, saying any punishment was still under discussion, pending an apology from Herman or VOA.



Photo: Nicholas Pfosi/Reuters



In February, Rep. Devin Nunes (R-Calif.) [barred](#) his hometown newspaper, The Fresno Bee, from attending a water forum with the congressman and the secretary of the Interior Department, that other news outlets were allowed to cover. Press freedom groups questioned whether The Bee's exclusion was connected to Nunes' then-pending [libel](#) suit against The Bee's parent company, McClatchy, for an [exposé](#) about a raucous yacht party and subsequent lawsuit against a winery in which Nunes had invested. (Nunes subsequently [dropped](#) the lawsuit in October 2020.) In an [editorial](#), The Bee noted that Nunes' new tactic of "excluding media outlets from public events as punishment for doing their jobs" resembled Trump's playbook of banning news outlets like [Bloomberg News](#), [Buzzfeed News](#) and [Politico](#) from covering his events. While Nunes has filed nine lawsuits in recent years against members of the press and others, courts have already dismissed three of them, and he has dropped another two as of press time. Nunes' attorney and a senior aide faced [sanctions](#) in April 2021, in connection with a lawsuit against CNN, for filing an amended complaint in "bad faith."

In September, the Office of the Director of National Intelligence [barred](#) The New York Times from attending a press briefing on warrantless surveillance in apparent retaliation for an article published by The New York Times Magazine. Times Deputy General Counsel David McCraw sent a letter to the ODNI on Sept. 15, addressing the incident and stating that its reporters were not told about the call, while reporters from other news outlets were invited.

Chilling Statements

The Tracker highlighted several [“chilling statements”](#) in 2020 made by U.S. politicians and other public figures.

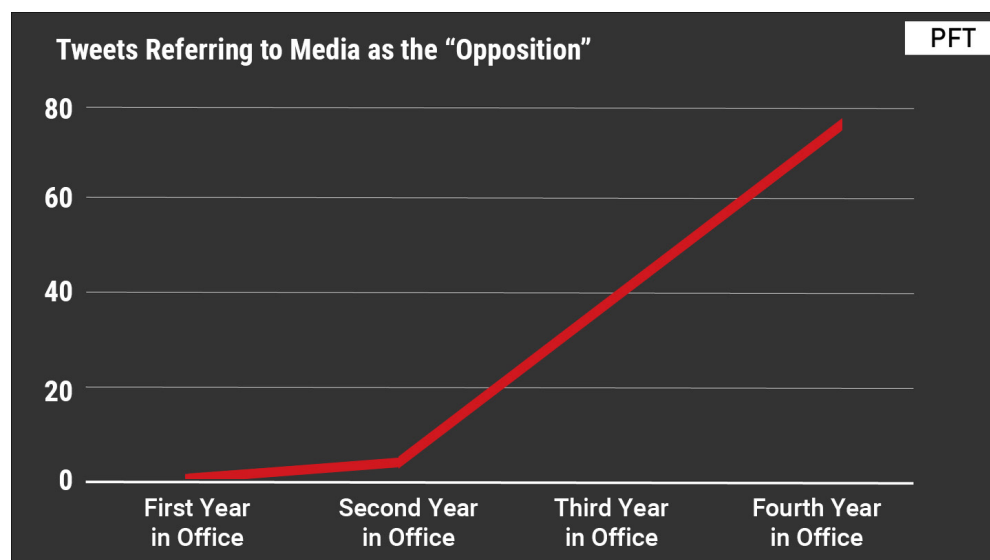
TWEETS DURING TRUMP’S TIME IN OFFICE

ANTI-MEDIA		“FAKE NEWS”		“ENEMY” OF THE PEOPLE	
2020: 632	2019: 564	2020: 300	2019: 273	2020: 13	2019: 22
2018: 309	2017: 261	2018: 187	2017: 171	2018: 18	2017: 4

President Trump accelerated his attacks on the news media in his fourth year in office, until Twitter suspended his account on Jan. 8, 2021

The wave of assaults and arrests of journalists nationwide in 2020 did not dampen former President Trump’s [anti-press rhetoric](#). To the contrary, he mocked journalists injured during the protests, referring to the [“beautiful sight”](#) of MSNBC anchor Ali Velshi getting hit with a rubber bullet. In his fourth and last year in office, Trump tweeted a record number of attacks on the press — a total of [632](#) in 2020 — the highest count of his term, according to a [Tracker database](#). While Trump’s use of the term “enemy of the people” in these tweets dropped from a high of 22 in 2019 to 13 in 2020, he used the phrase “fake news” a record 300 times and dramatically increased his references to the media as the [“opposition party”](#) or as “partners” of the Democratic party in this election year. Trump’s [most frequent targets](#) were CNN, followed by The New York Times and MSNBC/NBC.

Since he declared his candidacy for president on June 15, 2015, Trump tweeted [2,520 anti-press tweets](#), averaging out to more than one tweet a day for five-and-a-half years. This ended on Jan. 8, 2021, however, when Twitter permanently suspended his account, due to the [“risk of further incitement of violence”](#) after the Jan. 6 insurrection at the U.S. Capitol.



SOURCE: U.S. PRESS FREEDOM TRACKER DATABASE, ‘TRUMP’S NEGATIVE TWEETS ABOUT THE PRESS’

Tennessee lawmaker introduced bills to declare CNN, Washington Post “fake news” and, later, to condemn “mainstream media” for “sensationalizing” COVID-19 pandemic

In 2020, state legislators echoed Trump’s attacks on the media. In January, for example, Tennessee State Rep. Micah Van Huss [introduced](#) a resolution that “recognizes CNN and the Washington Post as fake news and condemns them for denigrating our citizens.” The resolution [stalled](#) in May, but in June, Tennessee’s House of Representatives [passed](#) a resolution also introduced by Van Huss condemning the “mainstream media” for “sensationalizing” the COVID-19 pandemic and congratulating the people of Tennessee for “clearly seeing” this.

DHS continued surveillance of news media in 2020, this time compiling “intelligence reports” on two journalists in connection with the protests in Portland

In July 2020, The Washington Post reported that the Department of Homeland Security’s Office of Intelligence and Analysis had compiled “[intelligence reports](#)” about a journalist from The New York Times and the co-founder of the Lawfare blog. These journalists had published leaked information regarding DHS’s operations in Portland, Oregon, where federal agents had responded to anti-racism protests throughout the summer. Following The Post’s reporting, Acting Homeland Security Secretary Chad Wolf ordered the intelligence office to [stop collecting information on journalists and announced an investigation](#) into the reports.

This was not the first time a DHS agency has surveilled journalists. In March 2019, NBC 7 San Diego [revealed](#) that Customs and Border Protection was tracking journalists covering immigration at the southern border, as well as attorneys, activists, and others, through a secret database. These revelations prompted a public outcry, including a [letter](#) by the Reporters Committee and 103 organizations to DHS, demanding that border agencies end such surveillance and targeting of journalists, and a [lawsuit](#) filed by Reporters Committee attorneys for public records about these practices.

USAGM executives and senior VOA editor secured court order requiring Trump appointee to stop interfering in editorial decisions

Voice of America is an international broadcaster funded by the U.S. government that aims to [promote democracy](#) and freedom of the press abroad. A “[firewall](#)” enacted into law in 1994 prohibits interference by the government in reporting by VOA and its fellow international broadcasters, ensuring their editorial independence. On June 17, the new CEO of the U.S. Agency for Global Media, Michael Pack, [violated this firewall](#) by suspending top officials at USAGM and refusing to process visa renewals for foreign journalists. Pack’s senior aides reportedly [investigated](#) VOA journalists for bias against former President Trump and pushed for their [dismissals and reassignments](#). The suspended USAGM executives and a senior VOA editor [sued](#) Pack in October for violating the firewall, and a coalition of media organizations led by the Reporters Committee filed a [friend-of-the-court brief](#) in support. In November, a federal court in D.C. issued a preliminary [order](#) requiring Pack to stop interfering in news coverage and editorial personnel matters at the international broadcasters.

CONCLUSION

The country — and the news media — faced a historic and tumultuous year in 2020. In the first half of the year, the pandemic accelerated the [financial crisis](#) facing the news industry, leading to [widespread cutbacks](#) and layoffs across the industry but hitting newspapers especially hard.

Starting in May, journalists faced flagrant and targeted violence by both police and private individuals at protests at a frightening scale. Although journalists have been attacked by [both groups](#) at protests in the past, 2020 saw a marked increase in such attacks, a culmination of the increasingly hostile landscape the press has faced in recent years. In each year since 2017, former President Trump [increased](#) his anti-media rhetoric, relentlessly calling mainstream news outlets “fake news” and “enemy of the people” in an effort to [undermine](#) their ability to hold him accountable. This language went viral, and despots around the world quickly picked it up and used it to [justify jailing journalists](#). Over this time, the Tracker began [documenting attacks](#) on [journalists](#) here at home and [threats echoing](#) the president’s language. Even before 2020, journalists reported increasing threats and violence not only when covering [Trump rallies](#) but also when reporting in their [local communities](#).

Nevertheless, there are reasons for optimism in 2021. Following President Trump’s departure, [journalists have reported a shift in tone](#). The Reporters Committee is looking to the new administration for ways to strengthen newsgathering protections. In April, the Justice Department announced an investigation into the [Minneapolis Police Department](#) and [Louisville Metro Police Department](#) to assess whether police officers engaged in a pattern or practice of using excessive force against individuals engaged in First Amendment protected activities, among other things. The Reporters Committee, in turn, sent a [letter](#) to the Justice Department to encourage it to include the treatment of journalists within the scope of these investigations. The Reporters Committee also hopes to renew the [dialogue](#) it coordinated for news outlets with the Justice Department concerning the DOJ’s news media subpoena guidelines. The environment remains challenging but press organizations are collaborating with each other effectively to improve visibility for these important issues.

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