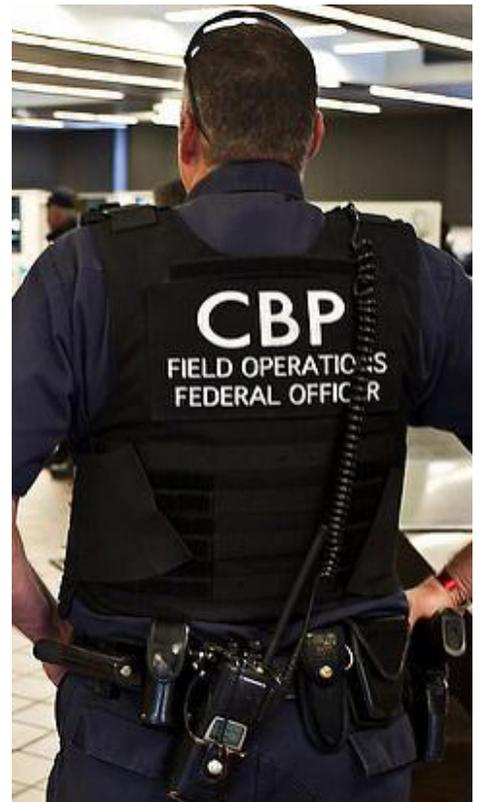


PRESS FREEDOMS in the United States **2019**



**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

A REVIEW OF THE U.S. PRESS FREEDOM TRACKER

APRIL 2020

Press Freedoms in the United States 2019

A REVIEW OF THE U.S. PRESS FREEDOM TRACKER

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Special thanks to Gabe Rottman, for his skillful editorial assistance, and Shontee Pant, for her significant help fact-checking this report. The Tracker data referenced herein is current as of March 31, 2020. This report covers calendar year 2019, with a few exceptions where events in early 2020 warrant attention. Cover photo: Screenshot of Bryan Carmody's security cameras as San Francisco police raid his apartment, via Bryan Carmody; Photo of man being restrained during a rally for President Donald Trump Monday, Feb. 11, 2019, in El Paso, Texas, via Eric Gay and Associated Press; Photo of a U.S. Customs and Border Protection officer, via CBP.gov.

Report design by Anna G. Bahn

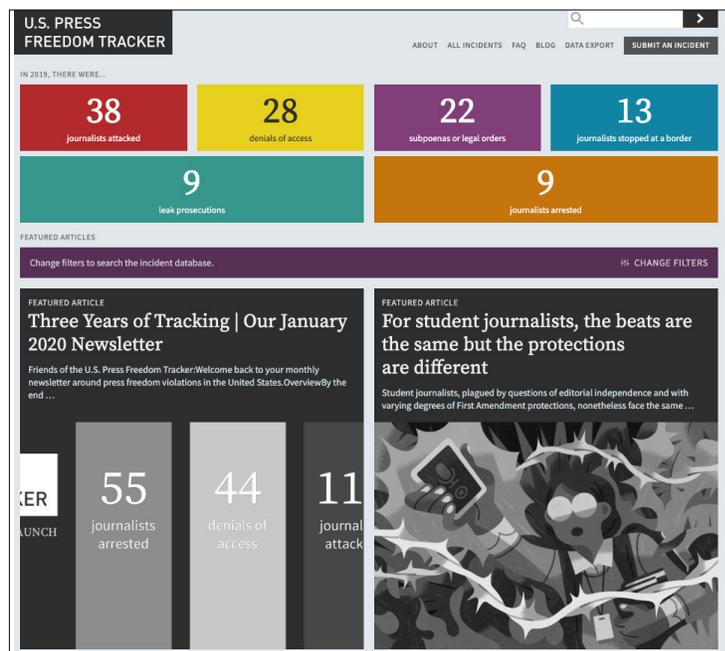
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About the U.S. Press Freedom Tracker

While the First Amendment has served as a powerful model for free speech and free press protections abroad, the U.S. news media has experienced increasing hostility in recent years, led by attacks from politicians. Against this backdrop, the Reporters Committee for Freedom of the Press joined with more than two dozen press freedom groups in 2017 to launch the [U.S. Press Freedom Tracker](#), a project aimed at documenting the country's track record on press freedom.

In its third year, the Tracker continued to serve as a valuable tool, shedding light on the treatment of journalists across the country. While it does not capture every press freedom incident that has occurred, 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. It also aims to document the number of criminal prosecutions of reporters' sources for disclosing government information to the press. Certain categories – such as subpoenas and border stops – are particularly difficult to monitor and more likely to be under-reported. The Tracker also highlights denials of access and statements by public officials that appear to be aimed at chilling the work of journalists.

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. As an organization that provides on-the-ground legal support to journalists and newsrooms through [direct litigation](#), [friend-of-the-court briefs](#), and a [hotline](#) available seven days a week, the Reporters Committee annually surveys the Tracker's data to assess what it means for our legal work protecting the newsgathering rights of journalists and First Amendment freedoms more generally.



The U.S. Press Freedom Tracker as seen on January 10, 2020.
Screenshot/Wayback Machine



Overview

This remains a critical time for press freedoms in the United States. In 2019, President Donald Trump’s attacks against the news media [intensified](#), but the national narrative is only part of the story. Around the country, we saw an increasingly hostile atmosphere for the press at the local level.

In San Francisco, police [raided](#) freelance journalist Bryan Carmody’s home and office, and in Chicago, three separate courts issued “[prior restraint](#)” orders prohibiting speech. These local cases have no apparent connection to Trump’s attacks and represent another worrisome trend. At the same time, journalists reported many physical [attacks](#) and threats, sometimes from people [echoing](#) the president’s language. The number of [subpoenas](#) reported to the Tracker also continued to rise, suggesting that some may feel emboldened to harass or retaliate against journalists through the legal process.

Public alarm continued to grow as anti-press rhetoric by government officials shifted to more concrete attacks on press freedom using the powers of the executive branch — through, for example, restricting press access in apparent retaliation for [asking questions](#) or [perceived negative coverage](#), [targeting journalists](#) at the border, and ramping up [criminal prosecutions of journalists’ confidential government sources](#). Perhaps most concerning in terms of the long-term development of the law, the Justice Department pursued charges under the Espionage Act against WikiLeaks founder Julian Assange for the simple act of [publishing](#)

2019 BY THE NUMBERS

34 **PHYSICAL ATTACKS**
At least three of those were women, whose attacks were of a sexual nature

9 **SEARCHES/ SEIZURES**
Police raid of Bryan Carmody’s home and office was the most concerning

3 **‘LEAK’ CASES**
Trump administration continued to prosecute government leaks

27 **SUBPOENAS**
Several journalists and news outlets believe they were subpoenaed as a form of retaliation

7 **PRIOR RESTRAINTS**
Nearly half were issued by courts in Chicago

9 **ARRESTS**
Five of those took place at protests

Source: U.S. Press Freedom Tracker, 2019

[government secrets](#) – the [first time in history](#) the government has obtained an indictment on that theory.

PHYSICAL ATTACKS AND ‘CHILLING STATEMENTS’

Protests were again the most dangerous place, but President Trump’s rallies became increasingly dangerous, and the president set a new record for critical tweets

In 2019, journalists in the U.S. continued to find themselves the targets of physical attacks and threats across the country. The Tracker reported [34 physical attacks, affecting 39 journalists](#), and data suggested that female journalists faced special risks while reporting in the field; at least [three women were attacked in a sexual way](#) while doing live shots. As in previous years, protests were [the most common place](#) for a journalist to be attacked.

But Trump rallies – where the president has frequently railed against the news media – also became increasingly dangerous, with assaults occurring [at a Trump rally in Texas](#) in February and [just outside a rally in Florida](#) in June. President Trump’s statements criticizing the press also increased in 2019, setting new records for the number of times he called the news media “[fake news](#)” (273 times) and “enemy” – as in, “[enemy of the people](#)” and variations on that phrase (22 times) on Twitter.



ARRESTS

Numbers decreased, but protests were again the most common place of arrest

As in 2018, the good news was that there were fewer arrests of journalists – only [nine in 2019](#), compared to [11 in 2018](#) and [38 in 2017](#) – perhaps because fewer demonstrations occurred where [police conducted mass arrests](#), sweeping up journalists. Yet protests were again the most common place of arrest, although unlike in 2017 and 2018, when roughly half of the arrests involved freelance journalists, only [two](#) of those arrested in 2019 were freelancers. [As in 2018](#), one journalist [was arrested for violating court recording rules](#).

SUBPOENAS

Another uptick, with concerns that subpoenas became tools to harass or retaliate against journalists

The year also saw another uptick in the number of subpoenas reported to the Tracker for the records or testimony of journalists: [27 in 2019](#) (up from [eight in 2017](#) and [25 in 2018](#)). Troublingly, several journalists and news outlets reported that they believed they were subpoenaed as a form of retaliation or harassment for critical reporting or for filing court access or public records lawsuits. Nevertheless, with the help of reporter's privilege laws, the press was able to defeat most of these subpoenas and secured several important wins, such as convincing the Nevada Supreme Court to recognize that the state's shield law [applies to online journalists](#). In that case, the Reporters Committee joined a [friend-of-the-court brief](#) in support of the blogger who sought to protect his confidential sources.

BORDER STOPS

CBP targeted journalists with harassing questions, searches, detention

In 2019, U.S. Customs and Border Protection officials continued to use border stops to target journalists. These often involved secondary screenings in which customs officials detained journalists, searched their

belongings and electronic devices, and questioned them about their work. In several cases, CBP officers asked journalists harassing questions or made politicized remarks — asking a journalist if he was “[part of the ‘fake news media,’](#)” insisting that a journalist concede he writes “[propaganda,](#)” telling journalists they should “[fall in line](#)” behind the president, and “[grill\[ing\]](#)” a journalist about his news outlet’s political reporting.



Seventy-five percent of the border stops [reported to the Tracker](#) occurred as journalists traveled to or from Mexico, and customs officials seemed to target primarily journalists reporting on the migration from Central America at the U.S.-Mexico border. In March 2019, San Diego news station NBC 7 reported that the Department of Homeland Security had been [tracking and keeping dossiers](#) on journalists who were covering this “migrant caravan,” as well as others. DHS also reportedly placed alerts on these journalists’ passports, subjecting them to secondary screenings and causing some to be denied entry into Mexico. The Reporters Committee, along with NBC 7 and one of its reporters, filed a [public records lawsuit](#) in April to obtain more information on these practices.

The good news in 2019 was that a federal judge in Boston [held that CBP must have “reasonable suspicion”](#) that a traveler’s electronic device contains contraband before searching it. This case is now on appeal, and the Reporters Committee plans to file a friend-of-the-court brief, as it did [in the trial court](#), in support of the plaintiffs, several of whom are journalists.

SEARCHES AND SEIZURES

A San Francisco police raid of a journalist’s home and office was found unlawful

Not surprisingly, most of the searches and seizures reported to the

Tracker occurred during border stops when customs officials searched journalists' belongings and electronic devices. Yet the most high-profile incident occurred when [San Francisco police searched](#) freelance journalist Bryan Carmody's home and office in an effort to discover the identity of a confidential source who had given him a police report. San Francisco judges [quashed those warrants and others for Carmody's phone records](#), finding that they had been improperly issued in violation of [California's "shield law."](#) The Reporters Committee joined a [friend-of-the-court letter](#) in support of Carmody, successfully [sued to unseal records](#) about the arrest and searches, and [filed a public records suit](#) against the Justice Department and FBI for information about why federal officers were present during the raid and tried to question Carmody about his source.

'LEAK' PROSECUTIONS

The Justice Department continued to prosecute government leaks and obtained charges against Julian Assange based just on publishing government secrets

The Justice Department continued its crackdown on federal employees or contractors who share government secrets with journalists, prosecuting an additional [three people](#) in 2019. The Trump administration has now prosecuted [eight people](#) in three years, coming very close to equaling the mark set by the Obama administration, which prosecuted [10 leaks over eight years](#) (though the majority of cases were brought in Obama's first term). And in a highly controversial move, a federal grand jury [issued indictments](#) against WikiLeaks founder Julian Assange, with three of the charges seeking to punish the act of publishing national defense information under federal spying laws. As we publish this report, the United States is [attempting to extradite Assange](#) from the United Kingdom. In addition, [anecdotal evidence](#) suggested that the increased prosecution of leaks has made it more difficult for reporters, particularly on the national security beat, to gather information from sources. This continuing trend toward secrecy undermines the news media's ability to inform the public about government activity and ensure the public can hold elected officials accountable. The Reporters Committee published several [special analyses](#) of the Assange charges, and continues to maintain the most comprehensive historical [survey](#) of leak cases in the U.S.

PRIOR RESTRAINTS

Numbers increased again, with nearly half issued by courts in Chicago

Prior restraint orders forbidding journalists from publishing information are historically very rare, given a long line of Supreme Court cases striking them down. But they may be on the rise, going from [one](#) reported to the Tracker in 2017, to [five in 2018](#) and [seven in 2019](#). Three of the seven came from courts in Chicago. Fortunately, in nearly every case, courts quickly vacated the orders.



Photo of the Chicago Flag. Via Daniel Huizinga/ Flickr

DENIALS OF ACCESS

Problems with access to the White House and federal agencies continued

The Tracker also highlighted several instances where the [White House](#), [State Department](#), [DHS](#), and [Department of Defense](#) restricted — or attempted to restrict — press access in some way, suggesting that past problems with access continue and could be worsening. As in 2018, the White House [appeared to retaliate](#) against journalists for asking questions during photo ops and, in the most high profile incident, [suspended](#) a White House correspondent's press access. Once again, however, a federal court in D.C. found the suspension likely violated the journalist's due process rights and [ordered](#) the White House to reinstate the journalist's press pass. That case is now on appeal, and the Reporters Committee filed friend-of-the-court briefs in both the [trial](#) and [appellate courts](#). Also in 2019, the White House press secretary [stopped holding press briefings](#), after decades in which regular briefings were the norm. And a federal appellate court in New York found that the First Amendment [bars the president from blocking his critics](#) on Twitter.



34 Physical Attacks on Journalists

The number of reported physical attacks on journalists stayed fairly consistent in 2019, dipping slightly from 2018 numbers ([34](#) versus [36](#)). The Tracker has back-filled cases in 2017 and 2018 as it learned of them (2018 previously had 35 cases, and 2017 had 46), and the 2019 numbers may likewise increase.

Once again, more attacks occurred at protests than any other location

As in 2017 and 2018, the most common place for a journalist to be attacked was at a protest — [nine of the 34 attacks](#) (26 percent) occurred while journalists covered demonstrations of some kind. At least three journalists were shot by rubber bullets or other “crowd control ammunition” while covering protests in Puerto Rico in July calling for then-Governor Ricardo Rosselló to step down.

Trump rallies became increasingly dangerous for journalists

President Trump has frequently railed against the press during his rallies in recent years, calling the news media “[fake news](#)” and other negative epithets, but now journalists have been targeted with physical violence at or near these rallies as well. On Feb. 11, a man wearing a “Make America Great Again” hat ran onto the press risers at a rally in El Paso, Texas, [pushing journalists and cameras](#) and giving BBC News cameraman Ron Skeans a “very hard shove,” while shouting “Fuck the media!” The president noticed the incident — asking, “Everything okay?” — but did not condemn the attack. A few months later, on June 18, a Florida man threatened an Orlando Sentinel reporter just outside a Trump rally in Orlando and

PHYSICAL ATTACKS

49	36	34
2017	2018	2019

JOURNALISTS AFFECTED

49	41	39
2017	2018	2019



A man is restrained after he began shoving members of the media during a rally for President Donald Trump at the El Paso County Coliseum, Monday, Feb. 11, 2019, in El Paso, Texas. Via Eric Gay/Associated Press

[smacked his hand](#), attempting to knock his cellphone to the ground. Police arrested the man and charged him with battery. Sentinel Editor-in-Chief Julie Anderson [“told the Tracker](#) that her staff has faced intimidation, threats, and name-calling at Trump rallies since 2016.”

Even when not covering Trump rallies, journalists have faced attacks in the field by people echoing the president’s language. On June 12, a freelance photographer in Boston, Massachusetts, reported that a man approached him on the street, put him [“in a choke hold,” “yelled ‘fake news! Trump 2020’ and punched \[him\] right in the face.”](#) Other local journalists have also [reported increasing hostility](#) in recent years, being called “liberal scum media” and “enemy of the state” and told they “lie all the time.” In 2018, an Associated Press video journalist was reporting on flooding in rural North Carolina when a man reportedly [punched him in the face](#) as his friends muttered “fake news.” Also in 2018, Trump supporter [Cesar Sayoc mailed defective pipe bombs](#) to prominent Democratic politicians and supporters and to CNN’s New York office. In July 2019, attorneys for Sayoc sought leniency from the federal judge who sentenced him, citing, among other things, his obsessive support of the president and consumption of [“right-wing ... conspiracy theories.”](#) The judge [sentenced him](#) to 20 years in prison.

Female journalists faced special risks while reporting in the field

At least [three women](#) were attacked in a sexual way while doing live shots, highlighting the additional risks female journalists face while doing their jobs. One was [forcibly kissed](#), another was [“forcefully hit”](#) on the rear end, and a third woman was kissed on air and reported that the same man, Bulgarian boxer Kubrat Pulev, then [“grabbed” her “buttocks and squeezed with both of his hands.”](#) In this last [incident](#), the journalist reported that it negatively impacted her career because, after she complained and Pulev was suspended and fined, his promoter, who represents almost 100 boxers, would not allow her to cover his company’s events, and some boxers became standoffish about providing interviews.



REPORTERS COMMITTEE TIPS FOR STAYING 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.
- Take threats of physical harm seriously and report them to your editor and law enforcement promptly. Ideally, your editor can monitor, assess, and report these threats for you and relieve some of the mental strain associated with them.
- Attacks can also happen online. Take precautionary steps to limit and safeguard your personal information online. It is much easier to prevent online harassment, such as doxing, by taking these steps ahead of time.
- [CPJ’s Journalist Security Guide](#) and [PEN America’s Online Harassment Field Manual](#) are helpful resources.



9 Arrests of Journalists

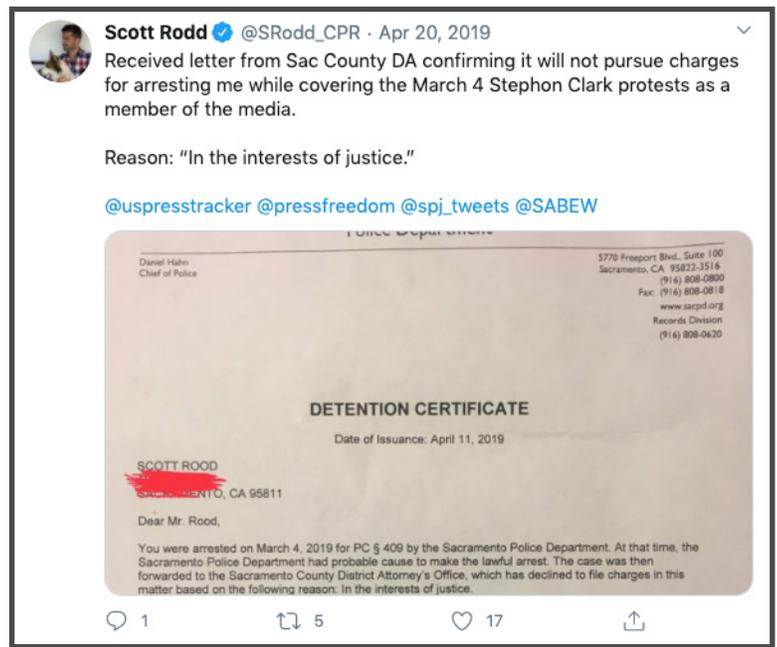
Protests were again the most common place of arrest in 2019

The number of arrests went down again: from [11 in 2018](#) to [nine in 2019](#). As in previous years, protests were again the most common place of arrest; [five of the nine journalists](#) arrested were covering some sort of demonstration at the time. All five identified themselves as journalists but police arrested them anyway, demonstrating the need for law enforcement training on the rights of journalists to report and gather the news, particularly during protests. Attorneys from the Reporters Committee and National Press Photographers Association are [coordinating such trainings](#) for law enforcement in Charlotte and Milwaukee in advance of the Republican National Committee and Democratic National Committee conventions, respectively, currently scheduled for this summer.

ARRESTS		
38	11	9
2017	2018	2019
JOURNALISTS AFFECTED		
37	10	9
2017	2018	2019

[Three reporters were arrested in Sacramento](#), California, while covering a protest on March 4 against the district attorney's decision not to bring criminal charges against the officers who shot and killed Stephon Clark, a 22-year-old African-American man. Police arrested the journalists during a mass arrest of 84 people for failing to disperse at the end of the protest, after "kettling" the remaining crowd into a closed-off area. "Kettling" — a controversial technique in which law enforcement corrals a large group of people into a confined space, followed by indiscriminate arrests — poses [serious risks to journalists](#) who are often arrested even though they are merely reporting on the event.

Sacramento Bee reporter Dale Kasler was released within an hour, after the Bee's publisher and editor made calls on his behalf, highlighting the importance of having colleagues or an attorney available to quickly contact the police department. Sacramento Business Journal reporter Scott Rodd and student journalist William Coburn were not so lucky. After more than four hours being detained, they were finally released with tickets for failure to disperse and court dates. Fortunately, the Sacramento district attorney dropped the charges a few days later. Sacramento Mayor Darrell Steinberg immediately questioned the arrests and expressed support for the journalists arrested, tweeting: [“No matter the reason an order to disperse was given, no member of the press should be detained for doing their job.”](#)



Another journalist was arrested for violating court rules

As in 2018, when a [freelance journalist](#) was arrested for violating a court's recording rules while covering the murder trial of Chicago police officer Jason Van Dyke, 2019 saw another journalist arrested for violating a court's recording rules. On Nov. 19, [a reporter for KNWA/FOX24 News](#) in northwest Arkansas was found in contempt of court for using her cellphone to record proceedings in a capital murder case in October. Although she apologized and explained that she was not aware of the judge's order prohibiting recording in his courtroom, the judge sentenced her to 10 days in jail — but suspended seven of the days — with six months' probation. He also ordered her to pay \$250 in court costs and barred her from his courtroom. Following an outcry from media outlets and journalism organizations who called the jail time [“excessive,”](#) the judge reduced her sentence to time served, releasing her from custody a few hours after she had begun her sentence on Nov. 20.

These arrests highlight the importance of researching a court's rules in advance. The Reporters Committee's [Open Courts Compendium](#) addresses each state's rules on [cameras and other technology in the courtroom](#). This should just be a starting point, however. Many jurisdictions leave the decision whether to permit cameras or other recording devices to the individual judge or courthouse, so journalists should research the specific local rules and whether a court has entered an order in a given case.

Only two of the arrests involved freelancers

This is down from [nearly half](#) of all arrests in 2018, and a little over half in 2017. Whether this is a meaningful change is unclear, given the relatively small number of arrests this year. Freelancers may have fewer resources to help them avoid arrest in the first place and defend against criminal charges after they occur. The Reporters Committee publishes [legal guides](#) to help fill this gap and also offers a [hotline](#) (rcfp.org/hotline) for reporters with legal issues.

REPORTERS COMMITTEE 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 avoid breaking the law (e.g., by inadvertently trespassing on private property).
- Familiarize yourself with a court's recording rules in advance.
- Review the Reporters Committee's [Police, Protesters, and the Press](#) guide and [tip sheet for covering protests](#) and the NPPA's [practical advice](#) about covering high-profile news stories.



27 Subpoenas and Legal Orders

The Tracker records what it can learn about subpoenas or legal orders that require journalists [“to testify in court or produce \[their\] records or work product”](#) or command third parties to produce a journalist’s records.

Subpoenas are notoriously underreported, so it is difficult to ascertain trends in this category.

But the number of subpoenas documented by the Tracker has continued to go up — from [eight in 2017](#) to [25 in 2018](#) and [27 in 2019](#).

This increase is notable because subpoenas can impose a significant financial, emotional, and professional burden on journalists and news outlets. If a journalist refuses to comply with a subpoena to protect a source or sensitive work product, he or she can risk jail time or hefty fines. And without a federal shield law, the protections for journalists [vary greatly depending on the jurisdiction](#). Fortunately, the subpoenas recorded by the Tracker in 2019 were largely unsuccessful thanks to various state shield laws and legal protections that applied.

Journalists were subpoenaed after critical reporting or filing court access or public records suits

Troublingly, several journalists and news outlets reported that they believed, based on the circumstances, that they were subpoenaed as a form of retaliation or harassment in response to critical reporting or the filing of a court access or public records lawsuit.

In one case, the Pittsburgh Post-Gazette learned of a secret settlement from 2018 between the gas drilling company Range Resources Appalachia LLC and families who claimed they had experienced serious health problems due to the nearby Range well, [“including a heightened risk of](#)

SUBPOENAS AND LEGAL ORDERS

8	25	27
2017	2018	2019

[cancer.](#)” After the newspaper filed a court action to unseal the settlement, [Range sought to subpoena documents and compel testimony](#) from former Post-Gazette Managing Editor Sally Stapleton and reporters Don Hopey and David Templeton to uncover their sources related to the case. Fortunately, a Pennsylvania state court judge [granted the newspaper’s motion to quash](#) the subpoenas on May 3, recognizing that under the state’s shield law, “the employees of the newspaper cannot be required to disclose any information that could lead to the disclosure of their sources.” The newspaper asked the court to order Range to cover its legal fees since the subpoenas were “[a brazen and legally abusive attempt to harass and intimidate the Post-Gazette,](#)” but the judge denied that request.

In another case, public relations and communications strategist [Trevor FitzGibbon subpoenaed Twitter](#) on Dec. 12 to compel the social media company to produce information, including direct messages, for nearly two dozen accounts, at least one of which belonged to a journalist. That journalist, freelancer Charles Davis, tweeted that he was named “[in retaliation](#)” for his reporting on FitzGibbon in 2017. “It is legal harassment,” Davis [told the Tracker.](#) [Twitter moved to quash](#) the subpoena on Feb. 4, 2020, but at the time of publication, motion had not been resolved.

Edgar County Watchdogs, an Illinois-based watchdog news site run by citizen-journalists Kirk Allen and John Kraft, were the target of four subpoenas in 2019, and already received two so far in 2020. [Algonquin Township in Illinois subpoenaed Dropbox](#) twice – in January and February – to compel it to produce information about the news site and its sources. These subpoenas came in the midst of a public records lawsuit in which ECW was suing Algonquin for failing to provide records in response to 16 different public records requests. ECW co-founder John Kraft [told the Tracker,](#) “Instead of just answering our FOIA requests they’re spending all this money to try and find out who is feeding us information.” The news site filed motions to quash the subpoenas, citing Illinois’ reporter’s privilege law, which a court granted [on Feb. 11](#) and [July 10,](#) respectively.

The news site received another subpoena on Feb. 19, from a frequent subject of its previous reporting, [former College of DuPage President Robert Breuder,](#) in connection with his lawsuit against the college. ECW had previously exposed [abuses](#) that appear to have contributed to the college’s decision to [terminate him.](#) The subpoena sought three years’ worth of communications between Allen, Kraft, and numerous other entities, including other journalists at the Daily Herald and Chicago Tribune.

The subpoena also sought Allen and Kraft's public records requests and responses, which Kraft said comprise thousands of pages and are already public records. Kraft [said](#) they opposed the subpoena but noted that it "makes us spend time, money, and effort fighting this, instead of writing like we should be doing." Ultimately, the parties settled the matter, with the subpoenas significantly narrowed.

ECW received yet another subpoena in August, this one from Effingham County in Illinois, whom ECW had also sued for violating Illinois' public records laws. The subpoena sought communications and documents relating to ECW's reporting on [an ambulance service](#) operating in that county. ECW had reported on the county's perceived conflicts of interest and no-bid process for awarding the contract to the current emergency provider. Allen [said](#) the county's subpoena asked "for all of our sources" and the documents he had received from the county through public records requests. The subpoenas were dropped when the case was dismissed on Sept. 11, but the county's attorney told the Tracker that he would not rule out refiling the subpoenas in the future, which he did in March 2020, after the case was refiled in state court.

BuzzFeed News and its senior technology reporter Ryan Mac received a total of [five subpoenas](#) from June to September in the defamation case between caver Vernon Unsworth and Tesla CEO Elon Musk. Unsworth sued Musk for libel, claiming the tech executive repeatedly called him a pedophile on Twitter and a "child rapist" in emails with Mac, which BuzzFeed then published. The subpoenas sought reporting material and testimony from the digital news outlet and Mac. BuzzFeed largely opposed the subpoenas, though it did agree to provide some limited documents, including [non-privileged website traffic and article metrics](#). Mac moved to quash the subpoenas for his testimony, arguing that they sought "[to harass and scapegoat](#)" him for his reporting on Musk's comments.

The federal judge handling the case in San Francisco granted the motion to quash Musk's subpoena but allowed Unsworth's subpoena to stand. Yet she only permitted compelled testimony on two discrete topics: "[\(1\) establishing that there were no communications between Mr. Mac and Mr. Musk other than the emails at issue; and \(2\) that BuzzFeed published those communications.](#)" The judge acknowledged the need for strict limits on the scope of Mac's deposition, noting "[the record suggests Mr. Musk feels animus toward non-party Mr. Mac](#)" and citing Musk's requests to question Mac or a BuzzFeed representative "about irrelevant and harassing topics

such as ‘the scope and existence of BuzzFeed’s coverage of Elon Musk, Tesla, or SpaceX.’” In December, the [jury returned a verdict](#) in favor of Musk.

With the help of reporter’s privilege laws, the press secured important wins



Photo of the Nevada Supreme Court. Via Wikimedia Commons

On March 4, a Nevada state court judge issued an order compelling Sam Toll, founder of an online news site, the [Storey Teller](#), covering Storey County, Nevada, to [reveal his confidential sources](#) in connection with a defamation suit. The judge reasoned that because Toll did not work for a print publication, he did not qualify as a journalist for purposes of Nevada’s shield law. That law, passed in 1969, well before the inception of the internet, protects any “[reporter, former reporter, or editorial employee of any newspaper, periodical or press association.](#)” Toll appealed the decision to the Nevada Supreme Court, and the Reporters Committee joined a [friend-of-the-court brief](#) with the Nevada Press Association and others in support. The Supreme Court ruled unanimously on Dec. 5 that Nevada’s shield law applies to “digital media,” explaining that “[just because a newspaper can exist online, it does not mean it ceases to be a newspaper.](#)”

The court sent the case back to the lower court to decide if the law, as construed by the court, applies to Toll in this case. The trial court [ruled](#) in March 2020 that the shield law applied and denied the plaintiff's request to compel information from Toll about his confidential sources.

On June 5, HBO succeeded in getting a subpoena for outtakes from its documentary "Rock and a Hard Place" [quashed under the New York shield law](#). The documentary, produced by the wrestler and actor Dwayne "The Rock" Johnson, focused on a "[boot camp](#)" program in Miami-Dade County, Florida, available to young people in lieu of a harsher prison sentence. A former correctional officer who had appeared in the documentary and was charged with various crimes in Florida sought the footage to support her defense. She argued that Johnson's involvement in the project rendered it a "celebrity reality TV show" as opposed to a documentary film entitled to protection under New York's shield law. The court rejected this argument and quashed the subpoena, noting that the statute's "[very broad definition of 'professional journalist' encompasses anyone involved in news gathering](#)" and that the correctional officer had not shown that the footage was critical or necessary to her defense and not obtainable from other sources.

Between February and June, attorneys representing the city of Chicago sent a series of subpoenas to New Yorker staff writer Nicholas Schmidle to [produce documents](#) and [to testify](#) about his sources for an article published in 2014, entitled "[Crime Fiction](#)." That article focused on the 1996 murder conviction of a Chicago man named Tyrone Hood and reported on evidence indicating Hood had been wrongfully convicted. The Illinois governor later commuted Hood's sentence and released him from prison, and a court subsequently vacated his conviction. Hood then filed a civil rights suit against the city of Chicago and the Chicago police officers involved in his arrest and prosecution. The defendants in that case believed that Schmidle's article was part of "[a carefully coordinated media campaign by Hood's post-conviction counsel designed to garner attention and support for Hood's case](#)." They subpoenaed Schmidle for documents and testimony about his reporting. The New Yorker sent letters opposing these subpoenas, and the defendants only pursued the subpoenas seeking testimony, which a [federal court in D.C. ultimately quashed](#) on Oct. 18, citing the reporter's privilege. The court explained that the defendants had failed to show that they "exhausted every reasonable alternative source of information," noting that Hood's post-conviction attorneys were "[an obvious alternative source](#)" for the information sought.

Business magazine Fast Company [received a subpoena-like discovery petition](#), dated Aug. 9, seeking communications and documents related to a 2017 article concerning the arrest of venture capitalist Shervin Pishevar. The petition was filed under a federal law that permits litigants in foreign cases to request material in the U.S. Fast Company largely complied with the subpoena but did not disclose a confidential source involved in the reporting. On Oct. 31, Pishevar filed a [second application for discovery](#) in New York federal court, this time against Fast Company senior news editor Marcus Baram, seeking his confidential source in the 2017 article. The Reporters Committee, joined by the U.K.-based Media Legal Defence Initiative, filed a [friend-of-the-court brief](#), and a Reporters Committee attorney presented oral argument in support of Baram. A federal magistrate judge [dismissed the petition](#) on Feb. 18, 2020, citing the reporter's privilege.

REPORTERS COMMITTEE TIPS IF YOU RECEIVE A SUBPOENA

- A subpoena is simply a notice that you must provide certain documents or appear at a deposition or other court proceeding to answer questions. You must not ignore a subpoena. If you fail to comply with it, you could be held in contempt of court 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 do not have in-house counsel and need help finding an attorney, contact the Reporters Committee's [hotline \(rcfp.org/hotline\)](#) 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.
- The Reporters Committee's [Privilege Compendium](#) provides an overview of the legal protections that may be available in your state or jurisdiction. However, this guide must never be a substitute for legal advice.
- If you feel comfortable doing so, please [report your subpoena to the Tracker](#).



16 Border Stops

The Tracker documents stops of journalists at the U.S. border when they are “[subjected to prolonged, invasive questioning](#),” “have their electronic devices searched,” or “are asked to provide passwords.” Since journalists do not always report such stops, this category likely undercounts the actual number of stops that occur.

75% of reported border stops in 2019 occurred as journalists traveled to or from Mexico, and CBP officers primarily targeted journalists reporting on the “migrant caravan”

BORDER STOP CASES

16	11	16
2017	2018	2019

JOURNALISTS AFFECTED

12	10	13
2017	2018	2019

All but four of the [16 stops in 2019](#) occurred as journalists traveled to or from Mexico. During these stops, Customs and Border Protection agents subjected journalists to secondary screenings, often involving lengthy and invasive questioning about the journalists’ reporting and what was happening at the border. Agents repeatedly pressed journalists for information, asking who was “[‘collaborating’ with the migrant caravan](#),” what they were “[‘seeing and hearing about the \[migrant\] caravan and organizers](#),” and “[‘who \[was\] stirring up stuff in the camp’ or ... helping the migrants](#).” Journalists reported being disturbed by this line of questioning, and freelance photojournalist Mark Abramson reportedly responded, “[‘I’m not an informant, my job is to inform the public](#).”

During these stops, CBP agents sometimes separated journalists from their belongings and conducted broad searches of their computers, [notebooks](#), [journals](#), and cellphones. Agents typically provided no justification for the searches, according to reports. For example, when Rolling Stone journalist [Seth Harp](#) was detained after returning to Austin, Texas, from a trip to

Mexico, CBP officers searched his personal journal, cellphone, and laptop, combing through his photos, videos, emails, and internet history. Harp also suspected officers made copies of his files, since they frequently took his devices out of the room for long periods of time. CBP officers even reportedly wrote down his laptop's serial number and his cellphone's identity code that could be used to track its physical location, [prompting concerns of ongoing surveillance](#). Harp said CBP officials repeatedly denied his requests to contact a lawyer and told him – erroneously – that [he would not be allowed to enter the country](#) unless he answered their questions. (CBP may not deny U.S. citizens re-entry, though they can detain them for significant amounts of time if they do not cooperate.)

In March 2019, NBC 7 San Diego [reported](#) that DHS officials had created a database tracking journalists covering immigration at the southern border, as well as attorneys, activists, and others who have worked at the border. Although many of the targets were U.S. citizens who had broken no laws, CBP subjected them to secondary screenings

for hours, put alerts on their passports, or even refused to let them cross into Mexico. The whistleblower who disclosed the documents [later identified himself](#) as Special Agent Wesley Petonak, a nine-year veteran of San Diego's Homeland Security Investigations office. Petonak said he told his supervisors he thought these tactics violated basic constitutional rights but was told it was "[standard practice](#)." Petonak then took photographs of PowerPoint slides about the program and shared them with NBC 7. The database included 59 individuals targeted by DHS's intelligence-gathering efforts, 10 of whom were journalists. The government had created dossiers for 25 of the targets, which included information about their travel, education, work histories, names of close relatives, and sometimes photos taken from social media accounts.



One of the journalists found on the government's secret database was Kitra Cahana, who was [denied entry into Mexico multiple times](#) between December 2018 and early 2019. Another, [Ariana Drehsler](#), was stopped at least three times at the border during the same time period, as was [Manuel Rapalo](#), who believes his passport was also flagged. On Nov. 20, the American Civil Liberties Union [filed a lawsuit](#) on behalf of Cahana, Drehsler and three other photojournalists who were targeted by DHS.

These revelations of CBP's efforts to target and monitor journalists prompted a public outcry from news outlets and press freedom groups. In April 2019, attorneys for the Reporters Committee [filed a lawsuit](#) on behalf of RCFP, NBC 7, and one of its reporters, seeking public records from DHS and a number of its components, including Immigration and Customs Enforcement and CBP, regarding these practices. In May, the Reporters Committee and a coalition of [103 organizations](#) sent a letter to DHS's acting secretary, demanding that border agencies end such surveillance and targeting of journalists.

CBP officers also targeted journalists with politicized remarks and questions

CBP officers also targeted journalists who were not reporting on migrants at the U.S.-Mexico border. In five separate incidents in 2019, CBP officers questioned journalists about their political views or made politicized remarks that were clearly inappropriate – such as asking if a journalist was part of the “[fake news media](#),” insisting that a journalist concede he writes “[propaganda](#),” telling two journalists to “[fall in line](#)” with the president's agenda, and [aggressively questioning](#) another reporter about his news outlet's reporting on the president.

On Feb. 3, Australian BuzzFeed reporter David Mack arrived at JFK airport in New York City, following a trip to the United Kingdom. Mack said a CBP agent saw BuzzFeed listed as his employer on his visa and “[grilled](#)” him about BuzzFeed's reporting on Robert Mueller's investigation into the Trump



campaign's connections to Russia and, in particular, a Jan. 17 article about Trump's former attorney Michael Cohen. The agent concluded the interview "[by saying that although he doesn't agree with Trump on everything, he supports his border security plans because of his line of work.](#)" A CBP official later apologized to Mack, stating that the officer's comments "[do not reflect CBP's commitment to integrity and professionalism of its workforce.](#)" The official also stated that it had reviewed the event and "initiated the appropriate personnel inquiry and action."

On May 13, as discussed above, CBP officers [detained](#) Rolling Stone journalist Seth Harp for four hours at the airport in Austin, Texas, after he declined to answer the officer's repeated questions about what he had been reporting on in Mexico (he eventually told them it was a story about gun-running). CBP officers denied his requests for an attorney and [interrogated him](#) on "all aspects" of his work, his "conversations with editors and colleagues," and his political views, including President Trump's position on removing troops from Syria.

On June 16, Michael Sokolove, a contributing writer for The New York Times Magazine and Ann Gerhart, a senior editor-at-large for The Washington Post, [reported being questioned](#) about their politics and work by a CBP officer at Newark Liberty International Airport, following a trip to the Caribbean island of Anguilla. Upon learning that they were journalists, the officer asked what they thought of President Trump, and they responded that it was not their job to have an opinion about the president but to simply report the news. Sokolove told the Tracker that he then "made the mistake of saying 'I think this family separation [policy] is really troublesome,'" at which point the officer became "very aggressive." Sokolove said the officer told them, "Well, I think you really ought to give him a chance and this country has to come together.' And he just started expressing his own political views that the press was too aggressive with the president, too critical of the president, and we really ought to 'fall in line and come together.'" The journalists reported being shocked and shaken by the incident.

On Aug. 22, British journalist James Dyer, digital editor-in-chief at Empire Magazine and host of the Pilot TV Podcast, reported that a CBP agent asked him if he was "[part of the 'fake news media'](#)" after he presented his journalist visa to the officer at Los Angeles International Airport. Dyer [tweeted](#) shortly thereafter that the CBP officer "wanted to know if I'd ever worked for CNN or MSNBC or other outlets that are 'spreading lies to

the American people.' He aggressively told me that journalists are liars and are attacking their democracy." A CBP spokesperson responded that ["inappropriate comments or behavior are not tolerated, and do not reflect our values of vigilance, integrity and professionalism."](#)

On Oct. 3, Defense One news editor Ben Watson reported that upon his arrival at Dulles International Airport in northern Virginia, following a trip to Denmark, a customs officer [refused to return his passport](#) after learning he was a journalist. The officer said, "So you write propaganda, right?" Watson responded that he did not, but the officer persisted until Watson replied, "For the purposes of expediting this conversation, yes." Before returning the passport, however, the officer reportedly made Watson repeat that he was a journalist and wrote propaganda. Watson subsequently filed a complaint with the Department of Homeland Security, and a CBP spokesperson said the agency was reviewing it.

Federal judge in Boston: CBP must have "reasonable suspicion" before searching electronic devices

Press freedom and civil liberties groups have already been [sounding the alarm](#) about CBP's fast-growing practice of searching travelers' electronic devices at the border without a warrant. This practice compromises the ability of journalists to do their jobs and protect confidential sources and sensitive work product. In 2017, CBP conducted [30,000 warrantless device searches](#) at the border, more than triple the number just two years earlier. In Sept. 2017, the ACLU and others [sued](#) DHS on behalf of 11 travelers, including two journalists, whose smartphones and laptops were searched at the border without warrants.



Photo of a U.S. Customs and Border Protection officer. Via [cbp.gov](#)

The Reporters Committee and the Knight First Amendment Institute at Columbia University filed a [friend-of-the-court brief](#) in support. The federal trial court overseeing the case issued an important decision in November 2019, holding that the government may not conduct searches of electronic devices at the border absent “[reasonable suspicion that the devices contain contraband](#).” This case is now on appeal to the U.S. Court of Appeals for the First Circuit.

REPORTERS COMMITTEE TIPS FOR JOURNALISTS AT THE BORDER

- Make sure your electronic devices are password-protected and that you have logged out of your email and other apps used for communicating.
- Use end-to-end encrypted communications services like Signal and ensure that messages on your device are set to auto-delete.
- Clear your devices of sensitive information, to the extent possible, ahead of time. For instance, Chromebooks have a “Powerwash” feature that allows you to completely wipe the computer of accounts and data.
- If you are traveling back from a country or region of heightened interest to U.S. authorities (a conflict zone, for instance), you may face an increased chance of questioning or secondary screening.
- If a border agent asks you to open your device, you can politely decline, explain that you are a journalist, that this property belongs to the news outlet you work for (if applicable), that it contains sensitive work product, and that you would like the agent to contact a supervisor and your attorney before searching or seizing your device. Please note, however, that this may subject you to additional detention and questioning.
- If you are a U.S. citizen and refuse to comply with a requested device search, you cannot be denied entry into the U.S., but you may be detained for longer than you otherwise would be, and your device may be seized. If you are not a U.S. citizen, refusing to cooperate may result in denial of entry.
- If an officer searches or takes your electronic device, write down the officer’s name and request a receipt for your property.

If you have questions about journalists’ rights when crossing the border, contact the Reporters Committee’s [hotline](#).



9 Equipment Searches or Seizures

This category tracks when law enforcement searches or seizes journalists' equipment in the course of their work. This category also likely undercounts the total number of searches and seizures that occur across the country, and only includes those incidents that are reported to the Tracker or that receive some press coverage.

Most searches and seizures of journalists in 2019 occurred at the border

Since 2017, most of the recorded searches and seizures occurred either at a protest, when law enforcement arrested a journalist, or at a border stop, when customs officials searched or seized a journalist's belongings, including electronic devices. Although 2017 saw a relatively high number of equipment searches and seizures (24), this was likely due to the large number of journalists arrested at protests that year; in fact, [at least 15](#) of the 24 cases occurred when police arrested journalists as they

were covering protests. All but one of the remaining searches and seizures occurred at border stops that year. In 2018 and 2019, the most common place for law enforcement to search or seize a journalist's equipment was at the border ([three](#) of seven cases in 2018 and [five](#) of nine in 2019). To learn more about border stops of journalists, see above.

Five judges found the San Francisco police raid of a journalist's home and office unlawful

Yet the most high-profile search and seizure in 2019 did not occur at the

SEARCH/SEIZURE CASES

24	7	9
2017	2018	2019

JOURNALISTS AFFECTED

23	8	9
2017	2018	2019



Screenshot of Bryan Carmody's security cameras as San Francisco police raid his apartment. Via Bryan Carmody

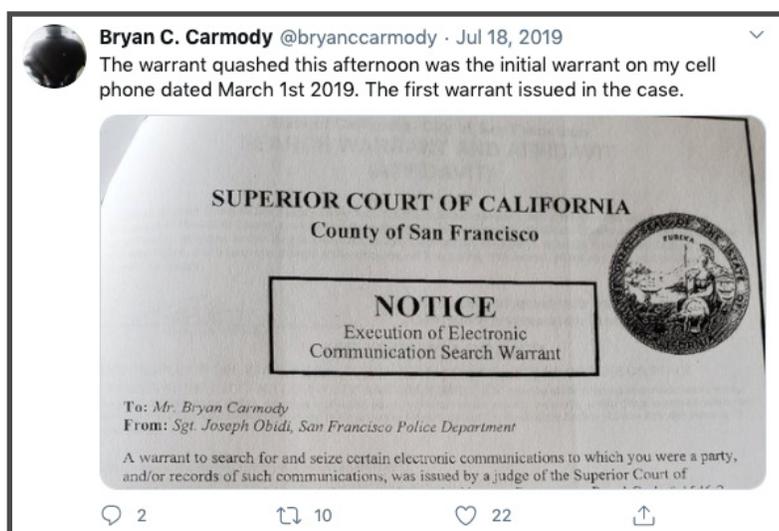
border. On May 10, San Francisco police officers [raided](#) freelance journalist Bryan Carmody's home as part of an investigation into one of Carmody's confidential sources. Carmody reported that he awoke to 10 or so officers banging on his front gate with a sledgehammer. He said he allowed them in after being shown a search warrant. The officers then handcuffed him and searched his house with guns drawn. Although police did not charge Carmody with a crime, they detained him at his house in handcuffs for more than five hours during the search. During the raid, officers got a second warrant to search his office space.

Notably, two FBI agents were present during the search and asked to interview Carmody while he was in custody, but he refused and requested an attorney. An FBI spokesperson later [told](#) the Los Angeles Times that the federal agents were not involved in the search but confirmed they were present to interview him. The Reporters Committee [sued](#) the Justice Department and FBI under the Freedom of Information Act to compel disclosure of information about why federal officers were there and tried to question Carmody about his source for the police report. In response to that lawsuit, the Reporters Committee [received an FBI document](#) showing that agents knew Carmody was a journalist during their questioning of him. That suit is still pending.

A few weeks before the raid, two San Francisco police officers had contacted Carmody and asked him to identify the source who shared with him a confidential police report on the Feb. 22 death of San Francisco public defender Jeff Adachi. He said he “[politely declined](#).” That police report included “[salacious details about Adachi’s drug use and possible extramarital affair](#),” and Carmody had used it as part of the story he had sold to local TV news stations, which ran segments about it. The San Francisco Police Department had come under attack for leaking the report. It condemned the leak and pledged to track down the source. When Carmody declined to turn over his source voluntarily, the police officers reportedly warned him that they could subpoena the information using a federal grand jury. But instead of issuing a subpoena, which Carmody could have contested in court, police raided his house and office. During the raid, the officers ultimately seized multiple notebooks, computers, phones, and cameras from his home and a USB thumb drive, multiple CDs, and a copy of the confidential police report from his office.

A few days after the raid, Carmody [sued](#) to quash all five search warrants that police had used to search his home, office, cellphone, and phone records, asking the court to order the immediate return of his work product and equipment. He argued that the search warrants were invalid because they violated his rights under the U.S. and California constitutions, the federal Privacy Protection Act – which restricts law enforcement from searching for and seizing a journalist’s work product and documentary materials—and California’s shield law. The Reporters Committee, joined by 59 media organizations, filed a [friend-of-the-court letter in support of Carmody](#).

The courts [agreed and quashed all five search warrants](#), finding that they violated Carmody’s rights under the California shield law. Superior Court Judge Rochelle East quashed the first warrant for Carmody’s phone records on July 18, finding that it should never have been issued and noting that investigators had failed to inform her that Carmody was a journalist and therefore protected under California’s shield law.



The Reporters Committee, First Amendment Coalition, and Northern California Chapter of the Society of Professional Journalists also [filed a motion to unseal](#) Carmody’s arrest and search warrant records in San Francisco Superior Court, which the [courts ultimately granted](#).

These raids prompted public outcry at the San Francisco Police Department’s disregard for Carmody’s rights and the unexplained involvement of the FBI. Despite the Reporters Committee’s FOIA lawsuit against the FBI, it has still refused to provide details on why it was involved in the raid. This incident is particularly troubling given the context – the president’s increasingly hostile rhetoric aimed at the news media and increased prosecutions of government officials who disclose information to the news media, discussed below. To read more about the Carmody case and the FBI’s involvement, see [an analysis published by the Reporters Committee here](#). In early March 2020, Carmody [settled civil claims](#) arising from the raid, with the city of San Francisco expected to pay him \$369,000.



3 ‘Leak’ Prosecutions

One of the most troubling trends in recent years has been the acceleration of prosecutions against federal employees or contractors for sharing government secrets with the news media. At the start of his presidency, Trump complained about embarrassing leaks to the media. For example, when his

former national security advisor, Michael T. Flynn, stepped down after the press reported that he had [misled Vice President Mike Pence and other officials about his conversations with a Russian diplomat](#), the president said the “[real scandal](#)” was the leak of government information that led to the story. In August 2017, then-Attorney General Jeff Sessions announced additional efforts against leaks, and said the Justice Department had [increased](#) the number of unauthorized disclosure investigations to 27, up



from nine, when he became attorney general (though we do not know if all of these cases involve unauthorized disclosures to the news media).

The Trump administration has now prosecuted [eight people](#) in three years. These prosecutions continued a trend started by the Obama administration, which prosecuted [10 leaks](#) over eight years (mostly in President Obama's first term, however). The government has typically prosecuted these disclosures by claiming they violate the Espionage Act, a vaguely worded law enacted in 1917 to combat spying that criminalizes the disclosure of government documents and information "[relating to the national defense.](#)"

Not only has the rate of leak prosecutions increased, but the prison sentences for those disclosing the information has also set new records. In the space of three months in 2018, the Trump administration secured the [longest sentence ever](#) in a civilian leak case (Reality Winner) and the [second-longest](#) (Terry Albury), discussed below. (The longest sentence handed down in one of these cases was the [35-year prison term](#) in the Chelsea Manning court martial, which was commuted to about eight years by President Obama).

In an unprecedented move, the government obtained an indictment charging Julian Assange with violating the Espionage Act for publication alone

In 2019, the Justice Department not only prosecuted [three additional leak cases](#), but for the first time ever, successfully obtained an indictment from a grand jury with Espionage Act charges based exclusively on the act of publication. In April 2019, federal prosecutors unsealed initial charges against [WikiLeaks founder Julian Assange](#) for conspiring with Chelsea Manning to violate a federal anti-hacking law known as the Computer Fraud and Abuse Act. But in May, a grand jury charged Assange with 17 additional violations of the Espionage Act. Multiple charges in the [superseding indictment](#) alleged that coordinating with a source to receive and publish government secrets constitutes a violation of the Espionage



Photo of Julian Assange. Via Flickr

Act, alarming First Amendment experts and press freedom advocates. Of [particular concern](#) were three charges against Assange for directly violating the Espionage Act based exclusively on the publication of classified information, the first time in history the government has successfully obtained an indictment on that legal theory. The Reporters Committee issued several [special analyses](#) discussing the matter and its significance for the press. At the time of publication, Assange is fighting the U.S. government's [efforts to extradite him](#) from the United Kingdom.

The Justice Department has prosecuted eight people for disclosing government information since 2017

The Trump administration began ramping up its leak investigations in 2017, when it announced charges against [Reality Winner](#), a 25-year-old Air Force veteran and federal contractor. Winner was indicted under the Espionage Act for allegedly giving a top secret document to The Intercept detailing Russian hacking attempts on electronic voting systems in the U.S. Winner pled guilty and was sentenced in August 2018 to [63 months in prison and three years of supervised release](#) – the [longest sentence](#) anyone has ever received in a civilian court for disclosing information to journalists.

In 2018, the Justice Department indicted [four additional people](#):

- Former FBI agent [Terry Albury](#), who was charged with two counts under the Espionage Act for leaking classified documents to an outlet identified in reporting as The Intercept. Albury allegedly [disclosed](#) secret guidelines for the FBI's use of informants, surveillance of journalists, and other topics. He pled guilty and sought probation, [explaining](#) that this was an “act of conscience” motivated by a desire to alert the public to [potential abuse](#) at the FBI, but the district court sentenced him to the second-longest sentence in a leak case: [four years in prison and three years of supervised release](#).
- [James Wolfe](#), the longtime director of security for the Senate Select Committee on Intelligence, who was charged with making false statements to FBI agents during an investigation into disclosures of classified information to New York Times reporter Ali Watkins. Watkins had published a [story](#) about Trump campaign aide Carter Page's alleged ties to Russian intelligence, which appears to have prompted the investigation. The Reporters Committee prepared a [comprehensive series of resources](#) on the case. Wolfe pled guilty in October 2018 and was sentenced to [two months](#) in prison.

- National Security Agency and CIA staffer [Joshua Schulte](#), who was charged with multiple violations of the Espionage Act, the Computer Fraud and Abuse Act, and several other federal laws for allegedly leaking sensitive CIA files — dubbed “Vault 7” and “Vault 8” — to WikiLeaks. In March 2017, [WikiLeaks published classified documents](#) allegedly detailing hacking tools and techniques used by the CIA. Federal agents raided Schulte’s apartment shortly thereafter and initially arrested him on child pornography charges. In early March 2020, a federal jury in New York [found Schulte guilty](#) of contempt of court and making false statements to the FBI but deadlocked on the Espionage Act charges, forcing the judge to declare a mistrial as to those charges.
- [Natalie Mayflower Sours Edwards](#), an official in the U.S. Treasury Department’s financial crimes division, who was charged with disclosing to a reporter at an outlet identified as BuzzFeed News “suspicious activity reports,” or SARs, that detailed suspicious banking transactions made by Russian diplomats and Trump associates. Although these reports were not classified, federal bank secrecy laws and regulations bar their disclosure. The criminal complaint revealed that federal investigators used search warrants to obtain access to Edwards’ personal email account and cellphone records, which allegedly showed emails, calls, and text messages between her and a BuzzFeed News reporter identified in reporting as Jason Leopold. Edwards [said](#), through her attorney, that she was motivated by a belief that the government may have been mishandling the information. In January 2020, she [pled guilty](#) to one count of conspiring to unlawfully disclose financial reports. At the time of publication, she had not yet been sentenced.

In 2019, the Justice Department announced the Assange indictments discussed above and also prosecuted three new leak cases:

- On Feb. 4, IRS employee [John Fry](#) was charged with unlawfully disclosing SARs detailing financial transactions involving President Trump’s former attorney Michael Cohen. Fry allegedly shared documents and information with prominent attorney Michael Avenatti and confirmed their contents to reporter Ronan Farrow after reportedly becoming concerned about Cohen’s suspicious overseas financial transactions.
- On May 9, former Air Force service member [Daniel Everette Hale](#) was arrested and charged with disclosing classified documents about the “targeted killing” drone program. His attorneys [moved to dismiss](#) the indictment in September, arguing that the Espionage Act violates the First Amendment by criminalizing the disclosure of newsworthy national defense secrets to the public. The Reporters Committee filed a [friend-of-](#)

[the-court brief](#) in support of Hale’s motion, arguing that the court must consider the “dramatic uptick in the prosecution of journalistic sources since 2009, an increase in the severity of punishment, and a heightened danger of selective enforcement against lower-ranking disclosers.” The trial court [denied](#) the motion. At the time of publication, Hale is awaiting trial.

- On Oct. 9, the Justice Department arrested [Henry Kyle Frese](#), a Defense Intelligence Agency counter-terrorism analyst, for allegedly disclosing national defense information to two journalists [reported to be](#) a national security reporter at CNBC and a more senior national security reporter for NBC. A [search warrant affidavit](#) appears to reference a CNBC article by these journalists about the Chinese military conducting anti-ship missile tests in the South China Sea. The Reporters Committee published [an analysis of the case](#).

The crackdown on leaks may hinder national security reporting and raises First Amendment concerns

The government’s prosecution of media leak cases, which the Obama administration began, and the Trump administration continued, raises serious concerns. First, these prosecutions may [chill reporting on national security](#), discouraging those who might otherwise have shared important, newsworthy information with journalists about government activities.

In addition, the Justice Department’s new legal argument — deployed for the first time in the Assange superseding indictment — that publication itself can become a criminal act in violation of the Espionage Act could be used directly against journalists or news organizations who publish government secrets. Although the Supreme Court has never directly addressed whether the First Amendment protects a journalist from prosecution under the Espionage Act for publishing national defense information, the Court’s prior decisions, in particular, a case called [Bartnicki v. Vopper](#), suggest that if the journalist did not violate the law in obtaining the information, the First Amendment may protect its publication.

Although government officials claimed that Assange “[is no journalist](#),” legal experts have noted that this has little relevance from a legal perspective because the Espionage Act does not make any distinction between journalists and non-journalists.

REPORTERS COMMITTEE TIPS FOR PROTECTING YOUR SOURCES

- Note that “insider threat” programs within government agencies may track documents or data using various methods, such as print logs or watermarks. Remain cognizant of such clues when handling or publishing information disclosed from a source.
- Use encrypted communications apps, such as Signal, and set messages to auto-delete.
- Keep in mind that your phone, text, or email metadata may be seized without notice by the government, and it may disclose the identity of unrelated sources.
- Think about your threat profile; if you’re reporting on crime, national security, or international human rights, for instance, your communications are more likely to be intercepted or seized incidentally or inadvertently by government actors or criminals.



7 Prior Restraints

The Tracker records “prior restraints” on journalists, which occur when a judge orders a journalist or news outlet “[not to publish information under threat of punishment](#).” The U.S. Supreme Court has consistently [held](#) that prior restraints on the news media violate the First Amendment, most famously in the landmark [Pentagon Papers case](#). There, the

Court rejected the government’s attempt to prevent The New York Times and The Washington Post from publishing a classified study about the history of the Vietnam War, which revealed that President Lyndon Johnson’s administration had secretly enlarged the scope of the war and lied about it to the American public and Congress. Accordingly, these cases are

PRIOR RESTRAINTS

1	5	7
2017	2018	2019

historically rare given the First Amendment's protections, but 2018 saw a flurry of them and, troublingly, 2019 saw even more.

Courts often issue these orders when a court or a litigant inadvertently discloses documents to the press and then tries to claw them back. Fortunately, in most cases, upon further reflection, the courts walk back this kind of drastic relief. But last year at least one judge in Chicago permitted a prior restraint to continue, although it did not ultimately prevent any reporting.

Nearly half of all prior restraints in 2019 were issued by courts in one city: Chicago

Within the span of three months in 2019, three judges in Chicago issued prior restraints on the media. In January, the [Chicago Sun-Times reportedly defied a prior restraint](#) order issued in secret by federal Magistrate Judge Young Kim, ordering the newspaper not to publish a search warrant affidavit that had been inadvertently filed publicly in the federal court's docketing system. Crain's Chicago Business Journal cited "knowledgeable sources" that said the magistrate's order "came despite sentiment within the U.S. attorney's office here" that a "[prior restraint, would be on shaky legal ground and likely inconsistent with past U.S. Supreme Court decisions.](#)" However, the magistrate later granted a request by the Chicago Tribune to unseal the search warrant affidavit, which the court had resealed, recognizing the ability of the Sun-Times to publish additional information from the affidavit.

In February, less than a month later, another Chicago judge — this time Cook County Circuit Judge Peter Flynn — [issued a prior restraint](#). Judge Flynn ordered the Better Government Association, an investigative watchdog group, not to publish records that Chicago Public School lawyers had mistakenly given the group in a public records lawsuit and then attempted to claw back. The records revealed embarrassing details about the school's lack of oversight that contributed to the death of a 14-year-old boy with autism who drowned after entering a school pool with neither direct supervision nor a life vest. The judge only vacated his prior restraint — which ordered the news outlet to delay publication — after BGA's attorney Matt Topic secured authorization from the deceased child's parents to release the materials. The Reporters Committee filed a [friend-of-the-court letter](#) in support of BGA.

In March, a third Chicago judge [issued a prior restraint](#). This time, Cook County Juvenile Court Judge Patricia Martin issued an order banning the nonprofit news outlet ProPublica Illinois and other media outlets from publishing information that identified minors and their foster parents in a child welfare case. The Reporters Committee, joined by 39 media organizations, submitted a [friend-of-the-court letter](#) in support of ProPublica on April 3. The judge subsequently narrowed her order to prevent reporting just on the images and names of minors, while recognizing ProPublica’s constitutional right to publish the material. ProPublica stated that it never planned on publishing this information, but it objected [“to the court interfering in newsroom decision-making.”](#)



Denials of Access

The Tracker documents [denials of access](#) “to government events that are traditionally open or attended by the press and where the denial of access either deprives the public of significant information, appears to be retaliatory, or is done without meaningful justification.” This category also includes “concrete changes in policy or practice to restrict or deny access.” Although the Tracker undoubtedly undercounts the actual number of times journalists are denied access to government events across the country, particularly at the local level, this category aims to capture the most egregious denials of access that occurred.

The Tracker highlighted [several incidents in 2019](#) where the federal government denied access to reporters, suggesting that past problems with access to the executive branch persist and could be worsening.

The White House again appeared to retaliate against journalists for asking questions during photo ops and, again, suspended a White House correspondent’s press pass

In July 2018, the White House told CNN’s Kaitlan Collins she [was not allowed to attend an event](#) in the Rose Garden that was otherwise open to the press in retaliation for trying to ask President Trump a question during a photo-op. And in November 2018, following a heated exchange at a news conference in which CNN’s Jim Acosta questioned Trump about why he



As President Donald Trump points to CNN's Jim Acosta, a White House aide takes the microphone from him during a news conference in the East Room of the White House, Wednesday, Nov. 7, 2018, in Washington. Via Evan Vucci/Associated Press.

had stoked fears of a migrant “invasion” of the United States, the White House [suspended Acosta’s press credentials](#).

In 2019, the White House again appeared to retaliate against journalists for asking questions during photo ops and, again, suspended a White House correspondent’s press access.

In February, the White House [banned four U.S. print journalists](#) who had been traveling in the press pool from covering the president’s dinner with North Korean leader Kim Jong-Un. Then-White House Press Secretary Sarah Huckabee Sanders said this was because of “sensitivities over shouted questions in the previous sprays.” During two previous photo ops on the trip, American reporters – including two of the four print journalists who were later banned – directed questions at Trump. Historically, the White House has upheld press access while the president travels overseas, particularly in countries without press freedom.

In August, the White House informed Brian Karem, the White House correspondent for Playboy and a regular CNN contributor, that his [press pass would be suspended](#) for 30 days. White House Press Secretary Stephanie Grisham explained this was punishment for an altercation

between Karem and former Trump aide and radio host Sebastian Gorka in the Rose Garden the month before, claiming it violated a [tacit agreement](#) to “act professionally” and with “decorum,” but acknowledging that the White House did not have “explicit rules” governing behavior. Karem filed suit and [secured a preliminary win](#). The D.C. federal trial court found that stripping Karem of his press access without explicit standards likely violated his due process rights, as recognized in the landmark 1977 case [Sherrill v. Knight](#), and required the White House to reinstate his press pass immediately. That decision is now on appeal. The Reporters Committee filed a friend-of-the-court brief in support of Karem both [in the district court](#) and [in the appellate court](#).



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, Thursday, July 11, 2019. Via Alex Brandon/Associated Press

The White House ceased “daily” press briefings

What used to be called “daily” White House press briefings went from infrequent in 2018 to virtually non-existent in 2019. In a tweet in January



White House Press Secretary Sarah Sanders speaks during a press briefing at the White House, Monday, March 11, 2019, in Washington. Via Evan Vucci/Associated Press

2019, President Trump said he directed then-Press Secretary Sarah Huckabee Sanders [to forego the tradition of holding daily White House press briefings](#) because [“the press covers her so rudely and inaccurately, in particular certain members of the press.”](#) A press briefing by Sanders on March 11, 2019, ended what was then the longest period between on-camera briefings in recent history [after 42 days](#). But the White House did not conduct its next press briefing until about a year later, in mid-March 2020, in response to the [coronavirus outbreak](#).

Federal appeals court: The First Amendment bars the president from blocking critics on Twitter

Although President Trump frequently uses Twitter to express his views and communicate with the public, he has blocked those who criticize him and his policies, including journalists. In July 2017, the Knight First Amendment Institute at Columbia University filed a lawsuit challenging this practice on behalf of seven individuals whom the President had blocked on Twitter. In May 2018, a federal judge [ruled](#) in their favor, finding that the “interactive space” associated with President Trump’s Twitter account constitutes a public forum (because it is used for official purposes), and the First Amendment therefore bars him from blocking critics based on their viewpoint. The U.S. Court of Appeals for the Second Circuit [affirmed](#) the decision in July 2019 and [denied the government’s request](#) for a full court review in March 2020.

The State Department came under fire for excluding members of the press, other than “faith-based media,” from a call and, in early 2020, for retaliating against NPR after an interview

On March 18, the State Department, in a highly controversial move, barred the press corps from a briefing call with Secretary of State Mike Pompeo, [allowing only “faith-based media”](#) to participate, although the Department originally [invited Wall Street Journal reporter Jessica Donati, before disinviting her](#). The call was to discuss “international religious freedom” ahead of Pompeo’s five-day trip to the Middle East. The State Department then [“took the unusual step of refusing to release a full transcript or a list of attendees.”](#) The State Department’s actions prompted a public outcry, and the Reporters Committee sued the State Department for public records about the call.

In January 2020, the State Department was forced to release the transcript of the call and related records, which showed that Pompeo had [fielded a wide variety of questions](#) on U.S. foreign policy in the Middle East.

In early 2020, the State Department again came under fire, after [removing an NPR reporter from an official trip abroad](#) on Jan. 26,

in apparent retaliation for her colleague's interview with Pompeo, which the secretary had criticized in a [public statement](#) the day before. In an interview on Jan. 24, NPR host Mary Louise Kelly had asked Pompeo about U.S. policy and his role in the dismissal of former U.S. ambassador to Ukraine, Marie Yovanovitch. Pompeo reportedly cut the interview short and, without specifying that the conversation would be off the record, shouted at Kelly for several minutes, asking, "Do you think Americans care about Ukraine?" and insisting that she point to Ukraine on a map (which she reportedly did).

A day after NPR ran its story about the interview, Pompeo issued a [statement](#) criticizing Kelly for "violat[ing] the basic rules of journalism and decency" and – echoing [President Trump's language](#) – called this "another example of how unhinged the media has become in its quest to hurt President Trump and this administration." The following day, a State Department official informed Kelly's colleague, NPR correspondent Michele Kelemen, that she would be denied her spot as the radio pool reporter on Pompeo's then-upcoming trip. The State Department Correspondents' Association released a [statement](#) calling the move "retaliation" and "unacceptable." The Reporters Committee closely monitors such denials of access and [issued a statement](#) condemning it.



DHS disinvited a BuzzFeed reporter from a media tour of the U.S. border and excluded the news media from tent asylum courts, before reversing course

In September, the Department of Homeland Security [disinvited BuzzFeed immigration reporter Hamed Aleaziz](#) from a media tour of the border with DHS Secretary Kevin McAleenan. BuzzFeed News Director Tom Namako sent an email protesting the decision and noting that DHS spokesperson Andrew Meehan had previously said he viewed Aleaziz as a “fair reporter” and “repeatedly” invited him to take a tour of the border with U.S. immigration authorities. Aleaziz had [“broken a number of stories on his beat,”](#) including most recently at the time, news that the DOJ had sent immigration judges a link to a white nationalist blog post as part of a news briefing.

Also in September, DHS [barred journalists from asylum hearings held in tent courts](#), even though immigration hearings are typically open to the public, but then [reversed](#) that policy, at least in part, in December.

After a media backlash, the Department of Defense withdrew press regulations at Guantanamo Bay

On Aug. 28, the Department of Defense [issued new press rules](#) that would have significantly restricted the ability of journalists to report at the Guantanamo Bay naval station where 40 detainees are still held. Military officials pressed journalists to sign the new rules within 48 hours in order to report on military commission hearings in September. The rules required journalists to be constantly escorted while at the naval station, gave military personnel the ability to seize “all materials and equipment” in a journalist’s possession, including cell phones, and required journalists to submit all images, video, and audio recordings for government review. The New York Times, joined by the AP, NPR, and First Look Media, sent a letter to the Department of Defense, objecting to the new restrictions, and on Sept. 6, the Department of Defense formally rescinded them.



Chilling Statements: Threats and verbal attacks on the press

The Tracker also documents “[chilling statements](#)” – that is, “selected public threats made to reporters and media organizations by U.S. politicians and other public figures, which can have a chilling effect on journalism.”

President Trump increasingly called the news media “fake news” and “enemy” of the people, prompting growing concerns that this language emboldens attacks on journalists abroad

As in previous years, the onslaught of verbal attacks against the news media [intensified](#), led by President Trump and his supporters. To better document the president’s attacks against the media via Twitter, the Tracker continued a project started at CPJ to record every tweet critical of the media. According to this database, in 2019 alone, the president referred to news outlets as the “enemy” of the people at least [22 times](#) (up from 4 in 2017 and 18 in 2018) and as “fake news” at least [273 times](#) (up from 171 in 2017 and 187 in 2018).

Press freedom groups and news outlets continued to express concern that this language is emboldening attacks on press freedom by foreign leaders. Journalists around the world “[uniformly report\[ed\] a surge of new laws in their countries aimed at ‘fake news,’](#)” typically defined as “anything that authorities deem to be against their individual interests.” The number of journalists charged with “false news” rose to 30 in 2019 (up from 1 in 2012), according to a [CPJ report](#). Human rights lawyer Amal Clooney said that Trump’s anti-press rhetoric gave “[a green light](#)” for the brutal murder of Jamal Khashoggi, a global opinions contributing columnist at The Washington Post. Khashoggi, a U.S. resident and Saudi dissident who had written critically of the Saudi regime, was killed inside the Saudi Consulate in Istanbul in October 2018. A June 2019 [report](#) by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary killings concluded that the state of Saudi Arabia was responsible for his premeditated, extrajudicial killing.

Many have voiced concerns that Trump’s rhetoric could also incite violence against members of the press in the United States. In October 2019, these fears intensified as a [graphic fake video went viral](#), depicting the president assaulting his political opponents, critics, and journalists in a church with the logos of at least 23 news organizations superimposed on the victims. The video was played during a pro-Trump conference from Oct. 10-12 at the president’s hotel and golf resort near Miami.

The president again threatened to use regulatory power in retaliation for perceived negative coverage

In 2019, Trump [again](#) threatened to use regulatory power against a TV network. In March, he [questioned](#), via Twitter, whether the Federal Election Commission or Federal Communications Commission should investigate a TV network – this time, complaining of a “Saturday Night Live” rerun parodying him that aired in March 2019. But critics quickly [noted](#) – citing FCC Chairman Ajit Pai’s statements to Congress in 2018 – that, among other things, the First Amendment prevents this type of government retaliation based on a network’s content.



A “loose network of conservative operatives” is reportedly targeting journalists

In August, the Tracker [documented](#) The New York Times’s [reporting](#) that a “loose network of conservative operatives allied with the White House” is pursuing “an aggressive operation to discredit news organizations deemed hostile to President Trump by publicizing damaging information about journalists.” These operatives reportedly dig through the social media histories of journalists at top news outlets in order to publicize information that could discredit the outlet as a whole. The New York Times [reported](#) that this is “the latest step in a long-running effort by Mr. Trump and his

allies to undercut the influence of legitimate news reporting.” The group has already released information about journalists at CNN, The Washington Post, and The New York Times – frequent targets of Trump’s attacks – with plans to disclose more [“as the 2020 election heats up.”](#)

California Congressman Devin Nunes filed three lawsuits against the news media in 2019 and accused CNN and The Daily Beast of “criminal activity”

In late November, Rep. Devin Nunes (R-Calif.) said during a Fox News interview that [he planned to sue CNN and The Daily Beast](#), alleging that they had [“very likely”](#) engaged in [“criminal activity”](#) in connection with their reporting that a witness was prepared to testify that he had met with former Ukrainian Prosecutor General Victor Shokin in Austria in 2018. When asked whether Nunes had met with the Ukrainian prosecutor, Nunes declined to answer, instead dismissing the articles as [“fake news.”](#) Nunes [sued CNN for defamation](#) on Dec. 3, 2019, in a federal court in Virginia. CNN moved to transfer and dismiss the case, but at the time of publication, the court had not decided either motion yet.

Nunes filed a total of [six lawsuits](#) in 2019, including two other suits against media entities and journalists. In April, he sued McClatchy, parent company of his hometown newspaper The Fresno Bee, over a story [about a lawsuit against a winery](#) in which he had invested. And he [sued](#) journalist Ryan Lizza and Esquire Magazine publisher Hearst Magazines, Inc. over a 2018 article [about Nunes’ relatives moving a family farm to Iowa](#).

Nunes sued McClatchy in Virginia, even though the company is based in California, and also sued San Francisco-based Twitter and multiple parody accounts (named “Devin Nunes’ cow” and “Devin Nunes’ Mom”) in Virginia. These and other lawsuits with tenuous connections to Virginia [prompted an outcry](#) that libel plaintiffs were using Virginia courts to exploit the state’s weak protections for defamation defendants and avoid states that would have discouraged such suits. California, for example, [has a strong “anti-SLAPP” law](#) (aimed at discouraging [“strategic lawsuits against public participation”](#)) that allows defendants to quickly dismiss meritless lawsuits and obtain attorneys’ fees. In February 2020, both chambers of the Virginia legislature [passed bills](#) “that would make it harder to pursue frivolous lawsuits designed to chill free speech,” but the General Assembly failed to move a bill to final passage.

Indiana's governor demanded the retraction of an investigative story

Threats to press freedom also came from state and local governments in 2019. In a highly unusual move in November, Indiana Gov. Eric Holcomb [sent cease-and-desist letters](#) to *Reveal* from the Center for Investigative Reporting and the Indianapolis Star, [demanding that they retract a story](#) about injuries at Amazon warehouses. The story included allegations that Holcomb had intervened in a state effort to absolve Amazon of responsibility in the death of a worker at one of its fulfillment centers during a time when Indiana was competing to host Amazon's planned second corporate headquarters. Holcomb disputed that he was involved, and the Indianapolis Star published a [new story](#) about Holcomb's letter. The news outlets added a clarification about the dispute but did not pull the story.



Conclusion

As we look back on 2019, it is impossible not to look ahead to the rest of 2020. The world is facing a global health crisis, which could [reshape society](#) in lasting ways. The free press is more important now than ever. Yet court closures and restrictions on access to public records, meetings, and spaces – while sometimes necessary to limit the spread of COVID-19 – can also [unduly obstruct](#) the rights of the public and press and prevent the new media from being able to provide the public with the information it needs. The Reporters Committee published [resources](#) monitoring such restrictions and outlining recommendations for journalists, legislators, and courts to ensure the press and public’s right of access to government information and proceedings is protected while entities take necessary steps to stop the spread of the coronavirus. A year from now, in next year’s report, we’ll see how we did.

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