

PRESS FREEDOMS

in the United States **2018**



A Review of the U.S. Press Freedom Tracker

MAY 2019

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Press Freedoms in the United States 2018

A Review of the U.S. Press Freedom Tracker

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Special thanks to the Gannett Foundation, whose funding made this report possible.

References to the tracker and Reporters Committee resources are hyperlinked
throughout this report; additional sources are cited in end notes.

The tracker data referenced herein is current
as of May 3, 2019, the date of publication.

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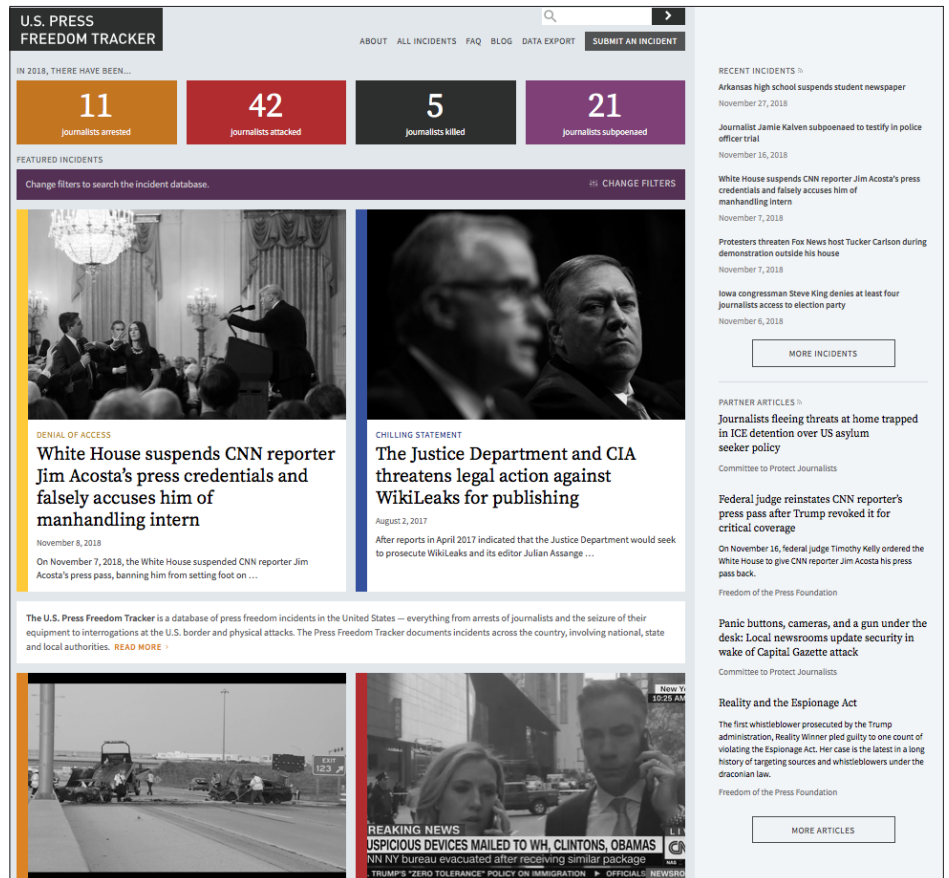
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About the U.S. Press Freedom Tracker

While the First Amendment has served as a powerful model for free speech and free press protections abroad, the United States news media has experienced increasing hostility in recent years, stoked by virulent attacks from politicians. In January 2017, the Reporters Committee for Freedom of the Press, joined by more than two dozen press freedom groups, recognized the need for “[c]onstant vigilance and an honest accounting” of the country’s record on press freedoms. Those groups subsequently created the [U.S. Press Freedom Tracker](#), founded on the principle that “[w]hen [journalists are obstructed, so is the public’s right to be informed and hold power to account.](#)”

In its second year, the tracker has 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, the tracker 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 tend to be under-reported. The tracker also highlights serious denials of access and chilling statements by public officials. In an effort to better monitor the negative rhetoric aimed at the press, the tracker has recently continued a project started by the Committee to Protect Journalists to track President Donald Trump’s tweets about the media, individual journalists, news outlets, or journalistic sources that are [“critical, insinuating, condemning, or threatening.”](#)

The tracker’s steering committee, led by CPJ, 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 website. The Reporters Committee annually surveys the tracker’s data to assess what it means for its work in the courts and in furtherance of legal protections for journalists. This report covers calendar year 2018, with a few exceptions where recent events in 2019 warrant attention because of their relevance to events in 2018.



The U.S. Press Freedom Tracker as seen on December 31, 2018. Via Wayback Machine

OVERVIEW

In 2018, journalists and news organizations came under an unprecedented level of attack from politicians and the public alike. On June 28, a man walked into the *Capital Gazette*'s newsroom in Annapolis, Maryland, and [shot several people](#), killing four journalists and a sales assistant. A few months later, Jamal Khashoggi, a *Washington Post* columnist whose reporting had been critical of Saudi Arabia's government, was killed at the Saudi consulate in Turkey.¹ Widely accepted evidence indicates that the Saudi crown prince commissioned his murder.²



After a shooting that killed five of its employees, the Capital Gazette newsroom still published the next day's edition of The Capital. Photo by Patrick Semansky/Associated Press

Additionally, journalists in the U.S. continued to find themselves the targets of a dismaying number of physical attacks and threats across the country. The tracker reported [35 attacks, affecting 42 journalists](#), ranging from assaults on reporters in the field to [explosive devices mailed to CNN's offices](#). Troublingly, President Trump has not stopped using rhetoric that endorses violence against journalists. At a rally in October, [President Trump praised](#) Montana Congressman [Greg Gianforte](#) for “body slamming” a *Guardian* reporter in 2017. Unlike in 2017, where the majority of assaults occurred at protests, in 2018, only about [one-third of attacks occurred at demonstrations](#), most of which were at the hands of law enforcement.

The good news in 2018 was that there were fewer arrests of journalists—[only 11](#) compared to [34 in 2017](#), perhaps because fewer demonstrations with mass arrests occurred. But protests were again the most common place of arrest, although covering [court proceedings](#) and [law enforcement activities](#) also led to some arrests. As in 2017, [roughly half of the arrests](#) involved freelance journalists.

The year also saw an uptick in the number of subpoenas reported to the tracker for the records or testimony of journalists: from [six in 2017](#) to [26 in 2018](#). Most concerning was that, in two cases, federal agencies sought information from journalists—*New York Times* reporter [Ali Watkins](#) and law journal editor [Daniel Kowalski](#)—in an effort to identify their sources.

In 2018, the Trump administration's anti-media rhetoric [continued unabated](#), while the Justice Department, Department of Homeland Security, and White House press office took actions implicating press freedom. The Justice Department escalated its crackdown on federal employees who share government documents and information with journalists, prosecuting people at a quickening pace and securing dramatically harsher prison sentences than in earlier cases.

In 2018 alone, the Justice Department brought charges against [four people](#), versus 10 cases during the eight years of the Obama administration. [Anecdotal evidence](#) suggests that the increased attention on “leaks” has made it more difficult for reporters, particularly on the national security beat, to gather information from sources. This trend toward government secrecy undermines the public’s ability to hold elected officials accountable.

During the course of one of these investigations, the Justice Department seized years’ worth of emails and phone records from *New York Times* reporter [Ali Watkins](#) without her knowledge or consent after she published a story about a Trump campaign aide’s alleged ties to Russian agents. Despite the acquisition of voluminous records from Watkins, which could have exposed sources with no relation to the underlying investigation, the case only resulted in the prosecution of a government official for making false statements to federal agents, which led to a plea agreement and a [two-month prison sentence](#).

2018 BY THE NUMBERS

Deaths

0 **5**
2017 2018

Subpoenas

6 **26**
2017 2018

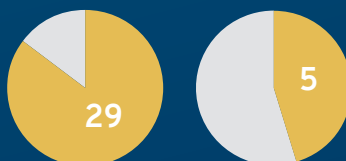
‘Leak’ cases

1 **4**
2017 2018

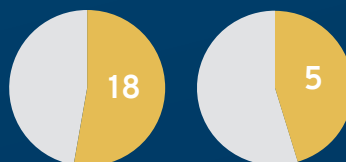
Arrests

34 **11**
2017 2018

Fewer arrests may be because fewer protests with mass arrests occurred in 2018.



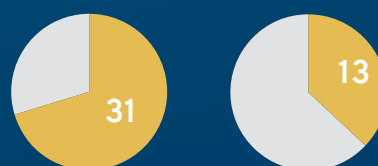
Protests remain the most common place for arrests.



Freelancers continue to make up about half of those arrested.

Attacks

46 **35**
2017 2018



Protests only comprised about one-third of attacks in 2018, meaning a larger share occurred in other situations than in 2017.

Prior restraints

1 **5**
2017 2018

Josh R. Moore/Reporters Committee

The Reporters Committee worked on these and related issues throughout the year and developed a suite of resources to help the public understand the leak investigations and their potential impact on the free flow of information. For instance, the Reporters Committee published a [comprehensive analysis](#) of the Watkins seizure, which occurred as part of the James Wolfe case; a historical [survey](#) of leak cases in the U.S. with an eye toward how a World War I-era spying law, the Espionage Act, is transforming into an anti-leak law; and a [primer](#) on foreign intelligence surveillance law and its potential impact on the press.

In the antitrust context, Trump reportedly ordered his staff to pressure the Justice Department to intervene in the AT&T/Time Warner merger, supporting concerns that the department's decision to challenge that merger may have been politically motivated. Ultimately, however, the courts rejected the challenge to the merger and permitted it to go forward. The Reporters Committee filed a [friend-of-the-court brief](#) in that matter, highlighting the concern that economic regulations like antitrust could be used to chill newsgathering and reporting.

In 2018, the Trump administration also used border stops to target journalists. The tracker documented [four of them](#), including [one photojournalist](#) who was stopped for secondary screenings each time she re-entered the U.S. after covering the migrant “caravan” in Mexico. Concerns began in 2018 regarding these stops, and in March 2019, the public learned that some of them may have been part of a formal program. A San Diego news station, NBC 7, reported that DHS had been tracking and keeping dossiers on journalists who were covering the migration from Central America at the U.S.-Mexico border as well as others.³ DHS also reportedly placed alerts on these journalists' passports, subjecting them to secondary screenings and causing some to be denied entry into Mexico.⁴ The Reporters Committee, NBC 7, and one of its reporters filed a [public records lawsuit](#) in April 2019, to obtain more information on these practices. Over the course of 2018, Customs and Border Protection also continued to search travelers' electronic devices at the border without a warrant, compromising journalists' ability to protect their sources and work product.⁵

The tracker also highlighted [several instances where journalists were denied access to government events](#). In the most high-profile incident, the White House press office [revoked CNN chief White House correspondent Jim Acosta's press pass](#) after he attempted to ask a follow-up question of Trump during a heated exchange at a news conference. Acosta and CNN sued to get his pass back and won. The court found that revoking Acosta's press pass without due process likely violated his Fifth Amendment rights. The Reporters Committee filed the [first friend-of-the-court brief](#) in the case along with the Institute for Constitutional Advocacy and Protection at Georgetown Law. Reporters Committee Executive Director Bruce Brown and ICAP Faculty Chair Neal Katyal authored an op-ed about the case.⁶

RCFP RESOURCES ON 'LEAKS'

- Everything we know about the Trump administration's first records seizure from a reporter
- Federal cases involving unauthorized disclosures to the news media, 1844 to the present
- How foreign intelligence surveillance law applies to the news media

35 PHYSICAL ATTACKS ON JOURNALISTS



People walked in silence during a vigil June 29, 2018, in Annapolis, Maryland, in response to a shooting in the *Capital Gazette* newsroom. The shooter killed four journalists and a sales assistant. *Patrick Semansky/Associated Press*

In Memoriam

Tragically, the tracker had to add a new category in 2018: killings of journalists. On June 28, 2018, an armed man entered the *Capital Gazette* newsroom in Annapolis, Maryland, and [shot several people](#)—killing journalists Rob Hiaasen, Gerald Fischman, John McNamara, and Wendi Winters, and sales assistant Rebecca Smith, and injuring two others. The suspected shooter previously sued the *Capital Gazette* for defamation

in connection with its reporting on his criminal case. He also reportedly had a history of threatening and harassing the newspaper's staff. Just one month before the *Capital Gazette* shooting, independent music journalist [Zachary Stoner was shot and killed](#) on May 30, while driving in downtown Chicago. Although the reasons for the shooting are not clear, the tracker's reporting suggests they may be related to his work as a journalist.

Killings of journalists in retaliation for their reporting have been rare in the U.S. Until the *Capital Gazette* shooting, the last time a newspaper journalist was killed was in 2007, when Oakland-based reporter Chauncey Bailey was shot after reporting on the financial and personnel problems of Oakland's Your Black Muslim Bakery.⁷ The *Capital Gazette* shooting put journalists on edge, prompting news organizations to provide increased security for their reporters at Trump rallies⁸ and to [“reevaluate their security infrastructure and procedures.”](#)

The tracker did not count the death of U.S.-based *Washington Post* columnist Jamal Khashoggi, who was killed in 2018, because it did not happen in the U.S. Khashoggi, a Saudi dissident and U.S. resident, was killed on October 2, during a visit to the Saudi consulate in Istanbul, Turkey.⁹ Widely reported evidence from U.S. intelligence agencies showed that the Saudi crown prince ordered the killing of Khashoggi, a former newspaper editor in Saudi Arabia, who had gone into exile and written critically of the Saudi regime.¹⁰ Despite this evidence and a Senate resolution condemning the crown prince for the murder, President Trump refused to hold him responsible.¹¹ CPJ said Trump's refusal to corroborate his intelligence agencies “signaled that countries that do enough business with the United States are free to murder journalists without consequence.”¹²

Even in the face of these deaths, the president has persisted in his verbal attacks on the media, discussed further below, including his repeated characterization of journalists as the

HOW CAN YOU STAY SAFE?

Take precautionary steps to limit and safeguard your personal information online. It is much easier to prevent online harassment, such as doxing (the publication of personal information online) by taking these steps ahead of time.

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.

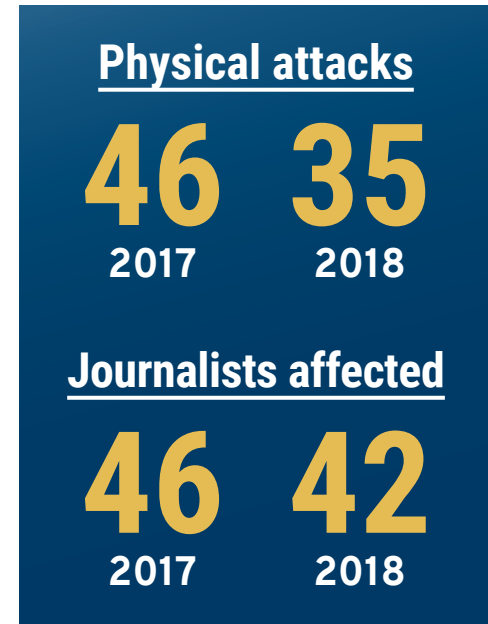
[CPJ's Journalist Security Guide](#) and [PEN America's Online Harassment Field Manual](#) are helpful resources.

[“enemy of the people.”](#) Many fear his rhetoric has contributed to a global crisis of press freedom that has emboldened people to attack journalists.¹³ Reporters have increasingly received threats of violence, particularly when they publish critical stories about Trump or he targets them on Twitter.¹⁴ For example, after the *Boston Globe* announced it would coordinate an editorial response to denounce Trump's attacks on the media, it began receiving calls from a California man who threatened to kill “every” *Globe* employee and echoed the president's rhetoric in calling the newspaper “the enemy of the people.”¹⁵

Concerns grow that anti-media rhetoric may be encouraging violence

In 2018, the tracker reported [35 physical attacks affecting 42 journalists](#), including explosive devices sent to newsrooms, attacks in the field, and assaults by police during demonstrations. Although it is impossible to tell whether the stream of anti-press rhetoric by government officials caused these attacks, many in the press freedom community are rightly concerned that it may have emboldened and inspired some of the attackers. For instance, the man who [pled guilty to sending pipe bombs](#) to CNN and others was known as a strong supporter of the president, as discussed below.

Troublingly, government officials have condoned violence against journalists. At a rally in October, [President Trump praised](#) Montana Congressman [Greg Gianforte](#) for “body-slamming” *Guardian* reporter Ben Jacobs in 2017. “Any guy that can do a body-slam,” Trump said, “he’s my guy.” In May, security guards at the Environmental Protection Agency prevented a number of journalists from entering the building where then-EPA administrator Scott Pruitt was giving a speech, and when [Associated Press reporter Ellen Knickmeyer](#) asked to speak with someone from the EPA’s press office about the matter, a security guard shoved her and pushed her by the shoulders out the door.¹⁶



Bombs and threats

On October 24, CNN’s New York bureau—a frequent target of Trump on Twitter—was evacuated after [staff found a pipe bomb in its mailroom](#). New York police removed the bomb, which resembled similar explosive devices sent to prominent Democratic political figures around the same time. Two additional bombs were later found, addressed to CNN and one of its commentators, at post offices near CNN’s offices in New York and Atlanta, Georgia. Authorities arrested Cesar Sayoc, a man living in a van in Florida covered with pro-Trump and anti-CNN stickers, in connection with the attempted bombings. A documentary filmmaker posted a video of the suspect attending a February 2017 Trump rally in which he can be seen holding an anti-CNN sign. Sayoc later pled guilty to criminal charges, including using a weapon of mass destruction and illegally mailing explosives with the intent to kill or injure people.¹⁷

On December 13, [at least 27 news organizations](#) reported receiving an email claiming that a bomb placed in their building would detonate if they did not pay a ransom in bitcoin. The threats turned out to be a hoax, but newsrooms reported taking them seriously, given the June 28 shooting in Annapolis.



CNN anchors Poppy Harlow and Jim Sciutto reported live during an evacuation of CNN's New York offices October 24, 2018, after a pipe bomb was found in the building's mailroom. Photo by Alexandria Neason/Columbia Journalism Review

Attacks on journalists in the field

Several journalists were attacked while reporting on local news in the field. In March, a man attacked local television news reporter [Bree Steffen](#) and photographer [Mike Gold](#) in San Diego while they were in the middle of a live shot. The man lunged at Steffen, injuring her wrist, and then knocked the video camera to the ground, breaking it. In April, [Tim Fleischer](#), a reporter for New York's ABC affiliate, was punched in the face by a stranger while filming a segment in Queens, New York. In June, reporter [Darryl Forges](#) and photographer [Linda Sargent-Nestor](#) with local Florida television station WTVJ were attacked by a stranger while doing a live shot on Miami Beach. In September, Associated Press video journalist [Josh Replogle](#) was reporting on flooding in rural North Carolina after Hurricane Florence when a man “knocked over his camera and began punching him in the face,” while his friends muttered “fake news.” “The ironic part is my video would have helped him,” Replogle said. “It would have brought attention to a small town” where there was flooding.

FIELD REPORTING SAFETY TIPS

1. Limit the use of one-person news crews when covering events in the field.
2. Be aware of your surroundings and keep an eye out for potential threats.
3. Learn more about staying safe while covering protests with the [Reporters Committee's tip sheet](#).

Some journalists see connections between these attacks in the field and the president's verbal attacks on the media. The Associated Press reported that "the attitudes unleashed" by President Trump's attacks on national news outlets "have filtered down to journalists on the street covering news in local communities across the country."¹⁸ Former Los Angeles TV news photographer Lori Bentley-Law published a blog post on why she was leaving her job after 24 years, explaining that when the president describes the press as enemies of the people, "attitudes shift and the field crews get the brunt of the abuse, . . . not just from one side. We get it all the way around, pretty much on a daily basis."¹⁹ Pennsylvania-based Chris Post, another photographer for a local television station, agreed: "The environment has changed. I've witnessed the transition."

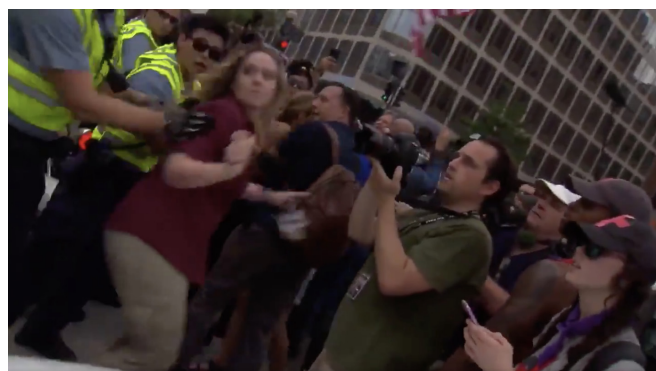
News stations and vehicles also became targets

In August, three journalists in Detroit—[local radio reporter Mike Campbell](#) and [local TV reporters Nia Harden and Mike Krotche](#)—were covering the scene of a fatal car crash when both of their vehicles were attacked by a man wielding a metal baton-like object. In September, a man repeatedly crashed his pickup truck into a [local Fox television station's studio](#) in downtown Dallas, Texas, yelling about "high treason." In October, [another man broke into the local Fox television station](#) in Washington, D.C., smashing the glass doors to the lobby. An armed security guard shot the man, who survived and was charged with burglary.

One-third of journalists were attacked at protests, in most cases by police

Approximately one-third of physical assaults on journalists ([13 of 35](#)) in 2018 occurred at protests. By contrast, in 2017, nearly 70 percent of the physical attacks on journalists ([31 of the 46 cases](#)) occurred at protests—perhaps due to a greater number of large demonstrations. In another change from the previous year, most of the attacks that occurred at protests in 2018 were at the hands of law enforcement ([9 out of 13](#)), while protesters were responsible for the remainder; in 2017, police officers were responsible for only about 30 percent of such attacks ([9 out of 31](#)).

Police in Washington, D.C., were responsible for three of these incidents, which occurred during a white supremacist rally and counter-rally on August 12. Police used a controversial tactic known as kettling to corral the crowd into a confined space, but instead of arresting people en masse (as they did during the Inauguration Day protest), they used physical force to try to control the crowd. Police violently shoved [CBS News producer Christina Ruffini](#), who was displaying her press credentials, and body-slammed [freelance photojournalist Craig Ruttle](#), who was carrying multiple cameras and displaying his press credentials at the time.



Washington, D.C., police officers shoved CBS producer Christina Ruffini while she was covering a protest August 12, 2018. Screengrab via CBS News

PHYSICAL ATTACKS ON JOURNALISTS

Another freelance photojournalist [Shay Horse](#)—who was arrested by police when he covered the Inauguration Day protest—described being shoved against a police van and hit in the face by a police officer while he was trying to take photographs of Jason Kessler, the organizer of the rally. Horse estimated that 10 to 15 people were pushed up against the van and that all but perhaps one of them were members of the press.

Police in Portland, Oregon, injured at least three journalists at a far-right protest and counter-protest on August 4. Local TV station photojournalist [Ric Peavyhouse](#) was shot with a “less-lethal” bullet while holding a large TV camera on his shoulder, and police with batons violently shoved independent journalist [Donovan Farley and photographer Doug Brown](#). Police tear-gassed and pepper-sprayed [photojournalist Liam Cohen](#) while he was carrying a large camera and wearing press credentials and a press patch, and an unknown person hit reporter [Eder Campuzano](#) from *The Oregonian* with a water bottle, causing his head to bleed.

Police in San Juan, Puerto Rico, shot Associated Press photojournalist [Carlos River Giusti](#) with rubber bullets during a demonstration in May, while another officer struck local newspaper reporter [José Encarnación](#) in the chest, knocking him to the ground, after he identified himself as a member of the press.

These assaults can have a chilling effect on journalists, deterring them from reporting on demonstrations or other events where their safety may be at risk. These incidents also demonstrate the need to engage with law enforcement about the dangers journalists face at protests—sometimes by police officers themselves—and the need to respect and protect journalists’ ability to gather the news.



The Oregonian reporter Eder Campuzano was hit with a water bottle by an unknown person August 4, 2018, while covering a protest in Portland, Oregon. Photo by Tyler Dumont/FOX 12 Oregon

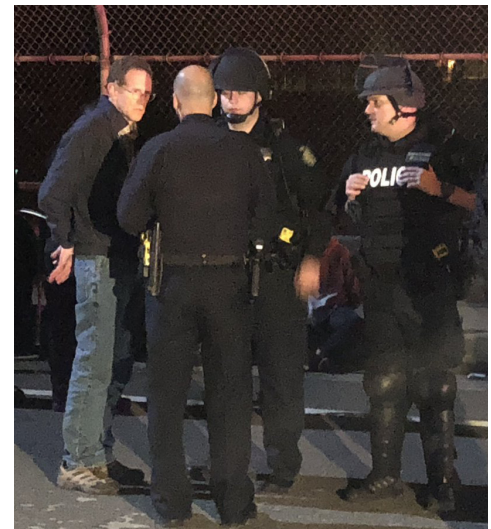
11 ARRESTS OF JOURNALISTS

2018 saw fewer journalists arrested, but protests were again the most common place of arrest

The number of reported arrests of journalists while doing their jobs dropped from [34 in 2017](#) to [11 in 2018](#), perhaps because there were fewer large demonstrations where multiple journalists were arrested. In 2017, the vast majority of arrests occurred at one of three protests—[Inauguration Day](#),²⁰ [Standing Rock](#), or [St. Louis](#)—where police kettled crowds into contained areas and then made mass arrests. However, this drop should not be taken as a sign that kettling and mass arrests are no longer a problem—[three journalists were arrested](#) in Sacramento on March 4, 2019, after being kettled by police while covering a protest following the district attorney’s announcement that she would not prosecute the officers who shot and killed 22-year-old Stephon Clark. A coalition of press freedom groups, led by CPJ and including the Reporters Committee, sent a letter to the Sacramento police chief,²¹ and police later informed at least one of the reporters that his arrest was [changed to a detention](#) in its records. The county prosecutor also dropped the charges against the journalists.²²

Protests were once again the most common place for a journalist to be arrested, with [five arrests](#) occurring at demonstrations in 2018. The cited reasons for these arrests included trespass, disorderly conduct, obstruction of a highway, and “failure to obey,” but in all of these cases, prosecutors either never brought formal charges against the journalists or dropped the charges. In one case, law enforcement dropped the criminal charges against [journalist Manuel Duran](#), who was arrested while covering an immigration protest, but transferred him into Immigration and Customs Enforcement’s custody. He has challenged his detention and deportation.

Freelance reporter Karen Savage was arrested twice (in [August](#) and [September](#)) while covering protests against the construction of the Bayou Bridge oil pipeline in Louisiana. Police arrested her under a newly enacted



Sacramento Bee reporter Dale Kasler, who was live-streaming a planned protest, was put in flexible cuffs March 4, 2019, by Sacramento police. Police arrested more than 80 people during the protest by kettling protesters and journalists. Photo by Nick Miller/Capital Public Radio News

law that makes it a felony punishable by up to five years in prison to trespass on a “critical infrastructure project,” even though Savage had obtained written permission to be on the property from one of the relevant landowners. Savage believed these arrests—which never led to formal charges—were designed to intimidate her and prevent her from reporting on the protests.

Journalists were also arrested while covering law enforcement activity and court proceedings

Some journalists were arrested while reporting on law enforcement activity and court proceedings. On July 5, Denver police officers arrested [Susan Greene, editor of the Colorado Independent](#), for attempting to record them as they interacted with a naked man on the sidewalk. Body camera footage released in the matter show the officers using physical force in arresting Greene, grabbing and twisting her arms, handcuffing her, and forcibly escorting her to a police car, while at the same time advising her to “act like a lady.” Police released Greene without charges. Notably, a growing consensus in the courts has recognized a First Amendment right to record police officers as they perform their duties in public.²³

On August 5, [Milwaukee Neighborhood News Service reporter Edgar Mendez](#) took photographs of the Milwaukee Police Department’s squad cars for a story on the local police department’s emergency response times. After leaving, police followed his car, pulled him over, arrested him, and brought him to the police station where they interrogated him, reviewed the photographs he took, and ordered him to delete three of them. He complied and was later released. Searches and seizures of a journalist’s work product by law enforcement, without consent or a warrant, generally [run afoul of the Fourth Amendment and the Privacy Protection Act](#).²⁴



Colorado Independent editor Susan Greene was arrested July 5, 2018, as she attempted to photograph the officers while they were on a public sidewalk in Denver. Screenshot of city of Denver body-cam footage via Colorado Independent

On October 2, [freelance journalist Zachary Siegel](#) was arrested while covering courtroom proceedings in the high-profile trial of Chicago police officer Jason Van Dyke for the murder of 17-year-old Laquan McDonald. Siegel had made an audio recording of the proceedings and inadvertently violated the court's order permitting only pool reporters to do so. The judge in that case—"notorious for strictly enforcing courtroom decorum"²⁵—found Siegel in contempt of court and sentenced him to three months of "[non-reported supervision](#)." Courts have discretion in adopting decorum orders and rules and ensuring compliance with them. Siegel's experience underscores the need for journalists covering court cases to research a court's rules and reputation in advance.²⁶



Freelance reporter Zachary Siegel was arrested October 2, 2018, while covering the murder trial of Jason Van Dyke in Chicago. Screenshot via WLS-TV

Nearly half of the arrests involved freelancers

[Five of the 11 arrests](#) in 2018 involved freelancers, including traditional journalists, photojournalists, and one videographer. In 2017, a little over half of those arrested (at least 18 of 34) were working in a freelance capacity.²⁷ Freelancers often have limited support and training 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](#) for reporters with legal issues.

REPORTERS COMMITTEE TIPS FOR AVOIDING ARREST

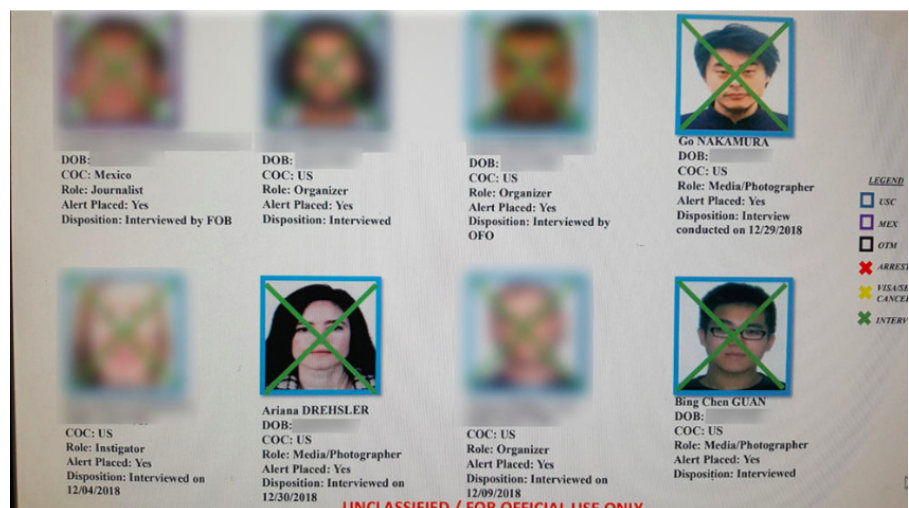
1. Wear press credentials prominently.
2. Always be polite, respectful, and professional when interacting with law enforcement.
3. Comply with orders from police officers, but you can calmly discuss your rights if you feel that doing so would violate those rights.
4. Pay attention to your surroundings and avoid breaking the law (e.g., by inadvertently trespassing on private property).
5. Review the [Reporters Committee's guide, *Police, Protesters, and the Press*, and tip sheet for covering protests](#).

4 BORDER STOPS

In early March 2019, NBC 7 San Diego broke the story that DHS officials had created a database tracking journalists covering immigration at the U.S.-Mexico border, as well as attorneys, activists, and others who have worked at the border.²⁸ The anonymous whistleblower who disclosed the documents also stated that DHS had created dossiers on each individual in the database.²⁹ The database included 10 journalists, some of whom have reported having alerts placed on their passports for secondary screenings, being detained and questioned about their work by border agents when trying to cross the border, and not being allowed to enter Mexico.³⁰ This report includes the NBC 7 story because it appears that border agents began targeting journalists—such as [Ariana Drehsler](#), who was listed on the watchlist³¹—at the end of 2018. In fact, three of the [five journalists](#) whose cases were recorded by the tracker in 2018 were stopped at the U.S.-Mexico border—all in December—and subjected to secondary screenings. They were [asked about people crossing the border illegally and details about migrant shelters in Mexico](#), as well as [shown photographs of people from the group of migrants and asked for information about them](#). Two of these journalists were also asked to [open their cameras and show their photographs](#) to CBP officers.

Revelations about CBP's tracking of journalists and others prompted a public outcry. The Reporters Committee and other press freedom groups have expressed

concerns about this practice and have pushed CBP officials for a meeting. In addition, on April 22, 2019, attorneys for the Reporters Committee [filed a lawsuit](#) on behalf of itself, NBC 7 San Diego, and one of NBC 7's reporters, seeking public records from DHS and a number of its



An image of a Department of Homeland Security database that tracks journalists who cover immigration issues at the U.S.-Mexico border. Screenshot of exhibit to complaint in the Reporters Committee/NBC 7 public records lawsuit

components, including ICE and CBP, regarding these practices.

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.³² In 2017, CBP conducted 30,000 warrantless device searches at the border, more than triple the number just two years earlier.³³ In September 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.³⁴ The plaintiffs argue that before conducting such searches, the government must obtain a warrant based on probable cause to suspect a violation of immigration or customs laws. The Reporters Committee and the Knight First Amendment Institute at Columbia filed a [friend-of-the-court brief](#) in support. The district court denied the government's motion to dismiss the case, finding that the plaintiffs can sue for violations of their First and Fourth Amendments rights, and allowed the case to proceed.³⁵

REPORTERS COMMITTEE TIPS FOR REPORTERS AT THE BORDER

1. Make sure your electronic devices are password-protected and that you have logged out of your email and other apps used for communicating.
2. Use end-to-end encrypted communications services like Signal and ensure that messages on your device are set to auto-delete.
3. Clear your devices of sensitive information, to the extent possible. For instance, Chromebooks have a "Powerwash" feature that allows you to completely wipe the computer of accounts and data.
4. 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 if you do so, you may be subject to additional detention and questioning.
5. 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.
6. If an officer searches or takes your electronic device, write down the officer's name and get a receipt for your property.
7. If you have questions about journalists' rights when crossing the border, contact the [Reporters Committee's hotline](#).

4 DOJ 'LEAK' PROSECUTIONS

One of the most troubling trends in 2018 was the acceleration of federal prosecutions against government employees for sharing government material and information with the news media. The Trump administration has now prosecuted [six people](#), four of them in 2018, and has expanded on the high water mark set by the Obama administration, which prosecuted 10 leaks over eight years.³⁶ Equally alarming were the unprecedented and harsh prison sentences those prosecuted received. In the space of three months, the Trump administration secured the longest sentence ever in a leak case (Reality Winner) and the second-longest (Terry Albury).³⁷

In 2017, as the Justice Department's leak investigations were ramping up, the government brought charges against [Reality Winner](#), a 25-year-old Air Force veteran and federal contractor. Winner was indicted under the Espionage Act—a vaguely worded law enacted in 1917 to combat spying attempts—for allegedly giving a top-secret document to *The Intercept*, detailing Russian hacking attempts on electronic voting systems in the U.S. In recent years, the government has used the Act to prosecute disclosures of government documents and information “relating to the national defense” in cases other than traditional espionage, where government employees disclose information to the news media.³⁸ As noted, Winner pled guilty and was sentenced in August 2018 to [63 months in prison and three years of supervised release](#)—by far the longest sentence anyone has ever received for disclosing information to journalists.³⁹

'Leak' prosecutions

1	4
2017	2018

In 2018, the Justice Department indicted [four additional people](#). In March, former FBI agent [Terry Albury](#) was charged with two counts under the Espionage Act for leaking classified documents to *The Intercept*. Albury allegedly disclosed secret guidelines for the FBI's use of informants, surveillance of journalists, and other topics.⁴⁰ He pled guilty and sought probation in the case, explaining that this was an “act of conscience” motivated by a desire to alert the public to potential abuse at the FBI.⁴¹ In October, the district court sentenced Albury to [four years in prison and three years of supervised release](#). Then-U.S. Attorney General Jeff Sessions [heralded the lengthy sentence](#) as “a warning to every would-be leaker in the federal government that if they disclose classified information, they will pay a high price.”

On June 7, federal prosecutors indicted [James Wolfe](#), the longtime director of security for the Senate Select Committee on Intelligence, for making false statements to FBI agents who had interviewed him while investigating disclosures of classified information to journalists. During the investigation into Wolfe, the FBI seized years' worth of emails and phone records from *New York Times* reporter Ali Watkins, with whom Wolfe had previously had a personal relationship, without Watkins' knowledge or consent, as discussed further below.⁴² This was the first known



Former FBI agent Terry Albury walked out of the courthouse in St. Paul, Minnesota, on October 18, 2018, after being sentenced to four years in prison for leaking classified documents to a reporter. Shari L. Gross, Copyright 2018, Star Tribune

seizure of a reporter's records by the Trump administration.⁴³ The complaint in the case suggests that a story Watkins published about Trump campaign aide Carter Page's alleged ties to Russian intelligence prompted the FBI to launch a leak investigation that ultimately swept in Wolfe.⁴⁴ The Reporters Committee prepared a [comprehensive series of resources](#) in the case, including an annotation of the complaint, a detailed timeline, and a series of open questions.

Also in June 2018, prosecutors charged former NSA and CIA staffer [Joshua Schulte](#) with multiple violations of the Espionage Act, the Computer Fraud and Abuse Act, and several other federal laws for leaking sensitive CIA files to WikiLeaks.⁴⁵ 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. At the time of publication, Schulte was awaiting trial.

On October 16, [Natalie Mayflower Sours Edwards](#), an official in the U.S. Treasury's financial crimes division, was arrested and charged with disclosing to a BuzzFeed News reporter "suspicious activity reports" that detailed suspicious banking transactions made by Russian diplomats and Trump associates. Although these reports were not classified, federal 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 BuzzFeed News reporter Jason Leopold. Edwards' case was still pending at the time of publication.

DOJ 'LEAK' CASES UNDER THE TRUMP ADMINISTRATION

June 2017

Reality Winner, a 25-year-old Air Force veteran and federal contractor, was the first person indicted during the Trump administration for leaking classified information to a reporter.

August 2018

Reality Winner pled guilty and was sentenced to 63 months in prison, plus three years of supervised release.

January 2019

John Fry, an IRS employee, was indicted for unlawfully disclosing financial information to a reporter.

March 2018

Terry Albury, a former FBI agent, was charged with leaking classified documents to *The Intercept*.

June 2018

Joshua Schulte, a former NSA and CIA staffer, was indicted for multiple charges related to leaking sensitive CIA files to WikiLeaks.

James Wolfe, director of security for the Senate Select Committee on Intelligence, was indicted for making false statements to FBI agents during their investigation of disclosures of classified information to journalists.

October 2018

Terry Albury pled guilty and was sentenced to four years in prison, plus three years of supervised release.

Natalie Mayflower Sours Edwards, an employee in the U.S. Treasury's financial crimes division, was indicted for unlawfully disclosing financial information to BuzzFeed News.

Although this report focuses on 2018, it is important to note one additional 2019 case. Just one month after William Barr's confirmation in January 2019 as the new attorney general, a second IRS employee, [John Fry](#), was charged with unlawfully disclosing information and documents detailing financial transactions involving President Trump's former attorney Michael Cohen. Fry reportedly shared documents and information with prominent attorney Michael Avenatti and confirmed their contents to *New Yorker* reporter Ronan Farrow.

Additionally, during Barr's confirmation hearing, he was asked whether the Justice Department, under his leadership, would consider jailing a journalist. After a long pause, Barr equivocated, saying he "could conceive of situations where . . . , as a last resort," a news organization or journalist could be held in contempt of court.⁴⁶ Although Attorney General Barr was likely referring to a criminal or civil subpoena to force a reporter to disclose anonymous sources, the question posed by Sen. Amy Klobuchar, Democrat from Minnesota, echoed statements by Obama's first attorney general, Eric Holder, who pledged he would not put reporters in jail for "doing their jobs."⁴⁷ It remains to be seen whether Barr's response marks a departure from the Holder Justice Department, but many anticipate Barr will continue to bring leak prosecutions.

If he does so, Barr would be building on his predecessor's record on leak matters. Attorney General Sessions previously said the Justice Department had increased the number of leak investigations to 27, up from nine, when he became attorney general, though it is unlikely that many or most of these involve members of the news media.⁴⁸

Sessions also [repeatedly refused to rule out prosecuting or jailing journalists](#) and said he would direct the Justice Department to review internal guidelines regarding the use of subpoenas, warrants, and similar types of legal demands to acquire journalists' records.⁴⁹ The current guidelines, amended in 2015 with input from a media coalition organized by the Reporters Committee, require that most such requests be approved by the attorney general, that the news media organization be notified if records are sought from a third party, and that "the government should have made all reasonable attempts to obtain the information from alternative, non-media sources."⁵⁰ These guidelines currently remain in place.



William P. Barr was sworn in as attorney general on February 14, 2019. During Barr's confirmation hearing, he was asked whether his Justice Department would consider jailing a journalist. After a long pause, Barr equivocated, saying he "could conceive of situations where . . . , as a last resort," a news organization or journalist could be held in contempt of court. White House photo by Tia Dufour

A survey of prominent national security reporters suggests that the aggressive prosecution of those who disclose government materials and information to the press has chilled the national security beat, discouraging those who might otherwise have shared important information about government activity and possible misconduct with journalists.⁵¹ This trend threatens the free flow of information to the public. Notably, four of the six leak prosecutions during the Trump administration pertain to leaks of information related to investigations into Russian interference. As Charlie Savage, *New York Times* reporter and Reporters Committee steering committee member, explained, leak investigations are particularly suspect because they can be used as a "backdoor attack" on a particular reporter.⁵²

REPORTERS COMMITTEE TIPS FOR PROTECTING YOUR SOURCES

1. 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.
2. Use encrypted communications apps, such as Signal, and set messages to auto-delete.
3. Keep in mind that your phone, text, or email metadata may be seized without notice by the government, and if it is accessed as part of a criminal investigation, it may disclose the identity of unrelated sources.
4. 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.

26 SUBPOENAS & LEGAL ORDERS

Another disturbing trend was the increase in subpoenas and legal orders reported to the tracker—from [six in 2017](#) to [26 in 2018](#). While the tracker does not capture all subpoenas, since most are not publicly reported, it documents those that receive some publicity. Troublingly, in two of these cases, federal agencies subpoenaed information from journalists in an effort to identify their sources.

As noted above, one of these cases involved *New York Times* reporter [Ali Watkins](#), whose email and phone records were seized by the Justice Department without her knowledge or consent. A CBP agent did, however, alert Watkins to a possible investigation in June 2017. CBP agent Jeffrey Rambo contacted Watkins and told her the Trump administration was interested in cracking down on leaks. He then referenced Watkins and Wolfe’s foreign travel together. CBP reportedly launched an internal investigation into Rambo’s actions.

In October, DHS subpoenaed [Daniel Kowalski](#), the editor of an immigration law journal, in an effort to identify the source of a leaked internal memo from ICE about changes to the government’s approach to asylum claims. This subpoena included a gag provision, requesting that Kowalski not disclose the existence of the subpoena. Kowalski said he would not comply and noted that he had not been properly served as required by the statute. ICE’s sister agency, CBP, previously issued the same type of subpoena or “summons” under 19 U.S.C. § 1509 to Twitter, demanding that it reveal the identity behind an “alt-government” account that had been critical of the Trump administration. [DHS later withdrew the subpoena](#), “and the DHS Office of Inspector General chastised CBP for misusing the statute.”

Several litigants used subpoenas to try to obtain information from journalists who had reported on their activities or misconduct. For example, in May, [Republican fundraiser Elliott Broidy](#) subpoenaed the Associated Press over hacked emails it had used as the basis for a story about Broidy’s efforts to use his influence with President Trump to undermine Qatar’s standing in Washington.⁵³ The Associated Press stated that they planned to fight the subpoena.

Subpoenas and legal orders

6 26
2017 2018

Note: Subpoenas are particularly difficult to monitor and tend to be under-reported.



New York Times reporter Ali Watkins’ email and phone records were seized by the Justice Department without her knowledge or consent. Screenshot via MSNBC’s “The Last Word with Lawrence O’Donnell”

Also in May, former University of Arizona coach Craig Carter subpoenaed [Arizona Daily Star reporter Caitlin Schmidt](#), who had been covering his case, seeking information about Schmidt's communications with a woman whom Carter had allegedly assaulted and who had sued him for civil damages. Schmidt and the *Star* convinced the court to quash the subpoena.

In November, independent journalist [Jamie Kalven](#) successfully opposed a second subpoena to testify in trials related to the police killing of Chicago teenager Laquan McDonald. Kalven's reporting on McDonald's death in 2015—showing that he had been shot 16 times throughout his body, contrary to the official police narrative—led to a criminal investigation and multiple prosecutions.⁵⁴ Kalven was subpoenaed in [2017](#) to testify in the murder trial of Chicago police officer Jason Van Dyke, who was ultimately convicted of second-degree murder and aggravated battery.⁵⁵ This time, the former police detective charged with covering up the murder subpoenaed Kalven, who again moved to quash, citing the Illinois reporter's privilege. The Reporters Committee [filed a friend-of-the-court brief](#) on behalf of a media coalition in support of Kalven. The defendant [withdrew his subpoena](#) before the judge ruled on Kalven's motion.

At the end of 2018, a hedge fund manager sued independent journalist [Teri Buhl](#) in a totally sealed case in New York state court with the goal of forcing Buhl to disclose her source in connection with her reporting on his involvement in a possible securities fraud matter. With financial help from the [Press Freedom Defense Fund](#),⁵⁶ Buhl secured counsel and convinced the court to unseal the entire case and dismiss the action. The [Reporters Committee](#) and a media coalition⁵⁷ filed friend-of-the-court briefs in support.

REPORTERS COMMITTEE TIPS IF YOU RECEIVE A SUBPOENA

1. 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.
2. 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](#) for journalists.
3. If you need financial assistance to help cover legal costs, you can apply to the [Press Freedom Defense Fund](#) (pressfreedom@firstlook.org).
4. Never destroy the materials sought in the subpoena, as this could subject you to criminal and civil penalties.
5. 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.
6. If you feel comfortable doing so, please [report your subpoena to the tracker](#).

5 PRIOR RESTRAINTS

Prior restraints occur when a court prohibits the media from publishing information it already has in its possession. Although these cases are typically rare given the First Amendment’s protections, 2018 saw a flurry of [five prior restraint cases](#) reported on the tracker and a sixth case where a school district unsuccessfully tried to have two reporters and a newspaper held in contempt for publishing information that the school district had inadvertently disclosed.⁵⁸ Fortunately, the courts quickly struck down the prior restraints in all of these cases, after attorneys for the press pointed to a long line of Supreme Court cases consistently rejecting such restrictions on the news media.

Prior restraints

1	5
2017	2018



In February 2018, the Nevada Supreme Court ruled that a lower court’s order barring the Las Vegas Review-Journal and the Associated Press from disseminating or reporting on anonymized autopsy records for victims of the October 1, 2017, Las Vegas mass shooting was an unconstitutional prior restraint. The Reporters Committee, joined by the Nevada Press Association, filed an amicus brief in support of the newspaper. Photo via Wikimedia Commons

“

To allow this prior restraint to stand would defy decades of well-established U.S. Supreme Court case law, send a chilling message to the press and the public by calling into question the news media’s ability to report on public records, and provide virtually no protection for the asserted privacy interests at stake...”

— Reporters Committee for Freedom of the Press, in an amicus brief to the Nevada Supreme Court

DENIALS OF ACCESS



A White House intern reached for the microphone held by CNN's Jim Acosta as he questioned President Donald Trump during a news conference November 7, 2018. The White House briefly suspended Acosta's security pass following the news conference. Photo by Jonathan Ernst/Reuters

The tracker highlighted [several instances](#) in 2018 where the government denied access to reporters, which may indicate that past issues with access to the Trump White House persist and could be worsening. In some of those instances, the denial appeared to be related to the journalist's questions or coverage.

In the most high-profile example, on November 7, the White House briefly suspended the security "hard" pass of [CNN's Jim Acosta](#) and denied him access to the White House after he attempted to ask a follow-up question of Trump during a heated exchange at a news conference. During the exchange, Trump said Acosta was "a rude, terrible person" who "shouldn't be working for CNN." Sanders first tried to justify the unprecedented suspension by falsely accusing Acosta of aggressive contact with a White House intern, who tried to take the microphone from Acosta.

CNN filed a lawsuit on November 13, seeking the reinstatement of Acosta's press pass. CNN's lawsuit was supported by multiple friend-of-the-court briefs, including [one by the Reporters Committee](#), which was filed at the same time as the CNN complaint. A judge quickly ruled that the White House had likely violated Acosta's Fifth Amendment rights by revoking his hard pass without due process.

The White House soon backed down and reinstated Acosta's pass, but it also [instituted new rules](#) of behavior for journalists during news conferences, including limits on follow-up questions. Notably, in a tweet earlier that year, President Trump suggested that members of the media whose coverage he perceived as negative [should have their credentials "take\[n\] away."](#) Reporters Committee Executive Director Bruce Brown and the faculty advisor for the Institute for Constitutional Advocacy and Protection, Neal Katyal, co-signed an op-ed in *POLITICO*, noting that the Acosta pass may have been quickly reinstated but challenges to access remain.⁵⁹

In addition, what used to be called "daily" White House press briefings became increasingly rare in 2018. President Trump said he directed Press Secretary Sarah Huckabee Sanders to forego the tradition of holding daily White House press briefings because "the press covers her so rudely & inaccurately, in particular certain members of the press."⁶⁰ 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,⁶¹ but as of publication, Sanders had not held a briefing in 53 days.⁶²

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. On May 23, 2018, a federal district judge ruled in their favor, finding that the "interactive space" associated with President Trump's Twitter account constitutes a public forum, and the First Amendment therefore bars him from blocking critics based on their viewpoint.⁶³ At the time of publication, that decision is on appeal to the Second Circuit.⁶⁴



White House Press Secretary Sarah Huckabee Sanders has continued to set records for the longest periods between on-camera press briefings. Photo via Wikimedia Commons

CHILLING STATEMENTS

Threats and verbal attacks on the press

In 2018, verbal attacks against the news media only intensified, with President Trump leading the onslaught. He continued to try to undermine reporting he perceived as critical by calling it “[fake news](#)” and referring to news organizations as the “[enemy of the people](#).” The tracker highlighted [eight of the most egregious chilling statements](#) made to members of the media by politicians—all but two of which were made by the president.

In January, the president vowed to take a “[strong look](#)” at libel laws and protections for the press when reporting on public officials. He also attempted (but failed) [to stop the release](#) of a book that was critical of his administration. In May, he suggested that members of the media whose coverage of him was perceived as negative [should have their credentials “take\[n\] away;”](#) in November, the White House press office revoked Jim Acosta’s press pass, as discussed above. In September, the president suggested that *The New York Times*’ decision to publish an anonymous op-ed by a high-level official within Trump’s administration constituted “treason”⁶⁵ and said he was [considering legal action](#), although he did not pursue it. He also called for the Justice Department to investigate who had authored the piece. In October, Trump [fondly recalled how Representative Greg Gianforte, Republican from Montana, “body-slammed” a journalist](#) the year before. In November, when asked about a recent poll showing that 49% of respondents believed Trump had encouraged politically motivated violence, [Trump responded by blaming reporters for “creating violence by not writing the truth.”](#)

TRUMP TWEETS INCLUDING:

‘Enemy of the people’

4	18
2017	2018

‘Fake news’

171	187
2017	2018

Source: [Tracker database of Trump’s tweets](#)

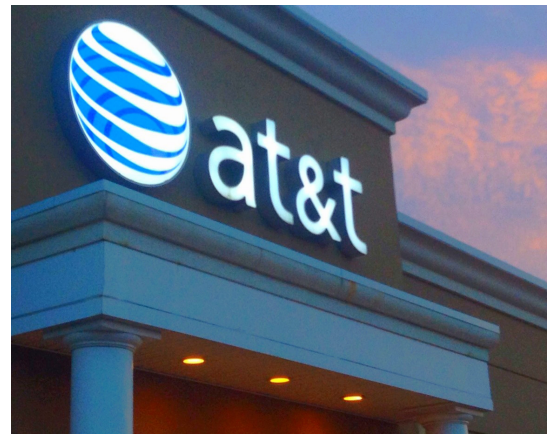
To better document the president’s attacks against the media via Twitter, the tracker has continued [a project begun at CPJ](#) to record every tweet critical of the media.

The president’s rhetoric continued to create an increasingly dangerous climate for journalists, both here and especially abroad, where it has provided cover to dictators who jail journalists.⁶⁶ This rhetoric may have affected not only foreign dictators but the American public. According to a 2018 Quinnipiac University poll, 26% of American voters—and 51% of Republicans—described the media as the enemy of the people (though 65% recognized that the news media “is an important part of democracy”).⁶⁷

ANTITRUST

In 2018, Trump’s threats may have also prompted government action. In addition to the Justice Department’s decision to ramp up leak prosecutions, reporting by *The New Yorker* confirmed suspicions that Trump also attempted to push the Justice Department to block the merger of CNN’s parent company, Time Warner, with AT&T.⁶⁸

According to *The New Yorker*, a few months before the Justice Department filed suit against AT&T in 2017, Trump met with John Kelly, then-chief of staff, and Gary Cohn, then-director of the National Economic Council, and urged Cohn to pressure the Justice Department to stop the merger. Cohn reportedly warned Kelly not to contact the Justice Department as they left the meeting.⁶⁹ *The New Yorker* pointed out that the deal would have benefited the parent company of CNN, a frequent target of Trump’s ire due to its critical coverage of him, and hurt CNN’s competitor and Trump’s favored network, Fox News.⁷⁰ *The New York Times* previously reported that [White House advisors](#) discussed possibly using the merger as leverage over CNN.⁷¹



Despite the Justice Department’s decision to challenge the AT&T-Time Warner merger, the courts ultimately decided its legality, providing an important check on the executive branch’s power. Photo by Mike Mozart via Flickr/CC 2.0

The Justice Department has “repeatedly assured the public” that Trump was not involved in its decision to challenge the merger,⁷² but these revelations nevertheless are a reminder that government actors can easily repurpose antitrust laws to punish or pressure specific news organizations. In fact, this has happened before. Oval Office tape recordings from the early 1970s showed that President Richard Nixon plotted to use the threat of an antitrust suit against the big three television networks—ABC, CBS, and NBC—to extort favorable coverage.⁷³

Despite the Justice Department’s decision to challenge the merger, an independent judge ultimately decided its legality, providing an important check on the executive branch’s power. That judge approved the deal after a six-week trial, though he did not permit discovery into the Justice Department’s motives for bringing the suit.⁷⁴ The Justice Department appealed this decision, and the Reporters Committee filed a [friend-of-the-court](#) brief in September, asking the appellate court to clarify that discovery is available in cases involving threats to press freedom. In February 2019, the D.C. Circuit Court of Appeals affirmed the trial court’s decision without reaching the question posed by the Reporters Committee’s brief.⁷⁵

CONCLUSION

This is a critical time for press freedoms. The president's verbal attacks against members of the media have coincided with an increasingly tense and violent atmosphere for journalists. Public concern is growing that this rhetoric may have shifted to more concrete attacks on press freedom using the powers of the executive branch.

In 2018, the Reporters Committee and the tracker documented ramped-up criminal prosecutions against journalists' sources in the government, the seizure of years' worth of a reporter's email and phone records without notice or consent, the creation of dossiers on journalists who cover the U.S.-Mexico border, the revocation of a journalist's White House press pass for asking follow-up questions, and a possible attempt by the president to block a merger in retaliation for coverage perceived as negative. These attacks highlight the ever-present threat that, despite the broad legal protections for press freedom under the First Amendment, government officials may use their authority to target particular journalists or news organizations for political reasons.

It is therefore imperative that the American public and our political representatives denounce these attacks that are designed to undermine a free press in this country. It is critical to our democracy that journalists can do their jobs and report on government malfeasance without fear of surveillance and retaliation. The U.S. must continue to set the benchmark for freedom of speech and of the press and serve as a beacon of these cherished principles abroad.

These attacks highlight the ever-present threat that, despite the broad legal protections for press freedom under the First Amendment, government officials may use their authority to target particular journalists or news organizations for political reasons.

STAY UP-TO-DATE

Keep up with the latest on U.S. press freedom issues throughout the year by signing up for the Reporters Committee's monthly newsletter: rcfp.org/subscribe

ENDNOTES

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