

## **RACIALIZED, JUDAIZED, FEMINIZED: IDENTITY-BASED ATTACKS ON THE PRESS**

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The press is under a growing and dangerous form of attack through identity-based online harassment of journalists. Armies of online abusers are strategically using a variety of rhetorical tools (including references to lynching, the Holocaust, rape and dismemberment) to intimidate and silence non-white, non-male and non-Christian journalists. Such expressive violence joins the mounting physical dangers faced by reporters both in the United States and around the world. Unsurprisingly, identity-based harassment of reporters has increased at the very moment that news organizations are attempting to enhance the diversity of the professional press.

The psychic and physical harms of such attacks on individual journalists are finally beginning to be publicly discussed. But the scale and intensity of identity-based assaults pose threats that extend far beyond the individual. Simply put, they collectively undermine *all* journalists, the function of journalism as a whole, and the press itself as a democratic institution. This Article seeks to highlight these threats to journalism and center them as key challenges for democracy. It analyzes the factors that most contribute to this growing democratic peril, including the professional self-monitoring and self-censorship inevitable in conditions of harassment, the likely effects of reporter intimidation on news organization diversity, and the inadequate responsive steps undertaken so far by news organizations and social media platforms.

The true nature and scope of the threats is obscured when reporter harassment is viewed in isolation and with insufficient attention to its identity-focused virulence. Zooming out, this Article identifies reporter harassment as one of three reinforcing tactics designed to hobble journalism at critical inflection points in its lifecycle. The Trump administration's refrain of 'fake news' worked to undermine public faith in *press output*. Critiques of libel law then and now seek to roll back press-protective *judicial*

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*outcomes*. And identity-based verbal violence threatens to undercut and paralyze the *journalistic process*. While racial, ethnic and misogynistic vitriol may at least sometimes be generated ‘bottom up’ by members of the audience, it reinforces and extends elite press-delegitimizing strategies by coordinating and leveraging new publics and new targets. One need not be a conspiracist to charge that reporter harassment, by threatening the core work of newsgathering and reporting, closes the circle on the press delegitimization schemes that surfaced during the Trump years.

Finding realistic ways to counteract and stem online identity-based abuse is an imperative next step if the press is to perform its constitutionally-recognized role under current conditions of existential threat. In that spirit, the Article suggests a varied menu of ameliorative moves directed to a spectrum of actors: news organizations, journalists, journalism schools, press-protective organizations, social media platforms, and social science researchers. News organizations must have obligations to protect their reporters from online harassment. Yet traditional legal responses currently seem insufficient to achieve such goals. Even so, business imperatives and professional norms create incentives for fruitful change. Once news organizations recognize and reframe reporter harassment as a systemic attack on journalism and their own institutional authority and vitality (rather than an individual problem for particular reporters), the immediate need to craft more effective responses will become self-evident. Like news organizations, social media platforms should adopt effective protective obligations, if only for their own self-interest. Press allies should provide support particularly for journalists lacking access to the resources of the institutional press. Finally, the success of all these suggested initiatives will rely on deeper, more inclusive and well-funded empirical research by social scientists. Specific recommendations aside, the key point is that collective, rather than individual, solutions across a range of constituencies offer the only realistic counterweights to the tsunami of harassment faced by reporters today.

***Warning:*** Please note that because it discusses identity-based online harassment targeted principally to journalists who identify as African American, Jewish and/or women, this Article contains discussion of white supremacist and misogynist material that readers are likely to find offensive, upsetting, and traumatizing. I include it neither to create

*difficulties for readers nor for sensationalism, but to provide a realistic lens into what journalists—and particularly non-male journalists and journalists from racial, ethnic, and/or religious minority communities—must face online when engaging in their constitutionally-grounded professional activities today.*

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## INTRODUCTION

Invocations of lynching, gas chambers and misogynistic torture have been widely deployed in attacks on American journalists at least since Donald Trump's presidential candidacy in 2016 and continue today. The logo "*Rope. Tree. Journalist. Some assembly required.*"<sup>1</sup>—flaunted on a MAGA supporter's t-shirt at a 2016 Trump rally—was not an accidental and idiosyncratic association destined to fade away with electoral change. In November 2020, an African American television anchor was threatened with lynching after the presidential election.<sup>2</sup> Rioters at the January 6, 2021 attempted coup at the Capitol fashioned a noose out of a journalist's camera cord and hung it on a tree.<sup>3</sup> The online world expands and amplifies such

<sup>1</sup> The "*Rope. Tree. Journalist. Some Assembly Required.*" logo appeared on a t-shirt worn by a Trump supporter at a pro-Trump rally in Minneapolis, Minnesota in 2016. See Brandy Zadrozny, *The Man Behind 'Journalist, Rope, Tree'*, DAILY BEAST (Apr. 13, 2017), <https://www.thedailybeast.com/the-man-behind-journalist-rope-tree>. Obviously, the logo—in what purports to be a veiled and "humorous" reference—advocates lynching reporters. The image showed an elderly woman and a young girl around him, apparently laughing. *Id.* (reproducing image). On the use of "humor" and "irony" as a cover for spreading hate speech via memetic culture, see discussion *infra* at Section I.B.

Anyone could have bought such a shirt at Walmart until 2017. Walmart, which sold the shirts, only pulled them from the shelves in November of 2017, in response to complaints by the Radio Television Digital News Association (RTDNA). *Walmart Pulls 'Rope. Tree. Journalist.' T-Shirt from Site*, CBS NEWS (Nov. 30, 2017), <https://www.cbsnews.com/news/walmart-pulls-rope-tree-journalist-t-shirt-from-site/>; Kristen Hare, *'Rope. Tree. Journalist' T-Shirt Was on Sale at Walmart.com Until RTDNA Spoke Up*, POYNTER (Nov. 30, 2017), <https://www.poynter.org/reporting-editing/2017/rope-tree-journalist-t-shirt-was-on-sale-at-walmart-com-until-rtdna-spoke-up/>.

A conservative blogger took credit for having originated the meme years before its appearance at the Trump rally. See, e.g., Zadrozny, *supra* (citing Emperor Misha I, Posting to *Fame Delayed is Fame Denied*, THE ANTI-IDIOTARIAN ROTTWEILER (November 8, 2016), <http://nicedoggie.net/?p=12372>). Tellingly, this claim would have dated the meme to President Obama's first term.

<sup>2</sup> Ken Boddie (@kenboddie), TWITTER (Nov. 17, 2020, 5:20 PM), <https://twitter.com/kenboddie/status/1328825483350327296> ("[Y]ou black ugly n\*\*\*\*\*. You need to be wrapped in chains and hung by your . . .") (This Article does not spell out the full "N word" as it appears in the original tweet). The rest of the message does not appear on the Twitter post. See Ken Boddie, *In His Own Words: Ken Boddie Reacts to Racist Letter*, KOIN, <https://www.koin.com/news/in-his-own-words-ken-boddie-reacts-to-racist-letter> (Nov. 18, 2020, 4:56 PM); see also Gary Harki, *When Writing About Race, Abuse Follows. Especially for Journalists of Color and Women*, POYNTER (Mar. 12, 2021), <https://www.poynter.org/ethics-trust/2021/when-writing-about-race-abuse-follows-especially-for-journalists-of-color-and-women/>; *infra* Section I.A.

<sup>3</sup> See, e.g., Tiffany Hsu & Katie Robertson, *Covering Pro-Trump Mobs, the News Media Became a Target*, N.Y. TIMES (Jan. 6, 2021) (citing Paul McLeod (@pdmcleod), TWITTER (Jan. 6, 2021, 5:11 PM), <https://twitter.com/pdmcleod/status/1346942367543091200?s=20>),

racialized attacks. Evidencing its focus on identity, online harassment also reveals chilling patterns of Judaized hate and violent misogyny.<sup>4</sup> Jewish journalists receive messages with photoshopped images of their faces in Nazi gas chambers,<sup>5</sup> while tweeters comment “Why do Jews get so triggered when we mention ovens?”<sup>6</sup> Women journalists fear opening Twitter lest they face leering sexism, misogyny<sup>7</sup> and promises to rape, dismember and kill them.<sup>8</sup> These examples are far from

<https://www.nytimes.com/2021/01/06/business/media/media-murder-capitol-building.html>.

<sup>4</sup> See discussion *infra* at Section I.A.

With respect to terminology, I follow the AP’s recent decision, following the Anti-Defamation League, to shift from “anti-Semitism” to “antisemitism.” Merrill Perlman, *The AP and the Latest Style*, COLUM. JOURNALISM REV. (Apr. 29, 2021), [https://www.cjr.org/language\\_corner/associated-press-stylebook-2021-changes.php](https://www.cjr.org/language_corner/associated-press-stylebook-2021-changes.php); see *Spelling of Antisemitism vs. Anti-Semitism*, ADL, <https://www.adl.org/spelling> (last visited May 18, 2022). I also typically refer to “African American” or “Black” journalists, rather than journalists or reporters “of color” more generally. I use the term “non-male” to include nonbinary and gender diverse reporters. I refer to journalists who identify as women as “women journalists” or “non-male journalists.”

<sup>5</sup> See, e.g., SAMUEL WOOLLEY & KATIE JOSEFF, ANTI-DEFAMATION LEAGUE CTR FOR SOC’Y & TECH., COMPUTATIONAL PROPAGANDA, JEWISH-AMERICANS AND THE 2018 MIDTERMS: THE AMPLIFICATION OF ANTI-SEMITIC HARASSMENT ONLINE 4 (2018) [hereinafter 2018 ADL Report],

<https://www.adl.org/resources/reports/computational-propaganda-jewish-americans-and-the-2018-midterms-the-amplification>; see also ANTI-DEFAMATION LEAGUE TASK FORCE ON HARASSMENT & JOURNALISM, ADL REPORT: ANTI-SEMITIC TARGETING OF JOURNALISTS DURING THE 2016 PRESIDENTIAL CAMPAIGN, ANTI-DEFAMATION LEAGUE TASK FORCE ON HARASSMENT AND JOURNALISM 8 (2016) [hereinafter 2016 ADL REPORT], [https://www.adl.org/sites/default/files/documents/assets/pdf/press-center/CR\\_4862\\_Journalism-Task-Force\\_v2.pdf](https://www.adl.org/sites/default/files/documents/assets/pdf/press-center/CR_4862_Journalism-Task-Force_v2.pdf) (similar reports).

<sup>6</sup> Emma Green, *The Tide of Hate Directed Against Jewish Journalists*, THE ATLANTIC (Oct. 19, 2016), <https://www.theatlantic.com/politics/archive/2016/10/what-its-like-to-be-a-jewish-journalist-in-the-age-of-trump/504635/> (“*The Atlantic’s* editor in chief, Jeffrey Goldberg, was one of the handful of most frequently targeted journalists. In June, he wrote about some of the tweets he’s recently received, including a cartoon of the U.S. ‘Jewpreme Court,’ a picture of money coming out of an oven, and a tweet that asked, ‘Why do Jews get so triggered when we mention ovens?’”).

<sup>7</sup> See, e.g., Charlotte Klein, “*I’m Afraid To Open Twitter*”: Next-level Harassment Of Female Journalists Is Putting News Outlets To The Test, VANITY FAIR (Mar. 26, 2021), <https://www.vanityfair.com/news/2021/03/harassment-of-female-journalists-is-putting-news-outlets-to-the-test>.

<sup>8</sup> Recently, Washington Post columnist and former New York Times Public Editor Margaret Sullivan wrote about receiving “viciously misogynistic name-calling and sexualized fantasies about dismembering me.” David Bauder, *Journalists Demanding More Action Against Online Harassment*, ABC NEWS (June 9, 2021), <https://abcnews.go.com/Technology/wireStory/journalists-demanding-action-online-harassment-78173081>; see also Margaret Sullivan, *Online Harassment of Female Journalists is Real, and It’s Increasingly Hard to Endure*, WASH. POST (Mar. 14, 2021), [https://www.washingtonpost.com/lifestyle/media/online-harassment-female-journalists/2021/03/13/ed24b0aa-82aa-11eb-ac37-4383f7709abe\\_story.html](https://www.washingtonpost.com/lifestyle/media/online-harassment-female-journalists/2021/03/13/ed24b0aa-82aa-11eb-ac37-4383f7709abe_story.html). See

exceptional. They reflect the traditional preoccupations and political agendas of white supremacist groups—hatred principally focused on African Americans, Jews, and assertive women<sup>9</sup>—as expressed against the “enemy” of the American people.<sup>10</sup> Online attacks today thus embrace identity-focused vitriol with two goals: to terrify and silence the targeted reporters

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generally Sarah Eberspacher, Note, *‘Delete Your Account’ or Deal With It? How News Organizations are Failing to Support Female Reporters Against Online Harassment*, 21 *GEO. J. OF GENDER & L.* 143 (2019).

<sup>9</sup> I focus on Black, women and Jewish reporters because both social science studies and anecdotal reports from journalists and media analysts indicate that these groups comprise the vast majority of the reporters facing abuse online. A 2018 study by the Anti-Defamation League (ADL) underscores that the two key subjects of white supremacist hate are Blacks and Jews. ANTI-DEFAMATION LEAGUE CTR. ON EXTREMISM, *NEW HATE AND OLD: THE CHANGING FACE OF AMERICAN WHITE SUPREMACY* 14 (2018), <https://www.adl.org/new-hate-and-old-the-changing-face-of-american-white-supremacy-report> (describing white supremacy’s focus on Blacks and Jews); see also ANTI-DEFAMATION LEAGUE CTR. ON EXTREMISM, *WHEN WOMEN ARE THE ENEMY: THE INTERSECTION OF MISOGYNY AND WHITE SUPREMACY* 15 (2018), <https://www.adl.org/resources/reports/when-women-are-the-enemy-the-intersection-of-misogyny-and-white-supremacy>; ANTI-DEFAMATION LEAGUE CTR. FOR TECHNOLOGY & SOCIETY, *ONLINE HATE AND HARASSMENT: THE AMERICAN EXPERIENCE 2021* (2021) [hereinafter ADL, *ONLINE HATE*], <https://www.adl.org/online-hate-2021> (reporting that African American respondents experienced a “sharp rise in race-based harassment, from 42% last year to 59% this year.”); *U.S. White Supremacist Propaganda Remained at Historic Levels in 2021, With 27 Percent Rise in Antisemitic Messaging*, ADL, <https://www.adl.org/resources/reports/us-white-supremacist-propaganda-2021> (last visited Mar. 28, 2022); see *infra* Section I.A.

This focus is in no way intended to sideline other identities or to minimize or discount the identity-focused online harassment also experienced by reporters who are, *inter alia*, LGBTQ+, nonbinary, Muslim, Latinx, Asian American and/or have disabilities. In fact, ADL has recently reported that the “levels of online harassment based on identity remain disturbingly high” across the range of marginalized groups. ADL, *ONLINE HATE*, *supra* at 7. For example, significant anti-Asian harassment was reported last year. See, e.g., Rebecca Sun, *Asian Americans in Media: ‘You Can’t Extricate the Humanity of Yourself From the Journalist,’* HOLLYWOOD REP. (Apr. 15, 2021), <https://www.hollywoodreporter.com/lifestyle/lifestyle-news/asian-americans-in-media-you-cant-extricate-the-humanity-of-yourself-from-the-journalist-4158009/>. Fifty-seven percent of the Muslim respondents to ADL’s *ONLINE HATE AND HARASSMENT* survey, see *supra* at 7, reported religion-based harassment. Sixty-four percent of the LGBTQ+ respondents reported online abuse. *Id.* at 13.

Despite differences, the otherization of Black, Jewish and women journalists (particularly if such reporters also have other, intersectional identities) is illustrative of, and useful in thinking about, abuse expressed against reporters whose identities are linked to other marginalized groups. It is also likely that the racist, antisemitic and misogynistic attacks on Black, Jewish and women reporters are intended to—and do—send strong signals of intimidation and silencing to reporters with other marginalized identities.

<sup>10</sup> See, e.g., Michael Grynbaum, *Trump Calls the News Media the ‘Enemy of the American People,’* N.Y. TIMES (Feb. 17, 2017), <https://www.nytimes.com/2017/02/17/business/trump-calls-the-news-media-the-enemy-of-the-people.html>; see also Matt Carlson et al., *Digital Press Criticism: The Symbolic Dimensions of Donald Trump’s Assault on U.S. Journalists as the ‘Enemy of the People,’* 9 *DIGIT. JOURNALISM* 737, 739 (2020).

(while sending a chilling message to journalists from other marginalized groups), and to undermine the press as a whole.<sup>11</sup> Such racialized, Judaized and misogynistic online harassment has particularly harmful effects, not only for the targeted journalists but also for the press as an institution with a critical role in democracy. This issue deserves a central place in democratic discourse both because of its human toll and its socio-political consequences.

Unsurprisingly, identity-based attacks on the press are happening at the very moment when news organizations are beginning to focus on their own discriminatory pasts, attempting to diversify the newsroom, and responding to modern calls for increased self-consciousness about the racial impacts of the structures and processes of their profession.<sup>12</sup> The goals of these techniques of press harassment are obviously to terrify and silence the reporters, influence the content of press coverage, deter diverse voices in journalism, chill newsgathering, and exacerbate doubts about the press in the public mind.

Online harassment has been weaponized by the ease of collective action online, Internet virality strategies, “humorous” presidential invitations to do violence to the media,<sup>13</sup> the memetic turn that makes “ironic racism” hard to identify<sup>14</sup> and

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<sup>11</sup> See, e.g., *Troll Patrol Findings: Using Crowdsourcing, Data Science & Machine Learning to Measure Violence and Abuse Against Women on Twitter*, AMNESTY INT’L [hereinafter *Troll Patrol Findings*], [https://decoders.amnesty.org/projects/troll-patrol/findings#what\\_did\\_we\\_find\\_container](https://decoders.amnesty.org/projects/troll-patrol/findings#what_did_we_find_container) (last visited March 12, 2022); J. Clara Chan, *Washington Post Defends Reporter Seung Min Kim After ‘Racist and Sexist Attacks’ by ‘Vicious’ Online Trolls*, THE WRAP (Feb. 25, 2021), <https://www.thewrap.com/washington-post-defends-reporter-seung-min-kim-after-racist-and-sexist-attacks-by-vicious-online-trolls/>; Gina Masullo Chen, et. al., *You Really Have to Have a Thick Skin’: A Cross-cultural Perspective on How Online Harassment Influences Female Journalists*, 21 JOURNALISM 877 (2020); Laura E. Adkins, *Israeli Reporter Interrupted with Anti-Semitic Slurs During Broadcast at Capitol*, TIMES OF ISR. (Jan. 7, 2021), <https://www.timesofisrael.com/israeli-reporter-interrupted-with-anti-semitic-slurs-during-broadcast-at-capitol/>; Green, *supra* note 6; Mathew Ingram, *Every 30 Seconds, A Female Journalist or Politician is Harassed on Twitter*, COLUM. JOURNALISM REV. (Dec. 19, 2018), [https://www.cjr.org/the\\_media\\_today/female-journalists-harassed-twitter.php](https://www.cjr.org/the_media_today/female-journalists-harassed-twitter.php); Anne Helen Petersen, *The Cost of Reporting While Female*, COLUM. JOURNALISM REV. (2018), [https://www.cjr.org/special\\_report/reporting-female-harassment-journalism.php](https://www.cjr.org/special_report/reporting-female-harassment-journalism.php).

<sup>12</sup> See discussion *infra* Section II.B.

<sup>13</sup> See, e.g., Michael M. Grynbaum, *Trump Tweets a Video of Him Wrestling ‘CNN’ to the Ground*, N.Y. TIMES (July 2, 2017), <https://www.nytimes.com/2017/07/02/business/media/trump-wrestling-video-cnn-twitter.html> (“President Trump posted a short video to his Twitter account on Sunday in which he is portrayed wrestling and punching a figure whose head has been replaced by the logo for CNN.”).

<sup>14</sup> See discussion *infra* Section I.B.

news organizations' affirmative requirement of online engagement by reporters.<sup>15</sup> But the threat of online harassment is also amplified by the worldwide increase in physical danger for reporters.<sup>16</sup> Today, journalists must fear not only the onslaught of online attacks, but increased threats of physical violence—even by police charged with protecting them. Journalists identifying as racial or ethnic minorities and non-male journalists in particular are faced daily with the recognition that they are neither psychologically nor physically safe.

Confronting the combination of online and physical violence has doubtless alarmed reporters, affected their personal and professional routines, hampered them in the practice of journalism, generated problems and division in the newsroom—and has even led to departure from the profession.<sup>17</sup>

But the impact goes beyond individual self-censorship. Identity-based online harassment of reporters otherizes not only the individual recipients but is designed to sideline and undermine the entire press project.<sup>18</sup> *Inter alia*, talent drain from the profession, a negative effect on news organizations' attempts to improve their own diversity, and self-censorship in coverage are all likely to increase existing public distrust in the press. The predictable self-censorship in response to harassment will influence, at least to some degree, what is covered, by whom, and how. To the extent that this self-censorship principally affects reporting seeking to diversify coverage and make up for news organization failures in the past, it portends a particularly regressive effect on the evolution of the press into the future.

The type of otherization based on entrenched biases may be particularly difficult to dislodge, both for its individual targets and for public perceptions of the press. This may be especially likely at times of political polarization. Identity-based harassment can end up normalizing abuse as it increases in scale. It can also invite new adherents to white supremacist ideas. When the terms of attack associate the press with otherwise socially embedded biases, they may be more subconsciously effective at least for some publics than merely abstract critiques

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<sup>15</sup> See discussion *infra* Section I.C.

<sup>16</sup> See discussion *infra* Section III.

<sup>17</sup> See discussion *infra* Section I.A.

<sup>18</sup> See, e.g., Silvio Waisbord, *Mob Censorship: Online Harassment of US Journalists in Times of Digital Hate and Populism*, 8 DIGIT. JOURNALISM 1030, 1037 (2020) [hereinafter Waisbord, *Mob Censorship*]; see also discussion *infra* Section I.A.

of the “fake news” media. Therefore, the associations may be more difficult to counteract and uproot through traditional methods of building institutional trust.

This suggests that the rise of identity-focused attacks on journalists should also be assessed in its broader political context. The Trump administration and its allies sought to undermine the effectiveness, credibility and legitimacy of the press in a number of ways. First came presidential candidate Donald Trump’s promises to reduce legal protections for journalistic activity.<sup>19</sup> Then came former President Trump’s attack on the “fake news” mainstream press during his term.<sup>20</sup> Finally, the repeated characterization of the media as the “enemy” of the American public<sup>21</sup> foreseeably invited targeted attacks on journalists engaging in newsgathering and reporting.

The overall strategy appeared designed to hobble journalism at critical inflection points in its entire lifecycle. Thus, the ceaseless refrain of “fake news” would undermine public faith in *press output*—what the press publishes. Critiques of libel law would seek to roll back press-protective *judicial outcomes*. And identity-based verbal violence would seek to intimidate press workers in order to undercut and paralyze the *journalistic process* (therefore also casting doubt on the credibility of media *output*.) From this vantage point, online harassment can be seen as the third leg of a three-pronged delegitimization program targeting different temporal moments in the journalistic process. Success in this tripartite strategy could undermine the press’s

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<sup>19</sup> From former President Trump’s calls to shut down press protections in defamation law to recommendations by Justices Gorsuch and Thomas to reconsider the protections of *New York Times v. Sullivan*, stability in press law has been challenged in both the court of public opinion and in the courts themselves. See, e.g., *Berisha v. Lawson*, 141 S. Ct. 2424, 2424–30 (2021) (Gorsuch, J. & Thomas, J., dissenting from denial of certiorari); see also AMY GAJDA, *THE FIRST AMENDMENT BUBBLE: HOW PRIVACY AND PAPARAZZI THREATEN A FREE PRESS* 3 (2015) (describing reduction in press-protective judicial decisions).

<sup>20</sup> The media’s output was attacked as “fake news” and press institutions (perhaps other than Fox) were demonized as the “enemy” of the American people. See, e.g., Grynbaum, *supra* note 10. Scholarly as well as conversational attention has rightly been paid to the obvious Trumpian strategy of delegitimizing the mainstream press. See, e.g., Ronnell Andersen Jones & Lisa Grow Sun, *Enemy Construction and the Press*, 49 ARIZ. ST. L.J. 1301, 1303 (2017); Lili Levi, *Real “Fake News” and Fake “Fake News,”* 16 FIRST AMEND. L. REV. 232, 234 (2018).

<sup>21</sup> See, e.g., Grynbaum, *supra* note 10 (describing Trump’s “enemy” rhetoric); Daniel Politi, *Trump Cheers Supporters Who Harassed Reporter at Anti-Lockdown Protest: “Great People,”* SLATE (May 16, 2020), <https://slate.com/news-and-politics/2020/05/trump-cheers-supporters-harassed-reporter-lockdown-protest-great-people.html>.

constitutional function and further diminish the public's belief in the legitimacy of the mainstream institutional media.

When seen holistically—as a long-range strategy of undermining and decentering the press—there is reason to believe that the three-pronged approach has had some troubling success. Doctrinally, courts are beginning to question the stability of press-protective precedents.<sup>22</sup> The ceaseless drumbeat of Trump's "fake news" claims appears to have reinforced previously-declining public faith in the press. And even though the election of President Biden put the brakes on official Executive branch press-bashing for purposes of delegitimization, it did not put a stop to the parallel (albeit sometimes more decentralized) strategies of journalist harassment. If the journalists gathering the news to tell the mainstream media's stories are threatened and silenced, or even if campaigns of harassment trigger responsive changes to the press' traditional routines and practices, the goal of hamstringing the press will have been significantly advanced.

Having identified harassment of journalists as a particularly disruptive strategy then raises the question of what should be done in response. This Article makes recommendations aimed at news organizations, journalism schools, reporters and journalist-representative organizations, scholars, and social media companies. It does so because each can play an important and interlocking positive role. It should become clear to *all* participants that campaigns of online intimidation and harassment against one reporter are actually campaigns against all reporters and require a united front in response.

The Article recognizes that at least five contextual complexities attend any attempts to craft corrective recommendations.<sup>23</sup> Mindful of those concerns, the Article first argues that news organizations must have obligations to their employees to protect them both from physical violence and

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<sup>22</sup> See discussion *infra* Section IV.

<sup>23</sup> Specifically, recommendations must be made with full awareness of the following: the dangers of seeking to micro-manage the press; reportorial ambivalence in light of the professional capital offered by social media engagement; the variety in the new media landscape and the evolution of online harassment; concerns about amplifying harasser voices; the many players involved in the process of news dissemination and the differences among their content-management practices; and concerns about recommending evidence-based changes in light of lacunae in existing empirical research. See discussion *infra* Section V.A.

online abuse.<sup>24</sup> Racial, ethnic, religious and misogynistic harassment online is violence of a different sort and calling for reportorial “grit” or a “thick skin” does not satisfy the news organizations’ obligations—which should be recognized, if not yet wholly and extensively in law, then in professional practice.<sup>25</sup> There are existing legal protections against workplace harassment and discrimination, anti-cyberbullying statutes, privacy-protecting torts and good arguments for extending fiduciary duties to employees, but formal interpretations, limited footprints, and the possibility of contracting around certain obligations may make the existing legal tools insufficiently robust protections. While we await further reporter-protective developments in legal doctrine, professional norms and institutional self-interest can and should be read to impose such obligations.

Without presuming to be overly directive, the Article recommends well-designed protocols applicable across the board for surfacing and analyzing such expressive violence, appropriate abuse-report processes, changes made to the organizations’ social media presence policies, attention paid to security training, resources devoted to mental health in the newsroom, and newsroom diversification and culture change. News organizations must also recognize, as they engage in their expressed goals of expanding diversity in their ranks, that merely hiring reporters who add to newsroom racial, ethnic or gender diversity is not enough. Resources must be spent on creating collaborative and inclusive newsrooms in which all reporters feel supported in responding in a variety of ways to the various forms of intimidation to which they are now subjected. And without giving white supremacists another platform, information about these campaigns of intimidation and harassment should be publicized, shared with scholars for study, brought to the attention of the social media platforms on which they occur (and the public), and serve as the subject of government lobbying.

As for journalism schools, the Article recommends that specific attention be paid to the phenomenon of online harassment of reporters as a distinct tool in the contemporary attacks on the legitimacy of the press globally. Reporters as well—and those who represent them, such as unions, press organizations, media lawyers and law school-based media law

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<sup>24</sup> See discussion *infra* Section V.B.

<sup>25</sup> See discussion *infra* Section V.B.

clinics—should create networks to share information about these attempts to intimidate, assess legal options, offer mentorship, and provide resources to freelancers and news organizations too financially challenged to respond adequately to the current landscape of threat.<sup>26</sup> This is particularly important for freelance news workers who do not have other access to institutional resources.

Social media as well—over which much online harassment is generated and transmitted—must consider ameliorative suggestions as to tech tools, algorithmic and user-facing design, reporting processes, terms of service enforcement, and data transparency.<sup>27</sup> In light of public disapproval and activist calls for regulation, effective attention by the platforms themselves is now a matter of self-preservation.

In addition, much empirical and analytic work by researchers still needs to be done to help direct reform efforts.<sup>28</sup> The Article therefore offers a research agenda for scholars. For example, researchers should correct the paucity of empirical studies focusing on the experiences of African American journalists. They should also study further the impacts of public exposure to identity-based attacks on reporters. The Article also reinforces the need for independent researcher access to social media platform information to aid in advancing empirical study of online harassment.

The Article proceeds in five sections. Section I describes the current picture of identity-based online harassment against the press, focusing on African American journalists, women, and journalists perceived to be Jewish; sketches the memetic turn designed to avoid criticism; and explains both the institutional push to engage online and the institutional failures in addressing the harassing results. Section II explores the consequences of online attacks on journalists personally, on their professional routines, and on the journalistic function writ large. The Section argues that those expressive threats familiar to white supremacy have not only hurt and minimized non-white, non-male and non-Christian reporters but also have delegitimized the press and

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<sup>26</sup> See discussion *infra* Section V.C.

<sup>27</sup> For pragmatic reasons, I call for negotiated steps on all those fronts rather than relying principally on formal legal change, although negotiating in the shadow of likely regulation can offer significant negotiating advantages. See discussion *infra* Section V.D.

<sup>28</sup> See discussion *infra* Section V.E.

undermined journalism as a whole. Section II also situates the harassment dynamic in the context of news organizations' developing attempts to increase diversity in the newroom. Section III outlines the rise in physical violence and threats of violence against the press, especially by law enforcement during political protests and in politically-incited attacks by private parties. The Section argues that online threats must be seen as only one part of a mosaic of threats facing journalists in their work. Section IV situates the expressive and physical violence described in the previous Sections in what amounts to a broader, multifactorial approach to the delegitimization of the mainstream press. The Section contends that while this strategy was emblematic of the Trump administration, it has not disappeared with the election of President Biden. Finally, while recognizing the complexity of the issues and the response-related ambivalence of many reporters themselves, Section V considers ways forward, including recommendations for news organizations, journalism schools, scholars, press-representing organizations, reporters themselves and the social media platforms on which online harassment of journalists diffuses.

## I. ONLINE HARASSMENT OF JOURNALISTS

One of the most notable realities of current journalistic life is reporters' exposure to systematic online harassment and intimidation.<sup>29</sup> Although online attacks on reporters predated

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<sup>29</sup> Online harassment is an umbrella idea which covers a variety of ways in which individuals are attacked. *See, e.g.*, EMILY A. VOGELS, PEW RSCH. CENTER, THE STATE OF ONLINE HARASSMENT 5 (2021), <https://www.pewresearch.org/internet/2021/01/13/the-state-of-online-harassment/> (describing various forms of online attack); *see also* Avery E. Holton, Valerie Belair-Gagnon, Diana Bossio & Logan Monyneux, "Not Their Fault, but Their Problem": Organizational Responses to the Online Harassment of Journalists, JOURNALISM PRAC., July 2021, at 7 (describing three distinct forms and degrees of harassment); Kaitlin C. Miller, *Hostility Toward the Press: A Synthesis of Terms, Research, and Future Directions in Examining Harassment of Journalists*, DIGIT. JOURNALISM, Oct. 2021, at 2–4 [hereinafter Miller, *Hostility Toward the Press*] (describing lack of consensus in the literature on defining harassment, suggesting "unwanted abusive behaviors" as an option, and focusing on the perception of the receiver rather than the intent of the speaker in defining harassment).

Because this Article focuses on racist, antisemitic and misogynistic attacks experienced by journalists online—what might be considered "*res ipsa*" harassment—it need not attempt to map the entire landscape of online harassment. In any event, while not every caustic expression of political disagreement should be classed as the sort of online harassment that threatens journalism and democracy, personal attacks or threats using a reporter's identity as a weapon to undermine the work of journalism easily fit the category.

the Trump presidency, journalists have reported increased virulence in online attacks and criticism since the start of the Trump administration.<sup>30</sup> Recent studies indicate that while journalists across the board have been subjected to online attacks,<sup>31</sup> Black, Jewish and women journalists are particularly

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While there are numerous newspaper articles and social science studies on online harassment of reporters, I am particularly indebted to Professor Silvio Waisbord's excellent scholarship on this issue in the field of media studies. See generally Waisbord, *Mob Censorship*, *supra* note 18; Silvio Waisbord, *Trolling Journalists and the Risks of Digital Publicity*, *JOURNALISM PRAC.*, Sept. 2020 [hereinafter Waisbord, *Trolling Journalists*]. I agree entirely with Professor Waisbord's argument that online harassment should not be seen as a safety problem, but rather as "a speech issue with huge implications for journalism." Waisbord, *Mob Censorship*, *supra* note 18, at 1041. In sympathy with Waisbord's analysis, this Article argues that contemporary mob censorship's particular focus on racial and ethnic minority and women journalists leads to particularly harmful consequences for both reporters and the press as a whole.

<sup>30</sup> Eberspacher, *supra* note 8, at 152–53; see, e.g., Mark Follman, *Trump's "Enemy of the People" Rhetoric Is Endangering Journalists' Lives*, *MOTHER JONES* (Sept. 13, 2018), <https://www.motherjones.com/politics/2018/09/trump-enemy-of-the-people-media-threats/>.

<sup>31</sup> In light of former President Trump's attacks on the mainstream media, it might be assumed that online harassment, particularly by politically conservative commentators, would be both evenly distributed against all presumably "liberal" reporters and focused on (and responsive to) substantive political controversies. As noted in text, however, African American, Jewish and women reporters were more actively and virulently attacked, and race, ethnicity and gender were a distinct part of attacks on journalists in general as well.

The "learn to code" controversy in 2019 is an example. In that episode, journalists who had been fired in a series of mass layoffs were subjected to online harassment, nastiness and partisan attacks on Twitter and told that they should "learn to code." See *Learn to Code*, *KNOW YOUR MEME*, <https://knowyourmeme.com/memes/learn-to-code> (last visited Nov. 26, 2021) (explaining the "learn-to-code" meme and how 4chan users coordinated attacks in which they would continuously tweet "learn to code" to any laid-off journalist). Fox's Tucker Carlson reportedly chided the laid-off journalists for having failed to see the humor in the comments but said nothing about their context as part of a brigading pile-on attack:

[T]he "learn to code" suggestions were interspersed with memes of journalists being beheaded and hanged. Reporters who were Jewish, women, or people of color also received violently anti-Semitic, misogynist, and racist replies and messages. For some, the messages numbered in the hundreds and included death threats. Far from being mocking but ultimately innocuous advice, "learn to code" was part of a campaign originating on an anonymous message board to harass journalists widely disliked by the far right.

"There's this patina of plausible deniability where if people object to the harassment, you can call them a snowflake or say they're overreacting to a simple suggestion," Talia Lavin, the writer who first traced the campaign to its origin, tells CJR. "But it's not that I'm 'triggerred' by the simple phrase 'learn to code,' it's that it's coming from so many people, and alongside overt hate speech, which is clearly not a coincidence."

and viciously targeted. There is jaw-dropping anti-Black racism, antisemitism and misogyny against the press online.<sup>32</sup> These online comments—whether in newspaper comments sections, or email, or (most frequently) on social media such as Twitter—all too often demonstrate extreme disinhibition in their identity-based attacks on the targeted journalists themselves (rather than on the content of their published stories).

Terror hatched online can all-too-easily cross boundaries into the physical world.<sup>33</sup> Recent empirical study links online

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Zoe Beery, *The Troll Brigade Berates Laid Off Journalists*, COLUM. JOURNALISM REV. (Jan. 30, 2019), <https://www.cjr.org/analysis/learn-to-code.php>. When Twitter sought to control the use of the phrase “as part of a targeted harassment campaign,” conservative commentators “including Ben Shapiro, Donald Trump, Jr. and David Duke referenced the meme with one-off tweets, signaling to their followers to keep the pressure up, often adding that this was yet another example of a social media platform censoring conservatives.” *Id.*

<sup>32</sup> See, e.g., Eberspacher, *supra* note 8, at 150; Emma Marshak, *Online Harassment: A Legislative Solution*, 54 HARV. J. ON LEGIS. 501, 503 (2017); Waisbord, *Mob Censorship*, *supra* note 18 and sources cited therein.

Recent studies show that a vast number of Americans are subjected to online harassment. See, e.g., PEW RSCH. CTR., THE STATE OF ONLINE HARASSMENT (2021), <https://www.pewresearch.org/internet/2021/01/13/the-state-of-online-harassment/> (reporting that “41% of Americans have personally experienced some form of online harassment” and that online harassment has intensified since 2017 as “growing shares have faced more severe and multiple forms of harassment. For example, in 2014, 15% of Americans said they had been subjected to more severe forms of online harassment. That share is now 25%. There has also been a double-digit increase in those experiencing multiple types of online abuse—rising from 16% to 28% since 2014. This number is also up since 2017, when 19% of Americans had experienced multiple forms of harassing behaviors online.”) So why limit the focus and remedial suggestions here to journalists?

Without minimizing the impacts of online harassment on anyone targeted by it and the social harm of such widespread harassment, this Article focuses on the harassment of journalists because journalism provides a critical social benefit—one with constitutional recognition and significance. See Kaitlin C. Miller, *Harassment’s Toll on Democracy: The Effects of Harassment Toward US Journalists*, JOURNALISM PRAC., Dec. 2021, at 2 [hereinafter Miller, *Harassment’s Toll*] (arguing that because of journalists’ “unique position,” harassment of journalists threatens democracy). Identifiably negative effects of harassment on journalists constitute a threat to a fundamental democratic function—one beyond the general social harm of online harassment of individuals. Moreover, some media researchers have argued that journalists “face a unique level of oppression *because* they are journalists.” Miller, *Hostility Toward the Press*, *supra* note 29, at 13. On this view, harassment operates on journalists’ intersecting identities, with “journalist” as an aversive role that exacerbates the overall harassment grounded on other identity markers. *Id.* In addition, as a practical matter, it is easier to imagine concrete institutional steps to control or reduce online harassment of journalists than to solve for the online population as a whole.

<sup>33</sup> See, e.g., *47 Journalists Killed in 2017 / Motive Confirmed*, COMM. TO PROTECT JOURNALISTS, [https://cpj.org/data/killed/2017/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&start\\_year=2017&end\\_year=2017&group\\_by=loc](https://cpj.org/data/killed/2017/?status=Killed&motiveConfirmed%5B%5D=Confirmed&type%5B%5D=Journalist&start_year=2017&end_year=2017&group_by=loc)

attacks to physical attacks on female journalists.<sup>34</sup> Inciting physical threats, the recent past has seen a rise in “doxxing” online<sup>35</sup> and “swatting,” sometimes with tragic results.<sup>36</sup> The deployment of expressive white supremacy (including classic antisemitic and racist tropes) and the language of gender bias against the press on the Internet can also have unprecedented global reach and reinforce worldwide threats to journalist safety.<sup>37</sup> It is critical to take these developments seriously, and to address the underlying otherization which they reveal.

*A. Identity-Based Online Attacks On African American, Jewish And Women Journalists*

Studies of online expression as well as journalist self-reporting establish that online harassment and criticism are

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ation (last visited Oct. 11, 2021) (reporting that a significant percentage of murdered journalists had previously been subjected to online harassment and abuse); Julie Posetti, Jackie Harrison, & Silvio Waisbord, *Online Attacks On Female Journalists Are Increasingly Spilling Into The ‘Real World’—New Research*, THE CONVERSATION (Nov. 25, 2020) <https://theconversation.com/online-attacks-on-female-journalists-are-increasingly-spilling-into-the-real-world-new-research-150791>; see also Matthew Haag & Maya Salam, *Gunman in ‘Pizzagate’ Shooting is Sentenced to 4 Years in Prison*, N.Y. TIMES (June 22, 2017), <https://www.nytimes.com/2017/06/22/us/pizzagate-attack-sentence.html> (describing gunman who fired assault rifle in Washington DC pizzeria in response to online conspiracy-inspired belief that he was saving children from sex-trafficking).

<sup>34</sup> See, e.g., Eberspacher, *supra* note 8, at 149; see JULIE POSETTI ET AL., UNESCO, THE CHILLING: GLOBAL TRENDS IN ONLINE VIOLENCE AGAINST WOMEN JOURNALISTS (2021) [hereinafter UNESCO, THE CHILLING], <https://unesdoc.unesco.org/ark:/48223/pf0000377223>; see MICHELLE FERRIER, TROLLBUSTERS, ATTACKS AND HARASSMENT: THE IMPACT ON FEMALE JOURNALISTS AND THEIR REPORTING 40–44 (Elisa Lees Munoz ed., Int’l Women’s Media Found. 2018) [hereinafter TROLLBUSTERS REPORT], <https://www.iwmf.org/wp-content/uploads/2018/09/Attacks-and-Harassment.pdf>.

<sup>35</sup> Doxxing refers to commenters online publicly sharing personal information about reporters (including home addresses, phone numbers and family information). See, e.g., Follman, *supra* note 30; Rose Eveleth, *How to Deter Doxxing*, NIEMAN REPS. (July 17, 2015), <https://niemanreports.org/articles/how-to-deter-doxxing>.

<sup>36</sup> “Swatting” refers to commenters falsely reporting criminal activity by journalists to law enforcement. Such swatting incidents can lead to tragedy. Tonya Mosley, *‘The Caller Told Them I Was Going To Open Fire On The Police’: A Black Writer Discusses Swatting*, WBUR (Aug. 21, 2019), <https://www.wbur.org/hereandnow/2019/08/21/swatting-police-unaware-victim> (discussing swatting of African American Miami Herald columnist Leonard Pitts, Jr. and another swatting situation in which a man was killed); Rachel Weiner, *Member of Neo-Nazi Group Pleads Guilty to ‘Swatting’ Conspiracy Against Journalists, Minorities*, WASH. POST (July 14, 2020), [https://www.washingtonpost.com/local/public-safety/member-of-neo-nazi-group-pleads-guilty-to-swatting-conspiracy-of-journalists-minorities/2020/07/14/695f0e52-c5d4-11ea-8ffe-372be8d82298\\_story.html](https://www.washingtonpost.com/local/public-safety/member-of-neo-nazi-group-pleads-guilty-to-swatting-conspiracy-of-journalists-minorities/2020/07/14/695f0e52-c5d4-11ea-8ffe-372be8d82298_story.html).

<sup>37</sup> For example, 2.6 million explicitly antisemitic tweets appeared and could have been seen an estimated total of 10 billion times. See 2016 ADL REPORT, *supra* note 5, at 5.

particularly virulent, identity-based, biased, and threatening when directed at journalists who are identified as Black, women, and/or Jewish. Some abuse is explicit in its racism, antisemitism, and misogyny, and some is more coded (often labeled as “dog whistles.”)<sup>38</sup> Intersectional identity—for example, journalistic identity as Black women or Latinx Jews—leads to even more egregious expressive violence.<sup>39</sup> Regardless of the substantive context, online harassment using the language of white supremacy, misogyny and antisemitism<sup>40</sup>—familiar expressive techniques to harass, terrify, destabilize and silence—in order to terrorize and put targets on the backs of non-white, non-male, non-Christian reporters.<sup>41</sup>

Online comments of this type hark back to well-established discriminatory tropes and white supremacist preoccupations.<sup>42</sup> A 2018 report by the Anti-Defamation League which maps the terrain of white supremacist groups today—from

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<sup>38</sup> There has been much discussion of racist dog whistles against African Americans and Latinx, non-European people and Jews in former President Trump’s statements. See, e.g., Dean Obeidallah, *Trump is Trafficking in Anti-Semitic Tropes. It Must Stop*, CNN (Dec. 8, 2019), <https://www.cnn.com/2019/12/08/opinions/donald-trump-dangerous-anti-semitic-tropes-obeidallah/index.html>; Ian Olsav, *Offensive Political Dog-whistles: You Know Them When You Hear Them. Or Do You?*, VOX (Nov. 7, 2016), <https://www.vox.com/the-big-idea/2016/11/7/13549154/dog-whistles-campaign-racism>; Adam R. Shapiro, *The Racist Roots of the Dog Whistle*, WASH. POST (Aug. 21, 2020), <https://www.washingtonpost.com/outlook/2020/08/21/racist-roots-dog-whistle/>. Recently, dog-whistling has been evident in the context of online attacks on Jewish reporters, with the use of the three parentheses “echo” reference, with three parentheses placed around Jewish names. 2018 ADL REPORT, *supra* note 5, at 6–7; see also Marc Tuters & Sal Hagen, *(((They))) Rule: Memetic Antagonism and Nebulous Othering on Achan*, 22 NEW MEDIA & SOC’Y 2218 (2019).

<sup>39</sup> See Caroline Sindors & Vandinika Shukla, *Some Very Simple Ways Platforms Could Better Protect Journalists From Harassment*, SLATE (May 5, 2021), <https://slate.com/technology/2021/05/twitter-facebook-reddit-harassment-journalists.html> (noting Amnesty report finding that “Black women experience the most harassment online.”); see also 2018 ADL REPORT, *supra* note 5, at 7, 12 (discussing, in part, the online harassment of Jewish women).

<sup>40</sup> 2018 ADL REPORT, *supra* note 5, at 12 (“Following his election, anti-Semitism has become normalized and harassment is a daily occurrence. The harassment, deeply rooted in age-old conspiracies such as the New World Order, which alleges that an evil cabal of Jewish people have taken autocratic control of the globe, and Holocaust imagery—faces placed inside Nazi concentration camp ovens or stretched on lampshades—shows no signs of abating. Unfortunately, the more minority or vulnerable groups one identifies with (e.g. Jewish Latina), the more targeted one becomes. . . . The platforms are key facilitators of this anti-Semitic harassment.”)

<sup>41</sup> See discussion *infra* Section I.A (describing race-based anti-Black attacks, threats of sexual violence, and a persistent thread of rabid anti-Jewish hostility (whether or not the targeted reporters were actually Jewish)).

<sup>42</sup> 2018 ADL REPORT, *supra* note 5, at 7.

the so-called alt-right<sup>43</sup> to neo-Nazis—establishes that their main concern is what they call “white genocide” and their main targets are Jews and African Americans. It is important to note as well that many of the harassing messages to racial and ethnic minority and women reporters contain not just discriminatory tropes, but actual threats of violence and harm directed to the journalists themselves and their families.<sup>44</sup>

Harassment *is* a threat to journalists, especially journalists of color, women, and nonbinary people. Reporters receive repeated onslaughts of abuse, death threats, and rape threats. This harassment harms people in real, tangible ways, and journalists routinely face all different kinds of harassment related to their jobs. Journalists have been killed all over the world for what they report.<sup>45</sup>

A 2019 survey by the Committee to Protect Journalists (CPJ) reported that over 70 percent of respondents had “faced safety issues while working as a journalist” and 90 percent of the U.S. journalist respondents saw online harassment as the top threat to journalist safety.<sup>46</sup>

Consider some specific accounts of online expressive abuse directed toward women reporters, Black reporters and Jewish reporters.

The most sustained and broadest empirical studies of online harassment have focused on reporters identified as

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<sup>43</sup> The term “alt-right” was coined by white supremacist Richard Spencer to refer to a bloc of different white nationalist groups and to try to bring white supremacy to the mainstream. To resist that move, I refer to the alt-right as the “so-called alt-right” in this Article. See Adrian Florido, *The White Nationalist Origins Of The Term 'Alt-Right'—And The Debate Around It*, NPR (Nov. 27, 2016), <https://www.npr.org/2016/11/27/503520811/the-white-nationalist-origins-of-the-term-alt-right-and-the-debate-around-it>; Shaya Tayefe Mohajer, *It is Time to Stop Using the Term Alt-right*, COLUM. JOURNALISM REV. (Aug. 14, 2017), <https://www.cjr.org/criticism/alt-right-trump-charlottesville.php>; see also Stephanie L. Hartzell, *Alt-White: Conceptualizing the “Alt-Right” as a Rhetorical Bridge Between White Nationalism and Mainstream Public Discourse*, 8 J. CONTEMP. RHETORIC 6, 6–25 (2018).

<sup>44</sup> 2016 ADL REPORT, *supra* note 5, at 3–8 (giving examples of threats to families and children of Jewish journalists Ben Shapiro and Bethany Mandel).

<sup>45</sup> Sinders & Shukla, *supra* note 39.

<sup>46</sup> *Journalist Safety in the U.S., Canada*, COMM. TO PROTECT JOURNALISTS, <https://infogram.com/cpj-safety-survey-sept-2019-1h0n25jdd3zo6pe?live> (last visited Nov. 26, 2021); see also Sinders & Shukla, *supra* note 39.

women. Various worldwide organizations have been documenting the digital harassment of women journalists.<sup>47</sup> Their findings are staggering and sobering. Women reporters worldwide are exposed to a relentless barrage of gendered attacks and threats of violence. A case in point is the story of the vicious harassment of Filipino-American journalist Maria Ressa, a winner of the 2021 Nobel peace prize, former CNN war correspondent, laureate of the 2021 UNESCO World Press Freedom Prize, and founder of Manila-based news site Rappler. Since the Philippines' 2016 election, Ressa reports receiving more than 90 hate messages *an hour* on Facebook—described in a recent report as “Death threats. Rape threats. Doxxing. Racist, sexist and misogynistic abuse. In text, image and memes.”<sup>48</sup> From constant comments on and vituperative attacks over their

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<sup>47</sup> For example, Amnesty International supported a study called the Troll Report Findings. *Troll Patrol Findings*, *supra* note 11. UNESCO as well undertook a global empirical study of the subject. See UNESCO, *THE CHILLING*, *supra* note 34. See also UNESCO, *JOURNALISM IS A PUBLIC GOOD, WORLD TRENDS IN FREEDOM OF EXPRESSION AND MEDIA DEVELOPMENT GLOBAL REPORT (2021/2022)* (describing worldwide threats to journalists and specifically to women and those affected by multiple and intersecting forms of discrimination). The Organization for Security and Co-operation in Europe (OSCE) has specifically front-burnered the safety of female journalists online and provided responsive resources. See *Safety of Female Journalists Online*, OSCE, <https://www.osce.org/fom/safety-female-journalists-online> (last visited Oct. 11, 2021). The UN Special Rapporteur launched a collection of essays under the title #JournalistsToo documenting personal stories of harassment by women journalists. See *UN Special Rapporteur Irene Khan Launches Essay Collection “#Journaliststoo”*, UNESCO (Nov. 25, 2021), <https://en.unesco.org/news/special-rapporteur-irene-khan-launches-essay-collection-journaliststoo-personal-stories>.

Studies also show gender segregation in coverage, as well as systemic bias that cuts against representation at the highest levels of management. See WOMEN'S MEDIA CTR., *WHAT ONLINE HARASSMENT TELLS US ABOUT OUR NEWSROOMS: FROM INDIVIDUALS TO INSTITUTIONS (2020)* [hereinafter WOMEN'S MEDIA CTR. REPORT] [<https://womensmediacenter.com/reports/what-online-harassment-tells-us-about-our-newsrooms-from-individuals-to-institutions-a-womens-media-center-report>].

<sup>48</sup> UNESCO, *THE CHILLING*, *supra* note 34, at 45. Ressa received the Nobel Peace Prize in 2021 for “efforts to safeguard freedom of expression, which is a precondition for democracy and lasting peace.” *The Nobel Peace Prize 2021—Maria Ressa*, THE NOBEL PRIZE, <https://www.nobelprize.org/prizes/peace/2021/ressa/facts/> (last visited Nov. 26, 2021).

appearance<sup>49</sup> to highly sexualized name-calling<sup>50</sup> to abominable promises of rape and torture,<sup>51</sup> female and gender nonconforming journalists are particular targets of abuse and intimidation online.

The attacks often appear to be coordinated in order to achieve maximal intimidation.<sup>52</sup> Social media platforms such as 4Chan are fertile grounds for such coordinated activity.<sup>53</sup> Political actors often fuel and instigate pile-on attacks.<sup>54</sup> The April 2021 UNESCO Research Discussion Paper found that online violence against women journalists “is designed to: belittle, humiliate, and shame; induce fear, silence, and retreat; discredit them professionally, undermining accountability journalism and trust in facts,; and chill their active participation (along with that of their sources, colleagues and audiences) in public debate.”<sup>55</sup>

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<sup>49</sup> See, e.g., Alex Gangitano & Julia Manchester, *Online Harassment is Ugly and Routine for Women in Journalism*, THE HILL (Mar. 24, 2021), <https://thehill.com/homenews/media/544628-online-harassment-is-ugly-and-routine-for-women-in-journalism>; Kaitlin C. Miller & Seth C. Lewis, *Journalists, Harassment and Emotional Labor: The Case of Women in On-air Roles at US Local Television Stations*, 23 JOURNALISM 79 (2022); Helen Ubiñas, *The Hate We Get: Why Journalists Need to Stop Accepting Threats as Part of the Job*, PHILA. INQUIRER (July 3, 2018), [https://www.inquirer.com/philly/columnists/helen\\_ubinas/capital-gazette-shooting-online-threats-hate-mail-helen-ubinas-20180703.html](https://www.inquirer.com/philly/columnists/helen_ubinas/capital-gazette-shooting-online-threats-hate-mail-helen-ubinas-20180703.html).

<sup>50</sup> See Gangitano & Manchester, *supra* note 49. (“Female reporters who spoke to The Hill say that being called a c--- is not an uncommon insult. Messages calling women other sexist slurs like whore and slut, remarks about their appearances and emails from men making sexual remarks are harassments that border on the routine.”).

<sup>51</sup> See, e.g., Sullivan, *supra* note 8; Gangitano & Manchester, *supra* note 49; UNESCO, THE CHILLING, *supra* note 34.

<sup>52</sup> See, e.g., Gangitano & Manchester, *supra* note 49 (“Online harassment of female journalists often resembles pack attacks. In many instances, a woman will receive the same email, direct message or tweet from hundreds of accounts.”).

<sup>53</sup> Eveleth, *supra* note 35 (“4chan has become ground zero for many coordinated harassment campaigns, in defiance of an official policy against doxxing. Doxxers obtain personal information from public records, data collection services, and security breaches or through hacking into e-mails and other personal accounts. Doxxing is almost always followed by a call to action, often in the form of coordinated harassment that ranges from threatening phone calls and unwanted food deliveries to more dangerous things like swatting or posting a claim on Craigslist that the resident has rape fantasies and encouraging men to visit.”)

<sup>54</sup> See UNESCO, THE CHILLING, *supra* note 34, at 27.

<sup>55</sup> *Id.* at 6. Similarly, a prior report by Amnesty International surveying the treatment of women reporters from the US and abroad on social media found that “[t]he aim of violence and abuse is to create a hostile online environment for women with the goal of shaming, intimidating, degrading, belittling or silencing women. *Troll Patrol Findings*, *supra* note 11; *Toxic Twitter – Women’s Experience of Violence and Abuse on Twitter*, Chapter 3, AMNESTY INT’L, <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-3/> (last visited March 11, 2022). More broadly, the effort is to

Studies show, unsurprisingly, that the threats and abuse are *significantly* greater for Black female journalists. A 2018 report by Amnesty International found, for example, that while female journalists and politicians were subjected to some type of abuse online every 30 seconds or so, women of color were 84 percent more likely to be mentioned in abusive or harassing tweets.<sup>56</sup> The Amnesty Troll Patrol Findings synthesized information from millions of tweets to arrive at this conclusion.<sup>57</sup>

The Miami Herald's first Black and female executive editor, Monica Richardson, recently wrote an open letter to the paper's readers reproducing the racist screed she received in response to an editorial in the paper.<sup>58</sup> The email capped off its vitriolic litany of offense by calling Ms. Richardson a "racist b---".<sup>59</sup> In her open letter, she said:

I will never forget the first time as a reporter that I was called a "n-----." Like other moments of coming face to face with racism, it will sit with me for life. ... Brutal and evil were the words that came to mind after I read [the email] over a few times. . . You might tell me to just chalk it up to

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silence news organizations as a whole and to control public discourse. See Waisbord, *Mob Censorship*, *supra* note 18, at 1031.

<sup>56</sup> *Troll Patrol Findings*, *supra* note 11; see also Ingram, *supra* note 11.

<sup>57</sup> See *Troll Patrol Findings*, *supra* note 11 (on scope and methodology).

<sup>58</sup> Monica R. Richardson, Editorial, *I received a Racist Email After a Protest Blocked an Expressway. Let's Talk About It*, *Miami, MIA. HERALD* (July 16, 2021), <https://www.miamiherald.com/news/local/news-columns-blogs/from-the-editor/article252802303.html>. The editorial in the Herald had questioned why then-recently-passed anti-protest legislation had not been enforced against demonstrators who blocked highways in support of an uprising against the government in Cuba over the summer.

<sup>59</sup> The abusive and sickening character of the email can best be captured by reproducing it, which the Herald did:

"Cubans don't attack non cubans and don't threaten to kill white people..like your people do when they go on a rampage. Cubans don't assault non cubans eating a meal at a sidewalk Cafe..cubans don't rob and beat up 88 year old white men in the streets. Next time your people riot in Miami dade if I were de santis..I would bring about 500 hard core colombian paramilitaries to teach your people a lesson.. You and your people turn the country into south africa..you not going to be allowed to murder non blacks with machetes nor will you rape..sodomize and then disembowl non black women. Keep writing your anti white and anti cuban exile drivel..you racist bitch."

*Id.* (reproduced with all grammatical errors but paragraph separations removed); see also Eberspacher, *supra* note 8, at 150 (quoting racist tweets received by African American reporter Jemele Hill).

ignorance and anger. But it's not just about this one man and this one email. It's bigger than that.

I was raised humble, raised to turn the other cheek and be the bigger person, to move on and get over it. That's a smart lesson and a smart way to move through life at times. This isn't one of those times. As a Black woman, I refuse to oblige the various ways that some people seem to demand that I simply take what they give. To the contrary, hate can't be solved with silence. The reality is that the silence is as loud as the injustice of racism itself.<sup>60</sup>

UNESCO reports that “[r]acism, religious bigotry, sectarianism, ableism, homophobia and transphobia intersect with misogyny and sexism to produce significantly heightened exposure and deeper impacts for women experiencing multiple forms of discrimination concurrently, as evidenced by our survey respondents and interviewees.”<sup>61</sup> As put by a spokesman of the Committee to Protect Journalists, “If you’re a woman and another identity . . . the intersectionality is a whole other dimension to all of that[.]”<sup>62</sup> Female Latinx columnist Helen Ubinas bears witness to this in an article quoting part of a troll’s message in which he says “make sure you don’t get that big Rican caboose like JLo” and “[m]y right hand would thank you very much” if Ubinas were to publish a full-figure photo.<sup>63</sup> While this is less directly hostile and physically threatening than other threats of rape, death, and dismemberment received by other intersectional women journalists, Ubinas’ accompanying tweet, “Just when I think my inbox can’t get any worse,” indicates how (justifiably) unnerving she found it. Seung Min Kim, a Washington Post White House reporter of Korean heritage, was subjected to vicious sexist and racist online attacks when a photo of her interviewing Alaska Senator Lisa Murkowski about a tweet by the Biden Administration’s embattled Office of

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<sup>60</sup> See Richardson, *supra* note 58; see also Juan Thompson, *Online, Black Writers Confront Racist Backlash*, THE INTERCEPT (May 7, 2015), <https://theintercept.com/2015/05/07/black-writers-confront-online-racism/> (recounting, inter alia, attacks on Salon contributing writer Brittney Cooper as “[b]lack c\*\*\*bag, . . . savage, she-gorilla, bitch, and professor in quote marks—a passive aggressive way of questioning her academic credentials.”).

<sup>61</sup> UNESCO, THE CHILLING, *supra* note 34, at 12.

<sup>62</sup> See Gangitano & Manchester, *supra* note 49 (quoting Courtney Radsch, advocacy director of CPJ).

<sup>63</sup> Ubiñas, *supra* note 49.

Management and Budget (OMB) nominee began to circulate online.<sup>64</sup>

What adds to the difficulties faced by these gender-targeted journalists is that many report being (or at least feeling) unable to the harassment within their own organizations.<sup>65</sup> Recent studies indicate that, worldwide, the sexism of newsrooms creates significant disincentives to the frank reporting of online harassment.<sup>66</sup> Even when they do report abuse, women journalists report that their employers are not particularly sympathetic and do not provide appropriate responsive resources.<sup>67</sup>

While a number of women reporters have spoken publicly of their harassment, others have said that reporting the harassment publicly typically leads to enhanced harassment.<sup>68</sup> In one much-publicized example, New York Times tech reporter Taylor Lorenz tweeted that a “harassment and smear campaign” last year had “destroyed her life” and, in honor of International Women’s Day, asked her followers to consider supporting women subject to online harassment.<sup>69</sup> In response, Fox News

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<sup>64</sup> J. Clara Chan, *Washington Post Defends Reporter Seung Min Kim After ‘Racist and Sexist Attacks’ by ‘Vicious’ Online Trolls*, THE WRAP (Feb. 25, 2021), <https://www.thewrap.com/washington-post-defends-reporter-seung-min-kim-after-racist-and-sexist-attacks-by-vicious-online-trolls/>; see Waisbord, *Mob Censorship*, *supra* note 18, at 1034 (quoting Thera Vargas on typical misogynistic online trolling).

<sup>65</sup> See, e.g., Eberspacher, *supra* note 8, at 158; JACOB L. NELSON, TOW CTR. FOR DIGITAL JOURNALISM, A TWITTER TIGHTROPE WITHOUT A NET: JOURNALISTS’ REACTIONS TO NEWSROOM SOCIAL MEDIA POLICIES (2021), [https://www.cjr.org/tow\\_center\\_reports/newsroom-social-media-policies.php](https://www.cjr.org/tow_center_reports/newsroom-social-media-policies.php). This is the case reported by Black journalists as well. See, e.g., Mattie Khan, *8 Journalists on Reporting While Black, With the Weight of History on Their Shoulders*, GLAMOUR (June 3, 2020), <https://www.glamour.com/story/8-black-women-journalists-on-reporting-police-brutality>; see also *infra* Section I.C.

<sup>66</sup> UNESCO, THE CHILLING, *supra* note 34, at 40–42; see also WOMEN’S MEDIA CTR. REPORT., *supra* note 47, at 9 (noting “newsroom managers not taking online threats seriously, minimizing harms, and gaslighting staff who experience stress or fears as a result of being targeted.”)

<sup>67</sup> See WOMEN’S MEDIA CTR. REPORT., *supra* note 47, at 9.

<sup>68</sup> See, e.g., Gangitano & Manchester, *supra* note 49. This is seen not only with respect to women in political reporting, as is evident in the harassment of women reporters in connection with the Gamergate controversy in 2014. See, e.g., Aja Romano, *What We Still Haven’t Learned from Gamergate*, VOX (Jan. 7, 2021), <https://www.vox.com/culture/2020/1/20/20808875/gamergate-lessons-cultural-impact-changes-harassment-laws> (describing massive sexual harassment campaigns against women in gaming industry).

<sup>69</sup> See, e.g., Gangitano & Manchester, *supra* note 49; Teo Armus, *Tucker Carlson Keeps Attacking a New York Times Reporter After the Paper Calls His Tactics ‘Calculated and Cruel’*, WASH. POST (Mar. 11, 2021),

host Tucker Carlson mocked Lorenz for much of his show one evening:

“Destroyed her life, really? By most people’s standards, Taylor Lorenz would seem to have a pretty good life, one of the best lives in the country, in fact,” he said. “Lots of people are suffering right now, but no one is suffering quite as much as Taylor Lorenz is suffering.”<sup>70</sup>

When criticized for his attack on a journalist, Fox News defended Carlson, saying that “no public figure or journalist is immune to legitimate criticism of their reporting, claims or journalistic tactics.”<sup>71</sup> Carlson himself kept the pressure on, continuing to lambast Lorenz on a subsequent program and calling her a “deeply unhappy narcissist.”<sup>72</sup>

The notable point here is not only a conservative media outlet’s hyper-focus on a tweet by a single “liberal” newspaper’s reporter, but that this kind of publicity is effectively a call to arms for further harassment by members of Carlson’s audience. As Lorenz herself put it, “I hope people see this and recognize it for what it is, an attempt to mobilize an army of followers to memorize my name and instigate harassment.”<sup>73</sup> The New York Times further elaborated on this point, issuing a sharp statement that: “In a now familiar move, Tucker Carlson opened his show last night by attacking a journalist. It was a calculated and cruel tactic, which he regularly deploys to unleash a wave of harassment and vitriol at his intended target.”<sup>74</sup> Reportedly, Lorenz followed up the incident by tweeting “a screenshot of a

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<https://www.washingtonpost.com/nation/2021/03/11/tucker-carlson-taylor-lorenz-fox/>; (@TaylorLorenz), TWITTER (Mar. 9, 2021) (“I’m slightly open abt some of what I deal w/ but the scope of attacks has been unimaginable. There’s no escape. It has taken everything from me. The only mild solace I’ve found is w/ other women who have had their lives destroyed in the same way. We’ve developed deep trauma bonds”).

<sup>70</sup> Armus, *supra* note 69.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* This shows that even if online harassment today is a “bottom-up” example of “anti-press revolts by citizens[,]” it can be “justified and promoted by elite propagandists, such as politicians, religious leaders, and intellectuals.” Waisbord, *Mob Censorship*, *supra* note 18, at 1032.

<sup>74</sup> Armus, *supra* note 69; (@NYTimesPR), TWITTER (Mar. 10, 2021, 3:30 PM), <https://twitter.com/NYTimesPR/status/1369747504565256193>; *see also* Sullivan, *supra* note 8 (arguing that Carlson’s “disproportionate” focus on Lorenz “before his audience of millions has unleashed even more troll attacks”).

violent email threat she had received.”<sup>75</sup> Without minimizing the differences between this and the kinds of online harassment which presage rapes and murders of women journalists, the Lorenz story points to the routinization and normalization of gendered online attacks and how attempts to engage public discussion on the subject generate a boomerang effect, placing an even larger target on the complaining journalist’s back.

Online harassment campaigns against reporters also often focus on reporters who are Jewish (or presumed to be Jewish).<sup>76</sup> Two studies by the Anti-Defamation League—one in 2016 and the next during the midterm elections in 2018—demonstrated extensive and explicitly identity-based/antisemitic online harassment against Jewish reporters.<sup>77</sup> The 2016 ADL Report included a sample of Holocaust-referencing tweets the antisemitism of which could not be more obvious.<sup>78</sup> The 2016 Report found that “at least 800 journalists received anti-Semitic tweets with an estimated reach of 45 million impressions.”<sup>79</sup> In

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<sup>75</sup> Armus, *supra* note 69 (containing the tweet which is currently unavailable on Twitter). Former President Trump has been consistently accused of weaponizing online harassment of reporters by his supporters through his anti-press rhetoric. One female reporter, for example, observed from her own experience that “[i]n the couple of instances where Trump had gone after a story that I had written specifically, that definitely escalated the rhetoric and the volume of emails you were getting[.]” Gangitano & Manchester, *supra* note 49.

<sup>76</sup> See 2016 ADL REPORT, *supra* note 5. The ADL Report also noted that even non-Jewish journalists received antisemitic tweets following criticism of Trump, characterizing this finding as presumably indicating an intention “to be either an insult or threat.” *Id.* at 2. The Report concluded that “this is likely connected to the anti-Semitic tropes related to Jews ‘controlling’ the media, and the media ‘controlling’ the government.” *Id.* Arab-American and Muslim reporters have been targeted as well. Waisbord, *Mob Censorship*, *supra* note 18, at 1033 and sources cited therein.

<sup>77</sup> See 2018 ADL REPORT, *supra* note 5; see 2016 ADL REPORT, *supra* note 5.

<sup>78</sup> One of the telling things about the attacks on Jewish reporters prior to the 2016 presidential election is that whatever the complaint of the poster—and usually the complaints seemed political and grounded on criticism of Donald Trump and his family—the attacks were entirely antisemitic. See 2016 ADL REPORT, *supra* note 5, at 8. From “Adolph Oven Services” to images of freelance Jewish female reporter Bethany Mandel’s face photoshopped onto an extermination oven and a mass grave of Jews during the Holocaust (with a red circle around one corpse’s face) to a picture of the gates to Auschwitz with the motto “Machen Amerika Great,” the visual attack memes were explicitly antisemitic. *Id.* at 11–14.

More generally, the 2016 ADL Report found that the 2.6 million tweets containing antisemitic language appeared an estimated 10 billion times, indicating that such language was potentially seen 10 billion times by large populations: “a juggernaut of bigotry [which] we believe, reinforces and normalizes anti-Semitic language and tropes on a massive scale.” *Id.* at 5. According to the 2016 Report, the five words which appeared most frequently in the account bios of the reporter-harassers included “Trump,” “conservative,” “white,” “nationalist” and “American.” *Id.* at 6.

<sup>79</sup> *Id.* at 1.

other words, almost 20,000 overtly antisemitic tweets mentioning 800 journalists were seen approximately 45 million times. Eighty-three percent of the tweets at the time were received by 10 Jewish journalists.<sup>80</sup> According to the ADL 2016 Report, “a considerable number” of the antisemitic tweets targeting journalists, “self-identified as Trump supporters and conservatives,”<sup>81</sup> with white nationalists “stepp[ing] up “online propaganda offensives” in the runup to the upcoming midterm elections to attack and try to intimidate Jews and especially Jewish journalists.<sup>82</sup> ADL was apparently able to identify “individuals and websites in the white supremacist world that have played a role in encouraging these attacks.”<sup>83</sup> In addition, the 2018 Report also notably found that the vast majority of these (about two-thirds) originated from real accounts, not bots.<sup>84</sup>

The social media platforms which are often the site of racist, antisemitic and misogynistic abuse have not been terribly successful at stemming the tide of online harassment. The 2018 ADL Report concludes that social media platforms are “key facilitators of this anti-Semitic harassment.”<sup>85</sup> However, although 1600 Twitter accounts generated 68% of the antisemitic tweets targeted at journalists, only 21% had been suspended by Twitter during the study period.<sup>86</sup> That so many of the attacks originate from actual accounts, and not bots, apparently makes platform control more difficult.

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> See 2018 ADL REPORT, *supra* note 5, at 3–4 (finding a “marked rise in the number of online attacks” against the Jewish community ahead of Election Day); see, e.g., Press Release, Anti-Defamation League (ADL), Anti-Semitic Incidents Remained at Near-historic Levels in 2018; Assaults against Jews More than Doubled (Apr. 30, 2019) [hereinafter 2019 ADL Press Release], <http://www.adl.org/news/press-releases/anti-semitic-incidents-remained-at-near-historic-levels-in-2018-assaults>.

<sup>83</sup> 2016 ADL REPORT, *supra* note 5, at 9.

<sup>84</sup> See 2018 ADL REPORT, *supra* note 5, at 8 (“The interview subjects stated that, while they were familiar with the use of bots in spreading online propaganda, they were more concerned—and had more frequently experienced—human-based attacks on social media.”). This is significant, at a minimum because the use of technological resources to identify and cut off bots would not be effective.

<sup>85</sup> *Id.* at 16. The authors also concluded that the themes of the online harassment “have been carried from the 2016 U.S. presidential election to the 2018 midterm contest.” *Id.* at 5. See also VIKTORIYA VILK, ELODIE VIALLE & MATT BAILEY, PEN AMERICA, NO EXCUSE FOR ABUSE: WHAT SOCIAL MEDIA COMPANIES CAN DO NOW TO COMBAT ONLINE HARASSMENT AND EMPOWER USERS (2021), <https://pen.org/report/no-excuse-for-abuse/> (describing platform failures to address online abuse more generally).

<sup>86</sup> 2016 ADL REPORT, *supra* note 5, at 1. On complaints that social media platforms do not respond adequately to online threats, see, e.g., ADL, ONLINE HATE, *supra* note 9, at 15.

Two factors make these identity-based online attacks particularly worrisome these days. First is the amplifying character of online expression. Platforms such as Twitter and Facebook have global reach. The online environment invites and enables virality. Virality is relatively easy to achieve online on social media today.<sup>87</sup> Material can remain online and accessible indefinitely; stories and comments may get downgraded in search, but they do not die. Platform incentives favor sensationalist expression. Algorithms can “systematically move White supremacist talking points into the mainstream....”<sup>88</sup> Bots’ instantaneous, widespread but obscure activities can amplify and weaponize expressive abuse.<sup>89</sup> One recent report characterizes this as synchronized censorship.<sup>90</sup> Discussion boards such as 4Chan and 8Chan enable anonymous communities of people who coordinate attacks. And the anonymity of the online abusers gives them cover. Social media tools—such as Twitter’s curated lists function—can be used by online harassers to create easy targets.<sup>91</sup>

The second significant factor is the ease of collective action in the online world—the relative effortlessness of coordinating swarms online. The online attacks on racial minority and women journalists can be both individualized or undertaken as groups or in coordinated “pile-on” tactics. Targeted journalists report that they receive overwhelming numbers of communications designed to operate like DDoS

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<sup>87</sup> See, e.g., REPORTERS WITHOUT BORDERS, ONLINE HARASSMENT OF JOURNALISTS: ATTACK OF THE TROLLS 13–16 (2018) [hereinafter REPORTERS WITHOUT BORDERS REPORT], [https://rsf.org/sites/default/files/rsf\\_report\\_on\\_online\\_harassment.pdf](https://rsf.org/sites/default/files/rsf_report_on_online_harassment.pdf) (explaining ways in which the Internet’s virality easily disseminates hate); see also Waisbord, *Mob Censorship*, *supra* note 18, at 1032, 1037 (arguing that all types of speech can easily flow into the public sphere and that online harassment of reporters reflects “easy public access to journalists, the presence of toxic Internet right-wing and far-right cultures, and populist demonization of the mainstream press.”)

<sup>88</sup> Jessie Daniels, *The Algorithmic Rise of the “Alt-right,”* 17 CONTEXTS 60, 62 (2018).

<sup>89</sup> See, e.g., Julia Angwin, *Cheap Tricks: The Low Cost of Internet Harassment*, PROPUBLICA (Nov. 9, 2017), <https://www.propublica.org/article/cheap-tricks-the-low-cost-of-internet-harassment> (describing, *inter alia*, massive retweeting campaigns of offensive tweets to expand circulation).

<sup>90</sup> REPORTERS WITHOUT BORDERS REPORT, *supra* note 87, at 13.

<sup>91</sup> See Lauren Feiner, *Trolls Use a Little-known Twitter Feature to Swarm Others with Abuse, and Their Targets say Twitter Hasn’t Done Much to Stop It*, CNBC (June 9, 2019), <https://www.cnbc.com/2019/06/07/how-trolls-use-twitter-lists-to-target-and-harass-other-users.html>.

attacks.<sup>92</sup> Organized attempts to identify and target Jewish journalists have been documented.<sup>93</sup> When attacks are undertaken as groups or coordinated to achieve effect a ‘pile-on’ effect, the result is overwhelming for the reporter,<sup>94</sup> both personally and professionally. At a minimum, these sorts of coordinated attacks cause annoyance, expense, expenditures of time, and technical problems. Psychically, they cause anxiety, anger, and feelings of isolation. And when such disputes catch the attention of partisan mainstream media, multi-platform amplification and reporter-harassment often follow.<sup>95</sup>

Identity-based attacks—whether directly expressed or coded in familiar discriminatory tropes—will likely have significant and particularly powerful impacts on targeted reporters. Online identity-based ‘othering’ tactics trade on the full history and social reality of discrimination.<sup>96</sup> They inevitably bring with them the echoes of racial, ethnic and gender violence, domination, exclusion and discrimination both past and present.

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<sup>92</sup> For example, third parties can subscribe journalists to huge numbers of websites and email lists, including porn sites, to embarrass them and to make it impossible for them to manage their emails. See Angwin, *supra* note 89 (documenting email or subscription bombing targeting 3 reporters and ProPublica itself in response to investigative piece). These activities are human versions of distributed denial of service attacks, whereby “every channel for digital communication is flooded to the point where it becomes unusable.” Eveleth, *supra* note 35.

<sup>93</sup> A 2018 Report by the Anti-Defamation League reports that two days after a Trump rally in Cleveland during which attendees “chanted ‘Lügenpresse,’ the German Nazi slur for ‘lying press’ . . . Trump supporters began #TheList on Twitter—a compilation of journalists who ‘speak out against Donald Trump, for Hillary Clinton, or other forms of ‘Kikery’. Journalists were tweeted images with large, red X’s on their faces, alerting them that they had been placed on #TheList due to ‘their crimes against the American people.’” Connecting this with antisemitism, one user on 8chan, where the #TheList was created, wrote: “‘Name ‘em and shame ‘em. I look forward to seeing plenty of echoed names’.” 2018 ADL REPORT, *supra* note 5, at 6 (citing Cooper Fleishman, #TheList: Alt-right Donald Trump Trolls Have Found a New Way to Attack Journalists, MIC (Oct. 24, 2016), <https://www.mic.com/articles/157543/the-list-alt-right-donald-trump-trolls-harass-jewish-journalists-8chan-raid>).

<sup>94</sup> With respect to Jewish journalists for example, the 2016 ADL Report refers to freelance reporter Bethany Mandel, a Jewish freelance reporter, who “was also viciously harassed on Twitter. One user tweeted about her for 19 hours straight, and she received messages containing incendiary language about her family, and images with her face superimposed on photos of Nazi concentration camps.” 2016 ADL REPORT, *supra* note 5, at 8. While she has received antisemitic attacks before, “these attacks stood out . . . for their ‘volume and the imagery. It also seemed coordinated—they would come in waves and 50 percent of the time I couldn’t identify the source.’” *Id.*; see also Waisbord, *Mob Censorship*, *supra* note 18, at 1035 (describing loose coordination evident in brigading, swatting and multiple doxing).

<sup>95</sup> See Waisbord, *Mob Censorship*, *supra* note 18 (describing the coordinated “learn to code” attacks on unemployed journalists).

<sup>96</sup> See Matthew Costello, et al., *Social Group Identity and Perceptions of Online Hate*, 89 SOCIO. INQUIRY 427, 428–29 (2019).

They also doubtless raise worrisome portents for the future. While an exploration of cultural and racial trauma and collective memory are beyond the scope of this Article, it stands to reason that references to lynchings and racial attacks are particularly salient for African American reporters in light of America's history of slavery and continuing racism, systemic and otherwise.<sup>97</sup> Images of a reporter superimposed on a crematorium in Auschwitz are likely to have a particularly strong emotional impact on a Jewish reporter in light of the genocide of some six million Jews by the Nazis during the Holocaust. And sexualized online harassment is doubtless particularly threatening for women reporters in light of systemic worldwide sexism and the use of rape as a weapon of subjugation and disempowerment. Researchers are increasingly describing a spectrum of psychic effects on targeted journalists.<sup>98</sup>

Moreover, in addition to its impact on the targeted reporters, it is hard to believe that such trolling does not also impact other members of the public who are exposed to it. Repetition and ubiquity can normalize identity-based abuse and ironically lead people to expect journalists to take it in stride as part of business as usual. This minimizes the harms of harassment and shifts the burden of justification to the complaining journalists. Human nature suggests that reports of harassment can engender *schadenfreude* in some observers. For some, exposure to the harassment can also recruit new adherents to white nationalist views, further amplifying the likelihood of enhanced harassment in the future. Some audiences' distrust of the mainstream press as an institution can also be subconsciously validated by racist, misogynistic or antisemitic characterizations

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<sup>97</sup> For an expansion of the concept of cultural trauma in the context of African American experience, see Angela Onwuachi-Willig, *The Trauma of the Routine: Lessons on Cultural Trauma from the Emmett Till Verdict*, 34 SOCIO. THEORY 335 (2016). Cf. TERRIE M. WILLIAMS, BLACK PAIN: IT JUST LOOKS LIKE WE'RE NOT HURTING 37 (2009) (explaining that African Americans who hold onto the "violence of racist images" experience double the risk for deep depression).

Analogously, many Black journalists covering Black Lives Matter protests felt their assignments to be deeply personal. See, e.g., Elahe Izadi & Paul Farhi, *The Terror of Wearing Both a Press Badge and Black Skin': Black Journalists are Carrying Unique Burdens*, WASH. POST (June 1, 2020), [https://www.washingtonpost.com/lifestyle/media/the-terror-of-wearing-both-a-press-badge-and-black-skin-black-journalists-are-carrying-unique-burdens-right-now/2020/06/01/2266a258-a414-11ea-b473-04905b1af82b\\_story.html](https://www.washingtonpost.com/lifestyle/media/the-terror-of-wearing-both-a-press-badge-and-black-skin-black-journalists-are-carrying-unique-burdens-right-now/2020/06/01/2266a258-a414-11ea-b473-04905b1af82b_story.html). (quoting African American reporter Wes Lowery: "'You watch those videos [of police killings] and you think it could be your brother, your father, your daughter or yourself . . .'").

<sup>98</sup> See *infra* Section II.

of particular journalists.<sup>99</sup> To the extent that online harassment trades on and reinforces socially embedded biases, it is likely to be even more difficult to uproot with traditional media education techniques than political assertions about the “fake news” press. Even for those who do not consider themselves racist, sexist or antisemitic, the familiarity of established rhetorics of racism, antisemitism or sexism may circumvent a critical stance—especially if such expression is characterized as nothing more than humor or irony or political disagreement.

*B. The Memetic Turn and the Ease of Collective Action Online*

Perhaps one of the most dangerous aspects of the online harassment story has to do with the ways in which the modern stance of irony, humor and meaning evolution on the Internet has been used by white supremacists in order to preach their racist, misogynistic, and antisemitic messages in relatively more or less coded ways.<sup>100</sup> The so-called alt-right has developed a strategy of attracting young people to its sites and ideas through the clever deployment of memes which are deliberately ambiguous in their meanings,<sup>101</sup> and through an attempt to

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<sup>99</sup> Social scientists have been exploring the phenomenon of unconscious bias. With respect to journalism, as one respondent to a recent report on journalists and social media put it, “[w]hite male reporters are given the benefit of the doubt more often...If you’re a person of color, a woman, a member of any kind of minority group, there’s automatically judgments made based on how objective or fair you can be.” NELSON, *supra* note 65. To the extent that online harassment reinforces such differential assumptions, it is likely to boost distrust of the news organizations as well as the targeted reporters.

<sup>100</sup> See generally HEATHER SUZANNE WOODS & LESLIE A. HAHNER, MAKE AMERICA MEME AGAIN: THE RHETORIC OF THE ALT-RIGHT (2019); see, e.g., Julia Rose DeCook, *Trust Me, I’m Trolling: Irony and the Alt-right’s Political Aesthetic*, MEDIA CULTURE J. (2020), <https://journal.media-culture.org.au/index.php/mcjournal/article/view/1655> (“Creating a kind of unreality where it is difficult to parse out truth from lies, fiction from non-fiction, the troll creates cultural products, and by hiding behind irony and humor confuses onlookers and is removed from any kind of reasonable blame for their actions . . . [F]or our current socio-political landscape, trolling is a political strategy that infuses irony into politics and identity.”); Derek Stanovsky, *Remix Racism: The Visual Politics of the “Alt-Right,”* 7 J. CONTEMP. RHETORIC 130, 130–138 (2017).

<sup>101</sup> See, e.g., Marc Fisher, *From Memes to Race War: How Extremists Use Popular Culture to Lure Recruits*, WASH. POST (Apr. 30, 2021), [https://www.washingtonpost.com/nation/2021/04/30/extremists-recruiting-culture-community/?tid=usw\\_paywall&case=fms&](https://www.washingtonpost.com/nation/2021/04/30/extremists-recruiting-culture-community/?tid=usw_paywall&case=fms&); Rachel Hatzipanagos, *How Online Hate Turns into Real-life Violence*, WASH. POST (Nov. 30, 2018), <https://www.washingtonpost.com/nation/2018/11/30/how-online-hate-speech-is-fueling-real-life-violence/>; Joshua Zitser, *Neo-Nazi Groups are Using Instagram to Recruit Young Teenagers, Experts Warn. Memes are Being Used to Entice Them.*, INSIDER (Mar. 27, 2021), <https://www.businessinsider.com/instagram-memes-used-recruit->

deliver a “Brooks Brothers version of white nationalism.”<sup>102</sup> The effectiveness of this memetic turn in white supremacy depends on the online ability to create community. The anonymous discussion boards 4chan and 8chan have been very effective platforms from which to launch ambiguous memes for extensive circulation, including through algorithmic amplification.<sup>103</sup> Indeed, 4chan’s design, in which posts are deleted after a certain amount of user engagement, functions as a “powerful selection machine” for attention-grabbing memes online.<sup>104</sup> Even reporting on white supremacists has “bought into the idea of ironic racism” and allowed white reporters to “hold the material at arm’s length,” and dismiss it as “just trolling,” or “just the [I]nternet.”<sup>105</sup> By creating confusion, uncertainty and in-group identification via memes, trolling techniques are given more mainstream attention and centrality as people seek to decode them and therefore further disseminate their reach.<sup>106</sup>

All this in turn enhances the manipulative power of online trolling in a variety of ways. First, it allows the outrage of racial and ethnic minority and women journalists to be attributed to their humorlessness; they are just “snowflakes”<sup>107</sup> who don’t understand the *lingua franca* and rough humor and irony of the Internet. Triggering outrage on purpose—which can then be characterized as liberal overreaction in the service of

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young-people-to-nazi-groups-experts-2021-3; see also Maxime Dafaure, *The “Great Meme War:” the Alt-Right and its Multifarious Enemies*, ANGLES [ONLINE] (Apr. 2020), <https://journals.openedition.org/angles/369> (discussing meme culture use for harassment as associated with Trump election).

<sup>102</sup> Amanda Darrach, *Should We Cover Right Wing Extremism?*, COLUM. JOURNALISM REV. (Aug. 9, 2018), [https://www.cjr.org/first\\_person/should-we-cover-right-wing-extremism.php](https://www.cjr.org/first_person/should-we-cover-right-wing-extremism.php).

<sup>103</sup> On the complexity of meanings of Pepe the Frog, a visual often used in racist and antisemitic memes, but whose origin is described as not racist, see, e.g., *Pepe the Frog*, ADL, <https://www.adl.org/education/references/hate-symbols/pepe-the-frog> (last visited March 11, 2022); see also Stanovsky, *supra* note 100; Tuters & Hagen, *supra* note 38.

<sup>104</sup> See Tuters & Hagen, *supra* note 38, at 2219.

<sup>105</sup> See Darrach, *supra* note 102 (describing attitude of young, white, mostly upper middle class and mostly male tech and Internet culture reporters); see also Jon Allsop, *With Poway Synagogue Shooting, Online Hate Comes Alive Again*, COLUM. JOURNALISM REV. (Apr. 29, 2019), [https://www.cjr.org/the\\_media\\_today/chabad\\_poway\\_synagogue\\_shooting.php](https://www.cjr.org/the_media_today/chabad_poway_synagogue_shooting.php) (“Sites like 8Chan double the difficulty because the ‘toxic in-jokes’ they traffic in are intended, in part, to hoodwink and humiliate journalists.”).

<sup>106</sup> See DeCook, *supra* note 100.

<sup>107</sup> See, e.g., Merrill Perlman, *Bill O’Reilly and the snowflakes*, COLUM. JOURNALISM REV. (Apr. 10, 2017), [https://www.cjr.org/language\\_corner/bill-oreilly-snowflakes-history-election.php](https://www.cjr.org/language_corner/bill-oreilly-snowflakes-history-election.php) (“Today, a ‘snowflake’ can be any progressive or liberal, in the view of many conservatives, or anyone seen as weak or unresisting.”).

“political correctness”—can put targeted journalists in a double bind and enhance circulation of memes for far-right political ends without taking responsibility. Second, and relatedly, memes and trolling can be used as a way of creating community,<sup>108</sup> contributing to social identity, and policing the boundaries of the in- and out-groups. Third, memes as coded forms can be used to communicate messages and trigger action by members of the in-group; they can serve as rallying points to promote and ease collective action. Each of these strategic consequences is deeply problematic for journalists and the press today.

### *C. The Institutional Context*

Ironically, one of the reasons why this kind of harassment and intimidation has become endemic—other than the anti-press culture of the Trump days—may have to do with attempts by news organizations to evolve in response to technological change. For all the many benefits of the open digital door both for news organizations and for reporters themselves, it is important to recognize the distinct threats it poses to journalists.

In light of the move to digital, the rise of social networks, and the need for legacy news organizations whose funding model had collapsed to find new “relevance,” many news outfits made the institutional decision to engage more with the public than had been the typical practice for legacy news organizations in the past.<sup>109</sup> For some papers, for example, this involved adopting online comment sections and requiring reporters to have social media presences and to engage in conversations with

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<sup>108</sup> See, e.g., Tuters & Hagen, *supra* note 38 (describing how “online anonymous communities use memetic literacy, memetic abstraction, and memetic antagonism to constitute themselves as [a] political collective[.]”); see also Allsop, *supra* note 105 (on communal character of white nationalists.).

<sup>109</sup> See, e.g., Kathryn Bowd, *Social Media and News Media: Building New Publics or Fragmenting Audiences?*, in *MAKING PUBLICS, MAKING PLACES* (Mary Griffiths & Kim Barbour eds., 2016) (ebook), [www.jstor.org/stable/10.20851/j.ctt1t304qd.13](http://www.jstor.org/stable/10.20851/j.ctt1t304qd.13); Chen et al., *supra* note 11, at 878 (“For women journalists [the expectation to engage with the public online] may foment a particularly potent combination: a digital sphere that invites harassment along with a requirement that they engage in this space as part of their jobs.”); Eberspacher, *supra* note 8; Teri Finneman et al., “*I Always Watched Eyewitness News Just to See Your Beautiful Smile*”: *Ethical Implications of US Women TV Anchors’ Personal Branding on Social Media*, 34 *J. MEDIA ETHICS* 146 (2019); Waisbord, *Trolling Journalists*, *supra* note 29, at 4, 6 and sources cited therein; NELSON, *supra* note 65.

their readers.<sup>110</sup> Those were the very openings needed for troll armies to harass racial and ethnic minority and women journalists.

Although the various social media platforms do not reflect the same level of journalist harassment,<sup>111</sup> the requirement that reporters engage with the audience online necessarily opens the door to the kind of strategic harassment discussed in *Section I.A* above. Furthermore, Twitter has become an important platform for journalists in developing stories, finding sources, and engaging in the activities of traditional journalism.<sup>112</sup> It is also one of the worst culprits in online trolling.

The situation is obviously much more problematic for freelancers or reporters who work with small and underfunded news organizations. Small local news organizations and freelance journalists have had no or few resources on which to fall back in response to the ocean of intimidating and threatening attacks on them online.<sup>113</sup>

Even in the better-funded news organizations, however, the story is not reassuring. Although some mainstream news organizations have attempted to train journalists in how to deal with social media and its dangers, reporters have consistently argued that the steps have been insufficient.<sup>114</sup> Reporters—and particularly women reporters and African American reporters—often hesitate to report online harassment to their editors and publishers for a variety of reasons. Whether because of the news organization’s expressed commitment to open engagement with the audience, or because of concern that they will be taken off good stories and not be given desirable assignments in the future,

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<sup>110</sup> See, e.g., Becky Gardiner et al., *The Dark Side of Guardian Comments*, THE GUARDIAN (Apr. 12, 2016), <https://www.theguardian.com/technology/2016/apr/12/the-dark-side-of-guardian-comments>.

<sup>111</sup> See, e.g., 2016 ADL REPORT, *supra* note 5, at 5–6.

<sup>112</sup> See, e.g., Ingrid Dahlen Rogstad, *Political News Journalists in Social Media*, 8 JOURNALISM PRAC. 688 (2014); Genevieve Chacon, Thierry Giasson, & Colette Brin, “That’s What I’m Talking About”: Twitter as a Promotional Tool for Political Journalists, 16 POPULAR COMM’N 276 (2018).

<sup>113</sup> That has been changing somewhat, with press representative organizations stepping up to help journalists cope with online harassment. See *infra* note 256.

<sup>114</sup> See, e.g., NELSON, *supra* note 65; see also Bauder, *supra* note 8; *Troll Patrol Findings*, *supra* note 11; UNESCO, THE CHILLING, *supra* note 34; Lucy Westcott & James W. Foley, *Why Newsrooms Need a Solution to End Online Harassment of Reporters*, COMM. TO PROTECT JOURNALISTS (Sept. 4, 2019), <https://cpj.org/2019/09/newsrooms-solution-online-harassment-canada-usa/>; Klein, *supra* note 7.

or because of a newsroom culture that values “grit” and a “thick skin,”<sup>115</sup> or a sense that the newsroom neither truly values diversity nor will actually listen and respond to the complaints, many journalists do not report the online harassment, intimidation, threats and expressive violence to which they are subject online.<sup>116</sup> Black reporters say that the racism of their newsrooms<sup>117</sup>—or at least the whiteness and maleness of the newsroom culture—creates strong incentives to avoid discussing the impact of harassment and online abuse on them. Women reporters as well talk about the silencing effect of gendered disempowerment in their newsrooms.

News management responses have reportedly been anemic in many news organizations even when such harassment has been reported in-house.<sup>118</sup> While some organizations appear to take online harassment seriously, questions can be raised about the sophistication of their security systems and the extent of their commitment of resources to online engagement

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<sup>115</sup> See Chen et al., *supra* note 11; see also Lucy Westcott, ‘The Threats Follow Us Home’: Survey Details Risks for Female Journalists in U.S., Canada, COMM. TO PROTECT JOURNALISTS (Sept. 4, 2019), <https://cpj.org/2019/09/canada-usa-female-journalist-safety-online-harassment-survey/> (detailing “fear of being thought of as weak, sensitive, or unable to handle their job.”); TROLLBUSTERS REPORT, *supra* note 34, at 40–44 (explaining fear of retaliation or being taken off their beats or losing future work).

<sup>116</sup> See Chen, *supra* note 11; see also Letrell Deshan Crittenden, *The Pittsburgh Problem: Race, Media and Everyday Life in the Steel City*, TOW CTR. DIGIT. JOURNALISM (Oct. 25, 2019), [https://www.cjr.org/tow\\_center\\_reports/racism-black-burnout-in-pittsburgh-journalism.php](https://www.cjr.org/tow_center_reports/racism-black-burnout-in-pittsburgh-journalism.php).

<sup>117</sup> See Mathew Ingram, *Black Journalists Face Challenges That Stem from Systemic Racism*, COLUM. JOURNALISM REV. (July 9, 2020), [https://www.cjr.org/the\\_media\\_today/black-journalists-systemic-racism.php](https://www.cjr.org/the_media_today/black-journalists-systemic-racism.php); Clark Merrefield, *Race and the Newsroom: What Seven Research Studies Say*, NIEMANLAB (July 22, 2020), <https://www.niemanlab.org/2020/07/race-and-the-newsroom-what-seven-research-studies-say/> (“The message is clear: whether national outlets or hyper-local brands, journalism has a race problem.”); Laura Hazard Owen, “I Continue to Have Nightmares That I Still Work There”: Many, Many Journalists Speak Out About Racism in Newsrooms Across the Country, NIEMANLAB (June 11, 2020), <https://www.niemanlab.org/2020/06/i-continue-to-have-nightmares-that-i-still-work-there-many-many-journalists-speak-out-about-racism-in-newsrooms-across-the-country/>; Sam Sanders, et al., *Reckoning with Race and Journalism*, NPR (July 14, 2020), <https://www.npr.org/2020/07/10/889773113/reckoning-with-race-in-journalism> (“But very often when [Black journalists] tell the truth about racism, when they tell the truth about white supremacy, they’re labeled as activists because they have dared to bring their Blackness across the newsroom threshold”); see also *infra* notes 120, 125, 134, 135, 161, 162.

<sup>118</sup> See, e.g., TROLLBUSTERS REPORT, *supra* note 34, at 12 (reporting that one third of the journalists who complained to management of online harassment were “not satisfied with management’s response.”); Holton, *supra* note 29; NELSON, *supra* note 65; WOMEN’S MEDIA CTR. REPORT, *supra* note 47; Eberspacher, *supra* note 8, at 153 and sources cited therein.

controls.<sup>119</sup> Critics also mention that non-minority management do not understand the nature and severity online abuse suffered by African American and women reporters.<sup>120</sup> Perhaps most critically, news organization management often treats online harassment as an individual problem involving a particular reporter, rather than a systemic problem addressed to and plaguing the profession as a whole.<sup>121</sup>

## II. CONSEQUENCES OF THE DUAL THREATS ON JOURNALISTS AND THE JOURNALISTIC FUNCTION

The online attacks on the press, and particularly the otherization attacks on non-male, non-white and non-Christian reporters, have had significant effects both on the journalists themselves and on the journalistic function. Journalists personally have experienced exhaustion, mental health effects, pressures to self-censor—the full range of chilling effects. News organizations have changed professional routines. And there has been an impact on important institutional activity directed to enhancing diversity and making up for a history of racism in the news media. In sum, there is strong support for the intuition that “the threats of violence and deluges of anti-Semitism had become part of [the reporters’] internal equations.”<sup>122</sup>

### *A. Effects On Journalists, On Journalism Itself, And On Democratic Discourse*

The kind of constant white supremacist and misogynistic campaigns of harassment sketched out in *Section I* above are

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<sup>119</sup> See, e.g., JENNIFER R. HENRICHSEN, TOW CTR. FOR DIGIT. JOURNALISM, COLUM. JOURNALISM REVIEW, *THE RISE OF THE SECURITY CHAMPION: BETA-TESTING NEWSROOM SECURITY CULTURES* (2020),

[https://www.cjr.org/tow\\_center\\_reports/security-cultures-champions.php](https://www.cjr.org/tow_center_reports/security-cultures-champions.php) (on information security in the newsroom). Moreover, although this has not yet been addressed (at least in the legal literature), there are questions about whether, in what ways, and to what extent a security focus might end up affecting journalistic norms. I plan to address this in future work.

<sup>120</sup> See, e.g., NELSON, *supra* note 65.

<sup>121</sup> See Chen et al., *supra* note 11; Holton et al., *supra* note 29; see also WOMEN’S MEDIA CTR. REPORT, *supra* note 47 (arguing that undermining credibility of woman reporter also undermines her news organization and freedom of the press as a whole).

<sup>122</sup> 2018 ADL REPORT, *supra* note 5, at 8 (“For some, it drove them to speak out louder and more vigorously, defying the trolls; for others, often citing concern over the harassment of family members, friends and romantic partners, sought to make adjustments.”).

doubtless overwhelming, demoralizing, and terrifying to reporters. At least some journalists report symptoms akin to PTSD.<sup>123</sup> Once the impact of the verbal abuse is amplified and weaponized by the fear of actual physical attacks and violence against the targeted reporters and their families, a heightened response of fear would be natural. Given the persistence of racial discrimination and white supremacy in the United States, it would not be surprising for African American reporters to feel fundamentally at risk from the online harassment sketched out above.<sup>124</sup> African American reporters already operate under difficult conditions in their own newsrooms and feel the brunt of discriminatory treatment.<sup>125</sup> Especially considering the increase in recent antisemitic violence in the US,<sup>126</sup> it would not be irrational for Jewish reporters brigaded by white supremacist threats to feel terrorized. Similarly, if women reporters are barraged by threats that they will be raped and killed, believing in that possibility is far from irrational; fear of retaliation is realistic given the extent and demographic realities of physical violence against women journalists worldwide.<sup>127</sup> It seems beyond cavil that campaigns of online abuse against journalists on the basis of markers of social identity such as race, gender,

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<sup>123</sup> River Smith, et al. *Covering Trauma: Impact on Journalists*, DART CTR. FOR JOURNALISM (July 1, 2015), <https://dartcenter.org/content/covering-trauma-impact-on-journalists>; Gangitano & Manchester, *supra* note 49. As noted above, empirical studies find this to be an intention of such harassment. See, e.g., UNESCO, *THE CHILLING*, *supra* note 34; see also Eberspacher, *supra* note 8, at 154 (describing “secondary harm” to family and friends of the reporters as well).

<sup>124</sup> See, e.g., Avi Ascher-Schapiro, *Journalists Covering US White Supremacists Must Weigh Risk to Selves and Families*, COMM. TO PROTECT JOURNALISTS (Mar. 15, 2018, 11:04 AM), <https://cpj.org/?p=32153>.

<sup>125</sup> See, e.g., Wesley Lowery, Opinion, *A Reckoning Over Objectivity, Led by Black Journalists*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/opinion/objectivity-black-journalists-coronavirus.html>; see also sources cited *supra* note 117, 120. In addition to “refus[ing] to promote qualified Black reporters, dismiss[ing] their story ideas, pigeon-hol[ing] them as only fit to report so-called ‘Black’ stories, and compound[ing] marginalization for Black women or Black queer communities,” Ingram, *supra* note 117 (quoting Allissa Richardson), Black journalists describe the additional work they are required to do to “educate their colleagues about racism and its effects” with “very little appreciation of the real labor involved in being every person in the newsroom’s ‘black friend.’” *Id.* (quoting Wesley Lowery).

<sup>126</sup> See, e.g., 2019 ADL Press Release, *supra* note 82; Press Release, Anti-Defamation League, Preliminary ADL Data Reveals Uptick in Antisemitic Incidents Linked to Recent Mideast Violence (May 20, 2021) [hereinafter 2021 ADL Press Release], <https://www.adl.org/news/press-releases/preliminary-adl-data-reveals-uptick-in-antisemitic-incidents-linked-to-recent>.

<sup>127</sup> See Eberspacher, *supra* note 8, at 148–149; see also UNESCO, *THE CHILLING*, *supra* note 34 (20% of female respondents reported offline attacks in connection with online abuse); TROLLBUSTERS REPORT, *supra* note 34, at 44–46 (describing physical and psychological reactions of harassed female reporters).

ethnicity, sexuality and religion upend the lives and psyches of the reporters themselves.

To be sure, journalist reactions to online harassment will doubtless differ—for example, at least as a result of factors such as individual temperament and personality, family obligations, age and experience, status in the profession, and technological savvy. Some reporters will attempt to control their exposure to this material and try to ignore it, often with the help of technical guidance. Others will seek to respond, publicize, and fight. Yet others have reported plans to (or at least the desire to) leave the profession entirely.<sup>128</sup> Studies report that this reaction may be more common among women journalists—and especially young women journalists may have this latter reaction.<sup>129</sup> There is increasing recognition of the negative mental health effects of online harassment.<sup>130</sup>

Even those journalists who are not driven out of the field by constant online attacks are likely to have some reaction to the barrage of white supremacy and misogyny. At a minimum, the constant awareness of being monitored by malign forces is likely to have an impact, as is the amount of time necessary to devote to safety issues in response.<sup>131</sup> However, there are good reasons

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<sup>128</sup> See, e.g., Bauder, *supra* note 8; REPORTERS WITHOUT BORDERS REPORT, *supra* note 87; Dalia Faheid, *Online Harassment New Frontline for Journalists, Report Says*, VOA NEWS (Dec. 17, 2020, 12:25 PM), <https://www.voanews.com/press-freedom/online-harassment-new-frontline-journalists-report-says>; Holton et al., *supra* note 29, at 2, 12 and sources cited therein; Miller, *Harassment's Toll*, *supra* note 32, at 11, 17 and sources cited therein; Autumn Slaughter & Elana Newman, *Journalists and Online Harassment*, DART CTR. FOR JOURNALISM & TRAUMA (Jan. 14, 2020), <https://dartcenter.org/resources/journalists-and-online-harassment> (noting that journalists reported coping with online harassment by: turning off Twitter notifications, deleting unread messages of known harassers, disguising their identity when publishing, reducing the amount of media content they create, and leaving journalism.” (citations omitted)).

<sup>129</sup> Scott Reinardy, *Female Journalists More Likely To Leave Newspapers*, NEWSPAPER RSCH. J., Summer 2009, at 53; see also TROLLBUSTERS REPORT, *supra* note 34.

<sup>130</sup> See, e.g., *Toxic Twitter — The Psychological Harms of Violence and Abuse Against Women Online, Chapter 1*, AMNESTY INT’L, <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/> (last visited Nov. 29, 2021); see also Miller, *Harassment's Toll*, *supra* note 32 at 3–5; VILK, *supra* note 85 and sources cited therein.

<sup>131</sup> See, e.g., Chen et al., *supra* note 11 at 877 (finding that study respondents “face rampant online gendered harassment that influences how they do their jobs.”); Eberspacher, *supra* note 8, at 155 (discussing time drain and negative effects on workflow); Waisbord, *Mob Censorship*, *supra* note 18, at 1037 (discussing trolls’ desire to “get in journalists’ heads to remind them that they should be cautious because they are being monitored”) and 1038 (noting reports of self-censorship and “strategic retreat”). See also Miller, *Hostility Toward the Press*, *supra* note 29, at 8 (citing to

for which these reactions are difficult to establish. There is a significant amount of anecdotal evidence in studies and reports that reporters who are subject to these kinds of harassment engage in self-censorship.<sup>132</sup> There is also the cultural assumption that reporters have thick skins and are undeterred by threats or favor.

Even if reporters will not admit to specific instances of self-censorship (perhaps because of professional reluctance to admit to concrete instances of self-censorship), there is still a possibility that exposure to terrifying online harassment will (even subconsciously) affect the reporter's professional routines. Admittedly, as with the claim of self-censorship, the concern about responsive change to the reporters' professional routines is hard to unearth and document. But in general terms, significant numbers of women journalists have admitted to professional effects.<sup>133</sup>

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studies that show impact of harassment on reporter routines and how it "forces many women journalists to produce unpaid emotional labor.")

<sup>132</sup> See, e.g., TROLLBUSTERS REPORT, *supra* note 34; WOMEN'S MEDIA CTR. REPORT, *supra* note 47; see also Eberspacher, *supra* note 8, at 154; Dan Escalona, *Research: A Review of Studies Shows Increasing Online Threats to Female Journalists*, INVESTIGATIVE JOURNALISM EDUC. CONSORTIUM (Aug. 1, 2018), <https://ijec.org/2018/08/01/research-a-review-of-studies-shows-increasing-online-threats-to-female-journalists/> (quoting executive director of International Women's Media Foundation: "Journalists often second-guess and question what they will write and report on if a particular issue or statement will generate harassment. Often journalists will not cover certain topics because of the potential for threats and abuse in response . . ."); Pete Vernon, *The Media Today: Press Challenges Beyond Trump and Finances*, COLUM. JOURNALISM REV. (July 31, 2017), [https://www.cjr.org/the\\_media\\_today/the-media-today-press-challenges-beyond-trump-and-finances.php](https://www.cjr.org/the_media_today/the-media-today-press-challenges-beyond-trump-and-finances.php). The security expert at BuzzFeed was quoted as saying "I've seen reporters paralyzed with self-censorship." Ascher-Schapiro, *supra* note 124; Miller, *Hostility Toward the Press*, *supra* note 29 and sources cited therein; Miller, *Harassment's Toll*, *supra* note 32 and sources cited therein. There can be institutional self-censorship as well. See, e.g., Harki, *supra* note 2 (noting Virginian-Pilot decision to print article on Poynter rather than newspaper). A Pew research study published in 2000 documents extensive self-censorship by reporters, but the analysis does not address online threats as an expressed reason. PEW RSCH. CTR., SELF-CENSORSHIP: HOW OFTEN AND WHY (2000), <https://www.pewresearch.org/politics/2000/04/30/self-censorship-how-often-and-why/>.

<sup>133</sup> See UNESCO, *THE CHILLING*, *supra* note 34, at 13 ("30% of the women journalists surveyed answered that they self-censored on social media."); TROLLBUSTERS REPORT, *supra* note 34, at 7 (approximately 40% of respondents who had been harassed online at least once "said they avoided reporting certain stories as a result . . ."); see also Sullivan, *supra* note 8 (asserting chilling effect). On the challenges of attempting to assess the level and depth of self-censorship, see, for example, Waisbord, *Mob Censorship*, *supra* note 18, at 1038. See also Miller, *Harassment's Toll*, *supra* note 32, at 3-4 (offering citations to studies about effects of harassment on journalistic work).

Moreover, for many Black journalists, the newsroom experience has been far from safe and inclusive even absent online harassment.<sup>134</sup> Many African American journalists report lack of diversity, widespread professional distrust, constraints on their ability to report, career path limits grounded on racism, and racial pigeonholing for assignments.<sup>135</sup> Such circumstances enhance the likelihood of a chilling effect.

The bottom line is that there is good anecdotal evidence that online campaigns of harassment which are targeted to particular non-white, non-male and non-Christian journalists—and which use traditional rhetorics and images of otherization, discrimination and dehumanization—will have significant negative effects on the targeted journalists themselves (and their families).

Furthermore, a recent study finds that “[d]isinformation purveyors operationalise misogynistic abuse, harassment and threats against women journalists to undercut public trust in critical journalism and facts in general.”<sup>136</sup> The weaponization of disinformation and the relentless abuse will inevitably erode the reporters’ own credibility, but it will also predictably damage trust in the news organizations which employ them.<sup>137</sup>

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<sup>134</sup> See, e.g., Owen, *supra* note 117; Lowery, *supra* note 125; see also sources cited *supra* notes 117 and 120; see also *infra* Section II.B.

<sup>135</sup> See, e.g., Katti Gray, *The Racial Divide on News Coverage, and Why Representation Matters*, KNIGHT FOUND. (Sept. 25, 2020), <https://knightfoundation.org/articles/the-racial-divide-on-news-coverage-and-why-representation-matters/>; KNIGHT FOUND., *AMERICAN VIEWS 2020: TRUST, MEDIA AND DEMOCRACY* (2020), <https://knightfoundation.org/wp-content/uploads/2020/08/American-Views-2020-Trust-Media-and-Democracy.pdf>; DANIELLE K. KILGO, ET. AL., UNIV. OF TEX. CTR. FOR MEDIA ENGAGEMENT, *NEWS DISTRUST AMONG BLACK AMERICANS IS A FIXABLE PROBLEM* (2020), <https://mediaengagement.org/wp-content/uploads/2020/11/CME-Report-News-Distrust-Among-Black-Americans-is-a-Fixable-Problem.pdf>; Ivan Natividad, *How Did Trump Change American Journalism?*, BERKELEY NEWS (Jan. 27, 2021), <https://news.berkeley.edu/2021/01/27/how-did-trump-change-american-journalism/>.

<sup>136</sup> UNESCO, *THE CHILLING*, *supra* note 34, at 7.

<sup>137</sup> See, e.g., Janet Coats, *Disinformation Fuels Online Violence Against Women Journalists*, UNIV. OF FLA. CONSORTIUM ON TRUST IN MEDIA AND TECH. (May 21, 2021), <https://trust.jou.ufl.edu/blog/insights/may-21-2021-disinformation-fuels-online-violence-against-women-journalists/>.

*B. Effects On The Media's Reckoning With Race*

Threats to reporters who are women and/or members of racial, ethnic or religious minority groups must also be read against the fact that at this moment, press organizations are themselves beginning to take stock of their racial pasts and talking about making broader commitments to diversity. While correlation is of course not causation, this uptick in harassment at the very moment of racial reckoning is suggestive. Does this type of press self-examination trigger a defensive response expressed through online harassment? Does the fact that the modern newsroom is being pushed by its Black reporters to address the immanence of race<sup>138</sup> figure in the intensity of attacks? Is there an implicit message to Black journalists and their employers—a strategy of warning designed to derail efforts to diversify? To the extent that online harassment works to undermine the media industry's fledgling success in diversifying its newsroom and practices, such an impact is particularly institutionally harmful.

Newsrooms in the US are still overwhelmingly white and male.<sup>139</sup> Black reporters report a variety of minimizations as a result, both in their own treatment and in the media's approach to coverage.<sup>140</sup> However, whether because of the COVID-19 pandemic or in response to the nationwide protests for racial justice in 2020 or because Black reporters are pushing the

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<sup>138</sup> The non-profit media watchdog Free Press recently released a 100-page report diagnosing a history of racism in the American media in association with the organization's Media 2070 project, which is geared to the exploration of media reparations for past racism. See FREE PRESS, MEDIA 2070: AN INVITATION TO DREAM UP MEDIA REPARATIONS 15 (2020), <https://mediareparations.org/wp-content/uploads/2020/10/media-2070.pdf>.

<sup>139</sup> See, e.g., Elizabeth Grieco, *Newsroom Employees are Less Diverse Than U.S. Workers Overall*, PEW RSCH. CTR. (Nov. 2, 2018), <https://www.pewresearch.org/fact-tank/2018/11/02/newsroom-employees-are-less-diverse-than-u-s-workers-overall/>; Darren Walker, *Five Decades After Kerner Report, Representation Still Remains an Issue in Media*, COLUM. JOURNALISM REV. (Mar. 5, 2018), <https://www.cjr.org/analysis/race-media.php>; WOMEN'S MEDIA CTR. REPORT, *supra* note 47.

<sup>140</sup> See, e.g., Paul Farhi & Sarah Ellison, *Ignited by Public Protests, American Newsrooms are Having their Own Racial Reckoning*, WASH. POST (June 13, 2020), [https://www.washingtonpost.com/lifestyle/media/ignited-by-public-protests-american-newsrooms-are-having-their-own-racial-reckoning/2020/06/12/be622bce-a995-11ea-94d2-d7bc43b26bf9\\_story.html](https://www.washingtonpost.com/lifestyle/media/ignited-by-public-protests-american-newsrooms-are-having-their-own-racial-reckoning/2020/06/12/be622bce-a995-11ea-94d2-d7bc43b26bf9_story.html); Ingram, *supra* note 117; (quoting Allissa Richardson, *inter alia*, "Newsrooms can re-create some of the most objectionable forms of racism when they refuse to promote qualified Black reporters, dismiss their story ideas, pigeon-hole them as only fit to report so-called 'Black' stories, and compound marginalization for Black women or Black queer communities.").

conversation or because press organizations are calling for sustained study, news organizations have begun to focus on the issue of race and the media.

This is not the first time that media coverage of race and the racial makeup of the news industry have been addressed. For example, the National Advisory Commission on Civil Disorders (typically referred to as the Kerner Commission) was empaneled by President Lyndon Johnson to examine the underlying reasons for widespread racial protests that had occurred in American cities in the summer of 1967 and to answer, *inter alia*, the question “What effect do the mass media have on the riots?” the times suggest a more effective reckoning.<sup>141</sup> With respect to the media, the Kerner Commission Report found that the media had “failed to report adequately on ... the underlying problems of race relations[,]”<sup>142</sup> and that “[t]he journalistic profession has been shockingly backward in seeking out, hiring, training, and promoting”<sup>143</sup> African Americans. The Kerner Report concluded that “[a]long with the country as a whole, the press has too long basked in a white world, looking out of it, if at all, with white men's eyes and a white perspective. That is no longer good enough.”<sup>144</sup>

Despite these strong words, the news industry took to change slowly. Although the American Society of Newspaper Editors (ASNE) set out the goal in 1978 of a journalism workforce reflective of the US population's racial make-up by

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<sup>141</sup> REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS I (1968) [hereinafter KERNER COMMISSION REPORT].

<sup>142</sup> *Id.* at 201, 203 (“By and large, news organizations have failed to communicate to both their black and white audiences a sense of the problems America faces . . . . The media report and write from the standpoint of a white man's world.”).

<sup>143</sup> *Id.* at 211 (“News organizations must employ enough [African Americans] ... in positions of significant responsibility to establish an effective link to [African American] ... actions and ideas and to meet legitimate employment expectations. Tokenism—the hiring of one [African American] ... reporter, or even two or three—is no longer enough. [African American] ... reporters are essential, but so are [African Americans] ... editors, writers and commentators . . . .”)

<sup>144</sup> *Id.* at 213; see also Dorothy Gilliam, *What Do Black Journalists Want?*, COLUM. JOURNALISM REV. (1972), reprinted in COLUM. JOURNALISM REV.: CJR AT 60 (Dec. 20, 2021), <https://www.cjr.org/60th/what-do-black-journalists-want-dorothy-gilliam-kerner-commission.php/> (as part of Columbia Journalism Review's 60<sup>th</sup> anniversary, reprinting May/June 1972 article describing the panoply of media failures with respect both to Black reporters and to reporting on race).

2000,<sup>145</sup> it became clear that this goal would not be met.<sup>146</sup> In one analyst's words, newspapers have "failed spectacularly" to achieve ASNE's 1978 goal of population parity.<sup>147</sup> And while a 2018 ASNE report of some increased diversity in the newsroom is encouraging, the industry's low survey response rate that year means that we cannot generalize from the data obtained.<sup>148</sup> Black journalists report significant continuing roadblocks.<sup>149</sup>

Still, recent studies indicate that seventy-nine percent of the American public believes that news organizations should increase the diversity of their staff (although, admittedly, these respondents differ on the type of diversity they would prefer.)<sup>150</sup> And at least as a matter of rhetorical commitment, many news organizations have been articulating commitments to diversity

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<sup>145</sup> See *ASNE Diversity History*, NEWS LEADERS ASS'N, <https://members.newsleaders.org/content.asp?contentid=57> (last visited Nov. 29, 2021) (recounting that ASNE leadership pledged to "to try to achieve the minority percentage in newsrooms equal to the minority proportion of the total population before the year 2000 suggested in the committee report.").

<sup>146</sup> *Id.* (recognizing that "the industry will fall far short of the 2000 goal, the ASNE board in October adopts a new goal. The new goal seeks parity by 2025 or sooner and calls for creating a series of three-year benchmarks to help the industry better track its progress.").

<sup>147</sup> Gabriel Arana, *Decades of Failure*, COLUM. JOURNALISM REV. (Fall 2018) [https://www.cjr.org/special\\_report/race-ethnicity-newsrooms-data.php](https://www.cjr.org/special_report/race-ethnicity-newsrooms-data.php).

<sup>148</sup> ASNE's 2018 diversity survey results reflect low participation but some increase in newsroom diversity. *2018 Survey: ASNE's 2018 Diversity Survey Results Reflect Low Participation But Encouraging Shifts*, NEWS LEADERS ASS'N (2018); see also WOMEN'S MEDIA CTR. REPORT, *supra* note 47, at 6. The News Leaders Association's 2019 results indicate that "[j]ournalists of color make up nearly a third of the full-time workforce among online-only news organizations...[,]" *2019 Diversity Survey: Digital-Only Platforms Drive Race And Gender Inclusion Among Newsrooms In 2019 ASNE Newsroom Diversity Survey*, NEWS LEADERS ASS'N (Sept. 10, 2019), <https://www.newsleaders.org/2019-diversity-survey-results>, although the study is still marked by a very low (22.8%) response rate. ASNE and Google offer an interactive tool called *How Diverse Are US Newsrooms* to address the gender and racial breakdown of US news organizations. See *How Diverse are US News Rooms?*, AM. SOC'Y OF NEWS EDS. & GOOGLE NEWS INITIATIVE, <https://googletrends.github.io/asne/> (last visited March 25, 2022).

<sup>149</sup> See, e.g., David Folkenflik, *Rancor Erupts In 'LA Times' Newsroom Over Race, Equity And Protest Coverage*, NPR (June 15, 2020), <https://www.npr.org/2020/06/15/874530954/rancor-erupts-in-la-times-newsroom-over-race-equity-and-protest-coverage>; see also sources cited *supra* notes 117, 125, 140; NELSON, *supra* note 65; Rasmus Kleis Nielsen et al., *Race and Leadership in the News Media 2020: Evidence from Five Markets*, REUTERS INST., OXFORD UNIV. (July 16, 2020), <https://reutersinstitute.politics.ox.ac.uk/race-and-leadership-news-media-2020-evidence-five-markets>.

<sup>150</sup> See, e.g., Hanaa' Tameez, *Two New Studies About Media and Diversity Can Help Newsrooms Through Their Reckoning with Racism*, NIEMANLAB (June 26, 2020), <https://www.niemanlab.org/2020/06/two-new-studies-about-media-and-diversity-can-help-newsrooms-through-their-reckoning-with-racism/> (describing Pew and Knight study results).

in their media workers.<sup>151</sup> Media organizations have publicly begun taking stock of their own lack of diversity.<sup>152</sup> Newspapers have been engaging in a public reckoning with respect to their participation in historic racist practices and racist reporting of news, with several issuing apologies for their past racism in coverage, advertising policy and lack of newsroom diversity.<sup>153</sup> They have also sought to expand and diversify their coverage of issues relating to race by, for example, creating the “race beat,”<sup>154</sup> the protest beat and the white supremacy beat.<sup>155</sup>

This focus on media diversity has engaged scholars and media non-profits as well. For example, the relationship of the press and issues of race has received recent attention (in the press and through Fress Press Media’s Media 2070 project).<sup>156</sup> Scholarly colloquia are aiming to further that discussion.<sup>157</sup> Although some argue that only a small percentage of American

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<sup>151</sup> See, e.g., Nathan Bomay, *USA Today Owner Gannett Commits to Make Workforce as Diverse as America, Add New Beats on Race and Social Justice*, USA TODAY (Aug. 20, 2020 6:01 AM), <https://www.usatoday.com/story/money/2020/08/20/gannett-usa-today-diversity-commitment-journalism/5604473002/>; Rebecca Frank, *Why Diverse Newsrooms are Important*, NEWS MEDIA ALL. (Feb. 9, 2018), <https://www.newsmediaalliance.org/diverse-newsroom-study/>; Ahiza Garcia-Hodges, *News Organizations Struggle to Meet Diversity Pledges Despite Key Hires*, NBC NEWS (Feb. 19, 2021), <https://www.nbcnews.com/news/all/news-organizations-struggle-meet-diversity-pledges-despite-key-hires-n1258264>.

<sup>152</sup> See, e.g., Arana, *supra* note 147.

<sup>153</sup> See, e.g., Alexandria Neason, *On Atonement*, COLUM. JOURNALISM REV. (Jan. 28, 2021), [https://www.cjr.org/special\\_report/apologies-news-racism-atonement.php](https://www.cjr.org/special_report/apologies-news-racism-atonement.php); FREE PRESS, *supra* note 138, at 31–37; Mike Fannin, *The Truth in Black and White: An Apology from The Kansas City Star*, KAN. CITY STAR (Dec. 20, 2020, 3:50 PM), <https://www.kansascity.com/news/local/article247928045.html>; Opinion, *Our Reckoning with Racism*, L.A. TIMES (Sept. 27, 2020), <https://www.latimes.com/opinion/story/2020-09-27/los-angeles-times-reckoning-with-racism>; Editorial, *To The Community and The Families of the Groveland Four: We’re sorry*, ORLANDO SENT. (Jan. 10, 2019), <https://www.orlandosentinel.com/opinion/editorials/os-op-orlando-sentinel-apologizes-groveland-four-20190109-story.html>; Editorial, *Anti-Black Racism and the Press*, COLUM. JOURNALISM REV. (June 18, 2021), [https://www.cjr.org/the\\_media\\_today/anti-black-racism-and-the-press.php](https://www.cjr.org/the_media_today/anti-black-racism-and-the-press.php).

<sup>154</sup> See, e.g., Errin Haines Whack, *My Life on the Race Beat*, COLUM. JOURNALISM REV. (Fall 2018), [https://www.cjr.org/special\\_report/race-beat.php](https://www.cjr.org/special_report/race-beat.php).

<sup>155</sup> See, e.g., Bomay, *supra* note 151; Christiana Mbakwe, *White-supremacy Threat Demands its Own Beat Reporters*, COLUM. JOURNALISM REV. (Aug. 21, 2017), <https://www.cjr.org/criticism/white-supremacy-beat.php>.

<sup>156</sup> FREE PRESS, *supra* note 138.

<sup>157</sup> The University of Houston Law Center and Georgetown Law School hosted a colloquium on Race, Racism and American Media in early 2022. *Race, Racism, and American Media*, UNIV. HOUS. L. CTR., <https://www.law.uh.edu/RaceMedia/> (last visited Mar. 3, 2022).

newspapers have faced the racism of their past practices,<sup>158</sup> there appears to be growing public recognition that the American press is looking more intentionally than in the past at its own complicity in racism.

Of course, there are questions about whether the promised diversity is sufficiently “real” and whether the news organizations’ staffing and coverage plans going forward will adequately address the suffusive effects of race. There are reminders that true diversity doesn’t come from simply hiring a few journalists of color. Moreover, for some Black journalists and media scholars, the degree of reckoning discussed thus far does not sufficiently surface or address implicit racial tilts in foundational journalistic norms. Some progressives criticize journalistic norms and the profession as grounded on whiteness and maleness and therefore insufficiently responsive to the public.<sup>159</sup> Scholars have criticized American journalism for failing adequately to recognize the assumptions of whiteness in fundamental professional norms.<sup>160</sup> They have suggested that racism is baked into many of the traditional journalistic values—especially that of objectivity.<sup>161</sup> Arguing that objectivity as understood in practice (if not in theory) unquestioningly assumes the white gaze, these journalists and theorists are calling for a reevaluation by news organizations of their journalistic commitments and practices.<sup>162</sup>

Even without addressing the debate over fundamental journalistic norms, however, online journalist harassment could pose a serious threat to the institutional efforts to enhance the diversity of news institutions. Effective campaigns of online

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<sup>158</sup> See, e.g., Neason, *supra* note 153; Channing Gerard Joseph, *American Journalism’s Role in Promoting Racist Terror*, THE NATION (Apr. 19, 2021), <https://www.thenation.com/article/society/media-journalism-racism-reparations/>.

<sup>159</sup> Tameez, *supra* note 150.

<sup>160</sup> See, e.g., Carlos Alamo-Pastrana & William Hoynes, *Racialization of News: Constructing and Challenging Professional Journalism As “White Media,”* 44 HUMAN. & SOC’Y, 67 (2018); Sue Robinson & Kathleen Bartzen Culver, *When White Reporters Cover Race: News Media, Objectivity and Community (Dis)trust*, 20 JOURNALISM 375 (2019); see also Merrefield, *supra* note 117 and sources cited therein.

<sup>161</sup> See generally Mathew Ingram, *What Comes After We Get Rid of Objectivity in Journalism?*, COLUM. JOURNALISM REV. (July 2, 2020), [https://www.cjr.org/the\\_media\\_today/what-comes-after-we-get-rid-of-objectivity-in-journalism.php](https://www.cjr.org/the_media_today/what-comes-after-we-get-rid-of-objectivity-in-journalism.php); Ari Shapiro, *Black Journalists Weigh In on a Newsroom Reckoning*, NPR (July 2, 2020), <https://www.npr.org/2020/07/02/886845421/black-journalists-weigh-in-on-a-newsroom-reckoning>. For a recent report making this point in the context of journalist engagement with Twitter, see NELSON, *supra* note 65.

<sup>162</sup> See, e.g., Lowery, *supra* note 125.

harassment on reporters who add to newsroom diversity will at least threaten to slow down the newsroom diversification efforts in which today's news organizations are beginning to engage (however tentatively). If non-white and non-male reporters are effectively hounded out of the newsroom as a result of online identity-based abuse, then the goal of diversifying the newsroom and its news coverage could be dealt a severe blow.

### III. REPORTING IN THE SHADOW OF PHYSICAL THREATS, VIOLENCE AND DANGER

The targeted online harassment and intimidation against journalists—and particularly African American journalists and women—cannot be assessed by itself, as an independent and singular phenomenon. Journalism takes place against a backdrop of danger and violence in the “real world” as well. Journalists cannot help but be aware that they do their work in the shadow of both expressive violence and physical danger. It is inconceivable to suppose that this recognition does not and will not have consequences for the press.

A 2017 study on murdered journalists indicated that “[i]n at least forty percent of cases,” those journalists reported that they had received threats prior to their deaths,<sup>163</sup> leading researchers to conclude that “online violence against journalists is jumping offline.”<sup>164</sup> This reality doubtless adds to the perceived weight of the online threats for journalists.

The political and social environment of the Trump years offered a fruitful climate for enhancements of physical danger for journalists. While the previous Sections have sketched online attempts to intimidate reporters with words and pictures, it is important to look also at the real-world follow-through of expressive attempts to silence reporters. The online intimidation has carried over into doxing journalists and revealing information about them and their families.<sup>165</sup> What, other than

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<sup>163</sup> See Elisabeth Witchel, *Getting Away With Murder*, COMM. TO PROTECT JOURNALISTS (Oct. 31, 2017), <https://cpj.org/reports/2017/10/impunity-index-getting-away-with-murder-killed-justice-2/>; Posetti, Harrison & Waisbord, *supra* note 33; see also *Journalists Killed in 2017*, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/data/killed/2017/> (last visited Oct. 14, 2021); see, e.g., *Joaquin Briones*, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/data/people/joaquin-briones/>.

<sup>164</sup> Posetti, Harrison & Waisbord, *supra* note 33.

<sup>165</sup> See Follman, *supra* note 30.

inciting in-person harassment or even physical violence could possibly have been the goal of such doxxing?? Former President Trump's characterization of the press as an "enemy" doubtless weaponized press harassment even offline. It predictably invited physical attacks on journalists at Trump rallies.<sup>166</sup> Some Trump supporters saw in his attacks on the press an implicit permission to treat reporters as he suggested they deserved.<sup>167</sup> His refusal to condemn white supremacy—such as, for example, in his response to the violence of the so-called "Unite the Right" rally in Charlottesville that there were "very fine people" on both sides<sup>168</sup>—emboldened the alt-right's attempts to bring white supremacy and its ideas mainstream.<sup>169</sup> At a minimum, the then-President's language was taken by some Trump champions to

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<sup>166</sup> See e.g., Eric Neugeboren, *US Journalists Suffer Attacks During Capitol Riot, Protests*, VOA (Jan. 14, 2021 10:29 AM), <https://www.voanews.com/press-freedom/us-journalists-suffer-attacks-during-capitol-riot-protests>; *Cameraman, Other Reporters Attacked at Trump Rally*, U.S. FREEDOM PRESS TRACKER (Feb. 11, 2019), <https://pressfreedomtracker.us/all-incidents/cameraman-other-reporters-attacked-trump-rally/>; Asher Stockler, *Trump Supporter Charged With Assault on Orlando Sentinel Journalist Covering President's 2020 Rally*, NEWSWEEK (June 19, 2019 2:37 PM), <https://www.newsweek.com/trump-supporter-arrested-assault-journalist-rally-1444834>; *Minnesota Journalist Attacked by Trump Supporter at Rally*, AP NEWS (Oct. 1, 2020), <https://apnews.com/article/election-2020-joe-biden-donald-trump-journalists-minnesota-546e102d48ef79cb460857115ddee695>.

<sup>167</sup> Libby Cathey & Meghan Keneally, *A Look Back at Trump Comments Perceived by Some as Inciting Violence*, ABC NEWS (May 30, 2020 5:00 AM), <https://abcnews.go.com/Politics/back-trump-comments-perceived-encouraging-violence/story?id=48415766>; Meagan Flynn, *Trump Inciting 'Violence': More than 200 Retired Journalists Condemn President's 'Un-American' Attacks on Press*, WASH. POST (Oct. 25, 2018), <https://www.washingtonpost.com/nation/2018/10/25/trump-inciting-violence-nearly-retired-journalists-condemn-presidents-un-american-attacks-press/>; Andrew Solender, *Trump Says Police Violence Against Journalists is 'Actually A Beautiful Sight'*, FORBES (Sept. 22, 2020 9:46 PM), <https://www.forbes.com/sites/andrewsolender/2020/09/22/trump-says-police-violence-against-journalists-is-actually-a-beautiful-sight/?sh=39b9a04c57d6>; see also Kyong Mazzaro, *Anti-Media Discourse and Violence Against Journalists: Evidence from Chavez's Venezuela*, INT'L J. OF PRESS/POLITICS, Nov. 8, 2021, and sources cited therein (asserting that "[g]overnment-sponsored anti-media rhetoric has increasingly become a reason for concern for media freedom monitoring organizations, policymakers, and scholars who caution about how politicians' rhetoric can normalize and even lead to non-state anti-media violence in democracies[,]" noting the limited amount of empirical study, and using Venezuela to develop a predictive model of when government-sponsored anti-media discourse can be expected to lead to non-state violence).

<sup>168</sup> Glenn Kessler, *The 'Very Fine People' at Charlottesville: Who Were They?*, WASH. POST (May 8, 2020), <https://www.washingtonpost.com/politics/2020/05/08/very-fine-people-charlottesville-who-were-they-2/> ("You had some very bad people in that group, but you also had people that were very fine people, on both sides.").

<sup>169</sup> See, e.g., John Haltiwanger, *Trump has Repeatedly been Endorsed by White Supremacist Groups and Other Far-Right Extremists, and They've Looked to Him as a Source of Encouragement*, INSIDER (Sept. 30, 2020 3:59 PM), <https://www.businessinsider.com/trumps-history-of-support-from-white-supremacist-far-right-groups-2020-9>.

justify and normalize violent activity toward the press. Reports support the conclusion that journalists were targeted for violence by the mob during the January 6, 2021 insurrection at the Capitol.<sup>170</sup> All this made more real the shadow of violence against which reporters had to do their jobs.

Physical violence of every sort against the press is pervasive and globalized, according to the CPJ's tracker. 2,003 journalists have been assassinated since 1992.<sup>171</sup> Whether these murders of journalists are state-approved murder in autocratic regimes,<sup>172</sup> or engineered by criminal enterprises or corrupt government officials,<sup>173</sup> or associated with war and terrorism,<sup>174</sup>

<sup>170</sup> See, e.g., Hsu & Robertson, *supra* note 3; Joseph Choi, *Videos Show Protesters Outside Capitol Destroying Journalists' Equipment*, THE HILL (Jan. 6, 2021 7:04 PM), <https://thehill.com/homenews/news/533022-videos-show-protesters-outside-capitol-destroying-journalists-equipment>; Erin Doherty, *FBI Begins Arresting Individuals Who Attacked Journalists on Jan. 6*, AXIOS (July 3, 2021), <https://www.axios.com/fbi-arrests-attacks-journalists-capitol-riot-9cd908f3-e222-4df3-93de-4ca1e2b5aa28.html>; Neugeboren, *supra* at note 166; Jordan Williams, *Journalist Accounts, Footage Suggest They Were Targeted in Capitol Riot*, THE HILL (Jan. 8, 2021 12:19 PM), <https://thehill.com/homenews/media/533330-journalist-accounts-suggests-they-were-targeted-in-capitol-riot>.

<sup>171</sup> See *Journalists Killed Between 1992 and 2021*, COMM. TO PROTECT JOURNALISTS, [https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&motiveUnconfirmed%5B%5D=Unconfirmed&type%5B%5D=Journalist&start\\_year=1992&end\\_year=2021&group\\_by=year](https://cpj.org/data/killed/?status=Killed&motiveConfirmed%5B%5D=Confirmed&motiveUnconfirmed%5B%5D=Unconfirmed&type%5B%5D=Journalist&start_year=1992&end_year=2021&group_by=year) (last visited Feb 14, 2022). For 2020 data, see COMM. TO PROTECT JOURNALISTS, *MURDERS OF JOURNALISTS MORE THAN DOUBLE WORLDWIDE (2020)* [hereinafter *MURDERS OF JOURNALISTS*], <https://cpj.org/reports/2020/12/murders-journalists-more-than-doubled-killed/>.

<sup>172</sup> For example, there is little doubt that the murder of journalist Jamal Ahmad Khashoggi had the nod of Saudi Arabia. See, e.g., Greg Myre, et al., *U.S. Intelligence: Saudi Crown Prince Approved Operation to Kill Jamal Khashoggi*, NPR (Feb. 26, 2021, 1:49 PM), <https://www.npr.org/2021/02/25/971215788/biden-administration-poised-to-release-report-on-killing-of-jamal-khashoggi>; Julian E. Barnes & David E. Sanger, *Saudi Crown Prince Is Held Responsible for Khashoggi Killing in U.S. Report*, N.Y. TIMES, <https://www.nytimes.com/2021/02/26/us/politics/jamal-khashoggi-killing-cia-report.html> (July 17, 2021); see also Martin Kibaba, *Journalism—One of the Most Dangerous Professions in the World*, WORLD PRESS INST. (Sept. 18, 2019), <https://worldpressinstitute.org/journalism-one-of-the-most-dangerous-professions-in-the-world/>; Melanie Pineda, *We Need to Talk About the Dangers of Journalism*, WASH. SQUARE NEWS (Oct. 15, 2018), <https://nyunews.com/2018/10/15/10-16-ops-pineda/>.

<sup>173</sup> See, e.g., Azam Ahmed, *In Mexico, 'It's Easy to Kill a Journalist'*, N.Y. TIMES (Apr. 29, 2017), <https://www.nytimes.com/2017/04/29/world/americas/veracruz-mexico-reporters-killed.html>; Nina Lakhani, et. al., *Murder in Mexico: Journalists Caught in the Crosshairs*, THE GUARDIAN (Dec. 6, 2020), <https://www.theguardian.com/world/2020/dec/06/murder-in-mexico-journalists-caught-in-the-crosshairs-regina-martinez-cartel-project>.

<sup>174</sup> See, e.g., *MURDERS OF JOURNALISTS*, *supra* note 171; *Reporting Safely and Ethically*, SOC'Y OF PRO. JOURNALISTS, <https://www.spj.org/safety.asp> (last visited May 11, 2021); see also Lindsay R. Grossman, *All the News That's Worth the Risk: Improving Protection for Freelance Journalists in War Zones*, 40 B.C. INT'L & COMPAR. L. REV. 141 (2017).

or otherwise associated with their journalistic work, what is clear is that being a reporter these days is a very dangerous enterprisingly.<sup>175</sup>

There is of course no indication that the Trump administration approved the murder of journalists. But there has been quite a bit of private, non-state violence against the press. Reporters and newsrooms have been the subject of violent attacks or threats of mass shooting. One example is the mass shooting at the Capital Gazette in 2018, in which a gunman killed all the reporters in the newsroom.<sup>176</sup> While some other planned attacks have been foiled, the anti-press language of the Trump years can be heard in some of the justifications offered by would-be attackers in support of their threats. In one such instance, the FBI arrested a man for threatening to commit a mass shooting at the offices of the Boston Globe.<sup>177</sup> He was heard to say in anonymous calls to the Globe: “[y]ou’re the enemy of the people, and we’re going to kill every fucking one of you” and

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<sup>175</sup> See, e.g., MURDER OF JOURNALISTS, *supra* note 171 (collecting reports of violence against reporters); see also Jon Allsop, *Dark Clouds Gather Over Press Freedom in Europe*, COLUM. JOURN. REV. (July 13, 2021), [https://www.cjr.org/the\\_media\\_today/press\\_freedom\\_europe\\_de\\_vries.php](https://www.cjr.org/the_media_today/press_freedom_europe_de_vries.php). Global violence against the press is beyond the scope of this paper, but American journalists operate in a global theater and cannot but be aware of the increasing physical dangers to reporters from both state and non-state actors. Stories of physical threats to journalists from state actors are becoming more common: just last summer, it was reported that the government of Iran planned a kidnapping of an Iranian American journalist whose work was critical of the regime. See, e.g., Benjamin Weiser, *Iranian Operatives Planned to Kidnap a Brooklyn Author, Prosecutors Say*, N.Y. TIMES (July 13, 2021), [https://www.nytimes.com/2021/07/13/nyregion/iran-masih-alinejad-kidnapping.html?campaign\\_id=60&emc=edit\\_na\\_20210713&instance\\_id=0&nl=breaking-news&ref=cta&regi\\_id=6024790&segment\\_id=63358&user\\_id=db1a3d75d18a265e5f9d679f0f226fa3](https://www.nytimes.com/2021/07/13/nyregion/iran-masih-alinejad-kidnapping.html?campaign_id=60&emc=edit_na_20210713&instance_id=0&nl=breaking-news&ref=cta&regi_id=6024790&segment_id=63358&user_id=db1a3d75d18a265e5f9d679f0f226fa3). As of December 2021, there were 293 journalists imprisoned as a result of their work. *Attacks on the Press in 2021*, COMM. TO PROTECT JOURNALISTS, <https://cpj.org/2021/12/attacks-on-the-press-in-2021/> (last visited Mar. 25, 2022). At least 27 reporters were killed in 2021 as a result of their work. *Id.* (This count does not address 2022 or the dangers faced by reporters covering the Russia/Ukraine war.)

<sup>176</sup> On June 28, 2018, Jarrod Ramos shot and killed five newsroom employees and injured two others at The Capital Gazette, a newspaper serving Annapolis, Maryland. See Alex Mann and Lilly Price, *‘This is a really bittersweet day’: Jury finds Capital Gazette gunman criminally responsible in Annapolis newsroom shooting*, CAP. GAZETTE (July 15, 2021), <https://www.capitalgazette.com/news/crime/ac-cn-capital-gazette-trial-verdict-20210715-c2kgmf64hjfoho6ekarjxjuv4-story.html>; Kristen Hare, *At the Capital Gazette, We’re Still Mourning. We’re Gonna Need Help. But We’re Still Here*, POYNTER (July 25, 2018), <https://www.poynter.org/reporting-editing/2018/at-the-capital-gazette-%C2%91we-%C2%92re-still-mourning-we-%C2%92re-gonna-need-help-but-we-%C2%92re-still-here-%C2%92/>.

<sup>177</sup> Follman, *supra* note 30.

“[w]e are going to shoot you motherfuckers in the head.”<sup>178</sup> From reports of explanations these attackers provide, it is possible to find connections to the conspiracy theories fanned by former President Trump and his supporters.<sup>179</sup> Echoes of Trump’s inflammatory anti-press rhetoric could be heard during the mob takeover of the Capitol on January 6, 2021.<sup>180</sup> All told, private party physical attacks on the press seem to have expanded domestically.<sup>181</sup> To the extent that Trump supporters continue to believe that the 2020 election was “stolen” with the help of the mainstream media,<sup>182</sup> continuing attacks on the press and reporters based on such conspiracy theories can be expected.<sup>183</sup>

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<sup>178</sup> *Id.*

<sup>179</sup> Other examples suggest the same. For example, some of the language used by the insurrectionists at the January 6, 2021 takeover of the Capitol carried echoes of language used by the former president. “Murder the Media” was etched into a door in the Capitol. *See, e.g.*, Hsu & Robertson, *supra* note 3; *see also* Peter Baker & Michael D. Shear, *El Paso Shooting Suspect’s Manifesto Echoes Trump’s Language*, N.Y. TIMES (Aug. 4, 2019), <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html>; Mehdi Hasan, *After El Paso, We Can No Longer Ignore Trump’s Role in Inspiring Mass Shootings*, THE INTERCEPT (Aug. 4, 2019), <https://theintercept.com/2019/08/04/el-paso-dayton-mass-shootings-donald-trump/>.

<sup>180</sup> *See, e.g.*, Shomari Stone (@shomaristone), TWITTER (Jan. 6, 2021, 5:08 PM), <https://twitter.com/i/status/1346941715895250949> (“Mob of Trump supporters swarm the media near the US Capitol. They yell what Trump frequently says, ‘the media is the enemy of the people.’ They destroy equipment and chased out reporters. I’ve never seen anything like this in my 20 year career: @nbcwashington @MSNBC.”).

<sup>181</sup> REPORTERS COMM. FOR FREEDOM OF THE PRESS, PRESS FREEDOMS IN THE UNITED STATES 2020, at 8 (2021) [hereinafter RCFP PRESS FREEDOM TRACKER], [https://www.rcfp.org/wp-content/uploads/2021/05/Press-Freedom-Tracker-2020\\_FINAL.pdf](https://www.rcfp.org/wp-content/uploads/2021/05/Press-Freedom-Tracker-2020_FINAL.pdf) (“As of press time, the Tracker documented 438 physical attacks on journalists in 2020. This is more than three times as many attacks as it recorded over the previous three years combined. Of those attacks, which affected 416 journalists, more than 91% occurred during the Black Lives Matter protests. Sixteen assaults occurred at protests related to the 2020 election.”); *see also Trump Supporter Attacks BBC Cameraman at El Paso Rally*, BBC (Feb. 12, 2019), <https://www.bbc.com/news/world-us-canada-47208909>.

<sup>182</sup> *See* Todd J. Gillman, *CPAC: Donald Trump Spins Tales of Rigged Election, Papers Over Jan. 6 Riot, Hints at 2024 Comeback*, DALL. MORNING NEWS (July 11, 2021), <https://www.dallasnews.com/news/politics/2021/07/11/cpac-donald-trump-spins-tales-of-rigged-election-papers-over-jan-6-riot-thrills-conservatives/>; Amanda Seitz & David Klepper, *Dangerously Viral: How Trump, Supporters Spread False Claims*, AP NEWS (Dec. 4, 2020), <https://apnews.com/article/how-trump-supporters-spread-false-claims-8cf62c15893c4e8878a471e99ee81459/> (citing survey findings that “almost one-third of Americans, and more than 75% of Trump supporters, believe Biden only won because of fraud. Falsehoods around the election have continued to reach a large audience . . .”).

<sup>183</sup> After journalists covering the 2021 Capitol riot experienced violent attacks from Trump supporters who believed the 2020 election was stolen, the Committee to Protect Journalists “warned that there may be ‘escalating attacks on the media’ in the future and urged reporters to take precautions.” Angela Fu, *Reporters Covering the Capitol Attack Were Used to Harassment and Heckling. But Wednesday was Different*,

Journalists are not just exposed to a barrage of in-person verbal violence with a white supremacist cast. They have also faced more direct instances of police threats and private violence not adequately controlled by police.<sup>184</sup> It is notable that the then-President of the United States characterized manhandling of the press as “a beautiful sight.”<sup>185</sup> Troublingly, reports indicate that law enforcement has often failed to protect reporters during the exercise of their journalistic functions.<sup>186</sup> Indeed, reporters have also been at risk from police themselves, especially during their coverage of protests.

Reports of incidents suggest that police have been affirmatively targeting reporters and photojournalists; “[l]aw enforcement officers were responsible for 321 - or 80% - of the 400 total assaults on journalists during Black Lives Matter protests in 2020, affecting 324 journalists.”<sup>187</sup> The visibility of press credentials and reporters’ oral assurances that they are

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POYNTER (Jan. 13, 2021), <https://www.poynter.org/reporting-editing/2021/reporters-covering-the-capitol-attack-were-used-to-harassment-and-heckling-but-wednesday-was-different/>.

<sup>184</sup> See, e.g., Lynn Walsh, *Meet the Victims of Violence Against Journalists*, QUILL (June 12, 2018), <https://www.quillmag.com/2018/06/12/meet-the-victims-of-violence-against-journalists/> (describing extensive beating of freelance journalist David Minsky by protesters, with police aid coming only after the attack).

<sup>185</sup> See, e.g., Solender, *supra* note 167 (quoting Trump’s comments at a Pittsburgh rally that “you don’t want to do that,” meaning throwing a reporter “aside like he was a little bag of popcorn[,]” but then noted such instances as “actually a beautiful sight.”), <https://www.forbes.com/sites/andrewsolender/2020/09/22/trump-says-police-violence-against-journalists-is-actually-a-beautiful-sight/?sh=3282a54057d6>.

<sup>186</sup> See RCFP PRESS FREEDOM TRACKER, *supra* note 181, at 8; see also Hsu & Robertson, *supra* note 3 (“He [CBS reporter Chip Reid] described ‘a scary moment’ on Wednesday when a protester had told him that law enforcement officers would not protect journalists. ‘There were no police around us—we were on our own,’ Mr. Reid said. ‘We high-tailed it out of there.’ He described the pro-Trump agitators as ‘absolutely, ferociously angry at the media.’”).

<sup>187</sup> See RCFP PRESS FREEDOM TRACKER, *supra* note 181, at 8; see also Jon Allsop, *The Police Abuse the Press. Again.*, COLUM. JOURNALISM REV. (June 1, 2020), [https://www.cjr.org/the\\_media\\_today/the-police-abuses-the-press-again.php](https://www.cjr.org/the_media_today/the-police-abuses-the-press-again.php); Katelyn Burns, *Police Targeted Journalists Covering the George Floyd Protests*, VOX (May 31, 2020, 1:10 PM), <https://www.vox.com/identities/2020/5/31/21276013/police-targeted-journalists-covering-george-floyd-protests>; Trevor Timm, *We Crunched the Numbers: Police—Not Protesters—Are Overwhelmingly Responsible for Attacking Journalists*, THE INTERCEPT (June 4, 2020, 4:00 PM), <https://theintercept.com/2020/06/04/journalists-attacked-police-george-floyd-protests/>; Marc Tracy & Rachel Abrams, *Police Target Journalists as Trump Blames ‘Lamestream Media’ for Protests*, N.Y. TIMES (June 1, 2020), <https://www.nytimes.com/2020/06/01/business/media/reporters-protests-george-floyd.html>.

press do not seem to have deterred police action against them.<sup>188</sup> A Buffalo police officer reportedly told a freelance photojournalist “[f]\*ck your First Amendment” “as officers pointed guns at his head.”<sup>189</sup> Reporters have been hit with rubber bullets, tear gassed, tackled, pepper-sprayed, threatened and intimidated, disbelieved as to their press status and credentials, strong-armed and arrested as they were attempting to do their journalistic jobs.<sup>190</sup> Some—such as Linda Tirado, who lost her sight in one eye—have suffered permanent physical injuries, while others have narrowly escaped harm through sheer luck.<sup>191</sup> Even teenage journalists working on their high school newspapers have been subjected to tear gas.<sup>192</sup> One photojournalist “forcefully loaded into a van by police while covering a protest” recounted, “I was sitting there, choking. I couldn’t breathe.”<sup>193</sup> The Press Freedom Tracker also tracked a number of incidents in which police searched or seized journalists’ equipment.<sup>194</sup>

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<sup>188</sup> See, e.g., RCFP PRESS FREEDOM TRACKER, *supra* note 181, at 8; Tracy & Abrams, *supra* note 187; Timm, *supra* note 187; Allsop, *supra* note note 187 (listing many specific attacks by police on reporters); see also Angela Rulfes, *The First Amendment in Times of Crisis: An Analysis of Free Press Issues in Ferguson, Missouri*, 68 SYRACUSE L. REV. 607 (2018) (discussing journalist mistreatment during coverage of prior protests in Ferguson after the police killing of Michael Brown).

<sup>189</sup> RCFP PRESS FREEDOM TRACKER, *supra* note 181, at 4.

<sup>190</sup> See, e.g., April Knight, *Under Attack: How Enhanced Anti-Protest Laws Impede and Endanger the Free Press*, 58 AM. CRIM. L. REV. ONLINE 84 (2021); Ahiza Garcia & Brain Stelter, *CBS Reporter Arrested at Trump Rally: ‘I’ve Never Seen Anything Like What I’m Witnessing,’* CNN (Mar. 12, 2016, 6:16 PM), <https://money.cnn.com/2016/03/12/media/cbs-sopan-deb-arrest-trump-rally/>; Burns, *supra* note 187.

<sup>191</sup> See, e.g., Tala Doumani & Jamil Dakwar, *Rubber Bullets and the Black Lives Matter Protests*, 24 HUM. RTS. BRIEF 77, 77 (2020) (describing freelance photojournalist Linda Tirado’s loss of vision due to a rubber bullet fired at her by police at a protest and noting 13 other instances of permanent loss of vision due to rubber bullet use at BLM protests); Courtney Douglas, *Amid Black Lives Matter Protests, A Crushing Moment for Journalists Facing Record Attacks, Arrests at the Hands of Law Enforcement*, REPORTERS COMM. FOR FREEDOM OF THE PRESS (Sept. 4, 2020), <https://www.rcfp.org/black-lives-matter-press-freedom/> (describing Tirado injuries and police officer shoving photojournalist Barbara Davidson to the ground, causing her to hit her head on a fire hydrant).

<sup>192</sup> See Douglas, *supra* note 191.

<sup>193</sup> See Walsh, *supra* note 184 (“‘We assumed it was obvious we were journalists . . . . They (police) would go after the rioters, not let them run away and leave us alone.’ Instead . . . an officer grabbed him and threw him against a wall where there were three other journalists forced into the same position. ‘I was wearing a helmet and a gas mask, and the police tried to rip it off, but the strap was choking me,’ he said. ‘Another journalist saw what was happening and told the cops I couldn’t breathe. But all he said was, ‘Shut the f--- up,’ and then walked away.’”).

<sup>194</sup> Douglas, *supra* note 191.

Many more reporters have also been arrested or charged than has typically been the case in the past.<sup>195</sup> And while many of the arrested reporters are subsequently released without charges, that is not always the case.<sup>196</sup>

Most notably, police actions against the press revealed a distinctly racialized character during the COVID-19 pandemic and especially during protests over the murders of Black men and women by police.<sup>197</sup> Especially during their coverage of protests<sup>198</sup> after George Floyd's murder, Black journalists and other journalists of color were disproportionately questioned, harassed, arrested or hurt while doing their jobs.<sup>199</sup> One female Latinx freelance photojournalist suffered permanent injury to her eye from a rubber bullet.<sup>200</sup> African American Wall Street Journal reporter Tyler Blint-Welsh was hit in the face and pushed to the ground, despite visible press credentials issued by the NYPD.<sup>201</sup> CNN's Omar Jimenez and his crew covering protests

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<sup>195</sup> RCFP PRESS FREEDOM Tracker, *supra* note 181, at 12 (reporting that “[j]ournalists were arrested or charged with a crime at least 139 times in 2020, more than a 15-fold increase over the previous year.”) In addition, the period 2017–2020 saw a dramatic increase in subpoenas apparently designed to harass or retaliate against journalists.

*Id.*; Douglas, *supra* note 191.

<sup>196</sup> RCFP PRESS FREEDOM TRACKER, *supra* note 181, at 5. This is so even with respect to prior protests. For example, it took two years for charges to be dropped against Wesley Lowery of the Washington Post and Ryan Reilly of Huffington Post in connection with their reporting of protests in Ferguson, Missouri after the fatal shooting of Michael Brown by police. See, e.g., Niraj Chokshi, *Ferguson-related Charges Dropped Against Washington Post and Huffington Post Reporters*, WASH. POST (May 19, 2016), <https://www.washingtonpost.com/news/post-nation/wp/2016/05/19/ferguson-related-charges-dropped-against-washington-post-and-huffington-post-reporters/>.

<sup>197</sup> See, e.g., *A Black Latino CNN Reporter was Arrested. A White CNN Reporter was Not.*, CNN (May 29, 2020, 9:29 AM), [https://www.cnn.com/us/live-news/george-floyd-protest-updates-05-28-20/h\\_9023ffd063def0b1af22cb3ecdc72a06](https://www.cnn.com/us/live-news/george-floyd-protest-updates-05-28-20/h_9023ffd063def0b1af22cb3ecdc72a06); Douglas, *supra* note 191; Timm, *supra* note 187.

<sup>198</sup> See Burns, *supra* note 187; Douglas, *supra* note 191; LZ Granderson, *George Floyd and the Special Hell Reserved for Black Journalists Covering His Killing*, L.A. TIMES (May 30, 2020, 11:06 PM), <https://www.latimes.com/world-nation/story/george-floyd-and-the-special-hell-reserved-for-black-journalists-covering-his-killing>; Adriana Morga Oregel, *Journalists Face Increasing Attacks from Law Enforcement While Covering Racial Justice Protests*, LATINO REP. (Aug. 7, 2020), <http://latinoreporter.org/2020/journalists-across-the-country-face-attacks-while-reporting-on-racial-justice-protests/>.

<sup>199</sup> See Kimberly Harris, *Journalists Under Attack While Reporting on Protests*, UNIV. OF OR. SCH. OF JOURNALISM & COMMUN., <https://journalism.uoregon.edu/journalists-under-attack-while-reporting-protests> (last visited Aug. 6, 2021); Harki, *supra* note 2; Patrice Peck, Opinion, *Black Journalists Are Exhausted*, N.Y. TIMES (May 29, 2020), <https://www.nytimes.com/2020/05/29/opinion/coronavirus-black-people-media.html?searchResultPosition=1>.

<sup>200</sup> Doumani & Dakwar, *supra* note 191, at 77; Douglas, *supra* note 191.

<sup>201</sup> Douglas, *supra* note 191.

in Minneapolis were handcuffed by police on-air.<sup>202</sup> Josh Campbell, a white reporter, was a few blocks away from Jimenez and said:

I was treated much differently than [Omar Jimenez] was. I'm sitting here talking to the National Guard, talking to the police. They're asking politely to move here and there. A couple times, I've moved closer than they would like. They asked politely to move back. They didn't pull out the handcuffs. Lot different here than what Omar experienced.<sup>203</sup>

This police violence against Black reporters added to the already-fraught context of reporting on racial justice protests: “[w]e’re not just covering protests and policy—we are also reporting on issues that reflect our lived experiences.”<sup>204</sup>

When the threat of police action (or private violence not curtailed by the state) joins the impacts of expressive harassment, it is clear that non-white journalists are particularly at risk. Surely the double whammy of psychic and physical violence affects reporters and the work of the press.

#### IV. ZOOMING OUT: SITUATING ONLINE HARASSMENT IN A TRIAD OF PRESS-DELEGITIMATING POLITICAL TACTICS

When viewed from the broader political perspective, identity-focused attacks on journalists reveal themselves to be one leg of a three-pronged political strategy to undermine the effectiveness, credibility and legitimacy of the mainstream press.

The strategy for weakening press authority centers on public trust, judicial protection, and press function. While the goal of the whole process is to doubtless to undermine the press's oversight function, each element of the strategy targets a different temporal moment in journalistic activity.

Public trust can be eroded by doubts cast on the veracity of press reports and the trustworthiness of the news institutions.

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<sup>202</sup> Oregel, *supra* note 198.

<sup>203</sup> Harris, *supra* note 199; *see also* sources cited *supra* notes 197–202.

<sup>204</sup> Tracie Potts, *Journalists of Color are Part of the Story of Racism in America. That Raises Tough Questions on the Job*, USC CTR. FOR HEALTH JOURNALISM (June 22, 2020), <https://centerforhealthjournalism.org/2020/06/19/journalists-color-are-part-story-racism-america-raises-tough-questions-job>.

Press attacks designed to undermine public trust in the press as an institution generally focus on the news organization's published output and reputation. Former President Trump's attack on the "fake news" mainstream press during his term<sup>205</sup> and his characterization of the media as the "enemy" of the American public<sup>206</sup> spurred distrust in the mainstream media and laid the groundwork for targeted attacks on journalists.

A second prong of the press-diminishment strategy consists of attempts to destabilize what had been thought to be well-settled and relatively press-protective legal doctrines. From former President Trump's calls to "open up" libel law and reduce press protections,<sup>207</sup> to recommendations by Justices Gorsuch and Thomas that the Court reconsider the press protections afforded by the actual malice standard of *New York Times v. Sullivan*,<sup>208</sup> to the adoption of anti-protest laws and other limits on retaliatory speech claims,<sup>209</sup> stability in press law has been challenged recently in both the court of public opinion and in the courts themselves. Attacks on the press under this umbrella generally focus on reducing the legal protections under which the press operates.

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<sup>205</sup> The media's output was attacked as "fake news" and press institutions (perhaps other than Fox) were demonized as the "enemy" of the American people. *See, e.g.*, Grynbaum, *supra* note 10. Scholarly as well as conversational attention has rightly been paid to the obvious Trumpian strategy of delegitimizing the mainstream press. *See, e.g.*, Jones & Sun, *supra* note 20, at 1303; *Levi*, *supra* note 20.

<sup>206</sup> *See*, Grynbaum, *supra* note 10.

<sup>207</sup> *See* Hadas Gold, *Donald Trump: We're Going to 'Open Up' Libel Laws*, POLITICO (Feb. 26, 2016), <https://www.politico.com/blogs/on-media/2016/02/donald-trump-libel-laws-219866>; Michael Grynbaum, *Trump Renews Pledge to 'Take a Strong Look' at Libel Laws*, N.Y. TIMES (Jan. 10, 2018), <https://www.nytimes.com/2018/01/10/business/media/trump-libel-laws.html>; *see also* Jane Kirtley, "Uncommon Law: The Past, Present and Future of Libel Law in a Time of 'Fake News' and 'Enemies of the American People'", 2020 U. CHI. LEGAL F. 117 (2020), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1665&context=uclf>.

<sup>208</sup> *See, e.g.*, *Berisha v. Lawson*, 141 S.Ct. 2424 (2021) (Gorsuch J. and Thomas J., dissenting from denial of certiorari). Justice Thomas had previously argued for a repeal of the *New York Times v. Sullivan* actual malice standard in defamation cases in his concurrence in the denial of certiorari in *McKee v. Cosby*, 139 S.Ct. 675 (2019). *See also* GAJDA, *supra* note 19 (describing reduction in press-protective judicial decisions). Scholars too have recently joined the anti-*Sullivan* bandwagon. *See, e.g.*, David Logan, *Rescuing Our Democracy by Rethinking New York Times v. Sullivan*, 81 OHIO ST. L.J. 759 (2020).

<sup>209</sup> *See, e.g.*, John S. Clayton, *Policing the Press: Retaliatory Arrests of Newsgatherers after Nieves v. Bartlett*, 120 COLUM. L. REV. 2275 (2020); April Knight, *Under Attack: How Enhanced Anti-Protest Laws Impede and Endanger the Free Press*, 58 AM. CRIM. L. REV. ONLINE 84, 84-85 (2021); Michael G. Mills, *The Death of Retaliatory Arrest Claims: The Supreme Court's Attempt to Kill Retaliatory Arrest Claims in Nieves v. Bartlett*, 105 CORNELL L. REV. 2059 (2020).

This Article contends that the rise of harassment of reporters—and particularly of identity-focused attacks—should be framed as a third significant element in an overall strategy of press-delegitimization launched during the Trump presidency. Identity-based personal attacks attempt to intimidate press workers in order to fracture *the reporting process* and the discovery of news and information.

The three prongs of the attack on the press reinforce each other and address different moments in the journalistic lifecycle. On the legal front, challenging what was thought to be a relatively stable set of doctrinal protections of the press opens the door to imagining an alternative—and much less press-protective—legal balance. It is hard to believe that enhanced liability for defamation, privacy and newsgathering torts would not, in turn, lead to a more timorous press both in gathering and publishing news. On the public trust front, the ceaseless “fake news” claim works to undermine public faith in the credibility of the *output* and the trustworthiness of the *institution* of the press. On the journalistic process front, identity-based verbal violence against reporters seeks to undercut the journalistic *function* (in addition to casting doubt on the credibility of media *output*). From traumatizing targeted reporters and leading to self-censorship, newsroom disfunction, and backsliding on diversity, virulent identity-based harassment undercuts news organizations’ ability to engage in fearless accountability journalism. It is important to recognize here that this strategy, while associated with the Trump presidency, does not require Trump to be President to continue gaining support and effectiveness over the long term.<sup>210</sup>

When seen holistically—as a long-range strategy of undermining and decentering the press<sup>211</sup>—there is reason to

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<sup>210</sup> Some suggest that harassment of journalists occurs “for three interconnected reasons: (1) political motivation [associated with the global rise of populism], (2) accessibility to the press [due to the requirement of visibility on social media], and (3) identity of journalists [with “Black, Indigenous, Jewish, Arab and lesbian women journalists . . . experienc[ing] both the highest rates and most severe impacts of online violence”]. Miller, *Hostility Toward the Press*, *supra* note 34, at 10–11. This Article identifies the political motivation as disempowering the press in its oversight role, and claims that this goal has been operationalized through a tri-partite strategy that takes aim at newsgathering, reporting, and the legal protection for those activities.

<sup>211</sup> If online harassment is an independent, bottom up development, why does this Article identify it as part of a press-debilitating strategy deployed by high government

believe that the institution-hobbling approach has been troublingly effective.<sup>212</sup> Doctrinally, courts are beginning to question the stability of press-protective precedents.<sup>213</sup> The ceaseless drumbeat of Trump's "fake news" claims appear to have reinforced previously-declining public faith in the press. And even if the election of President Biden put the brakes on official press-bashing designed to delegitimize the press, it did not put a stop to the parallel (albeit sometimes apparently more decentralized) strategies of journalist harassment. If the journalists gathering the news to tell the mainstream media's stories are threatened and silenced, or even if campaigns of harassment trigger responsive changes to the press' traditional routines and practices, the goal of hamstringing journalism and undermining press authority will have been significantly advanced.

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officials and elites? It is not necessary to assert a conspiratorially-designed and self-consciously strategic master plan to observe that elite attacks on the role and trustworthiness of the press invite bottom up confrontations, which then work as part of a multi-pronged method to sideline the press. It is striking to see how cleanly the different prongs of the attacks on the press fit together to undermine the key inflection points in journalistic practice. Moreover, empirical data cast some doubt on the notion that much online abuse is individual, self-directed, random, and 'bottom up' harassment. *See, e.g.*, News Release, UNESCO, UNESCO Releases Pioneering Discussion Paper On Online Violence Against Women Journalists (March 9, 2022), <https://www.unesco.org/en/articles/unesco-releases-pioneering-discussion-paper-online-violence-against-women-journalists> (asserting that online attacks against women journalists are "organised[] and inextricably linked with disinformation and populist politics.")

<sup>212</sup> It is true that the American public had already begun to lose faith in its institutions, including the press, for some years prior to the election of Donald Trump to the Presidency. But the constant refrain of the mainstream media as "fake news" greatly enhanced that distrust and effectively turned it into a partisan issue. *See, e.g.*, MARK JURKOWITZ ET AL., PEW RSCH. CENTER, U.S. MEDIA POLARIZATION AND THE 2020 ELECTION: A NATION DIVIDED (2020), <https://www.journalism.org/2020/01/24/u-s-media-polarization-and-the-2020-election-a-nation-divided/>; Jeffrey Gottfried, *Republicans Less Likely To Trust Their Main News Source If They See It As 'Mainstream'; Democrats More Likely*, PEW RSCH. CTR. (July 1, 2021), <https://www.pewresearch.org/fact-tank/2021/07/01/republicans-less-likely-to-trust-their-main-news-source-if-they-see-it-as-mainstream-democrats-more-likely/>. A recent Pew Research Center study happily suggests that the American public "express[es] open-mindedness about the possibility that their trust in the industry could improve." JEFFREY GOTTFRIED ET AL., PEW RSCH. CTR., AMERICANS SEE SKEPTICISM OF NEWS MEDIA AS HEALTHY, SAY PUBLIC TRUST IN THE INSTITUTION CAN IMPROVE (2020), <https://www.journalism.org/2020/08/31/americans-see-skepticism-of-news-media-as-healthy-say-public-trust-in-the-institution-can-improve/>. Still, a significant percentage of the public continues to be deeply skeptical of the press.

<sup>213</sup> *See, e.g.*, GAJDA, *supra* note 19.

## V. WAYS FORWARD?

Having identified harassment of journalists as an important element in a press-disruptive strategy<sup>214</sup> and a major threat to public discourse then raises the question of what should be done in response. The key point: all participants should recognize clearly that campaigns of online intimidation and harassment against one reporter are actually campaigns against *all* reporters and the press as a whole. They require a united front and a collective response. While individual reporter safety is extremely important, the issue is far bigger than any one reporter. A multi-player approach targeted to the various participants (and looking to a combination of legal obligation, culture change, institutional self-interest, tech work, and cross-industry cooperation) is more likely to bear fruit than, say, a purely legalistic or single-focus approach. Realistically, there is no easy fix or complete “solution” to the problem of online harassment of journalists. Still, the ultimate intractability of the problem as a whole is no excuse for avoiding the many small steps that are likely to help.

### *A. Contextual Challenges And The Need For Care*

The task of crafting ameliorative recommendations faces at least five challenges. First, and especially when focusing on recommendations to news organizations and reporters, it is important to recognize the dangers of micro-managing their functions and decision-making processes. This is not only because the category “news organization” or “media” includes many different kinds of entities, but also because of the significance of the press’s role and the need for its independence.

Second, there is some complexity generated by reportorial ambivalence. These days, reporters rely on social media such as Twitter as part of their professional portfolios, relationships with sources, identities/brands.<sup>215</sup> Simply put, their social media presences are part of their professional capital.

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<sup>214</sup> To be sure, some minimize the threat of online attacks on journalists. *See, e.g.*, Cathy Young, *How Bad is Online Harassment? And How Dangerous is it for the Future of Free Speech?*, REASON (April 2020), <https://reason.com/2020/03/22/how-bad-is-online-harassment>. Such assessments are both empirical and normative, and Ms. Young’s article does not support its claims on either front.

<sup>215</sup> *See, e.g.*, TROLLBUSTERS REPORT, *supra* note 34; NELSON, *supra* note 65.

Indeed, some of them may see their personal brands as bulwarks against the public's loss of trust in the media as an institution.<sup>216</sup> A visible and desirable, publicly-recognizable brand indubitably also enhances the journalist's employment status and bargaining position.<sup>217</sup> Some scholarship also supports the proposition that engagement with journalists on Twitter reduced public perceptions of media bias.<sup>218</sup> And while most Americans think news coverage is "one-sided," they "fault media organizations themselves much more than the journalists who work for them."<sup>219</sup> This, along with the uncertainty of journalism jobs since the beginning of the 21st C.,<sup>220</sup> creates incentives for individual reporter branding and audience engagement. Social media is also widely seen as "a democratizing force within journalism."<sup>221</sup> In light of this, at least some journalists might be ambivalent about heavily proscriptive (and prescriptive) recommendations. This is of course likely to be the case for those reporters who are active on social media and do not receive the amount and virulence of the online harassment directed at non-male, Black and/or Jewish reporters and those identifying with other marginalized communities. The dangers of audience engagement and social media presence are not equally distributed within the news worker cohort. Tolerance for audience engagement may thus raise conflicts of interest among journalists and may ossify professional inequalities. But it's also not inconceivable that the ability to establish a public brand may empower some otherwise disempowered journalists. It's

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<sup>216</sup> LEE RAINIE ET AL., PEW RSCH. CTR., *TRUST AND DISTRUST IN AMERICA* (2019), <https://www.pewresearch.org/politics/2019/07/22/trust-and-distrust-in-america/>. They also provide job opportunities in uncertain professional times. NELSON, *supra* note 65.

<sup>217</sup> See, e.g., Ken Doctor, *The Newsonomics Of David Pogue and the Pujols Effect*, NIEMANLAB (Oct. 24, 2013), <https://www.Niemanlab.Org/2013/10/The-newsonomics-of-david-pogue-and-the-pujols-effect/>; NELSON, *supra* note 65 ("In short, social media platforms have become the means by which journalists establish their professional identities, promote their work, improve their relationship with the public, find job opportunities, and advocate for changes to industry norms and labor practices.")

<sup>218</sup> See Trevor Diehl et al., *How Engagement With Journalists on Twitter Reduces Public Perceptions of Media Bias*, 13 JOURNALISM PRAC. 971, 971 (2019).

<sup>219</sup> Mason Walker & Jeffrey Gottfried, *Americans Blame Unfair News Coverage on Media Outlets, Not The Journalists Who Work For Them*, PEW RSCH. CTR. (Oct. 28, 2020), <https://www.pewresearch.org/fact-tank/2020/10/28/americans-blame-unfair-news-coverage-on-media-outlets-not-the-journalists-who-work-for-them/>.

<sup>220</sup> For a recent report on the decline of newsroom employment since 2008, see Mason Walker, *U.S. Newsroom Employment Has Fallen 26% Since 2008*, PEW RSCH. CTR. (July 13, 2021), <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>.

<sup>221</sup> NELSON, *supra* note 65.

complicated, and we don't have enough empirical evidence yet to support generalizations.

Third, recommendations to news organizations are of little relevance for freelancers and other journalists unaffiliated with traditional and economically stable news organizations.<sup>222</sup> Even with respect to the mainstream press institutions, the reality is one of significant economic difficulties at least since the early 2000s. So, and without uncritical acceptance of claims of corporate poverty, exactly how much by way of resources news organizations will be able to summon to fight online harassment consequences will be an open question (probably largely dependent on the organization at issue).

Fourth, arguments for legal obligations—and particularly recommendations aimed at social media entities—must take into account the uncertainties of the regulatory environment. Although much has been made of the arguments to revise or eliminate § 230 immunity for the social media platforms,<sup>223</sup> and although the Biden administration, through the Federal Trade Commission and otherwise, has expressed the desire to regulate social media companies,<sup>224</sup> the type and degree of regulation, how new regulations will fare in the courts, how long change is likely to take, and what the social media companies will do in response are all open questions.

Fifth, the range of material that constitutes the umbrella concept of online harassment is broad, suggesting not only the need to address relative severity (as some studies have

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<sup>222</sup> See, TROLLBUSTERS REPORT, *supra* note 34, at 48.

<sup>223</sup> See, e.g., Matthew Ingram, *Section 230 Critics are Forgetting About the First Amendment*, COLUM. JOURNALISM REV. (July 29, 2021), [https://www.cjr.org/the\\_media\\_today/section-230-critics-are-forgetting-about-the-first-amendment.php](https://www.cjr.org/the_media_today/section-230-critics-are-forgetting-about-the-first-amendment.php); Daisuke Wakabayashi, *Legal Shield For Social Media Is Targeted By Lawmakers*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/section-230-internet-speech.html>. Section 230 of the Communications Decency Act provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c). It thus grants interactive computer services a safe harbor from liability for claims based on the speech of third parties. See also *infra* note 280.

<sup>224</sup> See Andrea Vittorio, *Biden's Executive Order Links Data Collection To Competition*, BLOOMBERG LAW (July 9, 2021), <https://news.bloomberglaw.com/tech-and-telecom-law/bidens-executive-order-links-data-collection-to-competition>; see also Kevin Breuninger & Lauren Feiner, *Biden Signs Order to Crack Down on Big Tech, Boost Competition 'Across the Board'*, CNBC (July 9, 2021), <https://www.cnbc.com/2021/07/09/biden-to-sign-executive-order-aimed-at-cracking-down-on-big-tech-business-practices.html>.

imperfectly attempted to do),<sup>225</sup> but also that recommended solutions might have to be tailored rather than across-the-board.<sup>226</sup> Relatedly, both online harassment and technology are quickly evolving, with lack of transparency and the pace of change challenging research and threatening staleness for concrete and directive recommendations.

Recognizing these challenges, this Article suggests that ameliorative recommendations be directed to the many different players involved in the problem of online harassment. Thus, it addresses news organizations, journalism schools, journalist-representative organizations (*inter alia* unions, journalist trade associations, media lawyers and media law clinics in law schools), reporters themselves, social media platforms, and researchers working in media-affiliated fields. It does so, however, in a spirit of modesty.

### *B. Obligations Of News Organizations*

News organizations must have obligations to their employees to protect them both from physical violence and online abuse. Calling for reportorial “grit” or a “thick skin”<sup>227</sup> in this kind of situation cannot satisfy the news organizations’ obligations. They must have duties of care toward their employees and paying close attention to online harassment of vulnerable reporters must be a key element in those duties. Further, imposing responsibility solely on the harassed journalists for the responses to the harassment—an individualizing tactic—does not sufficiently address the collective character of the effects.

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<sup>225</sup> See, e.g., *infra* text accompanying notes 286 and 287 (suggesting the need for researchers to address cumulative effects of even less severe online harassment). See also note 29 *supra* (on the obvious characterization of the kinds of attacks discussed in this Article as online harassment).

<sup>226</sup> For a PEN America report recognizing the complexities of making recommendations to counter abuse while protecting free expression, see VILK, *supra* note 85 (“It is important to bear in mind that both proactive and reactive measures are themselves susceptible to gaming and weaponization.”) Agreeing with PEN America’s recognition that “the difference between an effective strategy and an ineffective or overly restrictive one depends not only on policies but also on the specifics of how tools and features are designed and whom they prioritize and serve[.]” *id.*, this Article commends the issue to the participants closest to the issues.

<sup>227</sup> Chen, et al., *supra* note 11; UNESCO, THE CHILLING, *supra* note 34, at 40.

What I suggest here is not a matter of explicit and clearly defined legal doctrine. Of course, a variety of state, local and federal laws, *inter alia* from cyberstalking to privacy to defamation to intentional infliction of emotional distress to copyright infringement to employment discrimination and beyond, can be the bases for prosecutions or civil actions over harassment.<sup>228</sup> Prosecutors have brought actions against white supremacists who were targeting journalists, among others, and reporters have brought discrimination actions.<sup>229</sup> On the employment discrimination side, anti-discrimination laws impose liability on employers for workplace harassment. Employers must guard against workplace harassment and hostile workplace environments, and can be liable for non-employee discrimination so long as they knew or reasonably should have known of the harassment and failed to take appropriate corrective action.<sup>230</sup> Some scholars have also recently argued for legal recognition of fiduciary duty on the part of employers to employees, while admitting that such duties (while immanent in other existing doctrines) have not yet been adopted by courts as explicit fiduciary duties.<sup>231</sup>

Current legal responses appear limited. There are complexities with respect to application of those existing legal obligations when the harassment is ‘only’ online (since applicable laws vary, when the employer does not know of it and the employee is deemed not to have notified the employer adequately), and when the employer has taken some (even if

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<sup>228</sup> See, e.g., Mary Catherine Young, *Online Harassment of Journalists and Uncertain Paths to Recourse Under the Law*, WAKE FOREST L. REV. CURRENT ISSUES BLOG (Feb. 16, 2021), <http://www.wakeforestlawreview.com/2021/02/online-harassment-of-journalists-and-uncertain-paths-to-recourse-under-the-law/>; Marshak, *supra* note 32 (describing a variety of state cyberharassment laws); Eberspacher, *supra* note 8 (on federal law of workplace harassment).

<sup>229</sup> See, e.g., *Neo-Nazi Pleads Guilty in Journalist Threat Case*, AP (Apr. 7, 2021), <https://apnews.com/article/conspiracy-journalists-seattle-1e5606dab4b7be262c491c50272576a7> (describing cyberstalking case against neo-Nazi Cameron Shea); Matthew Barakat, *Neo-Nazi Leaders Face Conspiracy Charges on Both Coasts*, NBC MIA. (Feb. 26, 2020), <https://www.nbcmiami.com/news/national-international/ex-neo-nazi-leader-charged-with-swatting-cabinet-official-alexandria-church/2197330/>. See *infra* note 233 (describing reporter suit against Washington Post).

<sup>230</sup> 29 C.F.R. § 1604.11(e) (2019) (EEOC guidelines); see also Eberspacher, *supra* note 8, at 162 and sources cited therein; Dallan F. Flake, *Employer Liability for Non-Employee Discrimination*, 58 B.C. L. REV. 1169 (2017). For an early, influential argument on varieties of legal recourse against online mobs, see generally Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61 (2009).

<sup>231</sup> See, e.g., Matthew Bodie, *Employment as Fiduciary Relationship*, 105 GEO. L. J. 819 (2017).

minimal and only minimally effective) steps with respect to the issue.<sup>232</sup> In light of questions about the news organizations' control over external sources of harassment and the need to demonstrate severity of harm, reporters may face uphill litigation battles. As for an expanded notion of employer fiduciary duty, the applicability of such putative fiduciary duties in the kinds of situations addressed in this Article has not yet been explored or established; the relational duties proposed by scholars addressing fiduciary duties of boards to employees do not reflect the relationships between editors and reporters in the newsroom. Finally, the possibility of contractual waivers, arbitration clauses, and other procedural ways of protecting employers might undermine direct liability for news organizations as a practical matter.

Lest this be too pessimistic a reading, the issue of news organization obligations to reporters has already been presented in a recent lawsuit by breaking political news reporter Felicia Sonmez against the Washington Post and a number of its editors.<sup>233</sup> Despite the recent dismissal of the Sonmez lawsuit on

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<sup>232</sup> See generally Marshak, *supra* note 32 (discussing statutory variation, prosecutorial discretion); Eberspacher, *supra* note 8, at 143, 156–60 (on low level “basic trainings and policies” required by courts to satisfy workplace harassment compliance and therefore likely limits legal recourse for online harassment); see also Rosario-Mendez v. Hewlett Packard Caribe BV, 573 F. Supp. 2d 558 (D.P.R. 2008) (finding employer not liable because the employee failed to properly notify the employer of the harassment). For an example of the hurdles likely to face women reporters who sue their employers on a disparate impact theory, see Eberspacher, *supra* note 8, at 161.

<sup>233</sup> See Jeremy Barr, *Washington Post Reporter Felicia Sonmez Files Suit Against the Newspaper and Top Editors, Alleging Discrimination Over Past Coverage Ban*, WASH. POST (July 22, 2021), <https://www.washingtonpost.com/media/2021/07/22/felicia-sonmez-lawsuit/>; Orion Rummel, *Newsrooms are Failing to Protect Women Journalists. Survivors Hope Felicia Sonmez's Lawsuit Will Change That*, NIEMANLAB (Aug. 10, 2021, 7:33 AM), <https://www.niemanlab.org/2021/08/newsrooms-are-failing-to-protect-women-journalists-survivors-hope-felicia-sonmezs-lawsuit-will-change-that/> (linking to Sonmez's complaint). Ms. Sonmez' lawsuit claims both that the Post discriminated against her by banning her from covering sexual harassment and assault stories after she had publicly discussed having been a victim of sexual assault herself, and also that the paper did nothing to protect her from online harassment in response to her tweets shortly after Kobe Bryant's death about his prior criminal charges. She was given no special security when she reported the abuse, in contrast to a male reporter who had made a similar report. Over three hundred Washington Post staffers had sent the paper an open letter supporting Sonmez, objecting to her having been placed on administrative leave after the Bryant tweet, and asking for safety and protection for her. *Id.*

The *Sonmez* suit was recently dismissed on the ground that she had not proved discrimination on the basis of the paper's assignment decisions. Order, *Sonmez v. WP Co.*, No. 2021 CA 002497 B (D.C. Super. Ct. Mar. 25, 2022). The court did not specifically opine on Sonmez's claims about the Post's inadequate efforts to protect her from harassment, although it did reject her claim for negligent

other grounds, the filing of actions like this should indicate to news organizations that how they deal with online harassment against their journalists will be a matter discussed both in the court of public opinion and in courthouses as well.

In any event, regardless of the extent of formal legal obligations, professional norms, public concern, labor realities and sheer self-interest should counsel news organizations to adopt effective plans to address online harassment of their journalists. Journalist unions can play a role in reminding the news organizations of their duties to their employees. Unlike many other industries, there appears to have been a significant uptick in unionization in the news media sector.<sup>234</sup> How news organizations deal with the harassment of reporters should be a very important element of the union negotiation platform.

At a minimum, the news organizations should support their reporters' legal actions against police and other state actors who have caused them physical injury.<sup>235</sup> But this is only the first

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infliction of emotional distress on the basis of the Post's reporting bans and performance evaluation. In doing so, the court asserted that "[t]he relationship between a newspaper and a reporter is not the kind of special relationship that necessarily implicates the plaintiff's emotional well-being, nor is there an especially likely risk that the newspaper's negligence would cause serious emotional distress to its reporters." *Id.* at 22. Sonmez reportedly will appeal the dismissal. Charlotte Klein, *Judge Tosses Reporter Felicia Sonmez's Discrimination Case Against The Washington Post*, VANITY FAIR (Mar. 28, 2022) <https://www.vanityfair.com/news/2022/03/judge-tosses-reporter-felicia-sonmezs-discrimination-case-against-the-washington-post>. Admittedly, even a successful appeal in the *Sonmez* case might have limited broader impact since the claims in the complaint were based on provisions of the Washington D.C. Human Rights Act and negligent infliction of emotional distress. However, even a partially successful appeal would send a clear signal to other news organizations not subject to the DC legislation at issue in *Sonmez*.

<sup>234</sup> Angela Fu, *Not Just a Aave, But a Movement: Journalists Unionize at Record Numbers*, POYNTER (July 12, 2021), [https://www.poynter.org/business-work/2021/not-just-a-wave-but-a-movement-journalists-unionize-at-record-numbers/?utm\\_source=Daily+Lab+email+list&utm\\_campaign=3ba641a280-dailylabemail3&utm\\_medium=email&utm\\_term=0\\_d68264fd5e-3ba641a280-396145757](https://www.poynter.org/business-work/2021/not-just-a-wave-but-a-movement-journalists-unionize-at-record-numbers/?utm_source=Daily+Lab+email+list&utm_campaign=3ba641a280-dailylabemail3&utm_medium=email&utm_term=0_d68264fd5e-3ba641a280-396145757) ("In the past decade, workers at news publications have launched more than 200 union drives, and over 90% of them have been successful. . . . Diversity in hiring and coverage remains a key priority among many media unions, and more and more journalists see unionizing as a way of effecting change.").

<sup>235</sup> See *supra* Section II, on physical threats and injury to reporters from police and other law enforcement; see also Eberspacher, *supra* note 8, at 163 (recommending that news organizations bring suit or support the journalist's suit "[w]here the conduct rises to a legally actionable level.") With respect to physical threats and violence, reporters have brought various actions under Section 1983 for their treatment during coverage of the nationwide demonstrations following the police murder of George Floyd and have been largely successful. In one of these cases, the court dubbed this

step, as it addresses physical harms offline. This Article recommends close attention by news organizations to the scale of the problem<sup>236</sup> and the types of structural mechanisms that they should put in place in response to online harassment. One of the most damaging critiques of the news organizations' responses to online harassment is that news management has typically ignored the problem or treated it as simply an individual issue to be dealt with by the affected reporter.<sup>237</sup> Recognition of the type of threat posed by online harassment to the press as a whole should lead to a far more proactive attitude<sup>238</sup>—one which would address the organization's social media policies, its response protocols when reporters are targeted for harassment, and its newsroom culture.

News management should ensure that the company's social media policies are clear, up to date, and well understood by the reporters.<sup>239</sup> They should also eliminate blanket contractual requirements requiring engagement with social media as a precondition of employment.<sup>240</sup> To the extent that they wish to create incentives for online audience engagement, they should put protective mechanisms in place to respond nimbly to attacks on their reporters. For example, there should be consideration of whether and when comments sections should be disabled or monitored by other news organization

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jurisprudence the “Floyd Case Law.” See *Alsaada v. City of Columbus*, 536 F. Supp. 3d 216 (S.D. Ohio 2021); see also Clayton, *supra* note 209.

<sup>236</sup> See, e.g., Waisbord, *Mob Censorship*, *supra* note 18, at 1041 (“[i]t is hard to tell whether news organizations know the scale of the problem . . .”).

<sup>237</sup> See, e.g., NELSON, *supra* note 65.

<sup>238</sup> A recent report by the Tow Center for Digital Journalism also recommends a proactive approach to harassment by newsroom managers. In addition, it makes recommendations focused on social media policies and calls for increased diversity in both the reporter and manager ranks. *Id.*

<sup>239</sup> This is also one of the recommendations in the Tow Center report. *Id.* See also Miller, *Harassment's Toll*, *supra* note 29, at 13–16 (on need for organizational and supervisor support). Reporters also complain that social media policies are sometimes enforced in unfair ways “tending to fall along racial and gender lines.” NELSON, *supra* note 65. This too requires sustained attention and evaluation by the news organizations.

<sup>240</sup> See Chen et al., *supra* note 11 (explaining news organization expectations of digital engagement by reporters with the public); see Eberspacher, *supra* note 8, at 164 (on the need to refine anti-harassment training programs).

Some ameliorative steps are already being taken. For example, the AP is creating a new response plan and training program akin to the preparation its provides its reporters for reporters going into conflict zones. See Patrick Maks, *AP's Top Editor: We Must Protect Journalists Online*, AP (Nov. 23, 2021) <https://blog.ap.org/industry-insights/aps-top-editor-we-must-protect-journalists-online>.

personnel.<sup>241</sup> Consideration could be given to a dedicated social media team to relieve the pressure on targeted reporters.<sup>242</sup>

Once harassment occurs, the news organizations should have well-designed and appropriate responses. They should prioritize their reporters' mental health and physical safety even outside of conflict zones: they should devote material resources to mental health in the newsroom and should consider security training for their professional staffs.<sup>243</sup> News managers should be trained to deal appropriately with online harassment and there should be structures in place to manage harassing messages. Moreover, both reporters and managers would benefit from clear and user-friendly reporting processes for harassment.<sup>244</sup> News managers should adopt a presumption of public

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<sup>241</sup> Admittedly, “[s]o-called trolls no longer live only in the comments section at the bottom of an article or in hate mail. The nature of online abuse has evolved along with online media itself.” Klein, *supra* note 7. This means that disabling the comments section might be ineffective to quell abuse while eliminating a site where true critical discourse might take place. This is why the Article suggests that news organizations consider this option in the particular contexts they face.

Similar thought should be given to whether to discontinue anonymity in online commenting. See Mathew Ingram, *Why Ending Anonymity Would Not Make Social Media Better*, COLUM. JOURNALISM REV. (Feb. 4, 2021) [https://www.cjr.org/the\\_media\\_today/why-ending-anonymity-would-not-make-social-media-better.php](https://www.cjr.org/the_media_today/why-ending-anonymity-would-not-make-social-media-better.php) (reporting findings that identified commenters were harsher than anonymous ones).

<sup>242</sup> The Tow report recommends that “the news industry as a whole should consider normalizing *not* using Twitter.” NELSON, *supra* note 65. Alternatively, the Report recommends that “if newsroom managers are going to push their reporters to be on social media, they should be on it, too, setting an example and getting their backs.” *Id.* The blanket boycott of Twitter by all news organizations at this point is rather unrealistic. With respect to the alternative, perhaps an official and well-curated social media presence might be more effective than individual news manager engagement on Twitter.

<sup>243</sup> This is consistent with the Tow Center report’s recommendation that “[a] proactive approach should privilege the mental health of journalists facing abuse” and that “newsroom managers should undergo training so they know how to deal with online harassment from the moment it begins.” NELSON, *supra* note 65. A recent study shows the “connective practices that involve joint action with peers and editors” that are “particularly effective in addressing the emotional effects of harassment. Anu Kantola & Anu A. Harju, *Tackling The Emotional Toll Together: How Journalists Address Harassment With Connective Practices*, JOURNALISM, Dec. 9, 2021.

<sup>244</sup> This is consistent with the Tow Center report’s recommendation that “[a] proactive approach should privilege the mental health of journalists facing abuse” and that “newsroom managers should undergo training so they know how to deal with online harassment from the moment it begins.” NELSON, *supra* note 65.

This would at a minimum require efficient, effective and probably confidential systems for such reporting. See, e.g., Elana Newman et al., *Online Abuse of Women Journalists: Towards and Evidence Based Approach to Prevention and Intervention*, in OSCE REPORT, NEW CHALLENGES TO FREEDOM OF EXPRESSION: COUNTERING ONLINE ABUSE OF FEMALE 50 (2016), <https://www.osce.org/files/f/documents/c/3/220411.pdf>.

institutional support of the reporters under fire. The institutional press also needs to develop sophisticated responses to accounts of reporter harassment. Taking a reporter off her beat because she has reported online harassment is not an acceptable response, either legally or as a matter of professional norms.<sup>245</sup>

With respect to newsroom culture, the organization should pay particular attention to the experiences of African American reporters and women reporters both with online harassment and with their experience of their workplaces.<sup>246</sup> News media should attend quickly to diversifying their professional staffs.<sup>247</sup> And they must recognize, as they engage in their expressed goals of expanding diversity in their ranks, that merely hiring diverse reporters is not enough. Black journalists in news organizations today report that their newsrooms are not inclusive and protective spaces.<sup>248</sup> Resources must also be spent on creating collaborative and inclusive newsrooms—emphasizing the recognition that if one newsroom staffer is subjected to online harassment, all of the rest of them in effect are as well.

Further, without giving white supremacists another platform, information about these campaigns of intimidation and harassment should be publicized, shared with scholars, brought to the attention of the social media platforms on which they occur (and the public), and perhaps serve as the subject of government lobbying. The news organizations themselves are in a much better position to engage in this public commenting function than the reporters who have been subjected to the

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<sup>245</sup> See *supra* note 233 (discussing Felicia Sonmez's claims against the Washington Post).

One of the particularly problematic responses of news companies wishing to avoid conflict is to refuse to employ women who are being targeted online. As one reporter put it, "they get thrown under the bus." Sullivan, *supra* note 8. This sort of discrimination should not be tolerated.

<sup>246</sup> The Tow report suggests that news organizations should also consider rejecting 20<sup>th</sup> Century norms of reportorial objectivity in favor of a transparency-based approach. See NELSON, *supra* note 65 ("Newsrooms should consider embracing transparency over objectivity when it comes to social media policies, as well as when it comes to their efforts to earn audience trust more generally. ... That transparency should extend to the enforcement of social media policies. ... With that in mind, newsrooms might consider distinguishing between their journalists' views and their organization's view. ... Newsrooms should have larger conversations about the guiding values that inform their approaches to everything else, including social media policies....")

<sup>247</sup> See also NELSON, *supra* note 65.

<sup>248</sup> See *supra* notes 120, 125, 134, 135, 140, 161, 162 and accompanying text.

harassment.<sup>249</sup> Collective reporting can enhance pressure on social media platforms to respond.

Finally, the news organizations should publicize—and put pressure on government to regulate—companies whose business it is to sell social network followers and retweets to individuals or organizations or that assist with “email bombing.”<sup>250</sup> To the extent that there are existing regulatory regimes and that the companies are subject to U.S. law, enforcement should be a priority.

These sorts of initiatives are supported by both moral considerations and business exigencies. As for the latter, news organizations must recognize that if they do not take adequate steps, they are likely to lose many of the very reporters they wish to attract in order to diversify their newsrooms and promote increased trust in the press.<sup>251</sup>

### *C. Recommendations For Journalism Schools, Reporters, Press-Representative Organizations And Media Law Clinics*

Both public and professional education about online harassment of reporters might help. Reports suggest that journalism schools are not arming their graduates adequately to deal with online harassment.<sup>252</sup> This is particularly problematic,

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<sup>249</sup> See, e.g., REPORTERS WITHOUT BORDERS REPORT, *supra* note 87 (recommending that media organizations “make online harassment of journalists a big issue.”); see also Eberspacher, *supra* note 8, at 167–68 (arguing for collaboration among news organizations).

<sup>250</sup> REPS. WITHOUT BORDERS REPORT, *supra* note 87, at 14. (“One of these firms, Followers and Likes, did not hesitate to sell retweets to *ProPublica*’s undercover reporters, who had created two fake Twitter accounts. The reporters were able to buy 10,000 retweets for their fake pro-Russian account for just 45 dollars and 5,000 retweets for 28 dollars for their fake English-language account.”); see also Julia Angwin, *How Journalists Fought Back Against Crippling Email Bombs*, WIRED (Nov. 9, 2017), <https://www.wired.com/story/how-journalists-fought-back-against-crippling-email-bombs/> (discussing email bombs).

<sup>251</sup> See, e.g., Hanaa Tameez, *Here’s How the News Media Can Repair its Trust Problem with Black Americans*, NIEMANLAB (Nov. 19, 2020), <https://www.niemanlab.org/2020/11/heres-how-the-news-media-can-repair-its-trust-problem-with-black-americans/>.

<sup>252</sup> See, e.g., Carolyn Copeland, *Are Journalism Programs Properly Training Students to Navigate Harassment?*, PRISM (July 19, 2021), <https://prismreports.org/2021/07/19/are-journalism-programs-properly-training-students-to-navigate-harassment/>; FERRIER, *supra* note 126, at 32 (quoting study subject); see also Anne Wen, *Student Journalists Say Online Harassment Is a Major Issue*, TEENVOGUE (Oct. 18, 2021) <https://www.teenvogue.com/story/journalist-harassment-students>.

as the majority of new journalism school graduates are women.<sup>253</sup> In addition, to the extent that many stories are being reported by journalism students,<sup>254</sup> they are themselves likely to be subject to harassment even prior to full-time, professional employment as journalists. This Article therefore recommends that specific attention be paid by journalism schools (and universities generally) to the phenomenon of online harassment of reporters as a distinct weapon in the contemporary attacks on the legitimacy of the press globally. Such attention might include sophisticated security training in coordination with university computer engineering departments, as well as information from law school colleagues on the state of the relevant law.

With respect to professional reporters, the anecdotal reports of the traumatizing effects of much online harassment seem to relate to have to do with feelings of isolation that arise from discomfort with reporting the harassment and being left alone to deal with it.<sup>255</sup> Reporters should be open to the training and reporting opportunities offered by news organizations (as suggested in *Section V.B* above). Reporters should both push for and take advantage of employer- or trade association-offered training in protective techniques online.<sup>256</sup> This is particularly

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<sup>253</sup> WOMEN'S MEDIA CTR. REPORT, *supra* note 47, at 4; Catherine York, *Women Dominate Journalism Schools, But Newsrooms Are Still A Different Story*, POYNTER (Sept. 18, 2017), <https://www.poynter.org/business-work/2017/women-dominate-journalism-schools-but-newsrooms-are-still-a-different-story/>; see Escalona, *supra* note 132 (discussing journalism becoming a majority female profession).

<sup>254</sup> See Elahe Izadi, *College Newspaper Reporters are the Journalism Heroes for the Pandemic Era*, WASH. POST (Sept. 19, 2020), <https://www.washingtonpost.com/media/2020/09/19/coronavirus-college-newspapers/>.

<sup>255</sup> See generally WOMEN'S MEDIA CTR. REPORT, *supra* note 47, at 10.

<sup>256</sup> An increasing number of resources are being made available for reporters. For example, UNESCO and the Thomson Reuters Foundation, in collaboration with the International Women's Media Foundation, launched two guides—GENDER-SENSITIVE SAFETY POLICIES FOR NEWSROOMS (2021), <https://unesdoc.unesco.org/ark:/48223/pf0000379907>, and PRACTICAL GUIDE FOR WOMEN JOURNALISTS ON HOW TO RESPOND TO ONLINE HARASSMENT (2021), [https://news.trust.org/dA/f6f7b0dad9/file/TRF+Practical+Guide+JUL+2021+V15.pdf?language\\_id=1](https://news.trust.org/dA/f6f7b0dad9/file/TRF+Practical+Guide+JUL+2021+V15.pdf?language_id=1). The Thomson Reuters Foundation, the International News Safety Institute and UNESCO also launched the ONLINE ATTACKS AGAINST JOURNALISTS: KNOW YOUR RIGHTS GUIDE (2021), <https://safetyofjournalists.trust.org/#knowyourrightsguide>. The Knight Center for Journalism in the Americas, the International Women's Media Foundation and UNESCO created a massive open online course called How to Report Safely: Strategies for Women Journalists and Their Allies. See *New Free Online Course for Women Journalists and Allies: Learn How to Plan for Reporting Safely*, KNIGHT CTR. BLOG (Apr. 19, 2021), <https://knightcenter.utexas.edu/new-free-online-course-for-women->

important for freelance journalists who cannot rely on institutional resources of their employers. Reporters should also engage with others outside of their own organizations (including professional journalist organizations—trade associations—such as the Committee to Protect Journalists, the National Association of Black Journalists, the Reporters Committee for Freedom of the Press, the International Women’s Media Association etc.) to create networks to share information about these attempts to intimidate.<sup>257</sup> They should cooperate with researchers and scholars by providing all requisite information to enable further study and exploration. In addition, with commitment from the editorial/management side, non-minority, non-women reporters in the nation’s newsrooms should become allies with their targeted colleagues, take a close look at the culture of their workplaces, and commit to developing more inclusive work practices. This would, at a minimum, provide harassed reporters some feeling of safety in reporting the facts and their reactions to the attacks. If all the reporters—whether or not singled out for attack—present a united front to news management, logic suggests that it would be more difficult to dismiss the complainers as just a few hyper-sensitive souls. Reporters should also connect with scholars and others who are studying the phenomena of online harassment and provide as much information as possible for scholarly analysis.

Trade associations, media law clinics at law schools, and media lawyers representing reporters (including on a *pro bono* basis) can also help reporters—especially those who do not have access to major news organizations’ legal teams—to assess legal

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journalists-and-allies-learn-how-to-plan-for-reporting-safely/. Harvard’s Nieman Foundation for Journalism has published a recommended list of tools. Elisa Lees Munoz, *How Newsrooms, Journalists, and their Peers Can Combat Online Violence*, NIEMAN REPORTS (Apr. 12, 2021), <https://niemanreports.org/articles/how-newsrooms-journalists-and-their-peers-can-combat-online-violence/>. PEN America provides a harassment field manual. *Online Harassment Field Manual*, PEN AM., <https://onlineharassmentfieldmanual.pen.org/> (last visited Mar. 28, 2022); *see also* *Safety of Journalists*, FREE PRESS UNLIMITED RES. SPACE, <https://kq.freepressunlimited.org/themes/safety-of-journalists/> (last accessed Mar. 28, 2022).

<sup>257</sup> Some of this industry-wide self-help is already taking place. The International Women’s Media Foundation, the Committee to Protect Journalists, the International Center for Journalists, and PEN America, the Associated Press, among others, are providing digital security information and launching initiatives to provide support and resources to journalists facing harassment online. *See* Eberspacher, *supra* note 8, at 155 (discussing PEN America’s Online Harassment Field Manual); *see also* Florence le Cam, *Journalistic Organizations: Arenas for Professional and Symbolic Struggles*, COMM’N, Jan. 30, 2020 (discussing the history of journalist trade associations).

options as well as offering mentorship.<sup>258</sup> They can provide resources to freelancers and news organizations too financially challenged to respond adequately to the current landscape of threat. They can also play a role in continuing to publicize the expressive (and real world) violence to which African American journalists, those identified with other marginalized communities, and women reporters are particularly subject. In addition to continuing to use publicity on behalf of journalists and the important work of the press, these organizations should expand their fields of advocacy for the press. They should make connections with other affinity groups concerned about civil rights in order to amplify public understanding of the threats to journalists working today.

These recommendations are not meant to suggest that we should focus on online harassment as only a safety issue for journalists. We must recognize, though, that promoting reporter safety also shores up the role of the press as a whole. Especially for news workers who are not affiliated with established and relatively resource-rich news organizations, help in fulfilling the journalistic function must come from other sources.

#### *D. Suggestions For Social Media Platforms*

Obviously, social media platforms are an important part of the delivery of online harassment to journalists who identify as members of racial, ethnic and religious minorities and/or as women or gender diverse persons. Some headway could be made against online harassment of journalists through: 1) attention to design—both of tech tools and user interaction/complaint procedures, 2) terms of service enforcement, and 3) greater algorithmic and informational transparency.<sup>259</sup>

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<sup>258</sup> In addition, the Legal Network for Journalists at Risk was inaugurated to expand legal assistance available for journalists internationally. See *UNESCO And Thomson Reuters Foundation Launched Practical Guides On The Safety Of Women Journalists*, UNESCO (Nov. 22, 2021), <https://en.unesco.org/news/unesco-and-thomson-reuters-foundation-launched-practical-guides-safety-women-journalists>. UNESCO also administers the Global Media Defence Fund. Munoz, *supra* note 256.

<sup>259</sup> A recent Pew poll reports that “[a]round half of Americans say permanently suspending users if they bully or harass others (51%) or requiring users of these platforms to disclose their real identities (48%) would be very effective in helping to reduce harassment or bullying on social media.” VOGELS, *supra* note 29. Permanent bans bring their own dangers, not the least of which are controversy and inevitable

On the tools and design front, I concur with the various recommendations to harassment response efforts suggested in the 2018 ADL Report on online harassment, including “allow[ing] users more nuanced control over who can see their tweets . . . allow[ing] for greater ease in filtering notifications and direct messages from unfamiliar accounts . . . [and block[ing] accounts that actively facilitate trolling.”<sup>260</sup> In addition to providing new tech tools to help journalists stem their exposure to online attacks, the platforms should pay close attention to the designs of their tools and the consequences of such designs.<sup>261</sup> At a minimum, the social media platforms could prioritize their attempts to label and control manipulative bots.<sup>262</sup> They should work harder to develop more effective automated tools for sniffing out harassment.<sup>263</sup> Furthermore, “[p]latforms need

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inconsistency over when and how they should be applied in practice. As for prohibiting anonymity, the Pew report itself recognizes the controversial character of this proposal and other work raises questions as to the effectiveness of requiring identification. See Ingram, *supra* note 241. Still, there is much to recommend PEN America’s recent recommendations directed to social media platforms, including the suggestion to “[c]reate a transparent system of escalating penalties for abusive behavior—including warnings, strikes, nudges, temporary functionality limitations, and suspensions, as well as content takedowns and account bans—and spell out these penalties for users every step of the way.” VILK, *supra* note 85.

<sup>260</sup> Unfortunately, the fact that many antisemitic tweets come from human accounts rather than bots means that just blocking bots will not be a full solution. 2018 ADL REPORT, *supra* note 5, at 12.

<sup>261</sup> Caroline Sindors, et al., *Trust through Trickery*, COMMONPLACE (Jan. 5, 2021), <https://commonplace.knowledgefutures.org/pub/trust-through-trickery/release/1#recommendations>. For example, Sindors et al. demonstrate the number of steps and complexities involved in abuse reporting for individual reporters.

<sup>262</sup> See 2018 ADL REPORT, *supra* note 5, at 14 (recommending development of “labeling system for accounts that demonstrate high-levels of automation . . .”).

<sup>263</sup> One recent positive development of this kind is Google’s release of the source code for its Harassment Manager tool with a specific hope for its use to help female journalists facing harassment online. See *Technology To Help Women Journalists Document And Manage Online Abuse*, MEDIUM (March 8, 2022), <https://medium.com/jigsaw/technology-to-help-women-journalists-document-and-manage-online-abuse-5edcac127872>. The Harassment Manager was built by Google’s Jigsaw unit in partnership with Twitter. The tool “helps users easily identify and harmful posts, mute or block perpetrators of harassment and hide harassing replies to their own tweets. Individuals can review tweets based on hashtag, username, keyword or date, and leverage our Perspective API to detect comments that are most likely to be toxic.” *Id.* Harassment Manager is not a downloadable app. Its code must be integrated into other software used by news organizations to evaluate tweets. Google announced that it will be launched by Thomson Reuters. *Id.*; see also *Harassment Manager*, GITHUB, <https://github.com/conversationai/harassment-manager> (last visited May 19, 2022). See also Adi Robertson, *Google Is Releasing An Open Source Harassment Filter For Journalists*, THE VERGE (Mar. 8, 2022, 5:00am EST),

clearer mechanisms, that involve human facilitators and not just automated or online complaint systems, for identifying serious harassment and trolling.”<sup>264</sup>

Platforms could also improve their processes once complaints of harassment have been made.<sup>265</sup> Typically, their current workflow processes do not allow for conversation and appeal. Once a journalist has reported harassment to the platform, she is in the dark about the outcome and has no opportunity to appeal or contest a platform decision not to take down posts or deplatform her harassers.<sup>266</sup> Each platform should review its terms of service to ensure that they preclude the kinds of harassing attacks described in this Article, and ensure that such terms of service are rigorously and equally enforced.<sup>267</sup> To be sure, the so-called “alt-right” has developed ways of making

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<https://www.theverge.com/2022/3/8/22966204/google-jigsaw-perspective-ai-twitter-moderation-harassment-manager-journalists> (explaining that “unlike AI-powered moderation on services like Twitter and Instagram, ... Harassment Manager isn’t a platform-side moderation feature. It’s apparently a sorting tool for helping manage the sometimes overwhelming scale of social media feedback...”)

For more platform-side suggestions, see, e.g., Sindera & Shukla, *supra* note 39.

<sup>264</sup> 2018 ADL REPORT, *supra* note 5, at 13 (quoting female Jewish reporter that “there needs to be a chain of command that we can go to counteract trolling during a deluge.”).

<sup>265</sup> In October 2021, Facebook stated that it would begin treating journalists as involuntary public figures, thereby offering them increased protection against harassment. See *Facebook Rule Protects Journalists And Activists As ‘Involuntary’ Public Figures*, GUARDIAN (Oct. 13, 2021),

<https://www.theguardian.com/technology/2021/oct/13/facebook-involuntary-public-figures-journalists-harassment-bullying>; Brian Flood, *Facebook Will Treat Journalists, Activists As Public Figures To Limit Harassment And Bullying*, FOXNEWS (Oct. 13, 2021), <https://www.foxnews.com/media/facebook-journalists-activists-public-figures-harassment-bullying>.

It has also been reported that journalists have received more rapid protection from harassment on Twitter through its Project Guardian automated tool. See, e.g., Kurt Wagner, *Twitter’s Highest-Profile Users Get VIP Treatment When Trolls Strike*, BLOOMBERG (Dec. 8, 2021),

<https://www.bloomberg.com/news/articles/2021-12-08/twitter-s-highest-profile-users-get-vip-treatment-when-trolls-strike>.

<sup>266</sup> The platforms do not police harassment themselves; they rely on reports by users. Those user complaints are addressed by moderation teams “that are often poorly supported, remotely managed, and paid considerably less than most other tech workers. Decisions about content are made quickly, and erroneous takedowns of flagged content or accounts are fairly common.” Danny O’Brien & Dia Kayyali, *Facing the Challenge of Online Harassment*, EFF (Jan. 8, 2015), <https://www.eff.org/deeplinks/2015/01/facing-challenge-online-harassment>. I would suggest that erroneous failures to take down are also common.

<sup>267</sup> Social media platforms have adopted terms of service, although they are not all the same and what they consider harassment may differ.

Although studies such as the 2018 ADL Report indicate that social media platforms have sometimes blocked harassing accounts, see 2018 ADL REPORT, *supra* note 5, at 13, there is a sense that “they are neither consistent nor prompt in taking action.” Eberspacher, *supra* note 8, at 168.

its messages appear less explicitly Nazified in order to appeal to the conservative mainstream and cultivate a broader possible audience for conversion. At a minimum, they can do so through the appropriation of memes reflecting an ironic pose<sup>268</sup> or through the use of language whose ambiguity could circumvent harassment response filters. Still, the perfect is the enemy of the good, and the platforms should commit to increased enforcement of their terms of service against this kind of targeted and identity-based harassment even despite foreknowledge that their efforts will yield imperfect results.

Furthermore, the social media platforms should compile information and share with scholars as much as possible of what they know and understand about the evolving phenomenon of journalist harassment. Another locus of transparency should be educating reporters on the proactive measures available on the platforms and making their tools more intuitive and user-friendly.<sup>269</sup> The platforms are in the best position to be able to provide data for independent researcher analysis. (Doing so can even outsource predictable critiques to the researchers rather than the platforms themselves.) Although strongly criticized for the inadequacy of their public disclosures, some of the platforms have already begun to offer some more transparency about online harassment.<sup>270</sup> Others, like Facebook, have been resisting access by researchers, as noted in *Section V.D* above, largely on the ground that user privacy might be compromised. While

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<sup>268</sup> See, e.g., Emiliano De Cristofaro, *Memes are Taking the Alt-right's Message of Hate Mainstream*, THE CONVERSATION (Dec. 12, 2018, 8:45 AM), <https://theconversation.com/memes-are-taking-the-alt-rights-message-of-hate-mainstream-108196>; see also *supra* Section I.B.

<sup>269</sup> This recommendation echoes PEN America's suggestion that "[s]ocial media companies should design and build stronger proactive measures, make them more accessible and user-friendly, and educate users about them[]" since "[m]any of the writers and journalists PEN America works with, including those interviewed for this report, were unaware of existing features and tools and found themselves scrambling to deal with online harassment only after it had been unleashed." VILK, *supra* note 85.

<sup>270</sup> Twitter, for example, released an online transparency report in Dec. 2018. *Transparency*, TWITTER (Dec. 2018), <https://transparency.twitter.com/> (last visited May 19, 2022). While Amnesty International suggests a number of aspects in which the Twitter report was insufficiently transparent with respect to online harassment on the platform, company personnel did make public commitments to transparency. See *Troll Patrol Findings*, *supra* note 11. How seriously they will be taken is a matter of doubt and debate. ADL points out, however, that access to Twitter's Firehose API is "prohibitively expensive for many groups" and "still provides an incomplete view of Twitter." ADL CTR. FOR TECHNOLOGY & SOCIETY, *HOW PLATFORMS RATE ON HATE: MEASURING ANTISEMITISM AND ADEQUACY OF ENFORCEMENT ACTIONS ACROSS REDDIT AND TWITTER 9* (2022) [hereinafter ADL, *HOW PLATFORMS RATE ON HATE*], <https://www.adl.org/how-platforms-rate-on-hate>.

concern about user privacy is commendable, surely Facebook and independent researchers could reach accommodations on criteria for access and use that would address such concerns. To the extent that the concern is the desire to protect the platform's competitive position, the problem of online harassment is serious enough that scholars and Facebook could negotiate confidentiality boundaries. The fact that the law in other contexts (such as trade secrets) recognizes competition-related confidentiality is not to the contrary. In any event, according to one report, harassment has been worse on Twitter than on Facebook.<sup>271</sup> Since Twitter now appears to be a more critical tool in the modern reporter's professional arsenal, perhaps Twitter should be the first principal focus of attempts to enhance transparency of information regarding online harassment.

There are reasons to be hopeful about the possibility of culture change at least at some of the platforms. As the 2018 ADL REPORT on online harassment points out, there are tech workers at the platforms who would be disposed to agree with commitments to greater accountability.<sup>272</sup> Admittedly, however, we need to be realistic about expecting change largely through the agency of social media tech employees—in light of the non-disclosure agreements they sign and work cultures perceived as retaliatory.<sup>273</sup> Scholars and analysts have also noted

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<sup>271</sup> See 2018 ADL REPORT, *supra* note 5, at 12. See also Holton et al., *supra* note 29 (characterizing Twitter as locus of more, and more offensive, harassment). Other studies appear to suggest that Facebook has been the major culprit. See UNESCO, THE CHILLING, *supra* note 34. What is clear is that the designs of the two platforms differ in the harassment methodologies they enable.

On Twitter, “many interviewees spoke of massive, coordinated, attacks by trolls—sometimes at the behest of white nationalist or hate-group leaders such as Andrew Anglin and David Duke—that were impossible to filter or staunch. . . . As one interviewee remarked: “Twitter does an awful job. An awful, awful, awful job policing discourse on the site.” 2018 ADL REPORT, *supra* note 5, at 12. (“The ease of attack was highlighted several times—with minimal effort, an anonymous harasser could mention one in a tweet or comment on a post, and without forewarning or consent, the target will receive an automatic notification and be subjected to disturbing imagery or threats.”).

<sup>272</sup> See 2018 ADL REPORT, *supra* note 5, at 13. Facebook employees have publicly dissented from Mark Zuckerberg's apparently libertarian views on speech. See, e.g., Craig Timberg & Elizabeth Dwoskin, *Another Facebook Worker Quits in Disgust, Saying the Company 'Is on the Wrong Side of History'*, WALL ST. J. (Sept. 8, 2020), <https://www.washingtonpost.com/technology/2020/09/08/facebook-employee-quit-racism/>.

<sup>273</sup> 2018 ADL REPORT, *supra* note 5, at 13 (“Groups like Coworker.org, Tech Solidarity, the Tech Workers Coalition, and the Center for Human Technology are working to organize and give voice to tech workers, but they face challenges in connecting with employees due to strict non-disclosure agreements and company cultures that penalize and isolate those that speak out.”).

that the business models of social media platforms do not create incentives to control or eliminate sensationalist content that drives engagement.<sup>274</sup>

Still, the social media platforms have some economic self-interest in doing better on this front (as Twitter itself has shown.) There are likely to be significant reputational benefits for social media platforms which seek to identify and limit online harassment. Recent polling shows that 55% of Americans consider online harassment to be a “major problem” and that the vast majority of respondents believe the social media platforms are doing only a fair to poor job of addressing online harassment.<sup>275</sup> African Americans and women are significant demographics whose participation in the social networks advances the platforms’ economic and social vision. MySpace is an object lesson on how—and how fast—the mighty can fall in the digital world; Twitter presumably has an interest in remaining relevant in its fast-changing environment. While Twitter is an important tool for journalists, according to the 2018 ADL Report, “journalists are also integral to the fabric of Twitter and produce much of the high-quality content on that platform. Journalists are under constant harassment on Twitter, but they are also extremely valuable to the Twitter landscape. This unique position provides opportunity for organization and negotiation.”<sup>276</sup> Most broadly, it might be expected that the many calls to regulate the social media platforms<sup>277</sup> would create

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<sup>274</sup> *See id.* (“Our interviewees suggested that the business models of many social media platforms incentivize the companies to allow disinformation and harassment.”).

<sup>275</sup> VOGELS, *supra* note 29 (reporting the 55% figure and that “roughly eight in ten” Americans think the social media companies are doing a fair to poor job” in handling online harassment).

<sup>276</sup> *Id.* at 14. As I argue below, *see infra* note 278, I would expect that political conservatives would be just as appalled by the type of harassment detailed in this Article as political liberals might be. In any event, I am not proposing an empirical comparison of reputational impact on conservative and liberal user communities. The point is solely to indicate that a “business reason” can support attempts to control online harassment even if the overarching business model of the social media platforms pushes user engagement via sensationalism and outrage.

<sup>277</sup> Criticisms and arguments in support of further regulation are by now legion, both in the United States and abroad. *See, e.g.*, VILK, *supra* note 85 and sources cited therein. Doubtless the revelations of the Facebook whistleblower Frances Haugen added recently to public outrage about the platform and calls for legislative reform. *See, e.g.*, Cat Zakrzewski, et al., *Facebook Whistleblower Frances Haugen Tells Lawmakers That Meaningful Reform Is Necessary ‘For Our Common Good’*, WASH. POST (Oct. 5, 2021), <https://www.washingtonpost.com/technology/2021/10/05/facebook-senate-hearing-frances-haugen/>.

business incentives for these companies to do more to address the public's concerns about online harassment.

Without overstating the case, there is some reason for optimism that pragmatic negotiation designed to convince the platforms that they would stand to benefit from more effective control of vitriolic and identity-based harassment of reporters might be fruitful.<sup>278</sup> By contrast, some might claim that government regulation could be a surer and better bet. But that prospect raises complex issues under U.S. law, history and practice.<sup>279</sup> Although many have called for the diminution or elimination of the Communications Decency Act's § 230 protections for interactive computer services, the statute currently remains in place.<sup>280</sup> At a minimum, and given the many different approaches suggested for immunity reform, change is likely to take time, with uncertainty as to the details of the ultimate result. The possible impact of reform on social media treatment of online harassment is therefore, at a

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<sup>278</sup> Last year, Facebook adopted new rules for internal political discussions, requiring professional and respectful dialogue and seeking to ensure that all employees, and particularly the Black community, "feel supported at work." Salvador Rodriguez, *Facebook Issues New Rules on Internal Employee Communication*, CNBC (Sept. 17, 2020), <https://www.cnbc.com/2020/09/17/facebook-issues-new-rules-on-internal-employee-communication-.html>.

To be sure, those who complain, for example, about Facebook's supposed bias against conservative views, *see, e.g.*, Bobby Allyn, *Facebook Keeps Data Secret, Letting Conservative Bias Claims Persist*, NPR (Oct. 5, 2020), <https://www.npr.org/2020/10/05/918520692/facebook-keeps-data-secret-letting-conservative-bias-claims-persist>, might argue that shutting down purveyors of identity-based online harassment of journalists would unduly interfere with conservative political speech. Without addressing the accuracy of such claims substantively, at least one simple response to this is that the kind of online abuse discussed here is precisely *not* political; the journalists are attacked with respect to their identities, and not their politics. In any event, even if there could be disagreements on the margins, attacks deploying inflammatory references to lynchings, the Holocaust, rape and murder should warrant bipartisan condemnation.

<sup>279</sup> The degree of public support for legal responses to address harassment is unclear. *See* VOGELS, *supra* note 29 (reporting that 63% of Americans (and more whites than Blacks) believe that targets of online abuse should not be able to bring legal action against social media sites.)

<sup>280</sup> Communications Decency Act, 47 U.S.C. § 230(c); *see supra* note 223; David Anderson, *Second Thoughts: A Response to David A. Logan's Rescuing Our Democracy by Rethinking New York Times v. Sullivan*, 82 OHIO ST. L.J. ONLINE 23 (2020) (supporting Section 230 reform); Agnieszka McPeak, *Platform Immunity Redefined*, 62 WM. & MARY L. REV. 1557, 1570–84 (2021) (describing § 230 and various reform proposals). On May 14, 2021, President Biden issued an executive order revoking former President Donald Trump's action directing the executive branch to "clarify certain provisions under § 230 of the Communications Decency Act." Jeffrey D. Neuberger, *The President Revokes Prior Administration's Executive Order on CDA Section 230*, NAT'L L. REV. (May 17, 2021) (citing Exec. Order No. 14029, 86 Fed. Reg. 27025 (May 14, 2021)), <https://www.natlawreview.com/article/president-revokes-prior-administration-s-executive-order-cda-section-230>.

minimum, unknown. While § 230 immunity can block court orders to take down content, one of the advantages of § 230 is that it allows, and indeed encourages, social media companies to engage in content moderation.<sup>281</sup> Proposed legislation such as the Stop the Censorship Act, on the other hand, would have barred § 230 immunity if the platforms removed “objectionable” content.<sup>282</sup> Even if it passed judicial muster, what incentives might such legislation create for social media platform discussion of anything political or controversial? As for the possibility of tort liability without the § 230 immunity, a company like Facebook or Twitter might well continue to avoid liability under a classic tort standard for liability. For example, a social media platform could satisfy a reasonable care standard if it had put in place some formal procedures (such as terms of service and the ability to report abuse) and made reasonable compliance efforts. It’s far from clear that this would be sufficient to put a dent in the online harassment sketched in this Article. Still, the prospect that the negotiations recommended here would be taking place in the shadow of possible § 230 reform might provide a nice tactical advantage for the press.

#### *E. Research Agendas For Scholars*

With respect to scholars—whether communications studies or media scholars, law professors, sociologists, cognitive psychology scholars, computer engineers, social media studies researchers etc.<sup>283</sup>—further inquiry fleshing out the origins, nature and threats of online harassment, the self-censorship it triggers, and possible technological solutions are strongly recommended.

One of the striking aspects of researching this Article was the discovery that while large-scale research has been funded and undertaken with respect to online harassment of women journalists (including Black women journalists), and some with respect to Jewish journalists, no such studies appear to have been published concerning the online harassment of African

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<sup>281</sup> See, e.g., McPeak, *supra* note 280, at 1576.

<sup>282</sup> Stop the Censorship Act, H.R. 4027, 116th Cong. (2019).

<sup>283</sup> Professor Waisbord convincingly discusses communication studies as a “post-discipline.” See generally SILVIO WAISBORD, COMMUNICATION: A POST-DISCIPLINE (2019).

American journalists as a whole in the United States.<sup>284</sup> This lacuna in the empirical research must be remedied. Large-scale empirical and anecdotal studies should be funded and undertaken with respect to the working conditions of African American reporters generally.<sup>285</sup>

In addition, much of the research about online harassment has sought to distinguish between less and more severe forms of online harassment.<sup>286</sup> But does exposure to the types of harassment that have been categorized in prior studies as “less severe” have an amplifying effect when constant, leading journalists to experience the totality of such attacks as notably severe?<sup>287</sup>

More broadly, in light of the particular type of racist, antisemitic and misogynist rhetoric embedded in the online harassment of minority and women reporters, it would be important to explore further whether and how the rhetoric of white supremacy and misogyny enable and enhance actual violence against the press.

Independent research into relevant technological aspects, including the use of artificial intelligence in identifying online harassment,<sup>288</sup> would also be particularly helpful for those trying to develop effective responses. Further, research could focus on the variety of origins of online harassment—from white

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<sup>284</sup> Admittedly, the studies of harassment of women journalists worldwide do specify the particular intensity of the attacks on Black women journalists. *See supra* Section I.A. But those studies do not address the specific harassment of Black male journalists. And they have a worldwide focus, rather than specifically focusing on the experiences of Black women journalists in the United States.

<sup>285</sup> While the National Association of Black Journalists has been seeking information from its membership, I am not aware of a broad-scale empirical study that has been published thus far. *See also* Miller, *Hostility Toward the Press*, *supra* note 29, at 15 (also recently noting the dearth of studies focusing on Black reporters.).

<sup>286</sup> *See, e.g.*, VOGELS, *supra* note 29, at 5 (describing definitions of online harassment used by the report’s authors).

<sup>287</sup> We should not make assumptions about such effects without further empirical study. After all, it is not clear that a barrage of nasty and offensive name-calling that is neither violent nor identity-based would necessarily have the same impact as doxxing or sexual harassment or distinctly identity-based attacks designed to trigger reporter fears. But distinctions between less and more severe characterizations of online harassment also focuses on individual statements rather than assessing their potentially cumulative effects. Further granular study might enable finer analysis that addresses matters of intensity and strategic effects, in addition to the existing content-focused studies.

<sup>288</sup> *Troll Patrol Findings*, *supra* note 11. One of Amnesty International’s main arguments in its attack on Twitter and other social media companies is the platforms’ assertedly uncritical reliance on automated AI tools.

supremacists on 4chan to sophisticated and government-funded troll armies.<sup>289</sup> And in a bookend to the study of harassment, researchers should further examine the type, extent and intensity of journalist- and institutional self-censorship in response to online harassment.<sup>290</sup>

It would also be useful for researchers to engage in further study of professional branding by journalists, its impact on professional status, and whether decisions by reporters to retreat from being public persons on social media reifies existing status discrimination in the newsroom.

These areas of focus are, of course, just a few examples in what should be a rich and broad vein of future empirical research. Policy implementations are most likely to be effective if based on rigorous and reliable data subject to analysis and assessment by independent scholars.<sup>291</sup> Particularly with respect to technological solutions focused on social media platforms, such research is hobbled by the reluctance of some of the platforms to provide access to their data.<sup>292</sup> This can also lead to some study skews: social media studies research has focused extensively on Twitter, perhaps because of the “relative openness of the platform’s APIs.”<sup>293</sup> Attempts to address researcher access issues will therefore be critical, especially with respect to solution-focused studies of social media harassment.

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<sup>289</sup> See, e.g., REPORTERS WITHOUT BORDERS REPORT, *supra* note 87 (describing state-affiliated troll armies).

<sup>290</sup> For another recommendation of further research, see Waisbord, *Mob Censorship*, *supra* note 18, at 1042.

<sup>291</sup> For an example of a critical assessment of social media studies research more generally, see Ariadna Matamoros-Fernandez & Johan Farkas, *Racism, Hate Speech, and Social Media: A Systematic Review and Critique*, 22 TELEVISION AND NEWS MEDIA 205 (2021). For a recommendation that social media companies provide more transparent access to their data and submit to “regular and comprehensive third party audits, see ADL, HOW PLATFORMS RATE ON HATE, *supra* note 270, at 22.

<sup>292</sup> Facebook, for example, has restricted researcher access to data on grounds of user privacy. See, e.g., Laura Edelson & Damon McCoy, *We Research Misinformation on Facebook. It Just Disabled Our Accounts.*, N.Y. TIMES (Aug. 10, 2021), <https://www.nytimes.com/2021/08/10/opinion/facebook-misinformation.html?referringSource=articleShare>; see also Lili Levi, *Media Literacy Beyond the National Security Frame*, 2020 UTAH L. REV. 941, 965 n.110 (2020) and sources cited therein.

<sup>293</sup> Matamoros-Fernandez & Farkas, *supra* note 291.

## CONCLUSION

Increasingly, journalists who identify as Black, women, Jewish, Muslim, Latinx, Asian American, LGBTQ+ and/or whose identities are intersectional are arguing for an enhanced and visible presence and an increased role in the ways in which news media define and portray the world and their communities. They are charging that, historically, mainstream news organizations have reported principally from the vantage point of the white male gaze—and have therefore alienated and failed to speak to other communities. They are calling for more inclusive journalism, and news organizations are beginning to attend to the benefits of diversity in the newsroom.

At the same time, however, journalists are facing unprecedented attacks in performing their press functions. Social scientists and media scholars are documenting the endemic reality of identity-based online harassment experienced by the vast majority of journalists who identify as non-male or as members of racial, ethnic or religious minority groups. Analysts are showing also the degree to which such harassment is based on identity bias and often uses the most hateful white supremacist and misogynistic language and images to achieve its widespread intimidating effects. It is also important to see this psychic landscape in its broader context: one of increasing physical danger to journalists globally. Identity-based harassment of journalists is neither accidental nor limited to a few, isolated individuals. All too frequently, it is part of organized and strategic campaigns. Overall—whether individual and decentralized or systematic and collective—such harassment is an attempt by some publics to silence diverse voices and undermine the democratic role of the press.

This pattern of online harassment harms journalists themselves individually (at a minimum in job satisfaction and mental health), likely leads to responsive changes in their news practices and to self-censorship in their work, and threatens news organization attempts to enhance the diversity of the professional press. To the extent that it leads journalists who identify as non-white, non-male and non-Christian to leave the profession, it undermines recent attempts to make the press more inclusive, diverse, and responsive to the entirety of the public. These chilling effects thus harm not only the targeted individual journalists, but all journalists and the function, legitimacy and

credibility of the press as a whole. Further, to the extent that the press is an agent of the public, then harms to the press' ability to perform its democratic role harm the overarching public interest.

Until now, journalists charge that most news organizations have treated reporter harassment as a personal issue for particular reporters, to be dealt with by the reporters themselves or, at best, by Human Resources departments or company Security staff. This Article has argued instead that harassment of reporters should be seen as a broad-based press problem and therefore a democracy problem.<sup>294</sup>

When observed most broadly, online harassment takes its place as one of the three press-delegitimizing tactics weaponized during the Trump administration. These tactics consist of challenging settled press-protective legal doctrine, attacking the press's published output and its claims to institutional credibility, and undermining the reporting function by intimidating the reporters in their work. Despite electoral change, the echoes of these tactics remain and may even be increasing in their reverberations.

Finding realistic ways to restrict the flow and counteract the harms of online expressive attacks on reporters is an imperative next step if the press is to perform its constitutionally recognized role under current conditions of existential threat. This Article has argued for a variety of ameliorative steps directed to news organizations, journalism schools, press-protective organizations, social media platforms, social science researchers and journalists themselves. News organizations and their allies should recognize that obligations to protect reporters against expressive violence are morally required, likely to be legally expected, and simply a matter of good business today. As a matter of self-preservation, social media platforms too must accept the part they play in the environment of online harassment. This involves attending to the design of their tech tools, complaint procedures, terms of service enforcement and needs for informational transparency. In turn, researchers should systematically provide the empirical data to guide these steps, including by remedying the insufficiency of current research into the experiences of African American journalists. All the recommendations in this Article are grounded in the

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<sup>294</sup> See Miller, *Harassment's Toll*, *supra* note 34, at 2 and sources cited therein (agreeing on characterization of online harassment of journalists as a democracy problem).

realization that reporter harassment is best seen as a collective social problem undermining the democratic benefits of a robust, vibrant and inclusive press. Consequently, collective and coordinated solutions—rather than individual and isolated approaches—offer the most realistic hope of stemming this tide.