

Trump, Nixon, and the War on the Press

M. Elizabeth Thorpe, The College at Brockport, State University of New York¹

The Trump administration has created a particularly divisive relationship with the press, going so far as to create its own “Fake News Awards” (published on the Republican GOP website on January 17, 2018) singling out reporters and media groups it feels have been particularly harsh toward the President. Trump’s repeated attacks on the *New York Times*, for example, indicate a tendency to lash out at specific news outlets. He has called the *New York Times* “fake news” (Morin, 2017) and referred to it as a “failing” newspaper, even though subscriptions have recently risen by an enormous margin (Addady, 2016). Trump has tweeted about the “fake” nature of the press in excess of 250 times in the last year and a half (FactBase, 2018). On June 13, 2018, Donald Trump tweeted that America’s biggest enemy is the media (RealDonaldTrump, 2018). He has moved beyond calling reporters fake or liars to calling those who report on him more dangerous than MS-13 or ISIS (RealDonaldTrump, 2018). The press can do nothing but report these claims, but doing so only amplifies them. If the President decides to make legal moves, he will have created a sympathetic public that will be unlikely to stand in his way.

In setting up the press as the enemy and crafting a narrative in which all negative coverage is “fake,” the administration is engaging in a direct attack on the citizenry’s ability to self-govern. This administration is not the first to have a relationship with the press defined by such animosity; Richard Nixon’s career was known for a contentious relationship with the press that came to a head during the Watergate years. Like Trump, Nixon saw the press as “the enemy” and worked to discredit it in a number of ways (McKay, 2004, p. 109). McKay (2004) argues that Nixon’s “hatred of the press was real and deep, and it spread to other elements of the administration” (p.109). This same vitriol can be seen in Trump’s “smear campaign” tactics against the “fake news” on his Twitter accounts and the way in which his press

¹ Dr. Thorpe is an Assistant Professor of Communication Studies at The College at Brockport, State University of New York.

secretaries have handled the press with clear disdain. These two administrations are comparable in the ways they define their relationships to the press, and their understandings of the press's job in a democratic society. Nixon's legal and political war on the press was more aggressive than Trump's, but Trump's rhetorical war on the press is profound. Because of Trump's access to multiple forms of communication media, his continuing aggression is just as, if not more, dangerous. For example, Trump's utilization of Twitter as a means of communication bypasses the press entirely and opens up lines of communication that Nixon could never have dreamed of. The president has insisted upon using @realDonaldTrump as his official communication medium, and he uses it frequently. He has been using that account since 2009, well before he was a politician and was simply a celebrity figure. The similarity in these men's attitudes toward the media is apparent in their libelous attacks on the press, but their approaches so far differ. Nixon's administration used not just oratorical attacks but political pressure and illegal dealings to attack the press while Trump's war on the press is largely rhetorical so far. However, Trump's war is possibly more dangerous because of his unlimited access to the public in real time.

This paper will offer a historical comparison between the Trump and Nixon Administrations' relationship with the press and highlight the ways in which Trump's access to the public allows his war on the press to be more rhetorical than Nixon's but just as toxic. This paper will compare the transgressions of both administrations, the reactions of the public, and the current legal and political implications. Ultimately, I argue that Trump is waging a war on the First Amendment, but in this new media environment he can attack it rhetorically instead of legally with a profound social, political, and possibly even legal impact.

The Role and Power of the Press

The press has a specific role to play in the liberal tradition. It is tasked to both share information and be a check on the power of the government (Gauthier, 1999). In *New York Times Co. v U.S.* (1971), or the Pentagon Papers case, Hugo Black opines that "the Founding Fathers gave the free press the protection it must have to fulfill its

essential role in our democracy. The press was to serve the governed, not the governors.... The press was protected so that it could bare the secrets of government and inform the people.” In other words, the press has a democratic duty to criticize or censure the government or figures within the government, and it must remain free to do so. Both the *NYT v. US* and *NYT v. Sullivan* cases were essential in edifying that duty and that right.

Media ethicists argue that the public has a right to know what the government is doing and that it is the press’s job to report on that. The press has both a right and a duty to freely print news as a part of a participatory society (Gauthier, 1999). Applegate (2007) argues that the press is essential to our democratic freedoms and a system of representative government: a people must be fully and accurately informed in order to choose their leaders wisely. Therefore, the press must be able to comment freely on the actions of the administration in order to fulfill this vital function. As Gauthier (1999) argues, “It appears that the moral right to know, belonging to the public, and the legal concept of freedom of the press are inextricably bound together” (p.198). Ravi (2005) argues that “A free press is an essential prerequisite of a democratic system: it provides the people the information they need to govern themselves and maintain their sovereignty. It also enables debate and discussion of issues of contention and enables informed decision making” (p.1).

The Trump administration has boldly announced it wishes to reassess the relationship between the press and administrative power. Whereas Justice Black states the job of the press is to critique the government, the Trump administration would make that job increasingly more difficult. The Trump administration wishes to revisit libel law, the role of the press, and re-negotiate the relationship between the press and the administration.

President Trump has long expressed his doubts about the efficacy of a free press. He has described his desire to “open up” libel laws so that it is easier to sue media who speak ill of him (Camp, 2016). However, the *New York Times Co. v. Sullivan* case of 1964 protects almost all statements by the press—even statements that turn out to be false. As the Court says in *NYT v. Sullivan* (1964),

A rule compelling the critic of official conduct to guarantee the truth of his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable “self-censorship.” Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that alleged libel was true in all its factual particulars....Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism...

In other words, forcing a publication to prove the veracity of its claims in order to print them, even when they are likely true, would lead to self-censorship and would dampen the vigorous public debate that is necessary for democracy. Criticism is necessary for public debate, and debate is a matter of probabilities and arguments, not absolutes. The case provides cover for journalists who run stories that challenge the policies, positions, or narratives of officials and allows journalists the opportunity to criticize public figures without fear of retribution. The Supreme Court holds that a public figure has to show “actual malice” in order to collect damages from a publication for libel charges. Actual malice means that a statement is made “with knowledge of its falsity or with reckless disregard of whether it was true or false” (*NY Times Co. v. Sullivan*, 1964). As the Court argues in *Beauharnais v. Illinois* (1952), “Public men are, as it were, public property.” And because of that “discussions cannot be denied, and the right, as well as the duty of criticism must not be stifled.” (*Beauharnais v. Illinois*, 1952). Public figures open themselves up to criticism from the press by virtue of their public nature, and our national, vested interest in robust public debate means criticism of them is a part of that public conversation. As the Court notes in *Bridges v. California* (1941), it is “a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions.” Americans have been guaranteed the right to criticize, even pointedly, the figures and institutions at the forefront of national policy and events. It is this flexibility that the Trump administration takes issue with. The media are allowed to be critical of public figures and officials and can print or report on stories that they do not have absolute proof of if they have reasonable claims or even just a reason to believe their claims. They can

speculate, print, or criticize not just those things that are proven but also those things they suspect. The Trump administration sees this as libelous, whereas the law sees this as part of the democratic process.

Nixon, Trump, and the Press

The Nixon administration provides an example of the ways that the public's relationship with the press can change because of concentrated efforts from an administration. William Safire, Nixon's speechwriter, said he heard Nixon say repeatedly "the press is the enemy," (Nolan, 2005, p.71). Nixon, like Trump, worked to delegitimize the press, and in some ways, it worked. Nixon's adversarial relationship with the press pre-dated his presidency and began in the 1950s with journalists such as Drew Pearson who needled him over his questionable finances (Feldstein, 2004). McKay (2004) describes a situation in which there was paranoia on all sides, and a deep mistrust of the press by the government. Members of the Nixon Administration referred to the press as "merchants of hate" and "parasites of passion" and claimed the country would be no worse for wear if it were to separate from the press entirely. Nixon, in short, believed the press was "out to get him" (Harris, 1973). There were implied threats of censorship that in some ways worked because television networks responded by revising their plans for broadcasts.

Nixon's war on the press was not just rhetorical; he engaged in political and legal aggression. Nixon used his connections to make it difficult for a network owned by *The Washington Post* to get its Federal Communications Commission (FCC) license renewed and directed his aides to "screw" *The Post* by inciting shareholders to "go after" Katherine Graham by targeting the paper's real estate investments. The Justice Department filed anti-trust charges against NBC, ABC, and CBS for monopolistic practices, and federal prosecutors drafted legislation that would have made it a felony for journalists to get unauthorized leaks. In a move that comes as no surprise from a historical perspective, Nixon authorized illegal wiretaps on journalists who criticized the administration (Feldstein, 2016). In this sense, Nixon's legal and political actions outdid Trump's war on the press (that we know of), as Nixon sought to bring the full

weight of the legal and political system down on a critical media, both officially and through unofficial means.

In Trump's first press event as president, his press secretary, Sean Spicer, used the opportunity to tell the press what they should be covering and repeatedly accused them of dishonesty and poor judgment (Stelter, 2017). Trump and his then-adviser Steve Bannon have called the press the "opposition party" and described their relationship to the press in particularly divisive ways (Fabian, 2017). This is particularly troubling when considered with the fact that Trump has specifically called for reporters to be fired for their coverage of his rallies and the Michael Flynn controversy (Perez, 2018), and Kellyanne Conway has asked for journalists who covered Trump negatively to be terminated (Seipel, 2017). The press, in response, has vowed to hold him accountable for his continual falsehoods and abuses of power, both official and unofficial (Pope, 2017). It may well be this unofficial power that is the real conflict that causes problems for the press.

Nixon's attacks on the press 45 years ago did not destroy democracy so one might question why Trump's hostility to a free press is cause for concern today. I argue that Trump's aggression toward the press is as great, if not a greater threat to the press as Nixon's because of Trump's access to the American people. Decades ago, Nixon had very limited ways of speaking to the public. Nixon depended on the radio, television, and the newspaper to share his narrative with the public. On the one hand, he sought to delegitimize the press, but on the other, he depended on the press to spread his ideas. It was through the paper, press releases and conferences, television coverage, and radio addresses that Nixon's version of events was spread to the American citizenry at large. Trump has much greater access to the public to shape a version of reality. Through Twitter, the GOP website, email, WhiteHouse.gov, Facebook, and any number of other means of communication, the Trump machine can share its version of events without depending on the press or media. Trump could completely delegitimize the press or shut it down entirely and still have access to the American public. Trump has no need of the press to share his narrative with the people, and the public can respond to him in real time. Because of this, Trump's

attack on the media is a much greater threat to the American public than Nixon's since he has no dependency on the press to construct his reality. There are already legal ramifications of this that are both a victory for the First Amendment but also indicative of the power the Trump administration has over its own narrative. The Knight First Amendment Institute at Columbia University recently sued President Trump for blocking people on his Twitter account because it is a public forum. Judge Naomi Buchwald agreed and declared that Trump's Twitter account is a "designated public forum" and therefore protected by the First Amendment (*Knight First Amendment Institute et al. v. Donald Trump et al.*, 2018). In other words, Trump cannot block critics on Twitter because people should have access to him and be able to criticize him publicly because he is a public official. While this is a victory for free speech, it indicates that the press is no longer necessary for Trump to get his message out to the public. He can delegitimize the press to a much greater extent than Nixon and still have avenues to share his version of reality.

When the press is constantly under attack by the administration, and its legitimacy is consistently undermined, it is not the populace that benefits, it is institutional powers. The effect of demonizing the press is not enlightening the citizenry, as the Nixon and Trump administrations would imply, but removing a check on the administration. These attempts to delegitimize the press are part of an orchestrated and systemic attempt to rein in the press's ability to restrain the power of the administration. Trump uses interviews, rally speeches, social media, and the public faces of his administration to craft the narrative that the press is dishonest and untrustworthy. He uses Twitter to speak directly to the American people, side-stepping the press, much like Nixon saw radio and television as media "through which a president could 'go over the head' of reporters and speak to Americans directly" (Nolan, 2005, p.74). In doing so, he is shifting power from the Fourth Estate to his own administration. Nixon attempted to use television and radio to bypass the press, but, even then, he was at the mercy of media- and press-related corporations. However, Trump has inexhaustible means by which he can access the American public without the traditional press. Trump's use of Twitter, mass emails, the White

House website, the GOP website, and countless other methods gives him a direct line to the public that Nixon lacked. Trump, in short, does not need the press to communicate with the public.

In some ways, Nixon lost his war with the press. His administration lost the high-profile *New York Times Co. v. United States* case (1971), which only strengthened the notion of a free press, and he was ultimately brought down by two dogged investigative journalists in the Watergate scandal. When Nixon engaged with the press in legal matters, he lost. Trump has avoided that pitfall. He has threatened and bullied but has made few actual legal moves against the press. What needs to be addressed, then, are the effects of Trump's rhetorical war against the press.

The President, the Press, and the People's Response

In 1972, Gallup started asking the general population about their attitudes toward the press (Swift, 2016).² Gallup conducted a study on reactions to the press at the height of Nixonian attacks, and while the percentage of those interviewed giving "excellent" or "good" ratings for 'keeping people informed on important problems' was high (40% for newspaper, 65% for television news, 41% for newsmagazines, and 59% for radio news) some of the Nixon-Agnew criticism hit home. Roughly a third of those polled said the media were doing too little to present the administration's views. Forty-five percent said the news out of Washington was slanted. And slightly less than a quarter of those interviewed said the media they used contained a liberal bias (Becker, Cobbey, & Sobowale, 1978, p.422).

In a 1973 Gallup poll, only 39% of the population said they had "a great deal" or "quite a lot of respect and confidence in newspapers." Similarly, a Harris poll found in 1976 (2 years after Nixon resigned) that only 24% of people surveyed had a "great deal of confidence in the press." Television news received a slightly higher rating of 32%. A 1976 Gallup poll showed that only 33% of people gave journalists a "high" or "very high" rating on honesty and ethical standards (Becker, Cobbey, & Sobowale, 1978, p.422).

² Before then it was not something that was polled regularly.

Complaints of liberal bias are especially notable because for the first half of the century, the public's complaints had been about the press's overwhelming conservatism (Cimaglio, 2016). But now, institutional powers were using the same kinds of complaints about the power of the press to claim a liberal bias. Polling would indicate that these criticisms seemed to resonate with some of the public. These historical attacks on the press worked to weaken and delegitimize the press in the eyes of the citizenry. Nixon's sustained attack on the press helped to strengthen his administrative power until the Watergate scandal. Nixon's historical example is representative of the power administrative rhetoric has in relationship to the press. Animosity toward the press can mean a changed relationship between the press and the populace. Trump's attacks on the press follow the same pattern, but with increased voracity because he has the added mediums of social media and cable news to provide a constant source of vitriol toward the press.

Creating a populace that does not trust the press ensures that there would be fewer outcries if he does follow through with his attempts to legally rein it in. If Americans see the press as a negative force in public discourse, then they are less likely to protest political and legal moves to limit the press's ability to speak. The lessons of the Nixon era are that while Americans generally support the idea of a free press, in practice they are often more reserved. Studies from the Pentagon Papers and Watergate Eras, which many argue was the golden age of the press, showed distrust for the press and a desire to restrain reporters from certain quarters. For example, a CBS poll in 1970 found that only 42% of the people polled felt that the press should have the right to report any story in peacetime if the government felt it was harmful to national interests (Becker, Cobbey, & Sobawale, 1978). Trump is following Nixon's example by working rhetorically and politically to disempower the press. Gallup poll numbers indicate that these attacks are having an effect on the public perception of the press as American trust in the mass media has sunk to lows similar to the post-Nixon years (Swift, 2016). At this point only 32% of Americans say they have "a great deal" or "a fair amount" of trust in the media. Gallup polls note that while trust in the media has fallen across the board, that dip is particularly acute among Republicans,

who, like in the years of Nixon, feel the press is exceedingly focused on scandal and unfairly critical of the President. Specifically, 14% of Republicans say they trust the press, down from 32 percent in previous years (Swift, 2016). Conservatives, particularly, do not trust the press, and the administration's admonitions that the news is the opposition, or, more hyperbolically, is "fake," seem to have taken strong root among some parts of the conservative base (Swift, 2016).

The nature of Trump's war on the press is important to understand from a theoretical point of view as well because of the "truth effect" (Koch & Zerback, 2013). Trump has so much access to the public that he can share his view of the press and the media in a constant, nearly uninterrupted narrative flow with the listening public. As Koch and Zerback (2013) observe, this kind of repetition has an effect on what people think of as "true." Repetition creates acceptance in an audience, which may explain the public's growing dislike of the media. As Trump's narrative of a dishonest media is repeated over and over, the public's distrust of the media grows. Social media only work to create an echo chamber for this narrative of "fake news." This "truth effect" may indicate why both Nixon and Trump had such success defining America's relationship to the press throughout their administrative tenure. As they repeated to the public that the press was untrustworthy, the public faltered in their trust of the media. So, while one cannot argue that the President's rhetoric is the sole cause for the declining trust in the press, there is reason to believe that administrative attacks on the press could be a part of the overall decline in positive attitudes toward the press and media at large.

Current Political Implications

Trump's threats to "open up" libel laws are particularly galling as a legal and political threat. His one-time Chief of Staff Reince Priebus told the press that Trump and his staff had discussed and looked into changing libel laws to make it easier to sue organizations, but does not clarify how that would be possible without overturning *New York Times Co. v. Sullivan* (1964) (Desiderio, 2017). Trump has encouraged investors to sue ABC (Sanicola, Wattles, & Disis, 2017) and questioned when it would

be appropriate to pull the license of NBC (RealDonaldTrump, 2017b). At this point, however, he has only made threats, not legal moves. As these examples indicate, his legal actions have been limited since he has been president. This is compared to Nixon's war on the press which led to a showdown in the Supreme Court. Nixon attempted to silence both *New York Times* and *The Washington Post* in the infamous *New York Times v. United States* (1971).

Trump's battle with the press, though largely rhetorical, has taken some tangible steps. For example, in April, reports surfaced that the Department of Justice (DOJ) revised its U.S. Attorney's Manual and eliminated a section on the "Need for Free Press and Public Trial." Specifically, the deleted section stated, "Likewise, careful weight must be given in each case to the constitutional requirements of a free press and public trials as well as the right of the people in a constitutional democracy to have access to information about the conduct of law enforcement officers, prosecutors and courts, consistent with the individual rights of the accused" (Tillman, 2018). So, U.S. attorneys were no longer being advised on the importance of a free press. Trump has also put legal and rhetorical pressure on publishers and business interests to silence criticism of him. Trump sent a "cease and desist" to the publisher and journalist who produced *Fire and Fury: Inside the Trump White House* (Lima, 2018), though that book was ultimately published. Also, at the time this paper was being written, a story was released that the Justice Department had secretly seized years' worth of reporter's phone and email records after a former Senate Intelligence Committee aide was arrested in an investigation of classified information leaks. This was the "first known instance of the Justice Department going after a reporter's data under President Trump" (Goldman, Fandos, & Benner, 2018). This story broke June 7th, so it may herald a more aggressive approach by the Trump administration. If so, his rhetorical war on the press has paved the way for legal actions against the press.

This combination of rhetorical, political, and legal action raises some very important questions for legal scholars. For example, James Comey testified that when Trump requested that he drop the investigation into Michael Flynn, he took it as an order, whereas the administration claims it was not (Pramuk & Schoen, 2017). In a

similar vein, Trump constantly makes accusations and strong suggestions from a number of public platforms. Trump is known to make outlandish claims and then back off soon after and claim he was joking or being sarcastic. An egregious example was on June 15, 2018 when he told a Fox reporter he wanted his people to treat him the same way as the people of North Korea treat dictator Kim Jong-Un (NBC, 2018). After the immediate backlash, he claimed he was being sarcastic. In short, Trump's messages are difficult to decode. This presents not just a communicative but a legal quandary. It can be unclear which of his proclamations in emails and tweets are executive directives and which are bluster. Should the FCC see his comments about news stations as directives from the President or as a frustrated man letting off steam? Though the FCC is overseen by Congress, the five commissioners are appointed by the President, giving the POTUS (President of the United States) significant influence over the direction of the FCC. His rhetorical attacks on the press are problematic because this makes them so very public. Because his private and public communication are somewhat conflated, this presents us with new legal territory. It is difficult to know at what point Trump is dictating policy he would like to see enacted and at what point is he airing personal grievances.

Trump's attack on the First Amendment and a free press presents a complicated legal picture. He has certainly pushed the edges of the law by threatening newspapers, journalists, and news stations. The effects are discursive, unlike Nixon who took his war with the press to the courts and ordered the press to be silent. Trump's war on the free press, however, has been effective because his voice is amplified by his use of new technologies, and the courts have validated his use of those technologies as public forums where he can speak to the people directly. This is why the public's attitude toward the media is so important to understand as it relates to the President. A historical comparison with Nixon, then, is useful in seeing how the public has responded to this kind of presidential battle in the past. The public right now has little trust for the media—Trump's unending attacks on the press seem to be making inroads. This could conceivably pave the way for more legal and political attacks from the administration, not just rhetorical ones. Trump has a voice outside the press

where he can take his vitriol to the American people, which may make the press disposable to the administration. This complicates our social and political relationship to the First Amendment.

In this paper, I have addressed the importance of the press, compared Nixon's and Trump's relationship to the press, and argued that Trump's rhetorical attack on the press is just as dangerous as Nixon's political and legal attacks. As Trump continues to make attempts to erode the people's trust in the press, future studies may wish to further investigate the "truth effect" and Trump's messaging. Legal scholars will certainly wish to pay attention to the moves the Trump administration makes against journalists and the press as his tenure progresses. Trump has had a profound influence on the judiciary with his appointments, so assessing any success at legal moves against the press will be interesting to both political and legal studies. Ultimately, Trump's overall effect on the power of the press is yet unknown. History, if the narrative of Nixon is indicative, would compel us to believe that the press may come out with legal victories but with a difficult relationship with the public. Trump's ability to speak to the public may exacerbate that condition, leaving the press even more scarred than his historical predecessor.

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