POWER, PRIVILEGE, AND RESPONSIBILITY: RETHINKING PRESS PROTECTIONS IN AN AGE OF MISINFORMATION

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ABSTRACT

This article builds on recent scholarship advocating for press exceptionalism in the United States, including arguments by Floyd Abrams, Sandra Baron, Lee Levine, and Jacob Schriner-Briggs, under the auspices of The Floyd Abrams Institute for Freedom of Expression, and Professor Sonja West. These scholars propose a multi-factor framework to justify special protections under the First Amendment's Press Clause, grounded in the principle that a free press is essential to democratic self-governance. Among their proposed criteria are editorial independence, adherence to journalistic ethics, and a demonstrated history of newsgathering.

This article argues that press exceptionalism must be earned, not presumed. Drawing on recent reporting failures related to the Israel–Hamas conflict—particularly post-October 7, 2023—this piece interrogates whether some legacy media outlets meet the ethical and professional standards required to merit heightened legal protections. Examples include *The New York Times*' initial misleading headline on the Gaza hospital explosion and broader concerns over newsroom transparency, anonymous sourcing, and influence from partisan actors, including Hamas operatives posing as journalists. These lapses have not only undermined public trust but, arguably, also fueled a surge in antisemitic sentiment and violence.

Comparative analysis shows that the United States diverges from global counterparts in its regulatory stance. While U.S. jurisprudence strongly rejects state-mandated licensing or ethical codes, several European nations link journalistic protections with responsibility. The European Union's 2024 Media Freedom Act, for example, enshrines editorial independence and prohibits government interference while also emphasizing ethical standards and transparency. Countries such as the United Kingdom, France, and Greece incorporate professional standards into requirements of journalism, effectively offering privileges in exchange for media's professional accountability.

This article acknowledges the critics' arguments that restrictions on journalists— limiting international journalists' access to Gaza—and disproportionate government influence over media contradict democratic values. Conversely, Israel's concerns about terror-affiliated actors posing as journalists and Hamas' control of media in Gaza, underscore the difficulty of defining legitimate press actors in asymmetric conflict zones.

In conclusion, this article proposes that any movement toward press exceptionalism—whether in the U.S. or abroad—must be tethered to a

renewed commitment to journalistic responsibility. A comparative legal framework that rewards adherence to professional ethics, editorial independence, and transparency may provide a viable path forward—one that balances democratic necessity with public accountability in an era of global information disorder.

I. INTRODUCTION

In 2024 (before Donald Trump was elected president of the United States), Floyd Abrams, known as "Mr. First Amendment,"[1] along with a few other scholars, argued under the banner of The Floyd Abrams Institute for Freedom of Expression that the Press Clause in the First Amendment of the United States Constitution should have independent, revitalized force to meet contemporary financial, political, and legal pressures—pairing press-specific protections with accountability. The report released by the Institute, entitled *The Press Clause: The Forgotten First Amendment* (Report), builds historical, precedential arguments and proposes a blended multi-factor test to define who counts as "the press" and examine criteria such as secure access/newsgathering, editorial autonomy, publication, protection, and economic viability.[2] The Report argues journalists require and are entitled to stronger constitutional protections under the First Amendment's Press Clause that exceed the speech protections under the First Amendment's Speech Clause given the history of Supreme Court jurisprudence.[3] The desired protections of journalists include: (i) permitting the press to stay on the scene of a protest even after the police disburse crowds; (ii) shielding journalists from compelled disclosure of confidential sources in connection with reporting government misconduct; and (iii) allowing journalists to avoid

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[1] Joanne Myers, Dir. of Pub. Affs. Programs, Carnegie Council for Ethics in Int'l Affs., Closing remark from Public Affairs: The Soul of the First Amendment 01:04:28 (June 5, 2017) (transcript available at https://www.carnegiecouncil.org/media/series/39/20170601-floyd-abrams-the-soul-of-the-first-amendment) ("In the legal profession, Mr. Abrams has always been known as "Mr. First Amendment . . . ."); Mr. Abrams has also been called "[t]he most famous and perhaps original 'First Amendment lawyer.'" John Anderson, *"Floyd Abrams: Speaking Freely" Review: The First Amendment's Dogged Defender*, WALL ST. J. (Sept. 19, 2023, 5:41 PM), https://www.wsj.com/arts-culture/television/floyd-abrams-speaking-freely-review-the-first-amendments-dogged-defender-fa679639.

[2] FLOYD ABRAMS ET AL., ABRAMS INST., THE PRESS CLAUSE: THE FORGOTTEN FIRST AMENDMENT 9-10 (2024) [hereinafter PRESS CLAUSE REPORT].

[3] *See* Ronald K.L. Collins, *Floyd Abrams, "Journalists Need Stronger Protections Than the Supreme Court Has Recognized*," FIRE: FIRST AMEND. NEWS (Oct. 16, 2024), https://www.thefire.org/news/blogs/ronald-kl-collins-first-amendment-news/floyd-abrams-journalists-need-stronger; Floyd Abrams, Opinion, *Beef Up the Freedom of the Press*, WALL ST. J. (Oct. 13, 2024, 3:00 PM), https://www.wsj.com/opinion/beef-up-the-freedom-of-the-press-media-journalism-reporting-constitution-first-amendment-4560e167?\.

litigation intended to intimidate the press and suppress reporting.[4] Abrams also argues for the press to have more access to public records and government information.[5] In his *Wall Street Journal* article, Abrams quotes Thomas Jefferson as having "said that a free press is the 'most effectual . . . of all the avenues to truth.'"[6]

Since Trump's election as president of the U.S. in 2024, the Trump Administration has exerted content-specific litigation pressure on the media.[7] Although not completely on point, it's worth noting that an undisclosed, very high-level source at Disney revealed to a journalist that Disney settled the Stephanopoulos case[8] not to curry favor with the President but to avoid giving the Supreme Court a vehicle to overturn *New York Times v. Sullivan*,[9] the landmark Supreme Court case creating the public figure defamation standard of actual malice.[10]

This article tries to reconcile Abrams' pursuit of "truth" through journalism and the contemporary state of the profession, in particular with regard to reporting on the Israel-Hamas conflict.

Abrams and his scholar-collaborators concede that not everyone is or can be entitled to the special treatment or else it would have no meaning or effect.[11] Importantly for this article, their Report stipulates that "press rights can be understood as accruing to the benefit of the entire public, not

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[4] Abrams, *supra* note 3.

[5] PRESS CLAUSE REPORT, *supra* note 2.

[6] Abrams, *supra* note 3.

[7] *See, e.g.*, Michael R. Sisak, *ABC Agrees to Give $15 Million to Donald Trump's Presidential Library to Settle Defamation Lawsuit*, AP NEWS (Dec. 14, 2024, 6:23 PM), https://apnews.com/article/abc-trump-lawsuit-defamation-stephanopoulos-04aea8663310af39ae2a85f4c1a56d68; William Brangham & Azhar Merchant*, Kimmel Suspension and Self-Censorship Set Dangerous Precedent, FCC Commissioner Says*, PBS NEWSHOUR (Sept. 19, 2025, 6:40 PM), https://www.pbs.org/newshour/show/kimmel-suspension-and-self-censorship-set-dangerous-precedent-fcc-commissioner-says (Trump suggested the FCC should revoke licenses of broadcasters who air material criticizing him. Further, the FCC chair suggested ABC affiliates should pull *Jimmy Kimmel Live* from their airwaves.); James Hill & Peter Charalambous, *Trump Seeks to Proceed with $10B Lawsuit over WSJ Story on Epstein's Birthday Book*, ABC NEWS (Oct. 21, 2025, 9:01 AM), https://abcnews.go.com/US/trump-seeks-proceed-10b-lawsuit-wsj-story-epsteins/story?id=126717491; Katie Fallow, *Paramount's Trump Lawsuit Settlement: Curtain Call for the First Amendment?*, KNIGHT FIRST AMEND. INST. COLUM. UNIV.: DEEP DIVE (July 9, 2025), https://knightcolumbia.org/blog/paramounts-trump-lawsuit-settlement-curtain-call-for-the-first-amendment.

[8] *See* Sisak, *supra* note 7 (ABC network agreed to settle Donald Trump's "defamation lawsuit over anchor George Stephanopoulos' inaccurate on-air assertion that the president-elect had been found civilly liable for raping writer E. Jean Carroll.").

[9] Kim Masters, Partner, Puck, Comment made during *What Is Happening in Defamation? – From Blake Lively to* The Queen's Gambit panel at the USC Gould School of Law and Beverly Hills Bar Association Institute on Entertainment Law and Business (Oct. 18, 2025, 4:00 PM).

[10] *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

[11] PRESS CLAUSE REPORT, *supra* note 2, at 86.

just to the individuals or institutions that can claim them."[12] The scholars summarize two key approaches to establishing entitlement to enhanced press protections—an institutional one that establishes "who (or what) is and is not 'the press'"[13] and a comparatively functional one that analyzes those who engage in press-like activity[14]—ultimately culminating in a multi-factor definitional approach that resulted from the group's research project.[15]

The institutional approach considers the established, so-called "legacy press," to have already proven its bona fides given its long-standing role in public debate, and there is an assumption that it regulates itself and adheres to professional standards such that a member of the institutional press is *de facto* deemed worthy of press protections.[16]

The functional approach considers actions, not a specific institutional affiliation—in other words, holding oneself out as, being trained as, and being considered as a journalist ought to afford the person with the applicable protections.[17] This approach is not without federal courts' support.[18]

The scholars determined that both the institutional and the functional approach were neither reliable enough nor without risk of including or excluding improperly, and, therefore, recommended and established a multi-factor test (Multi-Factor Test) meant to be an overall workable mechanism to protect legitimate journalism.[19] Among other observations, the project workshop participants considered the possibility that, if the Press Clause were to be seen as affording greater protections than the Speech Clause, then courts might require a standard similar to "England's 'responsible journalism' construct" that would amount to a "quid-pro-quo" approach conditioning additional press rights upon the result of the evaluation of "whether the press took appropriate steps to verify its information, the urgency of the subject matter it covered, whether the article captured the gist of competing parties' points of view or sought comment from them, and the general circumstances surrounding publication."[20] Essentially, the press would be entitled to "additional rights so long as it makes good faith efforts to exercise those rights in a manner that serves its democratic functions."[21] The factors proposed (blending institutional and functional considerations)

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[12] *Id*. at 87.
[13] *Id*. at 87-88.
[14] *Id*. at 89.
[15] *Id.* at 92-95.
[16] *Id.* at 88-89.
[17] *Id*. at 90-91.
[18] *Id*. at 91.
[19] *Id*. at 92.
[20] *Id*. at 93 (citing Catherine Spratt, *A New Day in the U.K*., REPS. COMM. FOR FREEDOM PRESS (2007), https://www.rcfp.org/journals/the-news-media-and-the-law-winter-2007/new-day-uk/).
[21] *Id*.

to evaluate whether a person or entity qualifies for Press Clause protection are:

- "The rights claimant is a member of a news organization;
- The rights claimant has a standing history of news reporting;
- The rights claimant has a sizeable audience;
- The rights claimant exercises editorial independence, especially from the subjects of their work;
- The rights claimant subjects their work to an editorial process as a means of quality control;
- The rights claimant adheres to professional standards and ethics;
- The rights claimant holds itself out as the press;
- The rights claimant is a human or, as in the case of entities, consists of humans;
- The rights claimant has training, education, or experience as a journalist; and
- The rights claimant is earning a living, or endeavoring to do so, from press activities."[22]

Notably, "some factors might be more important and receive more weight depending on the legal context and specific rights at issue."[23] As noted above, the Report acknowledges the inadequacy of a Press Clause right being afforded only to legacy (institutional) press and, yet, still seems to assume that legacy media journalists adhere to professional journalism standards and ethics.[24] This article challenges that assumption by spotlighting examples of legacy media journalists breaching journalistic ethics in the context of reporting on the Israel-Hamas conflict since October 7, 2023. These examples reflect media coverage that would ultimately not satisfy the Multi-Factor Test and, thus, would not afford the journalists the protections argued for by Abrams and the other scholars.

The Report concludes, after quoting Thomas Jefferson, by expressing unequivocal respect for the role of newspapers in informing people and grave concern over a "press [] in peril" due to restricted access, reduced publication rights, and diminishing funding.[25] Although, presently,

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[22] *Id*. at 94.
[23] *Id*. at 92.
[24] *Id* at 88-89, 92.
[25] *Id*. at 95-96.

legacy media's reach is said to be eclipsed by the power of social media, its authority gives weight to social media trends—even when they are misleading or false—allowing misinformation and disinformation to drive boycotts and cancel culture against artists and academics and justify antisemitic hatred and violence. In an era when students and so many in the general population source information from the internet powered by artificial intelligence, society should be able to rely on legacy media for neutral, fact-based, and honest reporting and transparency around ideology and activism. That "a lie can travel halfway around the world while the truth is still putting on its shoes" is even truer today post-internet and the virality of social media than it was already in the nineteenth or early twentieth centuries when it was first said—likely by Jonathan Swift, though often mistakenly attributed to Mark Twain.[26]

The aftermath of October 7 has exposed a media landscape where selective reporting, misleading headlines, and outright omissions of facts have fueled global misconceptions about Israel, shaping a distorted public narrative.[27] As a result, we are witnessing an alarming shift where misinformation doesn't just influence opinions—it dictates social conduct, fuels hostility and violence on college campuses, and justifies the canceling of anyone who dares to challenge the prevailing pro-Palestinian narrative.

This article is focused on the old-guard legacy media such as *The New York Times* (*Times* or *Gray Lady*) because it is taken seriously. It legitimizes opinions and influences courts and legislation. It is ingested and taken as true by Artificial Intelligence (millions of articles were used to train AI).[28] Yet it supports the point that even the most esteemed media does not necessarily pass the Multi-Factor Test.

Media bias against Israel was discussed long before the October 7, 2023 attacks by Hamas. In 2020, Masters of the Arts candidate Sarah Ben Harush published a lengthy thesis charting anti-Israel media bias by analyzing articles (including headlines, language, omissions, citations, and photographs) in the Associated Press, *The New York Times*, Reuters, and *The Washington Post*.[29] Harush quoted Israeli journalist Ben-Dror Yemini's observations regarding the disproportional attention the Israel-Hamas

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[26] Niraj Chokshi, *That Wasn't Mark Twain: How a Misquotation Is Born*, N.Y. TIMES (Apr. 26, 2017), https://www.nytimes.com/2017/04/26/books/famous-misquotations.html. The quote has often been attributed to Mark Twain, sometimes to Winston Churchill, and even to others, but it seems to be more likely attributable, at least to some extent, to Jonathan Swift.

[27] *See infra* Part II.

[28] Michael M. Grynbaum & Ryan Mac, *The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work*, N.Y. TIMES (Dec. 27, 2023), https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html.

[29] *See generally* Sarah Ben Harush, Anti-Israel Media Bias: A Case Study (2020) (M.A. thesis, George Mason University) (on file with George Mason University), https://mars.gmu.edu/server/api/core/bitstreams/8b93d35f-49f0-4a09-a8f8-54f00483d29c/content.

conflict has received in the media despite a fraction of the total casualties when compared to other conflicts and more humane humanitarian conditions for the Palestinians as compared to neighboring countries such as Turkey, Egypt, and Morocco.[30] Harush was not just charting bias to critique the journalism but argued that it distorts the public's understanding of the conflict and is an obstacle to peace.[31]

Since October 7, 2023, nothing has changed, but the backlash has been even graver. This article first summarizes established professional journalism codes of ethics and best practices and then presents an overview of the media coverage of Israel and Gaza about October 7 that other journalists and commentators argue to be biased against Israel and violating those standards.

Part II examines research highlighting anti-Israel bias in reporting, particularly by *The New York Times*. This includes the uncritical and inaccurate repetition of Gazan casualty numbers and the unsubstantiated portrayal of Israel having been found guilty of genocide. Further, Part II details significant factual inaccuracies, misleading headlines, biased language and emphasis, reliance on Hamas-affiliated journalists and others with a conflict of interest, mapping examples of legacy media coverage that does not satisfy the Press Clause Multi-Factor Test.

Part III suggests further teaching of and emphasis on journalistic ethics and taking a careful approach with regard to so-called activism journalism. This article is not meant to understate the threat to journalism, but, instead, to hold the press to live up to its own established ethical principles and to conduct itself according to the Report's Multi-Factor Test if it is to benefit from any special protections for the press beyond those of speech under the First Amendment. Part III considers that while First Amendment scholar and Professor Emeritus at Harvard Law School, Alan Dershowitz famously said "[American] law is agnostic about truth. It's very skeptical of ultimate truth. That's why freedom of speech permits lies to be told,"[32] the press should only enjoy special privileges that regular citizens do not if it abides by the professional and ethical reporting standards that it purports to and is assumed to,[33] is one of the factors in the Multi-Factor Test,[34] and that includes attempting to provide objective truth.[35] Finally, Part

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[30] *See id*. at 1 (citing Ben-Dror Yemini, *NGOs vs. Israel*, 18 MIDDLE E.Q. 67, 67 (2011)).
[31] *Id*. at 2.
[32] Kathryn Schulz, *Alan Dershowitz on Being Wrong, Part II: Error in the Law*, SLATE (May 12, 2010, 5:32 PM), https://slate.com/news-and-politics/2010/05/alan-dershowitz-on-being-wrong-part-ii-error-in-the-law.html.
[33] PRESS CLAUSE REPORT, *supra* note 2, at 88-89.
[34] *Id.* at 94.
[35] *See, e.g.*, *Global Charter of Ethics for Journalists*, INT'L FED'N OF JOURNALISTS, https://www.ifj.org/who/rules-and-policy/global-charter-of-ethics-for-journalists (last visited Nov. 5, 2025) ("[A]dopted at

III provides a few examples of the democracies, specifically the United Kingdom, Greece, and France, that maintain a quid pro quo system, according journalists protections in exchange for adhering to certain professional and ethical standards.

II. LEGACY NEWS MEDIA'S PARTIAL AND DISTORTED COVERAGE OF ISRAEL WHEN COVERING THE ISRAEL-HAMAS CONFLICT

A. Examples of Legacy News Media's Coverage of Israel That Does Not Satisfy the Multi-Factor Test

While the subject of anti-Israel media bias is not new,[36] this article focuses on legacy news media's reporting bias against Israel since October 7, 2023,[37] that has contravened established journalism standards and that does not satisfy certain factors of the Multi-Factor Test. Leading non-profit journalist organizations expressly set out ethical and professional standards that include: "Truth and Accuracy," "Impartiality," avoiding "conflict of interest" or even the appearance of one,[38] "[r]espect for the facts and for the right of the public to truth" and "clearly distinguish[ing] factual information from commentary and criticism."[39] The Global Charter of Ethics for Journalists also requires that "[t]he journalist shall report only in accordance with facts of which he/ she [sic] knows the origin," prioritize "the verification of facts, sources and/or the offer of a reply" over urgency to disseminate the information, and "do the utmost to rectify any errors or published information which is found to be inaccurate in a timely, explicit, complete and transparent manner."[40] Journalists are to "ensure that the dissemination of information or opinion does not contribute to hatred or prejudice and shall do their utmost to avoid facilitating the spread of discrimination on grounds such as geographical, social or ethnic origin, race, gender, sexual orientation, language, religion, disability, political and other opinions."[41] While the

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the 30th IFJ World Congress in Tunis on 12 June 2019[,] [i]t completes the IFJ Declaration of Principles on the Conduct of Journalists (1954), known as the 'Bordeaux Declaration.'"); *Statement of principles*, AM. SOC'Y OF NEWS EDS., https://web.archive.org/web/20150407151346/http://asne.org/content.asp?pl=24&sl=171&contentid=171 (last visited Nov. 5, 2025) ("originally adopted in 1922 as the 'Canons of Journalism'" and revised to be the "Statement of Principles" in 1975); *SPJ Code of Ethics*, SOC'Y OF PRO. JOURNALISTS, https://www.spj.org/spj-code-of-ethics/ (last visited Nov. 5, 2025).

[36] *See infra* Part II.A.1 (detailing analysis of and commentary about anti-Israel media bias before October 7, 2023).

[37] *See supra* Part I.

[38] *Statement of principles*, *supra* note 35.

[39] *Global Charter of Ethics*, *supra* note 35.

[40] *Id*.

[41] *Id*.

Society of Professional Journalists (an American organization established in 1909) has an extensive Code of Ethics consistent with the other organizations quoted here, it also emphasizes as key principles accountability and transparency and the need to correct mistakes "promptly and prominently."[42] Not surprisingly, the Society of Professional Journalists disclaims any legal obligation resulting from the Code, especially in light of the First Amendment.[43]

The examples of legacy media reporting discussed below illustrate a contravention of both the press's own ethical standards and also the Multi-Factor Test that is meant to establish entitlement to extraordinary treatment, above the judicially-enforced constitutional free speech guarantees.

Since October 7, 2023, there are various excoriating articles, opinion pieces, and reports regarding mainstream media's bias against Israel in related news coverage.[44] Additionally, there's documentation of the American public's loss of interest in the news and trust in U.S. media outlets due to "'bias, sensationalism, and misinformation" and the use of clickbait headlines.[45]

A former long-time National Public Radio (NPR) and CNN journalist, Josh Levs, complains that mainstream news outlets have "[f]or decades" been routinely biased against Israel, following either written rules or ones enshrined in practice.[46] For example, the outlets' internal policies against use of the word "terrorist," yet only avoiding the term when discussing attacks against Israel by Hamas, a United States-designated terrorist organization.[47]

Specifically addressing news coverage since October 7, conservative pundit Michael Goodwin accuses the media of "propagating evil lies" and the Associated Press of no longer being a "boring but trustworthy news organization" but, instead, one in a race for clicks by having false headlines such as *Hamas Official Says Group Would Lay down Its Arms if an Independent Palestinian State Is Established*.[48] The issue, Goodwin explains,

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[42] *SPJ Code of Ethics*, *supra* note 35.

[43] *Id.*

[44] *See infra* Part II.B.

[45] Matt Robinson & Cliff Schecter, Opinion, *These Media Companies Figured Out the Secret. Will Anyone Else*?, NEWSWEEK (Feb. 25, 2025, 10:27 AM), https://www.newsweek.com/these-media-companies-figured-out-secret-will-anyone-else-opinion-2035941.

[46] Josh Levs, Opinion, *The Mainstream Media is Biased Against Israel*, NEWSWEEK (May 7, 2024, 1:29 PM), https://www.newsweek.com/mainstream-media-biased-against-israel-i-know-i-was-part-it-opinion-1898058.

[47] *Id*. (also noting that, apart from being designated a terrorist organization by the United States, Hamas is dedicated to the destruction of the world's only Jewish state).

[48] Michael Goodwin, Opinion, *The Media Is Propagating Evil Lies About the Situation in the Mideast*, N.Y. POST (Apr. 27, 2024, 9:16 PM), https://nypost.com/2024/04/27/opinion/the-liberal-media-fuels-the-lies-about-the-situation-in-the-middle-east-regarding-the-israel-hamas-war/; *see also* Abby Sewell, *Hamas Officials Says Group Would Lay down Its Arms if an Independent Palestinian State Is*

is that, apart from Hamas not being described as a terrorist organization, the article (based on an interview) ignored the same Hamas official's interview in Arabic with a London-based paper in which he not only insisted on Palestinians' "historic right to all Palestinian lands" (which Goodwin explains means "from the [Jordan] river to the [Mediterranean] sea") that would lead to the elimination of Israel, but also delineated conditions that "were so onerous that they amounted to poison pills."[49] Israeli media, however, is accustomed to cross-checking what is said in Arabic media and not only in English—but Goodwin's point is that the Associated Press and mainstream media in general parrots Hamas' talking points without verifying or even questioning, and in a way that invariably paints Israel in a negative light even when the information cited is false and fuels antisemitism.[50]

Since 1982, the Committee for Accuracy in the Middle East Reporting and Analysis (CAMERA) has focused on "promoting accurate and balanced coverage of Israel and the Middle East" because distorted, misleading coverage has a harmful impact on public opinion, which impacts public policy.[51] Since October 7, 2023, CAMERA made over 600 corrections that were implemented by the applicable news outlets (about double from each of the prior two years) and offered the following perspective about the process and results:

> Different media outlets treat corrections differently. Some respond more professionally than others, correcting articles and adding an informative editor's note within hours of a correction request. Other news outlets are less professional. Some will issue vague editor's notes that fail to explain the error previously made. Others try to hide their corrections. Cable news networks, for example, will sometimes admit to making an error during a broadcast watched by hundreds of thousands by posting on one of their X accounts where only a few dozen will see the post. Some outlets will refuse to correct, relying on any ambiguity or absurdly stretched hypothetical, unless confronted with an irrefutable smoking gun. Then there are the media outlets which have forsaken journalistic integrity entirely and refuse to issue corrections at all.[52]

Established, AP NEWS (Apr. 25, 2024, 8:44 AM), https://apnews.com/article/hamas-khalil-alhayya-qatar-ceasefire-1967-borders-4912532b11a9cec29464eab234045438.

[49] Goodwin, *supra* note 48.

[50] *Id*.

[51] *Mission*, COMM. FOR ACCURACY IN THE MIDDLE EAST REPORTING AND ANALYSIS, https://www.camera.org/about/mission/ (last visited Nov. 5, 2025).

[52] Zoom Interview with David Litman, Author, Comm. for Accuracy in the Middle East Reporting and Analysis (Dec. 30, 2024); Email from David Litman, Author, Comm. for Accuracy in the Middle East Reporting and Analysis (Mar. 10, 2025, 08:35 AM) (on file with author).

In 2025, a viral image of an 18-month-old boy named Mohammed al-Matouq was widely circulated to support claims of mass starvation in Gaza, appearing in legacy media outlets such as BBC, CNN, and *The New York Times*.[53] To see the image, one has to go to alternative media sources.[54] It was later revealed that Mohammed suffers from cerebral palsy, hypoxia, and a serious genetic disorder—not malnutrition.[55] His brother, also depicted in the original photograph and looking reasonably healthy, was not depicted in the *Times*' front-page story.[56] Following the international outrage caused by the image, the *Times* issued a correction acknowledging the story was misleading.[57] The image was a misrepresentation of the facts and fueled a misleading political narrative. The *Times* admitted this in a post on the social media platform X and removed the image from its website.[58] The "quietly placed correction" was met with scrutiny owing to the disparity in viewership between the original story—shared with the *Times*' 55 million X followers—and the correction that was posted to an account with "fewer than 90,000."[59]

Furthermore, a *Free Press* investigation revealed that twelve children whose images went viral as supposed symbols of famine in Gaza were in fact suffering from severe pre-existing health conditions—not starvation.[60] The article detailed how these photos, stripped of medical context, were weaponized to push a political narrative, despite the families confirming diagnoses such as cerebral palsy, congenital disorders, and hypoxia.[61] By the time corrections surfaced, the images had already shaped

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[53] Rawan Sheikh Ahmad et al., *Gazans Are Dying of Starvation*, N.Y. TIMES (July 29, 2025), https://www.nytimes.com/2025/07/24/world/middleeast/gaza-starvation.html; Allyson Horn, *Why This Image of an Emaciated Gazan Boy Sparked Controversy*, ABC NEWS (July 31, 2025), https://www.abc.net.au/news/2025-07-31/controversy-over-image-of-a-skeletal-one-year-old-gazan-boy/105596198.

[54] Victor Nava, New York Times *Stunningly Rolls Back Claims About Viral Photo of Starving Gaza Boy*, N.Y. POST (July 29, 2025, 9:10 PM), https://nypost.com/2025/07/29/media/new-york-times-stunningly-rolls-back-claims-about-viral-photo-of-starving-gaza-boy/.

[55] David Collier, *The Truth Behind the Viral Gazan Famine Photo*, DAVID COLLIER (July 27, 2025), https://david-collier.com/the-truth-behind-the-viral-gaza-famine-photo/.

[56] *Id.*

[57] *Editors' Note: July 30, 2025*, N.Y. TIMES, July 30, 2025, at A15.

[58] Brian Flood, New York Times *Admits Using Misleading Cover Photo of Emaciated Gaza Child*, FOX NEWS (July 30, 2025, 11:58 AM), https://www.foxnews.com/media/new-york-times-admits-using-misleading-cover-photo-emaciated-gaza-child.

[59] *NYT Criticized for Scaled Response After False Reporting on "Emaciated" Gazan Boy*, THEMEDIALINE (July 31, 2025), https://themedialine.org/headlines/nyt-criticized-for-scaled-response-after-false-reporting-on-emaciated-gazan-boy/.

[60] Olivia Reingold & Tanya Lukyanova, *They Became Symbols for Gazan Starvation. But All 12 Suffer from Other Health Problems*, FREE PRESS (Aug. 17, 2025), https://www.thefp.com/p/they-became-symbols-for-gazan-starvation.

[61] *Id.*

global outrage and policy discourse, underscoring how visual rhetoric can overwhelm factual accuracy.[62]

Taking the Multi-Factor Test criteria into account, *The New York Times* satisfies all those that one would assume of a venerable press intuition—"[t]he rights claimant is a member of a news organization" and "has a standing history of news reporting."[63] It also has a "sizeable audience."[64] *The New York Times* obviously satisfies the factors regarding being made up of "humans" who have "training, education, or experience as [] journalist[s]," who "exercise[] editorial independence" and maintain "an editorial process as a means of quality control" and who "earn[] a living . . . from press activities.[65] While this leaves only one of the ten factors in the Multi-Factor Test at issue—"[t]he rights claimant adheres to professional standards and ethics,"[66]—each factor need not be given the same weight,[67] and the various ethical standards should, in this author's opinion, be considered the most consequential because the ethics principles are historic and cover such a broad range of conduct applicable to professional journalism. Arguably, the above examples do not adhere to professional ethics in terms of "truth and accuracy," "respect for the facts and the right of the public to know the truth," and correcting mistakes "promptly and prominently."[68] Moreover, if there were to be a "more active judicial evaluation of how the press behaves" "akin to England's 'responsible journalism' construct" to merit the special press protections, as the Report contemplates, then the above legacy media coverage fails the potential criteria of taking "appropriate steps to verify its information."[69]

The nonprofit HonestReporting whose mission is "to combat ideological prejudice in journalism and the media, as it impacts Israel"[70] explained that

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[62] *Id.*

[63] PRESS CLAUSE REPORT, *supra* note 2, at 94.

[64] *Id.* In 2021, the *Times* boasted a subscriber base of eight million. Edmund Lee, The New York Times *Reaches 8 Million Subscriptions*, N.Y. TIMES (Aug. 4, 2021), https://www.nytimes.com/2021/08/04/business/media/nyt-new-york-times-earnings-q2-2021.html. As of August 2025, the *Times* had "11.30 million digital-only subscribers," with a goal of reaching "15 million subscribers by 2027." Jaspreet Singh, New York Times *Subscriptions Boosted By Bundling of News and Lifestyle Content*, REUTERS (Aug. 6, 2025, 8:42 AM), https://www.reuters.com/business/new-york-times-subscriptions-boosted-by-bundling-news-lifestyle-content-2025-08-06/.

[65] PRESS CLAUSE REPORT, *supra* note 2, at 94; *see also* N.Y. Times Trust Team, *Behind the Journalism: How* The Times *Works*, N.Y. TIMES (Apr. 7, 2025), https://www.nytimes.com/explain/2022/new-york-times-journalism.

[66] PRESS CLAUSE REPORT, *supra* note 2, at 94.

[67] *Id.* at 92.

[68] *See supra* Part II.A ¶¶ 1-8.

[69] PRESS CLAUSE REPORT, *supra* note 2, at 93.

[70] *Mission Statement*, HONESTREPORTING, https://honestreporting.com/about/ (last visited Nov. 6, 2025).

> Israel received empathetic media coverage on October 7, 2023 until the moment Israel Defense Forces (IDF) started fighting back. Since then, the coverage has gotten progressively worse, as the media has gradually forgotten about the attacks that are still fresh and raw for Israel and will continue to be until all our hostages return home. There are exceptions, such as the two days Iran attacked Israel in April and October 2024, but media empathy for Israel has for the most part been lacking throughout the war.[71]

Even coverage of the 2025 Twelve-Day War between Iran and Israel was covered in a biased manner as will be addressed in this article.[72] These and other examples below are part of a pattern of legacy (and other media) not adhering to journalism professional ethics under the proposed Multi-Factor Test and not satisfying the quid pro quo standard under England's responsible journalism construct as will be further illustrated in this article.

1. Charting Anti-Israel Bias in *The New York Times* Post-October 7

Professor Eytan Gilboa of Bar-Ilan University[73] and Lilac Sigan, commentor and columnist at the Israeli daily newspaper *Maariv*, conducted a study on *The New York Times*' coverage of Israel, revealing a pattern of omissions and biases that negatively shaped public perception.[74] Their research found that the *Times* often downplayed or ignored threats faced by Israel while amplifying narratives that framed Israel as the aggressor.[75] They criticized the use of Gaza-based journalists with potential ties to Hamas, questioning whether their reports adhered to journalistic integrity. Gilboa and Sigan also noted the *Times*' selective reporting reinforced negative biases,

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[71] Email Interview with Gil Hoffman, Exec. Dir. and Exec. Ed., HonestReporting (Mar. 3, 2025) (on file with author).

[72] *See infra* Part II.A.3.

[73] Professor Eytan Gilboa is a leading expert in international communication, public diplomacy, and U.S.-Israel relations. He holds a Ph.D. from Harvard University and has held academic positions at Bar-Ilan University (Israel), where he served as Founding Director of the School of Communication and Senior Research Associate at the Begin-Sadat Center for Strategic Studies. In the U.S., he has been a visiting professor and researcher at Harvard, UCLA, Georgetown, American University, Tufts, USC, and the University of Pennsylvania. Beyond academia, he has advised the Israeli Prime Minister's Office, the Ministries of Defense and Foreign Affairs, and served as Academic Director at Israel's National Defense College. His research on media bias, political communication, and international conflicts has been widely published. *Brief Bio*, BEGIN-SADAT CTR. FOR STRATEGIC STUD., https://besacenter.org/wp-content/uploads/2013/03/Prof.-Eytan-Gilboas-CV.pdf (last visited Nov. 6, 2025).

[74] *See generally* Eytan Gilboa & Lilac Sigan, *The* New York Times *Coverage of the Israel-Hamas War: Errors, Omissions, and Poor Editorial Supervision*, 30 ISR. AFFS. 939 (2024), https://doi.org/10.1080/13537121.2024.2394292.

[75] *See id*.

stating that "[e]rrors were identified by external sources," and "[c]orrections were late, vague and sometimes evasive. Omissions created false context and reporting" and lacked transparency.[76] Yale Professor Edieal Pinker, Deputy Dean at the School of Management, also analyzed *The New York Times*' coverage of the Israel-Hamas conflict.[77] His study found a strong emphasis on Palestinian casualties and Israeli actions, with little focus on Israeli suffering or Hamas' role post-October 7.[78] He argued that this framing negatively influences public opinion about Israel which, he reasoned, is likely the paper's editors' goal, or, otherwise, they are just motivated to get clicks and generate more advertising revenue.[79] Clearly, these accusations, with which this author (among others) agrees, further demonstrate a leading legacy media entity arguably failing to adhere to certain journalism ethical precepts such as "truth and accuracy" and "impartiality" and correcting mistakes "promptly and prominently."[80]

October 7 and its aftermath are not the first time the *Times* has been scrutinized for anti-Israel bias. As early as 2014, lauded investigative journalist Gary Weiss decried much of western media's—especially the *Times*'—coverage of the war at the time in Gaza as "media intifada" with media outlets having "become part of the Hamas war machine"—"journalism that functions as a tool of a terrorist organization, Hamas: breathlessly pushing its narrative, whether cowed by its threats, sympathetic to its cause, or simply ignorant."[81] Richard Behar's exceptionally detailed and lengthy article in *Forbes* focused on *The New York Times* because it is regarded as "the most important media outlet in the world" and "the most authoritative media outlet in the world for international coverage."[82] Other journalists and commentators have made the same observations again in various media outlets since October 7.

Both Pinker and Gilboa and Sigan's research also focused on the *Gray Lady* but, since October 7, continues to expose the *Times*' pattern of omission and misleading emphasis in its war coverage, shaping a narrative that minimizes Israeli suffering, ignores ongoing attacks from multiple fronts, and amplifies Hamas-driven casualty figures without adequate scrutiny.[83]

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[76] *Id*. at 940.

[77] *See generally* Edieal J. Pinker, *An Analysis of the* New York Times *Coverage of the War Between Israel and Hamas* 1 (Yale Sch. of Mgmt., Working Paper, 2025).

[78] *Id.* at 6-7.

[79] *Id.* at 2.

[80] *See supra* Part II.A ¶¶ 1-8.

[81] Richard Behar, *The Media Intifada: Bad Math, Ugly Truths About* New York Times *In Israel-Hamas War,* FORBES (Apr. 21, 2014, 12:35 PM), https://www.forbes.com/sites/richardbehar/2014/08/21/the-media-intifada-bad-math-ugly-truths-about-new-york-times-in-israel-hamas-war/.

[82] *Id*.

[83] *See* Gilboa & Sigan, *supra* note 74; Pinker, *supra* note 77.

All in all, the patterns tracked by others who have studied the coverage point to an ethical and quality control failure of an otherwise presumptively press protection-worthy organization.

2. The "G-Word" Accusation – Reporting on Casualty Numbers

On the topic of civilian casualties and the accusation that Israel committed genocide in Gaza, there are numerous examples of legacy media, and especially the *Times*, rushing to publish and not taking steps to properly verifying information, thus again flouting professional journalism ethical standards, and not maintaining proper quality control. Furthermore, as is demonstrated below, the *Times* and others often did not "capture[] the gist of competing parties' points of view"[84] nor did they prioritize verifying casualty numbers[85] and while, obviously, a reporter could not verify those numbers, the media outlets did not often disclose the source of the numbers in plain terms that readers would understand and nor did they cover the counter evidence discussed below.

Gazan civilian casualties were a strong focus in 2024, prompting then-president Biden to exclaim that there could not be another "30,000 Palestinians dead" just because Israel was going after Hamas.[86] He was joined by other world leaders, even those usually supportive of Israel's right to defend itself, as they expressed grave concerns over the civilian casualties.[87] The issue triggered protests, including violence in American cities, at American university campuses and across the globe.[88] Although they knew that the casualty numbers were being reported by Hamas (it runs the Gaza Health Ministry), *The New York Times* did not scrutinize them or even comment accordingly to its readers.[89] Gilboa and Sigan noted that the *Times* did publish a long article claiming that the Gazan civilian killings by Israel were "almost unprecedented in this century, even when compared to the war between Russia and Ukraine."[90] *The New York Times*' own prior reporting on Ukrainian deaths contradicted this claim and, thus, the *Times* admitted the error but only by erasing the incorrect paragraph without

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[84] PRESS CLAUSE REPORT, *supra* note 2, at 93.
[85] *Global Charter of Ethics*, *supra* note 35.
[86] Barak Ravid, *Biden's "Red Line" on Gaza: "Can't Have Another 30,000 Palestinians Dead,"* AXIOS (Mar. 9, 2024), https://www.axios.com/2024/03/10/biden-red-line-gaza-palestinians.
[87] Gilboa & Sigan, *supra* note 74.
[88] *See infra* Part II.B.
[89] Gilboa & Sigan, *supra* note 74 (citing David Adsenik & Kevin Chen, *The Gaza Health Ministry Flimflam*, COMMENTARY (June 2024)).
[90] *Id*. (citing Lauren Leatherby, *Gaza Civilians, Under Israeli Barrage, Are Being Killed at Historic Pace*, N.Y. TIMES (Nov. 30, 2023)).

disclosing the error that remained published in syndicated versions of the article.[91]

Several studies analyzed Hamas' casualty figures, especially of women and children, and used statistical data analysis and information about the Ministry of Health's changed but unidentified methodology for counting fatalities to credibly challenge the numbers being reported out of Gaza and cited in *The New York Times*, which never mentioned the studies.[92] The "paper of record" rarely indicated that "Hamas failed to differentiate between combatants and civilians" which, of course, inflated the civilian death toll.[93] Despite the fact that, in connection with other conflicts, the *Times* quoted the globally-recognized expert in urban warfare John Spencer, it never quoted him when he indicated that Israel has taken more measures than most to avoid civilian casualties and had a better ratio of civilian casualties than United Nations and European Union estimates in modern war generally.[94] Not even in twenty-seven opinion pieces addressing Gazan civilian casualty numbers did the *Times* cover the issue of distinguishing civilians from combatants when estimating casualties.[95] Nor did the *Times* discuss the studies that challenged the casualty numbers data.[96]

Several other media outlets presented the casualty numbers and analysis of them differently, and the United Nations ended up halving the numbers of women and children civilian casualties.[97] But, by then, the trusted media sources had amplified the distorted and damaging data[98] that ultimately informed President Biden's criticism of Israel for "indiscriminate bombing" and decision to withhold weapons shipments.[99]

Another issue (outside the scope of this article but important to mention briefly) is that legacy news media including *The New York Times* usually ignores Hamas' strategy of deliberately increasing civilian deaths by

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[91] *Id*.

[92] *Id*. (citing Tom Simpson et al., *Statistically Impossible: A Critical Analysis of Hamas's Women and Children Casualty Figures*, FATHOM (Mar. 2024)); Gabriel Epstein, *Gaza Fatality Data Has Become Completely Unreliable*, WASH. INST. FOR NEAR EAST POL'Y (Mar. 26, 2024); Abraham Wyner, *How the Gaza Ministry of Health Fakes Casualty Numbers*, TABLET (Mar. 6, 2024).

[93] Gilboa & Sigan, *supra* note 74.

[94] *Id*.

[95] *Id*.

[96] *Id*.

[97] *UN Halves Its Estimate of Women and Children Killed in Gaza*, FOUND. FOR DEF. OF DEMOCRACIES (May 11, 2024), https://www.fdd.org/analysis/2024/05/11/un-halves-its-estimate-of-women-and-children-killed-in-gaza/.

[98] David Adesnik, *Hamas's Casualty Numbers Games: Journalists and Joe Biden Lend Credence to Bogus Counts from the Gaza Health Ministry*, WALL ST. J. (Apr. 4, 2024, 5:12 PM), https://www.wsj.com/articles/hamass-numbers-games-civilian-death-counts-casualty-data-b99140eb.

[99] David Adnesik, *Why the U.N's Gaza Casualty Figures Were So Off*, NAT'L REV. (May 14, 2024, 12:18 PM), https://www.nationalreview.com/2024/05/why-the-u-n-s-gaza-casualty-figures-were-so-off/.

using civilians as human shields[100] (while Hamas fighters take shelter underground and Israel has shelters for its civilians), all in order to impact global public sentiment against Israel.[101] Hamas calls it "the CNN strategy."[102] Even taking Hamas' numbers at face value, there was credible information to support "a historically low overall ratio of combatant-to-civilian casualties [which] refutes the possibility of genocide."[103]

Under Article II of the 1948 Genocide Convention, the legal definition of genocide requires the demonstrated "intent to destroy, in whole or in part, a national, ethnical, racial or religious group . . . ."[104] To that end, "[j]ournalists and jurists point[ed] to damning quotes from Israel's war cabinet as evidence of genocidal intent[,] [b]ut the citations [were] not what they seem[ed]."[105] Misquotations of Israeli leaders taken from mainstream media were used by South Africa's legal team in its arguments to the International Court of Justice (ICJ) that Israel was committing genocide and reiterated in Congress by Representative Rashida Tlaib.[106] Although the standard for having committed genocide requires a high evidentiary showing of intent and, per some experts including the former UN chief prosecutor of war crimes, Israel's actions in Gaza did not meet this criteria, unfortunately, several journalists pushed forward anyway, dangerously emphasizing what turned out to be misquotations. *The New York Times*, NPR, the British Broadcasting Channel (BBC), and *The Guardian* (in a piece by the former head of Human Rights Watch)—all at least once (but the *Times* twice)—

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[100] Behar, *supra* note 81.

[101] Alan Dershowitz & Andrew Stein, Opinion, *The Media Ignore Hamas' Long Deliberate Strategy to Increase Civilian Deaths,* N.Y. POST (Nov. 27, 2023, 8:13 PM), https://nypost.com/2023/11/27/opinion/the-media-ignore-hamas-long-deliberate-strategy-to-increase-civilian-deaths/.

[102] *Id*.

[103] Shlomo Cohen & Yaacov Samet, *The Genocide Claim Against Israel Doesn't Add Up*, TIMES OF ISR. (June 2, 2024, 4:41 PM), https://www.timesofisrael.com/the-genocide-claim-against-israel-doesnt-add-up/.

[104] Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1948), https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf. *See also Genocide*, U.N., https://www.un.org/en/genocide-prevention/definition (last visited Nov. 6, 2025) (Genocide is legally defined under Article II of the 1948 Genocide Convention as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group," including killing, causing serious harm, purposely inflicting destructive conditions, preventing births, or "forcibly transferring children . . . to another group."). International courts, including the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), have ruled that specific intent (*dolus specialis*) is a key element, as affirmed in cases like *Prosecutor v. Krstić* (Srebrenica genocide, 2001) (*Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment, August 2, 2001 (ICTY)); and *Prosecutor v. Akayesu* (Rwanda genocide, 1998) (*Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, September 2, 1998 (ICTR)).

[105] Yair Rosenberg, *What Did Top Israeli War Officials Really Say About Gaza?*, ATLANTIC (Jan. 21, 2024), https://www.theatlantic.com/international/archive/2024/01/israel-south-africa-genocide-case-fake-quotes/677198/.

[106] *Id.*

misquoted Israel's Defense Minister Yoav Gallant as saying: "Gaza won't return to what it was before. We will eliminate everything."[107] This quote, however, was misleadingly incomplete. The video from which the quote was taken was filmed three days after October 7 and showed Gallant talking to soldiers who had repelled Hamas. The correct quote translated from Hebrew is: "Gaza will not return to what it was before. *There will be no Hamas*. We will eliminate it all."[108] The error started with an interview on Bloomberg that was viewed over half a million times but incompletely translated with English subtitles. A more expansive description of the misquotations/mistranslations can be found in Yair Rosenberg's article, but an important takeaway is this quote from Rosenberg:

> Unfortunately, this concatenation of errors is part of a pattern. As someone who has covered Israeli extremism for years and written about the hard right's push to ethnically cleanse Gaza and resettle it, I have been carefully tracking the rise of such dangerous ideas for more than a decade. In this perilous wartime environment, it is essential to know who is saying what, and whether they have the authority to act on it. But while far too many right-wing members of Israel's Parliament have expressed borderline or straightforwardly genocidal sentiments during the Gaza conflict, such statements attributed to the three people making Israel's actual military decisions, the voting members of its war cabinet—Gallant, Netanyahu, and the former opposition lawmaker Benny Gantz—repeatedly turn out to be mistaken or misrepresented.[109]

Gilboa and Sigan lay out additional misquotations that were either only technically corrected without effort to reverse the misrepresentation or left uncorrected entirely.[110]

Naturally, *The New York Times* reported on Amnesty International's December 2024 report that concluded that Israel's actions in Gaza amounted to "genocide," asserting that Israeli forces committed acts prohibited under the Genocide Convention with the specific intent to destroy Palestinians in Gaza.[111] Not only had that conclusion been met with criticism from legal

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[107] *Id*.
[108] *Id*. (emphasis added).
[109] *Id*.
[110] Gilboa & Sigan, *supra* note 74.
[111] Adam Rasgon, *Amnesty International Accuses Israel of Genocide in Gaza*, N.Y. TIMES (Dec. 5, 2024), https://www.nytimes.com/2024/12/05/world/middleeast/israel-amnesty-international-genocide-gaza.html.

scholars,[112] including Amnesty International's Israeli branch, which stated that while the destruction in Gaza was catastrophic, their analysis did not find that Israel's actions met the definition of "genocide," but Amnesty International had also altered the definition of genocide to fit their ideological agenda.[113] Amnesty International's conclusion faced immediate pushback; the U.S. State Department swiftly rejected Amnesty's findings, calling the accusations "absurd"[114] and affirming that Israel's military actions, however controversial, did not meet the legal threshold for genocide.[115] Politico also covered the United States' government response to Amnesty International's report, easily summed up by this headline: *US Has Seen No Evidence that Israel Has Committed Genocide, Austin Says*.[116] As to *The New York Times*, Pinker concluded that the newspaper irresponsibly regurgitated and amplified (via unbalanced and relentless repetition) the accusations of genocide against Israel often emphasizing "revenge" or "retaliation" instead of defending the country.[117] The controversy surrounding the Amnesty International report highlights the ongoing struggle between advocacy organizations, international law, and geopolitical realities when assessing complex conflicts. Instead of reporting accurately, the *Times* misrepresented Amnesty International's findings, ignoring the fact that it did not find Israel had committed genocide but, instead, a defined "different crime which [the organization] has named 'genocide'" so it could create viral headlines, which proved effective.[118]

The media has amplified claims of "genocide" and "famine" in Gaza largely by repeating them without sufficient legal scrutiny or independent

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[112] Alice Speri, *Defining Genocide: How a Rift over Gaza Sparked a Crisis Among Scholars*, GUARDIAN (Dec. 20, 2024, 6:00 AM), https://www.theguardian.com/us-news/2024/dec/20/genocide-definition-mass-violence-scholars-gaza.

[113] Jonah Goldberg, *The Headlines Said Amnesty International Accused Israel of Genocide. Here's What They Missed*, L.A. TIMES: VOICES (Dec. 10, 2024, 3:00 AM), https://www.latimes.com/opinion/story/2024-12-10/amnesty-international-genocide-israel-gaza-palestinians-jonah-goldberg.

[114] *"Absurd": US Rejects Amnesty Accusation of Israeli Apartheid Against Palestinians*, TIMES OF ISR. (Feb. 1, 2022, 11:08 PM), https://www.timesofisrael.com/absurd-us-rejects-amnesty-accusation-of-israeli-apartheid-against-palestinians/.

[115] Eloise Goldsmith, "*We Disagree": US Dismisses Landmark Amnesty Report Accusing Israel of Genocide*, COMMON DREAMS (Dec. 5, 2024), https://www.commondreams.org/news/israel-amnesty-international-gaza-genocide.

[116] Connor O'Brien & Joe Gould, *US Has Seen No Evidence That Israel Has Committed Genocide, Austin Says*, POLITICO (Apr. 9, 2024, 11:03 AM), https://www.politico.com/news/2024/04/09/us-has-seen-no-evidence-that-israel-has-committed-genocide-austin-says-00151241.

[117] Pinker, *supra* note 77, at 15-16.

[118] Goldberg, *supra* note 113; *see also* Seth Mandel, *Amnesty International and Balaam's Talking Ass*, COMMENTARY (Dec. 5, 2024), https://www.commentary.org/seth-mandel/amnesty-international-and-balaams-talking-ass/; Amichai Cohen & Yuval Shany, *A "Cramped Interpretation of International Jurisprudence"? Some Critical Observations on the Amnesty International Genocide Report on Gaza*, JUST SEC. (Dec. 16, 2024), https://www.justsecurity.org/105790/critical-amnesty-international-gaza-genocide/.

verification.[119] While a few outlets have offered counterpoints, most coverage overwhelmingly centers on those claims despite credible evidence of Gaza's population growth and substantial humanitarian aid deliveries.[120] *New York Times* op-eds, presented as balancing both sides of the genocide debate, ultimately fuel the narrative—especially when paired with its famine reporting.

On September 16, 2025, the United Nations' news website, UN News, published an article with the headline *Gaza: Top Independent Rights Probe Alleges Israel Committed Genocide* and, soon into the article, covered Israel's rejection of and argument against the claim.[121] The article is short; therefore, nothing is covered in much detail. However, the related *New York Times*' reporting presented biased through a headline that presented the genocide allegation as established by the United Nations.[122] The *Times* and other top media outlets did not scrutinize the report's sources, methodology, or findings, and they did not present the reporting and detailed arguments challenging the findings.[123] Typically missing from legacy media's coverage of the report was detailed counter-arguments such as: (i) that the report by the UN Independent International Commission of Inquiry does not speak for the UN; (ii) the credible and widely available detailed scrutiny of the report for its failure to prove the requisite genocidal intent and coverage of the Israeli Defense Forces' efforts to avoid harming civilians, (iii) lack of addressing Hamas' military infrastructure and its tactics of recruiting children and operating out of hospitals, mosques, schools, and other civilian infrastructure, thus using civilians as shields; (iv) reliance on Hamas-provided casualty data regardless of the fact that Hamas does not distinguish

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[119] Andrew Fox & Tatiana Glezer, *Misinformation Strategy and Media Bias in the Gaza War*, MIDDLE E.F. (Mar. 1, 2025), https://www.meforum.org/meq/misinformation-strategy-and-media-bias-in-the-gaza-war; Jonas Du, *Why Is Reuters Carrying Water for Hamas?*, FREE PRESS (Aug. 11, 2025), https://www.thefp.com/p/why-is-reuters-carrying-water-for-hamas; Noah Rothman, *The "Genocide" Lie's Slow, Quiet Death*, NAT'L REV. (Aug. 20, 2025, 1:46 PM), https://www.nationalreview.com/corner/the-genocide-lies-slow-quiet-death/.

[120] Coleman Hughes, *The Simple Truth About the War in Gaza*, FREE PRESS (Aug. 4, 2025), https://www.thefp.com/p/coleman-hughes-the-simple-truth-about.

[121] *Gaza: Top Independent Rights Probe Alleges Israel Committed Genocide*, UN NEWS (Sept. 16, 2025), https://news.un.org/en/story/2025/09/1165856.

[122] *See* Nick Cumming-Bruce, *Israel Is Committing Genocide in Gaza, U.N. Inquiry Says*, N.Y TIMES (Sept. 16, 2025), https://www.nytimes.com/2025/09/16/world/middleeast/un-israel-gaza-genocide.html.

[123] *See, e.g.*, *id*. (only superficially – in two short sentences – covering the Israeli government description of the report as "fake"); *see also* Catherine Nicholls, *UN Commission Says Israel Is Committing Genocide in Gaza*, CNN (Sept. 17, 2025), https://www.cnn.com/2025/09/16/middleeast/israel-gaza-genocide-un-commission-report-intl (only briefly discussing Israel's opposing views); David Gritten & Imogen Foulkes, *Israel Has Committed Genocide in Gaza, UN Commission of Inquiry Says*, BBC (Sept. 16, 2025), https://www.bbc.com/news/articles/c8641wv0n4go (quickly noting that Israel's foreign ministry "categorically rejected the report" as "distorted and false" before quoting the UN commission as calling it "'the strongest and most authoritative UN finding to date' on the war").

civilians from combatants while ignoring IDF data on combatants; (v) ignoring the brutality of Hamas' actions on Israeli civilians on October 7 and with regard to the hostages then-still-present in Gaza; and (vi) myriad other key omissions, misrepresentations of data regarding alleged famine and Hamas and other gangs' theft of aid, taking Israeli leaders' quotes out of context and distorting their statements and positions, and various unsubstantiated claims.[124]

3. Language and Emphasis Bias, Factual Omissions, and Misleading Headlines That Contravene Journalistic Ethics

The fact that *The New York Times* and other legacy news media made corrections after false information was pointed out by others evidences that the outlet agreed with the correction. Between October 7, 2023, and June of 2024, the *Times* admitted to having made seventy-two errors in covering the war—forty-eight of them about Israel (or 66.67%).[125]

Of all the reporting mistakes that were negative about Israel, the *Times*' headline on its website, *Israeli Airstrike Killed 500 at a Gaza Hospital, Palestinians Say*, was arguably the most egregious and harmful.[126] This claim had been proven patently false—the blast was due to a failed rocket launch by Palestinian Islamic Jihad (not the Israel Defense Forces) that fell into the hospital parking lot (not the hospital itself), fifty to one hundred Palestinians (not 500) were killed, and the incident was misreported by the Hamas-controlled Ministry of Health, not just general Palestinians.[127] It took the *Times* five days and a rebuke from President Biden to properly correct the headline after having made only marginal, easy to dismiss, or not-even-seen corrections.[128]

A *New York Times* Slack channel (#israel-briefings), to which "hundreds of journalists have access," revealed that, just minutes before the final phrasing of the lead Ahli hospital blast headline, "the international editor opposed what he thought 'goes way too far,' and two junior editors

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[124] *See* Salo Aizenberg, UN Watch Rebuttal to the Pillay Commission's September 16, 2025 Conference Room Paper Titled: Legal Analysis of the Conduct of Israel in Gaza Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide (A/HRC/60/CRP.3) (Sep. 16, 2025), https://unwatch.org/wp-content/uploads/2025/09/UN-Watch-Rebuttal-to-September-2025-Pillay-Commission-Report-to-UNHRC.pdf; *see also* Danny Orbach et al., *Debunking the Genocide Allegations: A Reexamination of the Israel-Hamas War from October 7, 2023 to June 1, 2025*, BEGIN-SADAT CTR. FOR STRATEGIC STUD. (Sept. 2, 2025), https://besacenter.org/debunking-the-genocide-allegations/.

[125] Gilboa & Sigan, *supra* note 74.

[126] *Id*. (citing Patrick Kingsley et al., *Israel-Hamas War: Israelis and Palestinians Blame Each Other for Blast at Gaza Hospital That Killed Hundreds*, N.Y. TIMES (Dec. 11, 2024), https://www.nytimes.com/live/2023/10/17/world/gaza-news-israel-hamas-war).

[127] *Id*.

[128] *Id*.

also thought it would be better 'to hedge it', but one of the senior news editors in the newsroom insisted."[129] The international editor insisted, "we can't just hang the attribution of something so big on one source without having tried to verify it and then slap it across the top . . . Putting the attribution at the end doesn't give us cover, if we've been burned and we're wrong."[130] Unfortunately, the headline remained at the top of the homepage for hours.[131] That is a journalism ethics failure to "promptly and prominently correct" and a failure in "quality control" as required by the Multi-Factor Test,[132] as well as a failure under the quid pro quo analysis for not having taken the "appropriate steps to verify [the] information."[133]

As to the war since October 7, 2023, overall, while the *Times* extensively covered Palestinian civilian casualties, it downplayed ongoing violence against Israel.[134] Pinker's study of 1,561 *Times* articles (published between October 7, 2023 – June 7, 2024) found that the majority of reports framed Israel as the primary aggressor, with only 14% mentioning Israeli casualties despite 454 soldiers being killed in combat and 2,840 others wounded since its Gaza ground operation began on October 27, 2023.[135] Hezbollah's rocket fire from Lebanon, Iranian proxies in Yemen and Iraq, and continued Hamas attacks were largely underreported.[136] Israel is mentioned more than three times as often as Hamas in war-related articles.[137] Palestinian suffering is consistently emphasized, with personal stories appearing two out of every three days, while Israeli suffering outside of the October 7 attack is rarely covered.[138] This pattern contravenes the Global Charter of Ethics for Journalists' obligation of journalists to "ensure that the dissemination of information or opinion does not contribute to hatred or

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[129] *Id*. at 948 (citing Charlotte Klein, *You Don't Want to Hedge It?: Inside the* New York Times *Debate over Gaza Hospital Bombing Coverage*, VANITY FAIR (Oct. 24, 2023), https://www.vanityfair.com/news/2023/10/new-york-times-gaza-hospital-story?srsltid=AfmBOopXSvageER6TuCUqnzXcQ59AmQNok46a5nfIlbUNLaTp8XQDuIo).

[130] *Id*. (citing Charlotte Klein, *You Don't Want to Hedge It?: Inside the* New York Times *Debate over Gaza Hospital Bombing Coverage*, VANITY FAIR (Oct. 24, 2023), https://www.vanityfair.com/news/2023/10/new-york-times-gaza-hospital-story?srsltid=AfmBOopXSvageER6TuCUqnzXcQ59AmQNok46a5nfIlbUNLaTp8XQDuIo).

[131] *Id*.

[132] *SPJ Code of Ethics*, *supra* note 35; PRESS CLAUSE REPORT, *supra* note 2, at 94.

[133] PRESS CLAUSE REPORT, *supra* note 2, at 93.

[134] *Id.*; Luke Tress, NY Times *Downplays Israeli Post-Oct. 7 Losses, Hamas Role in War, Data Study Says*, TIMES OF ISR. (Feb. 9, 2025, 8:11 PM), https://www.timesofisrael.com/ny-times-downplays-israeli-post-oct-7-losses-hamas-role-in-war-data-study-says/ (linking and citing to Pinker, *supra* note 77).

[135] Nidal Al-Mughrabi & Emma Farge, *How Many Palestinians Has Israel's Gaza Offensive Killed?*, REUTERS (July 29, 2025, 10:00 AM), https://www.reuters.com/world/middle-east/how-many-palestinians-has-israels-gaza-offensive-killed-2025-03-24/.

[136] Pinker, *supra* note 77.

[137] *Id.* at 7 tbl.1, 8 tbl.2, 14 tbl.5.

[138] *Id*. at 3, 8 tbl.2.

prejudice"[139] and, as discussed below, the imbalanced coverage resulted in serious harms to Israelis and Jews generally.[140]

A striking omission, Pinker observed, was the lack of coverage on Israeli displacement. While *The New York Times* frequently highlighted Palestinian displacement, it barely mentioned the 60,000 – 80,000 (estimates varied) Israelis forced to evacuate their homes due to continued Hezbollah and Hamas rocket fire.[141] Israeli civilians were targeted in over 790 attacks post-October 7, yet these incidents were grossly underreported, which created a one-sided narrative that suggested Israel was the sole aggressor rather than a nation defending itself from ongoing assaults.[142]

Since October 2023, the Houthis have launched over 200 missiles and drones at Israel, intensifying their attacks in December 2024.[143] Notably, on December 9, a Houthi drone struck a residential building in Yavneh, and on December 21, a missile hit a playground in Tel Aviv's Jaffa area, injuring over sixteen people. However, those stories were not amplified in the *Times*.[144] By omitting key facts about ongoing attacks on Israel, its own civilian displacement, and combatant deaths, *The New York Times* shaped a narrative that misrepresented the war's realities to the point where it turned more into a "manufacturer" of news instead of a reporter of it.[145]

During the June 2025 Iran-Israel Twelve-Day War, Iran launched over 300 drones and missiles at Israel. One struck the Soroka Medical Center, injuring seventy-one people.[146] Despite the direct hit on a civilian hospital, major global outlets gave the incident limited coverage and avoided terms like "war crime" in headlines.[147] Israeli President Isaac Herzog called the strike deliberate, "disgusting and horrendous" as the Middle East conflict raged on, citing intelligence that the missile targeted emergency units.[148] "It

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[139] *Global Charter of Ethics*, *supra* note 35.

[140] *See infra* Part II.B.

[141] Pinker, *supra* note 77; *see also* Maayan Lubell & Dan Williams, *How Hezbollah Attacks Displace 60,000 Israelis, Six Months on*, REUTERS, (Apr. 3, 2024, 11:47 PM), https://www.reuters.com/world/middle-east/six-months-hezbollah-fire-keeps-uprooted-israelis-limbo-2024-04-04/; *UPDATED REPORT: UN Silent on Displaced Israelis*, UN WATCH (July 2, 2024), https://unwatch.org/report-un-silent-on-israeli-idps/.

[142] Pinker, *supra* note 77.

[143] *Id*.

[144] *Briefing on Developments Related to Houthi Attacks on Israel*, SEC. COUNCIL REP. (Dec. 29, 2024), https://www.securitycouncilreport.org/whatsinblue/2024/12/briefing-on-developments-related-to-houthi-attacks-on-israel.php.

[145] Pinker, *supra* note 77.

[146] Emily Rose, *Israeli Hospital Had Taken Patients Underground Hours Before Missile Hit*, REUTERS (June 19, 2025), https://www.reuters.com/world/middle-east/israeli-hospital-had-taken-patients-underground-hours-before-missile-hit-2025-06-19/.

[147] *See, e.g.*, *id.*

[148] Conor Wilson, *Babies Were in Israel Hospital "Targeted" by "Disgusting and Horrendous" Iran*, MSN (June 19, 2025), https://www.msn.com/en-gb/news/world/babies-were-in-israel-hospital-targeted-by-disgusting-and-horrendous-iran/ar-AA1H3hJF.

shows how cruel the Iranians are—the emergency care units full of babies were there, and this missile was aimed directly at the hospital."[149] Israel's emergency services reported over 1,000 casualties in one week of the Twelve-Day War alone—including twenty-three fatalities and more than a dozen severely wounded.[150] Global silence on the Soroka strike is glaring. CNN's Christiane Amanpour misreported it as "near a hospital" rather than as hitting Soroka's surgical ward, correcting the error only after CAMERA flagged it[151]—quite a contrast to the wall-to-wall coverage of the Al-Ahli hospital blast in Gaza, which *The New York Times* initially misreported[152] and a breakdown in pre-broadcast verification processes.

Another striking case of misrepresentation came when the United Nations humanitarian chief Tom Fletcher told BBC Radio 4, "There are 14,000 babies that will die in the next forty-eight hours," referring to Gaza aid shortages.[153] *The Guardian*'s headline softened it to *14,000 Babies Could Die*,[154] and the shocking figure spread widely across media and social platforms.[155] Within days, the UN and BBC walked back the claim, clarifying it was a theoretical projection, not data-based.[156] Despite this revelation that there was no evidence to back up the claim, news outlets including *The New York Times*, *Time* magazine, and ABC News continued to report the figure.[157] Fletcher later admitted the need to be "precise," yet the BBC's retraction still ran under a loaded headline: *Gaza Subjected to Forced Starvation, Top UN*

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[149] *Id.*

[150] Zaki Heller, *Day 7 Update*, Update to *MDA on Highest Level of Alert*, MAGEN DAVID ADOM UK (June 19, 2025), https://mdauk.org/mda-on-highest-level-of-alert-june-2025/.

[151] David Litman, *CNN Corrects Amanpour's Egregious Error on Soroka Hospital*, CAMERA (June 20, 2025), https://www.camera.org/article/cnn-corrects-amanpours-egregious-error-on-soroka-hospital/.

[152] Julian E. Barnes & David E. Sanger, *U.S. Cites "High Confidence" that Palestinian Rocket Caused Hospital Blast*, N.Y. TIMES (Oct. 24, 2023), https://www.nytimes.com/2023/10/24/us/politics/intel-rocket-gaza-hospital-blast.html.

[153] *Gazan Babies Will Die Without Aid – UN Humanitarian Chief*, BBC (May 20, 2025), https://www.bbc.com/news/videos/cdr550j818po. at 00:04.

[154] Jem Bartholomew, *First Thing: UN Says 14,000 Babies Could Die in Gaza in Next 48 Hours Under Israeli Aid Blockade*, GUARDIAN (May 20, 2025, 6:02 AM), https://www.theguardian.com/us-news/2025/may/20/first-thing-un-says-14000-babies-could-die-in-gaza-in-next-48-hours-under-israeli-aid-blockade.

[155] Rachel O'Donoghue, *"14,000 Babies Will Die": How the UN Invented a Blood Libel – and the Media Ran with It*, HONESTREPORTING (May 21, 2025, 5:04 PM), https://honestreporting.com/14000-babies-will-die-how-the-un-invented-a-blood-libel-and-the-media-ran-with-it/.

[156] Jewish News Syndicate, *UN, BBC Walk Back Dramatic Gaza Infant Death Toll Claim*, N.Y. POST (May 22, 2025, 2:27 PM), https://nypost.com/2025/05/22/world-news/un-bbc-walk-back-dramatic-gaza-infant-death-toll-claim/.

[157] O'Donoghue, *supra* note 155.

Official Tells BBC.[158] Israel's Foreign Ministry accused him of ignoring Hamas atrocities and echoing propaganda, calling it "blood libel."[159]

It is worth noting that other groups have complained about the harmful influence misinformation from *The New York Times* has had—for example, the trans community as presented in the documentary *Heightened Scrutiny*[160] which premiered at the Sundance Film Festival in January 2025. The documentary includes Chase Strangio of the American Civil Liberties Union who argued the *United States v. Skrmetti* case regarding Tennessee Senate Bill 1 before the United States Supreme Court. The documentary depicts Julie Hollar, Senior Analyst and Managing Editor of FAIR (Fairness & Accuracy in Reporting), saying:

> The news media sets the political agenda. I looked at the front-page coverage for twelve months at *The New York Times*. They published more front-page stories that framed trans people as a threat to others as opposed to stories about how trans people were being threatened by this right-wing political movement.[161]

The documentary includes interviewees commenting that the *Times*' factually inaccurate articles were cited in connection with anti-trans legislation. That *The New York Times* was accused of publishing biased articles suggests a failure to adhere to journalistic ethics by not capturing the gist of opposing views.

When considering the institutional approach, given all the examples of inaccurate, misleading, incomplete, partial and even ideologically driven, the *Times* has been and how untimely and inconspicuously its corrections, the Report's institutional approach of granting special privileges to "old" "identifiable and long established…"[162] media seems inappropriate.

4. Gratuitously Anonymous, Biased, or Conflicted Sources

The *Times* is not alone among legacy media outlets in presenting ethically-challenged journalism. The Washington Institute for Near East Policy is a nonpartisan think tank dedicated to advancing a balanced and

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[158] Fergal Keane, *Gaza Subjected to Forced Starvation, Top UN Official Tells BBC*, BBC (May 29, 2025), https://www.bbc.com/news/articles/c0k3d1y10pzo.

[159] Rachel Clun, *The Fight over Whether 14,000 Babies Were at Risk of Dying in 48 Hours in Gaza*, INDEPENDENT (May 22, 2025, 8:56 AM), https://www.the-independent.com/news/world/middle-east/gaza-tom-fletcher-israel-babies-un-b2755916.html.

[160] HEIGHTENED SCRUTINY (Amy Scholder et al. 2025).

[161] *Id.*

[162] PRESS CLAUSE REPORT, *supra* note 2, at 88 (citing PAUL HORWITZ, FIRST AMENDMENT INSTITUTIONS 146 (2013)).

realistic understanding of American interests in the Middle East.[163] The Institute examined media ethics, raising concerns over *The Washington Post*'s (above all other Western news media) overall unnecessary reliance on anonymous sources in Gaza war reporting, arguing that it undermines credibility and violates journalistic transparency standards.[164]

Arguably worse than relying on anonymous sources is relying on sources with a clear bias against Israel and/or a conflict of interest. HonestReporting charted what it describes as Hamas members and sympathizers inside newsrooms.[165] Specifically, HonestReporting alleges that "[s]ix major outlets employ 20 journalists tied to bias or even terror groups."[166] Reuters employed eight journalists who either celebrated October 7, demonized Israel, or had close ties to Hamas.[167] The Associated Press hired seven journalists who were allegedly part of October 7 because they were at the exact location at the right time to document Israelis being kidnapped into Gaza.[168] Furthermore, among other examples, *The Wall Street Journal* has one journalist who has been accused of sharing terrorist propaganda, and *The New York Times* has one journalist who was honored by Hamas as a "work partner" and another who "[i]nfiltrated Israel on October 7."[169] After HonestReporting raised these ethical questions, CNN fired Gaza-based freelance photographer Hassan Eslaiah who was in a picture being kissed by Yahya Sinwar, Hamas leader and October 7 mastermind, and who had posted images of himself, without "a press vest or a helmet," standing in front of a burning Israeli tank in Israel on October 7 with an Arabic caption that read: "Live from inside the Gaza Strip settlements."[170] Gil Hoffman, former political correspondent of *The Jerusalem Post* and present executive director and executive editor of HonestReporting cites other examples of bias/conflict of interest issues among journalists not already described above, including: (i) a regular correspondent for *The Palestinian Chronicle* found to have held

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[163] *See* THE WASH. INST. FOR NEAR EAST POL'Y, https://www.washingtoninstitute.org (last visited Mar. 2, 2025).

[164] Robert Satloff, *Anonymous Sources in Gaza War Reporting:* The Washington Post *vs. Its Peers*, WASH. INST. FOR NEAR EAST POL'Y (July 2024), https://www.washingtoninstitute.org/policy-analysis/anonymous-sources-gaza-war-reporting-washington-post-vs-its-peers.

[165] *Call Out Complicity: Why Have Media Failed to Take Action Over Critically Compromised Journalists*? HONESTREPORTING (Nov. 24, 2024, 5:33 PM), https://honestreporting.com/call-out-complicity/.

[166] *Id.*

[167] *Id*.

[168] *Id*.; *see also infra* Part IV (regarding related litigation).

[169] *Call Out Complicity*, *supra* note 165.

[170] Benjamin Lindsay, *CNN Fires Gaza-Based Photojournalist Discovered to Be Embedded With Hamas*, WRAP (Nov. 9, 2023, 1:30 PM), https://www.thewrap.com/cnn-fires-hassan-eslaiah-gaza-hamas-photojournalist/ (quoting *Broken Borders: AP & Reuters Pictures of Hamas Atrocities Raise Ethical Questions*, HONESTREPORTING (Nov. 8, 2023, 4:57 PM), https://honestreporting.com/photographers-without-borders-ap-reuters-pictures-of-hamas-atrocities-raise-ethical-questions/).

hostages in his home; (ii) Al Jazeera (funded by Qatar) employing active Hamas members; and (iii) journalist Soliman Hijjy, fired from *The New York Times* for his social media posts expressly praising Hitler[171] only to be rehired by the paper in October 2023,[172] though the *Times* ultimately yet tacitly stopped publishing him.[173] While the *Times* reported on "two more journalists [being] killed" it neglected to mention the IDF's information about ties to Hamas or Palestinian Islamic Jihad.[174] While international journalist organizations and others argue that Israel has not permitted journalists to access Gaza [decide citation(s)], there are significant safety concerns and issues of Hamas' control of media it can access as a tool in what has been described as "lethal journalism." [Cite to Landes + another source if keep this.]

Hamas, The Popular Front for the Liberation of Palestine (PFLP), and Hezbollah have implemented a long-term strategy of utilizing global media to sway public opinion and impact public policy.[175] *The New York Times* justified photojournalists being at the scene of Hamas' killing and abducting of Israelis on October 7 on the basis of wartime free press needs to witness and document the events first-hand.[176] The paper, however, did not acknowledge that neither Hamas nor the other Palestinian government entities permit a free press, and the *Times* did not discuss the possibility of the freelancers at issue being Hamas-members whose work is dedicated to Hamas—not honest reporting.[177] In terms of the Report, there is an evident failure with regard to some key Multi-Factor Test factors such as editorial independence, especially from the subjects of their work, which undermines credibility and adherence to ethics given the apparent conflicts of interests.

And what would a media outlet such as Al Jazeera qualify as under the Multi-Factor Test? During the Israel-Hamas conflict, Al Jazeera systematically organized and coordinated media coverage with Hamas, took direction from Hamas, and made a limited criticism of Hamas. Intelligence confirms that many of Al Jazeera's Gaza-based journalists were members or

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[171] Alison Leigh Cowan, *My* New York Times *Problem and Ours*, COMMENTARY (Oct. 23, 2023), https://www.commentary.org/alison-cowan/my-new-york-times-problem-and-ours/.
[172] Gil Hoffman, Opinion, *Hamas-Connected Journalists Have Worked for Global Mainstream Media Outlets for Years*, N.Y. POST (Aug. 23, 2024, 10:00 AM), https://nypost.com/2024/08/23/opinion/hamas-members-worked-for-global-news-organizations/.
[173] Gilboa & Sigan, *supra* note 74.
[174] Vivian Yee & Ameera Harouda, *Two More Journalists Killed in Gaza, Including Son of Al Jazeera Reporter*, N.Y. TIMES (Jan. 7, 2024), https://www.nytimes.com/2024/01/07/world/middleeast/journalists-gaza-al-jazeera-reporter-son.html; Gilboa & Sigan, *supra* note 74 (citing Jonathan Shanzer, *The Growing List of Al Jazeera Terrorists*, COMMENTARY (Mar. 21, 2024), https://www.commentary.org/jonathan-schanzer/the-growing-list-of-al-jazeera-terrorists/).
[175] Hoffman, *supra* note 172.
[176] *Call Out Complicity*, *supra* note 165.
[177] Gilboa & Sigan, *supra* note 74.

affiliates of Hamas managed by Hamas leaders located in Doha, Qatar.[178] Intelligence reporting evidences a connection between Hamas and Al Jazeera which led to exaggerated or blatantly false news reporting, while those who spoke out against Hamas were either not covered by the outlet or actively silenced when attempting to express criticisms.[179] The language Al Jazeera uses—such as referring to Hamas as "'resistance' fighters" and the Israel Defense Forces as the "occupation army"[180] (even though Israel has not occupied Gaza since 2005)—further supports the argument that Al Jazeera is not a neutral media outlet but a mouthpiece for Hamas.

5. Newsroom Intifada[181] Does Not Satisfy the Multi-Factor Test

The New York Times' extensive high profile reporting titled *"Screams Without Words": How Hamas Weaponized Sexual Violence on Oct. 7*, based on extensive interviews and other evidence, documented the brutal sexual violence against women and established that these were "not isolated events but part of a broader pattern . . . ."[182] Despite its journalistic rigor (two months of research, 150 testimonies, Jeffrey Gettleman—a *Times*' Pulitzer Prize-winning reporter—as author along with two freelancers, and being lauded by the Editor-in-Chief),[183] the report faced criticism internally that resulted in a leak challenging the reporting in an effort to sabotage the piece, and then that story was covered by The Intercept and others, revealing a newsroom culture that dictates what is reported, framed, and ultimately believed.[184]

This investigation provided additional evidence of the internal pressure the *Times*' young journalists apply on senior editors to adopt highly biased coverage practices and norms. In this case, the pressure was so intense that it created the impression that these journalists were political "activists,"

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[178] *See* AVISHAI KARO, DOCUMENTARY EVIDENCE OF HAMAS-AL JAZEERA RELATIONS AND COOPERATION 12-21 (Oct. 19, 2025). *See also* Yigal Carmon & Alberto M. Fernandez, *Hamas and Al-Jazeera, A Decades-Long Symbiotic Relationshi*p, MEMRI: DAILY BRIEF NO. 631 (Aug. 5, 2024) (For decades Al Jazeera has aligned itself with Hamas or provided a platform for its leaders. It regularly deems the current conflict as a "resistance".).

[179] KARO, *supra* note 178, at 3-4, 6, 8-9.

[180] *Id*. at 2.

[181] Oliver Darcy, The New York Times *Stands By Its Reporting On The Hamas Terror Attack After Questions Are Raised*, CNN (Mar. 1, 2024, 7:49 AM), https://www.cnn.com/2024/03/01/media/ny-times-stands-by-reporting-hamas/index.html.

[182] *Id*. (citing Jeffrey Gettleman et al., "*Screams Without Words": How Hamas Weaponized Sexual Violence on Oct. 7*, N.Y. TIMES (Mar. 25, 2024), https://www.nytimes.com/2023/12/28/world/middleeast/oct-7-attacks-hamas-israel-sexual-violence.html?searchResultPosition=1).

[183] Gilboa & Sigan, *supra* note 74.

[184] Jeremy Scahill et al., *"Between the Hammer and the Anvil": The Story Behind the* New York Times *October 7 Exposé*, INTERCEPT (Feb. 28, 2024), https://theintercept.com/2024/02/28/new-york-times-anat-schwartz-october-7/.

engaging in advocacy, feeling no obligation to follow journalism standards.[185]

Despite the UN Under-Secretary-General and Special Representative on Sexual Violence in Conflict reporting[186] and other documentary evidence of planned brutal and systematic sexual violence, especially against women,[187] this again revealed a cadre of activist journalists acting with a political/ideological agenda rather than abiding by professional journalism ethical standards, a commitment to accuracy, and fairness,[188] and it has led to a rise in antisemitism, cancel culture targeting Jewish voices, and real-world violence inspired by inflammatory media narratives.

When we consider the question of who is the press that deserves extraordinary treatment (greater protections than protected speech under the First Amendment), we can see that even the *Times* allowed ideologically driven journalists to corrode the "professional enterprise" and flout the presumably properly established "self-regulatory standards" assumed of "legacy press"[189] and contravenes the adherence to journalistic ethics factor in the Multi-Factor Test by not avoiding a conflict of interest[190] and "[r]espect for the facts and for the right of the public to truth."[191]

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[185] Charlotte Klein, New York Times *Launches Leak Investigation Over Report on Its Israel-Gaza Coverage*, VANITY FAIR (Feb. 29, 2024), https://www.vanityfair.com/news/new-york-times-israel-gaza-leak; Eli Lake, *Who Is in Charge at* The New York Times*?*, FREE PRESS (Mar. 21, 2024), https://www.thefp.com/p/new-york-times-hamas-rape-investigation.

[186] *See generally* OFF. SPECIAL REP. SEC'Y-GEN. ON SEXUAL VIOLENCE IN CONFLICT, MISSION REPORT, U.N. (Mar. 4, 2024), https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2024/03/report/mission-report-official-visit-of-the-office-of-the-srsg-svc-to-israel-and-the-occupied-west-bank-29-january-14-february-2024/20240304-Israel-oWB-CRSV-report.pdf; GEN. ASSEMB. SEC. COUNCIL, REPORT OF THE SECRETARY-GENERAL, CHILDREN AND ARMED CONFLICT, U.N. (Jun. 5, 2023), https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2023_363.pdf.

[187] SCREAMS BEFORE SILENCE (Tzameret Alexandroni et al. 2024).

[188] Gilboa & Sigan, *supra* note 74; *see also supra*, notes 112-18.

[189] PRESS CLAUSE REPORT, *supra* note 2, at 88.

[190] *Statement of principles*, *supra* note 35.

[191] *Global Charter of Ethics*, *supra* note 35.

B. Consequences of Irresponsible Media Coverage of the Israel-Hamas Conflict on Israelis and Jews Generally

Public opinion on Israel's actions in Gaza has been shaped by selective media coverage that often omits critical context while amplifying narratives that fuel antisemitism and defamation. Media coverage frequently omitting critical context, such as Hamas' use of human shields and embedded military infrastructure, is not new[192] but has persisted even since October 7.[193] Nazi propaganda employed similar tactics, distorting reality to vilify Jews and justify violence.[194] Historically, mass media has been a tool of racial and ethnic defamation, from blood libel myths that incited pogroms to Nazi propaganda that justified genocide.[195] Today, similar tactics are at play, with selective reporting reinforcing anti-Israel and antisemitic tropes while downplaying or dismissing atrocities committed against Israelis. The failure of modern media to apply consistent scrutiny to all actors in the conflict exacerbates hostility and legitimizes antisemitic violence. In this author's opinion, this type of journalism is not worthy of extraordinary protections beyond the First Amendment's speech protections.

Antisemitic incidents have surged, with the Anti-Defamation League reporting a 388% increase following October 7, 2023.[196] Cornell University canceled Friday classes amid "extraordinary stress" on campus after violent antisemitic threats led to the arrest of a student.[197] The weaponization of media narratives has contributed to violence against Jews globally. In Tunisia, an attack on a historic synagogue left multiple people dead.[198] In Los

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[192] Behar, *supra* note 81.

[193] Raf Casert, *EU Nations Condemn Hamas for What They Describe as Use of Hospitals, Civilians as "Human Shields"*, AP: WORLD NEWS (Nov. 13, 2023, 6:21 AM), https://apnews.com/article/european-union-condemn-hamas-human-shields-2c0d1c04cb38fc4acce37d8d624e1a3f; U.N. Secretary-General, Secretary-General's Press Conference on the Middle East (Nov. 06, 2023), https://www.un.org/sg/en/content/sg/speeches/2023-11-06/secretary-generals-press-conference-the-middle-east.

[194] JEFFREY HERF, NAZI PROPAGANDA FOR THE ARAB WORLD (Yale Univ. Press 2009).

[195] DAVID NIRENBERG, ANTI-JUDAISM: THE WESTERN TRADITION (Harv. Univ. Press 2013); *see also* Michael J. Polelle, *Racial and Ethnic Group Defamation: A Speech-Friendly Proposal*, 23 B.C. THIRD WORLD L.J. 213, 253–54 (2003).

[196] *Over 10,000 Antisemitic Incidents Recorded in the U.S. Since Oct. 7, 2023, According to ADL Preliminary Data*, ANTI-DEFAMATION LEAGUE (Oct. 6, 2024), https://www.adl.org/resources/press-release/over-10000-antisemitic-incidents-recorded-us-oct-7-2023-according-adl; Sara Chernikoff, *One Year Later: Anti-Jewish and Anti-Muslim Hate Incidents Spike Since Oct. 7 Attacks*, USA TODAY (Oct. 8, 2024, 7:01 PM), https://www.usatoday.com/story/graphics/2024/10/07/hate-crimes-grow-in-us-since-oct-7-attacks/75501456007/.

[197] Elizabeth Wolfe & Zenebou Sylla, *Cornell University Cancels Classes Friday Amid "Extraordinary Stress" on Campus After Violent Antisemitic Threats Led to the Arrest of a Student*, CNN (Nov. 2, 2023, 3:27 PM), https://www.cnn.com/2023/11/01/us/cornell-university-antisemitic-threats-thursday/index.html.

[198] Eyad Kourdi & Hande Atay Alam, *At Least Five Killed in Attack Near Synagogue in Tunisia*, CNN (May 10, 2023, 6:41 AM), https://www.cnn.com/2023/05/09/africa/tunisia-djerba-synagogue-attack-intl-hnk/index.html.

Angeles, a Jewish man was killed at a protest, an incident under investigation as a hate crime.[199] In Detroit, a Palestinian-American child was murdered in a politically-charged hate crime,[200] while a woman leaving a Detroit synagogue was fatally stabbed.[201] These incidents highlight how media-driven narratives inflame tensions and contribute to real-world violence.

Three even more recent U.S. attacks underscore how biased coverage has normalized antisemitism and incited real-world violence. On April 14, 2025, the firebombing of Pennsylvania Governor Josh Shapiro's residence on the first day of Passover—justified by the suspect's claim of "injustices toward Palestinians"[202]—was framed in many outlets as a political dispute rather than antisemitic violence.[203] On May 22, 2025, two Israeli embassy employees in Washington, D.C., were murdered while the assailant shouted "Free Palestine."[204] Although the suspect has been charged with first-degree murder and federal hate crimes and could face the death penalty,[205] some coverage subsumed the attack into broader Middle East tensions.[206] On June 1, 2025**,** a Molotov cocktail attack at a pro-Israel march in Boulder, Colorado, killed 82-year-old Karen Diamond; the suspect, Mohamed Sabry Soliman, now faces first-degree murder, attempted murder, and federal hate crime charges**,** yet several reports framed it primarily as

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[199] Jeremy Childs et al., "*Conflicting Statements" Complicate Investigation into Jewish Man's Death at Protest*, L.A. TIMES (Nov. 7, 2023, 4:18 PM), https://www.latimes.com/california/story/2023-11-06/man-dies-after-fight-at-protest-westlake-village-israel-hamas-war.

[200] Meredith Deliso, *Man Convicted of Hate Crime in Fatal Stabbing of 6-Year-Old Palestinian-American Boy*, ABCNEWS (Feb. 28, 2025, 12:32 PM), https://abcnews.go.com/US/illinois-stabbing-verdict-hate-crime-murder-charges/story?id=119293881.

[201] Rob Frehse & Christina Maxouris, *A Man Was Charged in the Fatal Stabbing of Beloved Detroit Synagogue President*, CNN (Dec. 14, 2023, 10:11 AM), https://www.cnn.com/2023/12/13/us/samantha-woll-detroit-murder-update/index.html.

[202] Dudi Kogan, *Arsonist Targeted Jewish Governor over Pro-Israel Stance*, ISR. HAYOM (Apr. 16, 2025, 6:55 PM), https://www.israelhayom.com/2025/04/16/arsonist-targeted-jewish-governor-over-pro-israel-stance/.

[203] *See, e.g.*, John Shiffman & Andrew Hay, *Suspect in Pennsylvania Governor's Mansion Fire Harbored Hatred for Shapiro*, REUTERS (Apr. 14, 2025), https://www.reuters.com/world/us/suspect-arson-attack-pennsylvania-governors-residence-charged-with-attempted-2025-04-14/.

[204] Salvador Rizzo, *Capital Jewish Museum Shooting Suspect Could Face Death Penalty*, WASH. POST (Aug. 6, 2025), https://www.washingtonpost.com/dc-md-va/2025/08/06/jewish-museum-shooting-suspect-indictment-death-penalty-dc/.

[205] *Id.*

[206] *See, e.g.*, Ed. Bd., Opinion, *An Act of Antisemitic Terrorism in the Nation's Capital*, WASH. POST (May 22, 2025), https://www.washingtonpost.com/opinions/2025/05/22/israel-jewish-antisemitism-embassy-terror/; Lorenzo Tondo, *Washington DC Shooting of Israel Embassy Staff: What We Know So Far*, GUARDIAN (May 22, 2025, 10:25 AM), https://www.theguardian.com/us-news/2025/may/22/washington-dc-shooting-of-israeli-embassy-staff-what-we-know-so-far; Miranda Jeyaretnam, *What to Know About the Victims, Suspect, and Investigation Into the Shooting of Israeli Embassy Staff in D.C.*, TIME (May 22, 2025, 10:55 PM), https://time.com/7287740/washington-dc-shooting-israel-embassy-jewish-museum-suspects-victims-investigation/.

extremist rather than antisemitic violence.[207] As an example, Associated Press highlights the hate crime but not the antisemitic context.[208] This pattern of minimization in legacy media has normalized antisemitism, contributed to public apathy, and created permissive conditions for radicalization.

The war triggered a deluge of anti-Israeli and even anti-Jewish cancelling and boycotting, even more than before.[209] Some examples are: university faculty being uninvited from speaking engagements,[210] Jewish students facing harassment,[211] academics,[212] authors,[213] and actors being cancelled in some way or becoming public targets of the Palestinian Campaign for the Academic and Cultural Boycott of Israel (part of the boycott, divestment and sanctions (BDS) movement),[214] and Israeli and American businesses being boycotted regardless of their political stance.[215] Corporations such as Starbucks, McDonalds, and Coca-Cola faced major boycotts over their perceived support for Israel.[216]

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[207] Edward Helmore, *Boulder Woman, 82, Dies from Injuries Sustained in Attack on Rally for Israeli Hostages*, GUARDIAN (June 30, 2025, 2:33 PM), https://www.theguardian.com/us-news/2025/jun/30/boulder-attack-victim-dies.

[208] Colleen Slevin & Jesse Bedayn, *Man Accused of Yelling "Free Palestine" and Firebombing Demonstrators Charged with Attempted Murder*, AP NEWS (June 5, 2025, 6:50 PM), https://apnews.com/article/boulder-firebombing-attack-9820f4b51d73efc3da72150b80634ea2.

[209] Or Kashti, "*I Won't Work With You. You're Committing Genocide": Israeli Academia Faces an Unprecedented Global Boycott*, HAARETZ (Apr. 12, 2024), https://www.haaretz.com/israel-news/2024-04-12/ty-article-magazine/.highlight/amid-gaza-war-israeli-academia-faces-an-unprecedented-boycott/0000018e-cee6-d5ed-adcf-fff6f1d00000.

[210] Brian Flood, *Liberal Activist Disinvited from Speaking at UC Berkeley After Students Complained He Was Pro-Israel*, FOX NEWS (Dec. 22, 2023, 12:40 PM), https://www.foxnews.com/media/liberal-activist-disinvited-speaking-uc-berkeley-after-students-complained-pro-israel.

[211] Will Creeley, *As Campuses Reel, a Reminder of the First Amendment's Boundaries*, FIRE (Nov. 3, 2023), https://www.thefire.org/news/campuses-reel-reminder-first-amendments-boundaries.

[212] Shira Kadari-Ovadia, *Israeli Academics Face Hundreds of "Explicit" Boycotts by Foreign Universities, Report Says*, HAARETZ (Feb. 25, 2025), https://www.haaretz.com/israel-news/2025-02-25/ty-article/.premium/israeli-academia-faces-hundreds-of-explicit-boycotts-by-foreign-universities/00000195-3c2b-d96e-a9d7-fdeff09a0000?.

[213] Philissa Cramer, "*Is Your Favorite Author a Zionist?" Viral List Sparks Antisemitism Fears Among Authors*, TIMES OF ISR., (May 10, 2024, 10:22 PM), https://www.timesofisrael.com/is-your-fav-author-a-zionist-viral-list-sparks-antisemitism-fears-among-authors/.

[214] Eric Berger, *Bad Apple? How Disney's* Snow White *Remake Turned Sour*, GUARDIAN, (Aug. 25, 2024, 12:00 AM), https://www.theguardian.com/film/article/2024/aug/25/snow-white-israel-gaza-rachel-zegler-gal-gadot? (describing effort to boycott Disney's *Snow White* because of Israeli star Gal Gadot's comments on social media that the international community failed to condemn Hamas' rape and murder of women on October 7, despite the fact that co-star is publicly very pro-Palestinian); *see also* Nadia Khomami, *Nobel and Pulitzer Winners Denounce "Dangerous" Israel Cultural Boycott*, GUARDIAN (Oct. 30, 2024, 11:00 AM), https://www.theguardian.com/world/2024/oct/30/nobel-and-pulitzer-winners-denounce-israel-cultural-boycott.

[215] Gad Lior, *The Countries, Companies Boycotting Israel and the Damage Caused*, YNET, (June 9, 2024, 11:34 AM), https://www.ynetnews.com/business/article/hyhtol7hr.

[216] Astha Rajvanshi & Yasmeen Serhan, *What to Know About the Global Boycott Movement Against Israel*, TIME (Feb. 14, 2024, 2:55 PM), https://time.com/6694986/israel-palestine-bds-boycotts-starbucks-mcdonalds/.

This reaction and sometimes suppression raises concerns about ideological coercion and the erosion of free speech protections. Intense disagreements about the Israel-Hamas conflict that "fuel[ed] cancel culture" led to discussions about "chilling effect of firing and deplatforming people for speech on issues of public concern."[217] Jews and Jewish organizations have been silenced or punished for not condemning Israel.

Furthermore, increased activism pushed U.S. policymakers to pull back on support for Israel. For example, in May 2024, the Biden administration temporarily withheld the transfer of certain munitions to Israel, including MK-82 bombs, fuses, and Joint Direct Attack Munition (JDAM) guidance kits.[218] This decision was influenced by concerns over potential civilian casualties in Gaza and mounting pressure from progressive lawmakers and activists advocating for a ceasefire[219]arguably influenced by the biased legacy media reporting they read.

III. HOW TO ACCORD THE PRESS ADDITIONAL PROTECTIONS BEYOND FREE SPEECH WHILE ENFORCING CORE JOURNALISM STANDARDS AND ETHICS

It is well established that the limitations on the constitutional guarantees of free speech are only the few categories of "false factual speech,"—namely defamation and fraud—speech tied to criminal conduct including incitement to commit imminent lawless action, and directed true threats against someone.[220] The protection of speech includes "lies about any matters that are not 'easily verifiable.'"[221]

When addressing the question of whether the traditional press has any extra protections due to the Press Clause in the First Amendment of the Constitution,[222] Professor Rodney Smolla contends that, modernly, the First Amendment's "Press Clause has been largely subsumed into the Speech

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[217] Aaron Terr, *Intense Disagreements About the Israel-Hamas War Fuel Cancel Culture*, FIRE (Dec. 15, 2023), https://www.thefire.org/news/intense-disagreements-about-israel-hamas-war-fuel-cancel-culture.

[218] Mike Stone et al., *US Paused Shipment of Weapons to Israel to Head off Rafah Invasion-Official*, REUTERS (May 7, 2024, 8:12 PM), https://www.reuters.com/business/aerospace-defense/us-has-been-holding-up-several-weapons-shipments-israel-2-weeks-source-says-2024-05-07/.

[219] Jacob Magid, *With Ammo Shipment Said Put on Hold, US to Report if IDF Using Weapons Legally in Gaza*, TIMES OF ISR. (May 7, 2024, 10:23 AM), https://www.timesofisrael.com/biden-administration-set-to-report-whether-israel-using-us-weapons-in-gaza-legally/.

[220] United States v. Alvarez, 567 U.S. 709, 717-18, 737 (2012).

[221] Eugene Volokh, *When Are Lies Constitutionally Protected?*, 4 J. FREE SPEECH L. 685, 690 (2023) (citing Alvarez, 567 U.S. at 732 (2012) (Breyer, J., concurring)).

[222] U.S. CONST. amend. I ("Congress shall make no law… abridging freedom of speech, or the press").

Clause."[223] However, as noted above,[224] First Amendment scholar and litigator Floyd Abrams, while acknowledging that the American press has "broad protections against prior and subsequent restraints developed through twentieth-century jurisprudence" and more legal protections than other democratic nations, still argues that the Press Clause needs to be revitalized because the Framers intended that "freedom of the press [be] an inviolable right" but, presently, the press faces new and extreme challenges in the form of political opponents, local and federal government interference, and even assault, arrest, financial challenges, and a loss of public trust.[225] Moreover, laws that discriminate among media or specific speakers will typically trigger strict scrutiny analyses as much as content-based regulations.[226]

If the Press Clause is to be revitalized to protect journalists more than they would be protected under the Free Speech Clause, journalists must do more than just speak; they must be educated and required to follow the longstanding ethics guidelines of the profession.[227] Apart from ethics considerations, there is an issue of biased and even ideological education. For example, the newsroom activism described above[228] may stem, at least in part, from U.S. universities' global reach. Education City in Qatar—home to multiple American branch campuses—illustrates how academic globalization intersects with ideology, offering an optimistic vision of social advancement but also raising questions about foreign influence.[229] Moreover, Qatar's investments extend to journalism programs, such as Northwestern University in Qatar,[230] and overall raise concerns about anti-Israel and anti-Western biased education and foreign government influence on college

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[223] Does the press enjoy any special First Amendment protection?, 3 Smolla & Nimmer on Freedom of Speech § 22:10 (citing McConnell v. Federal Election Commission, 251 F. Supp. 2d 176, 234-35 (D.D.C. 2003), quoting 2 Rodney A. Smolla, Smolla and Nimmer on Freedom of Speech, § 22:6 (2002)). *See also* PG Pub. Co. v. Aichele, 705 F.3d 91, 99, 41 Media L. Rep. (BNA) 1209 (3d Cir. 2013) (The Constitution does not generally require government to accord the press special access to information not shared by members of the public generally.).

[224] *See supra* Part I.

[225] Floyd Abrams et al., *The Press Clause: The Forgotten First Amendment*, 5 J. FREE SPEECH L. 561, 564 (2024); *see also* Eugene Volokh, *Free Speech Unmuted: Freedom of the Press, with Floyd Abrams*, REASON (Feb. 25, 2025, 10:36 AM), https://reason.com/volokh/2025/02/25/free-speech-unmuted-freedom-of-the-press-with-floyd-abrams/.

[226] Does the First Amendment ban discrimination among different media?, 3 Smolla & Nimmer on Freedom of Speech § 22:19.

[227] *See supra* Part II.A.

[228] *See supra* Part II.A.5.

[229] Nick Anderson, *In Qatar's Education City, U.S. Colleges Are Building an Academic Oasis*, WASH. POST (Dec. 6, 2015), https://www.washingtonpost.com/local/education/in-qatars-education-city-us-colleges-are-building-an-academic-oasis/2015/12/06/6b538702-8e01-11e5-ae1f-af46b7df8483_story.html.

[230] Lake, *supra* note 185; *see also Bachelor of Science Journalism*, NORTHWESTERN UNIV. IN QATAR, https://www.qatar.northwestern.edu/academics/undergraduate/bs-journalism.html (last visited Mar. 7. 2025).

campuses, academia overall,[231] and public policy as students get older and take on leadership positions.[232]

Criticism of *The New York Times* is not limited to concerns about reporting on Israel and the Israel-Hamas conflict. Unrelated to Israel, several former *Times* journalists have written about how the paper has lost its way. In her resignation from the *Times*, politically conservative writer and founder of *The Free Press*, Bari Weiss, wrote (about the press generally and specifically about the *Times*), the need to "resist[] tribalism" and its tendency to impose an already existing "orthodoxy" instead of engage in a process of truth discovery.[233] She added: "I was always taught that journalists were charged with writing the first rough draft of history. Now, history itself is one more ephemeral thing molded to fit the needs of a predetermined narrative."[234] Former editorial-page editor of the *Times*, James Bennet, now writing for *The Economist*, commented that the "paper of record" appears to be catering to its readers and social media reactions instead of being an arbiter of truth and sharing various ideas and perspectives.[235] Bennet went on to observe that "the *Times* is not good at acknowledging mistakes" and its problem "has metastasised from liberal bias to illiberal bias, from an inclination to favour one side of the national debate to an impulse to shut debate down altogether."[236] Especially because of social media polarization and tribalism, the *Times*, by marketing the fact that it separates opinion and news journalists, misleads readers into thinking they are reading "independent and impartial" news and is misleading Americans into misperceiving the center of "their country's . . . political and cultural gravity."[237]

Both Bennet and Judith Miller, a Pulitzer Prize-winning former investigative reporter for the *Times*, describe the *Gray Lady* as having deviated from the publisher's mantra of being "without fear or favor" with

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[231] Jennifer Gould, *When Your Teacher is Qatar: As Student Protesters Call for Their Universities to Divest from Israel, Qatar Is Spending Billions to Influence Those Same Schools*, AIRMAIL (June 1, 2024), https://airmail.news/issues/2024-6-1/when-your-teacher-is-qatar (adding, "It should be noted that while ISGAP is privately funded, it has received a grant from the Israeli government.").
[232] *Id*.; *Qatar's Funding of US Universities: Influence and Controversy*, EU TODAY (Feb. 4, 2025), https://eutoday.net/qatars-funding-of-us-universities/ (citing Testimony of Dr. Charles Asher Small, Founder and Exec. Dir. of the Inst. of the Study of Global Antisemitism and Policy (ISGAP), Fueling Chaos: Tracing the Flow of Tax-Exempt Dollars to Antisemitism; Before the United States House Committee on Ways and Means, Subcommittee on Oversight, July 23, 2024).
[233] Bari Weiss, *Resignation Letter*, https://www.scribd.com/document/469143280/Resignation-Letter-Bari-Weiss (last visited Nov. 9, 2025).
[234] *Id*.
[235] *Id.*; James Bennet, *When* The New York Times *Lost Its Way*, ECONOMIST (Dec. 14, 2023), https://www.economist.com/1843/2023/12/14/when-the-new-york-times-lost-its-way.
[236] Bennet, *supra* note 235.
[237] *Id.*

editors now being afraid of their reporters' whims and rageful reactions.[238] It should be noted that Miller was herself criticized over her ultimately mistaken reporting while at the *Times* regarding Iraq having weapons of mass destruction, and the *Times* apologized to its readers in a lengthy published letter.[239] This is an example of the type of correction that the paper could have done over its most egregiously wrong and tarnishing reporting about Israel. Miller recalls fondly what prior publisher Abe Rosenthal said, that "*Times* editors had to 'lean right' because virtually all their reporters 'leaned left'"—and thus his tombstone "bears only his name and proudest achievement: 'He kept the paper straight.'"[240]

The same journalists' organizations that publish codes of ethics can reward the most abiding reporters though that judgment suffers perceived bias too. Presumably, most readers will agree that the government cannot be the arbiter or truth. Creating a culture that values a balanced and more complete information diet will yield an incentive structure just by reader/media consumer demand.

Connecting university funding and university curricula and other programming, as well as enforcing journalism ethics and valuing neutrality over advocacy, can help solve the issue of media bias from within—establishing a value system that aligns with the goals of an informed citizenry not vulnerable to misinformation or disinformation.

Ideally, the organizations committed to ethics in journalism would have material influence on the profession to enforce journalism ethics standards. The Columbia Journalism Review, meant to "assess the performance of journalism in all its forms, to call attention to its shortcomings and strengths, and to help define—or redefine—standards of honest, responsible service,"[241] addressed the *Times*' tendency to embrace high profile storytelling projects which privilege impact over fact verification. For example, the podcast *Caliphate* platformed a man later charged with faking his involvement with ISIS. *The 1619 Project* drew criticism over how it presented historical events and the accuracy of those presentations. The journal concluded that ethical journalism is about factual accuracy, perspective, and understanding that a journalist can control the

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[238] *Id.*; Judith Miller, Opinion, *I Used to Work for* The New York Times, FOX NEWS (Dec. 20, 2023, 5:00 AM), https://www.foxnews.com/opinion/pulitzer-times-former-editor-right-paper-becoming-culture-intolerance.

[239] Tom McCarthy, *Judith Miller: "No Senior Official Spoon-Fed Me a Line About WMD"*, GUARDIAN (Apr. 3, 2015, 5:54 PM), https://www.theguardian.com/media/2015/apr/03/judith-miller-essay-wmd-saddam-hussein-iraq-war; *FROM THE EDITORS; The* Times *and Iraq*, N.Y. TIMES (May 26, 2004), https://www.nytimes.com/2004/05/26/world/from-the-editors-the-times-and-iraq.html.

[240] Miller, *supra* note 238.

[241] *News and Notes*, 25 PUB. OP. Q. 666, 666 (Joseph T. Klapper ed., 1961).

public's point of view and, therefore, has a duty of ethical reporting.[242] Consider the parallels to how news reporting depicting Israel as an aggressor has been fueling antisemitism.[243]

In democracies where the press holds power to account, a subtle but vital bargain is often in play—the state offers legal and institutional guarantees of journalistic freedom: source protection, access to information, statutory defamation defenses. In return, journalists deliver rigorous public-interest reporting with verification, accountability and transparency. In the United Kingdom, Greece and France, different manifestations of this "quid pro quo" illustrate how the deal works, or falters, and what it has accomplished for watchdog journalism.

For example, in the United Kingdom, the WSJ Europe relied on the responsible-journalist defense after reporting that, at the United States' request, Saudi authorities were monitoring accounts possibly linked to terror financing and named the Abdul Latif Jameel Group.[244] Jameel sued for defamation for allegedly implying they were under suspicion of funding terrorism[245] and insisted the WSJ should not receive *Reynolds*/public-interest privilege.[246] After the trial court and Court of Appeal rejected the defense, the House of Lords held that, as a matter of high public interest, the reporting met responsible-journalism standards by using and verifying the credibility of multiple sources, using a specialist to investigate in the United States and in Saudi Arabia, pursuing comment from Saudi officials, including the gist of the plaintiff's perspective,[247] presenting the story neutrally as a matter of public interest (the story broke shortly after 9/11),[248] and avoiding presenting the allegations as proven fact.[249]

Although in the United States, First Amendment jurisprudence would likely have protection the media under the actual malice standard for a matter of public concern,[250] this example of the quid quo pro standard of vetting a media outlet's practices in order to be entitled to journalistic

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[242] Jon Allsop, Caliphate*,* The 1619 Project*, the* Times*, and the Culture*, COLUM. JOURNALISM REV.: THE MEDIA TODAY (Oct. 14, 2020), https://www.cjr.org/the_media_today/rukmini_callimachi_1619_project_times.php.

[243] David Crary, *Anti-Defamation League Says Anger at Israel Is Now the Driving Force Behind Antisemitism in the US*, AP NEWS (Apr. 22, 2025, 10:03 PM), https://apnews.com/article/antisemitism-united-states-jews-donald-trump-2c2db56fd4d994cbabfde037cb107af8; Steven Erlanger, *Anger over Starvation in Gaza Leaves Israel Increasingly Isolated*, N.Y. TIMES (Aug. 1, 2025), https://www.nytimes.com/2025/07/31/world/middleeast/gaza-starvation-aid-israel-netanyahu.html.

[244] Jameel v. Wall St. J. Eur. Sprl [2006] UKHL 44.

[245] *Id.* at ¶ 4.

[246] *Id*. at ¶ 7.

[247] *Id*. at ¶¶ 41-43.

[248] *Id*. at ¶¶ 40-43, 49.

[249] *Id*. at ¶40.

[250] United States v. Alvarez, 567 U.S. 709, 727 (2012).

protections is instructive, especially since the protections sought are meant to be above and beyond those under the Press Clause.

In the UK, the bargain is unusually explicit: if journalists can show responsible newsgathering and a clear public-interest rationale, the law gives them room to publish—and, crucially, to defend that publication later. Two pillars do the heavy lifting. First, section 4 of the Defamation Act 2013 creates a statutory "public-interest" defence [sic]: publishers defeat a libel claim if the statement was on a matter of public interest and they reasonably believed publication was in the public interest. Courts look at what the newsroom actually did—verification steps, whether comment was sought, how seriously the allegations were treated, the tone and urgency—rather than demanding perfection.[251]

Second, section 10 of the Contempt of Court Act 1981 gives a qualified shield for sources: no court may compel disclosure unless it is necessary in the interests of justice, national security or the prevention of crime; this approach was entrenched by the European Court of Human Rights in *Goodwin v. United Kingdom* (1996), which warned that forcing disclosure chills watchdog reporting.[252] On the journalist side, the quid is professional diligence that can be shown on paper: IPSO's Editors' Code requires taking care not to publish inaccuracies and correcting significant errors "promptly and with due prominence,"[253] while Ofcom's Broadcasting Code demands due accuracy and due impartiality in news.[254]

A concrete illustration is the 2009 MPs' expenses investigation. The story began with Freedom of Information litigation that pried open the principle that receipts should be disclosable; before formal publication, a leaked cache reached *The Daily Telegraph*, which ran a meticulous, weeks-long series built on the original documents. The safeguards mattered at each step. *The Telegraph* could keep its sources confidential under the section 10/*Goodwin* line of cases. And when the transparency fight continued after the scandal, the Court of Appeal confirmed in 2015 that the regulator must release the underlying receipts—not just summaries—because the public interest in seeing the documents themselves outweighed administrative convenience.[255]

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[251] *Defamation Act 2013* (c. 26) § 4.

[252] Contempt of Court Act 1981 (c. 49) § 10; Goodwin v. United Kingdom, 2 Eur. Ct. H.R. (ser. B) (1996), https://hudoc.echr.coe.int/eng?i=001-57974.

[253] *The Editor's Code of Practice*, INDEP. PRESS STANDARDS ORG., https://www.ipso.co.uk/editors-code-of-practice/ (last visited Nov. 9, 2025).

[254] *Section five: Due impartiality and due accuracy*, OFCOM (Oct. 20, 2025), https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/section-five-due-impartiality-accuracy.

[255] *See* Rajeev Syal, *MPs' Expenses Claims Must Be Disclosed in Full, Court of Appeals Rules*, GUARDIAN (Apr. 28, 2015), https://www.theguardian.com/uk-news/2015/apr/28/ipsa-loses-court-challenge-over-mps-expenses-ruling; *see also MP's expenses scandal*, INFO. COMM'R'S OFF., https://ico.org.uk/for-the-public/ico-40/mp-expenses-scandal/ (last visited Nov. 9, 2025).

By contrast, Greece provides a cautionary scenario where the formal side of the bargain exists, but the state's follow-through is inconsistent, and journalists must operate under heavier strain. The Greek Constitution's Article 14 protects freedom of speech and the press, and as an EU and Council of Europe member state, Greece is subject to legal obligations under the European Media Freedom Act (EMFA) and the European Court of Human Rights jurisprudence on source protection.

However, the 2022 "Predatorgate" spyware scandal where journalists, such as Thanasis Koukakis, had their phones allegedly infected with the Predator spyware, revealed systemic risks to the press.[256] The "Predatorgate" scandal exposed how fragile those guarantees were. Investigations by Reporters United, Inside Story, and EfSyn revealed that financial reporter Thanasis Koukakis, who had been probing banking regulation and possible corruption, was placed under official wiretap by the National Intelligence Service (EYP). Authorities later acknowledged the surveillance (while denying state use of the Predator malware itself).[257] The political fallout was immediate: in August 2022 both the EYP chief (Panagiotis Kontoleon) and the prime minister's chief of staff (Grigoris Dimitriadis) resigned,[258] Parliament opened inquiries, and EU bodies scrutinized the case. Greece subsequently passed Law 5002/2022 to tighten oversight of interceptions, though rights groups say the fixes don't fully address spyware abuses.[259]

Under Greece's media system, TV and radio broadcasters must hold state licenses via the National Council for Radio and Television (NCRTV), and online outlets enroll in the government's Electronic Media Register to qualify for state advertising. While no outlet lost a license over Predatorgate, investigative reporters documented administrative pressure, exclusion from public-advertising programs, and strategic lawsuits/defamation actions after publishing on the scandal—forms of leverage that chill reporting without a formal revocation.

Despite that pressure, the journalistic quid held—reporters produced verifiable forensic evidence (including external lab analyses) and documented the surveillance ecosystem in detail, which in turn fed EU-level

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[256] *Greece's Predatorgate: The Latest Chapter in Europe's Spyware Scandal*, EUROPEAN PARLIAMENTARY RSCH. SERV. (2022), https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/733637/EPRS_ATA%282022%29733637_EN.pdf.

[257] George Georgiopoulos, *Greek Intelligence Service Admits Spying on Journalist – Sources*, REUTERS (Aug. 3, 2022, 5:20 AM), https://www.reuters.com/world/europe/greek-intelligence-service-admits-spying-journalist-sources-2022-08-03/.

[258] George Georgiopoulos, *Greek PM Says He Was Unaware of Phone Tapping of Opposition Party Leader*, REUTERS (Aug. 8, 2022, 7:36 AM), https://www.reuters.com/world/europe/greek-pm-says-was-dark-over-phone-tapping-political-opponent-2022-08-08/.

[259] *From Bad to Worse: The Deterioration of Media Freedom in Greece*, HUM. RTS. WATCH (May 8, 2025), https://www.hrw.org/report/2025/05/08/bad-worse/deterioration-media-freedom-greece.

oversight and recommendations to curb spyware and reinforce source protection under the EMFA framework.

France presents perhaps the most tightly codified version of the journalist-state bargain among these three democracies. On the state side, France has long recognized the fundamental importance of source confidentiality and investigative media in its legal architecture. The 2010 "Loi Dati" (Law No. 2010-1) formally prohibits a journalist from being forced to reveal a confidential source unless a judge concludes that disclosure is strictly necessary and proportionate to safeguarding a serious crime or national security.[260] Moreover, the state integrated the EU Whistle-blower Directive via the Sapin II Law (2016), creating statutory protections for individuals who disclose wrongdoing in the public interest and thereby reinforcing the ecosystem by which journalists can obtain and publish sensitive disclosures with legal backing.

In addition, professional ethics codes (for example the SNJ Code of Ethics) require verifying information, protecting sources, maintaining internal documentation and proportional measures of publication risk.[261] What the journalists side must show in order to benefit from these protections is clear: they must publish information that serves a demonstrable public interest, they must show they exercised due diligence in verification (multiple sources, documents, comment sought), they must maintain internal records of their process, and they must demonstrate that they relied on confidential sources whose identities were protected and who risked exposure.[262] Only when these standards are met will the legal protections—non-disclosure of sources, judicial scrutiny of state intrusion, limited powers of seizure—reliably activate. The mechanism plays out in practice when courts or investigating bodies assess whether the state's request to intervene (search a newsroom, seize journalist documents, force disclosure) met the high threshold of necessity and proportionality.

In effect, France's model shows that when both sides honor the bargain—the state guaranteeing legal shields and the press meeting standards of verification and public-interest publication, the result is investigative journalism that not only flourishes but holds power to account and triggers structural reform. The state side creates the predictable regulatory

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[260] *OSCE Media Freedom Watchdog Welcomes France's New Law Allowing Journalists to Protect Confidential Sources*, OSCE (Jan. 14, 2010), https://www.osce.org/fom/51822.

[261] *Journalists' Professional Code of Ethics (SNJ)*, EU PRESS COUNCILS (2011), https://www.presscouncils.eu/codes/21_fr/.

[262] *Protection of Journalistic Sources*, HUM. RTS. GUIDE, https://www.guidedroitshomme.fr/en/themes/freedom-of-expression-media/media-freedom/protection-of-journalistic-sources (last updated May 10, 2023).

environment; the journalist side provides the pressure, scrutiny and evidence. Together they deliver accountability that matters.[263]

Across these three examples, we observe a shared pattern: governments must promise predictable, enforceable protections—source confidentiality, fair access to information, narrow state surveillance powers—and journalists must accept corresponding responsibilities—rigorous fact-checking, right of reply, transparent editorial practices. Where both sides deliver, the public receives stories that are robust, verifiable, impactful: the UK's expenses reckoning, Greece's surveillance scandal, and France's high-level corruption exposé—and the consequent regulatory momentum. The quid pro quo is not merely symbolic—it is functional. Without the state's guarantees, journalists risk chilling and self-censorship; without journalistic responsibility, the guarantees become hollow. For funders and licensing stakeholders concerned with media ecosystems, the lesson is clear: support the frame (legal, institutional) and invest in the practice (editorial discipline, verification, accountability). Only then does the bargain pay off in stories that are not only bold but enduring.

VI. CONCLUSION

"The remedy for speech that is false is speech that is true. This is the ordinary course in a free society."[264] Journalists and their readers may disagree on what is true, but if the media abide by their professional ethical and professional standards including "truth and accuracy," "impartiality," "respect for the facts and right of the public to the truth," avoiding even the appearance of a "conflict of interest," and making timely and prominent corrections of mistakes[265] and abiding by the "functional and institutional

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[263] *See, e.g.*, Martin Goillandeau & Makana Eyre, *French Prosecutors Tied to Macron Attempt Newsroom Raid After Critical Stories*, COLUM. JOURNALISM REV.: ANALYSIS (Feb. 5, 2019), https://www.cjr.org/analysis/mediapart-raid-macron.php (Investigative reporters from the outlet Disclose revealed the French intelligence-Egyptian cooperation in "Operation Sirli"; in the subsequent police raid on journalists in 2021, the protections created by a 2010 law (Loi Dati) and subsequent jurisprudence were invoked and the court ruled in favor of press protection rather than state oppression.); *see also The Cahuzac Affair: An A-Z of Mediapart's Exclusive Investigations and Analysis*, MEDIAPART (Apr. 2, 2013, 9:25 PM), https://www.mediapart.fr/en/journal/france/020413/cahuzac-affair-z-mediaparts-exclusive-investigations-and-analysis (Independent outlet Mediapart, in the "Cahuzac Affair" (2012-13), was protected after demonstrating they sought comment, published only after the evidence chain was solid, and maintained internal documentation of source protection and verification – the journalism led to judicial and parliamentary oversight, the minister's resignation and subsequent imprisonment, and significant reforms).

[264] United States v. Alvarez, 567 U.S. 709, 727 (2012) (citing *Whitney v. California*, 274 U.S. 357, 377 (1927) (J. Brandeis, concurring) ("If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.")

[265] *Statement of principles*, *supra* note 35; *Global Charter of Ethics*, *supra* note 35.

considerations"[266] accounted for in the Multi-Factor Test, they will be deserving of extraordinary treatment—but not before. This article argued that the *Times*' and other media coverage of the Israel-Hamas conflict often failed key aspects of the Multi-Factor Test, especially the requirement to adhere to journalistic ethics. As in the United Kingdom and other countries, earned exceptionalism, in an era of extreme information disorder, identifying who is a legitimate journalist, and upholding responsible journalism need not limit a free press—it can lead to a stronger press better serving the better-informed public and democratic functions.

[266] PRESS CLAUSE REPORT, *supra* note 2, at 95.