

# HOW WE TALK ABOUT THE PRESS

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CITE AS: 4 GEO. L. TECH. REV. 335 (2020)

## TABLE OF CONTENTS

I.	INTRODUCTION .....	335
II.	THE POWER OF NAMING .....	337
III.	CALLING THE PRESS NAMES .....	339
IV.	WHY WHAT WE CALL THE PRESS MATTERS .....	344
V.	DIVORCING FAKE FROM NEWS .....	347
VI.	CONCLUSION.....	349

## I. INTRODUCTION

“I believe freedom begins with naming things.” Eve Ensler<sup>1</sup>

When the American Dialect Society made “fake news” its 2017 “Word of the Year,” the press release suggested two related reasons for the organization’s decision.<sup>2</sup> The first was the term’s ubiquity. The second was its slipperiness. Beyond referring to propaganda, the term fake news had become a weapon—a “rhetorical bludgeon” against the press.<sup>3</sup>

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<sup>1</sup> Eve Ensler, *The Power and Mystery of Naming Things*, NPR (Mar. 20, 2006), <https://www.npr.org/templates/story/story.php?storyId=5285531> [<https://perma.cc/6FQL-GNV7>].

<sup>2</sup> See “Fake News” is 2017 American Dialect Society Word of the Year, AM. DIALECT SOC’Y (Jan. 5, 2018), <https://www.americandialect.org/fake-news-is-2017-american-dialect-society-word-of-the-year> [perma.cc/MZ4F-YBDR].

<sup>3</sup> *Id.* (quoting Ben Zimmer, chair of the American Dialect Society’s New Words Committee and a *Wall Street Journal* language columnist).

Since receiving this distinction, “fake news” has continued to enjoy popularity. Scholars, teachers, and journalists still use it.<sup>4</sup> For example, a Harvard website offers students “Four Tips for Spotting a Fake News Story.”<sup>5</sup> According to *The Guardian*, the “Word of the Year” honor (also bestowed on fake news by the U.K.-based Collins Dictionary and the Australian-based Macquarie Dictionary) gave the term fake news a “certain legitimacy.”<sup>6</sup>

The continued and often-uncritical use of fake news should worry us. As thinkers across disciplines have recognized for centuries, what we name things matters.<sup>7</sup> It shapes the very way we understand these things. This phenomenon is especially true when it comes to naming the press.

Although conventional wisdom is that press power and freedom spring primarily from the First Amendment, in reality First Amendment doctrine is that the press has no greater rights than any other speaker.<sup>8</sup> Rather, the press’s power and freedom are derived in large part from customs and norms. And those customs and norms draw sustenance from the language of the courts, other institutions, and the public’s belief that the press serves the democratic functions of truthful educator, trusted proxy, and fair watchdog.

Press power is, in great part, rhetorical power.

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<sup>4</sup> See, e.g., *Explained: What is Fake News?*, WEBWISE.IE, <https://www.webwise.ie/teachers/what-is-fake-news/> [<https://perma.cc/HH7E-LMG2>]; *Fake News: How to Spot It*, ENOCH PRATT FREE LIBR., <https://www.prattlibrary.org/research/tools/index.aspx?cat=90&id=4735> [<https://perma.cc/6A5Q-TANT>]. The Social Science Research Network, a repository for scholarly papers, includes approximately seventy-five papers with the term “fake news” in the title posted since 2018. SOC. SCI. RES. NETWORK, <https://www.ssrn.com/index.cfm/en/> [<https://perma.cc/WKK9-6TDU>] (follow the “Advanced Search” hyperlink; then search for “fake news” using the “Title Only” option, and then sort results by “Date Posted, Descending”); Andrea Carson & Kate Farhall, *The Real News on “Fake News”: Politicians Use It to Discredit Media, and Journalists Need to Fight Back*, CONVERSATION (Oct. 1, 2019), <http://theconversation.com/the-real-news-on-fake-news-politicians-use-it-to-discredit-media-and-journalists-need-to-fight-back-123907> [<https://perma.cc/J6PX-TEEG>] (noting that evidence suggests “journalists play a role in driving and reinforcing fake news discourse to the likely detriment of trust in media”).

<sup>5</sup> Christina Nagler, *4 Tips for Spotting a Fake News Story*, HARV. DIVISION CONTINUING EDUC., <https://www.summer.harvard.edu/inside-summer/4-tips-spotting-fake-news-story> [<https://perma.cc/NC6Y-E6WK>].

<sup>6</sup> See Alison Flood, *Fake News Is ‘Very Real’ Word of the Year for 2017*, GUARDIAN (Nov. 1, 2017), <https://www.theguardian.com/books/2017/nov/02/fake-news-is-very-real-word-of-the-year-for-2017> [<https://perma.cc/5V3N-YUWF>]; *Macquarie Dictionary Word of the Year*, MACQUARIE DICTIONARY (Nov. 23, 2016), <https://www.macquariedictionary.com.au/resources/view/word/of/the/year/2016#> [<https://perma.cc/3W9Q-JMGE>].

<sup>7</sup> See *infra* Part I.

<sup>8</sup> See *infra* Part III.

This rhetorical power is especially fragile in our networked information sphere, where content is infinite and gatekeepers are few. As we spend more of our lives online, we are coming to understand that when labels or narratives are decontextualized and amplified, we begin to internalize and adopt them, sometimes regardless of their accuracy or how savvy we believe ourselves to be.<sup>9</sup> Moreover, what is blunt or vitriolic generally scales further and faster than what is nuanced or measured.<sup>10</sup> As a label, fake news is arguably becoming so entrenched and normalized that it might ease the way for other terms that rhetorically marry the press to falsity, bias, and laziness—like “pink slime journalism”—to slip into our everyday discourse.<sup>11</sup>

If protecting the press was the only goal of curbing anti-press rhetoric, that would be enough. But there is another reason to curb such rhetoric. How we talk about the press plays into how we tackle one of the biggest challenges of our networked age—stemming information pollution. Fundamental to this effort is separating accurate information from false, trusted sources from manipulated ones, and journalism from propaganda and marketing. If we use labels that conflate these categories, we make a daunting task harder.

As we barrel toward one of the American press’s biggest challenges of this century—reporting on the 2020 presidential election—we need to provide the press every possible support. Taking care in how we talk about the press should be part of that effort.

## II. THE POWER OF NAMING

The belief that the act of naming brings with it great power is one that stretches across eras, religions, cultures, and academic disciplines.<sup>12</sup> We could start with the Book of Genesis and how God’s naming of light with the

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<sup>9</sup> Whitney Phillips, *The Toxins We Carry*, COLUM. JOURNALISM REV. (Fall 2019), [https://www.cjr.org/special\\_report/truth-pollution-disinformation.php](https://www.cjr.org/special_report/truth-pollution-disinformation.php) [<https://perma.cc/HL3X-JSCB>] (citing the work of psychologist Lynn Hasher and her team from the 1970s); Mike Wendling, *The (Almost) Complete History of “Fake News,”* BBC NEWS (Jan. 22, 2018), <https://www.bbc.com/news/blogs-trending-42724320> [<https://perma.cc/T8R4-ULZ5>] (“Experts say highly-educated people can be duped by lies as well - and can often be more stubborn when presented with information that challenges their views.”).

<sup>10</sup> See Jonathan Haidt & Tobias Rose-Stockwell, *The Dark Psychology of Social Networks*, ATLANTIC (Dec. 2019), <https://www.theatlantic.com/magazine/archive/2019/12/social-media-democracy/600763/> [<https://perma.cc/E25J-PP22>] (citing a study in which “posts exhibiting ‘indignant disagreement’ received nearly twice as much engagement—including likes and shares—as other types of content on Facebook”).

<sup>11</sup> See *infra* Part II.

<sup>12</sup> See Loren Graham, *The Power of Names: In Culture and in Mathematics*, 157 PROC. AM. PHIL. SOC’Y 229 (June 2013).

command—“Let there be light”—resulted in illumination.<sup>13</sup> We could look at the fairy tale Rumpelstiltskin, in which an impish man lords over a miller’s daughter until she is able to learn the man’s name.<sup>14</sup> We could look to the Russian-French mathematician Alexander Grothendieck, who, it was said, “had a flair for choosing striking evocative names for new concepts; indeed he saw the act of naming mathematical objects as an integral part of their discovery.”<sup>15</sup> Evidence is rich that great power inures in the act of naming.

But naming goes beyond giving us the power to control. Names tend to shape how we understand things. As the Heisenberg principle posits, the very act of looking at something changes it. This phenomenon extends to linguistics as well, according to marketing scholar Adam Alter.<sup>16</sup> “[A]s soon as you label a concept, you change how people perceive it,” Alter says.<sup>17</sup>

This change in perception can be in service of humanity and freedom. For example, blogger and cultural critic Maria Popova has written that to name something is “to confer upon it the dignity of autonomy while at the same time affirming its belonging with the rest of the namable world; to transform its strangeness into familiarity, which is the root of empathy.”<sup>18</sup> It can also be in service of beneficial progress. For example, naming is a precursor to our ability to problem-solve. Rebecca Solnit, a feminist writer and historian, has said, “When the subject is grim, I think of the act of naming as diagnosis. Though not all diagnosed diseases are curable, once you know what you’re facing, you’re far better equipped to know what you can do about it.”<sup>19</sup>

But as naming can be generative, it can likewise be oppressive. Names can be used to minimize, defame, and distance or other. Law gives us a host of shameful—and current—examples of this. An entire section of the United

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<sup>13</sup> *Id.* at 229.

<sup>14</sup> *Id.* at 231.

<sup>15</sup> *Id.* (citing A. Jackson, *Comme Appelé du Néant*, 29.5 NOTICES AM. MATHEMATICAL SOC’Y 173–78 (1974)).

<sup>16</sup> Adam Alter, *The Power of Names*, NEW YORKER (May 29, 2013), <https://www.newyorker.com/tech/annals-of-technology/the-power-of-names> [<https://perma.cc/8HYV-NNLN>].

<sup>17</sup> *Id.*

<sup>18</sup> Maria Popova, *How Naming Confers Dignity Upon Life and Gives Meaning to Existence*, BRAIN PICKINGS (July 23, 2015), <https://www.brainpickings.org/2015/07/23/robin-wall-kimmerer-gathering-moss-naming> [<https://perma.cc/52AD-ENFW>].

<sup>19</sup> REBECCA SOLNIT, *CALL THEM BY THEIR TRUE NAMES* 1 (2018); Maria Popova, *Rebecca Solnit on Rewriting the World’s Broken Stories and the Paradigm-Shifting Power of Calling Things By Their True Names*, BRAIN PICKINGS (Oct. 18, 2018), <https://www.brainpickings.org/2018/10/18/rebecca-solnit-call-them-by-their-true-names/> [<https://perma.cc/P5W9-RLGW>].

States Code is titled “Aliens and Nationality.”<sup>20</sup> And our gun laws refer to “mental defectives.”<sup>21</sup>

As evidenced by these examples, damaging naming practices can have cultural staying power. According to Lucy Jewell, a scholar of law and rhetoric, “[H]armful rhetoric used to describe racial minorities and other subordinated groups produces toxic thought patterns that can become entrenched in the public mind.”<sup>22</sup> Thus, to name, or to *misname*, something has tremendous significance. It shapes how we understand what is named, how we value it, and how we consider its possibilities. This is all true when it comes to the names we use to refer to the press.

### III. CALLING THE PRESS NAMES

The story of how “fake news” became popular is a story of metastasizing meaning. According to Merriam-Webster, the term’s original meaning was a literal one. First used in the late nineteenth century, fake news was the sum of its parts.<sup>23</sup> It meant false information published by the press.<sup>24</sup>

Skip ahead more than a century, and the term reemerged.<sup>25</sup> Perhaps reflecting the popularity of the spoof magazine *The Onion*, in the 1990s the term fake news meant news satire.<sup>26</sup> Then, as information migrated online, the meaning of fake news again shifted. In 2014, Craig Silverman, a journalist documenting misinformation, discovered a false story describing a Texas town that had been quarantined after a family contracted Ebola.<sup>27</sup> In an apparent attempt to make it look like a news article, the story included a made-up quote attributed to a hospital official.<sup>28</sup> Silverman fired off a tweet linking to the false story and saying, “Fake news site National Report set off a measure of

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<sup>20</sup> 8 U.S.C. § 1101 et seq.

<sup>21</sup> See 18 U.S.C. § 922. This statute, in discussing who is barred from gun ownership, also happens to refer to an “alien” who is “illegally or unlawfully in the United States.” *Id.*

<sup>22</sup> Lucy Jewell, *Neurorhetoric, Race, and the Law: Toxic Neural Pathways and Healing Alternatives*, 76 MD. L. REV. 663, 664 (2017).

<sup>23</sup> *The Real Story of “Fake News,”* MERRIAM-WEBSTER, <https://www.merriam-webster.com/words-at-play/the-real-story-of-fake-news> [<https://perma.cc/DNU9-MCCW>].

<sup>24</sup> *Id.*

<sup>25</sup> See Will Oremus, *Facebook Has Stopped Saying “Fake News,”* SLATE (Aug. 8, 2017), <https://slate.com/technology/2017/08/facebook-has-stopped-saying-fake-news-is-false-news-any-better.html> [<https://perma.cc/N4W3-ZDQG>].

<sup>26</sup> See *id.*

<sup>27</sup> Craig Silverman, *I Helped Popularize the Term “Fake News” and Now I Cringe Every Time I Hear It*, BUZZFEED NEWS (Dec. 31, 2017), <https://www.buzzfeednews.com/article/craigsilverman/i-helped-popularize-the-term-fake-news-and-now-i-cringe#.rpd8qX19B2> [<https://perma.cc/958T-PV57>].

<sup>28</sup> *Id.*

panic by publishing fake story about Ebola outbreak . . . Scumbags.”<sup>29</sup> This use of fake news had a new meaning—false information, lies, or propaganda, dressed up as news and deployed online.<sup>30</sup>

With Donald J. Trump’s election as president, the path of fake news developed another well-known fork. About a week before his inauguration, Trump responded to a question from CNN’s Jim Acosta by saying, “You’re fake news.”<sup>31</sup> Around the same time, the President adopted fake news as a Twitter mantra.<sup>32</sup> At most recent count, the President had tweeted the terms “fake news,” “fakenews,” or “fake media” more than 700 times since his inauguration.<sup>33</sup> And he has inspired copycats among other government officials, both in the United States and abroad, who also brandish the term as a sword.<sup>34</sup> In 2017, use of the term fake news rose 365%.<sup>35</sup> Beyond these modern uses of fake news (as satire, disinformation, and weapon), more permutations exist. One study examining academic articles that use the phrase fake news teased out six different meanings of the term.<sup>36</sup>

Fake news is a jellyfish of a term—squishy and stinging. That sting is obvious when “fake news” is wielded as a weapon against the press. And

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<sup>29</sup> *Id.*

<sup>30</sup> *See id.* In advance of the 2016 presidential election, “fake news” continued to be used to describe disinformation churned out by “hoax sites and hyperpartisan blogs.” *See* Craig Silverman, *This Analysis Shows How Viral Fake Election News Outperformed Real News on Facebook*, BUZZFEED NEWS (Nov. 16, 2016), <https://www.buzzfeednews.com/article/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook> [<https://perma.cc/U8QT-8ATU>]. These sites produced false stories with such titles as “Pope Francis Shocks the World, Endorses Donald Trump for President” and “WikiLeaks CONFIRMS Hillary Sold Weapons to ISIS.” *Id.*

<sup>31</sup> Wendling, *supra* note 9.

<sup>32</sup> *See id.*

<sup>33</sup> TRUMP TWITTER ARCHIVE, <http://www.trumptwitterarchive.com/archive> [<https://perma.cc/KR36-4E8V>] (search for “fake news || fakenews || fake media”). The Committee to Protect Journalists has also created a database of President Trump’s tweets related to the press. Stephanie Sugars, *From Fake News to Enemy of the People: An Anatomy of Trump’s Tweets*, COMM. TO PROTECT JOURNALISTS (Jan. 30, 2019), <https://cpj.org/blog/2019/01/trump-twitter-press-fake-news-enemy-people.php> [<https://perma.cc/P3BK-L2WK>].

<sup>34</sup> *See, e.g.*, Heather Swift, DHS spokesperson (@SpoxDHS), TWITTER (Dec. 10, 2019, 3:35 PM) <https://twitter.com/spoxdhs/status/1204499883157311488?lang=en> [<https://perma.cc/G626-R5Q7>] (responding to a tweet by an immigration reporter from BuzzFeed News saying “[f]ake news alert”); N.Y. Times Editorial Bd., Editorial, *Who Will Tell the Truth About the Free Press?*, N.Y. TIMES (Nov. 30, 2019), <https://www.nytimes.com/interactive/2019/11/30/opinion/editorials/fake-news.html> [<https://perma.cc/ZD9U-PY2L>] (noting the use of the epithet “fake news” by world leaders).

<sup>35</sup> *See* Flood, *supra* note 6.

<sup>36</sup> *See* Edson C. Tandoc, Jr. et al., *Defining “Fake News”: A Typology of Scholarly Definitions*, 6 DIGITAL JOURNALISM 2 (2018), <https://www.tandfonline.com/doi/abs/10.1080/21670811.2017.1360143?journalCode=rdij20> [<https://perma.cc/5DNX-ZLUM>].

although it is necessary to call out those who are weaponizing the term, other people—especially journalists—have ably done this.<sup>37</sup> Instead, my concern here is with those who likely do not intend harm when using the term. These individuals may even be avid supporters of the press. But regardless of intent, harm is still harm. As communications scholar Whitney Phillips has pointed out with respect to information pollution more generally, “The impact of industrial-scale polluters online—the bigots, abusers, and chaos agents, along with the social platforms that enable them—should not be minimized. But less obvious suspects can do just as much damage.”<sup>38</sup>

These less obvious suspects perpetrate harm in a variety of ways. One way is suggesting fake news is actually a type or subset of news. For example, the Wikipedia page for “fake news” begins by saying fake news is “a form of news.”<sup>39</sup> Likewise, in a post on its website, Merriam-Webster indicates it is not planning to add fake news to its dictionary because fake news is “a self-explanatory compound noun” with “an easily understood meaning.”<sup>40</sup> According to Merriam-Webster, “*Fake news* is, quite simply, *news* (‘material reported in a newspaper or news periodical or on a newscast’) that is fake (‘false, counterfeit’).”<sup>41</sup>

But defined this way, fake news is an oxymoron—and a damaging one.<sup>42</sup> As a United Nations report on disinformation explained, “[N]ews’ means verifiable information in the public interest, and information that does not meet these standards does not deserve the label of news.”<sup>43</sup> That is, news is necessarily not fake. It may contain inaccuracies. It may lack context. But journalists are not intending to deceive. By suggesting journalists are taking us for a ride or the press is churning out false facts, this use of the term fake news linguistically links the press with falsity.<sup>44</sup>

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<sup>37</sup> See, e.g., A.G. Sulzberger, *The Growing Threat to Journalism Around the World*, N.Y. TIMES (Sept. 23, 2019), <https://www.nytimes.com/2019/09/23/opinion/press-freedom-arthur-sulzberger.html> [<https://perma.cc/AG3W-XVZ2>] (“[W]hen the president decries ‘fake news,’ he’s not interested in actual mistakes. He’s trying to delegitimize real news, dismissing factual and fair reporting as politically motivated fabrications.”).

<sup>38</sup> Phillips, *supra* note 9.

<sup>39</sup> *Fake News*, WIKIPEDIA (last updated Apr. 20, 2020, 6:34 PM), [https://en.wikipedia.org/wiki/Fake\\_news](https://en.wikipedia.org/wiki/Fake_news) [<https://perma.cc/R7RU-BQFJ>].

<sup>40</sup> *The Real Story of “Fake News,” supra* note 23.

<sup>41</sup> *Id.*

<sup>42</sup> See Cherilyn Ireton & Julie Posetti, *Journalism, “Fake News,” and Disinformation*, UNESCO 7 (2018), [https://en.unesco.org/sites/default/files/journalism\\_fake\\_news\\_disinformation\\_print\\_friendly\\_0.pdf](https://en.unesco.org/sites/default/files/journalism_fake_news_disinformation_print_friendly_0.pdf) [<https://perma.cc/65RY-KBWF>].

<sup>43</sup> *Id.* This report does have the words “Fake News” in its title, but those words are crossed out with a red slash on the cover page. *Id.* at 1.

<sup>44</sup> Put another way: “If it’s fake, it’s not news.” Adriaan Basson, *If It’s Fake, It’s Not News*, NEWS24 (July 6, 2017) <https://www.news24.com/Columnists/AdriaanBasson/lets-stop-talking-about-fake-news-20170706> [<https://perma.cc/QYU6-3EC6>].

Scholars and journalists may also unintentionally perpetrate harm. Although they have become more attuned to the hazards of using “fake news” (*BuzzFeed*’s Silverman says he now cringes every time he hears it<sup>45</sup>), some still invoke it in ways that feel gratuitous. For example, the title of a paper by Dartmouth researchers asks: “Real Solutions for Fake News?” Yet the paper then goes on to say that because the term fake news is “frequently used in imprecise and confusing ways,” the body of the paper will use other terminology.<sup>46</sup> Setting aside the clearly good intentions of the authors, the title feels designed to grab attention. Likewise, a recent article in *The Atlantic* headlined *The Conservatives Trying to Ditch Fake News* is about an effort to create journalism for a conservative audience.<sup>47</sup> Yet the body of the article does not use the term fake news at all.<sup>48</sup>

The continued popularity of “fake news” is not surprising. As a phrase, its two-syllable simplicity combined with its fuzzy meaning plays to the reflexivity and shallow thinking our frenetic online spaces encourage. Fake news can be slapped on all sorts of content, and it disparages on contact. This may be its appeal, but it is also its danger.

And the longer it enjoys popularity, the more entrenched the term fake news becomes. There may be no greater testament to this than its inclusion in a 2020 Super Bowl advertisement.<sup>49</sup> The ad for Amazon’s Alexa includes an exchange in which a man asks a newsboy, “What’s today’s news?” and the newsboy responds, “Doesn’t matter. It’s all fake.”<sup>50</sup> The ad’s use of fake news

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<sup>45</sup> Silverman, *supra* note 27.

<sup>46</sup> Katherine Clayton et al., *Real Solutions for Fake News? Measuring the Effectiveness of General Warnings and Fact-Check Tags in Reducing Belief in False Stories on Social Media*, POL. BEHAV., Feb. 2019, at 2 n.1.

<sup>47</sup> McKay Coppins, *The Conservatives Trying to Ditch Fake News*, ATLANTIC (Jan. 31, 2020), <https://www.theatlantic.com/politics/archive/2020/01/dispatch-tries-sell-real-news-right/605860/> [<https://perma.cc/RQ93-SUBY>].

<sup>48</sup> *Id.* Another example is a recent article in Harvard’s Nieman Lab that uses “fake news” in the subheading but not at all in the article. See Mike Caulfield, *Ctrl-F: Helping Make Networks More Resilient Against Misinformation Can Be as Simple as Two Fingers*, NIEMAN LAB (Jan. 29, 2020, 9:35 AM), <https://www.niemanlab.org/2020/01/ctrl-f-helping-make-networks-more-resilient-against-misinformation-can-be-as-simple-as-two-fingers> [<https://perma.cc/VD83-YLDK>]. The article’s subheading states: “Sometimes it’s the sort of basic Internet skill you might take for granted—like knowing how to search a web page—that can stop someone from sharing fake news.” *Id.*

<sup>49</sup> See *Amazon Super Bowl Commercial 2020 - #BeforeAlexa*, YOUTUBE (Jan. 29, 2020) <https://www.youtube.com/watch?v=RF9t2rFmTVE> [<https://perma.cc/B7EF-EK4K>].

<sup>50</sup> *Id.* It is hard to tell if the reference is made ironically, especially given that the newsboy shakes his head when the questioner cannot stop laughing at the “fake news” reference. See *id.* The lack of clarity, however, is part of the danger inherent in the term. Recognizing that danger, the director of communications for the Reporters Committee for Freedom of the Press tweeted her disappointment about the ad. Jenn Topper (@jenntopper), TWITTER (Feb. 2, 2020,

as a punch line is more concerning than funny. (It is especially concerning given that Amazon’s owner, Jeff Bezos, also owns *The Washington Post*.<sup>51</sup>) As described, naming practices shape how we think about people, ideas, and institutions. Moreover, as those studying disinformation have confirmed, when people are exposed to false information again and again, that information begins to feel true—so true that it is believed even when people are shown evidence of its falsity.<sup>52</sup> Thus, even corrective efforts to demonstrate that news is the product of journalism—a method aimed at unearthing, contextualizing, and communicating truth—may be unsuccessful.

We should also be concerned that fake news may not be the last of its ilk. It is possible this type of term—one linking journalism to falsity—will proliferate. “Pink slime journalism” could be next. In December 2019, the Tow Center for Digital Journalism at Columbia University published a report entitled “Hundreds of ‘Pink Slime’ Local News Outlets Are Distributing Algorithmic Stories and Conservative Talking Points.”<sup>53</sup> The report, which describes the mushrooming of 450 “partisan outlets masquerading as local news organizations,” does more than the headline to separate “pink slime” from “news.”<sup>54</sup> But it is still possible to see how the phrase (or others like it) could become the same type of weaponized, blobby, value-laden smear as “fake news.”

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9:05 PM), <https://twitter.com/jenntopper/status/1224151948812791809> [<https://perma.cc/ER8F-4C8Q>].

<sup>51</sup> See Taylor Telford, *Jeff Bezos Might Lose His Title As World’s Richest Person*, WASH. POST (Oct. 25, 2019), <https://www.washingtonpost.com/business/2019/10/25/jeff-bezos-might-lose-his-title-worlds-richest-man/> [<https://perma.cc/P5YE-X6QV>].

<sup>52</sup> Phillips, *supra* note 9.

<sup>53</sup> Priyanjana Bengani, *Hundreds of “Pink Slime” Local News Outlets Are Distributing Algorithmic Stories and Conservative Talking Points*, COLUM. JOURNALISM REV. (Dec. 18, 2019), [https://www.cjr.org/tow\\_center\\_reports/hundreds-of-pink-slime-local-news-outlets-are-distributing-algorithmic-stories-conservative-talking-points.php](https://www.cjr.org/tow_center_reports/hundreds-of-pink-slime-local-news-outlets-are-distributing-algorithmic-stories-conservative-talking-points.php) [<https://perma.cc/KX5R-ZJMW>].

<sup>54</sup> For further discussion of the term “pink slime journalism,” the report links to a blog post about an episode of the radio show *This American Life*. That radio-show episode concerned a company named Journatic that created “hyperlocal” journalism using automation as well as employees based in the Philippines writing under false bylines. The same Journatic employee featured in the *This American Life* episode told the journalism nonprofit Poynter, “I feel like companies like Journatic are providing the public ‘pink slime’ journalism.” *Id.* (linking to Dan Kennedy, *Exposing the “Pink Slime” Journalism of Journatic*, MEDIA NATION (July 5, 2012), <https://dankennedy.net/2012/07/05/exposing-pink-slime-journalism/> [<https://perma.cc/W8WK-ECC4>]); Anna Tarkov, *Journatic Worker Takes “This American Life” Inside Outsourced Journalism*, POYNTER (June 30, 2012), <https://www.poynter.org/reporting-editing/2012/journatic-staffer-takes-this-american-life-inside-outsourced-journalism/> [<https://perma.cc/D8EQ-36SQ>].

## IV. WHY WHAT WE CALL THE PRESS MATTERS

Naming is of vital importance when it comes to the press. A great deal of press power springs not from the law but from language. Using—even without ill intent—language that has the potential to undermine the press is a risk.

For those who believe in a free press, there is solace in thinking the Constitution will protect the press. Journalists, for one, regularly invoke the First Amendment as a guardian.<sup>55</sup> But although the press is named in the First Amendment, the Constitution’s power to protect the press is constrained.<sup>56</sup> The First Amendment protects the press from Congress making a law infringing on press freedom, but it does not grant the press any affirmative rights.<sup>57</sup> The Supreme Court has stated that the press has no special protections over and above those of any other speaker.<sup>58</sup> And the First Amendment only protects the press from government overreach.<sup>59</sup> It does not protect the press from private action.

Beyond the First Amendment, press power rests on what media-law scholars RonNell Andersen Jones and Sonja R. West have called other “pillars.”<sup>60</sup> These include, among others, the press’s financial strength, the public’s trust in the press, and customs and norms, such as providing press access to events and public officials.<sup>61</sup> These pillars are interdependent, and, in this moment, they are compromised. The press’s advertising-based business model is failing as technology platforms vacuum up advertising dollars.<sup>62</sup>

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<sup>55</sup> See, e.g., A. G. Sulzberger, *The Growing Threat to Journalism Around the World*, N.Y. TIMES (Sept. 23, 2019), <https://www.nytimes.com/2019/09/23/opinion/press-freedom-arthur-sulzberger.html> [<https://perma.cc/4JH5-36YB>] (“The First Amendment has served as the world’s gold standard for free speech and the free press for two centuries.”).

<sup>56</sup> See U.S. CONST. amend. I.

<sup>57</sup> See *id.* (“Congress shall make no law . . . abridging the freedom of speech, or of the press”).

<sup>58</sup> See *Citizens United v. FCC*, 558 U.S. 310, 390 n.6 (2010) (Scalia, J., concurring) (dismissing as “passing strange” the belief that the press should receive special constitutional protection); *Branzburg v. Hayes*, 408 U.S. 665, 704 (1972) (“Freedom of the press is a ‘fundamental personal right’ which ‘is not confined to newspapers and periodicals.’”).

<sup>59</sup> See U.S. CONST. amend. I.; *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 685 (1994) (O’Connor, J., concurring in part and dissenting in part) (noting that “the First Amendment as we understand it today rests on the premise that it is government power, rather than private power, that is the main threat to free expression”).

<sup>60</sup> RonNell Andersen Jones & Sonja R. West, *Don’t Expect the First Amendment to Protect the Media*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/opinion/dont-expect-the-first-amendment-to-protect-the-media.html> [<https://perma.cc/QT4L-8B3R>].

<sup>61</sup> See *id.*

<sup>62</sup> See Erin C. Carroll, *Platforms and the Fall of the Fourth Estate: Looking Beyond the First Amendment to Protect Watchdog Journalism*, 79 MD. L. REV. (forthcoming 2020).

Many press outlets are struggling to profit.<sup>63</sup> The public's trust in the press is not at an all-time low, but it is close. Only forty-one percent of Americans say they trust the media.<sup>64</sup> Perhaps most alarmingly—because of its swiftness and speed—norms and customs are collapsing. The White House has discontinued press briefings. As of this writing in February 2020, it has not held a formal press briefing since March 2019.<sup>65</sup> The Trump Administration has pulled press passes and otherwise denied journalists access to officials seemingly in retaliation for negative coverage.<sup>66</sup> And the executive branch is not alone in demonstrating disdain for the press. During the Senate impeachment trial of President Trump, Capitol Police gave senators cards cueing them with language to use if the senators sought to avoid talking to journalists, including, “Please get out of my way” and “You are preventing me from doing my job.”<sup>67</sup>

The term fake news and other anti-press rhetoric contribute to the pillars' collapse. Repetition of the term is like unleashing groundhogs to burrow under the pillars of press freedom. The groundhogs may not singlehandedly bring them down, but they riddle the ground with holes, destabilizing it.

The effect of this destabilization may be greatest on the trust pillar. As researchers at the University of Texas concluded, “exposure to talk about fake news may lower individuals' trust in media and lead them to identify real news with less accuracy.”<sup>68</sup> Researchers primed subjects by showing them tweets

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<sup>63</sup> See Jimmy Wales & Orit Kopel, *The Internet Broke the News Industry—and Can Fix It, Too*, FOREIGN POL'Y (Oct. 19, 2019), <https://foreignpolicy.com/2019/10/19/internet-broke-journalism-fake-news/> [<https://perma.cc/GFZ2-GGSP>] (noting that “[p]rint products are in terminal decline; television audiences are plummeting”).

<sup>64</sup> Megan Brennan, *Americans' Trust in Mass Media Edges Down to 41%*, GALLUP (Sept. 26, 2019), <https://news.gallup.com/poll/267047/americans-trust-mass-media-edges-down.aspx> [<https://perma.cc/3G87-M4WL>].

<sup>65</sup> See Scott Nover, *The Last White House Press Briefing Was Months Ago. Does Anyone Really Miss It?*, WASH. POST (Jan. 13, 2020), [https://www.washingtonpost.com/lifestyle/magazine/the-last-white-house-press-briefing-was-months-ago-does-anyone-really-miss-it/2020/01/10/4a8d5c10-2357-11ea-bed5-880264cc91a9\\_story.html](https://www.washingtonpost.com/lifestyle/magazine/the-last-white-house-press-briefing-was-months-ago-does-anyone-really-miss-it/2020/01/10/4a8d5c10-2357-11ea-bed5-880264cc91a9_story.html) [<https://perma.cc/BMS4-YSB8>].

<sup>66</sup> See Matthew Ingram, *White House Revokes Press Passes for Dozens of Journalists*, COLUM. JOURNALISM REV. (May 9, 2019), [https://www.cjr.org/the\\_media\\_today/white-house-press-passes.php](https://www.cjr.org/the_media_today/white-house-press-passes.php) [<https://perma.cc/7RRD-Z4K7>]; Aaron Rugar, *State Department Bans NPR Reporter from Traveling with Pompeo After Testy Interview*, VOX (Jan. 28, 2020), <https://www.vox.com/2020/1/28/2111760/pompeo-state-department-npr-feud> [<https://perma.cc/FS2M-FBA4>].

<sup>67</sup> Ashraf Khalil, *Reporters Getting 1st Taste of Impeachment Restrictions*, AP NEWS (Jan. 16, 2020), <https://apnews.com/dd945e7c4c820637272a087d6b99043b> [<https://perma.cc/9K9L-9L6H>].

<sup>68</sup> Emily Van Duyn & Jessica Collier, *Priming and Fake News: The Effects of Elite Discourse on Evaluations of News Media*, 22 MASS COMMUN & SOC'Y 1, 44 (2019); Daniel Funke,

referencing “fake news” before the subjects read articles. Even tweets that merely included article headlines with the words “fake news” tended to lessen trust.<sup>69</sup>

Beyond trust, anti-press rhetoric has also been blamed for creating an environment so rife with hate that it subjects journalists to harassment, threats, and even death. The Committee to Protect Journalists has blamed President Trump’s tweets for giving “cover to autocratic regimes” and notes it is aware of several U.S. journalists “who say they were harassed or threatened online after being singled out on Twitter by Trump.”<sup>70</sup> And after the murder of five journalists while they worked in the Annapolis, Maryland, *Capital Gazette* newsroom, numerous journalists blamed pervasive anti-press rhetoric.<sup>71</sup> This rhetoric includes “fake news,” but it also goes beyond it to include epithets such as “enemy of the people.”<sup>72</sup>

Because of their interdependence, the tumbling of one pillar could precipitate the tumbling of them all. Undermining the public’s trust in the press can hurt the press’s bottom line and, consequently, justify the erosion of norms and customs. As the *New York Times* editorial board wrote about the term fake news: “The capacity of news organizations to produce [hard-hitting] journalism—and to reach an audience that will listen—is contingent and

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*Reporters: Stop Calling Everything “Fake News,”* POYNTER (Aug. 29, 2018), <https://www.poynter.org/fact-checking/2018/reporters-stop-calling-everything-fake-news/> [<https://perma.cc/KH9Y-PMBF>].

<sup>69</sup> Duyn & Collier, *supra* note 68 at 35, 42; Funke, *supra* note 68. Notably, and perhaps seemingly at odds with the Duyn and Collier study, a 2019 study found that President Trump’s tweets about fake news may actually cause readers to believe the press is more credible. See Daniel J. Tamul et al., *All the President’s Tweets: Effects of Exposure to Trump’s “Fake News” Accusations on Perceptions of Journalists, News Stories, and Issue Evaluation*, MASS COMM’N & SOC’Y, 2019, at 7, 24. Yet, a synopsis of the study by Harvard’s Shorenstein Center indicated that the findings “cannot be generalized beyond the individuals who participated” in the studies—about 2,000 people, more than half of whom were undergraduate students. Denise-Marie Ordway, *Fake News and Fact-Checking: 7 Studies You Should Know About*, SHORENSTEIN CTR. ON MEDIA, POL., AND PUB. POL’Y (Jan. 13, 2020), <https://journalistsresource.org/studies/society/news-media/fake-news-fact-checking-research-2019/> [<https://perma.cc/SG72-JEN8>].

<sup>70</sup> Sugars, *supra* note 33.

<sup>71</sup> See Mandy Mayfield, *Journalists Call Out Trump Anti-Press Rhetoric Following Annapolis Newsroom Shooting*, WASH. EXAMINER (June 28, 2018), <https://www.washingtonexaminer.com/news/journalists-call-out-trump-anti-press-rhetoric-annapolis-capital-gazette-shooting> [<https://perma.cc/LM6A-BGVL>].

<sup>72</sup> See Tamara Keith, “*Treason*,” “*Spy*,” “*Coup*”: *As Impeachment Talk Intensifies, So Does Trump’s Rhetoric*, NPR (Oct. 5, 2019), <https://www.npr.org/2019/10/05/767224186/treason-spy-coup-as-impeachment-talk-intensifies-so-does-trump-s-rhetoric> [<https://perma.cc/R5B2-7YMT>].

fragile.”<sup>73</sup> Using the term fake news is one more contribution to the undermining of the press.

## V. DIVORCING FAKE FROM NEWS

It is probably impractical and maybe even unhelpful to argue that the phrase fake news should never be used. For example, using the term in a way that does not unnecessarily highlight it and immediately provides context about its imprecision or using “fake news” to critique the term itself both seem legitimate and even beneficial. Yet, some self-restraint is in order. Before we mentally reach for fake news (or any other term that uses a broad brush to paint the press unfairly), we should engage in some strategic silence. In a journalistic context, strategic silence calls for consideration of the public good in deciding whether or not to share information, especially online.<sup>74</sup> In other words, we need to pause, mentally generate some of the friction largely absent in our online spaces, and consider whether a more precise term could substitute.

The lexicon is fast-developing. Notably, Claire Wardle at First Draft, a nonprofit dedicated to combatting what Wardle calls “information disorder,” has developed an “Essential Glossary” for the task.<sup>75</sup> It includes terms like disinformation, misinformation, and malinformation.<sup>76</sup> It does not include fake news, which Wardle, along with blogger and researcher Hossein Derakhshan, describe as “woefully inadequate to describe the complex phenomena of information pollution.”<sup>77</sup>

The substitutions may not be as catchy, but they are also not as poisonous. For example, in a Twitter thread, Renee DiResta, the technical research manager at Stanford Internet Observatory, referred to “‘pink slime’ content farms that look like journalism.”<sup>78</sup> That description is eight words to

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<sup>73</sup> N.Y. Times Editorial Bd., *supra* note 34.

<sup>74</sup> See Joan Donovan & danah boyd, *Stop the Presses? Moving from Strategic Silence to Strategic Amplification in a Networked Media Ecosystem*, AM. BEHAV. SCIENTIST, Sept. 29, 2019, at 1 (defining strategic silence, in part, as the “use of editorial discretion for the public good”).

<sup>75</sup> Claire Wardle et al., *Information Disorder, Part 1: The Essential Glossary*, MEDIUM (July 9, 2018) <https://medium.com/1st-draft/information-disorder-part-1-the-essential-glossary-19953c544fe3> [<https://perma.cc/D2PN-XLEX>].

<sup>76</sup> *Id.*

<sup>77</sup> Claire Wardle & Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, COUNCIL EUR. 5, 15 (Sept. 27, 2017), <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-research/168076277c> [<https://perma.cc/Q2Q6-7GYK>].

<sup>78</sup> Renee DiResta (@noUpside), TWITTER (Feb. 8, 2020, 11:29 AM), <https://twitter.com/noUpside/status/1226181774390087681> [<https://perma.cc/5PQL-CBZM>].

pink slime journalism's three, but it also helps make the nuanced point that this content is not news or journalism even if it is intended to look like it is.

Shunning anti-press rhetoric, especially fake news, is also a component of a broader effort to remedy information pollution. Along with “real-world” pollution and climate change, the problem of information pollution is rapidly evolving into one of the greatest humans face—impacting our mental and physical health, our elections, and our democracy.<sup>79</sup> We need to be able to name and define the components of this issue precisely. We also need to allow for those names and definitions to evolve as the underlying challenges morph and, hopefully, our grasp of them simultaneously tightens.<sup>80</sup> If, as Rebecca Solnit said, naming is an act of diagnosis, the term fake news is not only obscuring the disease but is also feeding it.<sup>81</sup>

Another benefit of sweeping away anti-press rhetoric is the creation of space for press-affirming rhetoric. Journalism scholar Nikki Usher has argued that in rejecting the term fake news there exists “an interesting branding opportunity to possibly restore trust in journalism.”<sup>82</sup> Journalists are engaging in this to some degree. As one example, Usher pointed to a *New York Times* campaign of handing out “truth buttons” at events—pins saying things like “The truth is hard” and “Truth: It’s more important now than ever.”<sup>83</sup> Far beyond this, journalists are working in numerous ways to rebuild trust and faith in their discipline. For example, researchers and academics at the University of Texas’s Center for Media Engagement are testing the impact of what they call a “Behind the Story card” offering “information about why and how a story was written.”<sup>84</sup> The American Press Institute and the Reynolds Journalism Institute also have a project, Trusting News, that provides

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<sup>79</sup> See Whitney Phillips, *The Internet Is a Toxic Hellscape—But We Can Fix It*, WIRED (Feb. 3, 2020), <https://www.wired.com/story/the-internet-is-a-toxic-hellscape-but-we-can-fix-it/> [https://perma.cc/VDT8-7BN2].

<sup>80</sup> See Wendling, *supra* note 9 (quoting Claire Wardle as saying, “If we're going to start thinking of ways we can intervene, we're going to have to have clear definitions”).

<sup>81</sup> See SOLNIT, *supra* note 19.

<sup>82</sup> Daniel Funke, *Should We Stop Saying Fake News?*, POYNTER (Dec. 14, 2017), <https://www.poynter.org/fact-checking/2017/should-we-stop-saying-fake-news/> [https://perma.cc/6N9G-P7SD].

<sup>83</sup> See *id.*; *Truth Buttons (Set of 4)*, STORE: N.Y. TIMES, <https://store.nytimes.com/products/truth-buttons-set-of-4> [https://perma.cc/7QFB-Y2VM].

<sup>84</sup> Caroline Murray & Natalie (Talia) Jomini Stroud, *Testing Behind the Story Cards*, CTR. FOR MEDIA ENGAGEMENT 1 (Jan. 2020), <https://mediaengagement.org/wp-content/uploads/2020/01/CME-Report-Testing-Behind-the-Story-Cards-1.pdf> [https://perma.cc/KNV4-MVK5].

journalists trainings and resources regarding how to build more trust in their reporting and stories.<sup>85</sup> Other efforts abound.<sup>86</sup>

But individual press advocates must also play a role. The press needs those who believe in its work to amplify and generate these pro-press messages, whether through conversation, social media, public speaking, or scholarly articles. As Whitney Phillips counsels with respect to remedying information disorder, we need to understand our own agency. Phillips advocates that “[t]o have any hope for a different future, we must survey the landscape, consider where our own bodies stand, and ask: How might what I do *here* affect what happens over *there*?”<sup>87</sup> Although various means exist for supporting the press (including financial ones), we can each support high-quality journalism and the press with our words.

## VI. CONCLUSION

“It is important to remember that language itself is a moral medium,” wrote philosopher and novelist Iris Murdoch.<sup>88</sup> “[A]lmost all uses of language convey value.”<sup>89</sup> As a phrase, fake news devalues. When used uncritically—without explanation or interrogation—it has the potential to undermine an already besieged press.

It is, of course, right to critique the press. The press, the journalists who comprise it, and the journalism they engage in are all imperfect. But fake news is not reasoned or thoughtful critique. It is a hazy and often hastily-applied label that can erode trust. Harm can result regardless of whether the speaker intended harm.

The press is already unthinkably fragile. Law may provide a thin layer of bubble wrap around it, but it does not guarantee the press’s safe passage into the future. To protect the press, we must take care with the language we use to talk about it. That language can promote trust in and respect for the

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<sup>85</sup> *Trusting News Project: Helping Journalists Earn News Consumers’ Trust*, TRUSTING NEWS, <https://trustingnews.org> [<https://perma.cc/NUZ6-MFAU>].

<sup>86</sup> See, e.g., Audrey Schomer, *News Organizations Are Engaging More Proactively in Open-Source Journalism to Rebuild Trust in News Media*, BUS. INSIDER (Dec. 3, 2019), <https://www.businessinsider.com/open-source-journalism-can-rebuild-trust-in-news-media-2019-12> [<https://perma.cc/WXU7-5WLD>]; *Frequently Asked Questions*, TRUST PROJECT, <https://thetrustproject.org/faq/> [<https://perma.cc/E342-73VP>] (noting that it is an “international consortium of news organizations building standards of transparency” and trying “to make it easy for the public to identify trustworthy news”).

<sup>87</sup> Phillips, *supra* note 9 (emphasis in original).

<sup>88</sup> Maria Popova, *Iris Murdoch on Storytelling, Why Art is Essential for Democracy, and the Key to Good Writing*, BRAIN PICKINGS (July 18, 2018), <https://www.brainpickings.org/2018/07/18/iris-murdoch-existentialists-mystics-philosophy-literature-art/> [<https://perma.cc/4L38-ML4E>].

<sup>89</sup> *Id.*

press and journalism as a method. Or it can suggest news is just another form of pollution in our damaged information ecosystem.

The right language is not only essential for the purpose of protecting the press so it can continue its democracy-promoting work. It also helps us to better understand the pollutants in our information environment and work to remediate them. And such language helps allow the press to be a force in that remediation, providing truthful, contextual, and newsworthy information to the public.