**Adia Samba-Quee:** [00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting.

**CNN Arrest footage:** [00:00:37] Wherever you want us, we will we will go, we are just getting out of your way when you were advancing through the intersection.

**Hannah McCarthy:** [00:00:42] So have you seen this clip, Nick?

**Nick Capodice:** [00:00:45] Yeah, I've seen it.

**CNN Arrest footage:** [00:00:46] I'm sorry, Your Honor. OK, do you know why I'm under arrest, sir? Why? Why am I under arrest?

**Hannah McCarthy:** [00:00:53] This is the end of May of this year. Twenty twenty. During protests in Minneapolis following the police killing [00:01:00] of George Floyd, a CNN television crew was arrested by police as they were filming. So this is on live television.

**CNN Arrest footage:** [00:01:09] We're all about to be arrested. That's our producer.

**Hannah McCarthy:** [00:01:13] Officers said that the crew refused to move, even though you hear them offer to move or they later released the crew after learning they were news media, even though the crew told them they were news media.

**CNN Arrest footage:** [00:01:25] Right now on live television in handcuffs. I've never seen anything like this.

[00:01:32] I'm being arrested now.

**Hannah McCarthy:** [00:01:34] So I watched this and I was like, OK, well, what about the First Amendment? Isn't that a violation of the freedom of the press?

**CNN Arrest footage:** [00:01:46] The police are now saying they're being arrested because they were told to move and didn't.

**Hannah McCarthy:** [00:01:55] This is Civics 101, the podcast refresher course on the basics of how our democracy works. [00:02:00] I'm Hannah McCarthy.

**Nick Capodice:** [00:02:01] I'm Nick Capodice.

**Hannah McCarthy:** [00:02:02] And this is part two on Freedom of the Press. And it's a murky one because, well, press freedom can seem a little tenuous these days.

**Melissa Wasser:** [00:02:11] In 2020 alone.

[00:02:13] One hundred and eighty eight journalists have been attacked, 60 of them have been arrested.

[00:02:18] This is Melissa Wasser, a policy analyst with the Reporters Committee for Freedom of the Press.

**Melissa Wasser:** [00:02:24] There's been many damaged equipment searched in search and seizure of that equipment.

[00:02:30] And during the Black Lives Matter protests alone this summer, over 740 reported aggressions against the press. We saw it in Minnesota when the CNN crew got arrested, we see it at rallies by the president where he could say something negative and kind of fanned the flames.

[00:02:51] And you see the crowd reacting to the highest office holder in the land saying these people are fake news. [00:03:00] They're not giving you the real information.

**Trump:** [00:03:02] Fake news, fake news. They are fake.

**Reporter at Trump rally:** [00:03:06] You can hear there is a chorus of those and other chants of this Trump crowd here in Tampa, Florida, they're saying things like saying I'm. Go home and fake news, Wolf. Obviously, all of those things are false. We're staying right here. We're going to do our job and report on this rally to all of our viewers here tonight.

**Nick Capodice:** [00:03:24] Hannah to your question. Is it illegal to, for example, arrest the press while they're working? Was that a violation of First Amendment rights?

**Erin Coyle:** [00:03:33] Well, the First Amendment doesn't protect us against breaking laws.

[00:03:39] There is a circuit court opinion that says that the First Amendment is not a license to trespass or steal. I can't say I'm a journalist, so I'm going to go steal all of the information to write this article.

[00:03:54] This is Erin Coyle, a media law and history of journalism professor at Temple University. So [00:04:00] when it comes to restricting the press, her point is that journalists don't necessarily have special privileges. The freedom of the press clause says simply to sum it up, Congress shall make no law abridging the freedom of the press. And in fact, the Supreme Court has had a fairly narrow reading of that clause. For example, there's a case called Houchins versus KQED, Inc. The court ruled that the press did not have the right to enter a jail, to film that the press had the access that the public had, and that was it.

**Erin Coyle:** [00:04:37] And these things can become really challenging when covering a live event. For instance, when I was living in Baton Rouge several years ago, there were journalists who were they were charged under a law that allows arrests [00:05:00] for impeding traffic on a state highway and just accidentally having one foot go on to that state highway. One instance was seen as you're impeding traffic, you broke the law. We're going to charge you. The First Amendment law related to access essentially says that the access rights that journalists have are there because they're the public's rights. And we get to go where the public could go so we don't get special treatment to be able to step into a highway and tell traffic to stop because we could get a better photograph or better video from being at that angle.

**Nick Capodice:** [00:05:50] I hear her, the press can't be breaking the law to do its job, but isn't the whole point of the press to witness and report on what's going on so [00:06:00] the American people know what's going on? How can they do that? In other words, what makes them a free press if they can be arrested while doing their job?

**Erin Coyle:** [00:06:09] It's very disappointing to see how journalists are being treated. It's disheartening to see journalists getting injured and having to wear body armor and gas masks to go do their jobs. And very disappointing to see journalists getting arrested for covering protests. And yes, I read the arguments that, well, the law enforcement couldn't tell who's a member of the press and who is a protester.

[00:06:42] I think the key question there is where members of the press doing anything wrong.

**Hannah McCarthy:** [00:06:46] This is what really clinches it for me, because if we look back at that CNN tape, for example, the cops are saying back off and the reporter saying, OK, yeah, we'll go wherever you want, but then they get arrested anyway. Or when [00:07:00] it comes to curfew and mobility orders, basically the governor saying get off the streets by 6:00 p.m. You can't go here, here, here.

[00:07:07] Well, many states explicitly build media exemption into that.

[00:07:12] But that hasn't necessarily mattered lately.

**Press covering protests:** [00:07:16] We're news media hour news media, head out, media is exempt from curfew.

**Hannah McCarthy:** [00:07:38] Here's Melissa again.

**Melissa Wasser:** [00:07:40] We found that most most Americans believe a free press is super important.

[00:07:45] They know it's the First Amendment.

[00:07:47] They can name it in the in the five freedoms, but they don't see why it's at risk. And that's really troubling.

**Nick Capodice:** [00:07:58] Just to jump in for a second, when Melissa says [00:08:00] the five freedoms, she's referring to the five freedoms enshrined in the First Amendment, they are religion, speech, assembly, petition and of course, press.

**Melissa Wasser:** [00:08:11] There have been signs over the past few years that, you know, it is under attack.

[00:08:18] I mean, the most serious, right, has been the murder of the journalist at the Capital Gazette in direct response to their reporting about the shooter.

[00:08:30] We've seen during the protests. They've been pepper sprayed and tear gassed. They've received death threats. How many we saw those hoax bomb threats at CNN. They if we also think about women and people of color and queer journalists online, the amount of online harassment that journalists get, I mean, there's signs all around us and it can and it consistently gets worse and worse and worse.

[00:08:58] And I think there needs to [00:09:00] be even more general awareness that these are the signs that, you know, freedom of the press is kind of slipping, at least in the United States.

**Nick Capodice:** [00:09:09] But did Melissa or Erin say why this is happening now? I know you've got a debate about what the press is actually free to do, but this is more than that. What has caused press freedom in the United States to slip?

**Erin Coyle:** [00:09:24] We can see patterns of presidents being very upset with the press throughout history.

**Hannah McCarthy:** [00:09:30] Yeah, when the president doesn't like or respect you, well, good luck getting other people to.

[00:09:37] It's the job of the press to find and tell the truth about people in power. And they do that by assembling information, gathering data, talking to witnesses and experts and then conveying an account of what they found and what it means and that much scrutiny, that intense analysis of what you do and say and how it affects people. Well, [00:10:00] who would want that?

**Erin Coyle:** [00:10:38] It's just human nature to want to defend ourselves if we see something nasty about us and put it out, and it's no wonder to me that people get upset when that happens. So part of this is probably just part of human life. But [00:11:00] also, I was listening last week to a tape recording of President Nixon being very upset with The New York Times and using some colorful language about why he wasn't going to talk with anyone from The New York Times because he was angry with news coverage.

**Richard Nixon:** [00:11:22] If I were going to give an interview to people, Why would I give it to a newspaper man anyway. Give it to a television man. Darn right. He will never be in my office as long as I'm president. Never. And no man from the Times will ever be in my office as long as I'm President. It isn't worth it. Agreed? I sure do. That's it.

**Nick Capodice:** [00:11:46] But it's not just the people in power who are wary of the press these days, it's also the people who aren't even necessarily being written about members of the public who have a negative perception of media.

**Erin Coyle:** [00:11:57] So I think today it's [00:12:00] very concerning to have these discussions about can there be trust in journalists today when people are hearing the term fake news and when fake news gets applied to something often on an emotional basis rather than on a basis of whether something is accurate or not, that contradicts what we teach journalism is supposed to be. Journalism is supposed to be accurate, and sometimes people are not going to like the truth.

[00:12:37] Erin reminded me that, of course, there was a world of print media before the First Amendment. And in that world, truth was not a defense against a claim that something was a lie. Like with libel cases, libel is printing something false about someone that can damage their reputation.

**Nick Capodice:** [00:12:58] Hold up. I want to make [00:13:00] sure I understand you here. You're saying that the truth was not a viable defense against a claim that something is libel?

[00:13:09] Well, in this case, seditious libel. Sedition is anything that inspires or causes people to rebel against a state or a monarch. And under English law, seditious libel was illegal before we had the First Amendment.

**Erin Coyle:** [00:13:27] As we know it now, printers were published for seditious libel and seditious labels essentially made people in power or authority and the government look bad or hurt their reputation. And under seditious libel laws, the greater the truth, the greater the libel. It wasn't until the 17th thirties that their notion was accepted that truth could be a defense for libel. And [00:14:00] that didn't come from the law. That came from a very persuasive argument that jurors in the colonies accepted the seditious libel laws still existed after the seventeen thirties.

[00:14:16] It just wasn't very likely that people in the colonies were going to support punishing truthful criticism of a government authority.

**Nick Capodice:** [00:14:32] Truthful criticism of government authority. So basically you're allowed to say something negative as long as it's backed up by evidence.

**Hannah McCarthy:** [00:14:41] Yeah, and within that, it's important to recognize what is a statement of opinion and what is a statement of fact. There's a lot of opinion out there right now, some of it based on fact and some of it based on it. Kind of nothing. Give me an example you're talking about. All right. So if someone writes that graph, for example, covid-19 [00:15:00] could have been handled better in the United States. They're basing that opinion on caseloads and the responses of people in power to the virus. Right. But if someone says that testing people for the virus is what leads to more cases, that is something based on paranoia and fear. Maybe not science or fact. And because of the Internet, because anyone can say anything and we can all read it, there's more stuff out there than ever. And these days, when that opinion is made public, especially if it's an opinion about somebody, you might hear it and dismiss it as fake news, especially if you don't like it. And then you might take it a step further and say that the media outlet itself is fake news.

[00:15:47] So when we're calling things fake news, that can end up being really confusing. I mean, how do we know what is fact or not?

**Melissa Wasser:** [00:15:54] People are smart. They they know where they want to be able to turn for news.

[00:15:59] I [00:16:00] think sometimes people kind of get tripped up between what is news and what is opinion. And it's not invalidating any network or paper or anything like that.

[00:16:11] But sometimes, you know, there's people who are reporting the news and reporting the story directly to people, whether that's, you know, photojournalists or writing news articles online or giving them directly on broadcast or what you're doing on radio.

[00:16:27] You know, it's it's important that people understand the factual stories. But there's also people who give opinions about different things on both sides, across the political spectrum. And when people don't agree with the story that they're hearing, they might think, oh, they don't like the president, they don't like Congress, they don't like my state governor. They're fake news.

[00:16:52] And it is so it really does kind of like weaponize that term and demonize the press.

**Nick Capodice:** [00:16:58] So, Hannah, with the acknowledgement [00:17:00] that you and I are members of the press, this demonizing of the press feels like it could have seriously negative consequences. One of the reasons the framers enshrined that free press in the Bill of Rights is in part that they saw what could happen if the goings on of government were kept hidden from the people. This idea that sunlight is the best disinfectant, as they say, that exposing potential corruption and bad deeds is the best way to stop corruption and bad deeds from happening in the first place. The press is ideally there to protect democracy.

[00:17:34] But if we don't trust the press or we call the truth lies, then we're not actually aware of what's going on anymore.

**Erin Coyle:** [00:17:41] A society in which people know enough about our government to be able to have a say, to have informed discussions and debates, to cast informed votes.

[00:17:55] We need journalists out there doing their job. Journalists [00:18:00] are out there representing all of us, going to the trials. We can't take off work to go to going to protests that we might not be healthy enough to go to taking those risks to provide us with information.

**Hannah McCarthy:** [00:18:20] Erin brought up this one point that I think is pretty important, that it's not just that the public may feel they can't trust journalists. It's also that a government opposed to the press may result in a press that's afraid of the government.

**Erin Coyle:** [00:18:35] One of the concerns that arises when talking about freedom of speech and freedom of the press is that some government actions can be a deterrent. And there are some instances in which. The. Potential punishment or potential fine would be so [00:19:00] great that people might not be willing to address that topic. It's just too much risk to be able to take to be able to address that specific topic. And that's called a chilling effect.

**Nick Capodice:** [00:19:20] I wasn't aware of the term chilling effect until I took a class on the First Amendment in college, but yeah, it's it's a big deal.

[00:19:27] It's basically censorship, discouraging the exercise of legitimate rights and in this case, the freedom of the press with legal threats.

[00:19:37] Like the threat of a lawsuit or the threat of a passage of a law that's basically intimidating to the point that it prevents people from exercising their rights.

**Erin Coyle:** [00:19:45] When we think about the tradition of press freedom and societal expectations for press freedom. It's hard to believe that there are not a set chilling effects that could [00:20:00] be occurring right now because of journalists being called nasty things or people engaging in intentional intimidation of the press. Those are very important factors for us to consider and to address.

**Nick Capodice:** [00:20:18] So here's where we're coming back around to a principle that we talk about a lot on the show, which is that it doesn't really matter what's written in the Constitution or our laws and statutes if we don't uphold it and protect it, and that the government can basically do whatever the government wants to do.

[00:20:37] If we want to stop or change that, we need to do something about it. But we definitely can't do something about it if we don't know what's going on. So what do we do?

**Melissa Wasser:** [00:20:48] You know, there are ways to to fix these things, including not demonizing the press to make sure that journalists are protected when they go to do their jobs from assault, arrest and threat of retaliation. [00:21:00]

[00:21:00] And that could be at the federal level through a bill in Congress or at your state level or even local level with local city councils or mayors signing executive orders. You know, it's it's a full level. It's it's at all three levels.

[00:21:15] And so I think it is in front of them. And maybe sometimes people are turning a blind eye and not realizing how threatening these little acts are until they all add up and then it'll be too late. So I think it's really changing the hearts and minds of people, too, to see why these all constitute risks to press freedom.

**Hannah McCarthy:** [00:21:39] I think the bottom line is that it's not really about whether you agree with the news or coverage of the news, the publishing of provably true information about our government and communities is necessary to maintaining a healthy democracy.

[00:21:57] That's how we make sure the Constitution is [00:22:00] actually upheld. Not liking what we learn about our government can actually be a sign that good journalism is being done. And there's a reason that we say knowledge is power. And in American democracy, it's one of the few true powers that we, the people have.

[00:22:35] Our listeners are what make us us if Nick and I were just shouting into the void with no curious, skeptical, civic minded people out there to hear us, well, we would just have to close up shop. But here you are letting us bend your ears and joining us as we try to figure out how this democracy works. It's our privilege and delight to offer this to you for free. But [00:23:00] the one snag is that Civics 101 is not free to make while the team here mostly subsists on civic pursuit. We do also need money to survive and equipment and all sorts of other stuff that comes at a cost that Nick and I are blessedly spared the details of. But my point is, if you like Civics 101, if you find it useful, if you want us to keep going and to join our efforts to maintain a healthy democracy here in these United States, please take a moment and donate to Civics 101. We believe there's power in understanding how this country works. With your help, we can keep figuring it out and sharing it with you. Check out the donate link on our home page at Civics101podcast.org.

[00:23:51] That does it for this free press today. This episode was produced by me, Hannah McCarthy, with Nick Capodice. Our team includes Jackie Fulton. Erica Janik, [00:24:00] besides the five freedoms before every meal. Music in this episode, by broke for free, blue dressed man, Lee Rosevere and Daniel Birch, Scott Gratton, Ikimashoo Aoi and spectacular sound productions. You may have noticed that we have this new thing we're doing, by the way, called Ask Civics 101. You ask us about what's going on in this ever evolving democracy. And we make you and everyone else a short and sweet episode answering that question. So if you've got a burning query about our government or politics, you can email us at Civics 101 at any nhpr.org and we will get cracking and ask Civics 101 just for You. Civics 101, supported in part by the Corporation for Public Broadcasting and is a production of NPR, New Hampshire Public Radio.

**PRX:** [00:24:57] From PRX.