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# Media Coverage and the First Amendment: Did Recent White House Exclusion of Journalists from Briefings Violate the Constitution?

BY [CRISTIANA MODESTI](#) / ON MARCH 15, 2017

Potential First Amendment violations involving freedom of the press are of growing concern, especially in the wake of controversy surrounding Trump's criticism of the media. The president is certainly entitled to his own First Amendment protection when disapproving of the media and its reporting. However, his continuous attempt to undermine its authority and infringe on journalists' right to free speech has incredibly damaging consequences that may unjustly bias public perception of the president's authority at the expense of public access to information.

A Manhattan federal judge issued a preliminary ruling on Monday, holding that the New York Police Department "may have violated the First Amendment by revoking the press credentials of a journalist."<sup>[1]</sup> The Judge further held that news outlets cannot be excluded from briefings or coverage on an arbitrary basis.<sup>[2]</sup> Following the ruling, various journalists from news outlets such as The New York Times, CNN, and The Huffington Post were banned from a White House briefing by the White House press secretary.<sup>[3]</sup> Director of the Knight First Amendment Institute at Columbia University contended that the White House's recent exclusion of news organizations from briefings violated the Judge's ruling.<sup>[4]</sup> He claims that it is unconstitutional to prohibit reporters from live coverage merely on the basis that one disagrees with their reporting; he deems this a form of viewpoint discrimination.<sup>[5]</sup> First Amendment experts contend that the decision to exclude certain news outlets while allowing others access to press passes and public forums must be evaluated impartially rather than using discriminatory tactics based on personal dissatisfaction with their work and opinions.<sup>[6]</sup> Even the White House Correspondents' Association board conceded that the matter was handled inappropriately by the White House, urging that they were "strongly against" the press team's conduct in excluding journalists from the briefing.<sup>[7]</sup>

Nonetheless, it must be acknowledged that not all instances of banning journalists based on disapproval of their work constitute First Amendment violations. A federal appeals court held that a governor preventing state employees from communicating with two reporters because he did not like their reporting was not a First Amendment violation.<sup>[8]</sup> Moreover, not all legal experts are troubled by the recent White House conduct; a Standard law professor argues that disagreement with the reporting of certain journalists should not be discouraged but should rather motivate journalists to more professionally and accurately portray political figures such as Trump.<sup>[9]</sup>

Although journalism is an aggressive and competitive profession whereby only select journalists are chosen for exclusive interviews or given access to information not available to the public, their access to “press credentials and seats at government news conferences” are typically afforded greater First Amendment protections than other forms of news gathering.<sup>[10]</sup> According to the United States Court of Appeals for the District of Columbia, the freedom of the press “requires that this access [to White House press facilities] not be denied arbitrarily or for less than compelling reasons.”<sup>[11]</sup> Although it is not yet clear whether excluding journalists from the White House briefings was unconstitutional, there may be various interests at stake if this conduct is accepted in future situations.

Not only do First Amendment protections benefit the journalists, their professional work, and the news outlets for which they work, there is also a significant public interest in limiting their restricted access to information, despite White Office officials’ disapproval of their reporting styles. The public is ultimately at the greatest risk if the president may constitutionally limit journalists and/or news outlets from covering press events based on his own personal preferences. This would potentially cause the president to use his own agenda to shape public perception, while dissuading journalists from reporting what they perceive to be the truth in fear of retaliation. The Associated Press director of media relations contends that the public benefits from “as much access to the president as possible.”<sup>[12]</sup> Trump has responded to this argument by claiming that some of these large media corporations do not prioritize the public’s best interest but are rather trying to exert their power and influence to effectuate their own plans.<sup>[13]</sup>

According to a leading First Amendment lawyer, the “daily denigration of the press as the enemy of the American people and statements that the use of confidential sources by journalists ‘shouldn’t be allowed’ is both novel and dangerous.”<sup>[14]</sup> Another law professor at George Mason University acknowledged that although it is acceptable for presidents to reprimand the media for bias and inaccurate reporting, Trump’s attempt to “delegitimize” the media is far more problematic.<sup>[15]</sup> Moreover, whether or not exclusion from the briefings was in fact a First Amendment violation, it is still important to consider that it may have violated well-established norms of freedom of the press that must not be disregarded with such a nonchalant attitude. In condemning the White House’s actions, the White House Correspondents’ Association criticized White House conduct for violating media coverage protocol, implying that they also violated accepted norms of journalism and fair access to information.<sup>[16]</sup>

It is undetermined whether prohibiting journalists’ access to recent White House briefings violated the First Amendment. Although there are meritorious arguments supporting both sides, delegitimizing the public’s perception of the media has important legal and policy implications. The Trump Administration has already pushed the boundaries of many commonly accepted norms, and it is feared that permitting the administration to risk

constitutional violations without consequence has the power to set a dangerous precedent that should not be overlooked.

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[1] Adam Liptak, *Barring Reporters From Briefings: Does it Cross a Legal Line?*, New York Times (Feb. 28, 2017), [https://www.nytimes.com/2017/02/28/us/politics/white-house-barring-reporters-from-briefings.html?rref=collection%2Ftimestopic%2FFirst%20Amendment%20\(US%20Constitution\)&action=click&contentCollection=timestopics&region=stream&module=stream\\_unit&version=latest&contentPlacement=1&pgtype=collection](https://www.nytimes.com/2017/02/28/us/politics/white-house-barring-reporters-from-briefings.html?rref=collection%2Ftimestopic%2FFirst%20Amendment%20(US%20Constitution)&action=click&contentCollection=timestopics&region=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection).

[2] *Id.*

[3] Tara Golshan, *The White House just barred major media outlets from a press briefing*, Vox (Feb. 24, 2017 2:30 PM), <http://www.vox.com/policy-and-politics/2017/2/24/14729078/white-house-banned-media-outlets-press-briefing>.

[4] Liptak, *supra* note 1.

[5] *Id.*

[6] *Id.*

[7] Golshan, *supra* note 3.

[8] Baltimore Sun Company v. LP LLP. No. 05-1297.

[9] Liptak, *supra* note 1.

[10] *Id.*

[11] *Id.*

[12] Christina Prignano, *Media outlets blocked from White House press briefing*, Boston Globe (Feb. 24, 2017), <https://www.bostonglobe.com/news/nation/2017/02/24/media-outlets-blocked-from-white-house-press-briefing/bk90JskdD2TRG33TMcfeEM/story.html>.

[13] *Id.*

[14] Liptak, *supra* note 1; Golshan, *supra* note 3; Julie Hirschfeld Davis & Michael M. Grynbaum, *Trump Intensifies His Attacks on Journalists and Condemns F.B.I. 'Leakers'*, New York Times (Feb. 24, 2017), <https://www.nytimes.com/2017/02/24/us/politics/white-house-sean-spicer-briefing.html> ("President Trump turned the power of the White House against the news media on Friday, escalating his attacks on journalists as "the enemy of the people". . .)

[15] Liptak, *supra* note 1.

[16] Yaron Steinbuch, *White House bars several media outlets from press conference*, New York Post (Feb. 24, 2017), <http://nypost.com/2017/02/24/white-house-bars-several-media-outlets-from-press-conference/>.