



Written by [R. Cort Kirkwood](#) on November 16, 2018

CNN Wins for Now. But Do Reporters Have Right to be Rude, Disruptive?

CNN has prevailed, at least temporarily, in its lawsuit to reinstate the press pass of anti-Trump propagandist Jim Acosta (shown), whose open disdain and disrespect for the president, and refusal to follow a directive, finally got him kicked out of the White House few days ago.



Federal Judge Timothy J. Kelly, a Trump appointee, sided with the anti-Trump network in issuing a narrow ruling that the White House trespassed Acosta's "due process" rights when it booted him out.

But the case might not be over. Kelly didn't say the White House had violated the imperious reporter's right under the First Amendment per se. And the White House can appeal his decision.

The Ruling

The White House banned Acosta, as [The New American reported](#), after a disputatious exchange with the president during which he refused to surrender a microphone to an intern. Acosta briefly struggled with the intern. That, spokeswoman Sarah Huckabee Sanders said, is why the White House lifted Acosta's pass.

[CNN's lawsuit claimed](#) the White House banned Acosta because the president dislikes his opinions and reporting, which trespassed his First Amendment right to report. It also claimed the ban was arbitrary and denied Acosta "due process."

[The White House argued](#) that Acosta was disruptive and discourteous, "inappropriately refused to yield, " and in any event has complete discretion on who it permits into press conferences.

Siding with the anti-Trump network, Kelly tailored his ruling narrowly.

[According to the New York Times](#), the judge said the White House "most likely violated Mr. Acosta's due process rights when it revoked his press badge after a testy exchange with the president at a news conference last week."

The *Times* reported Kelly's comments from the bench: "I want to emphasize the very limited nature of this ruling," the judge said. "I have not determined that the First Amendment was violated here."

[The Washington Post reported](#) that the judge did support CNN's request to overturn the White House on First Amendment grounds, but only narrowly so.

"In explaining his decision," the *Post* reported, "Kelly said he agreed with the government's argument that there was no First Amendment right to come onto the White House grounds. But, he said, once the White House opened up the grounds to reporters, the First Amendment applied."

As well, the *Post* reported, Kelly said the White House's decision was "so shrouded in mystery that the



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government could not tell me ... who made the decision.” Kelly said the justification the White House offered did not satisfy due process.

The decision means Acosta can return to the White House and continue disrupting press conferences and arguing with the president with leftist talking points disguised as questions.

[White House spokeswoman Sarah Huckabee Sanders stated](#) that the White House will write rules to ensure that press conferences stay under control, no matter how much the leftist White House press corps wants to disrupt them. “Today, the court made clear that there is no absolute First Amendment right to access the White House,” she said. “We will temporarily reinstate the reporter’s hard pass. We will also further develop rules and processes to ensure fair and orderly press conferences in the future. There must be decorum at the White House.”

Questions About the Decision

The court’s decision raises several constitutional questions.

If the president is required to permit Acosta or any other reporter access even when he is disorderly or disruptive, or refuses to stop asking questions so the press conference can proceed, when can the White House act? At what point can he be kicked out?

And how much “due process” is enough? Is this and any future president now faced with having to conduct a virtual jury trial to expel a rude, disruptive jerk?

And if a judge can control who has access to the White House, can he also force the president to permit a reporter to ask questions? That is, can Trump ignore Acosta and refuse to call upon him? If not, how many questions must Acosta or any reporter be allowed to ask? And can a federal judge now order the president to answer a question he does not want to answer?

And given Acosta’s propensity for obnoxious grandstanding, what of other reporters waiting to ask questions? Can a reporter ask questions without limit, and must a press conference proceed until every reporter asks one or more questions?

The constitutional principle at stake is the [separation of powers](#). Each branch of the federal government — executive, legislative and judicial — is separate and equal, a principle that endows each with powers that enable it to check the powers and actions of the other two.

Where does the court find the power to order the executive branch to alter its administrative rules governing access to the White House? Can the president order the courts or Congress to alter their rules governing media access? If not, why not?

Photo of Jim Acosta: AP Images



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