

Hostile messages and actions by U.S. president aim to intimidate and silence journalists and news media

Executive Summary

The United States ranks 13th out of 22 nations in the Chapultepec Index of Freedom of Expression and the Press, with 49.6 points, 1.82 points below the global average (51.42) of a maximum of 100. The institutional action in the Legislative and Judicial environments was valued by experts to have “slight influence” in situations adverse to freedom of expression, while the Executive environment had a greater impact, being considered to have a “moderate influence.” This result reflects the effect of president Donald Trump’s attempts to intimidate journalists by describing them as “enemies of the State”, issuing comments to discredit the news media and accusing them of spreading “fake news”, threatening TV stations to take away their broadcast licenses, and intimidating social media platforms into making changes that match his political point of view.

Introduction

This analysis covers the period from May 1, 2019, to April 30, 2020, which coincides with the third year of the presidency of Donald Trump.

Since the beginning of his presidential term on January 21, 2017, Trump has frequently stated that anti-defamation laws must be changed to apply to journalists critical of his government (something that has not happened), has described reporters as “Enemies of the State”, has launched a campaign to erode the reputation of the news media before the public opinion by classifying them as producers of “fake news”, and has criticized social media platforms for allegedly discriminating conservative opinions.

However, these types of statements or threats often conflict with the constitutional protections that exist in the United States.

The United States has a long history of protecting freedom of speech and the press thanks to the First Amendment to the Constitution. This amendment guarantees freedom of speech, religion and the press, and prohibits the establishment of laws that violate these rights. Historically, freedom of the press and expression have also been protected by the U.S. Supreme Court’s decisions, which have prohibited the application of prior censorship, and in some cases have guaranteed the protection of anonymous sources in news coverage (History.com, 2017).

There have been advances in the protection of journalists so that they can do their work without restrictions, or with few limitations, and in general the State does not pressure the media to obtain favorable coverage.

There are also resources such as the Freedom of Information Act where journalists can request access to information from the federal and state governments. However, this does not automatically discourage attempts by the federal or state governments to try to limit access to information or even intimidate journalists.

Since the terrorist attacks of Sept. 11, 2001, national security has been a frequently used as a justification for subpoenaing journalists. The administrations of George W. Bush and Barack Obama used this justification in the cases of journalists Judy Miller (who spent 85 days in jail for failing to reveal a source in 2005 [BBC News, 2005]) and James Risen (who was found guilty of contempt of court and was threatened with being sent to jail in 2014 [LoGiurato, 2014]).

There is a concern that this confrontation between the government and the media could disrupt the free flow of information in the United States. This tension has continued during the presidency of Donald Trump.

Another example is the Espionage Act, which has been used to sue journalists or sources who have revealed secret or classified government information, such as Julian Assange (Savage, 2019) and Edward Snowden (Zapotosky, 2019). Both administrations of Presidents Barack Obama (2009-2016) and Donald Trump (2017-present) have used the Espionage Act to sue Snowden.

Most recently, on July 23, 2020, a county judge in Washington state ordered a newspaper and four television stations to turn over unpublished photographs and video footage of street protests to the Seattle Police Department. The argument of the police was that the images could help identify protesters who destroyed property during the protest, and thus the images could help them arrest the suspects (Elfrink, 2020). The media organizations appealed the judge's decision and the order was postponed. The final decision is in the hands of the Washington Supreme Court (Kamb, 2020).

Although the previously mentioned examples did not occur within the period studied, they are cases that help us to illustrate the tense relationship that may exist between the United States government and the exercise of the free press.

Analysis of results

Overall rating

With 49.6 points, out of a possible 100, the United States ranks 13th out of 22 countries in the Chapultepec Index that measures the impact of institutional actions on freedom of expression and the press in the hemisphere. The United States along with eight other

countries were categorized as nations with “partial restrictions” on free speech and the press because of the impact of institutional actions.

According to the experts consulted, the domain with the greatest impact was the Executive Domain, which had a “moderate influence” with 4.19 points. In comparison, the Legislative (2.26 points) and Judicial (1.02 points) domains were classified as having a “slight influence” in situations unfavorable to the freedom of speech.

About the environments

Of the three environments analyzed, the Executive was the one that received the least favorable evaluation with 4.19 points, which places it in the category of having a “moderate influence” in situations adverse to freedom of expression and the press in the United States.

An example of the institutional actions of President Donald Trump are the lawsuits recently filed against three media outlets.

On March 8, 2020, the U.S. president's reelection campaign sued the New York Times, Washington Post, and CNN for defamation for publishing opinion pieces that criticized his administration. The action was considered an intensification of the confrontation that the president has had with the media since the beginning of his government (Wise, 2020).

According to legal experts cited in the story that appeared on the news website The Hill, these lawsuits are not likely to succeed because the standard in the United States for proving defamation is too high. However, these experts warn that this tactic could be used by influential political figures to intimidate the press.

Although the three aforementioned news media have economic resources to pay the expenses of judicial defense in the courts, there is fear that this type of lawsuit could be used to intimidate news organizations that have fewer resources to cover the cost of a lawyer who can defend them in court (Wise, 2020).

Trump regularly attacks the press, and frequently refers to journalists as “enemies of the state,” but these actions represented the first time that he has sued news organizations, and the president also warned that there could be more lawsuits in the future.

Social media platforms have also come under fire from President Trump, who is a regular user of Twitter and has more than 85.5 million followers (As of August 2020).

For example, on April 23, 2019, President Trump criticized Twitter for allegedly discriminating the views of conservatives and representatives of the Republican Party, and advocated for a “fairer” platform. Although he has also criticized other platforms and technology companies such as Google, Trump has offered no evidence to support his accusations (Reuters, 2019.)

In May of this year, Trump threatened to shut down Twitter after the social network placed a warning in two of his tweets alerting readers that the messages contained “questionable information” about voting by mail. These warnings are part of Twitter's new policy of classifying information that may be false (Bond, 2020).

Another example of the institutional actions by the Executive Environment is the letter that the Trump re-election campaign sent to several television stations in five states that could have a decisive impact on the presidential election on Nov. 3, 2020.

In the letter, the Trump campaign asked stations to stop broadcasting a campaign ad criticizing Trump's management regarding the coronavirus pandemic. The ad was produced by Priorities USA, a political organization that supports the candidacy of its Democratic rival Joe Biden. Failure to do so, the letter said, the Federal Communications Commission (FCC) would consider suspending the broadcast licenses of these stations (Shields, 2020). An expert quoted in the Bloomberg report explains that this action has no chance of succeeding since the ad is considered political information that is protected by the Constitution, and the government could not penalize the stations that broadcast it. However, the lawyer added that the intention of the letter was to intimidate the stations into limiting the broadcast of negative announcements about President Trump.

With regard to the Legislative (2.26 points) and Judicial (1.02 points) domains, institutional actions had a “slight influence”, according to the assessment of the experts consulted. Although they did not cite specific situations of how these environments affect freedom of expression and the press, recently in the United States there have been cases where judges have ordered the media to hand over photos and videos to the police.

Realm A

This realm explores whether people are informed and free to express their opinions, and the experts consulted gave it 14.2 points out of a total of 23.

American people live in a country where their right to express themselves and to be informed is respected. In general, there are few restrictions to having access to information and journalists are free to write and cover the news with almost no restrictions. This is not to say that there are no challenges when reporting the news, as President Trump's constant criticism of the press and journalists adds pressure to the work they do. In this context, the experts considered that the institutional actions of the Executive Domain had a “strong influence” (6.02 points).

Regarding sub-realm 1, which evaluates actions in favor of the flow of information to people, the experts assigned 7.4 out of 11 points. Here, the impact of the actions of the Executive Environment stands out, which was considered to have “a strong influence” (5.85 points). This is because of threats issued by President Trump to television and digital media that could affect the flow of information.

With respect to sub-realm 2, which assesses whether the State creates possibilities for citizens to express themselves publicly, the experts also assigned 6.8 out of 12 points. Here, the Executive Environment also had the greater impact, which was labeled as having a “strong influence” (6.19 points).

Although there are no state provisions to increase criminal charges of defamation, slander and contempt, President Trump has sued three media outlets for defamation. This is the first time that the president has intensified his confrontation with the media by taking to the courts, despite the fact that the vast majority of specialists have said that these lawsuits are unlikely to succeed.

Realm B

This realm explores whether the State guarantees the exercise of journalism, and the experts consulted assigned it 5 out of 10 points.

In general, the United States has clear laws that protect the intellectual property of journalistic content, it is not mandatory for journalists to be licensed or belong to an organization, and it is not necessary that they have a university degree, or even formal education to practice journalism.

However, historically there have been cases in which the State tries to pressure the media and journalists to reveal sources of information. In the period evaluated by the experts, no specific examples of these actions were cited. However, as mentioned in the introduction, on July 23, 2020, a Washington state judge issued an order for five news organizations to reveal photos and video images of street protests that have not been previously published.

The Judicial (1.81 points) and Legislative (1.57 points) environments were considered to have a “slight influence”, and the Executive Environment was considered to have a “moderate influence” (3.26 points).

Realm C

This realm explores violence and impunity in the exercise of freedom of speech and the press. The experts consulted in the case of the United States assigned it 8 out of 42 points. This ranking is low if we compare the U.S. with other countries where there are documented cases of violence against journalists, such as Mexico (12 points) and Colombia (11.4). In this realm, the Executive Environment was classified as having a “moderate influence” (3.76 points), the Legislative (1.87 points) and Judicial (0.92 points) as having a “slight influence”.

In general, in the United States, the State does not favor the persecution of journalists and media outlets that publish criticisms of the government. However, some statements

by the current president of the United States, members of his cabinet and influential conservative voices have been considered intimidating and even promoters of hatred toward journalists and the media. In sub-realm 1 of actions against persecution, the experts assigned the Executive Environment 8.03 points and rated it as having a “strong influence”. The Legislative Environment (3.85 points) was perceived as having a “moderate influence”, and the Judicial Environment (1.63 points) was classified as having a “slight influence”.

Sub-realm 2 explores actions for the protection of freedom of speech and the press. As previously mentioned, the First Amendment to the Constitution of the United States offers a strong defense of freedom of speech and the press.

During the period covered by this report, the experts did not cite specific examples. However, since May 25, 2020, when George Floyd, a black man, died after a police officer immobilized him and put his knee on his neck for more than eight minutes in Minneapolis, Minnesota, protests broke out in dozens of cities of the United States. During these protests, there were cases where the police arrested protesters after shouting slogans or criticizing the police, and on other occasions several journalists were temporarily detained and attacked by the law enforcement officers. In several of these cases, the arrests were considered illegal and state attorneys began investigations into the police actions (Editorial Board, 2020).

That was the case of a CNN reporter and his broadcast team who were detained for more than an hour on May 29, 2020 in Minneapolis. The arrest drew criticism, the journalists were released and the action forced the Minnesota governor to apologize for the police agents’ behavior (Grynbaum & Santora, 2020).

Another incident occurred on May 31, 2020, in New York when a Wall Street Journal reporter was physically assaulted by police officers despite identifying himself and following the instructions given by the officers. The Manhattan District Attorney’s Office announced an investigation into the assault (Scannell & Holcombe, 2020).

The influence of the environments was classified as follows: Executive (3.25 points) had “moderate influence”; and Legislative (1.75 points) and Judicial (1.13 points) had “slight influence”.

Sub-realm 3 explores actions against impunity, specifically the existence of legislation to aggravate penalties in cases of homicides of journalists, other types of crimes against journalists and the media, or if the State abides by international judgments or rulings to accept responsibility for crimes against journalists and the media, and repair damages to the victims. All domains received 0 points and were classified as no having an influence in this area.

Realm D

This realm focuses on the control of the media and how it affects freedom of speech and the press. The experts consulted in this study assigned it 22.4 out of 24 points, a high figure that places the United States in the category of “full freedom of expression.” In this context, the Executive Environment (3.71 points) had a moderate influence, and the Legislative (1.58) and Judicial (0.46) environments had a “slight influence”.

In sub-realm 1 that explores direct control of the media, the United States scored 15.2 out of 16 points, also a high number. In the United States, the State does not really close, expropriate, or confiscate news organizations; nor applies additional taxes beyond what is already applicable under the law. In this study, the experts cite an example where the president threatened to withdraw the broadcasting license of several television stations, something that he cannot legally do since he does not have the power to implement it. All domains were classified as having a “slight influence”: Legislative (1.50), Judicial (0.25) and Executive (2.25).

Sub-realm 2 analyzes indirect control of the media. The United States received 7.2 out of 9 points. In general, the State does not apply pressure to technological intermediaries or suppliers of materials that affect the production of news content or prevent the dissemination of information. The experts consulted classified the Legislative (1.67) and Judicial (0.67) environments as having a “slight influence”, but this was not the case of the Executive Environment (5.17 points), which was placed in the category of having a “strong influence”.

There is a clear example of an institutional action during the period analyzed in which the Executive branch tried to exert indirect influence on a media outlet. On June 1, 2019, President Trump sent a message on Twitter suggesting the idea of boycotting the telecommunications company AT&T to penalize that company for the news content produced by one of its subsidiaries, the cable news channel CNN. Trump accused CNN of unfairly covering his government, producing “fake news” and transmitting a negative image of the United States. The attack is part of the strategy to criticize CNN since his government began (Grynbaum & Lee, 2019).

The article mentions that press freedom activists have warned of Trump’s attacks on the media and the message he sends abroad, where several autocratic regimes have begun to use the same language of “fake news” to suppress independent journalists and news organizations. Also, during the Trump administration, the Justice Department tried to block AT&T’s purchase of the Time Warner conglomerate, to which CNN belongs. In the end, the strategy was unsuccessful as a court decision approved the purchase (Grynbaum & Lee, 2019).

Conclusions

Because the U.S. Constitution guarantees the right to freedom of speech and prohibits laws that restrict this right, the United States is a country where its citizens can express

themselves freely and journalists carry out their functions in an environment that generally guarantees the free flow of information.

This does not mean that the relationship between the press and the State is free of tension and clashes. In the period analyzed for this report, the experts determined that in the United States there is a partial restriction of freedom of expression and the press. This distinction is primarily reflected in the institutional actions carried out by the Executive Environment.

Specifically, President Donald Trump has carried out a campaign to discredit and undermine the credibility of traditional news media. Trump frequently refers to journalists as “enemies of the state,” and accuses the news media of being sources of “fake news”.

Trump has used this strategy since he became president in 2017, but it reached its most serious point in March 2020 when the president's reelection campaign sued for defamation two newspapers (New York Times and Washington Post) and a cable news channel (CNN) for publishing opinion articles criticizing Trump's government.

Although most experts recognize that these types of lawsuits have a very low probability of succeeding and are quickly rejected by the courts, the objective of these actions was to intimidate journalists and the news media so that they do not publish negative information about the president. This attempt to intimidate the media is generally referred to in the United States as having a “chilling effect” in the work of journalists. There were also threats from President Trump to shut down or regulate Twitter, and promote a boycott of AT&T, the company that owns CNN.

It should be noted that although the president's actions have not led to the closure of news organizations or the imprisonment of journalists, it would be important to determine whether the institutional actions have undermined the trust of citizens in the media. With regard to the Chapultepec Index, it would be relevant to analyze the impact of Trump's presidency during the last year in office, and to study the following year, in case he is reelected in the presidential elections of Nov. 3, 2020. On the contrary, if there is a new president, it would be interesting to analyze what kind of impact the new president could have on the Chapultepec Index of Freedom of Expression and of the Press in a post-Trump period.

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