



NEW YORK  
CITY BAR

**COMMUNICATIONS AND  
MEDIA LAW COMMITTEE**

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MATTHEW L. SCHAFER  
CHAIR  
mlschafer@gmail.com

**COUNCIL ON INTELLECTUAL  
PROPERTY**

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JAMES R. KLAIBER  
CHAIR  
james.klaiber@hugheshubbard.com

February 5, 2021

**Via Email**

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

**Re: Prioritizing Freedom of Speech and the Press**

Dear Mr. President,

We represent various constituencies of the New York City Bar Association dedicated to freedom of expression in its many forms. As you settle in as the 46<sup>th</sup> President of the United States, we write to urge you to make freedom of speech and of the press a priority in your Administration.

Sitting in the media capital of the world, we have a special interest in freedom of speech and of the press. New Yorkers' commitment to it can be traced to our earliest days as the Province of New York and the eighteenth century trial of printer John Peter Zenger. Zenger ended up on the wrong side of the royal governor because of his paper's attacks on the administration. Despite being charged with criminal libel, a New York jury acquitted him after his counsel, Andrew Hamilton, cautioned that freedom of the press was "not of small nor private concern."

Rather, Hamilton said, "It is the cause of liberty." As he told the jury, "I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery will bless and honor you, as men who have baffled the attempt of tyranny; and . . . laid a noble foundation for securing to ourselves

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

. . . the liberty of both exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth.”<sup>1</sup>


Your home state has a similar commitment. In 1776, Delaware became one of the first states to compile a list of fundamental rights of a newly independent people. That year, delegates from New Castle, Kent, and Sussex drafted *A Declaration of Rights and Fundamental Rules*, among which was: “THAT liberty of press ought to be inviolably preserved.” In adopting this language, Delaware charted the course for other states, weaving into our national identity a commitment, as James Madison put it, to freedom of the press as “an essential right.”<sup>2</sup>

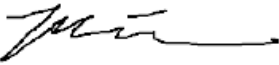
Today, however, that freedom hangs in the balance. In 2020 in the United States, 365 journalists were physically attacked, 123 were arrested and dozens were subpoenaed.<sup>3</sup> Just last month, insurrectionists at Capitol Hill physically assaulted journalists, scratched “murder the media” into a door of the Capitol, and fashioned a noose out of a camera cord. At the same time, the government has made it more difficult for journalists to do their jobs. It has threatened sources, retaliated against journalists for their reporting, and allowed needless secrecy to metastasize. Unsurprisingly, Reporters Without Borders ranks the United States as forty-fifth in press freedom worldwide.<sup>4</sup>

This situation is untenable; easy solutions are unavailable. One hard solution that is available, however, is to begin a cultural shift. A shift in how we talk about the press, freedom of it, and the role it plays in our republic. This shift, if it has any chance, must come from the top—from your Office. So, we urge you to use the power of your Office to recommit the United States, in your words and your actions, to press freedom at home and around the world.

We thank you in advance for your thoughtful consideration of this letter.

Respectfully,

  
Matthew L. Schafer  
Chair  
Communications and Media Law Committee

  
James R. Klaiber  
Chair  
Council on Intellectual Property<sup>5</sup>

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<sup>1</sup> Livingston Rutherford, *John Peter Zenger, His Press, His Trial and a Bibliography of Zenger Imprints* 123 (1904) (cleaned up).

<sup>2</sup> *Virginia Resolutions*, Founders Online, National Archives, (December 21, 1798), <https://founders.archives.gov/documents/Madison/01-17-02-0128>. (All sites last visited February 4, 2021)

<sup>3</sup> Quick Facts, *U.S Press Freedom Tracker*, <https://pressfreedomtracker.us>.

<sup>4</sup> 2020 World Press Freedom Index, *Reporters without Borders*, <https://rsf.org/en/ranking>.

<sup>5</sup> The Council on Intellectual Property’s membership reflects a wide range of corporate, private practice and academic experience and is constituted of the Chairs of the following Committees: Art Law; Communications & Media Law; Copyright & Literary Property; Entertainment Law; Fashion Law; Information Technology, Cyber, & Privacy Law; Patents; Sports Law; Trade Secrets; and Trademark & Unfair Competition.