
REPAIRING THE DAMAGE: PRESIDENT BIDEN AND THE PRESS

RonNell Andersen Jones*
Lisa Grow Sun**

The Trump era was unprecedentedly bad for the American free press. During his four years as president, Donald Trump pursued an unrelenting and fundamentally dangerous strategy of vilifying working journalists. Employing rhetoric typically embraced by “authoritarians and dictators,”¹ he branded the press as “enemies of the people,” discredited media organizations as purveyors of “fake news,” insulted and mocked individual members of the press, stripped reporters’ credentials in retaliatory ways, suggested “jailing journalists” and “making it easier to sue them for libel,”² and celebrated violent attacks on the press.³

From the beginning, Trump was remarkably transparent that his motive was to discredit the press and undermine its ability to counter his own false narratives.⁴ The consequences for the stability of U.S. democracy were grave.

But now we look ahead. While the first 100 days of the Biden Administration represent a welcome return to normality—to the typical, everyday tensions between press and president—a mere return to normality will not be sufficient to repair the deep and lasting damage President Trump’s “enemy of the people”

* Teitelbaum Chair & Professor of Law, University of Utah S.J. Quinney College of Law.

** Howard W. Hunter Professor of Law, Brigham Young University Law School.

1. Roy S. Gutterman, *After 4 Damaging Years, Biden Must Restore Press Freedom*, SYRACUSE.COM (Dec. 10, 2020), https://www.syracuse.com/opinion/2020/12/after-4-damaging-years-biden-must-restore-press-freedom-roy-s-gutterman.html?_ga=2.221130910.729064608.1612977547-1278528241.1612977547 [<https://perma.cc/ME3X-Y2TJ>].

2. *Restoring U.S. Press Freedom Leadership: A Proposal to the Incoming Biden Administration from the Committee to Protect Journalists*, COMM. TO PROTECT JOURNALISTS (Nov. 17, 2020), <https://cpj.org/restoring-u-s-press-freedom-leadership-biden/> [<https://perma.cc/2C2V-ULU9>]; Parker Higgins, *The Biden Admin’s Press Freedom Record Should Be Judged on Actions, Not Just Rhetoric*, FREEDOM OF THE PRESS FOUND. (Jan. 21, 2021), <https://freedom.press/news/the-biden-admins-press-freedom-record-should-be-judged-on-actions-not-just-rhetoric/> [<https://perma.cc/HCP6-V9UT>].

3. Brett Samuels, *Trump Mocks Reporters Who Were Roughed Up by Police During Protests*, HILL (Sept. 22, 2020, 9:07 PM), <https://thehill.com/homenews/media/517713-trump-mocks-reporters-who-were-roughed-up-by-police-during-protests> [<https://perma.cc/UP9J-2TT8>] (noting Trump described excessive police force against reporters as a “beautiful sight”).

4. Jon Levine, *Lesley Stahl: Trump Said He Wants to ‘Discredit’ the Media ‘So No One Will Believe’ Negative Stories (Video)*, WRAP (May 23, 2018, 6:51 AM), <https://www.thewrap.com/lesley-stahl-trump-target-media-discredit-bad-stories/> [<https://perma.cc/5THV-A3XX>] (“You know why I [attack the press]? I do it to discredit you all and demean you all, so when you write negative stories about me no one will believe you[.]”).

rhetoric and destruction of First Amendment norms inflicted on the press, on the American people's trust of the press, and on the country's press-freedom standing in the wider world. Instead, President Biden will have to be a much greater advocate of the press and press freedom than he has been to date, taking active steps to reestablish the press as a core institution of democracy.

TRUMP'S DAMAGE

Trump's anti-press campaign inflicted deep and lasting damage, both in the United States and around the world. We predicted this trajectory four years ago, in our parallel piece marking Trump's first 100 days in office and in other work,⁵ but President Trump's hostility to and damage of the press exceeded even our most dire predictions.

Trump's attacks have threatened the safety of working journalists by emboldening both law enforcement and citizens to physically attack members of the press. Threats and violent assaults on reporters have increased dramatically.⁶ In part because of these increased risks to members of the media, Reporters Without Borders downgraded the United States in 2019 to a "problematic" place for journalists to work and ranked the U.S. a disappointing forty-eight out of 180 on the organization's annual World Press Freedom Index.⁷ Americans' increased willingness to threaten or deploy violence against the press was on shocking display during the January 6 insurrection, when rioters scrawled "Murder the Media" on the door of the capital.⁸

Trump's characterization of the press as an enemy has also reverberated around the world, emboldening dictators and repressive governments to dismiss critical press coverage as "fake news,"⁹ deny inconvenient facts and "ugly truths,"¹⁰ crack down on press members and press access,¹¹ turn a blind eye to

5. RonNell Andersen Jones & Lisa Grow Sun, *Making an Enemy of the Press*, 2017 U. ILL. L. REV. ONLINE: Trump 100 Days (Apr. 19, 2017); RonNell Andersen Jones & Lisa Grow Sun, *Enemy Construction and the Press*, 49 ARIZ. ST. L.J. 1301, 1326–28 (2017).

6. See generally *Quick Facts*, U.S. PRESS FREEDOM TRACKER, <https://pressfreedomtracker.us/> (last visited Apr. 23, 2021) [<https://perma.cc/7L87-WQ9J>].

7. Sasha Ingber, *The U.S. Now Ranks as a 'Problematic' Place for Journalists*, NPR (Apr. 18, 2019, 5:13 PM), <https://www.npr.org/2019/04/18/714625907/the-u-s-now-ranks-as-a-problematic-place-for-journalists> [<https://perma.cc/963B-66BA>].

8. James McManus & Beena Sarwar, *Why Restoring Press Freedom Globally Should Take Precedence on Biden's Priority List*, WIRE (Jan. 27, 2021), <https://thewire.in/media/why-restoring-press-freedom-globally-should-take-precedence-on-bidens-priority-list> [<https://perma.cc/W5M3-6GLS>].

9. COMM. TO PROTECT JOURNALISTS, *supra* note 2.

10. Margaret Sullivan, *Trump is Leaving Press Freedom in Tatters. Biden Can Take These Bold Steps to Repair the Damage*, WASH. POST (Dec. 6, 2020, 4:00 AM), https://www.washingtonpost.com/lifestyle/media/trump-biden-press-freedom/2020/12/04/251c669e-3583-11eb-a997-1f4c53d2a747_story.html [<https://perma.cc/8G49-B2ZS>] ("Officials with an autocratic bent around the globe snatched up the idea to mock the press or to deny ugly truths. By late 2017, for instance, a state official in Myanmar was using the term to deny not only the shameful persecution of a Muslim minority group, but that population's very existence: 'There is no such thing as Rohingya. It is fake news.'").

11. COMM. TO PROTECT JOURNALISTS, *supra* note 2 (reporting that Journalists from Brazil, Pakistan, India, Tanzania, and Nicaragua told Vice President Pence "that President Trump's actions had emboldened their leaders to crack down on domestic media").

increasing attacks on press members,¹² and trump up spurious criminal charges against local reporters.¹³ Murders of journalists “in retaliation for their work” have doubled worldwide.¹⁴

Moreover, Trump’s attacks on the press have fueled a deep partisan divide in Americans’ trust of the press. Indeed, Republicans’ trust has declined to its lowest level on record. In addition to having “far greater skepticism of the news media and their motives than Democrats,”¹⁵ “Republicans and Trump supporters are also far more likely to endorse extreme claims about media fabrication, to describe journalists as an enemy of the people, and to support restrictions on press freedom.”¹⁶ The increased confusion so many Americans feel about who they can trust to provide critical information—and their concomitant susceptibility to conspiracy theories—has had deadly effects during the COVID-19 pandemic. Basic public health measures, such as mask-wearing, that could have saved lives have instead been politicized and thus resisted by substantial portions of the population.¹⁷ The concrete ramifications of Trump’s anti-press campaign reverberate in deadly ways.

BIDEN’S TEMPTATION

Of course, all presidents have a fraught relationship with the press. Our past research demonstrates that every president is tempted to limit transparency about important issues in an effort to avoid criticism and negative publicity. Presidents want to control press coverage to control the public narrative about their administrations, to advance their policy agendas, and to err on the side of national security. Notably, the Obama Administration, in which Biden served as vice president, was regularly criticized as less than ideal in its treatment of the institutional press. Indeed, as we have noted elsewhere, that administration “threatened prosecution of journalists in connection with government leaks, pursued criminal charges against more whistleblowers than all previous presidents combined, seized records of more than twenty Associated Press phone lines, and actively

12. Jones & Sun, *supra* note 5.

13. In 2020, a record 274 journalists were imprisoned. See *274 Journalist Imprisoned*, COMM. TO PROTECT JOURNALISTS, https://cpj.org/data/imprisoned/2020/?status=Imprisoned&start_year=2020&end_year=2020&group_by=location (last visited Mar. 31, 2021) [<https://perma.cc/PV6Z-DB9E>]; Elana Beiser, *Record Number of Journalists Jailed Worldwide*, COMM. TO PROTECT JOURNALISTS (Dec. 15, 2020), <https://cpj.org/reports/2020/12/record-number-journalists-jailed-imprisoned/> [<https://perma.cc/4Z3A-82ZT>].

14. Jennifer Dunham, *Murder of Journalists More than Double Worldwide*, COMM. TO PROTECT JOURNALISTS (Dec. 22, 2020), <https://cpj.org/reports/2020/12/murders-journalists-more-than-doubled-killed/> [<https://perma.cc/Y6VE-AHT2>].

15. Jeffrey Gottfried, Galen Stocking, Elizabeth Grieco, Mason Walker, Maya Khuzam & Amy Mitchell, *Trusting the New Media in the Trump Era*, PEW RES. CTR. (Dec. 12, 2019), <https://www.journalism.org/2019/12/12/trusting-the-news-media-in-the-trump-era/> [<https://perma.cc/84CN-ARGN>].

16. Andrew Guess, Brendan Nyhan & Jason Reifler, *You’re Fake News! The 2017 Poynter Media Trust Survey*, POYNTER (Nov. 29, 2017), <https://poyntercdn.blob.core.windows.net/files/PoynterMediaTrustSurvey2017.pdf> [<https://perma.cc/J4G2-SR7U>].

17. See, e.g., David Klepper, *Viral Thoughts: Why COVID-19 Conspiracy Theories Persist*, AP NEWS (Apr. 6, 2021), <https://apnews.com/article/why-covid-19-conspiracy-theories-persist-2586c1bc28259f7e224885b609c8f131> [<https://perma.cc/D5VE-B2PA>].

criticized major newspapers for their use of confidential sources.”¹⁸ Likewise, all modern presidents have been defensive with the press—inclined to thwart some press access and to criticize the press, both fairly and unfairly, to protect their own interests.¹⁹

It is unsurprising, then, that President Biden’s record on press treatment, as a candidate and in his short time as chief executive, is mixed. While there is promising rhetoric and a seeming return to normalcy, Biden has also faced critiques.

During his presidential campaign, Biden “skirted the national media.”²⁰ COVID-19 severely and reasonably limited regular campaigning, but Trump remained in regular contact with the media while Biden went three months without holding a press conference, even virtually.²¹ Opponents accused him of hiding from the press to avoid making any mistakes—in effect, “r[unning] out the clock” while avoiding as much press and public scrutiny as possible.²²

Since becoming president, Biden has faced additional critiques about his transparency and press access. For example, Biden was roundly criticized for delaying his first press conference until Day 64 of his presidency.²³ No president in a hundred years had waited so long to hold “a formal Q&A session with the White House media.”²⁴ While White House Press Secretary Jen Psaki has held regular—almost daily—press conferences, that simply is not the same as giving the media, as proxies for the people, the chance to engage directly with the President himself. More generally, while Biden “appears for signing executive orders or short scripted addresses,” he often delegates the rest of communication to subordinates.²⁵

Even when President Biden does make statements to the press, he often does not take questions.²⁶ On one occasion, after delivering remarks virtually to

18. Jones & Sun, *Enemy Construction and the Press*, *supra* note 5, at 1327–28.

19. *See id.* (cataloging press-president tensions during the Kennedy, Ford, Johnson, Carter, Reagan, and Bush administrations).

20. Jon Allsop, *How Will Biden’s New Team Treat the Press?*, COLUMBIA JOURNALISM REV. (Nov. 30, 2020), https://www.cjr.org/the_media_today/joe_biden_communications_team_press_secretary.php [<https://perma.cc/E7V9-ZHR5>].

21. *Id.*; *see also* Christopher Cadelago & Natasha Korecki, *Scenes from Biden’s First Encounter with the Media in Months*, POLITICO (July 1, 2020, 9:49 AM), <https://www.politico.com/news/2020/06/30/biden-rally-wilmington-346007> [<https://perma.cc/77DK-BD7C>].

22. Joe Concha, *Why Is Joe Biden Dodging the Public and the Press?*, HILL (Mar. 4, 2021, 12:15 PM), <https://thehill.com/opinion/white-house/541580-why-is-joe-biden-dodging-the-public-and-the-press> [<https://perma.cc/K3WU-2F66>].

23. Christopher Cadelago & Sam Mintz, *Why You Haven’t Seen a Sit-Down Biden Interview Yet*, POLITICO (Jan. 31, 2021, 9:04 AM), https://www.politico.com/amp/news/2021/01/31/joe-biden-spotlight-464003?__twitter_impression=true [<https://perma.cc/7USD-L76F>]; Concha, *supra* note 22.

24. Concha, *supra* note 22 (noting Donald Trump held his first press conference on Day 27, Barak Obama on Day 20, and George W. Bush on Day 34); Tim Darnell, *Biden Under Increasing Media Spotlight for Lack of News Conferences*, ATLANTA J.-CONST. (Mar. 4, 2021), <https://www.ajc.com/news/nation-world/biden-under-increasing-media-spotlight-for-lack-of-news-conferences/KMZDG4EQHRE2FCS6KUF6QX4/> [<https://perma.cc/R2PQ-CGLV>].

25. Cadelago & Mintz, *supra* note 23.

26. Allsop, *supra* note 20; *see also* @ZekeJMiller, TWITTER (Nov. 21, 2020, 2:18 PM), <https://twitter.com/ZekeJMiller/status/1330259408274776072> [<https://perma.cc/4HU8-D377>]. The president of the White

House Democrats, Biden offered to take questions “[i]f that’s what I’m supposed to do,” and the White House promptly cut the feed.²⁷ Some have suggested that when Biden has taken questions, his press team has asked for the questions in advance²⁸ or shown favoritism to friendly questioners.²⁹ Biden has also faced other allegations of more subtly disrespecting the press—like imposing a COVID testing fee on reporters who go to the West Wing,³⁰ failing to promptly issue a presidential memo outlining transparency goals,³¹ and not posting online any citizen petitions or schedules for president and vice president.³² To be sure, not all members of the press are uniformly happy with Biden’s press policies all of the time.

CAUSE FOR OPTIMISM

In contrast to Trump, though, President Biden is a remarkably strong press-freedom advocate. There is no question whatsoever that the freedom of the press is in far better hands than it has been in the last four years, and at this early stage in the Biden presidency, there are strong signs that he will advance and protect the essential role of the press. Both before becoming president and during his first 100 days in office, Biden has already demonstrated—both in word and in action—a much stronger commitment to press freedom and to the media’s critical role in our democracy than his predecessor did.

President Biden’s positive rhetoric about and toward the press could not contrast more sharply with that of President Trump. Before assuming the office of president, Biden repeatedly defended the importance of the press, explaining that questioning the “legitimacy of a free press” is “dangerous,” that “denigrat[ing]” the role of the press “weaken[s] our ability for self-government,” and that labeling or treating the media as an “enemy” of the people is a serious threat

House Correspondents’ Association noted that “[t]his is unacceptable. The pool exists to provide the independent account of the activities of a president(-elect) that the American people deserve.”

27. Concha, *supra* note 22.

28. Brian Flood, *White House Seeking Press Briefing Questions in Advance Could ‘Crush’ Trust in Media, Ethics Guru Says*, FOX NEWS (Feb. 2, 2021), <https://www.foxnews.com/media/white-house-seeking-questions-trust-media-ethics-guru> [<https://perma.cc/38H6-VFKZ>]; Ashley Collman & Grace Panetta, *Biden’s Press Office Asked Journalists to Send Questions in Advance, Drawing Mixed Reactions From Reporters*, INSIDER (Feb. 2, 2021, 4:26 PM), <https://www.businessinsider.com/biden-press-office-asked-journalists-advance-questions-report-2021-2> [<https://perma.cc/YZQ8-8ZZY>].

29. @TaraPalmeri, TWITTER (Feb. 2, 2021, 7:37 AM), <https://twitter.com/tarapalmeri/status/1356597689480335361> [<https://perma.cc/LWA7-A3AQ>] (noting that “If Psaki doesn’t like your question, she doesn’t call on you”).

30. Paul Farhi, *White House and Press Are at Odds Over Plan to Charge Reporters for Coronavirus Testing*, WASH. POST (Feb. 26, 2021, 1:13 PM), https://www.washingtonpost.com/lifestyle/media/white-house-press-covid-tests/2021/02/26/d623f316-7855-11eb-948d-19472e683521_story.html#click=https://t.co/zwiR-wNRwPY [<https://perma.cc/W8SC-6LLZ>].

31. Antia Kumar, *Biden Won’t Release White House Virtual Visitor Logs*, POLITICO (Mar. 1, 2021, 4:30 AM), <https://www.politico.com/news/2021/03/01/biden-white-house-transparency-trump-obama-471868> [<https://perma.cc/J42J-WN4V>].

32. *See id.*

to democracy.³³ The value of this language cannot be overstated. A major lesson of the Trump era is that shifts in tone are followed by stark shifts in treatment, and Biden's steady acknowledgment of the function of a free press sets a crucial baseline for a democracy—sending the message that, despite the inherent press-president tensions, he will recognize and respect the media's role in enhancing his accountability and others should do so, too.

Although President Biden has not spoken much about the press during his first 100 days in office, his administration has clearly reaffirmed the importance of press freedom. Press Secretary Jen Psaki has consistently highlighted the “essential role” of the press.³⁴ During her first press conference, Psaki expressed “deep respect for the role of a free and independent press,” explaining that the Biden Administration and the press share “a common goal” of providing “accurate information with the American people.”³⁵ Psaki has also emphasized the importance of “restor[ing] norms around press access and communication”³⁶ and “rebuild[ing] trust with the American people” by being “as steady and as fact-based” as possible.³⁷ Reporters have noted the Biden Administration's powerful tonal shift, observing that “the White House understands the job of reporters” and respects that they have a role beyond parroting the talking points of the president.³⁸

The Administration's more press-positive rhetoric has been backed by a demonstrable commitment to being more responsive and accountable to the press. Psaki's press briefings feature “civil, if largely unmemorable, exchanges with reporters.”³⁹ The administration has provided increased public access to

33. See, e.g., Meredith McGraw, *Joe Biden Defends Media, Courts From 'Dangerous' Attacks*, ABC NEWS (Mar. 2, 2017, 12:57 AM), <https://abcnews.go.com/Politics/joe-biden-defends-media-courts-dangerous-attacks/story?id=45848276> [<https://perma.cc/L8B4-G2NY>] (quoting President Biden's explanation that, even if some reporters are “lousy,” “[w]e should never challenge the basic truth that an independent and free press is the fundamental element in functions of our democracy”); Rishika Dugyala, *Contrasting Messages From Biden and Trump on World Press Freedom Day*, POLITICO (May 3, 2020, 8:40 PM), <https://www.politico.com/news/2020/05/03/biden-trump-world-press-freedom-day-232808> [<https://perma.cc/P58B-9SFJ>].

34. Steve Inskeep, *Biden's Incoming Press Secretary: Briefings Won't Be a Platform for Right-Wing Spin*, NPR (Dec. 31, 2020, 5:03 AM), <https://www.npr.org/sections/biden-transition-updates/2020/12/31/951452717/bidens-incoming-press-secretary-briefings-wont-be-a-platform-for-right-wing-spin> [<https://perma.cc/UR63-XJKN>].

35. Higgins, *supra* note 2.

36. *Id.*

37. Inskeep, *supra* note 34.

38. @MaggieNYT, TWITTER (Feb. 27, 2021), <https://twitter.com/maggienyt/status/1365764216431509509?s=21> [<https://perma.cc/8PSG-UU9P>] (retweeting @sahilkapur: “A subtle but notable signal from these retweets by Biden's chief of staff that the White House understands the job of reporters”).

39. Aaron Rugar, *No Meltdowns: Jen Psaki's First Briefing as Biden's Press Secretary Was a Breath of Fresh Air*, VOX (Jan. 20, 2021, 8:40 PM), <https://www.vox.com/2021/1/20/22241632/jen-psaki-first-press-briefing-biden-administration> [<https://perma.cc/K8K9-PBCY>]; see also David Smith, *Jen Psaki's First White House Press Briefing Heralds Return to Normality*, GUARDIAN (Jan. 20, 2021, 9:52 PM), <https://www.theguardian.com/us-news/2021/jan/20/biden-press-briefing-jen-psaki-white-house-secretary> [<https://perma.cc/EJ8N-JTFV>].

White House visitor logs⁴⁰ (although with a potentially problematic exception for virtual visits, which have been the “primary mode of interaction” during the pandemic).⁴¹ There is other evidence of efforts to increase candor, transparency, and respect for the press function, including clear information about the President’s medical issues,⁴² the release of a declassified intelligence report on the murder of Saudi journalist Jamal Khashoggi,⁴³ and a pattern of candid, respectful responses to “uncomfortable questions.”⁴⁴ All told, Biden’s first 100 days have been marked with a refreshing and desperately needed return to normality on the press front.

EXPECTING MORE

But a return to normality is simply not enough.⁴⁵ A restoration of typical press-president relations is inadequate to redress the deep and lasting damage of President Trump’s “enemy of the people” rhetoric and the destruction of press freedom norms at home and abroad. President Biden should, of course, take basic steps like holding regular press conferences, taking interviews with journalists from across the political spectrum,⁴⁶ and assuring journalists that their access will not be conditioned on their coverage.⁴⁷

But he must also do even more—re-enshrining press freedoms as a central pillar of democracy. Fairly or unfairly, he has inherited a deeply damaged press-freedom edifice, and herculean efforts will be necessary to mend the structure, restore the goodwill, and reestablish the sense of stability and accountability that come from robust freedom of the press. A larger project to restore damaged constitutional norms and rebuild eroded democratic values falls on Biden’s shoulders in the post-Trump era. It is imperative that press freedom be viewed as a key component of that restoration.

40. Larry Siems, *A Promising Start: The New Administration Takes Steps to Reaffirm Transparency and Press Freedom*, KNIGHT FIRST AMENDMENT INST. AT COLUMBIA UNIV. (Jan. 20, 2021), <https://knightcolumbia.org/blog/a-promising-start> [<https://perma.cc/74ZV-84NM>].

41. Kumar, *supra* note 31.

42. Allsop, *supra* note 20 (“Yesterday, Biden’s doctor said that the president-elect broke bones in his foot while playing with his dog, and the transparency of the announcement drew contrasts with the messaging debacle that followed Trump’s hospitalization with COVID-19 last month.”).

43. See *Declassified Report on Saudi Role in Killing of Jamal Khashoggi*, CNN: POLITICS (Feb. 26, 2021, 2:05 PM), <https://www.cnn.com/2021/02/26/politics/read-unclassified-report-on-jk/index.html> [<https://perma.cc/P9KZ-89BV>].

44. Sullivan, *supra* note 10 (“After interviewing Biden and Vice President-elect Kamala D. Harris last week, CNN’s Jake Tapper reflected, on air, about what a far cry their demeanor was from Trump’s. When asked uncomfortable questions, they didn’t respond with ‘the attack that we in the Fourth Estate have been used to.’ That’s a welcome change.”)

45. Dan Froomkin, *Biden’s Press Secretary Needs to Throw Open the Windows of the White House*, PRESS WATCH (Nov. 19, 2020, 5:16 PM), <https://presswatchers.org/2020/11/bidens-press-secretary-needs-to-throw-open-the-windows-of-the-white-house/> [<https://perma.cc/UA2J-TTVA>] (“[S]imply returning to pre-Trump standards isn’t nearly enough.”); Higgins, *supra* note 2 (“refraining from insulting and delegitimizing reporters on a daily basis is an incredibly low bar”).

46. Froomkin, *supra* note 45.

47. Bruce D. Brown, *Trump Has Amped Up Unprecedented Attacks on Press Freedom. Here’s Biden’s Work Ahead*, MIA. HERALD (Dec. 16, 2020, 2:40 AM), <https://www.miamiherald.com/article247687825.html>.

Press-freedom and transparency-advocacy groups have articulated a wide variety of measures that would advance this critical goal at this critical moment—ways President Biden could go beyond a mere abandonment of the abusive Trump approach to a proactive reclaiming of press freedom as an important American value and a reestablishment of the press as a central American institution.

President Biden could more deliberately spotlight the principle of press freedom by referencing it in a major public address. He did not do so in either his inauguration or his first speech to the joint session of Congress, but should find a significant opportunity soon.⁴⁸ “[S]imply speaking out for [the] value of free press here and around the world” in “a sentence or two”⁴⁹ would punctuate his commitment to this key liberty and show the priority he places on restoring it.⁵⁰ The President should specifically “recognize the critical role that journalists play in providing trusted, accurate and timely information, which people everywhere need in order to hold their leaders accountable”⁵¹ and make clear that it is unacceptable for law enforcement to target journalists with force and arrest.⁵²

More broadly, the President can “ensure that U.S. foreign policy is focused on defending journalists and their rights around the world,” establishing a Special Envoy for Press Freedom “to represent the administration at a high level wherever journalists are under threat,” while the administration “works to rebuild the State Department institutions that traditionally support journalism and press freedom.”⁵³ As Margaret Sullivan has noted, this would “send a loud, powerful message”⁵⁴ of the radically realigned values of the United States in this space. In conjunction with this effort, the administration might “send a directive to U.S. embassies around the world indicating that the defense of press freedom is a foreign policy priority, and empowering ambassadors and other diplomats to take appropriate measures. It should work with Congress to create an Office of Press Freedom within the State Department. It should develop and implement a press freedom curriculum at the Foreign Service Institute.”⁵⁵ Finding ways to make the U.S. an active, global advocate for a free press is critically important at this moment.

Even more importantly, Biden must pair these global efforts with domestic ones—tasking the Department of Justice with protecting journalists’ ability to

48. Caroline Linton, *Biden to Address Joint Session of Congress on April 28*, CBS NEWS (Apr. 14, 2021, 12:58 PM), <https://www.cbsnews.com/news/joe-biden-address-joint-session-congress-april-28/> [https://perma.cc/GZ54-GVQY].

49. Gutterman, *supra* note 1.

50. Joel Simon, *Here’s How Biden Can Restore US Press Freedom Leadership*, COMM. TO PROTECT JOURNALISTS (Nov. 17, 2020, 3:20 PM), <https://cpj.org/2020/11/heres-how-biden-can-restore-us-press-freedom-leadership/> [https://perma.cc/manage/create?folder=41475].

51. COMM. TO PROTECT JOURNALISTS, *supra* note 2.

52. Brown, *supra* note 47.

53. COMM. TO PROTECT JOURNALISTS, *supra* note 2.

54. Sullivan, *supra* note 10.

55. COMM. TO PROTECT JOURNALISTS, *supra* note 2.

rely on confidential sources, “ensur[ing] that federal investigations into news-gathering and reporting are limited,”⁵⁶ and reserving the Espionage Act “for cases of classic espionage, and affirmatively disavow[ing] the use of the Act for the prosecution of journalists, sources, and publishers.”⁵⁷ Offering clarity about “the criteria the Justice Department uses to determine who is protected under its guidelines as well as under secret FBI guidelines governing the use of national security tools against the news media” and “imposing limits on the use of secret surveillance tools in leak investigations”⁵⁸ will protect the flow of information on matters of public concern and signal a renewed commitment to vibrant American freedom of the press. The Biden administration can and should work directly with a coalition of press freedom groups, including the Reporters Committee for Freedom of the Press and the Committee to Protect Journalists, “to address a broad range of domestic press freedom concerns, including the aggressive prosecution of leakers, the harassment of journalists at U.S. borders, and the over-classification of information.”⁵⁹

President Biden can also throw his weight behind a legislative agenda that respects, supports, and sustains the press function. He must recognize the grave systemic threats posed by the decline of local and community journalism and support creative reforms that rebuild a healthy newsgathering landscape while respecting editorial independence.⁶⁰ He should champion efforts to enact a federal shield law and federal anti-SLAPP legislation and “should support enhancements to the Freedom of Information Act and other measures to promote transparency.”⁶¹ His voice from the bully pulpit in support of the work of the press will signal—to the press, to the people, and to the world—that the nation has returned to its firm commitment to the First Amendment principles of press freedom from which it regrettably deviated in the last four years. It will evince a concrete commitment to accommodate and celebrate the work that will sustain democratic accountability in the decades to come.

All told, there is every reason to believe that President Biden rescued the nation from the clutches of a perilous press-freedom emergency. But the work he must do for the country goes beyond a bare rejection of the press-vilifying practices of his predecessor. The damage done was severe, and the consequences threaten to be grave and systemic unless Biden takes bolder action to repair both the perception and the reality of the American commitment to liberty of the press.

56. Brown, *supra* note 47.

57. *A First Amendment Agenda for the New Administration*, KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY (Dec. 9, 2020), <https://knightcolumbia.org/content/a-first-amendment-agenda-for-the-new-administration> [<https://perma.cc/9W24-6PQL>].

58. *Id.*

59. COMM. TO PROTECT JOURNALISTS, *supra* note 2.

60. Steve Waldman, *Curing Local News for Good*, COLUMBIA JOURNALISM REV. (Mar. 31, 2020), <https://www.cjr.org/analysis/local-news-rescue-plan.php> [<https://perma.cc/HYT6-358K>] (outlining governmental actions that might spur structural relief to sustain newsgathering, including IRS decisions on newspaper non-profit status, reforms to bankruptcy and pension law, direct aid to journalists, and government spending on advertising in support of local news).

61. Brown, *supra* note 47.

Regaining what has been lost—the press’s protection, its viability, and its standing in the eyes of the American public—will be no small task and will require efforts from all institutions of civil society, including the press itself. But if President Biden elevates the issue to its rightful position, alongside other efforts to restore the damaged constitutional norms of the era, this critical component of democracy can not only survive, but flourish.