THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK, NY 10036-6689

COMMITTEE ON COMMUNICATIONS AND MEDIA LAW

DAVID A. SCHULZ
CHAIR
200 PARK AVENUE
NEW YORK, NY 10166
(212) 878-8266
FAX # (212) 878-8375

CAROLYN K. FOLEY
SECRETARY
1740 BROADWAY
NEW YORK, NY 10019
(212) 603-6472
FAX # (212) 489-8340

March 17, 2003

Via Facsimile and Regular Mail
The Honorable Michael R. Bloomberg
Mayor, City of New York
City Hall
New York, NY 10007

Hon. Michael A. Cardozo, Esq.
Corporation Counsel of the City of New York
100 Church Street, New York, NY 10007-2601

Hon. Raymond W. Kelly
New York City Police Commissioner
Hon. Stephen L. Hammerman, Esq.
Deputy Commissioner of Legal Matters
New York City Police Department
One Police Plaza
New York, NY 10007

Re: The Right to March in New York City

Dear Mayor Bloomberg, Mr. Cardozo and Commissioners Kelly and Hammerman:

I write on behalf of the Committee on Communications and Media Law of the Association of the Bar of the City of New York to urge the City to change its policies concerning political marches to avoid in the future the significant violation of fundamental rights that occurred when protestors were denied the opportunity to march during the anti-war rally on February 15, 2003.

Whatever the justifications perceived in advance for the position taken by the City, it is now clear that the result was not consistent with First Amendment rights under the U.S. Constitution, nor with the rights protected by Article I, Section 8 of the New York State

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Constitution.[1] The events of February 15 are all the more troubling because the City has rejected all recent permit requests for political marches, suggesting that rights are now being abridged as a matter of unstated policy.

On February 15, millions of people in hundreds of cities around the world engaged in peaceful marches to make their political views known, including more than a million persons in London. Only in New York City was the right to march denied.

Beyond barring participants from marching, and protesting where protest was meaningful, the police violated the rights of many thousands to see, hear, and associate themselves with event speakers. They also impeded and effectively barred what has been estimated as tens of thousands of New Yorkers and visitors who sought to participate from doing so, by an unpublicized practice of barring participants from joining the protest laterally (*i.e.,* walking east from the West Side or from the Lexington Avenue subway stops). For those who did not give up, the result was, ironically, that marches uptown *did* take place on various avenues west of First Avenue – but ad hoc marches, dispersed, unorganized, apart from the main event, and drained of most of their political significance.

Many members of our committee have spoken to people (often elderly) who sought to participate in the antiwar rally on February 15 and arrived to do so from the side streets in the 40s, 50s, or 60s, but were blocked by the police.

The right to march is fundamental. *See, e.g., Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston,* 515 U.S. 557, 568 (1995) (First Amendment protects right to march, and right to march); *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963) (a march "of protest and pride . . . reflects an exercise of . . . basic constitutional rights in their most pristine and classic form."); *Gregory v. Chicago*, 394 U.S. 111, 112 (1969) ("Petitioners' march, if peaceful and orderly, falls well within the sphere of conduct protected by the First Amendment.). Yet, notwithstanding those holdings, the City has since last fall denied *every* application for a political march (while permitting or scheduling cultural marches, including the St. Patrick's Day Parade and the Salute to Israel Parade). If the City has a policy or practice against political marches, it is unconstitutional. *Boos v. Berry*, 485 U.S. 312, 318-19 (1987). A policy of permitting such marches but only in its discretion would be equally unconstitutional. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 131 (1992) ("If the permit scheme "involves appraisal of facts, the exercise of judgment, and the formation of an opinion" . . . by the licensing authority, "the danger of censorship and of abridgment of our precious First

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1 While the U.S. Court of Appeals for the Second Circuit, without opinion, declined to reverse the denial of a preliminary injunction shortly before the February 15 march was to take place, we understand the panel cautioned at oral argument that the denial should not be taken as approving any policy generally denying permits for political marches.

Amendment freedoms is too great" to be permitted") (internal citations omitted). A practice of permitting marches that are not critical of government policy, but forbidding those that are, is barred as well. *Boos v. Barry, supra.*

Also fundamental is the right to engage in political demonstration where doing so is particularly meaningful – that is, where the conjunction between participants and venue makes the political point potent. Before February 15 this right had repeatedly been upheld, including specifically with respect to Harlem, the White House, Constitution Avenue, the Supreme Court, and foreign embassies.[2]

Moreover, the NYPD denied the right to march *anywhere* in City, even though public streets are

> traditional public fora that "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. In such places, which occupy a "special position in terms of First Amendment protection," the government's ability to restrict expressive activity "is very limited."

Boos, 485 U.S. at 318 (citations omitted).

We do not doubt the dangers facing New York (and London, San Francisco, Rome, and other cities at home and abroad). Particularly given the link between those dangers and the foreign policy issues now being debated, this is a time to strengthen and not to limit First

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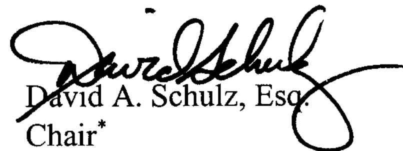
[2] *See, e.g., Million Youth March, Inc. v. Safir*, 155 F.3d 124 (2d Cir. 1998) (affirming preliminary injunction invalidating NYPD's denial of the right to march on Malcolm X Boulevard in Harlem); Quaker Action Group v. Morton, 516 F.2d 717, 2d 717 (D.C. Cir. 1975) (specifically upholding District Court's finding "that the White House sidewalk, Lafayette Park, and the Ellipse constitute a unique situs for the exercise of First Amendment rights"; *Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. District of Columbia*, 972 F.2d 365 (D.C. Cir. 1992), *aff'g Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. District of Columbia*, 751 F. Supp. 216 (D.D.C. 1990) (KKK march along Constitution Avenue from the Washington Monument to the Capitol); *United States v. Grace*, 461 U. S. 171 (1983) (sidewalk at Supreme Court); *Boos v. Berry, supra* (upholding First Amendment right to demonstrate peacefully near foreign embassies).

Amendment rights -- including the right to march, to demonstrate at places that are symbolically meaningful, and to assemble peaceably with others who share the same beliefs and goals. It is more important than ever that the precious rights guaranteed by the First Amendment are not sacrificed in the name of fighting terrorism.

Very truly yours,



David A. Schulz, Esq.
Chair*

* This letter is submitted on behalf of a majority of the members of the Committee as individuals, and not on behalf of their law firms or employers.