



## U.S. Press Freedom Post-9/11

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Before the  
International Commission of Jurists  
Eminent Jurists Panel on  
Terrorism, Counter-terrorism and Human Rights

American University  
Washington College of Law

September 8, 2006

**I**t is almost as humbling to follow a figure such as Floyd Abrams as it is to address such an esteemed panel of jurists, but I will do my best. I would also like to acknowledge our hosts. The International Commission of Jurists is an organization long respected for its comprehensive, on-the-ground reports about the rule of law --or lack thereof-- in many nations. The Washington College of Law is renowned for its expertise on human rights not only throughout this nation, but in Latin America and elsewhere around the world.

The Committee to Protect Journalists or CPJ, on whose behalf I am making this presentation, is a nongovernmental organization, based in New York, which is dedicated to monitoring and defending press freedom globally. CPJ is also an entirely independent organization, meaning we accept no government funds whatsoever. Instead, the Committee is funded exclusively by donations from media organizations, foundations, and individual journalists. The Committee is celebrating its 25th anniversary this year.

For the first two decades of its existence, CPJ rarely focused on cases within the United States. And, when the Committee did so, the cases tended to involve acts of violence against journalists reporting for immigrant communities through non-English language newspapers or other outlets. But that began to change in the wake of "9/11," mainly as the result of actions taken by the U.S. government. Without minimizing the seriousness of our concern about these specific cases, it goes without saying that the United States is hardly the world's worst press freedom abuser. However, precisely because the United States has long been seen as having one of the freest presses in the world, actions taken by the U.S. government to restrict the work of the media resonate around the world and embolden repressive governments who routinely limit reporting on national security issues.

In the aftermath of September 11 and through the invasion of Iraq, CPJ identified a trend among U.S. cases of assaults on source confidentiality, including the prolonged detentions of several U.S. journalists who resisted subpoenas in criminal cases. We also highlighted three categories of attacks on the press: (1) efforts to restrict information aired by U.S.-funded broadcasters, and attempts to persuade both private U.S. television networks as well as at least one foreign broadcaster to restrict the news; (2) attacks by U.S. forces on known foreign media broadcasting sites as well as one hotel with a concentration of international journalists; and (3) the prolonged detention of foreign journalists by U.S. military forces at overseas locations.

The assault on source confidentiality was most evident in what is now an infamous case. The details are

well known, and you have already heard from Mr. Abrams who was counsel to Judith Miller and *The New York Times* in the case. I only wish to add that CPJ was so concerned about the legal rulings in this case and their implications for the ability of journalists across the nation to protect their sources that the CPJ executive director and board members visited Ms. Miller in jail (<http://www.cpj.org/news/2005/USA28july05na.html>) to demonstrate the concern.

But even before she was imprisoned, a U.S. federal judge placed another U.S. journalist under house arrest for 121 days for his refusal to cooperate in another criminal investigation. Jim Taricani, a correspondent for the NBC-affiliated WJAR-TV station in Providence, Rhode Island, was confined to his home rather than imprisoned only due to medical concerns in December 2004 (<http://www.cpj.org/news/2005/USA08apr05na.html>). The judge also barred him from working, giving media interviews, or using the Internet even for personal use.

The same year, 2004, even more journalists were held in contempt in a civil lawsuit in which a scientist formerly employed at a U.S. government laboratory, Wen Ho Lee, alleged that government officials had leaked to the press his confidential personnel files (<http://www.cpj.org/news/2004/USA18aug04na.html>). Although the suit was ultimately resolved, the court rulings in this civil case combined with those the same year in criminal cases also weakened the ability of journalists to protect the identities of sources.

This year, on August 1, a U.S. federal judge in San Francisco ordered a video blogger, Josh Wolf, to jail without bail after holding him in contempt for refusing to hand over a videotape in another criminal investigation. Thirty days later, a federal appeals court released the journalist on bail, saying his argument that he has a common law privilege not to turn over the tape may have merit (<http://www.cpj.org/news/2006/americas/usa01sept06na.html>). The case itself has yet to go to court.

The United States also sought to restrict the press at home and abroad. Less than one month after 9/11, then-U.S. Secretary of State Colin Powell asked the Emir of Qatar to use his influence to rein in Al-Jazeera, the Qatar-based, Arabic-language satellite station funded by the Qatari government (<http://www.cpj.org/news/2001/US04oct01na.html>). The request stemmed from concern about the station's alleged anti-American bias and its repeated airing of a 1998 exclusive interview with Osama bin Laden. It remains unclear what effect, if any, the U.S. request had on Al-Jazeera's reporting.

One week later, on October 10, then-U.S. National Security Advisor Condoleezza Rice asked a group of U.S. television executives to use caution when airing pre-recorded messages from bin Laden and his associates. Rice argued that such statements were at best propaganda and could contain coded instructions to terrorist cells. Network executives agreed to consider editing future bin Laden videotapes to remove language that could incite violence against Americans (<http://www.cpj.org/attacks01/americas01/USA.html>).

Three months after 9/11, the U.S.-funded worldwide broadcaster, Voice of America, issued new guidelines barring interviews from "nations that sponsor terrorism." The change came in response to State Department pressure after an enterprising VOA journalist for the Pashto-language service managed to get an exclusive interview with Mullah Mohammad Omar, the Afghan Taliban leader (<http://www.cpj.org/news/2002/USA17jan02na.html>). The VOA journalist was also forced out of her job.

Some media outlets also came under physical attack from U.S. forces. In November 2001, during the U.S.-led campaign in Afghanistan, a U.S. missile struck the Kabul, Afghanistan bureau of Al-Jazeera. The U.S. military described the building as a "known" al-Qaeda facility without providing any evidence. In response to a CPJ letter to Defense Secretary Rumsfeld (<http://www.cpj.org/news/2002/USA31jan02na.html>), the Chairman of the Joint Chiefs General Richard Myers reiterated the U.S. military had no indications the building was being used by Al-Jazeera, even though the network had been using the building for nearly two years and had mounted several satellite dishes on its roof. More than four years later, in June 2006, the respected U.S. journalist and author Ron Suskind told CNN's Wolf Blitzer that the Kabul attack "was done on purpose, precisely to send a message to Al-Jazeera."

Three more media centers came under attack in Iraq on the same day --April 8, 2003-- during the U.S.-led invasion. U.S. military strikes damaged the Baghdad offices of Al-Jazeera, and the nearby office

of Abu Dhabi TV. Later the same morning, a U.S. tank shell struck Baghdad's Palestine Hotel, a center for international journalists. The April 8 attacks left two journalists dead and three wounded. CPJ asked Secretary Rumsfeld to order an investigation into the attacks (<http://www.cpj.org/protests/03ltrs/Iraq08apr03pl.html>). CPJ later conducted its own investigation of the Palestine Hotel incident ([http://www.cpj.org/Briefings/2003/palestine\\_hotel/palestine\\_hotel.html](http://www.cpj.org/Briefings/2003/palestine_hotel/palestine_hotel.html)). It concluded that, while the attack was not deliberate, it was avoidable.

Finally, the United States has resorted to detaining journalists for long periods without charge, and in one instance, to attempt to recruit a reporter as an informer.

In October 2005, CPJ asked the U.S. military to respond to the allegation that U.S. military interrogators were trying to recruit a detained journalist as a spy. Sami Muhyideen al-Haj is an Al-Jazeera cameraman who was arrested by Pakistani authorities along the Afghan-Pakistani border while on assignment for the network in December 2001. He has since been transferred to the U.S. military facility in Guantanamo Bay, Cuba, and he has been held without being charged for more than four years. In September, *The Guardian* of London reported that U.S. military interrogators allegedly told al-Haj that he would be released if he agreed to become an informant for the U.S. military about Al-Jazeera's activities. U.S. Navy Lt. Cmdr. Chris Loundermann declined to respond to the allegation or to confirm al-Haj's detainment (<http://www.cpj.org/news/2005/USA26oct05na.html>).

When it comes to Iraq, CPJ has many concerns about actions taken by various forces and their impact on the press. Knowing the interest the Commission takes in U.S. actions, I would draw your attention to the following: in the second half of 2005, CPJ documented seven cases in which local reporters, photographers, and camera operators were detained by U.S. forces in Iraq for prolonged periods without charge or the disclosure of any supporting evidence. At least three documented detentions exceeded 100 days, while the others spanned many weeks. The detentions involved journalists working for CBS News, Reuters, the Associated Press, and Agence France-Presse, among others. In September, CPJ sent a letter to Secretary Rumsfeld protesting the detentions (<http://www.cpj.org/protests/05ltrs/Iraq28sept05pl.html>).

The long-term detention of a journalist without charge is typical of many repressive regimes. The arguments made by U.S. forces in Iraq that security considerations were paramount, and that the overloaded judicial system moved slowly, not only echo those made by many of the same regimes. But repressive regimes literally around the world have been pointing to U.S. limitations on the press in the wake of 9/11 to try and justify their own nation's crackdowns on journalists.

On the first anniversary of 9/11, the Committee to Protect Journalists noted ([http://www.cpj.org/Briefings/2002/9-11\\_essay/9-11\\_essay.html](http://www.cpj.org/Briefings/2002/9-11_essay/9-11_essay.html)) how authoritarian governments were already appropriating the rhetoric of the "war on terror" to justify press freedom restrictions. In Russia, a senior advisor to President Vladimir Putin said he planned to study U.S. limitations on reporting about terrorists in order to develop rules for Russian media. In Eritrea and Zimbabwe, authorities began labeling as terrorists journalists who criticize their regimes. By 2005, CPJ noted that the jailing of Judith Miller in the CIA leak case was being used by governments as diverse as those in Venezuela, Cameroon, Nepal, and Egypt to attempt to justify repressive measures against the press in their own nations ([http://www.cpj.org/attacks05/americas05/usa\\_05.html](http://www.cpj.org/attacks05/americas05/usa_05.html)).

The U.S. detentions of journalists as well as many of the other actions described here are troubling in their own right. They also send a troubling message to the world about where to draw the line between security and the right to freedom of expression and the press, particularly in times of war.

Given its tradition of press freedom, it is imperative that the United States stand for the basic right to seek and receive information. Any compromise in these standards not only threatens the work of the press in this country, it potentially emboldens repressive leaders who have adopted the logic of the war on terror to justify restrictions on the media.