



September 8, 2008

Honorable Senator John McCain
John McCain 2008
P.O. Box 16118
Arlington, VA 22215

Dear Senator McCain:

As guardians of democracy, journalists and their rights must be protected around the world—not least in the United States, to which emerging democracies look for guidance, and where free speech is an inalienable right explicitly protected in the Constitution.

Regrettably, this is far from being the case and there is still much to accomplish.

The United States was ranked 48th out of 168 countries in Reporters Without Borders' 2007 Press Freedom Index, meriting only a "satisfactory" grade. This should be unacceptable.

We write to you today seeking your pledge to better protect press freedom.

Specifically, we seek your commitment in condemning acts of aggression against journalists and in eliminating impunity for those who engage in it. We seek your voice in protecting journalists' sources—and their lives when reporting in conflict areas where the US military is involved, such as Iraq and Afghanistan. And we seek your pledge to ensure better access to diverse information and in preserving Net neutrality.

We are enclosing a short report detailing the main press freedom-related issues in the United States and a list of questions we would like you to answer to let the American people know how you plan to improve their right to be informed.

We sincerely hope that we can look to your administration for change from the policies of secrecy, ambiguity and avoidance that have hampered the work of a free press. We are also hopeful that as President you will champion the cause of press freedom and denounce its abuses everywhere, whether those abuses are committed by friends or foes.

Respectfully,

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QUESTIONS TO THE US PRESIDENTIAL CANDIDATES AND BACKGROUND MATERIAL

Reporters Without Borders is asking the US presidential candidates to make a pledge to better protect press freedom in the future. We are asking you to help fight impunity in the murder of an American reporter, to protect journalists' sources and to guarantee that reporters working in areas where the US forces are present, such as Iraq and Afghanistan, are able to pursue information without fear of arbitrary detention. Our organization is asking you to be vigilant with regard to narrow media ownership, the free flow of information on the Internet and access to official information.

IMPUNITY STILL PREVAILS IN THE MURDER OF AN AMERICAN JOURNALIST

Murders of reporters are very rare in the United States but Chauncey Bailey was killed because of his work as a journalist. Bailey, 57, editor of the Oakland Post, was an acknowledged leader of California's Afro-American community. He was gunned down on 2 August 2007.

Five days later, the police arrested Devaughndre Broussard, 19, an employee of Your Black Muslim Bakery, which runs a network of community bakeries, a security company and several schools. Broussard initially confessed to killing Bailey because of his negative articles about the organization. But then he retracted, and pleaded not guilty during his latest court appearance on 24 January. He is still to stand trial.

Those close to Bailey say that prior to his death, he was investigating some allegations of police wrongdoing as well as Your Black Muslim Bakery, and its leader Yusuf Bey IV, who is suspected of being involved in protection rackets, murders and kidnappings. Some press reports have talked of ties of friendship between Bey and Derwin Longmire, the police officer in charge of the Bailey murder investigation.

The justice system has to send a strong signal to those who want to silence the media, and show them that impunity will not prevail. Those responsible for the murder as well as those protecting them must be brought to justice. This is unlikely to happen unless this becomes a federal case.

QUESTION: Will you ask the Attorney General of the United States of America to order an independent investigation in the murder of Chauncey Bailey?

PROTECTION OF SOURCES

In recent years reporters have faced increasing pressure for refusing to reveal their sources. The confidentiality of sources, a cornerstone of investigative journalism, must be respected. Otherwise, the ability of the media to find and provide information to the public as members of civil society is undermined. Subpoenas from federal courts for information that should be protected resulted in the following situations:

- The New York Times' Judith Miller and freelance blogger Josh Wolf spent, respectively, 78 and 224 days in jail, Wolf's being the longest time ever served by an American reporter for refusing to disclose his source.
- A Rhode Island journalist, Jim Taricani, spent a few months under house arrest at the end of 2004.
- Two San Francisco Chronicle reporters, Lance Williams and Mark Fainaru-Wada, and most recently, USA Today reporter Toni Locy were found in criminal contempt of court and sentenced to huge fines for not revealing sources. The San Francisco Chronicle reporters' source eventually came forward and the charges pending against the reporters were dropped. This case was related to sports issues and doping, not to national security, which has been extensively used by the current administration to go after reporters' sources and to justify the spying of American citizens in violation of civil liberties.
- Currently, CBS is fighting a case against the government to protect its newsgathering privilege and Washington Times correspondent Bill Gertz recently went to trial for refusing to reveal sources.

The House of Representatives passed by a vote of 398 to 21 the **Free Flow of Information Act** on 16 October 2007. The Senate Judiciary Committee had passed on October 4 a bill that provides only a qualified privilege to reporters protecting their sources but whose definition of journalists is wider, an act which you publicly endorsed. As you know, it would guarantee confidentiality of sources on a federal level for reporters. Thirty-four states have already adopted shield laws protecting journalists' sources. While we appreciate your support for the bill, your abstention from voting it to the floor and moving to cloture on debate on July 30, allowed Republican senators to block approval of the Act in their attempt to focus the Congress on energy legislation. The bill may go before the Senate again in September, but will otherwise have to await the next legislature in January 2009. It is of the utmost necessity that this bill be passed as soon as possible.

QUESTION: If you are elected President of the United States of America, will you work to protect journalists' sources and newsgathering privilege by supporting the Free Flow of Information Act? Will you pressure Congress to pass an act with the broadest definitions of the information that is protected by the privilege of reporters and those defined as journalists in the Senate and House versions of the bill?

MEDIA OWNERSHIP

Media ownership has continued to narrow as restrictions are loosened and news conglomerates vastly expand. This limits the amount and diversity of information distributed, and endangers Americans' right to be well informed.

In December 2007, the FCC loosened rules regarding cross-media ownership. The reforms allowed television stations and newspapers to merge if they were located within the 20 largest U.S. broadcast markets and there were at least eight independent media outlets remaining in the area. The FCC defended its decision to relax regulations by referencing the ongoing financial problems newspapers are facing. However, in May 2008, the Senate voted to overturn the FCC's ruling, a motion that Senator Obama sponsored. The motion is now pending on the House floor.

Congress seems ready to understand that the FCC's decision would allow a consolidation of media monopolies and endanger media diversity and independent reporting. Even before the FCC's loosening of regulations, we had seen the merger of large media organizations with other non-media corporations – one classic example, the merger of NBC-General Electric and ABC-Disney.

Reporters Without Borders is concerned that media monopolies will be detrimental to reporters' independence and citizens' choice of information sources.

The danger is clear: when fewer and fewer corporations control increasing percentages of the media, the decision of what information the public gets to see lies in the hands of a select few. The crowding out of smaller outlets means that the decrease in competition within the marketplace of ideas gives reporters fewer options for disseminating minority or potentially unpopular points of view, and consumers fewer options for receiving them.

This could result in misinformed citizens incapable of making fully developed decisions. If not handled properly, this issue could put media independence and access to information at risk.

QUESTION: If elected President of the United States will you clarify your position regarding media ownership and pledge to protect a free, independent and diverse media pool?

CONDITIONS OF JOURNALISTS IN AREAS UNDER US FORCES CONTROL

The treatment of journalists working in dangerous areas under US control or where the US forces are present, such as Iraq and Afghanistan, has been deplorable. Members of the media continue to be targets of insurgent groups, with hundreds kidnapped or killed in Iraq and Afghanistan since 2001. U.S. soldiers have not taken the appropriate measures to protect these journalists, and have in many instances become a part of the problem.

In Iraq, at least 72 journalists have been held by the US military, with many detained for months at a time without explanation.

- CBS cameraman Abdul Ameer Younis Hussein was held at Camp Bucca detention center and Abu Ghraib prison for a year
- Cyrus Kar, an American documentary filmmaker of Iranian origin, and his cameraman, were held for 55 days at a US base in Iraq and then released, without charge.
- Associated Press reporter Bilal Hussein was arrested on 12 April 2006 and held for more than two years before all legal proceedings against him were dropped.
- Associated Press cameraman Ahmed Nouri Raziak was released on August 25, after spending 80 days at the US base, Camp Cropper. The US authorities have refused to give any reason for his arrest, but have suggested that it was for reasons of "security."

In Afghanistan, the behavior of US forces towards reporters is similar. The first incidents of reporters roughed up or arrested by the US forces were recorded as early as 2001.

- In 2002, US soldiers threatened and restrained at gunpoint Washington Post correspondent Doug Struck.
- Afghan and foreign journalists are frequently ordered by international coalition forces not to film their activities.
- Jawed Ahmad, Afghan contributor to the Canadian television channel CTV, continues to be held by the US Army, detained since November 2007 at the Bagram air base. He was simply acting on behalf of the news media he worked for. He should be released as soon as possible if no evidence of his alleged "enemy combatant" activity can be produced.

While we understand the need for precise care and caution during wartime, accusations against local reporters suspected of being terrorists cannot be taken lightly. They are too often made because of ignorance of the rules of newsgathering. It is imperative that US forces in both Iraq and Afghanistan understand that journalists must be allowed to do their jobs.

We are also asking the United States to increase its diplomatic efforts in these areas in order to more actively defend freedom of the press, beginning with the situation of women reporters in Afghanistan and the need to fight impunity enjoyed by reporters' murderers in Iraq.

At least 10 women journalists have been attacked in Afghanistan's Herat province alone in recent months. Anonymous callers threatened to kill three women journalists at the

start of this year in Mazar-i-Sharif. One caller said: "Why do you work with the Americans? Take care, you are going to be killed." Unfortunately, the Taliban are not the only ones to target women working in the media. Religious fundamentalists, warlords and local politicians help to create a climate of fear designed to marginalize women in Afghan society.

We also ask you to raise through diplomatic channels the case of Afghan journalist Sayed Perwiz Kambakhsh, aged 23, who was sentenced to death for "blasphemy" in January, despite proof of his innocence.

At least 217 journalists and media assistants have been killed in Iraq since March 2003. Reporters Without Borders has asked the authorities to set up a special task force to investigate murderers of journalists. So far, they have been unable to protect reporters, and some murders preceded by death threats could probably have been avoided. The United States must apply pressure on Iraqi authorities to create this task force as soon as possible.

QUESTION: If you are elected President of the United States of America, will you ensure that the American military halts its arbitrary detention of journalists in US controlled zones and allows as open and broad coverage as possible? Will you use your influence with the local governments to promote the press freedom agenda?

NET NEUTRALITY

Reporters Without Borders is concerned about equal access to information on the Internet and supports efforts aimed at preserving net neutrality. There are numerous challenges being made to Internet freedom, and these challenges must be addressed.

The practice of charging fees for different access speeds to broadband Internet connection undermines the right of people to be informed. In a democratic society, it is unfair to have citizens receive information according to a series of set discriminatory prices that limit access to information based on ability to pay. Net neutrality is the core concept that has made the Internet the open media forum it is, and it must be protected.

The Internet Freedom Preservation Act, sponsored by Congressman Edward Markey, D-MA, who initially supported the late Network Neutrality Act of 2006, is still being discussed on the House floor. A similar bill was referred to the Senate Commerce Committee in January 2007, which Senator Obama sponsored. The act is an attempt to balance the need for complete freedom of access for Internet users and to protect them against harmful content on the web. The Act looks to have the FCC provide assessment and regulatory procedures to ensure that network providers will not interfere with the flow of Internet content.

The Act is still in its early stages and its definitions remain vague. For instance, in section 12(1), the House bill reads, "to maintain the freedom to use for lawful purposes broadband telecommunications networks, including the Internet, without unreasonable interference from or discrimination by network operators, as has been the policy and history of the Internet and the basis of user expectations since its inception."

The text must specify what it considers to be "lawful purposes" and "unreasonable interference" by network providers, or indicate whether a court or the FCC should interpret these terms on a case-by-case basis. By defining these terms more specifically, or assigning an interpreter of the law, we could avoid potential misunderstandings and decision-making based on political interests.

QUESTIONS: In one of your statements during your campaign, you said that you would keep the Internet free of "unnecessary regulations." In your recently released technology policy outline, you stopped short of supporting net neutrality rules and instead voiced expectations that a free market approach would correct disparities in access to information resulting from a two-tier internet system.

Do you believe that a free market approach will do away with this two-tier system that favors companies with enough funding to pay for it? More specifically, if elected, how will you ensure that internet traffic without the benefit of a large bankroll, to which information consumers deserve equal and unfettered access, will not be stifled by preferential relationships with telecommunications companies?

THE RESPONSIBILITY OF IT COMPANIES

American and Western IT companies have been accused in the past of collaborating with repressive regimes' web censors and undermining the free flow of information online.

In April 2005, Chinese journalist Shi Tao was sentenced to 10 years in prison for "divulging state secrets." He simply used his Yahoo! account to send websites based overseas copies of a 2004 memo in which the Chinese government had warned journalists about its concerns over the upcoming anniversary of the Tiananmen Square crackdown. Government officials asked Yahoo! to provide the personal information that was stored in Tao's user account and used it against him, as shown in the court verdict. Yahoo! justified complying with this request by saying they had to obey Chinese law. They thus ignored international human rights standards and regulations.

Reporters Without Borders has supported the Global Online Freedom Act (GOFA) since its birth. Introduced by Representative Chris Smith (R-NJ) in February 2006, it would protect American IT companies from being forced to collaborate with repressive regimes.

The Global Online Freedom Act would prevent repressive governments - those that punish dissidents and human rights activists who exercise their right to online free expression - from accessing personal data through US companies.

The bill would ban companies from locating the servers containing this data and from providing information identifying users, except in cases in which the law is being legitimately applied, to be decided by the US justice department. The US companies would also have to act transparently and transmit information about the type of censorship they apply to an interagency-staffed Office of Global Internet Freedom, which would have the job of defining US government policy for the promotion of the free flow of information online and monitoring violations. A feasibility study of technologies and

equipment's export control would also be made.

The bill promotes the idea of a voluntary code of conduct to be established for companies working in countries with repressive regimes.

GOFA was approved by the House's Foreign Affairs Committee in October 2007 and is now awaiting a floor vote. The Bush administration has voiced its opposition to the bill.

QUESTION: If elected President of the United States of America, will you agree to support the Global Online Freedom Act and to take a public stand in favor of an ethical commitment on the part of companies in the new technologies sector working in countries that do not respect freedom of expression?

ACCESS TO INFORMATION / FREEDOM OF INFORMATION ACT

In December 2007, President Bush signed a law approving amendments to the Freedom of Information Act (FOIA), improving citizens' access to government documents by promising to offer them in a timely manner and with fewer obstacles.

However, the approval of these amendments came after the administration had already circumvented citizens' right to access federal documents, the most known example being the series of videos destroyed by the CIA which allegedly showed terrorist suspects being tortured. The very existence of Guantanamo Bay, a legal and humanitarian scandal, has been undermining the image of the United States and its credibility abroad. Al Jazeera's cameraman Sam al-Haj was released in May 2008 after six years of detention without having been proven guilty of anything.

Reporters Without Borders welcomed the approval of the amendments to FOIA. However, the organization was disappointed that the administration delayed a decision on this matter while hiding information from the public eye. Also troubling was the decision by the Bush administration, just weeks after the amendments were approved, to transfer funding for the Office of Government Information Services (OGIS)—the office established to process FOIA requests—from the National Archives to the Justice Department. Shifting FOIA responsibilities from the National Archives to the federal agency responsible for litigating FOIA disputes constitutes an inherent conflict of interest and does not promote confidence in the administration's assurances of greater governmental transparency.

The secrecy with which the administration has conducted so many of its operations has significantly diminished the public's confidence in the Executive Office. In the past seven years, the administration has expanded its ability to withhold information in the name of "national security." Even agencies as seemingly apolitical as the Department of Health and Human Services have been granted greater powers to classify their work. President Bush's refusal, citing executive privilege or control, to release documents and information sought by Congress and journalists and deemed public by the courts has undermined the ability of the public to hold its government accountable for its decisions related to domestic and foreign-policy issues, most notably the war on terrorism.

QUESTION: Now that the FOIA has been signed into law by President Bush, what will you do to see that it is enforced?

A BOLD OPPORTUNITY

This historic presidential election which, by all accounts, has promoted change and a new direction for the United States as its central theme, offers an exciting opportunity, also, to reinforce the important role that a free press plays in our country. Recent years have proven that even in the United States, where we take pride in guarantees of personal freedoms including freedom of expression and press, those rights are nonetheless vulnerable to incursion if we are not vigilant and active in protecting them. By taking a firm public stance on this issue, and assuring the American public that freedom of the press will be vigorously guaranteed under your administration, you have the chance to set an example for the world by setting the United States apart as a foremost promoter of one of the most critical elements of an open and flourishing democracy.

Reporters Without Borders, journalists from the US and abroad, and the American people, are looking forward to hearing from you about this important issue.