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HOMEFRONT CONFIDENTIAL

How the U.S. Government Has Undermined Journalists' Ability to Cover the War on Terrorism

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War coverage blankets the nation's airwaves and newspapers every day, giving the impression that Americans know or can know almost all there is to understand about the United States's involvement in the conflict in Afghanistan. But how much information does the public really have? Consider:

- The escalation of U.S. forces before the October 7 attacks on Afghanistan generally occurred without a media presence. When bombing strikes began, reporters watched from afar, with only a few enjoying a vantage point within Afghanistan itself and none with troops in active combat.
- Pentagon officials denounced reports of a late-night raid on October 19 involving U.S. Army Rangers and other special forces near Kandahar, particularly an account from Seymour Hersch in a *New Yorker* article that detailed the mission as a glorified failure. Yet officials still

decline to offer details.

- Press restrictions early in the war constrained coverage so much that American reporters learned second-hand about the fall of Mazar-e-Sharif, a strategic city because of its airfields and roads to Uzbekistan where U.S. troops were based. Other raids and victories transpired without independent witnesses.
- The Defense Department continually refuses to field difficult questions concerning the January 24, 2002, raid at Oruzgan, where Afghan residents claim that U.S. Special Forces beat, shot, and killed men without giving them a chance to surrender.

These issues raise important questions about the ability of a free press to cover a profoundly important national and international initiative. This article will discuss restrictions on two fronts. First, it will assess the state of access on the Afghanistan front. Second, it will assess the equally important issue of secrecy on the homefront.

Lack of Access to the Battlefield

Defense officials describe the war in Afghanistan as a different kind of war, one that the Pentagon often describes as a war with multiple battles along multiple fronts and possibly against multiple and sometimes unknown enemies. For

journalists, that's become code for "restricted access."

"We are in a whole new world here," Assistant Defense Secretary Victoria Clarke told Washington bureau chiefs during a September 28 briefing. "We're trying to figure out the rules of the road. We are trying to figure out how to work with you, how to make sure you get what you need . . . while protecting the national security and the safety of the men and women in uniform."

Journalists had heard this talk before, more than eleven years ago as American forces limited press access during parts of the Persian Gulf War. Corralled into pools and daily briefings, reporters later said they felt the Gulf War was remarkably uncovered. As with the Persian Gulf, this new war arena, the deserts and mountains of Afghanistan, offered little hope of easy access to those reporting the war to the world.

Compromises with the Pentagon during peacetime have not stuck. A post-Gulf War agreement—a nine-point statement of principles forged in 1992—designated open coverage, not pools, as the default coverage system during wartime.¹

If journalists had hoped that such an agreement would stand, they were quickly disappointed. Despite personal assurances from Defense Secretary

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Donald Rumsfeld that the war in Afghanistan would not go without press coverage, the U.S. military launched a full-scale attack on terrorist camps and bunkers in the heart of Afghanistan without acknowledging the 1992 agreement or crafting a new formal arrangement to take its place.

Six months later, the rules remain unclear. Like their predecessors in the Persian Gulf War and the invasions of Panama and Grenada, the press covering the war on Afghanistan continually finds itself at the mercy of the Pentagon.

Obstacles to Coverage

Perhaps surprisingly, American reporters have always been free to go into Afghanistan, although at the risk of being captured or killed by the Taliban. In order to stay relatively safe, journalists must travel with the military, and in 1992, the Pentagon promised to offer pool transportation to military units, create information centers, or include reporters with U.S. troops. But the Pentagon did not improve reporting conditions much during the opening months of the Afghanistan war.

The buildup of American and alliance forces along the Afghanistan border following September 11 generally occurred without the media. When America unleashed its first wave of attacks on October 7, only a handful of journalists enjoyed a vantage point within Afghanistan. Although Pentagon officials allowed forty journalists to join military forces on the U.S.S. Enterprise and two other warships, those ships were incidental to the strikes at hand and journalists faced restrictions on what they could publish.

In effect, most American broadcasters and newspaper reporters scratched out coverage from Pentagon briefings, a rare interview on a U.S. aircraft carrier or a humanitarian aid airlift, carefully selected military videos, or leaks. Although they persuaded military officials to increase the number of briefings to as many as a dozen a week, they seldom scored interviews with troops or secured positions near the front during the early months of the war.

The truth is, the American media's vantage point for the war has never been at the front lines with American troops. On the occasions that reporters neared the battlefield, they were threatened with

arrest, confiscation, or even death, sometimes even by American troops.

For example, *Washington Post* reporter Doug Struck claimed that an unidentified U.S. soldier threatened to shoot him if he went near the scene of a U.S. Hellfire missile strike in Afghanistan in mid-February. Defense officials denied that a troop leader would knowingly threaten an American citizen, stating that it was likely the officer was merely trying to protect the reporter. In interviews, Struck called such an explanation "an amazing lie" and evidence of the "extremes the military is going to keep this war secret, to keep reporters from finding out what's going on."

The Defense Department continually either avoids answering questions or offers misleading answers about completed missions, including the October 19 Army Rangers raid on Kandahar or the January 24 Special Forces raid at Oruzgan. After the start of bombing, the Pentagon limited access to U.S. troops to such a degree that journalists had to base dispatches on the fall of Mazar-e-Sharif and other Taliban strongholds on secondhand reports.

Perhaps the most outrageous slight to press access occurred on December 6, when Marines locked reporters and photographers in a warehouse to prevent them from covering American troops killed or injured by a stray bomb north of Kandahar. The Pentagon later apologized, but the damage had been done. The press had to resort to accounts filtered through military sources. In other situations, the press accused U.S. military officials and soldiers of encouraging Afghan fighters to seize photos and digital images from photographers and occasionally deceiving the public about military operations.

Journalists have faulted the Pentagon for ignoring the 1992 agreement. In an October 17 letter to Defense Secretary Rumsfeld signed by a variety of media organizations, journalists urged him to activate pool coverage, place reporters among troops, and pressure allies to grant visas to American journalists covering the war. They finally got a break on November 27, when reporters from the Associated Press, Reuters, and the Gannett newspaper chain became the first to accompany U.S. troops in the war. The reporters followed a Marine unit to a military airstrip in southern Afghanistan.

On December 13, Press Secretary Clarke unveiled "The Way Ahead in Afghanistan," a memorandum that is the Pentagon's closest statement to acknowledging the 1992 agreement.² The memo briefly outlined the Pentagon's effort to open three coalition press information centers in Mazar-e-Sharif, Bagram, and Kandahar. Each center was to have between five and ten staff members charged with helping journalists get interviews, photographs, and other information covering the war. The Pentagon declared the end of pool coverage on December 27.

That was too little, too late. Most reporters and troops had already left Mazar-e-Sharif and Bagram. And there remains poor access to troops stationed in Uzbekistan and Pakistan because of what the Pentagon calls "host country sensibilities." At the end of February, the Pentagon quietly began allowing a handful of American journalists to join U.S. ground troops in active combat. Reporters joined the troops in eastern Afghanistan so they could witness assaults on suspected al Qaeda and Taliban fighters who had regrouped near the town of Gardez. Rumsfeld announced on March 4 that the reporters

About the Reporters Committee

The Reporters Committee for Freedom of the Press was created in 1970 in response to *Branzburg v. Hayes* and other cases in which reporters were asked to disclose confidential sources. The Committee's primary mission is to serve working journalists. It has also evolved into a major national and international resource on free speech issues, disseminating information in a variety of forms, including a quarterly legal review, a biweekly newsletter, a twenty-four-hour hotline, and various handbooks on media law issues.

This article is based on one section of the Committee's white paper published on March 15, 2002, that focuses on newsgathering restrictions imposed during the war on terror. The full report, *Homefront Confidential: How the War on Terrorism Affects Access to Information and the Public's Right to Know*, may be downloaded at www.rcfp.org.

joining the operation agreed to withhold filing their reports until U.S. military officials give them permission.

By then, the war was 149 days old.

Development of War Coverage

Many Pentagon officials consider the Persian Gulf War to be among the best-covered wars in history, noting considerable real-time coverage from CNN and pages and pages of news during the two-month conflict. But it took months and sometimes years of persistent questioning and research by the press for Americans to learn that most U.S. casualties during the war were due to friendly fire, and that the so-called smart bombs were successful less than 20 percent of the time.

Real-time coverage surfaced again during the Afghan war. But journalists fear that too many of the most important details of the war unraveled outside the view of independent observers and, thus, might never be revealed to the public. Journalists often make convincing arguments about the importance of coverage and the right to know what the U.S. government is doing in the name of American citizens. The Department of Defense, too, has recognized the importance of informing the public and, as official policy, requires its officials to provide maximum access to the press whenever security concerns allow it.

But the actual practice of granting access developed informally over the years, mostly evolving with each new conflict and rarely changing in peacetime. During World War II, censorship ran rampant, but journalists, often wearing uniforms and traveling with active units, enjoyed incredible access to troops and commanders. The Office of War Information and Office of Censorship gave explicit instructions on what journalists could not include in their reports, including troop size, location, and movement. The military lifted almost all journalistic restrictions during the Vietnam War and regularly provided transportation to reporters and photographers. For the military, however, the war turned into a public relations nightmare, leaving officials to swear that they would never let reporters enjoy as much freedom covering combat again.

The October 5, 1983, invasion of Grenada dramatically changed the media-military dynamic. When troops invaded the island, journalists were not

there to document it. The Pentagon restricted all access to Grenada for twenty-two more days even though the actual invasion lasted less than forty-eight hours. The treatment irked the press corps, which demanded immediate changes. A commission, led by retired Maj. Gen. Winant Sidle, determined that while open coverage of conflict would be the preferred method, a pool of reporters would be acceptable and, at times, desirable in covering early stages of combat or surprise attacks. The 1989 invasion of Panama offered few assurances that things had changed. The Pentagon activated the press pool too late to cover the launch of attacks and then hemmed in reporters for the first two days of action in that conflict, keeping them from the front lines.

After the Persian Gulf War, reporters demanded more changes. The resulting nine-point statement of principles signed by the Pentagon and news media representatives on March 11, 1992, stated that "open and independent reporting will be the principal means of coverage of U.S. military operations." The new principles allowed the Pentagon to establish credentials for journalists, organize pools in limited and extreme circumstances, and eject those who fail to adhere to ground rules. The principles also called for the military to provide transportation and information centers for the press whenever possible.

But it was clear that the agreement was tenuous. In signing the agreement, Pentagon officials stated that the department "believes that it must retain the option to review news material, to avoid the inadvertent inclusion in news reports of information that could endanger troop safety or the success of a mission." The press, in turn, wrote: "We will challenge prior security review in the event that the Pentagon attempts to impose it in some future military operation."

Legal Precedent

For the most part, the conflicts between the media and the military avoid the courtroom. Perhaps that is best for the press. In the few instances such matters came before a judge, courts have not forced the Pentagon to accept journalists on the battlefield.

The first notable case, *Flynt v. Weinberger*,³ came more than eight months after the Grenada invasion. *Hustler* publisher Larry Flynt challenged the Pentagon's decision to pro-

hibit press coverage during the initial stages of the invasion. A federal judge granted the Pentagon's motion to dismiss on June 21, 1984, determining that the case was moot because the coverage Flynt sought was granted by Defense officials on November 7, 1983.

The judge also refused to impose an injunction on future efforts by the Pentagon to restrict coverage. The judge wrote that the invasion of Grenada, like any other military event, is unique and that Flynt could not show that such a press ban would be imposed in the future. And court action, the judge suggested, might raise separation of powers issues if the judiciary branch attempted to restrict the executive branch on conflicts yet to occur:

An injunction such as the one plaintiffs seek would limit the range of options available to the commanders in the field in the future, possibly jeopardizing the success of military operations and the lives of military personnel and thereby gravely damaging the national interest. A decision whether or not to impose a press ban is one that depends on the degree of secrecy required, force size, the equipment involved, and the geography of the field of operations.⁴

The Federal Circuit Court remanded the decision with instructions to the district court that it simply deem the matter moot.⁵

Another federal district court in New York City on April 16, 1991, similarly dispensed with a lawsuit brought by the *Nation*, the *Village Voice*, and other media plaintiffs concerning restrictions imposed during the Persian Gulf War.⁶ Although the *Nation* filed the lawsuit on January 10, 1991, before the actual war began, the court decided the case after the Pentagon lifted press restrictions on March 4, 1991. But in rendering the case moot, the court said "the issues raised by this challenge present profound and novel questions as to the existence and scope of a First Amendment right of access in the context of military operations and national security concerns."⁷ This was not the case to determine the answers to those questions, the court said. "We conclude that this Court cannot now determine that some limitation on the number of journalists granted access to a battlefield in the next overseas military operation may not be a reasonable time, place, and manner restriction, valid under the First and Fifth Amendments."⁸

Most recently, a federal court in the D.C. Circuit decided on January 8,

2002, not to impose a restraining order against the Pentagon for its press restrictions. *Flynt v. Rumsfeld*⁹ was the publisher's second war-related suit against the Pentagon. The court said Flynt "was not likely to suffer irreparable harm" and that he and other publishers enjoyed some access to the war despite the restrictions. The court noted, too, that circumstances had changed since Flynt filed his lawsuit and that open coverage was in place in Afghanistan. Again, the court said such an injunction might be justified in another case.

To increase the media's chances of success, major news organizations that actively maintain Pentagon and foreign coverage during peacetime could seek satisfaction after being excluded from press pools or other coverage. But major news organizations historically bargain with the Pentagon at the onset of invasions to avoid rolling the dice in courts or alienating the officials who maintain the pool.

Even though direct challenges to restrictions on wartime reporting have not succeeded, there is precedent to support such actions by the media. Perhaps the strongest case for the press on military matters is *New York Times v. United States*,¹⁰ the U.S. Supreme Court case holding that the publication of the Pentagon Papers could not be restrained by the government on national security grounds. But the case is one on prior restraint, not right of access. Presumably, if the press gained access to the battlefield and collected information, the government would bear the burden of showing that strong and compelling national security issues require halting publication.

The courts have not historically recognized that the press enjoys a right of access to battlefields and troops. As the U.S. Supreme Court said in the 1971 case of *Pell v. Procunier*:

It is one thing to say that the government cannot restrain the publication of news emanating from certain sources. It is quite another to suggest that the Constitution imposes upon the government the affirmative duty to make available to journalists sources of information not available to members of the public generally.¹¹

Indeed, attempts to make the argument about right of access place a strong burden on the press, not the government. The press lost an argument on military access in 1996 before a federal district court and then before the D.C.

Circuit Court. In *JB Pictures Inc. v. Department of Defense*,¹² a group of photographers and veterans contested restrictions the Defense Department had placed on picture-taking at Dover Air Force Base, the main military mortuary for soldiers killed abroad. The court agreed to hear the case because the policy is ongoing, not temporary, such as restrictions during wartime. The court determined that the government had sufficient interest to limit access to the base to reduce the hardship of grieving families and to protect their privacy. The court further stated that it could not rule on whether the policy prohibited groups from speaking on base because the plaintiffs did not raise such a claim.

Pentagon Reports and Codes

Case law aside, the press can cite the Pentagon's reports and regulations as compelling arguments for open coverage during war time.

Released on August 23, 1984, the Sidle panel report documented the findings of a Pentagon-sanctioned committee studying press restrictions in Grenada and recommended the creation of a press pool. The Pentagon, as a result, established the Department of Defense National Media Pool, a cadre of journalists from the leading news organizations ready to cover the early stages of conflicts provided they agree to security restrictions and share their reports with nonpool members.

After the invasion of Panama, the Pentagon commissioned Fred Hoffman, a former Pentagon correspondent for the Associated Press, to review press restrictions in that conflict. Hoffman found that an excessive concern for secrecy by the Pentagon and then-Secretary of Defense Dick Cheney destroyed the effectiveness of the pool and slowed the transition from pooled to open coverage.

The 1992 agreement drafted after the Persian Gulf War was codified first on March 29, 1996, and then again on September 27, 2000, by the Defense Department with some minor rewrites as part of its policy on "Principles of Information."¹³ With this in mind, press advocates could argue that the Pentagon violates its own regulations in keeping reporters from conflicts.

But because agreements between the media and the Pentagon seem tenuous at best, perhaps the answer for access

might be legislation. Congress itself felt the brunt of George W. Bush's administration's penchant for secrecy early in the war as the White House declined to reveal details of homeland security and other war matters. Persuading Congress to recognize a media right of battlefield access would not be easy, but an argument would be quite compelling. The case for ensuring press access to combat zones and troops can be based on four important points:

1. Press access should not pose a risk to national security.

Pentagon officials and Congress should note that journalists have a long history of keeping secrets. During World War II, a dozen journalists joined the Allied forces for the Normandy invasion, agreeing to conditions that they not file their reports until after General Dwight Eisenhower declared the invasion a success. A *New York Times* reporter later in the war rode with the bombing squadron on its way to Hiroshima and waited three days before offering his account of the mission. During the Vietnam War, the Pentagon reported fewer than a dozen serious national security violations because of journalists, mostly from the foreign press. None caused the death of American troops. During the Persian Gulf War, journalists knew of the infamous "left hook" invasion plan but never revealed that the amphibious attack planned for Iraq's Gulf shore was merely a ruse. Even during the present war, reporters, knowing an initial strike was evident in early October, never leaked the news.

2. Reporter safety should not stand in the way of press access.

The Pentagon repeatedly raises reporter safety as an issue whenever it declines to allow journalists access to the battlefield. In the Afghanistan war in particular, military officials have said the combat is just too dangerous for the kind of embedding that occurred in Vietnam and World War II. "It is not a set of battle lines, where Bill Mauldin and Ernie Pyle can be with troops week after week after week as they move across Europe or even across islands in the Pacific," Rumsfeld said on March 4. "This is a notably different activity. It's terribly untidy." But war correspondents understand "untidy." In conflict after conflict, they willingly risk their lives to tell the

An Essential Bibliography of Wartime Resources

Access to Troops and Combat Areas

1. Pentagon's "Way Ahead in Afghanistan" memorandum is available at *Flynt v. Rumsfeld*, Civ. No. 01-2399 (D.D.C., Jan. 8, 2002) and at www.defenselink.mil/news/Dec2001/d20011213media.pdf.
2. *Flynt v. Weinberger*, 588 F. Supp. 57 (D.D.C. 1984)
3. *JB Pictures Inc. v. Defense Dep't*, 86 F.3d 236 (D.C. Cir. 1996)
4. *Nation Magazine v. Defense Dep't*, 762 F. Supp. 1575 (D.D.C. 1991)
5. *New York Times v. United States*, 403 U.S. 713 (1971)
6. *Pell v. Procunier*, 417 U.S. 817 (1974)
7. The Department of Defense's "Principles of Information," DoD Directive 5122.5 (Sept. 27, 2000), can be found at www.defenselink.mil/admin/prininfo.html.
8. The original 1992 nine-point statement of principles signed by Pentagon officials and news media representatives can be found in Appendix IV of the Freedom Forum report *America's Team: Media and the Military*, located at www.freedomforum.org/templates/document.asp?documentID=13999.

Military Tribunals

1. Application of Yamashita, 327 U.S. 1 (1946)
2. *Courtney v. Williams*, 1 M.J. 267 (1976)
3. *Duncan v. Kahanamoku*, 327 U.S. 304 (1946)
4. *Ex Parte Milligan*, 71 U.S. 2 (1866)
5. *Ex Parte Quirin*, 317 U.S. 1 (1942)
6. *Ex Parte Vallandigham*, 68 U.S. 243 (1863)
7. *Johnson v. Eisentrager*, 339 U.S. 763 (1950)
8. *Madsen v. Kinsella*, 343 U.S. 341 (1952)
9. *O'Callahan v. Parker*, 395 U.S. 258 (1969)
10. *United States v. Grunden*, 2 M.J. 116 (C.M.A. 1977)
11. *United States ex rel. Toth v. Quarles*, 350 U.S. 11 (1955)
12. President Bush's first Military Order authorizing military tribunals can be found at "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 *Federal Register* 57833 (November 16, 2001).
13. The Pentagon's revised rules for military tribunals can be found at www.defenselink.mil/news/Mar2002/n03212002_200203213.html

Access to Immigration and Terrorism Proceedings

1. The complaint in the Michigan case seeking access to immigration proceedings, *Detroit News v. Ashcroft*, can be found online at www.aclu.org/court/haddad.pdf. Judge Edmunds's opinion striking down secret immigration hearings can be found at www.mied.uscourts.gov/_opinions/edmunds.htm.

2. The complaint in the New Jersey case seeking access to identities of detainees held in New Jersey jails is online at <http://www.aclu.org/court/creppy.pdf>.
3. The memorandum from Chief Immigration Judge Michael Creppy ordering secret immigration hearings for detainees is available at www.aclu.org/court/creppy_memo.pdf.
4. Advice on how to cover terrorism-related legal proceedings can be found in *Secret Justice: Access to Terrorism Proceedings*, www.rcfp.org/secretjustice/terrorism.

USA PATRIOT Act

1. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272. A text of the bill is available at <http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.3162.ENR>:
2. Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801-1811, 1821-1829, 1841-1846, 1861-1862.

Freedom of Information

1. The text of Attorney General John Ashcroft's memorandum outlining Freedom of Information Act policy is available at www.usdoj.gov/oip/foiapost/2001foiapost19.htm.
2. The text of Attorney General Janet Reno's FOIA policy directive can be found at www.fas.org/sgp/clinton/reno.html

Website Takedown

1. OMB Watch's page monitoring government sites that have been taken down can be found at www.ombwatch.org/article/archive/104/
2. The Electronic Frontier Foundation's antiterrorism page can be found at www.eff.org/Privacy/Surveillance/Terrorism_militias/antiterrorism_chill.html.

Presidential Records Act

1. *American Historical Ass'n v. National Archives*, Civ. No. 01-2447 (D.D.C. Nov. 28, 2001)
2. Presidential Records Act of 1978 (44 U.S.C. §§ 2201 *et seq.*)
3. Executive Order 12667, "Presidential Records," 54 *Federal Register* 3403 (January 18, 1989)
4. Executive Order 13233, "Further Implementation of the Presidential Records Act," 66 *Federal Register* 56025 (November 5, 2001)

world the truth about events, as the unfortunate deaths of *Wall Street Journal* reporter Daniel Pearl and eight other journalists during this war demonstrate.

3. Open coverage should not be prevented because of logistics.

A new war brings new rule and concerns. The Pentagon claimed in both the Persian Gulf War and the current conflict that the unique circumstances of modern warfare preclude open coverage in the early stages of a conflict. But one only has to look at the intermediate conflicts in Somalia, Haiti, and Kosovo to see that open coverage can and does work. And few reporters and military officials, if any, complained about coverage or the treatment of the news media during those conflicts.

4. The public has a right to know.

Most importantly, the American people have a right to know what is being done on their behalf. They have a right to see the atrocities of war, not for a sick fascination, but for the benefit of understanding what the war in Afghanistan entails and, if they wish, to change their minds about supporting it. Without this right to know, the real casualty of war is knowledge—whether we will really ever know what is happening in Afghanistan.

Increasing Homefront Secrecy

In the days immediately following September 11, the U.S. government embarked on a path of secrecy unprecedented in recent years. Public officials abandoned this country's culture of openness and opted for secrecy as a way of ensuring safety and security. The administration of President George W. Bush announced a variety of actions designed to restrict information from reaching the public, including:

- directive to agency heads by Attorney General John Ashcroft that changes the interpretation of the federal Freedom of Information Act to allow the agencies to deny access more often to public records if a claim of invasion of privacy or a claim of

breach of national security can be alleged.

- A proposal for secret prosecutions of non-American citizens by military tribunals.
- Secret imprisonment of more than 1,200 non-American citizens on alleged claims of immigration violations or as material witnesses.
- Orders to numerous executive agencies to pull basic government information from their websites.

Needless to say, each of these actions has made it considerably more difficult for journalists to cover the war on terrorism. Other actions, such as the executive order governing the release of Ronald Reagan's White House records that circumvents the Presidential Records Act and illegally limits access to records, have compounded the overall culture of secrecy.

The FOIA directive and the executive order on presidential papers probably would have happened even without the terrorist attacks on September 11. Actions taken to date by the Bush administration leave little doubt that it believes, far more than other recent presidential administrations, in the power of the executive office to control all executive branch information. Other actions, however, such as the secrecy imposed on immigration courts, would have been unthinkable before September 11.

No one has demonstrated that an ignorant society is a safe society. While some information logically should be withheld because it could pose a direct threat to American ground forces or could tip off terrorists that they are under surveillance, citizens are better able to protect themselves and take action when they know what they are facing.

In the months since the initial round of actions surrounding September 11, calmer heads have begun to prevail—largely because the courts and civil liberties organizations have had time to intervene. Information has been restored to some government websites. The Bush administration, under considerable pressure from the American Bar

Association, among others, announced revised rules for military tribunals that appear to allow for public access. Recent military offensives have included media coverage. After a lawsuit was filed by the Reporters Committee and others, the National Archives released nearly all of the Reagan papers.

Perhaps more importantly, American citizens seem less frightened by the specter of terrorism and more determined to maintain the rights and liberties they have worked so hard to achieve. They have started to object to the secret imprisonment of witnesses and immigrants. In fact, courts in New Jersey and Michigan recently have ruled the Justice Department's failure to allow public access to immigration proceedings and the identities of detainees is unconstitutional. Americans are asking hard questions about airline security and about the consequences of American attacks in Afghanistan. Increased secrecy by the federal government does not serve these goals. 

Endnotes

1. The 1992 statement of principles signed by Pentagon officials and news media representatives can be found in Appendix IV of the Freedom Forum report *America's Team: Media and the Military*, located at www.freedomforum.org/templates/document.asp?documentID=13999.
2. The Pentagon's "Way Ahead in Afghanistan" memorandum is available at *Flynt v. Rumsfeld*, Civ. No. 01-2399 (D.D.C., Jan. 8, 2002), and at www.defenselink.mil/news/Dec2001/d20011213media.pdf.
3. 588 F. Supp. 57 (D.D.C.1984).
4. *Id.* at 60 (Gasch, J.).
5. 762 F.2d 134 (D.C. Cir. 1985).
6. 762 F. Supp. 1558 (D.D.C.1991).
7. *Id.* at 1561.
8. *Id.* at 1562.
9. Civ. No. 01-2399 (D.D.C., Jan. 8, 2002).
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