

Railroading A Journalist In Iraq

By Tom Curley

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At long last, prize-winning Associated Press photographer Bilal Hussein may get his day in court. The trouble is, justice won't be blind in this case – his lawyer will be.

Bilal has been imprisoned by the U.S. military in Iraq since he was picked up April 12, 2006, in Ramadi, a violent town in a turbulent province where few Western journalists dared go. The military claimed then that he had suspicious links to insurgents. This week, Editor&Publisher magazine reported the military has amended that to say he is, in fact, a “terrorist” who had “infiltrated the AP.”

We believe Bilal's crime was taking photographs the U.S. government did not want its citizens to see. That he was part of a team of AP photographers who had just won a Pulitzer Prize for work in Iraq may have made Bilal even more of a marked man.

In the 19 months since he was picked up, Bilal has not been charged with any crime, although the military has sent out a flurry of ever-changing claims. Every claim we've checked out has proved to be false, overblown or microscopic in significance. Now, suddenly, the military plans to seek a criminal case against Bilal in the Iraqi court system in just days. But the military won't tell us what the charges are, what evidence it will be submitting or even when the hearing will be held.

Not that former federal prosecutor Paul Gardephe, Bilal's attorney, hasn't asked. The conversation went pretty much like this:

When will the court hold its first hearing? Sorry, can't tell you, except it will be on or after Nov. 29. Since we're trying to be cooperative, we will let you know the exact date at 6:30 a.m. the day of the hearing, if you're in Baghdad by then.

What will Bilal be charged with? Sorry, can't tell you. The Iraqi judge who hears the evidence is the one who decides what charges will be filed.

What evidence will the judge be basing that decision on? Sorry, can't tell you. In the Iraqi court system, we don't have to show our specific evidence until after we file the complaint with the court.

Will Bilal be allowed to present evidence refuting your evidence that we can't see in advance? We don't know. He might be. Ask an Iraqi lawyer if you don't know how this works.

It's almost like a bad detective novel: Go to the phone booth at Third and Jones at 6:30 in the morning and wait for a call for further instructions. How is Gardephe to defend Bilal? This affair makes a mockery of the democratic principles of justice and the rule of law that the United States says it is trying to help Iraq establish.

A year ago, our going to trial would have been good news. But today, the military authorities who created the case against Bilal have largely been rotated out of Iraq. Witnesses and evidence that Bilal may need would also be much harder to find, even if there were time to track them down. Further, if Bilal wins, he could still lose: The military has told us that even if the Iraqi courts acquit Bilal, it has the right to detain him if it still thinks he is an imminent security threat.

Meanwhile, Gardephe has learned that his client was subjected to interrogation just a few weeks ago, more than 16 months since he was last interrogated, presumably to obtain evidence to use against him in the upcoming trial. The interrogation violates Bilal's right to counsel in Iraq, as it would in the United States.

Gardephe's efforts to find out more about his client and the upcoming hearing in Baghdad have been equally fruitless. The only military people talking to him are press officers.

The Iraqi legal system traces its roots to the dawn of human civilization, and we are confident that it will do its best with this troubled case. But it takes nothing away from the competence and impartiality of Iraq's judiciary to protest what is about to happen to Bilal Hussein.

After months of stony silence, except for leaks of unsupported and self-serving allegations to friendly media outlets, military authorities are railroading Bilal's case before a judge in circumstances designed to put Bilal and his lawyers at an extreme disadvantage.

Perhaps it is not surprising that the operators of the world's largest prison-camp network have found a way to provide access to due process in a form that actually looks more unjust than indefinite imprisonment without charges.

But this is a poor example – and not the first of its kind – of the way our government honors the democratic principles and values it says it wants to share with the Iraqi people.

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