

# Casualty of war

## Allied coalition, democracy and freedom of information

RON CHEPESIUK

If, truth is the first casualty of war, as the saying goes, then civil liberties is surely the second. That's why, as the U.S. bombs Iraq back into the stone age, many Americans like myself worry about the home front and the threats to basic democratic rights posed by the out-of-control Bush administration's anti-Saddam campaign. Among other developments, the U.S. government has profiled the Muslim-American community, eavesdropped on conversations between people held in detention and their lawyers, and required colleges to provide certain records on foreign students. These measures will certainly intensify as the allied coalition fights a protracted war in Iraq.

But less publicised has been the federal government's bold move to drastically restrict the American's public right to access government information. In a disturbing trend several other Western countries, not coincidentally some of US's closet allies in the Iraq war, are following Uncle Sam's lead and slamming tight their doors to freedom of information.

At the heart of the American democratic system is the basic belief that the American people have a right to information that lets them know what their government is doing. The principle may seem as old as the Republic itself, but actually the move toward codifying an open government policy on information into law happened quite recently. In 1966, the U.S. Congress passed and President Lyndon B. Johnson signed the bill creating the Freedom of Information Act (FOIA). Amended in 1974, the law, which applies only to executive, not legislative records, provides that "any person" has the right to request access to federal agency records or information. "Any person" includes U.S. citizens, permanent resident aliens and foreign nationals, as well as universities, corporations and unincorporated associations, members of Congress and state and local governments. Journalists like myself have been perhaps the biggest beneficiaries of the FOIA.

Under FOIA, a federal agency is required to disclose records upon written request from a citizen. There are nine exemptions and three exclusions to FOIA, which protect certain records from disclosure. People requesting FOIA-related information have the right to go to court to gain access, if necessary.

On its Website, the National Security Archive in Washington, DC, describes FOIA's role: "It has promoted transparency and accountability in government, preventing the creation of secret law behind bureaucratic walls, and witnessing to Justice Brandeis' phrase, that 'sunlight is the best disinfectant.'"

Over the years, the National Security Archive in Washington, DC has become the world's largest nongovernmental library of declassified government documents and the most prolific FOIA user, filing approximately 1000 requests each year. The five million pages of declassified documents that the archive has obtained from the government since 1955 cover practically every major event in the post-World War II period and provide a rich resource of primary material for scholars, journalists, and other researchers. Topics documented include the Bay of Pigs, Cuban Missile Crisis, US relationship with Manuel Noriega, apartheid and South Africa, human rights violations in Central

America, Iran-Contra scandal, and US policy towards China, among others.

Through the years, thousands of journalists, lawyers, historians, activists, and citizens from all walks of life have used the National Security Archive collection or FOIA itself to scrutinise public documents and keep the government on its toes. I used the FOIA to pry from the government valuable intelligence reports produced by the CIA, FBI and DEA and Customs that provided important information for my book, *The Bullet or the Bribe: The Inside Story of the Cali Cartel and Law Enforcement's Biggest Takedown*. Fortunately for me I petitioned the government agencies before October 12, 2001.

An assault on the openness began, however, after the events of September 11 and the U.S.'s War on Terrorism, and it has dramatically changed the access to government

by surreptitious means the big winners, and those who want sunlight shed on government activities the big losers. As Martin E. Halstuk, a media law professor at Pennsylvania State University, pointed out in a *Los Angeles Times* editorial, "This added emphasis on privacy to justify withholding records creates a standard that fosters official secrecy on matters unrelated to national security and law enforcement." In the past decade, executive branch agencies have used privacy concerns to justify rejecting freedom of information requests on a number of issues of public interest.

The US isn't the only Western democracy that has been hard at work undermining the public's right to know in the wake of Sept. 11. The governments of Canada, Australia, and England all have introduced legislative measures, that, if passed, will ensure that elected officials and public ser-

vice of Information Act. But in November, 2001, the Lord Chancellor announced that it may not happen until 2005. British bureaucrats -- the keepers of public records -- claimed that if the Act were implemented in 2002, as originally planned, their agencies would be inundated with requests. English FOI advocates say this is a huge setback for the public and sends a disastrous message to officials: namely, that reforming the country's freedom of information laws is unimportant.

In Australia, meanwhile, legislation was introduced in October 2001 that could ensure that the public is kept in the dark about government activities. If passed, it would lead to the imposition of a staggering \$20 per hour fee on individuals and organisations trying to use FOI laws. The legislation is based on the Commonwealth FOI Act, but that model has seriously damaged the public's right to know. In fact, some

Council, an industry lobbying group, said that "in light of recent events, we believe it would be prudent if the agency reviewed the system by which this information is made available to ensure that all that can be done to protect it from being misused is, in fact, being done." While the EPA ponders, it has removed from its Website the chemical plant risk management plan database on hazards at 15,000 plants nationwide, and each company's prevention and emergency response plan.

Such moves raise questions like -- isn't the release of that type of information in the public interest and wouldn't revealing details on potential environmental hazards improve, not jeopardize, public safety? Apparently, the answers are unimportant, given the primacy of the "war on terrorism."

The official attack on the public's right to know doesn't stop there. In Nov. 2001, President Bush issued an executive order that will limit public access to presidential records and undermine the Presidential Records Act, which was meant to shift power over White House documents from former presidents to government archivists and, ultimately, the public. As Tom Blanton, director of the National Security Archive, put it: "The Bush order attempts to overturn the law, take power back and let presidents past and present delay public access indefinitely." Fortunately, the National Security Archive, Public Interest, the American Historical Association, and several other professional and watchdog groups have filed a lawsuit to block the order. Many such battles lie ahead, as the US and its allies use the War on Terrorism as an excuse to seal the door on open government.

The fact is the Bush administration has not formulated a consistent policy to explain its decisions relating to freedom of information. Most Americans can understand why certain categories of records, such as those relating to nuclear power plants or oil refineries should be restricted to public access. They have a hard time understanding, though, why the resumes and lists of awards of public government officials should be off limits or why all presidential records created from 1980 are now restricted? This is no exaggeration; it has been done. Such arbitrary decisions are creating suspicion and distrust, not confidence, in the federal government. Indeed, many Americans are beginning to wonder: Is the Bush administration making such arbitrary decisions to protect homeland security or to protect government officials and their buddies in the private sector from public scrutiny?

These are vital questions to which the Bush administration needs to provide answers. The government has the responsibility to protect the public interest, but it also has the responsibility to be straight with the American public and not use national security or homeland security as a convenient tool to withhold information that it has no good reason to withhold. Like citizens of democracies everywhere, the American people want to believe the American government, but the leaders of the Bush administration seemed determined to abuse that trust and support. They seem to have forgotten that protecting democratic principle begins at home. It's hypocritical -- as well as immoral -- for a government to claim that it is bombing a sovereign country into the Stone Age so that democracy can be established there while, at the same time, doing its best to dismantle democratic institutions and safeguards at home.

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**Awe-stricken innocent Iraqis: Casualties of brute brazen war.**

information landscape. In the months following the mega events, the Bush administration launched an aggressive campaign that is designed to protect national security, but at the same time challenges the spirit of FOIA while creating a level of secrecy in the U.S. government not known since FOIA became law.

The Bush administration's trampling of basic freedom of information rights of Americans officially began on Oct. 12, 2001, when US Attorney General John Ashcroft quietly slipped a memo through the government bureaucracy and under the political radar that strongly urged federal agencies to resist the public's right to request and scrutinise public records. In effect, the memo undermined one of the country's greatest democratic reform measures: the Freedom of Information Act (FOIA).

Ashcroft's memo directs federal agencies to be aware of "institutional, commercial and personal privacy issues" when considering any freedom of information request. His directive makes those who want a government

to hide behind a wall of secrecy.

The Canadian government's proposed anti-terrorism legislation would give the federal attorney the power to issue so called "certificates" sealing federal files for at least 15 years -- and possibly forever -- for the purpose of protecting international relations, defense and security." In defending the measure, Canadian Justice Minister Anne McLellan argued that Canada's allies won't share sensitive anti-terrorism intelligence without a strong guarantee that the information won't be released under the country's access laws.

Critics call the Canadian initiative "dangerous" and "unnecessary." Wesley Park, a professor of international relations at the University of Toronto and a specialist in intelligence and security issues, told the *Toronto Sun* that the government has "all the powers in the world they need to prevent disclosure of national security material. I can tell you that people in the intelligence community do not feel that there are loopholes to be concerned about."

In the United Kingdom, for instance, the Labour government under Tony Blair had been moving to implement its long awaited Freedom

of Information Act. But in November, 2001, the Lord Chancellor announced that it may not happen until 2005. British bureaucrats -- the keepers of public records -- claimed that if the Act were implemented in 2002, as originally planned, their agencies would be inundated with requests. English FOI advocates say this is a huge setback for the public and sends a disastrous message to officials: namely, that reforming the country's freedom of information laws is unimportant.

But the biggest attack on the right to know is taking place in the US -- and it's not just restricted to the FOIA. For instance, following Sept. 11, federal agencies began removing information from their Websites. In doing so, the government claimed that information such as maps of the nation's transportation infrastructure and data on the location and the operating standards of nuclear power plants has become too sensitive for public scrutiny.

A strong case can be made that, at best, the U.S. government is overreacting, and, at worst, using the "war on terrorism" to throw a cloak of secrecy not only over its own actions but those of its industry pals. One example: Last October, the US Environmental Protection Agency said it would consider a request by the chemical industry to halt public access to sensitive data that describes the potential consequences of catastrophic plant accidents.

In a letter to the EPA, Fred Webber, president of the American Chemical

*Lest we forget*

# A homage to justice Murshed

JUSTICE K M SUBHAN

It is possible to find a person worthy of seeing, but it is not easy to find a worthy place to see him. I realised the truth of it at a wedding in 1938. I was then a student of class ten. I saw the groom, turbaned and donned in a light cream sherwani under a 'choga' embroidered with real silver work. Tall and erect, bright eyed and of slightly tanned complexion -- that was the first sight I had of Barrister Syed Mahub Murshed. I saw him in the worthy place. I had then such an age when in the rich juvenile imagination I was trying to find his resemblance with those who always flashed. The first that came was Indranath of 'Srikanta' but Indranath had a few marks on his face. He had a perfect unblemished face. I got it -- it was Shibanath of *Shesh Prasna*. Yes, Shibanath has donned the groom's dress or may be, it is Othello -- tall, dark and handsome -- but his eyes lacked the hardness of a soldier. His eyes were electrified.

After about four decades, in remembering him, I am asking myself why it is so important to talk so much about his looks? It is probably necessary because unknown to myself I accepted him as my hero -- who later became my idol in my professional life. I was and still am enveloped with his profound influence. To imitate him would be an audacity because he was inimitable. About two decades after I saw him first I accepted him as the only person in my professional existence.

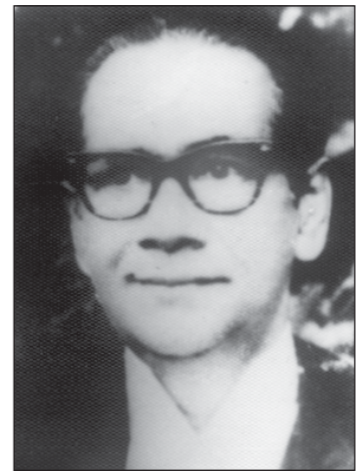
In 1943, when I was a student of Calcutta University Law College, I was lucky to be present in the courtroom where a murder trial was on and the counsel for the accused was cross examining the prosecution witness. Those days little did I understand the pointing questions. A few other barristers young and old were sitting in the courtroom one of whom said, "The questions indeed are worthy of a barrister". The prosecution witnesses were tumbling. The judgement was delivered. The accused got a clean acquittal. I saw him after this in a few other cases. His questions were equally pointing. The witnesses dared not look at him straight. Still then I was not very sure if I would take up legal profession -- but the more I saw him the more I was convinced to become a barrister. I till then saw him from a distance.

August 1946 -- the great Calcutta killings -- I had my first chance of getting a little close to him. He was then one of the leading barristers of Calcutta High Court, a terribly busy practitioner. A relief committee was organised which was located on the ground floor of the Congress Exhibition Road residence of Khan Bahadur Ataur Rahman Khan in Park Circus. The drawing room of the late Ismail, reputed industrialist, was used as the office. Syed Mahub Murshed used to reside then in a flat on the second floor. Within a few days, legal complications cropped up concerning those who were arrested during the riots and concerning property and families of these persons. I was entrusted to contact Syed Mahub Murshed as I was the only one in the committee who had something to do with legal affairs.

I was then a law student waiting to take the Law final examination which was postponed because of the riots. After much hesitation, I picked up courage to meet the legal luminary in his flat, but before I could finish, he came down with me to the office. The other members, late Mr Ismail, late Mr Sayedul Hasan, Poet Golam Qudus and few others who were present were puzzled over the situation and were eager to know the proper procedure to be followed in the matter. Very briefly

and within a short time he clarified the situation and told us what to do. I saw him that day frankly discussing with us the problems and he gave us much time as needed although he could hardly spare that, he helped us voluntarily and ungrudgingly. I witnessed his concern for the affected people -- his sympathy and help for the people who lost everything during the riots. In a short time he became a respectable leader in the matter. His success went beyond the legal matters. We found his deep concern for the suffering humanity.

Later I saw him as Judge of the



Dhaka High Court. In every case it was wonderful to see how he applied legal principles to facts. His way of looking at facts and the application of law stood out from many other honourable judges. He could fathom even a difficult case in the shortest possible time. His interpretation and application of legal principles were subjects of envy. The subordinate staff found a father figure in him when he became the Chief Justice of East Pakistan.

The first blow was struck at the autocratic regime of Ayub Khan by the Dhaka High Court and Chief Justice Murshed was the author. He excelled

himself in analysing and setting the constitutional issues that were raised before him. His rich language intermingled with the interpretation of law -- it was like the admixture of the Padma and the Jamuna. His superior power of interpretation of legal principles and fearless dispositions of constitutional matters once prompted Ayub to say, "Pakistan was rightly proud of two things -- the cricket team and the judiciary". I wonder if knowing Syed Mahub Murshed Ayub echoed with Shylock, "A Daniel come to judgement! Yea, a Daniel!" He was the author of most of the constitutional cases that settled the rights of the citizens, the human rights and established the supremacy of the rule of law. In his area he was uncompromising, unique and fearless in his confrontation with the tyrannical and autocratic regime of Ayub Khan.

He preferred to resign his high office rather than to bow before the authoritarian regime. The loss was entirely that of the nation of the people and of the judiciary. The blow was to the public conscience from which the nation has not yet recovered.

One gets overwhelmed with emotion in writing about him. The country is deprived of his unrivalled personality; his scholarship was confined not only to jurisprudence but encompassed world literature, music and socio-political philosophy and economics. Whenever he broached a topic, he appeared to know more than the others as he finished talking. He was free with any subject of conversation. His genius lighted up anything he touched.

I pay him my homage with deep sense of gratitude and respect on his 24th anniversary of death and close it with the words of the poet Nirmalendu Goon: "With these reminiscences come the melancholy dew drops on the pages."

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## Around the World

### Elderly assistance from cholesterol drugs

A recent study has found cholesterol-lowering drugs which, already a support of heart care for the middle-aged, also prevent heart attacks in elderly people.

The drugs, called statins, are widely prescribed to people with even modestly elevated cholesterol levels, and the new results are likely to enlarge their use.

Many studies so far have looked at people in their 50s and 60s. The new research was intended to see if the drugs improve the quality of life of people in their 70s and beyond, even though their life expectancy is relatively short.

The study involved 5,804 people between the ages of 70 and 82 in Ireland, Holland and Britain. All were considered at increased risk due to coronary artery disease because of other conditions, including diabetes, high blood pressure or smoking.

Among the findings:

- The drug reduced LDL, the bad cholesterol, by 34 per cent.
- Deaths from coronary disease fell 24 per cent to those getting statin.
- Strokes were not affected by the treatment. However, longer treatment might still show a benefit.

The study also found that people on statins had a 24 per cent increase in new cancer diagnoses. Then again, the researchers dismissed this as a coincidence, saying no other study found a link between statins and cancer, and there was no reason to think the medicines could start out the disease so quickly.

(Source: Lancet)

### Did you know?

Fruit and vegetables, especially when eaten raw, protect against cancer of the lung, digestive tract, bowel, bladder, pancreas and breasts.

Next: ABC of insomnia

# The tragedy of Iraq

## A different perspective

MAHFUZUR RAHMAN

It is only proper, nay, necessary, to shed a tear for the innocent people of Iraq who have to bear the brunt of another war. Reports of casualties are still scanty, but there is little reason to doubt that the dead and wounded will in the end be counted in the thousands. Countless others will be destitute and homeless. War is always cruel; it is invariably an abomination. Those who are protesting against the waging of the war are right to protest.

But it is also proper and necessary to shed a tear for the hundreds of thousands of Iraqis who have suffered at the hands of an oppressive regime over the decades. It is strange that tales of the regime's cruel torture and brutal persecution of dissent that have gone on for years have been totally drowned out by the questions of morality, legality, and motivations of the present war. The latter questions are certainly pertinent; so are those cruel tales.

Kanan Makiya, the Iraqi dissident, called Saddam Husain's Iraq a Republic of Fear, the title of his eponymous book. In a later book (*Cruelty and Silence*) he documented the murder of 100,000 Kurdish civilians in 1988 alone. The Iraqi leader sent hundreds of thousands to their death in a war of aggression against Iran and used nerve gas against the Iranian enemy as well as the Kurdish population of his own country. Thousands of Shias were executed in the 1991 *intefada* that followed the first Gulf War. Tales of torture and disappearance of dissidents in the country are among the darkest in human history.

The perfectly legitimate sadness and anger over the war should not be one's view of such tragedy. As bombs and rockets started to rain down on Baghdad, it became all too easy merely to decry it as an attack on the people of Iraq. Those

multitudes who have suffered at the hands of a megalomaniac dictator for so long are "the people". It is also legitimate to think that a large majority of the people of Iraq do want to be liberated, and may not fully share the kind thoughts that the outside world began harbouring about them only after the war had started. Most of the Kurds and the Shias, at any rate, would love to be rid of Saddam Husain. And they do constitute a very large majority of the people of Iraq. Yet they are virtually absent from the lengthy writings on the subject that surfaced as the war began.

Also absent from the learned writings on these pages and elsewhere, are the complexity of the circumstances that led to the war and the great diversity of views on it. Thus one reads that the "world community does not think" that the invasion of Iraq has legitimacy. May be it does not. But, what does the "world community" mean? In fact the world has rarely been as torn over any question of importance as it is today. Countries, societies, local communities, even families are split into opposing factions, each claiming the high moral ground. The intellectual community is similarly split, as are the jurists, many of whom do indeed find a legal basis for the present US-led invasion while many others do not. In that case what is a world community? And those people in Iraq who would like to be liberated from tyranny are the most important part of the world community in the present context.

The present war, like any other, is vile. But none should claim moral certitude about it. There will of course be time, time to examine the missteps, failures, and arrogance of power that led to it, before the blames are apportioned. Meanwhile, the sooner the devastation of Iraq is over, and succour brought to its freed people, the better.

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