Atwar Bahjat

In Iraq, a reporter and patriot is silenced.

By Jihad Ballout

DUBAI, United Arab Emirates

She was a daughter of Samarra, an Iraqi who loved for her country as much as for her profession. That’s why we in Al-Arabiya’s newsroom were not surprised when Atwar Bahjat insisted on covering the escalating violence in her hometown that fateful February day.

The bombing of the Shiite shrine Askariya, known as the Golden Mosque, had sparked sectarian battles, an assignment that would cause many experienced journalists to shudder. Not Bahjat, who believed that carrying out her professional duty was an act of non-partisan patriotism.

Bahjat had already filed reports from Samarra and was conducting additional interviews that day, February 22, when two armed men approached and demanded: “Where is that Al-Arabiya presenter?” She kept her cool, believing, perhaps, that her patriotism and professionalism would save the day. The group around her had less faith, and either stood by or quietly dispersed as the insurgents entered the building.

Adnan Khairallah, 36—were found near Samarra the next day. Bahjat represented everything that the merchants of war on all sides despise. A journalist who refused to take sides, she personified Iraqi non-sectarianism—having a Shiite mother from the sect’s heartland in Karbala and a Sunni father from Samarra itself. She carried her belief not only in her heart but around her neck in the form of a gold pendant depicting the map of all of Iraq. She was wearing the pendant that day.

Covering wide-scale death and destruction in her country was not, perhaps, foremost on her mind when Bahjat decided that journalism was her life and passion. An avid writer of poetry to specialized publications. She was adept at finding a way around obstacles.

Bahjat was too courteous to bicker, but she made it very obvious that her view was far different. When others might suggest limits on her work, she would flash a smile that was both infectious and enigmatic. She was adept at finding a way around obstacles.

Yet the traits that served her well—as a woman who personified all of Iraq, as a patriot who reported all sides—could not protect her from the purveyors of violence. In an interview aired on Al-Arabiya after Bahjat’s murder, her sister Ithaar repeated over and over in a heartbreaking voice: “Why, why Atwar? I need someone to tell me why!” Her words reflect the anguish of hundreds of thousands of Iraqis who fear a war wounds to personal tragedy.

Bahjat, in an image taken from video, wore a gold pendant depicting Iraq on the day she died.

Atwar Bahjat

What’s the future of those guidelines? I think they have a terrific future—as guidelines. But guidelines by definition are not enforceable, and courts have said the DOJ guidelines are not enforceable. What the lack of protection under the guidelines really points to is the need for federal statutory protection for the confidentiality of reporters’ sources.

Is there precedent to prosecute whistleblowers for leaking information? Under federal law, people can go to jail for disclosing classified information, and in rare instances that does happen. There is even an argument, which some media critics have been trying to build, that a media outlet itself could be prosecuted under Section 798 of the Espionage Act. Most lawyers who have studied the issue would say with a lot of confidence that Section 798 would be unconstitutional if applied to a newspaper or a media outlet for publishing information that somebody in the government regards as confidential. That kind of publication happens all the time, and it’s overwhelmingly in the public interest when it does.

Media lawyer Jeremy Feigelson discusses confidentiality, wiretaps, and talking to sources on park benches.

Interview by Maya Taal

Did special prosecutor Patrick Fitzgerald’s tactics in the CIA leak case set a precedent for jailing journalists? After all, Judith Miller of The New York Times went to jail and then testified. The Judy Miller case didn’t change the law very much, if at all. But it undoubtedly makes prosecutors everywhere a little bit cozier about their ability in the real world to get journalists to disclose their confidential sources. That’s something that historically prosecutors have shied away from. After Fitzgerald’s success in the Miller case, I don’t think they’ll be quite so shy.

For three decades, Justice Department guidelines said a journalist would be compelled to testify only in “exigent circumstances.” Now, what’s the future of those guidelines? I don’t think anybody does, to suggest that journalists are being deliberately targeted under the program and I don’t mean to suggest that they are. But if I were a journalist working in the Middle East or another epicenter of the war on terror, or a U.S. journalist who makes frequent calls to people or organizations in those places, or if I were a group like CPJ doing work that’s fundamentally similar to the work of journalists in those regions, then it seems almost inevitable that I’m going to be having conversations of interest to the government.

How does the interpretation of e-mail as corporate property affect source confidentiality? The 21st century reporter has to rely on tools like e-mail and cell phones. These create evidentiary trails that are within the custody and control of the companies that run the systems. So if those companies are subpoenaed, the individual reporter may not be able to exercise any control over the records.

For reporters working on very sensitive stories, in the future you may see more meetings with sources on park benches and more notes written in notebooks.

Will these cases lead to a more established definition of confidentiality? We always encourage a reporter to have a very specific understanding of confidentiality with the source up front. Unstated assumptions that an interview is confidential aren’t very helpful when you’re in front of a grand jury.