

Analysis: Journalists' Neutrality 'Under Threat'

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Randal case may drive a wedge between journalists and the tribunal.

Journalists will shortly to find out whether they are likely to be compelled to give evidence in war crimes trials, when Hague judges rule on the case of former Washington Post reporter Jonathan Randal.

Randal has refused a tribunal summons to give evidence at the genocide trial of Bosnian Serb politician Radoslav Brdjanin, accused of helping to mastermind the ethnic cleansing of Bosnia in 1992.

It is a case that many fear will drive a wedge between journalists and the court – all the more ironic since so much of the raw material for war crimes cases has come via front-line reporters.

The case hinges on an interview published by the Post in 1992, in which Brdjanin boasted to Randal about the success of ethnic cleansing.

Hague prosecutors produced the original story Randal wrote as evidence of Brdjanin's responsibility for war crimes. The defendant's American lawyer John Ackermann demanded the reporter be called to verify the story, and prosecutors summoned Randal.

Initially, there was no problem: like the dozen journalists so far called to give evidence at the tribunal, Randal said he would attend. But he later changed his mind.

He was immediately backed by 34 news organisations, mostly American, including the Washington Post which protested that he should not be forced to give evidence.

Their argument is simple: journalists are neutral and cannot be seen to be aiding an institution, even one they may privately agree with.

Otherwise, news organisations fear journalists will be seen as agents of the law by future warlords in future wars.

But it is not just Americans who are worried. "Journalists should have some kind of professional privilege, something like that enjoyed by lawyers and their clients, or doctors and their patients," said Thomas Verfuss, who covers the tribunal for the Dutch agency ANP, and is president of the Association of Journalists at the International Criminal Court, also at The Hague.

Verfuss says reporters should also remember that giving testimony provides opposition lawyers the chance to cross-examine them in a bid to undermine their credibility.

Prosecutors worry that if journalists get special privileges, the floodgates will open, with soldiers, officials, aid workers and victims of war crimes

demanding the same right.

For American news organisations, the case hits a raw nerve: for decades, they have waged an often bitter campaign to enshrine journalists rights. Now, they worry that the tribunal will simply be given carte blanche to use journalists for their own ends with no safeguards established.

Partly, the case shows the different perceptions of journalists and prosecutors.

For the former, this is a new development: until now very few had ever been asked to give evidence. For the latter, the number one problem in making war crimes cases stick is the availability of witnesses: war crimes, by their nature, often leave few witnesses. Those that do survive are often traumatised or frightened of repercussions, particularly when pointing the finger at warlords with powerful friends.

And it is only by the energetic efforts of prosecutors that some cases have come to trial: the first ever war crimes charges for rape, levelled at Serbs who used Muslim women as sexual slaves in the town of Foca, only came to court when some of these women agreed to the distressing experience of appearing as witnesses.

For prosecutors, journalists have far less excuse to avoid a summons.

“If it happens that a journalist is necessary there’s no reason that you don’t try to bring him or her in,” said Florence Hartmann, spokesman for chief prosecutor Carla Del Ponte. “It’s not a pleasure when you bring a victim of rape in court but there’s no other way.”

Amid the growing flack, there have been some attempts at finding compromise solutions.

Pulitzer-prize winning Newsweek correspondent Roy Gutman, who wrote the first reports of Bosnian Serb detention camps, has called for journalists to be used only as witnesses of “last resort”.

He told a war crimes conference last month at London’s City University that prosecutors should summon journalists only when their evidence is vital, and when there is no other way of getting it.

It is a fine idea, but possibly also a legal minefield, not least because other witnesses would all demand that they, too, be granted the same status.

But exceptions can be made: Red Cross workers who visited the detention camps are, for instance, immune from being summoned as witnesses because otherwise they are unlikely to get access to future battlefields. Journalists argue that they perform the same function and should have similar rights.

Unhappily for both journalists and prosecutors, the Randal judgement, expected later this month, is unlikely to produce a definitive ruling.

It will leave the key problem for journalists unresolved – the question of whether they should reveal their sources.

The problem of disclosure of sources does not arise in this particular case because the source is Brdjanin, and he gave the interview openly. Hartmann, herself a former Bosnia correspondent for Le Monde, says prosecutors do not want to compel reporters to surrender their sources.

But many of the latter would feel happier if Hague judges would put some sort of guarantee on paper.

The other problem with the Randal case is that the evidence may in the end be worthless. This is because Brdjanin is not denying that ethnic cleansing did not take place, only that he played no part in it.

As such, the defence could argue that the interview with the Washington Post proves that he boasted about it, but does not prove he did it.

Reporters who remember Randal from the Bosnian war, including this correspondent, testify to his bravery and tenacity in tracking down stories.

Driving into the heart of Serb-held Bosnia, during the height of the cleansing campaign against Croats and Muslims, and securing the Brdjanin interview, took strong nerves.

There is no reason to suppose Randal does not want to testify, if asked on a voluntary basis. The key issue is that he does not want to set a precedent by being compelled to testify.

The penalty for Randal could be steep. If the judges decide he must testify, and he refuses, he can be arrested and jailed for a maximum of seven years.

An added complication for him is that France, where he now lives, is one of the strongest supporters of the court and Paris is likely to back any order by The Hague for Randal's arrest.

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