"Time To Stand Up"—When PBS Buckles on War Documentary, *Frontline* Sings "Courage"

A hostile political climate and FCC ambiguity on indecency chill PBS when *Frontline* airs "A Company of Soldiers"

By Tom Mascaro

It hurts when heroes stumble. As when Muhammad Ali speaks in that soft whisper instead of the booming braggadocio he made famous.

Last year, when CBS was rocked by mistakes in the Bush National Guard-documents story, the industry was stunned because CBS News had climbed through fire to earn its place at the pinnacle of public-service journalism. CBS virtually invented broadcast news. Its reporters had slogged their way through tough conditions, created new methods, and emerged as the genuine article. Like the Beatles or Rolling Stones, they were standard bearers.

Had the Guard-documents story been flubbed by one of the younger news teams—cast, like the Monkees, to sing news of a particular style or tone—there would have been barely a ripple in the broadcast community because of lower expectations. But it was CBS News that faltered. We expect champions to be better.

Last February, it was another hero's turn to be humbled—PBS.

During the Clinton era, when Speaker of the House Newt Gingrich and others sought to de-fund the Public Broadcasting Service, they

quickly learned how their constituents cherished the noncommercial network. Television viewers, especially those who cannot afford wire feeds, depend on PBS for educational, cultural, news, and entertainment programming. It is the only broadcast network that routinely airs documentaries. *Frontline*, since 1983, has been the network's flagship and PBS is a hero to many for sustaining the investigative/documentary tradition through this series.

So when PBS announced it was going to censor a *Frontline* documentary, entitled "A Company of Soldiers," because it contained f-words uttered during combat in Iraq, there was a collective cry throughout the industry—"Say It Ain't So, PBS!"

"A Company of Soldiers" follows Dog Company of the 8th Calvary in South Baghdad. The 90-minute report was the product of an embedded team from October Films—Edward Jarvis was the producer, Tim Roberts the director. Filming began three days after the start of the Fallujah campaign last November.

During production, insurgents attacked Dog Company's sector. "They're a real tough group," Roberts said of the men and women known as the Misfits. "This is not an army hiding timidly behind their fortifications. They fight hard in the streets."

Proof is in the pictures of the Misfits responding to two massive car-bomb attacks. While returning to base, gunfire and rocket-propelled grenades rain on the unit. They return fire, but a civilian in a car is fatally wounded.

Next day the Company is ambushed again. Specialist Travis Babbitt is hit. He returns fire, killing several insurgents and saving the lives of fellow soldiers, before collapsing from fatal wounds. This is no warm-and-fuzzy beer promo recreated for a Super Bowl audience to show Americans cheering returning soldiers. This is the real deal, and it aches to watch.

With a camera rolling inside a patrolling vehicle, the viewer gains a haunting perspective on military duty in Baghdad. Dog Company is trying to keep a lid on the growing insurgency, never anticipated before the war. It is a dangerous mission placing brave men and women in the vicinity of roadside bombs and the sights of rebel fighters. An improvised explosive device (IED) injures another soldier. Fear and anger burst all restraints on politeness as soldiers say words unfit for the family dinner table but familiar as mashed potatoes. The viewer understands it is frightening and painful to be trapped in the confusion of a firefight. The blistering stream of words and images makes the point about the human cost, giving viewers a rare glimpse of the war's effect on sons and daughters, mothers and fathers, husbands and wives defending the flag.

The emotional toll is high. Big, tough, determined soldiers struggle to contain tears, then break as oversized lineman do at Hall of Fame ceremonies. Eventually, though, commitment and dedication overcome feelings, and the Americans soldier on.

Some scenes are uncomfortable to see, such as the Iraqi man dying in the back seat of a car, a dog being shot, and an American officer bullying a local Iraqi who seems to have been in a position to stem the insurgency. Still, the overall impression stirs appreciation and empathy for the soldiers of Dog Company. No mature

Members of the U.S. Army's 8th Cavalry Regiment in a Baghdad market.

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adult would fault any one of them for speaking f-bombs when attacked with real bombs or expect producers to excise offending words from a horrific event videotaped as it happened.

Public Broadcasting officials were nervous, though, about possible repercussions through fines by the FCC or renewed conservative political pressure to curtail its funding. Even staff members at *Frontline* understand PBS is in a tough position given the existing political climate, which is the real story of "A Company of Soldiers."

Public outcries have made broadcasters leery of possible penalties for material that may or may not be deemed indecent by the FCC or power-hungry politicians. The triggering incidents are now familiar: the appearance of Janet Jackson's breast during half-time at Super Bowl XXXVIII, a tawdry promo for ABC's *Desperate Housewives* during *Monday Night Football* last November, and a decision by ABC affiliates to pre-empt *Saving Private Ryan* during the last Veterans Day observance (ostensibly fearing FCC fines for the raw combat language and images of dismembered soldiers).

In addition to reactions to these incidents, the highly charged political climate fueled by partisan ads and documentaries during the 2004 election, and a belief that a "values" initiative re-elected George W. Bush, have given broadcast programmers the jitters. At last January's convention of the National Association of Television Program Executives (NATPE), workshop after workshop debated how to program television when the FCC is threatening punishment for indecency

without defining what is indecent. Faced with a Private Ryan moment, in the words of some observers, "PBS copped out."

It happened like this: In late 2004, *Frontline* set out to make a film about the raw experience of U. S. soldiers serving in Iraq. Louis Wiley followed the progress of the production, as he does all Frontline documentaries. As executive editor, Wiley screens all program proposals and monitors the editorial team that researches new ideas. He enforces editorial standards and practices. Finally, he reviews the rough cut, fine cut, final cut, and is involved in the fine scriptwriting session of each Frontline documentary.

Wiley was pleased with early reports from the team in Iraq, but he was most concerned about the safety of the film crew. "You're putting people in harm's way," he said, "even though they've said they want to do it, and Tom Roberts is a very experienced producer, as is Edward Jarvis. But nonetheless you're paying attention to what's happening to them. Are they okay? They would send back emails and other communications indicating where the story was going in general terms, but our primary concern was their safety."

Wiley was unaware of any language problem until he saw an early cut in January. The bigger problem was time. "We had asked them to do an hour film," said Wiley. "We were just so moved by what we saw, though, that once you were in the experience you really needed to let it play out." *Frontline* had to ask PBS for 90 minutes of air.

Just as truncating the film to an hour would have lessened its impact, Wiley also knew bleeping the actual words spoken during combat would

Frontline **Executive Editor, Louis Wiley**

diminish the program's power. "We're showing war as it is happening," said Wiley, "and we felt editorially this was completely justified. It certainly in no way falls within the indecency rules."

At this stage there was no deviation from conventional *Frontline*–PBS protocol. Documentaries are routinely shown to PBS officials. For any program containing questionable language or images, *Frontline* produces two versions—an original and an edited or bleeped version, as they did for "A Company of Soldiers." In the past, the network would hard-feed the original version and provide a soft-feed of the edited program for station managers who felt the content inappropriate for local audiences.

As the saying goes, "That was then, this is now." "Now" meaning a hostile climate for the press and free speech in news, knee-jerk sensitivity to anything that might be deemed "indecent" regardless of context or veracity, and anything that shows the real human or national costs of President Bush's war in Iraq.

Frontline sent a review copy of "A Company of Soldiers" and asked the network to feed the intact program at their normal 9:00 p.m. slot, and also make available the bleeped version for stations that wanted it. "We were all aware of the precedent of Saving Private Ryan," said Wiley, which had already aired unedited on national broadcast television. "Our view was, if it's good enough for a movie, and the FCC had preliminarily said they weren't going to sustain complaints about it, it sure is good enough for a documentary. It was time to stand up."

On February 17, David Fanning, *Frontline*'s Executive Producer, Michael Sullivan, Executive Producer of Special Projects, and Wiley issued a joint statement to PBS station executives: "Several months ago, *Frontline* set out to make a film that would bring the real and raw experience of U. S. soldiers serving in Iraq into the homes of public television viewers. That program, 'A Company of Soldiers' will air on Tuesday, February 22."

The statement further explained the program was "about young men at war, often in combat and always in danger . . . the language of these soldiers is sprinkled with expletives, especially at their moments of greatest fear and stress." Most of the expletives were the f-word along with a few common scatological references. "[We] were judicious" in editing the program, the men wrote, but [we] "came to believe that some of that language was an integral part of our journalistic mission: to give viewers a realistic portrayal of our soldiers at war. We feel strongly that the language of war should not be sanitized and that there is nothing indecent about its use in this context."

PBS disagreed. Facing the distinct possibility of government repercussions, PBS opted to hard-feed the sanitized documentary. What is more, PBS required any station intending to air the original (with expletives), to formally request the program and agree to indemnify PBS against FCC fines. At that moment, the matter shifted from corporate policy to journalistic principle. Fanning, Sullivan, and Wiley recognized the encroachment on press freedom and the mission of *Frontline* and sent their letter:

"Our attorneys, including outside counsel, have advised us that the expletives in 'A Company of Soldiers' do not violate the FCC's indecency rule. They have concluded that the uses of the f-word and others in this film do not cross the FCC's guidance against 'gratuitous' use. They are not meant to 'titillate' or 'pander' to the audience. As you know, there is a 'safe harbor' after 10 p.m. for such language for those stations who [sic] regularly air the program at that hour."

To bolster their case, Fanning, Sullivan, and Wiley summarized the "Private Ryan" example and former FCC Chairman Michael Powell's decision to withhold action against ABC affiliates that aired the film, because it is an accurate portrayal of the Normandy invasion.

They continued: "*Frontline* believes this is the moment for public television to stand firm and broadcast 'A Company of Soldiers' intact, as it was intended. We believe what is at issue is not the particulars of this case, but the principle of editorial independence. Because overreaching by the FCC is at its heart a First Amendment issue, all programs are at risk, whether art, science, history,

Two cavalrymen in a discussion with a local Iraqi.

culture, or public affairs.

"We believe the risks of an adverse outcome are small and the principles we stand on are large. Editorial decisions should be free from influence by the government and should be made in accordance with the standards, practices, and mission of public broadcasting."

WBGU General Manager Patrick Fitzgerald had no doubt about whether he would run the original, unedited version. WBGU-TV is the PBS affiliate in Bowling Green, Ohio, just south of Toledo. At the very least Fitzgerald planned to run the original during the overnight (early morning) rerun time slot. Before deciding what to air in the normal 9:00 p.m. slot, though, Fitzgerald conferred with his staff. He took an early feed from PBS and asked producers and other employees to view it and report on the appropriateness of the language as presented. They concluded overwhelmingly the dialogue in the documentary was fitting and proper in the context of the combat scenes shown. There was no need to broadcast the sanitized version. Fitzgerald ran the original at the regular time at 9:00 p.m. and received no viewer complaints.

Fourteen other PBS stations found Frontline's argument sound and aired the unedited version at 9:00 p.m. in Albuquerque, Buffalo, Chicago, Flint, Mich., Houston, Iowa PTV, Kansas City, Portland, San Diego, Schenectady, Springfield, South Carolina (ETV), Toledo, and Frontline's home, WGBH in Boston. "My hat is off to them," said Wiley. "*Frontline* sent a letter of thanks to those stations."

Wiley is also aware of the financial jeopardy, though: "We wanted to make

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a really strong point that this is the time to take a risk. I think maybe *Frontline* was asking too much, to be honest with you, and you can quote me on that. *Frontline* was pushing the envelope pretty far, so I understand why PBS said 'No.' But 15 stations chose to face that risk and I'm heartened by that. It was an important moment to raise the flag and make a point and they did so in the most direct way. Many stations were sympathetic to us and I think if you talk to PBS in editorial terms and not financial terms, they'd say 'we agree with you, our problems were not editorial.'

"But when the financial risk becomes an editorial risk, that's where you get the chilling effect. That's why I said this is a difficult problem and a serious moment. In financial terms, public television is relatively weaker in the panoply of broadcasters. So we have to respect the fears or concerns of station managers. I saw an email from one station manager who said, 'I'm with you, but I just can't afford to bet the farm.'"

Another 20 stations ran the unedited program at 10 p.m.: Cleveland, Dallas, Detroit, Erie, Fort Meyers, Harrisburg, Maryland PTV, Mt. Pleasant, Mich., New York, Orlando, Philadelphia, Rochester, San Francisco, Seattle, South Oregon PTV, Syracuse, Tampa, Tucson, Vermont PTV, and WETA in Washington, D. C. Comments from around the country posted on *Frontline*'s website (www.Frontline.org) reflect widespread praise of the program and what many viewers considered its "honest portrayal."

On the surface this case looks like a straight First Amendment question of free and protected speech, which it is. But not far below the surface, we begin to see the First Amendment showing signs of buckling under the weight of political power and policy and the ability of some to influence which ideas enter the marketplace and which do not. That is what makes Wiley and others nervous.

"Some producers and filmmakers," Wiley said, "would say, 'I don't want those nasty bleeps all over my program, let's make it unsay what was said.' I don't like that as a journalist who feels things ought to be what they are, not what you can do through a sly audio mix where you just hear a sound or a puff as the word goes by. And it's being done because of fear of government action. As far as I'm concerned you're right at the First Amendment doorstep here."

George Vradenburg, a Washington attorney and former general counsel to CBS, was unaware of the controversy involving "A Company of Soldiers" as it unfolded. He is no stranger to media litigation, though. Vradenburg helped defend CBS News against a very public lawsuit by U. S. Army General William Westmoreland in the mid-1980s.

Vradenburg says the legal advice a station would receive in this situation depends on the attorney's style. A self-confident attorney may conclude, given the FCC's policy and practice of focusing on the context of the broadcast—as a whole and in the use of particular words—the Commission likely would find that this is clearly not indecent. That attorney's advice: a producer or station could broadcast the program and be reasonably comfortable with the decision.

A more conservative attorney, though, might say, "I can't give you any assurance on this because the FCC's

An 8th Cavalry Regiment platoon.

decisions have been uncertain over the past year. They're subject to a lot of political pressure. As a consequence, if this is controversial, the FCC could be pressured to look into it because of how it depicts our troops. Who knows how the FCC is going to react to that pressure?"

That is what worries Lou Wiley: "If you lose, the FCC has a wide range of penalties they can impose. But any lawyer will advise you to check out the maximum. They don't have to impose the minimum. Can you tolerate the max?"

The thirteen objectionable words spoken in "A Company of Soldiers" could net a fine for each utterance, which, according to FCC spokesperson Janice Wise, is $32,500, up to a maximum $325,000.

The House, however, passed the Broadcast Decency Enforcement Act of 2005 (H. R. 310) earlier this year, which raises the penalty to $500,000 per violation. The Senate version of the bill (S. 193) would limit the fine to $325,000 for each violation or each day of a continuing violation to a maximum of $3 million. Wiley warns, "If that sails through the Senate and the President signs it, it won't just be chilling, it will be a glacier. You will freeze people in place with potential fines like that. They will instinctively say, 'if there's the least chance something is going to be controversial, forget it.'"

Wiley fears this climate will affect early editorial decisions and prevent programs like a previous *Frontline*—"American Porn," a frank report on the porn industry—from being broadcast. "I'm not sure we could do that today," he said. "I'm not sure we could even repeat that program. What more evidence do you want of a chilling effect?"

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Vradenburg agrees, and sees his profession as an important line of defense: "Media is a contentious, litigious, and politically controversial business. Unless your lawyers are willing to look past what might be to what should be the result, and with some degree of confidence that they can persuade the court system to adopt that result, you're going to get timid calls.

"This is a timid call on the part of PBS. The additional problem for PBS, though, is that they are funded by government. So this is not just about indecency fines. The concern is whether somebody is going to be upset on the Hill and pull their funding. They're in a political environment dependent on political money and therefore subject to more political pressure. But you need some backbone in the business or else this is not a place you should be a lawyer."

CBS News journalist and commentator Andy Rooney, who reported for the *Stars & Stripes* during World War II, sees it this way: "So often vulgarities and obscenities are gratuitous and included in pieces just to attract attention. This is wrong. But if it's part of the natural flow of the story, it belongs in there. The exclusion or inclusion of that sort of thing is fitting if it's part of the artistic whole of the piece.

"I see so many things where those terms are used just to attract an audience. I find it really repulsive, and yet in a case like this—how can you do a war film without it? It's part of the whole ugly scene and if it's going to be real, you can't leave it out.

"Obviously, public television is nervous in its position with conservatives right now and it copped out. If you want to see it survive, maybe they had to do it. But it's too bad. I can understand their being nervous about it, but they should have said, 'well this is the way it should be as an artistic whole and this is the way we're going to put it out.' There is nothing that can be said that is too ugly or bad about war and it should be portrayed that way. If they aren't careful, it's going to make war look pleasant."

Lou Wiley agrees: "This is an important case. If you can't hear what soldiers say in war, what can you hear? Obviously as you go down that list of things that are appropriate or inappropriate, the burden is on you to exercise responsibility in the way they are presented. But our policy isn't an endorsement of gratuitous and pandering use of language for shock value and effect. That's not what *Frontline* does and we don't think that's responsible. We're saying everything is contextual and these are editorial decisions. If you make a mistake and go too far, you should pay a penalty, but not one imposed by the government. To the audience, the advertisers, the top executives at your institution, you should be accountable, but not to the government. That's my tune."

Tom Mascaro is a documentary historian and assistant professor of telecommunications at Bowling Green State University's School of Communication Studies. He writes frequently on documentary issues for *Television Quarterly*, as well as *Journalism History, Journal of Popular Film & Television,* and the *Encyclopedia of Television.*