

Treason and Torture How “Top Secret America” and Black Sites Impacted National Security Reporting Post-9/11

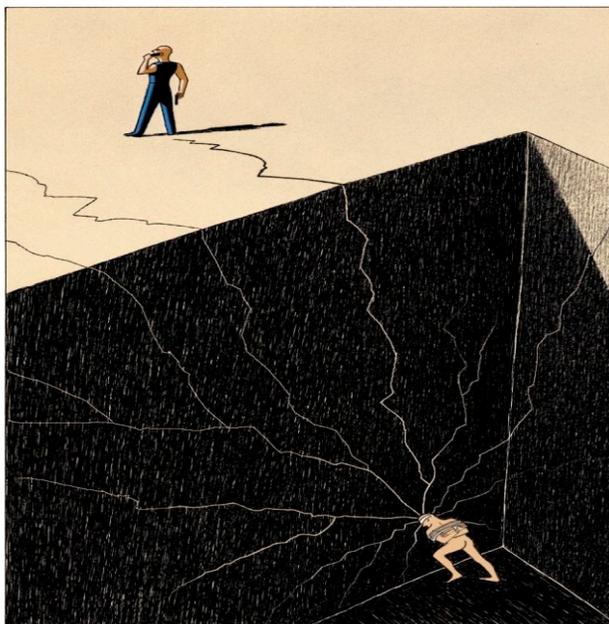


Illustration by Guy Billout, *The New Yorker*¹

Introduction: “You’ll have blood on your hands.”

In the years following the September 11 attacks that brought down both World Trade Center towers and left a gaping hole in the Pentagon, the media establishment faced tumultuous change and an angry public.

Nine days after the attacks, congress dedicated tens of billions of extra dollars towards counterterrorism efforts as many in Washington D.C. saw the September 11 occurrences as a failure of government agencies to communicate intelligence.

Following the creation of the Department of Homeland Security in 2002, the CIA overtook the military’s operations with the authorization of Greystone². Alleged terrorists disappeared from the battlefields but were not revealed in the military penal system as Joint Special Operations Command (JSOC) began a targeted system of “kill,

¹ “The Black Sites - A Rare Look Inside the C.I.A.’s Secret Interrogation Program.” 8/13/2007. By Jane Mayer. *The New Yorker* 8/13/2007.

² “Covert CIA Program Withstands New Furor” 12/30/2005. By Dana Priest. *The Washington Post* <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/29/AR2005122901585.html>

capture” operations in Afghanistan before migrating to Iraq due to suspicions that then President Saddam Hussein harbored weapons of mass destruction³. The objective was to curtail potential attacks on U.S. soil.

The shaken American public wanted answers and reassurance.

For journalists the heat brought new pressures at a time when age-old industry business models crumbled due to the explosion of online content. Newspapers found themselves battling shrinking revenue as partisan bloggers and other online publishers operating independently of major media outlets began growing user bases of their own, despite lacking objectivity⁴.

What worked for Carl Bernstein and Bob Woodward reporting Watergate was no longer considered credible. Journalists became targets of a suspicious public and a government trying to operate shrouded in secrecy as trust wavered in anonymous sources and leak investigations loomed.

In 2005, *The New York Times* took reporter Judith Miller’s case to the steps of the Supreme Court in support of her refusal to testify and disclose sources before a grand jury and lost. She spent 85 days in prison.⁵

The *Times*’ executive editor Bill Keller also sat on a monumental story for over a year reported by James Risen and Eric Lichtblau about how the Bush administration had authorized the National Security Agency to eavesdrop on foreign calls into the United States without court-approved warrants. They’d swelled to capture 1.7 billion calls per day.⁶ During a 2005 Oval office meeting where Keller informed the president of the Pulitzer Prize-winning story’s pending publication, Bush issued a stern warning. According to Keller, the message was essentially, “You’ll have blood on your hands” if the paper revealed the secret program and another terrorist attack on American soil occurred.⁷

³ “Kill/Capture”. 5/30/2011. Produced by Dan Edge and Stephen Grey. Frontline PBS
<http://www.pbs.org/wgbh/frontline/film/kill-capture/>

⁴ “News War: Part 3”. 2/27/2007. Produced by Raney Aronson-Rath, Arun Rath, Lowell Bergman, Stephen Talbot. Frontline PBS. <http://www.pbs.org/wgbh/frontline/film/newswar/#video-3/>

⁵ “Criminal Contempt Could Lengthen Reporter's Jail Stay”. 7/16/2005. By Howard Kurtz and Carol D. Leonnig. *The Washington Post*.

<http://www.washingtonpost.com/wpdyn/content/article/2005/07/15/AR2005071502080.html>

⁶ “Bush Lets U.S. Spy on Callers Without Courts”. 12/16/2005. By James Risen and Eric Lichtblau. *The New York Times*. <http://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html>

⁷ “The United States of America vs. Bill Keller”. By Joe Hagan. *New York (magazine)*
<http://nymag.com/news/media/20334/>

In the days following the NSA story's release, President Bush and a choir of conservative commentators called the *Times* "disgraceful". Keller feared a grand-jury probe of the NSA leak could bring yet more subpoenas for reporters as the commentators urged the Justice Department to charge the paper under the Espionage Act. Protestors outside the *Times* office building in New York waved signs with "Al Jazeera Times" scrawled in black sharpie. The press was officially the enemy of the people.

The nation already fumed from one-month prior when in November 2005 *Washington Post* reporter Dana Priest published "CIA Holds Terror Suspects in Secret Prisons", the first of several articles describing "Black Site" secret prisons the CIA operated in Afghanistan and other countries.⁸ Their revelation occurred amidst the War on Terror—a metaphor referring to the Bush administration's military campaign against what it deemed "violent extremism".⁹

Five years later, her reporting on Black Sites and the Pentagon led Priest to uncover a hidden world tucked into the shadows of office parks with defense contractors, surveillance agencies and technology used on the streets of Baghdad for "Top Secret America."¹⁰

Both controversial reports raised pertinent questions about the release of sensitive national security information, including thought processes of ethical considerations reporters in the post- 9/11 and post-Snowden media climate grapple with.

Casting the Web—Piecing Together Black Sites and "Top Secret America"

Priest describes her series on CIA Black Site prisons not as an instance where one source led her to a direct narrative but as a "classic investigative story where you have tiny bits of information and then cast a web to create a network of sources. You cast the web a little bit further each time, gathering more information that starts to emerge."¹¹ While reporting she often goes deep into her stories and then "to a 30,000-foot altitude" in order to connect the dots.

⁸ "CIA Holds Terror Suspects in Secret Prisons" 11/2/2005. By Dana Priest. *The Washington Post*. <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>

⁹ "U.S. Officials Retool Slogan for Terror War." By Eric Schmit and Thom Shanker. *The New York Times*. 7/26/2005. <http://www.nytimes.com/2005/07/26/politics/us-officials-retool-slogan-for-terror-war.html>

¹⁰ "Are We Safer?" 1/18/2011. Produced by Michael Kirk and reported by Dana Priest. Frontline PBS. <http://www.pbs.org/wgbh/pages/frontline/are-we-safer/>

¹¹ Jessica Buchleitner, interview with Dana Priest via phone. 2/15/2017.

As a Pentagon beat reporter at *The Washington Post*, she'd published a half-dozen stories on weapons of mass destruction leading up to the Iraq war, operations conducted by the CIA and the failure of intelligence over 9/11. Yet in reporting actions on counterterrorism, one question remained: what was happening to the prisoners being taken off the battlefields of Afghanistan? High value terrorist suspects were disappearing but not showing up in the military penal system.

After discovering the infamous "Salt Pit"¹² in Afghanistan, she applied common analytical questions to counterterrorism operations done by the CIA and under covert ops:¹³

- What tactics were used to fight?
- Were they successful?
- What were the tradeoffs?
- Is there collateral damage that's acceptable or unacceptable?
- Will those things achieve [the administration's] strategic goal?

In likeness to the great lengths Bob Woodward and Carl Bernstein went to while liaising with secret informant Deep Throat¹⁴ for a series of articles about the involvement of U.S. President Richard Nixon's administration in the Watergate scandal Priest found herself using disposable cell phones, working in double shifts, meeting at restaurants, and sitting in cars to avoid being seen while communicating with high level sources. While PGP keys exist today, she does not recommend their use for communicating with anyone in the government because they signal "red flags."

In the years following her Black Sites and Pulitzer Prize winning Walter Reed reports, Priest closely observed the erection of an elaborate, hiding-in-plain-sight terrorism industrial complex. Collecting information in "[her] brain and in her notes", she consistently encountered new agency representatives and contractors. Around 2008, she recalls noticing the U.S. intelligence budget ballooned significantly since 2001. After nine years of increased spending and rapid growth, the system put in place to keep the United States safe was so massive that its effectiveness was impossible to determine. From her compounding findings and sources the data-heavy "Top Secret

¹² "At CIA's 'Salt Pit' prison, torture reigned with little oversight." 12/9/2014. By Richard A. Serrano *Los Angeles Times*. <http://www.latimes.com/world/afghanistan-pakistan/la-fg-torture-salt-pit-20141210-story.html>

¹³ Investigative Reporting Workshop. Dana Priest interview with Charles Lews. 2012. <https://www.youtube.com/watch?v=-3OTlrZTJMs>

¹⁴ Woodward, Bob. *The Secret Man: The Story of Watergate's Deep Throat*, Simon & Schuster, 2005.

America”¹⁵ (2010) emerged revealing a Kafkaesque¹⁶, catch-22 bloated and seemingly inefficient bureaucracy.

Her partner William Arkin created a searchable database of organizations and contractors he’d come across for stories until there were hundreds of filterable entries based mostly on public records. She drove around Washington D.C. visiting addresses her and Arkin found online, slowly uncovering the “clusters like barnacles on a rock” of contractors surrounding large intelligence agencies in D.C. and throughout the country. Buildings existed on paper yet not in lobby directories.

“Top Secret America” is heavily based on government documents and contracts, job descriptions, property records, corporate and social networking web sites and hundreds of interviews with intelligence, military, corporate officials and former officials. Most requested anonymity either because they are prohibited from speaking publicly or because they feared retaliation at work for describing their concerns.

On April 30, 2011, Frontline PBS ran “Are we Safer?” as a precursor to a later hour-long documentary “Top Secret America”¹⁷. Both highlighted the bloated budgets and costly security measures Priest challenged in her series and how certain sophisticated military technologies were being used by mainland city police officers. The documentaries examined how incidents like the 2013 Boston Marathon bombing occurred despite significant government spending on security.

Post -9/11 to Post-Snowden: Ethics of Government Whistleblowing

Top national security reporters agree it is of due diligence to inform the powers that be of classified information prior to publication. Among the ethical considerations that arise - the two most apparent are the potential for harm to the public revelations can invite and the potential for damage to the lives and professions of sources.

During a 2014 panel discussion hosted by Northwestern University and the Reporter’s Committee for Freedom of the Press¹⁸, *Washington Post* reporter Barton Gellman said he follows age-old procedures used on the national security beat that involve routine checking with his editors and also giving government sources an opportunity to

¹⁵ “A hidden world, growing beyond control.” Top Secret America. 2010. By Dana Priest and William Arkin. <http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/>

¹⁶ “What makes something Kafkaesque?” 6/20/2016. Noah Tavlin. Ted Ed. <https://www.youtube.com/watch?v=wkPR4Rcl4ww>

¹⁷ “Top Secret America”. 4/30/2013. Produced by Michael Kirk, Jim Gillmore, Mike Wiser. Frontline PBS.

¹⁸ Military Reporters & Editors Association. 1/24/2014. <http://militaryreporters.org/2014/01/intel-and-communications-panel-discussion-set-for-jan-21/>

defend things they think shouldn't be published.¹⁹

Prior to running the report²⁰ regarding PRISM program documents leaked by Edward Snowden in 2013, Gellman and the *Post* revealed findings to administration officials. Since the program allowed U.S. officials to tap directly into the servers of nine major Internet companies, including Microsoft, Yahoo, Google and Facebook - the government urged the *Post* to not publish the company names, asserting concerns about losing out on future cooperation with private industry.²¹

On NPR's *Fresh Air*, Gellman's response was: "In my view, and it was shared by the editor, was that if the harm you're worried about consists of the public disliking what you're doing and responding either politically or in terms of the marketplace to that, then that's why we publish it. That's the nature of accountability."

Risen, Priest, Gellman and other national security reporters source stories often via confidential sources and leaks. Privacy is of utmost concern since sources are also in jeopardy of leak investigations, firings and potential legal trouble if their cover is blown.

During a 2006 interview for the "News War" series, Priest told Frontline PBS about her conversations with the Bush administration over the Black Sites findings knowing she was about to reveal classified CIA information to the public: "I called them up. ... Whenever there's something that the reporters obviously see as a potentially sensitive piece of information, I will tell them what it is before I publish it and ask for a comment, but also give them a chance, if they want to or if they feel that it's necessary to say, that piece of information would really be damaging to an ongoing operation, people's lives."²²

For publication of the Black Sites series, the government requested she not to publish the names of the countries, citing two reasons, both of which the *Post* put in the paper

¹⁹ "The Snowden era of journalism". 2/07/2014. By Darren Samuelsohn. *Politico*.

<http://www.politico.com/story/2014/02/nsa-media-edward-snowden-103240>

²⁰ "U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program." 6/7/2013. By Barton Gellman and Laura Poitras. *The Washington Post*.

https://www.washingtonpost.com/investigations/us-intelligence-mining-data-from-nine-us-internet-companies-in-broad-secret-program/2013/06/06/3aocoda8-cebf-11e2-8845-d970ccbo4497_story.html?hpid=z1&utm_term=.9756f33290a1

²¹ "Reporter Had To Decide If Snowden Leaks Were 'The Real Thing'". 9/11/2013. Heard on *Fresh Air*. NPR. <http://www.npr.org/2013/09/11/221359323/reporter-had-to-decide-if-snowden-leaks-were-the-real-thing>

²² "News War Interview with Dana Priest". 4/27/2006. Frontline PBS.

<http://www.pbs.org/wgbh/pages/frontline/newswar/interviews/priest.html#t>

in addition to naming “Eastern European democracies”²³ as site locations. The government expressed concern that the countries could have been subject to terrorist retaliation and that they could decide to stop their cooperation on other productive counterterrorism issues.

Priest said that despite her consideration of the requests, the Constitution does not make the president of the United States “the decider” regarding the flow of information and that it is “fundamental to who we are as a country that we have a press that is independent of the government.”

After the first Black Sites article was published, Priest told Columbia Journalism Review²⁴ she was able to pursue her Pulitzer Prize winning investigations into shoddy conditions at Walter Reed Medical Center because she was “too blacklisted” to continue her CIA beat. Her sources assumed the government was spying on her. Reporting on the CIA without offering sources anonymity is too difficult for her and colleagues as they have to conceal names, job descriptions or government agency. With both investigations she was largely on her own, unable to even talk to her editors at times about who she met with.

Despite her run-ins with the Bush administration while reporting on the CIA, Priest speaks openly about the profound effect the Obama administration’s aggressive legal threats had on the relationships between leak sources and journalists. In a Feb. 19 CNN broadcast of “Reliable Sources”²⁵, Glenn Greenwald, flanked by Priest and Carl Bernstein, described a “concerted rhetorical and legal framework war” over the last 8 years towards whistleblowers and journalists implemented by the Obama administration where more sources were prosecuted under the Espionage Act of 1917 than previously. James Rosen of FOX news, James Risen at *The New York Times* and those who reported on Snowden have been threatened with prosecution and subpoenaed phone records.

“Some of the revelations that have strengthened American democracy come from people inside the government discovering information and then giving it to reporters because they believed the people have the right to know that their leaders were engaged in deceitful conduct,” Greenwald said.

²³ In “CIA Holds Terror Suspects in Secret Prisons” Priest wrote, “*The Washington Post* is not publishing the names of the Eastern European countries involved in the covert program, at the request of senior U.S. officials. They argued that the disclosure might disrupt counterterrorism efforts in those countries and elsewhere and could make them targets of possible terrorist retaliation.”

²⁴ “Tenacious”. 12/11. By Jill Drew. Columbia Journalism Review.
<http://archives.cjr.org/feature/tenacious.php>

²⁵ “Justifying leaks from anonymous sources.” 2/19/2017. CNN- Reliable Sources with Brian Stelter.
<http://edition.cnn.com/videos/tv/2017/02/19/consequences-for-journalists-and-their-sources.cnn>

Treason and Heroism- Public Impact

Across the journalism community and from the American public, Priest received simultaneous praise and accusations of treason for her stories. She received a 2006 Pulitzer Prize in beat reporting “for her persistent, painstaking reports on secret “black site” prisons and other controversial features of the government’s counterterrorism campaign.”²⁶

To some she was a hero, a doer of good deeds by informing the masses of grotesque interrogation methods perpetrated against suspected terrorists held in far-flung detention centers. To others she was a traitor, opening a gaping hole in national security and potentially leaving the U.S. vulnerable to another attack. On the April 28, 2009 episode of MSNBC’s *Morning Joe*, Joe Scarborough publicly denounced her saying, “If planes fly into skyscrapers, blame Dana Priest. When her article came out that secret CIA program was dead on arrival.”²⁷

Priest says directly after 9/11 [sentiments] became “wrapped up in the flag”, meaning if [a journalist] questioned what the Bush administration was doing to keep the U.S. safe from terrorism it meant that he or she was not patriotic. Five years after her Black Sites series she was armed and ready for a similar reaction after release of “Top Secret America”. Yet Priest told Frontline PBS, while her and Arkin faced considerable public criticism from the Office of the Director of National Intelligence, in a striking differential, conservative talk show personalities and media outlets were among the most interested in the terrorism industrial complex since their hosts worried about big government and effectiveness.

Lingering findings – Senate Report and International Criminal Court

It’s been observed through the decades that solid “watchdog” journalism begets impactful change. In the days following “Top Secret America”’s release, The *Post* website recorded breaking 3 million hits in the first three days and managed to overload and freeze Twitter’s servers the first day.

In the months following, Defense Secretary Robert Gates promised a thorough review of intel programs and as of 2011 he appeared to carry them out including changes in the Office of the Director of National Intelligence. CIA director Leon Panetta vowed to decrease the agency’s dependence on contractors. Civil and privacy rights advocacy groups took to filing Freedom of Information requests.

²⁶ The Pulitzer Prizes, 2006. Dana Priest of *The Washington Post*. <http://www.pulitzer.org/winners/dana-priest>

²⁷ Media Matters for America. <http://mediamatters.org/video/2009/04/28/scarborough-declares-if-planes-go-into-building/149579>

Priest's Black Sites coverage prompted an exhaustive five-year Senate investigation and 528-page report from the Senate Select Committee on Intelligence in addition to a 112-page response from the CIA²⁸. The secret prisons were a dominant agenda item for the incoming Obama administration and remain a stark topic of conversation with President Trump's onboarding and in the international community.

In November 2016, International Criminal Court prosecutor Fatou Bensouda, under immense pressure to show the Court is unbiased in its investigations following announcements from South Africa, Burundi and Gambia of their intentions to withdraw, signaled a full investigation into war crimes committed by the CIA between 2003–2004 in Afghanistan and alleged "black sites" in Poland, Lithuania, and Romania was "likely."²⁹

According to David Bosco of Indiana University's School of Global and International Studies, The ICC maintains that it has jurisdiction over American conduct in Afghanistan because Afghanistan granted it jurisdiction over certain crimes, namely war crimes and crimes against humanity as defined by international law. Because the United States has not joined the Rome Statute, a 1998 treaty that created the court, the U.S. maintains that the Court cannot exercise jurisdiction over Americans.³⁰

Solid investigative reporting reverberates through the ages, leaving a lasting and repetitive impact. As observed in the works of Priest, Gellman and Risen the "fourth estate" persists—holding administrations accountable through the ages.

²⁸ "Senate report on CIA program details brutality, dishonesty". 12/9/2014. By Greg Miller, Adam Goldman and Julie Tate. *The Washington Post*. https://www.washingtonpost.com/world/national-security/senate-report-on-cia-program-details-brutality-dishonesty/2014/12/09/1075c726-7foe-11e4-9f38-95a187e4c1f7_story.html?utm_term=.8da3ef723498

²⁹"U.S. Forces May Have Committed War Crimes in Afghanistan, Prosecutor Says" 11/14/2016. By Somini Sengupta and Marlise Simons. *The New York Times*. <https://www.nytimes.com/2016/11/15/world/asia/united-states-torture-afghanistan-international-criminal-court.html>

³⁰ "US Options for Responding to ICC Scrutiny in Afghanistan". 2/23/2017. By David Bosco. Lawfare. <https://lawfareblog.com/us-options-responding-icc-scrutiny-afghanistan>

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