MLRC CHAIRMAN HENRY S. HOBERMAN: How many of you remember the old television program Hill Street Blues? Every day on that show, Sergeant Phil Esterhaus who was the Commanding Officer would give his officers the same admonition when they left the relative calm of role call at the Police Station to go and face the mean streets. He said, famously, “Hey, be careful out there.” These days when our reporters leave the relative calm of their newsrooms to meet with sources or gather the news, particularly if they work in the area of national security, we, as their lawyers, probably should be telling them the same thing, “Be careful out there. It is dangerous.”

In so many ways it’s the perfect storm right now. One of the most demonstrably and unabashedly secretive administrations in history, a nation caught in the vice of war, fully prepared to give up civil rights in the name of national defense. A public that no longer sees the press as the swash-buckling watchdogs of the Watergate era, prosecutors who no longer feel constrained by law or public opinion in jailing journalists, a once unthinkable prospect that may become, unfortunately, commonplace. Federal judges rejecting out of hand the very notion which we all accepted for decades, that a journalist has any right at all under the Constitution to protect a confidential source. An appellate court in New York, of all places, allowing a prosecutor to rummage through her reporters telephone records to identify a source. And perhaps most ominous, a court in Virginia in the APAC case going out of its way this summer to make clear that espionage and conspiracy laws could apply to journalists who receive secret governmental information in the ordinary course of news gathering. The perfect storm.
Tonight we've assembled five journalists, veteran accomplished journalists, who practice their trade almost entirely in the eye of that storm. We wanted to get their take on what it’s like to work in this environment and what all this sturm and drang portends for the future. Have the rules of engagement with government sources changed? Are journalists or sources more careful to spell out the ground rules in advance? Is secret information harder to come by? Are journalists pulling back from receiving classified information from sources? Or should they be? What do journalists think about the sobering possibility that their reporting might subject them not only to harassment and jail time for failing to reveal a source, but to actual indictment as co-conspirators under laws that were written for spies and traitors?

I don’t think I’m over-stating it to say that these are complex questions with profound implications for journalism, democracy, and the future of the first amendment. And we couldn’t have a more impressive panel tonight to help us understand the brave new world of journalism under the threat of indictment. Scott Pelley, our Moderator. First of all I want to just pause and thank him profusely for agreeing to step in tonight for Bob Schieffer who had a business engagement and could not attend. Scott, we are grateful to you. Thank you very much for stepping in on such short notice.

And by the way, this is the second year in a row that our Moderator had to cancel on short notice. Last year it was my colleague, Diane Sawyer, and Terry Moran was gracious enough to step in as Scott Pelley has this year. That’s it. I’m putting all our future Moderators on notice tonight, that if this happens again the MLRC will no longer pay the six-figure moderator fee that we do; and we have.

Scott has been a Correspondent with 60 Minutes since 2004. Before that, he was the Chief White House Correspondent for the CBS Evening News. In his 17 years with CBS News,
he’s covered news in Iraq, Afghanistan, Kuwait, and the former Yugoslavia. And he has been the recipient of the Edward R. Murrow Award, numerous Emmy’s and the Writers Guild of America award.

Dana Priest, a Washington Post Correspondent for over 20 years, covers national security issues and the intelligence community for her paper. She broke the story that the CIA had been holding and interrogating suspected terrorists in secret prisons in Eastern Europe. She won the 2006 Pulitzer Prize for Beat Reporting for this and other stories.

David Remnick has been the Editor of The New Yorker since 1998. During his tenure the magazine has won 21 national magazine awards and has regularly published important articles about national security and the military, including Sy Hersh’s groundbreaking series about Abu Ghraib. Mr. Remnick won the 1993 Pulitzer Prize for his book about the fall of the Soviet Union called Lenin’s Tomb.

Jim Risen covers national security and intelligence for The New York Times. He’s won two Pulitzer Prizes: the 2006 Pulitzer for National Reporting for a series of stories written with another New York Times reporter about the National Security Agency’s warrant-less domestic wire-tapping program. He was also part of the team that won the 2002 Pulitzer Prize for Explanatory Reporting for a series of articles that profiled the global terrorism network.

My colleague, Pierre Thomas, is the Justice Department Correspondent for ABC News, where he covers terrorism, law enforcement and anti-terrorism measures. He was a key member of ABC’s 911 coverage which won Peabody, Dupont, and Emmy awards. Before joining ABC in 2000, Mr. Thomas was a reporter for CNN and for The Washington Post, where
he and his team were finalists for the 1992 Pulitzer Prize for a series of articles about illegal gun running in Washington, DC.

Scott. Thank you.

SCOTT PELLEY: As mentioned, I am not Bob Schieffer. And Bob regrets that he couldn’t be here this evening. There was some major event in the country last night, I’m not quite sure, but Bob being the Chief Washington Correspondent of CBS is pretty busy on the evening news tonight.

You know I love having a crowd in a room with me because my work is usually subject to the remote control and I get blown away by millions of people every Sunday night. It reminds me of a story. I was with my son on Lake Placid a couple of falls ago. He’s about 12 years old, and we were in a canoe together. Every father’s dream. The lake was still as a mirror. There were deer on the beach. The loons were calling. The mist was rising. You get the picture. It is a thing that every dad longs for. And as we’re pushing the canoe, paddling the canoe through the lake, I hear the soft, sweet voice of my son. And he says, “Dad.” “Yes son.” “Do we have to do this?”

Fortunately tonight we’re all in the same boat, but we’ve got a great crew. These are the All Stars, everybody. These are the All Stars up here today. This year’s Pulitzer Prize, this year’s Pulitzer Prize, Editor of The New Yorker Magazine, Pierre Thomas, a terrific journalist who is part of a team that won the Columbia Dupont award and the Peabody award and an Emmy award. These are the people that we need to hear from who are on the front line of these issues involving national security and the question of whether reporters can be prosecuted for what they report.
I was talking to Dana Priest before she came up here and she said, “Wow, look at this room full of First Amendment Lawyers. What a comforting sight. Imagine the billable hours.” That last comment was mine.

So let’s just start off with a provocative notion and it is this. Now we just heard a moment ago about the case in Virginia, the District Court ruling on the 793 case, the 1917 Espionage Act. And let me just read you the judge’s quote:

“The government can punish those outside of the government for the unauthorized receipt or deliberate retransmission of information relating to national defense.”

That sounds like Dana’s story. That sounds like James’ story. So let’s ask them. James, why should you not be enjoying your Pulitzer Prize behind bars?

JAMES RISEN: You’re going to start with that? [Laughter]

SCOTT PELLEY: It’s a tough crowd.

JAMES RISEN: Well, you know, I think the First Amendment came first; before the Espionage Act. The First Amendment, I think, maybe unless they’ve changed it since the last time I read it, gave Americans the right to speak freely and to write freely. And long before, hundreds of years before there were classified documents there were newspapers. There were newspapers and there were writers and journalists first in this country. And I think Thomas Jefferson said it best when he said that, “If I had to choose between a government and a newspaper I would pick a newspaper.” And I think that freedom depends on the free expression of the people. And if we begin to limit that, and if we begin to think that it’s treason to speak freely, then we have lost our sense of what democracy is.
SCOTT PELLEY: Dana, let me move to you. Your story that won the Pulitzer Prize this year dealt with CIA secret prisons in Eastern Europe. You broke that story. Classified information; why should you not be behind bars?

DANA PRIEST: Well it’s odd that you should ask me this under these floodlights. I feel like this is my bad dream come true, you know? Of being interrogated in a way I thought was not going happen, thank you [phonetic]. I’m the mom of two kids who had to go through this story with me when people like Bill Bennett and other surrogates for the administration, but also the leaders of Congress stood up and say, “We should investigate this story.” But not, of course, the story but the reporter. And I found myself having to explain to them why some people wanted me and Jim and other people who poked around to be in jail. And really my best answer, which I’m sure is so fundamental to why you chose to be what you are, is that the Constitution set up a system of a contest. They really meant for this to be happening. And at the worst moments when people were impugning my motives -- people who had never met me before were actually calling me a traitor. And when I got over that viscerally, I said to myself and my kids, “You know, this really is all about the debate.” And even though the debate is awkward and painful at the moment, I, in general, always had faith that the debate would be the prominent feature that we would remember when this era was over. And I think we are actually seeing that that’s the case now. And, as you know the President, he came out and he recognized the fact that there was an NSA program that the Times outted. And much to my surprise, just a couple of months ago, he actually outted the CIA program. And my editors called me on the phone and said, “Can you get back in here right away? The President is about to announce that there are secret prisons.” I said, “You must have misunderstood, because there’s no way they’re ever, ever going to admit that. It just causes all sorts of problems diplomatically.” And low and behold he did. And that’s because, there was enough debate about the issue within his own administration and within the public; but fundamentally within the
administration about what they were doing. So it all is about the debate and the contest of ideas. And I’m very glad to see a room full of people who are going to defend the contest.

SCOTT PELLEY: Let the record show that both you and Jim scored the beat on the President on the story. I neglected to mention off the top, I’m going to be asking questions up here for maybe an hour or so as this conversation goes on. Then we’re going to go for some intelligent questions from those of you in the audience; which we’ll do for 10 or 15 minutes as I understand it, as it goes. So if you have some questions, think about those. We’ll get a microphone down there to you somehow. And we’ll pick three or four or five questions from the audience before this is all over.

Pierre Thomas, ABC, you were discussing with me earlier that the irony of all of this, in your view, is that reporters are now being prosecuted and investigated for doing the job that they’re supposed to do.

PIERRE THOMAS: Indeed. I mean, our society, I think, is built in part on the public having information. It’s what my bosses ask me to do every day when I come to work; which is “find out things about how the government is operating.” And, essentially every day, people are telling me things they shouldn’t be telling me. Some people might say that they shouldn’t be telling. And the way I look at it is very simple, which is how I get through the moments when I’m cajoling someone to give me additional information or when forces are having the conversation with you about, “Okay, you know, will you really protect me if I tell you this background information?” And where I come down on it is, I don’t think any of us want to live in a country where the government operates in a black hole. Where the government operates and no one knows what it’s doing or why it’s doing it. To piggy-back on what Dana was saying, that it’s about the debate. Now none of us want to report anything that’s going to be appealed. And
I’ve had conversations with editors and with, when I had information about some pending investigation where, if it was reported too early, someone could be injured. And we don’t publish that kind of information. But again, I think we all need to be very careful about a notion where the government has certain things that they can do in a complete vacuum and no one knows about it.

SCOTT PELLEY: You bring up an interesting point. And let me move to David Remnick, The New Yorker. You’re the only editor that we have so we’re going to beat you up for all the editing questions. Who are we to decide, as journalists, what is in the national interest? We have conversations at The Washington Post and The New York Times in which we presume to decide that this is or is not something that will breach national security or will endanger the United States. How do editors make that kind of decision?

DAVID REMNICK: Well, you know, I grew up at The Washington Post. And there was an ancient sports writer there, now gone, sadly, named Shirley Povich whose sports writing career began as a caddy for Calvin Coolidge. And was the sports editor for The Washington Post for half a century. And we were covering a fight together once and I got furious at the desk. And I was a sports writer. That’s how I started. And I was complaining and, you know, all the things that reporters do with editors. You know they put the who won, actually in the lead, instead of my poetic rambulations and so on. Outrageous. And I slammed the phone down as John Feinstein had taught me to do and Shirley said to me — Shirley Povich a man who had been for fifty years in Who’s Who in American Women. [Laughter] And always answered the question, “Has gender ever held you back in your profession?” -- negative. [Laughter] He said, “Son, stop misbehaving. An editor is merely a mouse training to be a rat.” So it’s very pleasing to be here as the singular rat.
I grew up at The Washington Post and I saw certain things happen. In a newsroom you are in a room, in fact this size, and you spend a third of your day actually working, a third of your day schmoozing, and third of your day observing everything else — roughly speaking — especially when you’re that young and stupid. And one of the things — I came 15 minutes after the whole Janet Cook thing. There was still the atavistic glamour of Woodward and Bernstein in the room. And another thing happened when I was a night police reporter. William Casey, the head of the CIA, strode through the room to Ben Bradley’s office. And remember Ben Bradley’s office is like a fish tank. It was glass so you could observe him the way you would observe a piranha [Laughter] …feet up on the desk. And Bradley at least respectfully put his feet down for the Director of the CIA. And it turned out, what that discussion was about was, that Woodward had information – not surprisingly – about submarine codes; about a story that you guys know, I’m sure better than I do, that turned out to be called Ivy Bells. And it was about the fact the United States knew that the Soviet Union — there was a thing called the Soviet Union — knew that they… So we ran on their codes.

SCOTT PELLEY: We had wire-tapped one of their undersea cables.

DAVID REMNICK: Whatever.

SCOTT PELLEY: Yes.

DAVID REMNICK: Yes. [Laughter]. But way past my pay grade at the time which was $18,000.

SCOTT PELLEY: This is a major order secret. This is a major secret and this is going to be trade methods and…
DAVID REMNICK: [Interposing] And let me tell you something. I don’t think The Washington Post was in love with Casey at the time. I think that the idea that reporters are ideological is nonsense. Reporters are built. They are hardwired to find out and publish. It is with horrible regret and with great self-restraint that they don’t publish or they publish half of what they know. And I’m here to tell you they do it all the time. All the time. Sy Hersh will call me and he will know operational things having to do with a rock. And I bet you that is the case with Dana and on down the line. And we do not publish it. And it is disgusting to me. The notion that public officials, whether it’s Larry Di Rita at the Defense Department, will make accusations, moral accusations, about us. I would ask the question, who has caused a far greater disaster? Please point to me the disasters that the press has caused in Iraq other than not getting the WMD question in time; which I don’t know quite how that question could have been gotten. But God knows we would all have loved to have gotten it.

So the First Amendment to the Constitution and then the American system is set up precisely so that editors, who are appointed, yes, by private owners in most cases, have important decisions to make. And I swear to you that they take these things extremely seriously. No, we are not elected. But a lot of decisions are made in American society that lives depend on it, where economies depend on it, that are done by people who are not elected.

SCOTT PELLEY: Jim Risen, on that subject, let me ask you about the piece again the won the Pulitzer Prize this year that you did with Eric Lichtblau regarding the warrantless surveillance of the NSA domestically. The New York Times held that story for a year. Give us some insight into that. What was that conversation all about?

PIERRE THOMAS: Do tell James. [Laughter]
SCOTT PELLEY: Give us the version that doesn’t take a year too.

JAMES RISEN: Well, all I can say at this point is that it was a difficult decision. And it was difficult because, as David Remnick just described, we take very seriously the requests of the government not to publish information. As soon as, I mean this is no secret, but as soon as we went to the government with what we had they began to ask us not to publish. And it was a — we had a series of discussions both with the government and within the newspaper about that, that were difficult. You know, that’s no secret. But everyone involved, as David Remnick just said, took extremely seriously the issue of how would this affect national security? And that was the overriding issue that we all faced. And it was something that I don’t think The New York Times has been given enough credit for. Is how seriously we took that issue and how painful this whole process was for us as Americans.

SCOTT PELLEY: You told an audience in Oklahoma recently that it was the hardest decision you ever made in your life. What do you mean by that?

JAMES RISEN: You’ve been Googling me or something? [Laughter]

SCOTT PELLEY: Oh I, yes. I’m a reporter. [Laughter]

JAMES RISEN: Yes, it was. It was the hardest decision I ever made. It was the hardest decision I think The New York Times has made in the last 20 or 30 years. And I think it was the right decision.
SCOTT PELLEY: And the difficulty was what? I mean you can make the argument now that the White House, arguably, was breaking the law, was driving around FISA, there was a process in place for doing this and they were circumventing that. What’s so hard about that?

JAMES RISEN: Because you had the, from their point-of-view which — a position they have made public since — which was that this is vital to national security. That the ability to eavesdrop on terrorists is central to the war on terror; that was their argument in a nutshell. And the counter-argument, I think, which eventually, I think was what convinced us that it was the right thing to publish, was that it’s no secret that the United States monitors the telephone and email — telephone conversations and email traffic of terrorists. But the real secret here was a political secret and a legal secret that — not a national security secret. The political and legal secret was that they were avoiding the law and the they were going around the Pfizer [phonetic] process. The central thing that we reported — really the — what we were... The secret we reported was that they were not following the law. And so, ultimately that was why I think we published the story.

SCOTT PELLEY: Pierre, I want to come to you about your involvement as a defendant in the Wen Ho Lee case. But before I do that, while I’m on this theme, let me ask Dana this question. Dana, before you published your story regarding the secret prisons or the rendition stories that you broke, what sort of conversation was there at The Washington Post? And did anyone at any point come to you and say, “You know, we may not be able to keep you out of jail.” Was that part of the conversation?

DANA PRIEST: Well, it would be more dramatic if it were. But the jail question doesn’t come up like that. But like Jim was saying, these questions were treated very seriously and I’d like to recognize Eric Lieberman who helped us make those decisions. And then, to put in a
plug for the fact that the stories that Jim did, the story that I did, the stories all the reporters — not just in Washington. But there’s a huge national security bureaucracy that’s grown up all over the country; it’s actually becoming decentralized. If your reporters are any good they’ll go out and try to figure out what those secrets are to be told. And luckily we had Eric and other counsel who were steeped in, not just the Espionage Act; it’s really much more than that. It’s the sections that begin with 790-something that really talk about what it is that’s illegal to publish. And you have to start there and know that, for instance, we were not dealing in those areas. It gets to, then, an issue of judgment. And to help a paper make a judgment, we are never going to know what the totality of information is behind that curtain that the government wants to say is going to damage national security. So all we can do is have the facts the reporter can unearth — in my case that there are secret prisons, that they’re located in X country, that there’s a legal dispute about whether they are legal or not — and then when the government says, “Well this might damage national security.” It’s up to me as a reporter on intelligence to say, “Well how, in what way?” Because they’re not going to really tell me. And it’s up to, I believe, you to figure out how we should think about that. Not just does it break a law? But use your analytical skills to probe the reporter or other sources to figure out what it is that we should be considering that we might not think about. My fear is that reporters are going to say — and perhaps their editors and their publishers are going to say, you know this stuff is going to just bring us grief; in the short term at least. So let’s move onto something else. Well no. This is central to what we are as a country now. Follow the money and the money goes to this area of secret programs in the government. There are hundreds of billions of dollars that are being spent in the prosecution of the war on terror; most of it classified. And unless you have reporters on your staffs who know they’ll be backed-up with attorneys who believe that they should be doing this work, it’s much easier not to do it.
SCOTT PELLEY: Give the lawyers a little bit of insight about what drove the decision to publish editorially. As Jim was saying, what was the threshold issue in the editor's meeting in which somebody said, “We’re going to go with this?”

DANA PRIEST: Well, for us, the question was never really, “Should we publish this or not publish it?” It was, “How much of it should we publish?” And the government argued that they’d really like none of it to be public; but they don’t want the names of the countries to be public. And ultimately we decided, Len Downie decided, that that was a reasonable request. And he did that, and I was in a lot of those meetings, and we batted around, played devil’s advocate and all this, is that the threshold for us and the hardest question was that what the CIA was doing did not necessarily break U.S. law; because there’s the covert action section, they had the authority to do this with the Presidential signing that gave them the ability to set up these secret prisons. But, in the Eastern European democracies who are trying to work under a rule of law, this would be illegal. And to us that mattered a lot. And that was a special onus, you know. Okay, so now we know the countries but we’re not going to tell their citizens that what their government is doing is illegal. And that’s something that I think still weighs on us.

On the other side was — not the political embarrassment; we took that off the table. It was that all these countries cooperate on other things, some of which I know about, which would not be controversial and are productive in the area of counter-terrorism. And that they might, having been exposed, be so upset with the United States if this got out, or politically embarrassed that they would stop that cooperation. That was number one. And number two was a safety issue that perhaps if you identify the prison in which Khalid Sheik Mohammed was being held, that they might be a special target for terrorists. And we thought that that was also a reasonable thing to consider. So we didn’t name the countries.
SCOTT PELLEY: In a sense, both of these stories -- this information in both cases was classified at the highest possible government classification which is SCEI, for Sensitive Compartmentalized Embarrassing Information. And it seems to me that illegality was the issue for both The New York Times and The Washington Post in determining whether to publish. That you felt that you had uncovered something that was illegally, either domestically or overseas, and that was the compelling issue.

DANA PRIEST: The other question was – is the United States disappearing people? I mean, it was. It was disappearing people. And, okay, that’s a trade-off. And maybe that’s okay. Maybe people think that’s going to be okay. But again, going back to the debate and the contest of ideas, we believe that they should know that because it’s certainly unusual that we be doing that.

SCOTT PELLEY: Before I come back to you, David, let me move us off national security for just a second and get into a fascinating privacy case that Pierre was in the middle of. Pierre was a defendant in a case in which Wen Ho Lee, who you may recall was a scientist at Los Alamos; it was Los Alamos, wasn’t it? And there were government leaks coming out of the FBI, out of the Justice Department about Mr. Lee being under investigation for espionage. In the dark ages before ABC, Pierre was at CNN and reported extensively on this case — broke a lot of news on the case — and he ended up landing before the Supreme Court. Fill us in on the details a little bit, Pierre. And also tells us what you were telling me earlier about the absurdity of what you were reporting compared to what the charges were.

PIERRE THOMAS: One clarification, not a defendant; a witness. [Laughter]

SCOTT PELLEY: A pretty big one.
PIERRE THOMAS: And I will preface my remarks by a, “What do you do?” What do you do in a situation where you’re reporting is completely accurate, fair, and for the life of you you cannot find what the Privacy Act issue was? That this appears to be a situation where the person who is suing the government is on an information quest to find out who may have, I guess, originally leaked his name and information about the fact that he was under investigation. What do you do where you are asked to cover the story by your employer, the person’s name is already out there, the basic nuts-and-bolts of the story is out there, and your news organization says, “Cover a story of national significance. And cover the strengths and weaknesses in the government’s case, and cover what is happening with this person who is the subject of investigation?” And I will say that it is one of the most perplexing chapters in my life, in the sense that I kept wondering now, “Why is it that I’m called as a witness? And why is it that I might have to go to jail?” And I recall a conversation that I had late-Spring with my wife. And we had sort of talked around this issue, but the moment came when the definitive conversation needed to be had. And we did it in the kitchen of our home while our three-year-old played in the background. And it was, it began something like this.

“Honey, we found no relief in the courts. It’s headed towards the Supreme Court. The likelihood that they are going to rule in our favor is not high. There are some discussions about a possible settlement, but that seems very remote. So honey, I think I’ve got to go to jail.” As my three-year-old is playing in the background.

The look of pain on her face, and frustration, I can still recall very vividly in my mind. But I had to say that, to her, “You have to look at this strategically. And also, what is the right thing to do?”
First and foremost, if I give up the names of these sources I’m not going to be able to do business in Washington, DC in the way that I need to do business. And you heard me say, earlier, that every day I’m asked to find out things that there would be people in the government who would say you shouldn’t find out.

So frustrating, perplexing; and there was a very significant irony here. And I think I can say this without damaging the relationship with my sources. There were people, when I started reporting on that case, who from the very beginning said, “Pierre, I don’t know if there’s an espionage case here to be made. We don’t have Mr. Lee giving this information to anyone. So be careful in your reporting and be fair to this guy because, you know, we don’t know exactly how serious this matter is.” So I must tell you that colored my reporting the entire time. And I went back and actually looked at every piece I reported, and every piece talked about how no evidence of him giving the documents to anyone, and an espionage case just may never be. So the irony was, here I am being mindful, being fair, trying to be fair to this guy, and then all of a sudden, you know, because he’s got what he sees as a legitimate issue, called as a witness in a case where I’m like, “I’m a side issue. Why am I suddenly in a situation where I give up my freedom, and probably would have to give it up longer than he might have spent any time in jail?”

SCOTT PELLEY: And probably no one in this room needs to be reminded that the case was settled with a payment to Mr. Lee by all of the networks that were mentioned.

PIERRE THOMAS: The government paid the primary amount. The journalist, as we like to call it, contributed to the settlement. And it was something I think that no one was completely in love with doing but, at the end of the day, if you can protect your sources and the agreement that you made with them, and simultaneously stay out of jail; that’s not a bad thing. [Laughter]
SCOTT PELLEY: David Remnick, let me throw a little red meat in the editor's cage.

Gabriel Schoenfeld, in Commentary, wrote this recently:

“If Americans are still wondering why our Intelligence has been as defective as it has been, leading us from disaster to disaster, one of the reasons is unquestionably the hemorrhaging of classified information to the press.”

DAVID REMNICK: Yes. Well, that’s wrong. [Laughter]

SCOTT PELLEY: Moving on.

DAVID REMNICK: It’s just wrong. And I don’t cover Intelligence. And, again, I’m in the editor’s spot. And, in a sense, it’s better to ask these people. But my sense of why Intelligence, such as it is, has been so defective in the last several years is, first of all, a part of the world rightly or wrongly took us by surprise. It took us by surprise. Not rightly or wrongly. It just took us by surprise -- and the amount of resources that we now felt we had to apply to it; foreign languages, expertise in the country. I mean, Bob Behr could only go into so many places; or Milt Bearden or whomever — number one.

Number two, the Bush administration distorted the Intelligence systems. It’s not a highly scientific system but, such as it is, it was badly distorted by the process known as stove-piping; which is at the top, a desired result was wanted and therefore the system of Intelligence and the way that data got to the top and the way it was analyzed or not analyzed, or refined or not refined, or questioned or not questioned, was badly, badly distorted in a way that, I think the other panelists would agree, is unprecedented. Not that we haven’t lived through horrible episodes in the history of the CIA or the FBI, witness the Church investigations and many other such incidents. To call Commentary Magazine an ideological right-wing magazine, much as I love it, is an understatement. Gabriel Schoenfeld, ditto.
SCOTT PELLEY: Jim Risen.

JAMES RISEN: Can I comment on that?

SCOTT PELLEY: Please. Jump on in.

JAMES RISEN: That article that you’re referring to was talking about me.

SCOTT PELLEY: Correct. [Laughter]

JAMES RISEN: And he wanted — the point of the article was that I should be in jail, I think. To me, I think what the fascinating thing about the period we’ve been going through in the last few years is that the war in Iraq is very different from the Viet Nam War, militarily, on the ground, is very different facts. But I think the dynamic within the United States, that the war has created, is kind of eerily similar in the -- in particular in the dynamic between the press and the government. And we are now fighting a lot of the same ideological battles that we fought in the late ‘60s and early ‘70s in terms of the government versus the press. And I think that Commentary article reflected kind of the same conservative view about the press that was there in, you know, 1971, 1972 and that whole period. And so, I think, in a lot of ways we’re replaying generationally the arguments that a lot of these people had when they were young. They’re having the same arguments when they’re approaching Social Security age.

PIERRE THOMAS: It seems to me in some ways here, that in essence what James or Dana did, in some ways, is decide issues. And by that I mean that reporters becoming the focus of the ire of whomever in government. When the — what we should be doing and what we should be focused on is the following, “How could 911 happen and there be so much
information that the government had and could not piece together?” I mean, that’s the issue. Yet we’re sitting around talking about whether reporters should be in jail. It’s preposterous. [Applause]

SCOTT PELLEY: Dana, I’m curious. Hypotheticals are never very satisfying, but I’ll plunge into one. What would you not report? What’s a national security secret that’s beyond the pale?

DANA PRIEST: You know, this is the oddest thing about being a reporter in this time. And the thing that I, in some ways, would like to roll back the clock and never have been involved in, but I wouldn’t trade it for anything; which is that I do know things that I would never publish. And I actually understand in a way that I didn’t before, that there are things that should not be published. And those, you know, I gave the prison example. The easiest, the black-and-white example is troop movements. But there are a lot of things that I wrote about around the secret prisons that actually the biggest of my work had to do with what they call, the CIA calls foreign liaison relations; which is the relations with other governments. And those are the most sensitive relations that there are in our government. And you cannot get to them. You have to peel off so many levels to get there. And you don’t know, because I get such a superficial amount of information compared to what really exists, you don’t know what the dynamic is that that is going to set off. You look at the Italian … You know, the prison story has sort of died here. But in Europe it created a huge reverberation that continues today. And I reported, for instance, that the kidnapping of this Abu Omar Imam by the CIA several years ago took place with the cooperation of the Italian service; because that was true. But I also knew that the CIA doesn’t go into Europe and kidnap someone because – without the okay of the service there. What I didn’t know at the time, and what set off this giant search by reporters overseas, was that the journalists in Italy just weren’t used to reporting on this. And so I was opening up doors that
they had not gone through yet; for a lot of different reasons. And I don't know where that’s going to end, but it has sparked a — many debates in their Parliament. It set off an investigation by their, one of their judges that’s yet to be concluded. There are -- the head of their Foreign Service has been called up for, you know, prosecution. And this has happened in many other European countries. So you — in this area you are not sure.

And I remember Len Downie, at one point, saying during our discussions, you know, “We’re not going to be able to tell, right now, how this story ends.” So you do have to be cautious. And it’s not a position that I like to have. I, you know, as a journalist who's used to putting it all out there.

SCOTT PELLEY: There’s information you have not reported recently. What was the reason? What was it? Were people going to — seriously, were people going to be killed? I mean, how do you make that determination that, no...

DANA PRIEST: [Interposing] Well ultimately it is... It’s using as much — gathering as much information as you can about whether or not this really could damage national security. And in one sense you’re like a blind man in a room trying to feel these things and determine what they are; because you are never going to get to the point in which you really can answer that question with certainty because the nature of the — of what you’re doing. So, yes. People being — lives at stake is a no-brainer. Although you can’t really even sometimes determine when that might even be a case. And also relations with other countries, to some extent, is also something to consider; again, not political embarrassment. And that’s where it really gets to be a fine line. Is it just politically embarrassing? Or is it really going to cause the other country not ever to cooperate with the United States again? And, unfortunately, you can’t answer that question when you make the determination.
SCOTT PELLEY: David Remnick, your magazine published the Abu Ghraib story. Why? Why was that so important?

DAVID REMNICK: Because we got it. And the story of Abu Ghraib is a rather peculiar one. We didn’t get it first; so far as I know. CBS got it first. CBS was in possession of part of the story for quite some time. Now I’m talking — I don’t want to talk past my confidence, but this is the way I understand it. CBS came into possession of photographs. As we now know, only a small portion of a vast trove of repugnant photographs about what had gone on in Abu Ghraib Prison. And CBS did what you do. You call — in the course of your reporting you call the Pentagon or Pentagon spokesman or officers or what have you. And the Pentagon, to use the technical journalistic term, freaked out; and made the argument, as I understand it again, that if you publish this, if you put this on the air, precisely what Dana was talking about will happen. That the repercussion will be such that the American effort in Iraq, such as it is, such as it was, will worsen and lives will be lost as a result.

SCOTT PELLEY: [Interposing] It was, if I may interject...

DAVID REMNICK: You absolutely — you above all should.

SCOTT PELLEY: It was my broadcast and I’m familiar. What they told us was, and you’re exactly right, but they said, “Look, you’re going to get soldiers killed. This will kill soldiers because there will be such a level of outrage…”

DAVID REMNICK: [Interposing] I mean, I think we’re winking at each other in this narrative because we were on the other side of town on the same story. I won’t say how Sy Hersh came into possession … So CBS was holding this story…
DANA PRIEST: [Interposing] And why is that, Scott? Why did CBS hold the story?

SCOTT PELLEY: I ask the questions around here. [Laughter]

DAVID REMNICK: Yes, he works alone. So Sy, for want of a better tactical term yet again, gets the story. And he gets two elements, broadly speaking, he gets pictures and he gets something called the Taguba Report — all at once, very quickly again. And we, our weekly magazine — the story was so obviously gotten. I mean you had pictures, you had this report, I mean this was not, you know, one of these Sy Hersh or Jane Mayer or Steve Call things, or Dana Priest or James Risen — it takes six months a year, whatever. There was this. It was irrefutable and it was horrible, and it was no question that we were going to publish it the earliest possible date; which would have been six days later.

The way it works in journal-land is everybody knows everything. It’s that we know that you’ve got it, you know that we have it, and CBS’s pulse quickens when they hear that The New Yorker has it. The interesting thing — and I want to say that CBS did, I feel, the right thing and I hope it doesn’t sound patronizing. They went on the air on Wednesday, Thursday night on 60-Minutes too, and they did their story. I think Dan Rather was the reporter. And our story went up on a website, on our website Friday night, and we, as it were, gave it to The New York Times and -- which they always love. And we published at the earliest possible date, which was Sunday for Monday and so on. And we had this extra dimension which was this internal report of the military.

The interesting thing is the number… Now, we have a very — we have, because we have time, we have this… Not only do we have a lawyer, and not only do we have the likes of
me, who’s a little mouse next to Len Downie, but I’m in the same role, or Bill Keller. They don’t have to pick talking dog cartoons as well. [Laughter] We also have a fact checking department that calls everybody concerned. And Ed Klaris was the lawyer at that time, and Sy Hersh and so on. I did not get one phone call from the Pentagon. I think they knew at that point that it was a lost cause and there was nothing to do, and it would only make it worse. I can’t guess at their motives, but I have to tell you that over the course of eight years of doing this I’ve gotten a lot of phone calls from the Pentagon. I’ve gotten a lot of faxes from the Pentagon, and letters, and they are nasty sometimes. They are personal and they are nasty and they go, what I would have thought, beyond the bounds of professional language at times. Brian Whitman, Lawrence Di Rita and so on. Nothing that week. And we published the next week and the next week. This is highly unusual for The New Yorker. Three weeks in a row as the story accumulated and developed.

So, you know, did that story lead to a loss of life? What it certainly led to was a horrendous loss of American — remember, part of the reason we were evidently in Iraq was to build democracy and constitutional norms and all the opposite values of Sadam Hussein. This event undermined that moral presumption or effort dramatically and, I think, irreversibly.

SCOTT PELLEY: Is that a good thing?

DAVID REMNICK: Well, I lived in the Soviet — is it a good thing? [Crosstalk]

SCOTT PELLEY: [Interposing] Those pictures are going to be in Arab textbooks for the next 30 years.
DAVID REMNICK: Yes, The New Yorker and CBS didn’t torture people in prison. That’s what I would say. We’re reporting the truth. We’re — you know, I lived in the Soviet Union for four years and, yes; I’ve seen state propaganda. And, in fact, it’s now back again; very much. Do you want that? Then you won’t get the Abu Ghraib story and you won’t get the truth and you will live in this kind of epistemological, moral, informational vacuum that is called totalitarianism. It’s as simple as that. [Applause]

SCOTT PELLEY: Jim Risen, I’m curious. In the climate that we are in today, where people are talking about — where people are actually sending reporters to jail, and sources are being unmasked, are you having trouble getting your sources to talk to you now? Is there an actual chilling effect out there?

JAMES RISEN: Well, I don’t think I want to answer that question because I don’t want to talk about my sources in any way. But I think that it is important for us as Americans to begin to think about changing the rhetoric that we use about leaks and about reporting on classified and national security information. I mean, I think, when I got into this business a long time ago, a whistleblower was someone who was kind of respected in society. And we have had a real change in the nature of the debate over the media over the last ten years or so in which the media has become part of the partisan debate. And everything, you know, there is this partisan effort on both sides, I think, to denigrate people who talk to the media in a way that you can discredit them and take away the value of the information they provide. I go back to the Clinton period. It was the — I think they, the Clinton people started it; this, the Bush people are better at it — much better at it — at discrediting, demonizing journalism. And I think that that is the real problem we have today is that we are now part of something — a phrase that never existed before, the mainstream media. That was a phrase that didn’t exist before. We’re now being — we’ve been compartmentalized. And I think we have to go back to think about, you know, are
we trying to compartmentalize truth? And so I just want to get away from trying to demonize people who talk to reporters. And I don’t want to go any further than that, except to say that all I know is that the people who have talked to me are American patriots and I think that any effort to demonize leaks is just part of a broader effort, and a dangerous effort, to crush freedom of the press.

SCOTT PELLEY: Dana, what do you tell your sources about what sort of level of protection they can expect in a relationship with you?

DANA PRIEST: Eric? [Laughs] Yes, you know, I don’t feel comfortable getting into that. But I do feel comfortable adding to what Jim said; which is, it’s not only that this trend of bashing the mainstream media has come about, but it’s come about at a time when the media is undergoing its own transformation for economic reasons. And the blog is fear and the alternative media is blossoming using the information, of course, that we produce; but not crediting it in any way intellectually or financially. Who cares about that? But in any positive and truthful way. And I think the convergence of those three things is very threatening to democracy. And unless we can not only stop talking about leaks and start talking about issues that the leaks are, you know, revealing, that the combination of those three things are, it’s going to shrink the free press to a point that is very damaging. And I’m not sure that we can recover from that. So I think we’re in a critical point right now with the convergence of economic factors, alternative media and the mainstream media, to reaffirm in whatever way we can — and I do it by speaking about this, especially to alternative audiences who don’t get what the mainstream media does — the importance of it.

SCOTT PELLEY: David?
DAVID REMNICK: I want to be careful. I don’t think the alternative media threatens democracy. I don’t think that’s what you’re saying. I – that it’s parasitical sounds too aggressive; but it is, by nature, commenting upon, using, sending around — we’re in a sorting out moment. That the, the self-possession of the Ben Bradlee’s and the Abe Rosenthal’s in the ‘60s say, or the ‘70s, is gone. That when Ben Bradlee or Abe Rosenthal, in those days, would get a complaining phone call, ideological or otherwise, they could rightly or wrongly dismiss it with a nasty dismissive letter or the back of their hands because the power and the singularity of The New York Times and The Washington Post, and the networks were what they are [phonetic]. The psychology of the mainstream media now is different. But what concerns me, and it’s for economic reasons… You know, The Washington Post circulation has dropped, The New York Times circulation has dropped, the LA Times is going through its own michegas, to use the technical term, in the last few days. And it’s not going to get demonstrably better or more secure in the near term. What really concerns me is you have – not me, but these three people here – not freaks, but exceptions in the general picture of any media; mainstream, alternative, whatever. In other words, people who are paid pretty well, who are given pretty much their druthers to pursue stories with a great deal of time and resources and, God forgive me, lawyers, with great talent and fact checkers at a place like The New Yorker. This is not the common state for most reporters at most newspapers, most television stations and radio stations. NPR, The Washington Post, The New York Times, the best part of the networks; that is highly unusual and it’s not growing. And so the economic anxiety that is what it is, that is the nature of our times, has made this all the more fraught. And you can be sure that Karl Rove or whatever political advisors are in this administration, the last one, or the next one, are acutely aware of that anxiety and play on it; because they know they will not be treated with the same deftness that Ben Bradlee or Abe Rosenthal could afford 25 years ago.
SCOTT PELLEY: The other thing that they’re acutely aware of is the ambivalence of the public about what we do. This is a Pew Research Center poll taken after 911. 53 percent of the American people favor the government’s right to censor the news it believes might threaten national security. On the other hand, 52 percent of the same respondents said that journalists should always dig hard to get the information that they can, rather than trust the government.

DAVID REMNICK: [Interposing] It’s meaningless. More people believe in angels than you — than evolution in this country. I say it not as an insult or — it’s just a fact. So if you worry too much about statistics like this, you’re going to drive yourself crazy, out of business and out of good journalism. [Applause]

JAMES RISEN: [Interposing] Can I make one…

SCOTT PELLEY: Please do. Jim Risen.

JAMES RISEN: Just to follow-up on that. I’ve been a reporter, you know, since I got out of school; which was many years ago. And I have worked at several newspapers all across the country. And I’ve, from the first day I’ve been in the — as a reporter — I’ve heard about how much the people on the other end of the line hate the press. But then you start asking them about themselves, their personal life, their life, their job, and you can’t shut them up. And there is a deep ambivalence in the American psyche about the press that goes throughout everything we’re talking about. The same people who say that we should never have reported about the NSA eavesdropping program are the people who say, at the same time, why isn’t the press more aggressive? It’s just, it’s not necessarily logical, but I think there is a general sense that people hate the press, but they love a particular concrete example of what the press can do. It’s like we hate Congress, but we love our Congressmen.
SCOTT PELLEY: Pierre Thomas, I’m curious. What do you need from these people? What can these people do for you? Where have lawyers failed to rise up to the needs of a journalist in a case? You’ve been all the way to the Supreme Court.

PIERRE THOMAS: Well, I can say that my respect — my wife’s an attorney so I have to be careful. But I can say my respect for what the people in this room try to do, grew immensely throughout the five, six years that I had to deal with this issue. Many phone calls from me, long, you know, many, many hours. In fact, in Spring my mom happened to be visiting. And there was one day when I was literally on the phone — I took the day off because I knew I had some major decisions to make. And I was literally on the phone from about 9:00 a.m. to 6:30 p.m. And she said, “Boy, what is wrong with you?” Because, you know, I tried not to worry her too much about what I was going — what I was dealing with. But I will just say, what I — what we need from the people in this room is to go to the mat. To think of every creative way to allow us to do what it is we do so we don’t have to think about this kind of thing. The frustrating part, about the Wen Ho Lee case for example, is that at every court we found no relief. In fact, one of the more fascinating things about the case to me is that, as far as I could determine, none of the judges who were reviewing the case really looked at the specifics of what each reporter actually reported and whether it was relevant to whether they needed to be called as a witness. I found that incredibly, you know, frustrating. So I think, you know, in general I think what we need the people in this room to do is, again, to be as aggressive and as creative as they can be in making the case for us.

And I will also add this. That I think we in journalism also have to do a bit of self-examination; in that I think we’re in the communications business, but I think we also have to begin to ask ourselves the question, “Have we done a good enough job of communicating to the public what it is we do, and why it is we do what we do, and how there are different forms of
media?” I mean, do our news organizations, and should our news organizations, be going into elementary schools and high schools and having conversations with students about what it is we do? One of the things I worry about in our profession sometimes is, do we sometimes get a little bit too removed from the people that we serve? Because at our very best we are serving people, informing them; so I just throw that out there as an idea.

SCOTT PELLEY: Dana, let me ask you. What do you need from the lawyers?

DANA PRIEST: Well, in my case, I think I had luckily a group of experienced lawyers who could help think through these issues. But in thinking about the future, I had thought that what would be a good idea is to get a group of attorneys together — I don’t know in what forum—but if a paper doesn’t — if a paper confronts these issues, and the editor is trying with the help of the reporter and perhaps the counsel at the paper, to decide national security issues; can they go somewhere to get even better help? You know, can they go to a Jeff Smith who’s sitting out here; who’s the General Counsel at the CIA and has really been on both sides of the fence — but I believe, right now, is totally committed, you know, to pushing the limits of journalism. And say, what do you think about this particular issue we’re trying to mull over? And can you institutionalize among yourselves a group that actually can be used to think through, not the legal questions but, the legal questions in the context of the national security questions. And without that group then you’re left with sort of catch as catch can; and hopefully the editor at the paper that’s trying to push the limits will somehow figure this out in their own process. But I do think it would be advantageous to start thinking ahead and developing something that could be a resource.

SCOTT PELLEY: We’ve been at this about 60 minutes which is all the time I ever get. [Laughter] But I wonder, are there some questions in the audience that we can take. Yes sir.
MALE VOICE: Mr. Pelley, first all I want to tell you what a thrill it is to see you in person.

This is a question...

SCOTT PELLEY: [Interposing] I wish my wife felt the same way, but that's very kind of you.

MALE VOICE: David, this is a question for you. Let me take you back to the thrilling days of yester-year. In 1961, on the eve of the idiotic folly of the Bay of Pigs, CBS News was persuaded not to report that. That they were massing forces in south Florida which were about to attempt to invade Cuba. The White House, even though it inherited the plan from Dwight Eisenhower, the Kennedy White House persuaded CBS News not to report that. Reporting that might have changed the outcome. What would you do as an editor today?

DAVID REMNICK: Publish. [crosstalk] In other words, if you are doing this before-hand — and I think, by the way, every executive I've ever heard at The New York Times talk about this in retrospect, says the same thing. That you are not doing this is the active combat; that is much trickier and this is tricky enough. This is, believe me I don't mean to be flip about any of this. But everything I understand about the Bay of Pigs, and maybe James, particularly at The New York Times, or other New York Times people in the room know more deeply; everything I understand about the Bay of Pigs situation is that even James Reston, who is not exactly the Abbie Hoffman of his generation, wishes they had published well in time to have prevented -- or to inform about this.

SCOTT PELLEY: Dana, what do you think of that notion? I mean, these are — we're talking about troop movements here. [Crosstalk]
DANA PRIEST: Let’s make it harder. Let’s make it harder. What if we learn that there are, there’s a plan to enter Iraq or Iran, or to take down a nuclear — maybe a nuclear facility? [Crosstalk]

DAVID REMNICK: [Interposing] We’ve already published as much as we can about that.

DANA PRIEST: Well, I know. Or to, you know, mount a coup that is, you know, that hopes to be bloodless. I don’t know, I think these are the most… I can certainly see it both ways [Crosstalk]

DAVID REMNICK: Again, I don’t mean to be flip but I think history doesn’t… Indicate overwhelmingly that we should be quiet.

DANA PRIEST: But, you know, that’s the problem that you face is that you can’t see history when you’re in the middle of; you know, when you’re before it. And so it’s — they’re really tough. I can’t, you cannot talk about this in isolation. [Crosstalk]

DAVID REMNICK: [Interposing] Look, Sy, and he is not alone. I mean I don’t mean to keep to bringing up Sy Hersh, as if he’s the only investigative reporter in the world, he’s just one of ours, has published a couple of times in The New Yorker what the deliberations have been among the Joint Chiefs of Staff in the White House about a potential …the contingency planning for an attack in Iran and how angry the Joint Chiefs of Staff were that a nuclear option, no matter how limited, was kept in the argument. Now it seems to be off the board; but in the argument. Are we better off knowing that? Or better off not knowing that?
DANA PRIEST: But that’s different. What if the troops are on their way, you know, in the helicopters…

DAVID REMNICK: [Interposing] That, to me, is quite different. [Crosstalk]

JAMES RISEN: It gets to the central, the central divide in my mind, about whether you print – particularly about military operations – is what you’re talking about; it’s the divide between strategy and tactics. It’s what you’re tell-, what Sey has written about is strategic discussions. Tactics, the Bush administration doesn’t seem to know the difference between strategy and tactics, but that’s another issue. Tactical information is where you get into issues about publishing or not publishing.

DAVID REMNICK: I agree. But the Bay of Pigs… [Crosstalk]

JAMES RISEN: Right.

DAVID REMNICK: …would be a strategic decision…[Crosstalk] …it’s not right as troops are hitting the beach.

JAMES RISEN: Right.

SCOTT PELLEY: On the cusp of being tactical which is what makes this example so difficult. [Crosstalk]
DAVID REMNICK: [Interposing] My understanding is that The New York Times had that information, not as, you know, the night troops were hitting the beaches at the Bay of Pigs; but days well before that.

SCOTT PELLEY: Super question. Terrific. Another one, please. Right over here.

FEMALE VOICE: I hate it when no one has any questions, so my question for you is, have you been, have any of you or your organizations been actually faced with the government or the administration saying, “We are going to come after you under the Espionage Act. We are going to prosecute you if you go with this information”?

DANA PRIEST: I don’t think they show that much of their hand.

MALE VOICE: You’re not going to know it until they show up.

DAVID REMNICK: But so far as I know that has been a kind of undercurrent discussion that has been kind of put out there as a way to scare, to give pause. So far as I know it hasn’t actually happened yet, in reality, anywhere.

PIERRE THOMAS: But I would maintain you’re not going to know until the very last moment.

SCOTT PELLEY: When the FBI comes to the door?

DAVID REMNICK: Something like that.
SCOTT PELLEY: That’s when you’d know. Another question.

DAVID REMNICK: Lawyers only give answers.

SCOTT PELLEY: Yes, that’s right. [Laughter].
