

KEEPING JSOC A SECRET:

The Exposure of Special Warfare and its Adverse Effects on National Security and Defense to the United States



By:

Michael J. Sahadi, Jr., J.D.

Ave Maria School of Law Class of 2013

**In dedication to the unsung heroes who
fight, or have fought, thanklessly to
preserve the freedoms we all treasure.**

Thank you.

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Introduction

Any exposure is too much exposure. At least this holds true for the special forces of the United States. JSOC, or Joint Special Operation Command, operated in total secrecy with minimal to naught exposure by the media. That changed dramatically on May 1, 2011, in the wake of Operation Neptune Spear. In a matter of minutes after President Barak H. Obama announced to the world that Osama bin Laden was neutralized, media outlets began reporting the Navy SEALs killed bin Laden. Within in a very short time the world was made known of mission details, from the modified Black Hawk helicopters, to the compound where bin Laden lived, all the way to the unit who neutralized him. Never before has so many details dealing with an operation been disclosed globally. The effects of such a divulging of information are completely adverse to JSOC and its ability to conduct successful missions.

This research paper will be discussing JSOC and its intended purposes. This paper shall argue that the recent exposure JSOC has received is detrimental to its success in missions and operations it conducts. Though at times it may appear a political argument is being made, it is important to note those arguments deal directly with the danger of politicizing the military, not advancing a political agenda.

This paper shall discuss the-now-famous Operation Neptune Spear, not for the purposes of retelling the story, but to illustrate why disclosure of any mission to the caliber that Neptune Spear was disclosed is dangerous and counterproductive to the mission of JSOC. This paper aims to discuss these, while at the same time not promote

disclosure of sensitive material. JSOC has also been incredibly instrumental in the War on Terror, and this paper shall argue that in order for this command to maintain successful operations, it must remain secret.

What is JSOC?

JSOC is a military acronym for the Joint Special Forces Operations Command. This command falls under the United States Special Operations Command, under the acronym USSOCOM. JSOC is one of the most, if not the most, important command within our military. Without the supporting and active role that JSOC plays, our military would not enjoy the success it has throughout history. Quite frankly, without JSOC, history as we know it today would be largely different, and likely for the worse. What is it that JSOC does that makes it so important? JSOC is “charged to study special operations requirements and techniques, ensure interoperability and equipment standardization, plan and conduct special operations exercises and training, and develop joint special operations tactics.”¹

JSOC is comprised of the elite of the elite in our military. Its overall focus is on counter terrorism, and each branch of the military has their most lethal units under JSOC’s command. Although JSOC is involved with many operations on a regular basis, very little is known about those missions - as it should be. Because of the nature and purpose of JSOC, secrecy is vital. JSOC works very closely with the intelligence community to plan and execute operations. The units involved with these operations

¹ United States Special Operations Command, *Joint Special Operations Command*, USSOCOM (Mar. 2, 2013, 1:52 PM), <http://www.socom.mil/pages/jointspecialoperationscommand.aspx>.

are separate from the general military, and in a sense, work parallel to their general counterparts. Being an operative in one of these elite units is not something one can simply join. The selection process is incredibly rigorous, even for best military personnel. Members of these units are traditionally handpicked, in addition to the extensive training and screening. The units comprising JSOC include “the Army’s Delta Force, the Navy’s SEAL Team 6, the Air Force’s 24th Special Tactics Squadron, and the Army’s 160th Special Operations Aviation Regiment and 75th Ranger Regiment.”² Working under the same command does not necessarily mean working in together on all operations. Both “Iraq and Afghanistan had been informally divided, with the SEALs running Afghanistan and the U.S. Army’s Delta Force conducting the bulk of the operations in Iraq, though there was overlap of each organization.”³

Of all the units that comprise JSOC, none is more studied than the most elite and lethal unit, the United States Naval Special Warfare Development Group (DEVGRU). There is almost a romantic aspect about this group which draws so much attention, albeit that when it was conceived, no one was supposed to know of its existence.

² Dana Priest, ‘*Top Secret America: A Look at the Military’s Joint Special Operations Command*’, THE WASHINGTON POST (Apr. 10, 2013 1:56 PM), http://www.washingtonpost.com/world/national-security/top-secret-america-a-look-at-the-militarys-joint-special-operations-command/2011/08/30/gIQAvYuAxJ_story_1.html. [Hereinafter Priest].

³ Kimberly Dozier, *Fabled SEAL Team 6 Ends Hunt for bin Laden*, MILITARY TIMES (Apr. 16, 2013, 12:50 PM), <http://www.militarytimes.com/apps/pbcs.dll/article?AID=2011105020305>. [Hereinafter Dozier]

DEVGRU

Navy DEVGRU is the most elite and most lethal unit in the world. That is a bold statement, and one might even argue an arrogant one. However, that statement is absolutely true.

Naval Special Warfare Development Group, otherwise known as 'DEVGRU' or 'SEAL Team 6', is a Counter Terrorism unit administered by US Naval Special Warfare Command. An elite within an elite, the unit is made up of SEALs selected from existing SEAL Teams. DEVGRU is considered a 'Tier One' special mission unit on a par with the Army's Delta Force. SEAL Team Six is under operational command of JSOC.⁴

DEVGRU came to exist in the wake of the Iranian hostage crisis after the failed Operation Eagle Claw. In early November, 1979, "Iranian militants seized the U.S. Embassy in Tehran, and took all it's diplomatic personnel hostage."⁵ At the time, the United States did not have specialized units to deal with situations like this. Soon thereafter, "Major General James Vaught was charged by the Joint Chiefs of Staff to form a task force - it was called TAT, or Terrorist Action Team - that would plan a military hostage-rescue option."⁶ Colonel Charlie Beckwith was tapped to design a team. Colonel Beckwith had been part of several special forces operations in the past. Colonel Beckwith "had realized early on there was a need for an elite, mobile, highly trained unit to fight terrorism, conduct surgical behind-the-lines operations, gather intelligence, and provide nonconventional options to low-intensity-conflict scenarios. The unit he'd conceived and built to do the job was called SFOD-D - Special Forces Operational Detachment-Delta - or more commonly, Delta Force."⁷

⁴ American Special Ops.Com, SEAL Team 6, (April 2, 2013), <http://sealteamsix.americanspecialops.com>.

⁵ RICHARD MARCINKO, ROGUE WARRIOR 225 (1992).

⁶ *Id.* at 225.

⁷ *Id.* at 226.

Due to a series of mechanical problems with the helicopters and severe dust storm, along with other factors, the mission ultimately failed. Failure, though never good, provides a critical learning tool. There were a “number of significant lessons were learned from Operation Eagle Claw, which led to the establishment of the United States Special Operations Command (USSOCOM) and its USAF component, the Air Force Special Operations Command (AFSOC). The operation also highlighted the necessity of Joint planning and training.”⁸ Within SOCOM, JSOC came to exist.

SEAL Team Six was the brainchild of Navy SEAL Commander Richard Marcinko. Marcinko was involved with the Terrorist Action Team, though he did not design SFOD-D, he did help plan their mission. In the wake of Operation Eagle Claw, it was evident specialized forces, properly equipped and trained, would be necessary to deal with counterterrorism. Marcinko writes in his autobiography, *Rogue Warrior*, “[w]hat I had wrought was a new SEAL unit devoted exclusively to counterterror. It would become a coequal part of the JTF [Joint Task Force], alongside Delta and the Air Force’s SOF, with world-wide maritime responsibilities.”⁹ This new unit would be called SEAL Team Six, later to be known as DEVGRU. Marcinko named it “Six because there were already six platoons that had received CT [Counter Terrorism] training. And Six because the number would make the Soviets believe that there were five other SEAL teams somewhere, when there were in fact only two.”¹⁰

⁸ Air Force Historical Studies Office, *Operation Eagle Claw*, (April 2, 2013), <http://www.afhso.af.mil/topics/factsheets/factsheet.asp?id=19809>.

⁹ Marcinko, *supra* note 5, at 240-241.

¹⁰ *Id.* at 241. At the time, there were SEAL Teams One and Two, one on each coast. Team One was the West Coast Team located in San Diego, California; Team Two was the East Coast Team located in Little Creek, Virginia.

At its inception, SEAL Team Six was designed to blend in anywhere in the world, much like the way people might imagine CIA operatives to act. Marcinko writes, “SEAL Team Six would be lean and mean - seventy-five enlisted men and fifteen officers. They would look like civilians. Modified grooming standards - long hair, earrings, beards, and mustaches - would be maintained, so they’d pass as blue-collar workers anywhere in the world. Language skills would be encouraged.”¹¹ Anywhere in the world was not a sales gimmick, Team Six would truly become a global unit. However, “[u]nlike SEAL One or Two, whose activities were limited geographically, SEAL Team Six would be available on four-hour notice to deploy from its Virginia base to anywhere in the world.”¹²

According to Marcinko, SEAL Team Six was “an alleged top-secret unit. We wore civilian clothes; I’d ordered my men to remove the base stickers from their vehicles, keeping them instead on magnetic strips they’d attach just as they drove through the gates. We’d come and go at odd hours. Nothing about SEAL Six was military - and that’s the way I wanted it.”¹³ SEAL Team Six’s behavior modeled their appearances, leading the common man to not give it a passing glance should he run into the unit.

The entire idea of SEAL Team Six was completely cloaked in secrecy. The unit was so secret, that although it was housed a few yards from SEAL Team Two, Two did not

¹¹ *Id.* at 241. SFOD-D also shares in “modified grooming standards” much to the same level as SEAL Team Six.

¹² *Id.* at 241. SEAL Team’s One and Two would operate in specific geographic areas, Six was designed to operate globally, this is just one of many differences between Six and its counterpart SEAL Teams.

¹³ *Id.* at 260.

know who this group was. There are several reasons for this, first and foremost, in remaining secret, they had the element of surprise on their enemies. Enemy combatants can not take preventative steps to stop a unit they do not know exists. The purpose of “non-existence” is so much more than just the surprise element. When a unit is the best of the best, the most lethal, it is completely adverse to show enemy combatants what makes that unit so lethal. So long as SEAL Team Six remained secret, they could train in secret, hone their skills, and essentially be a phantom unit. Our enemies did not know of SEAL Team Six’s existence, but they likely knew that the United States did not have a counterterrorism unit in place. What little they would have known about our counterterrorism would have entirely been based on Operation Eagle Claw, and would not have been very credible.

Another reason for the secrecy, arguably equally as important as the first, was to protect the unit operators. SEAL Team Six operators are people too, they have family, homes, and friends. Much like CIA agents, exposing their identity not only makes them vulnerable to counter attacks, but also jeopardizes the missions they participate in. To say that secrecy is important to SEAL Team Six’s success is an understatement, it is essential to it.

Any Exposure is Too Much Exposure

There are misperceptions that exist, “[t]his is what people think of when they imagine the Joint Special Operations Command, or JSOC — the secretive, über-elite military

unit that killed Osama bin Laden.”¹⁴ There is a very good reason that this is all that people’s view is of JSOC, and for that matter DEVGRU: too much exposure. There has been no other operation in JSOC’s history that has received the hype and glamour that Operation Neptune Spear received. Granted, DEVGRU neutralized a very high-value target, Osama bin Laden, but apart from the value of the target, the operation was of little difference compared to the thousands of operations conducted annually by JSOC.

Most American’s are aware that agencies like CIA and NSA exist, but few if any, can possibly imagine what those agencies do. Comparatively, most American’s had no idea whatsoever that JSOC existed, that is until Operation Neptune Spear. Most people knew that the Navy SEALs were an elite fighting force, and possibly knew they were broken up into teams. However, it would take active research to determine what each team specializes in, and to understand the night and day differences between SEAL Team Six and the rest of the SEAL teams. Most of that knowledge came in the forms of books, and unless the reader was interested in the US Navy or special warfare, the average person would not have known these details.

JSOC was designed to be shrouded in secrecy. The “mystique is hard to penetrate: JSOC is so secretive that it instructs its members not to write down important information, lest it be vulnerable to disclosure under the Freedom of Information Act.”¹⁵

As previously discussed, there are certain legitimate reasons for this secrecy. The

¹⁴ Spencer Ackerman, *How The Pentagon’s Top Killers Became (Unaccountable Spies)*, WIRED (Mar. 31, 2013), <http://www.wired.com/dangerroom/2012/02/JSoc-ambinder/>. [Hereinafter Ackerman].

¹⁵ *Id.*

entire mission of JSOC is dependent on it remaining in the shadows. To be successful, their global presence must be unseen and unknown.

Covert vs. Clandestine

Understanding the differences between covert missions and clandestine missions is vital to understanding how and why JSOC is so successful at what it does. According to the Department of Defense Dictionary, a covert operation is an “operation that is so planned and executed as to conceal the identity of or permit plausible denial by the sponsor.”¹⁶ The Department of Defense Dictionary defines clandestine operations as an

operation sponsored or conducted by governmental departments or agencies in such a way as to assure secrecy or concealment. A clandestine operation differs from a covert operation in that emphasis is placed on concealment of the operation rather than on concealment of the identity of the sponsor. In special operations, an activity may be both covert and clandestine and may focus equally on operational considerations and intelligence-related activities.¹⁷

While both types of missions are top-secret and highly classified, covert is typically held to a higher level of security. Deciding which type of mission it will be transcends all the way down through the training. In a recent phone interview with counter-terrorism expert, Ambassador Dell Dailey, he gave an example on the difference between the two mission types. If the mission is a clandestine mission, the operators will carry identification cards and travel in marked vehicles, such as a labeled helicopter, with markings showing who it belongs to.¹⁸ This is different for covert missions. During covert missions, operators carry no identification and travel in unmarked vehicles, such

¹⁶ DEPARTMENT OF DEFENSE DICTIONARY 67 (JP 1-02).

¹⁷ *Id.* at 41.

¹⁸ Telephone Interview with Ambassador President Dell Dailey, Center for a New American Security (Mar. 28, 2013). [Hereinafter Dailey].

as blacked out helicopters. The reason for this is so they cannot be identified as belonging to any one nation. Setting secrecy aside, “JSOC is not permitted to carry out covert action as the CIA can.”¹⁹ During a covert mission, “in which the U.S. role is to be kept hidden,” it “requires a presidential finding and congressional notification.”²⁰ Given this complexity, much of the media reports incorrect and often contradictory news with respect to JSOC. Part of this complexity is due to JSOC following a separate chain-of-command, one in which reports directly to the President of the United States. “Many national security officials, however, say JSOC’s operations are so similar to the CIA’s that they amount to covert action. The unit takes its orders directly from the president or the secretary of defense and is managed and overseen by a military-only chain of command.”²¹

The Success of JSOC in Present Times

Much of the war initiative in both Iraq and Afghanistan has been successful largely due to JSOC sanctioned missions. While the conventional military clears street by street, JSOC operators move in on specified targets. This has resulted in the conventional forces being more successful in their operations. Our “special operations forces in Iraq may work in the shadows, but they are making a larger contribution to the war than commandos in any other conventional military operation in U.S. history, according to senior military officials.”²² When a JSOC operation disrupts the command of al-Qaeda,

¹⁹ Priest, *supra* note 2.

²⁰ *Id.*

²¹ *Id.*

²² Lisa Burgess, *DOD Says Special Ops’ Role in Iraq Biggest Ever*, STARS AND STRIPES (Apr. 3, 2013, 9:43 PM), <http://www.stripes.com/news/dod-says-special-ops-role-in-iraq-biggest-ever-1.3939>. [Hereinafter Burgess].

it makes it easier for conventional forces to neutralize combatants. As previously stated, JSOC reports directly to the President. During the Bush Administration, “JSOC’s operations were rarely briefed to Congress in advance — and usually not afterward — because government lawyers considered them to be “traditional military activities” not requiring such notification. President Obama has taken the same legal view, but he has insisted that JSOC’s sensitive missions be briefed to select congressional leaders.”²³ JSOC’s success did not go unnoticed by the Department of Defense. Our “[s]pecial ops forces performed so well during the Afghanistan campaign that in January, Defense Secretary Donald Rumsfeld announced that for the first time, JSOC would have the option of leading global missions, instead of following directions from other regional commanders.”²⁴ When executive order was signed, it in a sense became a significant milestone for JSOC. It was “on Sept. 16, 2003, Rumsfeld signed an executive order cementing JSOC as the center of the counterterrorism universe. It listed 15 countries and the activities permitted under various scenarios, and it gave the preapprovals required to carry them out.”²⁵ While that executive order may make some civilians uncomfortable, it is important to note that the units that make up JSOC are highly trained elite units, far more tactically advanced than best units in the conventional forces. The operators in these units are experts in their fields, better than the best of the best. Typically when weapons and tactics are deemed “tried and tested” by the elite forces, they are slowly incorporated into the conventional forces. It was “those kind of techniques, by 2007-8, were used not just by the elite special operations forces, but also the so-called white special operations forces — Green Berets and other Navy

²³ *Id.*

²⁴ Burgess *supra* note 19.

²⁵ Priest *supra* note 17.

SEAL elements, as well as conventional human intelligence brigades that were attached to combat units.”²⁶

In 2007, “the U.S. military and intelligence agencies launched a series of top-secret operations that enabled them to locate, target and kill key individuals in groups such as al-Qaeda in Iraq, the Sunni insurgency and renegade Shia militias, or so-called special groups.”²⁷ Even then both the military and administration officials appreciated the importance of secrecy. Several “[s]enior military officers and officials at the White House urged against publishing details or code names associated with the groundbreaking programs, arguing that publication of the names alone might harm the operations that have been so beneficial in Iraq.”²⁸

It may come as a surprise that JSOC has had such a profound impact on the war effort. That surprise is a result of secrecy. This command has operated virtually unnoticed by the public, few if any knew of its existence. Unfortunately, in May 2011, a blinding light was shone into the darkest shadows of JSOC, and with it, the floodgates were opened and an outpouring of sensitive information flowed.

Operation Neptune Spear

A little “after eleven o’clock on the night of May 1st, the assault team of 23 SEAL operators and additional support members lifted off from Jalalabad Air Field, in eastern

²⁶ Ackerman *supra* note 12.

²⁷ Bob Woodward, *Why Did Violence Plummet? It Wasn’t Just the Surge*, THE WASHINGTON POST (Mar. 14, 2013, 10:42 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/07/AR2008090701847.html?hpid=topnews>.

²⁸ *Id.*

Afghanistan.”²⁹ Once there, “[t]hirty to 40 U.S. Navy SEALs disembarked from the helicopters as soon as they were in position and stormed the compound. The White House says they killed bin Laden and at least four others with him.”³⁰ At 11:35 P.M., President Barack H. Obama announced to the world “that the United States has conducted an operation that killed Osama bin Laden, the leader of al Qaeda.”³¹ The President’s speech lasted some nine minutes, concluding at approximately 11:44 P.M.³² Barely five minutes later, at 11:49 P.M., The Huffington Post, among other media outlets, put out a story saying that “[t]he fight lasted only 40 minutes and was described by a senior administration official as a “surgical raid” conducted by a Navy Seals unit.”³³ In a very brief few moments, many went from not knowing Osama bin Laden was dead to knowing operational details. For anyone familiar with the SEALs, it would not be difficult to venture a guess as to which SEAL Team was responsible. While all of the Teams specialize in different things and receive similar training, only one is revered for being the counterterrorism team. Although officially DEVGRU does not exist, as addressed earlier, SEAL Team Six was designed for counterterrorism before it ceased to officially exist.

²⁹ Kevin H. Govern, *Operation Neptune Spear: Was Killing Bin Laden a Legitimate Military Objective?*, in *TARGETED KILLINGS: LAW AND MORALITY IN AN ASYMMETRICAL WORLD*, 355 (Claire Finkelstein, et al., eds., 2012). [Hereinafter Govern].

³⁰ Michael Murray, *Osama Bin Laden Dead: The Navy SEALs Who Hunted and Killed Al Qaeda Leader*, ABC NEWS (Apr. 3, 2013 9:14 AM), <http://abcnews.go.com/US/osama-bin-laden-dead-navy-seal-team-responsible/story?id=13509739#.UWeDtr9H304>. [Hereinafter Murray].

³¹ Macon Phillips, *Osama Bin Laden Dead*, THE WHITE HOUSE (Apr. 16, 2013 5:08 PM), <http://www.whitehouse.gov/blog/2011/05/02/osama-bin-laden-dead>.

³² Murray *supra* note 25.

³³ Sam Stein & Jennifer Bendery, *Osama Bin Laden Dead, Obama Announces*, THE HUFFINGTON POST (Apr. 16, 2013, 5:31 PM), http://www.huffingtonpost.com/2011/05/01/osama-bin-laden-dead-killed_n_856091.html.

The question is inevitably begged, how could such sensitive information get out, and get out so quickly? The research conducted through this paper all seems to come to a common answer: it was leaked. These leaks clearly came long before any book deal was made with any insiders or operators pertinent to the mission, as this information came out instantly. It is interesting to note the backlash certain books received, when for the most part, the stories they tell are just more coherent and articulate versions of what was already circulating in the media. Ironically, “[t]he Obama administration has gone to extraordinary lengths to publicize details of the raid that killed Osama bin Laden, even as it threatens to file criminal charges against a former Navy SEAL because he provided the same type of mission rundown in his recently published book.”³⁴ The Washington Times even did a comparison between the two, and was hard pressed to find differences. The “examination by The Washington Times shows that several details in the book “No Easy Day” already have appeared in print based on interviews with administration officials and likely will be included in an upcoming movie and another book.”³⁵ Quite possibly the strongest condemnatory statement from The Washington Post’s article is that, “the most detailed account of the raid appeared in a 2011 New Yorker article based on authorized interviews with White House officials.”³⁶

In the summer after Operation Neptune Spear, The New Yorker ran an article. The author was able to interview administration officials who were candid about the operation. Although most of the details divulged by the administration official were

³⁴ Rowan Scarborough, *Details of bin Laden Raid Leaked First by Obama Aides*, THE WASHINGTON POST (Apr. 16, 2013, 5:45 PM), <http://www.washingtontimes.com/news/2012/sep/16/details-of-bin-laden-raid-leaked-first-by-aides/?page=all>. [Hereinafter Scarborough].

³⁵ *Id.*

³⁶ *Id.*

similar to those which had been previously printed by other media outlets, there was new information to be found coming from the administration officials. In “the aircraft were twenty-three Navy SEALs from Team Six, which is officially known as the Naval Special Warfare Development Group, or DEVGRU.”³⁷ Although not confirmed, this very well could be the first time an administration official disclosed and confirmed (1) the existence of the nonexistent group, and (2) that DEVGRU was the unit involved with the operation. The unnamed official continued the disclosure of what else took place the night of Neptune Spear: “On the night of May 1st alone, special-operations forces based in Afghanistan conducted twelve other missions; according to the official, those operations captured or killed between fifteen and twenty targets.”³⁸ Granted, this is a normal night for JSOC, missions do not just happen once a month, they happen daily, and given the size of JSOC, simultaneously. The perplexity of the argument this paper is making is *why* was Neptune Spear so highly, and arguably pre-maturely, disclosed to the world?

JSOC runs numerous operations each night, yet Neptune Spear, one of thirteen missions that ran on May 1, 2011, is the only one being disclosed. One can rightly argue that the disclosure was owed to the American people, and the world, because it was that mission which neutralized the al-Qaeda leader, Osama bin Laden. That argument fails to answer the question posed: why disclose mission details. Surely the administration could have simply said *an operation was conducted which killed Osama bin Laden, the world can now rest a little easier*. Those are all the details we, the world,

³⁷ Nicholas Schmidle, *Getting Bin Laden*, THE NEW YORKER (Apr. 16, 4:17 PM), http://www.newyorker.com/reporting/2011/08/08/110808fa_fact_schmidle. [Hereinafter Schmidle].

³⁸ *Id.*

needed to know. Aside from the high-value-target, this mission was of little difference from any other mission JSOC conducts. The nonexistent group, “called Navy SEAL Team Six, probably won’t claim the credit publicly, however.”³⁹

The Wake of Neptune Spear

It is absolutely shocking that any mission conducted by JSOC would receive any attention, let alone the sheer outpouring of details Neptune Spear has and still is receiving. Keeping Osama bin Laden’s death a secret would have been an monumental, if not futile, task. Telling the world that bin Laden was dead would have been enough, disclosing anything more than that raises questions that should remain unasked and unanswered. Providing additional details only encourages investigative reporting and likely breaches in classified details. Once these details, whether true or false, are disseminated, anyone who had any level of involvement with the mission felt the need to set the record straight. Before long, details of the mission are being disclosed in articles, interviews, and book deals, detailing some of the most intimate aspects of the mission. Post-Neptune Spear has afforded numerous individuals to write their version of history through a variety of outlets, the most notable is likely “No Easy Day” by Mark Owen. “No Easy Day” is the first hand perspective of a DEVGRU operator who was on Operation Neptune Spear.⁴⁰ Much of the book details Mr. Owen’s life and training leading up to May 1, 2011. By time the book came out, in the third-quarter of 2012, most of the mission details had already been printed and re-printed dozens of times through different articles - it was essentially old news by then. The

³⁹ Dozier, *supra* note 3.

⁴⁰ MARK OWEN, NO EASY DAY, (2012).

recount by Mr. Owen did not sit well with administration officials. As a result, threats of litigation were made to Mr. Owen. “Clearly, the same administration that now is threatening [Mr. Owen] was knowingly releasing the same kind of detail a year earlier, the source close to the SEALs said.”⁴¹ The White House went on a campaign to make Neptune Spear the most important operation conducted in recent history. As a result, the “White House push to tell the bin Laden story has resulted in scores of pre-“No Easy Day” accounts of the raid in newspapers and magazines. The articles quote administration officials, White House aides and Pentagon sources.”⁴² It is certainly questionable as to why Mr. Owen received such backlash for re-telling the story that had been told with such vigor for the previous year. The position maintained by the Pentagon is, “regardless of what has been released by administration officials, the ex-SEAL violated rules by failing to have his manuscript reviewed.”⁴³

The fact of the matter is this, even without books like “No Easy Day,” the story was still told, and told with such details by the administration, that it is hypocritical for administration to go after Mr. Owen. While the rhetoric has been argued, the “White House has gone to great lengths to help Hollywood make a movie on the bin Laden raid,” “which was due to come out before the election” and “at the time the White House was helping filmmakers.”⁴⁴

On June 15, 2011, a month after the raid, White House communications aide Ben Rhodes wrote to spokesman Douglas Wilson at the Pentagon: “We are trying to have visibility into the [bin Laden] projects, and this is likely the most high-profile one. Would

⁴¹ Scarborough, *supra* note 29. Mr. Owen was added in place of the operators real name, based on his pen name.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

like to have whoever the group is that's going around in here at the WH to get a sense of what they're doing/what cooperating they are seeking."⁴⁵ Unfortunately, this is not the first time during this administration that our Special Forces have been depicted in Hollywood. Even a couple of "active duty SEALs were authorized — some in the community say 'ordered' — to appear in the movie 'Act of Valor,'" which debuted in February" of 2012.⁴⁶ It is not known which Team those SEALs were part of, though it was likely not DEVGRU, the other Team's are still highly specialized units that work in the Special Warfare community.

Exposure of JSOC in Pop-Culture & The Dangers it Creates

Some may argue that movies help to illustrate history in a way that books and documents can not do. While that may be true, the movies this paper discusses are not on the same lines as other military movies. There is a clear and obvious difference between movies like "Saving Private Ryan" and "Act of Valor." "Hollywood fiction, like The Green Berets, starring John Wayne, those are fine. It inspires young people to think about the military."⁴⁷ The dangers come from using real operators, or using closely related mission scenarios or training techniques. Ambassador Dailey believes "this absolutely tips [the enemy] off as to what we are competent at, it allows them to think at our level, and allows them to adapt to our training skills."⁴⁸ Movies such as "Act of Valor" and "Zero Dark Thirty" have a "potential to affect us"⁴⁹ in a number of ways.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Dailey, *supra* note 16.

⁴⁸ *Id.*

⁴⁹ *Id.*

“Zero Dark Thirty is extremely revealing,” and “we don’t want our foes and adversaries to be aware of [our] tactics,” because that compromises success.⁵⁰

Beyond the danger to our future operations success, a more personal danger has been created. After “the White House identified SEAL Team 6 as those responsible, camera crews swarmed into their Virginia Beach neighborhood, taking shots of the SEALs’ homes.”⁵¹ Exposing the individual operators, especially in the media is incomprehensible. Operators in this unit work very closely with the intelligence community. Showing who they are, and what they do, directly threatens theirs and their families lives. If al-Qaeda was looking for someone to go after for the death of their leader, the media gave them photos and addresses. During the interview with the alleged “Shooter” of Osama bin Laden, it was noted: “Personally,’ his wife told me recently, ‘I feel more threatened by a potential retaliatory terror attack on our community than I did eight years ago,’ when her husband joined ST6.”⁵² Unfortunately, “[t]here is commerce attached to the mission, and people are capitalizing.”⁵³ With movies, books, and countless articles written about the mission, people are making plenty of money off JSOC’s exposure.

Politicizing JSOC

Although this is not intended to be a political paper, there is a political aspect of Neptune Spear which needs addressed. Beyond the money made from the operation,

⁵⁰ *Id.*

⁵¹ Phil Bronstein, *The Man Who Killed Osama bin Laden... Is Screwed*, ESQUIRE (Mar. 30, 2013, 2:33 PM), <http://www.esquire.com/features/man-who-shot-osama-bin-laden-0313>.

⁵² *Id.*

⁵³ *Id.*

there has also been a substantial amount of politics being forcibly intertwined in it, and critics immediately took notice. Neutralizing bin Laden “was a staple of presidential-campaign brags. One big-budget movie, several books, and a whole drawerful of documentaries and TV films have fortified the brave images of the Shooter and his ST6 Red Squadron members.”⁵⁴ The President’s press announcement was “ridiculous, it was cheap politics.”⁵⁵ This sentiment is more about patriotism than it is about politics. Many Americans feel that the President took too much credit for the operation. Some of the harshest critics come from the special forces community. Of those, one group Special Operations OPSEC, a possible political think tank or lobbyist group, has accused “Obama of seeking political gain by disclosing successful secret operations.”⁵⁶ The group posted a “web video featuring former special forces officers accus[ing] President Barack Obama of taking too much credit for the killing of Osama bin Laden and allowing classified information about the raid to become public.”⁵⁷ Although its easy to pass this over as merely political rhetoric that took place during a campaign season, this group may have a valid point. While administration officials, like Vice President Joseph Biden, go around touting “we also got bin Laden,” and then immediately saying, “Let me correct that. The president of the United States and the special forces got bin Laden,”⁵⁸ it is easy to see the animosity. The way the administration has told this story, one might think the President himself was with DEVGRU on May 1, 2011 in Abbotabad. Supporters of the President say he deserves much of credit, and hinge their argument

⁵⁴ *Id.*

⁵⁵ Telephone Interview with Amos Guiora, professor of law at The S. J. Quinney College of Law, University of Utah (Mar. 24, 2013). [Hereinafter Guiora].

⁵⁶ Dugald McConnell & Brian Todd, *Former Special Forces Officers Slam Obama Over Leaks on bin Laden Killing*, CNN (Apr. 17, 2013, 1:46 PM), <http://www.cnn.com/2012/08/16/politics/former-seals-obama>.

⁵⁷ *Id.*

⁵⁸ *Id.*

on a comment by then-counterterrorism advisor to the president, John Brennan, because he “praised the mission that killed Osama bin Laden as a ‘gutsy call.’”⁵⁹

The intelligence leading up to Neptune Spear spans much of the last decade, any president, be it George W. Bush or Barack H. Obama, would have made the decision that was made. That is the extent of it, the president made a decision while JSOC ran the operation. That is precisely why the critics of the president are upset, he made a decision, but the years of hard work gathering intelligence and the constant training on the part of the operatives, along with the countless lives that were lost in missions leading up to Neptune Spear appear to have minimized in the shadow of the president’s decision. While JSOC and its units, including DEVGRU, do not seek public recognition, it only seems right that credit be given to them, as they are the unsung heroes who did the deed, not the president. While the administration has gone around patting one another on the back, JSOC has pressed on, as Neptune Spear was all in a days work for them.

Many forget that before Osama bin Laden was neutralized, JSOC captured Saddam Hussein in a spider hole in Iraq. However, the response by the Bush Administration was quite different from that of the Obama Administration. Saddam Hussein was captured by SFOD-D, one of DEVGRU’s counterpart units in the JSOC fold. The differences in both units and operations are very different, yet very similar. SFOD-D “also played the principal role in the painstaking hunt for Iraq’s most violent terrorist

⁵⁹ Megashyam Mali, *Brennan: Bin Laden Raid was a “Gutsy Call”*, THE HILL (Apr. 17, 2013, 7:50 PM), <http://thehill.com/blogs/blog-briefing-room/news/224421-brennan-says-bin-laden-raid-was-a-gutsy-call>.

leader, Abu Musab Zarqawi.”⁶⁰ The “Bush administration put out few details about how Zarqawi was found in a hideout north of Baghdad, and Delta remained in the shadows.”⁶¹ Ironically, both the capture of Saddam Hussein and Osama bin Laden came just one year before both reelection campaigns. Conversely, “the hunt and capture of Saddam with the bin Laden killing, President [George W.] Bush was very quick to congratulate the troops and move on,” . . . “what we see with the current administration is, it is being used for political leverage.”⁶² When SFOD-D “and conventional ground troops hunted down Iraqi dictator Saddam Hussein in 2003, found him a spider hole and flew him to Baghdad in a special ops “little bird,” the covert unit received far less media focus and garnered no starring role in a movie.”⁶³ The way the Operation Red Dawn (the operation that captured Saddam Hussein) and Operation Neptune Spear were handled differ greatly, although all events surrounding them, including the political climate, are almost identical.

The same holds true the other way around, the military should not entangle itself in politics. Traditionally, the “paradigm of the soldier and the state and related concepts of military leadership and professionalism are based on a pure warrior ethic that calls for an unpolitical soldier, one clearly unsuited for civil-military operations in which political

⁶⁰ Rowan Scarborough, *Delta Force: Army’s “Quiet Professionals”*, THE WASHINGTON TIMES (Apr. 17, 2013, 8:20 PM), <http://www.washingtontimes.com/news/2012/jun/3/delta-force-armys-quiet-professionals/?page=all>. [Hereinafter Scarborough Delta].

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

objectives predominate.”⁶⁴ Politicians should not use the military for political leverage, nor should military personnel use operations for personal gain.

Has Exposing JSOC Been Beneficial to the Special Warfare Community?

The short answer: no. Now that JSOC has received such unprecedented media attention, it has been subject to much ridicule and a number of accusations. Most notably, in what appears to be response to the movie “Zero Dark Thirty,” the self-proclaimed documentary, “Dirty Wars” has been released. In “the film Dirty Wars, co-written with David Riker and directed by Rowley, Jeremy Scahill is pulling back the curtain on [JSOC], which has lately exploded into the public eye with the torture-endorsing movie Zero Dark Thirty, about the killing of Osama bin Laden.”⁶⁵ The documentary refers to JSOC as a “death squad” and “secret assassins”⁶⁶ among other things. Jeremy Scahill and Richard Rowley, the journalists who created the documentary, “track this new model of US warfare that strikes at civilians and insurgents alike – in 70 countries.”⁶⁷ The duo “interview[ed] former [JSOC] assassins, who are shell-shocked at how the “kill lists” they are given keep expanding, even as they eliminate more and more people.”⁶⁸ Scahill and Rowley accuse JSOC of being lawless and unaccountable:

Our conventional forces are subject to international laws of war: they are accountable for crimes in courts martial; and they run according to a clear chain of command. As much

⁶⁴ RUDOLPH C. BARNES, JR., *MILITARY LEGITIMACY: MIGHT AND RIGHT IN THE NEW MILLENNIUM* 92-93 (1996). [Hereinafter Barnes].

⁶⁵ Amy Goodman, *Dirty Wars: Jeremy Scahill’s Antidote to Zero Dark Thirty’s Heroic Narrative*, THE GUARDIAN (Feb. 2, 2013, 3:30 PM), <http://m.guardiannews.com/commentisfree/2013/jan/28/dirty-wars-jeremy-scahill-zero-dark-thirty>. [Hereinafter Goodman].

⁶⁶ Naomi Wolf, *JSOC: Obama’s Secret Assassins*, THE GUARDIAN (Mar. 20, 2013, 1:52 PM), <http://www.guardian.co.uk/commentisfree/2013/feb/03/jsoc-obama-secret-assassins>.

⁶⁷ *Id.*

⁶⁸ *Id.*

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as the US military may fall short of these standards at times, it is a model of lawfulness compared with JSoc, which has far greater scope to undertake the commission of extra-legal operations – and unimaginable crimes.⁶⁹

The duo have made other public accusations - through their documentary - such as, JSOC “has already been sent to kill at least one US citizen – one who had been indicted for no crime, but was condemned for propagandizing for al-Qaida.”⁷⁰ They are referring to Anwar al-Awlaki who was killed in a drone strike. The documentary also asserts that JSOC is running around killing innocent people on purpose.

In Gardez, US special operations forces had intelligence that a Taliban cell was having some sort of a meeting to prepare a suicide bomber. And they raid the house in the middle of the night, and they end up killing five people, including three women, two of whom were pregnant, and ... Mohammed Daoud, a senior Afghan police commander who had been trained by the US.⁷¹

If there are mission errors, it is likely not due to the operators, but more so on the part of the mission planners. This does not mean that mistakes do not occur, and when they do, they have very real, very human, consequences. Although the operators are an elite fighting forces, they are still human. Any “JSOC raid that also wounded or killed civilians, or destroyed a home or someone’s livelihood, became a source of grievance so deep that the counterproductive effects, still unfolding, are difficult to calculate.”⁷²

The operators in JSOC are people, and have emotions, to assert they are cold-blooded killers is just wrong. Beyond that, these are true American heroes who have made such costly sacrifices to defend our nation and protect our liberties. It is disgraceful that someone would say such disrespectful and heinous words about these brave men and women simply because they lack an understanding of JSOC, its purpose, and how it operates. An organization needs to exist to combat terrorism. It is better to neutralize

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Goodman, *supra* note 58.

⁷² Priest, *supra* note 17.

terrorists in their dwellings than for innocent people to lose their lives when the terrorists attack. JSOC is that unit, though many may disagree with the tactics they use, the tactics JSOC employs are far better than anything the terrorists would do to them. In the world we live in, it takes great people to do unspoken things to ensure our freedoms are preserved. By unspoken, that is not to be interpreted as illegal, but to be understood as secret; secret for the safety of the operators and the public.

This paper is not advocating for cutting media access to the military, merely that certain exercises are best not to be reported on. Media responsibility is necessary, “[w]hen the media understands the need for military force it contributes to the public support required for military and political legitimacy--that is, so long as the standards of legitimacy are met.”⁷³ This is a two way street. Historically, the “interrelationship of legitimacy, public support, and the media make it essential to avoid "bad press" in sensitive and unforgiving peacetime environments.”⁷⁴ Though there is a “history of mutual suspicions between the military and the media, recent experience indicates the two can be allies.”⁷⁵ To achieve this goal, several options are available, it “can be accomplished if military personnel understand and conform to the standards of military legitimacy and avoid conflicts between military and civilian values.”⁷⁶ The media is also capable of promoting military legitimacy as well. The mainstream “media can help maintain military legitimacy so long as the military remains a positive and constructive

⁷³ Barnes, *supra* note 64, at 53.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

force promoting democracy, human rights, and the rule of law.”⁷⁷ Both the public and the military “should understand that it is shortsighted to restrict coverage of military operations for other than security reasons.”⁷⁸ That is precisely what this paper is arguing, media coverage is acceptable, but for security reasons, JSOC should be off-limits.

The media needs to know these limits, and respect them. There have been circumstances where the media has overstepped this line, for example, “in the pre-dawn darkness of December 1992 when the international press corps greeted Navy Seals on the beaches of Mogadishu with the blinding lights of network television. The farcical affair rendered night vision equipment inoperable; had there been opposition to the landing, American lives could have been lost.”⁷⁹ This is just a small example of what media exposure can do. The exposure of Neptune Spear is much larger than the Mogadishu example.

International Legal Ramifications

The senior adviser to the President said that “penetrating other countries’ sovereign airspace covertly is something that’s always available for the right mission and the right gain.”⁸⁰

There are legal restrictions on what the CIA can do in terms of covert operations. There has to be a finding, the president has to notify at least the “Gang of Eight” [leaders of the intelligence oversight committees] in Congress. JSOC doesn’t have to do any of that. There is very little accountability for their actions. What’s weird is that many in congress who’d be very sensitive to CIA operations almost treat JSOC as an entity that doesn’t have to submit to oversight. It’s almost like this is the president’s private army, we’ll let

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Schmidle, *supra* note 36.

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the president do what he needs to do. As long as you don't get in trouble, we're not gonna ask too many questions.⁸¹

These statements are not entirely accurate in their facts. However, these statements are publicized and taken at a face value. "JSOC is in a host nation country with permission of DOD and DOS as well as host country permission,"⁸² they do not arbitrarily show up in a sovereign nation and set up shop. There are potential international law related issues that this exposure raises. For example, in looking at the movie "Zero Dark Thirty" there was a scene where "special ops are going over a target area" and some "double taps occurred" on what appeared to be an unarmed individual, "through the way the movie depicts it, the double tap appears to be illegal, thereby raising "potential to violate UN protocol in shooting unarmed individuals."⁸³ If these actions are "depicted in the movie, we tell the world that we are doing things against UN Protocol."⁸⁴ This "occurs when movies get real close or accurate"⁸⁵ to the actual event they are depicting.

If movies that are very close and accurate to the actual event were not made, or were not granted cooperation from the government, JSOC would avoid claims that they are breaking protocol. These movies, besides demonstrating tactics and trainings, raise the potential for possible legal ramifications, even if those charges are completely baseless.

⁸¹ Ackerman, *supra* note 14.

⁸² Dailey, *supra* note 18.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

Is There Any Benefit for Missions to be Shared with the World?

There is “no reason whatsoever should missions be shared after the fact.”⁸⁶ Once the government discloses mission details to the world, we can no longer run an operation like that again. It tips off the enemy of what we might do. However, if the government did not say anything with respect to the mission, then similar plans could be reused or modified for future operations. There is no legitimate reason to divulge information on that level. Operation Neptune Spear should have been dealt with much the same way as Operation Red Dawn, simply acknowledge the high-value target has been caught or neutralized, and then move on. There is no need to dwell on the mission, scrutinize it, publicize it, or capitalize on it.

It is important to remember that neutralizing Osama bin Laden did not end the war with al-Qaeda, nor the War on Terror. Osama bin Laden was just a man, nothing more. The terrorists did not fight to promote bin Laden, they fought to promote what he preached. Radical militant Islam is a distorted ideology, and neutralizing bin Laden did not kill the ideology. An ideology is an intangible thing, and it is irrelevant who is leading the jihad to promote it, be it bin Laden, or his successor Ayman Mohammed Rabie al-Zawahiri. Though bin Laden is gone, the war rages on, and new targets are neutralized. JSOC did not stop all operations after Neptune Spear. Neutralizing bin Laden has significance in that it put an end to *his* reign of terror in which so many lives were lost, but it unfortunately did not end terrorism. Contrasting bin Laden’s demise with that of Adolf Hitler’s, when Hitler died, so did the Nazi’s. Al-Qaeda is still present, and just as deadly. We need command’s like JSOC to be ever vigilant and neutralize these terrorists.

⁸⁶ *Id.*

The Push for Transparency and Drone Warfare

Transparency is a term that used frequently among politicians and the electorate. The people want our government to be more transparent, they want to know what our government is doing. In a recent telephone interview, counter-terrorism expert Amos Guiora said, “The government cannot hide information in way traditionally hidden from people.”⁸⁷ There are reasons this cannot be done, for example “social media has had a huge impact”⁸⁸ on the way information gets out to the public at large. With respect to transparency, Guiora said, “It’s better for the government to bring [the information] out, rather than it coming from other sources.”⁸⁹ If the government divulges certain information, they can control what gets told, and how it gets told to the public. If the information comes from other sources, there is a high probability more information than is necessary could be divulged, and easily misinterpreted.

It is no secret that the United States uses drones as a military tool. Transparency has extended to the drone program as well. Guiora said, “everyone knows what we are doing,” and people want “transparency with drones” as well.⁹⁰ The best way to handle this situation is be upfront about it. The government should tell the people, “this is what we do, these our are guidelines, policy is policy” and “drone policy is the future of combat, and there is a lack of transparency” in this area.⁹¹

⁸⁷ Guiora, *supra* note 54.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

Transparency is good for certain things the government does, however, the drone program is complicated. Although not confirmed, some “drones likely fall under JSOC.”⁹² If there are drones that JSOC utilizes, that should be one area that remains non-transparent. By contrast, if the government uses drones in a search and rescue situation during a natural disaster, that is a scenario where the drone usage could be transparent. Drones are highly effective tools, and they appear to be an integral part of military operations moving forward, therefore it would be adverse to share such sensitive information.

Drones were likely used leading up to Operation Neptune Spear to catch bin Laden, whereby “Obama in turn drafted a memo to Panetta in June, 2009 directing the CIA to create a “detailed operation plan” for finding the AQ leader and to ‘ensure that we have expended every effort’ to track bin Laden down, as well as to intensify the CIA’s classified drone program.”⁹³ Furthermore, “Predator drones have reportedly been used “at least hundreds of times to fire on targets in Afghanistan, Pakistan, Yemen, Iraq, and elsewhere.”⁹⁴ Drone warfare has increased over the last few years, because “President Obama has authorized nearly four times the number of drone strikes for targeted killing in Pakistan in his first two years in office as President Bush did in his eight years.”⁹⁵ It appears that “Africa may end up becoming the next front in Obama’s drone war, and he may have bipartisan support.”⁹⁶

⁹² *Id.*

⁹³ Govern, *supra* note 28, at 353.

⁹⁴ *Id.* at 351.

⁹⁵ *Id.* at 366.

⁹⁶ Greg McNeal, *Terrorist Safe Havens in North Africa Threaten the United States Homeland*, FORBES (Apr. 3, 2013, 4:14 PM), <http://www.forbes.com/sites/gregorymcneal/2013/01/31/terrorist-safe-havens-in-north-africa-threaten-the-united-states-homeland/>.

Both drone warfare and transparency will be hotly contested issues in the coming years, especially during campaign seasons. The people want transparency, the politicians will promise it, and all will conflict with national security. Certain drones could be disclosed to the public, but others must remain hidden. Any drone associated with JSOC should never be disclosed to the public. The operators in JSOC risk their lives on every mission, if there are drones that can help reduce that risk, there is no reason to disclose them, as there is no public benefit.

Conclusion

This paper has demonstrated why it is so important to keep JSOC a secret organization, exposure does nothing more than counteract all that JSOC is trying to accomplish. Exposing JSOC and its units only makes the command ineffective as a fighting force. JSOC was largely unknown before Operation Neptune Spear took place. Post-Neptune Spear, the entire world was privy to highly sensitive information. The leaking of this information was not for historical value, merely personal gain, which makes it utterly wrong. Operation Red Dawn was handled properly, whereby the world was made known of Saddam Hussein's capture, and then moved on. Operation Neptune Spear was handled with much less care and wisdom, thereby jeopardizing the lives of the operators and possible success in future missions. The world needed to know Osama bin Laden was neutralized. The world did not need to know who did it, why it was done the way it was, how it was planned and executed, where it took place, and when each stage occurred.

Had the administration not leaked this highly sensitive information, the floodgates would never have been opened whereby countless news articles, television shows, books, and now movies advertise in great detail what our operators are capable of. JSOC operates successfully when left deep in the dark shadows. Shining blinding lights into places that ought not be illuminated with media only threatens the success of the command. From the beginning JSOC was designed in secret, and was to operate in secret, that was its ethos. The cloak of secrecy has been more than pierced, it has been completely ripped away by the onslaught of media outlets, journalists, and do-gooders out to set the record straight. The rationale by these groups is that Neptune Spear will forever be studied in the history books. That is highly unlikely as bin Laden's death did not bring with it the collapse of al-Qaeda and all its terror cells in the same way Hitler's death brought down Nazi Germany. If Neptune Spear makes in the history books of time, it will be nothing more than a small section buried in a chapter.

This paper is not stating Operation Neptune Spear or the death of Osama bin Laden are irrelevant or of no great importance, this paper argued that how that operation was conducted needed to be kept a secret, as all of JSOC's countless missions should be. Classified or Top Secret information does not mean that it is only reserved for those with the necessary security clearances to divulge to the world, it means it should *not* be divulged at all.

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JSOC was designed in secret, JSOC operates in secret, and therefore JSOC should remain a secret. Any exposure is too much exposure.