

Blackwater: CIA Assassins?

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In April 2002, the CIA paid Blackwater more than \$5 million to deploy a small team of men inside Afghanistan during the early stages of US operations in the country. A month later, Erik Prince, the company's owner and a former Navy SEAL, flew to Afghanistan as part of the original twenty-man Blackwater contingent. Blackwater worked for the CIA at its station in Kabul as well as in Shkin, along the Afghanistan-Pakistan border, where they operated out of a mud fortress known as the Alamo. It was the beginning of a long relationship between Blackwater, Prince and the CIA.

Now the New York Times is reporting that in 2004 the CIA hired Blackwater "as part of a secret program to locate and assassinate top operatives of Al Qaeda." According to the Times, "it is unclear whether the CIA had planned to use the contractors to capture or kill Qaeda operatives, or just to help with training and surveillance."

The Times reports that "the CIA did not have a formal contract with Blackwater for this program but instead had individual agreements with top company officials, including the founder, Erik D. Prince, a politically connected former member of the Navy Seals and the heir to a family fortune." A retired intelligence officer "intimately familiar with the assassination program" told the Washington Post, "Outsourcing gave the agency more protection in case something went wrong." The Post reported that Blackwater "was given operational responsibility for targeting terrorist commanders and was awarded millions of dollars for training and weaponry, but the program was canceled before any missions were conducted."

"What the agency was doing with Blackwater scares the hell out of me," said Jack Rice, a former CIA field operator who worked for the directorate of operations, which runs covert paramilitary activities for the CIA. "When the agency actually cedes all oversight and power to a private organization, an organization like Blackwater, most importantly they lose control and don't understand what's going on," Rice told The Nation. "What makes it even worse is that you then can turn around and have deniability. They can say, 'It wasn't us, we weren't the ones making the decisions.' That's the best of both worlds. It's analogous to what we hear about torture that was being done in the name of Americans, when we simply handed somebody over to the Syrians or the Egyptians or others and then we turn around and say, 'We're not torturing people.'"

Reached by telephone, Illinois Democrat Jan Schakowsky, a member of the House Intelligence Committee, said that because of her oath of secrecy on sensitive intelligence issues, she could neither confirm nor deny that Congress was aware of Blackwater's involvement in this program before the Times report. Schakowsky also declined to comment on whether Blackwater came up at a June briefing by CIA director Leon Panetta, which she attended. That briefing sparked calls for an investigation into whether Vice President Dick

Cheney ordered the CIA to conceal an assassination program from Congress.

“What we know now, if this is true, is that Blackwater was part of the highest level, the innermost circle strategizing and exercising strategy within the Bush administration,” Schakowsky told *The Nation*. “Erik Prince operated at the highest and most secret level of the government. Clearly Prince was more trusted than the US Congress because Vice President Cheney made the decision not to brief Congress. This shows that there was absolutely no space whatsoever between the Bush administration and Blackwater.”

As *The Nation* has reported, Blackwater continues to operate on the US government payroll in both Iraq and Afghanistan, where it works for the State Department and the Defense Department. The CIA will not confirm whether Blackwater continues to work for the agency (or, for that matter, if it ever has).

Blackwater’s work for the CIA was the result of meetings in the immediate aftermath of 9/11 between Prince and Alvin “Buzzy” Krongard, then-executive director of the CIA, the agency’s number-three man. Krongard and Prince, according to a former Blackwater executive interviewed by *The Nation*, “were good buddies.” In a 2006 interview for my book, *Blackwater: The Rise of the World’s Most Powerful Mercenary Army*, Krongard said that the company was hired to provide security for the CIA in Afghanistan. “Blackwater got a contract because they were the first people that could get people on the ground,” Krongard said. “The only concern we had was getting the best security for our people. If we thought Martians could provide it, I guess we would have gone after them.”

The relationship between Krongard and Prince apparently got chummier after the contract was signed. One former Blackwater executive said in 2006, “Krongard came down and visited Blackwater [at company headquarters in North Carolina], and I had to take his kids around and let them shoot on the firing range a number of times.” That visit took place after the CIA contract was signed, according to the former executive, and Krongard “may have come down just to see the company that he had just hired.”

The relationship between Blackwater and the CIA quickly evolved. Shortly after Prince arrived in Afghanistan in May 2002, according to a former Blackwater executive who was with Prince, the Blackwater owner focused on winning more business with government agencies, providing private soldiers for hire. In 2002 Prince, along with former CIA operative Jamie Smith, created Blackwater Security Consulting, which would put former Navy SEALs and other special ops on the market.

Prince subsequently tried to join the CIA but was reportedly denied when his polygraph test came back inconclusive. Still, he maintained close ties with the agency. He reportedly was given a “green badge” that permitted him access to most CIA stations. “He’s over there [at CIA headquarters] regularly, probably once a month or so,” a CIA source told Harper’s journalist Ken Silverstein in 2006. “He meets with senior people, especially in the [directorate of operations].”

Prince would also go on to hire many senior Bush-era CIA officials to work at Blackwater. In July 2007 Buzzy Krongard joined the company’s board; Prince offered him a \$3,500 honorarium per meeting attended plus all expenses paid. “Your experience and insight would be ideal to help our team determine where we are and where we are going,” Prince wrote in a letter to Krongard. At the time his brother, Howard “Cookie” Krongard, was the State Department inspector general responsible for overseeing Blackwater’s work for the

State Department. In September 2007 California Democratic Representative Henry Waxman accused Cookie Krongard of impeding a Justice Department investigation into Blackwater over allegations the company was illegally smuggling weapons into Iraq.

Prince hired several other former CIA officials to run what amounted to his own private CIA. Most notable among these was J. Cofer Black, who was running the CIA's counterterrorism operations and leading the hunt for Osama bin Laden when Blackwater was initially hired by the CIA in 2002. Black left the government in 2005 and took a job at Blackwater running Prince's private intelligence company, Total Intelligence Solutions.

While at the CIA, Black ran the "extraordinary rendition" program and coordinated the CIA "Jawbreaker" team sent into Afghanistan to kill or capture bin Laden and senior Al Qaeda leaders. In the days immediately after 9/11, he told Bush that his men would aim to kill Al Qaeda operatives. "When we're through with them, they will have flies walking across their eyeballs," Black promised Bush. When Black told Bush the operation would not be bloodless, the president reportedly said, "Let's go. That's war. That's what we're here to win."

Before the CIA Jawbreaker team deployed on September 27, 2001, Black gave his men direct and macabre directions: "I don't want bin Laden and his thugs captured, I want them dead.... They must be killed. I want to see photos of their heads on pikes. I want bin Laden's head shipped back in a box filled with dry ice. I want to be able to show bin Laden's head to the president. I promised him I would do that." According to CIA operative Gary Schroen, a member of the Jawbreaker team, it was the first time in his thirty-year career he had been ordered to assassinate an adversary rather than attempt a capture.

In September 2002, five months after Blackwater's first known contract with the CIA in Afghanistan, Black testified to Congress about the new "operational flexibility" employed in the "war on terror." "There was a before 9/11, and there was an after 9/11," Black said. "After 9/11 the gloves come off." Black outlined a "no-limits, aggressive, relentless, worldwide pursuit of any terrorist who threatens us," saying it "is the only way to go and is the bottom line." Black would later brag, in 2004, that "over 70 percent" of Al Qaeda's leadership had been arrested, detained or killed, and that "more than 3,400 of their operatives and supporters have also been detained and put out of an action." The Times reports that the Blackwater-CIA assassination program "did not successfully capture or kill any terrorist suspects."

In addition to Black, Total Intelligence's executives include CEO Robert Richer, the former associate deputy director of the CIA's Directorate of Operations and second-ranking official in charge of clandestine operations. From 1999 to 2004, Richer was head of the CIA's Near East and South Asia Division, where he ran covert operations in the Middle East and South Asia. As part of his duties, he was the CIA liaison with Jordan's King Abdullah, a key US ally and Blackwater client, and briefed George W. Bush on the burgeoning Iraqi resistance in its early stages.

Total Intelligence's chief operating officer is Enrique "Ric" Prado, a twenty-four-year CIA veteran and former senior executive officer in the Directorate of Operations. He spent more than a decade working in the CIA's Counterterrorist Center and ten years with the CIA's "paramilitary" Special Operations Group.

Total Intelligence is run out of an office on the ninth floor of a building in the Ballston area of

Arlington, Virginia. Its Global Fusion Center, complete with large-screen TVs broadcasting international news channels and computer stations staffed by analysts surfing the web, “operates around the clock every day of the year” and is modeled after the CIA’s counterterrorist center, once run by Black. The firm employs at least sixty-five full-time staff—some estimates say it’s closer to 100. “Total Intel brings the...skills traditionally honed by CIA operatives directly to the board room,” Black said when the company launched.

Representative Schakowsky says the House Intelligence Committee is investigating the CIA assassination program and will probe alleged links to Blackwater. “The presidential memos (often referred to as ‘findings’) authorizing covert action like the lethal activities of the CIA and Blackwater have not yet surfaced,” says Ray McGovern, a retired twenty-seven-year CIA analyst who once served as George H.W. Bush’s national security briefer. “They will, in due course, if knowledgeable sources continue to put the Constitution and courage above secrecy oaths.”

Blackwater Strikes Back

The Times report comes as Prince and his Blackwater empire are facing the prospect of a potentially explosive civil trial over the killing of Iraqi civilians. Attorney Susan Burke and the Center for Constitutional Rights (CCR), who are suing Prince and his companies on behalf of their Iraqi victims, have alleged that Prince is “equivalent to a top mafia boss who is responsible for all the day-to-day crimes committed at his direction and behest.” If the case proceeds, the process of discovery could blow the lid off some of the darkest secrets of the powerful security contractor and its secretive owner. Burke and CCR are suing Prince and his companies directly rather than his individual employees because they say Prince “wholly owns and personally controls all Defendants.” Burke also alleges that Prince has committed “violations of the Racketeer Influenced and Corrupt Organizations Act, a federal statute permitting private parties to seek redress from criminal enterprises who damage their property.” Among the allegations are war crimes, extra-judicial killings and assault and battery of Iraqis.

Since the first case was filed by Iraqi civilians against Prince and Blackwater over the killing of seventeen Iraqis at Baghdad’s Nisour Square on September 16, 2007, the company’s high-powered lawyers have fought feverishly to have that and four other cases dismissed. Now, facing a crucial August 28 hearing in federal court in Virginia, they are putting forward a new argument: instead of Prince and Blackwater standing trial, the US government should be the defendant.

In a motion filed August 12, Blackwater’s lawyers asked federal Judge T.S. Ellis III to order “that the United States ‘be substituted as the party defendant,’ in place of all of the current Defendants.” In his motion, Blackwater lawyer Peter White of the powerhouse firm Mayer Brown argued that the company was working for the State Department in Iraq and therefore was on official business when the alleged killings and injuries of Iraqis took place. White cites the 1988 Westfall Act, which prohibits suits against government employees for their actions on behalf of the government and states that the government will assume liability for any lawsuits against employees.

Federal tort law defines “employees” in this context as “persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.” The fact that the defendants are “corporate entities” in this instance, White claims, “does not alter that conclusion.” In the

motion, Blackwater's attorneys note that the company, which recently renamed itself Xe Services, now does business with the government under the name US Training Center (USTC).

"The idea that the United States government should accept liability for the unprovoked criminal manslaughter of seventeen innocent Iraqis by Blackwater mercenaries, and place it on the back of taxpayers, is corporate animism run amok," says Ralph Nader, who has spent his entire career fighting against corporate personhood. "If Blackwater wants to be treated like a person, then its latest mutation, USTC, should be prosecuted, convicted and given the equivalent penalty of corporate capital punishment by revoking its charter and terminating its corporate operations."

The Westfall Act was passed in 1988 as an amendment to the Federal Torts Claim Act "to protect federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of federal employees with an appropriate remedy against the United States." After Westfall, the government assumed legal responsibility for suits filed against federal employees and made the sole remedy for victims suits against the government.

Blackwater has asked Attorney General Eric Holder to intervene in the case and to assume liability for the allegations against Blackwater. If that were to happen, legal experts say, the case would be dead in the water. "It's clear that if they win this motion and the government is substituted, since the wrongs occurred in a foreign country, the government is absolutely immune and the case will be dismissed," says Alan Morrison, a former federal prosecutor who is now the associate dean for public interest at George Washington Law School. "This is an effort [by Blackwater and Prince] to absolve themselves...of any liability for the alleged wrongs to the plaintiffs." He adds: "A gigantic, for-profit corporation is seeking to use this statute, designed to protect government employees, to shield themselves from any responsibility for the deaths and injuries" of Iraqis.

"When Blackwater chooses to interpose itself in the middle and to make profit off these individual employees in the relationship with the government, the notion that Blackwater itself, a corporation, could be an employee is unusual to say the least," says Morrison. "Why would Congress want to, in effect, transfer liability from a large, well-heeled corporation like Blackwater to the United States taxpayers for this kind of conduct? What they'd be saying [if Blackwater's interpretation of the Westfall Act is accepted] is they would have wanted to assume liability for that which they didn't have any liability in the first place."

The Justice Department has not yet issued a position in this case. "Unfortunately, there's nothing we can provide in regard to your inquiry at this time," an official wrote in an e-mail. Earlier, in response to questions from The Nation, a Justice Department spokesperson sent a memo filed by the department earlier this year in a similar case against Blackwater in federal court in Florida, in which the department had rejected the company's attempt to make the government responsible. "Defendants' request for Westfall Act certification should be denied because only natural persons can be considered 'employee[s] of the government,'" Assistant Attorney General Tony West wrote on June 8 in a thirty-five-page filing opposing Blackwater's motion.

Several legal experts interviewed by The Nation said they could not foresee the Justice Department intervening on Blackwater's behalf. But the Westfall Act has been used by attorneys general in both the Bush and Obama administrations to attempt to absolve senior

Bush officials of liability for their alleged role in crimes and to make the government liable. On June 26 Holder's office intervened in a lawsuit filed by CCR against Defense Secretary Donald Rumsfeld and twenty-three other military and medical officials "for their role in the illegal detention, torture, inhumane conditions and ultimate deaths" of two Guantánamo prisoners.

Citing the Westfall Act, Tony West wrote that "the type of activities alleged against the individual defendants were 'foreseeable' and were 'a direct outgrowth' of their responsibility to detain and gather intelligence from suspected enemy combatants." In defending the government's position, West cited case law stating that "genocide, torture, forced relocation, and cruel, inhuman, and degrading treatment by individual defendants employed by Department of Defense and State Department were within scope of employment" and similar cases justifying CIA torture as part of official duty.

"It is essentially saying torture is all in a day's work when it comes to holding people in military detention," says Shane Kadidal, who heads the Guantánamo project at CCR. In that case, the issue was not whether Rumsfeld and the others were "employees" but whether they were doing official business. Blackwater's argument is a tougher sell, says Morrison. "Does it hold water?" he asks. "It holds Blackwater."

Meanwhile, in another development, Prince's lawyers have responded to explosive allegations made against Prince by two former employees. In sworn affidavits submitted by lawyers representing the Iraqis suing Blackwater, the two alleged that Prince may have murdered or facilitated the murder of individuals who were cooperating with federal authorities investigating the company. One of the former employees alleges that Prince "views himself as a Christian crusader tasked with eliminating Muslims and the Islamic faith from the globe," and that Prince's companies "encouraged and rewarded the destruction of Iraqi life." They also charge that Prince was profiting from illegal weapons smuggling. In a motion filed August 10, Prince's lawyers asked Judge Ellis to strike from the record the sworn statements of the two former employees, saying that "the conclusory allegations they contain are inadmissible on multiple grounds, including lack of foundation, hearsay, irrelevance, and unfair prejudice." They charge that the lawyers suing Blackwater are attempting to "use this litigation as a 'megaphone' to increase their ability to influence the public's perceptions regarding the use of contractors in military battlefield situations, the Iraq War, and most particularly about Erik Prince and the other defendants. Unsubstantiated statements made in filings in this Court become 'newsworthy' simply because they appear in those filings." The lawyers characterize the allegations as "scandalous, baseless, inadmissible, and highly prejudicial." Interestingly, nowhere do Prince's lawyers say flatly that the allegations are untrue.

As the cases against Prince move forward, the company continues to do a robust business with the federal government, particularly in Afghanistan. Schakowsky has called for a review of all of the companies' current contracts, and she has called on Secretary of State Hillary Clinton and Defense Secretary Robert Gates to stop awarding the company contracts. The "Obama administration should at the very least cancel and debar [Blackwater's] present and pending government contracts," says Nader. "Otherwise corporate crimes, privileges and immunities continue to pay and pay and pay."

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