

# How Human Rights Can Build Haiti

American interventions in Haiti are often sold as paternalistic charity for a basket-case country, but the U.S. interference has often done more harm than good for the impoverished nation where two lawyers have tried to a different approach, building human rights, writes Marjorie Cohn.

By Marjorie Cohn

Haiti is one of the poorest countries in the world. It has suffered a devastating earthquake followed by a deadly cholera epidemic, both set in the backdrop of a history of oppression by corrupt rulers and foreign exploitation. In spite of incredible challenges, two intrepid human rights attorneys one Haitian and one American have worked diligently to vindicate the rights of the people of Haiti, with some notable successes.

Fran Quigley's important book, *How Human Rights Can Build Haiti*, tells the story of Mario Joseph and Brian Concannon, whose Bureau des Avocats Internationaux (BAI) has given hope to untold numbers of Haitians. They opt for a "bottom-up" rather than a "top-down" approach.

Their preference is to help to empower the Haitian people to make change themselves, instead of relying on outside groups particularly the United States and non-governmental organizations (NGOs) which establish "rule of law programs" and provide charity, generally with strings attached.

Often called the leading human rights lawyer in Haiti, Mario Joseph is president of BAI. "We had an earthquake, yes, but far too many people died in this earthquake. And that is because we in Haiti have no respect for the rule of law," he says, attributing the deaths to poorly built homes crowded onto steep hillsides. It is estimated that more than 200,000 were killed, 300,000 were injured, and two million were rendered homeless by the earthquake.

Joseph has developed a reputation in Haiti as a fearless advocate, in the face of numerous death threats. While court proceedings take place in French, Joseph speaks Creole so his clients can understand the proceedings. "The justice system is unaffordable for the people of Haiti," Joseph observes, "but if you are rich or important and your rights are not respected, you can find justice. Conversely, if you are powerful and you abuse human rights, you can find ways to avoid the consequences of your actions."

## **Brian Concannon**

Joseph's counterpart in the United States is Brian Concannon, who directs the

Institute for Justice and Democracy in Haiti (IJDH) in Boston. Concannon, also fluent in Creole, worked in Haiti for nine years, including the successful case he and Joseph filed after the Raboteau massacre. Concannon returned to the United States and founded IJDH, BAI's sister organization in 2004. Known as a "tireless worker who makes the transition from human rights lawyer to political strategist to movement organizer as the needs of the Haitian dictate," Concannon has developed a reputation with congresspersons, who "clearly look to him as the definitive voice on Haiti justice issues," according to Nicole Lee, former BAI lawyer, now executive director for TransAfrica Forum.

### **A legacy of exploitation**

Quigley outlines Haiti's tragic history, starting with the occupation by the United States in 1915. After occupying Cuba and Puerto Rico, the United States sent Marines to invade Haiti, the only nation born from a successful slave rebellion. The United States declared martial law, seized control of the treasury, and arrested the editors of a newspaper critical of U.S. actions. Haitian opposition to the U.S. occupation grew for the next 20 years, and in 1934, the Marines left Haiti.

Haitian President Francois "Papa Doc" Duvalier exploited the bitterness of the people of Haiti about U.S. domination. But his anti-communism endeared him to the United States and led to U.S. endorsement of his presidential campaign and his successful election in 1956. For the next 30 years, Papa Doc presided over a reign a terror in Haiti, backed by the United States. U.S. support continued during the oppressive tenure of Papa Doc's son, Jean-Claude Duvalier ("Baby Doc").

Haiti's fragile economy was further weakened by the neoliberal "structural adjustment" program foisted upon it by its international creditors, including the International Monetary Bank. Wages and social services were kept at a minimal level as taxes and tariffs were lifted. By 1986, 300 U.S. corporations were located in Haiti. People migrated from the countryside to seek low-wage jobs in the city.

In 1990, Jean-Bertrand Aristide became Haiti's first democratically elected president, winning more than 67 percent of the vote and defeating a neoliberal former World Bank official. When Aristide attempted to reverse the neoliberal policies foisted on Haiti, the United States strongly resisted. Less than one year later, Aristide was ousted by officers of the Haitian army who had been trained at the U.S. School of the Americas and/or were on the CIA payroll.

President Bill Clinton helped restore Aristide to power only after the Haitian president promised to cut government programs for the poor and lower tariffs on

food. Clinton regrets that condition to this day. The United States also blocked a \$146 million loan to Haiti from the Inter-American Development Bank, money earmarked to improve the water infrastructure system. That move would prove to have devastating consequences in the cholera outbreak in 2010.

In 2004, Aristide was forced to leave Haiti in what many thought was a kidnapping by U.S. Army Special Forces as part of a U.S.-backed coup d'état. The Bush administration then saw to it that Aristide's progressive policies were reversed.

That same year, the United Nations mission in Haiti (MINUSTAH) arrived but UN peacekeeping troops did little to protect civilians targeted by the new coup government. In fact, MINUSTAH troops helped facilitate political violence, causing resentment among the Haitian people. Cables obtained by WikiLeaks confirm that MINUSTAH protected U.S. interests and global capital.

After the 2004 coup, Haiti descended into lawlessness as the coup government instituted a system of repression with torture, disappearances, summary arrests and executions, rape and drug trafficking. Only a tiny fraction of those in prison had been convicted of a crime and prison conditions were deplorable.

When Quigley visited one of the prisons, "[a]ll the prisoners were shirtless and barefoot, very thin, and wearing as little as possible," he says. "The startling sight of near-naked dark-skinned men crammed together and crouching on a bare floor evoked images of Africans chained in the hold of a slave ship."

Haiti had "endured a full thirty-two coups and a near-constant state of military dominance over civilians," Quigley writes. "The government of Haiti made disastrous choices in loans and alliances, and has never been able to develop an economy that is independent of foreign powers, particularly the United States."

The earthquake in 2010 triggered an overwhelming global response. But since aid was administered by NGOs instead of the Haitian government, much of the pledged money never reached the people of Haiti. And because, writes Quigley, "the military and the media mischaracterized post-earthquake Port-au-Prince as a security crisis rather than a humanitarian crisis, the Haitian people paid dearly."

The United States sent soldiers instead of humanitarian workers, and many food and supplies were not distributed to the victims. "[M]ost of the USAID dollars spent for Haiti went to top U.S. contractors, most based in Washington, DC, area. Less than one percent of U.S. government expenditures have gone to Haitian businesses or organizations."

Shortly after the earthquake, an outbreak of cholera claimed more than 8,600

lives, and 684,000 became ill. The World Health Organization describes cholera as “an easily treatable disease.” Dr. Paul Farmer, founder of Haiti-based Partners in Health, notes that chronic poverty and deficiencies in the infrastructure made Haiti vulnerable to disasters such as earthquakes and infectious disease. The cholera infection was traced to the dumping of sewage near a river by troops in a camp where the MINUSTAH was based. Bill Clinton admitted that UN peacekeepers were the “proximate cause” of the cholera epidemic.

### **A Human Rights-based Approach**

In 2011, BAI lawyers filed more than 5,000 claims against the UN and a petition for relief on behalf of cholera victims, requesting compensation. The UN had concluded a status of forces agreement (SOFA) with the government of Haiti in 2004, granting UN troops immunity from civil and criminal claims.

But Concannon told Quigley that the UN forfeited its immunity by failing to establish a commission to hear claims of cholera victims, as required by the SOFA. In 2013, UN Secretary-General Ban Ki-Moon refused to receive BAI’s claims. BAI then filed a lawsuit against the UN in a New York federal court. That suit is now pending.

Joseph and Concannon won the most important human rights court verdict in Haitian history in 2000. As a result of their work, 53 military and paramilitary officers and soldiers were convicted of human rights violations during the 1994 massacre in Raboteau. They were ordered to pay the victims \$140 million.

In other lawsuits, Joseph and Concannon are advocating prosecution of Baby Doc’s collaborators for financial crimes and political repression during the brutal Duvalier regime. And the work of BAI and IJDH in responding to the epidemic of rapes in the IDP (internally displaced persons) camps following the earthquake has been exemplary.

They have helped to empower the victims, challenged law enforcement, established security patrols and know-your-rights training, pushed prosecutions, and developed an international campaign through the media. As a result, sexual assaults have decreased dramatically, and women are now willing to file complaints. Joseph says, “Where the rule of law does not exist, you have to build it.”

Quigley describes how these two courageous lawyers are creating a template for an effective human rights-focused strategy to end global poverty and failed states. He writes, “[t]heir docket includes community-based programs on rape accountability and prevention, housing rights, and prisoners’ rights, along with

international advocacy for fair elections in Haiti, earthquake response, and immigration rights for the Haitian diaspora. BAI helps organize street-blocking protests by camp dwellers facing eviction, and loud, aggressive demonstrations in protest of the UN's cholera response."

Joseph and Concannon work indefatigably to give voice to the voiceless and vindicate their human rights. They seek justice both inside and outside the courtroom.

This excellent book combines careful research with personal observations and interviews to paint a graphic portrait of the reality in Haiti and the critical work of Joseph and Concannon. Far from a dry history, it is a gripping tale of two courageous lawyers working to overcome seemingly insurmountable odds to better the lives of the Haitian people. This is a must-read for all those concerned about human rights both in Haiti and elsewhere.

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## Hiding the Political Subtext of Sterling Trial

Whenever lawyers for ex-CIA officer Jeffrey Sterling sought to illuminate the political context for his prosecution as a leaker, prosecutors objected with the support of the federal judge, but politics has always lurked in the case's background, writes Norman Solomon.

By Norman Solomon

Continuing to deliberate as this week gets underway, the jurors in the CIA leak trial might ponder a notable claim from the government: "This case is not about politics."

The prosecution made that claim a few days ago in closing arguments, begun with a somber quotation from former Secretary of State Condoleezza Rice about the crucial need to stop the spread of nuclear weapons. Of course prosecutor Eric Olshan was not foolish enough to quote Rice's most famous line: "We don't want the smoking gun to become a mushroom cloud."

During the seven days of the trial, which received scant media coverage, Rice

attracted the most attention. But little of her testimony actually got out of the courtroom, and little of what did get out illuminated the political context of the government's case against former CIA officer Jeffrey Sterling.

A heavy shroud over this trial, almost hidden by news media in plain sight, has been context: the CIA's collusion with the Bush White House a dozen years ago, using WMD fear and fabrication to stampede the United States into making war on Iraq.

And part of the ongoing context of the Sterling case has been the Obama administration's unrelenting pursuit of Sterling for allegedly leaking classified information, revealed in the last chapter of a book by James Risen, about a now-15-year-old CIA operation that's far more suitable for Freedom of Information Act disclosures than criminal prosecution. The jury is weighing nine felony counts, including seven under the atrociously misapplied Espionage Act.

It was just six weeks after the invasion of Iraq when, at the end of April 2003, Rice then President George W. Bush's national security adviser hosted a meeting at the White House to tell representatives of the *New York Times* that the newspaper should not report on Operation Merlin, the CIA's ill-conceived and dangerous maneuver that had provided a flawed design for a nuclear weapon component to Iran three years earlier.

The Times management caved within a week. Only Risen's book *State of War*, published in January 2006, finally brought Operation Merlin to light.

Rice was in her usual smooth form at the Sterling trial. Emphatic that the CIA's Operation Merlin was hardly known to anyone, Rice testified: "This program was very closely held. It was one of the most closely held programs during my tenure." Yet the CIA manager in charge of Operation Merlin ("Bob S," who appeared at the trial behind a screen) testified that the operation was known to more than 90 people.

Helping to lay groundwork for the Iraq invasion, Rice was a key enabler for the CIA's slam-dunk mendacity about Saddam Hussein's purported weapons of mass destruction. More than a decade later, she has used the Sterling trial as an opportunity for more distortion of the historical record, as though her quash-the-Merlin-story meeting at the White House in 2003 was free of self-service.

The prosecution helped Rice settle into her stance:

Question: "Now, was the purpose of your convening this meeting out of any sort of embarrassment that it would get out that there had been a botched operation?"

Rice: "My concern in convening this meeting was that we had a very sensitive,

extremely important program for the security of the country that was about to be compromised . . . That was my concern.”

But one of the prosecution’s main concerns, no doubt shared by Rice, had to do with insulating the trial from intrusive context, a context that could explain why any whistleblower or journalist might want to expose and debunk Operation Merlin, an operation targeting a supposed nuclear weapons program in Iran, a country that the Bush administration was eager to attack with the goal of regime change.

When the time came for Rice to face cross-examination, defense lawyer Barry Pollack tried to blow away some fog:

Question: “[P]reventing working nuclear weapons from falling into the hands of rogue states is one of the most important missions of your, the administration you worked for certainly ”

Rice: “Yes.”

Question: “ and any other administration, correct?”

Rice: “That’s correct.”

Question: “And certainly counterproliferation was of great interest at this particular time, correct?”

Rice: “That’s correct.”

Question: “The United States had invaded Iraq the earlier month?”

Prosecutor Olshan: “Objection.”

Judge Leonie Brinkema: “Well, we’ve heard that before. Let’s just move this along, Mr. Pollack. Sustained.”

A week later, in the closing arguments, Pollack, who noted that “the government has great lawyers”, told the jury: “Make no mistake. This is a very important case for the government.” He pointedly reminded jurors that the last chapter in Risen’s book “made the CIA look bad.”

Minutes later, wrapping up the prosecution’s closing statement, Assistant U.S. Attorney James Trump declared: “This case is not about politics. It’s not about salvaging the reputation of the CIA.”

But, no matter how great the government’s lawyers may be, the case of *United States of America v. Jeffrey Alexander Sterling* has everything to do with politics and the CIA’s reputation.

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## The CIA's Prosecutorial Defense

In the trial of alleged CIA whistleblower Jeffrey Sterling, the U.S. government appears more intent on burnishing the CIA's tarnished reputation than proving Sterling's guilt. The defendant almost looks to be collateral damage in this PR process, as Norman Solomon observes.

By Norman Solomon

Midway through the trial of former CIA officer Jeffrey Sterling, one comment stands out: "A criminal case," defense attorney Edward MacMahon told the jury at the outset, "is not a place where the CIA goes to get its reputation back."

But that's where the CIA went with this trial in its first week, sending to the witness stand a procession of officials who attested to the agency's virtues and fervently decried anyone who might provide a journalist with classified information.

The CIA's reputation certainly needs a lift. It has rolled downhill at an accelerating pace in the dozen years since telling President George W. Bush what he wanted the nation to hear about Iraqi weapons of mass destruction. That huge bloody blot on the agency's record has not healed since then, inflamed by such matters as drone strikes, rendition of prisoners to torture-happy regimes and resolute protection of its own torturers.

CIA sensibilities about absolution and prosecution are reflected in the fact that a former head of the CIA's clandestine service, Jose Rodriguez Jr., suffered no penalty for destroying numerous videotapes of torture interrogations by the agency, which knew from the start that the torture was illegal.

But in the courtroom, day after day, with patriotic piety, CIA witnesses, most of them screened from public view to keep their identities secret, have testified to their reverence for legality.

In the process, the CIA is airing soiled threads of its dirty laundry as never before in open court. The agency seems virtually obsessed with trying to refute the negative portrayal of Operation Merlin, the CIA's effort 15 years ago to provide a flawed nuclear weapon design to Iran, in James Risen's 2006 book *State*

*of War.*

To underscore the importance of blocking the information about Operation Merlin that eventually surfaced in the book, Rice testified that, in her role as national security adviser in 2003, she consulted with President Bush and got his approval before meeting with representatives of the *New York Times*. Rice succeeded in persuading the newspaper hierarchy not to publish the story. (Revealing CIA memos about the agency's maneuvers to pressure the *Times* are posted as trial exhibits.)

The star witness at the end of last week, identified as "Mr. Merlin," was the CIA-asset Russian scientist who delivered diagram material for a nuclear weapon component to an Iranian office in Vienna in 2000. Like the CIA officers who testified, he voiced pride in Operation Merlin, at one point even seeming to assert that it had prevented Iran from developing a nuclear bomb. (That was an especially bizarre claim. Mr. Merlin himself admitted that his efforts never got any response from Tehran, and there is no evidence the operation had any nonproliferation effect.)

Contrary to the narrative in *State of War*, which portrays him as very skeptical of the operation and reluctant to participate, Mr. Merlin's testimony via video aimed to present himself as resolute about executing the plan: "I knew I needed to do my job. . . . I had no doubts."

When the prosecutor asked whether it took a lot of persuading to get him to participate in the operation, Mr. Merlin responded with sudden vehemence: "It was not a rogue operation. It was a brilliant operation." (The chapter in Risen's book detailing Operation Merlin is titled "A Rogue Operation.")

The prosecutor probably liked the answer, except for the obvious fact that it was not responsive to his question. So he tried again, inquiring whether it took a lot of persuasion from the CIA case officer to go through with his assigned mission to Vienna. The query was an evident prompt for a "No" answer. But Mr. Merlin replied: "I don't know."

The prosecutor tried again, asking whether he had been reluctant to agree to go ahead with the task. At first there was no answer, just conspicuous silence. Then: "I don't know." Then: "I didn't have any doubts. I didn't hesitate."

All this is potentially important to the case, since the government is asserting that Risen's book is inaccurate, that Operation Merlin was actually near flawless and that Sterling invented concerns and a narrative that unfairly characterized it.

Everyone agrees that Sterling went through proper channels to share his concerns

and classified information with Senate Intelligence Committee staff in early March 2003. But the prosecution, armed with a 10-count felony indictment, alleges that he also went to Risen and disclosed classified information. Sterling says he's innocent on all counts.

The government hadn't wanted Mr. Merlin to testify, contending that he was too ill (with kidney cancer), but U.S. District Court Judge Leonie Brinkema ruled for a video deposition. That turned out to be unfortunate for the prosecutors, since Merlin became foggy and evasive under cross-examination, with increasing frequency of replies like "I can't recall" and "I don't remember." Dense fog of his own making eclipsed Mr. Merlin as a star witness for the government.

To close out the trial's first week, before a three-day weekend, the government called more CIA witnesses to the stand. They hammered at the vital need for scrupulous rectitude from CIA officers to obey the law and regulations in handling classified materials.

As you might imagine, none had anything to say about disapproval of violating laws against torture or destroying evidence of torture. Nor did any allude to realities of extremely selective prosecution for leaks, with top U.S. government officials and the CIA press office routinely funneling classified information to favorite journalists.

But high-ranking officials and PR operatives are not the only CIA employees apt to elude intense scrutiny for possibly leaking to the press. Judging from testimony at the trial, the harshest investigative spotlight shines on those seen as malcontents. The head of the CIA press office, William Harlow, indicated that Sterling (who is African American) became a quick suspect in the Operation Merlin leak case because he'd previously filed a suit charging the agency with racial bias.

Sterling's other transgressions against a de facto code of silence included his visit to Capitol Hill when he spilled classified beans to Senate oversight committee staffers.

In the courtroom, during the trial's first week, I often sat near retired CIA analyst Ray McGovern, who chaired the National Intelligence Estimates in the 1980s and prepared the CIA's daily briefs for presidents from John Kennedy to George H.W. Bush. I wondered what McGovern was making of the spectacle; I found out when he wrote that "the real subtext of the Sterling case is how the politicization of the CIA's analytical division over the past several decades has contributed to multiple intelligence failures, especially efforts to 'prove' that targeted regimes in the Middle East were amassing weapons of mass destruction."

There's no telling whether members of the jury will grasp this "real subtext." Judge Brinkema seems determined to exclude anything more than faint wisps of such context. Overall, an elastic sense of scope is prevailing from the bench, to the benefit of the government.

"In the Sterling case, federal prosecutors seem to want to have it both ways," McGovern observed. "They want to broaden the case to burnish the CIA's reputation regarding its covert-op skills but then to narrow the case if defense attorneys try to show the jury the broader context in which the 'Merlin' disclosures were made in 2006, how President George W. Bush's administration was trying to build a case for war with Iran over its nuclear program much as it did over Iraq's non-existent WMDs in 2002-2003."

Along the way, the CIA is eager to use the trial as much as possible for image damage control, trying to ascend high ground that has eroded in part due to high-quality journalistic accounts of the sort that Risen provided in his *State of War* reporting on Operation Merlin. And the CIA wants a very harsh prison sentence to serve as a warning to others.

The CIA is on a quest for more respect, from news media, from lawmakers, from potential recruits, from anyone willing to defer to its authority, no matter how legally hypocritical or morally absent. Demolishing the life of Jeffrey Sterling is just another means to that end.

**Norman Solomon is the executive director of the Institute for Public Accuracy and the author of *War Made Easy: How Presidents and Pundits Keep Spinning Us to Death*. He is a co-founder of RootsAction.org. [This article originally appeared at ExposeFacts.org]**

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## How Propaganda Conquers Democracy

In recent decades, the U.S. propaganda system has grown more and more sophisticated in the art of "perception management," now enlisting not only government PR specialists but careerist journalists and aspiring bloggers to push deceptions on the public, a crisis in democracy that Nicolas J S Davies explores.

By Nicolas J S Davies

Do we live in a country where citizens are critically informed on the issues of the day by media that operate independently of the government? Or do our political leaders deliberately plant a false view of events and issues in the

mind of the public that complicit media then broadcast and amplify to generate public consent for government policy?

This is a basic test of democracy for the citizens of any country. But the very nature of modern propaganda systems is that they masquerade as independent while functioning as the opposite, so the question is not as straightforward as it seems.

In *Democracy Incorporated; Managed Democracy and the Specter of Inverted Totalitarianism*, political scientist Sheldon Wolin examined how America's "managed democracy" has devolved into "inverted totalitarianism," concentrating power and wealth in the hands of a small ruling class more efficiently and sustainably than 20th Century "classical totalitarianism" ever succeeded in doing.

Instead of sweeping away the structures of constitutional government like the Fascists, Nazis or Soviets, this "political coming-of-age of corporate power" has more cleverly preserved and co-opted nominally democratic institutions and adapted them to its own purposes.

Self-serving politicians and parties compete for funding in election campaigns run by the advertising industry, to give political investors the most corrupt President, administration and Congress that money can buy, while courts uphold new corporate and plutocratic political rights to ward off challenges to the closed circle of wealth and political power.

Oligarchic corporate control of the media is a critical element in this dystopian system. Under the genius of inverted totalitarianism, a confluence of corrupt interests has built a more effective and durable propaganda system than direct government control has ever achieved.

The editor or media executive who amplifies government and corporate propaganda and suppresses alternative narratives is not generally doing so on orders from the government, but in the interest of his own career, his company's success in the corporate oligarchy or "marketplace," and his responsibility not to provide a platform for radical or "irrelevant" ideas.

In this context, a common pattern in five recent cases illustrates how the U.S. government and media systematically deceive the public on critical foreign policy issues, to generate public hostility toward foreign governments and to suppress domestic opposition to economic sanctions and to the threat and use of military force.

1. Non-Existent WMDs in Iraq. This is the case we all know about. U.S. officials made claims they knew were false when they made them, and the media faithfully

and uncritically amplified them to make the case for war. The result was the destruction of Iraq in a war based on lies. At meetings in 2001, according to Treasury Secretary Paul O'Neill, CIA Director George Tenet consistently told the National Security Council (NSC) that that the CIA had no "confirming intelligence" that Iraq possessed nuclear, chemical or biological weapons.

When Defense Secretary Donald Rumsfeld laid out the Pentagon's plans to invade Iraq, Tenet reiterated that it was still only speculation that Iraq possessed weapons of mass destruction. Eying the junior staffers in the room, Rumsfeld replied, "I'm not sure everyone here has clearance to hear this."

Senior officials knew their case for war was weak and unsubstantiated, but they treated the weakness of their case as a closely guarded state secret to be kept from the public, up to and including staffers at NSC meetings. They set up the Office of Special Plans at the Pentagon to "stovepipe" unvetted intelligence directly to senior officials to bolster the case for war, bypassing the review process that is supposed to filter intelligence for accuracy and reliability.

As the head of MI6 told the British cabinet in July 2002, "the intelligence and the facts were being fixed around the policy." Chief UN weapons inspector Scott Ritter revealed how MI6 planted unsubstantiated stories in newspapers around the world to make the case for war. In June 2002, the CIA-backed Iraqi National Congress revealed that its "Information Collection Program" was the primary source for 108 media reports on Iraq's WMDs and links to terrorism over the past eight months.

In July 2002, Ritter told CNN, "No one has substantiated the allegations that Iraq possesses weapons of mass destruction," but CNN enthusiastically – and profitably – joined the rush to war.

When Congress debated the 2002 Iraq war resolution, the administration gave members a 25-page document it advertised as a summary of a new National Intelligence Estimate (NIE) on Iraq. The document was pure propaganda, produced months before the NIE, and included false claims that were nowhere to be found in the NIE, such as that the CIA knew the location of 550 sites in Iraq where chemical and biological agents were stored.

Sen. Bob Graham, D-Florida, chair of the Senate Intelligence Committee, begged his colleagues to instead read the classified NIE, dramatically warning them, "Blood is going to be on your hands." Only six Senators and a handful of Representatives did so, but the media clung to the propaganda narrative that the White House and Congress had seen "the same intelligence."

In his 2003 State of the Union speech, President George W. Bush cited gaps in

Iraq's accounting for weapons it destroyed in 1991 as a continuing threat, from 25,000 liters of anthrax to 500 tons of Sarin, VX nerve agent and mustard gas. Of all these, only mustard gas would have still been potent 12 years later – if it had existed.

Bush pretended that 81-mm aluminum rocket casings were tubes for centrifuges, a claim already dismissed by the International Atomic Energy Agency, and that Iraq was buying uranium in Niger based on a forgery that the IAEA spotted within hours. But Bush's deceptive fear-mongering was uncritically embraced and amplified by the U.S. media.

Secretary of State Colin Powell's presentation to the UN Security Council in February 2003 contained at least a dozen categorical but false statements about Iraqi weapons, based on recordings and photographs deliberately misinterpreted by the Iraqi National Congress and CIA agents. Security Council members were unconvinced, but the U.S. media uniformly and enthusiastically endorsed Powell's "slam-dunk" case for war.

Fairness and Accuracy in Reporting (FAIR) found that U.S. media coverage was unashamedly pro-war during the critical weeks leading up to the invasion, with only three anti-war voices among 393 "expert" interviews on major TV networks. A total of 76 percent of interviewees were present or former government officials, of whom only 6 percent were critical of the case for war, even as a CBS poll found that 61 percent of the public wanted to "wait and give the United Nations and weapons inspectors more time."

The election of President Barack Obama was a chance for the U.S. to make a clean break from the destructive and deceptive policies of the Bush administration. But the U.S. propaganda system has instead evolved to embrace even more sophisticated techniques of branding and image-making, not least to build a deep sense of trust into the iconic image of a hip celebrity-in-chief with roots in African-American and modern urban culture.

The contrast between image and reality, so essential to Obama's role, represents a new achievement in managed democracy, enabling him to maintain and expand policies that are the polar opposite of the change his supporters thought they were voting for.

2. Non-Existent WMDs in Iran. Incredibly, after their exposure and embarrassment over Iraq, the U.S. government and media didn't skip a beat but immediately recycled their WMD narrative to justify a similar campaign of sanctions and threats against Iran.

We are finally on a more promising diplomatic trajectory, but it is still taboo

for U.S. politicians or media to admit that Iran has almost certainly never had a nuclear weapons program, and the U.S. propaganda narrative still insists that a decade of brutal economic warfare has played a constructive role to “bring Iran to the table.” Nothing could be farther from the truth.

A 2012 study by the International Crisis Group found that ever-tightening sanctions had “almost no chance of producing an Iranian climb-down any time soon,” and could end up leading to war, not offering an alternative to it – just as in Iraq.

As Iranian Foreign Minister Mohammad Zarif remarked in November 2014, “The effect of sanctions can be seen in how many centrifuges are spinning in Iran. When we began the sanctions process, Iran had less than 200 centrifuges. Today it has over 20,000.” Zarif also reiterated Iran’s long-standing position that, “Nuclear weapons don’t serve our strategic interests and are against the core principles of our faith.”

Trita Parsi (president of the National Iranian American Council), Mohammed ElBaradei (former IAEA director-general), and Gareth Porter (an award-winning investigative reporter/historian) have each written enlightening books that demolish critical elements of the U.S. propaganda campaign against Iran:

In *A Single Roll of the Dice: Obama’s Diplomacy With Iran*, Trita Parsi explained that Obama’s “dual-track approach”, combining negotiations with sanctions, was a political compromise to appease doves and hawks in Washington. But this was a prescription for failure in the real world, because the two tracks were incompatible and the sanctions track gave the hardliners on both sides the upper hand.

After Brazil and Turkey persuaded Iran to agree to a comprehensive proposal offered by the U.S. only months earlier, the U.S. rejected its own plan because it would undermine its efforts to pass new sanctions in the UN Security Council. A senior State Department official told Parsi that the main obstacle to resolving the crisis was the U.S. inability to take “Yes” for an answer.

In *The Age of Deception: Nuclear Diplomacy in Treacherous Times*, ElBaradei recounted how the CIA and other Western intelligence agencies kept providing the IAEA with supposed “evidence” of an Iranian nuclear weapons program, but, just as in Iraq, there was nothing there to find.

Despite the “Key Lessons” of UNMOVIC’s final report on Iraq that UN inspection agencies should not be used “to support other agendas or to keep the inspected party in a permanent state of weakness,” nor be given the impossible political task of “proving the negative,” ElBaradei found himself back in exactly that

position, even as the IAEA was already fulfilling its legitimate task of monitoring all Iran's nuclear material and facilities.

Gareth Porter has maybe done more than anyone to expose the bankruptcy of the U.S. propaganda narrative on Iran. In Manufactured Crisis: the Untold Story of the Iran Nuclear Scare, he explained how this entire campaign has been based on falsehoods and fabrications for two decades.

There is no real evidence that Iran has ever taken the first step toward weaponizing its civilian nuclear program, and each suggestion that it has is based on sloppy analysis poisoned by mistrust and false assumptions, or in some cases on evidence actually fabricated by Iran's enemies, like the infamous "laptop documents" that were most likely supplied by the Mujahedeen-e-Kalq (MEK).

And yet mainstream media reports in the U.S. still parrot the false premises of an unjust campaign of economic warfare that has devastated Iran's economy and the lives of its people, to say nothing of cyber-warfare, the assassinations of four innocent Iranian scientists, and threats of war.

In the U.S. media narrative, we are still the "good guys," and the Iranians are still the "bad guys" who can't be trusted. But, of course, that's the whole point. The underlying purpose of campaigns like this is to frame U.S. disputes with other countries in Manichean terms to justify brutally unfair and dangerous policies.

3. Sarin Attack at Ghouta in Syria. Hundreds of Syrian civilians were killed by a missile filled with about 60 kg of the nerve agent Sarin on Aug. 21, 2013. U.S. officials immediately blamed the Syrian Army and President Bashar Al-Assad. President Obama was soon ready to launch a massive assault on Syria's air defenses and other targets, a major escalation of the covert, proxy war he had been waging since 2011.

Three weeks after the Sarin attack, Obama declared in a televised speech, "Assad's government gassed to death over a thousand people... we know the Assad regime was responsible." Following reports by UN investigators and investigative journalists with good access to U.S. military and intelligence sources, it now seems almost certain that the chemical attack was conducted by Jabhat Al-Nusra (al-Qaeda's affiliate in Syria) or other rebel forces, with help from either Turkish or Qatari military intelligence.

The missile was fired from a rebel-held area 2 km from its point of impact, only a fraction of the distance to the Syrian military base from where U.S. officials claimed it was fired, and the chemical impurities in the Sarin suggest that it

was improvised, not military-grade.

The question of motive suggests that this was a rebel “false-flag” attack that almost succeeded in drawing the U.S. deeper into the war, acting as the air force of Al-Nusra and its allies. On the other side, there is no plausible reason why the Syrian government could have expected to gain by conducting such an attack (especially since UN inspectors had just arrived in Damascus to begin a study of another chemical attack that had been blamed on the rebels).

The “Who Attacked Ghouta?” web site is a good effort to bring together and analyze all the evidence, and both Seymour Hersh and Robert Parry have written good articles based on U.S. intelligence sources. But U.S. officials and media pundits still talk as if their dangerous and irresponsible charges are beyond question.

Their assertions are so well established in the U.S. media that they have effectively become part of American popular culture. When Americans think of President Assad, they think “gassed his own people.”

When we examine the words and actions of President Obama, Secretary Kerry and other U.S. officials, only one thing is certain: that their expressions of certainty regarding responsibility for the chemical attack were false, both then and now. Like Bush, Cheney, Rumsfeld and Powell, they simply lied when they told the world that the intelligence pointed only in one direction.

As in other cases, this was a deliberate propaganda strategy to so strongly establish a false narrative in the mind of the public that it would be hard to dislodge, even once evidence emerged that it was probably just plain wrong.

As we watch this strategy play out in each of these cases, we can see that Iraq was the exception that proved the rule, the case where U.S. propagandists were caught out and embarrassed before the American public and the whole world. But this has not stopped them or their successors from doubling down on the same propaganda strategy, nor has its exposure in Iraq rendered it ineffective as a means of misleading the public in other cases.

4. Who shot down Malaysian Airlines MH17? President Vladimir Putin is the latest foreign leader to be targeted by a classic U.S. vilification campaign.

Since the State Department and CIA engineered a violent coup in Ukraine that literally tore that country apart, U.S. politicians and media have marched in lockstep to pretend that the crisis was caused, not by the U.S.-backed overthrow of the elected government, but by Russia’s subsequent reintegration of the Crimea based on a popular referendum.

Almost 5,000 people (with some estimates even higher) have been killed as the Western-backed government that seized power in Kiev has dispatched its Army and new National Guard units to attack cities in Eastern Ukraine. It recruited some of them, like the Azov Brigade, from the neo-Nazi Svoboda and Right Sektor militias who provided the muscle for the coup in February.

The Russian-speaking people in the eastern Ukraine expect no mercy or justice from these anti-Russian Ukrainian nationalists, so they fight on despite heavy losses and dire conditions, with limited support from Russia. Like the chemical weapons attack in Syria, U.S. officials and media immediately blamed the shoot-down of Malaysia Airlines MH-17 on U.S. enemies and claimed once again that the evidence pointed only in one direction. But once again, the only thing that is sure is that they can't be sure of that.

A Dutch team is leading an investigation, as each side accuses the other of responsibility. Concerns about the impartiality of the investigation have led to calls for a fully independent investigation, including a public online petition. U.S. officials and media claim that the airliner was shot down by a Russian surface-to-air missile fired by Ukrainian rebels.

An alternative narrative is that it was shot down by one of two Ukrainian fighter planes that were reported to be tailing it. The cockpit appears to be riddled with bullet-holes, but these might have been caused by shrapnel from an exploding missile. But the only forces known to have deployed such missiles in the area were Ukrainian government forces, so the Western narrative remains doubtful at best.

Even if the rebels captured and fired a Ukrainian missile, there is no evidence of Russian involvement. Yet the U.S. used Russia's presumed guilt to trigger new U.S. and European Union sanctions against Russia, taking the world ever closer to the "new Cold War" that Mikhail Gorbachev warned of recently in Berlin.

The petition for an independent inquiry reads, "With the U.S. and Russia in possession of 15,000 of the world's 16,400 nuclear weapons, humanity can ill-afford to stand by and permit these conflicting views of history and opposing assessments of the facts on the ground to lead to a 21st century military confrontation between the great powers and their allies."

But by engineering a coup in Ukraine and rejecting reasonable Russian proposals to resolve the crisis, U.S. leaders have deliberately provoked such a confrontation. The U.S. media have provided political cover, blaming everything on Russia and President Putin, to give U.S. leaders the political space to play the most dangerous game known to mankind: nuclear brinkmanship.

5. North Korea vs. Sony? Now the U.S. is imposing new sanctions on North Korea based on claims that it is behind a cyber-attack on the Sony Corporation. Once again, U.S. officials claim to be sure of their accusations. And once again, the only sure thing is that they're only pretending to be sure, in this case risking a new conflict with a government whose actions they've consistently failed to accurately predict or understand for decades.

Cyber-security experts are already challenging the U.S. narrative. Marc Rogers of Cloudflare, who manages cyber-security at hacker conferences, thinks the attack on Sony was probably the work of a vengeful ex-employee. He wrote in an article for Daily Beast, "I am no fan of the North Korean regime. However I believe that calling out a foreign nation over a cyber-crime of this magnitude should never have been undertaken on such weak evidence."

But calling out foreign nations on weak evidence is an essential core element of U.S. propaganda strategy. U.S. officials quickly and loudly establish the narrative they want the public to believe, and leave it to the echo chamber of the complicit U.S. media system to do the rest. The media's roles are then to "work the story" through rote repetition and supporting analysis, and to suppress and ridicule alternative narratives.

U.S. officials believe they can win a global propaganda war, much as they think they won the Cold War. But they seem to be losing the global struggle for hearts and minds. The Obama charm offensive is wearing thin and worldwide opinion polls consistently identify the U.S. as the greatest threat to peace.

On the domestic front, as the lies that clothe our emperor and our empire become ever more transparent, Americans are inevitably growing more skeptical than ever of politicians and the media. Skepticism in the face of propaganda is vital, but the post-WW II record low turnout in the November 2014 election (36.4 percent) suggests that more Americans are reacting to the corruption of our political and media environment with disengagement than with the kind of activism that could awaken the sleeping giant of democracy.

But this is only one stage of a long and complex history. Growing democratic activism and independent media are the green shoots of a grassroots renewal of democratic politics that offers real solutions to our country's problems, not least to rein in its dangerous and destabilizing foreign policy and the web of lies that sustains it.

One thing we can do, in the words of Bob Dylan, is to let the masters of war and their media hacks know we can see through their masks.

**Nicolas J. S. Davies is the author of *Blood On Our Hands: The American Invasion***

*and Destruction of Iraq. Davies also wrote the chapter on "Obama At War" for the book, Grading the 44th President: A Report Card on Barack Obama's First Term as a Progressive Leader.*

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## 'Justice' Hidden Behind a Screen

**Exclusive:** Behind a physical (and perhaps metaphorical) screen, the U.S. government is putting on its case to pin ten felony charges on ex-CIA officer Jeffrey Sterling for allegedly leaking secrets to a U.S. journalist about a risky and convoluted covert op against Iran, as ex-CIA analyst Ray McGovern reports.

By Ray McGovern

The federal government claims it is prosecuting former CIA officer Jeffrey Sterling for leaking information to a journalist about a risky covert operation in which the spy agency funneled flawed nuclear-bomb schematics to Iran. But the opening days of the trial suggest that the government may be using the case more to overcome its reputation for shoddy intelligence work.

In opening statements and testimony on Wednesday, prosecutors seemed more concerned about refuting journalist/author James Risen's assessment of the CIA's scheme as botched and dangerous than in connecting Risen to Sterling. Eliciting testimony from a nuclear engineer testifying behind a screen, prosecutors sought to portray the phony-blueprint gambit as meticulous and careful.

The dispute seems to center on whether the Russian operative code-named "Merlin," who was assigned to deliver the documents to Iranian representatives, easily detected the flaws, as Risen wrote in his 2006 book, *State of War*, or simply noticed that some pages were missing. An internal team of CIA experts when asked to examine the schematics spotted about 25 percent of the errors, but there is a clash of opinions over whether that showed how easy it was to unmask the fraud or how difficult it was to spot the flaws.

None of that, however, relates to whether Sterling was or was not a source for Risen regarding the "Merlin" operation, proof that may prove difficult for U.S. prosecutors to establish because Risen, a New York Times' national security reporter, has an array of sources within the intelligence community from whom to draw. Since the Justice Department has dropped attempts to force Risen to identify his sources, prosecutors may find it hard to substantiate that Sterling was one of the sources for the "Merlin" disclosures.

But the real subtext of the Sterling case is how the politicization of the CIA's analytical division over the past several decades has contributed to multiple intelligence failures, especially efforts to "prove" that targeted regimes in the Middle East were amassing weapons of mass destruction.

The false Iraq-WMD case provided the key rationale for a war that has spread devastation not only across Iraq but has prompted terrorism and other violence throughout the Middle East and into Europe. "Operation Merlin" hatched during the Clinton administration was part of a similar effort to show that Iran was engaged in an active program for building a nuclear bomb and thus would have interest in the flawed schematics that the CIA was peddling.

Yet, in the Sterling case, federal prosecutors seem to want to have it both ways. They want to broaden the case to burnish the CIA's reputation regarding its covert-op skills but then to narrow the case if defense attorneys try to show the jury the broader context in which the "Merlin" disclosures were made in 2006 how President George W. Bush's administration was trying to build a case for war with Iran over its nuclear program much as it did over Iraq's non-existent WMDs in 2002-2003.

Judge Leonie Brinkema appears to be bending to the U.S. government's wishes, allowing the prosecutors to polish up the "Merlin" gambit but then slip back to insisting on narrow relevance if defense attorneys try to broaden the frame to include the reasons why Risen considered it important to publish the story in the first place. Then, the case is just about the narrow question of whether Sterling gave classified information to Risen.

But the two issues the bogus Iraq-WMD intelligence and the pressure to create another casus belli on Iran are inextricably linked, as Risen himself explained in his affidavit submitted in connection with the Sterling case.

Risen wrote, "I believe I performed a vitally important public service by exposing the reckless and badly mismanaged nature of intelligence on Iran's efforts to obtain weapons of mass destruction, so that the nation would not go to war once again based on flawed intelligence, as it had in Iraq."

### **Behind the Screen**

In the federal courthouse in Alexandria, Virginia, there was a huge screen between those of us from the public and the proceedings, to permit a number of the witnesses to testify without their identities being revealed. Some witnesses even used partial or fake names.

The 12-foot-tall screen seemed like a metaphor for all the smoke and mirrors that we could hear but not see during the first "public" day of Sterling's trial

on ten felony charges. Another scheduled witness was Bush's national security adviser Condoleezza Rice, who famously helped sell the Iraq WMD claims by warning that she didn't want "the smoking gun to be a mushroom cloud."

Another phrase from that era "not authentic" kept going through my mind, the words that Mohammed ElBaradei, head of the UN International Atomic Energy Agency, applied to forged documents supposedly proving that Iraq was hard at work on a nuclear-weapons program.

Those forged documents purportedly showed that Iraq was seeking "yellow-cake" (very low refined) uranium from the African country of Niger, a claim that President Bush referenced in his 2003 State of the Union Address as he sought to seal the deal on his Iraq invasion two months later.

No wonder the U.S. government wanted ElBaradei out as IAEA chief and a more pliable bureaucrat inserted to replace him. Then, the IAEA could be used to hype allegations about Iran's alleged nuclear-weapons program to justify ratcheting up U.S. sanctions and even possibly a bombing campaign. That is where leaked cables from Pvt. Bradley (now Chelsea) Manning to Wikileaks come in.

According to leaked U.S. embassy cables from Vienna, Austria, the site of IAEA's headquarters, American diplomats in 2009 were cheering how they had replaced ElBaradei with Japanese diplomat Yukiya Amano who had agreed to push U.S. interests on Iran in ways that ElBaradei wouldn't. After thanking the Americans for getting him his job, Amano put his hand out for more U.S. money to his office. [See Consortiumnews.com's "[America's Debt to Bradley Manning](#)."] ]

But ElBaradei's phrase "not authentic" could have been applied much more broadly to what was passing for an intelligence product during those years. For me, "not authentic" brought a horrid flashback to those embarrassing days before the attack on Iraq, when my profession of intelligence analysis was corrupted by Bush, Vice President Dick Cheney, Condoleezza Rice, Defense Secretary Donald Rumsfeld, and eager-to-please CIA Director George Tenet.

Commenting on the 2008 findings of a five-year bipartisan Senate Intelligence Committee investigation of the pre-Iraq War intelligence, then-Chairman Jay Rockefeller described much of it as "uncorroborated, contradicted, or even non-existent."

UN weapons inspector Hans Blix put it this way: "I found it peculiar that those who wanted to take military action could with 100 percent certainty know that the weapons existed and turn out to have zero knowledge of where they were." (I had a rare opportunity to raise that issue with Rumsfeld in May 2006 at a [public session](#) in Atlanta, Georgia.)

## The Iran Group Think

It was within the context of another “group think” the Inside-the-Beltway certainty that Iran was rushing to build a nuclear bomb that the CIA’s eager-beaver practitioners of covert action adopted an overly clever way to sabotage the equally ephemeral nuclear weapons program of Iran. It was a scarcely believable story of over-imaginative sophomores with lots of money plotting to set back a “program” that, in all probability, did not exist.

The most definitive study of a post-Iraq “uncorroborated, contradicted, or even non-existent” nuclear weapons program, this time in Iran, is presented in Gareth Porter’s *Manufactured Crisis* published a year ago (and viewed as untouchable by reviewers in the fawning corporate media). Porter brings together the results of his many years of research into the issue, including numerous interviews with former insiders.

He shows that the origins of the Iran nuclear “crisis” were not in an Iranian urge to obtain nuclear weapons but, rather, in a sustained effort by the United States and its allies to deny Iran its right, as guaranteed in the Nuclear Non-Proliferation Treaty, to have any nuclear program at all.

The book highlights the impact that the U.S. alliance with Israel had on Washington’s belligerent policy toward Iran and sheds new light on the U.S. strategy of turning the IAEA into a tool of that policy, especially the mysterious intelligence from a laptop computer that supposedly “proved” Iranian duplicity but that has since been traced to a possible Israeli covert op to plant “not authentic” evidence.

Here’s how Hans Blix describes the disclosures in Porter’s book: “National intelligence presented or peddled is often problematic as evidence. In the case of Iraq, defective intelligence contributed to a war against weapons of mass destruction that did not exist. Could unreliable or cooked intelligence one day lead to an attack on Iranian intentions that may not exist?”

“I feel grateful to Gareth Porter for his intrusive and critical examination of intelligence material passed to the IAEA. When security organizations do not shy away from assassinating nuclear scientists we can take it for certain that they do not for a moment hesitate to circulate false evidence.”

The allusion to the assassinations of Iranian nuclear scientists, killings widely ascribed to Israeli intelligence services, is clear enough. And that is only a small part of the essential role played by Israel in building a case to “bomb-bomb-bomb” Iran. To his credit, Porter pulls no punches in exposing chapter and verse of this story.

So, the trial against Jeffrey Sterling seems to have multiple purposes beyond simply proving that Sterling leaked some secrets to James Risen. It is a chance for the CIA to contest the widespread impression that is some bumbling intelligence agency that comes up with harebrained schemes. It is also an opportunity to intimidate any other potential whistleblowers who would dare expose to the public more evidence that the CIA is just such a bumbling intelligence agency.

And, it would provide some protection for the next time the U.S. government needs some made-to-order “intelligence” to justify another conflict like the Iraq War. In that way, the prosecution of Jeffrey Sterling is a deterrent to future officials, who might be tempted to commit the unpardonable sin of putting loyalty to their conscience and the Constitution ahead of the non-disclosure contract they signed earlier as a condition of employment.

As Lord Acton, the Nineteenth Century English politician and historian, once said, “Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.”

**Ray McGovern works with Tell the Word, a publishing arm of the ecumenical Church of the Saviour in inner-city Washington. He was a CIA analyst for 27 years, and now serves on the Steering Group of Veteran Intelligence Professionals for Sanity (VIPS).**

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## Is a Clinton Revival Timed-Out?

There may not be a big demand for 1990s nostalgia, but the 2016 presidential race could offer one more contest involving a Clinton and a Bush. Yet, some Democrats fear Hillary Clinton could ultimately fail because she lacks a vision for addressing today’s problems, says Beverly Bandler.

By Beverly Bandler

During the 1992 campaign, while facing criticism for her legal work on behalf of a failed savings and loan, Hillary Clinton remarked: “For goodness’ sake, you can’t be a lawyer if you don’t represent banks.”

For goodness’ sake, can you be president of the United States if you don’t understand the role the banks played in the 2008 Financial Crisis? Can you be president if you are oblivious to the real condition of the nation?

It may be difficult to see just how far the U.S. has fallen if you have two

expensive and grand homes in two of the best postal zips to which you are driven in a limousine, dine and dish with multi-millionaires and billionaires, and require presidential suites for high-paying speech events.

Both Clintons give evidence that they have become detached from the realities of most Americans. "We are in the best shape of any big country in the world in the next 20 years," Bill Clinton said recently. Perhaps Bill, who has rightly been called "the architect and primary spokesperson for the corporatist and pro-Wall Street wing of his party," should have said: "We Clintons are in the best shape."

It turns out that some of the primary beneficiaries of Clintonism and the "Third Way" concept of the so-called "pro-growth progressive" movement ended up being the Clintons, their cronies, the financial establishment and the other members of "the 1 percent", including, of course, the Republicans who never pretended to be other than corporatists intent on destroying the parts of government they couldn't own.

### **New Zeitgeist**

"Hillary Clinton is dangerously out of step with 'the new *zeitgeist*' with her finance-friendly politics that supported her rise to power," says prominent political journalist William Greider.

"Beyond recession and financial crisis," notes Greider, "we are in much deeper trouble than many people suppose or the authorities want to acknowledge."

Despite the recent economic uptick, many Americans subsist on inadequate pay while working long hours, sometimes needing multiple jobs to pay the bills. For the bottom 80 percent, livelihoods are fragile.

"Four out of five Americans will live near poverty, without work, or relying on welfare at least once during their lives, according to a recent survey from the Associated Press," reports Journalist Jane C. Timm.

The number of Americans living in poverty hovers just below 50 million. According to the latest Census, 46.2 million Americans, 15 percent of the country, are "officially" poor. A supplemental Census estimate that attempts to ascertain poverty levels based on measurements that are considered better than those used for decades, puts the number of Americans in poverty in 2013 at 48.7 million.

But those figures only tell part of the story: "The Associated Press/GFK survey notes that Census figures are a snapshot, they don't account for those who shift in and out of near-poverty, welfare reliance, or unemployment. When those

numbers are accounted for, the number of Americans who face such hardships surges to 79%.”

While most Americans live paycheck to paycheck with fear that the next paycheck might not be coming the relative handful at the top continue to amass wealth beyond the imagination of the vast majority of their countrymen and women.

“America’s wealth distribution now looks like a lopsided ladder: The bottom 40% of the population owns just 0.3% of the nation’s wealth,” writes Timm, “while the top 20% has 84% of the nation’s wealth, according to a 2010 study on wealth distribution and balance.”

### **Is America ‘Awesome’?**

As for America being “awesome,” as a Fox News host gushed recently, historian Lawrence Wittner points out that the United States is now “tops” only in violence and weapons exports. A close look at the social, economic and environmental statistics makes the United States look more like a Third World nation with a classic oligarchy and an endangered middle class, with powerful corporations treated better than people.

Yet, the word “corporation” does not appear in the Constitution. The word “people” does. The government was not designed to serve as the Protector of Wall Street. Government is supposed to serve all the people, to “provide for the general Welfare.” That was the design of the U.S. Constitution when the Framers replaced the non-functional Articles of Confederation.

It was also the idea reflected in the modern Democratic Party that Franklin Delano Roosevelt created in the 1930s. It is a fundamental concept that seems to elude both current main political parties in Gilded Age II.

Hillary Clinton, one half of the Ultimate Power Couple, is on course to run for president of a nation in crisis in 2016. But who is she? What does she believe? What is her worldview? Does she share her husband’s perspective that treats the role of government as some kind of Job Mart, lining up compliant workers to benefit the well-heeled and well-connected.

Indeed, what are Hillary Clinton’s positions: On the financialization of the economy and the power of the banks? Corporatism? Corporate welfare? Jobs? Poverty? Inequality? Education? Climate change? Environmental quality? On the austerity budget? The Middle Class? Militarism?

What does she believe is the role of government? What does she believe was the legacy of the New Deal? What does she believe the Democratic Party stands for? How does she define Fascism and Democracy? Is she still really a Goldwater Girl

in Democratic camouflage? Is she still in the embrace of 1990s Clintonism, “New Democrats” centrism? Not only are her stated positions crucial but the *basis for them*, how she understands the world today and the history that has brought us here.

On foreign policy, is she a Neocon Lite who will support every militaristic call for interventionism around the world? What lessons has she learned, if any, from her vote for the Iraq War and her instigation of the “regime change” in Libya, two decisions that have contributed to chaos across the Middle East and North Africa.

### **Rebranded and Retrenched**

As columnist Doug Henwood notes, “Hillary (and she has clearly rebranded herself as just a first name) embodies the ‘New Democrat’ politics of the 1990s that now seem hopelessly obsolete, no match for a world of chronic economic stagnation, polarization and climate catastrophe.

“She was very much a partner in inventing that ideology, business-friendly, hawkish, tough on unions and the poor, with her husband. The Clintonites purged the Democrats of their social-democratic wing, consolidating the victories of the Reagan Revolution. At this point, it’s hard to say what Hillary or the Democrats stand for, other than being protectors of the status quo.

“What is the case for Hillary? . . . She has experience, she’s a woman, and it’s her turn. It’s hard to find any substantive political argument in her favor. During her career as New York’s junior senator and as secretary of state, she has scarcely budged from the centrist sweet spot, and has become increasingly hawkish on foreign policy.”

Some Democrats like to compare the Clintons glowingly to Franklin and Eleanor Roosevelt, but others see the Byzantine power couple Justinian and Theodora, who brutally put down a popular revolt and made senators prostrate themselves when they entered the royal couple’s presence.

Yet, as Washington-based writer Rich Yeselson observes, “How you feel about Hillary Clinton’s inevitability depends a lot upon how alarmed you are that the GOP, the most radically extreme major party formation since the Southern ‘Slave Democrats’ of the 1850s, might take full control of the federal government in 2016

“Clinton is exactly the kind of candidate one would expect the Democrats to nominate in 2016. She has the typical political credentials of a modern presidential candidate: eight years in the Senate, followed by a high cabinet post. She has 100 percent name recognition. She has a powerful fundraising

apparatus. And her policy positions are broadly aligned with the vast majority of Democratic Party elites and much of its electorate, too. In this, she is the embodiment of what, in a useful phrase, [former] *New Republic's* Noam Scheiber has described as 'boardroom liberalism.'

## **The Clinton Years**

Hillary's political fortunes are bound up with Bill's eight years in office, since she was an integral part of his administration. And, though the economy performed better than under the two Bushes who sandwiched the Clinton years, Democrats should reflect carefully on those years.

Robert Borosage, co-director of *Campaign for America's Future*, points out that "Democrats understandably feast on the comparison between the salad days of the Clinton presidency and the Bush debacle. Twenty-two million new jobs under Clinton; the worst jobs record since the Great Depression under Bush. The longest period of growth in U.S. history under Clinton; the weakest recovery and biggest bust under Bush. Budget surpluses under Clinton; deficits as far as the eye could see under Bush."

But Borosage, nonetheless, says, "The [Democratic] party must free itself from the legacy of former President Bill Clinton and the centrism of his New Democrats. Clinton's successes in office have little relevance for Democrats today. The 1990s were a very different time both politically and economically. In fact, many of Clinton's policies led to the travails now facing Americans. They are part of the problem, not part of the solution.

"And Clinton's strategy of co-opting conservative themes offers no way out. As leader of the New Democrats, Clinton tacked to the prevailing winds of that conservative time. On the economy, Clinton's New Democrats scorned old 'tax and spend' liberals. They boasted that they understood markets, were skeptical of big government and disdained the outmoded social welfare policies of the New Deal and Great Society. The promise of America, they argued, was 'equal opportunity, not equal outcomes.'

"After taking office, Clinton shelved most of his populist promises. In today's political environment, Clinton's retreats and concessions on social issues are embarrassing anachronisms."

Borosage continues, "On economic issues, Clinton's Rubinomics contributed directly to digging the hole we are in. Deregulation helped unleash the 'financial wilding' that eventually blew up the economy. The celebration of deficit reduction bolstered the illusory belief in 'expansionary austerity' that has driven Europe back into recession and sabotaged any chance of getting a

sufficient stimulus here at home.

“Austerity continues to starve public investments vital to our future. The banks emerged from the crisis bigger and more concentrated than ever

“No matter how repellant Republicans may look to [the young, people of color, single women] voters, they are unlikely to turn out in large numbers for a party whose policies have failed them. Democrats and the country have to move beyond the old economy and the old arguments. Obama had it right: We need a new foundation for growth one that embraces the need for dynamic and activist government.”

Yet, it was President Barack Obama who called on Bill Clinton to make the case for his re-election at the 2012 Democratic convention. But what positives remain of the Clinton years?

### **Fearing the ‘Third Way’**

In the 1990s, there were many progressive/liberal Democrats who were alarmed by the Clinton policies and what they would portend for the future, particularly the deals he struck once the Republicans gained control of Congress in 1994.

Comparing the Democratic Party’s resistance to imposing a work requirement on women with children in the 1970s, lawyer Carol Lipton noted that “no Democrat at the time would have envisioned a Democratic president less than 20 years later, [dismantling] the ideological core of welfare, maintaining and supporting families, and substituting the Clintonian neoliberal vision of the undeserved poor having to make efforts to look for jobs that were menial, low-paying, and engaging in time-sucking job hunting efforts.”

It’s fair to say that many of us ordinary rank-and-file Democrats were uncomfortable with some Clinton policies back then, but the economy was relatively strong and thus few could envision the future consequences of Clintonism when the good times stopped rolling.

The last 15 years have revealed the painful downside of those “reforms” as millions of American families fell from their disappearing middle-class jobs through the shredded safety net into poverty. For those reasons, some progressives view Bill Clinton’s legacy as a surrender to the greed of corporatism that felt good at the moment only because of the inflated stock market bubble of the 1990s that burst in the ensuing decade.

Political columnist Matt Bai says, “Clinton tried gamely to leave behind lasting change, and he failed. In many more areas, though, the progress that was made under Clinton, almost 23 million new jobs, reductions in poverty, lower crime

and higher wages, [was] reversed or wiped away entirely in a remarkably short time.

“Clinton’s presidency seems now to have been oddly ephemeral, his record etched in chalk and left out in the rain. George W. and his Republican Party [undertook] a ferocious and unbending assault on Clinton’s progressive legacy. As Clinton points out in his speeches, Bush and the Republicans abandoned balanced budgets to fight the war in Iraq, widened income inequality by cutting taxes on the wealthy and scaled back social programs.

“Some Democrats, though, and especially those who are apt to call themselves ‘progressives,’ offer a more complicated and less charitable explanation. In their view, Clinton failed to seize his moment and create a more enduring, more progressive legacy, not just because of the personal travails and Republican attacks that hobbled his presidency, but because his centrist, ‘third way’ political strategy, his strategy of ‘triangulating’ to find some middle point in every argument, sapped the party of its core principles

“They say, he was less a victim of Bush’s radicalism than he was its enabler. Ideologically Clinton’s presidency fit snugly into the era of Reagan and Bush. Faced with ascendant conservatism Clinton saw his job, in a sense, as getting the Democratic Party to adjust to it, rather than to resist it.”

### **Hillary’s Coronation?**

Hillary Clinton’s expected presidential candidacy should be seen in the context of this recent past. She should not presume a “coronation” and a possible rematch with the Bush dynasty, if Jeb Bush wins the Republican nomination.

Americans are angry and a good number of them are “real” Democrats, who have the perception that the charismatic and smart neoliberal Clintons empowered themselves as they helped to enfeeble the Democratic Party. Unquestionably that was not their intention, but that is what happened.

The Clintonian version of the “Best and the Brightest” told fellow Democrats in the 1990s that they should “do more than just defend old programs.” Yet those sooooo smart, highly educated people failed to do the basic homework to learn the purpose of those programs, the context in which they were initiated, the principles they represented, and the national needs they met.

As professor Lawrence Davidson posits, the Clinton and their fellow corporate Democrats forgot the “why” of the New Deal.

Yet, just as the Clintons’ New Democrats of the 1990s viewed the New Deal Democrats as yesterday’s news, so do many of today’s Democrats view Hillary

Clinton as out of touch with this decade's problems.

As R.J. Eskow from Campaign for America's Future comments, "'Clintonism,' the Wall Street-friendly economic ideology of a bygone era, has passed its sell-by date."

Today's America is different from the 1990s politically and economically, and it is also not 2008. In many ways the situation is comparable to the 1920s when another Gilded Age was roaring for the lucky few but not for the fragile middle class and surely not for the struggling working and lower classes. Such imbalanced socio-economic structures are inherently unstable as well as intensely unfair.

Looking out over today's national landscape of struggling communities, desperate families and decaying infrastructure, Noam Chomsky has commented that America is "not a pretty sight."

The challenge for Hillary Clinton is whether she can demonstrate that she has a vision big enough to detect ways for addressing the multitude of problems or whether she can only see the comforts of the well-heeled friends who surround her.

Americans deserve clear answers to hard questions, not campaign bromides and reminiscences of a time gone by. Clintonism, however well intentioned it may have been, turns out to have been an illusion cloaked by a brief period of boom that did not survive the inevitable bust.

### **A Downward Trend**

As progressive media critic Jeff Cohen has written, "Despite gains on issues like gay rights and pot legalization, the trend since the 1980s has been economic/environmental decline alongside the solidification of corporate power and economic inequality a long-term downward trend that has persisted through the Bill Clinton and Obama years, though at a slower rate than with the GOP in the White House.

"The only way to reverse this dangerous trend is to tell the truth about and challenge corporate Democrats. As much as I'd like to see a woman president (I have two daughters), a good place for that challenge to happen would be through a progressive candidate taking on Hillary Clinton in the 2016 Democratic primaries, if she runs. Without that battle and many others, the corporatization of the Democratic Party and our government will continue to threaten all our futures."

As hard as it may be for some Democrats to accept, the reality is that

Clintonism helped Reaganism break the country.

Andrew Levine of the Institute of Policy Studies says: "Bill Clinton was the best Reaganite president ever not the most visionary, not the one with the most competent subordinates, but the most effective. No one, certainly not Reagan himself, did more to privatize and deregulate, and to undo government programs that perform worthwhile functions. Reagan famously proposed 'starving the monster.' This is what Bill Clinton did."

Now the Clintons expect to be further rewarded with the presidency of Hillary Clinton – "Eight years for Bill! Eight years for Hill!"

Should they be rewarded? Can Hillary Clinton be expected to fix what her husband's presidency helped break? Would she? Would they?

As Slate's Jamelle Bouie writes, "Hillary Clinton is a triangulating corporate Democrat who forged her political identity against a relentless, ideologically driven GOP and built her core support among the wealthy elites of the Democratic Party. The former makes her suspicious of (if not hostile to) the left on foreign and domestic policy, while the latter, coupled with her time as New York senator, makes her receptive to the failed ideas and expertise of Wall Street."

Bouie adds, "The task for liberals, and the left more broadly, is to correct that blind spot in the party and, in the process, force [Hillary] Clinton to see that the 1990s are over, and the public is more than primed for a big swing."

Hillary Clinton is a woman of accomplishment and one has to respect her remarkable political journey, her notable skills, her toughness, and the rich experience upon which she can draw. But if Hillary wants to return to where her husband "left off," the nation is in for even bigger trouble than we have now. She will offer progressives and Americans with common sense no choice but to try and stop her.

Perhaps Hillary Clinton can find the imagination, intellectual integrity, political courage and maturity for another option.

**Beverly Bandler's public affairs career spans some 40 years. Her credentials include serving as president of the state-level League of Women Voters of the Virgin Islands and extensive public education efforts in the Washington, D.C. area for 16 years. She writes from Mexico.**

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## Will France Repeat US Mistakes after 9/11?

**Exclusive:** As three suspects in the *Charlie Hebdo* massacre die in a shootout with French police, the cycle of violence that has engulfed the Mideast again reaches into the West, but the challenge is to learn from U.S. mistakes after 9/11 and address root causes, not react with another round of mindless violence, says ex-CIA analyst Ray McGovern.

By Ray McGovern

First, a hat tip to Elias Groll, assistant editor at *Foreign Policy*, whose [report](#) just a few hours after the killings on Wednesday at the French satirical magazine *Charlie Hebdo*, included this key piece of background on the younger of the two brother suspects:

"Carif Kouachi was previously known to the authorities, as he was convicted by a French court in 2008 of trying to travel to Iraq to fight in that country's insurgent movement. Kouachi told the court that he wished to fight the American occupation after viewing images of detainee abuse at Abu Ghraib prison."

The next morning, Amy Goodman of [Democracynow.org](http://Democracynow.org) and Juan Cole (in his blog) also carried this highly instructive aspect of the story of the unconscionable terrorist attack, noting that the brothers were well known to French intelligence; that the younger brother, Cherif, had been sentenced to three years in prison for his role in a network involved in sending volunteer fighters to Iraq to fight alongside al-Qaeda; and that he said he had been motivated by seeing the images of atrocities by U.S. troops at Abu Ghraib.

An article in the *Christian Science Monitor* added: "During Cherif Kouachi's 2008 trial, he told the court, 'I really believed in the idea' of fighting the U.S.-led coalition in Iraq." But one would look in vain for any allusion to Abu Ghraib or U.S. torture in coverage by the Wall Street Journal or Washington Post. If you read to the end of a New York Times article, you would find in paragraph 10 of 10 a brief (CYA?) reference to Abu Ghraib.

So I guess we'll have to try to do their work for them. Would it be unpatriotic to suggest that a war of aggression and part of its "accumulated evil" torture as well as other kinds of state terrorism like drone killings are principal catalysts for this kind of non-state terrorism? Do any Parisians yet see blowback from France's Siamese-twin relationship with the U.S. on war in the Middle East and the Mahgreb, together with their government's failure to speak out against torture by Americans? Might this fit some sort of pattern?

Well, duh. Not that this realization should be anything new. In an interview on Dec. 3, 2008, Amy Goodman posed some highly relevant questions to a former U.S. Air Force Major who uses the pseudonym Matthew Alexander, who personally conducted more than 300 interrogations in Iraq and supervised more than a thousand.

**AMY GOODMAN:** "I want to go to some larger issues, this very important point that you make that you believe that more than 3,000 U.S. soldiers were killed in Iraq, I mean, this is a huge number, because of torture, because of U.S. practices of torture. Explain what you mean."

**MATTHEW ALEXANDER:** "Well, you know, when I was in Iraq, we routinely handled foreign fighters, who we would capture. Many of, several of them had been scheduled to be suicide bombers, and we had captured them before they carried out their missions.

"They came from all over the area. They came from Yemen. They came from northern Africa. They came from Saudi. All over the place. And the number one reason these foreign fighters gave for coming to Iraq was routinely because of Abu Ghraib, because of Guantanamo Bay, because of torture practices.

“In their eyes, they see us as not living up to the ideals that we have subscribed to. You know, we say that we represent freedom, liberty and justice. But when we torture people, we’re not living up to those ideals. And it’s a huge incentive for them to join al-Qaeda.

“You also have to kind of put this in the context of Arab culture and Muslim culture and how important shame, the role of shame in that culture. And when we torture people, we bring a tremendous amount of shame on them. And so, it is a huge motivator for these people to join al-Qaeda and come to Iraq.”

However, if you listen to the corporate media, there is almost no discussion about why so many people in the Muslim world object to U.S. policies so strongly that they resist violently and even resort to suicide attacks. The average consumer of this thin gruel of “information” might come away thinking that Muslims are hard-wired to despise Westerners or they might recall President George W. Bush’s favorite explanation, “they hate our freedoms.”

One has to go back five years to find a White House correspondent worth his or her salt who bluntly raised this central question. In early January 2010, after President Barack Obama gave a flaccid account of the intelligence screw-up that almost downed an airliner over Detroit on Christmas Day 2009, the late Helen Thomas asked why the culprit, Umar Farouk Abdulmutallab, did what he did.

Like Carif Kouachi, he had trained in Yemen; like Carif Kouachi, he had slipped through the U.S. counter-terrorist security sieve despite intelligence that should have nailed him and despite the billions of dollars frivolously spent on eavesdropping on virtually everyone in the world. (The eavesdropping had created such a giant haystack of data that intelligence analysts couldn’t locate the crucial needle even when Abdulmutallab’s father called to warn U.S. officials about his son’s dangerous radicalization.)

Here’s the revealing exchange between Thomas and John Brennan, who was then White House counterterrorism adviser and is now CIA director:

Thomas: “And what is the motivation? We never hear what you find out on why.”

Brennan: “Al Qaeda is an organization that is dedicated to murder and wanton slaughter of innocents They attract individuals like Mr. Abdulmutallab and use them for these types of attacks. He was motivated by a sense of religious sort of drive. Unfortunately, al Qaeda has perverted Islam, and has corrupted the concept of Islam, so that he’s (sic) able to attract these individuals. But al Qaeda has the agenda of destruction and death.”

Thomas: “And you’re saying it’s because of religion?”

Brennan: "I'm saying it's because of an al Qaeda organization that used the banner of religion in a very perverse and corrupt way."

Thomas: "Why?"

Brennan: "I think this is a, long issue, but al Qaeda is just determined to carry out attacks here against the homeland."

Thomas: "But you haven't explained why."

Neither did President Obama, nor anyone else in the U.S. political/media hierarchy. All the American public gets is the boilerplate about how al-Qaeda evildoers are perverting a religion and exploiting impressionable young men.

### **Palace Pundits Make It Worse**

The intelligence tradecraft term of art for a "cooperating" journalist, businessperson or academic is "agent of influence." Some housebroken journalists take such scrupulous notes that they end up sounding dangerously close to their confidential government sources. Some have gone even further and actually worked for the CIA.

For a recent example of the housebroken variety, count the number of cooperating journalists who repeated the CIA and Republican line that the Senate Intelligence Committee report on torture released last month was "flawed and partisan," even though it was based on CIA cables and other original documents.

Or think further back to those vengeful days in the immediate aftermath of 9/11 and the macho pose taken by President George W. Bush, who won oohs and aahs for posturing with a bullhorn and throwing an opening pitch at a Yankees game (and later for dressing up in a flight suit as he arrived to deliver his "Mission Accomplished" speech).

CIA operative Gary Schroen told National Public Radio that, just days after 9/11, Counterterrorist chief Cofer Black sent him to Afghanistan with orders to "Capture bin Laden, kill him, and bring his head back in a box on dry ice." As for other al-Qaeda leaders, Black reportedly said, "I want their heads up on pikes."

This bloodthirsty tone reverberated among Bush-friendly pundits who sought to out-macho each other. One consummate insider, *Washington Post* veteran Jim Hoagland went so far as to publish a letter to President Bush on Oct. 31, 2001, that was no Halloween prank. Rather, Hoagland strongly endorsed what he termed the "wish" for "Osama bin Laden's head on a pike," which he claimed was the objective of Bush's "generals and diplomats."

In his open letter to Bush, Hoagland also lifted the curtain on the actual neoconservative game plan by giving Bush the following ordering of priorities: “The need to deal with Iraq’s continuing accumulation of biological and chemical weapons and the technology to build a nuclear bomb can in no way be lessened by the demands of the Afghan campaign. You must conduct that campaign so that you can pivot quickly from it to end the threat Saddam Hussein’s regime poses.”

Thus, Hoagland had the “pivot” idea three weeks before Defense Secretary Donald Rumsfeld called Gen. Tommy Franks to tell him the President wanted the military to shift focus to Iraq. Franks and his senior aides had been working on plans for attacks on Tora Bora where bin Laden was believed hiding but attention, planning and resources were abruptly diverted toward Iraq. And Osama bin Laden, of course, walked out of Tora Bora through the mountain passes to Pakistan.

The point here is that some media favorites are extremely well briefed partly because they are willing to promote what the powerful want to do and because they are careful not to bite the hands that feed them by criticizing the CIA or other national security agencies. Still fewer are inclined to point out basic structural faults, not to mention the crimes of recent years.

So it is up to those of us who know something of intelligence and how structural faults, above-the-law mentality and flexible consciences can spell disaster – how reckless reactions to terrorist provocations can make matters worse by accelerating a truly vicious cycle and doing nothing to address the underlying causes that prompted the violence in the first place.

Because of the refusal to seriously address the question of **why** that Helen Thomas posed to John Brennan or to do more than compete like bodybuilders adopting the most muscular poses disaster after disaster is what the West is in for, if it does not come to its senses.

**Ray McGovern works with Tell the Word, a publishing arm of the ecumenical Church of the Saviour in inner-city Washington. He was a CIA analyst for 27 years, and now serves on the Steering Group of Veteran Intelligence Professionals for Sanity (VIPS).**

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## Bush’s Enduring Theories of Martial Law

The failure to hold anyone accountable for torture derives from extraordinary post-9/11 legal theories that made the President all-powerful during “wartime”

and established what amounted to martial law in the United States, a condition that continues to this day, writes retired JAG Major Todd E. Pierce.

By Todd E. Pierce

On Oct. 23, 2001, the Office of Legal Counsel issued a legal opinion that would shock most Americans if they realized its full implications. By all appearances, it is still in effect, judging by military surveillance operations taking place in the U.S. by the Defense Department and its National Security Agency (NSA). The opinion was entitled: “Authority for Use of Military Force to Combat Terrorist Activities **within the United States**” (emphasis in original).

What is the Office of Legal Counsel, or “OLC” for short, that made such a bold move? It is a secretive office in the Justice Department. The purpose of the OLC is straightforward. It sits as a de facto court for the White House that decides the legal questions that set the boundaries for how the federal government runs day-to-day. Be they the highest presidential appointee or lowliest bureaucrat, a government official who complies with the OLC’s opinion is generally immune from later prosecution or liability.

An official is immune, that is, if the lawyers were providing “good faith legal advice” and not, in fact, just following orders to “legalize” an otherwise criminal act. Such tainted “good faith legal advice” would not then serve to protect their clients. Lawyers can’t help in committing crimes, and when they do, even OLC lawyers can be prosecuted for knowingly helping plan or commit a crime. In fact, a lawyer was prosecuted at Nuremberg for his role in committing war crimes.

The lawyers who wrote the OLC opinion about the use of military force within the United States were Robert Delahunty, now teaching “law” at St. Thomas University Law School, Minneapolis, and John Yoo, who is back teaching the same sort of “law” at Boalt Law School, University of California, Berkeley. By “the same sort of law” is meant their idiosyncratic belief that the President, acting as “Commander in Chief,” has dictatorial-like powers.

This is the “unitary executive theory”, a radically un-American, unconstitutional and extra-legal ideology that former Vice President and torture enthusiast Dick Cheney has been pushing since the Iran-Contra Affair. In other countries, but particularly Germany from 1933 to 1945, in which citizens lived under a dictatorship, this was called “prerogative” government, as described by German Jewish lawyers. Both Delahunty and Yoo continue working to shoehorn this radical legal theory into respectability with prolific writing of law review articles promoting it.

The argument was that because of these prerogative powers, the President was subject to no law, neither constitutional law nor international law. The Oct. 23, 2001 opinion is particularly dangerous, as it essentially granted the President martial law authority, meaning the authority to act outside the Constitution.

To reiterate, the conclusion the OLC drew was that the President has constitutional authority to use the armed forces in military operations against those deemed to be terrorists *within the United States*. Consequently, "these operations generally would not be subject to the constraints of the Fourth Amendment, so long as the armed forces are undertaking a military function."

This is a frightening prospect since the Fourth Amendment is what protects us against unreasonable searches and seizures, which can lead to arbitrary arrests. (The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.")

Furthermore, according to Delahunty and Yoo, terrorists operate within the continental United States and "conceal themselves within the domestic society and economy," which makes it difficult to identify them. By this logic, everyone is now "suspect."

Furthermore, they wrote, 9/11 created a situation "in which the battlefield has occurred, and may occur, at dispersed locations and intervals within the American homeland itself. As a result, efforts to fight terrorism may require not only the usual wartime regulations of domestic affairs, but also military actions that have normally occurred abroad."

This opinion by Delahunty and Yoo formed a legal basis for a state of martial law which the Bush administration took to mean that they could fight a "war" against terrorism outside the U.S. Constitution but inside the U.S. geographic area as a "military state," operating just the way paragons of legality Mubarak's Egypt and Pinochet's Chile did.

Bush officials argued this was due to necessity, but in fact that was fallacious, as the U.S. military is not, and should not be, considered an antiterrorist force. Militaries exist to defend against foreign armies attacking, not to conduct the police work required for counter-terrorism. But as we've seen, when a military takes control of a country, occupying it as in Iraq and Afghanistan, or the Israeli occupation of Palestine, it enforces martial law on the civilians living there, in other words, the military operates as a

dictatorship, or as our Supreme Court called it, "martial rule."

So in writing an opinion authorizing martial law, Delahunty/Yoo asserted that the Fourth Amendment's protections do not apply to domestic military operations in the United States, regardless of citizenship. They wrote that Federal Armed Forces must be free to use force when they deemed it necessary without being constrained by the Fourth Amendment, "even though force would be intentionally directed against persons known to be citizens."

Additionally, as a final blow against the Constitution, Delahunty and Yoo stated: "First Amendment speech and press rights may also be subordinated to the overriding need to wage war successfully. 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.'"

This OLC opinion laid the foundation for all the extra-constitutional actions by the Bush administration that would follow. They are still carried on by the Obama administration today with their assertions that the President can kill American citizens with a drone without any due process whether inside or outside the U.S.

(The Fifth Amendment provides that no citizen should be deprived life, liberty or property without due process of law. However, in September of 2011, American-born and educated Anwar Al-Awlaki was targeted and killed in a U.S. drone strike in Yemen. Also killed in a drone strike was Samir Khan. Al-Awlaki's 16-year-old son, Denver-born Abdulrahman al-Awlaki, who died while attending a barbeque with cousins in Yemen the next month. For more information about the killings, see investigative journalist Jeremy Scahill's account in *Inside America's Dirty Wars* or [The Nation](#), April 24, 2013)

<http://www.thenation.com/article/173980/inside-americas-dirty-wars>.

It would also explain the military operation currently being conducted against American citizens by the NSA, a component of the U.S. Defense Department, in violation of the Fourth Amendment.

The fruits of that opinion can be seen with an out-of-control CIA that has been on display in the Torture Report summary released by Senate Select Committee on Intelligence Chair Diane Feinstein in late 2014. The acts of torture described in this summary are war crimes because they were committed in the context of, and associated with, wars beginning in 2001.

But the war criminals, which could include some lawyers, may believe that there is no accountability for the perpetrators of these war crimes because they are

part of, and have the protection of what Professor

Michael Glennon describes as a “double government” in his book *National Security and Double Government*, and in an article by the same name. Glennon’s book puts into print, in the open and in the so-called mainstream, what some have known for years. The CIA and other national security agencies constitute a “deep state,” operating outside public view and, as we know now, without constitutional constraints or oversight.

But beyond setting the U.S. on a course of perpetual war and destroying democracy, the economy and the Constitution, the opportunity was there for those within the deep state to protect their power even more by placing the country under “martial law.” Though we don’t normally see troops on the streets controlling and keeping an eye on us, and most citizens have not felt the effects of a state of martial law, it is in effect with the constant NSA surveillance now permitted by law and the potential of military detention under Section 1021 of the 2012 National Defense Authorization Act (NDAA).

Even though these statutes seem to ratify the underlying military authority put into place, that doesn’t change its character as “martial law.” Martial law exists whenever the military assumes authority over civilian officials. When General DeWitt ordered the removal of the Japanese Americans from the West Coast in 1942, a martial law act, that character did not change because Congress, to its later shame, ratified it by providing penalties for violating DeWitt’s order.

In the Twenty-first Century, martial law was effectively imposed when the military (the Defense Department’s NSA) was given the military mission of surveillance of the population (us), the same mission they were given when Iraq was invaded by the U.S. and the NSA mission was to spy on Iraqi civilians.

In the U.S., the NSA was tasked to monitor all of our thoughts as expressed in our communications as if the military were conducting a counter-insurgency operation. The Minneapolis antiwar activists being investigated by a grand jury represent an example of what occurs when a country is under martial law, as is the persecution of Palestinian-American Ramea Odeh for her nonviolent political activities which are critical of foreign policy in the Mideast. It is not required under martial law that only the military enforces it, civilian law enforcement authority is used to enforce it as well. [For more information, see [stopfbi.net](http://stopfbi.net) and [uspcn.org](http://uspcn.org).]

While seeming to withdraw portions of the Oct. 23, 2001 opinion, a 2008 OLC memo corroborates the meaning of the Oct. 23, 2001 opinion fundamentally, but offered that “appropriate caution should be exercised” before relying on the opinion.

Because everything is wrapped in secrecy, we have no way of knowing current interpretations, except that we know the NSA/military is still spying on us through all of our communications and Section 1021 of the 2012 NDAA is still on the books as public law, providing for military detention "pending disposition under the law of war."

For anyone skeptical that this constitutes martial law, a vigorous advocate of martial law for World War II, Charles Fairman of Harvard University, considered a martial law expert, writing in 1942, justified it to include the removal of the Japanese-Americans from the West Coast that was conducted under the military authority of General DeWitt.

Fairman cited this routine aspect of martial law from World War II-era Hawaii: "No action should be maintained against a member of the armed forces for any act under color of duty, or against any person employed in an activity essential to the national defense for any act within the scope of such employment; nor should such a person suffer judgment by default, or be subpoenaed as a witness."

We have seen this principle applied since 2001 in those numerous cases against various national security officials which are routinely dismissed on the grounds of "state secrets," which can be presumed to be what the torturers are relying upon.

This is not the first instance of a "dual state" in what was once considered an enlightened, democratic country. A German-Jewish lawyer, Ernst Fraenkel, wrote as the opening line in 1939, in a book of the same name: "Martial law provides the constitution of the Third Reich." Fraenkel broke German government into the "prerogative state" and the "normative state." The prerogative state constituted that part of the German state under martial law and run by the security apparatuses. Prerogative power, which Delahunty and Yoo still advocate for, is martial law, or "martial rule" as our Supreme Court once described it.

But we don't need to permit our country to fall into the abyss as Germany did, or even to be a less severe version. We do not need to give up our constitutional rights any more in exchange for "safety," knowing as we do that to suppress speech and intimidate the citizenry is really only to protect the incompetents of the "deep state," who are driving the U.S. into an abyss, though different than the German example, an abyss nevertheless.

All we have to do is to demand accountability, starting with the torturers and their legal enablers, whoever they may be shown to be. Demand accountability of our government for these war crimes committed by our government, or call on international organizations and foreign nations that may be willing to assert universal jurisdiction over war crimes.

That is what it took to bring war criminal Augusto Pinochet to justice. There is no statute of limitations for war crimes, so we must not give up until torturers and enablers are held accountable for what the Torture Report has shown to be war crimes. We can do no less unless we want future generations to demand of us: why didn't we do something?

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## The 'Exceptionalism' of US Torture

Americans like to think of themselves as the ultimate "good guys" and anyone who gets in their way as a "bad guy." Under this theory of U.S. "exceptionalism," whatever "we" do must be moral or at least morally defensible, from sponsoring coups around the world to torture, as William Blum describes.

By William Blum

In 1964, the Brazilian military, in a U.S.-designed coup, overthrew a liberal (not more to the left than that) government and proceeded to rule with an iron fist for the next 21 years. In 1979 the military regime passed an amnesty law blocking the prosecution of its members for torture and other crimes. The amnesty still holds.

That's how they handle such matters in what used to be called The Third World. In the First World, however, they have no need for such legal niceties. In the United States, military torturers and their political godfathers are granted amnesty automatically, simply for being American, solely for belonging to the "Good Guys Club."

So now, with the release of the Senate Intelligence Committee report on CIA torture, we have further depressing revelations about U.S. foreign policy. But do Americans and the world need yet another reminder that the United States is a

leading practitioner of torture? Yes. The message cannot be broadcast too often because the indoctrination of the American people and Americophiles all around the world is so deeply embedded that it takes repeated shocks to the system to dislodge it.

No one does brainwashing like the good ol' Yankee inventors of advertising and public relations. And there is always a new generation just coming of age with stars (and stripes) in their eyes.

The public also has to be reminded yet again that contrary to what most of the media and Barack Obama would have us all believe the President has never actually banned torture *per se*, despite saying recently that he had "unequivocally banned torture" after taking office.

Shortly after Obama's first inauguration, both he and Leon Panetta, the new Director of the CIA, explicitly stated that "rendition" was not being ended. As the Los Angeles Times reported at the time: "Under executive orders issued by Obama recently, the CIA still has authority to carry out what are known as renditions, secret abductions and transfers of prisoners to countries that cooperate with the United States."

The English translation of "cooperate" is "torture." Rendition is simply outsourcing torture. There was no other reason to take prisoners to Lithuania, Poland, Romania, Egypt, Jordan, Kenya, Somalia, Kosovo, or the Indian Ocean island of Diego Garcia, amongst other torture centers employed by the United States. Kosovo and Diego Garcia both of which house large and very secretive American military bases if not some of the other locations, may well still be open for torture business, as is the Guantánamo Base in Cuba.

Moreover, the key Executive Order referred to, number 13491, issued Jan. 22, 2009, "Ensuring Lawful Interrogations," leaves a major loophole. It states repeatedly that humane treatment, including the absence of torture, is applicable only to prisoners detained in an "armed conflict." Thus, torture by Americans outside an environment of "armed conflict" is not explicitly prohibited. But what about torture within an environment of "counter-terrorism"?

The Executive Order required the CIA to use only the interrogation methods outlined in a revised Army Field Manual. However, using the Army Field Manual as a guide to prisoner treatment and interrogation still allows solitary confinement, perceptual or sensory deprivation, sensory overload, sleep deprivation, the induction of fear and hopelessness, mind-altering drugs, environmental manipulation such as temperature and noise, and stress positions, amongst other charming examples of American Exceptionalism.

After Panetta was questioned by a Senate panel, the New York Times wrote that he had “left open the possibility that the agency could seek permission to use interrogation methods more aggressive than the limited menu that President Obama authorized under new rules Mr. Panetta also said the agency would continue the Bush administration practice of ‘rendition’ But he said the agency would refuse to deliver a suspect into the hands of a country known for torture or other actions ‘that violate our human values’.”

The last sentence is of course childishly absurd. The countries chosen to receive rendition prisoners were chosen precisely and solely because they were willing and able to torture them. Four months after Obama and Panetta took office, the *New York Times* could report that renditions had reached new heights.

The present news reports indicate that Washington’s obsession with torture stems from 9/11, to prevent a repetition. The President speaks of “the fearful excesses of the post-9/11 era.” There’s something to that idea, but not a great deal. Torture in America is actually as old as the country.

What government has been intimately involved with that horror more than the United States? Teaching it, supplying the manuals, supplying the equipment, creation of international torture centers, kidnapping people to these places, solitary confinement, forced feeding, Guantãinamo, Abu Ghraib, Bagram, Chile, Brazil, Argentina, Chicago Lord forgive us!

In 2011, Brazil instituted a National Truth Commission to officially investigate the crimes of the military government, which came to an end in 1985. But Mr. Obama has in fact rejected calls for a truth commission concerning CIA torture.

On June 17 of this year, however, when Vice President Joseph Biden was in Brazil, he gave the Truth Commission 43 State Department cables and reports concerning the Brazilian military regime, including one entitled “Widespread Arrests and Psychophysical Interrogation of Suspected Subversives.”

Thus it is that once again the United States of America will not be subjected to any accountability for having broken U.S. laws, international laws, and the fundamental laws of human decency. Obama can expect the same kindness from his successor as he has extended to George W.

“One of the strengths that makes America exceptional is our willingness to openly confront our past, face our imperfections, make changes and do better.” Barack Obama, written statement issued moments after the Senate report was made public.

And if that pile of hypocrisy is not big enough or smelly enough, try adding to it Biden’s remark regard his visit to Brazil: “I hope that in taking steps to

come to grips with our past we can find a way to focus on the immense promise of the future.”

If the torturers of the Bush and Obama administrations are not held accountable in the United States they must be pursued internationally under the principles of universal jurisdiction.

In 1984, an historic step was taken by the United Nations with the drafting of the “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (came into force in 1987, ratified by the United States in 1994). Article 2, section 2 of the Convention states: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

Such marvelously clear, unequivocal and principled language, to set a single standard for a world that makes it increasingly difficult for one to feel proud of humanity. We cannot slide back. If today it’s deemed acceptable to torture the person who supposedly has the vital “ticking-bomb” information needed to save lives, tomorrow it will be acceptable to torture him to learn the identities of his alleged co-conspirators. Would we allow slavery to resume for just a short while to serve some “national emergency” or some other “higher purpose”?

If you open the window of torture, even just a crack, the cold air of the Dark Ages will fill the whole room.

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## Is Torture a ‘Conservative’ Value?

Conservatives who usually hail individual liberties are leading the televised defense of the U.S. government’s torture of terror suspects, including many who were completely innocent. But some conservatives are troubled by this knee-jerk defense of the Bush administration, as Independent Institute’s Ivan Eland explains.

By Ivan Eland

On the news talk shows, everyone is talking about torture – mostly defending the Bush administration's hysterical actions after the 9/11 attacks. Granted, 9/11 was a searing experience for the general public, which wanted action in retaliation. However, it is the duty of wise political leaders to reason with the public to dampen the desire for any rash, counterproductive actions.

Instead, Bush administration officials used such public fear and anger from 9/11 to fuel public support for their own unrelated policy agenda that made the Islamist terrorism problem worse. Torture was one aspect of that policy agenda.

Even after 9/11, terrorism was a rare event, as it was before, and government terrorism experts should have known that the resources of a small group, such as al Qaeda, were not great enough to necessitate excesses in response, such as torture and other government usurpation of American constitutionally-guaranteed civil liberties.

When prisoner abuse and torture at the Abu Ghraib prison in Iraq were exposed, guerrilla violence following in the wake of Bush's trumped-up post-9/11 invasion and occupation of Iraq worsened. Now torture at CIA secret prisons around the world after 9/11, already well-known but highlighted and detailed by the Senate Intelligence Committee's report, could similarly fan the flames of anti-American Islamism.

Yet news programs gave more air time to the defenders of Bush's clearly illegal and counterproductive policy than they did to opponents of torture – such as committee members and human rights organizations. The reason is that the media is in the habit of focusing in on Executive Branch officials as authoritative sources on policy (because the Executive Branch, contrary to the country's Founders' vision, now is by far the most powerful arm of government).

Also, the media likes to fan controversy and ex-officials defending lurid, outrageous, and frankly "un-American" policy is well ... great television. I say un-American because secret imprisonment and torture clearly violate U.S. law, official U.S. policy prior to the Bush administration, the international convention on torture and other cruel, inhuman, or degrading punishment signed by Ronald Reagan and ratified by Congress, and long-standing international standards of human rights.

Finally, Obama administration officials, who discontinued torture when Barack Obama came into office, have been ducking the issue, because they don't want to adversely affect the morale of the CIA bureaucracy.

However, maybe if some CIA personnel who tortured people or destroyed videos of it were prosecuted, the agency would learn to avoid such illegalities in the

future. People going to jail would have a more searing effect than apparently the Church Committee hearings in the mid-1970s had on illegal and unconstitutional practices by intelligence agencies.

In fact, perhaps Congress should pass a law that prohibits the CIA (and the NSA) from doing any activities other than lawful intelligence collecting on foreigners. Both agencies would be much better off and have better morale in the long-term if they stuck to this vital mission.

Yet, since its inception, the CIA has been distracted by more glamorous missions than the drudgery of painstaking intelligence collection – first covert action against unfriendly countries and more recently the management of the secret prisons where the torture occurred.

As well as being un-American – we should be better than our adversaries, such as ISIS or al Qaeda, who kidnap people and mistreat and gruesomely kill prisoners, but were not – torture theretofore had been clearly regarded as counterproductive, even by the U.S. government itself. The FBI and U.S. military initially blanched at the idea of U.S. personnel torturing people, because bad information is usually produced by the victim just to get the pain to stop.

The CIA during the Bush administration forgot its own report concluding the same in 1989. Moreover, the U.S. military – especially its lawyers – has never been keen on the practice because it gives future enemies an excuse to torture American service personnel in retaliation and makes it more likely that any enemy will fight to the death rather than be taken prisoner by the Americans. Both effects can result in more deaths to U.S. military personnel in any war.

But in the wake of 9/11, did Bush and Cheney listen to the experts in the military and the FBI on the counterproductivity of torture? No, instead these avoiders of combat during the Vietnam era had to pose as macho and pretend to do something to vanquish evil everywhere in lieu of focusing on capturing al Qaeda members that perpetrated the 9/11 attacks (not on overthrowing and capturing Saddam Hussein), interrogating them with FBI and military interrogators using legal tried-and-true methods, and trying them as criminals in perfectly capable civilian courts.

Instead, Bush and Cheney thought it would be really cool to let the CIA hire bozo contractors, who had no interrogation experience, to run a keystone cops program to kidnap and manhandle captives in CIA secret prisons. According to CIA admission, either implicitly or explicitly in CIA documents, this policy led to a shocking outcome: Almost a quarter (at least) of detainees in CIA prisons weren't guilty of anything at all, were held for years in dungeon-style prisons, and some were tortured.

It is amazing that in an America that is becoming politically correct on everything else, so many defenders of a heinous and clearly illegal practice can be found. They are mostly Republicans defending what was an outlaw Bush administration – the exception being John McCain, who represents the military’s view on the subject.

Since Dick Cheney, the most dangerous American politician in recent times, has publicly declared that he would support torture if he had it to do over again, maybe this blatant in-your-face attitude will cause some country overseas that has signed the torture convention, or has had American torture done on its territory, will prosecute him; certainly the Obama administration, which overall has not been that much better than the Bush administration in safeguarding American civil liberties, will not.

At minimum, maybe former Bush administration officials will fear to travel overseas for fear of being shanghaied for prosecution and jailing. Alberto Gonzalez, Bush’s Attorney General, recently expressed some personal fear of this outcome on a news program.

Since Bush started all of the U.S. government torture rolling by his “wink and nudge” declaration in February 2002 that al Qaeda fighters would not be held under the safeguards of the Geneva Conventions and has crowed about the necessity of using torture during his tenure, maybe he should just stay at home on the Texas ranch too.

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