

# **Secrets, Lies, & Propaganda: Hollywood's *Zero Dark Thirty*, America's Liberal Culture of Torture, & the Struggle for its Abolition<sup>i</sup>**

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January 5, 2013

**For Sister Dianna Ortiz and my fellow torture survivors**

**“All governments lie and nothing they say is to be believed.” I.F. Stone**

**“Why is there this inability to reckon with the moral and spiritual facts?”<sup>ii</sup>**

**“The abuse of detainees in U.S. Custody cannot simply be attributed to the actions of ‘a few bad apples’ acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.”-Report of the Committee on the Armed Services, US Senate, November 20, 2008**

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<sup>ii</sup> Bishop Bell, quoted in Andrew Chandler, "The Church of England & the Obliteration Bombing of Germany in the Second World War," *English Historical Review*, Volume 108, No. 429, October 1993, p. 939.

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## Introduction

After 9/11, US policies of torture and extraordinary rendition – the latter term a euphemism for the kidnapping and transfer of persons to countries where they would be tortured at the behest of the US – quickly went global. To be sure, US support for terrorism – the killing of innocent noncombatants – and programs of torture on a global scale existed long before 9/11. Before 9/11, though, these programs were often carried out via US support of a global network of client states, including the military dictatorships and death squad “democracies” of Latin and Central America. Particularly notable here was the first 9/11, the US supported overthrow of the democratically elected Socialist government of Salvador Allende in Chile, Latin America’s oldest democracy, on September 11, 1973 (Reifer, 2008; Harbury, 2005; Chomsky, 1991, 1999a, b; PBS, 2008). It didn’t take the attack on the US on 9/11 for US officials to support terror and torture, as US support for the Latin and Central American dictatorships so dramatically revealed (McSherry, 2005).

When one thinks about the US embrace of torture after 9/11, perhaps it was only a matter of time before Hollywood decided to make a tribute to America’s liberal culture of torture, for the big screen, instead of for the small screens via the pro-torture television series *24* (Mayer, 2007). That time has now arrived, except that while *24* was obviously based on fiction, Hollywood’s award winning director Kathryn Bigelow and screenwriter Mark Boal are trying to sell their new Hollywood fantasy film as being based on fact. Bigelow has a lot of money behind her, as she is the first female to win an Academy Award for Best Director, as does her award-winning screenplay writer; Boal is a former freelance writer who was once embedded with the US armed forces in Iraq. Both of them are famous in Hollywood and beyond for their powerful film, *The Hurt Locker*, which was nominated for nine Oscars at the Academy Awards and won six, including for Best Picture, Best Director and Best Original Screenplay (Boal also wrote the screenplay for 2007 film *In the Valley of Elah*). Both films were set in Iraq and *In the Valley of Elah* has profound anti-war themes.

## **Zero Dark Thirty & the Celebration of America's Liberal Culture of Torture**

This coming January 11, 2013, at a theatre near you, America's liberal culture of torture – the reframing of torture, seen as virtuous, to be celebrated as noble and necessary to stop a ticking time bomb and catch Bin Laden before his next attack – will go global, with the nation-wide and global premiere of the Hollywood film, *Zero Dark Thirty*. The term liberal is not used here in terms of the usual opposition in US political discourse between liberal and conservative but instead to stress, following the work of David Luban (2006), liberal values championing freedom and individual liberty, versus tyranny. Since 9/11, supporters of torture have used the ideology of the ticking time bomb, with substantial success, to try and make torture seem somehow consistent with liberal values rather than anathema to them, which they in fact are; hence the notion developed here of the liberal culture or ideology of torture.

The film *Zero Dark Thirty* is brought to you courtesy of the CIA, Pentagon and White House, all of whom cooperated closely with the makers of the film. At many theatres in the US, even where the film is not yet playing, one is greeted with a massively blown up November 25, 2012 article from *Time Magazine*, entitled “Zero Dark Thirty: The Girl Who Got bin Laden,” by Richard Corliss. The article extolls the need for ridding ourselves of our supposed ethical moorings in this new world of terror and disorder, in a celebratory embrace I suppose, of former Vice President Dick Cheney's famous statement about working on the dark side, by embracing torture.

Ethics, Corliss tells us, were necessarily “rendered obsolete” by 9/11, here echoing Bush White House Counsel and later Bush Attorney General Alberto Gonzalez's statements about the obsolescence of Geneva Conventions, akin to the Nazi's position on the conventions during their war in the East during World War II. After 9/11, the Bush administration secretly decided to throw the Geneva Conventions – the core of international humanitarian and customary law – out the window, so as to minimize the chance that US officials could be prosecuted for war crimes, as secret documents later leaked to the public revealed (Horton, 2006; Greenberg & Dratel, 2005, 2008; Reifer, 2009). The problem with this attempt is that certain forms of international humanitarian and customary international law are considered so morally binding that have achieved the status of *jus cogens*, Latin for “compelling law,” a preemptory norm, almost universally accepted by

the international community and hence non-derogable, I.e., from which no derogation is ever permitted: very specifically, this includes today the laws against slavery, aggressive war, genocide and torture, which are *erga omnes* obligations: obligations owing to all mankind. Thus, the US cannot legally free itself from the universal prohibition against torture, no matter how hard it tries (Cannizzaro, 2011; Orakhelashvili, 2009; Lepard, 2010; Paust, 2012, 2009; National Security Archive, 2012; Zelikow, 2009).

To be sure, US officials have tried to break out of these international *jus cogens* norms. For example, a January 25, 2002 Memorandum for the President by then White House Counsel Alberto Gonzales had this to say about the benefits of making a determination that the Geneva Conventions would not apply in the “war on terror”:

Substantially reduces the threat of domestic criminal prosecution under the War Crimes Act (18U.S.C. 2441). That statute, enacted in 1996, prohibits the commission of a “war crime” by or against a U.S. Person, including U.S. Officials. “War crime” for these purposes is defined to include any grave breach of GPW or any violation of common Article 3 thereof (such as “outrages against personal dignity”). Some of these provisions apply (if the GPW applies) regardless of whether the individual being detained qualifies as a POW. Punishment for violations of Section 2441 include the death penalty.<sup>iii</sup>

As Alex Gibney (2012), who made *Taxi to the Dark Side* in 2007 – a film on the US embrace of torture after 9/11 that won the Oscar that year for Best Documentary Feature – has written, it appears that this time Hollywood’s famous director and writer dynamic duo were seduced by their sources. Perhaps the filmmakers were also motivated by a desire to produce a more simplified film of good and evil than their previous works that could once again triumph at the Academy Awards. One can only speculate, especially give the arguably antiwar thrust of Boal’s previous work.<sup>iv</sup>

The film begins with the September 11, 2001 terrorist attacks on the US which killed thousands of people. Soon we enter into the global network of CIA black sites and prisons, which were an integral part of US programs of torture after 9/11. The primary focus of the film’s narrative – quite in contrast to reality – is the torturers of the CIA’s desire to find Usama Bin Laden, the purported mastermind

of the 9/11 attacks and head of Al Qaeda. The film shows no messy mass torture as in Abu Ghraib of course, where US programs of torture manifested into the sadistic culture of mass brutality that is torture, with untold numbers picked up in Iraq and elsewhere just by chance and tortured. Instead, in this fantastic flight from reality that Hollywood specializes in, albeit here in what is portrayed as a kind of documentary, we are shown torture ostensibly on point, targeted at the bad guys, brutal but somewhat sanitized (see Danner, 2004, 2012; Ghosts of Abu Ghraib, 2007).

In the film, the male Muslim prisoners are all known terrorists. Gone is any question of the protections of the Geneva Conventions and UN Convention Against Torture, not to mention rights going back to the Magna Carta, habeas corpus and the notion of presumed innocence until the proving of guilt (Chomsky, 2012; King & Hoffman, 2011; Halliday, 2012). Here, instead, the good guys and gals of the CIA fight the bad Muslim terrorists using any means necessary, which means mostly torture. “Everybody breaks,” the lead CIA torturer says, “it’s biology.” We are not told whether this particular quip is based on the CIA torturers supposed expert judgment or that of the torture doctors and psychologists who cooperated in the CIA and Pentagon’s torture programs (Miles, 2009).

Yet before the actual 9/11 footage that opens the visual portion of the film, there appears the following: “The following motion picture is based on first-hand accounts of actual events.” We are then treated to a world Hollywood loves: good guys, dedicated foot soldiers of the US torture regime, primarily in the CIA, and the bad Muslim terrorists who are plotting the next 9/11 and supposedly hiding Usama Bin Laden. Gone from the film are the voices of dissent inside and outside the US government, such as the military JAGS, the Pentagon’s top lawyers, who internally fought against US plans to violate the Geneva Conventions, as well as the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, both treaties signed and ratified by the US.

The filmmakers also decided not to take the opportunity to introduce Matthew Alexander (2008, 2011), widely believed to be most successful interrogator in the US system. Alexander, who has conducted some 300 interrogations and supervised over 1,000, has upheld the morality of humane treatment of prisoners and long opposed torture. In addition, Alexander has demonstrated the greater efficacy of humane treatment of prisoners, not to say that torture would not be totally unacceptable, morally repugnant and absolutely prohibited under international law in any event (see Ginbar, 2010). Significantly, in this regard,

Alexander openly criticizes torture as simultaneously immoral, ineffective and counterproductive, noting that these brutal sadistic techniques radicalize prisoners and those in their communities, and across the world, often creating new generations of terrorists horrified by the brutal practices of the US, which have been seen the world over from the time of Abu Ghraib on.<sup>v</sup>



**Best Propaganda Film  
Promoting Torture**



## **The Immorality of (US Programs of) Torture and US Defiance of International Treaties, UN Conventions & International Law**

As for the Geneva Conventions and the UN Convention Against Torture, the signing and ratifying of these treaties by the US arguably puts them on par with the US Constitution as the Supreme Law of the land, with the President bound by the Take Care clause to make sure that the laws are faithfully executed. Some scholars argue that the US has effectively escaped legal constraints of these and other treaties through a variety of mechanisms. For example, when ratifying the UN Convention against Torture, the US made a series of stipulations that were torture friendly, thus arguably violating the very spirit of the Convention, in violation of the Vienna Convention on the Law of Treaties. The Senate's words here were later carefully parsed by Bush Pentagon Secretary Rumsfeld's 2003 working group on interrogation/torture, as well as by those David Luban (2007) calls the "torture lawyers of Washington," most especially John Yoo, working in the Office of Legal Counsel of the US Department of Justice (Levinson, 2004; McCoy, 2012; Greenwald, 2006).

In inserting these stipulations and in their subsequent incorporation into domestic US law via the enactment of legislation under President Clinton, the US took pains to exclude the so-called mental torture techniques developed by America's Cold War adversaries in Soviet KGB and elsewhere deemed most effective. Here was a brazen but invalid attempt to try and legalize the mental torture perfected over decades by the CIA. The US sought to self-authorize itself to violate these treaties under at least a pretense of legality. Yes as argued earlier, the prohibition of torture and violations of the Geneva Conventions are *jus cogens*, Latin for compelling law. *Jus cogens* are fundamental overriding principles of international law, universal in application from which no derogation is permitted and thus cannot be legalized, whatever a country stipulates in the process of ratifying a treaty. Indeed, *jus cogens* preemptory norms do not allow for violations even if a country withdraws from such treaties. The International Criminal Tribunal for the Former Yugoslavia, in 2002, reaffirmed, for example, the *jus cogens* prohibition against torture, with torturers and slave traders considered, as indicated earlier, *hostis humani generis*, the enemies of all mankind. International conventions such as Geneva and the Convention against Torture are thus binding on all states, regardless of whether they are party to the treaties or not, with no exceptions.

Despite the fact that arguably under the most binding forms of customary international law and the Vienna Convention on the Law of Treaties of 1969 – brought into effect in 1980 – which stipulates that one cannot evade the legal obligations of a treaty by making stipulations or enacting legislation that goes against their spirit, the US has continued to violate the Geneva Conventions and the UN Convention against Torture. The US thus stands today in open defiance of *jus cogens* principles, not to mention common standards of decency and morality essential to upholding human dignity, as provided for in the Geneva Conventions, most especially Article 3 (Levinson, 2004; McCoy, 2006, 2011, 2012; Luban & Shue, 2012; Meron, 1994, 1998, 2000, 2007, 2011; Henckaerts & Dosweld-Beck, 2005a, b; Dewult, 2011).

In fact, when President Bush was asked the following question by a reporter at a 2006 press conference announcing his proposed Military Commissions Act – also known by anti-torture activists as the Torture Act: “What do you say to the argument that your proposal is basically seeking support for torture, coerced evidence, and secret hearings? ,” the President replied:

This debate is occurring because of the Supreme Court's ruling that said that we must conduct ourselves under the Common Article 3 of the Geneva Convention. And that Common Article 3 says that, you know, there will be no outrages upon human dignity. It's like – it's very vague. What does that mean, “outrages upon human dignity?” That's a statement that is wide open to interpretation...The first question that we've got to ask is: Do we need the program? I believe we do need the program...Now, the court said that you've got to live under Article 3 of the Geneva Convention, and the standards are so vague that our professionals won't be able to carry forward the program, because they don't want to be tried as war criminals (PBS, 2006; see Kateb, 2011, 2006).

As noted above, many of these techniques parsed by the Rumsfeld Pentagon working group were based upon the Senate's stipulations made in the course of ratifying the UN Convention Against Torture. The techniques were used in both Guantanamo and Abu Ghraib. Indeed, the European Court of Justice, in their legal ruling vindicating German citizen's Khalid El-Masri's claims that he was kidnapped and tortured by the US – in what was a case of mistaken identity by the CIA – Europe's highest court quotes the US Court of Appeals on the US government's astonishing arguments regarding its global network of prisoners in

the so-called war on terror. As quoted by the European Court (2012: 34), the US Court of Appeals described the Bush administration's position regarding a Libyan man kidnapped and held without due process held as an "enemy combatant" at Guantanamo:

under the government's theory, it is free to imprison Gherebi indefinitely along with hundreds of others citizens of foreign countries, friendly nations among them, and to do with Gherebi and these detainees as it will, when it pleases, without any compliance with any rule of law of any kind, without permitting him to consult counsel, and without acknowledging any judicial forum in which its actions may be challenges. **Indeed, at oral argument, the government advised us that its position would be the same even if the claims that it was engaging in acts of torture or that it was summarily executing the detainees.** To our knowledge, prior to the current detention of prisoners at Guantanamo, the U.S. Government has never before asserted such a grave and startling proposition...the government has announced...an extraordinary set of principles – a position so extreme that it raises the gravest concerns under both American and international law (emphasis added).

## **Slavers & Torturers, *Hostis Humani Generis*, Enemies of All Mankind**

The Geneva Conventions and the UN Convention Against Torture are integral parts of international humanitarian law and core parts of customary international law, the most binding of all international legal commitments and moral customs, like that abolishing the slave trade and slavery, having achieved the status of non-derogable, *jus cogens*, preemptory norms. Yet the US refuses to adhere to such binding norms. On the rare occasions when the US signs such treaties, it usually does so with reservations attempting to exclude itself from being bound by them, thus attempting to self-exempt itself from prosecution by the International Court of Justice or other tribunals, in decisions which the US courts and the Supreme Court have so far accepted, despite their clear illegality under the most binding forms of customary international law (see Mandel, 2004; see also Byers and Nolte, 2003; see Paust, 2007). These links between customary international law regarding torture, genocide, crimes against humanity, the Geneva Conventions and the slave trade is something Americans and others might want to remember, what with this January 1, 2013 being the 150<sup>th</sup> Anniversary of President Abraham Lincoln's Emancipation Proclamation. Under international customary law, slave traders and torturers have long been seen as *hostis humani generis*, enemies of all mankind, and jurisdiction in such cases is universal; any state can investigate or prosecute such crimes with appropriate legislation, something seen in the case of Chilean dictator Augusto Pinochet (see Foner, 2010, 2013; see Masur, 2012; see Holzer, 2012; see Oakes, 2013; see Masur, 2012; Roht-Arriaza, 2006; see Witt, 2012).

This is all the more relevant, because when one thinks about it, US programs of kidnapping and torture after the formation of the US as an independent nation state go back to the passage of the US Constitution in 1787, Article 4, Section 2 (later changed by the passage of the Thirteenth Amendment on January 31, 1865 and its ratification on December 6 of that same year), and the Fugitive Slave Act of 1793, signed into law that February by President George Washington, and the Fugitive Slave Act of 1850. This is something that may be resonant in the US and across the globe today, as our attention to slavery may have been renewed not only by the historic 150<sup>th</sup> Anniversary of the Emancipation Proclamation and the 50<sup>th</sup> Anniversary of the 1963 March on Washington and Reverend King's famous speech, but also by recent Hollywood films such as *Django Unchained*, and *Lincoln* (which focuses on the 13<sup>th</sup> Amendment abolishing slavery in 1865) (see also Finkleman, 2012, 2001; see also Wiencek, 2012).



## ***Zero Dark Thirty's* Celebration of Torture & Assassination**

The first part of *Zero Dark Thirty* primarily depicts US programs of torture after 9/11, albeit in a fairly sanitized fashion, one on one; no mass torture shown here. Yet in the film, as opposed to the real world, the good guys and gals torture only bad guys, guilty as not charged, since there was and still is no due process for those kidnapped and tortured in America's global gulag of secret and not so secret torture sites. We see the heroine of the film, the attractive CIA redhead named Maya, witnessing torture and poring over torture tapes, searching for the clues that ultimately, in the film's version of reality, leads to the killing of Usama Bin Laden. To be sure, there are a few problems with the film's version of events, most especially the fact that the film's main premise, that torture played a major role, not to mention any significant role in this, is entirely false.

Yet the film's basic premise, that US programs of torture are what led to the finding and killing of Usama Bin Laden, runs right through the film, and we are thus led to believe that such things are necessary in America's Moby Dick-like quest to catch and kill the great whale, Usama Bin Laden. Of course, despite the fact that all of this is a complete fabrication: even if it were true, no what the outcome there can be no moral justification for torture, and no allowance for it under international law, not to mention common standards of morality, decency and custom. Moreover, as in the drone strike assassinations which have vastly increased under the Obama administration, by the standards of international law or legal conventions going back to the Magna Carta, the US had no legal authority to summarily execute bin Laden, whatever beliefs it has about his role in 9/11. Neither does the US has legal authority under international law to carry out its global program of kidnapping, torture and assassination via drone warfare more generally, as vividly depicted in the recent Hollywood film, *The Bourne Legacy* (see Vincent, 2012; see Linebaugh, 2008; see Chomsky, 2011, 2012; Benjamin, 2012a, b; Turse & Engelhardt, 2012; Stanford & NYU School of Law, 2012; Columbia Law School, 2012).

Illustrated here too is the danger of quasi-secret Presidential wars, carried out by remote control by the CIA and the Pentagon at the behest of the Executive Branch of the US government, reminiscent of the secret war in Laos and bombing of Cambodia in the Johnson and Nixon years (Owen & Kiernan, 2006; Ely, 1993). These technological leaps forward in US killing capability now allows the Executive to escape Congressional authority and that of the people, by using

killing machines via robots as opposed to by boots on the ground. US drone strikes have killed untold innocent civilians and almost certainly have created more terrorists, thus violating just war criteria in multiple ways. Moreover, simply put, the US has no legal authority to act as judge, jury and executioner, without any due process, based simply on the whim of whoever happens to occupy the Presidency at any given time (Singer, 2009; *Journal of National Security Law & Policy*, 2012; see Luban, 2012; Chomsky, 2011).



## The Intellectual Fraud of *Zero Dark Thirty's* Ticking Time Bomb

The Reality of Torture as a World of Sadistic Practices

In fact, the realities of torture, exhaustively documented in Darius Rejali's (2007) *Torture & Democracy* and a host of other books, are totally at odds with the liberal culture of torture displayed in *Zero Dark Thirty*. The falsity of the liberal ideology of torture, with its ticking time bomb justification has been argued most forcefully by Dr. David Luban, Professor of Law and Philosophy at the Georgetown School of Law, and one of the world's leading legal ethicists and most brilliant analysts of US programs of torture after 9/11. Another leading analyst in the field is Yuval Ginbar (2010), legal adviser to Amnesty International and senior adviser to the Public Committee Against Torture in Israel), and author of the landmark, *Why Not Torture Terrorists: Moral, Practice, & Legal Justifications of the 'Ticking Time' Bomb Justification for Torture*. Both Luban and Ginbar, in texts that are simultaneously empirical, analytical and philosophical, present some of the most powerful moral and practical arguments to date for an absolute moral prohibition on and criminalization of torture, no matter what the circumstances<sup>7</sup>.

In *Zero Dark Thirty's* world, though, consistent with the liberal ideology culture of torture, torture is only pinpointed at specific individuals, supposedly with knowledge of ticking time bombs or the whereabouts of terrorists planning attacks on the US, most especially by Bin Laden. The film's heroine, assumed Bin Laden to be the center of global terrorism world-wide, despite the overwhelming amount of evidence to the contrary in the scholarly literature on terrorism (Pape, 2006; Pape & Feldman, 2012; Gerges, 2006, 2009). Yet in stark contrast to the film's depiction of reality based with its ticking time bomb, as David Luban (2006) demonstrates in his "Liberalism, Torture, & the Ticking Bomb," in actuality, **"Abu Ghraib is the fully predictable image of what a torture culture looks like"** (emphasis added) (see Danner, 2004; see Greenberg & Dratel, 2005). Luban goes onto say:

...it is easy to get seduced by simplistic examples that look compelling but actually misrepresent the world we live in...I suspect that throughout history...intelligence gathering, torture to forestall greater evils...has been the least common motivation for torture...The liberal ideology...of torture...insists that the sole purpose of torture must be intelligence gathering to prevent a catastrophe; that

torture is necessary to prevent the catastrophe; that torturing is the exception not the rule...[Yet the real world of torture] is a world of practices, not of ad hoc emergencies measures...The liberal ideology of torture presupposes a torture impelled by the desire to stop a looming catastrophe, not by cruelty... ..For all these reasons, the ticking time-bomb scenario is an intellectual fraud. In its place, we must address the real questions about torture – questions about...morality...Mark Osiel, who has studied the Argentinean military in the Dirty War, reports that at first many of them had qualms about what they were doing, until their priests reassured them that they were fighting God's fight. By the end of the Dirty War, the qualms were gone, and...hardened young officers were placing bets on who could kidnap the prettiest girl to rape and torture. Escalation is the rule, not the aberration.

On December 19, 2012, the day of the films initial release in New York and Los Angeles, the Chair of the Senate Select Committee on Intelligence, Senator Diane Feinstein, and two the ex-officio members, Senator Carl Levin, and torture survivor and former Republican Presidential nominee Senator John McCain, wrote the Chairman and CEO of Sony Pictures and Entertainment. The Senators expressed their disappointment with the films celebration of torture and the faulty premises of efficacy which promote this narrative, however morally repugnant. In the letter, they state: "*Zero Dark Thirty* is factually inaccurate, and we believe that you have an obligation to state that the role of torture in the hunt for Usama Bin Laden is not based on facts, but rather part of the film's fictional narrative."

Let me be clear here, torture, efficacious or not, whether in the hunt for Usama Bin Laden or for any other goal, is morally repugnant, and a moral argument focusing only on the efficacy of torture, or allowing for it under certain circumstances reflects a moral bankruptcy that would turn us all into sadistic torturers in pursuit of some supposedly worthy goal. Whether or not torture works does not make it moral (see Guval, 2010; see Luban, 2006, 2007). But the fact remains, that in addition to torture being illegal and morally repugnant, the argument implied by the films narrative, that torture led to the finding of Bin Laden, or that it can be controlled rather than growing like a cancer until its widespread and out of control, is totally false, as all history reveals.

The Senators cite, in their letter, the 6,000 page recently adopted study but still secret report of the US Senate Intelligence Committee on the CIA's Detention and Interrogation program (the euphemism is so they don't accuse the Bush

administration of torture in the title of their report), based on the review of some 6 million pages of documents. The documents and report, according to the Senators, uphold their argument that US practices of torture did not lead to the finding and killing of Usama Bin Laden, as the film would make viewers believe.

Even the Acting Director of the CIA, Michael J. Morrell, no doubt hoping to be appointed the CIA's next director, and knowing he will have to be considered for confirmation by the Senate Intelligence Committee, currently headed by the Democratic Senator from California, Dianne Feinstein, was forced to say the film "creates the strong impression that enhanced interrogation techniques were the key to finding Bin Laden. That impression is false." To be sure, Morrell went on to state, in typical self-serving CIA fashion, that some intelligence "...came from detainees subjected to enhanced techniques, but there were many other sources as well. And importantly, whether enhanced interrogation techniques were the only timely and effective way to obtain information from those detainees, as the film suggests, is a matter of debate and will never be resolved" (NYT, 12/23/12).

As noted in an article in the *Los Angeles Times* this last Friday, January 4, 2013, "The senators believe the Sony Pictures film wrongly suggests coercive interrogation was instrumental in tracking down the Al Qaeda leader, and they believe the filmmakers got that misimpression from CIA officials." The Senators wrote two letters to Acting Director, Morrell, one on December 19 stating their concerns, which quoted from a publicly released CIA email which stated: "As a [sic] Agency, we've been pretty forward leaning with [the filmmaker], and he's agreed to share scripts and details about the movie with us so we're absolutely comfortable with what he will be showing." The Senators sent their second letter on December 31, 2012 asking for clarification of the Acting Director's statement that interrogation played some role in finding Bin Laden, as it is contradicted by their own 6,000 page report, replete with 35,000 footnotes (Feinstein, 12/13/12).

Following this, on Thursday, January 3, 2013 the Senators put out a statement, quoting in part from their first letter, which read:

'Given the CIA's cooperation with the filmmakers...and the narrative's consistency with past public misstatements by former CIA officials...the filmmakers could have been misled by information they were provided by the CIA' and requested 'all information and documents provided to the filmmakers by CIA officials' (LAT, 1/4/13a; see also LAT, 1/4/13b; Feinstein, et al., 2012a, b, c; Feinstein, et al, 2013).

The *Wall Street Journal*, long the upholder of the ethics of torture, in a December 27, 2012 editorial discussing the matter, reached a new low with a blurb that read: “When a Hollywood script is more accurate than Senate intelligence,” ending the editorial by stating that still classified Senate Intelligence report, “whatever it contains, deserves never to be read,” a stark contrast with the *Los Angeles Times* editorial on December 20, which referenced Hollywood’s *Zero Dark Thirty*, entitled, “Free the CIA Torture Report,” something which is desperately needed as soon as possible, most especially before the film’s global and national release.

## **9/11 & Zero Dark Thirty's Celebration of Torturers: Fact Versus Fiction**

In actual fact, the more one digs, the more the storyline of the film unravels. Take for example, the heroine of the film, the senior CIA operative called Maya, a brilliant and beautiful redhead obsessed with finding and killing Usama Bin Laden, and depicted as 100% certain at the end as to where UBL is. Maya is ostensibly proven right in the raid that finds and kills UBL and members of his entourage, including women, who in the film are lunging towards something, though what they are lunging toward is unclear. Of course, the public still has no way of really knowing the circumstances of the actual raid, aside from government accounts and that of insiders, so there is no way of assessing the truth or falsity of the film here.

Yet it turns out that the supposedly heroic CIA operative after which the film is modeled is none other than Alfreda Frances Bikowsky, a former case officer since before 9/11 in the CIA's Bin Laden Unit-Alec Station. According to a variety of sources, it appears that Alfreda and her subordinate Michael Anne Casey, aka Mike, Michael or Michelle, was one of the some 50 to 60 CIA agents that were aware that two Al Qaeda operatives had infiltrated the US, but failed to inform the FBI, though the latter was officially responsible for domestic terrorism investigations. The two men, Khalid al-Mihdhar and Nawaf- al-Hamzi, had attended the infamous January 5, 2000, meeting of Al Qaeda in Kuala Lumpur, Malaysia in 2000. The men, both Saudi nationals, were veterans, among other wars, of the CIA's and Saudi Arabia's global jihad organized against the Soviet 1979 invasion of Afghanistan and subsequently infiltrated the US, a year and a half before the 9/11 attacks.

According to the official "independent" 9/11 Commission investigation – specifically, footnote 44 on page 502, Chapter 5, as well as related documents – when Doug Miller, a FBI agent on loan to the CIA's Counterterrorist Center tried to alert his FBI colleagues, Alfreda's junior subordinate partner, Michael, stopped him from doing exactly this, or from informing the White House, apparently upon the order of the Deputy Chief of Station, Tom Wilshire; and this, despite the fact that the CIA lost track of the two men. Yet according to the same footnote in the 9/11 report and other sources Michael later sent a cable to others within the CIA stating that this information *had been* shared with the FBI.

In a subsequent 2005 “Executive Summary” from the *CIA Office of the Inspector General Report on CIA Accountability With Respect to the 9/11 Attacks*, the findings of which were partially released in 2007, it was revealed that some fifty to sixty CIA personnel knew of this infiltration by Al Qaeda into the US, yet failed to pass this critical, possibly life-saving information, onto the FBI or to Richard Clarke, Bush’s Chief of Counterterrorism, despite Clarke’s closely working relationship with CIA Director George Tenet. In this same footnote of the 9/11 Commission report, it notes a CIA cable entitled “Activists of Bin Laden Associate Khalid Revealed,” from January 4, 2000, and further states that “His Saudi passport—which contained a visa for travel to the United States—was photocopied and forwarded to CIA headquarters,” while noting that this critical bit of information was not shared with the FBI until August of 2001.

Indeed, according to an interview Clarke did in 2011, at the principals meeting with Bush National Security Adviser Condoleezza Rice and others on September 4, 2011 in which Clarke participated; despite Tenet’s and Clarke’s urging that other senior officials in the Bush White House immediately address the imminent terrorist threat to the US homeland, CIA Director Tenet failed to tell the officials present of one of, if not the strongest bit of evidence for this urgency, namely the CIA’s knowledge that two Al Qaeda operatives had already successfully infiltrated the US some time ago. As to why Tenet didn’t reveal this, Clarke speculates that Tenet did not want to answer the question as to how long he had known this and kept this secret, because the answer, for over a year, would be bureaucratic suicide.

And yet, though again it’s only speculative, Clarke, the first and one of the only US officials to apologize to the 9/11 families for his failure and that of the US government as a whole for failing to prevent the 9/11 attacks, believes that even if senior officials had been made aware of this reality at late as September 4<sup>th</sup>, 2011, that there would have been a good chance that those Al Qaeda agents could have been rolled up and the 9/11 attack averted. Of course, we’ll never know but it’s a pretty strong charge coming from the former Chief of Counterterrorism for the Bush White House before and after September 11, 2001.

Yet the story of Khalid al-Mihdhar and Nawaf- al-Hamzi gets even worse. Once the two had arrived in Southern California, they made their way to San Diego, where they were assisted by Saudi national Omar al-Bayoumi, who let them stay at his apartment, helped them to find their own and then paid their security deposit and first month’s rent. Both the classified and unclassified parts

of the Congressional Report on the 9/11 attacks produced by a joint panel of the House and Senate Intelligence Committees, indicate the strong possibility that al-Bayoumi was a Saudi intelligence agent, including according to officials who read the report as stated in leaks to the *New York Times* (10/2/03). The unclassified parts of the report states that “one of the F.B.I.’s best sources in San Diego informed the FBI that he thought that al-Bayoumi must be an intelligence officer,” going on to say that “despite the fact that he was a student, al-Bayoumi had access to seemingly unlimited funding from Saudi Arabia.”

Some 46 Democratic Senators and the then Republican Chair of the Senate Intelligence Committee, Senator Richard Shelby, asked that the classified parts of the edited 28 page section of the report be declassified but to this day it is still secret. Democratic Senator Schumer of New York stated that: “Keeping this material classified only strengthens the theory that some in the U.S. Government are hellbent on covering up for the Saudi’s” (NYT, 10/2/03). Later, al-Mihdhar and al-Hamzi, were helped by a San Diego FBI agent told to get close inside the Muslim community, thought the FBI was reportedly unaware of this.

## Hollywood's New Femme Fatale & the Torture of Innocents<sup>vi</sup>

So what drove *Zero Dark Thirty's* red-headed heroine Maya, aka, Alfreda Frances Bikowsky's, obsession with Usama Bin Laden? We can only speculate. Yet it may very well be that Alfreda's own culpability and that of her CIA colleagues, in failing to pass on the critical bits of information regarding the two Al Qaeda operatives that had infiltrated the US, which if more widely known might have led to the apprehension of these men who were two of the 19 hijackers who carried out 9/11, and thus might have prevented the attacks, helped drive her desire for revenge.

In this instance, to use the famous sixties slogan in another context, the personal is political. And as a subsequent investigative report by AP reporters Adam Goldman and Matt Apuzzo, entitled "At CIA, Mistakes By Officers Are Often Overlooked," of February 9, 2011, published the *Washington Post*, noted, albeit without using names, Alfreda also bore personal responsibility for one of the most scandalous incidents of the CIA's kidnapping and torture program: that of a German citizen of Lebanese descent, Khalid El-Masri in December of 2003, thought to be a high level Al Qaeda operative but then found out to be innocent of any terrorist ties, something reaffirmed just this December 2012 by Europe's highest court, the Grand Chamber of the European Court of Human Rights in Strasbourg, replete with the awarding of damages for his kidnapping and torture.

According the various reports, ever since the 9/11 Commission criticized the CIA for being risk-averse, CIA officials have become even more reticent to discipline agents. Thus, despite the fact that many in the CIA's Counterterrorism Center doubted that El-Masri was a terrorist, Alfreda Frances Bikowsky, the heroine Maya in *Zero Dark Forty*, sure of herself, just as depicted in the film in her supposed certainty regarding Usama's whereabouts, pressed on, pushing for his kidnapping and torture, which was done. This time, apparently, though, her certainty, lauded by the film in regards to her finding of Usama (something which we don't know if it is true or not), was wrong. We do know that in the case of El-Masri, the film's heroine was horribly wrong, and El-Masri and his friends and relatives are still living with the life-long consequences of his kidnapping and torture today. According to the *Washington Post* story,

Senior managers were briefed, and a lawyer in the Counterterrorism Center signed off, former officials said. The CIA's inspector general determined that there



had been no legal justification for Masri's rendition. Although the inspector general does not make legal conclusions, the CIA's watchdog had essentially said the agency acted illegally...Hayden decided that the lawyer should be reprimanded...The analyst would be spared, he told colleagues, because he didn't want to deter initiative within the ranks.

And so, even after Alfreda's failures in helping to prevent 9/11 by withholding along with her CIA brethren, right up to CIA Director George Tenet, the fact that two known Al Qaeda operatives had infiltrated the US, and her role in the subsequent kidnapping and torture of an innocent person in a case of mistaken identity, El-Masri, then CIA director Michael Hayden, promoted her to be the Chief of the CIA's Global Jihad Unit. The Global Jihad Unit is supposedly an integral part of the Agency's Counterterrorism Center focused on Al Qaeda. The lawyer involved in the case is now apparently a legal adviser to the Near East Division.

Not surprisingly, El-Masri torture, for which Alfreda, the film's heroine Maya, appears to be substantially responsible, appears nowhere in *Zero Dark Thirty*, which of course might interfere with the film's pro-torture narrative in its hunt for Bin Laden, and thus with its quest for numerous Oscars. In reality, though, Maya/Alfreda's career – for she and her subordinate were promoted after 9/11 and then again after the torture of El-Masri – reminds one of the quip that followed architect of the Vietnam War, President Johnson's National Security Adviser (and former Deputy National Security Adviser under McGeorge Bundy in the Kennedy Administration), Walt W. Rostow's career: "he goes from failure to failure with ever mounting success."

That being said, at this point we don't really know the extent to which Maya, and the real life CIA agent her character is based upon, is represented accurately or is a composite of various people whose work led to the finding of Usama Bin Laden, or what her individual contribution was. What we do know, with more certainty, though, is that the film's protagonist was intimately involved with the wholesale violations of the Geneva Conventions and UN Convention against Torture, war crimes that are punishable by death under current US law (Jinks & Sloss, 2004). The war crimes against El-Masri and countless other kidnapping and torture survivors in which our *Zero Dark Thirty* heroine is implicated and the related ongoing story of justice delayed, justice denied, refuses to go away

however. Indeed, the trail runs from the Bush administration all the way through to the Obama administration, right up to the present moment.

On January 31, 2007, the public prosecutor of Munich, Germany issued domestic arrest warrants for the thirteen agents of the CIA involved in the kidnapping of El-Masri, their identities having been given to them by Spanish authorities, whose airports had been used by the CIA in the kidnapping. The WikiLeaks revelations of recent years' unearthed cables from February 2007 where officials of the Bush administration appear to have successfully threatened the independent prosecutor in Germany and German officials not to issue international arrest warrants, lest it harm US-German relations.

Though it hasn't been mentioned before, a major factor here may have been the Bush administrations' desire to take pressure off the US Supreme Court. For the US Supreme Court was soon to consider possibly listening to El-Masri's appeal challenging the State Secrets privilege, recurrently used by the Bush and later the Obama administration to deny the consideration of torture cases against the CIA and US government, by El-Masri and others. The Germans did in fact back down, never issuing international arrest warrants and the US Supreme Court, in October 2007, declined *ceteriorari*, I.e., to hear and review El-Masri's case, thus upholding the State Secrets doctrine used to dismiss lawsuits from survivors of US programs of kidnapping and torture after 9/11, including under President Obama.

Another cable released by WikiLeaks, dated April 17, 2009, reveals the Obama White House's successful pressure of the Spanish government, which had issued arrest warrants for the same CIA agents, to stop criminal investigations into the leading torture lawyers of the Bush administration and the use of Spanish bases for extraordinary rendition flights, including of El-Masri. Equally as outrageously, just a few months later, in July 2009, Obama's then Solicitor General Elena Kagan, weighed in on a US Supreme Court case, citing a lower US court ruling against El-Masri, to make the argument that the States Secret doctrine, despite going back to the divine right of English monarchs, was rooted in the Constitution (see Reifer, 2010; see Weaver & Escontrias, 2008; Pallitto & Weaver, 2007; see also Schwarz, Jr. & Hug, 2007; see also Greenwald, 2006).

As noted above, the February 2007 threats and the related decision by the US Supreme Court in October 2007 to deny the reconsideration of the State Secrets privilege that could have been achieved by hearing El-Masri's appeal may have been related. Similarly, the April 2009 US threats to Spanish authorities may have

been motivated, in part, by the Obama's administration's desire to weigh in but a few months later to the US Supreme Court, in an astonishing argument trying to argue for the constitutionality of the States Secrets privilege.

Here, then Solicitor General Elena Kagan used a case coming before the Supreme Court on another matter to weigh in and assert the findings of a lower court case in which a judge denied El-Masri consideration by stating that the State Secrets privilege was rooted in the Constitution, a claim never before made by a US Solicitor General to my knowledge, and which would be laughable were it not so outrageous. And yet, despite this outrageous assertion of Executive power and privilege by President Obama's Solicitor General, Kagan, in the pursuit of delaying and denying justice to US survivors of torture, her 2010 nomination and appointment to the US Supreme Court by President Obama soon thereafter sailed through, with virtually no stories in the media of her protection of secrecy and torture. Kagan's carrying water for the Obama administration in the denial of justice to survivors of US torture programs after 9/11, including El-Masri, and in the assertion of the constitutionality of the States Secrets privilege using this very case, apparently were not significant enough for the vast majority of the US media to cover, or to muster any significant opposition to her appointment as Supreme Court justice. This is but one telling indication of just how deep the liberal culture of torture in the US presently goes.

It should be stated here that the partial focus herein on the torture of innocents is in no way meant to imply that the torture of those guilty of crimes is any less morally repugnant, though the public may unfortunately think otherwise, a fact that needs changing in and of itself. Yet, in a personal conversation, Pentagon Papers whistleblower Dan Ellsberg pointed out to me that the importance of the prohibition against torture is not only that it protects those who may be indeed guilty of crimes from torture, but that, like the Miranda warning, it also protects innocent suspects from torture and coercive interrogation, as expressed in part in the Fifth Amendment to the U.S. Constitution, which states that "No person...shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...." As Ellsberg (2007) powerfully argues:

In particular, there is concern for banning, absolutely or to a maximum practical degree, "torture," and this for a number of reasons. First, it changes the relation of the subject to the state, and even the relation to the state of all citizens who know of its potential use...it not only causes pain and suffering to its victims,

but changes their relation to society and humanity as a whole, and that permanently; the sense of self and basic trust in other humans is permanently altered...Whereas human empathy is generally very limited with respect to perpetrators of heinous crimes or terrorist acts and to the known possessors of extremely guilty knowledge about such crimes, the main purpose of a ban on torture is not to protect such persons (as advocates of torture postulate) but to protect the mass of “innocent,” people who are potential subjects of investigation or suspects who are not, in fact, possessed of guilty knowledge or indeed...any knowledge critical to an investigation. To make them subject to torture is vastly to increase the number of actual victims of torture, most of whom know nothing that is important to increasing the safety of others or the population as a whole. It is to make a large part of the population if not all of it insecure in the most intimate and consequential sense...A comparable phenomenon occurred with the acceptance of strategic bombing in World War II and after, making non-combatants legitimate and actual targets of direct attack. The number of potential and actual victims in wartime was multiplied. Above all, with the extension of the same principle to the planned use of thermonuclear weapons, the potential victims have come to encompass the populations of continents, hemispheres, and all life on earth.<sup>vii</sup>

## Torture & 9/11

Now we come to two of the most insidious aspects of US policies of torture, both of which are highly relevant to considering morality of the film, *Zero Dark Thirty's* celebration of torture, namely the relationship between US programs of torture, the 9/11 attacks and the false confessions gotten through torture by the Bush administration so to persuade Congress and the public to invade Iraq in 2002 and 2003, at a cost of trillions of dollars and anywhere from between over 100,000 to over a million Iraqi lives, not to mention that of US soldiers deployed to Iraq. As many have argued, Al Qaeda and the 9-11 attacks came out of the combination of the CIA and Saudi intelligence's organization of a global jihad against the Soviet invasion of Afghanistan, the making of a new generation of jihadists born and bred in the torture chambers of Egypt's infamous prisons during the height of US support for Mubarak's repressive regime and the large scale US military force presence in Muslim holy lands such as Saudi Arabia that began with the 1990-1991 Gulf War, all fueled by US desires to continue its control of Middle Eastern oil reserves, while also striking blows against the USSR and Shia Iran (Pape, 2006; Pape & Feldman, 2010; Wright, 2007). Torture in Mubarak's dungeon like prisons in fact fueled the emergence of the Egyptian contingent of Al Qaeda, often considered the brains behind the organization, notably in the person of Al Qaeda's number two man, Ayman al-Zawahiri (Gerges, 2006, 2009).

In fact, in the last few years, the Arab Spring temporarily allowed for these taboo truths to be revealed in the US. Soon after the uprisings began, conservative *New York Times* columnist Ross Douthat started out his piece, "The Devil We Know," provocatively writing: "As the world ponders the fate of Egypt after Hosni Mubarak, Americans should ponder this: It's quite possible that if Mubarak had not ruled Egypt as a dictator for the last 30 years, the World Trade Center would still be standing," then going back to muse though, that perhaps the devil we know – Mubarak – is still better than what might lurk in the wings.

The thesis is credited to the reporter, Lawrence Wright (2007), whose *The Looming Tower: Al Qaeda & the Road to 9/11*, raised the possibility, Douthat notes, that "America's tragedy on September 11 was born in the prisons of Egypt." Douthat, Wright and others are not alone in this assessment. One of the world's foremost experts on radical violent jihadists, Fawaz Gerges (2006, 2009), has long noted the role of torture, and later the US invasion of Iraq in 2003, in spawning a new generation of Muslim extremists determined to strike the far enemy, the US, including in Iraq, so as to get the US to withdraw military forces from Muslim

lands and stop support tyrannical regimes through torture and coercion (see also Pape, 2006; see also Pape & Feldman, 2012).

### **Torture, False Confessions and America's Invasion of Iraq**

Furthermore, a report by the Senate Armed Services Committee (2008) on the Treatment of Detainees in US Custody and a host of other sources, including Michael Isikoff and David Corn's (2007) *Hubris: The Inside Story of Spin, Scandal & the Selling of the Iraq War*, revealed the successful use of torture by the Bush administration, by their standards, in extracting the false confessions they desired so as to build their totally fabricated story that a) Iraq was tied to Al Qaeda and thus to the 9/11 attacks against the US and b) that Iraq had weapons of mass destruction and was working on a nuclear program. In this effort, the cooptation of the mass media in spreading disinformation from the Bush administration, most notably Judith Miller of the *New York Times*, were central, as was the bending of the CIA to the will of the Bush and Cheney White House (Powers, 2004).

Paul Pillar, the lead CIA official for the Far East, by his own admission – in *Foreign Affairs* and later in his (2011) *Intelligence & U.S. Foreign Policy: Iraq, 9/11, & Misguided Reform* – along with his colleagues, “bent with the wind.” Specifically, in addition to the erroneous certainty of CIA Director George Tenet's about Iraq's WMDs, what he called to President Bush, “a slam dunk,” the CIA also played a major role in deceiving the public on the subject, at the President's behest. Pillar, under pressure from the Senate Intelligence Committee who wanted the public to know the dissents in the intelligence community on the question of Iraq's WMD's, drafted what turned out to be a trumped up White Paper justifying the case for invading Iraq. In this publicly released propaganda paper, those dissenting voices that the Senate Intelligence committee wanted the public to know about, from the Top Secret National Intelligence Estimate (NIE) that Congress forced the White House to provide when asked for Congressional authority to invade Iraq in 2002, were nowhere to be found (Isikoff & Corn, 2007). In his new book, Pillar (2011) has since stated: intelligence on WMD's had nothing to do with the decision by the Bush administration to invade Iraq; it only mattered for the false sales pitch to garner Congressional and public support.

What is of particular significance for assessing *Zero Dark Thirty's* celebration of torture, is the role of torture in the US invasion and occupation of Iraq, with all its consequences and implications. Most recently, Human Rights Watch, in their 2012 report, *Delivered into Enemy Hands: US-Led Abuse & Rendition of*

*Opponents to Gaddafi's Libya*, based on extensive first hand interviews and intelligence reports and memoranda gotten after the fall of Gaddafi, documented widespread US CIA programs of kidnapping, torture and rendition to Gaddafi for torture. In this report, almost wholly ignored by the US corporate media, Human Rights Watch (2012: 6, 10) highlighted in particular the case of Ibn al-Sheikh al-Libi, noting that:

his case is significant, among other reasons, because the United States relied on statements obtained through his interrogation while in CIA custody to justify the 2003 invasion of Iraq...al-Libi was held in US custody for years, allegedly tortured, and then rendered to Libya...His rendition and torture is of particular importance because it produced intelligence that the CIA itself has recognized was unreliable but that nevertheless played a significant role in justifying the US invasion of Iraq in 2003 (see also Clarke, 2012).

Human Rights Watch (2012: 17, 15, 120, 129) confirmed the imprisonment of al-Libi and others during their visit to Libya in 2009 and asked to see him; some two weeks later they were informed that he had committed suicide, a claim widely disbelieved by persons interviewed by Human Rights Watch who knew him, with additional doubt cast by pictures of al-Libi's bruised and swollen body. Al-Libi was secretly jailed and tortured by the CIA over a number of years before being transferred to the Libyan dictator.

President Bush, in an October 2002 speech on Iraq, and Secretary of State Colin Powell, in his historic speech and presentation to the UN on February 5, 2003, used the false information garnered from al-Libi's torture about Al Qaeda's ostensible cooperation with Iraq on chemical, biological, radiological and nuclear weapons, to sell the Iraq war. And yet, as Human Rights Watch notes, this was information which the US Defense Intelligence Agency had discredited a year earlier, and which the CIA deemed unreliable, and which al-Libi later recanted, saying he lied about future operations to avoid torture.

Powell used the false information to try and rally US and international support for the impending US invasion of Iraq, a war of aggression under the UN Charter and international law, and the supreme international crime, namely crimes against the peace, at the US-led Allied War Crimes Trial in Nuremberg after World War II, for which high officials of the Nazi regime were hanged. When President Bush finally admitted the existence of the secret CIA detention program and transferred

some 16 prisoners to Guantanamo, al-Libi's name was "noticeably missing from the list" (Human Rights Watch, 2012: 124).

Human Rights Watch (2012: 9) also revealed extensive cooperation between the US CIA and Britain's MI6 during the Bush-Blair years, noting in one particular instance, the transfer of a longtime opponent of Gaddafi to the Libyan dictator around March 9, 2004 – the day al-Libi allegedly committed suicide – and

just weeks before UK Prime Minister Tony Blair flew to Tripoli on March 25 for a very public rapprochement with Gaddafi. The same day, Anglo-Dutch oil giant Shell announced it had signed a deal worth up to 550 million [British pounds] (approximately \$1 billion US) for gas exploration rights off the Libyan coast.

What's more, despite claims by the Obama administration that they have stopped torture, a massive amount of evidence shows that torture has continued under Obama, including at a secret prison at Bagram air base in Afghanistan, whose existence was confirmed by the International Committee of the Red Cross and reported by the BBC. Torture also continues at jails throughout Afghanistan, a government which is bought and paid for by the US taxpayer, this according to the October 2011 report from the UN Office of the High Commission for Human Rights, "Treatment of Conflict-Related Detainees in Afghan Custody." The detailed report documented the widespread practice of torture throughout Afghanistan and America's regular transferring of prisoners to be tortured by the Afghan government it pays for. In addition, the Obama administration, while saying it still wants to close Guantanamo, has successfully argued the legal position that those prisoners held at Bagram Air Base, should be off limits from US and international law, including the great writ of habeas corpus, akin to those at Guantanamo; which raises the question: what's the point of closing Guantanamo, if Bagram becomes the new Guantanamo?



## The Military-Corporate Media-Entertainment-Complex

Last but not least, but again relevant for understanding Hollywood soon to be global celebration of torture in *Zero Dark Thirty* – America's torture coming out party as it were – is the close links that have developed over the years between the US corporate media and US government (Turse, 2009). As James Der Derian (2001) noted soon after 9/11:

...social scientific theories are unsuited for the kind of political investigation demanded by the emergence of a military-industrial-media-entertainment network. President Eisenhower in his 1961 farewell address famously warned the US of the emergence of a 'military-industrial complex', and of what might happen should 'public policy be captured by a scientific and technological elite'. Now

that Silicon Valley and Hollywood have been added to the mix, the dangers have morphed and multiplied. Think Wag the Dog meets The Matrix. Think of C.Wright Mill's power elite with much better gear to reproduce reality. So, for the near future, I believe virtuous war as played out by the military-industrial-media-entertainment network will be our daily bread and nightly circus.

To be sure, Der Derian exaggerates the novelty of this, as Hollywood and the corporate media have long produced propaganda for war since their inception (see Bernstein, 1977; see Melley, 2012; Baker, 2012). Yet Derian is correct to focus on the nexus between the corporate-media and America's military-corporate complex. We now know in retrospect how critical Judith Miller, the *New York Times* and other media were in making the case for the Iraq war to the US public (Isikoff & Corn, 2007). Today, *Zero Dark Thirty* reveals more than ever the continued importance of the military-media-entertainment network with regard to America's embrace of torture after 9/11. In fact, though, over the past decade, as the *New York Times* revealed in a series of articles (cited in the bibliography below), and which have extensively been documented elsewhere, after 9/11 the Pentagon increased its' coordination with a network of private military contractors who regularly appeared on news programs to discuss the progress of America's wars, so as to shape the Bush administration's message about US wars (see also Arsenault & Castells, 2006; see also Castells, 2011). This is part and parcel of the larger *Manufacture of Consent* as Edward Herman and Noam Chomsky (2002)

have documented in their landmark book of the same name, subtitled *The Political Economy of the Mass Media* (see also Chomsky, 1991).

This collaboration between the White House, mass media and private military contractors benefitting from Pentagon contracts and US wars, has increasingly shaped our images of war and torture. Moreover, this collaboration continues right up to the present. The film *Zero Dark Thirty* dramatically reveals this, most especially via the picture itself, but also through the hundreds of pages of emails and transcripts of the CIA, Pentagon and White House's close collaboration with the film makers, secured by Judicial Watch (2012) through Freedom of Information Act Requests, and the related back and forth legal wrangling, in which the distinct possibility that the CIA and/or the Pentagon would be allowed to review *Zero Dark Thirty's* final script, is openly alluded to.

## ***Zero Dark Thirty: Brought to You By Hollywood, the Pentagon, the White House & the CIA***

Whether or not the script was officially reviewed by the Pentagon, CIA or White House or all three, something we don't know at the moment, the Agency, in the words of the CIA's Chief Media Liason, who heads the CIA's Office of Public Affairs, Marie E. Harf, in an email on July 30, 2011 was assured of the films outcome: "Boal [the films writer and producer] seems committed to representing the Agency well in what is a multi-million dollar major picture." A week later on June 7, 2011, Harf wrote in two separate emails:

I don't think anyone disagrees that we should place most of our betting money on the Boal project at this point...I know we don't "pick favorites" but it make sense to get behind the winning horse...Mark and Kathryn's movie is going to be the first and the biggest. It's got the most money behind it, and two Oscar winners on board. It's just not a close call. We can certainly talk to [others]...but I don't think that should all get this kind of CTC treatment, that's all.

For the makers of *Zero Dark Thirty*, they got inside access on the killing of Usama Bin Laden, replete one can assume with lies about the role of torture in his hunting and killing, helped along by their own and the public's "need not to know." After all, the true story might insert moral ambiguity in what could otherwise be a perfect Hollywood script, based on secrecy and lies. In fact, the film is a sort of anti-*Hearts & Minds*, the famous anti-Vietnam war documentary, in which the Americans are now the heroes (see Ellsberg, 1972, 2002, 2010; see Turse, 2013). For the CIA and officials of the Bush and Obama administration who've carried out and covered up US programs of torture and denied justice to the survivors, what better way to secure future immunity from prosecution, than to convince the public that torture was indispensable in catching and killing the man widely believed to be responsible for the terrorist attacks of 9/11. To this date, not a single CIA official has being prosecuted for torture. At the same time, John Kiriakou (2012), who worked for the CIA from 1990 to 2004, was prosecuted for revealing, in a response to a query from the *New York Time*, the name of a former colleague involved in the CIA's torture program. Kiriakou, the first person to be successfully prosecuted under the Intelligence Identities Protection Act in 27 years, in what then CIA Director David Petraeus hailed as an "important victory" for the US intelligence community, faces up to thirty years in prison, but by plea

bargaining, got US prosecutors to drop related charges against him and recommend thirty months instead (NYT, 9/23/12).

There was something in it for the White House too, as the Obama administration was led to believe that the film would come out in mid-October 2012, right before the Presidential election. The *New York Times* went along too. Mark Mazzetti, National Security Correspondent for the *New York Times*, sent an August 5, 2011 email to CIA's Marie Harf, along with an advance copy of Op-Ed Columnist Maureen Dowd's piece on the movie, with a foreword that said: "this didn't come from me...and please delete after you read. See, nothing to worry about...."

In her column, which appropriately came out on August 6, 2011, the anniversary of the US nuclear bombing of Hiroshima, Dowd noted:

Just as Obamaland was hoping, the movie is scheduled to open on October 12, 2012 – perfectly timed to give a home-stretch to a campaign that has grown tougher. The moviemakers are getting top-level access to the most classified information in history from an administration that has tried to throw more people in jail for leaking classified information than the Bush administration. It was clear that the Obama administration had outsourced the job of manning up the president's image to Hollywood when Boal got welcomed to the upper echelons of the Pentagon and showed up recently – to the surprise of some military officers – at a C.I.A. Ceremony celebrating the hero Seals.

## What To Do? *Zero Dark Thirty* and the Challenges for the Global Human Rights Movement to Abolish Torture

The international human rights movement to abolish slavery, torture and uphold human dignity has a long history in the triangle of emancipation and beyond, from the abolitionist movement and the actions of Africans struggling against enslavement and for their freedom, to the US and Haitian revolutions, to Black Reconstruction in the US, to the movement against torture and violence – physical and structural – and for human rights today (see Reifer, 2012d, 2008, 2013). So what to do, at a time when it seems like America's liberal culture and ideology of torture, may be about to prevail? We live now in a time of great danger: if *Zero Dark Thirty* goes uncontested across the globe, torturers and their allies across the world will have won an important propaganda victory. And this could happen, especially if *Zero Dark Thirty* wins at the Academy Awards, and is given one or many Oscars, possibly for Best Picture, for which it is still in the running. At that point, if this happens, convincing the US public that torture should be ended may well be impossible. But if our movement against torture and for justice for survivors, victims and their families keep the issue alive all the way up to and beyond the Academy Awards, we can possibly help deny the film any awards, or at least morally tarnish the awards that are given, by uniting around a powerful slogan: **No Oscars for Torture: End Torture Now.**

We live in dangerous and perilous times. But as Walter Benjamin argued in his famous Theses on the Philosophy of History, written right after the Hitler-Stalin Pact and as the Nazi armies advanced on his heels across Europe, times of danger are also times of opportunity. We need a massive mobilization in the US and across the globe to first and foremost challenge the morality of torture, *no matter what the outcome*. There is no moral justification for torture, under any circumstances. And to prey upon the insecurities of the US public to make a case for torture based on lies, reflects a moral bankruptcy that shows just how strong America's liberal culture of torture has become and the need to find justifications so we can look ourselves in the mirror and not see the reality of the torturers that we have become.

Yet in addition to concentrating first and foremost on the immorality of torture, and violation of international law, we must also expose the lies *Zero Dark Thirty* uses to promote America's liberal culture of torture and to reveal instead the sordid truth of torture, the consequences of US programs of rendition and torture

*before and after 9/11*, most especially for its thousands of victims. We must also expose the likely role of torture and US military interventions and support for client states in the oil rich Middle East in inspiring a global jihad to attack the US, and its role in garnering support for the US illegal invasion of Iraq. And we must remember the costs for US soldiers, innocent Iraqi civilians and survivors of torture, including the lifelong scars of complex post-traumatic stress disorder that afflict both soldiers and torture survivors (Herman, 1997; Luban & Shue, 2012; Ojeda, 2008).

We need to be aware too, of our connection to the original abolitionist movement, the movement of the slaves and their allies for emancipation from slavery and torture, and for human dignity, as in the Amistad rebellion, and depicted powerfully, albeit not without serious limitations, in recent Hollywood films. If we campaign with the slogan, **No Oscars for Torture: End Torture Now**, we can help sustain a national movement to end torture, and generate too a powerful global anti-torture movement that could culminate in massive nonviolent demonstrations protesting the prospects of Academy awards for *Zero Dark Thirty* at the upcoming Academy Awards in Hollywood on February 24, 2013. We need to build a movement too that exposes the close cooperation of the makers of *Zero Dark Thirty* with the CIA, the Pentagon and the White House, and criticize US programs of kidnapping, torture and assassination, including through the use of drone warfare, that continue today.

To this end, we must demand that the 6,000 page Senate Intelligence report on torture be released immediately, by flooding the Committee's representatives with letters and phone calls. And even while we call on the Senate to release the report, we should openly call, as I do here, for some patriotic citizen to do what Private Bradley Manning is accused of doing, and for which he was jailed and tortured, to release this compilation of war crimes to the public (see Ellsberg, 2012; see Madar, 2012; see Assange, 2012; see Greenberg, 2012). The UN Special Rapporteur on Torture should also demand the release of the report. For the report, combined with the film, *Zero Dark Thirty*, could help provide, finally, for the prosecution of the torture lawyers of Washington and their superiors and subordinates.

Finally, at a time when the world's most populous democracy, India, is rocked by demonstrations protesting the brutal gang rape of a female Indian medical student, in the same week in which another rape victim committed suicide, the last thing the world needs is a film that glorifies torture, of which rape has long been

an important form. For as America's sad love affair with torture, which has involved rape, sexual humiliation and sodomy, as was revealed to the world at Abu Ghraib, is brought to light, the last thing the world needs is a film glorifying these very practices and hiding some of their more heinous aspects by sanitizing the true reality and extent of America's embrace of torture after 9/11.

In the last few years, as Manuel Castells (2012) noted recently in his *Networks of Outrage & Hope: Social Movement in the Internet Age*, the world has seen massive regional and global social movements against tyrannical regimes supporting torture and aggressive war and the related polarization of wealth, power and income from the many to the few, from the Arab Spring to the Occupy Wall Street movement. On the back cover of Lawrence Weschler's (1990) book, *A Miracle, A Universe: Settling Accounts with Torturers*, it notes the questions that faced survivors of torture...to bring torturers to justice and, in the process, redeem their societies from decades of brutality...Weschler...tells...of their risky and seemingly doomed campaigns.”

Yet here we must remember the globalization of the human rights movement and related struggles for democratization and against torture in Latin America did achieve important successes, in conditions far more adversarial than faced in the US today. Part of the battle here of course, was a struggle over the historical memory of what happened during the dark years of tyrannical regimes with their interrelated policies of secrecy, lies and torture, a struggle leading to the Chilean dictator Pinochet's arrest in London and trial in Chile, as has been recounted in Steven J. Stern's brilliant multivolume work, *The Memory Box of Pinochet's Chile* and a host of other works (Roht-Arriaza, 2006).

Perhaps, a global movement for the abolition of torture and related forms of violence and war, including drone assassinations, can help us uphold the human dignity that torturers violate every day, and in so doing, help us to create a new ark for all the world's creatures, including for those survivors of torture, such as myself, that live among us (see the Vista, 2012; Reifer, 2012; Sottas, 1998; Dewulf, 2012).<sup>viii</sup> For torture is more than the particular incidents of brutality; the scars last a lifetime. The new respect for the dignity of all humans and the rest of the world's species and a new relationship between humans and nature, based on mutual respect for our living planet, could then be harnessed to create a more egalitarian, democratic and peaceful world order. Failing that, we will go backward to the dark ages of torture and the tyranny and war to which it is intimately related.

Some years ago, Sister Dianna Ortiz, a torture survivor and founder and former director of the Torture Abolition and Survivors Support Coalition (TASSC) in Washington, D.C., stated that all humans have a moral obligation to work for the abolition of torture. If we agree, then the question becomes, what are we called upon to then do as moral human beings? The abolition of torture is one of the great challenges facing humanity, and as stated above, could be a key towards transforming our world as a whole. If we fail in this task, now as we are confronted with the glorification of torture and targeted assassinations in *Zero Dark Thirty*, none of us, at least in the US, will be able look in the mirror without recognizing that, more than ever, as Mark Danner (2005, 2012, 2004, 2009) put it so poignantly in an Op-Ed piece in the *New York Times* some years ago, “We Are All Torturers Now.”



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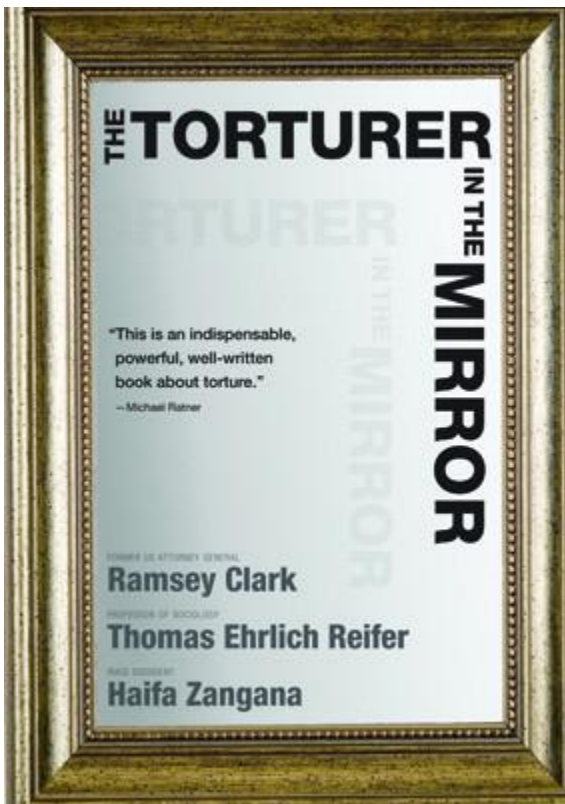


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Thomas Ehrlich Reifer, is co-author of *The Torturer in the Mirror*, Seven Stories Press, with former US Attorney General Ramsey Clark and Iraqi Dissident and torture survivor, Haifa Zangana <http://catalog.sevenstories.com/products/torturer-in-the-mirror>

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THE UNITED STATES  
*and* TORTURE



INTERROGATION, INCARCERATION, AND ABUSE

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<sup>iv</sup> See the generally laudatory review in the *New York Times* by Brook Barnes, "As Enigmatic as Her Picture," Sunday, December 30, 2012, section "The Oscars," pp. 2, 14.

<sup>v</sup> For a powerful argument for a moral absolutist prohibition against torture, see Ginbar, 2010 and Luban, 2006, 2007, as well as the website of the Torture Abolition & Survivors Support Coalition <http://tassc.org/blog/>.

<sup>vi</sup> For a recent detailed but ultimately quite problematic assessment (from the vantage point of morality and a human rights perspective) of these matters, see Mark Osiel, *The End of Reciprocity: Terror, Torture & the Law of War*, Cambridge University Press, 2009; an important critique "An Eye for An Eye: Counterterrorism, Reciprocity, & Human Rights," by Seumas Miller appeared in *Harvard International Review*, Spring 2009, Volume 31, #1, pp. 8486

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especially by Charles Gittings, one of the founders of the Project to Enforce the Geneva Conventions <http://www.pegc.us/> See also the important work of Theodor Meron – on Shakespeare, the laws of war and the evolution of customary international law and the recent work of Giorgio Agamben.

On the importance of cultural messages from television, see Jane Mayer, "Whatever it Takes: The Politics of the Man Behind 24," *New Yorker*, 2/12/07. See also the brilliant book by Marguerite Feitlowitz, *A Lexicon of Terror: Argentina & the Legacies of Torture*, New York: Oxford University Press, 1998. For a religious Catholic perspective, see John Perry, *Torture: Religious Ethics & National Security*, New York: Maryknoll, Orbis Books, 2005. Thanks to Robert Ellsberg for sending this to me.

[http://www.newyorker.com/printables/fact/070219fa\\_fact\\_mayer](http://www.newyorker.com/printables/fact/070219fa_fact_mayer) See also Martha Minow, "Living Up to the Rules: When Should Soldiers (and Others?) Disobey Orders?", Montreal, 2006

<http://www.learntoquestion.com/resources/database/archives/000907.html> and subsequently revised and reprinted. See also Elaine Scarry, *The Body in Pain*, New York: Oxford University Press, 2007.

vii Dan Ellsberg, Unpublished paper, March 12, 2007.

viii For the question of the torture of children in domestic violence situations, a lacunae in the existing international agreements and conventions against torture, which limit it to that done by "public authorities," see the first and only multidisciplinary study of children and torture, to my knowledge, Geraldine Van Buren's, ed., *Childhood Abused: Protecting Children Against Torture, Cruel, Inhuman & Degrading Treatment & Punishment*, most especially Eric Sottas, the former head of the World Organization Against Torture, "A Non-Governmental Organization Perspective of the United Nations' Approach to Children and Torture," Ashgate, 1998, pp. 139-154. My own story is that of being abused and tortured by my "caretakers," including being thrown against walls, picked up by ears and my hair till clumps fell out, my face smashed in plates of food, beaten with straps, the metal parts of belts, and with canes, chased with baseball bats, repeatedly strangled and drowned until I thought I would pass out or die, and brutalized, humiliated and attacked on a daily basis, until I ran away from home to escape this violence at age 13. I still struggle with the legacy of complex post-traumatic stress disorder so I know the lifelong effects of torture first hand. See *The Vista*, 2012, and my 2012d *Beyond the Triangle of Emancipation* for brief discussions.