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A Necessary Reckoning with Torture

By Philip Giraldi

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Much of the world continues to regard the post-9/11 United States as a rogue nation because the so-called global war on terror, coupled with the Bush Doctrine, sent a clear message that Washington would intervene in other countries as necessary if it felt in any way threatened. The fully justified attack on Afghanistan and al-Qaeda quickly morphed into questionable military action in a score of nations and the ill-advised war against Iraq, which continues to bear bitter fruit.

As the memory of the 9/11 attacks has faded, a more reflective America has lately begun to question Washington's largely militarized global role and to examine some of the misguided policies that grew out of the understandable desire to strike back against terrorism. The most reprehensible practice engaged in by United States military and intelligence personnel in the years immediately following 9/11 was so-called "enhanced interrogation," which was itself part of a broader program dealing with the treatment of prisoners acquired worldwide in the aftermath of the terrorist attack.

A new report ^[1] by the Washington D.C.-based Constitution Project's Task Force on Detainee Treatment appeared last week, and it should once and for all end the largely partisan debate about whether the United States engaged in torture as part of its counterterrorism effort. A rehashing of the pros and cons regarding the handling of terrorists might well have been considered old news but for the Task Force's well documented unanimous judgment that in the aftermath of 9/11 the U.S. government had indeed carried out acts that were indisputably torture.

A second finding maintains that the top officials in Bush administration bear full responsibility for enabling the practice, having entered into detailed discussions before committing what amount to war crimes.

For once, the media was paying attention. The *Washington Post* and the *New York Times* covered ^[2] the report in detail and followed up with editorials ^[3], op-eds ^[4], and a focused blog entry ^[5], suggesting that some pundits have begun to realize that the employment of torture goes far beyond the act itself in terms of its implications. Inflicting pain as an interrogation technique post-9/11—based on Justice Department memos that the report describes as “acrobatic,” “erroneous,” and ethically challenged—was a significant break with constitutionalism and rule of law. John Yoo, author of the best known memo, is quoted in the report as having confirmed that the president could order torture “since it wasn’t a legal question, but rather ... a policy question.” Other memos stated that the definition of torture should only encompass physical abuse that would lead to organ failure. The report also notes how the corruption resulting from the White House decision to permit torture was so pervasive that CIA medical doctors routinely monitored the physical abuse that detainees endured and even made suggestions to “improve” the results. Given the importance of the subject and the credibility of the task force, the *Times* concluded that even if the report appears to be “musty old business,” it rises to the level of being a “necessary reckoning”

The story also appeared in a number of other major newspapers, including ^[6] the *Los Angeles Times*, and was commented on ^[7] at length by Andrew Sullivan. Former Bush administration U.N. Ambassador John Bolton immediately attacked ^[8] its conclusions, apparently without reading the full report, as “completely divorced from reality,” noting that the enhanced interrogation procedures were “lawyered” again and again. Much of the media coverage was, inevitably, narrowly focused on one of the panel’s principal findings, that torture by the U.S. government was “indisputable.”

The meticulously documented 577-page report, which took two years to prepare, was the work of an 11-strong nonpartisan panel that included a broad range of contributors drawn from top levels of government and the private sector. Its co-chair was a former senior official from the Bush administration, Asa Hutchinson, who served both in Congress and at the Department of Homeland Security. Former George H.W. Bush UN Ambassador Thomas Pickering also was on the task force. The stated purpose of the inquiry was first to determine “what is known—and what may still be unknown—about the past and current treatment of suspected terrorists detained by the U.S. government during the Clinton, Bush and Obama Administrations.” This was accomplished through more than 100 interviews and review of public-record information, without having access to classified information. The panel then drew conclusions and recommended remedial action based on what was learned. The suggested responses to the development of the torture regime seek to establish a firm legal and institutional basis whereby no White House will ever again be tempted to resort to extraordinary measures in time of national emergency.

The Constitution Project report notes that the use of torture in Guantanamo, Iraq, Afghanistan, and at CIA “black site” secret prisons has damaged the standing and moral authority of the United States and has placed at risk U.S. soldiers, diplomats, and even tourists venturing

overseas. The task force makes no attempt to engage Alan Dershowitz's fantastical "ticking bomb" argument to justify torture in some circumstances; nor, lacking access to classified records, could it determine definitively whether torture ever provided critical information. The report notes somewhat drily that former officials who now defend the intelligence value of torture lack credibility because they were, generally speaking, the ones who had approved the practice in the first place. But based on its interviews, the panel was unable to develop any persuasive evidence that inflicting pain ever produced anything more than false leads and fabricated responses intended to stop the suffering.

The report notes that those Bush loyalists and CIA apparatchiks who persist in arguing that torture is effective might also consider the classified 6,000-page Senate Intelligence Committee report ^[9], which used government records to examine in detail every interrogation carried out by the Agency. It reportedly agreed with the Constitution Project Task Force, concluding that torture never produced any information that could not have been obtained by less coercive means.

The task force sifted through the evidence collected from its interviews and public-records searches to issue its unanimous finding that torture "indisputably" occurred post-9/11, a judgment "offered without reservation ... not based on any impressionistic approach ... grounded in a thorough and detailed examination of what constitutes torture in many contexts, notably historical and legal." An appendix cites the federal government's own previous determinations on what constitutes torture to make the case that there has always been a clear understanding that physical coercion by someone acting on behalf of the United States government is completely unacceptable on legal and constitutional grounds. Some of the citations date from the Bush administration, demonstrating that one part of the government was simultaneously practicing what another part was condemning.

The task force interviewed both government officials and former detainees, and its report provides what appears to be conclusive evidence that the use of various forms of torture, as well as widespread physical abuse, was far more common than has been conceded by the CIA and Defense Department, underlining the urgency of a full and systematic accounting of what the White House permitted to be carried out in the name of the United States in the aftermath of the terrorist attack. The report notes that former Vice President Dick Cheney persists in having "no regrets" over using harsh interrogation practices including waterboarding, a view that is not uncommon among a large and "disturbing" part of the American public, which will likely continue to support the use of torture until a detailed accounting of what actually took place sets the record straight.

The report describes in detail how some prisoners were tortured to death or died under mysterious circumstances. Others were chained to walls or hung from ceilings. Some were restrained and placed in unchanged diapers for days at a time, forcing the prisoner to soil himself repeatedly for the duration of his interrogation. Placing suspects in stress positions for hours or days, the use of guard dogs to terrify, enforced nakedness, exposure to cold and heat, and sleep deprivation were routine.

Of particular interest to those who believe that the CIA has been guilty of some dissimulation regarding the torture that it carried out—since it conveniently destroyed many of the records—the Constitution Project confirms that one or more Libyans were subjected to waterboarding, a challenge to the Agency’s contention that the procedure was only used on three al-Qaeda detainees. And another interesting sidebar is the account of how the International Red Cross learned about the systematic torture at Guantanamo shortly after it began but decided it would be better and “more politically acceptable” not to go public and expose the abuses being authorized by the White House.

And it is not all about George W. Bush. Rendition of prisoners began under Bill Clinton and sometimes had nothing whatsoever to do with terrorism. Several dissident Libyans were turned over to strongman Colonel Muammar al-Gaddafi as a favor. The Obama administration made clear that it had stopped all “enhanced interrogation” when it took office, but it continued to render suspects to friendly governments for questioning. The governments involved pledged not to use torture on the suspects, but an assurance of that nature is little more than a polite diplomatic fiction well understood by both Washington and the nation receiving the prisoners.

Obama also failed to bring transparency and closure to the illegal activity by refusing in 2009 to go after those who ordered and carried out the torture, in spite of the fact that Washington is a signatory to the International Convention Against Torture, which requires prompt investigation of all such allegations. Obama claimed that he wanted to look forward rather than back and, to be sure, he would have faced intense Republican resistance if he had proceeded, but he has since stonewalled on any accountability by repeatedly citing the state secrets privilege to halt legal proceedings or attempts by victims of the torture to obtain redress. The White House also has reneged on pre-election pledges to close Guantanamo prison, where suspects continue to be held indefinitely and illegally without any charges and a large scale hunger strike currently underway is being dealt with through forced feeding, which the Task Force considers to be a form of torture. The report concludes that Obama’s refusal to address the treatment of detainees generally “cannot continue to be justified on the basis of national security.”

Which leads to the report’s most important conclusion, that until the American people know exactly what was done in their name there can be no understanding of the violations of law and constitutionalism that took place after 9/11. “As long as the debate continues, so too does the possibility that the United States could again engage in torture,” the report warns while Thomas Pickering notes ^[4] a bipartisan government failure to “to fully acknowledge and condemn it” so Americans can finally “confront the truth.” He adds that “democracy and torture cannot peacefully coexist in the same body politic.” Some other commentators have noted that Obama could actually pursue the issue in a depoliticized fashion by appointing an independent “Truth and Reconciliation Commission” similar to that which took place in South Africa after apartheid. Closure on torture is important because without a full understanding of what has taken place, nothing will be done by Congress or the White House to take necessary steps to amend the existing anti-torture statute and the War Crimes Act to unambiguously label any infliction of pain on a prisoner as both completely unacceptable ethically and illegal.

The detainee treatment report is not an easy read, but it should convince a wider audience that the United States behaved wrongly post-9/11 and should now be strong enough to face the truth

and initiate measures to ensure that nothing similar happens again. Given the actual record on torture and renditions, trusting the government to do what is right is no longer an option, particularly when the White House can and will claim that its actions are based on national-security imperatives that cannot be revealed. Rather more appropriate in the post-9/11 world is the old Ronald Reagan maxim “trust but verify.” If the United States is ever to recover its good name as “an exemplary practitioner of the rule of law,” it must take steps to confront the past. As Andrew Sullivan put it ^[7], “There is no way forward without this going back. And there is no way past this but through it.”