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New Report Blows the Lid Off America's Recent History of Torture

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“A nonpartisan, independent review of interrogation and detention programs in the years after the Sept. 11, 2001, terrorist attacks concludes that ‘it is indisputable that the United States engaged in the practice of torture’ and that the nation’s highest officials bore ultimate responsibility for it.”

So began a page-one story in *The New York Times* that should have dominated public discussion for days and begun the process of coming to terms with this shameful chapter in American history. Unfortunately, the story ran April 16, the day after the Boston Marathon bombing, and thus got little notice. And just as attention on Boston was waning, the George W. Bush Library and Museum was dedicated in Dallas. Unsurprisingly, neither President Obama nor the ex-presidents assembled to celebrate the event (and the Bush administration), mentioned this “nonpartisan, independent review.”

It’s been pretty much consigned to the memory hole. But maybe it’s not too late to retrieve it.

The review was done by The Constitution Project’s Task Force on Detainee Treatment, which included members not normally associated with critics of the Bush administration, such as former Republican Rep. Asa Hutchinson (co-chairman), who was an undersecretary in the Bush

administration's Department of Homeland Security and administrator of the Drug Enforcement Administration.

The task force concluded that in Iraq, Afghanistan, Guantanamo, and other places, American forces engaged in torture and other practices that violated U.S. laws and international treaties — conduct that has been condemned by the U.S. government when practiced by other governments. Such conduct has long been considered a war crime, the task force noted. While it stopped short of claiming that the highest government leaders explicitly called for the use of torture against detainees, it said the use was a consequence of the administration's declaration that the Geneva Conventions did not apply to people captured in the "war on terror." (PDF) The report states,

The Task Force believes there was no justification for the responsible government and military leaders to have allowed those lines to be crossed. Doing so damaged the standing of our nation, reduced our capacity to convey moral censure when necessary and potentially increased the danger to U.S. military personnel taken captive.

Democracy and torture cannot peacefully coexist in the same body politic. The Task Force also believes and hopes that publicly acknowledging this grave error, however belatedly, may mitigate some of those consequences and help undo some of the damage to our reputation at home and abroad.

The task force also found,

There is no firm or persuasive evidence that the widespread use of harsh interrogation techniques by U.S. forces produced significant information of value. There is substantial evidence that much of the information adduced from the use of such techniques was not useful or reliable.

It notes that some former officials insist their interrogation techniques were effective, adding, "but those officials say that the evidence of such success may not be disclosed for reasons of national security." The task force discounts such assertions, however, because the former officials "generally include those people who authorized and implemented the very practices that they now assert to have been valuable tools in fighting terrorism.... It is reasonable to note that those former officials have a substantial reputational stake in their claim being accepted." The task force went so far as to reject the claim that torture led to the locating of Osama bin Laden, citing the Senate Intelligence Committee finding to that effect. (The fundamental case against torture, of course, is not that it is ineffective, but that it is immoral.)

The task force also called attention to the continuing detention of prisoners at Guantanamo, over half of whom have long been cleared for release. At the moment 100 of the 166 prisoners are conducting a hunger strike, and 21 are being force-fed by nasal tube, which in itself has been called torture and is condemned by the task force. A majority of the task force called for civilian or military trials of some of the detainees and release of others to countries in which they will not be tortured. It continued,

Those prisoners who are deemed to still be a threat to the safety of the U.S. and its citizens and who would be difficult (a) to prosecute because they were subjected to torture or the relevant

criminal laws did not apply overseas at the time of their conduct; or (b) to transfer due to lack of suitable receiving country, would be brought to the mainland United States and held in custody until a suitable place to transfer them was found. Their cases would be subject to periodic review.

This recommendation is not good enough. How can men be held indefinitely because the alleged evidence against them was obtained by torture and is inadmissible? That is grounds for release. But even worse is the recommendation from the two-member minority consisting of Hutchinson and Richard Epstein (yes, alas, *that* Richard Epstein):

As troubling as indefinite detention might be, there are currently no good or feasible alternatives. Those prisoners who are deemed to be a continuing threat to the United States and for whom a trial is not currently feasible, and where there is no other suitable country that will accept them, should remain in detention for the foreseeable future. They should not be brought to the U.S., and Guantánamo remains the best location to hold them.

Justice demands to know why people against whom there is apparently no trial-worthy evidence are to be left to rot in an American prison in Cuba. This is truly a disgrace. And notice the self-reinforcing nature of the argument. These people are said to be a threat, but holding them at Guantánamo sows the seeds of hostility and the desire for revenge. Even if they were tried and acquitted, they might be angry at the U.S. government for the treatment they received. Are they still to be held even if acquitted? (The Bush administration thought that in some cases, yes.)

It's good to see that the task force report holds the Bush administration lawyers responsible for the mistreatment of detainees:

Lawyers in the Justice Department's Office of Legal Counsel (OLC) repeatedly gave erroneous legal sanction to certain activities that amounted to torture and cruel, inhuman or degrading treatment in violation of U.S. and international law, and in doing so, did not properly serve their clients: the president and the American people.

Extraordinary rendition, the practice (begun in the Clinton years) of outsourcing torture to foreign governments, and abuse of detainees at secret CIA prisons, or "black sites," also come in for condemnation as violations of international law. Unfortunately, the task force did not call for an end to turning people over to other governments; it simply recommended that there be more than "diplomatic assurances" that torture will not take place.

Refreshingly, physicians and psychologists are taken to task for their participation, in violation of age-old ethical standards, in the abuse of detainees, both by devising techniques that constituted torture and for failing to report abuses. It's about time a floodlight was shined on this shameful conduct by medical and so-called mental-health professionals.

Also welcome is the recommendation that "the executive branch should declassify evidence regarding the CIA's and military's abuse and torture of captives." We have a right to know what this lawless government did in our names.

The task force also called on the government to comply with its obligation under the Convention Against Torture to assure “that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.” Quite the opposite has happened: “The United States has not complied with this requirement, in large part because of the government’s repeated, successful invocation of the state-secrets privilege in lawsuits brought by torture victims.” The Obama administration has been particularly determined to keep such suits out of court. This is a blot on the country.

The report further indicted the government for not complying with its obligation under the Convention Against Torture to “criminalize all acts of torture, attempts to commit torture, or complicity or participation in torture” and “proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.” It notes that “no CIA personnel have been convicted or even charged for numerous instances of torture in CIA custody.” Conspicuous by its absence is the call for prosecution of President Bush, Vice-President Dick Cheney, members of the Office of Legal Counsel who cooked up legal justifications for torture, CIA director George Tenet, and other top officials.

President Obama says “looking backwards” at past conduct is unproductive when it comes to the interrogation of detainees. That’s odd. The government doesn’t find it unproductive to look back when private individuals commit crimes. Why should government officers get special treatment?

We can only hope that someday, when these people are traveling abroad, they will be arrested and brought before the International Criminal Court.

Finally, the task force notes that Obama, despite apparent promises to end the abuses, has not lived up to expectations. Guantanamo is still open (he said this week he would push to close it), and reporter Jeremy Scahill has exposed the CIA’s continued participation in interrogations in a secret prison beneath Somalia’s National Security Agency. Scahill’s reporting reveals that the administration has simply outsourced torture — hardly an improvement over the Bush years. Of course, Obama also claims the power to kill people and to detain them indefinitely in a military prison without due process.

“The Obama administration has ended the most inhumane treatment of detainees,” the report states, “though some troubling questions about current policies remain unanswered. But it is unclear whether it has taken sufficient steps to prevent a future administration from resorting to torture or cruel treatment.”

When it comes to conserving the national-security state, it matters little which party is in power.