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U.S. Practiced Torture After 9/11, Nonpartisan Review Concludes

By **SCOTT SHANE**

WASHINGTON — 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.

The sweeping, 577-page report says that while brutality has occurred in every American war, there never before had been “the kind of considered and detailed discussions that occurred after 9/11 directly involving a president and his top advisers on the wisdom, propriety and legality of inflicting pain and torment on some detainees in our custody.” The study, by an 11-member panel convened by the [Constitution Project](#), a legal research and advocacy group, is to be released on Tuesday morning.

Debate over the coercive interrogation methods used by the administration of President George W. Bush has often broken down on largely partisan lines. The Constitution Project’s task force on detainee treatment, led by two former members of Congress with experience in the executive branch — a Republican, Asa Hutchinson, and a Democrat, James R. Jones — seeks to produce a stronger national consensus on the torture question.

While the task force did not have access to classified records, it is the most ambitious independent attempt to date to assess the detention and interrogation programs. A separate 6,000-page report on the Central Intelligence Agency’s record by the Senate Intelligence Committee, based exclusively on agency records, rather than interviews, remains classified.

“As long as the debate continues, so too does the possibility that the United States could again engage in torture,” the report says.

The use of torture, the report concludes, has “no justification” and “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.” The task force found “no firm or persuasive evidence” that these interrogation methods produced valuable information that could not have been obtained by other means. While “a person subjected to torture might well divulge useful information,” much of the information obtained by force was not reliable, the report says.

Interrogation and abuse at the C.I.A.’s so-called black sites, the Guantánamo Bay prison in Cuba

and war-zone detention centers, have been described in considerable detail by the news media and in declassified documents, though the Constitution Project report adds many new details.

It confirms a report by Human Rights Watch that one or more Libyan militants were waterboarded by the C.I.A., challenging the agency's longtime assertion that only three Al Qaeda prisoners were subjected to the near-drowning technique. It includes a detailed account by Albert J. Shimkus Jr., then a Navy captain who ran a hospital for detainees at the Guantánamo Bay prison, of his own disillusionment when he discovered what he considered to be the unethical mistreatment of prisoners.

But the report's main significance may be its attempt to assess what the United States government did in the years after 2001 and how it should be judged. The C.I.A. not only waterboarded prisoners, but slammed them into walls, chained them in uncomfortable positions for hours, stripped them of clothing and kept them awake for days on end.

The question of whether those methods amounted to torture is a historically and legally momentous issue that has been debated for more than a decade inside and outside the government. The Justice Department's Office of Legal Counsel wrote a series of legal opinions from 2002 to 2005 concluding that the methods were not torture if used under strict rules; all the memos were later withdrawn. News organizations have wrestled with whether to label the brutal methods unequivocally as torture in the face of some government officials' claims that they were not.

In addition, the United States is a signatory to the international Convention Against Torture, which requires the prompt investigation of allegations of torture and the compensation of its victims.

Like the still-secret Senate interrogation report, the Constitution Project study was initiated after President Obama decided in 2009 not to support a national commission to investigate the post-9/11 counterterrorism programs, as proposed by Senator Patrick J. Leahy, Democrat of Vermont, and others. Mr. Obama said then that he wanted to "look forward, not backward." Aides have said he feared that his own policy agenda might get sidetracked in a battle over his predecessor's programs.

The panel studied the treatment of prisoners at Guantánamo Bay, in Afghanistan and Iraq, and at the C.I.A.'s secret prisons. Staff members, including the executive director, Neil A. Lewis, a former reporter for The New York Times, traveled to multiple detention sites and interviewed dozens of former American and foreign officials, as well as former detainees.

Mr. Hutchinson, who served in the Bush administration as chief of the Drug Enforcement Administration and under secretary of the Department of Homeland Security, said he "took convincing" on the torture issue. But after the panel's nearly two years of research, he said he had no doubts about what the United States did.

“This has not been an easy inquiry for me, because I know many of the players,” Mr. Hutchinson said in an interview. He said he thought everyone involved in decisions, from Mr. Bush down, had acted in good faith, in a desperate effort to try to prevent more attacks.

“But I just think we learn from history,” Mr. Hutchinson said. “It’s incredibly important to have an accurate account not just of what happened but of how decisions were made.”

He added, “The United States has a historic and unique character, and part of that character is that we do not torture.”

The panel found that the United States violated its international legal obligations by engineering “enforced disappearances” and secret detentions. It questions recidivism figures published by the Defense Intelligence Agency for Guantánamo detainees who have been released, saying they conflict with independent reviews.

It describes in detail the ethical compromise of government lawyers who offered “acrobatic” advice to justify brutal interrogations and medical professionals who helped direct and monitor them. And it reveals an internal debate at the International Committee of the Red Cross over whether the organization should speak publicly about American abuses; advocates of going public lost the fight, delaying public exposure for months, the report finds.

Mr. Jones, a former ambassador to Mexico, noted that his panel called for the release of a declassified version of the Senate report and said he believed that the two reports, one based on documents and the other largely on interviews, would complement each other in documenting what he called a grave series of policy errors.

“I had not recognized the depths of torture in some cases,” Mr. Jones said. “We lost our compass.”

While the Constitution Project report covers mainly the Bush years, it is critical of some Obama administration policies, especially what it calls excessive secrecy. It says that keeping the details of rendition and torture from the public “cannot continue to be justified on the basis of national security” and urges the administration to stop citing state secrets to block lawsuits by former detainees.

The report calls for the revision of the Army Field Manual on interrogation to eliminate Appendix M, which it says would permit an interrogation for 40 consecutive hours, and to restore an explicit ban on stress positions and sleep manipulation.

The core of the report, however, may be an appendix: a detailed 22-page legal and historical analysis that explains why the task force concluded that what the United States did was torture. It offers dozens of legal cases in which similar treatment was prosecuted in the United States or denounced as torture by American officials when used by other countries.

The report compares the torture of detainees to the internment of Japanese Americans during World War II. “What was once generally taken to be understandable and justifiable behavior,” the report says, “can later become a case of historical regret.”