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## Coming: Judgement day for U.S. torture

By: Nat Hentoff – May 1, 2013

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As I'll be turning 88 in June, I'd begun to lose hope for at last witnessing in my lifetime some legal accountability for the George W. Bush-Dick Cheney-Barack Obama-CIA-national security torture policy instituted after 9/11, which continues today.

That was until I saw this April 16 New York Times front-page headline: "U.S. Practiced Torture After 9/11, Nonpartisan Review Concludes."

It was referring to the Washington, D.C.-based Constitution Project, a bipartisan legal research organization that has long been one of my primary sources for keeping the Constitution intact. It recently released a deeply researched, footnoted and documented 577-page report entitled "Detainee Treatment," characterized in an April 17 Times editorial as "Indisputable Torture."

"It is the fullest independent effort so far to assess the treatment of detainees at Guantanamo Bay, in Afghanistan and Iraq and at the CIA's secret prisons" -- and beyond ("Indisputable Torture," The New York Times, April 17).

I have the full report, and in this series I will demonstrate why -- as the Times phrased it for future historians and We The People -- "its authoritative conclusion that 'the United States engaged in the practice of torture' is impossible to dismiss by a public that needs to know what was committed in the nation's name."

Showing how forceful this report is, news analyst Glenn Greenwald, whose commentary I never miss, recently underlined that until now: "The New York Times ... steadfastly refused to use the word 'torture' to describe what was being done (unless it was done by other countries)" ("U.S. torture 'indisputable,' CNN's humiliation, and Iran sanctions," Greenwald, guardian.co.uk, April 18).

The most stubborn of those who still refuse to use the word "torture" to describe our treatment of detainees is President Obama, who has yet to issue any response to the Constitution Project's "Detainee Treatment" report. He remains unyielding in his determination that "nothing will be gained by spending our time and energy laying blame for the past" (my column, "President Reagan's Torture Advice to President Obama," [cato.org](http://cato.org), May 20, 2009).

Ronald Reagan insistently pressed for American ratification of the United Nations Convention Against Torture, which he signed on April 18, 1988. He declared it "will clearly express United States opposition to torture, an abhorrent practice unfortunately still prevalent in the world today."

As I have often reported, and as Reagan emphasized when signing it, the convention establishes a "universal jurisdiction" under which each signer must "prosecute torturers who are found in its territory or ... extradite them to other countries for prosecution."

This "universal jurisdiction" includes officials from each signing nation -- all the way to the top -- "who authorized torture."

It starts here with Bush and Cheney.

Yet this is what we find in the Constitution Project's report, as stated on page 335: In the United States, "there have been no professional sanctions against legal, medical or mental health personnel who participated in or authorized cruel treatment and torture."

Nor have there been any sanctions against the executive branch.

The report continues: "The criminal laws against torture have not been enforced against any CIA employee (including those working in the agency's secret prisons), even in cases of homicide and where the public evidence very strongly suggests that interrogators went beyond OLC's (Office of Legal Counsel's) and their headquarters' authorization."

The Constitution Project goes on to review both our Republican and Democratic administrations' licenses to commit torture:

"The (U.S.) Uniform Code of Military Justice also retains its clear prohibitions on mistreating prisoners, but the track record of prosecutions in the military is mixed at best, with many serious cases leading to no jail time or no convictions at all."

Under the heading "Can it Happen Again?" the Constitution Project makes a mistake when it says, "The Obama administration has ended the most inhumane treatment of detainees, though some troubling questions about current policies remain unanswered."

These questions are more than troubling, which a separate section of the report begins to make clear. I will focus on that next week.

Meanwhile, also judge for yourself whether the Constitution Project report underestimates how much Obama has sabotaged our future in this passage: "It is unclear whether (his administration) has taken sufficient steps to prevent a future administration from resorting to torture or cruel treatment, particularly if terrorists succeed again in conducting horrific crimes against Americans as they did on September 11."

Almost daily, the Obama administration is getting more secretive in its contempt for constitutional restrictions on its power. And it isn't going to prevent future administrations from aping it, even as a few of us keep piercing more of its obfuscations.

Starkly, what we have learned from the Constitution Project is unprecedented in American history. But if the citizenry is not shaken hard out of its apathy, our present and future governments will dissolve more of our fundamental constitutional precedents and continue to develop more cruel treatment of detainees.

How many 2016 presidential candidates from either party will likely refer to the Constitution Project's report? How many of you will know enough of it to remember it before you cast your vote?

More importantly, how many of your schoolchildren are aware of it now?