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Abu Ghraib accountability

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Although there was considerable media coverage of Alberto Gonzales' confirmation hearing for attorney general, a look at the full transcript still raises, for me, serious questions about his fitness to be our chief law enforcement officer.

At the start, Mr. Gonzales told the senators and the rest of us: "I think it is important to stress at the outset that I am and will remain deeply committed to ensuring that the United States government complies with all of its legal obligations as it fights the war on terror, whether those obligations arise from domestic or international law. These obligations include, of course, honoring Geneva Conventions whenever they apply."

Sen. Ted Kennedy asked the nominee if the media reports were accurate that Mr. Gonzales had chaired meetings that covered specific ways to make detainees talk. For example, having them feel they were about to be drowned or buried alive. Mr. Gonzales answered: "I have a recollection that we had some discussions in my office." But, he said, "it is not my job to decide which types of methods of obtaining information from terrorists would be most effective. That job falls to folks within the agencies."

So, "the agencies," including the CIA, can do whatever they consider effective; and Mr. Gonzales suggests that he had no role as to the lawfulness of those methods when he was counsel to the president, our commander in chief? Should he not have told the president that the Geneva Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment forbids "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession"? And should he not have been interested in trying to find out how many of those detainees had been sufficiently screened when captured in order to indicate whether they actually were terrorists or suspects or indiscriminately rounded up?

Sen. Russ Feingold asked Mr. Gonzales whether the president has "the authority to authorize violations of the criminal law under duly enacted statutes (by Congress) simply because he's commander in chief." Mr. Gonzales said: "To the extent that there is a decision made to ignore a statute, I consider that a very significant decision, and one that I would personally be involved with ... with a great deal of care and seriousness." "Well," Mr. Feingold said, "that sounds to me like the president still remains above the law." When Mr. Kennedy asked the same question, Mr. Gonzales said it was "a very, very difficult question." So, what does he believe about the separation of powers?

Another question from Mr. Kennedy: "Do you believe that targeting persons based on their religion or national origin rather than specific suspicion or connection with terrorist organizations is an effective way of fighting terrorism? And can we get interest from you [that], as attorney general, you'd review the so-called anti-terrorism programs that have an inordinate and unfair impact on Arab and Muslim?" Mr. Gonzales responded: "I will commit to you that I will review it. As to whether or not it's effective will depend on the outcome of my review." But Mr. Gonzales didn't answer the first crucial part of the question: Is targeting people based on religion, without specific suspicion, effective? And, I would add, isn't it broadly discriminatory?

Asked by Sen. Patrick Leahy about increasing reports of abuse of detainees in Iraq and Guantanamo Bay, Mr. Gonzales said: "I categorically condemn the conduct that we see reflected in these pictures at Abu Ghraib.

"I would refer you to the eight complete investigations of what happened at Abu Ghraib and Guantanamo Bay, and there are still three ongoing," he added. But none of the investigations have gone so far up the chain of command as the Defense Department and the Justice Department to determine the accountability of high-level policy-makers there.

As The Washington Post noted in a lead editorial on Jan. 7, "The record of the past few months suggests that the administration will neither hold any senior official accountable nor change the policies that have produced this shameful record." Nor did the senators ask themselves about Stuart Taylor's charge in the Jan. 8 National Journal that "Congress continues to abdicate its constitutional responsibility to provide a legislative framework" for the treatment of detainees. The White House strongly resists Congress' involvement.

"No longer," Mr. Taylor insisted, "should executive fiat determine such matters as how much evidence is necessary to detain such suspects (and) how long they can be held without criminal charges." As U.S. attorney general, will Mr. Gonzales move to reinstate the constitutional separation of powers to prevent further shame to the United States for the widespread abuses of detainees under the executive branch's parallel legal system of which Alberto Gonzales was a principal architect?