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John D. Hutson, Deborah Pearlstein: Gonzales vs. Geneva Conventions

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WASHINGTON

THE LATEST revelations of abuse "tantamount to torture" by U.S. authorities -- not in Iraq this time, but at the more closely monitored U.S. Naval Base at Guantanamo -- which the International Committee of the Red Cross reports include beatings, sexual humiliation, and prolonged isolation -- are now part of a familiar pattern of the Bush administration's no-law-applies approach to detainees in the "war on terror."

It's an approach that the courts have repudiated, and that most Americans oppose. But the man now poised to become America's chief lawyer was its principal architect. So we urge the senators to fully examine Mr. Gonzales's record.

Mr. Gonzales has a compelling life story: the son of a poor immigrant who beat the odds and is living the American dream. He has a distinguished legal career, and his nomination to be America's first Hispanic attorney general is an important step toward a presidential cabinet that reflects the people it serves.

But unfortunately, Mr. Gonzales has not demonstrated that he meets the most important requirement to fulfill the Justice Department's primary mission: a commitment to upholding the U.S. Constitution and the rule of law.

As White House counsel, Mr. Gonzales urged the president to consider the United States not bound by its obligations under the Geneva Conventions in its conflict in Afghanistan. His Jan. 25, 2002, memo -- which helped lay the groundwork for the widespread torture and other abuse that we've seen from Iraq to Afghanistan to Guantanamo Bay -- argued that the threat of terrorism had rendered the Geneva Conventions' protections "obsolete."

Indeed, Mr. Gonzales suggested that ignoring our treaty obligations would help insulate U.S. personnel from prosecution for war crimes under U.S. law (these personnel, it was implied, might engage in conduct giving rise to such issues). It was presumably with this concern that Mr. Gonzales later sought and oversaw preparation of ethically dubious memos purporting to provide legal justification for the use of torture in interrogation of al-Qaida suspects.

Mr. Gonzales's hesitancy to uphold America's laws was hardly limited to treaty obligations. He was also a chief defender of the administration's policy of detaining "enemy combatants" in the United States without access to counsel or an opportunity to dispute the allegations against them. In a speech to the American Bar Association last spring, Gonzales argued that the president was constrained in the "war on terror" by "prudence and policy," and not so much by the rule of law.

Not surprisingly, Mr. Gonzales's radical views have been rejected by the courts and the American people. The Supreme Court ruled eight to one last June that U.S. citizens held in military custody were entitled to a lawyer and an opportunity to argue their case before an unbiased authority. When told that the Supreme Court had rejected the administration's contention that it was not required to give detainees a lawyer or a full hearing, 68 percent of people surveyed by the University of Maryland's Program on International Policy Attitudes said that they agreed with the court.

Indeed, two out of every three Americans in the same survey said that "governments should never use physical torture." And nearly nine in ten respondents said that they favored complying with international law regarding the treatment of prisoners as a general principle. Asked whether unconventional fighters -- specifically, alleged members of al-Qaida -- should be accorded the same rights, 60 percent agreed.

The past four years have also shown that when it comes to fighting terrorism, Mr. Gonzales's uneasy relationship with the law is not just bad law -- it's bad policy. As Secretary of State Colin Powell warned in opposing Mr. Gonzales's views in 2002: to reject more than a century of U.S. policy and practice in upholding the Geneva Conventions would "undermine the protections of the rule of law for our troops, both in this specific conflict and in general."

Mr. Powell was also prescient in cautioning that our legal position would "undermine public support among critical allies, making military cooperation more difficult to sustain." Indeed, our allies are balking at cooperating in U.S. counterterrorism efforts in light of U.S. policy at Guantanamo Bay. And our enemies are using every photo of U.S. torture and other abuse as prime recruiting material.

Under the circumstances, the nomination of Mr. Gonzales risks sending a message to our country and the world that America lacks a firm commitment to principles of democracy and human dignity. These are principles, we are told, that such groups as al-Qaida most want to destroy.

The U.S. senators should ensure that the attorney-general nominee has been asked and responded to the question of whether he stands by the advice he gave the president -- and if so, how he squares that with the attorney general's responsibility to enforce the treaties and other laws of the United States. In particular, the senators should ensure that the nominee has been asked and responded to the question of whether he believes that the United States must observe the Geneva Conventions.

The senators should also ask whether Mr. Gonzales would uphold legal restrictions under U.S. and international law prohibiting torture and other cruel, inhuman and degrading treatment.

And, most important, the senators should insist on seeing the full record of Mr. Gonzales's involvement in developing a policy on the use of torture that even the White House has since disavowed.

Given the stakes, the Senate must study the facts and remember to "advise" as well as "consent" on the choice of the top lawyer for the United States.

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