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EDITORIAL

Torture and the Attorneys General

Consider how President Bush has degraded the office of attorney general.

His first choice, John Ashcroft, helped railroad undue restrictions of civil liberties through Congress after the 9/11 attacks. Mr. Ashcroft apparently had some red lines and later rebuffed the White House when it pushed him to endorse illegal wiretapping. Then came Alberto Gonzales who, while he was White House counsel, helped to redefine torture, repudiate the Geneva Conventions and create illegal detention camps. As attorney general, Mr. Gonzales helped cover up the administration's lawless behavior in anti-terrorist operations, helped revoke fundamental human rights for foreigners and turned the Justice Department into a branch of the Republican National Committee.

Mr. Gonzales resigned after his extraordinary incompetence became too much for even loyal Republicans. Now Mr. Bush wants the Senate to confirm Michael Mukasey, a well-respected trial judge in New York who has stunned us during the confirmation process by saying he believes the president has the power to negate laws and by not committing himself to enforcing Congressional subpoenas. He also has suggested that he will not uphold standards of decency during wartime recognized by the civilized world for generations.

After a Senate Judiciary Committee hearing in which Mr. Mukasey refused to detail his views on torture, he submitted written answers to senators' questions that were worse than his testimony. They suggest that he, like Mr. Gonzales, would enable Mr. Bush's lawless behavior and his imperial attitude toward Congress and the courts.

In a letter to the 10 Democrats on the committee, Mr. Mukasey refused to say whether he considered waterboarding (a method of extracting information by making a prisoner believe he is about to be drowned) to be torture. He said he found it "repugnant," but could not say whether it is illegal until he has been briefed on the interrogation programs that Mr. Bush authorized at Central Intelligence Agency prisons.

This is a crass dodge. Waterboarding is torture and was prosecuted as such as far back as 1902 by the United States military when used in a slightly different form on insurgents in the Philippines. It meets the definition of torture that existed in American law and international treaties until Mr. Bush changed those rules. Even the awful laws on the treatment of detainees that were passed in 2006 prohibited the use of waterboarding by the American military.

And yet the nominee for attorney general has no view on whether it would be legal for an employee of the United States government to subject a prisoner to that treatment? The only information Mr. Mukasey can possibly be lacking is whether Mr. Bush broke the law by authorizing the C.I.A. to use waterboarding — a judgment that the White House clearly does not want him to render in public because it could expose a host of officials to criminal accountability.

Mr. Mukasey's letter to the Senate committee accepts the administration's use of the so-called

shocks-the-conscience test to determine the legality of interrogation methods, rather than the clear and specific prohibitions against torture, humiliation and cruel treatment embedded in American and international law. The administration's standard is dangerously vague, invites abuse and amounts to a unilateral reinterpretation of the Geneva Conventions. Would Mr. Mukasey approve of a foreign jailer using waterboarding on an American soldier? Mr. Bush's policies increase the danger of that happening.

There seems to be little chance that Mr. Bush will appoint the sort of attorney general that the nation needs, a job that includes enforcing voting rights laws and civil rights laws and ensuring that criminal prosecutions are done fairly. Still, senators with a conscience that can be shocked should insist that Mr. Bush meet a higher standard than this nomination.

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