Addressing Social Security is not divisive—it is responsible.

The 109th Congress will be long on debate, but we must all work together to make sure that it is also filled with accomplishments for the American people. I look forward to working with my colleagues in the Senate and the House as we pursue a policy of hope and empowerment.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from South Carolina.

Mr. DEMINT. Mr. President, I rise today to express my strong support for the bold and forward-thinking agenda that President Bush laid out for us last night.

The President was right in saying that the state of our Union is ''confident and strong.'' We have been blessed with a healthy, growing economy, with more Americans going back to work, and with our Nation acting as a positive force for good in the world.

Our economy is bouncing back, but we all know that more must be done to make it stronger and more productive. The President understands that by making our economy more flexible, more innovative, and more competitive, we will keep America the economic leader of the world.

The President was very clear about the need for Congress to help reduce wasteful spending and burdensome regulations, make tax relief permanent, eliminate junk lawsuits, and lower health care costs. But I was most impressed with the President's willingness to tackle tax reform.

The President accurately pointed out that year after year, Americans are burdened by an archaic, incoherent Federal Tax Code. We all know that the Federal Tax Code is the No. 1 job killer in America, but very few of us seem willing to stand up and push for meaningful reform.

Earlier this year, the President established a bipartisan panel to study the Tax Code and to make recommendations. This is something I have been calling for for many years. When their recommendations are delivered, I stand ready to work with the President to give this Nation a Tax Code that is progrowth, easy to understand, and fair to everyone. If we want to secure the best jobs in the future, we must make America the best place in the world to do business. The President understands this, and I am hopeful that this body can make strides toward accomplishing that important goal.

Another goal the President put forward last night that is very close to my heart is the challenge of permanently fixing Social Security. I thought the President was clear about the financial problems facing the program. He pointed out what we all know but often fail to acknowledge—that Social Security will begin paying out more than it collects in just 13 years.

The current program does not have enough money to pay for all its promised benefits. Some may argue with this and say the trust fund will keep Social Security afloat until 2042, but I challenge them to show me the money, show me how they plan to make good on all of those IOUs. Our future seniors will not accept IOUs instead of real money, nor should they.

It is not enough to just oppose and obstruct one solution. The critics of reform must put forward their own plan. So far, we have not seen one.

I am very concerned about the misinformation surrounding this debate, and that is why I am introducing legislation today to require the Social Security Administration to update the information it gives American workers. The current statement entitled ''Your Social Security Statement'' fails to communicate the serious problems facing Social Security. The current statement reads like a passbook savings account and leads workers to believe that the Government is actually saving their money. It is not. The statement should tell workers that their combined employee and employer taxes total 12.4 percent of their wages throughout their life. It should tell them that none of that money is saved for their retirement. And it should tell them that each year that goes by, retirees get a lower and lower rate of return.

I thought the President's argument last night for the personal savings account was very accurate. He said:

> Your money will grow, over time, at a greater rate than anything the current system can deliver, and your account will provide money for retirement over and above the check you will receive from Social Security. In addition, you will be able to pass along the money that accumulates in your personal account, if you wish, to your children and grandchildren. And best of all, the money in the account is yours, and the Government can never take it away.

That last point is the most important part of this debate. Reforming Social Security with personal accounts is about forcing the Government to start saving workers' money for the first time in history so that no President, no Congress, can ever again spend it on other programs.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF ALBERTO R. GONZALES TO BE ATTORNEY GENERAL OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will resume executive session for the consideration of Executive Calendar No. 8, which the clerk will report.

The legislative clerk read the nomination of Alberto R. Gonzales, of Texas, to be Attorney General.

The PRESIDING OFFICER. Under the previous order, there will be 8 hours of debate equally divided between the Senator from Pennsylvania, Mr. SPECTER, and the Senator from Vermont, Mr. LEAHY, or their designees.

Under the previous order, time shall alternate every 30 minutes between the majority and minority for the first 2 hours, with the first 30 minutes under the control of the majority.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I rise to support a man of remarkable achievement, Judge Alberto Gonzales, to be the next Attorney General of the United States.

Judge Gonzales is proof that in America, there are no artificial barriers to success. A man or a woman can climb to any height that his or her talents can take them. For Judge Gonzales, that is a very high altitude indeed. And luckily for his country, he is not finished climbing yet.

Judge Gonzales is quite literally from humble beginnings. He was raised in the town of Humble, with seven siblings. The eight of them, and their mom and dad, lived in a small two-bedroom house that Judge Gonzales's father and uncles built from scratch.

Judge Gonzales's parents were both migrant workers of Mexican descent. They met while picking crops in the fields of south Texas. Both spoke little English, and had only 8 years of schooling between them. The house they raised Al in had no hot water or telephone.

But by teaching their gifted young son the value of perseverance and hard work, Pablo and Maria Gonzales raised a man who has been one of the most trusted advisors to the President of the United States.

Judge Gonzales got his first job when he was 12. He sold Cokes at Rice University football games. No one in his family had ever gone to college, and at that age Al didn't expect to either. When each football game ended, and the Rice students streamed out of the gates and back to their dorms, Al wondered about the world of education they were going back to.

He graduated from MacArthur Senior High School, a Houston public school, after challenging himself in college preparatory classes. He enlisted in the Air Force and was stationed north of the Arctic Circle at Fort Yukon, AK.

Those North Pole winds must have been a lot colder than anything he ever felt in Texas. It was probably a shock to young Al.

At the urging of his officers, Judge Gonzales applied and was accepted into the United States Air Force Academy. Our armed services are superb at finding and grooming talented Americans, and they succeeded again by pushing Judge Gonzales to the fore.

And then, in one of the moments where life begins to come full circle, Al transferred from the Air Force Academy to the very prestigious Rice University—the same Rice University where he had sold Cokes at football games as a boy. He fulfilled his 10-year dream of attending his hometown's preeminent institution.

He excelled at Rice and immediately entered Harvard Law School. Before the ink on his Harvard Law diploma was dry, he was recruited by the number-one law firm in Houston, one of the most esteemed firms in the Nation.

Judge Gonzales built himself from very modest beginnings to become one of the most distinguished attorneys in the country. A lot of us here are lawyers. We can tell the good ones from the mediocre ones, and Judge Gonzales is one of the best.

He could have stayed a highly paid Houston attorney. But he has answered the call to serve his country. Not just once, but again and again.

First he served as General Counsel to Governor Bush in Texas. Then the Governor appointed him as Texas's Secretary of State. Next, he was selected as a Justice of the Supreme Court of Texas. Then, he was asked to serve as Counsel to the President. Now he has been selected to be the 80th Attorney General of the United States—the first Hispanic-American to be the Nation's top law-enforcement officer.

But some in this body have made it clear they don't care about Judge Gonzales's exemplary record of service.

I want to rebut some galling allegations a few of my Democratic friends have made about Judge Gonzales. For instance, that he supports torture. I even saw one outrageous ad that juxtaposed Judge Gonzales's face with a picture of prisoner abuse at Abu Ghraib. Attempts to tar Judge Gonzales with this dirty brush are despicable.

Let me be clear: Judge Gonzales, President Bush, and the administration have never supported torture or the inhumane treatment of terrorist prisoners. Never.

Anybody who tries to tie Judge Gonzales to the depraved acts of a few twisted renegades ought to be ashamed.

Judge Gonzales has stated repeatedly that he does not support torture. He has stated repeatedly that no matter the answer to the question of whether al-Qaida terrorists deserve the privileges accorded to lawful combatants under the Geneva Conventions, it is the policy of this President that every prisoner will be treated humanely. And he has been repeating this long before he was the Attorney General nominee.

I am very disappointed that some of my colleagues refuse to acknowledge the frightening situation that President Bush faced after September 11. That a determined gang of terrorists could so easily kill 3,000 Americans. That many more terrorist cells may be poised to strike. Were our schools, our sports stadiums, our city halls safe? Even the postal system couldn't be trusted.

In that environment, Judge Gonzales aggressively explored every possible lawful means of gaining information about the terrorists, and their plots to murder innocent Americans. He was absolutely right to do so. He was fighting on behalf of his client, the United States of America. With the lives of his countrymen at stake, any less would have been a dereliction of duty.

Judge Gonzales doesn't owe anybody an apology for his record. But some owe him an apology, for rimracking him with phony allegations instead of honoring his willingness to serve his country.

Some have also criticized Judge Gonzales for supposedly not being sufficiently forthcoming with answers to questions from the Judiciary Committee. This is demonstrably untrue: Judge Gonzales has been extremely cooperative, and he has been asked far more questions than other Attorney General nominees in recent memory.

Judge Gonzales answered every question put to him at the committee's hearing, and then received hundreds of written questions afterward. Within days, he returned to the committee over 440 responses. I repeat: Within days, he returned to the committee over 440 responses. Then the committee asked Judge Gonzales even more questions, despite the fact that the deadline for questions imposed by the chairman had already passed. And still, Judge Gonzales graciously provided an additional 54 responses to every question that the Judiciary Committee could think of.

By contrast, Attorney General Janet Reno got only 35 questions from the Judiciary Committee in 1993. And records show she responded a whopping 9 months after she was confirmed. Let me repeat that. Janet Reno got 35 questions from the Judiciary Committee in 1993, and records show she responded 9 months after she was confirmed. I wish I had that plan when it came time to pay my bills.

Even the New York Times made the right call when it admitted Judge Gonzales has been very forthcoming. From January 19 of this year:

> His written responses totalling more than 200 pages on torture and other questions . . . offered one of the administration's most expansive statements of its position on a variety of issues.

That is the New York Times, not exactly a bastion of conservative or Republican supporters.

The position of the Attorney General, as we know, is a position of very high trust. After the President, he is the supreme law enforcement officer in the land. Like the President, he is charged with defending the Constitution. The office is reserved for those of great character. I don't have any doubt that Alberto Gonzales will fight to protect this country from terrorists with every bit of his power, while guarding the civil rights of every single American.

In short, he is supremely qualified to be the next Attorney General of the United States. I look forward to giving him my vote, and I am confident a vast majority of the Senate will, as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I commend the Senator from Kentucky for his excellent remarks, which I heard in my office, and the wrap-up I heard here. I congratulate all who have come forward in support of Judge Gonzales for their excellent statements and, I am prompted to say, in his defense.

It is a sad situation that a man of his integrity, of his accomplishments, of his skills, of his background, has to be defended in the Senate. This discussion we have had in committee and in the Senate is further evidence that the system of bringing not just Attorney General nominees but judicial nominees and other nominees—Secretary of State—has some serious problems. We have allowed the partisan politics to enter into some of these debates and discussions when we should be looking at the qualifications of the person, the integrity of the person, the skills of the person, the trustworthiness of the person, and whether they can do and execute the jobs faithfully.

Judge Gonzales has shown throughout his career, whether in his career as a lawyer, whether in his career as a counsel to the Governor, whether in his career as supreme court justice and elected official in the State of Texas, secretary of state, he has shown the highest degree of integrity and the skills necessary to do the job. He has proven to be trustworthy when given authority, taking that authority seriously and handling it with great responsibility.

I personally have worked with him on many occasions, and in some very difficult situations, and I have always found him to be completely forthright, brutally honest—in some cases telling me things I did not want to hear but always forthright, always honest, sincere, serious. This is a serious man who takes the responsibilities that have been given to him as a great privilege and a great honor which he holds very carefully and gently in his hands.

There is a wonderful spirit in this man of understanding the positions he has held, certainly the position he holds now as Counsel to the President, and the awesome responsibility that

comes with that. He has never given me any indication in any dealings I have had with him that he would do anything but faithfully execute his duties to the President and to the country, first and foremost.

Knowing the man—he is not a friend; I don't know him socially—having dealt with him on many occasions in my time in the Senate, to see this man being portrayed as someone who would condone torture in spite of all the statements to the contrary, someone who would not faithfully execute the laws of this country despite endorsements from every law enforcement agency there is out there—not just endorsements but glowing endorsements from law enforcement agencies and prosecutors—to see this man's integrity questioned, his forthrightness questioned, is a sad commentary on the questioners because this man's history, this man's record of service for the State of Texas and this Government is spectacular, as was Dr. Rice's service.

The sad part of this is that ultimately it is less about the individual and more about the politics. More and more we see that. We saw that last session of Congress with judicial nominations where it was more about the politics, the partisanship, than about the individual. Looking from afar and observing the political scene, as many people do in America, we see that, and that is just part of the game. Everyone is making their points when they have the opportunity and trying to drive the message. Maybe I can understand that a few months before an election, if you want to drive a pledge and position yourself on the wedge issues.

It is the first week of February. It is 3 months after the last election. Don't you think we can take a little time around here to treat people decently, people who serve this country well and have been role models and examples? Dr. Rice, Judge Gonzales—what two better stories in America of people who have achieved, from very humble beginnings, achieved at the highest level, and then to be treated as partisan pawns in this political process barely 3 months after an election. The Senate deserves better than that. More importantly, these are individuals. We are not debating a bill. This is not a piece of paper with words on it. If we say this language is bad or that language is bad, that is one thing. But to impugn the character of individuals, when you go after someone on a personal basis, when you say things and accuse people of things that are not supported by any of the evidence out there, and you do so principally not because you believe this person actually holds those characteristics but you do so for a grander political motivation, I argue that is something the Senate should not condone, and hopefully today we will see the votes in the Senate in a very strong and overwhelming bipartisan fashion.

There are a lot of people I commend on the other side of the aisle who have stood and spoken of their own experiences with this man. They have spoken about their review of the record and the facts and have given this extremely qualified nominee their support. It shows there are some on that side of the aisle who still are positioning themselves as if we are in the last week of October of last year instead of beyond that and moving on to try to do something that is positive for the future of our country.

I would argue Alberto Gonzales is going to be a great, positive contribution to the war on terror, to the crime-fighting obligation that he will have, to the integrity of our laws in this country. There is no question in my mind he will faithfully uphold the Constitution of the United States, and he will serve with great honor and distinction. It is my pleasure to speak in support of him.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, as I understand it, there are several minutes left for the majority at this particular moment. I inquire if I could begin my remarks—I think it has been agreed that I will be the first speaker on the minority side—and reserve whatever time the majority has for some point later so they do not lose their time. I ask unanimous consent that be the order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. Mr. President, I rise, late this morning, to speak on the nomination of Alberto Gonzales to serve as the Attorney General of the United States.

I would, as an initial matter, note that I know one of our colleagues came to the floor yesterday and spoke some words in Spanish in support of this nomination. And as someone who speaks Spanish, I was urged by some of my colleagues to do the same. I would not want to complicate the life of our reporters here. It is hard enough to understand us in English from time to time, and doing so in Spanish might make things more difficult.

I take great pride in the fact that I lived in a Spanish-speaking country as a Peace Corps volunteer, and that I have been a long-time member of the Senate subcommittee that concerns itself with Latin America. I understand this nomination is certainly a matter of ethnic pride to many. I understand that. But I would further suggest that to consider this nomination as only or even principally as a matter of ethnic pride does a disservice to the Latino, the Hispanic community. As far as I can tell, members of that community are no different than people throughout our great Nation. They want to know not only who you are and what you are, but also what you think and what you believe in. They want to know if a person nominated to be this Nation's chief law enforcement officer will uphold the rule of law.

The outcome of this nomination at this hour is not in doubt. It appears quite likely, if not altogether certain, that Mr. Gonzales will be confirmed by the Senate of the United States as our country's next Attorney General. So what I am about to say is of little, if any, consequence to the ultimate outcome of this particular nomination. If, in fact, this nominee is confirmed, I hope what I have to say might have some impact on his thinking as he assumes this office.

I have asked for time to participate in this debate because of the important questions that this nomination raises, for not only this body but for our Nation. I thank the two leaders for allotting time for a full debate on these questions.

I am going to oppose this nomination. I say that with deep regret. Like all or nearly all of my colleagues, I had very high hopes for this nomination when it was first announced. When Mr. Gonzales was nominated for this position several weeks ago, I didn't know a single Member who expressed any intention to vote against this nominee. That is certainly the case for this Senator. However, I also said at the time that I would reserve an ultimate decision until after the nomination was considered by the Judiciary Committee and put before the full Senate.

In the interim, the committee chairman and ranking member have done a tremendous job of holding a careful, thorough, and substantive set of hearings. They have given members of the committee every opportunity to ask questions of the nominee. Just as importantly, if not more, they have given every opportunity to the nominee to answer those questions fully.

As many of my colleagues may know, particularly those with whom I have served over the past almost quarter of a century, I have long adhered to the practice of according Presidents great deference in their nominations of term-limited appointees. Those who campaign for and win the highest office in our land deserve to name their team to the President's Cabinet. Accordingly, my standard of review for nominations such as this is different than it is for lifetime appointments.

There are two basic questions that must be answered. First, does the nominee have the personal qualities required to discharge the duties of the office to which he or she has been nominated? And secondly, has the nominee demonstrated an understanding of the duties that he or she will be required to discharge if confirmed?

Based on that standard of review and only that standard, I have supported overwhelmingly a number of Cabinet appointees during the quarter of a century I have served in this body. That

includes nominees of this President, including the current Attorney General, as many of my colleagues may recall 4 years ago. It also includes nominees proposed by Presidents and opposed by a majority of members of my own party, including, in at least one instance, a nominee opposed by a majority of the Senate. But I have, on rare occasions, less than five in my 24 years here, through all five Presidents during that time, opposed only a handful of Cabinet nominees, including nominees supported by the majority of Members of the Senate and a majority of members of my own party.

There is no question that this nominee possesses a number of admirable personal qualities. He has demonstrated considerable intellectual ability. He is an experienced and accomplished attorney. He has by all indications been a responsible member of his profession. And he has demonstrated commitment to public service. Like our colleagues, I have been deeply impressed with his proud family history.

But this nomination is not simply about Alberto Gonzales's impressive personal qualities. If it were, then he would be unanimously confirmed. What is at stake is whether he has demonstrated to the Senate that he will discharge the duties of the office to which he has been nominated, specifically whether he will enforce the Constitution and laws of the United States and uphold the values upon which those laws are based.

Regrettably and disturbingly, in my view, Alberto Gonzales has fallen short of meeting this most basic and fundamental standard. Let me explain why I take this position for two reasons: One, because in a nation founded on the principle of human freedom and dignity, he has endorsed, unfortunately, the position that torture can be permissible. And two, in a nation dedicated to the proposition that all are equal and none is above the law, he has suggested that the President of the United States, acting as Commander in Chief, has the right to act in violation of the laws and treaties prohibiting torture and may authorize subordinates to do the same. I will address briefly each of these issues in turn.

The issue of torture is relatively straightforward. Is it acceptable for the United States of America ever to effect or permit the torture or cruel, inhuman, degrading treatment of human beings? The Constitution clearly says no. The eighth amendment explicitly prohibits ''cruel and unusual punishments.'' The Geneva Conventions say no. They prohibit the torture and abuse of detainees and prisoners of war.

The Universal Declaration of Human Rights says no. Article 5 states:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The International Convention Against Torture also says no to torture. This document, signed by President Reagan, supported by former President Bush, and approved by the Senate Foreign Relations Committee under Chairman Helms with a unanimous committee decision, says:

> No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.

Lastly, the Army Field Manual says no to torture as well. This manual contains the knowledge, insight, and wisdom gathered by American soldiers over decades of hard experience.

It says:

> U.S. policy expressly prohibit[s] acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or to aid interrogation.

So this document, relied on for decades by U.S. military personnel in the theater of war to protect their lives and to do their duty, expressly prohibits torture. Why? Because, to again quote from the Army Field Manual:

> The use of torture is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. . . . It also may place U.S. and allied personnel in enemy hands at greater risk.

From the very earliest days of our Republic, the right to be free from torture has been a fundamental value of our Nation. Other values and rights have evolved or been won by the deprived and dispossessed: the emancipation of slaves, civil and voting rights for racial and ethnic minorities, equal rights for women, the right of privacy, just to name a few. But the right to be free from torture or similar treatment has never been in doubt, has never been seriously debated in our Nation. It has always been considered intrinsic to a nation such as ours, founded, as it is, upon the belief that all people are endowed with certain inalienable rights.

Yet, unfortunately, this nominee has in crucial aspects stood against the overwhelming and unequivocal weight of precedent and principle. He has instead stood on the side of policies that are in direct conflict with the laws, treaties, and military practices that have long guided our Nation and its citizenry. Moreover, the record strongly suggests that he, in fact, helped shape those policies to the great detriment of our Nation's moral standing in the world.

Indeed, as the White House Counsel, he is one of the chief architects of those policies. Let me review the record.

In January of 2002, Mr. Gonzales wrote a memorandum to the President of the United States regarding the applicability of the Geneva Conventions to the conflict in Afghanistan. He concedes in the memo that:

> Since the Geneva Conventions were concluded in 1949, the United States has never denied their applicability to either the United States or opposing forces engaged in armed conflict, despite several opportunities to do so.

But then Mr. Gonzales argues that the war on terror presents a ''new paradigm [that] renders obsolete Geneva's strict limitations on questioning of enemy prisoners.'' He urged a blanket exclusion of the Afghanistan war from the Geneva Conventions.

This position was strenuously opposed by Secretary of State Colin Powell. Powell pointed out:

> It will reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the rule of law for our troops, both in the specific conflict and in general.

He goes on to say:

> It will [also] undermine public support among critical allies, making military cooperation far more difficult to sustain.

Secretary Powell's legal adviser added that Mr. Gonzales's view that Geneva did not apply to Afghanistan was inconsistent with the plain language of the treaty, the unbroken practice of the United States over the previous half century, the practice of all other parties to the Conventions, and the terms of the U.N. Security Council resolution authorizing the intervention in Afghanistan.

Ultimately, in February 2002, President Bush ordered that all detainees captured by U.S. forces be treated in ''a manner consistent with'' the Geneva Conventions. But it has been pointed out that the treatment of detainees at places such as Abu Ghraib and Guantanamo raised questions about whether this order was effective in actually according detainees the protections of the Geneva Conventions.

What is most troubling to this Senator is that Mr. Gonzales argued for a view of the Geneva Conventions that was inconsistent with American law, American values, and America's self-interests.

Nor was this an isolated event. This administration's policy on torture was largely established in August of 2002. At that time, a memorandum regarding standards of conduct of interrogations was prepared at Mr. Gonzales's request by the Justice Department Office of Legal Counsel. This memorandum was accepted by the administration as policy until December 2004, when it was repudiated, at least in part, by the Justice Department on the eve of Mr. Gonzales's nomination hearing. The memorandum is 50 pages long. I will not dwell on it. Others among our colleagues have already thoroughly discussed it. I will only touch on two aspects of it.

One is its novel and absurdly narrow definition of torture. The only conduct it recognizes as torture is where the interrogator has the precise objective of inflicting ''physical pain . . . equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or death.'' Any other conduct implicitly would not, as defined by this document, constitute torture—and thus would be allowed.

Mr. President, this is a truly stunning and offensive reading of the law, not to mention plain English. It twists and contorts the meaning of the word ''torture''—so much so that the word is drained of any meaning whatsoever.

It would allow all manner of mistreatment, including the acts of brutality and degradation committed by Americans against Iraqis in places like Abu Ghraib prison. Incredibly, it would even excuse the beatings, rapes, burnings, and deprivations of food and water perpetrated at the behest of Saddam Hussein himself.

A second aspect of this memorandum that deserves mention is its discussion of the powers of the President of the United States when acting as Commander in Chief. The memorandum says that the criminal prohibition against torture ''does not apply to the President's detention and interrogation of enemy combatants pursuant to its Commander in Chief authority.'' Under this reasoning, executive branch officials can escape prosecution for torture if ''they were carrying out the President's Commander in Chief powers.''

Here again, this legal reasoning is stunning in its implications. It suggests that an American acting on behalf of the United States of America can commit heinous acts of torture without the slightest fear of prosecution. All he or she needs to do to avoid sanction is to show that he or she was ''just following orders.'' Whether the law prohibits torture is of no consequence. The President and anyone acting under his authority are in effect above the law.

This memorandum has been rightly condemned by legal experts. One is Harold Koh, a professor of law at Yale Law School. He served in the Reagan Justice Department and the Clinton State Department. In testimony before the Judiciary Committee last month, he called the August 2002 memorandum ''perhaps the most clearly erroneous legal opinion that I have ever read,'' and ''a stain upon our law and our national reputation.''

Yet while condemned as beyond the pale of American law and American values, these ideas were accepted and even embraced by the nominee to become the Attorney General of the United States of America. There is no evidence in the record that he even questioned them, much less disagreed with them. Apparently, he had them shared with the Department of Defense.

At his confirmation hearing, Senator LEAHY asked Mr. Gonzales whether he agreed with the memorandum's legal reasoning on the issue of torture. Mr. Gonzales replied, ''I don't have a disagreement with its conclusions.''

Our colleague, Senator KOHL from Wisconsin, asked if the nominee agreed with Attorney General Ashcroft's statement that he does not believe in torture because it doesn't produce anything of value. The nominee replied, ''I don't have a way of reaching a conclusion of that.''

Don't have a way of reaching a conclusion? Mr. President, that is an astounding admission for someone seeking to become the Nation's top law enforcement officer. If he cannot reach a conclusion about the illegality or immorality of torture, what can he reach a conclusion about? What other legal principles are open to similar legal evisceration and repeal? What does it say about our Nation's commitment to the rule of law that this nominee will not say torture is against the law? What does it say about our Nation's commitment to equal justice under the law that this nominee would have the President and his subordinates be above the law?

How do we explain this to the citizenry of our Nation, to the citizenry of other nations, particularly our allies, and most especially to the citizens of tomorrow, our young people who will inherit this country as we leave it to them? Will we tell them that torture is wrong—unless the President orders it? Will we teach them that America stands for life, liberty, and the pursuit of happiness—depending upon who you are?

Almost 60 years ago, this very day, the first allied forces liberated the condemned people of Auschwitz. On that day, the full horror of the Nazi genocide was laid bare, and all doubt about it was laid to rest.

Within weeks of that event, my father and a group of other attorneys in this country were on a plane to a place called Nuremberg, Germany. There, he, along with others from our allies, began what would perhaps be the most formative experience of my father's professional life at that time: serving as executive trial counsel at the trials of Nazi war criminals.

At that time, there were loud calls against trying the Nazi leaders. Many called not for due process of law, but for summary executions. In fact, Winston Churchill, a person we revered, who had great values, strongly suggested that summary executions would be the way to deal with the people responsible for the incineration of 6 million Jews and 5 million other civilians, not to mention the millions of combatants who lost their lives as a result of Nazi terror.

Yet the United States stood up for something different 60 years ago, in the summer of 1945 through the fall of 1946. As members of the allied powers, we insisted that the rule of law, rather than the rule of the mob, would rule. Even these most despicable and depraved human beings were given an opportunity to retain counsel and to testify in their own defense.

We were different. It did not depend on who the enemy was. It depended on what we stood for. If we begin to tailor our values and principles based on who our adversaries are, what do these laws mean? What do these bedrock principles stand for, if we can tailor them based on who we look across a battle line at? You cannot do that if you believe in these principles.

At that moment in history, the world learned something very important about the United States of America. It learned that this Nation would not tailor its eternal principles to the conflict of the moment. It learned that, as far as the United States of America is concerned, even the mightiest cannot escape the long arm of justice. And it learned that our Nation will recognize the words ''I was just following orders'' for what they really are—a cowardly excuse, which has no place in a nation of free men and women.

Mr. President, as I said, the outcome of this nomination is in little doubt at this hour. I understand that. My argument is not going to persuade anybody to vote differently. I want to be on the record saying that there have been only a handful—two or three cases in 24 years—where I have stood in the Chamber to oppose a Cabinet nominee. I supported and voted for the nominations of John Ashcroft and John Tower. My colleagues who served with me know that I generally believe that Presidents deserve to have their Cabinets—except in rare circumstances.

While I admire the personal story of this nominee, when he walks away from these critical principles, I cannot in good conscience give my vote to him to be Attorney General of the United States—the chief law enforcer of our country—when I know how important the rule of law is to this country, its history, and our reputation.

As I said earlier, the outcome of the nomination is not in doubt. I do not expect that the nominee in question is paying attention to these proceedings or what I have to say. But I hope Mr. Gonzales will pay heed to the lessons of history, if not to this Senator. In his second State of the Union Address, Abraham Lincoln said that in giving or denying freedom to slaves, ''We shall nobly save or meanly lose the last, best hope of earth.''

The issue then was how our Nation treats the enslaved. The issue today is, in some respects, no less profound: how our Nation treats its enemies and captives, including those in places such as Abu Ghraib prison and Guantanamo Bay.

By treating them according to our standards, not theirs—our standards, not theirs—we feed the flame of liberty and justice that has rightly led our Nation on its journey over these past two and a quarter centuries.

I strongly oppose this nomination, and I hope the President will come up with a better choice.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Illinois.

Mr. OBAMA. Mr. President, a few days ago, the world watched as the seeds of democracy began to take root in Iraq. As a result of the sheer courage of the Iraqi people and the untold sacrifices of American soldiers, the success of the elections showed just how

far people will go to achieve self-government and rule of law.

As Americans, we can take enormous pride in the fact that this kind of courage has been inspired by our own struggle for freedom, by the tradition of democratic law secured by our forefathers and enshrined in our Constitution. It is a tradition that says all men are created equal under the law and that no one is above it.

That is why even within the executive branch there is an office dedicated to enforcing the law of the land and applying it to people and to Presidents alike.

In this sense, the Attorney General is not like the other Cabinet posts. Unlike the Secretary of State, who is the public face of the President's foreign policy, or the Secretary of Education, whose job it is to carry out the President's education policy, the Attorney General's job is not just to enforce the President's laws, it is to tell the President what the law is. The job is not simply to facilitate the President's power, it is to speak truth to that power as well.

The job is to protect and defend the laws of freedoms for which so many have sacrificed so much.

The President is not the Attorney General's client; the people are. And so the true test of an Attorney General nominee is whether that person is ready to put the Constitution of the people before the political agenda of the President. As such, I cannot approach this nomination for Attorney General the same way I approached that of Secretary of State Rice or Veterans Affairs Secretary Nicholson or any other Cabinet position. The standard is simply higher.

Like the previous speaker, Senator DODD, I wanted to give Alberto Gonzales the benefit of the doubt when we began this process. His story is inspiring, especially for so many of us—like me—who shared in achieving the American dream. I have no question that as White House Counsel, he has served his President and his country to the best of his ability. But in my judgment, these positive qualities alone are not sufficient to warrant confirmation as the top law enforcement officer in the land.

I had hoped that during his hearings, Judge Gonzales would ease my concerns about some of the legal advice he gave to the President, and I had hoped he would prove that he has the ability to distance himself from his role as the President's lawyer so that he could perform his new role as the people's lawyer.

Unfortunately, rather than full explanations during these hearings, I heard equivocation. Rather than independence, I heard an unyielding insistence on protecting the President's prerogative.

I did not hear Judge Gonzales repudiate 2½ years of what appears to be official U.S. policy that has defined torture so narrowly that only organ failure and death would qualify, a policy that he himself appears to have helped develop and at least has condoned.

Imagine that, if the entire world accepted the definition contained in the Department of Justice memos, we can only imagine what atrocities might befall our American POWs. How in the world, without such basic constraints, would we feel about sending our sons and daughters off to war? How, if we are willing to rationalize torture through legalisms and semantics, can we claim to our children and the children of the world that America is different and represents a higher moral standard?

This policy is not just a moral failure, it is a violation of half a century of international law. Yet while Judge Gonzales's job was White House Counsel, he said nothing to that effect to the President of the United States. He did not show an ability to speak with responsible moral clarity then, and he has indicated that he still has no intention to speak such truths now.

During his recent testimony, he refused to refute a conclusion in the torture memo which stated that the President has the power to override our laws when acting as Commander in Chief. Think about this. The Nation's top law enforcement officer telling its most powerful citizen that if the situation warrants, the President can break the law from time to time.

The truth is, Mr. Gonzales has raised serious doubts about whether, given the choice between the Constitution and the President's political agenda, he would put our Constitution first. And that is why I simply cannot support his nomination for Attorney General.

I understand that Judge Gonzales will most likely be confirmed, and I look forward to working with him in that new role. But I also hope that once in office, he will take the lessons of this debate to heart.

Before serving in this distinguished body, I had the privilege of teaching law for 10 years at the University of Chicago. Among the brilliant minds to leave that institution for Government service was a former dean of the law school named Edward Levi, a man of impeccable integrity who was committed to the rule of law before politics.

Edward Levi was chosen by President Ford to serve as Attorney General in the wake of Watergate. The President courageously chose to appoint him not because Dean Levi was a yes man, not because he was a loyal political soldier, but so that he could restore the public's confidence in a badly damaged Justice Department, so that he could restore the public's trust and the ability of our leaders to follow the law.

While he has raised serious doubts about his ability to follow this example, Judge Gonzales can still choose to restore our trust. He can still choose to put the Constitution first. I hope for our country's sake that he will, and part of the reason I am speaking in this Chamber today is to suggest three steps that he can take upon assuming his role that would help restore that trust.

First, he can immediately repudiate the terror memos in question and ensure that the Department of Defense is not using any of its recommendations to craft interrogation policies.

Second, Judge Gonzales can restore the credibility of his former position as legal counsel by appointing an independent-minded, universally respected lawyer to the post.

And third, he can provide this Congress regular detailed reports on his efforts to live up to the President's stated zero tolerance policy with respect to torture.

Today we are engaged in a deadly global struggle for those who would intimidate, torture, and murder people for exercising the most basic freedoms. If we are to win this struggle and spread those freedoms, we must keep our own moral compass pointed in a true direction. The Attorney General is one figure charged with doing this, but to do it well, he must demonstrate a higher loyalty than just to the President. He must demonstrate a loyalty to the ideals that inspire a nation and, hopefully, the world.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I rise today in strong support of the President's nominee for Attorney General, Judge Alberto Gonzales. Judge Gonzales is a gentleman whom I have had the opportunity to work with in his role as counsel to President Bush. I have found him to be intelligent, steady, discreet, and honest in all our dealings. He is well qualified to be Attorney General. One should look at someone's record of performance. He served with skill and integrity as an effective counsel to the President. He has served as a distinguished jurist on the Supreme Court of Texas, as the 100th Secretary of State and chief elections officer in Texas and then as chief counsel to then-Governor Bush.

People say he has a life story that is inspirational and then dismiss all of that. I say to my colleagues, if one looks at someone's background, how they were raised, their life experiences tell a great deal about how a person is as an adult and as a leader with responsibility.

Alberto Gonzales was one of eight children, born to parents who were migrant workers. He was the first person to go to college in his family. He was a graduate of Rice University and Harvard Law School. He unequivocally has demonstrated that hard work and integrity will earn dividends no matter who one is in this country. He will not tolerate discrimination or limits on the ability of Americans to exercise their God-given rights or restrain any citizen in their equal opportunities and due process in the law.

He was raised in the way of achieving those goals and achievements in life that one aspires to regardless of one's race, ethnicity, or religious beliefs. With any nominee, it seems there have to be a number of accusations that Senators and others will level against them, but I believe Mr. Gonzales has clearly, forcefully, and consistently made clear his position on a number of issues. In fact, he is one of the most responsive nominees in recent history.

Judge Gonzales received hundreds of questions from 14 Senators who serve on the Judiciary Committee and one member not on that committee. Within 3 days, Judge Gonzales provided the committee with over 440 responses encompassing 221 single-spaced pages, in comparison to prior Attorney General nominees who received far fewer questions. Former Attorney General Janet Reno received only 35 questions for the record from five Senators. Records show that she responded to those questions 9 months after the Senate confirmed her.

Even the New York Times took note of Judge Gonzales's responsiveness. In a January 19, 2005, article, it stated:

His written responses totaling more than 200 pages on torture and other questions . . . offered one of the administration's most expansive statements of its positions on a variety of issues, particularly regarding laws and policies governing the CIA interrogation of terror suspects.

If this is an indication of how Judge Gonzales responds to his job as Attorney General, I am fully confident he will make an excellent and fair Attorney General.

Some will say he has not answered questions. Maybe they have not heard one of his many responses to this question about torture. But I think his statement in the Judiciary Committee that he ''denounces torture and if confirmed as Attorney General he will prosecute those who engage in torture,'' says it all. Maybe he can say it 12 more times and maybe 1 or 2 more Senators might understand it, but that is the record.

There is obviously a relatively small number of people who oppose this nomination, but there is a strong majority who support his nomination and from all sides, Republicans, Democrats, men and women from all ethnic groups. Henry Cisneros, former HUD Secretary under President Clinton, opined that he has voted only once for a Republican in his life and Judge Gonzales was that person. He felt confirming Judge Gonzales as Attorney General would be good for America because ''he understands the realities many Americans still confront in their lives.''

Mr. Cisneros goes so far as to say:

As an American of Latino heritage, I also want to convey the immense sense of pride that Latinos across the Nation feel because of Judge Gonzales's nomination . . . to one of the big four—State, Defense, Treasury and Justice. This is a major breakthrough for Latinos, especially since it is so important to have a person who understands the framework of legal rights for all Americans as Attorney General.

Lynne Liberato, a self-proclaimed partisan Democrat and former president of the State Bar of Texas and the Houston Bar Association, stated the first good result of President Bush's reelection was that he nominated Alberto Gonzales to become Attorney General and that the only downside is he will not be nominated to the U.S. Supreme Court. She goes on to opine that she can say with complete confidence he is a good man with a good heart.

Judge Gonzales's commitment to the betterment of America as a whole and its citizens has led to all sorts of accolades and awards. He has received many honors. In 2003, he was inducted into the Hispanic Scholarship Fund Alumni Hall of Fame. The United States-Mexico Chamber of Commerce honored him for the Good Neighbor Award. He received presidential awards from the U.S. Hispanic Chamber of Commerce and the League of United Latin American Citizens. We should strongly support the President's nomination of Judge Gonzales to become Attorney General of the United States. He is the embodiment of the American dream, a man of hard work, of legal sense and intellect, and that has lifted him to some of the highest positions in our Nation.

I like the fact that the President has nominated people who are good role models. I thought the fact that Dr. Rice had grown up in the segregated South. She applied and educated herself to obviously hold a very important position as Secretary of State—beyond her intellect and capabilities, it is a great life story that should be something for young people to be inspired by. The same with Judge Gonzales to become Attorney General of the United States.

We have other heroes, such as our new Senator from Florida, MEL MARTINEZ, a modern-day American dream coming from Castro's repressive Cuba. All Senators should aspire to be role models, and to the extent that people who have led the American dream, modern-day Horatio Algers stories should be an added plus to all their intellect, capabilities, and experiences.

I say to my colleagues: Adelante con Alberto Gonzales. Let's move forward with this nomination.

Mr. WARNER. Mr. President, I would like the record to reflect that I now have the privilege to speak to my colleagues with regard to the nomination of Alberto Gonzales to serve as U.S. Attorney General. I do so with a great sense of pride. I compliment our distinguished, strong President for having selected this outstanding American to serve in this exceedingly important position.

Article II of the Constitution provides that the President:

. . . shall nominate, and by and with Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States. . . .

Thus the Constitution provides a role for both the President and the Senate in the process. And that is precisely what this August body is now undertaking, their constitutional responsibilities of giving advice and consent of a President's nomination of a principal Cabinet officer.

In fulfilling the constitutional role of the Senate, I have tried throughout my career to give fair and objective consideration to both Republican and Democratic Presidential Cabinet level nominees. There are times when I have voted for nominees whom I, frankly, perhaps, if I had been in the position, would have picked others. But the leader of the opposition party, the President, in those instances chose those individuals. I searched in my heart to find those qualifications which I felt justified the President's decision. I have no difficulty whatsoever finding in my heart and knowledge more than adequate reasons to support this distinguished nominee.

His personal story is a compelling one. He was of seven children that were raised in a two-bedroom household in Humble, TX, that his family built and in which his mother still lives.

From these modest roots, Mr. Gonzales became the first in his family to go to college, graduating from Rice University and then later graduating from Harvard law school.

Throughout his life, Alberto Gonzales has demonstrated a strong commitment to public service, beginning with his service in the United States Air Force between 1973 and 1975. Then, after a number of years in private practice at a Houston, TX law firm, Mr. Gonzales served as Texas' Secretary of State from 1997 to 1999. In 1999, he was appointed to serve as a Justice on the Supreme Court of Texas.

In 2001, Judge Gonzales left the Texas bench and was commissioned as Counsel to President Bush. In this capacity, I have had the opportunity to work with Judge Gonzales on a number of matters, particular matters related to the Department of Defense. I have come to know him as a conscientious, soft-spoken man with a brilliant legal mind.

While our next Attorney General will continue to face the unique challenges that many in law enforcement have faced since September 11, 2001, I am confident that Judge Gonzales will meet these challenges head on with a respect for our Constitution, and the laws and traditions of the United States.

I look forward to voting in support of Judge Gonzales's nomination and look forward to working with him on the challenges that lay ahead.

I say to those who have spoken in opposition, I respect that right and on the whole I feel this debate has been a good one, a proper one, and shortly we are going to vote. I am confident a strong majority of the Senate will approve this distinguished American for this post.

I would like to talk about some personal experiences I have had with this

distinguished nominee. I go back, with a sense of modesty in my humble career—I guess it was in the late 1950s and 1960s. I was privileged to be an Assistant U.S. Attorney. I met literally the first Attorney General I had ever met, having been summoned to his office with regard to some matters. I remember walking up into that vast chamber in the upper floors of the Department of Justice, and there was Bill Rogers, the Attorney General of the United States under President Eisenhower. I got to know him. As a matter of fact, he had a great deal to do with influencing me to remain in public office and I am everlastingly grateful to him. In the ensuing years I had the privilege of working with a classmate at the University of Virginia Law School. Although he was a year or so ahead of me, that classmate, Robert Kennedy, later became Attorney General.

So I have been privileged through my modest career in public office to have had an association with many Attorneys General. What stands out in my mind about Alberto Gonzales is this interesting observation. When we debate on this floor, as we are obligated to do, and do so often with a sense of fairness, we talk about judicial temperament. In many respects, you can go into the dictionaries and into the case studies, you can look wherever you want and there isn't any precise definition of what judicial temperament is. But it is an essential quality of those individuals who ascend to the bench.

I have had a number of meetings over the years with Judge Gonzales, some in the White House. Often he would say, Senator, I will come to your office. In addition, Judge Gonzales has always given me, and I am sure others in the Congress, the courtesy of promptly returning my telephone calls. That is something sometimes members of the executive branch don't do often with Members of Congress. But he returned the calls and returned them promptly. Throughout my interactions with Judge Gonzales, he always manifested to me in his mannerisms, the courtesies that he extended to me, and I presume other Members of Congress, the quiet manner in which he would listen to your points of view, or express his point of view. To me, his thoughtfulness and the courtesy emulate the very essence of what judicial temperament should be and the qualities an Attorney General should have.

It is so important that I bring that forward because he is instrumental in advising, and as Attorney General he will continue to be instrumental in advising, the President of the United States with regard to his Constitutional power with respect to judicial and executive branch nominees. I often say, yes; the power, but it is a responsibility that the Constitution places on the President to fill the vacancies in the third branch of Government, the judicial branch.

I can't think of a more important framework of appointments than the members of the Federal judiciary. So often they continue in office long after a President's term has been completed—or terms, as the case may be—and expound upon interpretations of the law. They often continue some of the goals for the President—not writing, hopefully, new law, which a jurist should not do, that is the function of the Congress, but interpreting the law within the framework of the Constitution and the several statutes of our Government.

But this man, to me, stands out as one who brings a great sense of dignity, a great sense of inspiration, particularly to those in the Department of Justice who continue and come to serve. I am confident that in his continuing interactions with the Congress of the United States he will not change what I view as the extraordinary and, indeed, magnificent manner in which he performs his duties, formally as chief counsel to the President, and hopefully soon to be, with the advice and consent of this distinguished body, as Attorney General of the United States of America.

I wish him and his family well. I thank them for their continued public service. I recount the other portions of my remarks today about his extraordinary background. He overcame such impediments and hardship to receive and to be grateful for what this country offered to him and his family by way of opportunities of education and public service.

This has been a very important moment in the history of the Senate as we begin to give our advice and consent on an Attorney General, one who is imminently qualified and able to fulfill this office with that degree of dignity and intellect, fairness, and firmness that is needed to serve our President, but most importantly to serve Congress and the Nation.

We are a nation of laws. That separates us from so many other nations in the world. We believe in the fairness of the law as it relates to every citizen—I repeat, every citizen.

I am proud to have the privilege to give these brief remarks on his behalf and indicate my strong support. I hope I encourage others to likewise support this important nomination.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I rise to also express my strong support for the confirmation of Alberto Gonzales to be Attorney General of the United States.

I would like to say to my colleague from Virginia, the senior Senator from Virginia, before he leaves, what a great honor it is for me to serve with him, to listen to his experience—his experience in this body, his experience serving this country as Secretary of the Navy, and experience which allows him to bring judgment on matters such as this.

I have also served under one President. If I have an opportunity to serve under a President of a different party, I want to bring the same kind of judgment here—judgment that the senior Senator from Virginia has already talked about. It is not about politics. It is not about what jersey you wear. We have had an election. The President then gets to pick his team. We look at character, we look at intellect, we look at integrity, and all of those factors. That should be the judgment we bring every time.

That is what the senior Senator from Virginia, with his experience, has brought to the table. I would like him to know that I intend to follow that in my time here. I think it is the right standard.

Mr. WARNER. Mr. President, I am deeply humbled by the comments of the Senator. It has been a privilege. I have had an awful lot of good luck, and a lot of people have given me the wisdom and counsel in which I have put together this modest career. I thank the Senator for his service and I enjoy working with him.

Mr. COLEMAN. Mr. President, I enjoyed the statement I heard the other day, that a pessimist is someone who complains when opportunity knocks. Opportunity is knocking—a unique opportunity to send a message that America belongs to us all. It is a chance to prove that hard work and character can take you wherever you want to go in this country, no matter where you came from.

I urge my colleagues not to major in the minors today, and to take this historic opportunity to confirm Alberto Gonzales by an overwhelming vote.

This is a land of opportunity—a place where anything can happen. It is a place where a Jewish kid from Brooklyn can grow up to be a Senator from Minnesota; a place where a young man from South Carolina takes on a lot of responsibility at a young age to take care of his family and finds himself presiding over the Senate; a place where success is not defined by who your parents are or what they did or were able to do but how hard you work. Judge Alberto Gonzales is such a person.

The son of migrant workers—we have heard the story again and again. I will repeat part of it—he grew up with seven siblings in a small house in Texas that his father built with his own two hands. As a child, Mr. Gonzales often stood outside of Rice University football games selling soft drinks to earn a few extra dollars. It was while standing outside of one of those Rice football games that he promised himself that he would one day attend that university and make the American dream his own.

He not only graduated from Rice University, but he went on to attend Harvard Law School, and to eventually become the first Hispanic partner in a prestigious international law firm.

However, Mr. Gonzales's story does not end there. He chose to enter public

service. He was general counsel to Governor Bush in Texas, served as secretary of state in Texas, a member of the Texas Supreme Court, and for the last 4 years served as chief counsel to President Bush.

Alberto Gonzales embodies the American dream, and he should be confirmed for Attorney General.

I have served as an attorney myself. The Presiding Officer has had that same honor, that same distinction. I was Solicitor General of the State of Minnesota and served 17 years in the attorney general's office.

I can tell you from that experience that there are two types of lawyers. A good lawyer will tell you what the law is, while a lesser lawyer might be tempted to tell you what you might want it to say.

Mr. Gonzales is a good lawyer. And part of that controversy surrounding his nomination comes from his strict interpretation of what the law actually says, and not what some might want it to say.

According to article 4 of the 1949 Geneva Convention, only lawful combatants are eligible for POW protection. When Mr. Gonzales determined that as a legal matter al-Qaida and the Taliban represented uncharted legal territory for which the Geneva Convention was never intended, he did his job as Counsel to the President.

In fact, the Red Cross, a world-respected humanitarian organization, states that in order to earn POW status, combatants must be commanded by a person responsible for his subordinates, have a fixed distinctive sign recognizable at a distance, carry arms openly and conduct their operations in accordance with the laws and customs of war—qualifications that do not easily fit al-Qaida or the Taliban, do not fit at all.

Now, this is not to say al-Qaida fighters should not be treated humanely, but only that Alberto Gonzales's interpretation of the convention was well grounded in the letter of the law and strictly adhered to the structure and history of the convention.

Alberto Gonzales did what any good lawyer should have done. He informed President Bush of the letter of the law. He did what is expected of a good attorney.

I serve on the Homeland Security Governmental Affairs Committee. We were in the process of hearing testimony yesterday from the new head and Secretary of Homeland Security, Judge Chertoff. Questions came up with Judge Chertoff about a memo that defined torture. He was pressed before the committee about his definition. He came back and said he exercised his legal judgment to let people know that if you move forward in this area, which is not clear, you better be careful. He did what was expected of a good lawyer.

I note that his nomination was put forth from two Senators across the aisle, both my friends, my Democrat colleague from New Jersey, standing side by side with Judge Chertoff, who did what a good lawyer should do, as Judge Gonzales has done.

I take a moment to remind my colleagues Article II, Section 2 of the Constitution states the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, or other public Ministers and Counsels, Judges of the Supreme Court and all other offices of the United States . . . '' That provision creates a special responsibility for this body.

While the Constitution does not spell out the criteria by which Members of the Senate determine whether to approve nominations, we can all agree our standards should be consistent, regardless of who is in the White House. That is what the senior Senator of Virginia talked about a while ago.

I have made it clear I do not believe it is appropriate for the Senate to use the nomination process as a referendum on the policies of the administration. Our democratic system has a method for determining the basic policy thrust of the President. It is called an election. Those who lose the election should not use the nomination process to rehash the issues the people have already decided. We went through this with the nomination of Condoleezza Rice for Secretary of State. Some chose to rehash some of the issues that were before the public in the election. The President has a right to appoint his team. Are they competent? Do they have integrity? Do they have the intellectual capacity to do the job? The American people have heard the argument and made their choice. It is time to move on.

The appropriate questions for the Senate are, Is the nominee qualified? Does the nominee have any ethical lapses in his or her public record? And does he or she possess the necessary temperament to serve the Nation well? It would also do some of my colleagues well to remember the approval of the nominee is not the same as approving every position the nominee has taken. Checks and balances remain after the advice and consent. No matter what the outcome of the vote, we will still maintain oversight of the Justice Department.

Thomas Edison once said:

Most people miss opportunity because it shows up in overalls and is disguised as hard work.

Alberto Gonzales saw an opportunity and worked hard to capitalize on it. He makes me proud to be an American. He is an exceptional attorney and a good man and eminently qualified to be the top law enforcement officer of the land. I enthusiastically support the nomination of Alberto Gonzales to be Attorney General of the United States of America.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent my half hour be divided, with the first 10 minutes for myself, the second 10 minutes for the Senator from Washington, and the third 10 minutes to the Senator from New Mexico, Mr. BINGAMAN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, we are not voting today on just any appointment. We are voting today on a nominee to be Attorney General of the United States, historically one of the most important positions of power in our Government. The position is more important today than it has ever been as we wage the war on terror. At a time with unprecedented tension between the goals of security and liberty, we must be absolutely certain the person we confirm as Attorney General is right for the job.

The Attorney General stands apart from all other Cabinet officers. For those other Cabinet officers, simply carrying out the President's agenda is enough. The Attorney General, on the other hand, has to be someone who will follow the law, not just toe the party line. He must be someone who will do justice for all people, not just push the President's program. There are many times that demand independence from the President, when the Attorney General is asked, for instance, to approve a wiretap of an entire group. The Attorney General must make that decision based on the law and the precedent, not on loyalty to the President. The Attorney General owes his ultimate loyalty to the law on many of the decisions he makes, not to the person who nominated him.

There will be times when the legal weight of precedent is more important than the political weight of the President. That is the nub of why the Attorney General is not a typical Cabinet position. At such times the country needs an Attorney General who can stand the heat and do the right thing.

Independence is not such a critical quality in other Cabinet positions. The position of Attorney General requires more neutrality and independence than, for example, the Secretary of State, whose obligation is to advance the President's interests abroad. We must be absolutely sure that an Attorney General nominee not only has the right experience but the right view of the proper role of an Attorney General, to be an independent, nonpartisan chief enforcer of the laws.

For that reason, it is with great sadness and some heartache, because I so like and respect Judge Gonzales as a person and as an inspiration to so many, that I report I am unsure Judge Gonzales is the right man for this crucial job.

As I have said before, Judge Gonzales has many impressive qualities. He is a good person. He has impeccable legal qualifications. He has a breadth of legal experience, including time as a lawyer, a judge, and a White House Counsel. And, of course, Judge Gonzales has the kind of Horatio Alger

story that makes us proud to be Americans. But excellent credentials and an inspiring story are not enough, not in these times. One must also have the independence necessary to be the Nation's chief law enforcement officer.

When the White House asks the Justice Department for legal advice, on the other hand, the Justice Department is charged with giving an objective answer, not one tailored to achieve the President's goals. The Attorney General is supposed to provide sound legal advice in many of the decisions he or she renders, not political cover. As I have said before, it is hard to be a straight shooter if you are a blind loyalist.

I like Judge Gonzales. I respect him. I think he is a genuinely good man. I was initially inclined to support his nomination. I also believed, and I said publicly, that Judge Gonzales was a much less polarizing Attorney General than Senator Ashcroft has been. As I also said, being less polarizing than John Ashcroft is not enough to get my vote.

There are two models for an Attorney General, loyalist and independent. We know there are Attorneys General over the years who have been close to the President. There is no better example than Robert F. Kennedy, who served his own brother. That said, no one ever doubted in the confines of the Oval Office Bobby Kennedy would oppose his brother if he thought the President was wrong. Judge Gonzales is more of the loyalist type of Attorney General nominee than an independent type of Attorney General nominee, which does not alone disqualify him, but it raises serious questions.

After an extensive review of the record, unfortunately and sadly, despite my great personal affection for the judge, his testimony before this committee turned me around and changed my vote from yes to no. He was so circumspect in his answers, so allied with the President's position on every single issue, there was almost an eagerness to say, I will do exactly what the President wants, that I worry Judge Gonzales will be too willing to toe the party line even when the Attorney General is supposed to be above party. The Attorney General and the President are not supposed to be peas in the pod but, in short, Judge Gonzales still sees himself as chief counsel to the President rather than as chief law enforcement officer in the land, a very different type position.

Time and time again, this administration has gotten itself in trouble by going at it alone, by not seeking new opinions, by not reaching out, by doing things behind closed doors in the Justice Department, whether it was the total information awareness project, the TIPS Program, or torture. This Justice Department has been burned by a curious commitment to secrecy. I encouraged Judge Gonzales to be candid with the committee when discussing these issues. I encouraged him to give us some hope that he would run a very different Justice Department than John Ashcroft. But, unfortunately, even a cursory review of his answers—and I reviewed them more than once—reveals strict adherence to the White House's line and not a scintilla of independence. If his answers are any indication, once again, Judge Gonzales still sees himself as White House Counsel rather than a nominee to be Attorney General.

When push comes to shove, the Attorney General needs to stand up to the White House. We live in critical times and face crucial tests. The age-old struggle between security and liberty, which defines so many of the Founding Fathers' debates is alive and kicking. In fact, at no time since the internment of Japanese citizens in World War II has it been more relevant. We should have open debate about where the line should be drawn. We should not be afraid to confront the difficult questions that face us.

I have gotten in trouble with some of my friends on the left for suggesting there should be a reexamination of how we interrogate terror subjects. If a terrorist knew where a nuclear bomb was in an American city, and it was about to go off in 30 minutes, my guess is everyone in the room would say, do what it takes to find out. But we just cannot remake these rules behind closed doors.

Judge Gonzales's hearing was an opportunity for real debate on those issues. Instead, we got canned answers. I have great respect for the judge. The story of his life and the record of his achievements are inspirations to all of us. I am mindful of the fact that if he is confirmed, as I anticipate he will be, Judge Gonzales will become the Nation's first Hispanic Attorney General. It is a tremendous success story that makes this vote even more difficult.

When I called Judge Gonzales, last week, to tell him how I would be voting, it was one of the more painful phone calls I have had to make in a long time. He was understandably disappointed, but he was, as always, a total gentleman. He assured me we would be working together to solve our Nation's problems. He assured me he would prove me wrong. I hope he does. But this is just too important a job at too critical a time to have an Attorney General about whom I have such severe doubts. I really have no choice but to, with sadness, vote no.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, last week, I announced that I would oppose the nomination of Alberto Gonzales to be the Attorney General. I share many of the views on and reasons for opposing this nominee that my other colleagues have detailed—among them, the very grave concerns raised about Judge Gonzales's role in producing the so-called ''torture memos.''

But, I rise today to share with the Senate a reason for opposing this nominee that is particularly important to my home State of Washington. It is a reason that has not gotten much attention, but it is an issue I want to highlight because I feel Senators should know about it when they cast their vote on this nominee.

Among the reasons I am opposing Mr. Gonzales is his connections to Enron and his failure to commit to recuse himself from the Department of Justice's ongoing Enron investigation.

The Attorney General of the United States, as the chief law enforcement officer in the land, holds a special independent place in the government. After carefully listening to Judge Gonzales during his Senate hearings and reading his responses to questions, I do not have confidence that a Justice Department under his leadership will conduct the Enron investigations with sufficient vigor and independence.

We want our Attorney General to uphold the law no matter who the criminal is no matter how politically inconvenient and no matter who asks for his advice.

This administration's ties to Enron are common knowledge. In audiotapes released last summer, we heard Enron traders bragging about Enron's status as the number one contributor to the President's election campaign in 2000. We know that former Enron executives even had a hand in bankrolling the President's Inaugural festivities last month. So I think it's important for my colleagues to also realize that Judge Gonzales himself also had substantial ties to Enron while he was an attorney in private practice and then a candidate for the Texas Supreme Court.

Given the significance of this case and the past recusal of the outgoing Attorney General, Judge Gonzales should have made clear his intention to recuse himself from that investigation. Let me repeat this important point. Attorney General Ashcroft knew to recuse himself because of similar political ties to Enron.

Before his confirmation, I wanted the same assurances from Gonzales, or at least an explanation of why these former professional and political ties to Enron do not constitute grounds for recusal. I got none.

Let me make a few comments about the status of Federal investigations into the Enron mess, and why I believe it is so troubling that Judge Gonzales has to date refused to recuse himself from this matter.

It's my belief that, to date, the Department of Justice has done a good job in pursuing the case against Enron. I stood on this floor about seven months ago and applauded the work of the Enron Task Force when it handed down indictments of top executives including Ken Lay and Jeff Skilling last summer.

And the U.S. Attorneys in Northern California have been equally successful in bringing charges and securing guilty pleas from some of the Enron traders

implicated in the conspiracy to manipulate our Western power markets.

But this investigation is not finished. The Enron investigation must be allowed to proceed, free from any potential political interference from special interests, particularly the interests under investigation.

I would also note that we have not seen the same vigor—the same pursuit of justice—by other departments and agencies within the Administration, and in particular the Federal Energy Regulatory Commission. FERC is charged with protecting American consumers from precisely the types of fraud Enron perpetrated in our Nation's energy markets.

FERC is also run by three Bush administration appointees who had ties to Enron. In fact, the Senate Government Affairs Committee uncovered Enron memos recommending their appointment to the White House.

To date, these FERC appointees have failed to take any meaningful action to provide the victims of Enron's power market manipulations with any measure of relief. At every step of the way, it has taken public embarrassment to get FERC to pursue an Enron investigation of any integrity. Or in the words of a November 2002 report by the Senate Governmental Affairs Committee, ''Over and over again, FERC displayed a striking lack of thoroughness and determination with respect to key aspects of Enron's activities.'' Since then, the situation has only deteriorated. FERC's Enron investigation to date has been marked by a lack of aggressive action.

In fact, I'm going back to my office in just a few minutes to participate in a conference call with officials from the Snohomish Public Utility District in my home State of Washington. We are going to air publicly, for the first time, new Enron audiotapes. Shockingly, these Enron tapes were just discovered sitting in one of Enron's Houston warehouses. They were left behind by the same Federal regulators that are supposed to be defending our Nation's consumers from the types of fraud Enron perpetrated in our energy markets.

Only a small portion of these new tapes have been processed.

But on these tapes, the American public will hear Enron employees during the company's collapse bemoaning the fact they couldn't get promoted unless they ''cooked the books;'' speculating that ''everyone knew,'' and that ''nothing happened at Enron that Ken Lay didn't bless.'' This is evidence that was left behind.

New evidence will also show Enron traders fabricating excuses to shut down a power plant—on the very same day that rolling blackouts hit California and disrupted the Western power market. The blackouts affected at least half a million people that day. As we learned with the recent Northeast/Midwest blackout, these are serious matters. Not only do blackouts cost hundreds of millions of dollars in lost economic activity, they pose serious risks to human health and safety. They are no laughing matter. In my mind, this represents a whole new level of callousness.

But what Enron did was not just disgraceful on a human level—it was also illegal. It was a direct violation of power market rules and a direct violation of a DOE emergency order issued by former Secretary Bill Richardson the very same day.

And yet, our Federal agencies are not unearthing this new evidence. The FERC remains content to sit on its hands, more than four years after the Enron collapse. Utilities in the West are actually being sued by Enron for even more money. Yet FERC stands by, while Washington State ratepayers wait for the other shoe to drop.

The consumers in my State, in the States of Nevada and California, deserve justice. But what they've gotten are years of process—a procedural shell game.

We need more aggressive action from our Nation's top law-enforcement officer.

This is why I was so deeply troubled to read Judge Gonzales's answers to questions posed by Members of the Judiciary Committee in this matter. I want to thank my colleague, the Senator from Wisconsin, Mr. FEINGOLD, for asking these important questions. In his answers, Judge Gonzales would not state whether he would recuse himself, and he would not be specific about how his former ties to Enron might impact the Department of Justice's investigation of that company.

In his responses, Mr. Gonzales stated, ''I did some legal work for Enron over 10 years ago. I am told the work was totally unrelated to the collapse of the company.'' He added that ''it would be premature for me to commit to recuse myself from ongoing Enron prosecutions.''

Mr. Gonzales was clearly asked to provide more specificity, more details and more of a commitment on what Americans can expect from the Justice Department leadership on the Enron investigation. These answers of the nominee were not satisfactory.

I find this particularly troubling, given the fact Judge Gonzales has a clear history of employment related and political ties to Enron, and a track-record that leads me to question his judgment and his independence from the President.

As I stated at the outset, we want our Attorney General to uphold the law no matter who the criminal is no matter how politically inconvenient—and no matter who asks for his advice.

So I will vote against Judge Gonzales's nomination today, for this and other important reasons. But I am also here to note that the Federal Enron investigation is not over. It is likely that Judge Gonzales may be confirmed as Attorney General later today. Perhaps Judge Gonzales will recuse himself after he is confirmed.

But whatever his decision, I am here today to put Judge Gonzales on notice. If there is any hint whatsoever that the Enron Task Force is being undermined, underfunded, or otherwise hindered, this Senator will not stand for it. The Enron investigations must be allowed to proceed. And this Senator will be watching every single step of the way.

This Senate deserves straight answers from the President's nominees. Corporate criminals deserve to be prosecuted to the full extent of the law. And the victims of Enron's fraud in our Nation's power markets deserve relief.

What Enron did to my constituents in Washington and to countless others across the Nation was disgraceful.

Given these issues, I have substantial lingering questions about whether Mr. Gonzales would exercise independent judgment, especially when a clear commitment to conduct investigations and uphold a strict standard of conduct is needed.

I also have serious concerns about Judge Gonzales's legal judgment. As White House Counsel, his office generated a legal opinion on whether the President is bound by domestic and international law on torture, which the government recently repudiated as legally faulty.

Such a repudiation calls Judge Gonzales's judgment into question, judgment that is critically important for our country's top attorney. It also suggests he is not independent of the President, which is essential for his new Cabinet role. Further, Judge Gonzales's changed position on the torture memos in the weeks before his confirmation hearings appears to demonstrate political convenience, not a truly self-reflective change in his thinking on these matters.

Had Judge Gonzales recognized the serious problems with the judgments he made on these issues and given convincing assurances that he understands that his new role will require a different approach and a new allegiance to the law, I might have been convinced to defer to the President on this nomination. Without those assurances, and a clear commitment to ensure that there is no appearance that the Justice Department may take a difference course on the Enron investigation, I cannot support his nomination to be the next Attorney General of the United States.

In conclusion, many of my colleagues have spoken about this nomination. They have talked about a variety of issues, and certainly one of those issues is the independence of the Attorney General. That is clearly an issue that is at the forefront of my interest today.

The reason is because ongoing in the Department of Justice, and I wish ongoing in the Federal Energy Regulatory Commission, is an investigation of Enron and Enron fraud. This is an issue that Attorney General Ashcroft decided, when taking office—and the evidence started to pour in of market

manipulation—he basically looked at his record and background of having taken contributions from Enron and he recused himself from the Enron investigation and task force.

Now we have before us a new Attorney General nominee who not only has accepted campaign contributions from Enron, he actually worked to represent them at the law firm in his private practice, specifically working for the Enron company as an outside counsel.

If our past Attorney General clearly identified a conflict of interest and basically stepped aside to make sure he was not in any way unduly influencing the Enron investigation, why should not this nominee have clearly done the same thing—in particular, giving answers to the Judiciary Committee that he would recuse himself?

I am not a member of the Judiciary Committee. I am a past member of that committee, but I certainly asked my colleagues to submit questions to Judge Gonzales asking him if, in fact, he would recuse himself and to be explicit about any other ways in which he could ensure that this Enron investigation continued with its independence. Judge Gonzales would not commit to recusing himself from this situation.

Because he will not recuse himself, I cannot, today, give him my vote knowing that he will achieve the independence this agency so much needs to have when it comes to this investigation.

Just today, this very day, Snohomish County PUD will be releasing new information, new audiotapes from Enron employees that just happened to be left behind at the Enron Houston facility that investigators forgot to claim. These tapes actually have Enron employees discussing the fact that superiors, Enron traders, had asked them to cook the books.

We also will see other tapes and information that basically says that various, what are called, cogeneration facilities, that Enron had business relationships with, were actually asked to take generation offline, to come up with a scheme of why they should stop production of these powerplants. The result was a blackout in California in the next few days following this time period—something that is very troubling to us in the Northwest.

We have spent billions of dollars of economic impact, and we want an investigation to continue to take place. We want the independence that the Federal Energy regulators should have in this case in determining that just and reasonable rates have not been charged by Enron. We want the Department of Justice to do its job, unfettered by any kind of influence, and continue to pursue all those involved with the Enron case until justice is given and ratepayers have relief in the West.

So it is unfortunate that we cannot get Judge Gonzales to make a commitment up front about where he is going to be in recusing himself on this very important matter that has had great fiscal consequence to the people of the Northwest.

I wish, given all the other aspects of this nomination, I could overlook this issue or other questions that some of my colleagues have brought up, but I cannot.

As a young woman, when I first learned about our Attorney General, at a time and era when a White House and President and outside influence said that the Attorney General should just follow the line of what was happening in the White House, we had Attorneys General who decided, instead of not carrying out the law, they were not going to be influenced by the White House; that they would rather resign than not carry out the law. That is the kind of independence we want to see in an Attorney General.

The case is clear against Enron. The case for recusing himself is clear. Unfortunately, I cannot support the nomination of Alberto Gonzales today because I am not sure he will recuse himself in this case.

The ratepayers of Washington State need relief. We do not want to continue to have to be the policemen on the beat investigating this case, finding new evidence, proving that wrongdoing has happened, continuing to prove how much we have been hurt. We want Federal regulators to do their job and give us relief.

I ask unanimous consent that Mr. Gonzales's written responses to Judiciary Committee questions be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ETHICAL ISSUES

1. During your service as Justice of the Supreme Court of Texas, it has been reported that you on occasion accepted donations from parties interested in cases before you. For example, in 2000, you reportedly accepted a $2,000 donation from the Texas Farm Bureau, which ran the defendant insurance company in Henson v. Texas Farm Bureau Mutual Insurance, in the period between oral arguments and decision. You also reportedly accepted a $2,500 donation from the law firm defending the insurer in another case, Embrey v. Royal Insurance, just before oral arguments.

a. Are these reports accurate:

Response: In Texas, the voters elect the Justices of the Supreme Court. My contributors, as well as those of every other Justice, are a matter of public record. I am confident that during my service as a Justice on the Supreme Court of Texas, I complied with all legal and ethical requirements regarding acceptance of campaign contributions.

b. Do you think it is ethical or appropriate for a judge to accept donations from parties appearing before him?

Response: Please see my response to 1a, above.

2. The Department of Justice is currently pursuing multiple prosecutions related to Enron's collapse into bankruptcy. Currently, voluminous evidence related to Enron's manipulation of Western electricity markets remains under a Department of Justice sought protective order, out of public view. This includes thousands of hours of Enron audiotapes as well as reams of emails from the files of traders and senior executives. Based on the small amount of materials publicly released thus far, it is reasonable to conclude this evidence will provide more insight into the inner-workings of Enron's schemes to manipulate Western power markets. While there may be reasons to withhold some of this evidence in light of ongoing Department criminal prosecutions, this material is also of extreme importance to regulatory agencies such as the Federal Energy Regulatory Commission and to parties attempting to secure financial relief from power prices resulting from Enron's schemes. Likewise, it is of interest to Congress, as we attempt to craft legislation that would prohibit future Enrons from defrauding American investors and ratepayers.

a. Please detail your previous contacts with Enron Corp. and its executives, both in your previous career in Texas as well as in your role as White House Counsel?

Response: As an attorney at Vinson & Elkins, I did some legal work for Enron over ten years ago. I am told the work was totally unrelated to the collapse of the company seven years later. I had contacts with certain Enron executives in connection with my election to the Texas Supreme Court. I also had contact with Enron officials in connection with my civic work in the Houston community. I do not recall any contacts with Enron and its executives in my role as White House Counsel.

b. Given these contacts, do you plan to recuse yourself from involvement in ongoing Enron prosecutions?

Response: If confirmed, I would take very seriously my obligation to recuse myself from any matter whenever appropriate. I would also treat with equal seriousness the charge that the Attorney General has to enforce the law fairly and equally on behalf of all Americans. It would be premature for me to commit to recuse myself from ongoing Enron prosecutions without knowing all of the facts and without consulting with Department personnel about recusal practice and history.

c. If you do intend to recuse yourself, who will be the point of contact for Members of the Senate interested in exercising oversight of the Department's handling of this matter?

Response: If confirmed, I would consult the attorneys at the Department handling this matter regarding congressional oversight.

d. Will you commit to releasing to Congress and the public the maximum amount of evidence now under seal at the earliest possible date?

Response: If confirmed, I would consult the attorneys at the Department handling this matter regarding the release to Congress of any sealed evidence.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, there are strong reasons that cause me to want to support the nomination of Alberto Gonzales. He is clearly well educated. He has the experience and credentials to be our Attorney General. He clearly has the confidence of the President, and, as a general matter, the President should be given broad discretion in choosing his Cabinet.

Alberto Gonzales's personal history, as the son of immigrant parents, is truly inspiring, and he would be the first Hispanic Attorney General in our Nation's history.

So under any normal circumstances, these reasons would be more than adequate to gain my support for this nomination.

But the fact is that the policies of this administration, which in some cases Judge Gonzales has championed, and in other cases he has willingly acquiesced in, have constituted a sad chapter in our Nation's history. This administration's willingness to evade and sidestep our historic commitment to the rule of law is unfortunate, indeed, and I fear that a vote for the nominee would be interpreted as condoning those reprehensible policies.

In July of 2003, I spoke on the Senate floor about my concerns with the policies and practices of the administration with regard to the detention of three categories of individuals: immigrants, persons detained as material witnesses, and persons detained as enemy combatants.

This morning I reviewed those comments, and I believe today my concerns regarding the failure to afford basic due process rights that I discussed then are well founded.

The administration, in reaction to the terrorist attacks of September 11, 2001, chose to argue against any and all legal protections against arbitrary and abusive exercise of the power of the Government to incarcerate individuals. It made those arguments by using the rationale that we were a nation at war and that the law of war overrode the rule of law as we have known it.

Judge Gonzales played a key role in developing the legal justifications for some of those policies. He strongly supported the decision to hold individuals unilaterally deemed enemy combatants by the President, including American citizens, indefinitely without judicial review. He advised the Judiciary Committee that he accepted the views in the Department of Justice memo that significantly limited the definition of torture and drastically expanded the President's power to overrule Federal and international restrictions to its use.

In remarks to the Standing Committee on Law and National Security of the American Bar Association in February 2004, Alberto Gonzales argued that the ''law of war'' justified the administration's position that the President has virtually unfettered authority to designate individuals as ''enemy combatants'' and then to incarcerate those individuals ''for the duration of hostilities.''

He went on to state:

> They need not be guilty of anything; they are detained simply by virtue of their status as enemy combatants in war.

Since that speech was given, the Federal courts have soundly rejected the proposition that the Government could hold individuals without according them the right to challenge the basis of their detention. In two cases decided this last June, Rasul v. Bush and Hamdi v. Rumsfeld, the Supreme Court reaffirmed the right of all individuals detained within the territorial jurisdiction of the United States to file a petition for a writ of habeas corpus and inquire into the legality of their detention. Indeed the right to challenge the Government's deprivation of a person's liberty is fundamental to our Nation's commitment to justice.

In the Hamdi case, the administration maintained that the President's authority to hold enemy combatants included American citizens and that Federal courts could provide minimal judicial oversight. The Government argued that a simple affidavit by a Department of Defense official alleging that Hamdi was involved in hostilities in Afghanistan was sufficient to indefinitely deprive an American citizen of his liberty. According to this administration, it was neither proper nor necessary to hold any factual or evidentiary hearing or to give Hamdi an opportunity to rebut the Government's assertions.

The Supreme Court disagreed and held that an American detained as an enemy combatant must be given a meaningful opportunity to contest the factual basis for his detention before a neutral arbiter. In reaffirming ''the fundamental nature of a citizen's right to be free from involuntary confinement by his own government without due process of law,'' the Court sent a clear message to the administration that ''a state of war is not a blank check for the President when it comes to the rights of our Nation's citizens.''

In Rasul, which involved the cases of foreign nationals held in Guantanamo for over 2 years, the administration argued that despite the fact the United States has exercised exclusive jurisdiction over Guantanamo since 1903, Federal courts have no jurisdiction to hear their claims because Cuba technically retained sovereignty in the area.

Once again, the Supreme Court disagreed and granted the detainees the right to demonstrate that they were being held contrary to domestic and international law.

Our failure to afford these individuals a right to be heard and to assert their innocence has in certain cases resulted in the unnecessary and lengthy detention of people who were merely in the wrong place at the wrong time. According to a Wall Street Journal article dated January 26 of this year:

> Commanders now estimate that up to 40% of the 549 current detainees probably pose no threat and possess no significant information.

Whether or not this number is completely accurate, it demonstrates the importance of providing individuals with the right to challenge the Government's claims and the right to refute the basis for their detention.

As many of my colleagues have pointed out, the administration's position regarding the treatment of detainees is as troubling as its position on its unfettered right to incarcerate. The Justice Department, through its Office of Legal Counsel, on August 1, 2002, issued its now discredited and withdrawn memorandum regarding standards of conduct for interrogation. That document provided legal sanction for abuse of prisoners by narrowing the definition of what we would recognize as torture under the Convention against Torture and other Federal law. It is true that this memorandum was prepared for Alberto Gonzales and not by him, but there is no indication that he disagreed with its conclusions. In fact, when asked about the memorandum in his confirmation hearing, he stated:

> I don't have a disagreement with the conclusions that were reached by the Department.

Removing the bright line that has guided our troops for the last 60 years increases the chances that other countries will refuse to afford our troops legal protections in future conflicts and enhances the likelihood that they will be made subject to harsh interrogation techniques.

MG Mel Montano, former head of the National Guard in the State of New Mexico, in his letter to the Judiciary Committee eloquently gave voice to those concerns. He said:

> I was among 12 retired Admirals and Generals . . . who wrote to you urging that you closely examine Judge Gonzales's role in setting US policy on torture during the confirmation hearing.
>
> At that hearing, Judge Gonzales did not allay concerns about his record. To the contrary, his evasiveness and memory lapses raised even more concerns. Judge Gonzales continues to maintain that he can't remember how the infamous torture memo was generated. He has refused to explain the language in his own memo which implied that rejecting the applicability of the Geneva Convention would insulate US personnel for prosecution of war crimes they might ''need'' to commit. And he asserts that the Convention Against Torture's prohibition on cruel and inhuman treatment doesn't apply to aliens overseas.
>
> In my view these positions put our servicemen and women—already facing enormous danger—at even greater risk. . . .

The Constitution is clear that the President ''will take care that the laws be faithfully executed.'' The obvious first responsibility of the Counsel to the President is to advise him concerning what is meant by that obligation.

As regards the basic protections in our Constitution and laws against incarceration and abuse of individuals by the Government, both the President and his legal counsel have failed in that duty. I am compelled to vote no on the nomination.

I ask unanimous consent that the full letter from Major General Montano to the Judiciary Committee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAJOR GENERAL MELVYN MONTANO,
RET. USAF NATIONAL GUARD,
Albuquerque, NM, January 25, 2005.

HON. MEMBERS OF THE COMMITTEE ON THE JUDICIARY,
U.S. Senate Committee on the Judiciary, Washington, DC.

AN OPEN LETTER TO THE SENATE JUDICIARY COMMITTEE

DEAR SENATORS: I am writing to urge that you reject the nomination of Alberto

Gonzales for Attorney General. I understand that some Hispanic groups support Judge Gonzales's nomination and have urged you to confirm him. I write, as a Hispanic and as a military officer and veteran, to offer a different perspective.

I know what it feels like to be the first Hispanic named to an important leadership position in this country. I was the first Hispanic Air National Guard officer appointed as an adjutant general in the United States. I am a Vietnam veteran and served 45 years in the military, including 18 years in a command position. I welcome the prospect of more Hispanics serving in leadership positions in the government, and I respect Judge Gonzales's inspiring personal story. But I reject the notion that Hispanics should loyally support the nomination of a man who sat quietly by while administration officials discussed using torture against people in American custody, simply because he is one of our own.

I was among 12 retired Admirals and Generals, including former Chairman of the Joint Chiefs of Staff, General John Shalikashvili (Ret. USA), who wrote to you urging that you closely examine Judge Gonzales's role in setting U.S. policy on torture during his confinnation hearing.

At that hearing, Judge Gonzales did not allay concerns about his record. To the contrary, his evasiveness and memory lapses raised even more concerns. Judge Gonzales continues to maintain he can't remember how the infamous torture memo was generated. He has refused to explain the language in his own memo which implied that rejecting the applicability of the Geneva Conventions would insulate U.S. personnel from prosecution for war crimes they might ''need'' to commit. And he asserts that the Convention Against Torture's prohibition on cruel and inhuman treatment doesn't apply to aliens overseas.

In my view, these positions put our service men and women—already facing enormous danger—at even greater risk. In my capacity as Major General of the National Guard, I oversaw 4,800 National Guard personnel. When I think about how many of our troops fighting in Iraq today are drawn from the National Guard, it angers me that the danger they face has been increased as a resuIt of the policies Judge Gonzales has endorsed. I wonder, if Judge Gonzales' children grow up to serve in the military, would he be so cavalier in dismissing the Geneva Conventions as obsolete?

Some have cynically suggested that Americans who question Judge Gonzales's record on these issues do so because they are anti-Hispanic. I reject this view. My own concerns about Judge Gonzales' fitness to serve as Attorney General grow ftom a deep respect for American values and the rule of law. Judge Gonzales should be evaluated on his record, not his ethnicity. On the basis of that record, I urge you to reject his nomination.

Sincerely,

MAJOR GENERAL MELVYN MONTANO.

Mr. NELSON of Florida. Mr. President, while it is true, as many of my colleagues have pointed out, that Alberto Gonzales has chartered an impressive path, the son of migrant workers rising from humble beginnings to establish an impressive record as a judge and a lawyer, I do not cast my vote because of his life story.

I cast my vote in favor of Judge Gonzales because of two reasons: I believe it is the prerogative of the President to choose who is to serve in his Cabinet, and I believe Judge Gonzales is a smart and qualified lawyer.

Judge Gonzales served in the U.S. Air Force, graduated from Harvard Law School, was a partner in a prestigious law firm, a justice on the Texas Supreme Court, and the chief lawyer for Governor Bush and President Bush.

As a justice on the Texas Supreme Court, I have seen evidence of his independence and commitment to the rule of law in reaching decisions on controversial issues like parental notification for a minor seeking to terminate a pregnancy. While he may oppose it personally, he was able to set those feelings aside and issue a ruling based on the law. I believe that this is the Judge Gonzales who will serve as this Nation's Attorney General. I believe that this Judge Gonzales will appreciate the very important role he is to play as the top law enforcer who is charged with the duty of being the ''people's lawyer.''

The U.S. Attorney General serves at the pleasure of the President, but he does not serve to please the President. I believe that Judge Gonzales, the man I have met several times, is able to appreciate this important difference and will be faithful to fulfilling his responsibilities to enforce our laws and protect our freedoms.

I, as many of my colleagues were, was very troubled by the ''Bybee memo'' submitted by the Department of Justice and the memo Judge Gonzales drafted advising the White House as to the inapplicability of the Geneva Conventions.

As the President's lawyer, Judge Gonzales's responsibility was to represent the President and to provide legal advice in light of questions presented to him by the President.

I believe that Judge Gonzales understands the different role he is to play as Attorney General in representing the people's interest as a nation that honors the rule of law.

Mr. DORGAN. Mr. President, although Congress has the responsibility to advise and consent on the confirmable posts of Cabinet Secretaries, I have historically cast my vote in a manner that provides wide latitude for a President to select his Cabinet team. I have voted for Cabinet nominees with whom I have very substantial and deep disagreements because I believe a President should be able to select a team of his choice to pursue his administration's goals.

But there are those occasions where it is important for the Congress to express its independent judgment about the record and the qualifications of a Cabinet nominee.

That is the case with the nominee the President has sent us for the post of Attorney General.

I have met with Judge Gonzales on a number of occasions, and I think he is smart and capable and has served the President loyally for a long period of time. But I am very troubled by the results of the Judiciary Committee hearings on the nomination of Judge Gonzales. I believe there are serious questions about the role of Judge Gonzales in the development of guidelines defining ''torture'' in the war on terror that should be unsettling to all Americans. Judge Gonzales was evasive in answering direct questions about these issues and refused to release all of the information that has been requested by the Judiciary Committee.

With respect to civil liberties and issues relating to how our Government conducts itself, I want an Attorney General who will follow the law and not look for cracks or crevices in the law that will enable an administration to pursue its own course. Frankly, and regrettably, I think that Judge Gonzales in his work in the White House has not demonstrated the willingness to be independent, nor has he shown the concern about civil liberties that I want to see in an Attorney General.

These are difficult and uncertain times for our country. The war on terrorism is difficult and will likely be lengthy. It is important we have the tools available to combat terrorism, but it is also equally important for us to preserve our civil liberties and protect the constitutional rights of our citizens even as we wage the war on terrorism. For that reason, I believe it is critical to have an Attorney General who will understand that his responsibility is not to the administration, but rather to the Constitution.

Because of my concern for all of these issues, I cannot vote to confirm Judge Gonzales for the post of Attorney General. It is unusual that I vote against a President's choice for a Cabinet post, but I believe this an unusual time and circumstance, and I believe it is critical that we have an Attorney General who can resist the efforts of those who would diminish our civil liberties as we wage this war on terrorism.

Mr. KERRY. Mr. President, today we consider the nomination of Judge Alberto Gonzales—President Bush's selection for Attorney General of the United States. I will oppose this nomination for several reasons. Judge Gonzales's deep involvement in formulating the administration's detention and interrogation policies and his refusal to candidly answer questions about these matters concern me.

As White House Counsel, Judge Gonzales played a pivotal role in shaping the administration's policies on the detention and interrogation of enemy prisoners. In 2002 Judge Gonzales advised the President that the Geneva Conventions did not apply to terror suspects, and described some of the treaty's provisions as ''quaint.'' This dismissive approach to our international commitments laid the basis for President Bush's decision to treat terror suspects as ''unlawful enemy combatants.'' In casting aside the Conventions, Judge Gonzales opened a Pandora's Box that brought the country and American troops less security.

Separately, the Department of Justice circulated a memo it had written—

at Judge Gonzales's request—that provided an extremely narrow definition of torture. The memo was widely condemned and contrary to the plain language of the U.S. anti-torture statute and all legal precedents. When asked about this memo at his confirmation hearing, Gonzales said he did not recall, ''whether or not I was in agreement with all of the analysis.''

Do these revelations necessarily mean that Judge Gonzales is directly responsible for the prisoner abuse scandal that has damaged our national security and tarnished our Nation? Of course not. But his actions—at the very least—helped to create the environment in which the Abu Ghraib scandal took place. The result is less certain intelligence and more danger for American forces around the world.

I was struck during the hearings on Judge Gonzales's nomination when Senator Leahy asked if leaders of foreign governments could torture U.S. citizens if they thought it necessary to protect their own national security. Judge Gonzales replied: Senator, I don't know what laws other world leaders would be bound by. And I think it would—I'm not in a position to answer that question.

I wrote to Judge Gonzales asking him to clarify his answer. He responded, in fact that: international law forbids the use of torture. All parties to the Convention Against Torture have committed not to engage in torture and to ensure that all acts of torture are offenses under their criminal law. But it does not address the heart of the issue. Judge Gonzales interpreted U.S. and international law to suggest that U.S. citizens could conduct torture when the President of the United States gave them authority to do so. In doing so, he undermined the legitimacy of the very international norms he asserts would protect U.S. citizens. His assertions collapse under the weight of their own flawed logic.

This is not simply my judgment alone, but the judgment of some of America's most distinguished, retired military officers—including General John Shalikashvili, the former Chairman of the Joint Chiefs of Staff, General Joseph Hoar, former Commander-in-Chief of U.S. Central Command, and Lt. General Claudia J. Kennedy, the former deputy Chief of Staff for Army Intelligence. In an open letter to the Senate Judiciary Committee, they wrote:

> During his tenure as White House Counsel, Mr. Gonzales appears to have played a significant role in shaping U.S. detention and interrogation operations in Afghanistan, Iraq, Guantanamo Bay, and elsewhere. Today it is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world.

Judge Gonzales's interpretation of our commitments under U.S. and international law has been widely condemned in the United States and abroad, including by members of the State and Defense Departments. He is not an appropriate selection for the Attorney General of the United States.

Judge Gonzales's confirmation process presented him with an opportunity to reassure the country that as Attorney General he would uphold and enforce the laws that prohibit torture. Instead he offered evasive and overly legalistic answers. Judge Gonzales's refusal to answer questions about administration policy—either in oral testimony or in written responses to questions—raises doubts about his commitment to the rule of law.

His lack of candor before the Judiciary Committee leaves many outstanding questions about his role in determining administration policy. One can only conclude that either he lacks a fundamental understanding of U.S. and international law, which I believe to be untrue, or he is dismissive of its applicability as it relates to the President.

We have seen this approach taken by this administration before. They do not consult, they do not confer, they do not exercise good judgment and that is the end of the story. The rest of us are left to deal with the consequences. The policies Judge Gonzales favored have tarred the image of America in the world—not made us safer. They have placed our troops at even greater risk—not protected them. The choices he made as White House Counsel showed unacceptable judgment.

Mrs. CLINTON. Mr. President, there has been a lot of discussion throughout this debate of the personal story of White House Counsel Alberto Gonzales, who has been nominated by President Bush to serve as the next Attorney General of the United States.

I agree that Judge Gonzales's life story embodies the American dream. Judge Gonzales is the son of immigrants, and lived in a home with his parents and eight brothers and sisters that I am sure had a lot of love but that did not have a lot of comfort, with no running water and no telephone. Thanks to his hard work and dedication, he went on to graduate from Rice University and Harvard Law School; he served as the Texas Secretary of State and a Justice on the Texas Supreme Court; and of course he became White House counsel in 2000.

This is an extremely impressive record of personal accomplishment, and I admire Judge Gonzales for his life story, which proves that hard work can take you anywhere in this country, no matter where you start out on the economic ladder. It is inspiring not only for Hispanic Americans, but for all Americans.

But while a Cabinet nominee's personal story is relevant to our consideration of whether that nominee should be confirmed, I believe that our constitutional responsibility to advise and consent requires a more thorough look.

We in the Senate owe an obligation to the American people to consider and evaluate fully an Attorney General nominee's current policy and legal views, as well as his or her prior views and actions taken concerning relevant issues.

I have reviewed Judge Gonzales's record and his responses, or lack of responses, to the many thoughtful questions posed by members of the Senate Judiciary Committee. On the basis of his professional record and his unwillingness to answer critical questions, I am compelled to oppose his nomination.

Judge Gonzales's record as White House counsel contains misjudgments and misreadings of U.S. and international law that were so grievous as to have shaken the conscience of our Nation and the bedrock of the most fundamental aspects of our democracy.

Judge Gonzales advised President Bush in January 2002 that the Geneva Conventions did not apply to the conflict in Afghanistan. He wrote that the ''war on terrorism'' offers a ''new paradigm [that] renders obsolete'' the Geneva Convention's protections. Memos prepared under his direction that same year recommended official authorization of cruel interrogation methods including: waterboarding, feigned suffocation, and sleep deprivation.

In response to a draft memorandum prepared and circulated by White House Counsel Gonzales on the applicability of the Geneva Convention to the conflict in Afghanistan, then-Secretary of State Colin Powell, who served our Nation for decades with distinction both in and out of uniform, prepared a memo outlining his deep concerns with both Judge Gonzales's assertions and his reasoning.

Secretary Powell wrote that he was ''concerned that the draft [memorandum] does not squarely present to the President the options that are available to him. Nor does it identify the significant pros and cons of each option.'' The Secretary also noted a number of significant inaccuracies in the draft memorandum, concerning previous applications of the Geneva Convention.

In discussing the option of declaring that the Geneva Convention does not apply, Secretary Powell noted a number of key concerns, including that doing so ''would reverse over a century of U.S. policy and practice in supporting the Geneva conventions and undermine the protections of the law of war for our troops, both in this specific conflict and in general.''

Secretary Powell also noted many other major disadvantages of pursuing such a position, including the high cost in terms of a negative international reaction, which would hinder the ability of the United States to conduct its foreign policy, and noting that the policy would undermine public support among critical allies.

Judge Gonzales dismissed out-of-hand these concerns, as well as others raised by senior members of the military, and recommended that the Geneva Conventions do not apply.

I believe that all Members of this body strongly support our men and women in the military. As a member of the Armed Services Committee, however, I feel a particular personal obligation to do my utmost to ensure that our government does not do anything that unnecessarily puts our troops in harm's way; that diminishes our standing among our allies, from whom we have asked and will continue to ask much in helping us fight the global war on terror; or that blurs the values that distinguish us from our enemies, whose depraved actions and nihilistic morality stand in stark contrast to our Nation's historic values and conduct.

In serving as the President's top legal adviser on matters of both domestic and international policy and law, Judge Gonzales had that obligation as well. Unfortunately, I believe he fell short of meeting that obligation and let the American people, and especially America's men and women in uniform, down.

These are not just my views but the views of some retired senior members of our military. In an open letter to the Senate Judiciary Committee, this group of retired military leaders expressed their deep concern with this nomination. They noted his significant role in shaping U.S. detention and interrogation policies and operations in Afghanistan, Iraq, Guantanamo Bay and elsewhere and concluded, ''it is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world.'' Their open letter went on to say,

[p]erhaps most troubling of all, the White House decision to depart from the Geneva Conventions in Afghanistan went hand in hand with the decision to relax the definition of torture and to alter interrogation doctrine accordingly. Mr. Gonzales' January 2002 memo itself warned that the decision not to apply the Geneva Convention standards ''could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries.'' Yet Mr. Gonzales then made that very recommendation with reference to Afghanistan, a policy later extended piece by piece to Iraq. Sadly, the uncertainty Mr. Gonzales warned about came to fruition. As James R. Schlesinger's panel reviewing Defense Department detention operations concluded earlier this year, these changes in doctrine have led to uncertainty and confusion in the field, contributing to the abuses of detainees at Abu Ghraib and elsewhere, and undermining the mission and morale of our troops.

Almost as troubling to me as the advice Judge Gonzales gave the President as White House counsel is his unwillingness to respond to important questions posed by members of the Senate Judiciary Committee. During his nomination hearing before the Committee, Judge Gonzales was presented with repeated opportunities to repudiate his prior positions, and to respond to legitimate concerns. He consistently refused to do so. He also refused to respond freely to important written questions submitted by Judiciary Committee members that remained unanswered after the hearing.

Judge Gonzales's unwillingness to answer questions or to submit himself fully to the nomination process has extended beyond his dealings with the Judiciary Committee. The Congressional Hispanic Caucus has announced that it will not support his nomination, because Judge Gonzales refused to meet with the Caucus or address their questions. According to the White House, Judge Gonzales was ''too busy'' to meet with the CHC.

The CHC has determined that ''the Latino community continues to lack clear information'' about how Judge Gonzales would influence policies important to the Latino community. It is for this same reason that the New York-based Puerto Rican Legal Defense & Education Fund has withheld its endorsement from Judge Gonzales. PRLDEF signed a letter prior to Judge Gonzales's hearing before the Judiciary Committee, identifying serious concerns about his nomination. PRLDEF reports that Judge Gonzales has still not adequately addressed these concerns.

I believe the Congress and the American people deserve much more from a nominee who seeks to become the Nation's chief law enforcement officer.

What saddens me the most is that Judge Gonzales is an accomplished and bright public servant, and the circumstances that have forced me to oppose his nomination were eminently avoidable, had Judge Gonzales simply met his basic obligations as a lawyer and as a nominee.

Underlying my opposition to Judge Gonzales's nomination as Attorney General is the fact that as White House Counsel, one of the most important legal positions in the Nation, Judge Gonzales had a firm duty, as do all lawyers, to advise his client in this case President Bush with independent, professional judgment grounded in law, and based upon standards of morality and decency.

Indeed, the American Bar Association's Model Rules of Professional Conduct speak explicitly to the role of lawyers as counselors and advisors. One of those rules states that ''[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.''

The duty to exercise independent judgment and provide informed advice to one's client is a duty that all lawyers must uphold; lawyers are compelled to speak the truth as they independently see it, and not simply parrot back what they believe their clients want to hear.

I believe that as White House counsel, Judge Gonzales breached that duty, not only to his client President Bush, but to the American people. He advised that the President adopt a number of incorrect legal positions that were wrong on the law and wrong morally. And he did so on some of the most important issues confronting our Nation, at a time when thousands of young Americans fighting to promote democracy and freedom in Afghanistan and Iraq and around the world were at risk of mistreatment if captured. We cannot control the behavior of our enemies, but we can avoid giving them any excuse or rationale to mistreat Americans. And we can avoid giving them any basis on which to claim there is no difference between us and them.

For all of these reasons, I must oppose this nomination and ask my colleagues to do the same.

Mrs. BOXER. Mr. President, I begin by thanking my colleagues on the Judiciary Committee who did the hard work of exhaustively examining the nominee's record. They have done what the Constitution requires of us and the Founders intended—that Senators take seriously their role in giving advise and consent on members of the President's Cabinet.

The Attorney General is our Nation's chief law enforcement officer, tasked with upholding the Constitution and our laws.

While I believe Mr. Gonzales has a truly remarkable personal story, the poor judgment he has exercised in his role as White House Counsel has resulted in a serious consequences that cannot simply be overlooked when considering his nomination.

I will be voting against Mr. Gonzales for two main reasons.

First, Mr. Gonzales was the legal architect of the administration's policies on torture.

In 2002, when the intelligence community sought legal guidance about interrogation techniques, Mr. Gonzales asked the Justice Department to come up with legal justification for abusive interrogation tactics. The torture memo was drafted at his request and tacitly accepted by Mr. Gonzales. The Defense Department then used that memo to justify horrific and abusive interrogation tactics in Iraq, Afghanistan, and elsewhere.

This memo sets forth a position so outlandish that even the Dean of Yale Law School has said that much of Saddam's Hussein's horrific abuses—like cutting off fingers, electrical shock, branding and burning of skin—would not meet the memo's definition of torture.

Mr. Gonzales has never clearly repudiated this memo even though it has been a stain on our law and national reputation. Mr. Gonzales was asked about this memo at his confirmation hearings before the Judiciary Committee. Senator LEAHY specifically asked him if he agreed with the memo's very narrow reading of the law about what constitutes torture. Mr. Gonzales replied: ''I don't recall today

whether or not I was in agreement with all of the analysis, but I don't have a disagreement with the conclusions then reached by the Department.'' Mr. Gonzales's response was completely unacceptable.

It was his acceptance of this memo that formed the basis of administration policy for 2 years until the Department of Justice repudiated it on December 30, 2004, 1 week before Mr. Gonzales's hearings.

Second, Mr. Gonzales played a central role in shaping the Bush administration's policy toward detainees.

He called the Geneva Conventions ''quaint'' and ''obsolete''. And he advised President Bush to deny prisoners the protections under the Geneva Conventions, which had been the unbroken practice of the United States for over 50 years, and which have protected our soldiers since 1949.

He did this over the objection of Secretary Powell and State Department legal counsel. They warned that this advice could undermine military culture, generate confusion about how to treat detainees, and ultimately lead to abuse. Tragically, this is exactly what happened.

The torture and other abuses of prisoners in Iraq and Afghanistan have done immeasurable damage to America's standing in the world, have undermined our military rules and traditions, and exposed our own soldiers and citizens to greater risks.

I cannot support a nominee who has done so much damage to America's fundamental values and moral leadership in the world, and has taken actions and positions that put our soldiers and citizens at greater risk.

Mr. CORZINE. Mr. President, today we are considering the nomination of Alberto Gonzales to be the next Attorney General of the United States. Like many of my colleagues, I was inclined to support Judge Gonzales's nomination. I have had several dealings with Judge Gonzales and each time I have found him to be both cooperative and a gentleman. He has been extremely helpful and gracious in our mutual effort to fill the vacancies on the New Jersey Federal bench, and for that I am thankful.

Unfortunately, I cannot in good conscience support his nomination. Even though my personal interactions with Judge Gonzales have always been positive and productive, I have serious reservations and concerns about his role in the administration's attack on our laws and, more importantly, our sensibilities of what is right and just.

My vote against Judge Gonzales is not a vote against the man. In many ways, Judge Gonzales's story is the American success story. He grew up of modest means, the son of immigrants who came to this country in search of a better life. Judge Gonzales would not disappoint his parents. He has persevered academically and professionally, displaying a work ethic that would see him rise to the upper echelons of his profession and earn the trust and confidence of a President.

Yet while Judge Gonzales has ably served President Bush as his Counsel, as Attorney General his duty will be to the American people. And therein lies my concern.

As White House Counsel, Judge Gonzales played an integral role in formulating the Bush administration's policy on coercive interrogations in its war on terror. He advised the President to suspend the application of the Geneva Conventions, calling these international standards for humane treatment of detainees ''quaint'' and ''obsolete.'' He then tasked the Department of Justice with the job of identifying legal authority to justify the harsh interrogation tactics that became an international stain on our country's once proud moral standing in the world.

The ramifications of this abhorrent policy condoning torture cannot be downplayed. The United States has the most to lose by turning its back on the Geneva Conventions. Not only does the position advocated by the administration prevent the United States from claiming the moral high ground in future international entanglements, it also compromises our Nation's ability to build international coalitions. Finally, and perhaps most importantly, it signals to other countries that all bets are off, endangering U.S. troops who might be captured in future conflicts.

As many legal observers have noted, Judge Gonzales's advice was not only flawed from a legal standpoint, it also spoke to a larger failure. A client—even when he is the President—cannot always be deferred to. This is especially true when a client seeks justification for a position that runs contrary to the law. Judge Gonzales advocated for the administration's reversal of longstanding U.S. policies and practices supporting application of the Geneva Conventions and antitorture laws. He urged their suspension, relying on convoluted legal reasoning in order to justify an end. This willingness to skirt international law demonstrates a lack of independence from an administration committed to violating international principles of justice and humanity.

The job of Attorney General, unlike other Cabinet positions that advocate the President's agenda, requires independence. The Attorney General is tasked with enforcing the laws of the land, whether they advance or impede the President's policies. Judge Gonzales has not demonstrated a willingness to break from the President's agenda, and I fear his penchant for deferring to the President would hamper the Department of Justice in its mission to uphold the law. The need for independence is especially important in an administration that time and time again has demonstrated a cavalier attitude toward civil rights and civil liberties.

Should he eventually be confirmed, the challenges facing Judge Gonzales are numerous and daunting. And it is against this backdrop that I ask him to take on remedial efforts to restore not only America's moral standing in the world, but to restore the civil rights and liberties trampled on by this administration.

We need to strive to curb this administration's overreaching and to reinstate constitutionally protected civil liberties sacrificed by the administration in the name of fighting terrorism. I believe strongly that we can protect our Nation while preserving our cherished freedoms. Indeed, we can be both safe and free. Measures like racial profiling, which make people suspect because of their ethnicity or religion—rather than because of suspicious activity—are repugnant to our citizens, divert valuable resources from finding real terrorists, and ignore our Nation's commitment to freedom. I am certain that we can fight terrorism without resorting to hateful tactics such as racial profiling that cast a cloud of immorality over our country.

I sincerely hope that, if confirmed, Judge Gonzales takes up these challenges and provides an independent voice for the Department of Justice.

I know Judge Gonzales to be a gentleman and a patriot. And while I regrettably must oppose his nomination, I know that his confirmation is assured and pledge to work with him to ensure that our laws are enforced and our freedoms protected.

Mr. INOUYE. Mr. President, the nomination by President George W. Bush of Mr. Alberto Gonazales to serve as the Attorney General of the United States has stirred strong opposition. Although my first instinct is to support the prerogative of any President to select his own Cabinet, I have concluded upon a thorough review of Mr. Gonzales's record that I must oppose his nomination.

The Constitution confides in the Senate the duty of advice and consent. This means that my colleagues and I have the responsibility of considering the men and women the President nominates for high Government offices, and either confirming or rejecting them. Although many consider advice and consent to be a Senate right, I think of it as a duty that carries an obligation of fairness and due diligence. The power to reject a nominee should only be invoked where there is substantial doubt as to a nominee's fitness for office—not when there is a simple difference in political philosophy.

I do not personally agree with some of the positions that Mr. Gonzales has advocated, but that should come as no surprise, because I do not agree with many of the proposals made by the man who nominated him, President Bush. Most strikingly, I am appalled that he has professed only a ''vague knowledge'' of the racial and ethnic disparities in the imposition of the death penalty in Federal cases. These

very disparities in the State of Hawaii's penal system led me to champion the abolition of the death penalty in our territorial legislature many years ago, and I have remained opposed to this ultimate and irreversible sentence ever since.

Our philosophical disagreement over issues such as the death penalty, do not, in my mind, constitute a sufficient basis for opposing his nomination. His lack of candor and forthrightness in answering simple questions about his record does.

A January 2002 memorandum from Mr. Gonzales to the President advocated abandoning the Geneva Convention and its prohibitions on torture and inhumane treatment of prisoners of war. As a former officer in our Nation's military, I find this conclusion horrifying and repugnant. As a Senator, I find Mr. Gonzales's refusal to clarify his role in the subsequent development of a U.S. policy for torturing POWs inexcusable.

His decision—supported by the refusal of the Bush administration to turn over key documents—to stonewall efforts to bring this matter to the light of public scrutiny strikes to the very foundation of our Nation's democratic government. Our citizens have a right to openness and transparency in their public officials. Clandestine maneuvers under the ever-growing cloak of ''national security'' and ''executive privilege'' disenfranchises the electorate and deprives them of the information they need in order to make their choices at the polls.

Mr. Gonzales's failure to respond to questions legitimately posed to him by the Senate raises grave doubts in my mind as to his fitness to serve the people of the United States as their Attorney General. Mr. Bush may have the privilege of choosing his own ''team'' for his Cabinet, but American citizens have an unqualified right to be served by public officials who will answer candidly for their actions.

Accordingly, I must reluctantly oppose this nomination.

Mr. HARKIN. Mr. President, almost 35 years ago, in July of 1970, when I was a staff person in the House of Representatives, I was sent with a commission to Vietnam. My commission was to investigate reports about the South Vietnamese military using tiger cages to imprison, torture and kill people. Our State Department denied the existence of the cages, and our military denied the existence of the cages, calling reports of their existence Communist conspiracy stories.

Thanks to the courage of Congressman William Anderson of Tennessee and Congressman Augustus Hawkins of California, we were able to uncover the notorious tiger cages on Con Son Island. When the pictures I took appeared in LIFE magazine, the world saw North Vietnamese, Vietcong, and civilian opponents of the war in South Vietnam all bunched into these tiger cages, in clear violation of human rights, and in clear violation of the Geneva Conventions. The reaction was overwhelming. The pictures presented evidence of the cruel, torturous conditions in these tiger cages, how people had been tortured and killed, and how we, the U.S. Government, had provided not only the funding but the supervision for these prisons.

I thought that we had learned from that experience. So it was with a terrible sense of déjà vu that I saw the pictures of abuse at Abu Ghraib prison last year.

Since the Vietnam era, as a Government and as a society, we have taken strong measures against torture. We have passed a Federal law banning torture, and ratified an international treaty banning torture. The Army field manual today reads: ''The use of torture is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. . . . It also may place U.S. and allied personnel in enemy hands at greater risk.''

Yet, it was in an extraordinary document prepared at the request of Alberto Gonzales, the nominee for Attorney General, that the groundwork for the abuses at Abu Gharib was laid. That document reaches three conclusions:

That the President has the inherent constitutional power as Commander in Chief to override the prohibitions against torture enacted by Congress;

That only acts that inflict the kind of pain experienced with death or organ failure amount to torture and that the interrogator must have the ''precise objective'' of inflicting severe pain even if he knew ''that severe pain would result from his actions''; and

That government officials can avoid prosecution for their acts of torture by invoking the defenses of ''necessity'' or ''self-defense'' even though the Convention Against Torture says the opposite.

Because he had never spoken publicly about his involvement in the development of these policies, Alberto Gonzales's confirmation hearing took on unusual importance. The hearing was his opportunity to explain his role in the preparation of this document and to step away from its conclusions. Instead, when asked about the memo, Gonzales stated ''I don't recall today whether or not I was in agreement with all of the analysis, but I don't have a disagreement with the conclusions then reached by the Department.'' Gonzales also reasserted his view that the President has the power to override laws passed by the Congress and to immunize others to perform what would otherwise be unlawful acts. These positions are wrong as a matter of law and wrong as a matter of conscience. The torture memo laid the groundwork directly for the abuses at Abu Ghraib and has done great harm to our stature in the international community.

As the nominee for Attorney General, Alberto Gonzales is the person with the single greatest responsibility to uphold and defend the rule of law. Not only is the torture memo a reprehensible document that sanctioned engaging in illegal acts of torture in violation of basic human rights, it is also a prime example of a legal analysis that twists, turns and makes farfetched leaps of logic in order to justify a policy end sought by the administration. This sort of willingness to circumvent the law, to treat it as an obstacle to be negotiated around, shows a fundamental lack of independence. It calls into question Mr. Gonzales's fitness to be the Attorney General. Because of this, but even more because of his fundamental lack of respect for basic human rights, I cannot support him to be the chief law enforcement officer of this country.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise today in opposition to President Bush's nomination of Alberto Gonzales to be Attorney General of the United States. While I have long held that any President deserves a presumption in favor of his nominees for Cabinet positions, the advice and consent role of the Senate should never be regarded as a mere formality.

The Attorney General, in particular, is far more than simply another political appointee or adviser to a President. The Attorney General plays a key role in the provision of justice for all Americans, and nominees to this enormously important office must be reviewed with senatorial scrutiny which is fair and not political but demanding.

I am profoundly troubled that Mr. Gonzales's promotion of torture flies in the face of deeply held American values, undermines our Nation's reputation around the world, and places American troops and other citizens abroad in great danger. As the father of a soldier who served in combat in both Afghanistan and Iraq, I am particularly concerned that our Nation's utilization of torture creates an environment where other nations and other organizations feel they have justification for torturing our troops and our citizens. There is little wonder why Mr. Gonzales's position was strongly opposed by the U.S. Army's legal corps and by the U.S. State Department.

Mr. Gonzales oversaw and approved the decision to disregard the Geneva Conventions for detainees from Afghanistan, he endorsed interrogation methods that military and FBI professionals regarded as illegal and improper, and he supported the indefinite detention of both foreigners and Americans without due process. It was only after the Supreme Court's intervention, which ruled that the prisoners were entitled to appeal their detentions in Federal courts, that some of the harmful policies were reversed. The Court also ruled that an American citizen could not be detained and held as an ''enemy combatant'' without court

review or the right to counsel, invalidating Mr. Gonzales's position in the cases of Yaser Esam Hamdi and Jose Padilla.

Mr. Gonzales made a second horrible judgment about the Geneva Conventions—that their restrictions on interrogations were ''obsolete.'' Quite apart from the question of POW status for detainees, this determination invalidated the Army's doctrine for questioning enemy prisoners, which is based on the Geneva Conventions and had proved its worth over decades. Regarding this issue, Mr. Gonzales ignored advice from the Army's own legal corps to Secretary of State Colin L. Powell. Why is this so alarming? The President's promotion of torturous interrogation practices, such as ''waterboarding,'' would likely invite retaliation against Americans beyond what already exists. This could have grievous effects on our men and women serving abroad. I can think of few things worse, as the father of a soldier, than to know America's own torture policies would increase the likelihood of more torture directed at our American troops.

Mr. Gonzales had an opportunity to clarify this issue while testifying in front of the Senate Judiciary Committee. During that hearing, Judge Gonzales refused to reject a narrow definition of torture and directly answer whether he thought the President has the authority to overrule the statute that condemns torture and provide immunity for those who commit torture based on the directive of the President.

Turning to another issue of importance, it is incumbent upon me to point out that while Mr. Gonzales was serving as counsel to then-Governor George W. Bush, he provided questionable advice regarding clemency of inmates. It appears Mr. Gonzales failed in his duty to provide complete information regarding death row inmates in the State of Texas. In some of the 57 memos he composed for Governor Bush, Mr. GONZALEZ failed to include all mitigating circumstances that should be considered in clemency for death row inmates. Some of these mitigating circumstances include inmates' ability to have qualified representation as well as the questionable mental status of some of the death row inmates.

Mr. Gonzales faced rigorous questioning by members of the Senate Judiciary Committee. Despite the opportunity to explain away concerns the American public had pertaining to his record and his beliefs, Mr. Gonzales did not convince me that he is the proper person to serve as our Attorney General, the chief law enforcement officer of the United States.

The New York Times correctly observed that the Attorney General does not merely head up the Justice Department; he is responsible for ensuring that America is a nation in which justice prevailed. Mr. Gonzales's record makes him unqualified to take on the role to represent the American justice system to the rest of the world.

Mr. President, I ask unanimous consent to have printed in the RECORD editorials from the Washington Post and the New York Times wherein these highly respected newspapers contend that the confirmation of Mr. Gonzales would be counter to fundamental American values. I share those views.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 26, 2005]

THE WRONG ATTORNEY GENERAL

(Editorial)

Alberto Gonzales's nomination as attorney general goes before the Senate at a time when the Republican majority is eager to provide newly elected President Bush with the cabinet of his choice, and the Democrats are leery of exposing their weakened status by taking fruitless stands against the inevitable. None of that is an excuse for giving Mr. Gonzales a pass. The attorney general does not merely head up the Justice Department. He is responsible for ensuring that America is a nation in which justice prevails. Mr. Gonzales's record makes him unqualified to take on this role or to represent the American justice system to the rest of the world. The Senate should reject his nomination.

The biggest strike against Mr. Gonzales is the now repudiated memo that gave a disturbingly narrow definition of torture, limiting it to physical abuse that produced pain of the kind associated with organ failure or death. Mr. Gonzales's attempts to distance himself from the memo have been unconvincing, especially since it turns out he was the one who requested that it be written. Earlier the same year, Mr. Gonzales himself sent President Bush a letter telling him that the war on terror made the Geneva Conventions' strict limitations on the questioning of enemy prisoners ''obsolete.''

These actions created the legal climate that made possible the horrific mistreatment of Iraqi prisoners being held in Abu Ghraib prison. The Bush administration often talks about its desire to mend fences with the rest of the world, particularly the Muslim world. Making Mr. Gonzales the nation's chief law enforcement officer would set this effort back substantially.

Other parts of Mr. Gonzales's record are also troubling. As counsel to George Bush when he was governor of Texas, Mr. Gonzales did a shockingly poor job of laying out the legal issues raised by the clemency petitions from prisoners on death row. And questions have been raised about Mr. Gonzales's account of how he got his boss out of jury duty in 1996, which allowed Mr. Bush to avoid stating publicly that he had been convicted of drunken driving.

Senate Democrats, who are trying to define their role after the setbacks of the 2004 election, should stand on principle and hold out for a more suitable attorney general. Republicans also have reason to oppose this nomination. At the confirmation hearings, Senator Lindsey Graham, Republican of South Carolina, warned that the administration's flawed legal policies and mistreatment of detainees had hurt the country's standing and ''dramatically undermined'' the war on terror. Given the stakes in that war, senators of both parties should want an attorney general who does not come with this nominee's substantial shortcomings.

[From the Washington Post, Jan. 26, 2005]

A DEGRADING POLICY

Alberto R. Gonzales was vague, unresponsive and misleading in his testimony to the Senate Judiciary Committee about the Bush administration's detention of foreign prisoners. In his written answers to questions from the committee, prepared in anticipation of today's vote on his nomination as attorney general, Mr. Gonzales was clearer—disturbingly so, as it turns out. According to President Bush's closest legal adviser, this administration continues to assert its right to indefinitely hold foreigners in secret locations without any legal process; to deny them access to the International Red Cross; to transport them to countries where torture is practiced; and to subject them to treatment that is ''cruel, inhumane or degrading,'' even though such abuse is banned by an international treaty that the United States has ratified. In effect, Mr. Gonzales has confirmed that the Bush administration is violating human rights as a matter of policy.

Mr. Gonzales stated at his hearing that he and Mr. Bush oppose ''torture and abuse.'' But his written testimony to the committee makes clear that ''abuse'' is, in fact, permissible—provided that it is practiced by the Central Intelligence Agency on foreigners held outside the United States. The Convention Against Torture, which the United States ratified in 1994, prohibits not only torture but ''cruel, inhumane or degrading treatment.'' The Senate defined such treatment as abuse that would violate the Fifth, Eighth or 14th amendments to the Constitution—a standard that the Bush administration formally accepted in 2003.

But Mr. Gonzales revealed that during his tenure as White House counsel, the administration twisted this straightforward standard to make it possible for the CIA to subject detainees to such practices as sensory deprivation, mock execution and simulated drowning. The constitutional amendments, he told the committee, technically do not apply to foreigners held abroad; therefore, in the administration's view the torture treaty does not bind intelligence interrogators operating on foreign soil. ''The Department of Justice has concluded,'' he wrote, that ''there is no legal prohibition under the Convention Against Torture on cruel, inhuman or degrading treatment with respect to aliens overseas.''

According to most legal experts, this is a gross distortion of the law. The Senate cited the constitutional amendments in ratifying the treaty precisely to set a clear standard that could be applied to foreigners. Nevertheless, Mr. Gonzales uses this false loophole to justify practices that contravene fundamental American standards. He was asked if there were any legal prohibition against U.S. personnel using simulated drowning and mock executions as well as sleep deprivation, dogs to inspire fear, hooding, forced nudity, the forced injection of mood-altering drugs and the threat of sending a detainee to another country for torture, among other abuses. He answered: ''Some might . . . be permissible in certain circumstances.''

This is not a theoretical matter. The CIA today is holding an undetermined number of prisoners, believed to be in the dozens, in secret facilities in foreign countries. It has provided no account of them or their treatment to any outside body, and it has allowed no visits by the Red Cross. According to numerous media reports, it has subjected the prisoners to many of the abuses Mr. Gonzales said ''might be permissible.'' It has practiced such mistreatment in Iraq, even though detainees there are covered by the Geneva Conventions; according to official investigations by the Pentagon, CIA treatment of prisoners there and in Afghanistan contributed to the adoption of illegal methods by military interrogators.

In an attempt to close the loophole, Sen. Richard J. Durbin (D–Ill.), Sen. John McCain

(R–Ariz.) and Sen. Joseph I. Lieberman (D–Conn.) sought to attach an amendment to the intelligence reform legislation last fall specifying that ''no prisoner shall be subject to torture or cruel, inhumane or degrading treatment or punishment that is prohibited by the Constitution, laws or treaties of the United States.'' The Senate adopted the provision unanimously. Later, however, it was stripped from the bill at the request of the White House. In his written testimony, Mr. Gonzales affirmed that the provision would have ''provided legal protections to foreign prisoners to which they are not now entitled.'' Senators who supported the amendment consequently face a critical question: If they vote to confirm Mr. Gonzales as the government's chief legal authority, will they not be endorsing the systematic use of ''cruel, inhumane and degrading'' practices by the United States?

[From the Washington Post, Jan. 16, 2005]

THE VOTE ON MR. GONZALES

Despite a poor performance at his confirmation hearing, Alberto R. Gonzales appears almost certain to be confirmed by the Senate as attorney general. Senators of both parties declared themselves dissatisfied with Mr. Gonzales's lack of responsiveness to questions about his judgments as White House counsel on the detention of foreign prisoners. Some expressed dismay at his reluctance to state that it is illegal for American personnel to use torture, or for the president to order it. A number of senators clearly believe, as we do, that Mr. Gonzales bears partial responsibility for decisions that have led to shocking, systematic and ongoing violations of human rights by the United States. Most apparently intend to vote for him anyway. At a time when nominees for the Cabinet can be disqualified because of their failure to pay taxes on a nanny's salary, this reluctance to hold Mr. Gonzales accountable is shameful. He does not deserve to be confirmed as attorney general.

We make this judgment bearing in mind the president's prerogative to choose his own cabinet, a privilege to which we deferred four years ago when President Bush nominated John D. Ashcroft to lead the Justice Department. In some important respects, Mr. Gonzales is a more attractive figure than Mr. Ashcroft. His personal story as a Hispanic American is inspiring, and he appears less ideological and confrontational than the outgoing attorney general. Mr. Gonzales is also not the only official implicated in the torture and abuse of detainees. Other senior officials played a larger role in formulating and implementing the policies, and Mr. Bush is ultimately responsible for them. It is nevertheless indisputable that Mr. Gonzales oversaw and approved a decision to disregard the Geneva Conventions for detainees from Afghanistan; that he endorsed interrogation methods that military and FBI professionals regarded as illegal and improper; and that he supported the indefinite detention of both foreigners and Americans without due process. To confirm such an official as attorney general is to ratify decisions that are at odds with fundamental American values.

Mr. Gonzales's defenders argue that his position on the Geneva Conventions amounted to a judgment that captured members of al Qaeda did not deserve official status as prisoners of war. If that had been his recommendation, then the United States never would have suffered the enormous damage to its global prestige caused by the detention of foreigners at the Guantanamo Bay prison. In fact, the White House counsel endorsed the view that the hundreds of combatants rounded up by U.S. and allied forces in Afghanistan, who included members of the Taliban army, foreign volunteers and a few innocent bystanders, as well as al Qaeda militants, could be collectively and indiscriminately denied Geneva protections without the individual hearings that the treaty provides for. That judgment, which has been ruled illegal by a federal court, resulted in hundreds of detainees being held for two years without any legal process. In addition to blackening the reputation of the United States, the policy opened the way to last year's decision by the Supreme Court, which ruled that the prisoners were entitled to appeal their detentions in federal courts. The court also ruled that an American citizen could not be detained and held as an ''enemy combatant'' without court review or the right to counsel, invalidating Mr. Gonzales's position in the cases of Yaser Esam Hamdi and Jose Padilla.

Mr. Gonzales made a second bad judgment about the Geneva Conventions: that their restrictions on interrogations were ''obsolete.'' Quite apart from the question of POW status for detainees, this determination invalidated the Army's doctrine for questioning enemy prisoners, which is based on the Geneva Conventions and had proved its worth over decades. Mr. Gonzales ignored the many professional experts, ranging from the Army's own legal corps to Secretary of State Colin L. Powell, who told him that existing interrogation practices were effective and that setting them aside would open the way to abuses and invite retaliation against Americans. Instead, during meetings in his office from which these professionals were excluded, he supported the use of such methods as ''waterboarding,'' which causes an excruciating sensation of drowning. Though initially approved for use by the CIA against al Qaeda, illegal techniques such as these quickly were picked up by military interrogators at Guantanamo and later in Afghanistan and Iraq. Several official investigations have confirmed that in the absence of a clear doctrine—the standing one having been declared ''obsolete''—U.S. personnel across the world felt empowered to use methods that most lawyers, and almost all the democratic world, regard as torture.

Mr. Gonzales stated for the record at his hearing that he opposes torture. Yet he made no effort to separate himself from legal judgments that narrowed torture's definition so much as to authorize such methods as waterboarding for use by the CIA abroad. Despite the revision of a Justice Department memo on torture, he and the administration he represents continue to regard those practices as legal and continue to condone slightly milder abuse, such as prolonged sensory deprivation and the use of dogs, for Guantanamo. As Mr. Gonzales confirmed at his hearing, U.S. obligations under an anti-torture convention mean that the methods at Guantanamo must be allowable under the Fifth, Eighth and 14th amendments of the U.S. Constitution. According to the logic of the attorney general nominee, federal authorities could deprive American citizens of sleep, isolate them in cold cells while bombarding them with unpleasant noises and interrogate them 20 hours a day while the prisoners were naked and hooded, all without violating the Constitution. Senators who vote to ratify Mr. Gonzales's nomination will bear the responsibility of ratifying such views as legitimate.

Mr. JOHNSON. Mr. President, while I have voted in favor of President Bush's other Cabinet nominees, I stand in strong principled opposition to the confirmation of Mr. Gonzales.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise in support of the nomination of Judge Alberto Gonzales to be the next Attorney General of the United States of America. Based on my relationship with him over the last 4 years, I am certain he will make an outstanding Attorney General for all of the people in the United States.

Judge Gonzales has the education, experience, and character to make an excellent Attorney General. I know this to be the case because I have worked closely with him virtually every week, and many times every day, for 4 years on many issues, including terrorism and judicial nominations. I can tell my colleagues that he is a good man, and he is more than up to facing this challenging assignment.

Before making a few remarks in support of this nomination, I want to again commend the many contributions of Attorney General Ashcroft. We all owe him a debt of gratitude for working so hard over the last 4 years to make America safer for all of our citizens.

Unfortunately, but perhaps not unexpectedly, the Gonzales nomination has become as contentious as the nomination of Attorney General Ashcroft. I can only hope that once Judge Gonzales is sworn in as Attorney General, his opponents will work with him in good faith in the interest of the American people.

I have been here over the last 2 days as some of my colleagues have gone on at great length about what they misleadingly allege is the Bush administration torture policy and how Judge Gonzales acted to condone torture. Nothing could be further from the truth.

They attempt to make him responsible for a memo he did not write, prepared by an office he did not run, in a department in which he did not work, and they claim he gave advice that President Bush did not follow, which, of course, he did not.

In fact, the memo Judge Gonzales did not write was written by a person he did not supervise in a department in which he did not work and which was ultimately rescinded in July of 2004 and later replaced by a new memorandum.

In his effort to oppose the Gonzales nomination, my good friend from Massachusetts has now even tried to give a new name to the Bybee memorandum. This week, for the first time, the senior Senator from Massachusetts actually called it the Bybee-Gonzales memo.

I said it before, and I will say it again. Judge Gonzales did not write the memo. Yet his name is added to Bybee as if he were a coauthor. Somehow holding Judge Gonzales responsible for a memo he received is not fair.

Apparently, all Judge Gonzales did was ask a very important question of the entity within the Department of Justice, the Office of Legal Counsel, whose job it is to answer such inquiries. Is that a crime? Just because you ask for information does not mean you will agree with the information you receive.

Most importantly, we know the administration's policy. They have been very clear. The President has been clear. Judge Gonzales has been clear: No torture. That is their position. It has always been their position. Treat all detainees humanely, even those such as captured al-Qaida suspects who are not covered by the Geneva Conventions.

Regardless of what the rescinded and replaced Bybee memo says about the law, the bottom line is that the President never authorized or acquiesced in the use of torture. He never ordered torture. The February 7, 2002, memorandum that precedes the Bybee memo by months makes that clear. Judge Gonzales also never recommended torture.

The President made clear that regardless of whether there might be a theoretical right to override the Convention Against Torture, he was not and is not authorizing torture.

Several Senators correctly argued that no one is above the law. I agree with that. Judge Gonzales has also made clear that no man, including the President, is above the law. The President and Judge Gonzales never said the President could override the Convention Against Torture.

There has been some discussion at the nomination hearing in the Judiciary Committee and on the floor of the Senate about whether a President's independent duty to preserve, protect, and defend the Constitution of the United States might one day require a President not to enforce a statute enacted by Congress but viewed by the President as unconstitutional.

I want to discuss this matter a little further.

Although President Bush has clearly not to date exercised this authority—if it, indeed, does exist—some are criticizing Judge Gonzales's views of this power saying they are somehow out of the mainstream, dangerous, or even reflecting a profound disrespect for the rule of law.

Let me respond to the arguments made by several Judiciary Committee Democrats who say Judge Gonzales somehow believes the President is above the law, or that the President can pick and choose the laws or standards he will follow.

Specifically, my esteemed colleague from Vermont, the ranking minority leader of our committee, has asserted that Judge Gonzales has ''indicated that he views the President to have the power to override our law and, apparently, to immunize others to perform what would otherwise be unlawful acts. This is about as extreme a view of Executive power as I have ever heard. I believe it is not only dead wrong, as a constitutional matter, but extremely dangerous. The rule of law applies to the President, even this President.''

I have looked closely at Judge Gonzales's opinion on this issue, and I can tell you he is being wrongly criticized.

Let me talk about Judge Gonzales's position on Presidential authority.

It should go without debate that Judge Gonzales has specifically rejected that portion of the August 1, 2002, Office of Legal Counsel memorandum which asserted that the President, as Commander in Chief, possessed the constitutional authority in certain circumstances to disregard the Federal criminal prohibition against torture. He emphatically stated in his confirmation hearing that the memorandum has ''been withdrawn. It has been rejected, including that section regarding the Commander in Chief's authority to ignore the criminal statutes. So it has been rejected by the executive branch. I categorically reject it. . . . [T]his administration does not engage in torture and will not condone torture.''

That is what Judge Gonzales has already said, and every member of the committee knows that. So why would they come here and say he said otherwise when, in fact, that is explicit?

I should also point out that Judge Gonzales made it very clear that no man, including the President, is above the law. If confirmed as Attorney General, I have no doubt that he will remain faithful to his oath to defend the laws of the United States.

At the same time, however, Judge Gonzales has appropriately recognized that the President, consistent with his oath to preserve, protect, and defend the Constitution of the United States, as well as longstanding historical practice, may in rare circumstances conclude that a statute is unconstitutional. This is not new or even surprising. What is significant to me is that Judge Gonzales recognizes the gravity and limitation of this practice.

When my colleagues learn more about Judge Gonzales's views on this matter, I believe most will agree with him.

In his written answers to questions posed by Senators, Judge Gonzales noted that a decision to disregard a statute on constitutional grounds is an extremely serious matter and should be undertaken with considerable caution and care and only in extraordinary circumstances.

In response to my friend from Vermont, Senator LEAHY, Judge Gonzales emphasized:

> I would be reticent to conclude that statutes passed [by Congress] are unconstitutional and would make every reasonable effort if I am confirmed as Attorney General to uphold and defend those statutes.

That is what a good lawyer would do.

Similarly, in responding to a question from my learned friend on the committee, the Senator from Illinois, Judge Gonzales stated:

> For a President to consider whether or not to ignore a particular law as unconstitutional, however, would pose a question of extraordinary gravity and difficulty. I would approach such a question with a great deal of care.

During his confirmation hearing, Judge Gonzales rendered his opinion on this delicate issue when he stated the following:

> I think that . . . the executive branch should always look very carefully with a great deal of seriousness and care about reaching a decision that a statute passed by Congress is somehow unconstitutional and should not be followed. Certainly if I were confirmed, I would take my oath very, very seriously to try to defend any act passed by Congress, but it does appear to me, based upon my review of the history and precedent . . . that Presidents and White Houses on both sides of the aisle have taken the consistent position that a President may choose to not enforce [a] statute that the President believes is unconstitutional.

He goes on to say:

> The President is not above the law. Of course, he is not above the law. But he has an obligation, too. He takes an oath as well. And if Congress passes a law that is unconstitutional, there is a practice and a tradition recognized by Presidents of both parties that he may elect to decide not to enforce that law.

Again he goes on to say:

> Whether or not the President has the authority in that circumstance to authorize conduct in violation of a criminal statute is a very, very difficult question, as far as I'm concerned. And I think that any discussion relating to this line of reasoning would be one that I would take with a great deal of seriousness, because there is a presumption that the statutes are, in fact, constitutional and should be abided by. And this President does not have a policy or an agenda to execute the war on terror in violation of our criminal statutes.

That is what he said.

These are the statements of a man who understands that no one, including the President, is ''above the law,'' and that history and legal precedent allows, on the most serious and rarest of occasions, a President, if he believes a law is unconstitutional, to veto or even disregard such a law. Judge Gonzales appropriately described what we in this body have known for many years and through many administrations, both Republican and Democratic.

What if Congress passed a law that was discriminatory against a particular group of people? Now, I do not think Congress is going to do that, but what if it did? Should a President enforce that law knowing it is unconstitutional? I think most of us would conclude, no, he should not.

Now I want to go through the history and precedents that support Judge Gonzales's views regarding Presidential authority. Let me begin by pointing out that the Department of Justice's view that the President, in rare circumstances, may decline to enforce statutes that he finds to be unconstitutional is consistent with the position taken by the Justice Department in administrations of both parties for over 100 years.

In the 19th century, both James Buchanan's and Abraham Lincoln's Attorneys General argued that the President possesses the authority, under certain circumstances, to decline to enforce or disregard statutory provisions he views as unconstitutional. In 1860, Attorney General Jeremiah S. Black explained that ''[e]very law is to be carried out so far forth as is consistent with the Constitution, and no further.'' Thus, ''[t]he sound part of it must be executed, and the vicious portion of it suffered to drop.''

In 1861, Attorney General Edward Bates echoed this view when, in answering a question from the Secretary of the Interior as to whether the executive branch had the power ''to examine and decide upon the validity of an act of Congress, and to disregard its provisions,'' he advised that in cases where the conflict between the Constitution and a statute is ''plain and obvious,'' officials in the executive branch ''must disregard [the] statute.'' They may not, Attorney General Bates explained, ''disregard the Constitution, for that is the supreme law.''

In the 20th century, Democratic and Republican administrations consistently maintained that the President, in rare circumstances, may decline to enforce statutes he believes to be unconstitutional.

In 1918, Acting Attorney General John W. Davis of the Wilson administration agreed with the advice given by Attorney General Bates more than 50 years earlier that the President may decline to enforce a statute when its conflict with the Constitution is ''plain and obvious.''

My gosh, this is elementary law. I think almost anybody would have to agree with these conclusions, except somebody who just does not know elementary law or does not know constitutional law at all.

The Carter administration also took the position that the President may decline to enforce in certain circumstances statutes he viewed as unconstitutional. Carter administration Attorney General Benjamin Civiletti recognized that ''the Executive's duty to execute the law embraces a duty to enforce a fundamental law set forth in the Constitution as well as a duty to enforce the law founded in the Acts of Congress, and cases arise in which the duty to the one precludes the duty to the other.''

He therefore instructed in 1980 that the Education Department could implement regulations that Congress had already disapproved through the use of the legislative veto because the administration believed the statute authorizing the legislative veto to be unconstitutional.

Attorney General Civiletti, a Democrat in a Democratic administration, even went so far as to advise that the President could disregard a statutory provision forbidding the executive branch from expending money to implement regulations disapproved by legislative veto. Now, this is very significant because disregarding such a provision would constitute a violation of the Antideficiency Act, which carries with it criminal penalties.

The Carter administration's Office of Legal Counsel also took the position that ''the President's duty to uphold the Constitution carries with it a prerogative to disregard unconstitutional statutes.'' It therefore advised that if the unconstitutionality of a statute was certain, then ''the Executive could decline to enforce the statute for that reason alone.''

During the Reagan administration, Attorney General William French Smith also took the position that the President possesses the authority to disregard statutes he viewed as unconstitutional deviations from the separation of powers set forth in the Constitution.

In explaining President Reagan's decision to disregard certain provisions in the Competition in Contracting Act that he believed to be unconstitutional, Attorney General Smith stated the President's decision was ''based on the fact that in addition to the duty of the President to uphold the Constitution in the context of the enforcement of Acts of Congress, the President also has the constitutional duty to protect the Presidency from encroachment by the other branches.''

In the George H. W. Bush administration, the Office of Legal Counsel concluded in three separate opinions that the President could choose to disregard statutes that infringed on his constitutional authority. First, in 1990 the Office of Legal Counsel noted that ''[t]he Department of Justice in modern times has . . . consistently advised that the Constitution authorizes the President to refuse to enforce a law that he believes is unconstitutional.''

In another issue that occurred in 1992 which involved a statute that limited the President's ability to issue more than one passport to U.S. Government personnel, the Office of Legal Counsel concluded that the President was ''constitutionally authorized to decline to enforce [it]'' because it ''interfere[d] with the 'plenary and exclusive' power of the President to conduct foreign affairs.''

In the Clinton administration, the Office of Legal Counsel in 1994 reaffirmed the view that ''there are circumstances in which the President may appropriately decline to enforce a statute that he views as unconstitutional.'' In particular, that Clinton Office of Legal Counsel in the Justice Department explained that ''[w]here the President believes that [a statute] unconstitutionally limits its powers,'' ''he has the authority to defend his office and decline to abide by [the statute], unless he is convinced that the [Supreme] Court would disagree with his assessment.''

In the Clinton administration, the Office of Legal Counsel noted that the Department of Justice in the Carter, Reagan, and Bush administrations had consistently advised that ''the Constitution provides [the President] with the authority to decline to enforce a clearly unconstitutional law,'' and we reaffirm that ''this advice [was] consistent with the views of the Framers.''

Let me also point out that the view that the President, in rare occasions, may decline to enforce a law that unconstitutionally restricts his authority has also been consistently embraced by Presidents of both parties. Let me give a few examples.

In 1920, President Wilson announced that he would refuse to carry out a provision in the Jones Merchant Marine Act directing him to terminate certain tariff-related treaty provisions because he considered such a requirement to be unconstitutional.

President Dwight D. Eisenhower, in signing an appropriations act in 1955 that contained a legislative veto provision, stated that any legislative veto would ''be regarded as invalid by the executive branch of the Government . . . unless otherwise determined by a court of competent jurisdiction.''

Similarly, Presidents John F. Kennedy, Lyndon B. Johnson, Jimmy Carter, and Ronald Reagan later issued similar signing statements regarding the invalidity of legislation containing legislative veto provisions.

Moreover, Presidents Richard M. Nixon and Gerald R. Ford announced in signing statements that they would disregard legislative provisions requiring that a congressional committee approve the exercise of Executive authority, and they should have. In fact, according to one historian's survey, it is estimated that from 1789 to 1981, there were at least 20 instances where Presidents had failed to comply with statutory provisions they viewed as unconstitutional.

In these cases, Presidents have disregarded statutes that they believed intruded on, among other powers, their Appointments Clause powers, Recommendations Clause powers, removal powers, foreign affairs powers, pardon powers, and powers as Commander in Chief. Such Presidents include James Buchanan, Chester Arthur, Grover Cleveland, William Howard Taft, Woodrow Wilson, Franklin Roosevelt, Dwight Eisenhower, Lyndon Johnson, Gerald Ford, Jimmy Carter and Ronald Reagan.

In at least four of these cases, Presidents refused to follow the law because they believed it to infringe their powers as Commander in Chief. In 1860, President Buchanan disregarded a law requiring an Army Corps of Engineers project to be supervised by a particular captain, reasoning that this requirement intruded on his powers as Commander in Chief. Likewise, Presidents Ford, Carter, and Reagan disregarded various provisions of the War Powers Act, arguing that certain consultation, notification, and termination provisions contained in the act infringed upon their constitutional authority as Commander in Chief.

Finally, I want to draw particular attention to the holdings of the U.S. Supreme Court which has implicitly agreed with the view that the President, in extraordinary circumstances, has the authority to decline to enforce statutes that he views as unconstitutional when he believes that such statutes intrude upon the constitutional prerogatives of the Presidency. In 1926, the U.S. Supreme Court upheld President Wilson's decision to remove a postmaster from office in violation of a statute requiring him to first obtain the Senate's consent. The Court held that the statute in question constituted an unconstitutional limitation on the President's power to remove executive officers, and thus that the removal of the postmaster without the Senate's consent was legal. This is the teaching of the case of Myers v. United States, 272 U.S. 52 (1926).

Most notably, not a single member of the Court in Myers found or even suggested that the President had exceeded his authority or acted improperly by refusing to comply with what he viewed as an unconstitutional statute. As a result, the Clinton administration's Office of Legal Counsel concluded that:

[t]he [Supreme] Court in Myers can be seen to have implicitly vindicated the view that the President may refuse to comply with a statute that limits his constitutional powers if he believes it is unconstitutional.

More recently, four Supreme Court Justices have explicitly endorsed the position that the President may refuse to obey statutes he believes to be unconstitutional. In the 1991 case of Freytag v. Commissioner, Justice Scalia, in an opinion joined by Justices O'Connor, Kennedy, and Souter, explicitly stated that ''the means [available to a President] to resist legislative encroachment'' upon his power include ''the power to veto encroaching laws, or even to disregard them when they are unconstitutional.''

Consequently, there should be no hesitation regarding Judge Gonzales's responses to and analyses of this area of the law. He would be derelict were he to not acknowledge that there was indeed, in rare circumstances, precedents for a President to find a statute unconstitutional. It is unfair and unjustified to criticize this nominee for his accurate and, as I have just pointed out in some detail, traditional legal analysis of this issue. On top of that, these criticisms have ignored Judge Gonzales's very firm resolve that no man is above the law and that the President himself is not above the law. Sooner or later in this body we have to take people at their word. Having spent 4 years working with Judge Gonzales, I think you can take him at his word. I know you can.

I hope that this discussion puts to rest the erroneous suggestion that somehow Judge Gonzales holds some perverted view of the reach of the power of the President. President Bush certainly has never felt the need to assert this authority over the last 4 years which makes it hard to understand why it has become an issue in the Gonzales confirmation.

Of course, Judge Gonzales respects the law. Here is a man who was a justice on the Texas Supreme Court, where it was his job every day to uphold the law and mete out justice. He practiced law with one of the most prestigious law firms in the United State, Vinson and Elkins.

Here is a man who served honorably for his Country in the United States Air Force. Here is a man who was Texas's Secretary of State. And some of my colleagues say they will vote against him because he does not have the proper respect for the law. I simply do not understand this.

We know that Judge Gonzales is fully capable of acting independent of the President. It is not as if this will be the first time Judge Gonzales will be in a job that requires independence from President Bush. When he was a justice of the Texas Supreme Court, he was independent. At that time, he was no longer representing the interests of a Governor, he was representing the judicial system. He was upholding the law for those in Texas.

To suggest that he does not know how to exert his own opinions is offensive. He has done it before and he will do it again.

To those who criticize Judge Gonzales's responsiveness to questions submitted by the committee, let me just say this. When President Clinton nominated Janet Reno for the position of the next Attorney General, she was presented with 35 questions by the committee. We confirmed her—and I personally voted for her even though she did not respond to any of those questions prior to the vote. In fact, she did not submit her responses until 8 months after she was confirmed. We didn't rake her over the coals. We didn't send her 500 questions that required 250 pages of single-spaced answers. In contrast, Judge Gonzales responded to over 450 questions within 2 business days. He then responded to several series of additional questions over the next weeks. In total, he submitted 250 pages of single-spaced written responses to 500 questions posed by members of the Judiciary Committee. To claim that we do not know enough about his policy views simply is not supported by the voluminous record.

We didn't know anything about Janet Reno's policy views. We supported her because she was the nominee of the President and we believed her to be a good person and that she could do the job.

There is no excuse for people not supporting Judge Gonzales as the nominee of the President, because he is a good person and he has more than convinced any reasonable person that he can do this job.

Judge Gonzales is someone with whom I have worked very closely on many difficult issues during President Bush's first term. I didn't know him before President Bush was elected—at least I don't remember having met him. But I know him very well since he was appointed as White House Counsel. He is a first rate attorney. He is a straight shooter. He has always told it like it is, and he will tell it like it is. He is honest, hard working, intelligent, and experienced and he has said that he understands these principles.

He understands the difference between being Attorney General and the White House Chief Counsel. He understands that he represents all the people in America as Attorney General.

He came up the hard way and he is his own man. I am proud to know him. I am proud to have worked with him. I believe in the man. I believe he will do a great job. And I believe it is time for us to treat him with a little more respect than we have in the past.

I thank my colleague from Michigan. I know he probably wants to speak. I spoke at length. I apologize for that. But I thank him for his graciousness as he always listens to me, and to others as well.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from Utah.

Mr. President, I will vote against the nomination of Alberto Gonzales today because of the central role he played in establishing the legal framework that set the stage for the torture and mistreatment of persons in U.S. custody. That framework ignored prohibitions in our law and our international obligations. Of immense significance, this legal framework endangered American troops by making them more vulnerable to like treatment.

The shocking photographs of prisoner abuse at Abu Ghraib prison—images of a hooded man connected to electric wires, prisoners on dog leashes, naked men in so-called stress positions, and beaten, humiliated, or murdered prisoners—are now linked with American behavior. Prisoner abuse in Iraq, Afghanistan, and elsewhere has deepened the anger and resentment that some feel toward our country and has given a propaganda club to our enemies.

Longstanding legal prohibitions against torture and inhumane treatment are pivotal to the protection of American troops engaged in combat outside the United States, because upholding our commitments to international prohibitions against torture and inhumane treatment gives us the moral and legal standing to demand that others refrain from torturing or mistreating American service men and women in their custody and to enforce those demands.

Our top military lawyers, including the Legal Adviser to the Chairman of the Joint Chiefs of Staff and the Army's Judge Advocate General, expressed reservations and concerns at various times during the development of the administration's legal policies

regarding the handling of detainees. Military lawyers warned against deviating from the standards of the Geneva Conventions. Military lawyers also reportedly argued against tough interrogation techniques advocated by civilian attorneys saying such tactics would violate established military practice and, if revealed, would provoke public condemnation both at home and abroad. In the end, Judge Gonzales sided with the civilian attorneys in opposing the recommendations of our Senior military lawyers.

Also, a group of 12 retired senior military officers, including former Chairman of the Joint Chiefs of Staff, retired Army General John Shalikashvili, took the highly-unusual step of writing the Senate Judiciary Committee a letter critical of Judge Gonzales. They expressed deep concern in particular over his role ''in shaping U.S. detention and interrogation operations in Afghanistan, Iraq, Guantanamo Bay, and elsewhere.'' Those retired military officers stated, ''Today, it is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world.'' They also stated that Judge Gonzales's positions were ''on the wrong side of history.''

Judge Gonzales's personal history is inspiring. However, it is not enough to qualify someone to hold the office of Attorney General of the United States. The Attorney General is our chief law enforcement officer, the leader of the Department of Justice, and the first arbiter of our laws. We rely on the Attorney General to help maintain the rule of law in this country.

The rule of law seriously broke down in our treatment of prisoners. The Defense Department's own investigations show that abuses of detainees were not restricted to the acts of a few lower-ranking Reservists working the night shift at Abu Ghraib prison. They were widespread. The panel chaired by former Secretary of Defense James Schlesinger which examined the causes of these abuses found in their August 2004 report that ''There is both institutional and personal responsibility at higher levels.''

At two critical decision points, Judge Gonzales was at the center of the administration's development of an overly aggressive legal framework for the interrogation of detainees. Their policies broke with long-standing legal doctrine regarding the treatment of detainees and exceeded the limits of the law regarding permissible interrogation techniques. In doing so, Judge Gonzales contributed to creating an environment in which the systematic and abusive behavior toward detainees in U.S. custody was either permitted or was perceived to be permitted.

The first critical point at which Judge Gonzales played a role was in formulating the Administration's policy regarding the status of al-Qaida and Taliban combatants under the Geneva Conventions on the Treatment of Prisoners of War.

Judge Gonzales's view of the Geneva Conventions was revealed in his January 25, 2002, draft memorandum to the President. In that memorandum, Judge Gonzales advised the President against agreeing to Secretary of State Powell's request that the President reconsider his determination that the Geneva Convention on the Treatment of Prisoners of War does not apply to either al-Qaida or the Taliban. The State Department's position at the time, according to the Schlesinger panel report, was that the Geneva Conventions' legal regime was ''sufficiently robust'' for effectively waging the Global War on Terrorism. The Schlesinger panel also stated, ''The Legal Adviser to the Chairman, Joint Chiefs of Staff and many service lawyers agreed with'' the State Department.

Judge Gonzales, on the other hand, argued that the situation America faced after September 11th rendered ''obsolete Geneva's strict limitations on questioning of enemy prisoners . . .'' and that other provisions of the Convention were rendered ''quaint.''

Judge Gonzales's January 25, 2002, memo could have simply advised that the protections of the Geneva Conventions do not apply to al-Qaida and Taliban fighters, if that were his conclusion. He went beyond that. Instead he denigrated the Geneva Conventions where they do apply.

To say that the Geneva Conventions are obsolete and quaint is wrong and dangerously so. Judge Gonzales tried to evade the impact of his own memo when he told the Senate Judiciary Committee at his confirmation hearing, ''Contrary to reports, I consider the Geneva Conventions neither obsolete nor quaint.'' But these were not ''reports.'' These were Judge Gonzales's own words in his own memo. The tone set by those words and the approach of that memo helped put in place an environment which spawned prisoner abuse. It was a tone that was heard around the world.

Consistent with Judge Gonzales's January 2002 memo, the President determined on February 7, 2002, that the Geneva Convention on the Treatment of Prisoners of War does not apply to the conflict with al-Qaida, and that because Taliban combatants were ''unlawful combatants'' they were not entitled to POW status under the Convention and would not be protected by the Geneva Conventions. The President determined instead that ''to the extent appropriate and consistent with military necessity,'' detainees would be treated ''in a manner consistent with the principles of Geneva.''

The President's February 7, 2002, determination created a legal vacuum—a never-never land for detainees in our custody. His determination and implementing procedures did not identify which principles of the Geneva Conventions would continued to be followed. Furthermore, the President's decision that the principles of Geneva would be followed was qualified by the words ''to the extent appropriate and consistent with military necessity,'' a qualification so broad and vague as to render the pledge to follow the principles of Geneva nearly meaningless. Major General George Fay, who investigated detainee abuses by military intelligence personnel at Abu Ghraib prison, found in his August 2004 report that, ''Specific regulatory or procedural guidance concerning either 'humane' treatment or 'abuse' was not available in the context of [the Global War on Terrorism] and the recently promulgated national policies.'' The vacuum General Fay referred to was created at the top. Judge Gonzales has a major role in that creation. He was present at the creation.

Judge Gonzales has adamantly denied any relationship between his advice to the President, and the Presidential decision which followed, and the horrendous abuses at Abu Ghraib prison. But the Defense Department's own investigations found a connection to the abuses in Iraq.

The Schlesinger panel found that the Command Headquarters in Iraq, Combined Joint Task Force-7, used ''reasoning from the President's Memorandum of February 7, 2002'' in approving the use of additional, ''tougher'' interrogation techniques beyond those approved under existing Army doctrine. Major General Fay's August 2004 report said that ''National policy and DOD directives were not completely consistent with Army doctrine'' on detainee treatment and interrogation, ''resulting in CJTF–7 interrogation . . . policies and practices that lacked basis in Army interrogation doctrine.'' He added that ''as a result,'' interrogators at Abu Ghraib used non-standard interrogation techniques that ''conflicted with other DOD and Army regulatory, doctrinal and procedural guidance.''

Clearly, there was a change in signals from the top about the treatment and interrogation of captured adversaries. This, combined with the failure of ''national policies'' to provide specific guidance on ''humane'' treatment, helped produce a more lawless environment which contributed to the mistreatment of enemy prisoners at Abu Ghraib and elsewhere.

The second point at which Judge Gonzales played a central role was the administration's effort to push the limits regarding permissible interrogation techniques for use against enemy prisoners. It was Judge Gonzales who requested the flawed legal memorandum by the Justice Department's Office of Legal Counsel, or OLC, interpreting the scope of the Federal anti-torture statute, 18 U.S.C. 2430–2430A. Congress had enacted this criminal statute in 1994 to implement U.S. obligations as a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The anti-torture statute prohibits any person from committing or attempting to

commit torture, which is defined in the statute as ''an act . . . under the color of law specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control.''

But the OLC memorandum provided in response to Judge Gonzales's request, the so-called ''Torture Memorandum'' of August 1, 2002, significantly weakened the prohibition in the statute by asserting in effect that ''Physical pain amounting to torture,'' doesn't count as torture unless it is ''equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily functions or even death.'' Mental pain or suffering amounting to torture doesn't count unless it causes ''significant psychological harm of significant duration,'' that is, months or years. The memorandum also interpreted the ''specific intent'' requirement in the statute to mean that even if a person knows ''that severe pain will result from his actions, if causing such harm is not his objective,'' then he is not guilty of torture.

The legal reasoning employed by the Office of Legal Counsel has no basis in military law, the legislative history of the Federal anti-torture Statute, or the Convention Against Torture.

More importantly, it should have been apparent when the OLC Memorandum was received by Judge Gonzales in the summer of 2002 that its definition of torture, as well as other sections, were flawed. At his confirmation hearing, Judge Gonzales was asked, ''Wasn't it obvious to you that someone can suffer physical pain without being in danger of organ failure? . . . Wouldn't the removal of fingers, for example, fall outside the [memorandum's] definition of torture . . . ?'' Judge Gonzales responded, ''Obviously, things like cutting off fingers, to me that sounds like torture. . . .'' That is the Judge Gonzales at his confirmation hearing—very different from the Judge Gonzales in 2002, when the tone was set in memos to him and from him.

When the Torture Memorandum was finally leaked to the press in early June 2004, it shocked the American people and the world. The administration quickly disavowed the memorandum and the Department of Justice undertook to review all of the OLC's legal advice relating to interrogations. Finally, on December 30, 2004, shortly before Judge Gonzales's nomination hearings, the OLC issued a legal opinion superceding the 2002 memorandum.

What impact did the Office of Legal Counsel's August 1, 2002 Memorandum have on the interrogation of enemy prisoners in U.S. custody during the nearly 2 years that it was official U.S. policy? The investigative reports received by the Armed Services Committee show that OLC's legal opinions provided the legal framework for the Defense Department's approval of a number of additional interrogation techniques, beyond those in standard Army doctrine, for use with enemy combatants at Guantanamo Bay. These additional, more aggressive techniques eventually migrated to Afghanistan and Iraq, and contributed to the prisoner abuse at Abu Ghraib.

On December 2, 2002, Secretary Rumsfeld approved the use of a range of ''aggressive'' non-doctrinal interrogation techniques at Guantanamo Bay, including stress positions, isolation for up to 30 days, 20-hour interrogations, nudity and use of dogs to induce stress. However, in response to concerns raised by the Navy General Counsel, 1 month later Secretary Rumsfeld rescinded his approval and in January 2003 established an internal Defense Department Working Group to review interrogation techniques for use in the Global War on Terrorism.

According to the Schlesinger panel report, this Defense Department Working Group ''relied heavily'' on the OLC's legal opinions for the legal framework for its review of interrogation techniques. Much of the legal analysis in the Working Group's April 4, 2003 report was drawn directly from the OLC Torture Memorandum.

The Defense Department Working Group reviewed and recommended approval of 35 interrogation techniques for use against unlawful combatants outside the United States, all of which it deemed legally available subject to certain conditions. Eighteen of these were techniques not found in the standard Army doctrine of Field Manual 34–52. Of this group, the Working Group designated nine to be ''exceptional'' techniques that should only be used with the approval of the Secretary of Defense. These included isolation, prolonged interrogations, sleep deprivation, nudity, and increasing anxiety by the use of a detainee's aversions, for example, the use of dogs. Many of these are the same techniques that had been approved by Secretary Rumsfeld for use at Guantanamo Bay in December 2002.

Secretary Rumsfeld issued a new memorandum on April 16, 2003, approving 24 interrogations techniques for use on unlawful combatants at Guantanamo Bay, 7 more than contained in standard Army interrogation doctrine. Even though Secretary Rumsfeld approved only one ''exceptional'' technique from the Working Group's report, specifically isolation, other ''exceptional'' interrogation techniques recommended by the Working Group migrated to Afghanistan and Iraq. According to the report of General Fay, military officers at the Combined Joint Task Force Headquarters in Iraq, CJTF–7, ''relied heavily'' on Guantanamo Bay operating procedures, provided by Major General Geoffrey Miller, in revising CJTF–7 interrogation policies for the conflict in Iraq.

Major General Fay found that, ''By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved.'' He went on to say that interrogation techniques beyond those in Army doctrine ''came from documents and personnel in Afghanistan and Guantanamo. The techniques employed in JTF–GTMO [Joint Task Force-Guantanamo] included the use of stress positions, isolation for up to thirty days, removal of clothing, and the use of detainees' phobias.''

So the prisoner abuse and mistreatment at Abu Ghraib, can be traced back to the various Defense Department memoranda approving ''exceptional'' interrogation techniques and these Defense Department memoranda relied, in turn, on the legal framework set up in the opinions of the Justice Department's Office of Legal Counsel, including the August 1, 2002 Memorandum. As the Defense Working Group report stated regarding the standards applied in evaluating specific interrogation techniques, ''Generally, the legal analysis that was applied is that understood to comport with the views of the Department of Justice.''

The OLC August 1, 2002 memorandum was addressed to Judge Gonzales. In his testimony, Judge Gonzales initially said that he was doing his ''job as Counsel to the President to ask the question'' regarding the definition of torture. However, when pressed on the issue later on in the hearing, Judge Gonzales claimed that he couldn't remember if he requested the memo, even though, again, the memo says it is addressed to him and was requested by him.

At his confirmation hearing, Judge Gonzales disclosed that discussions leading to the August 2002 memorandum on torture took place in his office, that he participated in those discussions, and that he gave his views to the OLC, although he could not recall at the hearing what those views were. When I asked Judge Gonzales in post-hearing questions to consult with his staff or other documents relating to his views at the time of these discussions to refresh his recollection, he declined to do so, claiming that to do so would involve ''predecisional deliberations'' that he was not free to disclose.

Judge Gonzales was asked at his confirmation hearing whether he agreed with the definition of torture in the August 2002 memorandum on torture. He replied, ''I don't recall today whether or not I was in agreement with all of the analysis, but I don't have a disagreement with the conclusions then reached by the Department.'' Later in the hearing, he said, ''it's a position that I supported at the time.'' In other words, Judge Gonzales concurred in the torture definition and the other legal conclusions in the August 2002 memo at the time it was circulated. So, it was only after the memorandum became public and elicited outrage that the OLC withdrew it, and the White House, with Judge Gonzales out front, withdrew support.

When asked during his confirmation hearing what were his views on whether specific interrogation techniques might constitute torture within the meaning of our laws, Judge Gonzales was evasive. He acknowledged that he discussed specific interrogation techniques with the OLC. He said that, ''As Counsel to the President, my job was to ensure that all authorized techniques were presented to the Department of Justice, to the lawyers, to verify that they met all legal obligations, and I have been told that that is the case.'' He also said, ''It is of course customary . . . that there would be discussions between the Department and the Counsel's Office about legal interpretation of, say, a statute that had never been interpreted before, one that would be extremely emotional, say, if you're talking about what are the limits of torture . . . . And so there was discussion about that.''

When asked what his views were on specific techniques, however, he did everything but give a direct answer. In response to a written question about what methods he considered to be torture Judge Gonzales wrote, ''I do not think it would be prudent for me to address interrogation practices discussed in the press and attempt to analyze them under the prohibitions of [the federal anti-torture statute]. . . .'' At another point he said, ''we had some discussions [about specific interrogation techniques] . . . [a]nd I can't tell you today whether or not I said, 'That's offensive. That's not offensive.'''

Judge Gonzales was also repeatedly evasive and nonresponsive to Senators' requests for clarifications regarding his record on specific interrogation techniques. I submitted post-hearing questions to Judge Gonzales asking him to refresh his recollection by consulting with his staff. He declined. When asked by other Senators to refresh his recollection by examining relevant documents, Judge Gonzales responded that he had not conducted a document search. Period. To my knowledge, he has since taken no actions to obtain or review documents that could refresh his recollection.

One of the reasons given by Judge Gonzales for his refusal to provide the Senate with requested documents relating to his views on torture and specific interrogation techniques was that such disclosures would involve ''predecisional deliberations that I am not at liberty to disclose.'' For instance, when asked how many meetings took place prior to development of the 2002 memo and who was present, he gave that dismissive answer. When asked whether any of his staff attended the meetings or recalled his reactions to the legal issues, Judge Gonzales again for the same reason. His stonewalling of legitimate requests for information under the claim of some newly-created ''predecisional deliberation'' privilege to withhold information relevant to the Senate confirmation process, is totally unacceptable. It is extraordinary that the ACLU and other groups have had more success in obtaining administration documents through the Freedom of Information Act than the U.S. Senate has through the confirmation process. Does the U.S. Senate have to file Freedom of Information requests to get information from nominees?

The Senate has a right and a responsibility under its constitutionally assigned role in the nomination process to know what positions Judge Gonzales took with respect to any specific interrogation techniques which violated our laws. In his testimony and responses for the record, Judge Gonzales repeatedly refused to say what position he had taken on certain interrogation techniques, including simulated drowning (''waterboarding''), stress positions, sexual humiliation, or use of dogs, as constituting either torture or cruel, inhuman or degrading treatment. He claims it is the responsibility of the Justice Department to make such determinations. How Judge Gonzales addressed those issues and his views on these issues go to the very heart of the matter before us—whether the Senate should give consent made necessary by the Constitution before he assumes the office of Attorney General.

In the end, we are left with Judge Gonzales's memo stating that provisions of the Geneva Conventions have been rendered ''obsolete'' and other provisions ''quaint.'' We are left with his statement that he supported the legal position that physical pain amounting to torture is only prohibited if it is equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. We are left with his insistence that he cannot remember important meetings and discussions relative to specific interrogation techniques, while refusing to take steps to refresh his recollection.

The record is clear that Judge Gonzales played a central role in the development of U.S. legal policy in 2002 that set the stage for torture and inhumane treatment.

By undermining the importance of the Geneva Conventions and by refusing to acknowledge ''waterboarding,'' stress positions, sexual humiliation, or use of dogs, as violations of our anti-torture statute, Judge Gonzales falls short of the high standards needed in an Attorney General, whose office is at the pinnacle of the rule of law.

Finally, just as there must be accountability for those who carried out the acts of detainee abuse and mistreatment, there must be some accountability for the people who set the policies and established the legal framework that set the stage for those abuses.

To vote in favor of confirmation of Judge Gonzales for Attorney General would be to mean endorsement of the discredited legal theories which have endangered the safety of our Armed Forces, caused severe damage to the moral standing of the U.S. and to our efforts to promote freedom throughout the world.

Our troops deserve better. The American people deserve better. For these reasons, I will vote against the nomination of Judge Gonzales.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Is there a time allocation, as a matter of inquiry, Mr. President?

The PRESIDING OFFICER. The two sides are dividing 8 hours today.

Mr. KENNEDY. I will not take long, but I welcome the opportunity to address this issue in the final moments before the Senate will make an extremely important judgment.

We face a fundamental choice in the Senate today. The nominee for Attorney General of the United States is a good person, with an extraordinary life story that reflects, in many ways, the best of the American dream. If we were voting on that story, Mr. Gonzales would be confirmed in an instant.

But our vote today is not a vote on whether he is a good person or whether we admire and respect his life story. It is a vote on whether his performance in the highest reaches of our Government has shown that he should be entrusted with the Department of Justice. It is a vote on whether we mean what we say when we express our commitment to America's fundamental ideals, for abhorrence to torture is a fundamental value, and the world is watching us and watching what we do on this nomination.

Torture is an issue that cannot be wished away. Our attitude toward torture speaks volumes about our national conscience and our dedication to the rule of law.

Mr. Gonzales was at the heart of the Bush administration's notorious decision to authorize our forces to commit flagrant acts of torture in the interrogations of detainees in Afghanistan, Guantanamo, and Abu Ghraib. The war room in the White House became the torture room. Under this policy, our own agents burned detainees with lighted cigarettes. They bound them hand and foot and made them lie down in their own urine and feces. They administered forced enemas. They exploited our own female agents by ordering them to humiliate and degrade their male Muslim prisoners. They terrorized prisoners with unmuzzled dogs.

How did this start? Where did it start? Who is responsible?

We do not know everything because the administration refuses to come clean. But what we do know gives us some clear answers. And those answers should disqualify Mr. Gonzales from becoming Attorney General.

It started when those who wanted to use extreme methods of coercion approached the White House and asked for legal cover. They went to the Office

of the White House Counsel, the President's lawyer, Mr. Gonzales.

Mr. Gonzales went to Jay Bybee in the Justice Department and asked him for a legal opinion on torture. Mr. Gonzales helped Mr. Bybee write that opinion. And when Mr. Gonzales received it, he thought it was appropriate, and he allowed it to be disseminated throughout the Government. Its words appeared in the Defense Department's guidelines for military interrogation. Its standards were used by the Justice Department to advise the CIA and other agencies on the legality of extreme methods of interrogation.

When Mr. Gonzales received the Bybee memorandum he did not ask for it to be rewritten; he did not object to it; he did not ask for a second opinion. He agreed with the conclusions.

And so for over 2 years the Bybee-Gonzales memorandum—which shamefully narrowed the definition of torture almost to nothingness—was a roadmap to torture.

In the year since we first heard about prisoner abuses, no one has suggested any other source for our torture policy. If President Bush wants to take responsibility, let him do so. If Secretary Rumsfeld wants to take responsibility, let him do so. If the CIA wants to take responsibility, let it do so. But so far, they have let Mr. Gonzales take full responsibility, and the facts make clear that he was at the epicenter of the government's torture policy.

Many Senators, many military lawyers, and lawyers throughout the world knew the minute they saw the Bybee memorandum when it first came to light—2 years after it was written—that it was a political document, not a legal document. It was a document designed to reach a preordained result, not a document to say what the law really is.

Dean Harold Koh of Yale Law School, a former official in both the Clinton and Bush administrations, told our committee that it was ''the most clearly legally erroneous opinion'' he has ever read.

Yet it remained the administration's policy on torture for over 2 years.

In our Senate committee, Senator GRAHAM called the Bybee Gonzales memorandum, ''a lousy job''. On the floor Tuesday, Chairman SPECTER called it unacceptable and wrong.

Yet Mr. Gonzales did not share that view, and for more than 2 years, the memorandum remained in force as the administration's roadmap to torture.

The administration rewrote the law, twisted legal interpretations, and turned a blind eye to the predictable consequences. This set in motion events that have stained our Nation by authorizing and encouraging the commission of cruel, inhumane, and degrading acts, including torture.

The issue is now beyond dispute. Abu Ghraib tells us some of the truth. The FBI e-mails tell us some of the truth. The many Defense Department reports tell us some of the truth. There are too many reports of torture and abuses committed by too many people to be dismissed as the work of a few bad apples on the night shift, as the administration has tried so hard to do.

The Defense Department is now investigating over 300 cases of torture, sexual assault and other abuse of detainees. When the head of the Defense Intelligence Agency reports that DIA personnel were threatened and confined to their base by Special Forces agents because they had seen and tried to report interrogation abuses, we as a nation have lost our way. When senior FBI agents are forced to complain about abuses committed in their presence, we as a nation have lost our way.

It happened on Mr. Gonzales's watch, but that is only the beginning. It happened in Mr. Gonzales's office. Mr. Gonzales was an active participant. He was the principal enabler. Yet Mr. Gonzales can't remember much of any of this. He won't search for his torture-related documents. The White House won't give us the documents that exist. Yet, on this incriminating record, his supporters continue to ask us to look the other way, and ignore his central role in this scandal.

It is a sad day for the Senate, for our constitutional role in our system of government, and for our responsibility to advise and consent on presidential nominations, if we consent to the nomination for Attorney General of the United States of a person who was at the heart of the policy on torture that has so shamed America in the eyes of the whole world and has so flagrantly violated the values we preach to the world.

Surely the administration can find a person who is capable, who is trusted, and who has not had such a central role in undermining our Nation's fundamental dedication to the rule of law.

The President had countless candidates to choose from. Yet of all the respected men and women available, he chose Mr. Gonzales. He sent a message to the country and the world that the rule of law came in a distant second to his desire to reward Mr. Gonzales for his unquestioning loyalty.

The debate today is what we in the Senate do about it now. We know the country is engaged in a continuing, public debate about values. We have debated ''family values,'' ''religious values,'' ''social values,'' and ''fundamental values.'' All too often, the words are used as code words for a political agenda.

All too often, we shy away from having a true discussion about our values as a nation, our character as a society, the legacy we wish to leave our children; and our role in the world community. Too often, stating noble words becomes a cover for committing ignoble acts.

Today's debate and today's vote give us the opportunity to demonstrate our commitment to our core values. We need to show that our commitment to ''human dignity'' is a reality, not a slogan. We need to show that respect for law is an obligation, not an option.

We are a nation of laws, not hypocrites. This country is strong, and our constitutionl system has endured, because it permits us to do great things and still ensure that we treat people fairly and humanely. To suggest that the two are mutually exclusive is a failure of faith in the American people, and in our proud tradition of justice. We respect international law. If we do not, who will? The provisior1s of the Geneva Conventions and the Convention Against Torture serve us well, because they protect our own soldiers who go off to war. They proclaim that we are more than just the sum of our fears.

Mr. Gonzales's supportes claim it's just politics if we vote against him, but statesmanship if we vote for him. But on this record the only reason to vote for him is politics. Conscience and principle demand that we vote against him. All of our statements about values will have a hollow ring if we ignore this record and promote Mr. Gonzales to the position of Attorney General of the United States.

We have a choice—do we stand for the rule of law, or do we stand for torture? This vote will speak volumes about whether our specific actions in the Senate match our lofty rhetoric about fundamental values. That is why we should vote to reject this nomination.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, the decision on whether to vote to confirm Alberto Gonzales to be the next Attorney General of the United States has been difficult. As all of my colleagues know, I believe that Presidents are entitled to a great deal of deference in their cabinet nominations. I have voted in favor of a number of this President's nominees, including the current Attorney General, with whom I had serious disagreements on matters of policy and general ideology. My votes may not have always pleased my political supporters or my party's leadership. But in carrying out my part in the constitutional scheme, as one who is asked to advise on and consent to a President's nominations, I am guided by my conscience, and by the history and practices of the U.S. Senate. Rejecting a Cabinet nominee is a very rare event. The decision to do so must never be taken lightly.

After a great deal of thought and careful consideration, I reached the conclusion that I could not support Judge Gonzales's nomination. Let me take a few minutes to explain my decision.

The Attorney General of the United States is the Nation's chief law enforcement officer. The holder of that office must have an abiding respect for the rule of law. A formative experience for me, and for many of my generation, was the Watergate scandal, and particularly the Saturday night massacre

on October 20, 1973. On that night, Attorney General Elliot Richardson and his deputy William Ruckelshaus both resigned from office rather than carry out President Nixon's order to fire special prosecutor Archibald Cox. Those acts of courage remain for me a shining example of the role that the Attorney General plays in our government. They give me the unshakeable conviction that his or her ultimate allegiance must be to the rule of law, not to the President.

As Judge Gonzales himself said as he stood next to the President on the day he was nominated

The American people expect and deserve a Department of Justice guided by the rule of law.

I am pained to say that Mr. Gonzales's performance as White House Counsel and, particularly, his appearance before the Judiciary Committee and his responses to our questions, have given me grave doubts about whether he meets that test.

Judge Gonzales too often has seen the law as an obstacle to be dodged or cleared away in furtherance of the President's policies.

Judge Gonzales has held the position of White House Counsel since the beginning of this administration and through a very difficult and challenging period in our history. The response of the administration to the September 11 attacks and the fight against terrorism have brought some very difficult legal issues to his desk. Some of these issues touch on the very core of our national identity. What kind of nation are we going to be during times of war? How will we treat those we capture on the battlefield? How will we live up to our international treaty obligations as we fight terrorism?

Time after time, Judge Gonzales has been a key participant in developing secret legal theories to justify policies that, as they have become public, have tarnished our Nation's international reputation and made it harder, not easier, for us to prevail in this struggle. He requested and then disseminated the infamous Office of Legal Counsel memo that for almost 2 years, until it was revealed and discredited, made it the position of the Government of the United States of America that the International Convention Against Torture, and statutes implementing that treaty, prohibit only causing physical pain ''equivalent in intensity to the pain accompanying serious physical injury; such as organ failure, impairment of bodily function, or even death.'' Under that standard, the images from Abu Ghraib that revolted the entire world would not be considered torture, nor, according to some, would the shocking interrogation technique called ''waterboarding.''

Judge Gonzales advised the President that he could declare the entire legal regime of the Geneva Conventions inapplicable to the conflict in Afghanistan. Secretary of State Powell rightly pointed out the danger of this course, but Judge Gonzales persisted. This theory could actually have given greater legal protection to terrorists, by taking away a key part of the legal regime under which war crimes can be prosecuted. The idea that the Geneva Conventions protect terrorists who commit war crimes, which Judge Gonzales repeated in his hearing, is a dramatic misunderstanding of the law, and it was very troubling to hear it from the person who would coordinate our legal strategy in the fight against terrorism.

Judge Gonzales was also an architect of the administration's position on the legal status of those it called ''enemy combatants,'' a position that was soundly rejected by the Supreme Court of the United States last year.

In all of these areas, Judge Gonzales served as the President's lawyer, and facilitated the President's policies. I believe that he failed the President and the Nation badly. But these past mistakes need not have been conclusive in my assessment of his suitability for the office of Attorney General. For example, I also have serious concerns about the role that the national security adviser—and now Secretary of State—Dr. Condoleezza Rice, played in crafting and implementing the administration's badly flawed foreign policy. But I do not think that taking part in a policy I strongly oppose is sufficient grounds for me to oppose a cabinet nomination. As I have indicated, the President—any President—is entitled to be advised by those who share his beliefs and confidence.

Had Judge Gonzales in his testimony before this Committee recognized the serious problems with the judgments he made on these issues and given convincing assurances that he understands that his new role will require a different approach and a new allegiance to the rule of law, I might have been convinced to defer to the President once again. Attorney General Ashcroft, for example, was unequivocal in expressing his commitment, under oath, to enforcing laws with which he disagreed as a Senator—laws and court decisions that he, I think, abhored, but he made it very clear that his role was to uphold the law as it stands.

But Judge Gonzales's appearance before the Judiciary Committee was deeply disappointing. When given the opportunity under oath to show that he would be adequately committed to the rule of law as our Nation's chief law enforcement officer, he failed to do so. He indicated that the infamous OLC torture memo is no longer operative, but that he does not disagree with the conclusions expressed in it. He reiterated erroneous interpretations, of the effect that applying the Geneva Conventions to the war on Afghanistan would have on the treatment of members of al-Qaida captured in combat. Most disturbingly, he refused time after time to repudiate the most far-reaching and significant conclusion of the OLC memo—that the President has the authority as Commander-in-Chief to immunize those acting at his direction from the application of U.S. law.

This failure goes directly to the question of his commitment to the rule of law. Under our system of government, the Attorney General of the United States may be called upon to investigate and even prosecute the President. We cannot have a person heading the United States Department of Justice who believes that the President is above the law. I and other members of the Judiciary Committee questioned Judge Gonzales closely about this issue. He hid behind an aversion to hypothetical questions, he conjured up his own hypothetical scenarios of unconstitutional statutes, but he simply refused to say, without equivocation, that the President is not above the law.

On the torture issue in particular, Judge Gonzales repeatedly told us that he opposes torture and that the President has never authorized torture. Thus, he indicated, the question of whether the President acting as Commander in Chief can authorize torture has never and will never come up. I certainly hope that we can rely on those assurances, but the Founders of this Nation designed a system where even the President is bound by our laws—precisely so that we would not have to rely on trust alone that the President will act in accordance with them. I think the Judiciary Committee, and the American people, deserved to hear whether the next Attorney General agrees that the President has the power to disobey laws as fundamental to our national character as the prohibition on torture. Judge Gonzales refused to address this question unequivocally, and that left me deeply troubled.

Mr. President, Judge Gonzales has a compelling personal story, and many fine qualities as a lawyer. If he is confirmed by the Senate, there are many issues on which I hope we can work together for the good of the country. But I cannot support his nomination. Not because he is too conservative, or because I disagree with a specific policy position he has taken, but because I am not convinced that he possesses the abiding respect for the rule of law that our country needs in these difficult times in its Attorney General. I will vote ''No.''

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Are we in Republican time at this time?

The PRESIDING OFFICER. That is correct.

Mr. THOMAS. Mr. President, I am pleased to hear that we may bring this

debate to a conclusion shortly. Certainly it seems to me we have had plenty of time to talk about it. We have heard the same things over and over. Of course, everyone has a perfect right to have a different point of view, and I understand that. They also have a right to share that point of view. However, there does come a time when we ought to come to the snubbing post and vote, and I hope that can happen soon.

I come to the floor to express my support for the nomination of Alberto Gonzales. It occurs to me the President should have the right and does have the right and the responsibility to surround himself with people with whom he can work the best, people who reflect his point of view. After all, we are talking about a manager surrounding himself with people who will carry out his programs. Obviously, he is going to have people who fit that order.

If something is found that is disingenuous or disagreeable about the nominee, of course, it is legitimate to talk about that. I do think it is interesting, however, that people from the other side of the aisle on the Judiciary Committee have gotten up and talked about all these difficult issues on the memos. The fact is, the same committee members on this side of the aisle have not mentioned that at all. One has to think if there is a little bit of politics here. That would not be a brand new idea, of course.

It is time to go forward. Certainly lots of people have had lots of good things to say about Judge Gonzales. They talked about his legal career, which is very impressive. He entered Harvard Law School. That is a good thing. He certainly has had military service, which does not have any direct involvement with this job, but it is something he should be recognized for having done. He served in Texas as the secretary of state. He was a distinguished jurist in Texas, and the people from Texas from whom we hear are all very complimentary of what has happened there with respect to Judge Gonzales.

We ought to consider those comments from people such as Senator CORNYN who worked with him in the same government in Texas and who has nothing but good things to say. Certainly no one has suggested that this jurist is one who is an activist judge who is seeking to make law as opposed to interpret it. That is one of the questions we have had, of course, in this whole series of debates, but it does not seem to be part of this one.

Judge Gonzales has been complimented for issuing his opinions based on the facts, on interpretation of the law rather than his personal interests which, of course, is one of the keys to a successful judgeship.

As I say, it is perfectly legitimate for people to have a different point of view. However, there is a limit to how long we need to keep talking about it. We have been here all week. I hope now most of us can come to the decision that it is time to move on.

I frankly do not know the judge. I have not worked with him, as many people have. But I was impressed listening to those who have, particularly about his Texas experience. He certainly seems to have worked on cases diligently and has done a great job. He has not been influenced outside the courtroom. Those are excellent qualifications for someone in this job.

Certainly, there has also been the opportunity to serve with the President as White House Counsel. It is a very important job that has given him experience in Federal Government so he can move right into this position. He remained steadily at the helm, despite the tough times we had during 9/11 and following in terms of terrorism in which this Department and these judges and attorneys had the real challenge of what to do to deal with terrorism. He was instrumental in coordinating the law enforcement efforts post-9/11 and ensuring the rights of Americans at the same time.

It is interesting to have reports on what Mr. Gonzales has done with homeland security consistent with the Constitution and the laws. He demonstrated independence as Counsel at the White House, resisting from time to time the Department of Justice.

The transition from where he is as White House Counsel to the Justice Department will be a relatively easy one. The Justice Department is very interesting. A very good friend of mine has been Assistant Attorney General for Public Lands, a gentleman who at one time was, in fact, my staff director. He has about 700 people who work for him. It is a tough job and one that does require a background and knowledge.

As I read it—I am not on the committee of jurisdiction but those who are from this side have said he demonstrated a will to honor and uphold the Constitution, which, of course, all of us need to do. He is independent enough to make decisions that have to be done independently, and that is excellent.

Again, we will have differences of view. That is all right. We have differences of view on almost everything. It is time to draw the line. It is time to go. It is time to get this job done.

I certainly urge support for Judge Gonzales and hope we can go forward and give him an opportunity and then give us an opportunity to move forward with what we ought to be doing.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, I rise today because I want to address the allegation that we have heard in this Chamber over the last several days that the debate around the nomination of Judge Gonzales to be the next U.S. Attorney General is somehow occurring because of the fact that he is Hispanic. I want to let the President, the Members of this Chamber, and the people of the United States know that in my view, that is not at all the case, and it is a notion that we should, in fact, reject. We should reject it because it is divisive.

Instead, what we ought to be doing in the United States of America is moving forward with a sense of unity and a celebration of diversity that can unite us as a country.

The fact is, the debate that has occurred in this Chamber over the last several days concerning Judge Alberto Gonzales is an appropriate debate. We do not have a king in these United States. We have a President who appoints, subject to the advice and consent of the Senate. And for the Senate to have engaged in the debate and dialog, as it has over the last several days, is the appropriate constitutional role for this Senate.

The questions that have been raised about Judge Gonzales are questions that are very serious about international law and international accords and the laws of these United States.

For my colleagues who have stood up and who have raised questions about Judge Gonzales's role with respect to these issues, they have been carrying out their constitutional duty. I believe that constitutional duty should be respected.

I, for one, after doing my constitutional duty and reviewing the record and meeting with Judge Gonzales, talking to him about civil rights, talking to him about his opposition to torture, concluded that I would cast my vote in support of Judge Gonzales's nomination, and I will do so in a few minutes. That vote will not change. But I think it is a mistake for this Chamber to allow the race card of being Hispanic to be used to destroy or erode the institutions that we have in the Senate.

As I say that, I say it because I have seen the journey of civil rights in America. That journey of civil rights in America is one which has taken us a long time to get to where we are today. When we think about the history of our country, for the first 250 years from the founding of Plymouth Rock and Jamestown to the civil war, we were a country that divided ourselves by the race of our skin, so that if one was one race, they were able to own as property members who were from another race. It took a very bloody civil war—in fact, the bloodiest of all wars that this country has been engaged in—to end that system of slavery and to usher in the 13th, 14th and 15th amendments that said we are equal in this Nation.

Notwithstanding that bloodiest of wars and notwithstanding the fact that we had amended the Constitution in those ways, it took another 100 years for us to legally end the system of segregation in this country because it was not until 1954 and the decision written by Justice Warren in Brown v. The Board of Education that we said that segregation was wrong and that we would not tolerate it under our system of law.

As we have evolved in our relationships within groups over the last half a

century, there have been leaders, both Democrats and Republicans, who have embraced the doctrines of diversity and an inclusive America. In the 1960s, that effort was lead by Democrats, such as John Kennedy, Robert Kennedy, and Lyndon Johnson. It was the Civil Rights Act of the 1960s that created opportunities for all of us in America to recognize that we are, in fact, one Nation.

But it was not just the Republicans or the Democrats who were in the lead in that role. There were also others who were involved, Republicans like President Gerald Ford. A few years ago, President Ford wrote an article in the New York Times which was entitled, ''An Inclusive America.'' In that article in the New York Times, President Ford talked about the importance of bringing all of our community together and giving everybody an equal opportunity, regardless of their background.

So as we move forward to making this decision on Judge Gonzales, which I anticipate and fully expect is going to be a decision to affirm his nomination as the Attorney General of the United States of America, let us not use this moment to divide this country and let us not use this moment to divide this Chamber.

My view is that those Democratic colleagues of mine, who are people I admire, are very much champions of diversity and champions of civil rights and, in my view, they were exercising their appropriate role and their duty to make sure that the scrutiny of the Senate of one of the President's nominees was, in fact, exercised.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I rise to speak in regard to the nomination of Judge Gonzales to be the Attorney General of the United States. Since this is about justice, in reviewing the record on Judge Gonzales and in considering what my own conclusion about it would be, particularly since it was all about justice, I thought I should try to reach a result that seemed just to me. Each of us, in the fullness of our heads and hearts, has to decide what is appropriate.

I was reminded of that famous saying from the Bible: Justice, justice shalt thou seek. I remember asking a teacher of mine once why the repeat of the word ''justice,'' and I was told, well, it not only means you should pursue justice but you should pursue it in a just way.

I have had that in mind as I have considered this nomination and others over my 16 years in the Senate. Throughout my tenure I have voted on hundreds of Presidential nominations. In each case I have adhered to a broadly deferential standard of review. To me, that seems to be the just process to follow.

As I explained in my very first speech on the Senate floor which, for better or worse, was in regard to the nomination of John Tower to serve as Secretary of Defense, a nomination which I opposed, the history of the debates of the constitutional convention makes clear to me that the President is entitled to the benefit of the doubt in his appointments to his Cabinet. The question I concluded I should ask myself in considering nominees is not whether I would have chosen the nominee but, rather whether the President's choice is acceptable for the job for which the nominee has been chosen.

That, obviously, does not mean the Senate should always confirm a President's nominees. Were that the case, the Framers would have given the Senate no role in the appointments process, no power to advise and consent. Instead, the Senate's constitutional advice and consent mandate obliges us to serve, if you will, as a check, in my opinion, at the margins on the President's power to appoint, a power that a sitting President wins by virtue of his selection by the people of the country.

As I put it in my statement on Senator Tower's nomination, I believe this requires this Senator to consider several things: First, the knowledge, experience, and qualifications of the nominee for the particular position for which he or she has been nominated; second, the nominee's judgment as well as his personal behavior; third, the nominee's ethics.

In unusual circumstances Senators can also, it seems to me, consider fundamental and potentially irreconcilable differences of policy between the nominee and the mission of the agency he or she is called upon to serve.

As a result of that personal process that I follow in nominations, on a very few occasions—I would guess, although I haven't looked back, maybe just over 5 during my 16 years in the Senate—I have determined that the views of certain nominees, usually on one end of the political spectrum or the other, fell sufficiently outside the mainstream to compel me to oppose their nominations. In other words, I give a presumption in favor of the nominee unless there is a reason to decide otherwise.

In this case I have met with Judge Gonzales, I have reviewed his record throughout his career, I am familiar with his life story, I have reviewed the proceedings before the Judiciary Committee, the comments made by many on the committee in describing their votes, his testimony there, and I have concluded that this nominee deserves to be confirmed and therefore I will vote to confirm the nominee.

I need not labor on the details of the first three points—knowledge, experience, qualifications, judgment and personal behavior, and nominee's ethics. I believe this nominee, as everyone said, including those who are opposed to the nomination, has a remarkable life story that speaks to his strength, to his balance, to his values. He has acted under pressure and gives me the confidence that he would do the same as Attorney General.

He has spoken quite eloquently in his testimony before the Judiciary Committee that he understands his accountability, his first accountability as Attorney General will be to the Constitution and to the people of this country. I know there are some who question his independence of opinion and judgment because he has had a close relationship with the President of the United States. But, as others before me in this debate on the Senate floor about this nomination have said, more often than not a President chooses as Attorney General someone close to him. President Kennedy obviously chose his brother Robert, who was a great Attorney General. President Reagan, if I remember correctly, chose his personal lawyer to be his Attorney General. President Carter chose Griffin Bell, who was extremely close to him, from Atlanta. And so it goes throughout most of our history.

It seems to me, as I followed the debate in the committee and on the floor, that there are two or three elements that have troubled my colleagues enough to decide to vote against this nomination. I believe in fairness I have to consider these seriously, but consider them in the context of Judge Gonzales's entire career. The two most significant points of contention are Judge Gonzales's work as White House Counsel early in 2002, in the memo he wrote and the involvement he had in the policy with regard to the application of the Geneva Conventions; and, second, what relationship he had with the memo of Mr. Bybee, head of the Office of Legal Counsel at the Justice Department, with regard to the definition of torture under the Convention Against Torture.

In both of these cases, it seems to me, as I listen to my colleagues who are opposed to the nomination, they take Judge Gonzales's work in both of these areas to be indications of perhaps his lack of independence, lack of good judgment which they believe disqualifies him for this position. And some—I am trying to be fair here—raise questions about whether both of these memos, certainly the second one, the Bybee memo, in any way or in some way contributed to the horrific behavior we saw in the prison abuse scandals at Abu Ghraib. I want to briefly speak to both.

The first is the work that Judge Gonzales did early in 2002, within months after the attack against us of September 11 and the initiation of our own war against terrorism in Afghanistan. I know people have quoted from the memo he wrote with some derision.

I think you have to appreciate the context. As I look back post-September 11, it seems to me in Judge Gonzales's memo and the memos submitted by the State Department, by the Defense Department and others, there is a very serious and classical American debate going on about how to handle al-Qaida and the Taliban, and prisoners taken from their membership, and what is the relevance of the Geneva Convention to those people. It is an argument by a nation that cares about the rule of law. You can agree with Judge Gonzales's position in this matter or not. I happen to agree with the ultimate decision made. And the decision was, in my opinion, a reasonable one and ultimately a progressive one. The decision was that under the terms of the Geneva Conventions, al-Qaida simply is not a state party to a convention, it is a terrorist group, and as such its members were not entitled to prisoner-of-war status.

There is a sentence in Judge Gonzales's letter that was quoted with great derision, laughter, as if it were over the edge. ''In my judgment, this new paradigm,'' which is the post-September 11 war on terrorism, ''renders quaint some of the provisions requiring that captured enemy''—we are talking here about al-Qaida—''be afforded such things as commissary privileges, scrip advances of monthly pay, athletic uniforms and scientific instruments.''

I think, respectfully, Judge Gonzales was being restrained and diplomatic in using the word ''quaint.'' To offer these benefits—access to a canteen to purchase food, soap and tobacco, a monthly advance of pay, and the ability to have and consult personal financial accounts, the ability to receive scientific equipment, musical instruments or sports outfits—to Khalid Shaikh Mohammed, who planned the attacks against us on September 11, would not be quaint, It would be offensive.

It would be offensive. It would be ridiculous. It would be ultimately unjust.

A different conclusion was reached about the Taliban. A summary of the opinion says, although we never recognized the Taliban as a legitimate Afghan government, Afghanistan is a party to the Geneva Conventions, and therefore the President has determined that the Taliban is covered by the conventions.

But then they cite that under the terms of the conventions, Taliban detainees do not qualify for prisoner-of-war status.

Then the progressive part of this opinion, coming out in February 2002, says that even though the detainees are not entitled to prisoner-of-war privileges, they will be provided many POW privileges as a matter of policy. All detainees in Guantanamo are being provided three meals a day that meet Muslim dietary laws, water, medical care, clothing and shoes, shelter, showers, soap and toilet articles, foam sleeping pads, blankets, towels, washcloths, the opportunity to worship, correspondence materials and a means to send mail, and the ability to receive packages of food and clothing subject to security screening. Detainees will not be subjected to physical or mental abuse or cruel treatment.

That is the policy that Judge Gonzales helped them form. That is the policy that our Government issued. To me, it is a remarkably just policy.

I see no basis in anything in the record of Judge Gonzales's participation in this that would lead me to override presumption in his favor.

The Bybee memo—the memo from the Office of Legal Counsel in August of 2002 interpreting the Convention Against Torture and the American statute implementing the conventions—is a separate matter. It is very important to say that this memo was written by the independent Office of Legal Counsel at the Department of Justice with a proud record of independence of opinion.

You may disagree with its conclusions. I disagree with a lot of its content and conclusions. But it is a lengthy, 50-plus pages, single-spaced document, quite scholarly, with over 25 footnotes, as I recall—and offered to Judge Gonzales in his role as Counsel to the President.

I want to repeat again: This was not Judge Gonzales's memo. It was the Office of Legal Counsel's memo.

It is not clear what Judge Gonzales did with this memo. He refused at his hearing before the Judiciary Committee to reveal exactly what he advised the President about the memo. That was frustrating to the committee members, and I understand that. But I must say as a former attorney general, as a lawyer, I respect the right of the Counsel to the President to keep private for reasons of precedent and executive privilege the private counsel he gives to the President of the United States.

I repeat that there are parts of that Bybee memo which I find profoundly offensive. But it was not the Gonzales memo. On the record, we do not know what he advised the President as a result of it.

In questions and answers before the committee, he said he agreed with the conclusion but not all of the analysis in it. It is hard to know what that means. What we do know is that in June of last year, presumably after the Abu Ghraib scandal broke, the Attorney General and White House Counsel were asked to reconsider and withdraw the opinion of August 2002, and reissued the opinion in December of 2004 with just about all of the objectionable matter—to me objectionable—being taken out of it and presumed objectionable to most others. So it is no longer a prevailing memo.

Again, Judge Gonzales said repeatedly at the hearing he would not countenance torture—repeated what is the fact; that the administration made very clear, presumably with his counsel, that the rules of the Geneva Conventions applied to the Iraq war because Iraq was a duly formed government, a sovereign state, and a party to the Geneva Conventions.

What happened at Abu Ghraib was embarrassing, was hurtful to our cause in the world, was offensive, and it is being dealt with within the military justice system as we have seen.

Questions are raised about the connection, I suppose, between the Bybee memo and whatever involvement Judge Gonzales had entered in the events of Abu Ghraib. There is simply no evidence to make the connection, certainly between Judge Gonzales and what happened at Abu Ghraib in any of the independent reviews that have gone on, most particularly Mr. Schlesinger's independent review which said there was no connection between so-called higher-ups and what happened at Abu Ghraib.

In the end, I have to ask myself, because of a memo written by somebody else, Mr. Bybee at the Office of Legal Counsel, which has in it material that I find, as I said, profoundly offensive, that Judge Gonzales received and did something with, am I prepared to vote to deny him confirmation as Attorney General of the United States? To me personally that would be an unjust result. That is why I will vote to confirm.

I understand the frustration of members of the Judiciary Committee about some of the answers—many of the answers that Judge Gonzales gave at the hearing. Some of them were evasive and some were legalistic. But that wouldn't be, would it, the first time the committee had a witness before it that proceeded in that particular way, particularly one who has privileges that he occupies and lives under as Counsel to the President of the United States.

That is why I am going to vote for Judge Gonzales—to confirm his nomination. Nothing that I see in the report rises to a level high enough to overcome the presumption in favor of him as a nominee of the President.

He has many outstanding qualities. I don't know if others have mentioned this in this debate. He has a certain independence of spirit which I don't think has been very much commented on.

I remember reading in the press a moment ago when his name was mentioned as a potential nominee for Supreme Court, some people—I will be explicit—thought he wasn't a likely nominee because there were people in the Republican Party who thought he had too much independence on some issues that were central. I think that should be remembered as we cast the vote.

The final point I wanted to make is this: I would like to believe this. I will state that it has nothing to do with the standard that I apply to voting on confirmation of a nomination, but to me it is a kind of bonus associated with this

nomination. Judge Gonzales, if confirmed, will be the first Hispanic Attorney General in the history of the United States. That is a fact. It is not reason, of course, to vote for him, nor is it a reason to vote against him. But to me it is both a bonus and an extra measure of encouragement about the kind of Attorney General he will be.

I have been in positions myself when I have had the chance in the true spirit of the American dream to break some barriers. I probably have a special sensitivity to others who have had the opportunity to break barriers. When I had that opportunity myself, somebody said to me of another ethnic group—in fact, another racial group—that they were thrilled about what had just happened to me because they believed in America when a barrier falls for one group, the doors of opportunity would open wider for every other American. I believe that. I think that is the bonus that comes with this nomination.

I can't help but also note the broad base of support that Judge Gonzales has received from the Hispanic community, from elected officials, and generally nonpartisan Hispanic organizations. They speak to the significance beyond the merits, but build on the merits that this nomination has to a group of Americans who are playing an increasingly important role in the life of this country.

It encourages me about the kind of job he will do, because I think the experiences he has had, the road he walked to get to where he is, the extraordinary hard work he did to do that, the pride he has in his family, in his heritage, will quite simply make him sensitive to the most fundamental values of equal opportunity, of the rule of law, of an absence of discrimination of any kind.

For all of those reasons, I shall vote yea on the nomination of Judge Gonzales to be our next Attorney General.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am very fortunate. I did not plan it this way, but I was here for most of what Senator LIEBERMAN had to say. I am very glad I had that opportunity. Even though I have never been a member of the Judiciary Committee, I am a lawyer, although I have not practiced for a long time, but I am very pleased I had a chance to listen to an analysis given by the Senator with reference to the memos and what might be taken from them in terms of what it means if we nominate, if we accept his nomination or send him signals about what we think about torture.

Does that mean because he was involved in all of this activity at a time of turmoil, when there were a lot of things we did not know, a lot of legal definitions had not yet been completely determined, that are still out there being litigated and discussed, that he is disqualified from being a good Attorney General? That is hogwash.

As a plain, simple person looking at this, I say: What if I were a lawyer and I decided that the law meant A, B, C, D and that was logical, there were legal opinions and a lot of people supporting it, but after the fact things occurred, and D, E, F said that wasn't right. Does that mean whatever you said was right, as a matter of law? Does it mean since that is not what the court says, you are not a good lawyer, or in some way that disqualifies you from a job?

We have lawyers arguing against each other with legal briefs that have innumerable citations supporting a position. Somebody wins, somebody loses, right? And that does not mean that either side did anything but research the law as best they could, come up with conclusions as best they could.

These very narrow arguments on legal niceties totally miss the point. None of those justify saying he has given America a black eye in terms of torture, and if he is Attorney General, we approve of this kind of person, that would be part of such activity. That has got to be nonsense. I say it different from the Senator. You say it is nonsense but you never say it is nonsense; you just go through and pick it apart.

Of the people who know him, who have known him for longer thin anybody on that side of the aisle, who have practiced with him, who were in the State bar with him, who were there when he got great awards in the Texas bar for his minority, in terms of his culture, but for his excellence in terms of the law, one is Henry Cisneros. He has known him for years and wrote a letter January 5, a tremendous letter. He knew this man. What did he say? Well, he is not saying he shouldn't be Attorney General because he has been reading about what happened with regard to prisoners of war. He didn't say that. He said: I know all about him. He is a terrific lawyer, a wonderful man, and a great success story, and he is Hispanic like I am. Henry Cisneros said: I am proud of him. That is Democratic Henry Cisneros. I think he should become the first Hispanic to be Attorney General.

Other Senators—I hate to say which ones—come down here and argue these legal niceties. I don't want to discredit them. I don't want to say this is an excuse because probably some of them really believe what they have said. I think there is something to the fact that there are a lot of Senators who want to forget the fact that George Bush won. They can't believe he is President again, so, wherever they can, they want to vent their feelings about this.

This man should have every vote in the Senate. He is more qualified than most. He is, in a sense, a better example of somebody who should get this job, a success in America, because of the signal it tells about the American way of life. And success can be achieved by minorities.

His experience as a lawyer is as much or better than most who have been Attorneys General of the United States. Everything you look at, his decisions about this whole business of al-Qaida and whether they should be deemed to be protected by Geneva or not, whether the Taliban up there in Afghanistan should be treated as prisoners of war. There is no question he is not on the edge of a group of people who do not care about humanity, who want to do anything. He is not on that side. In fact, he is pretty much correct, that the ones I just described shouldn't be covered by the Geneva Conventions. Maybe the Iraqi soldiers, but there is nothing that says the Taliban terrorists should or the terrorists in Iraq should, for sure. There is lots of legal opinion. That is not the subject matter of the Geneva Conventions. You still have to have rules about torture. I understand.

I thought I would try to answer some of the allegations that have been made today with reference to the subject matter, but I will not. I am absolutely convinced for many people who are active Democrats, including some in the Senate, they cannot envision that this man, Hispanic, with his upbringing, should be a Republican nominee for Attorney General.

I lived through it all. I come from a State with a large population of Hispanics, huge numbers of them elected to every office in my State, predominantly Democrat. One can almost feel it, a Republican just shouldn't be doing that. That should not be a nominee of a Republican President. They have a lot to learn. He is not the first one. He will not be the last one. And Hispanics are not going to be natural constituents for the Democratic Party or naturally Democratic. It will just not happen anymore.

I commend the President for doing what he did. I commend this man for his successes, his family for the sacrifices, and the Senate for confirming him by an overwhelming vote today. I look toward to his being sworn in.

I conclude by saying I know him, I have worked with him—not as long as former Secretary Cisneros or some others I put in the RECORD yesterday who worked with him in Texas, but when it is all finished, he will be a very good Attorney General.

Frankly, for those who think they might have bruised him up so he cannot be a nominee for the Supreme Court of the United States, which some might have hoped for, I think they missed it because it comes out in the end of being a very frivolous attack. He might be the logical candidate. He might be the kind of person who will clear the Senate. At least when he started a few weeks ago he clearly was in that category. I hope they haven't changed it by what they have done on the other side.

Instead of simply saying we oppose President Bush or we are against the war in Iraq, many of my colleagues on

the other side of the aisle have chosen to make Judge Alberto Gonzalez a scapegoat for their own frustrations.

We have heard numerous allegations such as not treating al Qaeda terrorists like prisoners captured during previous wars means the United States is not following the rule of law.

Since 9/11, Judge Gonzalez and countless other Government lawyers have attempted to respond to war that America had never fought. This is a ''War Against Terror.''

All of these lawyers had to make very difficult decisions to protect America from a new and deadly threat while not knowing if more attacks were imminent.

This is a case of second guessing at its absolute worst.

The allegation is that Judge Gonzalez supports the torture and abuse of terrorists during interrogations.

Judge Gonzalez has repeatedly stated that it is not the policy of the United States to condone torture and that he does condone torture.

The allegation is that Judge Gonzalez does not believe in the Geneva Convention.

The Geneva Convention applies when a combatant meets the following four criteria: is commanded by a person responsible for his subordinates; has a fixed distinctive sign recognizable at a distance; carries arms openly; and conducts operations in accordance with the laws and customs of war.

Clearly the Geneva Conventions do not apply to Taliban fighters or al-Qaida terrorists.

Yet there are still those who insist that Judge Gonzales completely disregarded the Geneva Conventions and through his legal memoranda encouraged torture and mistreatment.

Let me provide just a small sampling of the overwhelming body of evidence that completely refutes Judge Gonzales's opponents.

The final 9/11 Commission Report stated:

> The United States and some of its allies do not accept the application of the treatment of prisoners of war to captured terrorists. Those conventions establish a minimum set of standards for prisoners in internal conflicts. Since the international struggle against Islamist terrorism is not internal, those provisions do not formally apply . . .

The U.S. Court of Appeals for the 4th Circuit in the John Walker Lindh case stated:

> The President's decision denying Lindh lawful combatant immunity is correct.

Legal scholars agree. In her treatise on The Law of War, Professor Ingrid Detter noted that ''[u]nlawful combatants . . . are not, if captured, entitled to any prisoner of war status.''

Professor Gregory M. Travalio has written that ''terrorists would not qualify under Article 4 of Geneva Convention III as Prisoners of War.''

Moving beyond what can only be described as a smoke and mirrors argument, I believe there are other forces at work that have absolutely nothing to do with the Geneva Convention.

Partisan, political, and personal pretty well sums up the opposition to the nomination of Judge Alberto Gonzales to be the next United States Attorney General.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. On behalf of the leader, I ask consent that there be 60 minutes remaining for debate on the pending nomination, with the time divided as follows: 15 minutes to the distinguished ranking member, Senator LEAHY; I, as chairman, the next 15 minutes; then the Democratic leader, Senator REID, 15 minutes; and the majority leader, Senator FRIST, the final 15 minutes.

Finally, I ask consent that after the use or yielding back of time that the Senate proceed to a vote on the nominee as the previous order provides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. Mr. President, for the most part, this has been a substantive debate. Actually, it has been a necessary debate. Now, partisans on the other side of the aisle at times have tried to smear anyone who has voiced concern about this nomination, notwithstanding that anyone who listened to the statements of those of us who oppose this nomination know that each of us has praised the journey Alberto Gonzales and his family have taken.

I am a grandson of immigrants who came to this country not even speaking the language, so I have unbounded respect for all that he and his family have accomplished. In fact, I am the first Leahy to get a college degree; my sister is the second. So I applaud anybody who takes such a journey.

On Tuesday, the Senate heard from Senators FEINSTEIN, SCHUMER, KENNEDY, MIKULSKI, DAYTON, and STABENOW. Yesterday, the debate on this side of the aisle included eloquent and powerful statements by Senators BYRD, DURBIN, JACK REED, and JEFFORDS, all stating their reasons for opposing this nomination on the merits. No one should be accusing these Senators of doing anything except their constitutional duty. Today, we heard as well from Senators DODD, OBAMA, CANTWELL, BINGAMAN, JOHNSON, LEVIN, and FEINGOLD. Each has spoken from conviction. They are voting their conscience.

We have also made time to hear from one of our newer Democratic Senators, Mr. SALAZAR of Colorado, regarding the assurances and commitments he has obtained from the nominee and on which he is relying in his vote. I also note that today he returned to the Senate floor to make another important statement that rejected those who have tried to play a divisive ethnic card. He spoke about the true meaning of diversity and our national journey toward equal rights for all. Senator SALAZAR spoke to me before he spoke on the floor. I commend him for what he has done. I thank him for his remarks. It is what I would have expected from a man of his integrity and quality.

Senator BIDEN observed during the confirmation hearing that none of us came to that hearing having determined to vote against the nomination. In fact, most of us, I would say, if not all of us on the Democratic side of the aisle in the Judiciary Committee came there assuming we were going to vote for him. We listened. We asked questions. We sought answers. We weighed the record.

It was not an easy decision for any of us. Each of us would have liked to have supported the first Hispanic nominee to be Attorney General. We each made a decision on the merits of the nomination. We did not ignore his judgments that contributed to the scandals in the war against terror and the mistreatment of detainees around the world. Some have said that some of those positions were embarrassing. They were a lot more than embarrassing; they were a complete scandal.

When this nomination was announced last year, many of us were inclined to support Judge Gonzales. But as the confirmation process unfolded, one by one, members of the Judiciary Committee began to have doubts. Many were troubled by the nominee's refusal to engage with us in an open discussion of his views on a wide range of issues.

I was particularly concerned because I had actually sent to him and to the Republicans in the committee a number of the questions I was going to ask so he would have plenty of time to prepare to answer. Instead, he did not answer.

For some, the key question was how Judge Gonzales interprets the scope of Executive power and his belief that the President possesses authority to ignore our laws when acting as Commander in Chief. No President of the United States can ignore our laws, no President of the United States is above the law any more than any of us are above the law. For others, the tipping point was the nominee's continued adherence to flawed legal reasoning regarding torture, a stubborn commitment betraying seriously poor judgment. Finally, and deeply troubling to many of us, is the nominee's lack of independence from the President.

In the end, after serious consideration of the record, each of us arrived at the same conclusion: In good conscience, we could not vote for this nomination.

Now, some have talked about the legal memos he was involved in as legal niceties. Well, Mr. President, torture is not a legal nicety, especially if you are the person being tortured. Those of us who have been in the military or who have had members of our family in the military have always hoped we would hold to the highest standards so we could demand that other countries do the same.

It is wrong for partisans to castigate Senators for debating this nomination

and for considering the critical role this nominee played in the development of legal policies that were kept hidden for a couple years, but when they were brought forward by the press, not in answer to questions by Members of Congress—the press did our work and brought them forward—those so-called legal niceties could not stand the light of day.

Consistent with my oath of office, the commitment I have had to the people of Vermont for over 30 years, I will vote my conscience again today. I urge each and every Senator to do the same. Review the record, truly review the record and the actions of this nominee over the past 4 years and vote accordingly.

I do not think I have ever been on the floor of this Senate and predicted vote totals. I am not going to today. But I will predict this: Democratic Senators will not vote as a block. Some will vote against this nomination; some will vote in favor of this nomination. They will do so not on the basis of some party caucus position but as individual Senators. I urge all Senators—Republicans and Democrats and Independent—to approach this vote in that way, on the merits, after you review the record in good conscience. This should not be a party-line vote on either side of the aisle but one where each Senator votes his or her best judgment.

Many Senators here today no doubt believe that the President is owed a high degree of deference in his Cabinet choices. I feel that way. But that does not erase our constitutional obligations as Senators. We have a duty to advise and consent, not to listen and rubberstamp. I take that responsibility very seriously, especially in the case of the Attorney General. The Attorney General is unique among Cabinet officers. You can give a lot more flexibility to other Cabinet officials whose main purpose is simply to state the position of the President of the United States. Whether you agree with the position, that is their duty. So you give a lot more deference, and you say: Well, they are going to state the position of the President. We can vote for them.

But the Attorney General is different. He or she is the top Federal law enforcement officer in the land. The power and discretion of the Attorney General is enormous. The Attorney General has to have sufficient independence to uphold the law and enforce the law, even if doing that serves to embarrass or disadvantage the President, even if it means taking a position contrary to what the President may want, because you have to enforce the law.

Now, when Judge Gonzales was designated and appeared in the White House with the President, he offered a very significant insight into how he views the role of the Attorney General. He emphasized how much he looked forward ''to continuing to work with friends and colleagues in the White House in a different capacity on behalf of our President.''

During his confirmation hearing, he appeared to continue to serve as a spokesman for the administration and to be its chief defense lawyer on a wide variety of important matters. His defenders here on the Senate floor have excused his answers by characterizing them as the views of the administration.

We are voting on the Attorney General of the United States, not the Attorney General of the President. The Attorney General must represent the interests of all Americans and is the nation's chief law enforcement officer.

One of the key questions raised by this nomination is whether, if confirmed as Attorney General, the nominee will serve not just this President but all the American people, and whether he will show the independence necessary to enforce the law. We have to know that he is there to represent all of us. We have to know that he can enforce the law and not be worried about friends, colleagues, or benefactors at the White House. The Attorney General's duty is to uphold the Constitution and the rule of law, not try to find ways to circumvent it to fit the desires of any President.

Actually, the President, when you come right down to it, as well as the Nation, are best served by an Attorney General who gives sound legal advice and takes responsible action without regard to political considerations. Others in the Cabinet are there to just voice the opinions of the President. The Attorney General has to be a lot more independent.

I raised this matter of independence with Judge Gonzales when he testified, and I reiterated it in a letter I sent to him before his hearing. I ask unanimous consent that letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, December 3, 2004.

Hon. ALBERTO R. GONZALES,
Counsel to the President,
The White House, Washington, DC.

DEAR JUDGE GONZALES: I enjoyed our preliminary meeting and look forward to your confirmation hearings. In following up on our meeting, and to give you and your staff ample opportunity to prepare for the hearings, I write to reiterate several concerns that I have raised in prior discussions and correspondence. When we met on November 17, 2004, I said that these issues will be raised, by myself and other members of the Senate Judiciary Committee, during the upcoming hearings. Based on our conversation, I am encouraged by your willingness to answer questions about your role and your views in these matters.

Photographs and reports of prisoner abuse in Iraq and other locations show an interrogation and detention system operating contrary to U.S. law and the Geneva Conventions. In addition to the abhorrent images from the Abu Ghraib prison that were published last spring, actions that have occurred with Administration approval include the forcible rendition of individuals to nations where they may face torture, and the hiding of ''ghost detainees'' from the International Committee of the Red Cross. Reports of abuse continue to emerge. Just this week, The New York Times reported that the Red Cross has charged U.S. military authorities with using physical and psychological coercion ''tantamount to torture'' on prisoners at Guantanamo Bay. The Washington Post is reporting that in December 2003 Army generals in Iraq were warned in a confidential report that members of an elite military and CIA task force were abusing detainees. According to The Post, the report concluded that certain arrest and detention practices could be deemed to be ''technically'' illegal.

In letters dated May 17 and June 15 of this year, I asked you to describe your role in both the interpretation of the law and the development of policies that led to what I and many others consider to have been a disregard for the rule of law. These letters remain unanswered.

My concerns regarding the abuse of prisoners in U.S. custody did not begin with these letters. I have been seeking answers from the Administration for well over a year, before the abuses at Abu Ghraib came to light. In a very few cases my questions were answered, but with information that later proved to be less than accurate. For example, in a news conference on June 22, 2004, you stated, ''In Iraq, it has always been U.S. position that Geneva applies. From the early days of the conflict, both the White House and the Department of Defense have been very public and clear about that.''

However, an October 24, 2004, article in The Washington Post revealed yet another Justice Department memo authorizing actions that potentially violate the Geneva Conventions. The draft memo, dated March 19, 2004, apparently was written to authorize the CIA to transfer detainees out of Iraq for interrogation—a practice expressly prohibited by the Geneva Conventions. According to the memo's cover letter, it was drafted at your request.

In another example, a June 25, 2003, letter from Department of Defense General Counsel William Haynes stated that the United States was adhering to its international obligations including those under the Convention Against Torture. We later learned of an August 1, 2002, Department of Justice memorandum that twisted the definition of torture in unrecognizable ways. That memo was addressed to you. We also learned months later of the rendition of a Canadian-Syrian citizen to Syria, despite his fear of being tortured there, and despite the Syrian government's well-documented history of torture. Unnamed CIA officials told the press that this man was in fact tortured in Syria.

The Committee and the Senate will want to know your role in these situations and your views with regard to the development of the legal justifications that appear to underlie so many of these actions. You will be called upon to explain in detail your role in developing policies related to the interrogation and treatment of foreign prisoners. The American public and the Senate that will be called upon to confirm your appointment deserve to know how a potential Attorney General, the chief law enforcement officer in the nation, will interpret and enforce the laws and how you will develop policy.

We want to know what the current policy on torture is, but since the Administration disavowed the August 1, 2002, memo, no public statement of policy has replaced it. Questions remain unanswered on a host of issues. Requests to the White House and the Department of Justice for relevant documents—including my requests to you in May and June of this year—have been ignored or rejected. I

urge you and the Administration to provide the documents that have been requested by myself and others without further delay so that the hearings will be well informed.

Another key concern you will be called upon to discuss is how you view the duties and responsibilities of the Attorney General. As we discussed, I view the White House Counsel position and that of the Attorney General as quite distinct. You may well have viewed this President as your ''client'' while serving him at the White House, although the courts do not recognize an attorney-client privilege in that setting. We will want to know how differently you will act and view your responsibilities as the Attorney General of the United States. finally, I encourage you to commit to cooperating with all members of the Judiciary Committee on issues of oversight and accountability. In the 108th Congress, the Judiciary Committee failed to fulfill its oversight responsibilities. Accountability and improving government performance are sound and long established purposes of congressional oversight, and accountability has been lacking on these and other crucial issues. With a new Congress, and a new Attorney General, I expect a return to the diligent oversight envisioned by our Founders to ensure that the Executive Branch remains accountable to the American people.

Our meeting was a constructive beginning at the start of the confirmation process, and I look forward to your hearing early next month. In the meantime, Marcelle and I send our best wishes to you and your family and hope that you have a restful and rewarding holiday season.

Sincerely,

PATRICK LEAHY,
Ranking Democratic Member.

Mr. LEAHY. I was not surprised to hear him say that the responsibilities of the Attorney General are different than those as White House Counsel. But I did not see that during the hearings. He deferred to the official policies of this administration throughout the Judiciary Committee proceedings.

When asked about the Bybee memo, he said:

I don't have a disagreement with the conclusions then reached by the Department.

And he stated a patently false reading of the torture convention that would allow for foreigners captured overseas to be subjected to cruel, inhuman, and degrading treatment at the hands of American captors or surrogates. He appeared to accept the notion that the President has the authority to immunize somebody to commit torture under his command.

A letter signed by a number of high-ranking former military officers, including the former head of the Joint Chiefs, GEN John Shalikashvili, said the interrogation policies that Judge Gonzales helped to define ''have fostered greater animosity toward the United States, undermined our intelligence-gathering efforts, and added to the risks facing our troops serving around the world.''

The best evidence we have is that he rejected the advice of Secretary Powell and career military officers when he recommended to the President the Geneva Conventions should not apply to the conflict in Afghanistan. Admiral John D. Hutson, the former Judge Advocate General of the Navy, testified to the Judiciary Committee that the advice given by Judge Gonzales to the President on this point was ''shallow in its legal analysis, short-sighted in its implications, and altogether ill-advised. Frankly, it was just wrong.''

These military men are joined in opposition to this nomination by a large number of organizations, including the Leadership Conference on Civil Rights, the La Raza Centro Legal, and the Mexican-American Political Association. Three leading human rights organizations, Human Rights Watch, Human Rights First, and Physicians for Human Rights, none of which have ever opposed a nomination before, did so for the very first time. They acknowledge that the struggle to stamp out torture around the world ''has been made harder by the legal positions adopted by the Bush Administration, including Mr. Gonzales's refusal to state that a President could not lawfully order torture.'' The Congressional Hispanic Caucus and the Mexican American Legal Defense and Educational Fund both issued statements stating that they cannot support this nomination. I ask unanimous consent to include in the RECORD a list of organizations opposing or not supporting the nomination.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ORGANIZATIONS OPPOSED TO THE CONFIRMATION OF ALBERTO R. GONZALES

Alliance for Justice
Americans for Democratic Action
Center for American Progress
Center for Constitutional Rights
Friends Committee on National Legislation
Global Rights: Partners for Justice
Human Rights First
Human Rights Watch
International League for Human Rights
La Raza Centro Legal
Leadership Conference on Civil Rights
The Mexican-American Political Association (MAPA)
Minnesota Advocates for Human Rights
National Alliance for Human Rights
People for the American Way
Physicians for Human Rights
Physicians for Social Responsibility
Plainfield Meeting of the Religious Society of Friends (Plainfield, VT)
REFUGE (Torture survivors program)
RFK Memorial Center for Human Rights
The Shalom Center
Veterans for Common Sense

Mr. LEAHY. While I have heard partisan attacks from the other side of the aisle, I have not heard Republicans offer a strong defense of Judge Gonzales's actions and judgment. What they come back to again and again is his inspirational life story. Having an Hispanic American serve as Attorney General is overdue and something to which I look forward. Having an African American serve as Attorney General is, likewise, overdue. In his letter to the Judiciary Committee, retired Major General Melvyn Montano may have said it best: ''Judge Gonzales should be evaluated on his record, not his ethnicity.''

At particular moments in our history, the Senate at its best can be the conscience of the Nation. The history books and our children and grandchildren will look back on these times and make their own judgments about how worthily the Senate has served that role as we confront any number of difficult issues in these challenging times. But I do believe that, whatever the outcome of this confirmation proceeding, it is worthy of the Senate that we at least held this debate. It is worthy of the Senate that these issues were deemed important enough to discuss for several days on the floor of the United States Senate. To have wished them away or to have just glossed over them would have been a disservice not only to today's generations of Americans, in and out of uniform, but also to tomorrow's generations of Americans. And it would have been a disservice to the Senate that we all so deeply respect.

I have deeply believed that it should concern the Senate that we have seen departures from our country's honorable traditions, practices, and established law in the use of torture, originating at the top ranks of authority and emerging at the bottom. At the bottom of the chain of command, we have seen a few courts-martial, but at the top we have seen medal ceremonies, pats on the back, and promotions.

At his recent inaugural address, I praised President Bush for his eloquent words about our country's historic support for freedom. But to be true to that vision, we need a government that leads the way in upholding human rights, not one secretly developing legalistic rationalizations for circumventing them. We need to climb our way back to the high moral ground that has distinguished our great country and that has been an inspiration to the whole world.

Members of the Senate have a solemn obligation to uphold the law and the Constitution. Each of us has to decide whether the nominee has the sound judgment and the independence required to be Attorney General. I would have been willing to vote for Judge Gonzales in a number of different positions of Government, but not in this one. I wish we could vote for his life story and not for the actual record. Unfortunately, we are voting on the record. I ask each Senator to consider it.

I know that each will consult his or her conscience in reaching a decision, and that is in keeping with the best traditions of the Senate.

If I have time remaining, I yield it back.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, it has been a long month for Judge Gonzales, starting with his hearing on January 6, through today. It has been a long month for the Senate, as we have considered his testimony, heard him, deliberated about him, and now 3 days of

argument on the Senate floor about Judge Gonzales. What is striking to me is how little there has been about the 49 years of this man's life contrasted with a few meetings where the contents have been grossly distorted.

This is a man who has an extraordinary record, but it has not been the subject of analysis or discussion today as to whether he has the qualifications to be Attorney General of the United States.

What are those qualifications? A man of intellectual achievement, a graduate of Rice University, a graduate of Harvard Law School, professional competence demonstrated by practicing law, a distinguished career as a state supreme court justice in Texas, his work for Governor George W. Bush in Texas, his work for 4 years as White House Counsel where he has come into contact with so many Members of the Senate, and quite a few of those Members have spoken out about him before the misrepresentations of what happened in a few meetings, which have led people to inappropriately blame Judge Gonzales for what happened at Abu Ghraib or Guantanamo.

But what have Members of the Senate had to say about Judge Gonzales on their work with him?

Senator KOHL said:

We have had an opportunity to work together on several different issues over the years, and I have come to respect you also. And I believe if you are confirmed that you will do a good job as Attorney General of the United States.

Senator DURBIN:

I respect him and his life story very much.

Senator LEAHY:

. . . I like and respect Judge Gonzales.

Senator BIDEN:

He has overcome great adversity in his life, and I believe he is an intelligent, decent, and honorable man.

Senator SCHUMER, who has had very extensive contact with Judge Gonzales because the State of New York has a great many Federal judges, had this to say:

I like Judge Gonzales. I respect him. I think he is a gentleman and I think he is a genuinely good man. We have worked very well together, especially when it comes to filling the vacancies on New York's Federal bench. He has been straightforward with me and he has been open to compromise. Our interactions haven't just been cordial; they have been pleasant. I have enjoyed the give-and-take we have engaged in.

I was inclined to support Judge Gonzales. I believed and I stated publicly early on that Judge Gonzales was a less polarizing figure than Senator Ashcroft had been.

I still have great respect for Judge Gonzales. He has the kind of Horatio Alger story that makes us all proud to be Americans. It is an amazing country when a man can rise from such humble beginnings to be nominated for Attorney General.

And what Senator SCHUMER was referring to was the fact that there were seven siblings, a mother and father, two-room accommodations, no hot water, referring to his Horatio Alger story, up from the bootstraps without even boots.

When Senator LIEBERMAN took the floor this afternoon, there was for the first time, except for Senator SALAZAR, at least as I recollect, comments from the other side of the aisle about the man's character and about the man's background.

Well, what happened? There was a memorandum which has been quoted against Judge Gonzales repeatedly where, referring to the Geneva Convention, the words ''quaint'' and ''obsolete'' were used. But what was the context? This is what he said:

This new paradigm—that is, after 9/11—renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions requiring that the captured enemy be afforded such things as commissary privileges, scrip—that is, advances of monthly pay—athletic uniforms, and scientific instruments.

Well, nobody is going to say that al-Qaida or the Taliban would have any commissary privileges—not an issue. Whether there would be advances of monthly pay—not an issue. Athletic uniforms—not an issue. Scientific instruments—not an issue. So there is simply a recognition that it was quaint, that it didn't apply to the situation at hand.

The charges against Judge Gonzales have been that he was the architect of what happened at Abu Ghraib and Guantanamo, which is a stretch beyond any conceivable justification from the record in this case. What did Judge Gonzales do? Judge Gonzales asked that the Department of Justice prepare a legal memorandum on the law. That is the responsibility of the Department of Justice. Then he participated in several meetings, and he was candid about what happened in those meetings, as best he or anybody could recall on meetings that happened several years ago. And then, understandably, he said it was a matter for the Department of Defense and the Central Intelligence Agency, where they had the expert questioners, to decide what questions to propound to the detainees. And from that participation, he has been charged with monstrous offenses.

The so-called Bybee memorandum of August 2002 has been denounced. It was denounced by Judge Gonzales. I asked him the specific question about the assertion in the Department of Justice memorandum that the President had as much authority on questioning detainees as he had on battlefield decisions—an absolutely preposterous assertion—and Judge Gonzales said, no, he disagreed with that. There had been a comment that he respected the authority of the Department of Justice to render a legal opinion because of the continuing concern not only from this President, but prior Presidents, that if the White House tried to tell the Justice Department what the words were, or to control it, the White House could be guilty of politicization. Judge Gonzales understandably steered away from that.

In terms of being deferential to the role of the Department of Justice, but not to the August 2002 memorandum, which he denounced and which he said was incorrect when it asserted great powers to the President, with the suggestion that the President have the power to ignore the law, or which suggested inferentially, very tenuously about the President having the authority, were explicit on granting immunity, which, of course, the President doesn't have the authority to do.

Mr. President, how much time remains of my 15 minutes?

The PRESIDING OFFICER. There is 6 minutes.

Mr. SPECTER. I thank the Chair.

The essence of Judge Gonzales's role was summarized by one of his statements, consistent with his entire testimony. It is this:

Shortly after September 11, 2001, until the present, the administration has been involved in conducting the war on terror by gathering as much information from terrorists as we possibly can within the bounds of the law. During that time, I have participated in several meetings at which the possible use of methods of questioning were discussed. These meetings may have included, from time to time, representatives from the National Security Council, the Department of State, the Department of Justice, the Department of Defense, Central Intelligence Agency, and others. In the meetings I attended, agencies' representatives raised concerns that certain terrorists had information that might save American lives. The participants shared the desire to explore whether there existed methods of questioning these terrorists that might elicit that information. It was always very clear that we would implement such methods only within the bounds of the law. As counsel to the President, my constant interest is and was on the last factor, enduring compliance with the law.

There you have Judge Gonzales's role. He listened to the Department of Justice, which had the responsibility to interpret the law on what the appropriate conduct was. When it was off the wall or over the top, he disagreed with it. It is up to the Department of Defense and CIA—the experts on questioning—to make decisions on those matters.

Judge Gonzales was explicit in his opening statement. He didn't wait for anybody to ask him any questions about the scope and role of the Attorney General—that it was much broader than being Counsel to the President.

On the totality of this record, I suggest to my colleagues that Judge Gonzales is qualified to be Attorney General of the United States. When you look at his life, some 49 years, and at the values which he demonstrated in many lines, values he demonstrated as a young man facing great adversity and achieving a college education at Rice—that is not easy—going to the Harvard Law School—that is not easy—practicing law with a prestigious firm and distinguishing himself; taking on a responsibility for the Governor of Texas; being a justice on the State Supreme Court; and his positions as White House counsel were very progressive and independent. He took a

stand in opposition to the White House, favoring affirmative action on the University of Michigan lawsuit, a very controversial matter. It is not easy for White House Counsel to stand up in the midst of a great deal of polarized contentions and be in favor of affirmative action. When the Texas statute came up—the so-called bypass—on what a young woman had to do to obtain an abortion with respect to satisfying the requirements for an order of the court allowing a bypass, Judge Gonzales took a position which was sharply criticized by those on the far right of the party, showing independence, showing values, showing judgment. You can contrast that with a few meetings where Judge Gonzales played an appropriate role, except to the extent that there have been representations and attenuations and inferences that are far beyond any of the testimony or anything that has been said.

So if you take the scanty fathoms, scanty ideas, scanty speculation—I guess that is the best word—from those meetings, it is totally unsubstantiated by the record; and everything on the record shows Judge Gonzales is worthy of being confirmed as Attorney General of the United States.

I thank the Chair and yield the floor. I am sure the leaders will appear shortly to take the remainder of their time. In the absence of a Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mr. REID. Mr. President, our great Nation was founded on the idea of human rights. From the very beginning, we were designed to be a place where men and women could live free, a place where no man was above the law, a place where the state would never trample on the rights of individuals.

We did not always live up to our ideals. Along the way, we stumbled. We have made mistakes. But we always worked to correct our mistakes. We worked to uphold the core values that formed our national soul.

Because of our unshakable belief in human rights, we became a ray of light, a beacon for people in other parts of the world. America has been that beacon because we are a nation governed by laws, not by men.

We are a nation where no one, not even the President of the United States, is above the law. We are a nation where our military is bound by the uniform Code of Military Justice and the laws of war. And we are a nation that even at war stands for and upholds the rule of law.

There is no question gathering intelligence from suspects in our war on terror is critical to protecting this great Nation. No one in this Chamber would argue otherwise, I would think. These are very bad people with whom we are dealing. But when interrogation turns to torture, it puts our own soldiers at risk. It undermines the very freedoms Americans are fighting to protect.

We are a nation at war—a war in Iraq and a war against terrorism—but this war does not give our civilian leaders the authority to cast aside the laws of armed conflict, nor does it allow our Commander in Chief to decide which laws apply and which laws do not apply. To do so puts, I repeat, our own soldiers and our Nation at risk.

But that is what has occurred under the direction and coordination of the man seeking to be Attorney General of the United States, Alberto Gonzales, a man I personally like, but whose judgment on these very serious matters was flawed and is flawed.

I have heard a great deal on this Senate floor about Judge Gonzales's background over the last few days, how his parents were migrant farm workers, and how he worked his way up from poverty. It is an inspiring story, and it is one that resonates with me.

I met with Judge Gonzales after the President sent his nomination to the Senate. We talked about our childhoods, about coming from small rural towns, some would say without many advantages. The fact that someone from a place called Humble, TX, and someone from a place called Searchlight, NV, have had an opportunity to achieve their dream is what America is all about.

But, embodying the American dream is not a sufficient qualification to be Attorney General of the United States.

The Attorney General is the people's lawyer, not the President's lawyer. He is charged with upholding the Constitution and the rule of law. The Attorney General must be independent, and he must be clear that abuses by our Government will not be tolerated.

Judge Gonzales's appearance before the Judiciary Committee raised serious questions about his ability to be that force in the Justice Department. That is why I am going to vote against him.

In 2002, Judge Gonzales provided legal advice to the President of the United States calling parts of the Geneva Conventions obsolete and quaint—that is what he said, they were obsolete and quaint—opening the door for confusion and a range of harsh interrogation techniques.

What are the Geneva Conventions? At the end of the Civil War, people from around the world decided there should be some semblance of order in how war is conducted. Starting in 1864, there was a convention adopted, and there have been four revisions to the Geneva Convention. That is why it is referred to as the Geneva Conventions because it is, in effect, four treaties.

This is basically an agreement concerning the treatment of prisoners of war, of the sick, wounded, and dead in battle. These are treaties that relate to what happens to human beings in war. These conventions have been accepted by virtually every nation in the world.

A former Navy judge advocate general, RADM John Hutson, said:

> When you say something down the chain of command, like 'the Geneva Conventions don't apply,' that sets the stage for the kind of chaos we have seen.

The President signed an order accepting the reasoning of the Gonzales memo. The Presidential order was the legal basis for the interrogation techniques and other actions, including torture, which simply took as fact that the Geneva Conventions did not apply.

Can you imagine that, the United States saying the Geneva Conventions do not apply? But that is what took place.

Our military lawyers, not people who are retired acting as Monday-morning quarterbacks, but our military lawyers who are working today, who are experts in the field, have said the interrogation techniques authorized as a result of the Presidential order and allowed under the Gonzales reasoning were in violation of the U.S. military law, the U.S. criminal law, and international law.

According to RADM Don Guter, a former Navy judge advocate general:

> If we—we being the uniformed lawyers—that is, the lawyers who are in the U.S. military—had been listened to and what we said put into practice, then these abuses would not have occurred.

So the people who serve in our military who gave legal advice said this should never have happened.

After the scandal at Abu Ghraib and the recent allegations of abuse at Guantanamo, I expected at this hearing before the Judiciary Committee to hear Judge Gonzales discuss the error of the administration's policies and the legal advice he provided the President.

When he came before the committee, Judge Gonzales stood by his legal reasoning and the policy of his reasoning. Judge Gonzales called the President's Geneva determination ''absolutely the right decision.''

With regard to the legal opinion Judge Gonzales solicited in the Justice Department so-called ''torture memo,'' he stated at his hearing, ''I don't have a disagreement with the conclusions then reached by the Department,'' even though the Department itself has now disavowed this legal reasoning.

I heard Senator KENNEDY state that the dean of Yale Law School, probably the No. 1 law school in the entire country, has said he has never seen legal reasoning as bad as the Gonzales memo. That is pretty bad.

For example, military lawyers who are experts in the field have said without the order issued by the President, at Mr. Gonzales's behest, they would take the position that the interrogation techniques used against Taliban prisoners and later in Iraq would be violations of U.S. military law, U.S. criminal law, and international law.

So who are we to believe? These people who are dedicated to making sure that they, as the legal officers of the U.S. military, do what is right? They say we should follow the Geneva Conventions. Gonzales said—not necessary.

I will say a word about the interrogation techniques that were authorized. They included forced nakedness, forced shaving of beards, and the use of dogs, just to name a few. Many are specifically designed to attack the prisoner's cultural and religious taboos.

In describing them, the similarities to what eventually happened at Abu Ghraib are obvious. Once you order an 18-year-old, a young man or woman, to strip prisoners naked, to force them into painful positions, to shave their beards in violation of their religious beliefs, to lock them alone in the dark and cold, how do you tell him to stop? You cannot.

We have seen the pictures of naked men stacked on top of each other in the so-called pyramid; rapes of men, rapes of women, leading in some cases to death. How does one tell an American soldier that torture is a valid treatment as long as the Government says the prisoner is not covered by the Geneva Conventions?

Any student of history would know that the North Vietnamese said captured U.S. pilots were not protected as prisoners of war because there was no declared war. That is what happened in the Vietnam war. They kept our men in solitary confinement for months, sometimes years at a time.

I will tell my colleagues about one of our men and what that man said about his treatment by the Vietnamese:

> It's an awful thing, solitary. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment. . . .

Here, I would make an editorial comment that this man knows about any other kind of treatment. He was brutally beaten, limbs broken, limbs already broken rebroken. So he knows what he is talking about. So I repeat, a direct quote:

> It's an awful thing, solitary. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment. Having no one else to rely on, to share confidences with, to seek counsel from, you begin to doubt your judgment and your courage.

The man who said these words was a Navy pilot, LCDR John McCain. For John McCain and all our soldiers serving across the globe, we need to stand against torture because of what it does to us as a country, to those serving now, to the future servicemen of our country, and what it does to us as a nation.

If we fail to oppose an evil as obvious as torture—it is an evil and it is obvious it is wrong—then as President Thomas Jefferson said, I will ''tremble for my country when I reflect that God is just.''

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, the Senate is about to vote on the nomination of Judge Alberto Gonzales for Attorney General. We have had 3 days of spirited debate. I am gratified that my colleagues on the other side of the aisle decided not to block an up-or-down vote on his nomination.

Judge Gonzales is eminently qualified to serve as our Nation's top law enforcement officer. He is an outstanding candidate who deserves our strong support.

Unfortunately, during the course of this process a number of groundless criticisms have been unfairly leveled against Judge Gonzales, many of them based on exaggeration or quotations taken out of context. I will take this opportunity to very briefly address them for the record.

First, President Bush does not have, nor has his administration ever had, an official Government policy condoning or authorizing torture or prisoner abuse.

Let me restate for the record an excerpt from a Presidential memo dated February 7, 2002:

> Our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. . . .As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with the military necessity, in a manner consistent with the principles of the Geneva Conventions governing the laws of war.

Second, neither Judge Gonzales nor the President have condoned, advocated, or authorized torture of prisoners. In fact, on numerous occasions both have explicitly condemned torture as an abhorrent interrogation technique.

Third, Judge Gonzales was not the author but the recipient of memos focusing on interrogation methods of captured terrorists. The research memos that have been the focus of so much attention and criticism were written by the Office of Legal Counsel of the Department of Justice to Judge Gonzales as White House Counsel. The memos explored the legal interpretation of a Federal law. They did not set administration policy. The Department of Justice has since categorically withdrawn this controversial legal analysis, stating unequivocally:

> Torture is abhorrent, both to American law and to international norms.

These are the facts, straight and simple. Judge Gonzales has acted with total professionalism and high regard for the law. Suggestions to the contrary are baseless and a slur against an honorable man. Judge Gonzales is highly qualified to be America's next Attorney General. Judge Gonzales is a man of keen intellect, high achievement, and unwavering respect for the law. He will continue to build on the success of the last 4 years in reducing crime, fighting corporate fraud, and upholding our civil rights. As our first Hispanic-American Attorney General, Judge Gonzales will stand as an inspiration to all Americans. I urge my colleagues to offer their full support to Alberto Gonzales as our next Attorney General.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Alberto R. Gonzales, of Texas, to be Attorney General?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent—the Senator from Montana (Mr. BURNS).

Further, if present and voting, the Senator from Montana (Mr. BURNS) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Dakota (Mr. CONRAD), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii (Mr. INOUYE), would vote ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 36, as follows:

[Rollcall Vote No. 3 Ex.]

YEAS—60

Alexander	Domenici	Murkowski
Allard	Ensign	Nelson (FL)
Allen	Enzi	Nelson (NE)
Bennett	Frist	Pryor
Bond	Graham	Roberts
Brownback	Grassley	Salazar
Bunning	Gregg	Santorum
Burr	Hagel	Sessions
Chafee	Hatch	Shelby
Chambliss	Hutchison	Smith
Coburn	Inhofe	Snowe
Cochran	Isakson	Specter
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Cornyn	Lieberman	Talent
Craig	Lott	Thomas
Crapo	Lugar	Thune
DeMint	Martinez	Vitter
DeWine	McCain	Voinovich
Dole	McConnell	Warner

NAYS—36

Akaka	Dorgan	Levin
Bayh	Durbin	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Harkin	Obama
Byrd	Jeffords	Reed
Cantwell	Johnson	Reid
Carper	Kennedy	Rockefeller
Clinton	Kerry	Sarbanes
Corzine	Kohl	Schumer
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden

NOT VOTING—4

Baucus	Conrad	Inouye
Burns		

The nomination was confirmed.

Mr. MCCONNELL. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak therein for up to 10 minutes.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

The Senator from Pennsylvania.

CONFIRMATION OF ALBERTO GONZALES

Mr. SPECTER. Mr. President, I thank my colleagues for the affirmative vote in support of Judge Gonzales to be the next Attorney General of the United States. The final vote of 60 to 36 reflects a degree of bipartisanship.

Judge Gonzales takes on this heavy mantle of responsibility as Attorney General of the United States being very well qualified to do so. He has worked as White House Counsel, as we all know, for 4 years, and has worked closely with many, if not most, of the Senators who have had judicial nominations which have come to him. I put into the RECORD many laudatory, complimentary statements which were made about Judge Gonzales for his work as White House Counsel.

Regrettably, the incidents at Abu Ghraib and Guantanamo—particularly at Abu Ghraib—are a major blemish. At Guantanamo the problem is still under investigation. Those incidents, realistically viewed, were not the responsibility of Judge Gonzales. His role was a limited one. It is up to the Department of Justice to provide legal opinions as to the scope of appropriate conduct, up to the experts in the Department of Defense, the CIA to formulate the questions. But 60 votes is good, sound support for Judge Gonzales. I am pleased to see his confirmation has been approved by the Senate. We have consented to the President's nomination.

In my capacity as chairman of the Judiciary Committee, I look forward to working with Attorney General Gonzales.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 15 minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SOCIAL SECURITY

Mr. DORGAN. Mr. President, we are embarking on a debate with respect to the subject of Social Security. Last evening, the President gave a State of the Union Address and today is traveling around the country to talk about a very important issue, Social Security.

In many ways the issue is about values. There has been a great deal of discussion about values in this country, especially as it applies to political debates. I think the debate about the Social Security system is a debate about values.

Some months ago, a friend of mine died in a small community in North Dakota. I sent some flowers and called. He was a man in his eighties. He lived a great life. He was a wonderful person. I got a note from his wife. Here is what she said about her husband. She said: Oscar always helped his neighbors and he always looked out for those who did not have it so good. That is all she said. But what a wonderful description of someone's value system and of someone's life: He always helped his neighbors and always looked out for those who did not have it so good.

In many ways that prompted the origin of the Social Security program. In the 1930s, one-half of America's senior citizens were living in poverty.

When I was a young boy, my father asked me, in the town of 300 people where we lived, to drive an old fellow to the hospital. The man lived alone in a very small shack. He did not have any relatives. He lived alone, and he was quite sick. My dad asked if I would drive him to the hospital. The nearest hospital was 60 miles away.

I went over and picked him up and drove him to the hospital. He never made it back. But this old man, who was then sick and did not have very much, lived on Social Security. The only thing he had was a small Social Security check, but it was the difference for that man between not having money to buy food, not having money to live, and being able to survive.

I know—and my colleagues know—how critically important Social Security has been to so many of America's elderly. Yes, I am talking about the people who built this country. I am talking about the people who built America's schools and roads and worked in America's factories. They are the people who turned this country into the strongest economy in the world, a beacon of hope for all people. Then they grow old and retire, and they reach their declining income years. The question is, what is there for them?

The one thing that for 70 years has always been there for them is something called Social Security. No, it is not an investment program. It is an insurance program. The money that goes into the Social Security system comes out of paychecks in something called the FICA tax. The FICA is not for investment. The ''I'' stands for ''insurance.'' Social Security has been a core insurance program. It provides insurance with respect to benefits for those who retire. It provides benefits for those who are disabled, and it provides benefits for dependent children. For example, when the breadwinner of the house lost their life, dependent children received the benefits. So it is more than a retirement program, but it is also that. It is the risk-free portion of retirement. It is the piece that for 70 years the American elderly could count on. They would know it would be there no matter what.

Some have never liked it and have always wanted to take it apart. There was a memorandum leaked about 3 weeks ago from the White House that was interesting. It was from the chief strategist who is putting together this program to privatize a portion of Social Security. That memorandum said toward the end something that was very interesting. It said: This is the first time in six decades we have a chance to win this fight on Social Security. Of course, the whole implication of that is, we have never liked it, but we have had to bear with it. Now we have a chance to deal with it.

The administration, as announced by the President last evening, wants to make some changes. He says the Social Security system is in crisis. He predicted last night that at a certain time the Social Security system would be bankrupt. But it is not in crisis, and it will not be bankrupt. He is simply wrong.

Our colleague, former Senator Pat Moynihan, used to say: Everyone is entitled to their opinion, but not everyone is entitled to their own set of facts. I hope we can discuss this issue using the same set of facts, at least.

Let me begin by saying something most everyone would acknowledge. In the year 1935, when Franklin Delano Roosevelt signed the law that created Social Security to protect our elderly from what he called ''poverty-ridden old age,'' one half of the senior citizens in this country were impoverished. Now it is slightly less than 10 percent.

Has the Social Security program worked? Of course, it has. It has been a remarkable program that has lifted tens of millions of senior citizens out of poverty. It has worked over the years unfailingly.

The President says it is in crisis. It is set to be bankrupt at some point. Therefore, let's make some changes. He says: Let's create private accounts with a portion of the Social Security system and invest it in the stock market.

What he didn't say last night was how he would do that. He would be required to borrow $1 to $3 trillion at a time when we are up to our neck in debt with the highest budget deficits in the history of America. He would borrow $1 to $3 trillion in additional funding, invest it in private accounts in the stock market, cut Social Security benefits at the same time, and say that somehow this is going to be better for our elderly. With great respect—and I