I am hopeful and confident Judge Gonzales will continue that legacy in his new position. He is a man of great integrity. I encourage all my colleagues to entrust him with the honor and responsibility of being our next Attorney General.

I also take a few moments to formally thank Attorney General John Ashcroft for his tremendous service the past 4 years. I have a personal relationship with the Ashcroft family and understand what he went through in the last 4 years. He has done his job with great dedication and integrity. He is a man who put the right people in the right places at the right time.

He has served us well. He reorganized the Department of Justice with new directives, new directors. I thank him. His friendship, his service to the country, should not go unnoticed and unappreciated. He has done a tremendous job in very stressful times. I venture to say for an Attorney General, no time has been more stressful than the time John Ashcroft has hung his hat as Attorney General downtown.

We welcome the nominee. We have the highest hopes for him. We wish him not only good luck but good hunting. We also thank the outgoing Attorney General.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The PRESIDING OFFICER. Under the previous order, the hour of 10:45 a.m. having arrived, the Senate will proceed to executive session for the consideration of Executive Calendar No. 8, which the clerk will report.

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

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, we are proceeding at the moment to the nomination of White House Counsel Alberto Gonzales to be Attorney General of the United States of America. He had served as a judge on the Supreme Court of Texas and has been commonly referred to as Judge Gonzales, which I shall do during the course of my presentation.

Judge Gonzales, 49, comes to this nomination to be the chief law enforcement officer of the United States with an extraordinary record.

He was one of eight children, sharing a two-room living quarters with their parents. They had no hot water, no telephone. He pursued an academic career, first at the military academy; then at Rice University, where he graduated; and then at the Harvard Law School.

He went into the private practice of law and then was asked by then-Governor George Bush to work with him in the Governor's office.

Judge Gonzales then, as noted, was a justice of the Supreme Court of Texas. With the election of Governor Bush to the White House, Judge Gonzales has been White House Counsel for the last 4 years.

It is not irrelevant to note that Judge Gonzales would be the first Hispanic to be Attorney General of the United States. That is quite a dramatic rise in the legal community.

When I was elected district attorney of Philadelphia some time ago, in 1965, there was not a single Hispanic lawyer in Philadelphia. At that time, I made an effort of outreach to bring minority representation into the district attorney's office as assistants and could not find a single Hispanic. So there has been a great deal of progress. Now there are Hispanic Federal judges in Philadelphia, State court judges, city solicitors, prominent attorneys, but Judge Gonzales would be the first Hispanic to be Attorney General of the United States, if confirmed.

He will bring, I think, a unique perspective because of his minority status. I think he would have a broader view, a different view on civil rights. We have an issue which is subject to some congressional oversight where some 762 alien detainees were rounded up after 9/11, and according to a report by the Inspector General of the Department of Defense, there was never any showing of connection to terrorism or to al-Qaida or to any reason for their detention.

While we know we live in a very dangerous world, there has to be some reason—it may not be as strong as probable cause for an arrest, or probable cause for search and seizure, or even sufficiency for stop and frisk—but there has to be a reason for detention. That is something of which I think Judge Gonzales might have some greater perspective.

Judge Gonzales, I think, also would be expected to have a broader view on the immigration laws, being Hispanic, being from Texas, seeing the kinds of problems which are present both from the point of view of stopping illegal immigrants and also from the point of view of immigrants who come to this country who seek a better way of life.

Similarly, I think he might have some greater insights into voting rights. He took a position broadly viewed as divergent from the administration on affirmative action in the controversial cases involving the University of Michigan. Affirmative action, always a complicated, controversial subject, but one where differing views and a broader perspective is a quality that would be well served in the Attorney General of the United States.

He also took a broader view on the issue of what was required on parental notification under the Texas statute, drawing opposition from some on the so-called right of the party. There again, a little different view and a little broader view reflective of his background and his own attitudes.

A great deal of the hearing process on Judge Gonzales has been involved on the issue of compliance with the Geneva Convention, on compliance with the statutes of the United States which prohibit torture. A great deal has been made of a statement made by Judge Gonzales with respect to the Geneva Conventions. He has been broadly quoted on a statement that some of the Geneva Convention's limitations are obsolete or quaint. In an opinion which he circulated, he said this:

> In my judgment, this new paradigm—

referring to what has happened after 9/11—

> renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.

That part of the statement is the one always quoted, and the comment on ''quaint'' and the comment on ''obsolete'' have drawn a lot of criticism. But almost nowhere has there been a followup on what he was referring to. But what he said, continuing:

> . . . renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip—i.e., advances of monthly pay—athletic uniforms and scientific instruments.

Well, when you see the reference here to ''items like commissary privileges,'' I don't know that that would be exactly something to be concerned about on a prisoner, or scrip or advances of monthly pay or athletic uniforms or scientific instruments. So in that context, to say it is ''quaint'' or ''obsolete'' is not to challenge the underlying provisions of the Geneva Convention on its important substantive provisions.

In Judge Gonzales's statements and testimony before the Judiciary Committee, he has been very emphatic about his personal opposition to torture and about the opposition of the administration to torture. He has been emphatic on his opposition to transporting detainees to other countries which permit torture to enable detainees to be tortured in other countries where they could not be under the auspices of the United States. He has been explicit in articulating the view that the CIA is bound by the same rules prohibiting torture as anyone else.

He has come under considerable criticism for the so-called Bybee memorandum which was issued in August of 2002, signed by Jay Bybee, then Assistant Attorney General of the United States, where the memorandum was requested so that there would be a full

statement and an understanding of what the law required to comply with the statutes prohibiting torture in the United States.

That memorandum was erroneous in its legal conclusions, as has been generally agreed to, and has been withdrawn by the Department of Justice. The interpretation of what constituted torture was very extreme, referring to the kind of excruciating pain and loss of bodily function, certainly not a realistic or an adequate or a definition of torture which would withstand legal analysis or legal scrutiny.

The memorandum was extreme and excessive in a statement, an articulation of executive power. One example was the statement that the President of the United States had as much authority on questioning of detainees as the President had on battlefield decisions, which obviously makes no sense. When you talk about a battlefield decision, that is a prerogative of the Commander in Chief, as it is delegated down through field commanders. But that kind of authority does not reside in the President on an issue such as the questioning of detainees.

The memo went quite far in suggesting that the President had authority to ignore statutes if he felt they were unconstitutional. There has been some question raised, although it is not explicit in the Bybee memo, about the authority of the President to immunize those who violate the law. That certainly is not lawful. When you talk about immunizing, you talk about judicial action in the context where there is a statute by the Congress of the United States authorizing immunity in a given context, immunity from criminal prosecution to disclose some information, but there is no suggestion anywhere that the President has the authority to immunize executive branch officials from noncompliance with the law.

We find Judge Gonzales essentially working as White House counsel, working for the President in a role which he was very emphatic in distinguishing from the role of the Attorney General of the United States. As Attorney General he has a responsibility to represent all of the people. As counsel to the President, as White House counsel, his responsibility is limited only to the President.

The memorandum by the Department of Justice was requested in order to have the legal interpretation as to what the appropriate line of questioning could be in order to be in compliance with the law. That was the role of the Department of Justice. It was not the role of Judge Gonzales. Then the decision as to what the questions would be, what the interrogation would be is the role of the Department of Defense, again, not the role of Judge Gonzales.

Judge Gonzales has been very forthcoming, being available and meeting with some 27 Senators, which is said to be a record in being available to everyone on the Judiciary Committee and beyond, submitting to up to four rounds of questioning, 10 rounds each, and then in some cases the third round of 15, and in one case the fourth round of 22 minutes, and then responding to very broad questions, with the New York Times commenting that the responses of more than 200 pages of answers to questions was the most expansive view by the administration of its techniques and procedures on the questioning of detainees. So there is no doubt that Judge Gonzales has responded very broadly to the inquiries made of him.

There has been a challenge that he has not answered all the questions because he could not recall specific conversations which were held years before, but that is entirely understandable.

There were questions about discussions where representatives of the executive branch got together to discuss the specifics of the Department of Justice memorandum and the interrogation techniques to be employed by the Department of Defense. One of his answers to one of the written questions propounded gives a fair summary in a fairly abbreviated form as to Judge Gonzales's role. These are his words:

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 law. During that time, I have participated in several meetings at which possible uses 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, the 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 a 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.

That would bear repeating, ''always very clear that we would implement such methods only within the bounds of the law.'' Judge Gonzales continues:

As counsel to the President, my constant emphasis and interest was on the last factor, ensuring compliance with the law. It would not have been appropriate for me to comment on issues such as whether a particular individual may have information that would be helpful to the effort to save American lives or to defeat terrorists or whether a certain procedure for questioning that individual would be effective in eliciting that information. Others with more relevant experience, expertise, and information were responsible for making those judgments. Instead it was my responsibility to ensure that any method they deemed appropriate and effective from an operational point of view was considered lawful by the Department of Justice. To the extent I was involved in recommendations, results, and assignments arising out of such meetings, my activities were directed toward ensuring that those with operational responsibilities would act only after receiving the judgment of the Department of Defense that a proposed course of action was lawful.

That is the end of Judge Gonzales's statement on that. His role was reasonably, clearly delineated. He represented the President. He was responsible for saying what were the outlines of the law, or what was lawful. Those practices were defined by the Department of Justice Office of Legal Counsel, which has the responsibility to do that. And then anything beyond the legal techniques of the questions would lie with those who have the expertise, as he described it, and the experience, and the responsibility from the Department of Justice or from the Central Intelligence Agency.

There was one other statement by Judge Gonzales in response to a question by Senator KENNEDY, which I think is a summary, which delineates his own role. When asked about a specific newspaper article and about events that occurred several years before, Judge Gonzales replied:

Sir, I don't have any specific recollection. I read the same article. I don't know whether or not it was the CIA [that was in reference as to whether it was a CIA request]. What I can say is that after this war began against this new kind of threat, this new kind of enemy, we realized that there was a premium on receiving information. In many ways, this war on terror is a war about information. If we have information, we can defeat the enemy. We had captured some really bad people who we were concerned had information that might prevent the loss of American lives in the future. It was important to receive that information, and people at the agencies wanted to be sure that they would not do anything that would violate our legal obligations, so they did the right thing; they asked questions—what is lawful conduct, because we don't do anything that violates the law.

So here again is a capsule statement of Judge Gonzales's role. He is representing the President. He is not looking to determine what the appropriate scope of conduct is. That is a matter to be determined by those who are involved in questioning the detainees.

That is the essence of what I believe—to be succinct and to the point of the issue. There are a great many other responses that could be read, a great many other arguments that could be advanced. I will reserve further responses on this matter as the course of the argument develops.

I thank my colleague, Senator HATCH, for coming early in the proceedings to make a cogent argument.

Mr. President, I have sought recognition today to state my support for the nomination of Alberto Gonzales to be Attorney General of the United States.

First, I would like to describe Judge Gonzales's personal background. He has had an extraordinary life and career. His personal story is one of dedication and courage—the sort of story

that is possible only in America, where the dreams of even the most humble citizens can be achieved through hard work and discipline.

Judge Gonzales was born in San Antonio, Texas, and raised in the small town of Humble, just outside of Houston. Although he and his seven siblings shared a two-room house that lacked either a telephone or hot running water, Judge Gonzales refused to be deterred by his difficult circumstances. He journeyed through Texas public schools, graduating from a Texas high school. Judge Gonzales then chose to serve his country by joining the Air Force and serving for approximately 2 years before entering the United States Air Force Academy for a 2-year stint. Shortly thereafter, he accomplished his childhood dream of graduating from Rice University. Following his graduation from Rice, Judge Gonzales went on to graduate from the Harvard Law School.

In June of 1982, he joined the law firm of Vinson & Elkins in Houston, TX, where he later became a partner. Not content merely to practice law without giving back to the profession, Judge Gonzales also taught law as an adjunct professor at the University of Houston Law Center.

The opportunity for service arose again when then-Governor Bush asked Judge Gonzales to leave his law firm to become the Governor's General Counsel. Thereafter, Judge Gonzales embarked upon a distinguished career in public service, including service as Texas's 100th Secretary of State from December 2, 1997 to January 10, 1999.

In what would be a capstone for many lawyers' careers, in 1999 Judge Gonzales was appointed a Justice of the Supreme Court of Texas—a job he loved, and the reason he is still today known as Judge. Although he enjoyed his job on the Texas Supreme Court, the President called upon him to serve his country as the White House Counsel, a position he filled throughout the administration's first term.

Mr. President, no one in the Senate could take issue with Judge Gonzales's remarkable rise to prominence, and the obvious talent and ability that fueled it. Indeed, I think we are all in agreement about that. Nevertheless, Judge Gonzales finds himself confronting substantial opposition from my colleagues across the aisle. The purported reasons do not justify the opposition.

First, the opponents of Judge Gonzales have succeeded in confusing the public about his views on torture. To listen to Judge Gonzales's critics, one would think that the policy of the United States was to promote or sanction torture, and that Judge Gonzales somehow established such a policy. Last week, for example, the senior Senator from Massachusetts stood on the Senate floor and accused Judge Gonzales of being a participant ''in the shameful decision by the administration to authorize the torture of detainees at Guantanamo and in Iraq.'' That charge is simply false. In fact, the White House has made very clear that the United States policy and law prohibit torture, and the President himself has insisted upon humane treatment for detainees. Judge Gonzales has been emphatic in his agreement with this position. When asked, point blank, by the senior Senator from Illinois whether U.S. personnel can legally engage in torture under any circumstances, Judge Gonzales answered: ''Absolutely no. Our policy is we do not engage in torture.'' To which my colleague replied: ''Good. I am glad that you have stated that for the record.''

Despite that exchange, and others like it, some critics, including the editors of the Washington Post and New York Times, have mischaracterized Judge Gonzales's answers to the committee's questions. In its editorial of January 26th, the Post claimed that Judge Gonzales had asserted the administration's right to, among other things, ''transport [foreigners] to countries where torture is practiced.'' In response to a question on this topic posed by my colleague from Massachusetts, however, Judge Gonzales wrote: ''The policy of the United States is not to transfer individuals to countries where we believe they likely will be tortured, whether those individuals are being transferred from inside or outside the United States.'' He added, ''I am not aware of anyone in the Executive Branch authorizing any transfer of a detainee in violation of that policy.''

In case this was not clear enough, Judge Gonzales reiterated to the Senator from Massachusetts: ''United States policy is clear—the President has directed that the United States is not to engage in torture anywhere in the world and is not to transfer detainees from anywhere in the world to other countries where they likely will be tortured.''

In the New York Times editorial, also dated January 26th, it is argued that the ''biggest strike against Mr. Gonzales'' is the fact that a ''now repudiated'' Justice Department memorandum giving a ''narrow definition of torture'' was addressed to him. This ignores several facts: First, Congress—not the Administration—enacted the definition of ''torture.'' In 1994, Congress defined torture as ''an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.''

The now repudiated Justice Department memorandum suggested that ''severe physical pain,'' as used in the torture statute, should be construed narrowly to mean the type of pain ordinarily ''associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body functions—in order to constitute torture.'' But, Judge Gonzales was not the author of this offending language, and—as I will discuss at greater length later—he has rejected this narrow view of what constitutes torture.

Moreover, while the memo has now been repudiated and replaced by one widely acknowledged to be more appropriate, neither memo altered the President's policy that detainees are to be treated humanely.

The Times editorial also cites a leaked draft memorandum from Judge Gonzales to the President. Some on the Judiciary Committee, including the Ranking Minority Leader from Vermont and the senior Senator from Massachusetts, have mischaracterized this draft memo as a disavowal of the Conventions. Again, this ignores what Judge Gonzales has written and said. The language from the leaked memorandum is often taken out of context. The relevant passage reads as follows:

> The nature of the new war [against terrorism] places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians, and the need to try terrorists for war crimes such as wantonly killing civilians. In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip (i.e., advances of monthly pay), athletic uniforms, and scientific instruments.

At his hearing, Judge Gonzales reasserted his commitment to the Geneva Conventions as a whole. He told the Judiciary Committee in no uncertain terms: ''I consider the Geneva Conventions neither quaint nor obsolete.'' And he stressed that, ''[t]he President has repeatedly condemned torture and made clear that the United States will not condone torture.'' When asked about potential changes to the Conventions, he noted: ''I'm not suggesting that the principles of Geneva regarding basic treatment, basic decent treatment of human beings, should be revisited. That should always be our polestar.'' Further, in response to another Democratic Judiciary Committee Member, Judge Gonzales reiterated, ''Yes, I do denounce torture, and if confirmed as Attorney General, I will prosecute those who engage in torture.''

Finally, none of those standing in opposition to Judge Gonzales has come close to articulating a viable case for linking the actions of Judge Gonzales to the so-called ''migration'' of a flawed interrogation policy to the atrocities committed at Abu Ghraib, and perhaps elsewhere. Despite multiple investigations, including several discussed at our hearing, no one has established a link—even an attenuated one—between Judge Gonzales and improper interrogation techniques in the field; I have yet to see anything other than supposition and conjecture.

So, Mr. President, I think that Judge Gonzales has been clear about the United States' policy and his own views against torture, leaving no

meaningful basis to oppose his nomination on such grounds.

As I have already indicated, another issue that has been misrepresented by Judge Gonzales' opponents is his stance with respect to the Office of Legal Counsel's memorandum on the anti-torture statute, the so-called Bybee memo.

At the Judiciary Committee's last Executive Meeting, the senior Senator from Massachusetts suggested that Judge Gonzales had failed to reject the memorandum. The record established the contrary. For example, Judge Gonzales has rejected the Bybee Memorandum's overbroad statement of Executive authority. In response to the Committee's questions about the memorandum, Judge Gonzales said:

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. And, in addition to that, as I have said repeatedly today, this administration does not engage in torture and will not condone torture.

During his hearing, I asked Judge Gonzales: ''Do you agree with the statement in the memo, 'Congress may no more regulate the President's ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements on the battlefield'?'' Judge Gonzales answered: ''I reject that statement, Senator.'' This is a clear and unequivocal answer.

Moreover, Judge Gonzales has explicitly recognized that Presidential authority in this area is indeed limited. Among other things, he has noted:

We in the executive branch, of course, understand that there are limits on Presidential power. We are very, very mindful of Justice O'Connor's statement in the Hamdi decision that a state of war is not a blank check for the President of the United States with respect to the rights of American citizens. I understand that and I agree with that.

In addition, at his confirmation hearing, Judge Gonzales testified that he did not agree with the portion of the Bybee Memorandum stating that severe physical pain, as used in the torture statute, was limited to pain equivalent to organ failure, impairment of bodily function, or even death. In response to a question from the Committee's Ranking Member, for example, Judge Gonzales agreed that horrific conduct, such as cutting off someone's finger, would be considered torture. Nevertheless, at the Executive Meeting, the Senator from Massachusetts continued to suggest that Judge Gonzales might somehow condone conduct such as, ''[b]eating you, suffocating you, ripping out your fingernails, burning you with hot irons, suspending you from hooks, putting lighted cigarettes in your ear.''

Such hyperbole, Mr. President, serves to highlight the fact that arguments against Judge Gonzales have ignored significant statements by this nominee. Judge Gonzales has taken important steps towards accommodating the legislative branch of government through his rejection of the Bybee dicta and his concessions on the limits of presidential power. Ignoring such efforts is the wrong way to approach such an important nomination and the wrong way to assess such a fine and worthy nominee.

On a related note, my colleague from Massachusetts and other critics, including the New York Times, have seized upon the fact that the President's February 2002 directive regarding the humane treatment of prisoners is addressed to the Nation's Armed Forces to suggest that somehow the CIA has been operating without legal constraints. The senior Senator from Massachusetts, for example, has alleged that Judge Gonzales ''evaded answers to questions about whether the CIA can abuse prisoners, even if the military is prohibited from doing so.'' This is directly contradicted by Judge Gonzales's responses to the Judiciary Committee's written questions. For example, Judge Gonzales has written:

The CIA and other intelligence agencies are fully bound by the prohibition on torture contained in 18 U.S.C. §2340 and §2340A and, depending on the circumstances, by other criminal statutes such as those defining crimes in the special maritime and territorial jurisdiction of the United States. Those statutes prohibit, for example, assault (18 U.S.C. §113) and maiming (18 U.S.C. §114). These criminal prohibitions prevent abuse of detainees by intelligence officers. In fact, the Department of Justice is currently prosecuting a CIA contract employee for various charges of assault under 18 U.S.C. §113.

Despite such answers, my colleague from Massachusetts continues to accuse the administration of sending ''the message that anything goes to our troops and intelligence officers in the field.'' To the contrary, Judge Gonzales has stressed that the ''CIA and other intelligence agencies are fully bound'' by the laws against torture. And, as further noted by Judge Gonzales, the CIA and other agencies have sought Department of Justice guidance concerning the boundaries emanating from U.S. obligations under, for example, Article 16 of the Convention Against Torture.

In fact, let me take a moment to address Article 16 directly. Some have suggested that the administration's interpretation of Article 16 has been used to justify or facilitate the cruel, inhumane or degrading treatment of aliens overseas. Just last week, for example, the senior Senator from Massachusetts accused Judge Gonzales of saying ''that the CIA is not bound by the prohibition on cruel, inhumane and degrading treatment in Article 16 of the Convention Against Torture.'' Again, this ignores the testimony of Judge Gonzales. At our hearing, Judge Gonzales noted that, when the Senate ratified the Convention Against Torture, it took a reservation equating the requirements under Article 16 with the requirements under the Fifth, Eighth, and 14th Amendments. Judge Gonzales further acknowledged that, when interpreting these requirements, the Administration has looked to Supreme Court precedents holding that aliens interrogated by U.S. personnel outside the United States enjoy no substantive rights under the Fifth, Eighth, and 14th Amendment. Nevertheless, regardless of the debate about the strict legal requirements of Article 16, Judge Gonzales testified that the administration has sought ''to be in compliance as a substantive matter under the Fifth, Eighth, and 14th Amendment.'' He also testified that, to the best of his knowledge, the United States has met its substantive obligations under the Fifth, Eighth, and 14th Amendments. This commitment has often been overlooked by the Judge's opponents.

Contrary to the claims of his critics, Judge Gonzales also acknowledged that, based on his review of the relevant investigations, the responsibility for what happened at places like Abu Ghraib extends further up the chain than the culpable guards. The Senator from Massachusetts accuses Judge Gonzales and others in the administration of a ''continuing effort to pin the blame for the torture scandal on a few bad apples among our solders.'' In reality, however, Judge Gonzales testified:

The reports [by Schlesinger, Faye, Kearns and others] seem to indicate that there was a failure, there was a failure of discipline amongst the supervisors of the guards there at Abu Ghraib, and also they found that there was a failure in training and oversight at multiple layers of Command Joint Task Force 7. And so I think there was clearly a failure well above the actions of the individuals who actually were in the prison. At least that's what the reports seem to indicate, as I review them.

At the same time, he rejected the notion that inhumane treatment was tolerated or encouraged as a matter of course. He pointed out, for example, that, even within Abu Ghraib, the gross misconduct of the night shift was aberrant:

The findings in these eight reports universally were that a great majority, an overwhelming majority of our detention operations have been conducted consistent with American values and consistent with our legal obligations. What we saw happen on that cell block in the night shift was limited to the night shift on that cell block with respect to that first category, the more offensive, the intentional severe physical and the sexual abuse, the subject of those pictures. And this isn't just Al Gonzales speaking. This is what, if you look at it, the Schlesinger report concludes. And so what you see is that you have got this kind of conduct occurring at the night shift, but the day shift, they don't engage in that kind of conduct because they understand what the rules were. And so I respectfully disagree with the characterization there was some sort of permissive environment.

Once again, on this point as with others, the Judge's own words refute the accusations of his critics.

Some of my colleagues have also seized upon Judge Gonzales's inability to recall certain details of meetings that occurred more than 2½ years ago

to suggest that we lack sufficient information to make an informed decision about his nomination or that Judge Gonzales is being less than forthcoming when he asserts he cannot recall a matter. Last week, for example, the senior Senator from Massachusetts told the Judiciary Committee that Judge Gonzales ''refuses to tell us anything about those meetings.''

In fact, the Senator from Massachusetts had several exchanges with Judge Gonzales on this topic at our confirmation hearing. The Senator queried, for example: ''I just want to point out, if it is true, as the Post reported, that you held several meetings at which the legality of interrogation techniques, such as threat of live burial and waterboarding were discussed; do you remember that?'' Judge Gonzales responded:

Senator, I have a recollection that we had some discussions in my office, but let me be very clear with the Committee. It is not my job to decide which type of methods of obtaining information from terrorists would be most effective. That job responsibility falls to folks within the agencies. It is also not my job to make the ultimate decision about whether or not those methods would, in fact, meet the requirements of the anti-torture statute. That would be a job for the Department of Justice. And I never influenced or pressured the Department to bless any of these techniques. I viewed it as their responsibility to make the decision as to whether or not a procedure or method of questioning of these terrorists that an agency wanted, would it, in fact, be lawful.

Given the passage of time, his inability to recall precise details is understandable. Moreover, it must be viewed in the context of what he has recalled and provided to the committee. Among other things, he has: acknowledged his participation in meetings where the questioning of detainees was discussed; explained the genesis and purpose of such meetings; described the limited nature of his role; and explained the result of these meetings. In one lengthy written answer to a question posed by my colleague from Massachusetts, for instance, he explained:

Since 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 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, the 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 a desire to explore whether there existed methods of questioning these terrorists that might elicit that information; and 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 emphasis and interest was on the last factor—ensuring compliance with the law. It would not have been appropriate for me to comment on issues such as whether a particular individual may have information that would be helpful to the effort to save American lives or defeat terrorists, or whether a certain procedure for questioning that individual would be effective in eliciting that information. Others with more relevant experience, expertise, and information were responsible for making those judgments. Instead, it was my responsibility to ensure that any method they deemed appropriate and effective from an operational point of view was considered lawful by the Department of Justice. To the extent I was involved in recommendations, results, and assignments arising out of such meetings, my activities were directed toward ensuring that those with operational responsibility would act only after receiving the judgment of the Department of Justice that a proposed course of action was lawful.

That answer provides a good deal of information. The fact that he cannot recall details of those meetings is understandable. It is commonplace to forget details of meetings, particularly when years have passed. It is certainly not, given the responses that have been made, a reason to oppose someone who is universally praised for his ability and integrity.

Since his nomination, the White House has offered every Committee member a personal, private meeting with Judge Gonzales. To date, the Judge has met personally with 14 members of the Judiciary Committee, and more than a dozen other Senators.

At his hearing, Judge Gonzales testified for nearly 6 hours, answering multiple rounds of questions. There were three rounds of questions, and I encouraged Senators to participate in each round. After a complete and lengthy first round, 9 Senators participated in a second round of questions. After that, 4 Senators including myself took advantage of the third round. I made sure every Senator had ample opportunity to question Judge Gonzales. Indeed, one Senator was ultimately granted a fourth round of questions.

Contrary to the assertion by the Senator from Massachusetts that Judge Gonzales was unresponsive and he made ''a mockery of the notion of congressional oversight and accountability,'' Judge Gonzales's answers to the committee's written questions, contained in 221 single-spaced pages, provided nearly 450, often detailed, responses on issues ranging from the war on terrorism to intellectual property. So thorough was Judge Gonzales's response that the New York Times (January 19, 2005) stated that Judge Gonzales's answers to the committee's written questions comprised ''one of the administration's most expansive statements of its positions on a variety of issues, particularly regarding laws and policies governing C.I.A. interrogation of terror suspects.''

The questions kept pouring in even after the committee's hearing record closed on Thursday, January 13th, with 4 Senators submitting more than 40 additional questions for the nominee. Judge Gonzales has now responded to all of those supplemental questions. In 27 additional pages of questions and answers, Judge Gonzales has further clarified his position on several issues. He also furnished a remarkable 93-page memorandum on the Geneva Conventions prepared by the State Department as well as a letter reiterating his role in a court appearance for then-Governor Bush.

These facts refute the claims that Judge Gonzales has failed to provide us with sufficient information to evaluate his nomination.

Nevertheless, the Judge's opponents continue to clamor for more. At the executive meeting, for example, the senior Senator from Massachusetts complained that Judge Gonzales had ''not conducted a search for . . . requested documents.'' In fact, my colleague said it would be ''hard to imagine a more arrogant insult to this Committee's oversight responsibility.''

I requested that a search be conducted for any draft or final memoranda or other documents written by Judge Gonzales and relevant to the subject of interrogation techniques or torture. The White House responded by conducting a search.

On January 19, 2005, at the direction of the White House Chief of Staff, David Leitch, Deputy Counsel to the President, supervised a search of certain electronic records available in the Office of Counsel to the President. Specifically, he searched for word processing documents containing the words ''torture'' or ''interrogation'' that were located on (1) the shared Counsel's Office directory, (2) the personal and network directories used by Judge Gonzales and his assistants, or (3) the hard drive of Judge Gonzales's computer.

According to the White House, based on the practices concerning documents created by Judge Gonzales, there is a very high probability that any document of the sort described would have been identified as a result of this search. I have been advised, however, that no such documents were identified by the administration.

Moreover, the White House has represented, and Judge Gonzales confirmed, that he has no notes reflecting discussions at any meetings concerning these topics, nor does the White House believe there are any notes taken by Judge Gonzales in the files of the office.

Finally, I have been advised that, during Judge Gonzales's tenure as counsel to the President, there have never been any audio recordings or transcriptions of any meetings in the White House Counsel offices concerning these topics, or any others, so far as the White House is aware.

Judge Gonzales and the White House have undertaken appropriate efforts to accommodate the Senate by providing relevant information. Between his written answers and his testimony, Judge Gonzales has addressed his role in the solicitation and provision of legal advice, as well as his personal views on the contested issues—such as

the treatment of detainees. There is an ample record to evaluate his nomination. I urge Senators to review the voluminous materials that have been produced before coming to any conclusion.

Mr. President, another argument used by the Gonzales critics is that he refused to answer certain hypothetical questions during his hearing. Using the rejected language of the Bybee memo about a postulated Commander-in-Chief override of the torture statute, certain Judiciary Committee members repeatedly asked Judge Gonzales whether he believed the President could authorize torture in extreme and hypothetical circumstances. Judge Gonzales refused to engage in scenarios about when, if ever, torture might be sanctioned, because the President has rejected torture under any circumstances.

So, when the ranking minority member asked, ''Now, as Attorney General, would you believe the President has authority to exercise a Commander in Chief override and immunize acts of torture?'' Judge Gonzales answered:

[T]he President has said we are not going to engage in torture under any circumstances. And so you're asking me to answer a hypothetical that is never going to occur. This President has said we're not going to engage in torture under any circumstances, and therefore, that portion of the opinion was unnecessary and was the reason that we asked that that portion be withdrawn.

Given the administration's clear policy, this response is appropriate. Judge Gonzales has explained that the Bush administration will not engage in torture under any circumstance, so his reluctance to contradict the President's policy is perfectly understandable.

In fact, even the distinguished witnesses on the second panel of our confirmation hearing, including two law school deans and an advocate for victims of torture, were unwilling to engage in hypothetical debates about what set of circumstances—if any—might justify a presidential decision to approve torture. One witness even characterized the hypothetical about a ticking time bomb as ''fantasy'' and part of the ''mythology'' of torture. Such reticence is understandable, especially for someone, like Judge Gonzales, who serves a President who has rejected the use of torture under any circumstances.

Another of the anti-Gonzales shibboleths is that he is too close to the President to be independent. This argument ignores what Judge Gonzales, an honorable and credible man, told the Judiciary Committee. During his opening statement, and several times thereafter, Judge Gonzales acknowledged the difference between his role as White House Counsel and the job of Attorney General. At the outset of our hearing, he noted:

With the consent of the Senate, I will no longer represent only the White House; I will represent the United States of America and its people. I understand the differences between the two roles. In the former I have been privileged to advise the President and his staff. In the latter I would have a far broader responsibility: to pursue justice for all the people of our great Nation, to see that the laws are enforced in a fair and impartial manner for all Americans.

That is a clear statement that he recognizes the difference between his current job and the job of Attorney General. Judge Gonzales has been the lawyer for one person—the President—and is now going to serve as a lawyer for all Americans. Judge Gonzales knows the difference and will serve honorably as the next Attorney General.

Before I conclude, Mr. President, I want to emphasize a few of the positive comments my Democratic colleagues on the Judiciary Committee have made about this nominee. At his confirmation hearing, the senior Senator from Wisconsin told Judge Gonzales: ''As you know, 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.'' At our Executive Meeting, the senior senator from Delaware noted: ''My vote, to state the obvious, is not about his character or his compelling personal story, which is compelling. He has overcome great adversity in his life, and I believe he is an intelligent, decent and honorable man.'' The senior senator from New York said, ''I like Judge Gonzales. I respect him. I think he is a gentleman and I think he is a genuinely good man.'' Such comments do not surprise anyone who has gotten to know Judge Gonzales.

As I have noted, Judge Gonzales has taken a strong stand against torture, rejected suggestions that the President is above the law, and recognized the important distinctions between the position of White House Counsel and Attorney General. So, what is behind the votes against him? Not his personal story. Not his character. Not his willingness to work with Congress. There may well be a large overhang of politics clouding this nomination. Politics, however, is a poor reason for denying the President his choice to be Attorney General. I urge my colleagues to consider this nomination based on the facts. Regardless of what administration is in power, that is a standard we should all honor.

Mr. President, the bottom line is that Judge Gonzales is a remarkable American, well-suited for the position of Attorney General, who has been forthcoming with the Senate and the American people about his role in some very difficult decisions during a very important time. He is a good man. Even his opponents acknowledge that. I urge my colleagues to support Judge Gonzales to be Attorney General.

I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I will not at this point speak quite as long. Because I will not use the same amount of time now, I ask unanimous consent that the Senator from California, Mrs. FEINSTEIN, be allowed to follow my remarks.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent to have printed in the RECORD a number of recent editorials regarding the nomination of Alberto Gonzales.

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

[From the Los Angeles Times, Jan. 6, 2005]

A WINDOW ON A MAN'S MORALITY; ALBERTO R. GONZALES' RECORD RAISES QUESTIONS ABOUT HIS FITNESS TO SERVE AS ATTORNEY GENERAL

The Republicans' comfortable majority in the Senate means that Alberto R. Gonzales will almost certainly be confirmed as the next attorney general. With hearings on his nomination set to start today, many Democrats think the best they can do is wound Gonzales enough with questions about his notorious torture memos to disqualify him for any future Supreme Court seat. In the end, however, they will feel pressure to support him or face retaliation from Republicans.

They should resist.

The eight Democrats and a smattering of moderate Republicans who voted for John Ashcroft four years ago probably felt the same pressure.

No one now can doubt the enormous power the attorney general wields or the lasting harm the person who holds that office can do. Gonzales may not share his predecessor's zeal in hounding X-rated moviemakers or cancer patients who smoke marijuana, but as the president's chief lawyer, he has been every bit as reckless.

As a leading architect of Bush's ends-justifies-means war on terror, Gonzales pushed to justify torturing terror suspects in violation of international law, promoted military tribunals that echo Stalin's show trials, helped write the Patriot Act (which, among other powers, gives government agents vast new snooping authority) and excused the limitless imprisonment of American citizens whom the president merely suspects of terror activity.

Three years into that war, much of Gonzales' handiwork has been rejected by courts, damned by the world community and disavowed by the administration—as in the Justice Department memo quietly released last week declaring that ''torture is abhorrent to both American law and values and to international norms.''

Gonzales' defenders argue that, as White House counsel, he was simply a passionate advocate for his client. But the most devoted counselor knows that, even in wartime, there are legal and moral lines this nation crosses at peril to its own citizens and those of other countries. Gonzales' justifications opened the door to the abuse at Abu Ghraib prison and the Guantanamo Bay detention facility. The mistreatment and prisoner deaths that occurred have raised fears of retaliation against captured Americans. Those concerns prompted a dozen retired generals and admirals, along with civil rights groups, to oppose Gonzales' nomination.

Our justice system relies on an attorney general willing to defend civil liberties as ardently as he pursues criminals and terrorists. That person must be someone who respects both the power and the limits of law.

Gonzales' record as White House counsel is not just a series of unfortunate missteps; rather, it is a troubling window into the man's morality and his fitness to be the nation's chief lawyer. Democratic senators will surely ask Gonzales sharp and embarrassing questions about the principles that guided his tenure in the Office of Legal Counsel. These lawmakers then ought to demonstrate that they understand the principles at stake by actually voting no.

[From the Arizona Daily Star, Jan. 8, 2005]

WRONG FOR THE JOB

George W. Bush understandably wants a trusted adviser to be his next attorney general. White House Counsel Alberto Gonzales enjoys that trust, but the President's nominee is the wrong man for the job.

With Republicans outnumbering Democrats by 55–45 in the Senate, Gonzales is likely to win approval for the position. Yet, the man who advocated the use of torture as an interrogation tool is not only unqualified, he is a threat to the rights of Americans.

Before Thursday's Senate hearing on his nomination, Gonzales was merely a legal adviser who was unqualified. But during the hearing he showed himself to be a man of questionable morality and ethics.

For example, his 2002 memo to the president stated that the war on terror ''renders obsolete Geneva's strict limitations on questions of enemy prisoners and renders quaint some of its provisions.'' The Geneva Conventions outline how prisoners of war should be treated.

But when questioned by the Senate on Thursday, Gonzales said this: ''Contrary to reports, I consider the Geneva Conventions neither obsolete nor quaint.'' He said his early interpretation applies only to organizations like al-Qaida that have no national affiliation and do not ''fight according to the laws of war.'' And he said the Geneva Conventions' protections for terrorists would ''honor and reward bad conduct.'' And he pledged to prosecute those who tortured terrorism suspects.

However, he noted that the White House is looking to change some of the Geneva Conventions' guidelines. There again, one has to question whether Gonzales is saying the right things in order to win the job.

His statements now and in the past are inconsistent at best. But more important, the legal opinion he forwarded to the president and this administration cannot be separated from the scandals of torture and death at Abu Ghraib prison in Iraq.

It is significant that among his Senate supporters, Gonzales' legal abilities and his leadership skills are hardly mentioned as top qualifications. Supportive senators instead promote the nominee's rags-to-riches story. Second among his qualifications is that he would become the nation's first Hispanic attorney general.

This administration has an affinity for those kinds of stories. But it should have learned from the Bernard Kerik nomination that they don't always make for good national leadership. Kerik withdrew his nomination as head of Homeland Security after questions arose about the immigration status of a housekeeper and nanny he employed.

Gonzales' ethnicity, his accomplishments and his role as adviser to the president for nine years are admirable but irrelevant. His background makes for great political theater but does not qualify him to be attorney general. And one would hope that Hispanics would not rush to blindly support a man who is clearly wrong for the job.

Alberto Gonzales has a history of bending the law to fit policy and the wishes of the president. Eagerness to please makes him a great adviser and confidant.

But as head of the Justice Department, the attorney general should answer only to the law.

[From the Milwaukee Journal Sentinel, Jan. 8, 2005]

EDITORIAL: DON'T CONFIRM GONZALES

Thursday's Senate confirmation hearing provided Alberto R. Gonzales with an opportunity to confront some of the nagging questions that have been raised about his nomination to be attorney general. So important is the office to which Gonzales aspires that the Senate and the American people needed to hear convincing answers to these questions. They deserved assurances that Gonzales had the judgment, the temperament and the integrity necessary for this cabinet position.

Far from supplying this reassurance, Gonzales proved to be consistently weak and evasive. So intellectually sterile was his testimony that it showed Gonzales to be unfit for the important office he seeks, and for this reason the Senate should reject his nomination.

Realistically, of course, this will almost certainly not happen; Democrats on the Judiciary Committee signaled Thursday that, despite reservations about Gonzales, they will support the nomination. Indeed, they make a respectable case, which is that presidents are entitled to broad leeway in the selection of their cabinet members. But there are limits to the discretion to which presidents are entitled; otherwise, the entire confirmation process becomes meaningless.

Unfortunately, Gonzales's views put him beyond even these broad limits. As White House counsel, he was largely responsible for, or at least acquiesced in, a repudiation of some of this country's most precious ideals, such as the notion that human beings should not be tortured.

In January 2002, Gonzales told President Bush that the war on terror ''renders obsolete'' some of the strict limitations imposed by the Geneva Conventions as applied to al-Qaida and, in some cases, Taliban fighters. Arguably, one can make that legal case but elsewhere in that letter, and more disturbing, was the tone Gonzales adopted when he dismissed as merely ''quaint'' some of the convention's human rights provisions. In August 2002, Gonzales received a Justice Department memorandum that a president could suspend Geneva Convention protections at will and that some forms of torture ''may be justified.''

On Thursday, Gonzales disavowed the use of torture. A week earlier, the Justice Department had repudiated its August 2002 memo. But why did this reversal take this long? In light of Gonzales's four-year record, his disavowal of terrorism seemed merely rhetorical and tactical. Efforts to elicit Gonzales's views were met with vagueness and equivocation. Gonzales said he couldn't remember key details of his involvement with the August 2002 memo. He wasn't even sure whether Americans could legally engage in torture under any circumstances.

Ordinarily, even these gross deficiencies might be tolerable. But these are not ordinary times. The threat to civil liberties posed by the fight on terror requires an attorney general with a demonstrated record of sound judgment, independent temperament and unquestioned integrity.

Gonzales's rags-to-riches personal story is an inspiration to all Americans. But his story is not the issue. He has not demonstrated the judgment and integrity to be the nation's chief law enforcement officer at this pivotal time in our history.

[From the Star Tribune (Minneapolis, MN), Jan. 8, 2005]

GONZALES; DEMOCRATS SHOULD REJECT HIM

Democrats in the U.S. Senate have many well-founded reasons to oppose with all their might President Bush's nomination of Alberto Gonzales to be attorney general. But one reason stands out above all others, and Democrats should pound it home: Gonzales believes the president of the United States has the power, as commander in chief, to permit the use of torture by American forces by immunizing from prosecution anyone who does it.

This reasoning was put forward in an August 2002 memo, called the Bybee memo, from the Department of Justice to the White House. Gonzales testified before the Senate Judiciary Committee Thursday that he, as the president's lawyer, simply passed the memo along. It wasn't his job, he said, to warn the president of the memo's implications or to disagree with it. Gonzales has a peculiar notion of his role as the president's attorney; others quite rightly characterize his behavior as a dereliction of duty. In fact, there's good reason to believe Gonzales was an active participant in the memo's construction.

But whatever his role, Gonzales clearly agreed with the memo, and does to this day.

Sen. Patrick Leahy, D–Vt., the ranking Democrat on the committee, tried every way he could to get Gonzales to answer ''yes'' or ''no'' to a simple question: ''Now, as attorney general, would you believe the president has the authority to exercise a commander-in-chief override and immunize acts of torture?'' Gonzales tried all kinds of tacks to avoid answering: The question is hypothetical because Bush opposes the use of torture, etc. Leahy persisted, and finally Gonzales said, ''Senator, I do believe there may come an occasion when the Congress might pass a statute that the president may view as unconstitutional,'' and therefore he can ignore it. The answer was disingenuous because the issue isn't laws Congress might pass, but established U.S. and international laws that prohibit the use of torture. Thus, the only reasonable way to interpret Gonzales' answer in the context it was asked is that, indeed, the president has the power to permit torture by immunizing those who do it.

The White House has done its darnedest to frustrate Judiciary Committee inquiries into Gonzales' role in the torture scandal. Leahy Thursday held aloft a hefty file of unanswered questions and letters he had sent to the White House seeking information on Gonzales' views about torture and his role in framing policies that led to the Abu Ghraib scandal and the abuse of prisoners at Guantanamo Bay. Despite that, Leahy and his colleagues got Gonzales on the record saying that he does believe the president has the power to override U.S. laws.

That's all the Democrats need to oppose Gonzales' confirmation en masse, and they should. Torture is always out of bounds, no matter the circumstance; it is immoral, ineffective and puts captured American forces at risk. Previous congresses and presidents have enacted laws and ratified international treaties to that effect.

The United States does not need an attorney general who believes that this president has the right to override those laws and treaties at his whim. Even if Gonzales is eventually confirmed, as it appears he will be, Senate Democrats must be on the record upholding the powerful principle that the United States unequivocally rejects torture.

[From the Slate (South Carolina), Sat. Jan. 15, 2005]

TORTURE TAINT SHOULD DISQUALIFY NOMINEE GONZALES

After last week's confirmation hearing for Alberto Gonzales, even senators who disliked the nomination said he would be confirmed, for no other reason than he is the one President Bush asked for. ''There's a lower standard, frankly, for attorney general than for judge, because you give the president who he wants,'' said Sen. Charles Schumer, D–N.Y.

There's a sad symmetry in this. Mr. Gonzales's work as legal counsel to the president on the issue of torture has been rejected by the U.S. Supreme Court and disowned by the White House—only after it backfired politically and legally. His principal qualification is unambiguous loyalty to the president. In short, his selection reflects what sadly seems to be the overriding attribute this president wants in his subordinates. That might be good enough for the president, but it does not make him the right choice to be the nation's top lawyer; in fact, in this case it should mean just the opposite.

Mr. Gonzales has helped this administration pursue the human equivalent of the hiddenball trick. Guantanamo Bay, Cuba, was chosen as the U.S. detention facility for ''enemy combatants'' under the assumption that it could be defined as a legal no-man's-land, a place where the laws of the United States do not apply. It would be years before the U.S. Supreme Court ruled, as Sen. Lindsey Graham put it, that ''Gitmo is not Mars.'' The administration took other actions, including denying legal counsel to detainees, that it thought were unlikely to withstand court scrutiny, so it endeavored instead to stall definitive rulings as long as it could.

Few of these actions can rise to the appropriately high standard delineated by Sen. Graham during the confirmation hearing: ''I do believe we have lost our way, and my challenge to you as a leader of this nation is to help us find our way without giving up our obligation and right to fight our enemy.''

But will Mr. Gonzales lead the Justice Department to meet that standard?

His answers during the confirmation hearing showed less of the firm moral base the position requires, and more of a tendency to look at things in a lawyerly way, in the Clintonian sense of the term. He said his new zeal to keep to the legal straight-and-narrow on torture stems from a new understanding that he would represent not just the president anymore, but the whole United States. But shouldn't advising the president have been enough of a guide for Mr. Gonzales to strive to uphold bedrock American principles? He treats the now-discredited legal opinions as if they have been vaporized. But they had, and are still having, real-world effects, some of them disastrous to the U.S. cause (such as Abu Ghraib). And which represents the real Alberto Gonzales: the man who appeared before the Senate or the one who advised President Bush?

This administration, and far more importantly this nation, must make a clean break from the policies identified with Mr. Gonzales. Making him attorney general of the United States accomplishes the opposite.

This nomination tells the world that no minds have been changed in this country about the use of torture; it says America sees no conflict between detaining suspects without legal counsel and trying to hold our constitutional democracy aloft as an example to the world.

Sen. Graham seems to understand that Alberto Gonzales is not the best choice. Both he and Sen. Jim DeMint have a duty, if they truly see the problems with this nomination, to vote against it, as loyal Republicans and as Americans. Only when they and others do so might this president finally see the need for change in key elements of his war strategy, and start making top personnel decisions based on that new understanding. This must happen, for the sake of the nation.

[From the Boston Globe, Jan. 18, 2005]

UNFIT AS ATTORNEY GENERAL

Two memos on the US treatment of detainees from Afghanistan and Iraq stand in the way of Alberto Gonzales becoming the next attorney general of the United States. At his confirmation hearing earlier this month, he neither disavowed the memos nor showed an understanding of how their denial of international protections to detainess could lead to the many cases of prisoner abuse reported by both the FBI and the International Red Cross. The Senate should reject his nomination.

In his testimony, Gonzales made frequent reference to the much-photographed instances of prisoner humiliation and abuse at Abu Ghraib, as though the naked-body pyramid and other abuses that Specialist Charles Graner was justifiably convicted of Friday were the worst of what has occurred. But the FBI and Red Cross reports as well as the military's own investigations of killings of prisoners make clear that some interrogators and guards crossed the line into torture or homicide. It is disingenuous of Gonzales not to acknowledge the link between permissive torture policies from Washington and acts of abuse that occurred not just at Abu Ghraib but in Afghanistan and Guantanamo as well.

In 2002 as White House counsel, Gonzales wrote a memo in which he called provisions of the Geneva Conventions regarding prisoners of war ''obsolete'' and ''quaint'' and said the United States could operate as though the conventions did not apply to the Afghan war. Indeed, some of the fighters captured during the 2001 war against the Taliban and Al Qaeda in Afghanistan might not have deserved the status of POWs.

But the Geneva Conventions—and American law—make clear that any battlefield detainee has that status until a ''competent tribunal'' puts him in the less protected category of ''enemy combatant.'' As US Judge James Robertson noted in a ruling last November, the Geneva Conventions do not give any individual, including the president, the authority to say who deserves POW status. The White House counsel certainly lacks that authority.

The second memo that has damaged the US reputation worldwide was written in 2002 by a Justice Department official as a guide to interrogation techniques. The memo, which Gonzales discussed with administration officials, said a president has the power to authorize torture despite a 1994 US law banning it. At the confirmation hearing, Gonzales declined chances to repudiate that view.

The Sept. 11, 2001, attacks thrust the United States into a new kind of conflict in which useful intelligence from detainees is crucial. But Gonzales has been at the center of administration policy-making that set aside tried and true US and international rules governing the collection of this information. His blindness to the consequences of those policies makes him a poor choice for chief law enforcement officer of the nation.

[From the Republican (Western Massachusetts), Jan. 23, 2005]

GONZALES NOMINATION LEAVES MANY QUESTIONS

When Alberto Gonzales appeared before the Senate Judiciary Committee earlier this month, some of his answers to questions about the treatment of prisoners in Iraq, Afghanistan and elsewhere left some Democratic committee members wanting more. So they asked a series of follow-up questions to be answered in writing. And when Gonzales provided his answers, those same senators still found themselves wanting more.

So they decided to delay—for at least one week—a committee vote on his nomination to succeed John Ashcroft as attorney general. It was the right move.

There are real questions about Gonzales's fitness to serve as attorney general. His nomination should not move forward until those questions are answered.

He has written that certain provisions of the Geneva Conventions—which provide for the treatment of enemy prisoners—are ''quaint'' or ''obsolete.'' Gonzales approved a memorandum saying that the president ''wasn't bound by laws prohibiting torture and that government agents who might torture prisoners at his direction couldn't be prosecuted by the Justice Department.''

Gonzales has said he believes that the president of the United States has the authority to order the detention of enemy combatants indefinitely during wartime. He has repeatedly backed the provisions in the USA Patriot Act that infringe most broadly on civil liberties and the fundamental right of the citizens to be left alone.

When he was attorney general of Texas—while George W. Bush was governor—he wrote a memo directly contradicting a federal law that grants foreign nationals access to American courts when they are accused of a crime.

And the list goes on and on.

The president has nominated Alberto Gonzales to be the chief law enforcement officer in the United States. The attorney general sits at the very top of the U.S. Department of Justice. The person in that position must possess a scrupulousness that is beyond question.

Gonzales has not, to date, demonstrated that he has the qualities that an individual needs to be elevated to one of the most significant positions in this nation.

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

THE WRONG ATTORNEY GENERAL

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?

Mr. LEAHY. Mr. President, today we are beginning the debate on the nomination of Alberto Gonzales to be Attorney General of the United States.

When I first heard of this nomination last November, I was hopeful. I saw this nomination as a chance for some long missing accountability on some of the most pressing issues facing our Nation. I noted at the time that I like and respect Judge Gonzales. I met with him soon after his designation and wrote to him, following up on that meeting, to inform him in advance of his confirmation hearing about issues that would be raised about several key issues. I listened carefully to him during our confirmation hearing.

The road he has traveled from being a 12-year-old boy selling soft drinks at football games, all the way to the State House in Texas and to the White House, is a tribute to him and to his family. In spite of our disagreements on issues, I have sought to maintain a cordial personal working relationship with Judge Gonzales during his years as President Bush's counsel. As Senator KENNEDY has said, I dearly wish that we could vote for that compelling story, and not for the nominee whose record is before us. In my case, I will vote based on the record.

It saddened me to call Judge Gonzales last week and tell him that I could not in good conscience vote to confirm his nomination to be Attorney General, the chief law enforcement officer of the Nation. He is not the person for this job.

My reasons for voting against Judge Gonzales arise from the need for accountability and derive from the nominee's involvement in the formulation of a number of policies that have tarnished our country's moral leadership in the world and put American soldiers and American citizens at greater risk.

When President Bush announced this nomination he said that he chose Judge Gonzales because of his ''sound judgment'' and role in shaping the Administration's policies in the war on terrorism. Based on the glimpses of secret policy formulations and legal rationales that have come to light, I believe his judgments not to have been sound. On the contrary, several of this Administration's legal policies have been exceedingly harmful to our national interests.

As Attorney General, the nominee's judgment about our laws would be of enormous consequence.

This is a different type of Cabinet position than many others. In many Cabinet positions, such as the Secretary of State, the Secretary of Treasury, and others, the Cabinet member states the President's position. They state the President's position and carry out the President's policies. The Attorney General is different. The Attorney General is not the Attorney General of the President; he is the Attorney General of the United States. This is a position where the cabinet member has enormous flexibility to carry out decisions—to bring prosecution or withhold it, to begin an investigation or to withhold an investigation, to determine to go into a place where he believes there may have been a voting rights violation or to say there is none. This individual must be independent of the President.

Judge Gonzales has championed policies that are in fundamental conflict with decades of laws, sound military practice, international law, and human rights. He remained silent for almost 2 years about a deeply flawed and legalistic interpretation of our Nation's torture statute. He also accepted a patently erroneous interpretation of the torture convention and apparently believes that the President, when acting as Commander in Chief, is above the law.

When I asked Judge Gonzales if he agreed with the Bybee memo's very narrow reading of the law, 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.'' This is the memo which concludes that ''physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.'' Even the Justice Department repudiated this legal memorandum, once it became public.

Under his restrictive redefinition such practices as threatening a prisoner with a firearm in a mock execution, ''waterboarding'' a person to make him experience the suffocating effects of drowning, and, as Senator KENNEDY noted, perhaps even cutting off a person's fingers one joint at a time would not amount to ''torture.'' But surely we consider these practices torture when done to a member of the U.S. military or to an American citizen.

How can we, the greatest Nation on Earth, stand up and say such acts are not torture if committed against foreign detainees?

Perhaps most disturbing of all as a legal matter is the nominee's positing of the President as above the law. Nothing is more fundamental about our constitutional democracy than our basic notion that no one is above the law. Yet at his June 2004 news conference and again in his testimony before the Judiciary Committee he 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.

From the time of George Washington to George W. Bush, we have always maintained that in our Nation no one is above the law—not the President, not a Senator, not a judge, not anyone in our country.

Ironically, it was the administration of this President's father that urged the Senate to ratify the torture convention. It did so to make clear that the United States condemns torture and to protect Americans from this barbaric practice. But if the U.S. President does not feel bound by the torture convention, then neither will other foreign leaders.

Ultimately, the Attorney General's duty is to uphold the Constitution and the rule of law—not to work to circumvent it. Both the President and the nation are best served by an Attorney General who gives sound legal advice and takes responsible action, without regard to political considerations—not one who develops legalistic loopholes to serve the ends of a particular administration.

The Attorney General appointed by the President's father remarked: ''Nothing would be so destructive to the rule of law as to permit purely political considerations to overrun sound legal judgment.'' Judge Gonzales demonstrates a lack of independence from the President, something that we cannot have in the chief law enforcement officer in the nation. He cannot interpret our laws to mean whatever the President wants them to mean. To do so would deny us the constitutional protections upon which this nation was founded. The Attorney General is supposed to represent all of the American people, not just one of them.

We have seen what happens when the rule of law plays second fiddle to the President's political agenda. This Administration has taken one untenable legal position after another regarding the rule of law in the war against terror. It will not admit to making mistakes. It takes action only after mistakes are made public and become politically indefensible.

Given the Republican Party's leadership in Congress, the Federal courts have provided what little check there has been on this President's claim of unfettered Executive power. The Congress has failed to do any real oversight of that use of power.

Judge Gonzales's nomination initially seemed like a breath of fresh air. I have noted how much I personally like him. I think most people do. But as I told the nominee when we met within days of the announcement of his nomination, these confirmation proceedings matter. The proceedings matter because it is the responsibility of this Senate to explore Judge Gonzales's judgment and actions in connection with the tragic legal and policy changes formulated in secret by this administration and still cloaked from congressional oversight and public scrutiny. Part of it is the fault of the Congress which has not conducted vigorous oversight, but a large part of this problem is due to an administration that has not answered the questions asked by both Republicans and Democrats.

America's troops and citizens are at greater risk because of those actions and their terrible repercussions throughout so much of the world. America's moral standing and leadership have been undercut. The searing photographs of Abu Ghraib have made it harder to create and maintain the alliances we need to prevail against the vicious terrorists who threaten us, including those who struck America 9 months into this President's first term.

Those abuses at Abu Ghraib have served as recruiting posters for the terrorists. That is why this process matters. The confirmation process shows that on the question of judgment, Judge Gonzales is the wrong man for this job.

After his recent inaugural address, I praised President Bush for the eloquent words he said about the United States' 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 that secretly develops legalistic rationalizations for circumventing human rights.

To reclaim our moral leadership in the world, and to become a true messenger of hope instead of a source of resentment, we need to acknowledge wrongdoing and show accountability for mistakes that have been made.

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 backs, and promotions.

Between these two dissonant images, there is a growing accountability gap. The administration's handling of this confirmation process, which could have helped to narrow the gap, has served to widen it.

I believe in redemption in public life, as in spiritual life, but to get to redemption, first there has to be accountability. This administration has a large and growing accountability deficit. Judge Gonzales, who could have become a part of the solution, remains a part of the problem.

Now more than ever we need an Attorney General to serve all Americans. There is much that has gone wrong that this administration has stubbornly refused to admit or correct. For this democratic Republic to work, we need greater openness and accountability. It is with those critical considerations in mind that I must vote against this nomination.

I believe under the earlier order, the Senator from California is now going to be recognized.

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

Mr. HATCH. Mr. President, reserving the right to object, and I will not object.

The PRESIDING OFFICER. The unanimous consent has already been agreed to.

Mr. HATCH. I understand. I ask unanimous consent that I immediately follow the Senator from California.

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

Mr. LEAHY. Then, Mr. President, I ask unanimous consent that following Senator HATCH, Senator SCHUMER be recognized.

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

Mr. LEAHY. Mr. President, I understand we are coming back at 2:15 p.m. after the caucuses?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. I ask unanimous consent that we lock in 10 minutes at 2:15 p.m. for the Senator from Maryland, Ms. MIKULSKI.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. That will be agreeable.

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

Mr. LEAHY. I thank the distinguished senior Senator from Pennsylvania, and I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member.

I rise today to explain why I deeply regret I cannot vote to confirm Alberto Gonzales to be the next Attorney General.

I believe as a general rule the President is entitled to the Cabinet of his choice. But one Department, the Department of Justice, always deserves special attention from Congress because it does not exist solely to extend the President's policies.

Though the Attorney General serves under the President, he must independently interpret the laws as written by Congress and be truly the country's chief law enforcement officer.

I cannot emphasize this enough. The Department of Justice must be independent from the White House. The FBI must be independent. The U.S. attorneys must be independent. The Criminal Law Division, the Environmental Law Division, the Civil Law Division must all be independent. The Solicitor General's Office, which argues before the Supreme Court, must be independent. The Office of Legal Counsel, which is charged with interpreting the law of the executive branch, must be independent. The Civil Rights Division must be independent.

These departments are charged with nothing less than following, interpreting, and implementing the law of the United States of America. The Department of Justice is in charge of defending the Nation in court. It is in charge of advising the rest of the Government about what the law means. It is in charge of overseeing the investigations of the FBI, and it is in charge of deciding when to prosecute criminals and send them to prison. This is obviously a big portfolio.

The head of the Department of Justice is the chief law enforcement officer of the United States. As such, the Attorney General is in charge of 59 separate divisions within the Department of Justice, which cover more than 110,000 employees. In my view, before we vote to confirm to put someone in charge of all this awesome power—and it truly is awesome—it is important for us to know what that individual thinks about the major policies the Department will be implementing. And that is where I have been disappointed by the confirmation process for Judge Gonzales.

When President Bush nominated Judge Gonzales, I think many of us were prepared to give him the benefit of the doubt. But the hearings crystallized how little we knew about his own policy views, how little we knew about his qualities for leadership, his policy views, his management style, his strength of character, and his personal beliefs in those areas where he sets the tone and the policy. I think this was a great missed opportunity.

John Ashcroft served 6 years in the Senate. We knew his service on the Judiciary Committee. We knew about his views. One could decide about his personal views, yes or no. Judge Gonzales has spent so many years serving President George Bush. If confirmed, this will be the fifth job George Bush appointed Judge Gonzales to over the past decade. The hearings were his first real opportunity to show his own views. I think this is why the hearing process became so important in many of our views.

This was a crucial opportunity for Judge Gonzales. Many of us were prepared to vote for him. If there is a single issue that defines this confirmation process, it is what Judge Gonzales thinks about torture and brutal interrogation practices.

He reminded us again and again that both he and the President condemn torture. But as we know from the Bybee memo of August 2002, for at least 2 years, the Federal Government followed a definition of torture that was excessively narrow. In fact, it was considered so incorrect that the Department of Justice revoked it on the eve of Judge Gonzales' hearing.

That memo defined torture as:

> Equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.

For me, in addition to its clear legal and moral importance, the issue of torture became the main way for assessing this next Attorney General. And it was very important for him to state in unambiguous terms what he thought. It was as important a way for us to assess how he approaches a problem as any.

In his opening statement, Judge Gonzales offered a clear, absolute condemnation of torture. He said flatly:

> Torture and abuse will not be tolerated by this administration.

At this point, at the beginning of his testimony, there were no ifs, ands, or buts. But after that, his testimony, both verbal and in writing, was full of ambiguities. It seemed intended not to make his views clear, but to shield his views, and it seemed to narrow the definition of what counts as torture.

For instance, at the hearing, at one point, Judge Gonzales told Senator LEAHY, our ranking member, ''I reject that opinion,'' referring to the Bybee opinion. But at another point in the hearing, he told the same Senator, Senator LEAHY:

> I don't have a disagreement with the conclusions then reached by the department.

Those statements are clearly in conflict, and leave me with no idea what he thinks about the Bybee memo.

I also note that Judge Gonzales clearly did not do everything he might have done to try to answer the questions put to him.

In his written testimony, especially to Senator KENNEDY, Judge Gonzales refused to provide the answers or the documents requested. He even refused to conduct a search that would have refreshed his memory.

Let me quote the multiple times Judge Gonzales refused to answer Senator KENNEDY's questions, and these are all quotes:

> I do not know what notes, memoranda, e-mails or other documents others may have about these meetings, nor have I conducted a search.

Point 2:

> I have no such notes, and I have no present knowledge of such notes, memoranda, e-mail, or other documents and I have not conducted a search.

Point 3:

> I have no present knowledge of any non-public documents that meet that description. However, I have conducted no search.

Point 4:

> I have no present knowledge that there are any documents of the sort requested in the question, although I have not conducted an independent search for such documents.

Point 5:

> I have no present knowledge of any such documents or materials, although I have not conducted a search.

Point 6:

> I have no present knowledge of any such records, although I have not conducted a search.

The last formulation he repeated in two additional instances.

These are not adequate answers to satisfy the nomination process for the confirmation of a person to be the next Attorney General, nor do they bode well for the Judiciary Committee's and this Congress's oversight responsibilities for the Department of Justice.

Judge Gonzales also refused to provide many documents that we requested. In specific, I asked him to provide me with a copy of the final version of his January 2002 memo to the President. That is very important because earlier memos that he had written were different. It was important, if this was his final opinion, that we have an opportunity to look at it, because that opinion was definitive and dispositive.

The January memo is a well known one, where he wrote that the war on terror ''renders obsolete Geneva's strict limitations on questioning of enemy prisoners.'' If that was only a draft, as he said, as he had emphasized, then I believe it is imperative for us to see the final version, and he refused me that opportunity. He wouldn't provide the memo, saying the White House had declined to allow it.

To tell you the truth, because of the prior history, that simply is not good enough for me.

Also of importance in the questions that he did answer, he seemed to continually narrow, again, the definition of torture. I saw this as a retreat from his original condemnation of torture and abuse and I thought it showed that he was trying more to defend the President's policies than to demonstrate his own views.

That, in my view, is the nub of the problem. Here he was no longer the President's man, he was going to be the

chief law enforcement officer, independent, head of 110,000 people, with all kinds of major departmental responsibilities—environmental law, civil rights law, the Solicitor General, as I stated earlier in my remarks. I saw this narrowing as a retreat from his original condemnation of torture and abuse, and I thought it showed that he was trying, again, more to defend the President than to talk for himself. Let me give an example.

At the hearing he told Senator DURBIN that even under the laws implementing the Convention Against Torture:

aliens interrogated by the United States outside the United States enjoy no substantive rights under the 5th, 8th, and 14th Amendments.

If this is Judge Gonzales's view, it is a significant gap in the prohibition against abuse.

I gave him the opportunity to clarify this issue. In written testimony he confirmed the thrust of the answer, stating to me:

There is no legal prohibition under the Convention Against Torture on cruel, inhuman or degrading treatment with respect to aliens overseas.

In another written question, I asked Judge Gonzales to specify his own views again on specific harsh interrogation methods. I wrote to him:

Putting aside legal interpretations, in your own personal opinion, should the United States use forced nudity, the threatening of detainees with dogs, or ''water-boarding'' when interrogating detainees?

That was my question in writing. He began his answer by stating:

I feel that the United States should avoid the use of such harsh methods of questioning if possible.

I was asking for a statement by the man. ''If possible'' is a major loophole, and I truthfully don't know what it means. I don't know how big that loophole is intended to be.

As I was reviewing the correspondence, I was struck, in particular, by a letter that the committee received from a group of 12 esteemed former military leaders—generals, admirals, even a former chairman of the Joint Chiefs of Staff.

This letter was signed by Brigadier General David M. Brahms, Retired, U.S. Marine Corps; Brigadier General James Cullen, Retired, U.S. Army; Brigadier General Evelyn P. Foote, Retired, U.S. Army; Lieutenant General Robert Gard, Retired, U.S. Army; Vice Admiral Lee F. Gunn, Retired, U.S. Navy; Rear Admiral, Retired, U.S. Navy; General Joseph Hoar, Retired, U.S. Marine Corps; Rear Admiral John D. Hutson, Retired, U.S. Navy; Lieutenant Claudia Kennedy, Retired, U.S. Army; General Merrill McPeak, Retired, U.S. Air Force; Major General Melvyn Montano, Retired, U.S. Air Force National Guard; and General John Shalikashvili, former Chairman of the Joint Chiefs of Staff.

Let me paraphrase the letter. They write as retired military professionals in the U.S. Armed Forces to express their deep concern about the nomination of Alberto Gonzales and they urge us in the hearing to detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice. They go on to say:

Mr. Gonzales appears to have played a significant role in shaping U.S. detention operations. . . . 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 around the world.

They then talk about the memo Judge Gonzales wrote to the President on January 25, 2002, advising him the Geneva Conventions don't apply to the conflict then underway in Afghanistan. They say more broadly that he wrote the war on terrorism presents a new paradigm that renders obsolete the Geneva protections.

Then they go on to say, and I think this is important:

The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would ''reverse over a century of U.S. policy and practice in supporting the Geneva Conventions,'' and would ''undermine the protections of the rule of law for our troops, both in this specific conflict [Afghanistan] and in general.''

That is a huge problem out there because at best, these hearings and the written questions and answers which are voluminous are really unable to clarify any of the positions of Alberto Gonzales, the man, Alberto Gonzales, head of one of the largest and most powerful agencies of the American Government, the U.S. Department of Justice.

We look at the Department of Justice one way, but most Americans look at it as being a major citadel of power in the United States. And on occasion, we have seen that power exercised. If you are going to set the policy, if you are going to set the tone, if you are going to be the head of this Department, I want to know what you as a man, or as a woman, think, and particularly at this time.

Yes, it is clear that the problems we will face in the future are most likely to be with respect to non-state actors, and with respect to torture, which I am speaking about now. Therefore, it is extraordinarily important to know what this man thinks. If you ask me today, despite the hearings, despite 200 pages of questions and answers, I cannot really tell you. I cannot really be sure that if the White House says one thing, the head of the Department of Justice would be willing to stand up and say another. I just do not know, based on the past jobs he has had and his past performance, if he is prepared to be independent.

I have to say to this body that is important. Every one of us knows that Janet Reno was an independent Attorney General. I do not know that Alberto Gonzales will be. I don't know his management style. I don't know the vision he has for this Department. I don't know the goals he would set.

I know he is an extension of the President. I know that he can legally enable the President. I know he gives the President advice, and I think much of that advice has brought us into a terrible place where our military could well in the future be jeopardized.

I am one, frankly, who believes the Military Code of Justice has stood the U.S. military in good stead. I am one who believes the Geneva Convention—the Convention Against Torture—is the right thing. I am one who believes we should follow those, even in this non-state war.

I want to comment on one other issue, and then I will yield the floor.

I think Judge Gonzales is going to be confirmed. He is a talented lawyer and has a compelling life story. I certainly want to work with him.

I want to say one thing about some who may say this is a qualified Hispanic, and indeed he is. Nobody should think that the Hispanic community is unified on this nomination. I will put into the RECORD, if I may, letters from the Congressional Hispanic Caucus, certain editorials from newspapers, the statement of the Mexican-American Legal Defense and Education Fund, a statement of the Mexican-American Political Association, a letter from Major General Melvyn Montano, and other letters.

I ask unanimous consent to have them printed in the RECORD.

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

ALBUQUERQUE, MN,
January 25, 2005.

Hon. MEMBERS OF THE COMMITTEE ON THE JUDICIARY,
U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

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' 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' 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' role in setting U.S. policy on torture during his 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 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 result 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' 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 from 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,

MELVYN MONTANO,
Major General (Ret.),
Air National Guard.

AN OPEN LETTER TO THE SENATE JUDICIARY COMMITTEE

Hon. MEMBERS OF THE SENATE JUDICIARY,
U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR: We, the undersigned, are retired professional military leaders of the U.S. Armed Forces. We write to express our deep concern about the nomination of Alberto R. Gonzales to be Attorney General, and to urge you to explore in detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice.

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. Before Mr. Gonzales assumes the position of Attorney General, it is critical to understand whether he intends to adhere to the positions he adopted as White House Counsel, or chart a revised course more consistent with fulfilling our nation's complex security interests, and maintaining a military that operates within the rule of law.

Among his past actions that concern us most, Mr. Gonzales wrote to the President on January 25, 2002, advising him that the Geneva Conventions did not apply to the conflict then underway in Afghanistan. More broadly, he wrote that the ''war on terrorism'' presents a ''new paradigm [that] renders obsolete Geneva's'' protections.

The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would ''reverse over a century of U.S. policy and practice in supporting the Geneva Conventions,'' and would ''undermine the protections of the rule of law for our troops, both in this specific conflict [Afghanistan] and in general.'' State Department adviser William H. Taft IV agreed that this decision ''deprives our troops [in Afghanistan] of any claim to the protection of the Conventions in the event they are captured and weakens the protections afforded by the Conventions to our troops in future conflicts.'' Mr. Gonzales's recommendation also ran counter to the wisdom of former U.S. prisoners of war. As Senator John McCain has observed: ''I am certain we all would have been a lot worse off if there had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war.''

Mr. Gonzales's reasoning was also on the wrong side of history. Repeatedly in our past, the United States has confronted foes that, at the time they emerged, posed threats of a scope or nature unlike any we had previously faced. But we have been far more steadfast in the past in keeping faith with our national commitment to the rule of law. During the Second World War, General Dwight D. Eisenhower explained that the allies adhered to the law of war in their treatment of prisoners because ''the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing.'' In Vietnam, U.S. policy required that the Geneva Conventions be observed for all enemy prisoners of war—both North Vietnamese regulars and Viet Cong—even though the Viet Cong denied our own prisoners of war the same protections. And in the 1991 Persian Gulf War, the United States afforded Geneva Convention protections to more than 86,000 Iraqi prisoners of war held in U.S. custody. The threats we face today—while grave and complex—no more warrant abandoning these basic principles than did the threats of enemies past.

Perhaps 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's January 2002 memo itself warned that the decision not to apply 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.

The full extent of Mr. Gonzales's role in endorsing or implementing the interrogation practices the world has now seen remains unclear. A series of memos that were prepared at his direction in 2002 recommended official authorization of harsh interrogation methods, including waterboarding, feigned suffocation, and sleep deprivation. As with the recommendations on the Geneva Conventions, these memos ignored established U.S. military policy, including doctrine prohibiting ''threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation.'' Indeed, the August 1, 2002 Justice Department memo analyzing the law on interrogation references health care administration law more than five times, but never once cites the U.S. Army Field Manual on interrogation. The Army Field Manual was the product of decades of experience—experience that had shown, among other things that such interrogation methods produce unreliable results and often impede further intelligence collection. Discounting the Manual's wisdom on this central point shows a disturbing disregard for the decades of hard-won knowledge of the professional American military.

The United States' commitment to the Geneva Conventions—the laws of war—flows not only from field experience, but also from the moral principles on which this country was founded, and by which we all continue to be guided. We have learned first hand the value of adhering to the Geneva Conventions and practicing what we preach on the international stage. With this in mind, we urge you to ask of Mr. Gonzales the following:

(1) Do you believe the Geneva Conventions apply to all those captured by U.S. authorities in Afghanistan and Iraq?

(2) Do you support affording the International Committee of the Red Cross access to all detainees in U.S. custody?

(3) What rights under U.S. or international law do suspected members of Al Qaeda, the Taliban, or members of similar organizations have when brought into the care or custody of U.S. military, law enforcement, or intelligence forces?

(4) Do you believe that torture or other forms of cruel, inhuman and degrading treatment—such as dietary manipulation, forced nudity, prolonged solitary confinement, or threats of harm—may lawfully be used by U.S. authorities so long as the detainee is an ''unlawful combatant'' as you have defined it?

(5) Do you believe that CIA and other government intelligence agencies are bound by the same laws and restrictions that constrain the operations of the U.S. Armed Forces engaged in detention and interrogation operations abroad?

Signed,

Brigadier General David M. Brahms (Ret. USMC).
Brigadier General James Cullen (Ret. USA).
Brigadier General Evelyn P. Foote (Ret. USA).
Lieutenant General Robert Gard (Ret. USA).
Vice Admiral Lee F. Gunn (Ret. USN).
Admiral Don Guter (Ret. USN).
General Joseph Hoar (Ret. USMC).
Rear Admiral John D. Hutson (Ret. USN).
Lieutenant General Claudia Kennedy (Ret. USA).
General Merrill McPeak (Ret. USAF).
Major General Melvyn Montano (Ret. USAF Nat. Guard).
General John Shalikashvili (Ret. USA).

RESOLUTION OPPOSING THE APPOINTMENT OF ALBERTO GONZALES TO BE ATTORNEY GENERAL OF THE UNITED STATES BY THE MEXICAN AMERICAN BAR ASSOCIATION OF VENTURA COUNTY

Whereas, the Mexican American Bar Association of Ventura County was formed in 1980 and is composed of attorney members and auxiliary members who for the past 25 years have promoted access to justice for all, respect for the rule of law, equal protection and due process of law.

Whereas, under other circumstances, the Mexican American Bar Association of Ventura County would have been proud to endorse and applaud the nomination of a fellow

Mexican American attorney to the highest law enforcement position in our country; and so it is with sadness and regret, that our organization finds itself in strong opposition to the nomination of Mr. Alberto Gonzales, White House Counsel for United States Attorney General.

Whereas, Alberto Gonzales, has rendered opinions proposing that the United States of America and our sitting president George W. Bush, can disregard the Geneva Convention; to wit, Mr. Gonzales advised the President in a January 2002 memorandum that the Geneva Convention did not apply to detainees at Guantanamo Bay, Cuba. This opinion has been roundly criticized and been condemned in our country and around the world, including by members of the State and Defense Departments, as well as U.S. Military lawyers, fearing that this policy would undermine respect for U.S. Law and International law, exposing the United States' own military service members to torture and abuse.

Whereas, it is now well known that at various military detention centers at Guantanamo Bay, Cuba, in Afghanistan, in Iraq, including Abu Ghraib prison, detainees were subjected to cruel, humiliating, degrading treatment and torture, leading to the injury and even death of detainees, by U.S. Military officers and civilian contractors operating under the auspices of the United States Department of Defense.

Whereas, Mr. Gonzales authored memos that condoned the Use of Torture, by relaxing the definition of torture, describing the prohibition contained in the Geneva Convention as ''quaint'' and ''obsolete'', permitting and thereby causing our nation to be shamed and disrespected, and these ''opinions'' have contributed to the our country's loss of the good will and the respect of a significant segment of the people and countries of the world.

Whereas, Mr. Gonzales, advised the President that he was empowered to order the detention of anyone, citizen or non-citizen for indefinite periods of time, without charges being presented, without access to counsel or to an impartial tribunal, thus violating the most sacred requirements of due process of law enshrined in the U.S. Constitution. This position was later rejected by the U.S. Supreme Court in the case of Rasul vs. Bush, in July of 2004, upholding the principle that no one is beyond the reach of the law and judicial scrutiny.

Whereas, it is documented that Mr. Alberto Gonzales, as Counsel to Governor George W. Bush of Texas, also failed to provide Governor Bush with adequate information to properly review clemency requests by prisoners on death row, that might have compelled commutation of the death penalty or further judicial review, and thus failed in his duty to act as competent counsel to his client and to the People of the State of Texas.

Whereas, Mr. Alberto Gonzales by his actions and legal opinions rendered throughout his career in public positions and in his current position as White House Counsel, has violated his obligation to support the stated mission of lawyers in the United States and specifically the mission of the State Bar of Texas, his home state, which is to ''support the administration of the legal system, assure to all the equal access to justice, foster high standards of ethical conduct for lawyers, ''and educate the public about the rule of law,'' be it therefore

Resolved, That the Mexican American Bar Association of Ventura County strongly opposes the confirmation of Alberto Gonzales to the position of United States Attorney General, and furthermore, strongly urges California's Senators Diane Feinstein and Barbara Boxer, as well as all other members of the United States Senate to vote against the confirmation of Mr. Gonzales based upon his demonstrated poor judgment in legal matters and his lack of commitment to the rule of law and the Constitution of the United States of America.

MALDEF Statement on the Likely Confirmation of White House Counsel Alberto Gonzales to the Position of United States Attorney General

MALDEF, the nation's premier Latino civil rights organization, released a statement today regarding the likely confirmation of White House Counsel Alberto Gonzales to the Cabinet post of Attorney General. Below is the statement released today by Ann Marie Tallman, MALDEF President and General Counsel.

''The United States Attorney General upholds the laws that define the very democracy of our Nation. The Attorney General enforces all federal criminal and civil laws. The office holder has the responsibility to determine how to use Federal resources to prosecute violations of individual civil liberties and civil rights—such protective laws have profound impact on the daily lives of American citizens and those living in the United States. Finally, the Attorney General has the authority to appoint a special counsel to investigate and, if appropriate, prosecute matters when the Attorney General concludes that extraordinary circumstances exist such that the public interest would be best served by removing the matter from the Justice Department.

MALDEF acknowledges that Judge Alberto Gonzales can fulfill his duties as Attorney General as defined by the United States Constitution, the U.S. Code and various federal Statutes. Judge Gonzales' personal history is compelling. He has overcome significant obstacles to achieve his success. His past professional experience speaks to his capabilities. MALDEF remains encouraged that President Bush would make an historic appointment of such a diligent individual.

MALDEF acknowledges Judge Gonzales' adherence to precedent in the area of individual privacy rights as defined by the constitutional right to privacy. We also recognize his perspectives on diversity and equal opportunity in higher education and employment.

MALDEF is America's premier Latino civil rights Organization, and from this unique position, we have serious questions and concerns about Judge Gonzales' record in three important areas of the law. First, Judge Gonzales' public statements and past record demonstrate support and deference to our Federal Government's Executive branch. It will be imperative for the Attorney General to question and challenge unilateral exercise of executive authority when matters of constitutional concern and violations of our federal laws demand that the Attorney General protect individual civil liberties or civil rights. In addition, there remains a concern about Judge Gonzales' unique position and transition—from Counsel to the President of the United States to the United States Attorney General—and his ability to determine when to appoint a special counsel. There is a question whether Judge Gonzales can fairly and independently determine in a matter he previously gave advice to the President as the President's attorney, if a special counsel should be appointed. A possible inherent conflict of interest based upon his on-going attorney-client duties to the President may impede his ability to be independent.

Second, due process under the law is an important Constitutional protection. Judge Gonzales's past record in the Texas Death Penalty cases and his association with memoranda setting aside the application of international war conventions as applied to enemy combatants raises concerns about whether he may set aside constitutionally guaranteed due process protections in various domestic circumstances.

Third, the federal government has sole authority and responsibility to uphold our nation's immigration policies while working to keep our homeland safe and secure. MALDEF is concerned that Judge Gonzales, as Attorney General, may delegate such important federal civil and criminal immigration authority to state and local law enforcement already overburdened with responsibilities to protect and serve at the local level without the appropriate due process protections that must remain guaranteed at the federal level.

We acknowledge that Judge Gonzales is likely to be Confirmed as the next Attorney General of the United States and the first Latino to hold this important post. MALDEF stands ready to work with Judge Gonzales as he carries out his duties and continues his public service. However, because of our specific concerns regarding apparent primacy of executive authority; a potential conflict of interest in the transition from Counsel to the President to Attorney General in enforcing the special counsel law; setting aside due process protections; and, uncertainty about whether inherent authority exists at the state and local level to enforce federal immigration policy, MALDEF cannot support his confirmation.

Congress of the United States,
Washington, DC, January 26, 2005.

Hon. Patrick J. Leahy,
Ranking Member, Senate Judiciary Committee, Dirksen Senate Building, U.S. Senate, Washington, DC.

Dear Senator Leahy, As the Senate considers the nomination of Alberto Gonzales to be the next Attorney General of the United States, we, on behalf of the Congressional Hispanic Caucus (CHC), wish to inform you that the CHC has not endorsed Mr. Gonzales.

Since its inception almost three decades ago, the CHC has served to advance the interests of the Hispanic community, which includes promoting the advancement of Latinos into high levels of public office. We have taken this responsibility seriously, and have accordingly developed a process to evaluate candidates for positions in the executive branch of the federal government. Such a process is critical to determining which candidates seek to hold office to serve the public interest rather than to promote their own personal interest. Our process has enabled us to endorse many exceptional Hispanic candidates. During the past four years, the CHC has proudly endorsed many judicial and executive branch nominees selected by President George W. Bush.

One simple step in our process is a meeting with the nominee. Upon hearing of Mr. Gonzales' nomination for Attorney General, we invited him to meet with the CHC to provide him with the opportunity to meet our Members, discuss issues important to the Latino community, and to seek our endorsement. We were informed that he wanted our support and for the past two months, we made every attempt to accommodate his schedule. However, Mr. Gonzales ultimately chose not to avail himself of the courtesies we extended to him. We were last advised that Mr. Gonzales was simply too occupied with responding to written questions from the Senate Judiciary Committee and that we would instead have to wait to until after he was confirmed as Attorney General before being granted a meeting.

Let us be clear, our concern is not about whether the CHC is granted a meeting—it is

about Mr. Gonzales' unwillingness to discuss important issues facing the Latino community. His answers to these questions would give our community the information needed to form an informed opinion of his nomination. With so little time left before a Senate vote on Mr. Gonzales' nomination, the Latino community continues to lack clear information about how the nominee, as Attorney General, would influence policies on such important topics as the Voting Rights Act, affirmative action, protections for persons with limited English proficiency, due process rights of immigrants, and the role of local police in enforcing federal immigration laws.

We are disappointed and surprised that Mr. Gonzales has refused to meet with the CHC during the confirmation process. Much has been said about the historic nature of Mr. Gonzales' nomination, as the first Hispanic to serve as U.S. Attorney General. However, the historic nature of this nomination is rendered meaningless for the Hispanic community when the nominee declines an opportunity to meet with the group of Hispanic Members of Congress who have worked for so many years to open the door of opportunity to fellow Hispanics. If he is not willing to meet with the CHC, how responsive can we expect him to be to the needs of the Hispanic community?

We provide you this information as the reason for our lack of endorsement of Mr. Gonzales.

Sincerely,

GRACE FLORES NAPOLITANO,
Chair, Congressional Hispanic Caucus.
ROBERT MENENDEZ,
Chair, CHC Nominations Task Force.
CHARLES A. GONZALEZ,
Chair, CHC Civil Rights Task Force.

Mrs. FEINSTEIN. Mr. President, in summary, I very much regret this, but I think the U.S. Department of Justice is a unique Department. I think whoever is the head of it has to stand on his own two feet, has to be totally independent of Congress, of the White House, and has to be willing to submit to rigorous oversight by the Senate, by the Judiciary Committee, and has to set a tone which enables the Department of Justice to function as a fair and independent voice of the American people, as its chief law enforcement officer.

I very much regret that I will vote no on this nomination.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Utah.

Mr. HATCH. Mr. President, I have heard the remarks of my distinguished colleagues, and I want to say I have some grave disagreements with some of the things that have been said.

I rise in support of the President's nomination of Alberto Gonzales to be the next Attorney General of the United States.

We all know who Judge Gonzales is. Today is a remarkable day in our country's history and a momentous day for the American Hispanic community.

Today, we are considering the nomination of Judge Alberto Gonzales who, when confirmed, will become the first Hispanic-American Attorney General of the United States. That is very significant. He will be eighth in line of succession to the Presidency.

In 1988, President Ronald Reagan appointed the first Hispanic Cabinet member, Secretary of Education Lauro F. Cavazos. Two years later, President George Herbert Walker Bush continued to make history by appointing the first woman and first Hispanic Surgeon General of the United States, Antonia C. Novello. Dr. Novello used to work with me as a fellow before she succeeded Dr. Koop as Surgeon General of the United States.

Just last week, the Senate confirmed President Bush's nomination of Carlos Gutierrez as Secretary of Commerce. And today, President George W. Bush sets yet another first. As Chairman of the Republican Senatorial Hispanic Task Force, I am well aware of the significance of this appointment and this moment in our Nation's history. Every Hispanic American in this country is watching how this man is being treated today and throughout this debate as we discuss the nomination. This nomination is just that important.

I know Judge Gonzales's life story. It has been laid out many times in the media and was described during the confirmation hearing. This is a story that bears repeating in the Senate. He is an American success story. He shows that no matter where anyone comes from, in America, there is no limit on how far they can go.

As many Americans know, Judge Gonzales was the second of eight children. His father and two uncles built a small two-bedroom home with no running hot water in Humble, TX, where all 10 members of this family lived, a truly humble family. His parents had no more than a few years of elementary school education, and his father was a migrant worker. Growing up in a working poor household, his family never even had a telephone.

In a story familiar to many whose parents and grandparents were immigrants, his parents knew the importance of an education for their son. After serving honorably in the U.S. Air Force, Judge Gonzales became the first person in his family to go to college. He attended the Air Force Academy and graduated from Rice University and Harvard Law School. Since then, Judge Gonzales has worked at one of the finest law firms in Texas and this country, Vincent & Elkins, he served for 3 years as the general counsel for the Governor of Texas, served as secretary of state for the State of Texas, served as a justice on the Texas Supreme Court, and became as we all know, White House Counsel for President Bush.

Yet his resume tells only part of the story. His accomplishments include many professional and civic honors. He was voted the Latino Lawyer of the Year by the Hispanic National Bar Association. He was inducted into the Hispanic Scholarship Fund Alumni Hall of Fame. He has received various awards from Harvard and Rice Universities, the United Way, the United States-Mexico Chamber of Commerce, the League of United Latin American citizens, just to name a few. He has been a pillar of every community in which he has lived.

Despite these incredible personal achievements, Judge Gonzales remains one of the most unassuming, humble, and decent individuals I have ever had the privilege of meeting, let alone work with in government. I know firsthand that he is well qualified to be Attorney General of the United States, and I commend the President of the United States on his choice of such an outstanding individual.

I am not the only person to think this. Judge Gonzales has the support of the National Council of La Raza, one of the largest Hispanic organizations in the country. He has the support of the Hispanic National Bar Association, the Latino Coalition, the League of United Latin American Citizens, the National Association of Latino Leaders, Congressional Hispanic Conference, the United States Hispanic Chamber of Commerce, the Hispanic Alliance for Progress Institute, the National Association of Latino Elected and Appointed Officials, the National Association of Hispanic Publishers, Minority Business Roundtable, the Texas Association of Mexican American Chamber of Commerce, the Congress of Racial Equality, the Jewish Institute for National Security Affairs, the Fraternal Order of Police, the National District Attorneys Association, the FBI Agents Association, the Recording Industry Association of America—just to mention a few. Anyone who says he does not have the vast majority support of all Hispanics in this country and most all other people who understand decency and honor just do not know what they are talking about.

He has garnered support from both Democrats and Republicans. The former Secretary of Housing and Urban Development, under President Clinton, Henry Cisneros, wrote an article in the Wall Street Journal in January praising Judge Gonzales, and Senator KEN SALAZAR, the newly elected Democrat from Colorado, testified in favor of Judge Gonzales in our Judiciary Committee. I commend Senator SALAZAR for sharing his opinion of the nominee.

Judge Gonzales is also supported by the former Solicitor General of the United States of America, Ted Olson, as well as members of the Heritage Foundation, the conservative institution in Washington. The philosophical, religious, and ethnic diversity of this support speaks volumes of his qualifications.

Let me take a few minutes to read from some of these letters. Janet Murguia, president and CEO of the National Council of La Raza, the largest constituency-based Hispanic organization, has given a strong recommendation of Judge Gonzales.

Not only is Judge Gonzales a compelling American success story, it is also clear that

few candidates for this post have been as well qualified. He has served as Texas' secretary of state, as a member of the Texas Supreme Court, and as White House counsel, and has been deeply involved in his community throughout his life.

We are encouraged that in response to questioning, Judge Gonzales agreed to review the Administration's positions on sentencing reform and articulated some reservations about the practice of ''deputizing'' local police to enforce immigration laws.

If confirmed, Gonzales would be the first Hispanic attorney general and the first Latino to serve in one of the four major cabinet posts—Secretary of State, Treasury, Defense, and Attorney General.

While we have had our policy differences with the Bush Administration, we are confident that Judge Gonzales is someone who will serve his country with distinction and who will also be accessible and responsive to the concerns of the Hispanic community. We urge the Senate Judiciary Committee and the U.S. Senate to confirm him as soon as possible.

She speaks for the vast majority of Hispanics in America.

Similarly, the Latino Coalition strongly supports Judge Gonzales. In a press release dated November 11, 2004, it states:

Judge Gonzales is the perfect choice for the next U.S. Attorney General. The Judge has been an instrumental part of the legal efforts to boost the war on terrorism and keep America safe and secure, while upholding the highest standards in government ethics. Judge Gonzales brings to the Office of the U.S. Attorney General a distinguished legal record based on his many years of work in the public and private sector. He also brings a unique perspective and human experience understood only by those whose families have migrated to a foreign land with little resources and not knowing the language. It is for this cultural depth and his unique legal qualifications that we urge the Senate Judiciary Committee and all members of the U.S. Senate to put partisan politics aside so that Hispanics are no longer denied representation in this important post. . . . We have been honored to work with the Judge for many years now, and have personally witnessed his ability to unite people of all different backgrounds to get things done. He is an extremely qualified and intelligent attorney who will serve with distinction and make every Latino proud. We endorse his nomination without any reservations.

He will make every Latino proud. He has up to this time everywhere he has been. He has set a good example and has done what is right in his government work.

The FBI Agents Association wrote to the committee last December:

We write to express the support of the FBI Agents Association for the nomination of Judge Alberto Gonzales for Attorney General of the United States. . . . We believe Judge Gonzales' practical life experiences, his legal training and education, his judicial expertise and his close proximity to and involvement with many of the most difficult jurisprudence issues associated with the ongoing war against terror make him a nominee fully worthy of confirmation by the U.S. Senate. We are also confident that Judge Gonzales' experience in and firm appreciation of the issues in today's national criminal justice system will serve him and the nation well as the next Attorney General.

I can guarantee the FBI Agents Association does not send recommendations like that in the case of people who are not worthy.

The National District Attorneys Association also expressed strong support for Judge Gonzales in a letter dated December 17, 2004. This is a bipartisan association of all the national district attorneys of the country:

During Judge Gonzales' tenure as Counsel to the President our leaders have had frequent opportunities to meet with him and to discuss with him issues challenging our public safety. Through these meetings we have come to recognize both his commitment to protecting the American public and to ensuring closer working relationship between federal, state and local law enforcement organizations.

With the increasingly complex challenges facing us in our fights against both organized gangs and terrorists he brings the skills and legal acumen necessary for this position of responsibility. We are confident that his confirmation will enhance the safety of our citizens from threats, domestic and international, while safeguarding those liberties that we all treasure.

As leaders for the only national organization representing the local prosecutors of this nation we have the utmost confidence in his ability to master this most challenging position and pledge to do everything within our ability to ensure that the working relationship between the Department of Justice and America's prosecutors grows even stronger.

Finally, let me read excerpts from a Wall Street Journal article written by Henry Cisneros, who was the Secretary of Housing and Urban Development in the Clinton administration and was the mayor of San Antonio for 8 years. This is what Mr. Cisneros had to say:

The last four years have posed harrowingly difficult dilemmas, especially those related to the 9/11 terrorist attack on our nation and the military and security actions that resulted from it. There have been successes and failures, there have been good judgments and misjudgments—all in the context of war, that is, a context of military organizations under stress, of imperfect information, of life-and-death concerns. The American people decided in November, for better or for worse, to see this conflict through. It would be unseemly at this juncture to use the forum of a Senate confirmation process to try to find a scapegoat for a war that is at a very difficult stage. In any event, Alberto Gonzales has done nothing to alter the basic facts that he is a seasoned legal professional, is needed by the president, and is a person of sterling character.

Mr. Cisneros goes on 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. I had the high honor of serving in a president's cabinet, as have five other American Hispanics, but we all served in what might be called ''outer circle departments.'' The historic character of this nomination is that Judge Gonzales has been nominated 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.

Judge Gonzales has demonstrated a nuanced understanding of the struggles people face as they try to build a life for their families in our country. Perhaps that appreciation comes from remembrances of his own family's struggle. In the Commencement Address at his alma mater, Rice University, earlier this year, he recalled: ''During my years in high school, I never once asked my friends over to our home. You see, even though my father poured his heart into that house, I was embarrassed that 10 of us lived in a cramped space with no hot running water or telephone.''

As an aside, I understand that. We had a humble home like that. We did not have indoor facilities at first. I knew what it was like to not be ashamed of my home but not wanting to bring people there. I understand Judge Gonzales. I was there, too.

I will continue on with Henry Cisneros's comment. Remember, he was a Cabinet member in the Clinton administration, and he strongly supports Judge Gonzales. This is what Mr. Cisneros said:

On another occasion, [Judge Gonzales] said: '' . . . my father did not have many opportunities because he had only two years of formal schooling, and so my memories are of a man who had to work six days a week to support his family. . . .He worked harder than any person I have ever known.''

That is what Judge Gonzales said.

Mr. President, this is the person who my Democratic colleagues are trying to defeat—a man who has bipartisan support throughout the country, and big-time support; a man who represents the American dream to so many of us; the man who deserves to be the next Attorney General. But to listen to these comments by our colleagues—and I think over the next couple days to listen to them—they act as if somebody has to be perfect to be a Cabinet member in any administration. But certainly in the Bush administration, they must be perfect. Not only do they say that, but you will find there are many distortions of his record. They take things out of context and blow them out of proportion.

I worked closely with Judge Gonzales during President Bush's first term, and I have found him to be a man of his word. Unfortunately, in a misguided attempt to bring this fine individual down, some people, somehow, blame Judge Gonzales for the abuses that have occurred at Abu Ghraib. As many Americans, I, too, am concerned about the alleged abuses of detainees apprehended in the war on terror. When I saw the pictures in the media of detainees at Abu Ghraib, I was simply disgusted. I think all decent Americans were disgusted. They understand the abuses that occurred there were repugnant and inconsistent with our renewed commitment to promoting liberty and democracy. There is absolutely no debate about that.

In addition, there are more allegations in the media recently about individuals being subjected to water-boarding, or suffering from cigarette burns, and other acts of physical intimidation that must be taken seriously as well. I take these allegations very seriously—very seriously. Regardless of what the precise legal definition of ''torture'' is,

when you see or hear about acts of physical abuse of prisoners, even in a time of war, it is very disturbing.

It should be obvious enough that it does not need to be said, but I condemn the torturous acts that occurred at Abu Ghraib. The President condemns torture. My colleagues on both sides of the aisle condemn torture. Make no mistake about it, Judge Gonzales condemns torture. Judge Gonzales must have said that dozens of times before and after his hearing, both orally and in writing. He opposes torture, period. He could not have been clearer on this issue. To have his record distorted is hitting below the belt.

There are many Americans who believe someone in the Government should be held responsible for these abuses. I agree. All of the individuals responsible for those atrocious acts should be punished. And they are being punished. The military immediately investigated. They have immediately prosecuted. Some of them have been sentenced, and the others will be. There is no question about it; they should be punished. However, these convictions do not get as much attention from the press as the photos themselves.

The fact is, the convictions do not provide the political ammunition for those who oppose the President and this administration.

Nonetheless, just earlier this month, Charles Graner was convicted for his role in detainee abuse. He was sentenced to 10 years of imprisonment. He also received a military demotion and was dishonorably discharged, as he should have been.

He is not the only person who has been convicted. The military has disciplined four members of a special operations unit for abusing detainees in Iraq, including at least one case of the use of a Taser stun gun. It has also subjected two individuals to administrative punishments and four others to nonjudicial punishments. The Department of Defense has completed eight investigations and has three additional ongoing investigations.

Lest we forget, the scandal of Abu Ghraib was the subject of an internal Government investigation well before the media broke the story. I am sure that as time goes on, there will be more investigations and more prosecutions of these people who acted as non-Americans, as far as I am concerned. In the global war against terrorism, American soldiers and employees must conduct themselves honorably, and we will insist they do so—and so has Judge Gonzales insisted that they do so.

Congress takes this oversight role very seriously. I was a cosponsor to S. Res. 356, which we passed last May, condemning the abuse of Iraqi prisoners at Abu Ghraib prison, urging a full and complete investigation to ensure justice is served, and expressing support for all Americans serving nobly in Iraq.

In August, the Defense Department Appropriations Act became law. It reaffirmed Congress's view that torture of prisoners of war and detainees is illegal and does not reflect the policies of the U.S. Government or the values of the people of the United States.

In December, the Consolidated Appropriations Act for Fiscal Year 2005 became law. This law includes a prohibition on the use of funds by the Justice Department to ''be used in any way to support or justify the use of torture by any official or contract employee of the United States Government.''

In addition, at least five committees have held hearings on Abu Ghraib in the 108th Congress. Since May, the Armed Services Committees of both Houses took testimony from numerous Defense Department officials. Secretary Rumsfeld himself testified four times. Other witnesses include GEN Richard Myers, Chairman of the Joint Chiefs of Staff; Acting Secretary of the Army, Les Brownlee; U.S. Army Chief of Staff, GEN Peter Schoomaker; and Central Command Deputy Commander, LTG Lance Smith.

The committees Interviewed General Taguba, the author of the Taguba Report, which investigated the photos of abuse at Abu Ghraib. They held hearings and heard testimony from general officers who conducted a formal investigation into the allegations of abuse, known as the Fay investigation and from James Schlesinger and Harold Brown, who were appointed by the Secretary of Defense to head the Independent Panel to Review DOD Detention Operations—otherwise known as the Schlesinger Report. The Senate also interviewed the Army Inspector General about his investigation, and interviewed Stephen Cambone, Undersecretary of Defense for Intelligence. The Senate Armed Services Committee took testimony from Central Command Commander General John Abizaid, Lieutenant General Ricardo Sanchez, who commanded the Multi-national Force-Iraq; Major General Geoffrey Miller, Deputy Commander for Detainee Operations in Iraq, and Colonel Marc Warren, Army Judge Advocate General.

Despite all this, there are some people who believe that not enough has been done. And I respect their views. But it seems that now, a small but vocal group of those individuals have attempted to create an almost mob mentality—looking for any high level official in the Bush administration to take the blame. And Judge Gonzales has become the favorite scapegoat for some. People who cannot even bring themselves to speak optimistically about our prospects in Iraq in the days before and now after the day of the historic election itself, surely have no qualms about creating a scapegoat out of Judge Gonzales. This man—a committed public servant, a veteran of our Armed Forces—deserves better.

Let us not lose focus here. Judge Gonzales has been nominated to be the Attorney General—not the Secretary of Defense.

And when these abuses occurred, Judge Gonzales was not the Secretary of Defense. It was not his responsibility to tell soldiers which specific interrogation tactics to use.

In fact, it was not even his responsibility to provide legal advice to the Secretary of Defense on torture or any other subject. Providing legal advice to executive branch departments and agencies is the role of the Department of Justice. His primary role was to provide legal advice to the President of the United States and other White House officials.

Now if Judge Gonzales is confirmed, it will become his responsibility to become the Nation's principal law enforcement official and help see that each American receives equal justice under the law.

But it is inappropriate and unfair to blame Judge Gonzales for legal advice given by somebody else in the Department of Justice years before he was even nominated to work in the White House.

For example, some opponents of Judge Gonzales have gone on at length about the so-called Bybee memo. Before I get into the specifics of this memo, let me bring you back to the months following September 11, 2001. All of us here remember exactly where we were when the planes crashed into the World Trade Center towers and the Pentagon and in Pennsylvania that morning. None of us will forget the feelings of vulnerability we all felt in the days, weeks and months following the attack.

President Bush has rightly made preventing another terrorist attack on U.S. soil his No. 1 priority. I know that my fellow citizens in Utah share the President's priorities when it comes to fighting terrorism. In fact, the first major international event that took place after 9/11 was held in Salt Lake City when my community hosted the winter Olympic games.

Here in the Senate, a mere month after the attack, we were terrorized by a letter sent to Senator Daschle's office containing anthrax. The distinguished ranking member of the Judiciary Committee was mistreated and threatened. Staffers, workmen, and visitors stood in line all day to be screened for anthrax, and hundreds of individuals took strong antibiotics as a preventative measure. I recall that time period where every day you would wake up wondering whether something terrible was going to happen that day.

The Bush administration, too, was facing difficult questions. We all thought that another terrorist attack could come at any moment, and it would be incredibly difficult to predict when or where such an attack would occur because our enemy acted in a clandestine manner. They dressed as civilians, not as soldiers. They did not attack our military but tens of thousands of innocent civilians, urban centers, and government buildings. These

individuals did not come from one specific country. They were a fanatic, ideological enemy with international reach. They could be anywhere. And they had the money to finance their terrorist activities.

It was during these early months that the administration explored what its options were and how they should act in confronting this unique enemy, one that fought not in uniforms on battlefields, not for a particular nation but in blue jeans and American civies.

Some are claiming that the President relied on the Bybee memo in formulating his policy with respect to interrogation techniques at Abu Ghraib. Let's take a look at these documents. First, the so-called Bybee memorandum was not written by Judge Gonzales, in spite of the implications by some. It was written by Jay Bybee who, at that time, was the Assistant Attorney General of the Office of Legal Counsel at the Department of Justice, and is now a distinguished judge on the Circuit Court of Appeals for the Ninth Circuit. That is why some people call it the Bybee memo. They could not call it the Gonzales memo. It is not the Gonzales memo, has never been the Gonzales memo.

The memo is dated August 1, 2002. Remember that date. The memo addresses the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It does not analyze the Geneva Convention. Let me just mention that this is a scholarly piece of analysis. Regardless of whether you agree or disagree with its legal conclusion, there can be little doubt that this 50-page, single-spaced document with 26 footnotes is a thoughtful and thorough analysis.

Let me also say that this memo does not tell the President to use torture in Iraq. Rather it tries to define what torture is from a purely legal perspective.

Let's compare the Bybee memo with the President's actual memorandum on the treatment of detainees. The subject of this memo is the humane treatment of al-Qaida and Taliban detainees. The President's memo was written on February 7, 2002. This is 6 months before the Bybee memorandum. So there is absolutely no way the President could have relied on the August 1, 2002, Bybee memo because it did not exist at the time he issued his definitive February 7 directive, the one that he and others followed.

Let me be clear: I am not saying the Justice Department never considered the Convention Against Torture prior to August 1, 2002. In fact, given the voluminous length of the analysis, it probably took some time to write. But to suggest this Bybee memo, which addresses a different statute, a statute that is nowhere mentioned in the President's memorandum, was indispensable in crafting the President's decision is simply false for the simple reason it did not exist at the time.

What some of my Democratic colleagues are trying to do is hold Judge Gonzales responsible for a memorandum he did not write and that came from the Justice Department which he did not direct.

The Bybee memo asks an important question: What is torture? This is a critical question to ask in the middle of a war on terror in which our enemies have made it clear that they will not observe the Geneva Conventions or any other rule of civilized conduct. Judge Gonzales received the Bybee memo, but some of my friends across the aisle are almost suggesting that he actually wrote it. He did not. He had nothing to do with it. In fact, they criticize him because they believe he did not object to the memo at the time he received it. But the fact is, we do not know what his private legal advice was to the President on the Bybee memo because that advice is privileged advice. And Presidents do not want their counsel divulging privileged advice.

In fact, we should think twice before we ever proceed down the path of attempting to require the White House Counsel to divulge to the Congress in an open hearing precisely what legal advice he gave to the President on an inherently sensitive matter such as those that directly relate to national security.

When all is said and done, Judge Gonzales did not supervise Jay Bybee. He did not supervise Attorney General Ashcroft. It was not his job as White House Counsel to approve of memos written by the Justice Department. And that memo of February 7 said the detainees should be treated humanely. That was the President's position.

I have a lot more I want to say about this, but I notice the distinguished Senator from New York is here and wanted to say a few words before we break for lunch. I will interrupt my remarks. I couldn't interrupt a few minutes earlier. I will come back to this subject.

I hope the Chair will allow the senior Senator from New York to have a few extra minutes. I would be happy to sit in the chair, if needed. But I will relinquish the floor and ask unanimous consent if I can finish my remarks after the luncheon; is that possible?

Mr. SPECTER. Mr. President, we have consent following the lunch. I think the Senator from——

Mr. HATCH. Immediately after the consent order.

Mr. SPECTER. The Senator is entitled to finish.

Mr. HATCH. Especially being interrupted and accommodating colleagues on the other side. I would like to finish.

Mr. SPECTER. There had been a request for Senator MIKULSKI for 10 minutes right after lunch.

Mr. LEAHY. Yes, at 2:15. We don't have to break at 12:30. We could continue on. I was off the floor. What was the request?

Mr. SCHUMER. Will my colleague yield for a minute?

Mr. LEAHY. I don't have the floor.

Mr. SPECTER. Mr. President, will the Senator from Utah be willing to await the completion of the remarks of Senator MIKULSKI for 10 minutes at 2:15 and Senator SCHUMER at 2:15 and then he will resume his remarks?

Mr. HATCH. Following Senator MIKULSKI?

Mr. LEAHY. If the Senator will withhold, how much longer does the Senator from Utah have?

Mr. HATCH. I have a little bit more. It could be as long as a half hour.

Mr. SPECTER. My unanimous consent request is that at 2:15, when we resume, Senator MIKULSKI be recognized for 10 minutes and Senator SCHUMER be recognized for 10 minutes and then Senator HATCH be recognized to conclude his remarks, then Senator CORNYN be recognized, and then Senator KENNEDY be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, it would be Senators SCHUMER, HATCH, CORNYN, and KENNEDY?

Mr. SPECTER. It would be Senators MIKULSKI, SCHUMER, HATCH, CORNYN, and KENNEDY.

Mr. LEAHY. I have no objection.

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

Mr. SPECTER. I thank the Chair.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will recess until 2:15 p.m.

There being no objection, the Senate, at 12:30 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF ALBERTO R. GONZALES TO BE ATTORNEY GENERAL—CONTINUED

The PRESIDING OFFICER. Under the order of recognition, Senator MIKULSKI is recognized for 10 minutes, Senator SCHUMER for 10 minutes, followed by Senator HATCH, Senator CORNYN, and Senator KENNEDY, with no time limit agreed to for Senator HATCH, Senator CORNYN, and Senator KENNEDY.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the agreement is to have Senator MIKULSKI recognized for 10 minutes and Senator SCHUMER for 10 minutes. There is no time set when Senator HATCH resumes, and then Senator CORNYN is in line, and then Senator KENNEDY is in line. It is my hope we will be able to get a consent agreement for the full debate time early this afternoon when that appears to be appropriate.

Senator MIKULSKI, under the unanimous consent agreement, now has 10 minutes.

The PRESIDING OFFICER. The Senator from Maryland.