29 other States it has already reached a crisis point. Seventy percent of doctors who have practiced in Tennessee for more than 10 years have had a claim filed against them. Does that mean that 7 out of 10 doctors in one State are conducting malpractice, bad health care? No, of course not.

If one looks at the studies of obstetrics, OB/GYN, 92 percent have had a claim against them. That is 9 out of every 10 doctors who have been delivering babies for more than 10 years. For cardiac surgeons, heart surgeons, not a higher risk but in some ways a higher risk field, one of the more common operations done across the country today is cardiac surgery—92 percent out of the physicians, 9 out of 10 physicians who have practiced more than 10 years, have had a suit filed against them.

Average malpractice insurance premiums have increased, so it is a problem, but it is a problem that is getting worse. Look over the last 5 years; these premiums have increased by 84 percent. The premiums go up because when the frivolous lawsuits increase, it creates a heavier burden and that is passed on, of course, to physicians. In Tennessee, OB/GYNs can expect to pay $60,000 a year in insurance premiums; heart surgeons, about $55,000; and general surgeons, $40,000. All of that is high. That is just to pay for the insurance. Remember, Tennessee is not yet a crisis State. If a doctor is in Pennsylvania, Ohio, or down in Florida, they are paying two to three times that. Some neurosurgeons, trauma surgeons, are having to pay insurance of $300,000, some even $400,000, a year for the privilege of taking care of people in the event there is an accident.

Dr. Martin Olsen, chair of OB/GYN division at East Tennessee State University, reports that their clinic in the rural town of Mountain City, TN, had to shut down because of unaffordable insurance costs. Cocke County meanwhile has lost 7 of its 12 doctors who deliver babies.

The problem is not limited to Tennessee. It is not even limited to the practice of medicine. I use that as an example because the impact these litigations costs and frivolous lawsuits have on medicine and health care is so dramatic to me as a physician, as I look at my physician colleagues.

Across the country, American businesses, doctors, plaintiffs, court systems, and taxpayers, are all being victimized by frivolous litigation, by out-of-control litigation. Now is the time to change that. That opportunity is before us.

In 2003, the tort system cost about $250 billion overall. Much of that, maybe half of that—I do not even know what the figure is—is obviously well spent. What we want to do is squeeze the waste, the frivolous lawsuits, out of the system. That figure of $250 billion means of an unnecessary tax of about $850 for every man, woman, and child. So it is bad now. At the current rate of increase, which outpaces the growth of our GDP, gross domestic product, it is estimated that per capita cost will go above $1,000 by 2006. That means for a family of 4, there is a tort tax of about $4,000.

The tort system accounts for about 2.23 percent of our GDP. That is equal to the entire economy of the State of Washington or more than that of the State of Tennessee, my own State. Where does all that money go? Unfortunately, less than half of it gets to the victims, the people who have been victimized and hurt. They need to be fully compensated. We all agree with that. The problem is, less than half of the money goes to the victims, which is the purpose of the tort system, and the other half of it goes to administrative costs and, of course, to the trial lawyers, the personal injury lawyers.

There are lots of different examples. Take the case of the Coca-Cola apple juice dispute. It is really on the apple juice end of this, that the plaintiffs' lawyers charged that the drink company was improperly adding sweeteners to its apple juice. So as compensation, the attorneys managed to secure a 50-cent coupon for each of the apple juice victims while at the same time the lawyers walked away with $1.5 million for themselves.

The system is out of balance. We will bring it back into balance. Small businesses get dragged into this irrational tort system. There is example after example that we all have. The system clearly needs to be reformed. Cherry-picking favorable counties to land billion-dollar settlements undermines the core principles of our legal system. Those principles are fairness and equity. These are the sorts of issues that the Judiciary Committee will be addressing tomorrow in committee and that we will be addressing on the floor of the Senate next week.

As our distinguished colleague from New York, Senator SCHUMER, has explained on the Senate floor, too many lawsuits are filed in local courts that have no connection to the plaintiff, the defendant, or the conduct at issue. If the case affects the Nation as a whole, it should be heard in a Federal court.

We have other areas of litigation that need to be addressed and hopefully will be addressed in the near future. Asbestos litigation has bankrupted 70 companies; 18 companies have been bankrupted in the last 24 months. It means job losses—60,000 jobs have been lost, with billions of dollars taken out of our economy without the patients or individuals with cancer being adequately compensated in a timely way. So squeeze the waste and abuse and in some cases the fraud out of the system—that is our goal—and return these systems back into systems of integrity.

I am very excited about where we are going in terms of addressing the tort issues in a balanced, bipartisan way. We will justly compensate those who have been injured by careless or reckless actions, and we want to hold those who commit these actions to account.

Since our country's founding, the tort system often has been a force of justice and positive change, but today that justice is being junked by trial attorneys looking for these multimillion-dollar windfalls, and that is what we need to address. We will take action to end the abuse in these lawsuits on the floor of the Senate. It will be done for the sake of true victims who deserve fair compensation, for the prosperity and health of our people, and for the integrity of our Government.

I yield the floor.

EXECUTIVE SESSION

NOMINATION OF ALBERTO R. GONZALES TO BE ATTORNEY GENERAL

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

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

The PRESIDENT pro tempore. Under the previous order, the time until 4:30 p.m. shall be equally divided for debate between the Senator from Pennsylvania, Mr. SPECTER, and the Senator from Vermont, Mr. LEAHY, or their designees.

The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, the division basically is going to be from 9:30 we will have Republican speakers and from 10:30 to 11:30 there will be Democratic speakers and then we will be going back and forth.

I am pleased to be able to open today's discussion on the nomination of my friend, Alberto Gonzales. I am pleased because I know Alberto Gonzales personally and have been able to work with him both during the time he was a distinguished supreme court justice in my home State of Texas, and as White House Counsel.

As the senior Senator from Texas and formerly the junior Senator from Texas, I have had a lot of commerce with Alberto Gonzales. I can tell the American public without reservation: He is honest. He is a straight shooter. He has told me some things I didn't want to hear on more than one occasion. But I was absolutely assured that he was doing what he said he was going to do and that he had reasons for what he did.

On the other hand, I have been able to persuade him on issues where our views differed, because he listened. He is not rigid and impenetrable, as some people have described him. Again, he is a person who listens, who is thoughtful, who is a straight shooter, and someone for whom I have the utmost respect.

I am proud to be able to start the floor debate today on Alberto Gonzales, who was nominated and is to be confirmed as Attorney General of the United States.

Alberto Gonzales is the American story. He is the American dream. He is the American dream, not because he wants his piece of the pie. He is the American dream because he worked hard, never complained. Without many advantages growing up, he persevered, maintained a positive spirit, and it is fair to say, Alberto Gonzales made it. He made it on his own because he prepared himself and because he didn't act like a victim. He understood that this country is filled with opportunities and he took responsibility and seized that opportunity.

He grew up in Humble, TX. Alberto Gonzales was one of seven siblings living in a two-bedroom house that was built by his father and his uncles. His father was a migrant worker, as was his mother. They did not have an education beyond elementary school. But Judge Gonzales learned through his parents' example that, with dreams and commitment and hard work, you can be rewarded in this country.

He excelled in the public schools around Houston, TX. He was a star. He was a star on his own merit because he studied, worked hard, and was always looking for that extra thing he could do to make himself better. Because of that, he was accepted into one of our Nation's most prestigious universities, Rice University in Houston, TX.

He was not only a graduate of a great university, he was the first person in his family to graduate from college and from a great university such as Rice. From there he went on to Harvard Law School, where he earned his law degree. He served in the Air Force. He was a partner at Vinson & Elkins, a prestigious international law firm. He then became general counsel to Governor George W. Bush, and that is where they came to have the bond that has been so important in their relationship through the years.

Then-Governor Bush appointed Alberto Gonzales to be secretary of state of Texas. The secretary of state is the person in charge of running elections, making sure we have fair elections in Texas and that the elections are well publicized so we would have a strong voter turnout. He also served as Governor Bush's liaison to Mexico.

It has become a tradition of Governors in our State to have a secretary of state who will work on border issues and issues with Mexico, because that is such an important bilateral relationship for our State as well as our Nation.

Then Governor Bush appointed Alberto Gonzales to the Supreme Court of Texas. He had a distinguished career. He gained experience and respect every step of the way. When the George W. Bush became the President, he brought Alberto Gonzales with him to Washington to be his White House Counsel.

As White House Counsel, the President wanted someone he could trust and someone who knew the law, someone he knew was smart, would do thorough research, would not shoot from the hip. He wanted someone who could be a steady hand at the wheel in the White House Counsel's Office. So, Alberto Gonzales came to the White House with the President and did an outstanding job as White House Counsel, and adviser to the President. He made sure the President knew all of the options and his perspective, but also provided him with the views and perspectives of others. This is very important.

I think Alberto Gonzales sometimes, because he is so fair-minded, would give the President options even though he personally disagreed with some of them. That is what made him such a trusted lawyer for the President. He wanted the President to make the decisions and he wanted the President to make the decisions with the best possible information he could have—whether he believed in that particular option or not. His loyalty to the President was, of course, absolute.

Judge Gonzales answered a very important question about his service as White House Counsel as opposed to the different role he would have as Attorney General. I think it is important because I think some of the criticism that has been made in the Senate Judiciary Committee and on the floor has revolved around the role of a White House Counsel and the very different role that the Attorney General of the United States would play. Alberto Gonzales understands the difference. He knows there is a difference. He agrees that there is a difference.

As White House Counsel he had one role, loyal adviser to the President of the United States, and he fulfilled that role superbly. He gave the advice; he gave different options; he let the President make the decisions. But he knows that the Attorney General of the United States is not just loyal to the President. Of course, he is in the President's Cabinet. Of course, he will be loyal to the President. But that is not his primary function. I want to read his response because it addresses exactly what the Attorney General's role should be, in my opinion. I agree with Alberto Gonzales, and I think he is right on the mark.

> I do very much understand that there is a difference in the position of Counsel to the President and that of the Attorney General of the United States. . . . As Counsel to the President, my primary focus is on providing counsel to the White House and to White House staff and the President. I do have a client who has an agenda, and part of my role as counsel is to provide advice so that the President can achieve that agenda lawfully. It is a much different situation as Attorney General, and I know that. My first allegiance is going to be to the Constitution and the laws of the United States.

Judge Gonzalez in a written response later said: ''All government lawyers should always provide an accurate and honest appraisal of the law, even if that will constrain the Administration's pursuit of desired policies.''

Judge Gonzales said if he becomes Attorney General, he will no longer represent only the White House, he will represent the American people. He is absolutely right on that point. That is what all of us expect and that is what he intends to deliver.

I think it is the most important point.

As we look at history and as we look at past Attorneys General, sometimes the impression is that an Attorney General is only loyal to the President. Of course, the Attorney General will be loyal to the President, but that will not override his loyalty to the Constitution, the law, and the American people.

Of course, the President too wants to do what is right for the American people. But the Attorney General is the one who will make the determination if something is lawful. And I know that Judge Gonzales will do a great job in representing the law and the American people.

I am disappointed some have suggested that maybe Judge Gonzales has not been responsive enough in his confirmation hearings about his role as White House Counsel. He was at the committee hearings for over 6 hours of questioning, and 450 questions were submitted to him after the hearings. He answered all of them—over 200 pages of single-spaced responses to Senators.

To put this in context, President Clinton's nominee, Janet Reno, received 35 questions. Alberto Gonzales received 450 questions.

I think it is a very important point to make that Judge Gonzales has been forthcoming. He has answered every question, either in the open forum, or in 6 hours of hearings, or in the 200 pages of written answers to questions that were submitted after the hearings by Senators. No one can claim this man has not been forthcoming.

In an article in the December 25, 2004, Christmas Day, Houston Chronicle entitled, ''A Dem on Gonzalez,'' a Democrat and former colleague of Judge Gonzales, Lynne Liberato, now a partner in the Houston office of Haynes and Boone wrote: '' . . . in the back of my mind [over the past four years] I have taken solace in the fact that the President had an adviser like Al. Certainly, I wish he were a Democrat, appointed by a Democratic President. But we lost. This President has the right to appoint the attorney general, and I do not think the President could have done better.''

In addition, I have to say how very impressed I am with the new Senator SALAZAR from Colorado, who I am told made a speech in his caucus yesterday in which he said, Please vote for Alberto Gonzales. I do not know firsthand what he said or exactly what his words were, but Senator SALAZAR has taken a position on principle. He took a position on principle on behalf of Dr. Condoleezza Rice and has done so with Alberto Gonzales. I must say I respect and admire his willingness to step up to the plate and talk about the record

and the principle of giving the President his nominee, and I commend Senator SALAZAR for that bipartisan effort.

I hope my colleagues will not use this debate to continue to attack the President. I hope today is filled with speeches about Alberto Gonzales, about his qualifications, and about his background. I hope we will stay on the issue of Attorney General of the United States. I have seen the rhetoric go in a different direction, both for Secretary of State Dr. Condoleezza Rice and for our nominee for Attorney General, Alberto Gonzales. I don't think this is the time to be attacking the President. There is plenty of opportunity to disagree with the President of the United States. Our duty today in this body is to give advice and consent on the nomination of Judge Alberto Gonzales to be Attorney General of the United States.

I am very hopeful we will be able to take this opportunity to do the right thing, to confirm Judge Gonzales as Attorney General of the United States, the first Hispanic American who will hold the office of Attorney General. He is a remarkable leader. He has shown great strength and resolve during a difficult time for our country. Furthermore, he has a record of public service over years that shows his remarkable character. He is a man who will be a great Attorney General of the United States.

I think it is going to be a very important vote that we will see tomorrow.

I hope during the debate yesterday the Democratic colleagues decided they will say their peace, hopefully on the merits or whatever they think of the qualifications of Judge Gonzales, and I hope the vote will come soon. We need to allow the President to fill his Cabinet so they can take over in a reasonable time frame.

I hope we can have the full debate today. It would be my hope we would have an early vote tomorrow. If people do not have anything else to say, let us have a vote. Let us allow Alberto Gonzales to be confirmed and take the oath of office and get about the business of our country.

There is no reason to hold him up. He is going to be confirmed. I think it was a mistake to hold Condoleezza Rice for hours and hours and hours. It was not the right thing for our country. I hope that for Alberto Gonzales we realize there is going to be a huge responsibility on his shoulders and he needs to be able to start. He needs to put a deputy in place, to see what is happening in the Department and have the time to make the appropriate adjustments. The Attorney General of the United States is essential to an efficient Justice Department. There are many issues he faces. The sooner he gets started, the better.

I hope the President's State of the Union speech tonight will allow him to lay out his case for the future of our country, and then I hope we can early tomorrow confirm Alberto Gonzales to be Attorney General of the United States.

I am very pleased one of our new Senators from the State of Florida has arrived on the floor. He is certainly a person, having served in the President's Cabinet, who knows how important it is to have a fair discussion and then go forward.

I would like to yield the floor to Senator MARTINEZ.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Florida is recognized.

Mr. MARTINEZ. Mr. President, good morning.

I ask unanimous consent to deliver a portion of my remarks in Spanish, and that a copy of my speech in English and in Spanish appear in the RECORD.

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

Mr. MARTINEZ. Mr. President, I rise today in support of the nomination of Judge Alberto Gonzales to be our next Attorney General of the United States.

As a freshman Senator, I was frankly hoping to wait a little longer before speaking for the first time on the Senate floor. It is a privilege I take very seriously. However, I could not fail to speak in defense of Judge Gonzales. I am disappointed that he has been the subject of such partisan attack, and today I rise in the defense of a good man and a good friend.

Al Gonzales is a very dedicated public servant and exceptionally qualified to serve our Nation as our next Attorney General.

In January of 2001, President Bush chose Judge Gonzales to be Counsel to the President, and he has served his Nation well in that position.

Judge Gonzales was appointed to the Texas Supreme Court in 1999, and from December of 1997 to January of 1999, he served as Texas's 100th Secretary of State.

I am so proud.

Judge Gonzales also has received a number of awards. He was inducted into the Hispanic Scholarship Fund Alumni Hall of Fame in 2003, and he was honored with the Good Neighbor Award from the United States-Mexico Chamber of Commerce.

I was honored when he and I both received the President's awards from the United States Hispanic Chamber of Commerce and from the League of United Latin American Citizens, probably the largest Hispanic organization in America.

These are just a handful of many professional accolades Judge Gonzales has been awarded over the course of his very distinguished career.

I know a lot has been said about Judge Gonzales's life story. It is a story of the fulfillment of the American dream. It is a story that resonates with all Americans, but especially with Hispanic Americans. We view his story with pride and many view it with hope for their own lives.

As a fellow Hispanic American, I want to put this nomination of Judge Alberto Gonzales in a very specific perspective. Our Hispanic community has broken key racial barriers in both Government and industry. I am so proud to have been part of that progress, thanks to the help of many who have opened doors and others who have been enlightened enough to make opportunities available to Hispanic people in America.

I was honored to serve as this Nation's twelfth Secretary of Housing and Urban Development. I am thrilled to represent the great State of Florida as our Nation's first Cuban-American Senator. It is a wonderful honor, but I also feel a tremendous weight of responsibility from that very important opportunity.

In the case of Attorney General, no Hispanic American has ever been in the position of Government at that level. No Hispanic American has ever served in one of the four premier Cabinet positions. I have sat at that Cabinet table, and I know what an immense privilege it is to sit in with the Counsel of the President of the United States. But I also know very well that there are four seats at that Cabinet table that have never before been occupied by a Hispanic. They are the Secretary of State, Secretary of the Treasury, Secretary of Defense, and Attorney General. These are the original Cabinet positions. These are the positions that are at the heart of the most important positions of our Government. Never in the history of our Nation has the Hispanic American or Latino had the opportunity to occupy that seat. Judge Gonzales will be the first Hispanic American to serve in one of the Cabinet's top four positions when he becomes our next Attorney General. This is a breakthrough of incredible magnitude for Hispanic Americans and should not be diluted by bipartisan politics.

Judge Gonzales is a role model for the next generation of Hispanic Americans in this country—a role model to our young people who, frankly, have too few.

Just this past weekend, Congresswoman SUE KELLY was relating a story to me of something that happened with her recently at a school she was visiting in her district. She told me of something that I know to be a fact; it has happened in my own life. She said, While I was visiting there, one of the young people came to me, a Latino, a Hispanic, a young person, and said to me, Do you know we now have our own Senator. That young person was speaking of me or perhaps of Senator SALAZAR from Colorado. But this young person knew and took pride in the fact that we were here as role models for them, as someone who could signal the opportunities that lie ahead in their own life. Attorney General Gonzales will resonate through the Hispanic community just as he has resonated throughout our community; that he has been the President's lawyer—not an insignificant thing for him to have done.

He is already and will continue to be an inspiration to these young students.

There will be Hispanic boys and girls across the country who will now aspire to be lawyers because of Judge Gonzales's example of what is possible and how it is possible that someone with his very humble beginnings could achieve all he has achieved if only they dare to dream in our great Nation.

And to Hispanic Americans throughout our Nation:

Y a los Hispano-Americanos a lo largo y ancho de esta gran nacion: tanto a nuestros niños, como a nuestros estudiantes de Derecho y los padres y abuelos que han venido a America a crear una vida mejor para ellos y sus familias, hoy les tengo un mensaje:

El Juez Gonzales es uno de nosotros. El representa todos nuestros sueños y esperanzas para nuestros hijos. Debemos reconocer la importancia de este momento—sobre todo para nuestra juventud. No podemos permitir que la politiquería nos quite este momento que nos enorgullece a todos. Apoyemos a Alberto Gonzales.

From our schoolchildren, to law students, to parents and grandparents who came to America to create a better life for themselves and their families in the United States, I have this message for you today: Judge Gonzales is one of us. He represents all of our hopes and dreams for our children and for all of us as Hispanic Americans. Let us acknowledge the importance of this moment, especially for our young people. We cannot allow petty politicking to deny this moment that fills all with such pride. Let us all support Alberto Gonzales.

I am honored to have my first remarks on the Senate floor be in praise of a friend, Alberto Gonzales, to be our next and I think exceptional Attorney General. Not only have I known Mr. Gonzales as a colleague in government service where I have known of his incredible dedication, the incredibly long hours he has put in, the very difficult days we all faced in the days following the tragic moments after September 11 when our Nation was attacked, the tremendous weight of responsibility that fell on him in the months and years that came after that, but I look forward to casting my vote in the Senate for our Nation's first, and in this historic moment, our next Attorney General, the first Hispanic to occupy that office.

I urge my colleagues to vote in favor of Judge Gonzales's nomination. I urge them to rise above the moment to see the greatness of this opportunity, to not lose this moment that we can all make history.

We can all make history. I look forward to being a part of that with my vote for Judge Gonzales.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. I congratulate our new colleague, Senator MARTINEZ, on his initial speech in the Senate. I bet the Senator will be cited by Senator BYRD who is an encyclopedia of statistics. I am sure this is the first time we have had a bilingual speech in the Senate.

I say to my colleagues, the Senator could not have picked a more important topic upon which to first speak on the Senate floor. We are grateful he is here. We listened carefully to every word, and we thank you for what you are doing for the nominee.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, while the Senator from Florida is still in the Senate Chamber, I congratulate him for his first speech in the Senate. I have come to know him as an exceptional public servant. It is fitting he should speak to this issue, the nomination of Judge Alberto Gonzales to be Attorney General of the United States in his first speech. Frankly, I am honored to follow his remarks. They will be not nearly as eloquent, but I hope, nevertheless, persuasive in support of Judge Gonzales's nomination.

This is a historic opportunity for America, and especially for me and the constituents in my State, so many of whom are Spanish, are Hispanic, and can understand how significant it is for a young man to rise literally from Humble, TX, where Alberto Gonzales grew up, to reach the pinnacles of power in American Government. They know it does not come easy. Many of them have suffered the same kind of background that could limit a person like Alberto Gonzales but in his case did not because of the support and love of his family and the strength and fortitude that he characterizes and the hard work that enabled him to progress from these humble beginnings, literally in Humble, TX, all the way through our finest educational institutions into one of the finest law firms of this country, and eventually into government when then-Governor George Bush discovered this fine young lawyer and asked him to fill a number of appointed positions in the State of Texas.

I was struck by one of the stories that has probably been repeated. It bears repeating. Senator SALAZAR, in introducing Alberto Gonzales to the Judiciary Committee, on which I sit, for his hearing, related the story of how Judge Gonzales had recalled in his upbringing the fact that during his high school years he never asked his friends to come over to his house because, he said: 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.

That is the situation in which this young man grew up. Yet, as I said, he was the first person in his family to go to college. He ended up graduating from Rice. As a young man he sold pop in the grandstands, dreaming one day of attending that university and graduated from Harvard Law School. After joining a prestigious law firm in Texas, he caught the eye of George Bush, who appointed him general counsel and then secretary of state, and eventually to the Supreme Court of the State of Texas and, of course, as counsellor to the President of the United States when he was elected President.

President Bush has had the opportunity to take the measure of this man and to work with him over many years and to appreciate the talents he can bring to the Department of Justice of the United States. Frankly, it is for that reason I think even though some on the other side of the aisle have reservations about Judge Gonzales, they certainly ought to give this man the benefit of the doubt. If anyone deserves the benefit of the doubt it is a person like Alberto Gonzales.

Is he perfect? No; none of us are. It seems to me the President, having known this man for so long and having relied upon him personally, would be given some deference in the selection of his nominee, especially given the fact that against great odds Alberto Gonzales has achieved so much in his life.

One word about some of the opposition. I don't think people who are watching should be overly concerned about the attacks relating to the subject of terror with respect to Judge Gonzales. They have nothing to do with Judge Gonzales. Their way of articulating frustration and opposition to the President's policies with respect to the war in Iraq—and it is unfortunate that sometimes these political statements and opposition are reflected in the context of a nominee for office—this is an opportunity for members of the opposition to make their case against the President when they have an opportunity to speak to the Secretary of State's nomination or the Attorney General's nomination or other public officials.

But it is too bad for those public officials because, as I said in the case of Alberto Gonzales, most of what has been said has nothing to do with him. He is accused in one case of offering advice to the President with respect to a treaty, and that advice was absolutely correct. In the other case, he is accused regarding the content of a memo he did not author, and therefore it is not his responsibility.

Do not be deceived by some of these discussions that might cause you to wonder what does this subject of terror have to do with Judge Gonzales. In this case, the answer is essentially nothing.

Back to the point that was the central theme of the Senator from Florida, there are a lot of people in this country who are qualified to be Attorney General of the United States—a relatively small number but nevertheless a lot of people the President could have chosen. It is significant he chose Alberto Gonzales. He is clearly qualified. When someone is qualified and has the confidence of the President, as Alberto Gonzales does, it seems to me those in this body—unless there is some highly

disqualifying factor brought to our attention—should accede to the President's request for his nomination and confirm the individual.

There is an extra special reason this is meaningful to me. That is because of the number of Hispanics in my State of Arizona and their aspirations and their pride at the achievements they have accomplished.

As the Senator from Florida pointed out, it is important for this country to recognize the kind of talent Alberto Gonzales represents and to hold that up as an inspiration to young people to let them know, regardless of their race or ethnicity, if they work hard, even when they come from humble beginnings, this country offers opportunities that are not available in any other country, and regardless of their background they have the opportunity to become the Attorney General of the United States of America.

That is a tremendous testament to this country. It is a testament to the Senate which has allowed people like Alberto Gonzales to have an opportunity, to the President for his perspicacity in nominating such an individual for Attorney General. It would be a very strong message not only around this country but around the world for the Senate to confirm the nomination of Alberto Gonzales as Attorney General of the United States.

Mrs. HUTCHISON. Mr. President, I thank the distinguished Senator from Arizona, a member of the Judiciary Committee, who has done a wonderful job on that committee. It is a tough committee, but he has done a terrific job. That was an outstanding statement on behalf of Alberto Gonzales.

Looking at this man's incredible background and how far he has come clearly shows the great country that America is and the great perseverance and intellect that Alberto Gonzales has.

I yield the time he may consume to the Senator from New Hampshire, Mr. GREGG.

Mr. GREGG. Mr. President, it is a pleasure to rise today in support of a native son of Texas. The Senator represents Texas so well in this Chamber.

Alberto Gonzales, as has been outlined by many of the speakers, is an American success story. What an incredible story. There is no point in plowing ground that has already been plowed numerous times, but still it is nice to see this happen. It is nice to see someone of such extraordinary capability rise to such success. It is the American way to reward ability. We as a nation open our arms to people who are productive, concerned citizens who are willing to give of themselves not only to produce a better life for them and their family but also to produce a better life for their fellow citizenry, which is exactly what Judge Gonzales has done.

With his talent he could have simply gone out and made a huge amount of money. The dollars that might have been available to him in private practice, it is hard to anticipate how much that would be, but it would have been considerable. Instead, at considerable financial sacrifice, I suspect, he has been willing to participate in public service. He has excelled at it both as a judge in Texas and as a counsel to the President in Washington.

Now he has been put forth as the nominee of the President to serve as Attorney General. I think it is an unfortunate reflection of the partisanship on the other side, to be very honest, that his character has been impugned, that his purposes have been impugned, that his integrity has been questioned, and that his record of commitment to public service has been brought into question, not necessarily, I think, because of what he has done, because what he has done has been as an extraordinarily successful public servant and exceptional justice, an exceptional counsel to the President, but simply because I believe Members on the other side wish to highlight their political differences, using Judge Gonzales as their stalking-horse to accomplish that, and have been willing to attempt to undermine such an American success story for the purposes of promoting what amounts to petty political gain.

It is unfortunate, unfortunate indeed, because the office of Attorney General has a tradition in this Nation, and especially in the post-World War II period, of being an office which has always had appointed to it high-quality individuals who have been very close to the Presidency. That also is a logical choice.

I think it is important to focus on that fact, that the Attorney General's position, in the post-World War II period at least, has been a position which has come to play a little different role than maybe it has historically played in the sense that it has been a position where Presidents have chosen people who they have had absolute personal confidence in, not people who necessarily are chosen because they balance a political ticket or political theme or regional need. The importance of having an Attorney General in whom a President has confidence has been the critical element of choosing that individual.

I guess the best example of that, of course, is the Presidency of John Kennedy, when he chose his brother Robert Kennedy, who clearly had very little experience. He had, of course, been counsel for hearings here in the Senate dealing with corruption and labor corruption issues involving the Teamsters Union, but he had not had a great breadth of experience. He was a fresh face, to be kind, in the area of public policy. He was chosen by President Kennedy, which was a choice of significant implications in that the President of the United States would actually choose his brother to serve as Attorney General.

It turned out to be a great choice. Robert Kennedy was probably one of the strongest and most effective Attorneys General, certainly of that period, who drove a great deal of the important issues that were decided in the area of civil rights and in the area of fighting corruption, especially organized crime, organized crime in labor union activity.

The reason that Robert Kennedy is sort of the prototypical appointment in the post-World War II period is because it reflected the fact that the President, President John Kennedy, felt so strongly that he needed in the Attorney General's position someone in whom he had absolutely unequivocal confidence and who was going to be there as an assistant and as a force to carry forward his policies.

That attitude has moved forward throughout this period. Attorney General Reno, who I had the opportunity to work with extensively during her term in office, initially started out in that role also, I believe. Certainly John Ashcroft has had that position. Now, in sort of a restatement, in a way, of the Robert Kennedy role, President Bush has chosen his closest legal adviser, Alberto Gonzales, who has a much stronger résumé than Robert Kennedy had but who has the same historic position in that he is going to be able to carry forth the decisions of this President and operate as a confidant of this President in a manner which is uniquely important to the Attorney General's role.

Obviously, the Attorney General has an obligation to be the law enforcement officer of our Nation, to be a fair arbiter, to be a spokesperson who has integrity on issues, and to speak clearly to the administration of what is right and wrong, and how it should move forward effectively on issues, in a way that does not compromise the administration. Judge Gonzales has done that. He has done that time and time again in his role as White House Counsel. He understands his new role as Attorney General in that context.

But the attacks on Judge Gonzales do not go to this role, they go more to a disagreement which people from the other side have over this administration's policy relative to Iraq in an attempt to bootstrap Judge Gonzales's nomination into a major confrontation on the issues of whether we are doing correct things in Iraq. That, to me, is inappropriate relative to the confirmation process.

There is no question we should debate Iraq. That should be a matter of open and continuous debate in this Senate. It is the most important international policy issue we have going on today. I have no hesitation about debating it. But I do not believe we should use an individual who is a nominee for a major office within the Cabinet as a stalking-horse for the purposes of making attacks on the Presidency, unless there is some clear relationship there. In this case there is none that is so substantive and appropriate that it rises to the level of opposition of the

Attorney General nominee, in my opinion.

The individual we have before us as a nominee, Judge Gonzales, is such a unique and extraordinary success story, who so eloquently defines the American dream, as we all love to profess to our different constituencies, to talk about how people succeed in attaining the American dream. Whenever I go into a classroom, especially an elementary or middle school classroom, I talk about how you can be anything. All you have to do is work hard, stay in school, study hard, and make a commitment to being an honest person, a person who has high values, and a person who is committed to working hard, and you can accomplish just about anything.

That is what we say to our youth in this country. That is what we say to people who come to our land as immigrants. Judge Gonzales personifies that statement. For some Members of this Senate to be taking such a negative approach in addressing his nomination, and defining his individual characteristics as not fulfilling those concepts of the American dream is, I think, a disservice to the people who, like Judge Gonzales, have succeeded in America.

This is a unique person whom we are very fortunate to have as a nominee to be Attorney General of the United States. His confirmation will stand as a statement of opportunity to tens of thousands, hundreds of thousands, potentially millions of Americans, especially Americans who have come here from Hispanic cultures, that America is a land of opportunity, that the American dream does exist for you, that if you work hard, that if you are a person of integrity, that if you commit yourself to your goals, you can succeed, and America will reward you in that success and acknowledge it.

So I believe very strongly that the choice of Judge Gonzales is an extraordinarily strong one, that it is consistent with the tradition of Attorney General choices in the post-World War II period, and that, more importantly, it is a statement by this President that he understands the American dream is personified in Judge Gonzales, and that it should be rewarded and should be respected.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I yield the remainder of the Republican time to the distinguished Senator from Georgia, Mr. CHAMBLISS, and I ask unanimous consent that he be allowed to speak until 10:32 or until the Democrats arrive.

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

The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I thank the Senator from Texas for her great leadership on this issue, particularly organizing the support on the floor this morning for Judge Gonzales.

I do rise in support of Alberto Gonzales to be confirmed as the next Attorney General for the United States. I had the pleasure of serving on the Judiciary Committee for the past 2 years, having gone off at the beginning of this session. But during the course of my 2 years as a member of the Judiciary Committee, I had the opportunity to be involved in the hearings, the discussions, and the review of a number of issues to which Judge Gonzales has spoken during the course of his confirmation process.

One of those issues is the administration's policy on torture, for which the judge has been unduly criticized by folks who are in opposition to his nomination. I want to respond to some of the ridiculous accusations of those who are opposed to this confirmation, and talk about some of the actual facts involved, which seem to be missing from the conversations on the floor coming from his critics and from those who are opposed.

I do not think Judge Gonzales nor could the administration be more clear than they have been on the policy and the subject of torture. As President Bush stated at his January 26, 2005, press conference:

> Al Gonzales reflects our policy, and that is we don't sanction torture.

In all of his statements and responses, Judge Gonzales has emphasized that there is a distinct difference between what the law would allow and what the administration policy is. No matter how the obligations of the United States under the Constitution, treaties, and various statutes have been interpreted, the President has said he would never order or condone torture. That is the policy. That is what Alberto Gonzales has represented and does represent today.

President Bush's February 7, 2002, memorandum to, among others, the Vice President, the Secretary of State, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence unequivocally required those detained by the U.S. Armed Forces to be treated humanely. The President stated:

> Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva. . . . I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, consistent with the principles of Geneva.

It could not be clearer. It absolutely could not be clearer. And it is not something that he said which is the subject of interpretation; it is something which the President committed to writing and for which Judge Gonzales stands.

Judge Gonzales has unmistakably, forcefully, and consistently made clear before, during, and after his confirmation hearing that it is not the policy of the United States to condone torture and that he personally does not condone torture.

At a June 22, 2004, press briefing, before his confirmation hearing—indeed, well before he was even a nominee—Judge Gonzales stated:

> The administration has made clear before, and I will reemphasize today that the President has not authorized, ordered or directed in any way any activity that would transgress the standards of the torture conventions or the torture statute, or other applicable laws.

He continued later:

> [I]f there still remains any question, let me say that the U.S. will treat people in our custody in accordance with all U.S. obligations including federal statutes, the U.S. Constitution and our treaty obligations. The President has said we do not condone or commit torture. Anyone engaged in conduct that constitutes torture will be held accountable.
>
> The President has not directed the use of specific interrogation techniques. There has been no presidential determination of necessity or self-defense that would allow conduct that constitutes torture. There has been no presidential determination that circumstances warrant the use of torture to protect the mass security of the United States.

I have several more pages of statements that were made by Judge Gonzales in his confirmation hearing that directly apply to this issue. They have been consistent. They have been very clear. They have been concise to the effect that Judge Gonzales has never condoned the use of torture. It is not the administration policy to condone torture. Why in the world folks on the other side continue to criticize this man for something he has not said or has not condoned should be pretty obvious to the American people. There is a reason for it, but the reason simply doesn't hold water.

Who is this man? That is the more important question. Who is Alberto Gonzales? Is he qualified to become Attorney General of the United States? Judge Gonzales grew up as a humble man. He is a Hispanic American who grew up, interestingly enough, in a two-bedroom house in Humble, TX, that his father and uncle built and where his mother still resides. His parents were never educated beyond elementary school, and he was the first person in his family to go to college. He is a graduate of Texas public schools, Rice University, and Harvard Law School.

Judge Gonzales served in the U.S. Air Force between 1973 and 1975 and attended the U.S. Air Force Academy between 1975 and 1977. He is married and has three sons. While his family lived in Houston, TX, he practiced with one of the best firms in America, and having practiced law for 26 years myself

and having associated with the firm of which he was a member, not knowing that in fact he was, I am very familiar with the firm. It is not just one of the best firms in Texas; it is one of the best firms in America. They don't hire lawyers who are not competent and capable to get the job done. That is exactly what Judge Gonzales is—competent and capable.

He was commissioned as Counsel to President George W. Bush in January of 2001, obviously showing what kind of confidence the President of the United States has in the man. Prior to serving in the White House, he served as a justice of the Supreme Court of Texas. Before his appointment to the Texas Supreme Court in 1999, he served as Texas's 100th secretary of state; that being from December of 1997 to January of 1999.

Among his many duties as secretary of state, he was a senior adviser to then-Governor Bush, chief elections officer, and the Governor's liaison on Mexico and border issues.

Simply stated, this man, unlike a lot of folks coming out of the same kinds of conditions in which he grew up, made a decision that he wanted to improve the quality of life for himself and for his family. He worked hard. He studied hard. He became a lawyer, something that nobody else in his family could ever do before him. He practiced law in one of the largest States in our country with one of the largest law firms in that particular State. He was a dadgum good lawyer. Obviously the President of the United States has confidence in him from the standpoint of looking to him for legal advice.

All of the criticisms directed at him have nothing to do with his ability to operate and practice as a lawyer, and in his capacity as Attorney General, he will be the No. 1 lawyer in the country. I submit to all of my colleagues that he is qualified for this job. I ask for their support of Judge Gonzales to be confirmed as the next Attorney General of the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, after every war, history is written. There are stories of courage, compassion, and glory, and stories of cruelty, weakness, and shame.

When history is written of our war on terrorism, it will record the millions of acts of heroism, kindness, and sacrifice performed by American troops in Iraq, Afghanistan, and other nations. And it will record as well the stunning courage of Iraqi men and women standing in line last Sunday, defying the terrorist bullets and bombs to vote in the first free election of their lives.

But sadly, history will also recall that after 9/11, and after the invasion of Iraq, some in America concluded our Nation could no longer afford to stand by time-honored principles of humanity, principles of humane conduct embodied in the law of the land and respected by Presidents of both political parties for generations.

Next to the image of Saddam Hussein's statue dragged from its pedestal to the dirt below will be the horrifying image of the hooded prisoner at Abu Ghraib, standing on a makeshift pedestal, tethered to electrical wires.

Alberto Gonzales is a skilled lawyer. His life story is nothing short of inspiring. I have the greatest respect for his success, for what he has achieved, and for the obstacles he has overcome.

But this debate is not about Mr. Gonzales's life story. This debate is about whether, in the age of terrorism, America will continue to be a nation based on the rule of law, or whether we, out of fear, abandon time-tested values. That is what is at issue.

The war in Iraq is more dangerous today because of the scandal at Abu Ghraib prison. Our conduct has been called into question around the world. Our moral standing has been challenged, and now we are being asked to promote a man who was at the center of the debate over secretive policies that created an environment that led to Abu Ghraib.

What happened at Abu Ghraib? What continues to happen at Guantanamo? What happened to the standards of civilized conduct America proudly followed and demanded of every other nation in the world?

Some dismiss these horrible acts as the demented conduct of only a few, the runaway emotions of renegade night shift soldiers, the inevitable passions and fears of men living in the charnel house of war. But we now know that if there was unspeakable cruelty in those dimly lit prison cells, there was also a cruel process underway in the brightly lit corridors of power in Washington.

At the center of this process, at the center of this administration's effort to redefine the acceptable and legal treatment of prisoners and detainees was Alberto Gonzales, Counsel to President George W. Bush. And with the skill that only lawyers can bring, Mr. Gonzales, Assistant Attorney General Jay Bybee and others found the loopholes, invented the weasel words and covered the whole process with winks and nods.

At the very least, Mr. Gonzales helped to create a permissive environment that made it more likely that abuses would take place. You can connect the dots from the administration's legal memos to the Defense Department's approval of abusive interrogation techniques for Guantanamo Bay, to Iraq and Abu Ghraib, where those tactics migrated.

Blaming Abu Ghraib completely on night shift soldiers ignores critical decisions on torture policy made at the highest levels of our Government, decisions that Mr. Gonzales played a major role in making. If we are going to hold those at the lowest levels accountable, it is only fair to hold those at the highest levels accountable as well.

Let's review what we know.

First, Mr. Gonzales recommended to the President that the Geneva Conventions should not apply to the war on terrorism. In a January 2002 memo to the President, Mr. Gonzales concluded that the war on terrorism ''renders obsolete'' the Geneva Conventions. This is a memo written by the man who would be Attorney General.

Colin Powell and the Joint Chiefs of Staff objected strenuously to this conclusion by Alberto Gonzales. They argued that we could effectively prosecute a war on terrorism while still living up to the standards of the Geneva Conventions.

In a memo to Mr. Gonzales, Secretary of State Colin Powell pointed out that the Geneva Conventions would allow us to deny POW status to al-Qaida and other terrorists and that they would not limit our ability to question a detainee or hold him indefinitely. So, contrary to the statements by some of my colleagues on the other side of the aisle, complying with the Geneva Conventions does not mean giving POW status to terrorists. Colin Powell knew that. The Joint Chiefs of Staff knew that. Alberto Gonzales refused to accept that.

In his memo to Mr. Gonzales, Secretary Powell went on to say that if we did not apply the Geneva Conventions to the war on terrorism, ''it will reverse over a century of U.S. policy and practice . . . and undermine the protections of the law of war for our own troops . . . It will undermine public support among critical allies, making military cooperation more difficult to sustain.''

The President rejected Secretary Powell's wise counsel and instead accepted Mr. Gonzales's counsel. He issued a memo concluding that ''new thinking in the law of war'' was needed and that the Geneva Conventions do not apply to the war on terrorism.

And then what followed? Mr. Gonzales requested, approved, and disseminated this new Justice Department torture memo. This infamous memo narrowly redefined torture as limited only to abuse that causes pain equivalent to organ failure or death, and concluded that the torture statute which makes torture a crime in America does not apply to interrogations conducted under the President's Commander in Chief authority. That was the official Government policy for 2 years.

Then relying on the President's Geneva Conventions determination and the Justice Department's new definition of torture, Defense Secretary Rumsfeld approved numerous abusive interrogation tactics for use against prisoners in Guantanamo Bay, even as he acknowledged that some nations may view those tactics as inhumane. These techniques have Orwellian names such as ''environmental manipulation.''

The Red Cross has concluded that the use of these methods at Guantanamo

was more than inhumane. It was, in the words of the Red Cross, ''a form of torture.''

We have recently learned that numerous FBI agents who observed interrogations at Guantanamo Bay complained to their supervisors about the use of these methods, methods which began at the desks of Alberto Gonzales and the Department of Justice, moving through the Department of Defense to Guantanamo Bay. In one e-mail that has been released under the Freedom of Information Act, an FBI agent complained that interrogators were using what he called ''torture techniques.'' This is not from a critic of the United States who believes that we should not be waging a war on terrorism. These are words from the Federal Bureau of Investigation.

Let me read the graphic language in an e-mail written by another FBI agent about what he saw:

On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they urinated or defecated on themselves, and had been left there for 18–24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. . . . On another occasion, the [air conditioner] had been turned off, making the temperature in the unventilated room well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his hair out throughout the night. On another occasion, not only was the temperature unbearably hot, but extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.

These are the words of an agent of the Federal Bureau of Investigation, who viewed the interrogation techniques at Guantanamo, techniques that flowed from the memo that came across Mr. Gonzales's desk to the Department of Defense down to these dimly lit cells. And the Red Cross and the FBI agree that they are torture.

I asked Mr. Gonzales: Of the 59 clemency cases he coordinated, how many times did he either recommend clemency, a stay of execution, or further investigation to resolve any doubts about a condemned inmate's guilt?

He replied that he could not recall what advice he may have given then-Governor Bush on any of the 59 cases.

He also said he never once recommended clemency because he believed that he and the Governor were obligated to follow the recommendations of the State Board of Pardons and Paroles.

Relying so heavily on the Texas Board of Pardons and Paroles might not be troubling if the board's record itself was not so troubling. Between 1973 and 1998, the Texas Board of Pardons and Paroles received more than 70 appeals of clemency denials. In all those cases, the board never once—not one time—ordered an investigation or held a hearing or even conducted a meeting to try to resolve any possible doubts about a case.

In fact, according to a 1998 civil suit, some board members do not even review case files or skim correspondence they are required to read before voting on clemency petitions. U.S. District Court Judge Sam Sparks, who presided over that lawsuit, found, in his words:

There is nothing, absolutely nothing—that the Board of Pardons and Paroles does where any member of the public, including the Governor, can find out why they did this. I find that appalling.

Typically, Mr. Gonzales presented a clemency memo to Governor Bush on the day that the inmate was scheduled to be executed. Mr. Gonzales would spend about 30 minutes at some point during the day briefing the Governor before this person was led to execution—30 minutes.

Let me tell you about 2 of the 59 people whose clemency requests Mr. Gonzales handled.

Irineo Tristan Montoya was a Mexican national executed in 1997. In 1986, in police custody, Mr. Montoya signed what he thought was an immigration document. In fact, it was a murder confession. Mr. Montoya could not read a word of it. He spoke no English.

Under the Vienna Convention of Consular Affairs, which the U.S. ratified in 1969 and accepted as our law of the land, Mr. Montoya should have at least been told that he had the right to have a Mexican consular officer contacted on his behalf. He was never informed of this right.

Mr. Gonzales's clemency memo mentioned none of these facts—not one. News accounts say Mr. Montoya was convicted almost entirely on the strength of this confession, a confession which he signed that he could not read or understand.

Then there is the case of Carl Johnson. It has become infamous. Mr. Gonzales's memo on Mr. Johnson's clemency request neglected to mention that Mr. Johnson's lawyer had literally slept through much of the jury selection.

Mr. Gonzales claims that omission of critical facts such as these do not matter because ''it was quite common that I would have numerous discussions with the Governor well in advance of a scheduled execution.''

However, Governor Bush's logs generally show one, and only one, 30-minute meeting for each execution. Thirty minutes for each life. And that meeting generally took place on the scheduled day of the execution.

At the Judiciary Committee hearing, Mr. Gonzales said: If I were in talking to the Governor about a particular matter and we had an opportunity, I would say, ''Governor, we have an execution coming up in 3 weeks. One of the bases of clemency I'm sure that will be argued is, say, something like mental retardation. These are the issues that have to be considered.''

The Texas death house was a busy place when Mr. Gonzales was general counsel. In the 6 days from December 6 to December 12, 1995, for example, there were four executions. In the 9 days from May 13 to May 22, 1997, there were six executions. In the 8 days from May 28 to June 4, 1997, there were five executions. In the week from June 11 to June 18, 1997, there were four executions. And during one 5-week period from May 13 to June 18, 1997, in the State of Texas, there were 15 executions.

Even if Mr. Gonzales found an opportunity, as he says, to mention critical details of upcoming executions during meetings on other topics, is that an appropriate or sufficient way to provide a Governor with information he needs to make a life-or-death decision?

Did Mr. Gonzales really expect the Governor to be able to keep track of these details that were discussed weeks in advance of a decision on clemency? Is that reasonable when a person's life is hanging in the balance?

Regardless of how one feels about the death penalty, no one—absolutely no one—wants to see an innocent person executed. That is not justice.

Over 2,000 years ago, Roman orator Cicero said: Laws are silent in time of war. The men and women who founded this great Nation rejected that notion. They understood that freedom and liberty are not weaknesses; they are, in fact, our greatest strengths.

In times of war or perceived threat, we have sometimes forgotten that basic truth. And when we have, we have paid dearly for it.

In the late 1700s, a war with France seemed imminent. Congress responded by passing the Alien and Sedition Acts. These patently unconstitutional laws empowered the President to detain and deport any non-citizen with no due process and made it illegal to publish supposedly ''scandalous and malicious writing'' about our Government.

President Lincoln, whom I regard as the greatest of all American Presidents, suspended the great writ of habeas corpus during the Civil War.

The first red scare during World War I accelerated into the Palmer raids after a series of bombings on Wall Street and in Washington, DC. Palmer, the U.S. Attorney, ordered roundups of suspected ''reds'' and summarily deported thousands of aliens, often with little evidence of wrongdoing and no due process.

We all know the tragic story of Japanese immigrants and U.S. citizens of Japanese ancestry being rounded up and placed in internment camps during World War II.

Another moment that I recall, as I stand here today, is when I served in the House of Representatives and heard two of my colleagues who were Congressmen at the time, Japanese Americans, come forward to explain what happened to them, how they were literally told the night before in their homes in California by their parents to pack up their little belongings, put them in a suitcase, and be prepared to

get on a train in the morning. Bob Matsui was one of those. He just passed away a few weeks ago.

Bob Matsui understood what discrimination could really be. What was his sin? He was born of Japanese American parents. That is a fact of life, and it was a fact that changed his life dramatically. He and others were taken off to internment camps without a trial, without a hearing, simply because they were suspected of being unpatriotic.

During the Cold War, our Nation, fearful of communism, descended into a red scare of McCarthyism, witch hunts, and black lists that destroyed the lives of thousands of decent people.

In the 1960s, the Government infiltrated many organizations and compiled files on its own citizens simply for attending meetings of civil rights or antiwar organizations.

Some on the other side of the aisle have compared Mr. Gonzales to one of our great Attorneys General, Robert Kennedy. With all due respect to Mr. Gonzales, he is no Robert Kennedy. Unlike Mr. Gonzales, Robert Kennedy understood the importance of respecting the rule of law to America's soul and our image around the world.

Listen to this quote from a speech that Robert Kennedy gave at the height of the Cold War and the civil rights movement. This is what he said:

> We, the American people, must avoid another Little Rock or another New Orleans. We cannot afford them. It is not only that such incidents do incalculable harm to the children involved and to the relations among people, it is not only that such convulsions seriously undermine respect for law and order and cause serious economic and moral damage. Such incidents hurt our country in the eyes of the world. For on this generation of Americans falls the burden of proving to the world that we really mean it when we say all men are created equal and are equal before the law.

Those were the words of Robert Kennedy, and if you replace Little Rock and New Orleans with Abu Ghraib and Guantanamo, those words ring true today. Mr. Gonzales does not seem to understand, as Robert Kennedy did, the impact such scandals have on America's soul and image.

Today is a critical moment for our Nation. Overseas, our Nation's actions and character are being questioned by our critics and our enemies. Here at home, we want to feel safer and more secure.

There are some who want to repeat the mistakes of our past. They think the best way to protect America is to silence the law in this time of war.

Let me tell you about one man who disagrees. His name is Fred Korematsu. More than 60 years ago, Mr. Korematsu was a 22-year-old student and was one of the 120,000 Japanese-American citizens and immigrants who was forced from their homes into these prison camps, internment camps.

After Pearl Harbor, Mr. Korematsu tried everything he could think of to be accepted as American. He changed his name to Clyde, and even had two operations to make his eyes appear rounder. He was still forced into Tule Lake, an internment camp in California.

He challenged his detention, taking his case all the way to the U.S. Supreme Court. In a decision that remains one of the most infamous decisions in the Court's history, the Supreme Court rejected Mr. Korematsu's claim and failed to find the internment of Japanese Americans unconstitutional.

It would be another 40 years until an American President, Ronald Reagan, officially apologized for that terrible miscarriage of justice and offered small restitution to its victims.

Today, Mr. Korematsu is nearly 85 years old. He is recovering from a serious illness, but he still loves America and is deeply concerned that we not again abandon our most cherished principles and values. So he has raised his voice, warning his fellow Americans we should not repeat the mistakes of the past.

I respect and admire Alberto Gonzales for his inspiring life story and the many obstacles he has overcome. Some of my colleagues suggested his life story embodies the American dream. But there is more to the American dream than overcoming difficult circumstances to obtain prominence and prosperity. We also must honor Fred Korematsu's dream that our country be true to the fundamental principle upon which it was founded: the rule of law.

Some of my colleagues have suggested that the opposition to Al Gonzales's nomination is all about partisan politics. That could not be further from the truth. This is about our ability to win the war on terrorism while respecting the values that our Nation represents.

I cannot in good conscience vote to reward a man who ignored the rule of law and the demands of human decency and created the permissive environment that made Abu Ghraib possible.

When the history of these times are recorded, I believe that Abu Ghraib and Guantanamo will join the names of infamous Japanese-American internment camps such as Manzanar, Heart Mountain, and Tule Lake where Fred Korematsu and over thousands of others were detained. I cannot in good conscience vote to make the author of such a terrible mistake the chief law enforcement officer of our great Nation and the guardian of our God-given and most cherished rights.

So, Mr. President, I will vote no on the nomination of Alberto Gonzales to serve as Attorney General of the United States. I yield the floor.

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

Mr. JEFFORDS. Mr. President, I rise today to oppose the nomination of Alberto Gonzales to be the next United States Attorney General.

It is disappointing to have to oppose this nomination, but based on his record, I believe there is no other choice.

Judge Gonzales's life story is a shining example of the American dream.

From humble beginnings he rose to serve on the Texas Supreme Court, become counsel to the President of the United States, and has now been nominated for one of the three highest Cabinet positions in the United States.

His life story is compelling and admirable, but that alone is not enough to support someone for the position of Attorney General of the United States.

The Attorney General is the chief law enforcement officer of the Federal Government, and serves as the face for truth and justice in this country.

This individual should and must be committed to the sanctity of the law, protecting the rights and liberties of all people, and ensuring that the laws are obeyed.

I believe Judge Gonzales's work as counsel to the President shows him to be unfit to perform the duties of the Attorney General.

My concern centers on three events during Judge Gonzales's tenure as counsel to the President.

His actions during these times cause me to question whether he can fulfill the duties of the Attorney General as I just outlined.

The first event involves Judge Gonzales asking the United States Department of Justice to prepare a legal opinion on acceptable interrogation standards that would be allowed under the Convention Against Torture.

This memo became the basis for the standards developed by the Defense Department's working group on detainee interrogation, which subsequently have been used in Afghanistan, Guantanamo Bay, and Iraq.

The Justice Department memo ignores significant contrary case law, a plain reading of the statute, and the legislative history of the law.

In doing so, the memo created such a narrow definition of torture that only actions that cause ''equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death'' would be considered torture.

The analysis included in the memo has been called weak and reckless by other lawyers, human rights groups, former officials from this administration, military officers, and military lawyers.

However, it appears that Judge Gonzales had no misgivings with the memorandum at the time.

In fact, it appears that Judge Gonzales continues to have no concerns with the conclusions of this memo, even though prior to his Senate Judiciary Committee hearing, the Department of Justice issued another superseding memorandum that reaches a much different conclusion.

According to the new memorandum, torture is defined as physical suffering ''even if it does not involve severe physical pain.''

Second, in a memo Judge Gonzales wrote to the President, he advised that the Geneva Conventions did not apply to captured members of al-Qaida and the Taliban.

This was a reversal of longstanding United States policy and practice of adhering to the Geneva Conventions.

This conclusion is a misstatement and misinterpretation of the Geneva Conventions.

The Geneva Conventions require humane treatment of all captives, whether soldiers, insurgents, or civilians.

Additionally, Judge Gonzales also requested a memo concerning the Geneva Conventions' effect on the transfer of protected persons from occupied territory.

This memo led to the creation of the ''ghost detainee program'' in Iraq, a practice that is against the spirit, plain reading, and any interpretation of the Geneva Conventions.

Finally, and most disturbingly, Judge Gonzales has advised the President that if a legal statute infringes on the authority of the President as the Commander-In-Chief, then that statute should be considered unconstitutional and the President could refuse to comply with the law.

Such a position is contrary to settled separation of powers case law, and has most recently been repudiated by the United States Supreme Court in its decision last year on the rights of detainees.

These events lead me to question the willingness of Judge Gonzales to, as required, protect the sanctity of the law; protect the rights and liberties of all people, not just some, but all; ensure that Federal laws are obeyed, and, effectively perform the duties of Attorney General of the United States.

I am truly saddened to have to oppose the nomination of an Attorney General for the first time in my career.

However, the Nation's chief law enforcement officer must be required to show, beyond any doubt, the utmost respect for the law and an unwavering determination to defend the law.

Instead, Judge Gonzales's record as counsel to the President points to repeated attempts to skirt the law rather than uphold it.

I must conclude that given the record before us, Judge Gonzales is not qualified for the job.

Following the Iraq prison scandal, Secretary Rumsfeld stated that people should not base their opinion of the United States on the events that occurred there, but on the actions we take thereafter.

Therefore, what will be the world's opinion of the United States if we elevate one of the architects of the policies that led to the Iraq prison abuses to the position of chief law enforcement officer of our country?

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, this morning we have heard many excellent speeches. I commend my colleague from Vermont, Mr. JEFFORDS, for his statement. Yesterday I listened to Senators FEINSTEIN, SCHUMER, KENNEDY, MIKULSKI, DAYTON and STABENOW on our side, and I thought their statements were very good. Both Senator DURBIN of Illinois and I were at a hearing this morning and left to come over here. I think his statement was straightforward and comprehensive and compelling. I appreciate what has been said.

I have also listened to the statements of those who support this nominee, most from the other side. I would say one thing, I am glad that none of them are defending torture. I never expected they would. None of them defend what happened at Abu Ghraib. I didn't expect they would. None of them are defending the Bybee memorandum, with its narrow legalistic interpretation of the torture statute. I never thought any of them would.

None of them defend the outrageous claim that the President of the United States is above the law. I don't know how anybody could defend that position. One of the things we have learned, from the first George W., George Washington, to the current President, is that no President is above the law, not even this one. None of us are. Senators are not. Judges are not. Nobody is.

In fact, some of the people who have spoken have been explicitly critical of the Bybee memo. Unfortunately, the nominee has not joined in that criticism. Instead, he told me at his hearing that he agreed with its conclusions. We know that for at least 2 years he did not disagree with the secret policy of this administration.

Water flows downhill and so does Government policy in this administration. Somewhere in the upper reaches of this administration a process was set in motion that rolled forward until it produced scandalous results.

We may never know the full story. The administration circled the wagons. They stonewalled requests for information from both Republicans and Democrats. What little we do know, we know because the press has done a far, far, far better job of oversight than the Congress itself. We know it from international human rights organizations because they have done a far better job of oversight than Congress has. We owe it to a few internal Defense Department investigations, and of course the Freedom of Information Act litigation. Thank goodness we have the Freedom of Information Act, because Congress, this Congress especially, both bodies, has fallen down for years on their oversight responsibility. It failed, actually refused, to do oversight of an administration of their own party. It is fortunate the Freedom of Information Act is there.

Every administration, Democrat and Republican, will tell you all the things they believe they have done right. None will tell you the things they believe they have done wrong. Normally it is the job of the Congress to root that out. We have not been doing our job. Fortunately the press and others, through the Freedom of Information Act, have.

Despite repeated requests both before and during and after judge Gonzales's confirmation hearing, there is much we still do not know. We gave this nominee every possibility before, during, and after his hearing to clarify this. I even sent to him and to the Republicans on the committee, well in advance of the hearing, a description of the types of questions I would ask on this particular matter so there would be no surprises and so that he would have a chance to answer them. He didn't.

We do know that he was chairing meetings and requesting memos and checking up on those memos as various Government agencies were being tasked with eroding long-established U.S. policy on torture.

Just this week, the New York Times reported the Justice Department produced a second torture memo to address the legality of specific interrogation techniques proposed by the CIA. So much for the proponents' argument that these memoranda were research memos with little real-world impact.

That second torture memo, which the administration refused to provide to the Judiciary Committee, reportedly used the very narrow and thus permissive interpretation of the torture statute outlined in the first memorandum. The administration will not come clean from behind the stone wall it has constructed to deter accountability for its actions. Does anyone believe this memo was generated without knowledge of the White House, without its approval?

The President said he chose Judge Gonzales because of his sound judgment in shaping the administration's terrorism policies. But the glimpses we have seen of secret policy formulations and legal rationales that have come to light show that his judgements have not been sound.

Look at his role with respect to the Bybee memo. This is the memo that noted legal scholar Dean Koh of the Yale Law School called, ''perhaps the most clearly erroneous legal opinion I have ever read.'' He went on to say it is ''a stain upon our law and our national reputation.''

In remarks yesterday, Republican Senators, quite correctly in my view and the view of many others who studied it, said the Bybee memo was ''erroneous in its legal conclusions. . . .'' They call the memo's interpretation of what constitutes torture ''very, very extreme . . . certainly not a realistic or adequate definition of torture which would withstand legal analysis or legal scrutiny.''

I commend them for doing that. I commend them for saying the memorandum was ''extreme and excessive in its statement and articulation of executive power.'' I would feel far better if

the man who they are supporting for Attorney General had taken the same position, as have many of my colleagues in the Senate, on both sides of the aisle.

Even supporters of Judge Gonzales distance themselves from the Bybee memo's conclusion that the President has authority to immunize those who violate the law knowing that ''certainly is not lawful.''

These are the statements of Republican Senators, but they should not be confused with the statements of Judge Gonzales, who has refused to criticize its legalistic excuses for recalibrations of decades of law and practice.

I ask unanimous consent to have printed in the RECORD a number of newspaper articles and editorials that bear on this nomination, including one that appears in today's Rutledge Herald, a prize-winning newspaper in Vermont.

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

[From the Rutland Herald, Feb. 2, 2005]

NO ON GONZALEZ

One of the best ways the U.S. Senate could assure the world that the United States is serious about democracy and human rights would be to reject the nomination of Alberto Gonzalez as attorney general.

The Democrats on the Senate Judiciary Committee were united in opposing Gonzalez, who received a vote of 10–8 from the committee. Sen. Patrick Leahy, ranking Democrat on the committee, was firm in opposition to Gonzalez. Democrats have flirted with the idea of a filibuster to block Gonzalez's confirmation, but on Tuesday they rejected that idea.

It is a difficult to understand how the Arab world or anyone else could take seriously President Bush's high-flown rhetoric on behalf of freedom or democracy if Gonzalez became part of his cabinet. Gonzalez has become known as Mr. Torture. His low-key, equable manner before the committee should not disguise the fact that during long hours of testimony he refused to say that it was illegal for the president to authorize torture of prisoners in the hands of the U.S. military.

It is well known that Gonzalez was the author of memos defining the ways that it was permissible for U.S. troops to torture their captives. He was behind numerous policies since ruled unconstitutional and illegal, such as the detention of prisoners without charge and without access to a lawyer. He was behind the military tribunals established to deal with prisoners at the Guantanamo naval base, which have also been thrown out by the courts.

Continuing revelations reveal that torture and other mistreatment were the work of more than a few miscreants at Abu Ghraib in Iraq. The International Red Cross has charged that torture of prisoners is widespread. New reports continue to emerge, such as that describing the sexual taunting of prisoners by female interrogators. It is degrading for the prisoners and for the U.S. military, and it shows the world a face of the United States that ought to shame all Americans.

Is Alberto Gonzalez responsible for these violations? Yes. He is not alone, of course. President Bush bears ultimate responsibility, and Secretary of Defense Donald Rumsfeld is culpable as well. But Gonzalez was responsible for the twisted interpretations that gave a legal gloss to policies that spread from Guantanamo to Iraq and Afghanistan.

Gonzalez is likely to win approval from the Senate. As Leahy noted at the time of Gonzalez's nomination, the present Senate would probably give the nod to Attila the Hun. But a strong voice of disapproval by senators concerned about the way that Gonzalez and Bush have abused our democratic ideals would remind the world that America is not unanimous in support of the inhumane policies of the Bush administration.

Bush has pledged his support for democratic movements all around the world. A no vote on the Gonzalez nomination would show the world the United States, too, is struggling to be a democracy.

[From the Wall Street Journal, Nov. 26, 2002]

GONZALES REWRITES LAWS OF WAR

(By Jeanne Cummings)

WASHINGTON.—Most people assume Attorney General John Ashcroft is the Bush appointee responsible for legal decisions that critics say place national security above civil liberties. But the real architect of many of those moves is someone most Americans have never heard of: White House Counsel Alberto Gonzales.

Since the Sept. 11 attacks, the former commercial-real-estate attorney from Texas has been rewriting the laws of war. From his corner office in the White House, he developed the legal underpinnings for presidential orders creating military commissions, defining enemy combatants and dictating the status and rights of prisoners held from Afghanistan battles. And he may well hold the most sway in President Bush's coming decision on whether to begin appointing military commissions to prosecute Afghanistan war prisoners.

He believes he is striking the right balance between American security and personal liberties. But his methods have evoked outrage from the State Department and even the Pentagon, which say they resent being cut out of the process.

Career Pentagon lawyers in the Judge Advocate General's Office were furious that they read first in news reports that Mr. Gonzales had devised the legal framework for military commissions. National Security Council legal advisers unsuccessfully tried in January to stall his controversial decision asserting that the Geneva Convention didn't apply to Afghanistan detainees. And Secretary of State Colin Powell launched an intense internal campaign to undo that decision.

''Essentially, a bunch of strangers are deciding the issues and you're outside the door not being heard,'' complains retired Rear Adm. John Hutson, who served as the Navy's judge advocate general until 2000 and who remains close to his former colleagues at the Pentagon.

The 47-year-old Harvard Law School graduate remains secure in his post mainly for one reason: President Bush. ''I love him dearly'' was how Mr. Bush introduced his former Texas chief counsel last year. Because of that bond, Mr. Gonzales is considered a likely candidate for nomination to the U.S. Supreme Court.

What makes the San Antonio native's role remarkable is his willingness to go toe-to-toe against Defense Secretary Donald Rumsfeld's department lawyers and Mr. Powell himself—to try to bend powerful insiders to the will of his client, Mr. Bush. Mr. Gonzales is the president's final sounding board on issues that in previous administrations were largely handled by experts in the National Security Council or the departments of State and Defense. ''There is a reason you have trusted aides in key positions. It's to get their judgment after hearing everyone else's judgment,'' says Dan Bartlett, the president's communications director.

The way Mr. Gonzales sees it, the war on terrorism requires a re-examination of the conventional rules, and it is his job to push Congress, the courts, and the international community to do that. ''Some of these principles have never been addressed in a court of law,'' says Mr. Gonzales. ''People think it is obvious that an American citizen, for example, would have a right to counsel if detained as an enemy combatant. But that's not so obvious.''

Before Sept. 11, Mr. Gonzales's only brush with the Geneva Conventions was in death-penalty appeals, such as the 1997 case of Mexican native Tristan Montoya. Under the Geneva agreement, Mr. Montoya had a right to contact his consulate office, but Texas authorities failed to inform him of that right. Mr. Gonzales argued that omission wasn't significant enough to overturn Mr. Montoya's murder-robbery conviction. He asserted Texas was under no obligation to enforce the agreement anyway since the state wasn't a party in ratifying it. Mr. Montoya was executed and the U.S. State Department sent a letter of apology to Mexico for the agreement's violation.

After the terrorist attacks, Mr. Gonzales took a new look at those agreements. The reference book ''The Laws of War'' is the newest addition to his research shelf. It was given to him by John Yoo, a former University of California, Berkeley professor now serving in the Justice Department's Office of Legal Council. Mr. Yoo built a formidable reputation in elite international law academic circles—the ''academy'' as they call themselves—for his provocative writings asserting profound presidential powers during time of war. He quickly became the White House counsel office's ''go to guy,'' says Mr. Gonzales.

But the Gonzales team's first venture into the international-law arena was a rocky one. On Nov. 13, 2001, Mr. Bush announced his intention to revive World War II-style military commissions. He released a framework that excluded explicit assurances of unanimous verdicts, rights to appeal, public trials, and a standard of proof beyond a reasonable doubt. The legal community—particularly military experts—exploded.

Over the next four months, Pentagon attorneys, who had complained about being kept out of the loop, wrote regulations for the commissions that guaranteed most of those rights. Still lacking, critics say, is the right to appeal to an outside court. ''Our political leaders just can't have the ultimate say on guilt and innocence,'' says Tom Malinowski, a Washington advocate and director of Human Rights Watch.

Mr. Gonzales was ''surprised'' by the sharp reaction to the commission ruling, but acknowledged it may have been written and released too hastily. He says he conducts wide-ranging consultations, but that there are times when others within the administration just don't agree with his final recommendation for action.

Two months after the commission order, Mr. Gonzales was readying another critical wartime recommendation—that the president deny Geneva Convention coverage to detainees housed in a makeshift prison in Cuba's Guantanamo Bay Naval Base. National Security Council lawyers tried to slow the order, but, on Jan. 18, Mr. Bush adopted that stand. ''They are not going to become POWs,'' Mr. Gonzales said.

The move immediately drew objections from the State Department. Mr. Powell, fearing captured U.S. servicemen or spies could face reprisals, demanded the president

reconsider the ruling. The secretary's discomfort was compounded by a Jan. 25 memo written by Mr. Gonzales that misstated Mr. Powell's position and concluded that the secretary's arguments for ''reconsideration and reversal are unpersuasive.''

Mr. Powell argued that while the detainees didn't deserve prisoner-of-war status, the administration must use the Geneva Conventions to reach that conclusion. After two intense NSC meetings, Mr. Bush opted to reverse course—but, for Mr. Gonzales, it was only a technical loss.

Today, federal judges are grappling with Mr. Gonzales's interpretation of the rights of U.S. citizens, the ''enemy combatants,'' who have been held for months without charges or access to attorneys. That is an issue that is unlikely to be resolved until it reaches the Supreme Court.

Mr. Gonzales readily admits the White House might lose some ground in those court cases. While being ''respectful'' of constitutional rights, the administration's job ''at the end of the day'' is ''to protect the country,'' he says. ''Ultimately, it is the job of the courts to tell us whether or not we've drawn the lines in the right places.''

[From the National Journal, Nov. 13, 2004]

OPENING ARGUMENT—THE PROBLEM WITH ALBERTO GONZALES

(By Stuart Taylor Jr.)

White House Counsel Alberto Gonzales is an amiable man with an inspiring personal story. One of eight children of uneducated Mexican-American immigrants, he grew up in a Texas house with no hot water or telephone. He would be the first Hispanic attorney general. He has the complete trust of the president, whom he has loyally served for four years in Washington, and in Texas before that. He is far less divisive and confrontational than the departing John Ashcroft.

The problem with Gonzales is that he has been deeply involved in developing some of the most sweeping claims of near-dictatorial presidential power in our nation's history. These claims put President Bush literally above the law, allowing him to imprison and even (at least in theory) torture anyone in the world, at any time, for any reason that Bush associates with national security. Specifically:

Gonzales played a central role in developing Bush's claim of unlimited power to seize suspected ''enemy combatants''—including American citizens—from the streets or homes of America or any other nation, for indefinite, incommunicado detention and interrogation, without meaningful judicial review or access to lawyers.

He presided over the preparation of the poorly drafted November 2001 Bush order establishing ''military commissions'' to try suspected foreign terrorists for war crimes.

He signed the January 25, 2002, memo to the president arguing that the 1949 Geneva Conventions offer no protection to any prisoners seized in Afghanistan; the memo dismissed some of the Geneva provisions as ''quaint.'' This memo signaled Bush's break—over vigorous objections from Secretary of State Colin Powell—with the generous interpretation of the Geneva Conventions used under every president from Harry Truman through Bill Clinton. It also led to Bush's refusal to provide the individual hearings required, both by Geneva and by Army regulations, for the hundreds of alleged ''unlawful combatants'' at his Guantanamo Bay prison camp.

He was the addressee of, and apparently had a role in vetting, the August 1, 2002, Justice Department memo asserting that the commander-in-chief has virtually unlimited power to authorize indiscriminate use of torture in wartime interrogations—tearing off fingernails, branding prisoners' genitals with red-hot pokers, you name it.

Here is how these profoundly unwise claims have worked out:

The no-due-process ''enemy combatant'' policy brought Bush an 8–1 rebuff from the Supreme Court on June 28, in Hamdi v. Rumsfeld. The majority asserted that ''a state of war is not a blank check for the president.'' Antonin Scalia, the justice whom Bush has said he most admires, stressed in a concurrence that ''the very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the executive.''

The ''military commissions'' have been a fiasco in practice (as detailed in my September 11, 2004, column) and were held to be unlawful in important respects on November 8 by Judge James Robertson of the U.S. District Court for the District of Columbia. (The administration plans to appeal.)

Bush's spurning of the Geneva Conventions and refusal to provide hearings for Guantanamo detainees probably explain his 6–3 defeat in another June 28 Supreme Court decision, Rasul v. Bush, which rejected Bush's claim of power to detain non-Americans at Guantanamo without answering to any court. And Judge Robertson wrote that the administration ''has asserted a position starkly different from the positions and behavior of the United States in previous conflicts, one that can only weaken the United States' own ability to demand application of the Geneva Conventions to Americans captured during armed conflicts abroad.''

The Justice Department torture memo, together with a similar Pentagon memo in March 2003 and the Abu Ghraib photos, have brought the United States worldwide opprobrium for authorizing torture as official policy (which Bush did not do) while making the CIA and the military newly wary of using even mild, legally defensible forms of coercion to extract information from captured terrorists.

If Senate Democrats (and Republicans) are not too cowed by Bush's election victories to do their jobs, the confirmation proceeding for Gonzales will drag us more deeply than ever through the torture memos, Abu Ghraib, the evidence of torture and killing of prisoners by U.S. forces in Afghanistan, and all that. Will that be good for Gonzales? For Bush? For the country?

At the very least, Democrats should demand a full accounting of Gonzales's role in the development of these torture memos. And when Bush claims confidentiality, the answer should be: If you must cloak in secrecy your counsel's role in shaping your own grandiose claims of power, then don't ask us to confirm him.

Here is a far-from-complete history of the torture memos, as reconstructed from anonymous sources and news reports:

The CIA began using various forms of duress to extract information from captured Qaeda leaders overseas in late 2001 and early 2002. But agency officials were concerned that they might be prosecuted by some future administration or independent counsel, and that the CIA itself might be attacked for abusing its powers, as it was during the 1970s. So CIA Director George Tenet requested a legal memo assuring interrogators and their superiors sweeping presidential protection from any future prosecution under an anti-torture law that Congress had adopted in 1994 to comply with the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The task was assigned to the Justice Department's Office of Legal Counsel. The Bush-appointed head of OLC, Jay Bybee, now a federal judge, and some other Justice Department and White House lawyers were reluctant to make such a bold and unprecedented claim of presidential power. But under apparent pressure from their superiors, Bybee and his staff produced the August 1, 2002, memo, addressed to Gonzales. Earlier drafts had been carefully vetted by the offices of Gonzales, Ashcroft, and David Addington, Vice President Cheney's counsel.

I have been unable to determine how deeply Gonzales was involved in the details. The Senate should demand to know.

Aside from the OLC memo's indefensible claims of presidential power to order torture, it also claims that rough treatment of prisoners does not even fit the definition of torture unless ''equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.''

There is no evidence that the administration ever approved ''torture,'' as thus defined, as a matter of policy. It did approve a number of highly coercive, still-classified interrogation methods, such as feigning suffocation and subjecting prisoners to sleep deprivation and ''stress positions,'' which apparently helped extract valuable information from Qaeda leaders. And in 2003, the Pentagon adopted the Justice Department's analysis—initially devised for CIA interrogations of a few high-level terrorists—to justify coercive interrogations of prisoners at Guantanamo and, later, in Iraq. This came despite strong objections from top military lawyers, based on their long-standing view that rough interrogation methods are ineffective, arguably illegal, and likely to become indiscriminate and excessive.

How much all of this had to do with bringing about the now-documented torture, abuses, and killings of prisoners in Iraq and Afghanistan is in dispute. What's clear is that the leaked torture memos, as well as the Abu Ghraib photos, disgraced our nation—so much so that Gonzales and other White House officials, at a June 22 news conference, sought to blame the OLC lawyers for what Gonzales called their memo's ''overbroad'' and ''unnecessary'' passages. The Senate should now explore whether (as has been suggested to me) the OLC lawyers had only been following orders from the same White House officials who later ran for cover.

This is not to deny the difficulty of the issues presented to Gonzales and his colleagues by the unprecedented magnitude of the terrorist threat. Nor is it to deny the need for judicious use of preventive detention and coercive interrogation techniques (short of torture) to prevent mass murders. But the torture memos are emblematic of a Bush White House that has consistently failed to strike a wise balance between the demands of security and of liberty.

Gonzales's role in all of this appears to be to tell Bush what Bush wants to hear. With the dubious benefit of such advice, Bush has not only shown little appreciation for civil liberties but also provoked a judicial and international backlash that has hurt the war on terrorism. Gonzales does have many fine qualities. But is this the attorney general we need?

[From the Washington Times, Jan. 24, 2005]

ABU GHRAIB ACCOUNTABILITY

(By Nat Hentoff)

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I rise this morning to speak about a man whose life and career embody principles that are uniquely, and proudly, American. He is the grandson of immigrants who overcame language and cultural barriers to carve out an existence through manual labor and faith. Through his commitment to education, his firm belief in the law, and a dedication to public service, he has risen to the top of his profession and now seeks to serve his country at the highest level. Mr. President, I rise this morning to speak about Alberto Gonzales and to urge bipartisan support for his confirmation as Attorney General of the United States.

Alberto Gonzales's qualifications speak for themselves. He is a graduate of Harvard Law. He served as Secretary of State for the State of Texas and as a justice on Texas' Supreme Court before being named White House Counsel by President Bush in 2001. Mr. Gonzales was recently inducted into the Hispanic Scholarship Fund Alumni Hall of Fame and has been honored with the Good Neighbor Award from the United States-Mexico Chamber of Commerce.

Henry Cisneros, the former Secretary of Housing and Urban Development, calls Alberto Gonzales a person of sterling character and says that Mr. Gonzales's confirmation by this body will be part of America's steady march toward liberty and justice for all.

It is a march that, for Alberto Gonzales, started in a two-bedroom house shared by ten people with no hot running water or telephone. But what Alberto Gonzales and his family lacked in comfort they made up for in vision and hard work.

Alberto was the first person in his family to go to college. He served in the United States Air Force and attended the United States Air Force Academy.

But Alberto Gonzales is about more than an impressive résumé. Each experience in his life has prepared him for the great honor of serving as the next Attorney General of the United States—a job he is extremely qualified for and a job that I know he will perform with honor and dignity.

As the Nation's chief law enforcement officer, Alberto Gonzales will take the lessons from his positions as Counsel to the President, Texas Supreme Court Justice, Texas Secretary of State, and General Counsel to the Governor and work to protect Americans from terrorism while protecting our Constitutional rights. He will also work to reduce crime, reform the FBI, and protect Americans from discrimination.

Alberto Gonzales has come a long way since his days growing up in Humble, Texas. He has accomplished so much, but he has never forgotten from where he came. He has been committed to the Latino community throughout his career, and they have recognized him for his community service and the impact he has made. Today, many of the largest national Latino organizations are standing in staunch support of his nomination and looking forward with great anticipation to the swearing-in of the first Latino Attorney General for the United States.

For Alberto Gonzales, the march toward liberty and justice started in Humble, TX, and continued through many ambitious goals. Alberto Gonzales has defied the odds and surpassed expectations time and time again. His successes have created a foundation that will serve our Nation well and inspire a new generation to aspire and conquer.

I urge my colleagues to join me as we continue the march toward liberty and justice by voting to confirm Alberto Gonzales as the next Attorney General of the United States.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Nevada for his fine comments about Judge Gonzales.

We have gotten to know Judge Gonzales over the years. He is a good and decent man, a fine lawyer who respects the rule of law, who is proud to be an American. He wants to see our country strong and free. He led the effort in the fight against terrorism. He did the things we wanted him to do.

He has a background that excites our pride. We are pleased to see how much he has achieved. He went to Harvard and was hired by one of America's great law firms. He served the Governor of Texas, was a judge in Texas—and all of his credential are wonderful.

We know he is a good, decent, honorable, and honest man.

If you listen to the comments made here today, by some Democrats, about him, you would not recognize the man we know.

It is not right. What has been done here is wrong.

If you have a disagreement with the policy of the President of the United States, OK, we will talk about it and

we will see what the differences are. But it is not right to demean and mischaracterize the nature of Judge Gonzales. I feel strongly about that.

I served in the Department of Justice for 15 years. I would like to share a few thoughts to give us some perspective about the role Judge Gonzales has played.

Judge Gonzales was legal counsel to the President. He was the President's lawyer. Of course, everyone who is a lawyer—I am a lawyer and a good number in this body are lawyers—knows that lawyers protect the legal prerogatives of their clients. You do not want to in memorandum and public statements make statements that constrict the ultimate power of the institution of the Presidency of the United States. That is a fundamental thing. That is what you have to do. That is what you are there for.

When 9/11 happened and we were taken aback by the viciousness of the attacks, we were worried, rightly, that throughout this country there would be terrorist cells continuing to plot as they were perhaps in Arizona, or in other places, as we have learned. We wanted to be sure we were defending this country well. We had to make some decisions.

We went after al-Qaida in Afghanistan. A lot of legal questions arose.

I serve on the Judiciary Committee. We had hearing after hearing regarding these issues.

Let me tell you what I think Judge Gonzales did not do. Not I think; I know he did not do. He did not approve of torture. He has always steadfastly opposed it. His position has consistently been that we comply with the laws of the United States and our treaty obligations. I will talk about that in a minute.

But that was not his call at that point in time. He did not privately tell the President, or call up the Secretary of Defense, or call the guard at Abu Ghraib and say torture these prisoners. He sought a formal legal opinion concerning the powers and responsibilities of the President of the United States as a lawyer for the President. He made that request of the Office of Legal Counsel, a senatorial-confirmed position of the U.S. Department of Justice, a position that is given the responsibility to opine on matters of this kind. They are not to set policy. They are not to say what torture is other than what the law says. They do not express their own views. But he asked them what the legal responsibilities and powers of the President were. They researched the law. They sent back a memo. That is the memo being complained of, a memo not written by Judge Gonzales, a memo written by the Office of Legal Counsel of the U.S. Department of Justice and their staff that worked on it at some great length. We have had complaints about it.

Judge Gonzales later on said: There have been complaints about this memorandum. You need to redo it.

He suggested that, I guess, on behalf of the President, and they rewrote it. They constricted the issues they discussed. They didn't speculate on what the ultimate powers of the President might be. They did that less in the second memorandum than they did in the first.

That is how this came about. It was their opinion, not his. They say he circulated it. Well, do you want him to circulate his personal views? Do you want him to circulate some politician's views? Or do you want him to circulate the duly drafted opinion of the Office of Legal Counsel of the U.S. Department of Justice which researched our history, the treaties, the Constitution, and the court cases of the United States?

We need to get our mind in the right perspective and remember the circumstances we are operating under. I will repeat, Judge Gonzales has never supported torture. We have Members who have said Judge Gonzales advised the President of the United States that torture was acceptable. That is false, inaccurate, and wrong. Anyone who said that ought to apologize for it. Do we have no sense of responsibility in what we say? Are we irresponsible, that we can attack this fine man, a son of immigrants who worked his way up through the entire legal system to be now nominated to that great office of Attorney General of the United States? He deserves a fair shake. He has not been getting it.

They say he abandoned the rule of law. He did not do that. He sought a legal opinion from the duly constituted Office of Legal Counsel which is supposed to render those opinions. He disseminated those opinions and now they blame him for it. It is not the right thing to do. As President Bush said on more than one occasion, but on the eve of the G–8 summit in June of last year:

> The authorization I issued was that anything we did would conform with United States law and would be consistent with international treaty obligations.

That has been the position. In a letter to Senator LEAHY, Assistant Attorney General Will Moschella in the legislative affairs division of the Justice Department rejected categorically ''any suggestion that the Department of Justice has participated in developing policies that would permit unlawful conduct.''

In a special piece submitted to USA Today, Judge Gonzales, in his capacity then as White House Counsel, stated ''in all aspects of our Nation's war on terror, including the conflict in Iraq, it is the policy of the United States to comply with the governing laws and treaty obligations.'' I will talk more about that because it is important legally to understand what has been occurring.

We as a nation do not approve of torture. We reject it. We prosecute and discipline those who are participating in it or carry it out and we have been committed to that as a country. We ought to ask ourselves, has this Congress stated any position on terrorism? What did they say?

I remember not too many months ago when Attorney General John Ashcroft was before the Judiciary Committee. They were bombarding him with the allegations that he was responsible for Abu Ghraib, he was responsible for any misbehavior throughout our entire command, and that he had approved torture, and they quoted things they said he approved. In frustration, Attorney General Ashcroft, looking at his former colleagues, said ''Well, the problem I have with you, Senator, is, it is not my definition of torture that counts. It's the one you enacted into law.''

Do you know we have a law that defines torture and sets forth what it amounts to and how it should be defined? It is that definition that was made a part of the OLC, Office of Legal Counsel memorandum, and it is that memorandum and that language our colleagues across the aisle are complaining about, and some of them were here when that statute passed and they voted for it.

Let's take a look at that. This statute, part of the United States Code, says:

> Torture means an act specifically intended to inflict severe physical or mental pain or suffering upon another person. Severe mental pain or suffering means the prolonged mental harm caused by or resulting from the intentional infliction or threatened infliction of severe physical pain or suffering. The threat of imminent death or the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or procedures calculated to disrupt profoundly the senses or personality.

These words were used—and I know the Presiding Officer is a skilled JAG officer from South Carolina—those were the words discussed in the OLC memorandum. They used those kinds of words. The same kind of words passed by a number of Democrat Members in this body. The authors of the OLC memo simply discussed the meaning of these words passed by the Congress. Now some are arguing that because of this memo we approve these horrible things.

I suppose a person could misinterpret deliberately some of that and carry out things that are not legitimate. I suppose some of these things would be legitimate. We said they were when we passed the statute, or at least we did not prohibit them when we passed the statute.

Who defines torture? The Office of Legal Counsel? Judge Gonzales? The President of the United States? Or the U.S. Congress? We have enacted a definition of torture, the one I just read. It might offend some people, but as it is, that is the definition of torture, I submit, and I don't see how it can be disputed.

We did have activities that occurred. This memorandum fundamentally was

advice to the President on what his ultimate powers were. But the President's orders, the policies of the U.S. military, were much more constrained than possibly would have been allowed under this statutory definition. Not that the President ultimately did not have that power. But we have not utilized that power or approved it. In fact, we have disciplined people who have not followed those rules and regulations.

First, it is always going to be the President's fault, during an election year. Then it was Secretary Rumsfeld, and then Condoleezza Rice. At some point they decided to quit blaming Secretary of State Rice during her confirmation proceedings and start blaming it all on Judge Gonzales. So now we have been through the President, the Secretary of State, National Security Adviser, the Secretary of Defense, and now we are down on Judge Gonzales. It is all his fault. Now he cannot be confirmed because somebody at Abu Ghraib violated policy. They have been tried. Some have already been convicted. They have been removed from office.

We had the situation—do you remember it?—when a full colonel in the Army, in the heat of battle, concerned for the safety of his troops, fired a gun near the head of an Iraqi terrorist to induce him to give information that would protect the lives of his soldiers. And we drummed him out of the service for it long before a lot of this happened.

Remember, it was the military that brought forth the abuses at Abu Ghraib. They recognized that some had violated the laws of the United States and that those activities should not be allowed. They have disciplined people systematically since. They are continuing to do so. If anybody higher up is implicated, these lower guys are going to tell about it. They are going to pursue that, I have absolute confidence. And we will pursue that.

But I think it is unhealthy for our country, dangerous to our troops, undermining of our mission to suggest that it was the policy of the U.S. Government to do this. How can that help us gain respect in the world when Senators in this body allege that the President's own counsel is approving what went on in Abu Ghraib, that his policies legitimized what was going on in Abu Ghraib? I do not believe that is true. It is not true. We should not be saying it. We had a big enough, bad enough problem in Abu Ghraib. It was an embarrassment to us. We were painfully hurt by it. And it should not have occurred. But I will say, with confidence, that Judge Gonzales does not bear the blame for that.

Discipline in war is hard to maintain. I mentioned the example of how a highly decorated colonel was removed from the service for his failure of discipline, even in a tough time. I remember back in the Pacific, in those island campaigns, neither side took prisoners. It was a battle to the death. We are facing an enemy unlike enemies we have faced before. They are a ferocious, suicidal, murderous, sneaky bunch that for most of them, hopefully not all, but for most of them they simply have to be defeated, they have to be captured, they have to be killed, they have to be restrained because they will not stop. If we are successful in doing that, I believe the glory that some of these terrorists have attained will be diminished, and it will be seen that they represent a small, backward, insular, violent mentality, not conducive to progress, peace, and democracy in the Middle East or anyplace else in the world.

I think we are going to make progress on that. We need to hold our standards high. I certainly agree with that. But war is a difficult thing. People do make mistakes. We have abuses in the Federal prison systems and in State prison systems. Senator KENNEDY and I offered legislation to prohibit sexual abuse in prisons by guards and prisoners, and to investigate it, to identify it, and stop it. But we know we have abuses in our prisons, and we need attention from the top and discipline from the top.

I will note a recent article about Abu Ghraib. Soldiers were interviewed in a Washington Post article, and they all said this was unacceptable behavior; it should have never occurred. It is clear that the soldiers who are there today fully understand their responsibilities to treat these people humanely, and that they will do so.

I want to mention one more thing about some of the details of this issue. First, I think it is indisputable that al-Qaida and such terrorists who are about and loose in the world today do not qualify under the Geneva Conventions. They simply are not covered by it because they are not the kind of lawful combatants the Geneva Conventions protect.

Now, the President says we are going to treat them humanely in any case, and we are going to treat them fairly. In many instances he says we are going to provide them the protections of the Geneva Conventions even though they are not entitled to them.

For example, it is the position of the White House that no detainee should be subjected to sleep deprivation. Now, I think under the torture statutes, sleep deprivation, at least to some degree, would not qualify as a severe kind of pain or the psychological impairments that were referred to in the statute Congress passed defining torture. But the President said that we would not deprive them of sleep anyway. Nor should they be deprived of food and water during any period of interrogation. Soldiers and interrogators were even prohibited from the act of pointing a finger at the chest of a detainee. That was declared an unacceptable technique by Secretary of Defense Rumsfeld 2 years ago, January 15, 2003. Well, we have gone a pretty good ways in trying to ensure that our behavior is good. We have prosecuted people at Abu Ghraib. We have disciplined a lot of people in Iraq and Afghanistan who have exceeded their authority. In the course of furthering our intense war against terrorism, we have tried to maintain control over our decency and our morality. I do not think Members of this body should be suggesting that we do not or that it is our policy to violate international law or the rights under our own statutes concerning torture and other rules.

I heard it pointed out we all have things that do not work out right in our lives. We do things we thought were right at the time and justified them, and they maybe turn out to be wrong. Nobody who ever comes before this body for confirmation is perfect. I know my colleague, Senator DURBIN, has stated that Judge Gonzales is no Robert Kennedy. And they are different people in different times. Robert Kennedy was appointed Attorney General by his brother. How much closer can you be than that? But we now know from many of the histories that have been written that on a number of occasions Robert Kennedy, as Attorney General, clearly violated the legal and constitutional rights of people he was investigating for criminal activities. I do not think that is disputed.

Well, let me tell you, what would have happened if that had been true of Judge Gonzales? How far would he get along in this process? He would not get to first base.

I would say this: Judge Gonzales was at the right hand of the President of the United States when we were deliberately attacked by an al-Qaida organization that had announced they were at war with the United States, that they were authorized and empowered, and it was legitimate for them to attack and murder civilians of the United States. We needed to respond to that. We did not need the legitimate power of the President to be constrained by some politically correct memorandum, a memorandum that he requested from the Department of Justice, which was written by them and which represented a statement of policy of the United States with regard to the powers of the Presidency and those in the military.

I think, all in all—there have been bumps in the road—but, all in all, our Government, from the President throughout the executive branch, including the military, has done its best to fight this vicious, despicable, violent enemy, an enemy that does not meet the standards of a lawful combatant but is clearly, in fact, unlawful combatants not entitled to the protections of the Geneva Conventions. We have treated them humanely, with a number of exceptions for which discipline has been applied. And we have striven in every way possible to tighten up since the beginning of this war our discipline with regard to our soldiers and our policies to make sure we have the least possible errors that

would occur in this process of fighting this war on terrorism. I believe that deeply.

Soldiers have placed their lives at risk. They have placed the lives of their associates and comrades at risk, adhering to the highest ideals of American values of life. They have not pulled triggers, subjecting themselves to risk, because they were not sure. They have held back and shown restraint time and time again. That has not been sufficiently appreciated. We have spent almost all of our time having Members of the Congress attack and blame the whole Government for failures in these hostilities of a few.

I believe Judge Gonzales is not the person to blame for all this. I do not believe the Counsel to the President is responsible for Abu Ghraib. He is not responsible for an opinion written by an independent agency of the Government, legally empowered and directed by this Congress to write it.

He is a good man, a decent man, a man we have seen up close and personal for quite a number of years. I find in him the highest standards of Americanism and decency. He is a superb lawyer. He has had a ringside seat on how the Justice Department works without being a part of it. It will allow him to move into it with a fresh look and be able to do good things.

I believe strongly he should be confirmed. I am disappointed in the nature of the attacks put on him. I believe they have been unfair and do not do justice to his character and the effectiveness of his service.

It is a pleasure to speak on behalf of this fine American. He will make a great Attorney General. I look forward to his confirmation and all of us working with him.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Madam President, I believe it is important that we discuss more carefully what our responsibilities are as a nation under the Geneva Conventions. We have had a lot of things said here, smeared over, slopped over, vague allegations of misconduct on behalf of this President and our country. Our soldiers are out fighting for us. We need to understand what it is.

They have alleged repeatedly that all this is in violation of the Geneva Conventions, all this amounts to torture. I previously have gone into some depth about what the congressional act was that prohibited torture and how this Congress defined torture and what it meant. It does not mean someone can't be deprived of some sleep or have an interrogator raise his voice during questioning. That is not torture.

I would make clear this basic fact—it is so basic we often don't think about it—this group al-Qaida has declared war on the United States. Not only have they declared it in a traditional lawful manner of nation states that they have done over the years, at least quasi-lawful; they have done it as a group of unlawful combatants, and they have done it in a way that is not justified under the Geneva Conventions or international law of any kind, shape, or form. When our soldiers go out and they are engaging al-Qaida, they don't give them a trial. They don't read them their Miranda rights. They don't sit down and see what they can do to ask them if they would change their heart. They shoot them. We are at war with them. They are a hostile enemy, and we do that.

When you capture a hostile enemy who a few moments before, you could have killed lawfully as a soldier of the United States executing the policy of the United States against a person who has declared war against you and has publicly stated they are justified in killing innocent American civilians, men, women and children, if you can do that, if you capture them, they don't then become entitled to every right that an American citizen has when he is tried in the U.S. district court for tax evasion or bank robbery or drug dealing. It is not the same. Everybody knows that, if they have given any thought to war and treaties over the years.

What is a controlling authority with regard to international agreements? It is the Geneva Convention. There have been a series of them. They have been amended over the years. The most pertinent one in this area is the Third Geneva Convention. This is in addition to the original Convention.

It provides strict requirements—four, to be exact—that must be fulfilled by an individual should he seek the protections afforded by the treaty.

In other words, everybody is not entitled to protection under the treaty. You have to do certain things, and you have to be what we have come to refer to as a lawful combatant.

What are those requirements? He must be commanded by a person responsible for his subordinates. He should have a chain of command. He cannot be a single murdering bomber and claim he is a lawful combatant, having no authority in a chain of command and not acting on orders from some lawful entity.

No. 2: He must, the exact words are, have a ''fixed, distinctive sign recognizable at a distance.'' What does that mean? It means you wear a uniform, basically. That is what it has always meant traditionally. So if you catch somebody in your country sneaking around not in uniform, they are spies, and they are hung. That is what happened historically. The Geneva Convention never changed that fundamentally.

Carrying arms openly—the treaty considers that lawful combatants, such as a member of the U.S. Army, will carry their arms openly. They will have a distinctive uniform, and they will carry their arms openly, evidence of the fact that they are soldiers. This is important for a lot of reasons.

One reason is that the people who are fighting against our soldiers are supposed to direct their fire at soldiers, not innocent civilians. So if they are wearing a uniform and carrying their arms openly, they know the target at which they are firing. The whole goal of the Geneva Conventions is to eliminate the loss of life of innocent people and to minimize loss of life in general and minimize the horror of war as much as possible.

If they are to be considered as one who has the protections of the Geneva Conventions, they must be conducting their operations in accordance with the laws and customs of war. Sneaking around, hijacking airplanes, flying them into buildings, putting explosive devices under vehicles, throwing them at people in line to vote—those actions are not consistent with the laws and customs of war, for Heaven's sake.

So there is no doubt whatsoever in my view that al-Qaida and the terrorist groups who do not wear uniforms, who go around bombing innocent people, are not acting according to the rules of war, who do not wear a uniform, who are not carrying their arms openly—they do not qualify for the protections of the Geneva Conventions. No counsel to the President, no counsel in the U.S. Department of Justice should render an opinion that says otherwise.

The President can say: We are going to give the protections, anyway, which he has done, and we are going to treat the people in Iraq according—I think he said we will treat them according to the Geneva Conventions. I do not think we said that explicitly with regard to Afghanistan and al-Qaida, but these Iraqi guys who sneak around and bomb are not much different to me. We have provided more protections, I would say with absolute certainty, than international law or U.S. statutes provide.

Al-Qaida is not a nation state. It has not signed the treaties of the Geneva Convention. Members of al-Qaida have no uniforms or distinctive signs. Al-Qaida has declared war on us, however, and they are quite capable through their sneaky, devious, murderous activities of sneaking into our country and killing Americans right now. If they are able to do so, they will.

One reason they have not been able to do so is because we have been hunting them down with the finest military the world has ever known, that is using discipline, humanity, and the proper execution of violence against these people. That is just the way it is. We have gone after them. We have put them on the run. If they could have attacked us in our election, if they could have attacked us any time since 9/11, I submit they would have. We have had an Attorney General, John Ashcroft,

who utilized the powers and laws provided to this country and our leadership to go after them.

These people are entitled to certain rights, but not the same rights that exist for an American citizen. They represent a different kind of threat. They are unlawful combatants. They are an unlawful enemy which rejects and despises law. They reject our Constitution. They reject democracy. They see it as a threat. They want to rule their people according to their narrow definition of law. They want to oppress women. They do not want progress. They do not want freedom. They do not want the things the whole world needs. And those societies and that kind of mentality are what cause wars, not democracies.

I feel strongly about this. It is important for us to be clear: We as a nation do not support, justify, or condone torture. We are disciplining people who have done so. We are putting people in jail who have done so. Guardsmen who came out of our communities, went to Iraq, worked midnight to 6 a.m., were away from home, lost their discipline and conducted themselves in ways that brought disrepute on the United States and violated our rules and standards of the military are being tried and convicted and put in jail, as they should be. It is sad we see that happen, and I know we will continue to punish those who violate our standards. As a result of those prosecutions and those actions, our military will show even greater discipline.

I see the Senator from Idaho in the Chamber. I am sure he wishes to speak. I want to yield to him because I respect his insight on these matters.

I will say, I am disappointed—deeply disappointed—in the unfair attacks that have been placed on Judge Gonzales. He is being blamed for every single thing about which people have complaints in the war against terrorism. They are saying he is responsible for everything that may have gone wrong, some of which was wrong, some of which probably was not wrong, but is being characterized as wrong. It is not right. He was counsel to the President. He did his duty. He sought the opinion from the proper people to give legal opinions on terrorism and war, and he conducted himself consistent with those principles. He steadfastly and continuously has condemned torture. He should be confirmed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, I associate myself with the remarks of the Senator from Alabama. Over the last several years, I have had the privilege of serving with Senator SESSIONS on the Judiciary Committee. I have gained such phenomenal respect for his keen intellect and bright legal mind. When one listens to him, as those who might be watching today have, they get the truth, direct, clear, understandable, and unvarnished. That is what it is all about.

The obfuscation of the truth sometimes finds its way to the Senate floor, and my guess is that it is finding its way to the Senate floor in the debate on the nomination of Alberto Gonzales.

I rise in support of the nomination of Alberto Gonzales to be our next Attorney General. It seems to me that some of our colleagues are interested in not the true man and his qualifications but more in what they perceive to be the politics and the policies of this administration.

In the last Congress, I had the privilege of serving as a member of the Senate Judiciary Committee and I witnessed this tactic used against judicial nominees time and time again, a tactic of equating a lawyer's performance as legal counsel with his likely performance to the very different role of being a judge. We saw that argued time and time again for a political purpose, not a reasonable analysis of the character of the individual and how he or she might perform in the new role in which they were being asked to participate.

Likewise, in this debate some have argued we should evaluate Judge Gonzales's fitness for the post of Attorney General, the Nation's top cop, based on a politically driven examination of his work product as the President's Counsel. I urge my colleagues to abandon that tactic, reject that argument, and look at the lifetime achievement of the nominee if my colleagues truly want to understand who Judge Gonzales is and what he is qualified to do in the role he is now being asked to play by our President.

I feel strongly that the Senate should vote to confirm this man. I had the privilege of getting to know Judge Gonzales and work with him firsthand while I served on the Judiciary Committee and in a variety of other settings.

First, Judge Gonzales's past experiences have prepared him for the position to serve honorably in that position, in my opinion, without question. As Counsel to the President, he has been instrumental in coordinating our Nation's law enforcement in the heightened security environment. Following 9/11, as Senator SESSIONS has just referred to, while serving as Counsel to the President, Judge Gonzales paid particular attention to protecting our Nation from terrorism, while not forgetting the importance of doing so under the Constitution, in order to safeguard our rights as free citizens.

Also, President Bush has acknowledged the great help Judge Gonzales has been to him in helping to select the best nominees for our Federal courts during the past few years. Before serving as White House Counsel, Judge Gonzales was distinguished as a justice of the supreme court of the State of Texas, at which time he was known as a careful jurist who was opposed to judicial activism and who recognized the limited role that the judiciary plays in our unique system of government.

Additionally, Judge Gonzales advised then-Governor Bush as his chief counsel in Texas. Judge Gonzales served there as both a secretary of state and chief elections officer of that great State. Furthermore, Judge Gonzales had a successful career in the private legal sector prior to entering public service. What combination do we need to get the very best top cop in the country? He has not only a keen legal mind but is one who has had administrative experience, one who has worked with large systems of government and one who knows the limit of the law and the limit and the capacity of the position in which he is now being asked to serve.

Finally, Judge Gonzales has led a life filled with many other activities and honors that helped to prepare him to be an outstanding Attorney General, and I will name just a few of them. Judge Gonzales served his country as a member of the U.S. Air Force from 1973 to 1975. He was also elected to the American Law Institute in 1999 and he served on the board of trustees of the Texas Bar Foundation for several years and as the president of the Houston Hispanic Bar Association from 1990 to 1991. Later in 1999, Judge Gonzales was chosen as the Latino Lawyer of the Year by the Hispanic National Bar Association.

As a number of my colleagues have pointed out, when Judge Gonzales is confirmed, he will be this great Nation's first Hispanic Attorney General. Through all of this, Judge Gonzales has found time to help the less fortunate of our country. He served on the board of directors of the United Way of the Texas Gulf Coast, and finally in 1997 he received the Presidential Citation from the State Bar of Texas for his work in addressing the legal needs of indigent citizens.

Clearly, Alberto Gonzales is an accomplished practitioner of the law and he is unquestionably qualified to be our Nation's No. 1 law enforcement officer.

The second reason I support Judge Gonzales, and the nomination that we are arguing in his behalf today, is the man himself and his views on issues facing our country and what our country needs and what his role is. He is very realistic, honest, and straightforward about it.

In the last Congress when I served on the Judiciary Committee, I participated in debates on many of these issues that we see reignited by this nomination. Those experiences convinced me that Judge Gonzales has the necessary outlook to protecting our country from all of those who would do us and our citizens harm.

I will talk a little bit about his views on some of these important issues regarding the war on terror. Judge Gonzales recognized that after the attacks of September 11, the United States was at war, a new and unique and different kind of war that we had

never experienced before. As Senator SESSIONS said, a war of ideas but a war of violence, a war in which al-Qaida was the enemy but in a way that we had never experienced before. It was a unique and different legal paradigm in which Judge Gonzales found himself, dealing with terrorists and not recognizing them merely as criminals.

That is why we had to change the character of some of our laws. We do not wait until after the fact and go out and collect the evidence and decide who may or may not have caused the violence or perpetrated a crime. It is too late then, and we all know it is too late. We act before, and we act decisively, as our President did.

Judge Gonzales advised our President in that, and the constitutional consequences, and how we work our way through and the reasonable nature and character of protecting human rights and being fair and responsible, while all the time recognizing we were dealing with an enemy who in no way would deal that way or comprehend that they had any responsibility to deal with us as we might deal with them.

Judge Gonzales has also worked to ensure that those detained in war as terrorists were treated humanely. While that allegation goes forth today, working to keep the principles of the Geneva Convention were clearly understood and all of that was well sought after.

My time is about up. My colleagues on the other side have gathered to speak to this nomination.

In closing, I support Judge Alberto Gonzales's nomination to be our next Attorney General because of his lifetime of hard work and his accomplishments. There is no question this man is qualified. That really is not the debate today. Others are trying to divert us off into a debate of policy or a debate of issues well beyond the character of the man and his ability to serve in the role that this President has cast him into as nominee for Attorney General of the United States.

I believe he will be confirmed, and I believe he will serve honorably in that position. I strongly support this nomination. I ask my colleagues to step beyond the politics of the day, look at the reality of who we place in these key roles of Government to be effective administrators on behalf of all of the people, to be an Attorney General that is fair, who understands the role of the Constitution and the boundaries we placed on law enforcement and the legal community in the character of building and sustaining a civil society of the kind that we as Americans have come to know and appreciate, and that which we would hope the rest of the world can understand.

Judge Gonzales understands it. Judge Gonzales will make a great Attorney General. I support him strongly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I am only going to take a few moments. I have colleagues on this side of the aisle who wish to speak during the hour.

I hear so many of the statements on the other side speak of Judge Gonzales's personality, his upbringing, and his inspirational life story. If we were just voting on his personality, his upbringing, and his life story, I would vote for him with wholehearted support. However, we are not voting on the life, we are voting on the record. It is an enormous difference. Equally important, we are not voting on an Attorney General to serve only the President, we are voting on the Attorney General for the United States.

So many of the supporters of Judge Gonzales have said that they abhor the idea of torture. They say that they believe the Bybee memo was wrong. They say that these policies are wrong.

Of course they are wrong, but these are the policies that were held in place by the administration for as long as they remained secret. The Bybee memo was sought by Judge Gonzales. It was agreed to by him. He apparently still takes the position that there are circumstances where the President of the United States is above the law.

I don't want someone to serve as Attorney General who will be a good soldier for the President. I would have said the same thing, whether it was a Democratic President or Republican President. I want someone for Attorney General who will be independent, who will give the best possible advice and protect the rights of all of Americans.

I am the parent of a former Marine. My son has now fulfilled his duty for the Marines, but if he were serving, I would worry for him as I worry for all the thousands of men and women serving overseas. The torture policies of this administration did nothing to enhance the security of our Americans fighting bravely. In fact, the policies put soldiers and civilians in greater danger.

The truth is that the Bybee memo was disavowed only when the press found out about it. Unfortunately, the people at the center of the development of these policies, who could have disavowed the memo upon its publication, who could have stopped it, including Judge Gonzales, did nothing.

I see the distinguished Senator from Louisiana and the distinguished Senator from Rhode Island. I don't know which one seeks recognition, but I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, every 4 years an individual chosen by the American people steps forward to assume the awesome responsibilities as President of the United States. His first act is to take this oath:

> I do solemnly swear that I will faithfully execute the office of the President of the United States and I will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.

George W. Bush took this oath on January 20, 2001, and again a few days ago on January 20, 2005. His overarching responsibility is to preserve, protect, and defend the Constitution. In order to protect, preserve, and defend the Constitution, you must understand what it says. As such, a President must rely on the advice of his legal counsel.

Alberto Gonzales has served as President Bush's legal counsel since 2001. In this capacity, he has provided advice to him that, in my view, ignores both the letter and spirit of the Constitution and the President's critical responsibility to preserve, protect, and defend it. Through his advice, he has set in motion policies that have harmed our interests at home and abroad.

Our Nation was founded by men and women fleeing severe political and religious persecution. Wary of authoritarian government or religious leaders, they created a nation by and for the people, a nation committed to the rule of law and the notion that every person has certain inalienable rights. Our Founding Fathers very deliberately did not create a new monarchy. They did not crown a king. Instead, they created a new system of government that relied on the rule of law that was agreed upon by representatives of the people.

As article VI of the Constitution states so eloquently:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land. . . .

The Constitution is the supreme law, not the word of the President. I would also emphasize the language here includes all treaties, including the Geneva Conventions and the Convention Against Torture.

They are not extrajudicial. They are part of the Constitution. They are part of the responsibility of all of us to defend.

In the United States of America, the Constitution, our Federal laws and our treaty obligations are the means by which we as a people, in this grand experiment we call democracy, have agreed to rule ourselves.

The President, all Senators, all Representatives, the members of our state legislatures, and all executive and judicial officers, both of the United States and the individual states, are bound by an oath to support our Constitution.

This oath to defend and support our Constitution was also taken by Judge Gonzales in his current position as counsel to the President.

Now, Judge Gonzales is being considered to serve as the Attorney General of the United States, the chief law enforcement officer of the United States.

It is Judge Gonzales's failure to defend and support our Constitution, our federal laws, and our treaty obligations that leads me to believe he does not have the wisdom or judgment to be our next Attorney General.

Our Nation's Attorney General must ensure that no person is above the law—including the President of the United States—and that no person is outside the law, whether that person is deemed an enemy combatant, or held outside the United States.

Judge Gonzales's record does not justify such an appointment.

I recognize that much of the advice that Judge Gonzales gave was in the aftermath of the attacks of 9/11 and the emergence of the al-Qaida network as a grievous threat to the United States. Small terrorist cells dispersed worldwide and committed to suicide attacks producing mass casualties represented a new and disturbing threat to our country. The possibility that al-Qaida or other terrorist cells might acquire weapons of mass destruction, including nuclear devices, added an even more frightening element to the dangers we faced. We had to face this threat realistically. The policies of deterrence that served us well in the Cold War are difficult, if not impossible, to apply to these ruthless groups of terrorists. With respect to al-Qaida, we had to take preemptive action. And, we did in Afghanistan.

But the nature of this threat did not relieve us of our responsibilities to the Constitution and the structure of international treaties embodied in the Constitution. This is not being naive or sentimental. The durability of the Constitution testifies to both its strength and its wisdom. The structure of international treaties reflects hard won agreements based on experience. The Constitution requires careful and sincere interpretation when new challenges arise. It cannot be ignored or trivialized.

When it comes to the issue of the conduct of war, legal guidance must be particularly clear and it must recognize that the fury of war too often brings out the worst.

Ages ago, Thucydides wrote:

> War, depriving people of their expected resources, is a tutor of violence, hardening men to match the conditions they face . . . Suspicion of prior atrocities drives men to surpass report in their own cruel innovations, either by subtlety of assault or extravagance of reprisal.

Shakespeare captured the essence of this visceral violence in his immortal phrase, ''Cry Havoc, and let slip the dogs of war.''

Abraham Lincoln understood the passions and emotions that grip the warrior. Writing to a friend in the midst of our Civil War, President Lincoln declared:

> Thought is forced from old channels into confusion. Deception breeds and thrives. Confidence dies, and universal suspicion reigns. Each man feels an impulse to kill his neighbor, lest he be first killed by him. Revenge and retaliation follow. And all this, as before said, may be among honest men only. But this is not all. Every foul bird comes abroad, and every dirty reptile rises up.

Yet, the guidance provided by this Administration was confused at best and relied on the fine parsing of legal terms which may pass muster in the contemplative chambers of a judge but fails miserably in the crucible of war. This advice was a disservice to the men and women of the Armed Forces.

It is clear that as White House counsel, Judge Gonzales has been one of the architect's of the Administration's post 9/11 policies. In particular, he has helped craft or agreed to policies regarding the treatment of individuals captured and detained in the wars in Afghanistan and Iraq. These policies have denied detainees the protections of the Geneva Conventions, permitted them to be interrogated under a dramatically narrowed definition of torture, and denied them access to counsel or judicial review.

In at least one memorandum, Judge Gonzales apparently agreed that the President has the ability to override the U.S. Constitution and immunize acts of torture.

Although supporters of Judge Gonzales will point out that only one of five memoranda discussed at his nomination hearing were written by Judge Gonzales, he clearly acquiesced to the conclusions in the other memos.

As White House counsel, Judge Gonzales's role was to decide what legal advice was needed from the Department of Justice and then to weigh and distill that advice before giving his opinion to the President.

It is clear from the record that Judge Gonzales either agreed with the legal advice dispensed in these memoranda, or allowed poor legal advice to be passed onto the President.

Either way, I believe Judge Gonzales has been deeply involved in policies that have undermined our standing in the world and our historic commitment to the rule of law.

I think we must first put these memos and decisions in historical context.

The issue of the treatment of detainees in war is not a new one and an extensive legal framework has been developed to guide a nation's behavior during conflict.

The most well known and comprehensive are the Geneva Conventions, created in 1948, to mitigate the harmful effects of war on all persons who find themselves in the hand of a belligerent party. 192 countries, including the United States and Afghanistan ratified the treaty.

The Geneva Conventions were created in the aftermath of World War II and the Nuremberg Trials, by a world which had just experienced warring armies, the systematic rounding up and extermination of millions of innocent civilians, squalid POW camps, death marches, resistance movements and the aftermath of two nuclear bombs. Those who drafted the Geneva Conventions had pretty much seen it all, and they accounted for all of it in the Conventions.

The United States clearly took the Conventions seriously and made them the part of the law of our land by incorporating them as part of our legal system.

The War Crimes Act, passed by Congress and signed by the President in 1996, makes ''a grave breach'' of the Geneva Conventions a crime punishable by prison and even the death penalty.

Adding to this legal structure, the United States ratified the United Nation's International Covenant on Civil and Political Rights in 1992. The ICCPR prohibits arbitrary detention and ''cruel, inhuman or degrading treatment.'' The United States notified the UN that it interprets ''cruel, inhuman or degrading treatment or punishment'' to mean cruel and unusual treatment or punishment prohibited by the First, Eighth and/or Fourteenth Amendment to the Constitution.

Furthermore, in 1998, the United States ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention requires parties to take measures to prevent torture from occurring within any territory under their jurisdictions, regardless of the existence of ''exceptional circumstances'' such as a war or threat of war, internal political instability or other public emergency. The U.S. Congress implemented the treaty by enacting 18 U.S.C. sections 2340–2340A. Torture is defined in this statute as ''an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering upon another person within his custody or control'' outside the United States. Offenders can be subject to imprisonment and the death penalty.

The laws of warfare are also an integral part of military training and conduct. The Uniform Code of Military Justice, or UCMJ, was a law enacted by Congress in 1950. The mistreatment of prisoners may be punishable as a crime under article 93, UCMJ, which forbids a soldier to act with ''cruelty toward, or oppression or maltreatment of, any persons subject to his orders.'' Article 97 prohibits the arrest or confinement of any person except as provided by law. The UCMJ also punishes ordinary crimes against persons such as assault, rape, sodomy, indecent assault, murder, manslaughter, and maiming. Article 134 also punishes ''all disorders and neglects to the prejudice of good order and discipline in the armed forces'' and ''all conduct of a nature to bring discredit upon the armed forces.''

The Army also has regulations implementing the laws of war, including regulation 190–08, which implements the Geneva Conventions. All soldiers are expected to abide by Army regulations and if a soldier violates a regulation, he or she is subject to punishment under the Uniform Code of Military Justice.

Despite the Constitution's clear prohibition on cruel and unusual punishment, despite law after law, treaty after treaty prohibiting torture, the President's chief counsel, Judge

Gonzales, requested a series of legal memos regarding the applicability of treaty provisions and permissible interrogation techniques in the war on terrorism.

One of these memos, the August 1, 2002, Bybee Memorandum, was apparently written to explore what coercive tactics U.S. officials could use without being held criminally liable.

This memo created a new and radically narrow definition of torture. It stated that torture would require interrogators to have specific intent to cause physical pain that ''must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death.'' Mental torture is defined in the statute but the Justice Department memo states that mental torture must result in ''significant psychological harm lasting for months or even years.''

According to Harold Koh, Dean of the Yale Law School, former Assistant Secretary of State for Democracy, Human Rights and Labor, and an international law expert, this memo is ''the most clearly erroneous legal opinion'' he has ever read. In testimony before the Judiciary Committee he stated:

> In sum, the August 1, 2002 OLC memorandum is a stain upon our law and our national reputation. A legal opinion that is so lacking in historical context, that offers a definition of torture so narrow that it would have exculpated Saddam Hussein, that reads the Commander-in-Chief power so as to remove Congress as a check against torture, that turns Nuremberg on its head, and that gives government officials a license for cruelty can only be described—as my predecessor Eugene Rostow described the Japanese internment cases—as a ''disaster.''
>
> One would have expected the Counsel to the President to have immediately repudiated such an opinion. Judge Gonzales did not.

Instead, this memo was endorsed by Judge Gonzales as the legal opinion of the Justice Department on the standard for torture.

Now, over 30 years ago, the U.S. Navy vessel USS *Pueblo* was sent on an intelligence mission off the coast of North Korea. On January 23, 1968, it was attacked by North Korean naval and air forces. Eighty-one surviving crewmembers of the USS *Pueblo* were captured and held captive for 11 months. One survivor, Harry Iredale, related his experiences with a North Korean interrogator named, ''The Bear:''

> The Bear proceeded to yell at me to confess. He had me kneel on the floor while two guards placed a 2-inch diameter pole behind my knees and other guards jumped on each end of it several times. Then the Bear picked up a hammer handle and proceeded to smash it onto my head, completely encircling my head with lumps as I screamed in pain.

I think most of us would consider this graphic description one of torture. But under the Bybee memorandum's definition, this would not constitute organ failure or death, so it would not be considered torture.

More importantly, perhaps, is that the North Korean regime still exists and thousands of American soldiers line the border. Our soldiers could still be captured. And now we cannot hold the North Koreans to a higher standard of conduct, because ours is the same.

The August Bybee memorandum also enumerated reasons that American officials could not be held criminally liable for coercive interrogation tactics that fell outside of this new narrow definition of torture.

It also posits that officials can invoke ''necessity'' or ''self-defense'' as a defense against prosecution for such acts, despite the fact the Convention Against Torture clearly states there are no ''exceptional circumstances'' that may be invoked as justification for torture.

Although the torture provisions of the August 2002 Bybee memo were rescinded and replaced four weeks ago by a new December 30, 2004 memo, the Bybee memo was Administration policy for almost 2½ years and has had extremely harmful effect on both our military and intelligence communities.

If this memo with its narrow definition of torture was so wrong on its face that it had to be rescinded, why didn't Judge Gonzales know it was wrong at the time he requested and endorsed it?

One of the most disturbing parts of the August Bybee memorandum is the suggestion that the President and other executive officials can escape prosecution for torture on the ground that ''they were carrying out the President's Commander-in-Chief powers.''

By adopting the doctrine of ''just following orders'' as a valid defense for United States soldiers and officials, the opinion undermines the very underpinnings of individual criminal responsibility set forth after World War II, and now embodied in the basic instruments of international criminal law.

This memorandum basically puts the President, and his subordinates, above the law, as it states, ''any effort to regulate the interrogation of battlefield combatants would violate the Constitution's sole vesting of the Commander-in-Chief authority in the President.''

This is antithetical to everything we know about our founding document and the rule of law.

It ignores the fact that the Convention Against Torture and other treaties have been approved by Congress, elucidated by statute and become the law of the land.

The Bybee memo's reading of the President's powers as Commander-in-Chief essentially would allow him to ignore or order that the criminal prohibition against torture in the United States code be set aside. The President could trump Congress' power under Article I, section 8, clause 10 to ''define and punish . . . offenses against the law of nations'' such as torture.

Interestingly, nowhere does the August Bybee memorandum mention the landmark Youngstown Steel & Tube Co. v. Sawyer decision in which the Supreme Court explained why the President's Commander-in-Chief or inherent executive power were not enough to allow him to take over the American steel industry during a time of crisis. In his concurring opinion, Justice Jackson eloquently discussed the limits on such Presidential powers, especially when the ''President takes measures incompatible with the express or implied will of Congress.''

In fact, Bybee cites no precedent for his unique enhancement of the President's Commander-in-Chief power other than:

> In light of the President's complete authority over the conduct of war, without a clear statement otherwise, we will not read a criminal statute as infringing on the President's ultimate authority in these areas. We have long recognized, and the Supreme Court has established a canon of statutory construction that statues are to be construed in a manner that avoids constitutional difficulties so long as a reasonable alternative construction is available.

This is nonsense. There are statutes on the book outlawing torture. There is no precedent cited because scant precedent exists, it any.

Now if this Commander in Chief override exists, if the President can exercise his Commander-in-Chief power to ask his subordinates to engage in torture to protect the national security of our country, how would this be done? One would think the Commander-in-Chief would have to order his subordinates to engage in such conduct for it to be legal. So where are the orders? And if there are no orders, aren't U.S. soldiers and intelligence officers still subject to the supreme law of our land—our Constitution, our statutes and our treaty obligations—and can they not be prosecuted for violations of this law? How would Judge Gonzales approach this dilemma, created by his own legal reasoning, if he is nominated-confirmed Attorney General? Would he prosecute subordinates of the President who engaged in what most rational people would consider torture during the past 2½ years and then defend themselves with the reasoning in the Bybee memorandum?

In addition, at this time there are over 20,000 private contractors in Iraq. Many of them are engaging in ''military functions'' in support of U.S. forces. These civilians are currently liable for prosecution in U.S. courts for various offenses, under the U.S. laws implementing the Convention on Torture. In addition, persons who are ''employed by or accompanying the armed forces'' may be prosecuted under the Military Extraterritorial Jurisdiction Act. Now, many such offenses are permitted by the Bybee memorandum but are prohibited by other U.S. law.

Again, would Judge Gonzales vigorously prosecute violations of law that, either through his advice or the legal reasoning he deemed were acceptable practices activities?

Now the creation of this so-called Commander-in-Chief override power has created some consternation in

legal circles. But neither Judge Gonzales nor the Justice Department has backed away from it.

The December 30, 2004, memo declares that it supersedes the August 2002 Bybee memo in its entirety. However, the Office of Legal Counsel has not yet clearly and specifically renounced the parts of the August 2002 memorandum concerning the Commander in Chief's power stating:

Consideration of the bounds of any such authority would be inconsistent with the President's unequivocal directive that United States persons not engage in torture.

Judge Gonzales's own public statements have also urged a broad view of the President's power to conduct the war on terror. In a June 2004 speech before the American Bar Association's Standing Committee on Law and National Security, Judge Gonzales stated:

[The President] has not had to—as I indicated, in terms of what he has done or has not done, he has not exercised his Commander-in-Chief override, he has not determined that torture is, in fact, necessary to protect the national security of this country.

But it seems that Judge Gonzales's statement is at least providing for a situation in which the President could make that determination, but under what constitutional principle I do not know.

Furthermore, Judge Gonzales was unwilling to repudiate the Commander in Chief override power when asked directly about it during his confirmation hearing, saying that it was a hypothetical question about a hypothetical situation and he was ''not prepared in this hearing to give you an answer to such an important question.''

Now, I always assumed the purpose of a hearing to confirm a Cabinet official was that he would answer, after preparation, important questions involving his proposed responsibilities. Apparently, Judge Gonzales did not believe that was the role of the hearing. He provided no answer.

In addition, in responding to a followup question submitted by Senator LEAHY, Judge Gonzales refused to answer in the affirmative that the President could not override the Convention Against Torture and any implementing legislation and immunize the use of torture under any circumstances, stating again:

[T]he President does not intend to use any authority he might conceivably have to authorize the use of torture.

I guess it is one of those situations where torture is in the eye of the beholder. Much of what seems to have happened to those crew members of the Pueblo looks to us as torture, but I guess it was not torture under the Bybee memorandum.

As Attorney General, Judge Gonzales will be responsible for enforcing the laws of our land. But he himself created an exception to these laws for the President. He not only allowed torture to be redefined, he also agreed to a new, unchecked power for the President that no President before ever had.

Now, I would like to discuss two memoranda Judge Gonzales requested from the Department of Justice Office of Legal Counsel regarding U.S. treaty obligations in the war in Afghanistan. Specifically, he asked if treaties forming part of the laws of armed conflict applied to conditions of detention and procedures for trials of members of al-Qaida and the Taliban militia. He also asked that if the Geneva Conventions did apply in Afghanistan, would the Taliban, the military force of Afghanistan, qualify for prisoner-of-war status.

As I noted earlier, after World War II, the United Nations drafted, and most of the world, including the United States and Afghanistan, ratified the Geneva Conventions. There are four conventions. The third convention defines six classes of persons who, if captured, should be considered as prisoners of war. The most protected class under the Geneva Conventions is the prisoner-of-war category. Civilians and spies are protected as other classes in the fourth Geneva Convention. Running through all of these conventions is common article 3, which prohibits:

[O]utrages upon personal dignity, in particular, humiliating and degrading treatment.

Most experts would agree this is the minimum standard for the treatment of all detainees.

As I stated in the beginning of my remarks, September 11 did usher in a new era. It was reasonable for Judge Gonzales to wonder if perhaps a group such as al-Qaida was one of those categories of individuals or groups that was not authorized automatic protection under the Geneva Convention. However, the Geneva Conventions maintain if the status of a captured individual is in doubt, a competent tribunal must decide that status. Furthermore, the Geneva Conventions are only one part of the law of armed conflict. The Convention Against Torture and the assurance of basic human rights remain in place at all times.

On January 22, 2002, the Justice Department sent a memo to Judge Gonzales regarding treaty obligations. Also signed by Jay Bybee, the Assistant Attorney General, the memo analyzed the War Crimes Act and the Geneva Conventions and concluded:

[N]either the federal War Crimes Act nor the Geneva Conventions would apply to the detention conditions of al-Qaida prisoners. We also conclude that the President has the plenary constitutional powers to suspend our treaty obligations toward Afghanistan during the period of conflict.

A memo sent 2 weeks later concluded that the Taliban did not qualify for prisoner-of-war status.

Now, legal experts can and have disagreed about the conclusions reached by the Department of Justice. But what I find deeply disturbing is the questionable judgment and cavalier attitude Judge Gonzales used outlining his recommendations as White House legal counsel.

On January 25, 2002, Judge Gonzales drafted a memorandum to the President agreeing with the January Bybee memorandum. He states two positive aspects of this decision. First, he finds that suspending these treaty obligations ''preserves flexibility,'' which, I would note, is not a legal conclusion. He then states that the war on terrorism is a new kind of war, a ''new paradigm that renders obsolete Geneva's strict limitation on questioning of enemy prisoners and renders quaint some of its provisions.'' A second positive aspect Judge Gonzales concluded is that since the Geneva Conventions do not apply to al-Qaida and the Taliban, it ''substantially reduces the threat of domestic criminal prosecution under the War Crimes Act.''

Judge Gonzales then goes on to list seven negative points about suspending the War Crimes Act and the Geneva Conventions in these circumstances, including:

The U.S. had abided by the Geneva Conventions since their creation in 1948.

The U.S. could then not invoke the Geneva Conventions for U.S. forces captured or mistreated in Afghanistan.

The War Crimes Act could not be used against the enemy.

The position would ''likely provoke widespread condemnation among our allies and in some domestic quarters.''

In the future, other countries may look for ''loopholes'' to avoid complying with the Geneva Conventions.

The determination ''could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct of combat, and could introduce an element of uncertainty in the status of adversaries.''

Remarkably, after weighing the pros and cons, Judge Gonzales found the negatives of such a decision by the President were ''unpersuasive.'' He concurred in the Justice Department's decision that the Geneva Convention did not apply to al-Qaida and the Taliban.

On January 26, 2002, Secretary of State Powell objected to the presentation and conclusions in the Gonzales memo. Secretary Powell sent his own memo to Gonzales, stating:

I am concerned that the draft does not squarely present to the President the options that are available to him. Nor does it identify the significant pros and cons of each option.

Secretary Powell lists as cons, in his words:

It will reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops; it is a high cost in terms of negative international reaction, with immediate adverse consequences for our conduct of foreign policy; it will undermine public support among critical allies, making military cooperation more difficult to sustain; and Europeans and others will likely have legal problems with extradition.

At a February 4, 2002, National Security Council meeting to decide this issue and make recommendations to the President, the Department of State, the Department of Defense, and

the Chairman of the Joint Chiefs of Staff were in agreement that all detainees would get the treatment they are or would be entitled to under the Geneva Conventions.

Now Judge Gonzales was faced with two opposing opinions: one, from the Department of Justice, which offered a new and untried approach to international law; and the other which was supported by decades of precedent and the entire military establishment, which was actually going to be on the front lines of the conflict. Judge Gonzales had to choose what he was going to advise the President.

On February 7, 2002, President Bush, presumably following the legal advice of his counsel, issued a memorandum stating that the Geneva Conventions did not apply to al-Qaida, and that while the Taliban were covered by the Geneva Conventions, they did not qualify for POW status. The fact that the third Geneva Convention requires a competent tribunal to determine this fact was ignored. Furthermore, President Bush stated that the Geneva Conventions' common article 3, the minimum standard of human rights for noncombatants, including prisoners, did not apply to either al-Qaida or the Taliban.

Mr. President, these questionable decisions of Judge Gonzales have profound effects. What he found unpersuasive was the most correct statement in his memo—that his advice would, in his words, ''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.''

In January 2004, the Pentagon announced that they were investigating reports of abuse of prisoners in Iraq. In May 2004, the world was horrified when pictures of some of the abuses at Abu Ghraib prison became public. Now for many months, DOD officials have maintained that such abuses were the acts of a few depraved, low-ranking individuals, but reports of abuses in other prisons, such as Guantanamo and the Adhamiya Palace in Baghdad, are coming to light.

To date, the Pentagon has initiated several investigations into these abuses. Only some of the investigations have been completed, and they all concern Abu Ghraib. However, they have startlingly similar findings. President Bush's February 7, 2002, memorandum set new policy that conflicted with longstanding Army doctrine based on established laws of war, and this conflict caused confusion and ultimately a corrosion of standards.

The Schlesinger report, released on August 24, 2004, was written by an independent panel chaired by the former Secretary of Defense, Jim Schlesinger, to review DOD detention operations. In fact, the report was essentially commissioned by the present Secretary of Defense, Mr. Rumsfeld. Dr. Schlesinger pointedly blamed the administration for confusion in the ranks. The Schlesinger report found ''Lieutenant General Sanchez signed a memo authorizing a dozen interrogation techniques beyond standard Army practice, including five beyond those applied at Guantanamo . . . using reasoning from the president's memo of February 7, 2002.''

Another report, completed by Lieutenant General Jones, stated that confusion over different standards for detainee treatment and interrogation, dictated by the administration and followed through by the Army, led to ''a permissive and compromising climate for soldiers.''

In order to overcome these problems, the Schlesinger report recommended that ''the United States should further define its policy applicable to both the Department of Defense and other Government agencies, on the categorization and status of all detainees as it applies to various operations and theories. It should define their status and treatment in a way consistent with U.S. jurisprudence and military doctrine and with the [United States] interpretation of the Geneva Conventions.''

It is a fact of life that there are always going to be abuses of human rights in time of war. But the abuses I have discussed above, and that are still, unfortunately, coming to light, are systemic. I would argue that they are the result of a corrosive trend started by the President's February 7 memo, which was based on advice given by Judge Gonzales in consultation with the Department of Justice. This is not the type of legal thinking and judgment that I find suitable for the Office of Attorney General.

There is one final issue that needs to be mentioned. That is the deeply disturbing issue of ''ghost detainees.'' The Bush administration has always maintained that the Geneva Conventions are in force in Iraq. Article 49 of the fourth Geneva Convention prohibits ''individual or mass forcible transfers, as well as deportations of protected persons from occupied territory . . . regardless of their motive.''

Yet an October 24, 2004, Washington Post story states that a confidential March 19, 2004, Justice Department memorandum granted permission to the CIA to take Iraqis out of their country to be interrogated for a ''brief but not indefinite period.'' It also said the CIA can permanently remove ''illegal aliens.'' Other reports state that as many as a dozen detainees were moved under this policy.

In addition, the third and fourth Geneva Conventions maintain that international organizations such as the Red Cross must have access to prisoners. Two generals investigating the abuses of Abu Ghraib, Major General Taguba and General Kern, noted in their reports that the U.S. hid prisoners from Red Cross teams. General Kern stated that the number of ghost detainees ''is in the dozens, perhaps up to 100.''

The role of Judge Gonzales in the production and approval of this memo is yet unknown. But given his participation in other decisions made about the wars in Iraq and Afghanistan, it is not irrational to assume that he had some participation.

The existence of ghost detainees is a violation of the Geneva Convention. Someone is responsible for this decision and must be held accountable. If Judge Gonzales is confirmed as Attorney General, will he pursue these types of investigations and potential prosecutions?

Some of my colleagues will likely state that opposition to Judge Gonzales is partisan politics. But we are not alone in opposing this nomination. Twelve retired admirals and generals sent a letter to the Judiciary Committee expressing deep concerns about the nomination of Judge Gonzales. This letter includes the following statement:

> During his tenure as White House Counsel, Judge 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 forced a greater animosity towards the [United States], undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world.

These are the words of distinguished general officers who have served their country in uniform upwards of 30 or more years.

A group of 17 religious leaders and organizations also sent a letter to the Judiciary Committee expressing concern about Judge Gonzales's nomination and his role, in their words, in ''sanctioning torture.'' Another group of more than 200 religious leaders sent a letter to Judge Gonzales stating:

> We fear that your legal judgments have paved the way to torture and abuse.

Even his colleagues in the legal community have doubts. A group of 329 prominent lawyers sent a letter to the Judiciary Committee stating that Judge Gonzales's purported role in deciding the treatment of detainees ''raises fundamental questions about Judge Gonzales's fidelity to the rule of law, about his views concerning the responsibility of a government lawyer, and about the role of the Department of Justice.''

Much has been made and much should be made about Judge Gonzales's rise from very humble beginnings. There is no disputing this fact. There is no disputing that the nomination of a Latino to such an August position is a significant, notable moment in our Nation's history. Indeed, there are many people in my State who see their deepest hopes and dreams for their children and grandchildren in the story of Judge Gonzales's rise. Such a sense of pride is no small thing. But our duty as Senators is to advise and consent on the fitness and skills of nominees. And there are few positions in the Cabinet that are as sensitive and important as that of Attorney General.

As heartening as Judge Gonzales's personal story is, like the congressional Hispanic caucus and a number of civil rights groups such as the Mexican American Legal Defense Fund, I believe that Judge Gonzales has left too many important questions unanswered.

Indeed, as The congressional Hispanic caucus has pointed out:

[T]he 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 of limited English proficiency, due process rights of immigrants, and the role of local police in enforcing federal immigration laws.

The right to vote, protection from discrimination, and assistance for those who have yet to master the English language are issues of great importance to Latinos in my State, and they deserve real answers. Despite Judge Gonzales's superb academic credentials and his record of achievement, I have too many concerns about his decisions made on legal matters, particularly in his role of the past 4 years as White House Counsel, to vote for his confirmation.

The genius of our Founding Fathers was not to allow power to be concentrated in the hands of a few. They were particularly concerned about a concentration of power in the President. Although they made the President the Chief Executive Officer of our Government and the Commander in Chief, the Founding Fathers constrained the President through the very structure of our Government, through both law and treaty. The Attorney General has a duty not just to serve the President but, also and ultimately, to support, protect, and defend the constitutional commitment to a system of checks and balances. I do not feel comfortable with Judge Gonzales's ability to do this.

After studying his record, I do not believe that Judge Gonzales has demonstrated the judgment necessary to perform the duties of the highest law enforcement officer of our land.

Mr. President, I ask unanimous consent to have printed in the RECORD a number of articles bearing on Judge Gonzales's role in torture policies, as well as recent statements by the Leadership Conference on Human Rights and the Center for Constitutional rights opposing this nomination.

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

LCCR OPPOSES GONZALES CONFIRMATION: VOTE ''NO'' FEBRUARY 2, 2005

Dear Senator: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest and most diverse civil and human rights coalition, we write to express our opposition to the confirmation of White House Counsel Alberto R. Gonzales as United States Attorney General. The Leadership Conference recognizes the historic significance of Mr. Gonzales's appointment as the first Hispanic American to serve as Attorney General, and so the action we urge today is not undertaken lightly. Regrettably, however, Mr. Gonzales's failure to properly address concerns with his past record and clearly explain his positions on critical civil and human rights issues compels us to urge the Senate to reject his confirmation.

Earlier this month, LCCR sent the Senate Judiciary Committee a letter, signed by more than four dozen national civil and human rights leaders, that expressed numerous concerns with Mr. Gonzales's record and urged close scrutiny. Despite a day-long hearing before the Committee, the submission of written questions by Committee members, and numerous inquiries by the press and the public, Mr. Gonzales and the Administration have not yet provided the Senate either with the critical information on his record or with the commitment to accountability and transparency that are prerequisites to the Senate exercising its constitutional duty of advise and consent on this nomination. We remain unconvinced that Mr. Gonzales would independently enforce the law, rather than continue to simply rationalize it, as he did while serving then-Governor George W. Bush.

MR. GONZALES HAS NOT ADDRESSED SERIOUS CONCERNS INVOLVING THE USE OF THE DEATH PENALTY

The Leadership Conference on Civil Rights opposes the death penalty under all circumstances, but recognizes that it is the law of the land in many states and at the federal level. As the ultimate—and the only irreversible—sanction for criminal conduct, capital punishment must never be administered if a government has not exercised every reasonable precaution at its disposal to avoid putting an innocent person to death. A failure to ensure that every death penalty case receives fair and balanced treatment can easily lead to severe miscarriages of justice.

As General Counsel to then-Governor George W. Bush from 1995 to 1997, Mr. Gonzales advised the Governor on pending clemency petitions in death penalty cases. While Governor Bush exercised ultimate authority to grant or deny a clemency petition, his decision in each case was based on the information he received from Mr. Gonzales. It was Mr. Gonzales's legal responsibility to present the Governor with a full and balanced summary of each case, including any and all significant mitigating factors.

To date, the only known physical records that document the information that Mr. Gonzales provided to Mr. Bush regarding clemency petitions are brief memoranda, ranging from one-and-a-half to seven pages in length. Most of these memoranda were dated either the day before or the day of a scheduled execution.

The clemency memoranda are, in many cases, extremely troubling. A number of them omit evidence that was presented in clemency petitions such as outstanding claims of innocence, allegations that a jury had failed to consider material evidence, signs of mental impairment, and personal mitigating factors such as severe childhood abuse. For example, in the case of Carl Johnson, the clemency memorandum prepared by Mr. Gonzales does not even refer to the fact that Mr. Johnson had claimed he received ineffective assistance of counsel because his lawyer slept through portions of his trial. In the case of Terry Washington, a mentally retarded 33-year-old, Mr. Gonzales barely mentioned that Mr. Washington's limited mental capacity (and the failure of his counsel to raise it during trial) formed the central basis of his thirty-page clemency petition. Instead, Mr. Gonzales referred the issue of Mr. Washington's mental capacity only as a piece of ''conflicting information'' about Mr. Washington's background.

Mr. Gonzales has claimed, during questioning before the Committee, that the memoranda were only ''summaries'' of the death penalty cases he handled for Governor Bush, and that they were typically provided at the end of a ''rolling series of discussions'' about each case. Yet to date, Mr. Gonzales has produced no tangible evidence of such discussions or any other communications with the Governor about any death penalty case, leaving serious and very troubling questions remaining about whether, under Mr. Gonzales's tenure, justice was properly administered in every case.

Mr. Gonzales's responses to questions about how he would handle death penalty cases as Attorney General, if confirmed, also cause significant concern. When asked about a recent Justice Department report that revealed striking racial and ethnic disparities in the imposition of the federal death penalty, Mr. Gonzales expressed only a ''vague knowledge'' of the problem. While he stated a willingness to examine the application of the death penalty if he were convinced that such disparities existed, he did not commit to address already-documented concerns at the federal level. In addition, while Mr. Gonzales was unfamiliar with Attorney General Ashcroft's policy of overriding decisions by federal prosecutors to not seek the death penalty, which in itself is not indicative of a problem, he failed to commit to formally review the practice, including its potential for racial disparities.

In sum, as evidenced by both his past record and his answers to questions about what he would do if confirmed as Attorney General, Mr. Gonzales has clearly failed to assure the Senate and ultimately the American people that he will administer death penalty cases fairly and in accordance with the law.

MR. GONZALES HAS FAILED TO FULLY ANSWER IMPORTANT QUESTIONS ABOUT CIVIL RIGHTS AND LIBERTIES

In his confirmation hearing, Mr. Gonzales testified that civil rights enforcement would be among his top priorities. Yet while some of his responses to questions reflect some level of consultation with the Justice Department (see response #5 to Senator Biden, p. 2; response #3 to Senator Durbin, p. 20), we are very troubled that his responses to questions on many extremely important civil rights issues were vague and were neither well-informed nor well-developed. For example:

In response to questions about Title VI of the Civil Rights Act, which prohibits racial and gender discrimination in federally funded programs and activities, Mr. Gonzales failed to commit to the enforcement of the Title VI regulations, as distinguished from the Title VI statute itself. This is troubling given the longstanding recognition that the regulations have a scope and application that extend beyond the limits of the statute itself. Because the Supreme Court in Sandoval prohibited individuals from bringing private actions to enforce the Title VI regulations, the government was left as the only entity with the capacity to do so. Important protections against discrimination in the areas of language rights, educational discrimination, environmental justice, and others will be entirely lost unless the Administration commits itself to bring enforcement actions. However, Mr. Gonzales's failure to make such a commitment suggests a substantial narrowing of the historic reach of one of our fundamental civil rights laws.

Mr. Gonzales responded to questions by Senator Kennedy about mandatory minimum sentencing by stating simply that ''mandatory minimums provide a clear deterrent and have been effective.'' His answers

on this topic ignore evidence, including statements from many current and former judges such as Supreme Court Justice Anthony Kennedy, that mandatory minimum sentences, by depriving judges of their traditional discretion to tailor a sentence based on the culpability of the defendant and the seriousness of the crime, render our nation's criminal justice system unjust, unfair, and counter-productive. And, as Justice Kennedy also observed, mandatory minimum sentencing has its most disproportionate impact on communities of color.

Mr. Gonzales was asked about the disparity in sentences for defendants convicted of crack vs. powder cocaine offenses. Under current law, draconian statutory and guideline penalties are triggered by possession or sale of a small amount of crack cocaine—one hundred times less than the amount of powder cocaine that triggers the same penalties. Because African Americans almost exclusively have been targeted by federal authorities for crack cocaine offenses, they and other racial and ethnic minorities serve far longer prison sentences for drug dealing than whites convicted of similar offenses involving powder cocaine. The U.S. Sentencing Commission has twice concluded that there is no empirical basis for the 100 to 1 ratio, but it persists. Yet after being presented with this information in written questions following his hearing, Mr. Gonzales failed to even acknowledge the racial disparities that the current policies have produced.

Mr. Gonzales played a critical role in shaping the administration's ''enemy combatants'' policy, which places individuals beyond the reach of the law and subjects them to indefinite, incommunicado detention. He publicly argued that the President's authority was constrained not so much by the rule of law but ''as a matter of prudence and policy''—a view so radical that it was eventually rejected by an 8–1 majority of the U.S. Supreme Court. In his responses to questions about this policy, following the ruling, Mr. Gonzales has still not made it clear that he, as Attorney General, would be fully committed to respecting the time-honored and vital role of judicial review of executive actions—a matter of grave concern to citizens and noncitizens alike.

MR. GONZALES HAS FAILED TO CLARIFY HIS ROLE IN POLICIES REGARDING TORTURE, INTERROGATION AND DETENTION

As White House Counsel, Mr. Gonzales oversaw the development of detention, interrogation, and torture policies for handling prisoners in Afghanistan, Iraq, and elsewhere. He wrote a 2002 memorandum disparaging the Geneva Conventions and arguing that they do not bind the United States in the war in Afghanistan. He urged the President to reject warnings by U.S. military leaders that such policies would undermine respect for the law in the military, with catastrophic results. He requested and reviewed legal opinions that radically altered the definition of torture and claimed U.S. officials were not bound by laws prohibiting torture. He even made the radical suggestion that the President has the power to disregard Congressional enactments. Changes made as a result to long-established U.S. policy and practices appear to have paved the way for the recent horrific incidents at Abu Ghraib and Guantanamo.

The Administration continues to withhold critical documents that could show the extent of Mr. Gonzales's involvement in setting the above policies. We believe that all relevant documents should be disclosed to the American people, and that the President should clarify or waive any purported claims of privilege. We strongly believe that the Senate cannot meet its constitutional obligations in this nomination without full disclosure and review of these materials.

CONCLUSION

In sum, the record before you regarding the Alberto Gonzales nomination is woefully incomplete, at best, in spite of repeated efforts by the Committee and other stakeholders to obtain all relevant information. At worst, it raises profound questions about Mr. Gonzales' commitment to civil and human rights and the rule of law.

The record is very troubling because nowhere is the Senate's constitutional role in reviewing a presidential cabinet nominee more important than in the case of a prospective Attorney General. It is even more troubling because Mr. Gonzales, in response to questions by Chairman Specter and other members of the Judiciary Committee during his recent confirmation hearing, had repeatedly pledged far greater cooperation with the Committee than his predecessor had extended. Mr. Gonzales and the Administration have utterly failed to deliver on this promised level of cooperation, leaving numerous questions remaining about his suitability for the position of Attorney General and about the impact his tenure would have on civil and human rights in this country and elsewhere. For this reason, we must urge you to not confirm Mr. Gonzales. Please note that LCCR intends to include how Senators vote on this issue in the upcoming 109th Congress LCCR Voting Record.

Thank you for your consideration. If you have any questions, please feel free to contact LCCR Deputy Director Nancy Zirkin at (202) 263–2880, or LCCR Policy Analyst Rob Randhava at (202) 466–6058.

Sincerely,

DR. DOROTHY I. HEIGHT,
Chairperson.
WADE HENDERSON,
Executive Director.

CCR OPPOSES THE NOMINATION OF ALBERTO GONZALES

SYNOPSIS

''The best way for the American people to send a message to the Bush administration and the world that 'we the people' of the United States do not condone torture is to mobilize to reject the nomination of Alberto Gonzales.''—Ron Daniels, Executive Director, the Center for Constitutional Rights

DESCRIPTION AND STATUS

The Center for Constitutional Rights (CCR) strongly opposes the nomination of White House Counsel Alberto Gonzales for the office of Attorney General of the United States. While we applaud the effort of recent Presidents to achieve greater diversity in their Cabinets and would be delighted to see the first person of Latino descent be elevated to this high office, the issue at hand is not about diversity, it is about the conduct of someone who has fundamentally aided and abetted efforts by those in the White House to disregard the rule of law.

We believe that at the behest of President Bush, Mr. Gonzales knowingly and willingly provided counsel and advocated policies calculated to evade or circumvent domestic and international laws prohibiting the use of torture to extract information from soldiers or detainees held in U.S. custody. We believe that the person entrusted to be the highest law enforcement officer in our country must not be someone who has shown such blatant disdain for the rule of law as Chief Counsel to the President of the United States. To confirm Mr. Gonzales would send the wrong signal to the nation and the world. It would be tantamount to condoning torture.

The evidence of Mr. Gonzales's efforts to evade or circumvent domestic and international laws dealing with the use of torture is overwhelming. As White House counsel, he has consistently treated the law as an inconvenient obstacle to be ignored whenever it conflicted with the wishes of the President. Mr. Gonzales is the author of a leaked memo, dated January 25, 2002, that justified the suspension of the Geneva Conventions in the war in Afghanistan, calling these universally recognized international laws ''obsolete'' and ''quaint.''

In the same year, Mr. Gonzales requested a memo from the Justice Department, inquiring as to whether the Bush Administration could evade current treaties and laws in its treatment of Al Qaeda and Taliban detainees without being open to prosecution for war crimes. Moreover, he drafted the original military commission order signed by President Bush on November 14, 2001, which would have allowed suspects apprehended in the global campaign against terrorism to be charged, tried, and even executed without the most basic due process protections. Gonzales also argued that U.S. citizens could be held incommunicado and stripped of the right to counsel and the right to challenge their detention in a court of law for as long as the President deemed necessary. [CCR successfully challenged this position in the milestone case Rasul v. Bush, where the Supreme Court ruled that the detainees at Guantanamo have a right to challenge their detention in U.S. courts.]

Furthermore, Mr. Gonzales and his colleagues approved the use of dogs, hooding, and extreme sensory deprivation, all forbidden by Geneva Convention and International Covenant Against Torture. They redefined torture to limit it to only those actions that lead to organ failure, death or permanent psychological damage. They justified this relaxed definition of torture on the grounds that in a time of war, interrogators need to extract information from prisoners quickly to save American lives. However, it has long been established by experts in the field that torture leads to false confessions and bad intelligence. None of this seems to have mattered to Mr. Gonzales and the higher ups in the White House. Indeed, there is little doubt that the memos written and commissioned by Gonzales paved the way for the abuse and torture of detainees at Guantanamo Bay, Abu Ghraib, Bagram Air Force base, and elsewhere—many of whom are represented by the Center for Constitutional Rights.

The verdict is clear; there is no question but that there is a causal link between the memoranda and other directives devised by Mr. Gonzales and the terrible infractions committed by officers and functionaries in the field. The images and information about the horrific acts committed against prisoners at Abu Ghraib, (80% of were innocent of any crimes according to the International Red Cross), has severely damaged the reputation of the U.S. in the world as a standard bearer for justice and the rule of law. The arrogance that abounds in the White House is such that they seem impervious to world opinion. But ''we the people'' have the opportunity, obligation and power to let the President and the world know that we will not tolerate intolerable acts committed in our name!

Many organizations and members of Congress are content to simply ask ''tough questions'' of Mr. Gonzales but not oppose his nomination. At the Center for Constitutional Rights, we firmly believe that a man who helped destroy our nation's moral standing in the eyes of the world, endangered our troops and dismantled centuries of carefully developed international standards of law must not be rewarded with a promotion. Tough questions are not enough. We have a

duty to save the soul of our country. Accordingly, we call upon Americans of all political persuasions who oppose torture and are eager to restore our nation's good name in the world to join in a massive mobilization to stop the confirmation of Alberto Gonzales as Attorney General of the United States.

MORE ON GONZALES:

According to Newsweek, Mr. Gonzales convened a series of meetings with Defense Department General Counsel William Hayes, Vice Presidential Counsel David Addington, and counsel from the CIA and the Justice Department, where they discussed specific torture techniques they deemed acceptable for use against Al Qaeda leadership, including mock burial, ''water boarding''—where the victim is made to feel that they are drowning—and the threat of more brutal interrogations at the hands of other nations. Indeed, the latter, a practice known as ''extraordinary rendition'' has sent many suspects to countries like Egypt, Jordan and Syria, previously far more experienced in the techniques of torture than the U.S.

The Center for Constitutional Rights has seen the effects of Mr. Gonzales's policies in all too much detail. We represent many of the men, women and children held and tortured at the hands of U.S. personnel at Abu Ghraib, Guantanamo Bay, and elsewhere. In addition, the U.S. has an unknown number of ghost detainees, hidden from the International Red Cross, at spots around the globe: we can only imagine the treatment they are receiving.

In their scathing critique of Mr. Gonzales's writings, The Washington Post linked him directly to the tortures at Abu Ghraib and called his legal positions ''damaging and erroneous.'' Making Alberto Gonzales the Attorney General of the United States would be a travesty. It would mean taking one of the legal architects of an illegal and immoral policy and installing him as the official who is charged with protecting our constitutional rights.

[From the Washington Post, Oct. 24, 2004]

MEMO LETS CIA TAKE DETAINEES OUT OF IRAQ

(By Dana Priest)

At the request of the CIA, the Justice Department drafted a confidential memo that authorizes the agency to transfer detainees out of Iraq for iterrogation—a practice that international legal specialists say contravenes the Geneva Conventions.

One intelligence official familiar with the operation said the CIA has used the March draft memo as legal support for secretly transporting as many as a dozen detainees out of Iraq in the last six months. The agency has concealed the detainees from the International Committee of the Red Cross and other authorities, the official said.

The draft opinion, written by the Justice Department's Office of Legal Counsel and dated March 19,2004, refers to both Iraqi citizens and foreigners in Iraq, who the memo says are protected by the treaty. It permits the CIA to take Iraqis out of the country to be interrogated for a ''brief but not indefinite period.'' It also says the CIA can permanently remove persons deemed to be ''illegal aliens'' under ''local immigration law.''

Some specialists in international law say the opinion amounts to a reinterpretation of one of the most basic rights of Article 49 of the Fourth Geneva Convention, which protects civilians during wartime and occupation, including insurgents who were not part of Iraq's military.

The treaty prohibits ''[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory . . . regardless of their motive.''

The 1949 treaty notes that a violation of this particular provision constitutes a ''grave breach'' of the accord, and thus a ''war crime'' under U.S. federal law, according to a footnote in the Justice Department draft. ''For these reasons,'' the footnote reads, ''we recommend that any contemplated relocations of 'protected persons' from Iraq to facilitate interrogation be carefully evaluated for compliance with Article 49 on a case by case basis.'' It says that even persons removed from Iraq retain the treaty's protections, which would include humane treatment and access to international monitors.

During the war in Afghanistan, the administration ruled that al Qaeda fighters were not considered ''protected persons'' under the convention. Many of them were transferred out of the country to the naval base in Guantanamo Bay, Cuba, and elsewhere for interrogations. By contrast, the U.S. Government deems former members of Saddam Hussein's Baath Party and military, as well as insurgents and other civilians in Iraq, to be protected by the Geneva Conventions.

International law experts contacted for this article described the legal reasoning contained in the Justice Department memo as unconventional and disturbing.

''The overall thrust of the Convention is to keep from moving people out of the country and out of the protection of the Convention,'' said former senior military attorney Scott Silliman, executive director of Duke University's Center on Law, Ethics and National Security. ''The memorandum seeks to create a legal regime justifying conduct that the international community clearly considers in violation of international law and the Convention.'' Silliman reviewed the document at The Post's request.

The CIA, Justice Department and the author of the draft opinion, Jack L. Goldsmith, former director of the Office of Legal Counsel, declined to comment for this article.

CIA officials have not disclosed the identities or locations of its Iraq detainees to congressional oversight committees, the Defense Department or CIA investigators who are reviewing detention policy, according to two informed U.S. Government officials and a confidential e-mail on the subject shown to The Washington Post.

White House officials disputed the notion that Goldsmith's interpretation of the treaty was unusual, although they did not explain why. ''The Geneva Conventions are applicable to the conflict in Iraq, and our policy is to comply with the Geneva Conventions,'' White House spokesman Sean McCormick said.

The Office of Legal Counsel also wrote the Aug. 1, 2002, memo on torture that advised the CIA and White House that torturing al Qaeda terrorists in captivity abroad ''may be justified,'' and that international laws against torture ''may be unconstitutional if applied to interrogations'' conducted in the war on terrorism. President Bush's aides repudiated that memo once it became public this June.

The Office of Legal Counsel writes legal opinions considered binding on federal agencies and departments. The March 19 document obtained by The Post is stamped ''draft'' and was not finalized, said one U.S. official involved in the legal deliberations. However, the memo was sent to the general counsels at the National Security Council, the CIA and the departments of State and Defense.

''The memo was a green light,'' an intelligence official said. ''the CIA used the memo to remove other people from Iraq.''

Since the Sept. 11, 2001, attacks, the CIA has used broad authority granted in a series of legal opinions and guidance from the Office of Legal Counsel and its own general counsel's office to transfer, interrogate and detain individuals suspected of terrorist activities at a series of undisclosed locations around the world.

According to current and former agency officials, the CIA has a rendition policy that has permitted the agency to transfer an unknown number of suspected terrorists captured in one country into the hands of security services in other countries whose record of human rights abuse is well documented. These individuals, as well as those at CIA detention facilities, have no access to any recognized legal process or rights.

The scandal at Abu Ghraib, and the investigations and congressional hearings that followed, forced the disclosure of the Pentagon's behind-closed-doors debate and classified rules for detentions and interrogations at Guantanamo Bay and in Afghanistan and Iraq. Senior defense leaders have repeatedly been called to explain and defend their policies before Congress. But the CIA's policies and practices remain shrouded in secrecy.

The only public account of CIA detainee treatment comes from soldier testimony and Defense Department investigations of military conduct. For instance, Army Maj. Gen. Antonio M. Taguba's report on Abu Ghraib criticized the CIA practice of maintaining ''ghost detainees''—prisoners who were not officially registered and were moved around inside the prison to hide them from Red Cross teams. Taguba called the practice ''deceptive, contrary to Army doctrine and in violation of international law.''

Gen. Paul J. Kern, who oversaw another Army inquiry, told Congress that the number of CIA ghost detainees ''is in the dozens, to perhaps up to 100.''

The March 19, 2004, Justice Department memo by Goldsmith deals with a previously unknown class of people—those removed from Iraq.

It is not clear why the CIA would feel the need to remove detainees from Iraq for interrogation. A U.S. Government official who has been briefed on the CIA's detention practices said some detainees are probably taken to other countries because ''that's where the agency has the people, expertise and interrogation facilities, where their people and programs are in place.''

The origin of the Justice Department memo is directly related to the only publicly acknowledged ghost detainee, Hiwa Abdul Rahman Rashul, nicknamed ''Triple X'' by CIA and military officials.

Rashul, a suspected member of the Iraqi Al-Ansar terrorist group, was captured by Kurdish soldiers in June or July of 2003 and turned over to the CIA, which whisked him to Afghanistan for interrogation.

In October, White House counsel Alberto R. Gonzales asked the Office of Legal Counsel to write an opinion on ''protected persons'' in Iraq and rule on the status of Rashul, according to another U.S. Government official involved in the deliberations.

Goldsmith, then head of the office, ruled that Rashul was a ''protected person'' under the Fourth Geneva Convention and therefore had to be brought back to Iraq, several intelligence and defense officials said.

The CIA was not happy with the decision, according to two intelligence officials. It promptly brought Rashul back and suspended any other transfers out of the country.

At the same time, when transferring Rashul back to Iraq, then-CIA Director George J. Tenet asked Defense Secretary Donald H. Rumsfeld not to give Rashul a prisoner number and to hide him from International Red Cross officials, according to an account provided by Rumsfeld during a June 17 Pentagon news conference. Rumsfeld complied.

As a ''ghost detainee,'' Rashul became lost in the prison system for seven months.

Rumsfeld did not fully explain the reason he had complied with Tenet's request or under what legal authority he could have kept Rashul hidden for so long. ''We know from our knowledge that [Tenet] has the authority to do this,'' he said.

Rashul, defense and intelligence officials noted, had not once been interrogated since he was returned to Iraq. His current status is unknown.

In the one-page October 2003 interim ruling that directed Rashul's return, Goldsmith also created a new category of persons in Iraq whom he said did not qualify for protection under the Geneva Conventions. They are non-Iraqis who are not members of the former Baath Party and who went to Iraq after the invasion.

After Goldsmith's ruling, the CIA and Gonzales asked the Office of Legal Counsel for a more complete legal opinion on ''protected persons'' in Iraq and on the legality of transferring people out of Iraq for interrogation. ''That case started the CIA yammering to Justice to get a better memo,'' said one intelligence officer familiar with the interagency discussion.

Michael Byers, a professor and international law expert at the University of British Columbia, said that creating a legal justification for removing protected persons from Iraq ''is extraordinarily disturbing.''

''What they are doing is interpreting an exception into an all-encompassing right, in one of the most fundamental treaties in history,'' Byers said. The Geneva Convention ''is as close as you get to protecting human rights in times of chaos. There's no ambiguity here.''

Mr. REED. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BUNNING. Mr. President, I rise to support the nomination of Judge Alberto Gonzales to be Attorney General of the United States.

Judge Gonzales is a dedicated public servant and a legal professional who has earned the trust of the President, and he deserves to be confirmed. I have worked personally with Judge Gonzales since he joined the administration, and I have a great deal of respect for him.

In 2001 and 2002, Kentucky had an urgent need to fill several district court vacancies in the eastern district of Kentucky, and Judge Gonzales was very helpful and worked with Senator MCCONNELL and myself to quickly fill those vacancies. This ensured that our courts in Kentucky continued to function and serve the people well.

Judge Gonzales has an impressive and broad legal and public service background. After a distinguished academic career, including a degree from Harvard Law School, Judge Gonzales joined one of Houston's most reputable law firms. His hard work and intelligence helped him quickly to become a partner in that law firm. That feat is even more impressive because he was one of the first two minority lawyers to become a partner in that firm.

He also took time from his private practice to teach law classes at the University of Houston. Judge Gonzales then left behind a well-paying private practice to become general counsel to President Bush when he was Governor of Texas. As general counsel, Judge Gonzales earned the trust and confidence of the Governor, who then appointed him secretary of state. After serving as secretary of state, Judge Gonzales was appointed to the supreme court of the great State of Texas. He heard cases on that court until Governor Bush was elected President and asked Judge Gonzales to serve him as White House Counsel, one of the most important legal jobs in this Nation. That job as White House Counsel became even more important after September 11 when our Government had to rethink our approach to fighting terrorism and terrorists and securing the homeland.

It is clear that Judge Gonzales has strong experience in all legal areas. As a practicing lawyer, he learned the private side of the justice system and what it was like to deal with the Government on a regular basis. As secretary of state and general counsel to the Governor of Texas, he received executive experience and learned management skills that will serve him well as head of the Department of Justice. As a judge, he learned the workings of the third branch of the Government and what the Department will have to confront when dealing with the courts.

Finally, as White House Counsel, Judge Gonzales participated in the creation of our strategies for fighting terrorism and terrorists at home and abroad, and he will carry that vision and experience into our Nation's top law enforcement job.

This is the unique part of the Judge Alberto Gonzales story. It is not just his legal experience and public service; it is also a story of hard work and living the American dream.

Judge Gonzales is the first Hispanic nominated to be Attorney General. This is noteworthy and a great accomplishment, and it reveals not just the greatness of Judge Gonzales's life, but it also reveals the opportunities our country provides to those willing to work hard and dare to achieve.

He was raised as one of eight children of migrant workers who barely spoke English. His parents did not graduate from high school. He began working at age 12 to help the family get by.

College seemed like a distant dream in his youth, so he joined the Air Force. He was then accepted to the Air Force Academy and then moved to Rice University. After that came law school and his distinguished career.

The fact that young Alberto was able to raise himself out of such underprivileged beginnings is a testament to his hard work and values he learned as a child.

It is not easy to graduate from one of America's most admired law schools, even for the children of wealthy or middle-class families. It is also not easy to become a partner in a law firm or to serve in high-ranking Government positions, no matter what your background happens to be. But Judge Gonzales overcame all the hurdles in his past and achieved what few have achieved.

I hope that his story is noticed by all who want to achieve great things in our country. In America, opportunities are boundless, and Alberto Gonzales is proof of that.

I am glad to support Judge Gonzales's nomination to be Attorney General. I may not agree with him on every issue in the future, but I am confident that President Bush has chosen an honorable and distinguished lawyer and public servant whom he can trust to be our Nation's top law enforcement officer.

This is a critical and opportunistic time for America. We need the best of the best to serve in this Cabinet, particularly at the Attorney General level as the chief law enforcement officer in these United States. Judge Alberto Gonzales is that person. I urge my colleagues to support his nomination.

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

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I have been listening closely to my colleagues, and I fear that sometimes in this debate we may just be missing the forest for the trees. By focusing almost exclusively on allegations regarding the Convention Against Torture, which is an important issue, to be sure, Judge Gonzales's critics seem to have forgotten that we are debating a nomination for the position of Attorney General of the United States of America.

One would think, for example, that all of my colleagues would join me in being supportive of the prospect of our Nation's civil rights laws being enforced by a citizen who grew up on the wrong side of the tracks and has worked his way up the hard way. I am one of many who is pleased at the prospect of Judge Gonzales enforcing our civil rights laws.

It was not that long ago that we did not even have a Civil Rights Division at Justice. Today, the public servants there do very important work. Whether they are working to guarantee the right to vote, protecting the freedom of worship, or preventing human trafficking, the 21st century version of slavery, these career lawyers are determined to extend the principle of equality under the law to all Americans regardless of race, creed, or color.

Alberto Gonzales shares that commitment to the principle of equal justice under the law. Instead of launching unfounded accusations that Judge

Gonzales in some attenuated fashion somehow supports the inhumane treatment of prisoners, one would think we would join together to support Judge Gonzales as the enforcer of our Nation's civil rights laws.

As a child of immigrants, the diversity of experience that he would bring to this position is remarkable. His personal story is a testament to the opportunity afforded in this great country by the guarantees of freedom and equality.

Through his role in the judicial nominations process as White House Counsel, Judge Gonzales has made it clear that diversity in Government is a desirable goal. I worked with him for 4 years on judicial nominations, so I know firsthand of his thoughts and actions on bringing diversity to our Federal bench. When working on behalf of the American people, a personal appreciation of their everyday trials and dreams can only make one a better public servant. For that reason, I suppose, he explained at the National Hispanic Leadership Summit, that we must ''go the extra mile'' when seeking diversity in public service. Certainly this administration has been doing that, and he has been a pivotal part of that.

There is no doubt that Judge Gonzales will bring these experiences to bear at his new job. Lynne Liberato, a partner in the Houston office of Haynes & Boone, and a former president of the State bar of Texas and the Houston Bar Association has said that Judge Gonzales:

> . . . has always been a person of good judgment, kindness, and moderation. He has experienced the prejudice endured by Mexican Americans. These experiences enhanced his judgment and fueled his compassion.

Now this is not lost on groups representing Hispanic Americans. It is certainly not lost on LULAC, the League of United Latin American Citizens, which has strongly supported Judge Gonzales and believes that he will uphold the 1965 Voting Rights Act making certain that all Americans can fully participate in the Democratic process. To me, that is the most important civil rights act in history.

Listening to Judge Gonzales's personal story, one discovers a person committed to the idea that if people are only treated equally, the opportunities afforded by America are boundless. His father built their house with his own hands. My dad did ours. His dad worked any job that was available to him in order to support his family. So did my dad. He picked crops as a migrant worker, worked in construction, as my dad did, and was part of a maintenance crew at a rice mill.

One gets the sense from listening to Judge Gonzales that his father did these things knowing that if only he and his family were given a fair shake they would find success in America. Let me just say that my father never met Judge Gonzales's father but it sounds to me that they would have had a lot in common given their belief and faith in the American dream. So it was hardly a surprise when Judge Gonzales defended the rights of labor even in the face of the Supreme Court's 2002 decision in Hoffman Plastics Compounds, Inc., v. NLRB.

The Court held that employees who present false documents to their employers in order to establish employment eligibility are not entitled to the remedy of backpay when their employers violate Federal labor law. Yet Judge Gonzales insisted that the decision:

> . . . will not prevent the administration from fully enforcing core labor protections against employers, regardless of the status of their employees.

When he made this statement at a meeting of MALDEF, the Mexican American Legal Defense and Education Fund, I am told that one could sense the passion of a person with a genuine appreciation of the noble sacrifice and the hard labor of the working poor.

Judge Gonzales is going to lead the Justice Department.

His personal commitment to justice is deeply rooted. I know the time pressures that attorneys face and yet Judge Gonzales has never let the demands of his profession or his career stand in the way of his voluntary service to his community.

Somehow, in the midst of building a successful law practice and second career as a public servant, he found time to serve as director of Catholic Charities and of Big Brothers Big Sisters. As Lynne Liberato explained in the Houston Chronicle:

> As a young lawyer, Al was committed to the education of minority kids. While a young associate at Vinson & Elkins he was instrumental in establishing the Vinson & Elkins Minority Scholarship. When asked by local Hispanic leaders to work on a committee to address the issue of the large number of Hispanic dropouts, Al devoted his time to the establishment of the Hispanic Career and Education Day. Both of these programs are still helping kids.

Judge Gonzales is committed to civil rights and the establishment of justice for all of our citizens, and so it is unfortunate that some of my colleagues have allowed their opposition to the President's prosecution of the war on terror to cloud their judgment in this case. Judge Gonzales will be our Nation's chief law enforcement officer. As such, he will be called upon to enforce our civil rights statutes and his long track record leaves no doubt that he will do so vigorously. His nomination is a milestone in American history and his confirmation will be remembered in our Hispanic communities for generations.

As a proud member of the party of Abraham Lincoln, I remain committed to a serious civil rights agenda. I wish my friends across the aisle would put partisanship aside and recognize that Judge Gonzalez would make a historic contribution to our Nation's continuing struggle to be a more just political community.

Some Senators on the other side of the aisle are desperately searching, fishing, and hunting to find something, anything, with which to attack Judge Alberto Gonzales. I reviewed some of the issues yesterday, including their attempt to hold Judge Gonzales responsible for a memo that he did not write, prepared by an office he did not run, in a Department in which he did not work, that provided legal advice that President Bush did not follow. That argument is a very thin brew. But some of my friends across the aisle are still throwing political spaghetti at the wall hoping something will stick.

The senior Senator from New York, for example, wants to drag Judge Gonzales into our internal Senate debate over filibusters of majority-supported judicial nominations. In the Judiciary Committee hearing on January 6 and the markup on January 26 and again on this floor yesterday, the distinguished Senator from New York has demanded to know Judge Gonzales's opinion on whether these filibusters are constitutional.

Senator SCHUMER says the answer will ''weigh heavily in my decision whether to support his confirmation.'' Judge Gonzales's answer has been clear and consistent, and it is both clearly and consistently correct. He said in the hearing that this issue is ''an internal Senate matter.''

Now, that is the right answer, because it is what the Constitution says. In article 1, section 5, the Constitution gives each House of the Congress the power to ''determine the rules of its proceedings.''

Judge Gonzales did not remind us of the at least four instances where the constitutional option was utilized in the Senate to stop an unjust, unconstitutional filibuster. No, he did not do that. He just said it is up to the Senate; the Senate should set its rules. That is what the Constitution says.

As the Supreme Court unanimously held more than a century ago, in exercising this authority we may not ignore constitutional restraints. That is a given. But both the authority to determine our rules and our responsibilities to meet constitutional standards are entirely ours so long as our rules do not contravene another constitutional requirement.

The House of Representatives has nothing to say about our rules in the Senate, and the executive branch does not either, and Alberto Gonzales recognized these principles.

Judge Gonzales is not like the professors who opined in hearings on this issue. Nor does he work for the Senate legal counsel or for the Parliamentarian waiting in the wings to give his opinion on any issue any Senator might raise. He is Counsel to the President of the United States of America. He comes before us wearing that hat. He has been nominated to be the next Attorney General of the United States of America. Both positions are in the executive branch, which has no role

whatsoever in determining how the Senate sets its internal procedural rules.

So Judge Gonzales's answer was not only correct on its face, but it demonstrated his respect for the fundamental principle of the separation of powers. In my view, he correctly believes it is not appropriate to accept any invitation that comes along to speculate and postulate about issues that the Constitution expressly removes from his jurisdiction.

In his January 6 hearing, Senator SCHUMER asked Judge Gonzales about the filibusters, after insisting that the words of the Constitution should be our standard on such issues. Keep in mind these are the first filibusters of judges, of Federal judges, in the history of this country in over 200 years.

If the words of the Constitution matter, then nothing could be more compelling than the Constitution's assignment of rulemaking authority right here in the Senate. Judge Gonzales's answer was grounded correctly in the text of the Constitution. For this reason, I was more than a little surprised yesterday to hear the distinguished Senator from New York, Mr. SCHUMER, say on this floor that Judge Gonzales's principled answer to this politically motivated question suggests that he would not be independent as Attorney General.

Give me a break. Frankly, as one who believes that my colleagues across the aisle are using the current rules of the Senate to filibuster judicial nominations in an unwise, unfair, unprecedented, and unconstitutional manner, there may have been some short-term political benefits to have the next Attorney General publicly side with me on this important issue. But Judge Gonzales wisely did not join in this fray, even though it could have been politically advantageous to the President and Republican Senators if he just came out on our side.

I asked those who questioned his independence and his ability to separate himself from the political interests of the President, what could be more independent than insisting that the constitutional separation of powers takes precedence over the politics of the moment?

This is an odd way to look at independence. On the one hand, Senator SCHUMER wants Judge Gonzales as Attorney General to be independent from the President at whose pleasure any Cabinet member serves. Then on the other side, Senator SCHUMER objects when Judge Gonzales, as Counsel to the President, shows a little independence from Senator SCHUMER by refusing to be pulled into a political dispute entirely outside the jurisdiction of the executive branch.

What is even more disheartening to me is that even though the distinguished Senator from New York has worked closely and cooperatively with Judge Gonzales in resolving their differences with respect to filling judicial vacancies in New York, he somehow finds Judge Gonzales to be unfit for the office of Attorney General. Selecting judges has been one of the most vexatious issues that any President and any Senate face. Judge Gonzales has a proven track record of working effectively with Senator SCHUMER on New York judicial vacancies.

I think it is fair to call Senator SCHUMER one of the most energetic Members of the Senate with respect to judicial nominations, whether you agree with him or not. It seems to me that Judge Gonzales's ability to work with my friend from New York so successfully on these contentious issues bodes well for his abilities to continue to work closely with the Senate once he is confirmed.

Several of my colleagues have stood on this floor and suggested—sometimes even flatly asserted—that Judge Gonzales lacks or will lack the necessary independence from the White House if he were to become Attorney General of the United States of America.

I cannot reach into the hearts and minds of those making these statements, but to me this suggestion is unadulterated bunk, sheer hokum. It is asking us to disprove a negative. It is the type of argument that is made when meritorious arguments are unavailable.

The charge that Judge Gonzales will not exercise his best judgment on behalf of the American public is groundless. Judge Gonzales is an accomplished lawyer, one recognized by the alumni association at his alma mater, the Harvard Law School, one of the greatest law schools in the country. He practiced at one of the most prestigious and respected law firms in the United States of America, Vinson and Elkins. He was a partner there.

As many speakers before me have noted, including Senator SPECTER and Senator SESSIONS, a good lawyer is one who knows who his client is and represents him well. What is it about Judge Gonzales that makes some people believe that he is somehow incapable of making the simple distinctions, distinctions made by lawyers every day? Is it prejudice? Is it a belief that a Hispanic American should never be in a position like this—because he will be the first one ever in a position like this? Is it a belief that only liberal Hispanics should be confirmed? Or is it because he has been an effective Counsel to the President of the United States, who many on the other side do not like? Or is it because he is constantly mentioned for the Supreme Court of the United States of America? Or is it that they just don't like Judge Gonzales? I find that that is not possible because you can't help but like him. He is a fine, enjoyable, friendly man.

I do not agree with those who insinuate that he cannot handle this job or that he will not do it in the best possible manner. I believe every Hispanic in America who is interested in this country and who understands what is going on here is watching this with a great deal of interest. It is amazing how some can be so in favor of minorities and yet whenever the minority might be—in this case moderate, but representing a conservative President—that for some reason or other, they are just not worthy to hold these positions?

It was explained in the Judiciary Committee, Judge Gonzales understands the differences between the role of the White House Counsel and the role of Attorney General. Over the course of our history there have been several individuals who have been close advisers and friends of the President and have gone on to serve successfully as Attorney General. In President Reagan's administration, Attorney General Meese wore both hats with great distinction. Earlier than that, Robert Kennedy, brother of the President of the United States, proved capable of separating his role of serving the American people from his unique relationship with his brother, President John F. Kennedy.

Frankly, I doubt that any Attorney General was closer to the President than Attorney General Robert Kennedy was to President John F. Kennedy. The historical record reveals that this issue was a matter of debate and concern by some prior to the confirmation of Attorney General Kennedy. In the same way that Robert Kennedy did not allow his closeness to the President to interfere with his legal judgment, I am fully confident, and I think everybody who knows Alberto Gonzales is confident, that Alberto Gonzales's relationship with President Bush will not impede his ability to serve as a fair and effective Attorney General of the United States of America.

In fact, that Judge Gonzales has the President's ear and full confidence can only help achieve the Department of Justice's priorities in the same way that the Department of Justice played a prominent role in the Kennedy administration.

I am quite confident that Judge Gonzales will serve the American public and enforce the law in a fair manner for all of our citizens. I am not certain why anybody would suggest that Judge Gonzales is somehow incapable of distinguishing his role as Attorney General of the United States from his role as Counsel to the President. He made it quite clear in his confirmation hearing that he understood the obligations of his new office. Here is what he said:

I do very much understand that there is a difference in the position of counsel to the President and that of Attorney General of the United States. . . . As counsel to the President, my primary focus is on providing counsel to the White House and to the White House staff and the President. I do have a client who has an agenda and part of my role as counsel is to provide advice that the President can achieve that agenda lawfully. It is a much different situation as Attorney General, and I know that. My first allegiance

is going to be to the Constitution and to the laws of the United States.

You know, I think he ought to be taken at his word. We have done it for countless others whom we have confirmed here in this body. But for some reason some on the other side actually believe that he might not be capable of doing this job. Or if he is, then he might not do it properly. Or, if he doesn't do that, then he might be so much in his President's pocket that he won't uphold the law, which he has always done.

It is ridiculous. What is the reason for this opposition? I don't know what it is. But I have listed a few things it could be. Judge Gonzales's service on the Texas Supreme Court should prove to anyone interested his ability to be independent from then-Governor and now-President Bush.

In response to questions for the record from Senator KENNEDY, the distinguished Senator from Massachusetts, Judge Gonzales stated that he ''would enforce the law fairly and equally on behalf of all Americans.''

Senator KENNEDY raised all of these torture memoranda as though Judge Gonzales wrote them.

He wasn't in the Justice Department. He wasn't in the office of legal counsel. He wasn't the person who wrote them. He didn't represent the Justice Department. But he did have a relationship to the February 7, 2002, memorandum where the President said that all prisoners, whether or not they were subject to the Geneva Conventions, had been treated ''humanely.''

People can have different views on the Bybee memoranda, and other memoranda that have been quoted here as though Judge Gonzales had anything to do at all with them, but Judge Gonzales's opinion, which he gave the President, was that they should be treated humanely.

Why do they insist on these points? Why has torture become the big point of debate on the floor of the Senate? There is only one reason: to undermine the President of the United States.

Just think about it. Why would we do that publicly as Senators? Why would we do that, especially since we all know that these were rogue elements who have done these awful things? We all condemn them. But why would we do this? Some people think that these statements are so bad, that they give comfort to the enemy. I do not go that far. But why have they used distortions to try to stop Judge Gonzales? Why would they do that?

He is a moderate man. He is an accomplished man. He is a decent man. We have had 4 years of experience with him. He has done a great job down there as White House Counsel. He has been up here before every Senator on the Judiciary Committee, eight of whom voted against him, and he accommodated them in every way he possibly could. Sometimes he couldn't do what they wanted him to do, but the fact is he was always accommodating. He was always reasonable, he was always moderate in his approach, and he always listened—exactly what we would hope the Attorney General of the United States would be like.

Further, during his opening statement at his confirmation hearing, Judge Gonzales indicated that ''[with] the consent of the Senate, [he] w[ould] no longer represent only the White House; [he] w[ould] represent the United States of America and its people.''

Knowing Judge Gonzales, he meant that.

Finally, Judge Gonzales explained at his hearing that his responsibility as Attorney General would be to ''pursue justice for the all the people of our great Nation, to see the laws are enforced in a fair and impartial manner for all Americans.'' I believe it is clear that Judge Gonzales understands the obligations associated with the position of Attorney General of the United States, and he is uniquely qualified to follow in the footsteps of the able and distinguished men and women who have preceded him.

I know the other side does not want any Republican on the Supreme Court of the United States of America. I cannot blame them for that. We do not share the same philosophy, by and large, as the liberal philosophy they espouse. On the other hand, in times past Republicans have confirmed liberals to the U.S. Supreme Court without putting them through these types of machinations that have despoiled their character. We have supported the President of the United States. We have not filibustered judges. We did not smear great legal intellectuals like Robert Bork. I can name many others, including the current Chief Justice of the United States, one of the finest men who ever served in the judiciary of this country, who had a distinguished public service record before his nomination but was smeared during the Judiciary Committee hearings and on the floor of the Senate. My party did not resort to these tactics. I would be disappointed if we did.

Here we have a chance to confirm a man who is a decent man, who is of Hispanic origin, the first Hispanic ever to be nominated to one of the big four Cabinet positions. Why can't my friends who oppose him recognize that and recognize the historic nature of this nomination, recognize his great ability, recognize his decency, recognize his fairness in working with them, and recognize that this man will make a difference for all Americans, as he has as White House Counsel?

Is the hatred for the President so bad they transfer it to somebody as decent as Judge Gonzales after years of complaints about John Ashcroft? He has been a wonderful Attorney General, in my eyes. After years of complaining about him because he is too conservative, all of a sudden you have a moderate Hispanic man who has a distinguished public service record, who has a distinguished career as a lawyer, who came from poverty to the heights of strength and success in this greatest of all nations, and he too gets treated like dirt. And I personally resent it.

Let me conclude these remarks by restating my support for Alberto Gonzales. He has the education, he has the experience, and he has the character to be the next Attorney General of the United States, and he deserves the support of the Senate.

I believe that those who vote against him—I hope nobody does, I would be so pleased if nobody did, but those who vote against him, I believe people throughout this country have to look at what they have done with disdain, with concern, and with intelligent eyes and determine why they voted against somebody of this quality. Why would they make some of these arguments that are clearly fallacious with regard to Judge Gonzales?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ALLARD. Mr. President, it is with great pride that I rise today in support of the President's nominee for Attorney General, Judge Alberto R. Gonzales. Judge Gonzales is an honorable man who will bring great integrity to the office of Attorney General. Few nominees have come before this body who have demonstrated the intelligence, commitment, and virtue of Judge Alberto Gonzales.

The biography of Judge Alberto Gonzales reads like a blueprint of the true American success story. He was born August 4, 1955 in San Antonio, TX. The second of eight children, a young Alberto was raised in a warm, family environment. His parents, a scant 8 years of formal education between them, taught their kids the value of hard work and persistence. It was in Humble, TX, a small town north of Houston, that Alberto Gonzales watched his father Pablo, a migrant worker, and two of his uncles build the two-bedroom house in which he and his siblings grew up. It is the same house in which his mother resides today.

Gonzales graduated from public high school in Houston in 1973. Having never considered college a realistic possibility and full of desire to learn and see the world, Alberto Gonzales enlisted in the Air Force. He was assigned to Ft. Yukon, AK, where he became inspired to apply for an appointment to the United States Air Force Academy. Special arrangements were made for Gonzales to take his ACT and the Academy's required physical examination while still stationed in Alaska. Gonzales was rewarded with orders to report to the Academy at Colorado

Springs, CO in 1975 to pursue his dream of becoming a pilot in the United States Air Force.

Alberto Gonzales excelled in his first year at Colorado Springs but found he was more interested in politics and law than the engineering and science curriculum required by the Academy. After much deliberation and consideration of the effort put forth to earn his appointment to the Academy, he decided to pursue a career in the law. Gonzales started at Rice University his junior year of college, graduating from Rice in 1979. After Rice, Gonzales attended Harvard Law School where he graduated in 1982. Gonzales returned to Houston as an associate at the law firm of Vinson & Elkins where he later became one of the firm's first two minority partners. While in private practice, Gonzales also taught as an adjunct law professor at the University of Houston Law Center and was actively involved in numerous civic organizations.

It was at a meeting of Houston area minority leaders in 1994 that Alberto Gonzales first met President George W. Bush during the President's first gubernatorial campaign. Several weeks after being elected Governor, Bush asked Gonzales to join his administration as his General Counsel, where he served for 3 years. On December 2, 1997, Gonzales was appointed Texas' 100th Secretary of State, serving as chief elections officer, the State's leading liaison on Mexico and border issues, and senior adviser to the Governor. Gonzales was appointed to the Texas State Supreme Court in 1999, and was elected to a full 6-year term on the court in 2000 with 81 percent of the vote. In January of 2001, Alberto Gonzales again heeded President Bush's call to service and was commissioned as counsel to the President.

This is an incredible journey from Humble, TX, to Ft. Yukon, AK, to the Air Force Academy in Colorado to the Ivy League. From private business and civil leadership in Texas to being recruited to serve in the administration of President Bush, Alberto Gonzales has led a life full of challenge, accomplishment, and great success. As if this weren't enough, Alberto Gonzales has given back to his community and his fellow Americans along the way.

Alberto Gonzales was a trustee of the Texas Bar Foundation from 1996 to 1999, a director for the State Bar of Texas from 1991 to 1994, and President of the Houston Hispanic Bar Association from 1990 to 1991. He was a director of the United Way of the Texas Gulf Coast from 1993 to 1994, and President of Leadership Houston. In 1994, Gonzales served as Chair of the Commission for District Decentralization of the Houston Independent School District, and as a member of the Committee on Undergraduate Admissions for Rice University. Gonzales was Special Legal Counsel to the Houston Host Committee for the 1990 Summit of Industrialized Nations, and a member of delegations sent by the American Council of Young Political Leaders to Mexico in 1996 and to the People's Republic of China in 1995. He served on the board of directors of Catholic Charities, Big Brothers and Big Sisters, and the Houston Hispanic Forum.

Judge Gonzales has been the fortunate recipient of many professional and civic honors, including his 2003 induction into the Hispanic Scholarship Fund Alumni Hall of Fame, and the Good Neighbor Award from the United States-Mexico Chamber of Commerce for his dedication and leadership in promoting a civil society and equal opportunity. Gonzales also received in 2003 the President's Awards from the United States Hispanic Chamber of Commerce and the League of United Latin American Citizens. In 2002, he was recognized as a Distinguished Alumnus of Rice University by the Association of Rice Alumni and was honored with the Harvard Law School Association Award. Gonzales was recognized as the 1999 Latino Lawyer of the Year by the Hispanic National Bar Association, and he received a Presidential Citation from the State Bar of Texas in 1997 for his dedication to addressing basic legal needs of the indigent. He was chosen as one of the Five Outstanding Young Texans by the Texas Jaycees in 1994, and as the Outstanding Young Lawyer of Texas by the Texas Young Lawyers Association in 1992. Gonzales was honored by the United Way in 1993 with a Commitment to Leadership Award, and received the Hispanic Salute Award in 1989 from the Houston Metro Ford Dealers for his work in the field of education.

When I began my remarks I suggested that Alberto Gonzales was one of the most accomplished and qualified individuals ever to stand before this body for confirmation. In recent weeks this body, and particularly the Senate Judiciary Committee, has engaged in a rigorous, often exaggerated, examination of Judge Gonzales life, his work, and character. Like all things that take place inside the beltway, this examination has bordered on the dramatic, the overblown, and the overtly political.

Most of the criticism Judge Gonzales has endured has not been related to his background, academic and professional accomplishment, or his competency to serve as this Nation's highest law enforcement official. Indeed, the criticism has focused on very recent American history. Judge Gonzales, like countless millions of Americans, was effectively called to service in a way previously unimagined when a small group of radical murderers attacked this Nation on September 11, 2001. September 11, 2001 was an act of war by a group of men who recognize no law and represent no nation. Terrorists who would attack innocent people around the world and Americans here at home sign no treaties, engage in no civil discourse, and disregard all bodies of democratic government. This is an ugly thing. These are difficult times. We are engaged in a war without borders against a foe that knows no bounds in its cruelty. Innocents killed for going to work on a sunny September morning, kidnap victims beheaded for publicity and fear, an entire civic system indicted for having the nerve to believe in the liberty of the individual. I find it hard to believe, but Judge Alberto Gonzales is being treated by some in this chamber as if he was somehow responsible for the senseless and violent acts of terrorists. More reasonable yet equally baseless are the criticisms that Judge Gonzales somehow supports the use of barbaric and medieval treatment of those apprehended by the United States and suspected of engaging in terrorist activities.

A good example of the ludicrous criticisms of Judge Gonzales, and one my friend from Texas, Senator CORNYN has rightly sighted in recent floor statements, is the flimsy assertion that Judge Gonzales in advising President Bush to deny prisoner of war status to al-Qaida and Taliban terrorists is somehow a violator of the human rights principles so essentially a part of the American ethic. In his role advising the President on legal matters in the war on terror Alberto Gonzales has never provided council regarding prisoners without insisting that their treatment be humane in all instances.

According to the very Geneva Convention these critics pretend to defend, only lawful combatants are eligible for POW protections. Lawful combatants must pass the smell test. They must look like combatants. They do not hide their weapons or their affiliations. They wear uniforms and they conduct their operations in accordance with the laws and customs of war. Civilians are to be treated as innocents. No stretching or distorting of this definition can turn terrorists in to lawful combatants. In their eagerness to demean Judge Gonzales his critics fail to acknowledge that neither al-Qaida nor the Taliban militia are legally entitled to the Convention's protections. They do not adhere to the required conditions of lawful combat and are not a party to the Geneva Convention. This is not some arbitrary and convenient conclusion. This is based in the very text and structure of the text, the history of the convention, and has been affirmed by several Federal courts across the country. And this is what they offer as evidence that Judge Gonzales is somehow unfit to serve as Attorney General?

Judge Gonzales and President Bush have repeatedly affirmed their respect for the humane but aggressive prosecution of the war this country was dragged in to. Specific to the Geneva Convention Judge Gonzales testified, ''honoring the Geneva Conventions wherever they apply . . . I consider the Geneva Conventions neither obsolete or quaint.'' The administration has fully applied the Geneva Conventions' protections in Iraq because Iraq is a

High Contracting Party to the Conventions. There was never any question about whether Geneva would apply in Iraq, Judge Gonzales testified recently, so there was no decision for the administration to make. Yet in committing to the legal study of engagement with the Taliban militia and al-Qaida fighters somehow Judge Gonzales is labeled as a radical and accused of maliciousness only fairly attributed to the enemies of America.

But the truth is not enough when there are political axes to grind. Members of the Senate Judiciary Committee and others have loudly asserted that the treatment of prisoners at Abu Ghraib somehow represents U.S. and administration policy. Like everyone else in this Chamber I was startled by the photographs of prisoner mistreatment at Abu Ghraib, but again we see a logical failure in connecting this incident of abuse with any policy set by the Department of Justice, Judge Gonzales or the President. ''I have been deeply troubled and offended by reports of abuse,'' Judge Gonzales testified. ''The photos from Abu Ghraib sickened and outraged me, and left a stain on our Nation's reputation.'' Judge Gonzales testified at length on this matter and the administration has been nothing but clear that these isolated acts were those of a small group of misguided soldiers. These acts were wrong and completely inconsistent with the policies and values of this country. The Independent Panel to Review DoD Detention Operations found that the abuses depicted in Abu Ghraib photographs were not part of authorized interrogations but a representation of deviant behavior and a failure of military leadership and discipline.

And still the critics of Judge Gonzales demand he be linked to these roundly condemned and isolated acts. While I am proud to rise in support of Judge Gonzales, I am dismayed at the atmosphere in which this nomination has been made and received by the Senate. As millions of Americans know, in recent years we have witnessed a historical hijacking of the President's power to appoint judges. While controversy may not be new to the appointment process, the unprecedented filibuster of judges in this Chamber last year flies boldly in the face of both the Founders' intent expressed in Article II, Section II of the Constitution, as well as a distortion of the Senate's rich tradition of providing advise and consent without filibuster.

In my opinion the tenor of this confirmation process reeks of last year's series of senseless cloture votes on nominees of high stature. Unfair and unsubstantiated claims have been made and half-truths and lies of omission have dominated the rhetoric of those opposing Judge Gonzales. I am not here today to impugn those who have contributed to this false advertising, though it is worth saying that the nature and intensity of these false arguments in light of this nominees extraordinary record and dedication may reveal more about the opponents than the nominee. Upon his confirmation Judge Gonzales will become the first Hispanic American to serve in this high post, yet another historic appointment by President George W. Bush. Judge Gonzales is a man of great character who has and will continue to serve this Nation with distinction. I urge my fellow Americans to look at Judge Gonzales's record and draw their own conclusions as to why some in this body find him to be so disagreeable to their aims. It is clear to me what has been happening here, just as it is clear to me that Judge Gonzales will be confirmed despite the overtly political and shallow opposition he faces.

I am proud to rise in support of Judge Alberto Gonzales. His record of service is indicative of the character, integrity and energy he will bring to the demanding and thankless job of Attorney General. I look forward to working with Attorney General Gonzales, and I thank my colleagues for their time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, we have had a lot of complaints on the floor about one of America's most decent, fine public servants, Judge Gonzales, who served as Counsel to the President of the United States. It has been really painful to hear what has been said. I, just for the record, would like to take a few minutes to respond to some of these allegations that are not fair, represent distortions, and really misrepresent him and attack his character unfairly.

Senator KENNEDY, for example, says that Judge Gonzales was at the ''epicenter'' of a torture policy. As I have indicated earlier, Judge Gonzales has repeatedly and consistently opposed torture. He has said it is not proper and not justified and has publicly stated that we, as a nation, are committed to the rule of law, to following our treaty obligations, and the statutory requirements that deal with torture. The President, of course, has said the same.

There is no policy of torture in the United States. We have a statute that deals with that and prohibits it. It defines what torture is and what it is not. Sometimes that has been the problem. Congress's definition has been ignored. Things that are not included in our definition have been said to be torture.

Indeed, some of the people who complained about the memorandums written by the Department of Justice officials actually voted for the statute that defined torture; and that memorandum quoted extensively from it and was framed by that American statute.

Senator STABENOW has contended that Judge Gonzales has a reckless disregard for human rights—this decent man, who has seen discrimination in his life—that he has a reckless disregard for human rights and has twisted the law to allow torture.

The truth is, Judge Gonzales has stated that every detainee should be treated humanely. In the only memorandum Judge Gonzales ever wrote, he provided prisoner-of-war status to Iraqi soldiers captured in Iraq, allowing them the additional protections of a prisoner of war under the Geneva Conventions, even though they do not qualify.

The soldiers caught and captured right after the conclusion of hostilities, wearing a uniform, operating in units, they qualify as prisoners of war. But these people who are sneaking around, not in uniform, placing bombs against civilian people, against Iraqi citizens, against American soldiers, they do not meet the definition of the Geneva Conventions. Therefore, they really are not entitled legally to those protections. But Judge Gonzales has said, and the President has agreed, that they will be given those protections.

Senator FEINSTEIN says Judge Gonzales did not answer the committee's questions properly, her questions. He really did answer them. I think the truth is that the Senator was unsatisfied with his answers because they were, she said, not independent of the President.

Let me ask, isn't it most likely the fact that Judge Gonzales and the President agreed on these positions? This issue has been taken to the American people in the President's reelection campaign. All these issues were debated and the American people affirmed his leadership and his guidance in the war on terrorism. To say there is not enough distance between the President's lawyer and the President is really an odd statement to make. Of course, the lawyer and the President are together, I am sure not only legally and professionally together on these issues, but they share deep values together.

Senator MIKULSKI claims that Judge Gonzales was not cooperative in the nomination of judges to the Maryland bench. The truth is, Maryland Senators have played a role in obstructing the judge's nominees. They have argued that one nominee, a lawyer born in Maryland and educated in Maryland, was not a Marylander and could not be confirmed. I think it was driven by their disagreement with his conservative judicial philosophy, but they objected on that basis, and there was a big disagreement on it. But that is not Judge Gonzales's decision to make. Ultimately, that is the decision of the President.

One Senator complained about his support for Claude Allen for the court of appeals, an African-American judicial nominee of excellent reputation,

and I don't think that is fair. He simply supported Claude Allen, a judge that I supported and a majority of this Senate supports but has been blocked through dilatory tactics from the other side. But that is not a basis to vote against him for Attorney General.

Senator SCHUMER complained that Judge Gonzales refused to answer his question on the so-called nuclear option, which is a political issue, a legislative branch issue of this Congress to deal with. It is a matter that involves rules in the Senate, how they are changed, and that kind of debate. This issue has nothing to do with running the Department of Justice. It is not any role for Judge Gonzales, a lawyer for the President of the United States, to start opining on what he thinks about Senate rules.

Senator SCHUMER is leading filibuster after filibuster of the President's nominees in an unprecedented use of the filibuster systematically against judicial nominees, something that has not happened in the history of this Republic. But for these filibusters, the nuclear question would not exist.

These complaints have been unfair. They have oftentimes relied on information taken out of context, information that is misleading. The truth is, Judge Gonzales is a sound lawyer, a decent man who believes in the rule of law. He believes in following the law. He will be a terrific Attorney General. He has been nominated by the President. I believe he will be confirmed. I am excited for him and his good, fine family. It is going to be a special day for them.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the hour of 2:30 having arrived, the Senator from West Virginia is recognized for 1 hour.

Mr. BYRD. I thank the Chair.

Mr. President, Alberto Gonzales is Counsel to the President of the United States. For the past 4 years, Mr. Gonzales has served as the chief legal adviser to President Bush, housed in the west wing of the White House, a stone's throw from the Oval Office.

The official biography of Alberto Gonzales on the White House Web site states that before he was commissioned to be White House Counsel, Judge Gonzales was a justice on the Texas Supreme Court. Prior to that, he served as the one-hundredth Secretary of the State of Texas, where one of his many duties was to act as a senior adviser to then-Governor George W. Bush. Before that, he was general counsel to Governor Bush for 3 years.

So for over a decade, Alberto Gonzales has been a close confidant and adviser to George W. Bush, and the President has confirmed his personal and professional ties to Judge Gonzales on many occasions.

The President has described him as both ''a dear friend'' and as ''the top legal official on the White House staff.'' When the President nominated Mr. Gonzales to be the next Attorney General of the United States, the President began by asserting:

> This is the fifth time I have asked Judge Gonzales to serve his fellow citizens, and I am very grateful he keeps saying ''yes'' . . . as the top legal official on the White House staff, he has led a superb team of lawyers.

In praising his nomination of Alberto Gonzales, the President specifically stressed the quintessential ''leadership'' role that Alberto Gonzales has held in providing the President with legal advice on the war on terror. The President stated specifically that it was his ''sharp intellect and sound judgment'' that helped shape our policies in the war on terror. According to the President, Mr. Gonzales is one of his closest friends who, again in the words of the President, ''always gives me his frank opinion.''

I am not a member of the Senate Committee on the Judiciary and so I have come to my conclusions by reading from the record. Not hearing directly the testimony, not being able to ask questions during the hearings, but from my reading of the testimony, I speak now.

Imagine how perplexing and disheartening it has been to review the responses—or should I say lack of responses—that were provided by Mr. Gonzales to members of the Senate Judiciary Committee at his confirmation hearing on January 6. It seemed as if once seated before the committee, Judge Gonzales forgot that he had, in fact, been the President's top legal adviser for the past 4 years.

It was a strangely detached Alberto Gonzales who appeared before the Senate Judiciary Committee. Suddenly this close friend and adviser to the President simply could not recall forming opinions on a great number of key legal and policy decisions made by the Bush White House over the past 4 years. And this seemed particularly true when it came to decisions which in retrospect now appear to have been wrong.

When asked his specific recollection of weighty matters, Judge Gonzales could provide only vague recollections in many instances of what might have been discussed in meetings of quite monumental importance even during a time of war.

He could not remember what he advised in discussions interpreting the U.S. law against torture or the power of the President to ignore laws passed by Congress, discussions that resulted in decisions that reversed over 200 years of legal and constitutional precedents relied on by 42 prior Presidents. That is pretty hard to believe. In fact, if one did not know the true relationship between the President and this nominee, or if one had never heard the President refer to the ''frank'' advice he has received from Judge Gonzales, one would think from reading his hearing transcript that Alberto Gonzales was not really the White House Counsel.

Instead, one might think that he is simply an old family friend who, yes, is happy to work near the seat of power but makes no really big decisions, has no legal opinions of his own, and certainly feels no responsibility to provide independent recommendations to the President.

I find it hard to believe that the top legal adviser to the President cannot recall what he said or what he did with respect to so many of the enormous policy and legal decisions that have flowed from the White House since September 11 in particular. It is especially difficult to comprehend the sudden memory lapse when the consequences of these decisions have had, and will continue to have, profound effects on world events for years, and even decades, to come.

Judge Gonzales was asked whether he had chaired meetings in which he had discussed with Justice Department attorneys such interrogation techniques as strapping detainees to boards and holding them under water, as if to drown them. He testified that there were such meetings, and he did remember having had some discussions with Justice Department attorneys, but he could not recall what he told them in those discussions.

When Senator KENNEDY asked if he ever suggested to the Justice Department attorneys that they ought to ''lean forward'' to support more extreme uses of torture, as reported by the Washington Post, he said:

> I don't ever recall having used that term.

He stated that, while he might have attended such meetings, it was not his role, but that of the Justice Department, to determine which interrogation techniques were lawful. He said:

> It was not my role to direct that we should use certain kinds of methods of receiving information from terrorists. That was a decision made by the operational agencies. . . . And we look to the Department of Justice to tell us what would, in fact, be within the law.

He said he could not recall what he said when he discussed with Justice Department attorneys the contents of the now-infamous ''torture'' memo of August 1, 2002, the one which independent investigative reports have found contributed to detainee abuses, first at Guantanamo and, then, Afghanistan and, later, Iraq.

When asked whether he agreed with the now repudiated conclusions contained in that torture memo at the time of its creation on August 1, 2002, Mr. Gonzales stated:

> There was discussion between the White House and the Department of Justice, as well as other agencies, about what does this statute mean. . . .I don't recall today whether or not I was in agreement with all of the analyses, but I don't have a disagreement with the conclusions then reached by the Department.

He went on to add that, as Counsel to the President, it was not his responsibility to approve opinions issued by the Department of Justice. He said:

> I don't believe it is my responsibility, because it really would politicize the work of

the career professionals at the Department of Justice.

Mr. President, one must wonder what the job of White House Counsel entails, if it does not involve giving the President the benefit of one's thinking on legal issues.

Perhaps one reason Judge Gonzales says he does not remember what he said in those meetings is because, as soon as the torture memo was leaked to the press, he had to disavow it. Once it became clear that the White House believed—based on those meetings—that only the most egregious acts imaginable could be prohibited as torture, the memo received universal opprobrium. Thus, the administration had little choice but to repudiate it and, in June 2004, Mr. Gonzales announced its withdrawal. He then directed the Justice Department to prepare new legal analyses on how to interpret prohibitions against torture under U.S. and international law.

Strangely, however, that new analysis was not available to the public for 6 more months. Finally, on December 30, just 1 week prior to the Gonzales nomination hearing, a memorandum containing the administration's most recent take on the subject was issued by the Justice Department.

With the benefit of 20/20 hindsight, together with a keen desire to be confirmed as the next Attorney General of the United States, Judge Gonzales told the committee on January 6 that the analysis of the August 1, 2002, memo no longer represents the official position of the executive branch of the United States.

If Judge Gonzales didn't see fit to question the Justice Department's official position on torture in 2002, what made the administration change its mind in 2004? Was it a careful review of the legal issues, or was it simply political backpedaling in light of the public knowledge of what its policies had brought about in Abu Ghraib and elsewhere?

I note in passing that the ''torture'' memo was written in 2002 by then-Assistant Attorney General Jay Bybee, who is now a Federal judge on the Ninth Circuit Court of Appeals. God help the Ninth Circuit Court of Appeals. I would like the record to reflect that 18 other Senators and I voted to reject the nomination of Jay Bybee to be a Federal judge, a decision I, for one, do not regret.

The Bybee memo drew universal condemnation and scorn for at least two of the legal opinions that were included in its text. First, it described torture as being prohibited under U.S. law in only very circumscribed circumstances. It defined torture so narrowly that horrific harm could be inflicted against another human being in the course of an interrogation overseas and not be prohibited. According to the memo, unless such acts resulted in organ failure, the impairment of a bodily function, or death, they could be considered legal. In fact, the first page of the memorandum states:

> We conclude that the statute [the statute against torture], taken as a whole, makes plain that it prohibits only extreme acts. . . . This confirms our view that the criminal statute penalizes only the most egregious conduct.

The second but equally shocking and erroneous legal conclusion reached in the so-called torture memorandum states:

> We find that in the circumstances of the current war against al-Qaida and its allies, prosecution under section 2340A [the relevant provision of U.S. law prohibiting torture] may be barred because enforcement of the statute would represent an unconstitutional infringement of the President's authority to conduct war.

As the Commander in Chief. Where have we heard that before, the term ''Commander in Chief''?

This means the White House believed that a President can simply override the U.S. law prohibiting torture, just because he disagrees with it. In other words, he can ignore the law by proclaiming, in his own mind, that the law is unconstitutional. Not because a court of the United States has found the law to be unconstitutional but because a wartime President decides he simply does not want to be bound by it.

What an astounding assertion. Think of it. A President placing himself above the constitutional law—in effect, crowning himself king.

This outrageously broad interpretation of Executive authority is so antithetical to the carefully calibrated system of checks and balances conceived by the Founding Fathers it seems inconceivable that it could be seriously contemplated by any so-called legal expert, much less attorneys of the U.S. Justice Department or the White House Counsel.

Has the White House no appreciation for the struggle that the Nation endured upon its creation? Can it really believe that a President can circumvent the will of the people and their legislature by adopting and disseminating a legal interpretation that would, in the end, protect from prosecution those who commit torture in violation of U.S. law?

Alexander Hamilton, in Federalist No. 69, described in detail exactly how the American system can and must be distinguished from the British monarchy. Hamilton wrote:

> There is no comparison—
>
> Hear that again—
>
> There is no comparison—
>
> None—
>
> There is no comparison between the intended power of the President and the actual power of the British sovereign. The one can perform alone, what the other can only do with the concurrence of a branch of the Legislature.

Mr. President, no one man or woman, no President, not his White House Counsel, nor all the attorneys in the Office of the Legal Counsel in the Justice Department can, on their own, act in contravention of a law passed by Congress.

No President—no President—can nullify or countermand a U.S. law to shield from prosecution those who would commit or attempt to commit torture. But that was the result sought by this White House.

When asked by Senator DURBIN if he still believes that the President has the authority as Commander in Chief to ignore a law passed by Congress, to decide on his own whether it is unconstitutional, or to simply refuse to comply with it, Judge Gonzales stated that, yes, he believes it is theoretically possible for the Congress to pass a law that would be viewed as unconstitutional by a President and, therefore, to be ignored.

And even though the torture memo was replaced by a new memorandum on December 30, the replacement memorandum does not reject the earlier document's shockingly overly expansive interpretation of the President's Commander-in-Chief power. Instead, the new memo states that because that portion of the discussion in the earlier memo was ''unnecessary,'' it has been eliminated from the new analysis.

Particularly disturbing is the fact that although the new analysis repudiates the earlier memo's conclusion that all but extreme acts of torture are permissible, Judge Gonzales could not tell us whether this repudiation of prior policy has been communicated to those who are today doing the interrogating.

This is important because there is language contained in the now-repudiated torture memo that was relied on in Guantanamo and parts of which were included word for word in the military's Working Group Report on Detainee Interrogations in the Global War on Terrorism. This report, dated April 2003, has never been repudiated or amended and may be relied upon by some interrogators in the field.

When asked whether those who are charged with conducting interrogations have been apprised of the administration's repudiation of sections of the Bybee memo and the administration's attendant change in policy, Judge Gonzales did not know the answer.

Mr. Gonzales continues to deny responsibility for many of the policies and legal decisions made by this administration. But the Fay report and the Schlesinger report corroborate the fact that policy memos on torture, ghost detainees, and the Geneva Conventions, which Judge Gonzales either wrote, requested, authorized, endorsed, or implemented, appear to have contributed to detainee abuses in Afghanistan, Guantanamo Bay, and Iraq, including those that occurred at Abu Ghraib.

The International Committee of the Red Cross has told us that abuse of Iraqi detainees has been widespread, not simply the wrongdoing of a few, as the White House first told us, and the abuse occurred not only at Abu Ghraib. Last week, the Los Angeles Times reported that documents released last

Monday by the Pentagon disclosed that prisoners had lodged dozens of abuse complaints against U.S. and Iraqi personnel who guarded detainees in another location, a little known palace in Baghdad that was converted into a prison.

The documents suggest, for the first time, that numerous detainees were also abused at one of Saddam Hussein's former villas in eastern Baghdad. The article noted that while previous cases of abuse of Iraqi prisoners had focused mainly on Abu Ghraib, allegations of abuse at this new location included that guards had sodomized a disabled man and killed his brother, then tossed his dying body into a cell, on top of his sister.

Judge Gonzales admits that he was physically present at discussions regarding whether acts of this nature constitute torture, but do not expect him to take responsibility for them. Do not hold me accountable, he says. It was not I. And he does not just point fingers at the Justice Department. He also spreads the blame around. While he admitted he had made some mistakes, he attempted to further deflect responsibility for his actions by saying the operational agencies also had responsibility to make decisions on interrogation techniques—Not him. This is exactly what he said:

> I have 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 types of methods of obtaining information from terrorists would be the 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 the job for the Department of Justice. . . . I viewed it as their responsibility to make a decision as to whether or not a procedure or method would, in fact, be lawful.

One wishes that Judge Gonzales could have told us what his job was rather than, telling us only what it was not. Talk about passing the buck.

At the end of the day one can only remember or wonder then what legal advice, if any, he actually gave to the President of the United States. Does Judge Gonzales or the President have an opinion on the question of what constitutes torture? Does he or the President have an opinion on the related question of whether it is legal to relocate detainees to facilitate interrogation? Do they believe it is morally or constitutionally right? Do we know? No.

According to article II, section 3, of the U.S. Constitution, as head of the executive branch, the President has a legal duty to take care that the laws be faithfully executed. The Constitution does not say that the President should or may undertake that responsibility. It clearly states that the President shall take care that the laws be faithfully executed.

He is duty bound to undertake that responsibility under the Constitution of the United States, and the President and his Counsel must be held accountable for not only failing to faithfully execute our laws but also for trying to undermine, contravene, and gut them.

With such a track record, how can we possibly trust this man to be Attorney General of the United States? What sort of judgment has he exhibited?

As I stated a few days ago with respect to Dr. Condoleezza Rice, there needs to be accountability in our Government. There needs to be accountability for the innumerable blunders, bad decisions, and warped policies that have led the United States to the position in which we now find ourselves, trapped in Iraq amid increased violence; disgraced by detainee abuses first in Guantanamo, then in Afghanistan, Iraq, and probably in locations we have yet to discover; shunned by our allies; perceived by the world community, rightfully, as careening down the wrong path.

I do not believe our Nation can rely on the judgment of a public official with so little respect for the rule of constitutional law. We cannot rely on the judgment of someone with so little regard for our constitutional system of government. I simply cannot support the nomination of someone who despite his assertions to the contrary obviously contributed in large measure to the atrocious policy failures and the contrived and abominable legal decisions that have flowed from this White House over the past 4 years. For all of these reasons, I have no choice but to vote against the nomination of Alberto Gonzales to be the next Attorney General of the United States.

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

The PRESIDING OFFICER (Mr. MARTINEZ). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SALAZAR. Mr. President, I rise in relation to the nomination of Judge Alberto Gonzales to be the next Attorney General of the United States.

Before making my comments about Judge Gonzales, I also want to say that earlier this afternoon I had a highly enlightening and very rewarding discussion with the distinguished Senator from West Virginia, Mr. BYRD. Senator BYRD spoke just before me. He is a man of tradition and hard work. I am very grateful for his leadership and his inspiration.

As I make my comments about Attorney General-nominee Gonzales, I want to tell you that I do so because my brothers and sisters in law enforcement have endorsed him. I do so as well because he has given me his written commitment to fight for civil rights. I do so because Judge Gonzales has given me his written pledge that he opposes torture in all of its forms and will use the power of his office to prosecute any American—anywhere—who uses torture.

Many of my colleagues and citizens across America have spoken eloquently about their concerns with Judge Gonzales. The most grave of those concerns has been the flawed legal analysis and conclusions regarding torture. That analysis and those conclusions were wrong and they have been rejected.

Any policy that condones torture is reprehensible for three reasons. First, a torture policy violates U.S. law and the cornerstone of the Geneva Conventions. Second, a torture policy endangers our men and women in uniform. And, third, a torture policy diminishes America's standing around the world.

Because of these concerns, I have had numerous conversations and meetings with Judge Gonzales, and I am confident that as Attorney General he will not sanction torture in any form and will uphold the laws of the United States and the international accords that make torture illegal.

In fact, I specifically asked Judge Gonzales to respond to my concerns and the concerns of the American public in writing. In his letter to me of January 28, 2005, Judge Gonzales wrote:

> I do not condone torture in any form. I confirm to you that the United States of America does not condone the torture of anyone by our country or by anyone else. The laws of the United States and the international obligations of the United States prohibit torture in all its forms. These international obligations include the Geneva Conventions, which I consider binding upon the United States. I reaffirm to you that, if confirmed as Attorney General, I will enforce these laws and international obligations aggressively to prohibit torture in all its forms.

He continues in his letter:

> I pledge to do so for two reasons. These are the laws of the United States, and I am obligated to uphold those laws. And secondly, any action by the United States that undermines the Geneva Conventions threatens the safety and security of our troops.

Judge Gonzales's statement is clear and unequivocal. Simply stated, torture is illegal and wrong and that will be the position of Judge Gonzales as Attorney General. As the Nation's top law enforcement officer, Judge Gonzales will be accountable for this position as he denounces torture, and I and the American people will make sure this is, in fact, the case.

Before proceeding further, I ask unanimous consent Judge Gonzales's letter to me be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, January 28, 2005.

Hon. KEN SALAZAR,
U.S. Senate,
Washington, DC.

DEAR SENATOR SALAZAR: I have appreciated our ongoing conversations, and I thank you for the dialogue we have had about my nomination by the President to serve as Attorney General. I am pleased to

reaffirm for you my positions on several issues I know are important to you.

I understand, I agree with, and I will act in accord with the principle that the Attorney General of the United States is the nation's chief law enforcement officer, with client responsibilities and other important duties to the people of the United States. If confirmed, I will lead the Department of Justice and act on behalf of agencies and officials of the United States. Nevertheless, my highest and most solemn obligation will be to represent the interests of the People. I know that you understand this solemn duty well from your prior service as Chief Counsel to the Governor and as Colorado Attorney General.

I do not condone torture in any form. I confirm to you that the United States of America does not condone the torture of anyone by our country or by anyone else. The laws of the United States and the international obligations of the United States prohibit torture in all its forms. These international obligations include the Geneva Conventions, which I consider binding upon the United States. I reaffirm to you that, if confirmed as Attorney General, I will enforce these laws and international obligations aggressively to prohibit torture in all its forms.

I pledge to do so for two reasons. These are the laws of the United States, and I am obligated to uphold those laws. And, secondly, any action by the United States that undermines the Geneva Conventions threatens the safety and security of our troops.

Also, I agree with you that our country should continue its broad and healthy debate about the provisions of the USA Patriot Act, particularly with regard to the necessary balance between civil liberties and the ability of law enforcement and other officials to protect public safety. I keep an open mind on these issues. I welcome your views on these matters, and I look forward to our continued discussions.

I understand your concern about increased funding for state and local law enforcement. As Attorney General, I will work with you and our state and local law enforcement community to do the best job we can to make our communities safer.

Finally, I understand the importance of civil rights and equal opportunity for all Americans. I will work to uphold those rights and opportunities as Attorney General.

Thank you for the opportunity to explain my position on these matters for you. I appreciate your friendship and your support.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

Mr. SALAZAR. Mr. President, I have spent the last 6 years of my life as the attorney general of the great State of Colorado working with people I consider to be my brothers and sisters in law enforcement. I have met with the widows of fallen officers, and I led our State efforts to train Colorado's 14,000 peace officers.

I have deep respect for the 750,000 men and women in law enforcement who risk their lives every day to keep each of us and our communities safe. These men and women will be the backbone of our Nation's Homeland Security efforts. I respect their judgment and opinion. In that regard, I stand with the Fraternal Order of Police, the National District Attorneys Association, the FBI Agents Association, and the Law Enforcement Alliance of America, all of whom have endorsed Judge Gonzales as Attorney General.

I have spoken to Judge Gonzales about the needs of law enforcement around the country. He has pledged his support and has pledged to come to Colorado to meet and learn from Colorado's heroic law enforcement officers about their experiences and their needs.

Finally, Judge Gonzales, I believe in his heart, knows about the importance of civil rights and liberties. He knows first hand of the indignities of a society that turns a blind eye to discrimination and prejudice. Because he knows that reality of the American experience, I expect him, as Attorney General, to help lead the way for the creation of an America that despises hate and bigotry and recognizes that every human being deserves a government that will fight for the dignity and equality of all.

I will vote to confirm Judge Alberto Gonzales to be the next Attorney General of the United States.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I am disturbed that even though there are some Democrats who support Judge Gonzales, and some who oppose, I have heard some Senators on the other side of the aisle imply that those who oppose this nomination are biased against him based on his ethnic background. I resent that charge.

For somebody to say that those opposed are biased against Judge Gonzales because of his ethnicity is preposterous and deeply offensive.

We have stood here for 2 days explaining our positions. Many of us have said if we were voting on the story and on the achievements of Judge Gonzales, which are commendable, we would be voting for him. If we were voting on what he has overcome in his life and career, we would be voting for him. What we have said clearly, however, is that we are voting against him based upon his conduct as Counsel to the President. We have come to this decision based upon his record.

Let us talk about that record. Judge Gonzales has argued that the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not prohibit cruel, inhuman, or degrading treatment or punishment with ''respect to aliens overseas.'' Reaching this conclusion requires such twisted reasoning that even those who support Judge Gonzales must part company with him on this point.

I am also disturbed by his interpretation of the Geneva Conventions. Judge Gonzales did not follow the advice he received from Secretary of State Powell, the former Chairman of the Joint Chiefs of Staff, or of the State Department lawyers. He did not stand up for the military and interpret our obligations consistent with the Army Field Manual and the decades of sound practice and counsel from the Judge Advocate General's Corps.

That is why I object to this nominee.

I ask unanimous consent to have printed in the RECORD an article describing Judge Gonzales's interrogation policies, written by Jeffrey Smith and Dan Eggen.

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

[From the Washington Post, Jan. 5, 2005]

GONZALES HELPED SET THE COURSE FOR DETAINEES—JUSTICE NOMINEE'S HEARINGS LIKELY TO FOCUS ON INTERROGATION POLICIES

(By R. Jeffrey Smith and Dan Eggen)

In March 2002, U.S. elation at the capture of al Qaeda operations chief Abu Zubaida was turning to frustration as he refused to bend to CIA interrogation. But the agency's officers, determined to wring more from Abu Zubaida through threatening interrogations, worried about being charged with violating domestic and international proscriptions on torture.

They asked for a legal review—the first ever by the government—of how much pain and suffering a U.S. intelligence officer could inflict on a prisoner without violating a 1994 law that imposes severe penalties, including life imprisonment and execution, on convicted torturers. The Justice Department's Office of Legal Counsel took up the task, and at least twice during the drafting, top administration officials were briefed on the results.

White House counsel Alberto R. Gonzales chaired the meetings on this issue, which included detailed descriptions of interrogation techniques such as ''waterboarding,'' a tactic intended to make detainees feel as if they are drowning. He raised no objections and, without consulting military and State Department experts in the laws of torture and war, approved an August 2002 memo that gave CIA interrogators the legal blessings they sought.

Gonzales, working closely with a small group of conservative legal officials at the White House, the Justice Department and the Defense Department—and overseeing deliberations that generally excluded potential dissenters—helped chart other legal paths in the handling and imprisonment of suspected terrorists and the applicability of international conventions to U.S. military and law enforcement activities.

His former colleagues say that throughout this period, Gonzales—a confidant of George W. Bush's from Texas and the president's nominee to be the next attorney general—often repeated a phrase used by Defense Secretary Donald H. Rumsfeld to spur tougher antiterrorism policies: ''Are we being forward-leaning enough?''

But one of the mysteries that surround Gonzales is the extent to which these new legal approaches are his own handiwork rather than the work of others, particularly Vice President Cheney's influential legal counsel, David S. Addington.

Gonzales's involvement in the crafting of the torture memo, and his work on two presidential orders on detainee policy that provoked controversy or judicial censure during Bush's first term, is expected to take center stage at Senate Judiciary Committee hearings tomorrow on Gonzales's nomination to

become attorney general. The outlines of Gonzales's actions are known, but new details emerged in interviews with colleagues and other officials, some of whom spoke only on the condition of anonymity because they were involved in confidential government policy deliberations.

On at least two of the most controversial policies endorsed by Gonzales, officials familiar with the events say the impetus for action came from Addington—another reflection of Cheney's outsize influence with the president and the rest of the government. Addington, universally described as outspokenly conservative, interviewed candidates for appointment as Gonzales's deputy, spoke at Gonzales's morning meetings and, in at least one instance, drafted an early version of a legal memorandum circulated to other departments in Gonzales's name, several sources said.

Conceding that such ghostwriting might seem irregular, even though Gonzales was aware of it, one former White House official said it was simply ''evidence of the closeness of the relationship'' between the two men. But another official familiar with the administration's legal policymaking, who spoke on the condition of anonymity because such deliberations are supposed to be confidential, said that Gonzales often acquiesced in policymaking by others.

This might not be the best quality for an official nominated to be attorney general, the nation's top law enforcement job, the administration official said. He added that he thinks Gonzales learned from mistakes during Bush's first term.

Supporters of Gonzales depict him as a more pragmatic successor to John D. Ashcroft, and a cautious lawyer who carefully weighs competing points of view while pressing for aggressive anti-terrorism efforts. His critics have expressed alarm at what they regard as his record of excluding dissenting points of view in the development of legal policies that fail to hold up under broader scrutiny and give short shrift to human rights.

His nomination has, in short, become another battleground for the debate over whether the administration has acted prudently to forestall another terrorist attack or overreached by legally sanctioning rights abuses.

One thing is clear: Gonzales, 49, enjoys Bush's trust. He has worked directly with the former Texas governor for more than nine years, advising him on sensitive foreign policy and defense matters that rarely—if ever—fell within the purview of previous White House counsels.

For example, when the Justice Department formally repudiated the legal reasoning of the August 2002 interrogation memo last week in another document that Gonzales reviewed, it was overturning a policy with consequences that Gonzales heard discussed in intimate detail—to the point of learning what the physiological reactions of detainees might be to the suffering the CIA wanted to inflict, those involved in the deliberations said.

The White House said Gonzales and Addington, a former Reagan aide and Pentagon counsel, were unavailable to be interviewed for this article. But asked to comment on whether Gonzales acquiesced too easily on legal policies pushed by others, spokesman Brian Besanceney responded that Gonzales had ''served with distinction and with the highest professional standards as a lawyer'' in private practice, state government and the White House, and he ''will continue to do so as attorney general.''

A SUCCESS STORY

Bush has told people that he was attracted by Gonzales's rags-to-riches life story. A Texas native and the son of Mexican immigrants, Gonzales served for two years in the Air Force before graduating from Rice University and Harvard Law School. He met Bush during his 1994 gubernatorial campaign, while Gonzales was a partner at the politically connected Houston law firm Vinson & Elkins.

Upon election, Bush appointed him as his personal counsel, later as Texas secretary of state and eventually as a justice on the Texas Supreme Court. Within weeks of the 2000 presidential election, Bush tapped Gonzales to be his White House counsel, and Gonzales set about creating what officials there proudly described as one of the most ideologically aligned counsel's offices in years.

Bringing only one associate to Washington from Texas, Gonzales forged his staff instead from a tightknit group of Washington-based former clerks to Supreme Court or appellate judges, all of whom had worked on at least one of three touchstones of the conservative movement: the Whitewater and Monica S. Lewinsky inquiries of former president Bill Clinton, the Bush-Cheney election campaign, and the Florida vote-counting dispute.

''It was an office of like-minded'' lawyers and ''strong personalities,'' said Bradford A. Berenson, a criminal defense lawyer appointed as one of eight associate counsels in Gonzales's office. ''There was not a shrinking violet in the bunch.''

''Federalist Society regulars'' is the way another former associate counsel, H. Christopher Bartolomucci, described the Gonzales staff and its ideological allies elsewhere in the government, such as Deputy Assistant Attorney General John Yoo and Defense Department General Counsel William J. Haynes II. All were adherents to the theory that the Constitution gives the president considerably more authority than the Congress and the judiciary.

One of the clearest examples of this ambition was Gonzales's long-running and ultimately futile battle with the independent commission that investigated the Sept. 11, 2001, terrorist attacks. Gonzales's office, acting as the liaison between the White House and the 10-member bipartisan panel, repeatedly resisted commission demands for access to presidential documents and officials such as national security adviser Condoleezza Rice, prompting angry and public disputes.

Gonzales is ''a good lawyer and a nice guy, and maybe he was a decent judge for a year, but he didn't bring a lot of political judgment or strategic judgment to their dealings with the commission,'' a senior commission official said. ''He hurt the White House politically by antagonizing the commissioners . . . and all of it for no good reason. In the end, the stuff all came out.''

Each morning, Gonzales convened round tables at which his staff—as well as Addington—related their legal conundrums. Gonzales was ''not a domineering personality . . . and he gave us a chance to speak our minds,'' said Helgi C. Walker, a former clerk for Clarence Thomas who was an associate counsel from 2001 to 2003.

''There was often a lively debate, but at the end it was not clear where Gonzales was,'' another former colleague said. A second former colleague recalls that in interagency meetings, Gonzales sat in the back and was ''unassuming, pleasant and quiet.'' So discreet was Gonzales about his opinions that one official who worked closely with him for a year said ''he never made an impression on me.''

But Berenson says Gonzales was hardly pushed around by officials who thought they had a monopoly on wisdom. ''I didn't have the sense that he was whipping his horses or that they were dragging him along behind them,'' he said, adding that Gonzales was ''neither the tool of an aggressive staff nor the quarterback of a reluctant team.''

Current and former White House officials interviewed for this article listed only a few episodes in which Gonzales forcefully pressed a position at odds with ideological conservatives. None was in the terrorism field.

Walker said she is aware of criticism that Gonzales ''should have been saying 'I believe this or that' '' about some of the provocative issues presented to him. ''He did not see his job as being about him'' but about advocating Bush's interests, she explained. ''The judge is not consumed with his own importance, unlike some others in Washington.''

DETAINEE POLICY

Unlike many of his predecessors since the Reagan era, Gonzales lacked much experience in federal law and national security matters. So when the Pentagon worried about how to handle expected al Qaeda detainees in the days after the Sept. 11 attacks and the Oct. 7 U.S. attack on Afghanistan, Gonzales organized an interagency group to take up the matter under the State Department's war crimes adviser, Pierre-Richard Prosper.

Former attorney general William P. Barr suggested to Gonzales's staff early on that those captured on the battlefield go before military tribunals instead of civil courts. But Ashcroft and Michael Chertoff, his deputy for the criminal division, both adamantly opposed the plan, along with military lawyers at the Pentagon. The result was that the process moved slowly.

Addington was the first to suggest that the issue be taken away from the Prosper group and that a presidential order be drafted authorizing the tribunals that he, Gonzales and Timothy E. Flanigan, then a principal deputy to Gonzales, supported. It was intended for circulation among a much smaller group of like-minded officials. Berenson, Flanigan and Addington helped write the draft, and on Nov. 6, 2001, Gonzales's office secured an opinion from the Justice Department's Office of Legal Counsel that the contemplated military tribunals would be legal.

That office, historically the government's principal internal domestic law adviser, was also staffed by advocates of expansive executive powers; it had told the White House in a classified memo five weeks earlier that the president's authority to wage preemptive war against suspected terrorists was virtually unlimited, partly because proving criminal responsibility for terrorist acts was so difficult.

After a final discussion with Cheney, Bush signed the order authorizing military tribunals on Nov. 13, 2001, while standing up, as he was on his way out of the White House to his Texas ranch for a meeting with Russian President Vladimir Putin. It provided for the military trial of anyone suspected of belonging to al Qaeda or conspiring to conduct or assist acts of terrorism; conviction would come from a two-thirds vote of the tribunal members, who would adjudicate fact and law and decide what evidence was admissible. Decisions could not be appealed.

Cut out in the final decision making were military lawyers, the State Department and Chertoff, as well as Rice, her deputy, Stephen J. Hadley, and Rice's legal adviser, John Bellinger. ''I don't think Gonzales felt he was acting precipitously, but he realized people would be surprised,'' Flanigan said. It amounted to a decision that the president could act without ''the entire staff's blessing. As it turned out, they [National Security Council officials] just weren't involved in the process.''

Berenson, who left the White House for private practice in 2003, said ''there were such

strong shared assumptions at the time [that] we had a powerful sense of mission.'' He attributes the haste to worry about another terrorist attack.

But David Bowker, then a State Department lawyer excluded from the process and now in private practice, called the order premature and politically unwise. ''The right thing to do would have been an open process inside the government,'' he said.

The tribunals were halted by U.S. District Judge James Robertson, who ruled on Nov. 24, 2004, that detainees' rights are guaranteed by the Geneva Conventions—which the administration had argued were irrelevant.

REBELLION AT STATE

Four weeks after Bush's executive order, a similarly limited deliberation provoked more determined rebellion at the State Department and among military lawyers and officers. The issue was whether al Qaeda and Taliban fighters captured on the battlefield in Afghanistan should be accorded the Geneva Conventions' human rights protections.

Gonzales, after reviewing a legal brief from the Justice Department's Office of Legal Counsel, advised Bush verbally on Jan. 18, 2002, that he had authority to exempt the detainees from such protections. Bush agreed, reversing a decades-old policy aimed in part at ensuring equal treatment for U.S. military detainees around the world. Rumsfeld issued an order the next day to commanders that detainees would receive such protections only ''to the extent appropriate and consistent with military necessity.''

Secretary of State Colin L. Powell—whose legal adviser, William H. Taft IV, had vigorously tried to block the decision—then met twice with Bush to convince him that the decision would be a public relations debacle and would undermine U.S. military prohibitions on detainee abuse. Gen. Richard B. Myers, chairman of the Joint Chiefs of Staff, backed Powell, as did the leaders of the U.S. Central Command who were pursuing the war.

The task of summarizing the competing points of view in a draft letter to the president was seized initially by Addington. A memo he wrote and signed with Gonzales's name—and knowledge—was circulated to various departments, several sources said. A version of this draft, dated Jan. 25, 2002, was subsequently leaked. It included the eye-catching assertion that a ''new paradigm'' of a war on terrorism ''renders obsolete Geneva's strict limitations on questioning of enemy prisoners.''

In early February 2002, Gonzales reviewed the issue once more with Bush, who reaffirmed his initial decision regarding his legal authority but chose not to invoke it immediately for Taliban members. Flanigan said that Gonzales still disagreed with Powell but ''viewed his role as trying to help the president accommodate the views of State.''

Thirty months later, a Defense Department panel chaired by James R. Schlesinger concluded that the president's resulting Feb. 7 executive order played a key role in the Central Command's creation of interrogation policies for the Abu Ghraib prison in Iraq.

A former senior military lawyer, who was involved in the deliberations but spoke on the condition of anonymity, complained that Gonzales's counsel's office had ignored the language and history of the conventions, treating the question ''as if they wanted to look at the rules to see how to justify what they wanted to do.''

''It was not an open and honest discussion,'' the lawyer said.

For Gonzales's aides, however, the experience only reinforced a concern that the State Department and the military legal community should not be trusted with information about such policymaking. State ''saw its mission as representing the interests of the rest of the world to the president, instead of the president's interests to the world,'' one aide said.

THE DEBATE OVER TORTURE

This schism created additional problems when Gonzales approved in August 2002—after limited consultation—an Office of Legal Counsel memo suggesting various stratagems that officials could use to defend themselves against criminal prosecution for torture.

Drafted at the request of the CIA, which sought legal blessing for aggressive interrogation methods for Abu Zubaida and other al Qaeda detainees, the memo contended that only physically punishing acts ''of an extreme nature'' would be prosecutable. It also said that those committing torture with express presidential authority or without the intent to commit harm were probably immune from prosecution.

The memo was signed by Jay S. Bybee, then an assistant attorney general and now a federal appellate judge, but written with significant input from Yoo, whom Gonzales had tried to hire at the White House and later endorsed to head Justice's legal counsel office. During the drafting of the memo, Yoo briefed Gonzales several times on its contents. He also briefed Ashcroft, Bellinger, Addington, Haynes and the CIA's acting general counsel, John A. Rizzo, several officials said.

At least one of the meetings during this period included a detailed description of the interrogation methods the CIA wanted to use, such as open-handed slapping, the threat of live burial and ''waterboarding''—a procedure that involves strapping a detainee to a board, raising the feet above the head, wrapping the face and nose in a wet towel, and dripping water onto the head. Tested repeatedly on U.S. military personnel as part of interrogation resistance training, the technique proved to produce an unbearable sensation of drowning.

State Department officials and military lawyers were intentionally excluded from these deliberations, officials said. Gonzales and his staff had no reservations about the legal draft or the proposed interrogation methods and did not suggest major changes during the editing of Yoo's memo, two officials involved in the deliberations said.

The memo defined torture in extreme terms, said the president had inherent powers to allow it and gave the CIA permission to do what it wished. Seven months later, its conclusions were cited approvingly in a Defense Department memo that spelled out the Pentagon's policy for ''exceptional interrogations'' of detainees at Guantanamo Bay, Cuba.

When the text was leaked to the public last summer, it attracted scorn from military lawyers and human rights experts worldwide. Nigel Rodley, a British lawyer who served as the special U.N. rapporteur on torture and inhumane treatment from 1993 to 2001, remarked that its underlying doctrine ''sounds like the discredited legal theories used by Latin American countries'' to justify repression.

After two weeks of damaging publicity, Gonzales distanced himself, Bush and other senior officials from its language, calling the conclusions ''unnecessary, over-broad discussions'' of abstract legal theories ignored by policymakers. Another six months passed before the Office of Legal Counsel, under new direction, repudiated its reasoning publicly, one week before Gonzales's confirmation hearing.

Mr. LEAHY. Mr. President, I want to set the record straight on something that the senior Senator from Utah said yesterday regarding the President's February 2002 directive on the treatment of al-Qaida and Taliban detainees. According to Senator HATCH, ''the President [said] unequivocally that detainees are to be treated humanely.'' In fact, the President's directive said only that ''the U.S. Armed Forces'' should treat detainees humanely. The President's directive pointedly did not apply to the CIA and other nonmilitary personnel.

I asked Judge Gonzales:

Does the President's February 7, 2002, directive regarding humane treatment of detainees apply to the CIA or any other nonmilitary personnel?

He replied:

No. By its terms, the February 7, 2002, directive ''reaffirm[s] the order previously issued by the Secretary of Defense to the United States Armed Forces.''

In other words, contrary to what he have heard, and continue to hear, from Judge Gonzales's supporters, the President's oft-quoted directive regarding the humane treatment of detainees is carefully worded to permit the occasional inhumane treatment of detainees. Indeed, that is one of the legal loopholes that concerns so many of us.

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

The PRESIDING OFFICER (Mr. COBURN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Ms. COLLINS. Mr. President, I rise today in support of the nomination of Alberto Gonzales to be Attorney General of the United States.

Judge Gonzales's story is truly inspirational. A man from humble beginnings—Humble, TX, to be precise—he grew up in a modest home built by his father and uncle where he lived with his parents and seven brothers and sisters with no hot water and no telephone. His parents were migrant workers who never even finished elementary school, but they believed in the American dream. They worked hard to give their children an education and to instill in them the American values of personal responsibility and hard work.

At the age of 12, Alberto Gonzales had his first job selling soft drinks at Rice University football games where he dreamed of one day going to college. Through determination, intelligence, and hard work, he achieved his dream. He graduated from Rice University, the first in his family to earn a college degree, and went on to excel at Harvard Law School.

Alberto Gonzales is a dedicated public servant. He has served his country in many capacities, including his service in the U.S. Air Force, as a judge on the Texas Supreme Court, and as Texas secretary of state. Judge Gonzales knows well that holding a public office involves a bond with the American people.

He has proven himself as a man of integrity and with the highest professional qualifications. That is why Judge Gonzales has broad support from groups and individuals across our country. His nomination is supported by the Hispanic National Bar Association, the League of United Latin American Citizens, the Fraternal Order of Police, the National District Attorneys Association, and the FBI Agents Association, to name just a few of these groups.

He also has bipartisan support from those who know him best, including leading Democrats, for example, Henry Cisneros, who served as Secretary of Housing and Urban Development under President Clinton. Mr. Cisneros, a former mayor of San Antonio, writes:

> In the 36 years that I have voted, I have supported and voted for only one Republican. That was when Alberto Gonzales ran for election to the Texas Supreme Court. I messaged friends about this uncommonly capable and serious man [and] I urged them to support his campaign. . . . He is now President Bush's nominee to be Attorney General of the United States and I urge his confirmation.

I have had the personal opportunity to meet with Judge Gonzales to discuss many issues over the last few years on many different occasions. I have always found him to be a man who honored his commitments, who kept his promises. I know he is a leader who is dedicated to protecting America, to following the Constitution, and to applying the rule of law.

The position of the Attorney General is as challenging a job as ever given the post-9/11 environment, but I am confident that as our Nation's chief law enforcement officer, Judge Gonzales will continue the progress we have made in fighting the war against terrorism, in combating crime, in strengthening the FBI, and in continuing to protect our cherished civil liberties.

As Judge Gonzales himself said regarding his nomination:

> The American people expect and deserve a Department of Justice guided by the rule of law, and there should be no question regarding the Department's commitment to justice for every American. On this principle there can be no compromise.

Alberto Gonzales, the man from Humble, is committed to ensuring justice for each and every American. He is committed to the rule of law. He deserves our confirmation, and I urge my colleagues to join me in voting for his confirmation.

I thank the distinguished senior Senator from New Mexico for allowing me to precede him.

Mr. DOMENICI. Mr. President, I thank the Senator for her good words. Needless to say, I agree with the Senator and I hope that sometime tomorrow an overwhelming number of Senators from both sides of the aisle will do likewise.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I rise in behalf of the President's nominee for Attorney General, Alberto Gonzales. I have read as much as I could about his background and his life. Most importantly, I have read what those who have lived and worked with him during his life have had to say about him, and I will read what they have had to say about him shortly.

From everything I have read and learned, I have concluded that some on that side of the aisle oppose him for totally personal, partisan, and political reasons, no question about it. I do not want to speculate as to why because it is really inconceivable to me that Democrats would do what they are doing to this man.

For decades, they used to talk about the Democrat Party being the party of Hispanics, as if it were just as natural and normal as day follows night that Hispanics, that minority which is growing, just ought to be Democrats.

Well, something has happened a little bit. Some change is occurring, and sure enough this President is tinkering with that toy of theirs. He is appointing more qualified Hispanics to high office than any of their Presidents ever have. My colleagues cannot say Alberto Gonzales was nominated just because he is a minority with the name Gonzales, because every single qualification that one would require he has met.

Did the American Bar Association approve? Absolutely. What did the bar of Texas think about him? They named him to one of their highest offices before we ever thought of him. What about law firms in Texas? He has been a member of the best law firms there are. What about judicial temperament? He sat on the highest civil and criminal court in the big, great State of Texas. Now, they did not all do that because his name is Gonzales, but it just happens that it is.

Nor did they approve of him because he was born in poverty, because his parents did not speak English, or because he lived in a house without running water. They did not approve of him because of that. They approved of him because he was qualified.

So then one might ask, what is all this objection about? It seems as if there is an idea that for some reason or another he has had a bad impact on our country's name because he is for torturing prisoners, or if I am reading too much into that then maybe it is he set a bad example which hurt America because people perceived he was for torturing prisoners and he did not do anything about it.

Based on the record, based on the law, based on the interpretation of the law, that is about as flimsy a reason as one could ever have for not approving this man to be Attorney General.

First, I do not want to take a lot of time. It is late. We have heard a lot. I did not come here without checking a few things. I find that most authentic and reliable discerners, interpreters of the legal consequences of the Geneva Convention conclude that the Geneva Convention does not apply to these kinds of captives.

I do not know how else to say it. There is opinion after opinion, interpretation after interpretation, that the title which talks about the care and how one must treat prisoners of war does not apply to terrorists. I will insert in the RECORD three different leading scholarly statements that say that is the case. Now, that is logical.

One might say, well, is America for torture? No. That is not logical. What is logical is when the Geneva Conventions were drawn, we were talking about prisoners of war such as those in the First and the Second World Wars, where literally thousands of soldiers belonging to an army of another nation were gathered and this was to say that you have to treat them a certain way. They belong to a country. Terrorists do not belong to any country. They are not fighting a war for a country. They are not part of an organized military that you capture.

I don't need to go into all that. I can just say, that is a bum rap, to say he should not be Attorney General because he might have said or signed a memo that said we do not need to apply the Geneva Conventions to these captives. If that were the case, that should not disqualify him because that is the predominant law, interpretive law of that convention.

Then we say: Senator, you are not saying, since that is not the case, you are free to do whatever you want to prisoners? Not at all. There still is a rule of law regarding the treatment of prisoners. I do not think anybody can rightfully get up and say Alberto Gonzales promoted or implicitly promoted treating these kind of captives any old way you want. I do not believe that is the case.

So I don't know what we are talking about. There might be something. There might be something. It might be that there has been a decision on that side of the aisle to just make every appointment of the President difficult, or anyone they can find the least thing about, make it difficult. Let me say, I don't think it does them any good. I don't think the American people, 2 weeks from now, are going to think this effort on their part did anything to hurt this man or hurt our President. What I am concerned about is whether the Democratic Party thinks it is going to help them because I do think it is another opportunity for Hispanics to say, Why should we be Democrats? I think that is giving that nail another nice pound with a nice strong hammer. I do not think there is any question about that.

I do think there is a growing concern on that side of the aisle as to who is going to be the next Supreme Court Justice. I know some might say: Senator DOMENICI, get off that.

No, no, every time you get in corners, little corners where people are talking up here, the subject is, who do you think the President can appoint

who can get by the Senate? There was a lot of talk up here that maybe Alberto Gonzales was that person. I don't know that. It looks to me, based on his history, based on his background, based on his relationship with the President, he might be. But maybe, if you make enough noise about him and attempt to stick enough signs up on a billboard saying he is this, that, or the other, maybe he will not be a candidate, a probable candidate anymore. That could be what some people think. I do not know. I hope it is not, and I hope, in spite of what has happened, it doesn't.

I am not here as his champion for that job. That is the President's job. But I think it would be terrific if the President of the United States followed up on all the things he has done to prove that he has no discrimination about his personal being and no discrimination that stems from his party, or Republicans. He is open. He has, in his Cabinet, we all know, a distinguished group of Americans who are minorities. This would be another one.

I want to close by saying I am very pleased that a lot of organizations in this country, and a lot of distinguished people have not bought the arguments made by the other side because they know him, they like him, they are familiar with him, they trust him, and they want him to be Attorney General.

Let me say first, about Henry Cisneros—a lot of Americans and a lot of Hispanic Americans know who he is. He had a little downfall in his career, but he is a very considerate, intelligent, concerned Hispanic American from the State of Texas. He is the former mayor of San Antonio and a former Cabinet member, Democratic Presidential appointee.

I will not make his letter part of the RECORD since it has already been printed in the RECORD. It is dated January 5, 2005, to the Wall Street Journal.

This is a tremendous examination of who this nominee is, what he has done, what he has demonstrated, and the conclusion that it will be good for America to have an Attorney General who has memories like those—having stated his upbringing and the like—

> . . . because he can rely on those memories to understand the realities that many Americans still confront in their lives. I believe he will apply those life experiences to the work ahead. His confirmation by the Senate can be part of America's steady march toward liberty and justice for all.

That is not a Republican, that is not the President, that is Henry Cisneros. He signs it: Secretary of Housing and Urban Development under President Clinton, mayor of San Antonio, TX, from 1981 through 1989.

Mr. Gonzales, in 1989, was recognized as the Latino Lawyer of the Year by the Hispanic National Bar Association and received a Presidential citation from the State Bar of Texas in 1997 for his dedication in addressing the basic legal needs of the indigent. He was chosen as one of the five outstanding young Texans by the Texas JCs, and an Outstanding Young Lawyer of Texas. He was also suggested as the Texas Young Lawyer by their association.

There are many more. I merely read these, and you know that they all are giving accolades, and that those who are giving accolades or giving awards are Hispanic. They are Hispanic organizations, Hispanic individuals. I think that means something. We are very proud as Republicans that the minority Hispanics in America are thrilled with this appointment.

I looked very carefully at a couple of organizations that have been cited or if not should be cited as being opposed to him. I would be remiss if I didn't tell you I would expect that they would be because they are so Democratic, I don't think they could be for a Republican Felix Frankfurter to be U.S. Attorney General if he were Republican. A couple of these Spanish organizations are so devoted to Democrats, they could not be for a Hispanic U.S. Attorney General if he were Republican no matter what his name is. So it doesn't bother me that two of them are.

But the League of United Latin American Citizens—LULAC, they are for him. The National Council of La Raza—whether you agree with any of these or not—is for him. The Hispanic National Bar Association is for him. The National Association of Latino Elected and Appointed Officials, they are for him. The U.S. Hispanic Chamber of Commerce is for him.

I can go on. There are eight more. I ask unanimous consent the list in its entirety be printed in the RECORD.

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

GONZALES NOMINATION—POSITIONS OF HISPANIC GROUPS

SUPPORT

League of United Latin American Citizens (LULAC)
National Council of La Raza (Kerry)—Presidential Endorsement
Hispanic National Bar Associations
National Association of Latino Elected and Appointed Officials
Hispanic Association of Colleges and Universities (HACU)
United States Hispanic Chamber of Commerce
Hispanic Alliance for Progress
The Latino Coalition (Bush)
Hispanic Business Roundtable (Bush)
New American Alliance
MANA (national latina women's organization)
National Association of Hispanic Publishers
National Association of Hispanic Firefighters (Bush)

WITHHELD ENDORSEMENT

Mexican American Legal Defense and Educational Fund

OPPOSE

Congressional Hispanic Caucus (Kerry)
Mexican American Political Association
National Latino Law Students Association

Mr. DOMENICI. There is a congressional Hispanic caucus which was among those that I was mentioning a while ago. They endorsed Senator KERRY, supported him, campaigned for him. I wouldn't expect them to be for this nominee.

I think I said most of what I wanted to say to the Senate for those who are interested in the other side of the coin from what the Democrats—small in number but by sufficient numbers—want to make a lot of people in the country think, that this man should not have this job.

I think they are wrong. I think the Hispanic community of America should know that they are wrong. I think the Hispanic community of America should know that most people who are concerned about them—Hispanic Americans—are for him. I think they could rightfully conclude that those who are not for him don't care about Hispanic Americans because most of them overwhelmingly think he is the right man for this job.

I thank the Senate for the few moments I have had to discuss this matter and hope that my few words will have something to do with adding to the chorus of support for this candidate, and for some of those who listened to that which is said against him will at least think if they were leaning toward believing that, that there really is another side; and that real side is probably somewhere close to what I said in the last 10 minutes.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as if in morning business.

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

Mr. DURBIN. Mr. President, I have listened carefully to the remarks of the Senator from New Mexico, and I would like to say two or three things for the RECORD.

The criticism has been leveled that the Democrats are somehow obstructionists; that we are standing in the path of the President to filling his Cabinet. The Senator from New Mexico knows this is the second rollcall on the nominees of the President. Six nominees for the Cabinet positions asked for by President Bush have been approved by voice vote—without even a recorded vote having been taken. Only one remains: Mr. Chertoff. To suggest that somehow we are delaying, obstructing, standing in the road of progress for this administration is to overlook the obvious.

We have cooperated with this administration. We have done our best to expedite the hearings on these nominees.

There are only two of the highest positions—Secretary of State and Attorney General—that have evoked any substantive floor debate.

As I listen to my Republican colleagues, it appears that their advice to the Democratic minority is to sit down and be quiet; you lost the election. But, as I understand it, each of us has been elected to represent a State and to stand up for the values in which we believe. To ask for a few moments on

the floor to debate an important nomination for Secretary of State or Attorney General I don't think is being impudent. I think it is what we were elected to do.

The Constitution not only empowers us and authorizes us; it commands us to advise and consent—not just consent. If we want to spend a day or two debating something as serious as Judge Gonzales's involvement in rewriting the torture policy in America, I don't think that is inappropriate. In fact, I think our silence would be inappropriate.

Those on the other side—and even some on this side—may disagree with the conclusions reached earlier. I think you will find when the rollcall comes that there will be Senators on both sides of the aisle voting for Judge Gonzales. So be it. But to say we are somehow stepping out of line by even debating a nominee for the Cabinet is just plain wrong.

Second, this is exactly the same argument that was used on the issue of judges. If you listened to the commentaries, particularly from some sources on radio and television, you would think that the Democrats had found a way to stop most of the judges nominated by President Bush over the last 4 years. But look at the cold facts. Two-hundred and four of President Bush's judicial nominees were approved. They went through this Congress, under both Democratic and Republican committee leadership. Only 10 nominees were held up. The final score in that game was 204 to 10. It is clear the President won the overwhelming percentage of judicial nominees he sent to the floor of the Senate. If you listen to our critics, you would think it was the opposite—that we only approved 10 judges and turned down 204.

That wasn't the case at all. When people come to the floor critical of the Democrats for even wanting to debate a Cabinet nominee, I think they are overstating the case.

Let me address the last point made by the Senator from New Mexico.

Mr. DOMENICI. Mr. President, will the Senator yield for 1 minute?

Mr. DURBIN. I would be happy to yield for a question.

Mr. DOMENICI. I don't want to take the Senator's right to the floor under any circumstances.

First, I ask to speak to ask the Senator a question right now, because I can't stay. I want the Senator to know that I always appreciate his remarks. They always stimulate me, whatever the Senator thinks that means. Maybe it stimulates me to answer; maybe it makes me get red in the face. I don't know.

Anyway, I don't think my remarks were principally devoted to—in fact, only mildly devoted to—the delay that may be taking place with regard to some nominees. I stand on that premise—that there have been delays that were uncalled for. But that was the principal point.

I hope that nobody would let the distinguished Senator kind of avoid the issue. That is not the issue Senator DOMENICI raises.

The issue is that this man is totally qualified; that those who know him best say he is qualified. It appears that those on the other side of the aisle want to see him defeated, or put upon by their arguments such that he doesn't go into that office strong and full of support but, rather, nicked by attacks that are meaningless and without any merit. That is the argument.

I tried to tell everybody who is for him. Frankly, they knew him a lot better than any Senators knew him. Many of them like Cisneros knew him for 15 years—and what he said about him on January 5, not 10 years ago, what he was, what he wasn't, how good he was.

That was my argument. My argument and question was, Why? Maybe that is my question. I thank the Senator for yielding.

Mr. DURBIN. Mr. President, I thank the Senator from New Mexico. I will make it a practice to always yield the floor whenever I possibly can because I think dialog between two Senators runs perilously close to debate which we have very little of on the floor of the Senate.

I welcome the comments of the Senator from New Mexico. I may disagree on this issue, but I hope we have respect for one another and what we bring to this Chamber.

The point I would like to make is this: I do not know him personally. I met him in my office for a brief meeting, the first time we ever sat down together.

I read his life story. I couldn't help but be impressed. Here is a man who came from a very modest circumstance, who served his Nation in the Air Force, who went to law school, who became general counsel to the Governor of Texas, a member of the Texas Supreme Court, and then legal counsel to the President of the United States. It is an amazing, extraordinary life story.

Some of my colleagues, including the Senator from Colorado, Mr. SALAZAR, have talked about their origins and their upbringing and how difficult it is to overcome with discrimination in many quarters. Thank goodness that is changing in America but not fast enough.

The point I would like to make is, I don't know a single Member of the Senate who has taken exception to Judge Gonzales because he is Hispanic or because he comes from humble origins. That is not the issue. The issue we believe, simply stated, is what did he do as general counsel to the President? Did it qualify him or disqualify him to have the highest law enforcement position in the United States of America? I think that is the issue.

When I came to the floor to speak earlier—and I will not recount my remarks—it related to the torture policy of which he was a part. I think in 10 or 20 years of history we will look at this war on terrorism and judge us harshly for having sat down to rewrite the policies and principles—the human principles—that guided this country for decades when it came to the treatment of prisoners and detainees. That is why I have reservations about Judge Gonzales. That is why I raised these questions, both in a public hearing and in written questions to him personally. That is why I am opposing his nomination, simply stated.

I have the greatest respect for what he has achieved personally in life, but I have a responsibility to go beyond that personal achievement and ask from a professional and governmental viewpoint, Is he the best person for this job? That is why many of us have risen in opposition to his nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up 10 minutes each.

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

RECOGNIZING NATIONAL APPRECIATION DAY FOR CATHOLIC SCHOOLS

Ms. LANDRIEU. Mr. President, I am pleased to recognize that today, February 2, 2005, is National Appreciation Day for Catholic Schools. As a proud graduate of Catholic schools, I am delighted to be able to meet some of these Catholic school student leaders to let them know what an investment in our future they are.

The spirit of Catholic schools has been present in the United States since the first settlers arrived in America. In 1606 the Franciscans opened a school in what is now St. Augustine, FL. During the next century, the Franciscans and Ursulines established Catholic schools throughout the American colonies: in Maryland, Massachusetts, Pennsylvania, New York, and even in non-British colonial locales, such as New Orleans. After the American Revolution, Catholic patriots worked to open the first official parochial school in the United States, St. Mary's School, established in 1782 in Philadelphia. In 1789 Georgetown University, the first Catholic college in the United States, was founded right here in the District.

Catholic schools have offered much more to the United States than just longevity, however; America's Catholic schools have offered an academic excellence that has helped to influence the moral, intellectual, physical, and social values of our youth for over 300 years. As Baltimore Archbishop Cardinal James Gibbons said, ''Education must make a person not only clever but good.'' For more than three centuries, Catholic schools in this country