

# Democrats ready to confirm defender of torture as new US attorney general

Joseph Kay

12 November 2004

President George Bush announced Wednesday his nomination of current White House Legal Counsel Alberto Gonzales to replace Attorney General John Ashcroft, who submitted his resignation on Tuesday. The nomination of Gonzales confirms that the Bush administration is preparing to escalate its attacks on democratic rights and its defiance of international law.

Ashcroft became something of a symbol of the Bush administration's contempt for constitutional safeguards and its assertion of unprecedented police powers. His tenure saw an unrelenting attack on democratic rights, including the implementation of the Patriot Act, the mass arrests and deportations of Muslims and Arabs following September 11, and the detention without charge of US citizens Yasser Hamdi and Jose Padilla. Ashcroft will be remembered for his assertion to a congressional committee that critics of administration policy were giving "aid" to the terrorists.

Gonzales is, if anything, more consistent in his hostility to constitutional principles and civil liberties. He is infamous for having authored a 2002 memo arguing that the Geneva Conventions did not apply to the war against Afghanistan. He is also implicated in discussions within the administration on legal justifications for the use of torture, military tribunals, and the claim that the president, as commander-in-chief in the "war on terror," has virtually unlimited powers.

Demonstrating their utter prostration before Bush and the Republican right, and their indifference to democratic rights, leading Democrats have already announced that Gonzales will have little trouble being confirmed by the Senate. Although the Republicans wield a majority in the chamber, the Democrats have more than sufficient votes to mount a filibuster and thereby block a nomination. They have gone out of their way to make clear, however, that they will not exercise that option.

Senator Charles Schumer of New York declared that "it's encouraging that the president has chosen someone less polarizing" than Ashcroft. Senator Joseph Biden of Delaware evaluated Gonzales to be "a pretty solid guy."

Donna Brazile, campaign manager for Al Gore in 2000 and a possible replacement for Terry McAuliffe as chairman of the Democratic National Committee, said on CNN that the Democrats would not seek to filibuster the nomination.

The *New York Times*, the newspaper of the liberal establishment and supporter of the Kerry campaign, published an editorial on Thursday declaring, "Mr. Gonzales has shown that he can distinguish between a political agenda and the law." It continued, "We hope he brings that sort of reasoned approach to the Justice Department."

The Democrats are well aware of Gonzales's role in the administration. In a speech he gave on May 26, 2004, Gore himself pointed to Gonzales as one of the advisors who had crafted the administration policy that led to the torture of Iraqi detainees at Abu Ghraib prison. In earlier speeches, Gore denounced as a " 'Big Brother' style of government" the very policies pushed by Gonzales.

As for the *New York Times*, it has documented in a number of articles Gonzales's contempt for constitutional principles of law and government. An article by *Times* correspondent Tim Golden published on October 24, 2004 ("After Terror, a Secret Rewriting of Military Law"), details how a group of right-wing lawyers—including Gonzales, one of his deputies, Timothy Flanigan, and the vice president's counsel, David Addington—pushed for an agenda that would undermine legal protections for those detained in the "war on terror."

Only a week after the September 11 attacks, Gonzales set up a group to examine options for prosecuting individuals captured by the American military and intelligence services. Gonzales himself favored the use of military commissions, where the most basic rights would be denied. When the original group failed to act quickly enough, Flanigan and Gonzales's Office of the White House Counsel moved to scuttle the discussion.

According to Golden, with the White House and its Office of Legal Counsel in charge, the planning of military tribunals moved more quickly, culminating in a memo sent to Gonzales on November 6, 2001. Written by one of Gonzales's deputies, Patrick Philbin, the memo set out that

the president had the “inherent authority” as commander-in-chief to establish military commissions without the permission of Congress.

In the divisions that emerged within the administration over the handling of detainees, Gonzales was consistently among the most fervent opponents of granting democratic rights. Golden states that Gonzales, Flanigan and Addington “opposed allowing civilian lawyers to assist the tribunal defendants, as military courts-martial permit, or allowing civilians to serve on the appellate panel that would oversee the commission. They also opposed granting defendants a presumption of innocence.”

On the question of the prosecution of detainees, Gonzales even outflanked Attorney General Ashcroft, who worried that some of the rules being proposed would be seen as “draconian.”

The military commissions set up in accordance with the proposals of Gonzales and company were this week ruled illegal by a federal district judge.

Gonzales was also the author of a memo dated January 25, 2002, arguing that no prisoners captured in the war against Afghanistan should be accorded the rights of the Geneva Conventions. His position was more extreme than that eventually taken by the administration.

A presidential decision issued two weeks later declared that the Geneva Conventions applied to the war in Afghanistan, but members of the Taliban captured by American troops would be treated as “unlawful combatants,” and not prisoners of war. All factions within the administration agreed that alleged members of Al Qaeda would not be given any rights under international law.

Gonzales opposed what would become the administration’s position because he thought it would limit the flexibility of the US government in its interrogation practices and its plans for further wars. His memo states, “The war against terrorism is a new kind of war.... The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors.... In my judgment, this new paradigm renders obsolete Geneva’s strict limitations on questioning of enemy prisoners.”

Gonzales also felt that by declaring that the Geneva Conventions did not apply at all to Afghanistan, the administration would more securely protect itself against future prosecution for war crimes. He noted that the US War Crimes Act makes war crimes—defined as grave breaches of the Geneva Conventions—punishable by death. Some provisions of the Conventions (such as the prohibition of ‘outrages against personal dignity’) apply whether or not the detainee is categorized as a POW. “A determination that the [Geneva Conventions] are not applicable to the Taliban

would mean that [the War Crimes Act] would not apply to actions taken with respect to the Taliban,” he wrote.

It is no surprise, therefore, that Gonzales was closely involved in the memos produced within the administration that sought to create a legal rationale for the use of torture. The most important memos on the subject that have been leaked to the press were drafted at the request of Gonzales, including the August 1, 2002, memo written by Assistant Attorney General Jay Bybee.

The Bybee memo sought to define torture in such narrow terms as to allow a wide variety of methods expressly prohibited under international law. It further developed the argument that the president had unlimited powers as commander-in-chief, asserting that even if torture were prohibited by law, such laws would be unconstitutional if they unduly restricted the powers of the president. (See “Washington Post publishes memo implicating White House in torture of prisoners”.)

Gonzales’s close ties to Bush—going back to Bush’s governorship in Texas—no doubt played a role in his selection. There are a number of ongoing investigations at the Justice Department involving the White House. These include an inquiry into the leaking of the name of a CIA operative who is the wife of an administration critic, and an investigation of Cheney’s former company, Halliburton. The *Washington Post* quotes one administration official as noting, “It could be the kiss of death [for these investigations] to have an attorney general so close to the White House.”

While the Democrats are lauding Gonzales as “a pretty solid guy,” the Christian fundamentalist faction of the Republican Party is also applauding his nomination, mainly because it means he will not be given a seat on the Supreme Court. These layers are cool to Gonzalez because of his support for affirmative action and what they consider to be his “soft” position on abortion. His nomination as attorney general is a signal that the Bush administration is preparing to appease the Christian right with a suitable nominee to the Court in the likely event that Chief Justice William Rehnquist resigns.



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