

Statement of

# **The Honorable John Cornyn**

United States Senator  
Texas  
January 6, 2005

U.S. Senate Committee on the Judiciary

U.S. Senator John Cornyn (R-TX)

Nominations Hearing

Alberto R. Gonzales

to be Attorney General of the United States

Thursday, January 6, 2005, 9:30 a.m., Hart Senate Office Building Room 216

Thank you, Mr. Chairman, for convening today's hearing.

I am very pleased to introduce Judge Alberto Gonzales to this committee. He is a talented lawyer, a dutiful public servant, and a good man. He is a great Texan and an inspiring American success story. I am honored to call him my friend.

I should also mention that Senator Hutchison, the senior Senator from Texas, had wanted to be here to express her strong support - but is away due to a preexisting commitment. I ask that her statement of support be entered into the record.

I have known the Judge for many years, and I can tell you that the media is absolutely right to refer to him as the "Man from Humble." Now if you're not from Texas, that refers not just to Humble, Texas, where he grew up, but also to the fact he is a modest, self-effacing man. The son of migrant workers, his childhood home - where his mother still lives today - was built by his father and uncle. As a child, he sold soft drinks at Rice University football games - where he dreamed of one day going to school.

Gonzales is the first person in his family to go to college. Because of the love and support of his family, and hard work and determination on his part, he graduated from Rice and Harvard Law School, and then joined a prestigious international law firm where he became one of its first minority partners. He eventually caught the eye of a Texas governor, who saw a uniquely talented yet modest man - and appointed him general counsel, secretary of state, Texas supreme court justice, and eventually, counsel to the President.

Judge Gonzales is truly an inspiration to everyone who still believes in the American dream. And so, his nomination to become our nation's 80th Attorney General - and our first Hispanic Attorney General - should by all accounts have a perfectly happy ending.

But that's not how Washington works, unfortunately. It appears that today's hearing will prove, once again, that our Senate's confirmation process is unnecessarily partisan, even cruel to some who selflessly offer themselves for public service.

Only in Washington would this good man get raked over the coals for simply doing his job. This must all be a little disorienting for one whose very life story testifies to the fact that America should always be a place where honesty, diligence, and determination are rewarded.

Take the harsh criticism about the Geneva Convention. Judge Gonzales has been harshly attacked for advising the President that all detainees be treated humanely, but that, as a legal matter, al Qaeda and Taliban fighters are not covered by the Geneva Convention.

Now, I hate to ruin a good story for the President's political opponents. But there is one important problem with this criticism: Judge Gonzales is right.

You don't have to take my word for it.

First of all, al Qaeda has never signed the Geneva Conventions.

Moreover, the Red Cross's own guidelines state that, to be entitled to Geneva protection as a prisoner of war, combatants must satisfy all four conditions of lawful combat: (1) being commanded by a person responsible for his subordinates, (2) having a fixed distinctive sign recognizable at a distance, (3) carrying arms openly, and (4) conducting their operations in accordance with the laws and customs of war. Does anyone on this committee seriously argue that al Qaeda terrorists comply with the laws of war?

By the way, Judge Gonzales's legal advice has also been affirmed by three federal courts across the country.

It has also been endorsed by numerous legal scholars and international legal experts across the political spectrum - as well as both the 9/11 commission and the final Schlesinger report. A brief filed in a recent U.S. Supreme Court case by former Carter Administration officials, State Department legal advisers, judge advocates general and military commanders, and liberal international law scholars concluded that "[t]he President's conclusion that the members of al Qaeda, and the Taliban, are unlawful combatants is clearly correct." Even Washington advocacy director for Human Rights Watch, Tom Malinowski, a vocal Bush Administration critic, has grudgingly conceded that the Administration interpretation was "probably correct."

The Administration's Geneva position is not just right as a legal matter - it is also essential as a matter of national security. I recently published an op-ed which explained that extending Geneva Convention protections to al Qaeda would (1) threaten the security of our soldiers, (2) dramatically disable us from obtaining the intelligence needed to prevent further attacks on U.S. civilians and soldiers, and (3) badly undermine international law itself. [I ask that that op-ed and supporting documents be entered into the record.]

Just take a look at all of the numerous privileges provided by the Geneva Convention. For example, questioners could not entice detainees to respond by offering creature comforts or other preferential treatment - even though that is standard operating procedure in police stations across our country. And because the convention prohibits the holding of detainees in isolation, al Qaeda fighters would be able to coordinate with each other to thwart effective questioning. POW status even confers broad combat immunity against criminal prosecution before civilian and military tribunals alike.

Surely, no member of this committee actually believes that an al Qaeda terrorist deserves to be treated better than an American citizen accused of a crime?

President Reagan and his successors didn't. Nearly two decades ago, President Reagan, and every President since that time, has rejected a proposed amendment - known as Protocol I of 1977 - to extend the Geneva Convention to cover terrorists. As President Reagan rightly argued, "we must not, and need not, give recognition and protection to terrorist groups as a price for progress in humanitarian law." Notably, even both the New York Times and the Washington Post agreed with the Reagan-Bush-Gonzales position. The Times called the position "sound," while the Post said it was "right" and even accused opponents of that view of "hijacking the Geneva Conventions."

All this support - from multiple federal courts, the 9/11 commission, the Schlesinger report, liberal international legal scholars, Carter Administration officials, even the New York Times and the Washington Post. Yet Judge Gonzales is criticized for taking precisely this same position? Only in Washington.

Take another issue. Take the Justice Department memos construing the federal torture statute. Judge Gonzales is being attacked for a memo he didn't write - analyzing a law he didn't draft. It was Congress - not Judge Gonzales - that enacted a strict definition of torture. It was Congress - not Judge Gonzales - that specifically provided that only specific intent to inflict "severe physical or mental pain or suffering" would constitute torture.

President Bush and Judge Gonzales have both unequivocally, clearly, and repeatedly rejected the use of torture. But is there anyone here today who would fail to use every legal means to collect intelligence from terrorists that can save American lives? I certainly hope not.

Finally, I imagine that we're going to hear a lot about Abu Ghraib today. I think it's safe to say that everyone agrees that Abu Ghraib was a shameful episode in our nation's history. Yet some people actually want to exploit that tragedy to score political points.

Abu Ghraib should be treated seriously - not politically. The Defense Department has been vigorously investigating the misconduct and prosecuting the violators. And the independent Schlesinger report has concluded that "[n]o approved procedures called for or allowed the kinds of abuse that in fact occurred. There is no evidence of a policy of abuse promulgated by senior officials or military authorities." If there is no evidence whatsoever that Judge Gonzales was in any way responsible for this, why are we talking about this at Judge Gonzales's confirmation hearing? This is a confirmation hearing for the top post at the Justice Department - not an oversight hearing for the Defense Department.

I am proud of my friend, Judge Alberto Gonzales. He is a source of great inspiration and pride to his family and friends, and to the great state of Texas. Time and time again, Judge Gonzales has done his duty in the war on terrorism. It disheartens me to see him held up to ridicule, distortions, and outright lies, just for being the patriot that he is.

To my colleagues I say: Let's confirm this great man from Humble.