

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
January 6, 2005

STATEMENT OF SENATOR PATRICK LEAHY,
RANKING MEMBER, SENATE JUDICIARY COMMITTEE
CONFIRMATION HEARINGS ON THE NOMINATION
OF ALBERTO GONZALES
TO BE ATTORNEY GENERAL OF THE UNITED STATES
JANUARY 6, 2005

Judge Gonzales, welcome to the Senate Judiciary Committee. In the 109th Congress we also welcome a very experienced member of the committee -- Senator Specter -- as our new chairman.

We are entrusted by the American people, the Senate and our Constitution to do a thorough and fair job in considering nominations for the Executive Branch of government.

At the outset, I want to make clear how inspiring your life story is. The recent Washington Post profile of your life's journey in particular touched me as few accounts of your life have. The road you have traveled from being a twelve-year-old boy selling soft drinks at football games, all the way to the State House in Texas and our White House, is a tribute to you and to your family.

I am sure today we will hear more about your life story. We are also here to learn more about Alberto Gonzales as counsel to the President. And we are here to try to glean a portrait of the kind of Attorney General you would become if confirmed by the Senate.

The Role Of Attorney General

The Attorney General should represent the interests of all Americans and is the nation's chief law enforcement officer. As Justice James Iredell wrote in 1792, the person who serves as Attorney General, to quote him, "is not called Attorney General of the President, but Attorney General of the United States."

This post is quite distinct from the position Judge Gonzales has performed for the President in which he acted as a spokesman for the Administration and appeared as chief defense lawyer for the White House on a range of important and politically sensitive matters.

A key question before this hearing is whether the nominee shares this view of the crucial role of the U.S. Attorney General.

When he was designated for this position by the President, Judge Gonzales said that he was looking forward to, in his words, "continuing to work with friends and colleagues in the White House in a different capacity on behalf of our President."

But there may be times when the Attorney General of the United States has to enforce the law and cannot be worried about friends, colleagues and benefactors at the White House.

At a time when the Republican Party has taken control of all three branches of the Federal Government, my worry is that our system of checks and balances may become short-circuited by too few checks on assertions of Executive Branch authority.

My concern is that during several high-profile matters in your professional career you have appeared to serve as a facilitator, rather than an independent force in the policy-making process. The job of Attorney General is not about crafting rationalizations for ill-conceived ideas. It is a much more vital role than that. It is about being a forceful, independent voice in our continuing quest for justice and in defense of the constitutional rights of each and every American.

Need For A Fresh Start

We have now seen what happens when the rule of law plays second fiddle to a President's policy agenda. With John Ashcroft as Attorney General and with a White House Counsel's office that has impulsively facilitated rather than cautiously vetted serious constitutional issues, the Administration has taken one untenable legal position after another regarding the rule of law in the war against terror.

The few times that Attorney General Ashcroft consented to appear before this Senate oversight committee, he brandished intimidation as a weapon, sometimes going so far as to say that questioning the Administration's policies was giving aid and comfort to our enemies.

By contrast, Judge Gonzales' nomination seems to offer the possibility of a new era.

But as I told the nominee when we met within days of the announcement of his nomination, these hearings matter. We need to know more about his judgment and actions in connection with the tragic legal and policy changes formulated in secret by this Administration that are still hidden from proper congressional oversight and public scrutiny.

Policy Changes Leading to Torture

Those policies include this nominee's role in developing interpretations of the law to justify harsh treatment of prisoners tantamount to torture. America's troops and citizens are at greater risk because of those actions and the terrible repercussions throughout so much of the world. The searing photographs from Abu Ghraib have made it harder to create and maintain the alliances we need to prevail against the vicious terrorists who threaten us. Those abuses serve as recruiting posters for the terrorists.

The scandal of Abu Ghraib, allegations of mistreatment at Guantanamo, and charges from cases in Iraq and Afghanistan are serious matters with lingering questions and unresolved accountability. These hearings are about a nomination, but these hearings are also about accountability.

From the outset of public disclosure of the Abu Ghraib photographs, the Bush Administration maintained that any wrongdoing was the action of "a few bad apples."

As bits of information have been made public by the press over the last year, it has become clear to all that these incidents at U.S. facilities around the world are not just the actions of a few low-ranking members of the military. Rather, in the upper reaches of the Executive Branch a process was set in motion that rolled forward to produce scandalous results.

The Army Field Manual reflects our nation's long-held policies toward prisoners. It says: "The goal of any interrogation is to obtain reliable information in a lawful manner.... U.S. policy expressly prohibit[s] acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or to aid interrogation."

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

Yet senior officials in the Bush White House, Ashcroft Justice Department and Rumsfeld Pentagon set in motion a systematic effort to minimize, distort and even ignore our laws, policies and agreements on torture and the treatment of prisoners. Defense Secretary Rumsfeld and, later, Lt. Gen. Ricardo Sanchez, authorized the use of techniques that were contrary to both U.S. military manuals and international law. Former CIA Director Tenet requested and Secretary Rumsfeld approved the secret detention of "ghost detainees" in Iraq so that they could be hidden from the International Committee of the Red Cross. Still unexplained are instances where the U.S. Government delivered prisoners to other countries known to utilize torture. Where is the responsibility and accountability for these abuses?

We are the most powerful nation on earth, the most powerful nation the earth has ever known, a country that cherishes liberty and human rights, a nation that has been a beacon of hope and freedom to the world. We face vicious enemies in the war on terrorism, but we can and will defeat them without sacrificing our values or stooping to their levels. I believe there are several people in the audience who are themselves survivors of torture committed by the armed forces and secret police of other countries who do not share our values. They continue to struggle to overcome those horrifying experiences, and they are very concerned that we not retreat from the high standards against torture that we have held up to the world in the past. I appreciate being made aware of their presence here today.

Opportunity For Accountability

These hearings are an opportunity at long last for some accountability for this meltdown of longstanding U.S. policy on torture. As White House Counsel, Judge Gonzales was at the center of discussions on the applicability of the Geneva Conventions to the wars in Afghanistan and Iraq, and the legality of detention and interrogation methods that have been seen as tantamount to torture. He oversaw the formulation of this Administration's extreme views of unfettered executive power and unprecedented government secrecy.

I hope things will be different if you are confirmed, Judge Gonzales. I hope that you will be accessible to Members of this Committee, and more responsive. Judge Gonzales, I welcome you and your family.

I know the President asked our incoming Chairman to proceed expeditiously with these hearings, and I have worked with him and other Members of the Committee to do just that.