

Statement of
The Honorable Richard J. Durbin

United States Senator
Illinois
January 26, 2005

STATEMENT OF SENATOR RICHARD J. DURBIN
BEFORE THE
SENATE JUDICIARY COMMITTEE
ON
ALBERTO R. GONZALES, NOMINEE, ATTORNEY GENERAL OF THE UNITED STATES
JANUARY 26, 2005

After every war, history is written. Stories of courage, compassion, and glory. Stories of cruelty, weakness, and shame.

When the history is written of our war on terrorism, it will speak of the end of tyranny and the opportunity of freedom. It will tell of thousands and thousands of brave American soldiers and millions of acts of heroism and kindness.

But, sadly, that 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 is the image of the hooded prisoner at Abu Ghraib standing on a makeshift pedestal tethered to electrical wires.

What happened at Abu Ghraib?

What happened, and what is happening, 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 Bush.

And with the skill that only lawyers can bring, Counsel Gonzales, Assistant Attorney General Jay Bybee, and others, found the loopholes, invented the weasel words, and covered the whole process with winks and nods.

Over the strenuous objections of Secretary of State Colin Powell and the Joint Chiefs of Staff, Mr. Gonzales recommended to the President that the Geneva Conventions should not apply to the war on terrorism. The clarity of the Geneva Conventions crumbled as these people rationalized torture and inhumane treatment.

As retired Admiral John Hutson testified before this Committee, they "lower[ed] the bar on acceptable conduct and fuel[ed] bitterness and resentment that encourages recruits to the enemy's cause."

For over 25 years, Human Rights Watch has been at the forefront of efforts to eradicate the use of torture. According to its statement issued earlier this week, the struggle to stamp out torture "has been made harder by the legal positions adopted by the Bush Administration, including Mr. Gonzales's refusal to state that a President could not lawfully order torture."

Furthermore, in anticipation of Mr. Gonzales's likely confirmation, Human Rights Watch said this: "The assertion of such a radical view [on torture] by the Attorney General of the United States would undermine President Bush's stated intention to promote liberty and law around the world. An administration that preaches moral clarity to others should not tolerate moral ambiguity in its top law enforcement official."

These are not people or organizations who routinely oppose nominees. This Committee rarely, if ever, receives the comments of a former professional military official like Admiral Hutson, and Human Rights Watch has never opposed a Cabinet nominee in its history.

At the last moment, just hours before the hearing on Mr. Gonzales' nomination, the Administration officially repudiated its rationale for redefining torture, the same Administration, I might add, which only days and weeks before had resisted my amendment to the Department of Defense authorization bill to formally restate our commitment to the Geneva Convention, and actually opposed my amendment to the intelligence reform bill to do exactly the same.

But facing this hearing and facing the inevitable questions about Mr. Gonzales' role in this embarrassing episode, the Administration recanted.

But Mr. Gonzales, who wrote the memo validating the President's discretion to grant Geneva status to inmates, did not recant when asked about this President's authority. The man who would be the Attorney General still believes this President can pick and choose the laws he will follow, and pick and choose the standards he will heed based on his personal view of the Constitution. Need I remind the Committee that this is exactly the same rationale of Mr. Bybee in the now-discredited memorandum on torture?

After all of these efforts by Mr. Gonzales to diminish the rights of others, this nominee asks this Committee to be entrusted with safeguarding the rights and liberties of all Americans.

In the aftermath of Abu Ghraib, Secretary of Defense Donald Rumsfeld came forward to announce that the world should "judge us by our actions." He challenged the international community to "watch how a democracy deals with the wrongdoing and with scandal and the pain of acknowledging and correcting our own mistakes." This was a definitive statement by the Defense Secretary.

I am pleased to note that some progress has been made in bringing to justice those responsible for these abuses.

But I also agree with Secretary Rumsfeld that the world indeed is watching what we do - especially what we do today in this Committee and what we do in the United States Senate - and whether we will promote a man who was at the center of the debate over the policies that unfortunately created a permissive environment leading to these abuses.

I realize the majority party controls the Committee and the Senate, and they are likely to confirm Mr. Gonzales. I respect him and his life story very much, but I will vote against his nomination.

This vote is not cast with the belief that we will defeat this effort to send him to the Department of Justice. Rather, I cast my vote today as a statement that some of us continue to believe that our nation must lead the world by example.