

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
January 26, 2005

STATEMENT OF SENATOR PATRICK LEAHY,
RANKING MEMBER, SENATE JUDICIARY COMMITTEE
EXECUTIVE BUSINESS MEETING ON THE NOMINATION
OF ALBERTO R. GONZALES
TO BE ATTORNEY GENERAL OF THE UNITED STATES
JANUARY 26, 2005

AN ACCOUNTABILITY DEFICIT

When this nomination was first announced, I was hopeful. I noted at the time that I like and respect Judge Gonzales. I met with him soon after his designation and wrote to him in advance of the hearing regarding fundamental concerns. I listened carefully to him during our confirmation hearing.

The road he has traveled from being a 12-year-old boy selling soft drinks at football games, all the way to the State House in Texas and to the White House, is a tribute to him and to his family. In spite of our disagreements on issues, I have sought to maintain a cordial personal working relationship with Judge Gonzales during his years as President Bush's counsel.

It saddened me to tell Judge Gonzales yesterday that I cannot in good conscience vote to confirm his nomination.

My reasons for voting against this nomination arise from the need for accountability and derive from the nominee's involvement in the formulation of a number of policies that have tarnished our country's moral leadership in the world and put our soldiers and citizens at greater risk. Anyone who has served in the military, or who has a son or daughter who served, knows that these actions violate everything that our soldiers are taught and everything they stand for. When President Bush announced this nomination he said that he chose Judge Gonzales because of his "sound judgment" and role in shaping the Administration's policies in the war on terrorism. Based on the glimpses of secret policy formulations and legal rationales that have come to light, I believe his judgments not to have been sound. Several of this Administration's legal policies have been exceedingly harmful to our national interests.

As Attorney General, the nominee's judgment about our laws would be of enormous consequence. Judge Gonzales has championed policies that are in fundamental conflict with decades of our laws, sound military practice, international law and human rights. He remained silent for almost two years about a deeply flawed legalistic interpretation of our nation's torture

statute. He also accepted a patently erroneous interpretation of the torture convention and apparently believes that the President, when acting as Commander in Chief, is above the law.

When I asked Judge Gonzales if he agreed with the Bybee memo's very narrow reading of the law, he replied: "I don't recall today whether or not I was in agreement with all of the analysis, but I don't have a disagreement with the conclusions then reached by the Department." This is the memo which concludes that "physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." Even the Justice Department repudiated this legal memorandum, once it became public.

Under his restrictive redefinition such practices as threatening a prisoner with a firearm in a mock execution, "waterboarding" a person to make him experience the suffocating effects of drowning, and, as Senator Kennedy noted, perhaps even cutting off a person's fingers one joint at a time would not amount to "torture." But surely we consider these practices torture when done to a member of the U.S. military or to an American citizen.

Perhaps most disturbing of all as a legal matter is the nominee's positing of the President as above the law. Nothing is more fundamental about our constitutional democracy than our basic notion that no one is above the law. Yet at his June 2004 press conference and again in his testimony before the Judiciary Committee he indicated that he views the President to have the power to override our law and, apparently, to immunize others to perform what would otherwise be unlawful acts. This is about as extreme a view of Executive power as I have ever heard. I believe it is not only dead wrong as a constitutional matter but extremely dangerous. The rule of law applies to the President, even this President.

Ironically, it was the Administration of this President's father that urged the Senate to ratify the torture convention. It did so to make clear that the United States condemns torture and to protect Americans from this barbaric practice. But if the U.S. President does not feel bound by the torture convention, then neither will other foreign leaders.

I had hoped that Judge Gonzales would see these confirmation hearings as an opportunity to demonstrate a new openness, to provide a fuller examination of Administration policies and to back away from the Administration's extreme views of virtually limitless Executive power. I had hoped that during the course of the hearing he would demonstrate the ability to distinguish between his loyalties as President Bush's counsel and the responsibility of the Attorney General of the United States to represent the American people. I had even hoped that he would make a credible commitment to work with us to ensure that meaningful oversight and accountability, which have been thwarted for years, would resume their proper role in our system of checks and balances. I was greatly disappointed.

Ultimately, the Attorney General's duty is to uphold the Constitution and the rule of law -- not to work to circumvent it. Both the President and the nation are best served by an Attorney General who gives sound legal advice and takes responsible action, without regard to political considerations -- not one who develops legalistic loopholes to serve the ends of a particular Administration. The Attorney General appointed by the President's father remarked: "Nothing would be so destructive to the rule of law as to permit purely political considerations to overrun

sound legal judgment." Judge Gonzales demonstrates a lack of independence from the President, something that we cannot have in the chief law enforcement officer in the nation. He cannot interpret our laws to mean whatever the President wants them to mean. To do so would deny us the constitutional protections upon which this nation was founded. The Attorney General is supposed to represent all of the American people, not just one of them.

At a time when the Republican Party has taken control of all branches of the Federal Government and Republican majorities in the House and Senate have chosen not to provide the kind of oversight needed to balance assertions of Government authority, the Attorney General's role is all the more critical.

We have seen what happens when the rule of law plays second fiddle to the President's political agenda. This Administration has taken one untenable legal position after another regarding the rule of law in the war against terror. It will not admit to making mistakes. It takes action only after mistakes are made public and become politically indefensible. Given the Republican leadership in Congress, the Federal courts have provided what little check there has been on this President's claims of unfettered Executive power.

Judge Gonzales' nomination initially seemed like a breath of fresh air. I have said how much I personally like Judge Gonzales. But as I told the nominee when we met within days of the announcement of his nomination, these confirmation proceedings matter.

They matter because it is the responsibility of this Committee to explore for the Senate and the American people his judgment and actions in connection with the tragic legal and policy changes formulated in secret by this Administration and still cloaked from congressional oversight and public scrutiny. America's troops and citizens are at greater risk because of those actions and the terrible repercussions throughout so much of the world. America's moral standing and leadership have been undercut. 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, including those who struck America nine months into this President's first term. Those abuses serve as recruiting posters for the terrorists.

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 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."

This is with good reason and in the finest tradition of our Armed Forces. That tradition began when General George Washington ordered the Continental Army to treat British and Hessian prisoners decently after the bloody battle of Trenton. That is the tradition to which Senators John McCain and Lindsay Graham have spoken so forcefully.

Yet senior officials in the Bush White House, Ashcroft Justice Department and Rumsfeld Pentagon set in motion a systematic effort to circumvent, distort and even ignore our laws, policies and agreements on torture and the treatment of prisoners.

What does this all mean in the real world? Why should we be concerned about this? Yesterday's Washington Post provided a vivid, sickening and depressing account of why this matters. We need to look no further than to the Iraqi security forces we are trying to train.

Let me quote: "Twenty months after Saddam Hussein's government was toppled and its torture chambers unlocked, Iraqis are being routinely beaten, hung by their wrists and shocked with electric wires."

This morning, a column by Anne Applebaum gave another account from an Iraqi prisoner: "We were blindfolded and our hands were tied behind our backs . . . they poured cold water over me and applied electric shocks to my genitals. I was beaten by several people with cables on my arms and backs."

I ask my colleagues, what do American officials say with a straight face to Iraqi security forces who are responsible for these acts? Use more humane handcuffs when hanging someone from the ceiling? Please make sure organ failure doesn't result from any of these practices?

The fact is we can say anything, and we can say nothing, and the result is the same. Say anything, and we now will be mocked as hypocrites. But to say nothing is to concede the heart and the soul of what we stand for as a nation. We need to climb our way back to the moral high ground that has distinguished and dignified our great country.

That is why this matters.

At his recent inaugural address President Bush spoke eloquent words about the United States' historic support for freedom. To be true to that vision, we need a Government that leads the way in upholding human rights not one secretly developing legalistic rationalizations for circumventing them. To reclaim our moral leadership in the world, to become a true messenger of hope instead of a source of resentment, we need to acknowledge wrongdoing and show accountability for mistakes that this Administration has made.

We have seen departures from our country's honorable traditions, practices and established law in the use of torture, originating at the top ranks of authority, and emerging at the bottom. At the bottom of the chain of command, we have seen a few courts martial. At the top, we have seen medal ceremonies, pats on the back and promotions.

Between these two dissonant images there is a growing accountability gap, and the Administration's handling of this confirmation hearing, which could have helped to narrow the gap, has served to widen it.

I believe in redemption in public life, as in spiritual life. But to get to redemption, first there has to be accountability. This Administration has a large and growing accountability deficit, and as this confirmation process draws to a close, I must conclude that the stonewalling continues, and

that Judge Gonzales, who could have become a part of the solution, remains a part of the problem. I am saddened by the choices that he and others have made in refusing to choose candor.

Now more than ever, the country needs a person to be Attorney General who will serve all Americans. There is much that has gone wrong that this Administration has stubbornly refused to admit or correct. For this democratic republic to work, we need greater openness and accountability. It is with those critical considerations in mind that I must vote against this confirmation.