

# White House and Gonzales Stonewall At Senate Confirmation Hearing

by Edward Spannaus

In a Nixon-style stonewall, the Bush White House refused to release to the Senate Judiciary Committee, at least a dozen key documents which are expected to shed light on the role of White House Counsel Alberto Gonzales in developing the Bush Administration's torture policies.

The White House's obstruction was compounded by Gonzales's own recalcitrance during the Jan. 6 opening session of his Senate Judiciary Committee confirmation hearing for U.S. Attorney General, during which Gonzales repeatedly responded with "I don't remember" to questions about his involvement in discussions about specific torture methods used in interrogations of suspected terrorists, such as threats of live burial, and "waterboarding," which creates the sensation of drowning.

When asked if he agrees that for an act to constitute torture, "it must be equal in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death"—the definition laid out by the Justice Department "Bybee memo"—Gonzales claimed that this "does not represent the position of the Executive Branch," and he claimed that it would be improper for him, as White House Counsel, to inject himself into Justice Department interpretations of the law. "Malarkey!" was Sen. Joe Biden's (D-Del.) characterization of this type of response.

And asked by Sen. Richard Durbin (D-Ill.), if U.S. personnel could legally engage in torture under any circumstances, Gonzales responded: "I don't think so, but I'd want to get back to you on that."

Retired Adm. John Hutson, one of the witnesses who spoke in opposition to the nomination, told *EIR* after the hearing that Gonzales "didn't help his cause" with his evasiveness. Some of Gonzales's "I don't remember" statements were "literally laughable," Hutson pointed out—particularly Gonzales's response when asked whether he had requested the Justice Department to draft the "Bybee memo," or whether the request came from the CIA.

Another response that left some jaws dropped, was when Sen. Ted Kennedy (D-Mass.) asked about the meetings where interrogation techniques such as "waterboarding" were discussed, and Gonzales responded: "It's not my job to decide which types of methods of obtaining information from terrorists would be most effective," and, "It is also not my job to make the ultimate decision about whether or not those meth-

ods would, in fact, meet the requirements of the Anti-Torture Statute."

## Can Torture Be Legal?

Gonzales repeatedly refused to answer Senators' questions as to whether he still stands by the opinion expressed in the August 2002 "Bybee memo," that the President, in his capacity as commander-in-chief, can ignore laws that he believes unconstitutional in restricting his freedom of action. And particularly, Gonzales was asked whether the President can confer immunity from criminal prosecution upon persons acting under his direction who violate the anti-torture laws. This question was first raised by Sen. Patrick Leahy (D-Vt.), and Gonzales responded that since the President has said that we're not going to engage in torture, that the question is "a hypothetical."

Leahy came back to this again later, saying that Gonzales had not answered the question, and that if a President can override the laws, especially on something so fundamental as torture, "that sets into motion a whole lot of other things," explaining: "We saw this in the Nuremberg Trials. . . . You had people who said, 'well, we were just following orders' . . . But the United States has always said . . . this is not a defense."

Gonzales, and one or more Republican Senators, pointed out (correctly) that Presidents of both parties have said that they reserve the right not to comply with a law, such as the War Powers Act, which they regard as unconstitutional. Sen. Russ Feingold (D-Wisc.) accused Gonzales of "dancing around" the question of torture, and he pointed out that there is a big difference between a President not enforcing a law he believes to be unconstitutional, "and a President claiming to authorize individuals to break the law by torturing individuals or taking other illegal actions." Even after this, Gonzales still stonewalled, on the excuse that this was a "hypothetical" question.

## A Republican Renders Gonzales Speechless

But it took a Republican Senator to stop Gonzales cold. Gonzales had undoubtedly been told he could stonewall the Democrats as much as he wanted, because the Republicans have the votes to confirm him. But he did not seem prepared for the lashing he got from Sen. Lindsey Graham (R-S.C.).



*Why is this man smiling? Alberto Gonzales was hammered by Senators and witnesses at his confirmation hearing on Jan. 6. Adm. John Hutson (ret.) branded Gonzales's interpretation of the Geneva Conventions "wrong legally, morally, diplomatically, and practically. It endangers our troops in this war and future wars, and it makes our nation less safe."*

Graham said that he is "a very ardent supporter of the war on terror," but that he believes that "we've dramatically undermined the war effort by getting on the slippery slope of playing cute with the law, because it's come back to bite us." He stressed a number of times that "we need to recapture the moral high ground."

Graham pointed out that he is a Judge Advocate in the Air Force Reserve, and that part of his job "is to advise commanders about the Law of Armed Conflict," and that they listen to what he tells them about the Geneva Conventions, "because every Air Force wing commander lives in fear of an air crew being shot down and falling into enemy hands."

Graham then proceeded to declare that "the Department of Justice memo that we're all talking about now was, in my opinion, Judge Gonzales, not a little bit wrong, but *entirely* wrong . . . because it excluded another body of law called the Uniform Code of Military Justice." Graham stated that he has been trying to get the memos from the Judge Advocates General (JAG) to the Pentagon working group on interrogation, and that he can't get them.

Graham stated that the Justice Department memo "puts our troops at jeopardy because the Uniform Code of Military Justice specifically makes it a crime for a member of our uniformed forces to abuse a detainee."

He asked Gonzales: "Do you believe that a professional military lawyer's opinion, that this memo may put our troops in jeopardy under the Uniform Code of Military Justice, was a correct opinion?"

Gonzales was literally speechless, and finally whimpered, "Would you like me to try to answer that now, Senator, Mr. Chairman?" Graham then said, "Take some time," and Specter told him, "If you want to think it over, Judge Gonzales, and respond later during the hearing, that's fine."

### Cheney's Mouthpiece

A number of Senators complained that they had learned about most of the Administration's torture memos from the press, not from the Administration itself. Indeed, in the days leading up to the Jan. 6 hearing, there were a series of leaks to the *New York Times* and *Washington Post*, coming from officials in the military and other government agencies who are disgusted with the policies of the White House. The leaks included new information on torture and abuse of detainees in Iraq and at Guantanamo, and on the Defense Department's and CIA's practice of secretly sending prisoners to third countries where they can be interrogated without U.S. fingerprints on the torture devices.

One of the most significant leaks, was a front-page article in the Jan. 5 *Washington Post*, which portrayed Gonzales, just as EIRNS has done for a long time: as a flunky for Vice President Dick Cheney and Cheney's Counsel David Addington.

"One of the mysteries that surround Gonzales is the extent to which these new legal approaches are his own handiwork rather than the work of others, particularly Vice President Cheney's influential legal counsel, David S. Addington," the *Post* wrote. "On at least two of the most controversial policies endorsed by Gonzales, officials familiar with the events say the impetus for action came from Addington—another reflection of Cheney's outsized influence with the president and the rest of the government."

Gonzales's subservience to Cheney and Addington was a key element emphasized in testimony submitted by LaRouche PAC to the Senate Judiciary Committee. The LaRouche PAC testimony (see p. 31) also demonstrated the parallels between the legal arguments promoted by Gonzales, and almost-identical arguments used in Hitler's Third Reich, and it warned that "putting someone of Mr. Gonzales's character into the position of Attorney General is almost a guarantee of the rapid implementation of fascist legal policies."

### Military Opposition

The most notable feature of the opposition to Gonzales, is how much of it is centered among the military. While active-

duty military officers cannot speak out against the Administration, retired officers can.

And in what is regarded as an unprecedented action, 12 retired generals and Admirals (six from the Army, three Navy, two Marines, and one Air Force) signed a letter to the Senate Judiciary Committee, expressing their “deep concern” about the nomination of Alberto Gonzales to be Attorney General, and calling on the Committee to examine in detail Gonzales’s views regarding the Geneva Conventions and U.S. detention and interrogation policies (see *Documentation*).

The signers included former Chairman of the Joint Chiefs of Staff Gen. John Shalikashvili, former Central Command commander and Marine Gen. Joseph Hoar, Air Force Gen. Merrill McPeak, and a number of retired top military legal officers.

The retired officers are particularly incensed that memos commissioned or signed by Gonzales “ignored established U.S. military policy”—especially the U.S. Army Field Manual on interrogation, which they describe as “the product of decades of experience.” This, they assert, “shows a disturbing disregard for the decades of hard-won knowledge of the professional American military.”

A number of other groups of veterans have also come out opposing Gonzales.

One of the signers of the Generals’ and Admirals’ statement also testified in opposition to Gonzales’s nomination at the hearing. This was Adm. John Hutson (ret.), the Judge Advocate General for the Navy during the Clinton Administration. Hutson began by speaking of the military strength of the United States, and its advocacy of human rights for all, and its adherence to the rule of law, as gifts held in trust for future generations. Previous generations of American political and military leaders understood this, and responded to World War II with programs like the Marshall Fund and the Geneva Conventions. They understood that even in the midst of war, “we should treat our enemies humanely,” Hutson said, adding: “To do so, is a sign of strength, not weakness. Not to do so, is a sign of desperation.”

“I come here to speak in opposition of the confirmation of Judge Gonzales, because he appears not to understand that,” Hutson continued. “His analysis and understanding of the Geneva Conventions . . . is shallow, short-sighted, and dangerous. It’s wrong legally, morally, diplomatically, and practically. It endangers our troops in this war and future wars, and it makes our nation less safe.

“My 28 years in the Navy tells me that his analysis of the Geneva Conventions and their applicability to the war in Afghanistan and the war on terror is particularly disturbing, because it indicates an utter disregard for the rule of law and human rights. Those are the reasons American fighting men and women shed their blood, and why we send them into battle. But if we win this battle and lose our soul in the process, we will have lost the war, and their sacrifices will have been for nought.

“Another important aspect of the Geneva Conventions is that it prepares us for the peace that will ensue,” Hutson continued. “We can’t so alienate our allies that they won’t fight alongside us again. Nor should we embitter our enemies so that they will fight on longer and harder than they otherwise would, or be unwilling to relent, even though their cause is hopeless. Abrogating the Geneva Conventions imperils our troops and undermines the war effort. It encourages reprisals. It lowers morale.”

Hutson said that the rejection of the Geneva Conventions advocated by Gonzales and others, undermined the military, and particularly the good order and discipline upon which the military depends. “Government lawyers, including Judge Gonzales, let down the U.S. troops in a significant way by their ill-conceived advice. . . . At the top of the chain of command, to coin a phrase that we’ve heard in the past, they set the conditions so that many of those troops would commit serious crimes.”

After having underlined the importance of accountability within the military, Hutson remarked, “Nomination to Attorney General is not accountability.”

“Damage has been done, but it’s never too late to do the right thing. If Judge Gonzales goes on to be the chief law enforcement officer of the United States after involvement in this, we will have failed to undo a wrong, but will have only exacerbated it.

“We’re at a fork in the road. Somewhat ironically, this nomination has given the United States Senate an opportunity to tell the world what you think about those issues,” Hutson concluded. “What you do here will send a message, good or bad, to the world, and importantly to American armed forces and fighting men and women.”

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## Documentation

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### Retired Military Leaders Question Gonzales’s Beliefs

*The following “Open Letter to the Senate Judiciary Committee” was released at a press conference in Washington, D.C. on Jan. 4, by 12 distinguished retired flag officers.*

Dear Senator:

We, the undersigned, are retired professional military leaders of the U.S. Armed Forces. We write to express our deep concern about the nomination of Alberto R. Gonzales to be Attorney General, and to urge you to explore in detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice.

During his tenure as White House Counsel, Mr. Gonzales

appears to have played a significant role in shaping U.S. detention and interrogation operations in Afghanistan, Iraq, Guantanamo Bay, and elsewhere. Today, it is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world. Before Mr. Gonzales assumes the position of Attorney General, it is critical to understand whether he intends to adhere to the positions he adopted as White House Counsel, or chart a revised course more consistent with fulfilling our nation's complex security interests, and maintaining a military that operates within the rule of law.

Among his past actions that concern us most, Mr. Gonzales wrote to the President on January 25, 2002, advising him that the Geneva Conventions did not apply to the conflict then underway in Afghanistan. More broadly, he wrote that the "war on terrorism" presents a "new paradigm [that] renders obsolete Geneva's" protections.

The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would "reverse over a century of U.S. policy and practice in supporting the Geneva Conventions," and would "undermine the protections of the rule of law for our troops, both in this specific conflict [Afghanistan] and in general." State Department adviser William H. Taft IV agreed that this decision "deprives our troops [in Afghanistan] of any claim to the protection of the Conventions in the event they are captured and weakens the protections afforded by the Conventions to our troops in future conflicts." Mr. Gonzales' recommendation also ran counter to the wisdom of former U.S. prisoners of war. As Senator John McCain has observed: "I am certain we all would have been a lot worse off if there had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war."

Mr. Gonzales' reasoning was also on the wrong side of history. Repeatedly in our past, the United States has confronted foes that, at the time they emerged, posed threats of a scope or nature unlike any we had previously faced. But we have been far more steadfast in the past in keeping faith with our national commitment to the rule of law. During the Second World War, General Dwight D. Eisenhower explained that the allies adhered to the law of war in their treatment of prisoners because "the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing." In Vietnam, U.S. policy required that the Geneva Conventions be observed for all enemy prisoners of war—both North Vietnamese regulars and Viet Cong—even though the Viet Cong denied our own prisoners of war the same protections. And in the 1991 Persian Gulf War, the United States afforded Geneva Convention protec-

tions to more than 86,000 Iraqi prisoners of war held in U.S. custody. The threats we face today—while grave and complex—no more warrant abandoning these basic principles than did the threats of enemies past.

Perhaps most troubling of all, the White House decision to depart from the Geneva Conventions in Afghanistan went hand in hand with the decision to relax the definition of torture and to alter interrogation doctrine accordingly. Mr. Gonzales' January 2002 memo itself warned that the decision not to apply Geneva Convention standards "could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries." Yet Mr. Gonzales then made that very recommendation with reference to Afghanistan, a policy later extended piece by piece to Iraq. Sadly, the uncertainty Mr. Gonzales warned about came to fruition. As James R. Schlesinger's panel reviewing Defense Department detention operations concluded earlier this year, these changes in doctrine have led to uncertainty and confusion in the field, contributing to the abuses of detainees at Abu Ghraib and elsewhere, and undermining the mission and morale of our troops.

The full extent of Mr. Gonzales' role in endorsing or implementing the interrogation practices the world has now seen remains unclear. A series of memos that were prepared at his direction in 2002 recommended official authorization of harsh interrogation methods, including waterboarding, feigned suffocation, and sleep deprivation. As with the recommendations on the Geneva Conventions, these memos ignored established U.S. military policy, including doctrine prohibiting "threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation." Indeed, the August 1, 2002 Justice Department memo analyzing the law on interrogation references health care administration law more than five times, but never once cites the U.S. Army Field Manual on interrogation. The Army Field Manual was the product of decades of experience—experience that had shown, among other things, that such interrogation methods produce unreliable results and often impede further intelligence collection. Discounting the Manual's wisdom on this central point shows a disturbing disregard for the decades of hard-won knowledge of the professional American military.

The United States' commitment to the Geneva Conventions—the laws of war—flows not only from field experience, but also from the moral principles on which this country was founded, and by which we all continue to be guided. We have learned first hand the value of adhering to the Geneva Conventions and practicing what we preach on the international stage. With this in mind, we urge you to ask of Mr. Gonzales the following:

- (1) Do you believe the Geneva Conventions apply to all those captured by U.S. authorities in Afghanistan and Iraq?
- (2) Do you support affording the International Committee of the Red Cross access to all detainees in U.S. custody?

(3) What rights under U.S. or international law do suspected members of Al Qaeda, the Taliban, or members of similar organizations have when brought into the care or custody of U.S. military, law enforcement, or intelligence forces?

(4) Do you believe that torture or other forms of cruel, inhuman and degrading treatment—such as dietary manipulation, forced nudity, prolonged solitary confinement, or threats of harm—may lawfully be used by U.S. authorities so long as the detainee is an “unlawful combatant” as you have defined it?

(5) Do you believe that CIA and other government intelligence agencies are bound by the same laws and restrictions that constrain the operations of the U.S. Armed Forces engaged in detention and interrogation operations abroad?

Signed,

Brigadier General David M. Brahms (Ret. USMC)

General Joseph Hoar (Ret. USMC)

Brigadier General James Cullen (Ret. USA)

Rear Admiral John D. Hutson (Ret. USN)

Brigadier General Evelyn P. Foote (Ret. USA)

Lieutenant General Claudia Kennedy (Ret. USA)

Lieutenant General Robert Gard (Ret. USA)

General Merrill McPeak (Ret. USAF)

Vice Admiral Lee F. Gunn (Ret. USN)

Major General Melvyn Montano (Ret. USAF Nat. Guard)

Rear Admiral Don Guter (Ret. USN)

General John Shalikashvili (Ret. USA)

## **Biographical Information on Signatories of Letter to Senate Judiciary**

**Brigadier General David M. Brahms (Ret. USMC):** General Brahms served in the Marine Corps from 1963-1988. He served as the Marine Corps’ senior legal adviser from 1983 until his retirement in 1988. General Brahms currently practices law in Carlsbad, California, and sits on the board of directors of the Judge Advocates Association.

**Brigadier General James Cullen (Ret. USA):** General Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General’s Corps and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.

**Brigadier General Evelyn P. Foote (Ret. USA):** General Foote was Commanding General of Fort Belvoir in 1989. She was recalled to active duty in 1996 to serve as Vice Chair of the Secretary of the Army’s Senior Review Panel on Sexual Harassment. She is President of the Alliance for National Defense, a non-profit organization.

**Lieutenant General Robert Gard (Ret. USA):** General Gard is a retired Lieutenant General who served in the United States Army; his military assignments included combat service in Korea and Vietnam. He is currently a consultant on international security and president emeritus of the Monterey

Institute for International Studies.

**Vice Admiral Lee F. Gunn (Ret. USN):** Admiral Gunn served as the Inspector General of the Department of the Navy until his retirement in August 2000. Admiral Gunn commanded the USS BARBEY and the Destroyer Squadron “Thirty-one,” a component of the U.S. Navy’s Anti-Submarine Warfare Destroyer Squadrons.

**Admiral Don Guter (Ret. USN):** Admiral Guter served as the Navy’s Judge Advocate General from 2000 to 2002. Admiral Guter is currently CEO of Vinson Hall Corporation/Executive Director of the Navy Marine Coast Guard Residence Foundation in McLean, Virginia.

**General Joseph Hoar (Ret. USMC):** General Hoar served as Commander-in-Chief, U.S. Central Command. After the first Gulf War, General Hoar led the effort to enforce the naval embargo in the Red Sea and the Persian Gulf, and to enforce the no-fly zone in the south of Iraq. He oversaw the humanitarian and peacekeeping operations in Kenya and Somalia and also led the U.S. Marine Corps support for operations in Rwanda, and the evacuation of U.S. civilians from Yemen during the 1994 civil war. He was the deputy for Operations for the Marine Corps during the Gulf War and served as General Norman Schwarzkopf’s Chief of Staff at Central Command. General Hoar currently runs a consulting business in California.

**Rear Admiral John D. Hutson (Ret. USN):** Admiral John D. Hutson served as the Navy’s Judge Advocate General from 1997 to 2000. Admiral Hutson now serves as President and Dean of the Franklin Pierce Law Center in Concord, New Hampshire.

**Lieutenant General Claudia Kennedy (Ret. USA):** General Kennedy is the first and only woman to achieve the rank of three-star general in the United States Army. Kennedy served as Deputy Chief of Staff for Army Intelligence, Commander of the U.S. Army Recruiting Command, and as Commander of the 703d military intelligence brigade in Kunia, Hawaii.

**General Merrill McPeak (Ret. USAF):** General McPeak served as the Chief of Staff of the U.S. Air Force. Previously, General McPeak served as Commander in Chief of the U.S. Pacific Air Forces. He is a command pilot, having flown more than 6,000 hours, principally in fighter aircraft.

**Major General Melvyn Montano (Ret. USAF Nat. Guard):** General Montano was the adjutant general in charge of the National Guard in New Mexico from 1994 to 1999. He served in Vietnam and was the first Hispanic Air National Guard officer appointed as an adjutant general in the country.

**General John Shalikashvili (Ret. USA):** General Shalikashvili was Chairman of the Joint Chiefs of Staff (Department of Defense) from 1993 till 1997. Prior to serving as Chairman, he served as NATO’s Supreme Allied Commander for Europe, and also as the commander-in-chief of the United States European Command. He was until recently a visiting professor at The Stanford Institute for International Studies.