Testimony to the Senate

Gonzales Opposed for Nazi-Like Doctrines

The testimony of Dr. Debra Hanania Freeman, spokesperson for Lyndon H. LaRouche, Jr., in opposition to the nomination of Alberto R. Gonzales for Attorney General of the United States, appears below. It was presented to the Senate Committee on the Judiciary, on Jan. 6, 2005.

Almost four years ago, in my capacity as national spokesperson for Lyndon H. LaRouche, I submitted testimony to this Committee, warning of the dangers implicit in the pending confirmation of John Ashcroft as U.S. Attorney General, and emphasizing the crisis-nature of the period into which the nation was then entering.

Unfortunately, Mr. Ashcroft was subsequently confirmed, and Mr. LaRouche's warnings have proven prophetic. Today, under the guise of "crisis management" in the wake of the 9/11 attacks, the nation has travelled a long distance toward the emergency-rule and bureaucratic fascism of which Mr. LaRouche warned four years ago.

Today, as a consequence, the stakes are much higher, and the dangers much greater, as we consider the nomination of Alberto Gonzales—who *already* has a well-documented record of recommending dictatorial powers for the President in pursuit of the "war on terrorism," recommendations which precisely parallel the type of legal advice provided to the Hitler regime in 1930s Germany.

Moreover, I wish to highlight, from the outset, the fact that the actual authorship of the hideous, Nazi-like doctrines recommended by Mr. Gonzales came from others, particularly the Office of Vice President Dick Cheney and the Counsel to the Vice President David Addington—as was just again reported in the Jan. 5 *Washington Post.* But Mr. Gonzales's adoption and promotion of these policies—of pre-emptive war, torture, and violation of the Geneva Conventions—means that he is among those officials eligible for prosecution for violation of the Geneva Conventions, the U.S. War Crimes Act, and the principles established by the Allied Powers at Nuremberg in 1945.

Based upon the documentary record, this Committee must, in the exercise of its Constitutional "advise and consent" responsibilities, decisively reject this nomination.

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In my 2001 testimony, I stated that my opposition to Mr. Ashcroft's confirmation was shaped by two considerations that go beyond the normal factors that one would weigh in such a situation: the first being "the extraordinary global financial and monetary crisis that will be the first and overriding order of business confronting the incoming Bush Administration"; and the second being the role that the next Attorney General would play, as part of the crisis-management team dealing with the crises that would arise out of these extraordinary circumstances.

I stated, at that time, that the incoming Bush-Cheney Administration would be faced with the choice of either (1) "abandoning the current economic and monetary policy axioms and returning to policies that, in the past, have led the United States and the world out of the path of disaster, as during the Presidency of Franklin D. Roosevelt," or, (2) "imposing a form of bureaucratic fascism on the United States, that bears striking resemblance to the conditions under which Adolf Hitler seized power in Germany in 1933." I explained: "It was Hitler's 'crisis management' of the Reichstag Fire and other events, real and manufactured, that established the dictatorship that no one in Germany had anticipated. . . ."

Just two weeks before my testimony, on Jan. 3, 2001, Lyndon LaRouche had identified the relevant precedent, in the adoption of the *Notverordnung* emergency decrees imposed in Germany immediately after the Reichstag Fire of Feb. 28, 1933; which decrees, LaRouche pointed out, were passed under the legal rules of Carl Schmitt, the famous pro-Nazi jurist, "which gave the state the power, according to Schmitt's doctrine, to designate which part of his own population were enemies, and to imprison them freely."

"And that is the danger you'll get here," LaRouche warned presciently—*this being eight months before the attacks of 9/11 and the draconian dragnet and detention measures which followed.* This is even more applicable to Gonzales, who provided the legal advice to the President that he could wield unlimited Executive powers in the name of the "war on terrorism" and "national security," with virtually no constraints from the Courts, Congress, or international treaty obligations.

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Alberto Gonzales is a man with no law-enforcement experience; his legal background is strictly in business and corporate law. What quality, therefore, so recommends him to President Bush, that he would be nominated for the position of the chief law-enforcement officer of the United States?

That sole quality, is Gonzales's obsequious personal loyalty to George W. Bush, the defining characteristic of which is Mr. Gonzales's willingness to stretch and pervert the law, to serve the interests and obsessions of his patrons.

While this is evident in numerous areas in which he repre-

sented Bush family interests, either in private practice at the Vinson & Elkins law firm, or while serving in the Texas State government—and for the past four years, while serving as Counsel to President Bush—it is most flagrantly displayed in his handling of death-penalty cases for Governor Bush in Texas.

I believe this is worth emphasizing, for it demonstrates a common thread which re-appears later, in Mr. Gonzales's recommendations found in the "torture memos." In his disregard for truth, and his justification of the exercise of raw Executive power, Mr. Gonzales follows in the evil footsteps of Carl Schmitt and those who provided the legal underpinnings for the Nazi dictatorship.

Mr. Gonzales's role in facilitating executions in Texas under Governor George W. Bush, was analyzed in a now well-known article by Alan Berlow in the July/August 2003 issue of *The Atlantic Monthly*. For the six years during which Mr. Bush was Governor, 152 persons were executed, in what Berlow says is "a record unmatched by any other governor in modern American history." For the first 57 of these, Governor Bush made his final decision based upon short, confidential legal memoranda prepared by his legal counsel—then Alberto Gonzales—and a verbal briefing (with an emphasis on "brief") presented to Bush on the day of the scheduled execution. The purpose of these memoranda was, allegedly, to summarize the facts and the background of the case, so that the Governor could decide whether to make a recommendation for clemency, to commute a sentence, or to recommend a delay to the Board of Pardons and Paroles. Not surprisingly, in each of those 57 cases, Governor Bush allowed the execution to proceed; for, as Berlow puts it, the Gonzales memos provided Bush with "only the most cursory" information, and "Gonzales repeatedly failed to apprise the governor of crucial issues in the cases at hand: ineffective counsel, conflict of interest, mitigating evidence, even actual evidence of innocence." The memos were, for the most part, simply a summary of the prosecutor's contentions, often in the most gruesome detail, with no effort to present any relevant material on behalf of the the convicted person.

As Berlow says, Governor Bush "sought to minimize his sense of legal and moral responsibility for executions"—and Gonzales provided Bush with the means to do so. It is not so different with the role Gonzales has played as White House Counsel, one in which President Bush takes no personal responsibility for the consequences of his policy decisions—indeed, he seems mentally and morally incapable of doing so.

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In the White House, Gonzales has functioned as a conduit for legal theories and recommendations coming out of the Office of Vice President Dick Cheney, and Cheney's counsel David Addington. Gonzales has consistently passed on legal advice to the President in which he has told the President that he can exercise virtually unlimited, untrammeled powers in his role as Commander-in-Chief in time of war. Having no background himself in military law or international law, Gonzales consistently ignored the advice of military lawyers and military professionals from the uniformed services, as well as the advice of international lawyers and others in the State Department (even the Secretary of State himself), and has instead put his imprimatur on crackpot legal theories identified with the notion of the "imperial Presidency."

The two locations which serve as the gathering points for right-wing ideologues who pass these notions along to Gonzales, are the Office of the Vice President, and the Justice Department's Office of Legal Policy (OLC). Gonzales has solicited their advice—as he did with the OLC's notorious August 2002 "Bybee memo," in which case he then passed the OLC's justifications for torture and its rejection of military law and international treaties, on to the President and to other agencies, such as the Department of Defense and the Central Intelligence Agency.

Another such memo is the Jan. 25, 2002 memo from Gonzales to the President, which infamously argued that the war against terrorism is "a new kind of war," and declared that, "In my judgment, this new paradigm renders obsolete . . . quaint" various provisions of the Third Geneva Convention, regarding the treatment of prisoners of war. (This memo was, according to numerous accounts, written and even signed on Gonzales's behalf by Cheney's Counsel David Addington, but Gonzales permitted it to be sent to the President in his name.)

In this memo, Gonzales warned the President that he and others stood in danger of future prosecution for war crimes, and he outlined measures which could be taken, "which would provide a solid defense against any future prosecution"—the most important of which, would be to declare that the Geneva Conventions did not apply to the war against al-Qaeda and the Taliban in Afghanistan.

In the past few weeks, the text of one of the earliest of the post-9/11 memos arguing for the unlimited war-making power of the President, has finally been made public. This is another memo drafted for Gonzales's office by the OLC, entitled "The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them," and dated Sept. 25, 2001; it asserted that the President could launch a military attack "pre-emptively" against alleged terrorist organizations, or countries claimed to be harboring terrorists, *whether or not* such organizations or countries were even linked to 9/11. Neither the Congress nor the courts could restrain or review the President's actions, the OLC memo argued.

Gonzales was also deeply involved in the process leading up to the decision to create military commissions (tribunals)

to try suspects in the war on terrorism. Unlike previous military commissions, which were Congressionally-authorized and generally followed the procedures of military courts-martial, the military commissions established by the President's Military Order of Nov. 13, 2001, were based upon a raw assertion of Executive power, and they ignored the legal standards and procedures embodied in the Uniform Code of Military Justice. This is not surprising, since military lawyers and legal experts were excluded by Gonzales and Addington from the planning process.

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There are shocking parallels between the arguments used by Gonzales, Cheney/Addington, and the OLC, and the policy arguments used by Hitler's Third Reich. Notable among these, are:

1) that each was engaged in a new kind of war, against a new kind of enemy;

2) that the enemy did not deserve the protections of international law and treaties;

3) that one's own side should have virtual immunity from prosecutions for violations of the law of war; and

4) that it is the role of the chief Executive (the "Leader") alone, to define those exceptional circumstances that justify departures from existing legal norms in the "defense of the nation."

In the Spring of 1941, as Nazi Germany was preparing to invade the Soviet Union, Adolf Hitler issued an infamous edict which has become known as the "Commissar Order," to govern the conduct of German armed forces on the Eastern Front.

As is documented in William L. Shirer's *The Rise and Fall of the Third Reich,* Hitler outlined this policy during a meeting with the heads of the three armed services and key army field commanders, early in March 1941, as follows: "The war against Russia will be such that it cannot be conducted in a knightly fashion. This struggle is one of ideologies and racial differences and will have to be conducted with unprecedented, unmerciful, and unrelenting harshness. All officers will have to rid themselves of obsolete ideologies. . . . German soldiers guilty of breaking international law will be excused. Russia has not participated in the Hague Convention and therefore has no rights under it."

On May 13, 1941, Field Marshal Wilhelm Keitel, the head of the Armed Forces High Command, issued an order in Hitler's name, severely limiting functions of the military courts martial system, and virtually giving immunity to German forces for war crimes against Russians: "With regard to *offenses* committed against *enemy civilians by members of the Wehrmacht, prosecution is not obligatory,* even where the deed is at the same time a military crime or offense." The army was explicitly instructed to go easy on any such German offenders, "remembering in each case all the harm done to Germany since 1918 by the 'Bolsheviki.' "

Underlying such orders was the legal philosophy set forward by the "Crown Jurist of the Third Reich," Carl Schmitt, whose writings have undergone an undeserved revival in the United States in recent years. Schmitt contended that, in times of emergency and crisis, the actions of the Leader were not subordinate to justice, but constituted the "highest justice." In passages which remind one of the legal defenses of "necessity" and "self-defense" posed by Gonzales, Addington, and the OLC, Schmitt wrote: "All law is derived from the people's right to existence. Every state law, every judgment of the courts, contains only so much justice, as it derives from this source. The content and the scope of his action, is determined only by the Leader himself."

This parallel to Carl Schmitt was also recently drawn by Prof. Sanford Levinson of the University of Texas, in an article in the Summer 2004 issue of *Daedalus.* Professor Levinson notes that Schmitt contended that there could be no limitation of the authority of the Leader, in determining what is necessary to defend the nation. Professor Levinson noted that Schmitt contended that legal norms are applicable only in stable, peaceful situations, not in times of war when the state confronts a "mortal enemy." The Leader determines what is "normal," and he defines "the state of the exception."

Levinson points out that the arguments raised by the Administration's lawyers suggest that there are no limitations which either the courts, or Congress and its laws, can impose on the President in the conduct of war. Indeed, Levinson suggests, this would seem to authorize the President and his designees "simply to make disappear those they deem adversaries, as happened in Chile and Argentina in what the Argentines aptly labelled their 'dirty war.' " What the Administration's lawyers are articulating, Levinson declares, is "a view of Presidential authority that is all too close to the power that Schmitt was willing to accord his own Führer."

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Some misquided souls may think that things can't get any worse than they did under the first Bush-Cheney Administration—or that Gonzales couldn't possibly be any worse than John Ashcroft—but anyone who believes this, is dead wrong. As Mr. LaRouche has warned, conditions can deteriorate rapidly—under the pressure of the onrushing financial-monetary collapse, and with the gross mismanagement of the nation's affairs by the Bush Administration. Under these conditions, 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.

On behalf of Mr. LaRouche, I urge this Committee and the entire United States Senate to reject the nomination of Alberto Gonzales for Attorney General of the United States.