

The following text may be printed, copy/pasted, or downloaded and emailed.

## **Bush's Counsel Sought Ruling About Torture**

DAVID JOHNSTON and NEIL A. LEWIS

New York Times

January 5, 2005

WASHINGTON - Alberto R. Gonzales, the White House counsel, intervened directly with Justice Department lawyers in 2002 to obtain a legal ruling on the extent of the president's authority to permit extreme interrogation practices in the name of national security, current and former administration officials said Tuesday.

Mr. Gonzales's role in seeking a legal opinion on the definition of torture and the legal limits on the force that could be used on terrorist suspects in captivity is expected to be a central issue in the Senate Judiciary Committee confirmation hearings scheduled to begin on Thursday on Mr. Gonzales's nomination to be attorney general.

The request by Mr. Gonzales produced the much-debated Justice Department memorandum of Aug. 1, 2002, which defined torture narrowly and said that Mr. Bush could circumvent domestic and international prohibitions against torture in the name of national security.

Until now, administration officials have been unwilling to provide details about the role Mr. Gonzales had in the production of the memorandum by the Justice Department's Office of Legal Counsel. Mr. Gonzales has spoken of the memorandum as a response to questions, without saying that most of the questions were his.

Current and former officials who talked about the memorandum have been provided with firsthand accounts about how it was prepared. Some discussed it in an effort to clear up what they viewed as a murky record in advance of Mr. Gonzales's confirmation hearings. Others spoke of the matter apparently believing that the Justice Department had unfairly taken the blame for the memorandum.

A White House spokeswoman, Erin Healy, said Tuesday that while Mr. Gonzales personally requested the August opinion, he was only seeking "objective legal advice and did not ask the Office of Legal Counsel to reach any specific conclusion."

As the White House's chief lawyer, Mr. Gonzales supervised the production of a number of legal memorandums that shaped the administration's legal framework for conducting its battle against Al Qaeda and other terrorist groups. Of the documents that have been made public, only one was written by Mr. Gonzales. In that memorandum, dated January 2002, he advised Mr. Bush that the Geneva Conventions did not apply to fighters captured in Afghanistan. The next month the White House decided that the Geneva Conventions would be applied to Taliban captives but not to detainees linked to Al Qaeda.

As a result, a major area of questioning at his confirmation hearing is expected to be the role he played in the production of the other documents, like the August 2002 memorandum. That memorandum concluded that interrogators had great leeway to question detainees using coercive techniques that they could assert were not torture.

The Justice Department formally rescinded the August memorandum last week and in its place issued a legal opinion saying that torture should be more broadly defined and that there was no need to say that Mr. Bush had the authority to sanction torture because he has said unequivocally that it is not permitted.

The revision stated that "torture is abhorrent both to American law and values and international norms." It rejected the language in the earlier memorandum, which said that only physical pain "of an intensity akin to that which accompanies serious physical injury such as death or organ failure" constituted torture punishable by law.

Administration officials said over the last few days that Mr. Gonzales had played a role in the decision to issue the new legal opinion as well, but they did not offer specifics.

Mr. Gonzales's request resulting in the original August 2002 memorandum was somewhat unusual, the officials said, because he went directly to lawyers at the Office of Legal Counsel, bypassing the office of the deputy attorney general, which is often notified of politically delicate requests for legal opinions made by executive-branch agencies, including the White House.

The memorandum has become one of the most hotly debated legal documents in the so-called war on terror. Democrats and human rights groups have complained that it created a permissive atmosphere that led to serious abuses of detainees in Iraq, Afghanistan and Guantánamo Bay, Cuba. The memorandum was addressed to Mr. Gonzales and was signed by Jay S. Bybee, then the head of the Office of Legal Counsel at the Justice Department.

Officials dispute how much senior Justice Department officials knew of the memorandum as it was being prepared. A former official and a current one said that neither Attorney General John Ashcroft nor his deputy, Larry D. Thompson, were aware of the memorandum until it was about to be submitted to the White House.

Another former official said, however, that they were given progress reports as the memorandum took shape.

John Yoo, a senior Justice Department lawyer who wrote much of the memorandum, exchanged draft language with lawyers at the White House, the officials said. Mr. Yoo, now a law professor at the University of California at Berkeley, said in an article published Sunday in *The San Jose Mercury News* that Mr. Gonzales did not apply any pressure on him to tailor the memorandum to accommodate the White House.

Instead, Mr. Yoo said that Mr. Gonzales was merely seeking to "understand all available options" in a perilous time, when the United States faced unprecedented threats.

But a senior administration official disagreed, saying that the memorandum's conclusions appeared to closely align with the prevailing White House view of interrogation practices. The official said the memorandum raised questions about whether the Office of Legal Counsel had maintained its longstanding tradition of dispensing objective legal advice to its clients in executive-branch agencies.

While the nature of Mr. Gonzales's specific discussions with the Justice Department remains unclear, administration officials said that Mr. Gonzales's customary way of dealing with Justice Department lawyers was to pose questions about issues rather than offer his own conclusions, although one said his preferences could sometimes be inferred easily from his questions.

Justice Department officials said that the timing of the revised memorandum, which was posted on the Justice Department's Internet site without announcement late on Dec. 30, was a result of instructions from James B. Comey, the deputy attorney general.

Mr. Comey, the officials said, told lawyers to complete the revised opinion before the end of the year. At the same time, officials said they were mindful that issuance of the new opinion might help neutralize the issue for Mr. Gonzales even as it served as a sharp critique of the earlier opinion.

Mr. Gonzales talked about the August 2002 memorandum in a meeting with reporters last June, when the White House sought to defend its actions at the height of the uproar over abuses of prisoners in Iraq.

Without discussing his own role in soliciting the document, Mr. Gonzales said that the memorandum was not a policy directive to officials in the field but a response to questions about the scope of the federal law prohibiting torture and the international convention on torture.

"The president has given no order or directive that would immunize from prosecution anyone engaged in conduct that constitutes torture," Mr. Gonzales said. "All interrogation techniques actually authorized have been carefully vetted, are lawful, and do not constitute torture."

Senator Patrick J. Leahy of Vermont, the ranking Democrat on the Judiciary Committee, who has signaled an intent to question Mr. Gonzales vigorously about his role in the memorandums, said Tuesday that he has been continually frustrated by the White House in trying to obtain answers and documents.

In a letter to Mr. Gonzales on Tuesday, Mr. Leahy wrote, "I am disappointed that, contrary to your promises to me to engage in an open exchange and answer my questions in connection with your confirmation process, you have not answered my letters" requesting documents.

But Senator Arlen Specter, Republican of Pennsylvania and the new chairman of the committee, said that Mr. Leahy's complaints appeared unjustified.