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Gonzales Defends His White House Record

Nominee Questioned On Detainee Policies

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Attorney general nominee Alberto R. Gonzales strongly defended his tenure as White House counsel yesterday, including his conclusion that the protections of the Geneva Conventions do not apply to alleged terrorists, and he suggested that the United States should consider renegotiating the international treaties to better wage its war on terrorism.

During a day-long hearing dominated by a debate over the Bush administration's detention and interrogation policies, Gonzales pledged to pursue any allegations of prisoner abuse in Iraq and Guantanamo Bay, Cuba, that fall within the Justice Department's jurisdiction. He said he would honor the obligations of the Geneva Conventions and other international agreements on the treatment of detainees.

"Torture and abuse will not be tolerated by this administration," Gonzales said. "I will ensure the Department of Justice aggressively pursues those responsible for such abhorrent actions."

But under often tough questioning from Democrats and some Republicans on the Senate Judiciary Committee, Gonzales said he could not recall key details of his involvement in the production of an August 2002 memo that narrowly defined the tactics that constitute torture. He also declined repeated invitations to repudiate a past administration assertion that the president has the authority to ignore anti-torture statutes on national security grounds.

Gonzales testified that while he disagreed with portions of the Justice Department memo, he could not recall whether he conveyed those objections to other government lawyers at the time. He said he did not quarrel with its general findings.

Gonzales said he could not remember who had requested the legal guidance on permissible interrogation tactics -- many officials have said it was the CIA -- but he acknowledged under questioning that high-pressure interrogation techniques were discussed in White House meetings at which he was present. Others have said the tactics included mock burials and simulated drownings.

The memo -- which was used to formulate permissive Defense Department rules on interrogations -- was withdrawn by the Justice Department after it was revealed publicly in 2004 and has since been rewritten, reaching starkly different conclusions.

"There was discussion between the White House and the Department of Justice as well as other agencies about what does this statute mean," Gonzales said, referring to a 1994 anti-torture law. "I don't recall today whether I was in agreement with all the analysis, but I don't have a disagreement with the conclusions then reached by the [Justice] department. Ultimately it is the responsibility of the department to tell us what the law means."

Republicans and many Democrats have said that they expect the GOP-controlled Senate to easily approve the appointment of Gonzales, 49, a longtime confidant of President Bush whose inspirational rise from poverty to Harvard Law School and the White House was cited by supporters yesterday.

His exchanges with senators touched on a wide variety of issues, from Gonzales's defense of the USA Patriot Act, an anti-terrorism law, to his acknowledgment that the Roe v. Wade decision that legalized abortion "is the law of the land." Several Democratic senators, who have had increasingly sour relations with Attorney General John D. Ashcroft, said they were hopeful that their relationship with Gonzales would be more productive.

But many Democrats and at least one Republican argued that Gonzales had participated in formulating policy that laid the foundation for the abuse scandals in Afghanistan, Iraq and Cuba, which have generated global outrage. Gonzales declined to answer many questions and said he could not recall details in relation to many others, prompting complaints from some Democrats on the committee.

"We're looking for you, when we ask you questions, to give us an answer, which you haven't done yet," Sen. Joseph R. Biden Jr. (D-Del.) told Gonzales. "I love you, but you're not very candid so far."

Gonzales said "it is appropriate to revisit" the Geneva Conventions, which provide an international standard of conduct for handling detainees during military conflicts. Gonzales disclosed that White House officials, including some lawyers, had held "some very preliminary discussion" about the idea, but he said "it's not been a systematic project or effort."

Gonzales did not say what revisions are under consideration, but he said they would not affect provisions requiring "basic, decent treatment of human beings."

An August report by a panel of experts appointed by the Defense Department endorsed the idea of adapting the 1949 conventions "to the realities of the nature of conflict in the 21st century." It particularly urged the creation of a legal category for detainees from terrorist groups, who presumably would not be afforded the same protections as other detainees. The International Committee of the Red Cross immediately condemned the idea of changing the Geneva Conventions.

Sen. Lindsey O. Graham (R-S.C.), who is a judge advocate in the Air Force Reserve, joined Democrats in criticizing some of the administration's conclusions on detention and interrogation policies. He said policymakers ignored the advice of seasoned military professionals.

"When you start looking at torture statutes and you look at ways around the spirit of the law . . . you're losing the moral high ground," Graham said. "Once you start down this road, it is very hard to come back. So I do believe we have lost our way, and my challenge to you as a leader of this nation is to help us find our way without giving up our obligation and right to fight our enemy."

Other Republicans on the committee strongly defended Gonzales, a counsel to then-Gov. George W. Bush and a former Texas Supreme Court judge, saying he was being unfairly used as a scapegoat by critics of the administration's anti-terrorism policies. Sen. John Cornyn (R-Tex.) said Gonzales's conclusion that al Qaeda and Taliban fighters are not protected under the Geneva Conventions is supported by other legal opinions. Cornyn characterized the 2002 memo on torture as "a memo he [Gonzales] didn't write, interpreting a law he didn't draft." The memo was written by the Justice Department's Office of Legal Counsel.

"President Bush and Judge Gonzales have both unequivocally, clearly and repeatedly rejected the use of torture," Cornyn said. "But is there anyone here today who would fail to use every legal means to collect intelligence from terrorists in order to protect American lives? I certainly hope not."

Four different senators tried to pin down Gonzales on the August 2002 memo's controversial assertion that a president had the power to authorize torture in unusual circumstances, but

Gonzales deflected that, saying it was a "hypothetical question." A new memo issued by the Justice Department last month also avoided the question of presidential power.

At the same time, Gonzales did not rule out reaching such a conclusion in the future. "I would have to know what . . . is the national interest that the president may have to consider," he told Sen. Russell Feingold (D-Wis.).

Gonzales acknowledged under questioning from Sen. Edward M. Kennedy (D-Mass.) that he took part in discussions about the legality of high-pressure interrogation techniques. But he said it was not his "job to decide which methods of obtaining information from terrorists would be most effective" or whether such methods are prohibited by a 1994 law barring torture.

"That would be a job for the Department of Justice, and I never . . . influenced or pressured the department to bless any of those techniques," he said.

Kennedy responded that "just as an attorney, as a human being, I would have thought that . . . if there were recommendations that were so blatantly and flagrantly over the line in terms of torture, that you would have recognized them."

In response to a question from Sen. Richard J. Durbin (D-Ill.) about whether U.S. personnel could legally engage in torture under any circumstances, Gonzales said: "I don't believe so, but I'd want to get back to you on that and make sure I don't provide a misleading answer."

Gonzales expressed skepticism about the reliability of documents obtained in a lawsuit by the American Civil Liberties Union indicating that as many as 26 FBI agents had reported seeing the mistreatment of detainees at the Guantanamo Bay prison. He said that one FBI agent had asserted erroneously that a presidential order authorized aggressive interrogation techniques, and that "if something like that is wrong in these e-mails, there may be other facts that are wrong."

Research editor Lucy Shackelford contributed to this report.