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Gonzales to Face Prisoner-Policy Questions --- Senators Plan to Address Attorney General Nominee's Role in Shaping Detainee Guidelines

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WHEN NOMINATING Alberto R. Gonzales for attorney general, President Bush cited his White House counsel's "sharp intellect and sound judgment" in helping shape the war on terrorism. In confirmation hearings this week, Mr. Gonzales will face questions from the Senate Judiciary committee on his role in setting policies for the treatment of prisoners in that war.

Traditionally, attorneys general have been chosen for their views on law-enforcement priorities and ability to manage the Justice Department. But as with other officials in the Bush administration, Mr. Gonzales's profile was crystallized by the Sept. 11, 2001, terrorist attacks, which thrust the 49-year-old Texas lawyer, a former justice of the state supreme court, into once-arcane corners of international and humanitarian law.

The attacks triggered a debate within the government over the powers that federal and international law give a president confronting a global terrorist network that uses tactics such as beheadings and bombings of civilians. Mr. Gonzales, assuming a role that in previous armed conflicts might have been taken by the national security adviser, became arbiter of disagreements between senior lawyers at the Defense and Justice departments, who urged the president to assert sweeping martial powers, and the State Department, which argued that the U.S. was bound by the framework of international law it helped create after World War II.

Late last week, the Justice Department issued a new, broader definition of what constitutes torture of detainees during interrogation, effectively retreating from the administration's previous position set out in an August 2002 Justice Department memo. The new document, prepared with the White House counsel's office, is silent on whether the administration's earlier policy was correct in asserting sweeping presidential powers to disregard laws and treaties in the name of national security. It also says nothing about U.S. obligations to refrain from "cruel, inhuman or degrading treatment or punishment," lesser forms of abuse than torture that nonetheless also are prohibited under the international Convention against Torture.

Mr. Gonzales wasn't available to comment. His supporters argue that his role in staking out the earlier position shouldn't be held against him, because he was simply helping to chart new territory in an unprecedented war against an unconventional foe. The White House referred questions about the new memorandum to the Justice Department, where a spokesman said the document emphasizes the administration's position that torture is abhorrent and corrects the earlier, inaccurate definition by spelling out what constitutes torture in the interrogation of prisoners.

Some Judiciary Committee members say they intend to press Mr. Gonzales to explain his role in developing the policies and overseeing their implementation.

"He'll be confirmed, unless there's something that comes out of the blue, Bernie Kerik-type stuff," said Sen. Lindsey Graham, a South Carolina Republican, referring to the former New York City police commissioner, who abruptly withdrew from consideration as Homeland Security secretary after questions mushroomed about his personal and professional ethics. But "the memos coming

out of his shop preceding Abu Ghraib disturb me," Sen. Graham said. The Baghdad prison was the site of some of the most notorious cases of prisoner abuse at the hands of U.S. forces. "This idea of playing cute with the torture statutes and trying to put square pegs in round holes, legally, was disturbing."

"You have to fight a ruthless enemy very aggressively, you don't want to lose sight of your biggest asset, which is the moral high ground," said Sen. Graham, a former Air Force officer who remains in close touch with military lawyers.

Mr. Gonzales, who began working for President Bush when he was governor of Texas, was the architect of the White House strategy in dealing with prisoners captured in the war on terrorism. Memorandums disclosed over the past year show that when Mr. Gonzales weighed in, it generally was to advise that almost no laws could interfere with the president's view of what national security required. Other administration memos sketching out broad executive powers to disregard the federal War Crimes Act, the Geneva Conventions and the international Convention against Torture were produced at Mr. Gonzales's request or with his knowledge.

Several memos focused on ways to block potential prosecution of administration officials and military personnel for war crimes. Other opinions advised that building an interrogation center at Guantanamo Bay, Cuba, would escape judicial oversight of prisoner treatment -- a judgment that was repudiated in June, when the Supreme Court ruled that prisoners there were entitled to challenge their detentions in court.

In a Jan. 25, 2002, draft memo, Mr. Gonzales advised the president that the war on terrorism "renders obsolete" the Geneva Conventions' prohibition of coercive interrogations. Just two weeks later, Mr. Bush adopted much of Mr. Gonzales's legal position, asserting in a Feb. 7 directive that he held the power to "suspend" the Geneva Conventions and that suspected terrorists "are not legally entitled" to humane treatment. The president deemed it unnecessary to suspend the treaty by deciding that al Qaeda and Taliban fighters weren't covered by it and directed, "as a matter of policy," prisoners were to be treated "humanely."

The Judiciary Committee's senior Democrat, Sen. Patrick Leahy of Vermont, has said Mr. Gonzales should expect detailed questioning about his role in prisoner policies. In what promises to be an unprecedented spectacle for a cabinet nominee, senators are likely to ask Mr. Gonzales his views on the legality of specific techniques either authorized or allegedly used on prisoners, including blindfolding, mock execution and "water-boarding" or other forms of threatening drowning," according to a person familiar with committee preparations.

Sen. Leahy and the committee chairman, Republican Sen. Arlen Specter of Pennsylvania, are negotiating the length of the hearings and whether panels of critics and supporters will be invited to testify. Sen. Specter's office declined to comment on the prospective hearings.

Mr. Gonzales has dismissed claims that legal reasoning in high-level, confidential memorandums contributed to abuse in the field, and administration officials often cite the president's direction that prisoners be treated humanely. Such issues as the president's authority to order torture or suspend the application of treaties and federal laws provided only a "broad legal framework" from which the president "ultimately adopted more narrowly tailored policies," Mr. Gonzales said at a June news conference.

Mr. Gonzales's supporters say that he was willing to rethink tough legal questions after Sept. 11. "He was the recipient of some advice which basically was meant to mark out the outer boundaries on those questions but which didn't purport to answer any of the questions as a policy matter," said Bradford Berenson, who was an associate White House counsel under Mr. Gonzales. "The prevailing attitude throughout the entire administration in the weeks and months after 9/11 was to be as aggressive and creative as possible in meeting the challenge posed by al Qaeda and other terrorist groups."

