

Courting disaster: Gonzales as attorney general?

by [Douglas Cassel](#) in the [January 25, 2005](#) issue

Is Alberto Gonzales qualified to be attorney general of the United States? By some measures, yes. The man who hopes to become the first Latino to occupy that office rose from humble origins to graduate from Harvard Law School and to serve as a justice of the Texas Supreme Court and as Texas secretary of state. He was chosen 1992 Outstanding Young Lawyer of Texas and 1999 Latino Lawyer of the Year. Alberto Gonzales is the American dream come true.

Or the American nightmare. As White House counsel, Gonzales issued legal interpretations that helped create a climate conducive to torture and mistreatment of prisoners. He advocated prolonged detention of American citizens on the say-so of the executive, without meaningful judicial review—a point on which he was rebuffed by an 8-1 Supreme Court vote. He argued for presidential power to imprison alleged terrorists, unconstrained by criminal law, the Geneva Conventions or, indeed, any law at all. He resurrected obsolete military commissions to try suspected terrorists, overlooking the last half century of legal reforms, including the Geneva Conventions, the Uniform Code of Military Justice and nearly all of modern international human rights law.

Gonzales's record calls to mind the warning sounded by Justice Louis Brandeis three quarters of a century ago: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

Even so, he looks like a good bet for confirmation. Republicans hold a solid majority in the Senate, and Democrats may be skittish about voting against the first Latino nominated to head the Justice Department.

Still, confirmation should depend on answers to key questions. What role did Gonzales play in developing legal positions that have alienated our allies, offended our leading legal organizations and provoked dissent by State Department and military lawyers?

Among the more troubling issues is his apparent role in bending the rules on torture. In 2002 he asked the Justice Department Office of Legal Counsel for an opinion on how far American interrogators could go in pressuring terrorism suspects during interrogations outside the U.S. The resulting August 1, 2002, memo advised in effect that nothing short of limb removal or permanent organ damage could amount to torture. In any event, it argued, nothing in American law or international treaties bars or could bar the president as commander in chief from authorizing torture if he deems it necessary to the conduct of war.

The memo was publicly released in June 2004 after the Abu Ghraib torture scandal. It was so indefensible that the Justice Department withdrew it. Recent accounts in *Newsweek* suggest that the memo may simply have told Gonzales what he wanted to hear. The memo reportedly emanated from a July 2002 meeting in Gonzales's office, attended by the lawyer who wrote it.

Techniques discussed in the meeting included "water boarding" (simulated drowning) and hard slaps designed to shock without leaving tell-tale physical marks. One participant reportedly says Gonzales pushed to stretch the bounds of the permissible. Although he "didn't want to go over the line," Gonzales asked, "Are we forward-leaning enough on this?"

If subsequent revelations of torture at Abu Ghraib surprised Gonzales, they should not have. Once a signal comes from on high to "lean forward," it is only a matter of time before the troops will lean too far.

The meeting and memo are too important—to the country and to the question of Gonzales's qualifications—to be left to snooping by journalists. The public is entitled to see notes of the meeting, requests by interrogators for advice, and relevant communications from Gonzales.

Gonzales should be pressed to support the American Bar Association's recommendation for an independent, high-level, bipartisan commission to investigate the full range of American abuses of prisoners. Military investigations to date have yet to look closely at the role of the upper echelons of the Pentagon, let alone the CIA, White House and other agencies.

Gonzales's other controversial legal views—such as his advocacy of prolonged detention of alleged terrorists without trial, denial of counsel to prisoners, denial of meaningful (or any) judicial review of detentions and convictions, the attempt to

treat the U.S. Naval Base at Guantánamo as an off-shore “prison beyond law,” trials by military commission that shortchange due process of law, and denial of the applicability of the Geneva Conventions to Taliban soldiers—raise fundamental questions about his appreciation of the importance of democratic checks and balances and the rule of law. He consistently pushes the powers of the president to their outer limits—and beyond— while minimizing independent judicial review, an essential safeguard of liberty.

Early in the hearings Gonzales condemned torture but dodged questions on whether his views on presidential power coincide with those of the torture memo (which he downplayed after its public release but did not repudiate). That memo exalted the role of the commander in chief to a sort of constitutional trump card: the president may do whatever he chooses in waging war—including the amorphous “war” on terrorism—and neither Congress, courts nor international law can stand in his way.

Such a doctrine is more dangerous even than torture. It threatens the very foundations of democracy. The man who would be our chief law enforcement officer must be questioned closely on how far he believes the president can go in overriding all laws in order to “win” the war against terrorism. There is no question of Gonzales’s well-meaning zeal. The issue is whether he lacks understanding.