

Alberto Gonzales: Bush's 'Nazi Lawyer'

by Edward Spannaus

Much can, and will, be said, during the upcoming Senate confirmation hearings for the post of Attorney General, about Alberto Gonzales's promotion of indefinite detentions and torture of prisoners, and his dismissal of the Geneva Conventions, while he served as Counsel to President George W. Bush, as well as his dishonest and unethical facilitation of executions when he was serving as counsel to then-Gov. George W. Bush in Texas.

But in and of themselves, these charges against Gonzales miss the larger point: his obsequious willingness, even eagerness, to provide President Bush and Vice President Dick Cheney with a legal rationalization for the untrammelled exercise of executive powers and the egregious abuse of those powers.

While Gonzales was certainly not an originator of any of these doctrines, he has faithfully put his imprimatur on, and then forwarded to the President, the sophisticated legal arguments coming from the Justice Department's Office of Legal Counsel (OLC), and also from Cheney's legal counsel, David Addington—asserting that the President, in exercising his “inherent powers” as Commander-in-Chief, could lawfully ignore the Judiciary and the Congress, as well as international treaties and agreements to which the United States is a party.

The Nazi Parallels

We have previously compared the “theories” coming out of the lawyers in this Administration, to those used to justify Adolf Hitler's war crimes during World War II. In the article “Bush and Hitler: What the 'Torture Memos' Reveal,” and an accompanying editorial, both in the July 2, 2004 *EIR*, we identified the parallels between the arguments put forward in the Bush Administration “torture memos,” and the notorious “Commissar Order” issued on the eve of Nazi Germany's invasion of the Soviet Union. Based on the notion that Germany was fighting a new kind of enemy, requiring new methods, and that Russia had not participated in the Hague Con-

vention, and therefore had no rights under it, the Commissar Order gave virtual immunity to German soldiers for war crimes committed against the “barbaric” Russian enemy. Hitler also demanded that his officers rid themselves of “obsolete ideologies.”

Compare that, to the memorandum sent by Gonzales to President Bush on Jan. 25, 2002. (That memo was actually drafted by Cheney's counsel Addington, according to a number of sources, but Gonzales signed off on it, and thus bears full responsibility for its content.)

Gonzales noted that the President himself had stated that the war against terrorism is “a new kind of war,” and Gonzales stated: “In my judgment, this new paradigm renders obsolete [and] quaint” various provisions of the Geneva Convention on the treatment of prisoners of war.

Gonzales also warned the President that he and other officials stood in future danger of being prosecuted for war crimes, and he suggested steps that could be taken by the President “which would provide a solid defense to any future prosecution”—the most important of which, would be to declare that the Geneva Convention did not apply to the war against Taliban and al-Qaeda in Afghanistan.

That memo referred back to previous memoranda produced by the Justice Department, which argued that the President had virtually unlimited power in respect to the deployment of military forces, and in the conduct of war, as well as in disregarding treaty obligations.

Hitler Had His Lawyers, Too

In the July 2 *EIR*, and elsewhere, we also pointed out that the arguments put forward in the torture memos, mimicked those of Carl Schmitt, the “Crown Jurist of the Third Reich,” who had prescribed the same sort of broad, unfettered powers to the Führer, allegedly in defense of the German nation under conditions of emergency.

This parallel was also drawn by Prof. Sanford Levinson, of the University of Texas, in an article in the Summer 2004 issue of *Daedalus*. Levinson noted, as did we in our “Children of Satan” series, 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, describing Schmitt as “the leading German philosopher of law during the Nazi period,” 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.”

“Although some analysts have suggested that the Bush Administration has operated under the guidance of the ideas of German emigré Leo Strauss,” Levinson writes, “it seems far more plausible to suggest that the true *éminence grise* of the Administration, particularly with regard to issues surrounding the possible propriety of torture, is Schmitt.”

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.”

And among those lawyers, the one closest to the President, responsible for advising the President on these matters, and dutifully passing along and repeating these Nazi-like arguments, is Alberto Gonzales.

The Imperial Presidency

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 a memo drafted for Gonzales’s office by the DOJ/OLC, within two weeks of the 9/11 attacks.

This memo, entitled “The President’s Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them,” and dated Sept. 25, 2001, argued 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 in any way restrain or review the President’s actions, the OLC memo argued.

The existence of this memo was previously known, but it has only recently been made public, by being posted in an obscure location on the Justice Department website, which was pointed out by *Newsweek*.

EIR had cited this particular memo in our July 2 editorial;

this was in the context of our reporting on Nixon-era White House Counsel John Dean’s insight, that the issue of unrestricted Presidential power has been an obsession of Dick Cheney since Cheney’s days in the Ford White House of the mid-1970s, during which, as Dean put it, “Congress set about dismantling the imperial Presidency” in the wake of Vietnam and Watergate.

“Cheney still seems to resent these moves to bring the Presidency back within the Constitution,” Dean wrote in his recent book *Worse Than Watergate*.

Dean’s contention about Cheney and the “imperial Presidency” is illustrated by the fact that the September 2001 memo cites a 1970 memorandum from the then-head of the OLC (now Chief Justice), William H. Rehnquist, to the then-Special Counsel to President Nixon, Charles Colson, on the subject of “The President and the War Power: South Vietnam and the Cambodian Sanctuaries.” Rehnquist argued that Congress could not interfere with the President’s powers as Commander-in-Chief “to ensure the security of the United States in situations of grave and unforeseen emergencies.”

The Rehnquist-Colson argument has been repeatedly cited by the OLC, in 2001 in support of the argument for the unlimited power of the President to attack anyone, anywhere, and then later in the infamous September 2002 OLC memo which argued that the Federal Anti-Torture Statute is unconstitutional if it infringes on the President’s power to order torture in times of emergency.

We and others have reported that this particular argument, not surprisingly, was pressed on the Justice Department by Cheney’s legal counsel David Addington.

Still More Documents

In recent weeks, many more government documents pertaining to the abuse and torture of prisoners have been made public, as a result of a Freedom-of-Information Act lawsuit brought by the American Civil Liberties Union and other organizations. These documents demonstrate the vile consequences which flowed from the legal doctrines promoted by Gonzales, and, among other things, they indicate that President Bush may have issued an Executive Order authorizing inhumane interrogation techniques in Iraq. A two-page FBI document references an Executive Order, and states that the President directly authorized interrogation techniques including sleep deprivation, stress positions, the use of dogs, and “sensory deprivation through the use of hoods, etc.” The document further states that the FBI had prohibited its agents from using the techniques that President Bush himself authorized. The FBI directly described a number of the techniques used by the military, as “torture.”

Other documents report that military interrogators at Guantánamo impersonated FBI agents, and one memorandum says that “this technique, and all of those used in these scenarios, was approved by the Dep Sec Def”—referring to the Deputy Secretary of Defense, Paul Wolfowitz.