



**GEORGE W. BUSH ORAL HISTORY PROJECT**

**FINAL EDITED TRANSCRIPT**

**INTERVIEW WITH ALBERTO R. GONZALES**

October 14–15, 2010  
Washington, D.C.

**Participants**

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*Wake Forest University*

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### INTERVIEW WITH ALBERTO GONZALES

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**Russell Riley:** This is the Alberto Gonzales interview as part of the George W. Bush Oral History Project. Thank you very much for coming to Washington. I'll repeat for the tape record that we just had a conversation about the confidentiality proceedings.

As an aid to the transcriber we have everybody around the table identify themselves and say just a few words so the transcriber will know who's who. Katrina [Kuhn] is also keeping a record of interventions.

I'm Russell Riley. I'm the head of the Presidential Oral History Program at the Miller Center and have been chairing the Bush Project interviews so far.

**Barbara Perry:** I'm Barbara Perry. I'm a Senior Fellow at the Miller Center in the Presidential Oral History Program.

**John Dinan:** I'm John Dinan, and I teach in the political science department at Wake Forest University and teach American politics courses.

**Nancy Kassop:** I'm Nancy Kassop. I teach in the political science department at the State University of New York in New Paltz. I teach courses on the Presidency and constitutional law.

**Riley:** There is a companion project to what we're doing going on at SMU [Southern Methodist University], and they'll probably want to talk to you at some point because one of the pieces in their portfolio is the Texas years. We're not going to spend a lot of time on Texas, but I thought it would be a good place for us to begin, to hear from you a little bit about how you came to know George Bush and if you could hit the high points of your relationship with him before 2000.

**Alberto Gonzales:** My wife tells me we met George W. Bush in '88 when he was campaigning for his father for President. I don't remember that meeting. A year before the gubernatorial election in 1994, he or someone on his behalf called a friend of mine, a prominent lawyer in Houston, and said, "George Bush is thinking about running for Governor against Ann Richards. He'd like to come to Houston and meet with some minority community leaders. Could you help set that up?"

So I set up a meeting at my law firm, Vinson & Elkins, and I invited some primarily Hispanic community leaders to Vinson & Elkins. As I've said publicly before, I thought he was great. He was very focused on a few issues, extremely likable, personable, but I thought he had no chance

of beating Ann Richards. That was the first time I recall spending time with him.

I saw him once at a campaign event during the middle of that year and then the night before the election I was at a campaign event. That was the extent of my relationship with him. So he won and about two weeks later someone, it may have been him, called one of my partners who told me, “Governor Bush just called to see whether or not you’d be interested in being his general counsel.” I was surprised. I’ve read that Harriet Miers had a lot to do with this because Harriet was president of the State Bar of Texas when I was on the board of directors, so Harriet and I had gotten to know each other.

I suspected Bush and the campaign were looking for some diversity on his senior staff. I got the call and that’s how I joined his staff, but I really didn’t know him.

**Riley:** Had you been involved in Republican Party politics in Texas before then?

**Gonzales:** I had been chair of the Harris County Hispanic Republican Party, but I really hadn’t been that active. I can’t remember my parents ever voting or ever talking about politics. Very apolitical, didn’t get involved in politics at all. Didn’t really worry about it or think about it until I started working as a lawyer. I’ve said many times I would have supported Bush if he had been a Democrat. I simply liked him and believed in what he stood for.

When I was asked to work in the Governor’s office I was tired of my private practice work and wanted a change. I promised my wife it would be two or three years and then I would go back into private practice. But I didn’t really know him when I went to work for him.

**Riley:** What was it about the Republican Party? You had an affiliation there, but if your parents were not—?

**Gonzales:** My father, for example, emphasized to me the importance of self-responsibility. No one was going to help, you had to take care of yourself. Your family, your uncles and cousins could help, but you weren’t going to rely upon government. I grew up in a very Catholic family, so religion was very important. There were a lot of people of faith in the Democratic Party and people believe in self-responsibility in the Democratic Party, but I just felt more comfortable with the Republican Party.

I think the Republican Party was looking for minorities, they were looking for diversity. Here was someone who was a partner in a law firm, Harvard graduate, Hispanic, I’m sure I looked pretty attractive to them, so I was given some unique opportunities.

**Riley:** Was President [Ronald] Reagan’s Presidency at all important in your decision?

**Gonzales:** Not at all.

**Riley:** So you’re brought in to work for Governor Bush.

**Gonzales:** Worked as his general counsel. When you work with someone as their lawyer you get to know your client pretty well. I always like to say you get to see how they deal with successes and failures. You get to know what kind of information they want in making decisions, how they

make decisions. For whatever reason I think President Bush and I got along pretty well.

**Riley:** You were within him the entire length of his Governorship?

**Gonzales:** I was with him three years as general counsel, then he appointed me Secretary of State. I did that for a year and as Secretary of State you're a constitutional officer, but you're still within that orbit of the Governor's office. Then in early 1999 he put me on the [Texas] Supreme Court so I no longer was involved in what he was doing. I was focused on my own campaign in 2000 to remain on the court. That was a clear division for two years.

**Riley:** Your original position was filling an unexpired term?

**Gonzales:** Yes. Raul Gonzalez stepped down from the supreme court; he was the only Hispanic. As soon as I heard he was stepping down, I had a sense Governor Bush was going to ask me to do that. We had a very interesting conversation. He was hosting the Mexican Energy Minister for breakfast at the Governor's mansion, and after breakfast he and I went upstairs and he said, "Do you want to go on the court?" I answered, "Do you want me to go on the court?" He said, "It's not what I want. What do you want?" I said, "I don't know what I want." Because I had never thought about being a judge. I'd never aspired to it; I'd been a transactional lawyer. We talked about it for a while and then we decided we would both think about it. For about a month I talked to different people. I don't know what he did about it, but after about a month I decided it was the best way for me to serve our profession, serve the state, and I decided to do it.

**Riley:** Would it have made a difference if it had been purely an appointed office?

**Gonzales:** I wasn't worried so much about running an election. I really enjoyed being within the executive branch. I liked that responsibility. Being Secretary of State of Texas is a great position. It really is the authority the Governor gives you. You're the chief elections officer, you're also in charge of all document filings for the state of Texas and then whatever jobs or authorities he gives you. You have a beautiful office in the Capitol, and you have a staff and a budget.

All of a sudden I'm going to be the junior justice on a court with a staff of three people. I liked being responsible and in charge, so it was hard for me at first. Again, I hadn't thought at all about being a judge.

**Riley:** Were there any particular cases you had to make decisions on that had implications for Governor Bush himself subsequently?

**Gonzales:** Maybe not for Governor Bush, but certainly for me. The Texas Legislature had passed a new parental notification law, and they provided an exception. Minors could get an abortion without notifying their parents if certain conditions existed. Those conditions were extremely vague and extremely broad. Of course, as the court we were left to interpret how broad or what those words meant. Some conservatives didn't like how I voted on some of these cases. It affected me down the road in consideration of going on the U.S. Supreme Court, I'm sure.

**Perry:** Can you go back to when you were general counsel? You said being general counsel, the Governor is your client in effect and that you learned a lot about him and how he approached successes and failures. Can you give some examples of that?

**Gonzales:** Of successes and failures?

**Perry:** And how he reacted to those.

**Gonzales:** He really was unhappy with the way school districts were funded based on property values. He felt it was a disservice to poorer school districts, particularly minority school districts, and he wanted to change the way they were funded. So he began this effort. He did it in a way that was kind of unusual for him. He had a great relationship with the Lieutenant Governor, Bob Bullock, and Speaker [James] Pete Laney. These were very powerful Democrats, very influential, but they really liked Bush and Bush really liked them.

He surprised them by announcing publicly what he was going to do, and I understand it made Bullock angry. Nonetheless the Governor felt this was the right thing to do, and he pushed hard to get it done. In the end it was the Republicans that hurt him, and I think had a great deal to do with him not being successful in this effort, much like his efforts to push immigration. It seemed to me it was the same play all over again with a different act. The President identifying something that he thought was right and going forward and pushing it and in the end finding out it was his own party that provided the final obstacles to making it happen.

That's one example that I would characterize as a failure, but it was also consistent with his belief that I saw so many times. George Bush had a really good understanding of the majestic power of the Presidency, and to some degree being a Governor and knowing that you're elected to office to do bold, great things, not to be timid, but to identify problems as you see them, try to fix them, and then let the chips fall where they may in terms of how the American people respond.

On the other hand, he also understood, maybe from seeing his dad in that office, that there are limits to the majestic powers of the Presidency and he was able to accept that. I think part of that also was because he was a man of great faith. He knew that as long as he did his best, that's all anyone could expect of him and it was all that he could do. That was a lesson I learned from him very quickly.

**Riley:** Did you have any experience with Governor Bush that is a sort of signature or something people ought to pay attention to as they relate to his own political development? Are there other instances where things prefigure what he deals with as President?

**Gonzales:** Maybe not so much events but processes. I can give you an example. I talk about this in my class. What I saw in George Bush was someone who was very disciplined in the way he approached major decisions and made those decisions. He liked to rely on a process. Even when that process took him to an outcome that was difficult or uncomfortable, he felt that was the right thing to do.

One example is in 1998 and the execution of Karla Faye Tucker in Texas, the first woman since Reconstruction and the first in this country, I think in almost 30 years. He received a great deal of pressure on the right to commute her sentence. But he had a process in place about how to make that decision, and in the end he followed that process. I think it took him to a place that was tough and uncomfortable, but he knew it was the right thing because he followed a process.

He sometimes followed his gut. But more often he followed a process in place so you minimize mistakes. I like to cite an example of where he didn't follow that model to results that weren't ideal. That was in the nomination of Harriet Miers for the Supreme Court. Harriet, whom I've known a long time and I love her and respect her so much and I think she would have made a fine Justice, but our White House counsel and DOJ [Department of Justice] vetting team for four years had vetted hundreds of individuals to go on the Court. Her name never came up once.

Governor Bush and I talked about the Supreme Court often and who he wanted to put on the Court, the type of person. He asked me, "Who are you thinking about? Who's at the top of the list?" For him it was important that he not make the same mistake as his father did with [David] Souter. So we had this process in place to prevent that from happening. But when that vacancy occurred he didn't follow the process, he relied on his gut. He felt, *I want to put a woman in this seat. It's important to the country that we put another woman on the Supreme Court.* So he didn't follow the process. He appointed someone who he knew well and in whom he had confidence, someone qualified, but someone outside the process and it didn't work out, in part because I failed to forcefully advocate the disadvantages of nominating a sitting White House counsel.

**Riley:** Did Governor Bush ever make any references to his father's term and lessons?

**Gonzales:** First time I met with him during the transition. He was Governor in the transition office. I wanted to know what he expected of me. I wanted to know what kind of access I would have with him. He said, "I'm not going to be like my dad. [John] Sununu was a gatekeeper, and as a result, people who needed direct access to my father didn't have it, and that hurt my father. We're not going to do that here. Joe Allbaugh will be the first among equals. He'll be the Chief of Staff, but you and other senior advisors will have direct access to me, because I saw what it did to my dad."

**Riley:** I see.

**Gonzales:** So very quickly.

**Riley:** But during his period as Governor you don't recall any references to things—?

**Gonzales:** No, I can think about it but sitting here right now I can't.

**Perry:** When did he start talking to you about running for President?

**Gonzales:** I'm not sure he and I ever had a conversation about his running for President. I'm not sure he said, "Al, I'm going to run for President." Fairly quickly he was mentioned and it was obvious. He was successful in Texas. He had worked well with Democrats in Texas. He was the son of a President, successful Governor of a big, influential state. It was pretty natural. Everyone was talking about it. I don't think he ever said, "I'm running for President, Al, what do you think?" He never asked me about that.

**Kassop:** But you were on the Supreme Court of Texas at that time. That would probably not have been appropriate for him to have that kind of conversation.

**Gonzales:** Yes, but those conversations occurred before then. I was on the court and I was worried about getting elected myself because I was on the ballot in 2000 as he was, but you're right. During that time I would not have had those kinds of conversations.

**Dinan:** Was your campaign to retain your seat an eventful one?

**Gonzales:** It was during the primary. I drew an opponent, someone from Houston, who had voted in the past three cycles in the Democratic primary. He was a Democrat but I think he felt he could beat me. The truth of the matter is back then, still, in a Republican primary, someone named Gonzales is an unusual name, even in Texas. I lost every county in Texas where I didn't have television ads. For judicial races people were uninformed and not educated, as you know. I made one television ad and the voiceover was all Bush. The rest were just pictures of my service, my family, but it was all Bush. I carried every county where we aired the ad. I got every newspaper endorsement, everything, but I spent \$800,000 during that campaign. I won the primary and then in the general election I was opposed by a Libertarian candidate, so after the primary it was basically over.

**Riley:** There is this famous episode when one of the Congressional leaders says of John Kennedy's White House run, "I wish there were more people around here who'd run for sheriff." Having subjected yourself to the electoral process in this way, did that leave you with certain lessons about—?

**Gonzales:** Not really. I think a judicial race, even though it was a statewide race, it's still different than—I'm not out there talking about all these kinds of issues. I talked about the fact that I'm going to follow the law, interpret the law, be an ethical person. There's not so much you can say as a judicial candidate. I wouldn't say I came away from that experience with thoughts about running for other office. I really didn't. I envisioned that I would be on the court for quite some time.

**Perry:** Once you got to the White House you saw the process for appointed positions. But did you come away with a preference, particularly for state judicial office?

**Gonzales:** I think at some point, I don't know if it was before I went on the court, I was concerned about electing judges. The Governor and I talked about it several times. He was dead set against changing the system because he felt it was tough to advocate to the people of Texas, "We're going to take away from you the right to select a government official." He just didn't think that was appropriate. He didn't think he could sell that. He always opposed changing the system. There have been many efforts to do so, but they've always been unsuccessful.

I think it is unseemly. To be a judicial candidate going out and raising money, it's tough. I wasn't very comfortable with it. I wish there was another way we could finance judicial races if we're going to have them be elective office.

**Perry:** How did you raise \$800,000? That's quite a lot of money.

**Gonzales:** A lot of them were, as you might expect, Bush supporters. Some came from companies that had cases before the court. That creates an appearance of impropriety. I think 99.9 percent of judges aren't affected by those kinds of contributions, but the appearance of

impropriety is a problem for the judiciary when you have an elective office like that. I've been supportive of changing the system. I think that would be a good idea.

**Riley:** What was the term?

**Gonzales:** It was a six-year term. You're appointed until the next general election. I had served for two years. Then I won a six-year term.

**Riley:** Were you surprised to be approached about going to Washington?

**Gonzales:** Clay Johnson, the President's college roommate, who was the appointments director in Texas, was tasked by Governor Bush to start assembling a transition team. Sometime in the summer or in September of 2000, Clay called me and said, "I've been searching for a counsel to the President. It has to be someone who's smart, tough, someone who knows Bush and Bush trusts." He said, "It's you. Would you consider it?"

As soon as he asked, I knew my answer was yes. But I said, "Let me go home and talk to my wife." I went home and told her, "We're going to Washington." Was I surprised? Not in the way that Clay explained it, it made sense to me as it did to him. How do you say no to that kind of opportunity?

**Riley:** You were otherwise completely immersed in your own campaign at the time?

**Gonzales:** Again, I have a Libertarian opponent so I'm doing minimal campaigning.

**Riley:** Are you doing anything for the Presidential?

**Gonzales:** The only thing I did in relation to his campaign was go to Philadelphia for the Republican Convention.

**Riley:** How was that?

**Gonzales:** It was great, it was a lot of fun. I enjoyed it very much.

**Riley:** You were just there as a—?

**Gonzales:** My wife Becky [Rebecca Turner Gonzales] and I were part of the friends and family group so we got to do all the neat things.

**Riley:** Do you have any particular memories of that? Were you circulated on the speech drafts or anything like that?

**Gonzales:** Absolutely not. The most memorable thing that happened was the night of the nomination. The nominee comes to the hall and he's greeted by a group of people, I guess there were 15 of us. I was asked to be one of the greeters and that was kind of cool.

**Riley:** Sure.

**Kassop:** Before we leave Texas and your position as general counsel to the Governor, is there



some way you can distill distinctions between the work you did as general counsel for the Governor and the job you did in the White House as counsel? Did you think when you were about to enter the White House in the same position but at a very different level of what the comparisons might be?

**Gonzales:** In many ways they're similar but the level of importance, the magnitude is very different. In both positions you deal with legislation and give advice as to whether something is constitutional. You help in drafting legislation. You monitor important litigation to the Governor or to the President, and you work with the Attorney General in both areas. You protect the prerogatives of that office, whether it's the Governor or the President.

We didn't have national security issues in Texas, although we like to think of ourselves as a country all to ourselves. Appointments was a little different. Clay Johnson did all the appointments with very little input from me with respect to judges, other than judges to the Supreme Court. When we were looking at an appointment to a vacancy of the Supreme Court of Texas, he would ask me to participate in the interviews and he would want my thoughts. Also in the counsel's office we vetted every significant appointment by the President. A Cabinet position, for example, I would sit down with them and we'd have our sex, drugs, and rock-and-roll talk. I'd ask them, "Is there anything in your background that would embarrass you or the President?" I didn't do that in Texas; it was all done out of the appointments office.

In many ways the role was similar, but I when I was in the White House, I dealt with Congress a lot at the federal level because of judges. And of course when I became the Attorney General because of legislation and other issues. I didn't deal that much with the Texas Legislature. If I went through it, I think I could demonstrate there's a great deal of similarity. The day before the election in 2000, as I recall, Clay told me that Bush would call me immediately after the election and offer me the job.

The night before the election Bush arrived back in Texas from his last campaign stop. There was a big rally at Bergstrom Airport, and we saw each other just briefly. He said, "I'll call you." He expected to win. Of course you know what happened the next night, but he did call me the next afternoon. He was tired. He congratulated me on my victory and I remember him saying, "This will be over in a few days. Clay tells me you've agreed to come on board." I said, "Yes, sir, I'm happy to do that." He said, "Great, I want you to come on board and be the White House counsel."

The only question I asked him was if I would have the same level of access, and he said absolutely. Beyond that we never talked about what he expected of me as White House counsel.

**Riley:** You're one of the few people with a guaranteed job at that point, right?

**Gonzales:** I don't know about guaranteed, but obviously Becky [Gonzales] and I watched the election and the recount with a great deal of interest because we knew it would dramatically affect our lives.

**Riley:** But you had a fallback position.

**Gonzales:** I had a great job.

**Kassop:** At what point did you actually come to Washington? Were you part of the transition?

**Gonzales:** The day after Christmas. Clay Johnson and I and a small group of happy warriors got on a charter plane. We left Austin and landed in Washington. I remember there was snow on the ground, and we went right to the transition office and started to work. My family moved up about five months later. I lived in a garage apartment for a while, in hotels for a while. It was quite an experience.

**Riley:** Did you not have any responsibilities during the recount period? Were you consulted at all?

**Gonzales:** Absolutely not. Again, I was on the Supreme Court so, no. I just watched like everyone else.

**Riley:** Was there a victory celebration when the Supreme Court finally made its decision?

**Gonzales:** My wife and I may have kissed if that qualifies.

**Riley:** That qualifies, yes.

**Gonzales:** No, there wasn't any big celebration.

**Perry:** You have three sons, as I understand it, so your wife had to move the family here.

**Gonzales:** Yes, our oldest was already out of the house, but we had two small boys.

**Perry:** Did they stay back until you got settled here?

**Gonzales:** We wanted to keep them there, let them finish the school year.

**Riley:** Where did you move once the family came up? Were you in the District?

**Gonzales:** No, we've always lived in Virginia. We lived in Vienna, Virginia, for a few years and then we moved to McLean, Virginia, and that's where we lived until we left a few years ago.

**Kassop:** So you came up after the Supreme Court decision.

**Gonzales:** Oh, yes.

**Kassop:** Once you began to work in the transition office, what were you doing there?

**Gonzales:** Finding a staff primarily.

**Riley:** For yourself.

**Gonzales:** Yes, and working with others in Clay's shop who were looking to fill legal positions. People would call me and say, "We're looking at So-and-So for Deputy Attorney General, what do you think? Here's a résumé, would you meet with them?" I remember Ted Olson, people like that, Larry Thompson. I don't remember working on, although I suspect I might have worked on

other issues, but Fred Fielding was there still. He was helping vet people. At some point I started vetting people as well in terms of their background issues. I remember in those early weeks I spent my time on personnel issues, trying to find the best staff I could.

**Riley:** For your office?

**Gonzales:** For my office and the key legal jobs in other agencies.

**Riley:** Did you have veto power effectively over those legal advisor positions in the departments? Do you remember exercising your veto at any point?

**Gonzales:** I don't remember exercising veto power, but it was my understanding from Andy Card that yes, I would have veto power. As far as my staff went, Andy always wanted to know, "Just tell me who you're going to hire." He did at one time ask if I would consider hiring one of the lawyers from the campaign and I said yes. I did offer a job to Michael Toner, who I think might have been the lead lawyer on the campaign. I also offered a position to [Rafael Edward] Ted Cruz, but he wanted to be my deputy, a position I had already filled. But beyond that Andy said, "It's your staff."

**Riley:** Andy at that point was—?

**Gonzales:** He had been designated as Chief of Staff. I met Andy in Austin a few days before Christmas.

**Riley:** You mentioned earlier that there was an expectation that Joe Allbaugh would be Chief of Staff?

**Gonzales:** I don't think I mentioned that. He was the Governor's chief of staff.

**Riley:** The reason I posed the question is there was a question about what he would do in Washington.

**Gonzales:** Of course. He did help run the campaign.

**Kassop:** But then [Richard] Cheney was head of the transition team.

**Gonzales:** Yes, Cheney headed up the transition team. The Vice President and I would participate in staff meetings every week, every morning. Those were the times I would see him and we would talk about any ongoing issues getting ready for the President to take office.

I had a number of memos to prepare that we would give out to the staff, memos on Presidential records, a memo on gifts, an ethics memo, a memo on the 25th Amendment. There were a number of memos that my staff and I worked on getting ready for the President to take office.

**Kassop:** It's interesting that you mentioned the 25th Amendment because isn't it the practice that when a new President and Vice President come into office, one of the first things they do is sit down with the counsel to go over the 25th Amendment and designate exactly what some of the contingencies might be?

**Gonzales:** Absolutely. In fact David Addington and I sat down with the President, the Vice President, Lynne [Cheney], and Laura [Bush] the day before the inaugural, and we had that conversation in the Blair House.

**Kassop:** Bush gets credit for being the first President to actually follow the 25th Amendment.

**Gonzales:** Does he really?

**Kassop:** Yes. President Reagan did not.

**Gonzales:** No, he didn't. We really didn't have much discussion about it. When he had his first colonoscopy there really wasn't much discussion about "Should I do this or not?" We were in a war and he would be sedated for a period of time, so it seemed like the obvious thing to do, that's why it was there.

**Dinan:** What else were you doing, key personnel matters at this time, the memos, and these things? Is it a proactive situation: "Here's what I want to accomplish in this position"?

**Gonzales:** Not really. I had conversations when I was still in Texas with former White House counsels, and there's literature out there about the responsibilities of the White House counsel, so I'd read that. I also had at least one conversation with Beth Nolan, [William J.] Clinton's counsel at the time. These were things I'd learned needed to be done.

**Dinan:** Are you able to look ahead after you get some of these things done? Are you planning for other things—

**Gonzales:** Oh, sure.

**Dinan:** For January, February? What kinds of things were you looking forward to? Judicial selection?

**Gonzales:** Judicial selection is a big one. Bush and I had a conversation during the transition, the first of many conversations about judges. Of course, I learned about how it was done under Bush 41 and that seemed to be a good model, so we created the Judicial Selection Committee and it met every Wednesday at four o'clock, typically in the Roosevelt Room, sometimes when it was occupied we'd meet in the counsel's office. But that was a very serious focus for the Bush administration. The counsel chaired that committee.

In the beginning we had a lot of vacancies to address. That was a big deal. I'd spend most of my days with meetings on other issues and then I would have interviews late into the night, nine, ten o'clock, interviewing judicial candidates. I tried to interview every person interviewing for a federal judgeship at the district and circuit court levels. I tried to sit in on every one of those interviews.

**Dinan:** How did that compare with previous judicial selection?

**Gonzales:** It's my understanding that it was fairly consistent with Bush 41. I can't remember how Clinton did it, although from what I understand and read he probably was less focused,

certainly as an initial matter, on the judiciary. President Bush thought it was important and that we should be focused on it.

**Kassop:** Some of the other things that go on in the counsel's office in the beginning of any new administration are a rash of new Executive orders and preparing for the State of the Union address and the first economic address. Don't all those get vetted through your office? Did you contribute to the supervision of drafting those speeches?

**Gonzales:** Yes, but I don't know that I'd call it supervision. Depending on the subject matter, I would be asked for input and thoughts. If you're talking about the economic speech, for example, unless there are legal implications to the economic policy, it would not be something I would probably have a lot of comment on.

In terms of Executive orders, yes, but I think this notion that the counsel or people in the White House draft up the orders solely and then have the President sign them, it doesn't work that way. It goes to the Department of Justice, and the Department of Justice looks at it and they sign off as to form and legality. They determine that this Executive order is consistent with law. So part of my job would be to make sure that that process was in place and operating the way it should operate. I would look at the Executive order, but even after I signed off on it, it still had to be approved by the Department of Justice.

**Kassop:** Where did an Executive order originate?

**Gonzales:** It would depend on the subject matter. Sometimes it would originate in one of the policy shops, and the drafting by one of the lawyers in my office. Sometimes it might originate at the Department of Justice. There wasn't one single spot it originated from.

**Kassop:** Were there any that President Bush came into office saying, "These are the things I want to accomplish by Executive order in the first few weeks"?

**Gonzales:** I think there may have been the Executive order on federal funding of abortion. That's the only one that comes to mind. I'm sure there probably were others, I just don't remember.

**Riley:** As I recall there were some efforts to undo some of the orders that had been done during the Clinton term.

**Gonzales:** But that always happens. President [Barack] Obama did that.

**Riley:** Of course, but my question was, are those things that are—?

**Gonzales:** We obviously looked at that during the transition, so we would be prepared when President Bush took office to have him sign what needed to be signed.

**Riley:** OK, and the two major initiatives of the first year would have been the tax bill and the education plan.

**Gonzales:** Right.

**Riley:** I'm assuming there probably wasn't a lot of counsel involvement on those two things, is that right?

**Gonzales:** No, but we may have participated in the drafting of the No Child Left Behind legislation. I remember attending meetings in Margaret Spellings' office as we talked about the policy. But my role there was fairly tangential. This was a development of policy. We might have looked at the legal implications, but Rod [Roderick] Paige had his team of lawyers at Education looking at it as well. I don't remember us spending a great deal of time on that.

**Riley:** Let me ask you the question in this way. There are conventionally two roles that the counsel plays, right? One is as a legal advisor, but there is a policy advisor role also.

**Gonzales:** Sure.

**Riley:** Were there any formal discussions with the President about whether he wanted you to emphasize one of those two?

**Gonzales:** Sure. On more than one occasion he would tell me, "I was elected to decide policy. You tell me what the law is."

From time to time he would ask me, "What do you think about this?" I would tell him my own personal thoughts about the policy, but I always tried to be clear. "This is what I think about the policy, this is not what I think about the law."

**Riley:** Were there predictable areas where he would come to you and ask you about policy?

**Gonzales:** Sure, if we talked about immigration, affirmative action, he'd be curious, "What do you think?"

**Perry:** Should we talk about affirmative action at this point, since the judge raised it?

**Riley:** If you want to, go ahead.

**Perry:** Can you tell us then about the strategy that went into, if there was a strategy—

**Gonzales:** There was a strategy.

**Perry:** About the University of Michigan cases and how you dealt with that.

**Gonzales:** In the beginning the President didn't want to have anything to do with the cases. He was worried about the message it would send in opposing the Michigan programs.

When I first raised it with him, he said, "I don't want to get involved in it." But I knew there was no way to stay out. This is an important case for the United States, for the American people. The Court has asked the government for its views, we have to give our view. Olson and [John] Ashcroft came to my office in December of '02. They didn't have a recommendation, but they gave me their view of the law. It was pretty clear to me that they believed both programs were unconstitutional and would be struck down.

I began encouraging the President to think about, “OK, we’re going to have to file a brief. What do you want it to say?” We began a series of conversations. Some were very informal, some were very formal. As we got closer to the brief being finalized and filed, we had a number of formal meetings in the Oval Office. There were many instances where the President said, “I don’t want to be known as the President who killed affirmative action.” He pushed us. He said, “I don’t want us to focus on what we’re against, I want the American people to know what we’re *for*.” Ashcroft and DOJ wanted to kill [Lewis] Powell’s analysis in [Allan] *Bakke* that race can be a factor in admission decisions. They just felt fundamentally that that is where we ought to go. The President didn’t want to go that far.

He asked me, “Is there something else we can do?” I asked Noel Francisco, who was on my staff, and David Leitch, “What are the options for the President?” We came up with the option that was ultimately adopted by [Sandra Day] O’Connor, which is, “We don’t have to answer the question whether race can ever be a factor in admission decisions; instead, we took the position it cannot be the overwhelming factor, however; and if it is the overwhelming factor without individualized determinations, it is in essence a quota, and racial quotas are unconstitutional.”

Fairly quickly we presented this to the President and he liked it. He agreed. You cannot have quotas. He liked the fact that you wouldn’t have to answer that hard question, “Can race ever be considered a factor?” That, as you might imagine, created some resistance at the Department of Justice. They did not feel it was logical to make the argument, you had to answer the tough question. This is what the Court wanted to answer. They felt that we would give someone like O’Connor an easy out, and they really worried about that.

Of course, conservative groups soon adopted a narrative that Gonzales was trying to protect affirmative action. What’s ironic is, in all the stories—and I’ve gone back and read the stories because I’m writing a book and I just finished this chapter on affirmative action. They all talk about how Olson and Ashcroft wanted to strike down *Bakke* and adopt a position that race can never be considered a factor. The narrative became conservatives wanted to oppose the Michigan programs, and Gonzales and [Karl] Rove wanted to support the Michigan programs because it would help Republicans in future elections, and because Gonzales was a minority.

Rove and I *never* supported the Michigan programs because we believed they were too much of a quota. We also agreed that the Michigan programs should fall. However, we felt that the Michigan programs should fall because they were too much like quotas, which was very consistent with what the President wanted to do. There was a lot of back-and-forth between the Department of Justice, but that’s how we wound up with the brief that was filed.

To Ted’s credit, he wrote the brief and at one point he suggested that he wasn’t going to sign the brief, but at the very end he conceded that the President is entitled to file the brief that he wants to file. He said, “I will argue it to the best of my ability. It is going to be a difficult argument and I’m going to get killed by [Antonin] Scalia and others, but I’m going to do my best.” I have a great deal of admiration for Ted Olson because I believe he fundamentally opposed and thought the President’s position made no sense and wasn’t the right position. But in the end he knew he was not the President.

**Dinan:** Were there other cases, perhaps not to the same level of activity, where briefs were

actually requested or decided to file on which there were memorable discussions in the counsel's office?

**Gonzales:** Certainly not to that level. We reviewed all the briefs that were filed that were significant, like any of the terrorism-related briefs, on [Yaser Esam] *Hamdi* and [Shafiq] *Rasul* and [Salim] *Hamdan* and all that, but we didn't have that same level of back-and-forth with DOJ. In the end the Michigan case was not about me versus Ashcroft or me versus Olson, it was about what the President wanted. I felt my job as counsel was to try to give the President the brief he wanted, which was perfectly legal and ultimately carried the day with the Court, to the dismay of many conservatives.

**Riley:** Were you consulted or did anybody talk to you about the decision to put John Ashcroft at the head of the Justice Department?

**Gonzales:** Was I consulted? No, I think I was told.

**Kassop:** By whom?

**Gonzales:** I think it may have been Andy. The first time I met Andy he may have mentioned that John was being considered for AG [Attorney General]. The day of the announcement in Austin I'd gone to the dentist and my mouth was numb, and I got a call from Andy saying, "We're going to make the announcement that John Ashcroft is going to be Attorney General. Would you like to come into town and meet him?"

I said, "Of course," because I was going to be the counsel. I remember meeting him, I could barely talk. So I would have to say I wasn't consulted about the selection.

**Riley:** Did that surprise you?

**Gonzales:** Not at all. I didn't know that much about John Ashcroft. I knew he had been a Senator and had not been reelected. But I didn't know what kind of lawyer he was. I knew he was conservative, but beyond that I didn't know that much about him. I have to say I wasn't surprised.

**Riley:** The conventional wisdom on the appointment in the literature is that it was a match made because there needed to be a cultural conservative in the Cabinet at some point.

**Gonzales:** I've read that as well.

**Riley:** Does that resonate with you?

**Gonzales:** John certainly was a conservative and he was a warrior. You may get into this, I'll go ahead and raise it now. The perception is that John and I were at odds with each other. We didn't agree on everything, but we agreed on a lot more than we disagreed on, and he was a warrior for the President. I honor his service. He took arrows for the President. I took arrows for the President too, and I have a great deal of admiration for John. We just had different styles, and everybody does. I think he did the job the President needed him to do as Attorney General.



**Riley:** Do you remember being consulted about other senior positions in the Justice Department?

**Gonzales:** Sure, on the Deputy Attorneys General. I remember that one, I remember also with respect to Ted Olson. I am quite confident I was asked about the Assistant Attorney General level. I just don't have specific recollections.

**Riley:** But to your knowledge Ashcroft wasn't given sole authority to make decisions on staff.

**Gonzales:** He may have had the final word. I think he had authority. With respect to the DAG [Deputy Attorney General] I remember being involved in that and having a phone conversation with Larry. He was worried about whether or not he would be accepted or how much influence he would have in an Ashcroft Justice Department. I tried to emphasize it really would be up to him. I had confidence in his ability to win over John Ashcroft. I believe Larry could be very influential, very helpful to have someone of his stature, an African American being the Deputy Attorney General. But now that I think about it, I suspect John had a lot to say about who the assistants would be. I was consulted to make sure I had no problems. I would have paid, I'm sure, a great deal of deference to John's views.

**Riley:** Do you remember, Judge, there being any particular cases where the White House and a Cabinet officer were at odds over who was being placed in these deputy positions? Particularly with legal portfolios but also any others.

**Gonzales:** No, because both Card and Bush were very much of the mindset that you ought to have your own people, people you feel comfortable with. Certainly that was true when I became the Attorney General. Whoever I wanted was going to go into the Department of Justice, with one exception that I can recall.

**Riley:** So your sense is that the Cabinet officers generally had the right to—

**Gonzales:** Like when I became Attorney General, there was the issue of who would be my deputy. Jim Comey was the Deputy Attorney General, but I wanted someone else. I think the White House also wanted someone else in that position and they would give me names to consider, which I did. From time to time you would hear from the White House, "What about this person as the Deputy Attorney General?" or "What about this person as a Deputy Cabinet Secretary?"

**Riley:** You said that in your early conversations with Governor Bush you had understood that one of your jobs was to help preserve the prerogatives of the Governor—

**Gonzales:** Yes.

**Riley:** Then later a part of your role was helping preserve the prerogatives of the Presidency.

**Gonzales:** Right.

**Riley:** I'm interested to hear from you about conversations you may have had with anybody about that particular issue. It becomes so important later on, the question about the restoration of the Presidency and the preservation of Presidential prerogatives. But I haven't seen much about

whether this was something that was very much in your mind as you were coming to Washington.

**Gonzales:** Andy Card stressed this from the outset. It certainly become much more important as we talked about, “What is the President going to do to protect our country?” and if he has authorities out there, if he has powers under the Constitution, for example, and if those powers can be used to protect our country then Bush wanted to know that. I think the genesis of the focus on restoring Presidential power and authority is what happened on 9/11.

**Riley:** Sure.

**Gonzales:** There may have been others who came into the administration with an agenda from the outset, that we’ve got to restore something to the Presidency, but for me, no.

**Kassop:** In the literature certainly it seems as if the origin of that was Vice President Cheney.

**Gonzales:** The President subscribed to that as well though. You’re absolutely right. I heard it from both Cheney and Addington, but I was in enough conversations with the President where he asked, “Listen, can I do this? Has this been done before?” He would ask me those kinds of questions.

I would say, “You can do this, the Department of Justice says you can do this.” Has it been done before? In a wartime situation maybe it has been done before and I would tell him, “This is not going to be well received,” or “It is going to be tough.” I would try to be candid with him, telling him, “You have the authority to do this, but it’s going to be tough.”

**Kassop:** Were these pre 9/11?

**Gonzales:** This is all post 9/11. Pre 9/11 the only time I can ever think about the President wanting to exercise what he thought was more authority was with respect to judicial appointments, in terms of the areas I was responsible with. This is due to home-state Senators who believed they got to decide who the President is going to appoint to the federal bench. But that was an area in which President Bush sometimes chafed at the notion that he could not decide who was going to go on the federal bench. In some states you had commissions that decide who the President can nominate, and in some states the Senator says, “OK, you get to choose five and I choose one,” like in New York State. He was not happy with that.

**Perry:** Could you talk a little bit about the early decision to dilute some of the input from the ABA [American Bar Association] and then the decisions to appoint those initial 11 Courts of Appeals nominees in May of the first year in office.

**Gonzales:** We worked extremely hard to get nominations up as quickly as we could. The President said publicly, “This is important for our country, this is important for my administration.” So those of us on the Judicial Selection Committee felt a great deal of pressure to try to get people vetted.

**Perry:** Who was on the Selection Committee?

**Gonzales:** All the lawyers on the counsel's staff were on the committee and they came to all the meetings, the Attorney General, the Assistant Attorney General for Legal Policy at the Department of Justice, the Chief of Staff, Karl Rove—I don't know what his official title was, Office of Political Affairs, the Legislative Office.

**Riley:** Somebody from the Vice President's office?

**Gonzales:** I'm not sure, I don't think so. Andy rarely came to those, but he would typically send a Deputy Chief of Staff. Karl probably came about 50 percent of the time or he'd send his deputy. The legislative person probably came less than 50 percent of the time, but there was one legislative person assigned to nothing but judicial appointments so that person was always there. Those were the people who were part of the committee.

**Perry:** Did you have a set of criteria that you attempted to stick pretty closely to in selecting these individuals?

**Gonzales:** For district court judges it would be different than if we were considering a circuit court judge. Sometimes with respect to district court judges there really wasn't much discretion or flexibility. If two home-state Senators really wanted this person to be appointed to the federal bench and the person was otherwise qualified, the person was going to get appointed, sometimes even if we feared they would be not qualified. If you were a district court nominee and you had the support of the home-state Senators, there is a great deal of deference paid to those decisions by the other members of the Senate. You're likely to get confirmed anyway, even if you're rated not qualified by the ABA.

In reality, we had less running room from home-state Senators on district court nominees. We'd look for someone who obviously was smart, could do the job. I would always ask, "How do you handle lawyers who appear in your courtroom and are not prepared?" I wanted to know how they would deal with the public and with lawyers because as a district court judge you're on the front lines.

Obviously their views about *stare decisis* and following precedent were important, but beyond that as a district court nominee there's not much you could ask. Was there a set of criteria? We would ask them questions like, "How would you decide a case?" Basic stuff, and if they said, "I'm just going to make it up on my own," then it is clear what you're going to do with that person.

**Perry:** Different for courts of appeals judges?

**Gonzales:** Yes, because there you have a little more discretion. In all those interviews my deputy counsel would also be involved, first Tim Flanigan and then David Leitch, both had been clerks for the Supreme Court. We would probably ask more philosophical, more probing questions, but even then the overriding thing is can you follow precedent, because that's your job as a lower court judge. How important is precedent to you? Why is it important? How do you interpret the statute? How should the Constitution be interpreted? Pretty basic stuff.

**Dinan:** To go back to the ABA decisions, we didn't have a chance to get into that.

**Gonzales:** There was consternation on the right about the ABA and some of the positions the ABA had taken on various issues and their rating of Judge [Robert] Bork as unqualified to serve on the Supreme Court. So we heard all that going in when Bush took office. But fundamentally it became, for the President, an issue of why one organization should have a role to the exclusion of others in the pre-nomination process.

We know after the nomination process if the Judiciary Committee wants to involve the ABA there's nothing we can do about it, but before the nomination we decided we're not going to have them involved to the exclusion of everyone else. That was the basis of the decision.

Did it make conservatives happy on the right? Yes, no question that it did. But the ABA was still going to be involved and has been involved. But for me and from what I know of the President, it was simply a question of why should the ABA be given a preeminent role in terms of helping us decide who to nominate? The President had confidence in our ability to identify good people to serve on the lower courts.

**Dinan:** It wasn't a matter of too much debate within the administration? It was pretty much uniformity that this was the thing to do, or was that a matter of some discussion and was there any dissent?

**Gonzales:** Within the Judicial Selection Committee, it was pretty clear where the views were. I do remember one time being in the Oval Office, and Harriet Miers was the staff secretary and of course she had been on the leadership ladder within the ABA. I think if she hadn't come to Washington she would have become the ABA president, so she was very vested in the ABA. Harriet would come in during our meetings and have him sign things, and the President made some kind of comment about the ABA and he'd go, "Right, Harriet?" *[laughter]* But beyond that I don't remember there being a lot of discussion about that decision. I think it was in the hands of the Judicial Selection Committee and the President.

**Riley:** And the President was happy to—?

**Gonzales:** No question about it.

**Riley:** So this was a prerogative question, this was preserving the Presidential—?

**Gonzales:** I guess you could say that. The President can decide who he wants to include in those kinds of decisions. Maybe it's also a function of him just being tired of "You get to say who I get to nominate." I don't think he liked that.

**Riley:** Did he ever comment or have any discussions with you about the Clarence Thomas nomination as a learning experience?

**Gonzales:** I just know he often commented about nominating the best person possible while avoiding a big confirmation fight.

**Kassop:** I have a few questions, one is just a nuts and bolts, the other is longer term. Was there a separate associate counsel in your office who was specifically designated for judicial nominations? I think previous counsel offices sometimes had somebody designated just for that.

**Gonzales:** Yes, there would be one person responsible for coordinating the process, but each counsel was given responsibility for states. If there was a vacancy in Texas, for example, that associate counsel would be responsible for getting names and then trying to whittle down the names to three or four or five they would bring in for interviews. That associate counsel would have primary responsibility for identifying the best people in the pool for us to interview. We did have an associate counsel who was generally in charge of making sure all the other associate counsels were identifying vacancies, identifying names, things of that nature.

**Kassop:** Would the one who was primarily in charge also be the connector with the Senate? In other words, having relations with the Senate Judiciary Committee to try to see that things would move smoothly there?

**Gonzales:** With the staff, yes. In the beginning it was Brett Kavanaugh, who is now on the D.C. Circuit.

**Kassop:** Was there thought given, particularly at the circuit court level, for judicial nominations, that they would be Supreme Court material down the road?

**Gonzales:** Of course. A prime example is Miguel Estrada. We felt Miguel would be an excellent appellate court justice, but we thought giving him that experience, having him go through a vetting process was also a good thing with the belief that you put someone like a Miguel Estrada or a Jeffrey Sutton, for example, someone who is young, has a tremendous résumé and background, tremendous intellect, that person potentially is someone we could look at down the road to go to the Supreme Court.

**Kassop:** So there were a few who fell into that category?

**Gonzales:** Sure, I would say so.

**Kassop:** What role did Boyden Gray play in your judicial nomination process?

**Gonzales:** I am sure Tim Flanigan and David Leitch and any of the associate counsels may have had conversations with Boyden or people like Leonard Leo or Ed [Edwin, III] Meese. I think Boyden may have come to my office a couple of times with a group of people to talk about judicial candidates. Primarily they would be focused on the Supreme Court. We had a couple of meetings in my office with people like Boyden in a group, to talk about potential Supreme Court nominees. He may have given us a name or two on various circuits, but I don't remember specifically. I didn't have any official or regular contact with Boyden beyond contacts I would have with Fred Fielding or anybody else.

**Riley:** Would your office be a likely target for communications by outside groups that were interested in judicial selection? Did they come in and meet with you?

**Gonzales:** Not that often. I think they had a lot more meetings with Karl's office than with our office, but we did have a few meetings.

**Riley:** Did you have a deputy for foreign policy issues?

**Gonzales:** I just had one deputy, one person. The War on Terror created a number of legal issues, so Brad Berenson was the associate counsel tagged with that portfolio.

**Riley:** Before 9/11 was there a parallel universe within the National Security Council structure where they would have counsels who would presumably do in the foreign policy area what you were doing in—?

**Gonzales:** John Bellinger was dual hatted. He reported to Condi [Condoleezza Rice] and he reported to me. He was on my staff and was at all my morning staff meetings.

**Riley:** Do you know if that is a common occurrence to have dual hats within—Nancy is nodding yes.

**Gonzales:** OK.

**Riley:** I know it has been done sometimes.

**Gonzales:** And we did the same thing with Homeland Security, dual hatted someone on my staff.

**Kassop:** Could I pick up on John Bellinger and your interactions with him? You said he would report to you and he would be in on all of your meetings?

**Gonzales:** He was in on every staff meeting.

**Kassop:** How often were those?

**Gonzales:** Every morning.

**Kassop:** So this is at the counsel's office every morning.

**Gonzales:** Yes. He was a member of my staff and he was expected to be at the morning meetings. It made for lively debate and discussion with him and Addington.

**Riley:** Even before 9/11?

**Gonzales:** Probably. I think if you ask the lawyers they will tell you it was probably their favorite time of the day, those morning staff meetings.

**Kassop:** How many were in that morning staff meeting?

**Gonzales:** All my lawyers, 12 people.

**Riley:** Addington was in that meeting also?

**Gonzales:** Addington came to those meetings as well.

**Kassop:** Was that typical in previous administrations?

**Gonzales:** That I don't know.

**Kassop:** Was anybody from outside your office other than John in those meetings as well?

**Gonzales:** Ed McNally, who was eventually dual hatted to [Thomas] Ridge and to me.

**Riley:** Before 9/11 what does Addington care about?

**Gonzales:** Are you going to talk to David?

**Riley:** I sure hope so. Do you think he'll talk to us?

**Kassop:** Tell him how nice we are.

**Gonzales:** The President is cooperating with this, right?

**Riley:** Yes, absolutely.

**Gonzales:** Is the Vice President cooperating?

**Riley:** I saw the Vice President 18 months ago. He had been to the Miller Center two or three times and was very supportive of what we do, so I think the answer is yes.

**Gonzales:** OK, you asked me what David is focused on. David is focused on everything. Every Executive order, every speech, David would read and mark up. I was amazed. I think everyone else was amazed. I would ask him, "How do you do it?" He'd say, "I have no responsibility, I've got nothing else to do." But he would read everything. We'd get email, "This court decision in California..." It was really quite amazing. He was focused on everything.

**Riley:** Did you get crossed with him at all in these early days? Was it a nuisance to have that kind of—?

**Gonzales:** Oh, not at all. It was just his view and he recognized that. I have to tell you because I didn't read a lot of the stuff that has been written about the Bush administration until most recently and reading some of the things that have been written about David and about how things operated. David is a large guy, extremely gruff. He is very intelligent and he knows his stuff, and he's not afraid to challenge you and can be intimidating.

I thought it was helpful to hear David challenge someone on their views because if they could defend it, that told me a lot. I think David may have intimidated people, and that was not a good thing. I never felt intimidated by David. I could ignore David because I was the counsel and I was the Attorney General. I knew David would have an opinion that he would share with me, but I could ignore it. It's the same as, I think, how Bush felt about Cheney—very opinionated, not afraid to state it, but at the end of the day Bush could ignore it. And David understood that. "I have no authority here. Here's what I think, whether you like it or not."

However, I think other people probably gave David too much credit in terms of influencing—certainly influencing me. If I thought David was right, I'd agree with him, but if I thought he was

wrong I wouldn't agree with him. I think he may have influenced how others reached conclusions and delivered advice. When I asked Clay Johnson, before the election, which lawyers are working on the transition, it was Fred Fielding but David was also involved. I said, "What's David like?" Clay said, "Al, you're much more subtle. David is like a bull that will run through a brick wall." It's true. He's an unusual guy. He's a great lawyer as far as I'm concerned. But perhaps his force of personality, it may have hurt us at times. It may have intimidated others who, for whatever reason, felt he carried more influence than he did.

**Riley:** He was a representation of the Vice President?

**Gonzales:** I can't tell you that. I think people assume that when David spoke he was speaking for the Vice President. But I have no idea. David was also very careful about protecting that relationship and the prerogatives of the Vice President. He had a job to do as counsel to the Vice President and he did it. I suspect that he often represented the Vice President's views, but I don't know if true in every case.

**Kassop:** Can you recall when you disagreed with him?

**Gonzales:** Sure, one big one was in connection with the [William] Jefferson search, when the FBI [Federal Bureau of Investigation] searched Congressman Jefferson's offices. David thought that was clear error and wrong, and publicly challenged me in front of others. In the end the court sided with the Speaker and said that the search violated the Speech or Debate Clause.

Privately David was not afraid to give me his real thoughts. I think David and the Vice President were very mindful of the chain of command and the appropriate role and responsibilities of offices. The Vice President might be the last person in the Oval Office with the President, but he doesn't get to decide. I've been in meetings where the Vice President said, "I don't agree with this, but I'm not the President." They understood their roles. They would give their opinion, but in the end they understood the limits of their authority. The Vice President didn't like where the President was on affirmative action at all. But he understood, like Ted Olson, that he wasn't elected to make those decisions.

**Kassop:** The policy of contacts between the White House and the Department of Justice is very rigid and very closely adhered to, and it is supposed to be head to head. Was Addington considered part of those contacts as well? Did he have the ability to be in contact with the Justice Department, or did it have to go to you?

**Gonzales:** Yes, he would be subject to those contacts' restrictions and there would be limits on his ability to contact the Department of Justice directly.

**Kassop:** He would have to go through you?

**Gonzales:** Yes.

**Riley:** You mentioned Karl earlier. We'll try to keep this restricted to pre 9/11, there may be no difference, but what was Karl's role? Did he have a kind of roving portfolio?

**Gonzales:** He did. Karl's office was right next door to mine, so I saw him all the time. What I



liked about Karl is that he always checked in with me. If he had a question about whether or not something was lawful or ethical, he would ask me. We were right next door, so he would just ask me. I think people had this notion, a view of Karl as being everywhere, pulling all the strings. But he was very respectful of his authority, always very careful about contacts. I enjoyed working with him very much. He and I were good friends and remain good friends.

**Riley:** There was no concern about his getting out of his lane when it came to counsel business?

**Gonzales:** No, I never found that to be a problem. He always tried to be very careful. Now I don't know what he may have said privately to the President on various issues, of course, but from my dealings with him he was—I never considered Karl a problem within the White House, not at all.

**Riley:** OK. Let's give you three or four minutes to catch your breath.

[BREAK]

**Riley:** You were saying you had a story about Cheney and [Donald] Rumsfeld.

**Gonzales:** When Andy Card left, we had a dinner for him and Cheney and Rumsfeld, this is a small group at this dinner. Cheney and Rumsfeld were kidding each other about who had the most disastrous trip under their supervision, because one of them would travel with [Gerald] Ford whenever he traveled. Either the Chief of Staff or the Deputy Chief of Staff would travel as part of the roles these men held. They were telling this story where Ford goes out to California and he's speaking at a hotel. Of course, by this time Ford has the reputation, rightly or wrongly, of being a klutz.

They're leaving this speech and riding down in a freight elevator that opens up in the middle and somehow it hits Ford on the forehead. He's got this bruise, and they're like, "Oh, my gosh. The President is going to step out with this bruise and people are going to say he fell again and hurt himself, clumsy old man." So they're fretting, "What are we going to do about this?"

Finally they get some makeup or something. They're still worried about it. But anyway he steps out of the hotel and that's when the woman fires a shot at him. It wasn't [Lynette] Squeaky Fromme.

**Riley:** There was another one, Sarah Jane Moore.

**Gonzales:** I think so. The point is, no one cared at all about what he looked like, they whisked him away. But anyway, Rumsfeld was saying one time they were somewhere on the motorcade and a car full of teenagers crashed into the limo in front of them and the President's car hit the car in front. I can't even imagine that happening.

**Kassop:** Didn't a court case come out of that, and there was a question of whether or not the

President could be deposed or—I think there was a court case, some liability kind of thing.

**Riley:** It was [Richard] Nixon.

**Kassop:** But there was a Ford case as well.

**Gonzales:** But to hear those guys, Rumsfeld and Cheney, tell stories was just fascinating.

**Riley:** I want to ask you about the Presidential Records Act. You mentioned at the beginning that you'd prepared and distributed memos about Presidential records. I'm assuming that was just the routine stuff about "everything has to be preserved."

**Gonzales:** Exactly.

**Riley:** In that regard were there any special instructions about keeping meeting notes or diaries or anything like that?

**Gonzales:** I can't remember whether all of the specifics of the guidance that we gave, both in writing and orally, included that.

**Riley:** One of the things we're always curious about is whether the paper record is likely to be as elaborate as we would like it to be.

**Gonzales:** What I would worry about as a scholar and historian is that as people become more and more concerned about investigations and discovery, more and more is going to be oral, and there will be insufficient record of some of the decision making within the White House. Certainly we worried, particularly once we lost control of the Congress, that there would be investigations and we'd get into fights about the disclosure of internal communications and advice for the President. I would worry about that.

**Riley:** That's part of why we're sitting here today. It's not a perfect fix, but it is a partial fix.

**Kassop:** I know the Clinton administration certainly bore the brunt of that, and consequently there were all these comments from the counsels during the time of the Clinton administration that they just stopped taking notes.

**Gonzales:** Yes, it was ridiculous. Congressman [Danny Lee] Burton started sending a subpoena a day. You can't operate in that kind of environment.

**Kassop:** How did that affect your ability to do the necessary work if you weren't able to keep notes?

**Gonzales:** You have to have a good memory. I took very few notes. Others may have taken notes, but I didn't take notes.

**Kassop:** Previous counsels had warned you about this?

**Gonzales:** Sure, but this is something we also worried about in Texas. Bush did not have email in Texas, did not have email in the White House for that reason. It was something we thought

about.

I was surprised Obama has email. If I'm the counsel I'm not sure I could advise that of a President, because you don't know who is going to send something to the President that nobody really wants him to see. It's not right, it's not good that he sees a document, but there you are.

**Kassop:** I think it is very circumscribed, few people can get through.

**Gonzales:** You hope that's true, but I would worry about it. The President took our advice that it would be better for him not to have it. That was true even when he was Governor.

**Riley:** You did not keep a diary?

**Gonzales:** No.

**Riley:** Do you know if the President kept a diary?

**Gonzales:** I have a recollection that he might have, but I guess we'll know in a few weeks.

**Kassop:** Did he ever ask your advice as to whether he should or could keep a diary?

**Gonzales:** I don't believe so.

**Kassop:** When President Reagan kept a diary it actually did become the subject of—

**Gonzales:** Yes.

**Riley:** President Clinton figured a way around it, hiding tapes from Taylor Branch in his sock drawer. Taylor is on our advisory committee for the Clinton project, and we didn't know about that for about three years.

**Gonzales:** Did he know about it?

**Riley:** Absolutely, because he was the one doing the interview, that's where the book came from. The lengths people go to keep records when they're not supposed to keep records are pretty extraordinary.

The core question is about the decisions on the Reagan papers.

**Gonzales:** And the Executive order.

**Riley:** How that initially presents itself to you. Who is giving you advice on this and how is your decision-making process—

**Gonzales:** Sometimes I'm asked, "Are there things you regret, mistakes you made?" This would be one because it was a self-inflicted wound. This was not about protecting the President's father or aides who had served with the President's father. This was because the Reagan documents were about to be subject to release, and we wanted to implement an orderly process consistent with the law but also consistent with the President's prerogatives in the Constitution to assert

privilege in certain circumstances. That was the objective.

Bush didn't order it. In fact, one Sunday the *Washington Post* ran a particularly stinging editorial condemning the Executive order, and he called me and said, "Why are we doing this? What is this about?"

I said, "This is just a process we wanted to put in place. Your Executive order cannot override the Presidential Records Act, but neither can the Presidential Records Act take away an executive privilege you have under the Constitution. This is to put in place a process." In hindsight it was probably more trouble than it was worth for the President, since he never asked for it and I think he probably felt it wasn't good for him, that it would make historians mad who are going to write his legacy. In hindsight I wish we'd never done it.

**Riley:** Who was doing all of the legwork on this, because from the outside it is a more complicated framework than existed before?

**Gonzales:** Brett Kavanaugh was the lead associate counsel who probably did most of the drafting, and of course it was signed off on by the Department of Justice. This is perfectly lawful according to DOJ, perfectly consistent with the Presidential Records Act, and preserves the constitutional executive privilege that can be asserted by a President or former President. But in terms of driving the process, the best I can remember is this was just to put in place an orderly process for the release of these documents.

Brett had the lead in drafting the Executive order, he was certainly involved, and of course OLC [Office of Legal Counsel] and the Department of Justice were involved, and I am sure I looked at it. But it was perfectly innocent. President Bush didn't know anything about this, it was just to put in place a better process. In hindsight that would be one of the things that I'd say was not worth it.

**Kassop:** But what was not orderly about the process that was already in place?

**Gonzales:** The timing in terms of the number of days and the actual process of the assertion of privilege. The recognition that the former Vice President has a role to play and when his authority could be exercised and how. We just wanted to better "codify," in quotation marks, a process of how this would actually work.

**Kassop:** But there had already been Executive orders from the Reagan administration that did just that.

**Gonzales:** Yes, but we were not happy with that order. We thought it was incomplete, and we thought there needed to be additional provisions. This was not to protect anybody, far from it. This was just trying to put in place a process where these documents could be released.

**Kassop:** The additional provisions were also related to the Vice President, who was not mentioned in the Executive order from the Reagan administration, I believe.

**Gonzales:** Yes. That would be another reason why, in hindsight, this is all again about putting in place a process that I think cost the President more than we actually got.

**Kassop:** Do you think it was Brett Kavanaugh who pointed this out initially, that this needed to be done? In other words, who determined that there was something deficient about the Executive order from Reagan?

**Gonzales:** I am not sure the order was the product of just one person.

**Riley:** I'm just raising the possibility that it is the Reagan Library that has the action on making this original stuff available at this point. So maybe there were contacts between—

**Gonzales:** We did have communication and we also, that summer, met several times with a group of historians and scholars. I think they were some kind of committee that we met with and we tried to explain to them what we were doing. They would tell us, "We're going to sue you," and we'd say OK, but let us try to explain.

Again, in hindsight this is one that wasn't worth it.

**Riley:** Barbara, do you want to dig into some of the judicial selection stuff again?

**Perry:** Since we're in the spring and summer of '01, can you talk about the 11 nominees for the circuit courts? You mentioned Miguel Estrada, but what were your thoughts about those 11 and criteria for choosing them, and then the President's rollout in the public sphere?

**Gonzales:** We wanted to get as many as we could nominated as quickly as we could. Initially the hope was that we'd have a number far greater than 11.

People like Peter Keisler for the Fourth Circuit and [Charles Christopher] Cox in California for the Ninth Circuit, but again we were dealing with home-state Senators who were Democrats and they were saying, "No, we're not going to support them." We knew that with two negative blue slips they might get a hearing but they wouldn't get out of committee, so we felt we would wait and continue to consult with the home-state Senators. There was some conversation about whether or not to go with people like Barrington Parker and Roger Gregory.

The feeling was that it would be helpful. If we're operating from a blank slate it is possible President Bush might not have nominated them. We knew they would be very capable jurists, but we also knew there was some history, especially with respect to Roger Gregory. It might be helpful, as an accommodation to the Democrats, to renominate someone like Roger Gregory.

I can't tell you the number of times we were walking to the Oval Office with a slate of candidates for the President to nominate where he would look at it and say, "There are no women here" or "They're all white here." President Bush really cared about diversity. What we liked about this group was that it was a diverse group with Miguel Estrada, Barrington Parker, Roger Gregory, and I think there were two or three women in the group. We felt it was an all-star group.

**Perry:** Was your colleague from Texas, Priscilla Owen, in that original group?

**Gonzales:** Yes, she was, and I think a woman from the Fifth Circuit.

**Perry:** Edith Clement?

**Gonzales:** Yes, and I think Deborah Cook from Ohio, so we felt very comfortable. This was a great lineup and would be supported. Of course many of them didn't get hearings for over a year. Despite our efforts we were not as successful as we'd hoped in getting judges appointed to the circuit courts.

**Dinan:** Are there discussions going on with key Senators—

**Gonzales:** Of course.

**Dinan:** Is this in the nature of "Can we work out a deal here? Can we get this?" How does one negotiate something like this? How does one discuss it?

**Gonzales:** It is very much locally. I can't tell you the amount of time I spent on the phone and going out to the Hill and meeting with home-state Senators. I did it a lot. And I would have a lot of conversations with Senator [Orrin] Hatch, who would give me general advice about strategies or he would tell me, "This Senator really thinks this way and really wants you to do this." But it was a lot of one-on-one. I would go up to the Hill by myself, hopefully to encourage a Senator to meet with me one-on-one without a staff. I always felt that was more conducive to making some progress on some of these difficult issues.

Occasionally they would want one particular person and we would have to say, No, this is the problem with that person. Like in New York State, [Charles] Schumer would say, "I'll let you have these five, but I get to go for the sixth." This was a system put in place by [Daniel Patrick] Moynihan. That's how Sonia Sotomayor received the appointment from the President's father, because of that deal. Some states like California, [Barbara] Boxer and [Dianne] Feinstein established a commission, six people, three Republicans and three Democrats, and if a person could come out of that commission with at least four votes, no matter who it was, Boxer and Feinstein would support them.

So home-state Senators each had their own way of doing it. In Texas, we had a commission set up by private individuals. Every place was different. I was always going up to the Hill, always on the phone, talking to them about supporting our nominees. With respect to the 11 nominated by the President in May of 2001, we had worked all those things out. We knew they would receive positive blue slips, which meant they would get a hearing at the Judiciary Committee. After that we didn't know what would happen.

**Dinan:** Did you get credit for the Gregory nomination?

**Gonzales:** If you ask the White House, I think we'd probably say no, we didn't get credit. We couldn't get certain positions like the Sixth Circuit. The Sixth Circuit had four vacancies, and [Carl] Levin and [Deborah] Stabenow refused to allow any more nominees to move because Senator Levin had a sister-in-law who had been blocked under Clinton and he was mad. I had conversations with him where he wanted President Bush to nominate Helene White first to the circuit. He kept insisting on the circuit. I remember one time calling Helene White and saying, "Would you take a district court judgeship?" and she said yes. But that didn't do me any good. So that didn't happen. You get frustrated.

The same thing with Maryland. The Fourth Circuit seat for Maryland sat vacant the entire first term because of [Paul] Sarbanes and [Barbara] Mikulski. They didn't like the people we were proposing; they weren't Marylanders. Even though we had someone who had served in the Maryland National Guard and was licensed in Maryland, because they practiced in Washington, D.C., they weren't true Marylanders. They rejected everybody we presented. For four years the seat sat empty because of that disagreement between the White House and Senators. They had that power and with that kind of power you have to make accommodations. We were much more willing to make accommodations at the district court level than at the circuit court level, and for that reason seats sat vacant for years.

**Dinan:** You mentioned President Bush's level of involvement. This is something he really did care about to a greater extent perhaps than President Clinton did. Would he ever get involved in negotiations with the Senators? How far would he get involved?

**Gonzales:** If he were meeting with a Senator who was holding us up, I might encourage him to say something. He and I would certainly talk about it and I would tell him what I just told you and he would harrumph. He didn't like it. He may have had some conversations. I think in 2003 the President gave a speech in the Rose Garden or the East Room, where he laid out a proposal that involved all three branches of government to try and solve this vacancy process where he would ask judges to give notice a year in advance of their retirement or of leaving the bench, so we would know a year ahead that there was going to be a vacancy. Then the President would make a nomination within 180 days, and the Senate Judiciary Committee would give a hearing within 180 days, and then that person would get a floor vote within 180 days of all that. The President laid that out and no one cared, no one paid attention to it.

He had some conversations with Senators when he laid that out. Generally he let me have the conversations with Senators about lower court judges.

**Dinan:** So particularly home-state Senators are crucial for the district and even for the circuit as you mentioned.

**Gonzales:** Yes.

**Dinan:** Did things did change in 2003 when the Republicans reclaimed the Senate, that it doesn't really so much matter—?

**Gonzales:** Home-state Senators have that prerogative. You may be in control of the Senate Judiciary Committee now, but in the future you may not. You want that prerogative protected and Senators do that. Every time there is a new administration or a new chairman, there is a conversation between the chairman of the Judiciary Committee and the new White House counsel about the rules of the road for the Judiciary Committee. "If there are two negative blue slips, is my guy going to get a hearing? If it is only one, is my nominee going to get a hearing? What if nobody returns a blue slip?"

So there is an understanding between the White House and the Judiciary Committee about the procedures in place with respect to blue slips and how much weight a negative blue slip is going to carry.

**Dinan:** Did those understandings change during the course of 2001 and 2003?

**Gonzales:** I can't say specifically they changed at that time, but they did change over time. Some people would refer to the [Joseph] Biden rule or whatever the rule was.

**Perry:** I think it was about this time that Chief Justice [William] Rehnquist in his year-end report spoke about the crisis of the vacancies.

**Gonzales:** That may have part of the impetus of what the President wrote down. We'd had nominees sitting for so long without even a hearing, including some of those 11 that we thought were stellar candidates and at least deserved a hearing and an up-or-down vote.

**Riley:** Congressional Relations is involved in these negotiations also?

**Gonzales:** They would always be apprised of the conversations, but I generally went up to the Hill and got on the phone without them. I did it on my own. I don't know how Harriet or Fred dealt with it.

**Dinan:** Were there any real successes there, where you hung up the phone and said, "I helped to facilitate this"?

**Gonzales:** Sure, when we caved. [*laughter*] More often than not we were frustrated. This was even true with Republican Senators from time to time. But some of the more memorable meetings—with Senator [John] Edwards about the logjam we had in North Carolina, Senator [Lindsey] Graham in South Carolina we had issues with. I could go up and down the list. Senator [Arlen] Specter of Pennsylvania. Gosh, one time he really pushed us for the President to nominate someone to the district court bench. We did our vetting, and this was a person who had actively campaigned against Bush and for [Albert, Jr.] Gore. He was a ward leader or something for Gore. I think the President may have gone ahead and nominated him, but I had to call Senator Specter and say, "Don't ever do that again. The President will consider Democrats, but not someone who has actively campaigned against him. It's just not right."

**Riley:** I was looking back at the timeline that first year to see if there were other things that you may have had a piece of. Let me just throw these out. One was the creation of the Office of Faith-Based Initiatives.

**Gonzales:** No recollection of serious involvement. We would look at issues arising with the creation of any new office. And I am confident DOJ advised the office about the limits under the Constitution.

**Riley:** No involvement?

**Gonzales:** If I did it was minimal and I don't remember it.

**Riley:** Very good. You said that in your own relationship with Bush you had a shared faith.

**Gonzales:** I don't think I said that.



**Riley:** That there was a shared sympathy.

**Gonzales:** I didn't say that either.

**Riley:** Let me try a question rather than an assertion. Did you and the President have conversations about your faith?

**Gonzales:** I can't recall ever having a conversation with the President about faith. I believe him to be a man of faith, based on everything I'd heard and what I observed, the way he treated people, and the policies he championed, and I consider myself a man of faith. Maybe we just accepted it. I don't recall us ever talking about it.

**Riley:** I connected dots then. The spy-plane incident with China?

**Gonzales:** I had very little to do with that. I don't recall ever giving advice or having to look at any legal issues. This was primarily dealt with through the National Security Council. If a meeting occurred in the Situation Room involving the principals and/or the President, I was normally at that meeting. I always sat in the back, but I generally—I don't know what I don't know. There may have been meetings I'm not aware of. To the extent that there were meetings about that in the Situation Room I would have been in those meetings but as an observer.

**Riley:** The stem cell decision, did you have a piece of that?

**Gonzales:** A little bit of that although that was primarily driven out of the policy shop. I think Jay Lefkowitz had the lead on the development of the policy. We looked at some legal issues, but I wouldn't say we had a large role in that.

**Dinan:** There was some talk that there be a federalism Executive order issued at the very beginning.

**Gonzales:** Yes. That died because of 9/11 when all of a sudden everyone was expecting the federal government to do everything. The thought was that we would delay it. But you're right, there was some talk about that and some work on that. Noel Francisco on my staff had the responsibility for it. But after 9/11 everybody's mindset changed. It just wasn't the right time to push it.

**Riley:** Was there anything else before 9/11 that we're missing?

**Gonzales:** It's an interesting question. I'm often asked, "What did you do before 9/11?" and I don't remember. We were very busy, a lot of time was spent on judicial selection, setting that up.

**Riley:** Is the person you're seeing in the Oval Office the same person you worked with in Texas?

**Gonzales:** Not a bit of difference. No change at all. In Texas I never gave a second thought to going by the Governor's office in the afternoon, sitting down with him on the couch just talking about politics, policy, baseball. But you don't do that with the President. His time is so valuable. Andy Card used to say, "If you need to see the President, you get to see the President. If you want to see the President, you don't get to see the President." In that sense it was different. I

knew how valuable his time was.

I would have what I call quiet conversations. I would normally go down to the Oval Office between 7:00 and 7:30 in the morning. I knew then he typically wouldn't have any meetings or phone calls. That was probably his only free time of the day. But I knew I could catch him. If I had something I needed to talk to him about, that's when I would talk to him. Most of the time those meetings were me and him, one-on-one. Occasionally Andy would come in to see what was going on, but that was a time that I had most of my conversations with the President and they would cover a wide variety of issues.

But to answer your question, no, I didn't see a change in him. I saw him struggle with the weight of the issues, but as the man, I didn't see a change.

**Riley:** Any particular things that frustrated him during that first—?

**Gonzales:** I think dealing with Congress was extremely frustrating. I think he had been so successful dealing with Bullock and Laney in Texas, maybe we were just—I can only speak for myself, maybe I was naïve in thinking we could be more successful.

**Perry:** Weren't you surprised by his working seemingly so closely with Senator [Edward M.] Kennedy on No Child Left Behind?

**Gonzales:** That seemed so natural, that's the game plan. No, I wasn't surprised by that at all.

**Perry:** Because that seemed to be the Texas model?

**Gonzales:** Exactly. All that changed after 9/11. It's funny, it's kind of ironic. For a moment in time, of course, the country was united. Then the policies he implemented and his directives were viewed as controversial. I think that was responsible for a lot of animosity that developed between Congress and the White House.

**Kassop:** Post 9/11 you and your associates were consumed with dealing with the policies. But there were ongoing normal activities that a counsel's office was expected to do such as judicial nominations and ethics, looking at Executive orders. How did you structure the office to accommodate that new national security—?

**Gonzales:** It didn't change other than we gave Brad Berenson the portfolio of terrorism-related issues. I probably spent most of my personal time on the terrorism issues and the deputy, Tim Flanigan or David Leitch, supervised the rest of it. But in terms of my personal time, I felt like I was in meetings all day. Either meetings with lawyers or meetings with policy makers giving advice on the law. That's how I would describe my life after 9/11.

**Kassop:** My question was also regarding the structure of the office.

**Gonzales:** I'm not sure that there was a change in the structure of the office other than of course—We already had John Bellinger in place. We gave Brad the portfolio of other terrorism-related issues, and when we set up the Homeland Security Office we brought in Ed McNally, so he was responsible for that.

**Kassop:** Would you say the other associate counsels were just doing normal counsel's office business?

**Gonzales:** Yes, by and large. They were doing other normal counsel business, which isn't to say that they weren't from time to time also tasked with issues related to the War on Terror. But I can't identify for you specifically instances when that occurred.

**Dinan:** As you're coming into office in these first few months, discussion about pardon power is much in the news because of the Clinton instances.

**Gonzales:** [Marc] Rich.

**Dinan:** Which leads to the question of how the pardon power process was set up in the Bush administration. Who would be involved in those decisions, was there any particular direction from the President? Direction from you? Direction from others of how we're going to go about handling pardon requests?

**Gonzales:** I had a great deal of experience with Bush and pardons in Texas. We had established in Texas criteria he considered important in making the decision whether to grant clemency. He and I talked about it during the transition, and those factors remained basically the same for him.

I had a conversation with the DOJ pardon attorney early on and said, "These are the facts that will be important to the President. You've got to run your own shop and do what you need to do, but I'm telling you that this is what the President is going to consider when granting clemency." The pardon attorney would evaluate a pardon request, a clemency request. It would go up to the Deputy Attorney General and then from the Department of Justice there would be a recommendation as to the clemency request that would always come over to the counsel's office and we would evaluate it.

Occasionally I would have conversations with the President like we did in Texas if there was a particularly difficult, interesting, or unique case. I might let him know, "Mr. President, this is on my desk and I'm kind of wrestling with this." I would just throw it out there and see what his reaction was. But in most cases I would present a list of requests and my recommendations, and generally he would accept those recommendations. Occasionally we would have conversations about a particular case. He might ask me a question about something. If I didn't have the answer, I'd go back to the pardon attorney and try and get the answer from him. That's the process we used.

**Dinan:** What kind of criteria were consistent through Texas and also here?

**Gonzales:** What are the reasons the person wants the pardon? What is the nature of the offense? What is the recommendation of the prosecuting attorney, of the judge in the case? How long has it been since the offense occurred? What has the person done after the conviction? Have they gone on, been a productive star in the community? Things of that nature.

I knew, for example, the President would never grant a pardon to a person who had committed a crime using a dangerous weapon. If there was an offense against a woman, a child, the person would never get a pardon. If it involved hard drugs. I think that may have shifted over time. If

you used cocaine once, maybe the President was OK with it. Marijuana in college, generally that was going to be OK, but if you were a dealer or something like that you're not going to get a pardon.

Bush and I talked about this back in Texas, so I had a pretty good idea of the kinds of cases he would look on favorably in making a decision.

**Dinan:** Were any of these difficult for you in these times that you really struggled with as part of the decision?

**Gonzales:** No, not personally because I had a sense of what the President was looking for. I tried not to assert my own views or opinions about whether or not someone was worthy. I would just look at the facts of a particular application and make a recommendation based on those facts.

**Riley:** Can you tell us what happened to you on 9/11?

**Gonzales:** I was traveling on 9/11. I flew to Norfolk, Virginia, with [Robert] Moose Cobb, who was the ethics advisor on my staff, to address a conference of government ethics officials. Flew out of Dulles [Airport] about an hour before American Airlines Flight 77, the one that crashed into the Pentagon. I often wonder whether I saw the hijackers in the terminal that day, I don't know.

I landed in Norfolk and went to the hotel where I was speaking. By that time the first plane had hit. My assistant back at the White House called me and said, "Get to a television." I saw the reports. No one knew what to think. So I gave my speech. When I finished, I got back to the television and the second plane had hit, so I knew we had a problem. I'm on the phone with my staff trying to understand what has happened and I have to get home.

Moose and I went to the airport. By that time they'd closed all air traffic so we were stuck. I remember everyone standing around in the terminal watching the televisions and it's crazy. The telephone service, even for someone like me, is really spotty and I'm having a hard time getting information. My deputy, Tim Flanigan, has gone down to the Situation Room. At some point I'm on the phone and Libby [Camp], my assistant, says, "I've got to get out of here, we're being evacuated." So I went for a period of time without really having much information. Didn't know how to get home. Moose and I thought about renting a car. We ran into a Navy officer and she said, "I can take you to Norfolk Naval Station. Maybe they can help you there."

She drove us to Norfolk Naval Station and of course it was being transitioned and they were putting up barricades and everybody had machine guns. They took us to the commanding officer. I identified myself and said, "Can you help us get back to Washington?" We spent a couple of hours waiting to get clearance to fly back. They said, "Maybe we can fly you back in a Navy helicopter." I said, "Whatever you can do would be great."

**Riley:** How did you make the connection with the naval officer?

**Gonzales:** We went by the USO [United Service Organizations] office in the airport. It was really crazy.

**Riley:** But they didn't recognize you?

**Gonzales:** No, I don't think so. That's not my recollection. No one knew me back then. I was just a staffer. So we're waiting there. Now the towers had fallen. There were reports that the State Department had been hit, the Pentagon had been hit, we don't know what's going on.

I remember at one point the commander asked me, "If we can get the chopper up, where do you want to go?" I said, "Get me as close as you can to the White House." He said, "We'll land you on the South Lawn." Immediately I said, "No, nobody but the President lands on the South Lawn," and I was worried about getting too close to the White House and being shot down.

Finally early afternoon we got word we had clearance. We were going to fly to Andrews AFB [Air Force Base]. So we got in a Navy helicopter and flew from Norfolk to Andrews and there were some white vans waiting. I remember we went by the Capitol and it was deserted other than law enforcement. It was weird.

Got to the White House. Now there are four stations to get into the White House. It was hard enough before getting in the White House, now it was even more difficult. They weren't going to let Moose in because he had not been cleared, and I had to say he was on my staff. Finally they let Moose and me in. I went up to my office. I think Libby may have been let back in the building. She said, "Tim is downstairs in the Situation Room." I think I went downstairs.

Then I went to the bunker where Cheney and the other senior staff were. I spent the rest of the afternoon there, in my office and in the Sit [Situation] Room. Of course watching as we tried to figure out how to get the President back and the decisions involved in making that happen. Sometime late in the evening, I ran into Karen Hughes, and she and I went down to the Oval Office because the President was returning in Marine One. Karen and I were standing outside the Oval Office when Marine One landed. I remember him coming up to us. Of course Karen and I have known him from his days in Texas. I don't know what we said, something like "Welcome home," or "I'm glad you're home, Mr. President."

He didn't say anything. He just looked at us and walked right by us and walked into the Oval Office. He was being readied to address the nation that night. We went into his dining room behind the Oval Office, and it was me and Karen and Condi and Ari [Fleischer] and Andy Card and the President. We started talking about what had happened and what were we going to do about it and what he was going to say to the nation that night.

I probably stayed there until about midnight. My car was at Dulles and all cars in that parking lot had been impounded because apparently one of the hijackers' cars was in that lot and nobody could take their car out of the lot, so for a few days I didn't have my car. Andy immediately assigned government cars to most of the senior staff. But Tim took me home at midnight and we were back at work at six o'clock the next morning. That was my day.

**Riley:** Were you able to get in touch with your family at all?

**Gonzales:** This is embarrassing to say, but it didn't even occur to me to call my wife that morning. All she knew was that I had left Dulles. She knew a plane had left Dulles and crashed into the Pentagon. She didn't know where I was going. But fortunately she called Libby, who

told her I was OK. But my wife tells the story that early in the morning she went to the school to pull our sons out. The principal begged her, “Please don’t pull your children out. Your husband is the White House counsel, and if you’re pulling your children out, what are the other parents going to think?”

Becky said, “I don’t care, I’m pulling my children out.” She took them to a neighbor’s house with a basement. This is in Vienna. The kids stayed in the basement and practiced maneuvers, putting things over their heads in case there was an attack on the house. But to answer your question, I didn’t talk to my wife until that afternoon. I never called her from Norfolk. It didn’t even occur to me.

**Dinan:** At what point did legal counsel business and decisions start pressing themselves upon you?

**Gonzales:** Tim was in the Situation Room answering those questions as they came up. Lawyers from the Department of Justice were available for answering questions as well. Tim was there to facilitate the questions and answers to make sure the right people were being asked the right questions. They relocated my staff into some commercial buildings in downtown. As far as I was told, they were dealing with questions immediately as I waited impatiently in Norfolk to get home.

**Kassop:** Certainly even just 25th Amendment questions.

**Gonzales:** Sure. One of the things we did identify very quickly, OK, where is everyone in the line of succession? Are they accounted for? That was something we worried about as well.

**Kassop:** And there was the Congress too?

**Gonzales:** Absolutely, yes. That was my day.

**Riley:** The next day?

**Gonzales:** The next day I got in early. Tim and I had a ritual where we would read the newspapers. He got in early too. The first thing we would do in the morning is read all the newspapers. I remember the headlines. We began trying to come up with a list of things we had to deal with. Very quickly this routine developed where in the morning the Principals Committee would meet, which would be all the NSC [National Security Council] without the President and then in the afternoon the National Security Council would meet. That began fairly quickly.

I’m not sure how soon it happened after 9/11, but the senior staff started receiving an intelligence briefing. Someone from the CIA [Central Intelligence Agency] would come over and provide a briefing, which I’m assuming was part of the briefing the President would receive. Also, fairly quickly, we started having regular meetings of the Domestic Consequences Group chaired by Josh Bolten. That was to respond to the situation primarily in New York. We worried about getting the stock market open in a week. That effort was successful primarily because of the cooperation of the Treasury, the SEC [Securities and Exchange Commission], and some of the major players, brokerage houses.

We had to deal with what industries needed help. There was genuine concern about the possible bankruptcy of a couple of airlines in the beginning. What also was kind of interesting is that fairly quickly—We all knew that this was an act of war, but Bush wanted to call it a war. I remember after one of the early meetings telling him, “We need to be careful about saying it is a war because first of all, there has not been a declaration of war. Second, if it is a war and if we’re at war, it is going to trigger a host of domestic statutes and a host of international treaty obligations. It may vitiate or affect contractual obligations between third parties, whether insurance coverage, for example, is applicable or not.”

He said, “I don’t care what you lawyers call it, I’m going to say it is a war.” I never raised that with him again.

**Riley:** You’re getting your information on this from your staff? Are they feeding you this material?

**Gonzales:** Sure.

**Riley:** Is there anyone on your staff who becomes more prominent as a result of the change, people who have portfolios in national security areas or anything?

**Gonzales:** No, I wouldn’t say more prominent. Bellinger has experience in this area; Addington has experience in this area, having served as general counsel to the Secretary of Defense. Berenson was given this portfolio, and Tim Flanigan.

**Riley:** Was there anything in your background—

**Gonzales:** Absolutely not.

**Riley:** I thought not.

**Gonzales:** I had heard of the Geneva Conventions, but we didn’t deal with it on the Supreme Court or in my commercial practice in Houston. So reading some of these media stories, the notion that I’m there making all these decisions is untrue. I needed the help of these other lawyers and of course lawyers at the Departments of Justice, State, Treasury, and Defense. I wasn’t an expert on the laws of war.

**Riley:** Is it possible for you to talk a little bit about the major issues presenting themselves to you in the first couple of days after? You’ve touched on this by saying you were concerned about the stock market and so forth. But at some point the authorization for the use of military force comes up and I want to hear that. Preliminary to that, were there things you were grappling with, trying to calibrate or regain a sense of equilibrium in a new environment?

**Gonzales:** I think fairly quickly we were confronted with the question, “What rules apply here, what can we do?” What can we do domestically and what are we going to do to respond to the damages, say, in New York, and then what are we going to do to punish those who engage in this kind of conduct? The question posed to lawyers was, “What rules apply?”

Even though the President didn’t make his decision about the Geneva Convention until February

the following year, he and I had conversations that fall where I told him, “This is an issue we have to answer. It is going to have tremendous implications for a lot of things. There is not agreement about the right way forward.” So fairly quickly we realized we had to deal with this.

**Kassop:** Can you talk a little bit about the level of disagreement? Without necessarily identifying people—?

**Gonzales:** Sure.

**Kassop:** What positions had formed? What was the relative strength of each position to the others?

**Gonzales:** On the issue of the application of Geneva?

**Kassop:** Sure, let’s start with that.

**Gonzales:** The Department of Justice believed that as a matter of law the Geneva Conventions did not apply to al-Qaeda because they weren’t signatory parties.

**Kassop:** When you say Department of Justice, can you be more specific?

**Gonzales:** The Attorney General and OLC. I can’t say the head of OLC but that was certainly John Yoo’s position on behalf of OLC, and that was also the position of the Attorney General.

I can’t recall with certainty, but I suspect that’s where the Vice President was. With respect to the Taliban, there was disagreement about whether the Geneva Conventions applied because they were the de facto government of Afghanistan, which was a signatory party and therefore one could argue that it does apply. But the Department made the argument that under Article 4 of the Geneva Conventions you could argue the President could determine that they had forfeited the right to prisoner-of-war protections because they didn’t follow the laws of war. They didn’t carry arms openly. They didn’t operate under a command structure, and they didn’t wear uniforms with insignia. Therefore they would not be entitled to prisoner-of-war protections.

The State Department initially took the position that as a matter of policy and law, the Geneva Conventions applied. I think over a period of time after a series of discussions, they backed off the position with respect to al-Qaeda and recognized as a legal matter that Geneva should not apply and agreed that it would not apply. I’m not sure they ever backed off on the Taliban. But certainly State and I think the Joint Chiefs believed that there was a lot at stake here for the United States because the United States had more of its soldiers overseas than any other country. We were more at risk. It was more likely that our soldiers would be treated consistent with the Geneva Conventions if we were applying the Geneva Conventions to the people we captured.

The concerns of the military were important to the President. They carried weight with him. He worried about that. We had a series of meetings among the lawyers of the various agencies to talk about these issues, but also Principals Committee meetings. Of course the President heard directly from the principals about their positions and finally made the final decision I think in February of 2002.



The discussions, to my recollection, were always respectful. They were passionate. They were strong. The President heard them and ultimately made the decision he did because he believed they would provide him the flexibility to gather information that he thought was absolutely necessary to protect our country. It really bothered him that terrorists had been in this country planning this attack for some time and we didn't know about it. He realized we had to be better at collecting information. He wanted the flexibility to do that.

**Kassop:** What about the role of John Bellinger?

**Gonzales:** John's role in this particular period was fairly limited in direct dealings with me. I am sure he was very busy working within the NSC process. I think John would have shared the concerns of the State Department that the Geneva Conventions, even if they didn't apply as a matter of law, should be applied as a matter of policy. I think there was also the question of whether or not under customary international law had these obligations under the Geneva Conventions now become binding upon the United States. I think some in the State Department and maybe in Defense argued that. John may have argued that as well, I just don't remember.

**Kassop:** Was he part of those discussions in a vigorous way?

**Gonzales:** I would not say John was part of the discussions in a vigorous way, no, but he had opportunities to provide input.

**Kassop:** Is there any reason why not? That would have been part of his portfolio.

**Gonzales:** I think the reason he wouldn't have been more involved is because most of these discussions involved the principals or involved the general counsel of Defense, the general counsel at State, the general counsel at Treasury, senior lawyers from DOJ, and the White House counsel. While John certainly had the expertise and in hindsight his contribution might have been helpful, the view was that we had the right people in the room making these arguments. I would be surprised to learn that John's views were not reflected in some way by the arguments made by State or by Defense.

**Riley:** What about John Yoo's role at OLC? In some ways this is a very junior person who is thrust into what seems, at least in most of the accounts, to be a very prominent role in piecing together the legal logic. Had you known John Yoo before?

**Gonzales:** No.

**Riley:** Did you have any associations with him before 9/11?

**Gonzales:** I suspect so, but nothing comes to mind. The White House counsel's office dealt primarily with the Department of Justice through OLC. A legal question came up, we would pick up the phone and call OLC.

**Riley:** Sure. You call OLC. You normally would call the director?

**Gonzales:** Not necessarily. Even after John left, I would pick up the phone and call [John] Pat Philbin, for example, depending on the issue. I wouldn't call the career people, only the political

appointees.

**Riley:** Was there ever any concern that there was a deficiency in the staffing arrangement at OLC in a critical time?

**Gonzales:** In hindsight, I have to wonder how much John was checking with, say, Jay Bybee. It is certainly my perception that John was viewed as the expert on these legal issues and others at DOJ deferred to him. Even if I called Jay Bybee, he would turn to John and say, “John, what do you think?” Maybe that’s not accurate, I just assume so. But that was certainly my belief, that John was the guy who would be answering these questions for the Department of Justice. I know the IG [Inspector General] has looked at this and concluded that there were insufficient safeguards, improperly staffed, things of that nature. But the President often decided who could have access to classified information, so with due respect to the IG, his conclusion on appropriate staffing levels is not dispositive in the face of a Presidential decision.

I don’t know whether we worried about the staffing arrangement at OLC. We had these issues coming at us, and we needed answers. John was the guy designated by the Attorney General to work in OLC and provide these answers.

**Riley:** What can you tell us about John? You gave us your character portraits of Addington and others.

**Gonzales:** I didn’t work as much with John Yoo as I did with David Addington. John is a very confident young man, confident in his views and his opinions, personal and legal. I laugh when I read suggestions that the White House put pressure on John Yoo to give the opinion that they wanted. No one is going to pressure John Yoo to give any opinion he doesn’t think is the right opinion. It’s just not his nature.

John had a very expansive view of Presidential power, particularly in a time of war, no question about it. Is that the reason we went to John Yoo? There was no one else to go to at Justice, he was the guy assigned within DOJ to address these questions. If they had given us someone else, we’d have gone to that person.

**Riley:** He had a demonstrated portfolio on the questions.

**Gonzales:** Exactly. He was certainly more expert than I was. If John gave me an opinion, that would carry a great deal of weight. Ultimately OLC provided, in my judgment, the definitive legal position for the executive branch. Even if there was a disagreement between State, Justice, Defense, there has to be one position. I couldn’t go to the President and say, “Mr. President, State says you can’t do this, Defense says you can only do it this way, and Justice says you can do it.”

I felt it was imperative, particularly during that period of time, to make sure we came to the President with a definitive position, but I always felt it was my responsibility to tell him when there were serious or strong differing views on the legal position. But he was like me, he accepted it. OK, the Department of Justice is charged by statute to provide legal advice for the executive branch. That responsibility has been delegated down to OLC. If OLC says this is the law, it may be controversial, there may not be universal agreement, but that is going to be the

legal position for the executive branch.

**Kassop:** As you said, John Yoo was very young, although he was certainly known among the legal community as having very strong views and there was no doubt about what those views were. Who was responsible for the appointment of John Yoo? How did his name surface?

**Gonzales:** I don't remember how his name surfaced to work in OLC. We certainly didn't give John the portfolio of these legal issues. I'm assuming it happened somewhere at Justice, and I'm assuming it is because John Ashcroft or some other senior official looked at John Yoo and said, "You're an expert on these issues. We want you to take the lead on answering these questions." I didn't do it at the White House.

This question about John Yoo being young, yes, you're right, he's young. I think a more appropriate measure is experience and training. No one had real-life experience with this kind of issue, of course. John had studied it and had developed ideas and opinions about these kinds of issues, certainly much more so than I had and most of the other people who were working in the administration.

**Kassop:** Was there also a comfort level between your staff and John Yoo given that they had similar backgrounds in terms of where they had gone to law school or Justices they had clerked for, for example?

**Gonzales:** There may have been, John was a likable fellow.

**Perry:** You said also that your contact with the people in OLC was only with the people and not with the career people.

**Gonzales:** John might come over with Robert Delahunty, for example, or I might go to the Department and meet with John or Larry, and they might have a career person there. But I can't remember ever picking up the phone as White House counsel and calling a career person and asking them a question or directing them to do something.

**Perry:** Not so much the question of your being in contact with a career person, but when John was formulating his memos, would there be any reason for him to have talked to career people, for them to have input?

**Gonzales:** Yes. John was asked questions about some of the most sensitive issues going on within the administration and we would give him instructions not to divulge what we were considering doing. I'm told he would divide up the issues and assign them to different career people. They wouldn't know what it was all about. They would get a piece of the issue and answer the question that way. I understand he did consult with the career people in answering some of these questions. That was his practice, involving career people but being very guarded about all the information he had and why he was being asked that question.

**Perry:** First time I've ever heard that.

**Gonzales:** Was it given to me as a complaint? *[laughter]* Or praise? That's pretty ingenious. I remember hearing he sometimes did that.

**Riley:** I want to go back to the more general question about the relationship between OLC and the counsel's office. Was it your view that your obligation to the President was to convey directly to him the decisions that were coming out of OLC, or is it a more nuanced relationship that you both have input at the stage at which the decisions are being taken? I'm trying to clarify the relationship between these various sets of lawyers.

You have as counsel a client—?

**Gonzales:** From time to time I would give to the President if he asked, and sometimes when he didn't ask, my view of the law on a legal issue. But I would always say, "OLC has the definitive word on this." I just felt that's the way it had to be because OLC and the Department of Justice would have to defend that position in the courts. They had the expertise, they had the institutional memory, not me. But I would tell him what I thought. Based on my examination of the law sometimes OLC would come in and give me their interpretation and I would thank them and then I would have one of my lawyers—who were all superstars, all great lawyers—do the research. Oftentimes they came back with the same answers, sometimes they didn't. Then I would call John or somebody and say, "What about this?" Or when I went and talked to the President I would say, "We looked at it independently and had these concerns, Mr. President, but OLC has the definitive word because they have to defend it." That's how I viewed my role as the counsel. My role is not to come up with the definitive legal position for the executive branch but to make sure those responsible for providing legal advice were involved.

**Riley:** That particular interpretation is consistent with preserving the President's own prerogatives on legal issues?

**Gonzales:** Even though the statute gives the Attorney General the authority to decide the ultimate legal question, I don't think it is good for people in the White House to be making that determination. The President could have done that. He could have asked me to look at all these issues and give the final say, but I didn't think that was a smart thing to do.

**Riley:** Unless doing it would completely open eyes, and your position would be—

**Gonzales:** I would tell him, "This is not a good idea," and he wouldn't do it.

**Perry:** Could you talk about the format in which you would present this material to the President? Was it always an oral presentation?

**Gonzales:** Almost always oral. The one very notable time when I was going to present advice to him in writing was the memo on the Geneva Conventions, which was leaked. What is often ignored is that that memo was circulated to all the Cabinet Secretaries to get their input. It wasn't going to be provided to the press. It's marked "Draft." All the pictures I've seen it says "Draft" because what I did was I prepared this as a draft, tried to lay out as honestly as I could the positions of all the Cabinet Secretaries, and then I circulated it because I wanted their input. If I needed a change, then I would.

It was leaked to the *Washington Times* by someone who wanted to embarrass [Colin] Powell because the *Washington Times* was a conservative publication, and this would be a way to show that Powell was catering to terrorists, wanting to give al-Qaeda terrorists Geneva Convention

rights. That taught me a very important lesson. If you have a controversial issue, don't put it down in writing and certainly don't circulate it to other agencies, because the very next morning my memo appeared on the front page of the *Washington Times*.

**Riley:** That explains why there is only one of your memos in this book rather than 30 or 40.  
[laughter]

**Gonzales:** Yes.

**Riley:** I'd like to hear from you about the negotiations and discussions about the AUMF [Authorization for Use of Military Force], which occur just a few days after 9/11. We know from press accounts that there were some things talked about it that might go in it or that wouldn't go in. Who are the key actors all the way around, and what was the administration hoping to accomplish through this? Did the final form fit your preferences or were some things compromised?

**Gonzales:** Tim Flanigan had the lead from my office in negotiating the wordsmithing of the AUMF. I do remember going up to the Hill for at least one meeting, sitting down with [Patrick] Leahy and [Richard] Gephardt and others to talk about the AUMF. But Tim had primary responsibility for the wordsmithing, he worked with the staff on the Hill.

If you were to ask him what he's most proud of, he's very proud of the fact that we got in the AUMF the whereas clause, recognizing the President's constitutional authority to defend the nation against this kind of attack. He and I felt that was very important.

The view within the White House, I don't recall there being any serious discussion that we go forward without anything from Congress. Congress wanted to do something for a couple of reasons. One, they wanted to preserve their institutional prerogative to initiate combat or war or conflict. Two, they were reacting to the 9/11 devastation and wanted to be part of this. They wanted to help America protect itself. We never had to pull Congress screaming and scratching for some kind of authority. They were there, they were willing to give us what we needed to go forward.

Our view was that the President had the constitutional authority, but his authority would be buttressed by Congressional support. We thought it was very consistent with the *Youngstown* analysis by Justice [Robert] Jackson about the authority—When is the President the strongest? When is he the weakest? He is strongest when he is acting with his constitutional authority buttressed by Congressional support, and that's where we wanted to put the President. So we got the authorization. It is a very broad grant of authority.

We could have attempted to be specific in terms of specific authorities. That was one of the issues raised in the *Hamdi* decision, where a U.S. citizen is detained and he is saying, "There is a federal statute that says I cannot be detained as an American citizen except by express grant by Congress." We argued that there is express grant, AUMF, and *Hamdi* argued that there is no specific mention of detention of American citizens. Justice O'Connor writes in *Hamdi* that it is of no moment that detention is not mentioned. This authorization grants the President all the authority fundamentally incident to waging war, and the detention of the enemy is fundamentally incident to waging war.

For that reason, because we knew we couldn't foresee all the specific acts that we would want authority to do, we pursued a broad grant of authority and we got it.

**Riley:** Was there any internal dissension in the White House about proceeding apart from an AUMF as a way of exercising, showing that in fact the President—

**Gonzales:** You mean was Cheney arguing going forward without anything?

**Riley:** Basically.

**Gonzales:** If he was, he was doing it privately. I don't recall there being discussions about going forward without any authorization or approval from Congress.

**Riley:** And nobody else that you—

**Gonzales:** No. Again, the Congress was there. They were saying, "What do you need? What do you want?"

**Kassop:** You mentioned *Youngstown*. Some of the criticisms of the administration are that there was not as much attention—It didn't appear, at least from what we were reading, that *Youngstown* was a vital part of your discussions and yet that's one of the first things you mentioned right now. How much of that did enter into the discussions about what you could and could not do?

**Gonzales:** Maybe not in a specific application, but I remember fairly early on being educated about that construct and how the President is always going to be strongest when he has the support of Congress. And that case, the Justice Jackson construct, I have a recollection of that.

**Kassop:** I was also referring particularly to some of John Yoo's memos where if he is looking back at precedent and the precedent is so important, that is the precedent that comes to mind immediately and it doesn't show up anywhere.

**Gonzales:** I don't know what he would say if he were sitting here today. Perhaps he would say that with the Congressional authorization that also included an acknowledgment of the President's constitutional power, the President's authority to act here was fairly obvious without going step by step through the Jackson test. It's a lot easier in hindsight. In hindsight, after reading the memos, I'd have to say, "OK, John, where's the *Youngstown* discussion?"

**Kassop:** So it didn't occur to you when you were reading them that it was left out?

**Gonzales:** I don't remember what occurred to me as I read those memos in the middle of everything going on at the time. But sitting here today I'd have to say that those opinions would have been stronger with that kind of analysis, at least in reassuring everyone that all possible legal arguments and cases had been considered. I do recall John once saying that the *Youngstown Steel* case was not directly on point since it dealt with economic issues here domestically where the President has less authority than in foreign affairs or military matters.

**Kassop:** Russell asked about the issues of what was included and not included in the AUMF.

**Gonzales:** Yes.

**Kassop:** I recall that Senator [Thomas] Daschle, in a *New York Times* or *Washington Post* op-ed, talked about a particular phrase that the White House wanted to include and in fact was not included.

**Gonzales:** Something about taking action domestically?

**Kassop:** Yes, here in the United States. In the final version it was not included. The White House had asked it to be included at the very last minute, and the Senate chose not to. But the question is what that would have meant if it had been included. Then ponying on that when you said the AUMF was very broad for very specific reasons, but so many of the actions taken since 9/11 use the AUMF as their justification. When you were crafting this broad legislation, did you think in advance of the kinds of things it would actually justify?

**Gonzales:** I'm not sure I thought about that. I thought we simply needed the broad grant of authority because we were confronting something here that people didn't have any experience with, and we didn't know what we would have to do. This wasn't an attack that happened in Africa or Asia or the Middle East. This was here. What would the President have to do? The broad band of authority was very important for the President. What was the first part of your question?

**Kassop:** The first was about the domestic, the exclusion of that phrase.

**Gonzales:** Yes, I don't remember asking for it and having it be turned down. I don't doubt Senator Daschle. I guess this became public in connection with the Patriot Act [USA PATRIOT Act—Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001] reauthorization. I can't remember when Daschle came out and said this. I remember thinking I wasn't that worried about it because the grant of authority was still broad enough.

Here you have Congress saying, "The President has constitutional authority to defend the country" and authorizing the President to use force to protect this country and to deal with those responsible for these attacks. These attacks happened here in this country. It would have seemed odd to grant authority to the President but not give him the authority to take action against the very same type of attack we just encountered. So my initial thinking was that even if what Senator Daschle claims happened happened, I could still make the strong argument that Congress intended for the President to at least be able to respond to the same kind of domestic attack that occurred on 9/11, which would have meant the President could respond domestically. Does that make sense?

**Dinan:** I think one thing that is not on the table in any serious way is the actual idea of a declaration of war rather than AUMF. It's passé, it's not done anymore. Did anybody raise it?

**Gonzales:** I don't think so. Part of it may be because we were not dealing with a State actor. I don't recall being involved in meetings where there was a serious discussion about pursuing a declaration of war.

**Dinan:** AUMF is just the way it is going to be done if you go to Congress?

**Gonzales:** Yes, and I don't know whether or not it is Congress. I think the President met with Congressional leadership a day or two after 9/11, and in that meeting they raised a couple of things. They raised, "Mr. President, you need to address a joint session of Congress." I believe in that meeting they raised the possibility of some kind of Congressional action. I don't recall anyone ever saying, "declaration of war."

**Kassop:** There is a theory in the war powers scholarship that talks about the fact that an authorization to use military force is that and that alone, it is not an authorization to do anything else connected to hostilities, which is what a declaration of war would have given you. But an authorization to use military force is just to use military force against an enemy.

**Gonzales:** But this was a broad grant of authority irrespective of the title, and at least four members of the Court agree, and you'd have to add Justice Thomas to the opinion written by O'Connor, and she interprets that authorization to use military force as authorizing the President to use anything fundamentally incident to waging war. What does that include? That could include a lot of things.

**Riley:** In the heat of crafting something like this do you have the luxury of troubleshooting the Supreme Court? Are you thinking, *I've got to get something that is going to get five or six votes from the Court in the long term*, or are you—?

**Gonzales:** No. Maybe I'm assuming too much. Maybe I'm assuming that OLC has checked with the Solicitor General's office and they're conferring about, "OK, how is the Court going to react to this?" I think we miscalculated where we thought the Court would draw the line between the protection of civil liberties and the protection of our own security in certain cases. There were a number of reasons. I notice you have my law review article in the book. I talk a little bit about the reasons for that miscalculation.

It's tough to walk into the Oval Office and tell the President, "Mr. President, we were wrong. The Supreme Court says you cannot do this." That's hard to do when you're the counsel to the President or the Attorney General, but I had to do it. The President is a great client because when I do that, he says, "That's what courts are for." That's his reaction. That's what the courts are there for. If they tell us we're doing the wrong thing, we'll conform our conduct to the right thing.

**Perry:** Do you think there was also a sense among those who were in these discussions—other than what you're saying the President's response was—but that the Court should perhaps not have that large a role in time of war in determining—

**Gonzales:** Do I believe some people believe that?

**Perry:** Yes.

**Gonzales:** Oh, yes, some people believe that. Some people were surprised. I was surprised. Like the decision that says aliens who were never in this country and who are held outside the United States nonetheless have habeas rights at Guantanamo. That was a decision that surprised us. Yes,



some people were surprised the Court was that involved, second guessing. Not just the President, but sometimes second guessing the President and the Congress. Yes, we were a little surprised by that.

**Perry:** In terms of those discussions, the accounts talk about a “war council” meeting. Is that what you all called it or is that in hindsight what it is being called?

**Gonzales:** There was no official or unofficial war council. There was a group of lawyers from the agencies involved in the war that I met with fairly regularly.

**Perry:** It sounds really impressive.

**Gonzales:** Perhaps, but come on. The lawyers had meetings all the time. Sometimes the meetings included Addington, [William] Haynes. Sometimes, Leitch, Flanigan, Yoo, sometimes they didn’t include all of these people. Sometimes there were other lawyers from various agencies. There were many meetings when it was just that group of people because the issues dictated that these are the people who should be at the meetings. But believe me, I had a number of meetings where there were other people in terrorism-related meetings. Unquestionably there were a number of meetings where it was just this group of individuals who were involved, depending on the issue.

**Perry:** Did that start up on 9/12?

**Gonzales:** No idea. There never came a day when we said, “I’m going to establish a war council, this is who is going to be on it, and we’re going to meet every week.” That never happened. I would meet with lawyers whenever the need arose, and if the need arose to include others and exclude some, that’s what I did.

**Riley:** What are the most pressing things on your agenda after the AUMF is issued? What issues are barreling down the road at you that require you to call these meetings and that you are having to provide immediate guidance to the White House?

**Gonzales:** My recollection is these meetings probably began some months after 9/11. I may be wrong, maybe some weeks. But certainly in the fall, we began looking at issues like the military commissions, the applications of the Geneva Conventions, the detention issues, interrogation issues, gathering information here in this country. That led to the President’s surveillance program, which the terrorist surveillance program was just a part of. These were all issues we were working on that fall.

**Riley:** Did the war in Afghanistan create demands on your time and attention?

**Gonzales:** To the extent people were being captured in Afghanistan it was an issue. If it was about questioning, I was involved. I attended all meetings of the National Security Council and the Principals Committee. There were often take-aways from those meetings that required review by the lawyers.

**Riley:** Your engagement then is largely on this question of information that you write about, the importance of gathering information from the enemy?

**Gonzales:** Not just information, detention. What rules apply? This is what the President wanted the lawyers to tell him. “Tell me where the box is. I’ll decide how close to the edge of the box I’m going to get as a matter of policy, but I need you to tell me where the box is.” He didn’t want to break the law. He didn’t want anybody to break the law. He was very clear about that. And he said, “When I say tell me where the box is, I want to go to the outer limits of the box, what the Constitution allows, what the statutes allow. But I’ll decide whether we get to the very edge of that or not.”

**Perry:** In that law review article you talk about the distinction between law and policy and what you just said the President said, “I want to know what the law will allow,” what the limits will include.

**Gonzales:** Right.

**Perry:** You did just now say that the President was going to go to the edge of the box of the law.

**Gonzales:** I think in certain circumstances he was prepared to do so, yes.

**Perry:** Is there that much difference when you’re at the edge of the box in law between that and policy?

**Gonzales:** No. It is either lawful or not. If that’s your question. Maybe I misunderstood the question.

**Kassop:** If the President said, “I need to know where the limits of the box are and I plan to go right to those limits,” did you have a feeling of pressure to try to expand those edges of the box as far as you thought the law would take it?

**Gonzales:** No, I wouldn’t say that I felt pressure to expand the edges. Quite the contrary. I tried to be even more cautious about the issues on the edge, more conservative, not less. My job, working with the other lawyers, was to tell him, “These are the limits of your authority.” I think some people’s perception is that the President wanted to do things that were unlawful, wanted to go beyond the lines. But he was very careful. He depended on the lawyers to say, “This is where the line is.” We may have laid out some aggressive lines on interrogation, for example, and some people disagree with where those lines are. I appreciate that, I understand that as a legal matter. But if you go beyond that, if interrogators did things beyond the lines, beyond the advice, then the President expected that they would be prosecuted. He believed that’s the way it should operate.

**Perry:** I’m going to change to a different subject altogether, regarding the military commissions.

**Gonzales:** Yes.

**Perry:** And the fact that they came out by Executive order.

**Gonzales:** By military order.

**Perry:** By military order, OK. But essentially it is from the signature of the President and there

was no Congressional inclusion.

**Gonzales:** We followed the [Franklin D.] Roosevelt model as much as we could, so it was a military order signed by the President like President Roosevelt did.

**Kassop:** Except that President Roosevelt was operating under a declaration of war, which was—

**Gonzales:** And we were operating under Authorization for Use of Military Force. Our view was that military commissions were fundamentally incident to waging war and had been used before in times of war. You're right, there is a clear difference. I'm not sure it is a difference with much of a distinction.

**Kassop:** Was there a discussion about whether to include Congress or not, or was it already assumed that this would be done in the executive branch?

**Gonzales:** I had no discussion with the President about including Congress. I don't know if others had discussions with the President about including Congress or whether others had discussions with Congress. But I'm not aware of any discussions to include Congress with respect to military commissions. In hindsight the Supreme Court said that was a fatal mistake.

**Kassop:** But also considering Justice Jackson's opinion in *Youngstown*, that would have given you stronger political—

**Gonzales:** Except that our view was the Authorization for Use of Military Force *was* Congressional support for the President's actions.

**Perry:** Was there White House input into the military order?

**Gonzales:** It was drafted in the White House with input and concurrence by DOJ. It was very close hold. I think Tim, my deputy, was aware of it. I think David Addington was aware of it. There may have been a White House associate counsel aware of it. John Bellinger was not aware of it. It was a very close hold. I did read some of the things in the binder. There was one article particularly critical of the military order. The order tracked the Roosevelt military order and my view was this was just the first shot to lay down the framework and that Rumsfeld would lay out all these regulations to clarify how this authority would be used.

It was also my view that military commissions would not be used for everyone we captured. I believed strongly, as I said in my law review article, that this was simply one of the things on the President's menu of dealing with this threat to the United States. We tried to follow the Roosevelt model as closely as we could. Much of the details I envisioned would be left to Rumsfeld and future regulation.

**Riley:** We know the general contours with the exception of some of the memos that were inputs to it that are still classified. What we don't have a very good picture of, although there have been some things written about this, is the dynamic within the White House among the critical actors and the extent to which there was harmony among the people engaged in this effort or the extent to which there may have been internal disagreements about some of the approaches or the big issues.

Do you have any recollections of how you came about some of these very difficult decisions? Were there expected institutional frictions? You have the State Department, which often is at loggerheads with Defense. How are you navigating through this period of time? Or is it the case that everybody is completely on the same page and working in total harmony?

**Gonzales:** No, not everyone's on the same page. These were very controversial issues, and of course there would be disagreement. Because of the sensitivity of these national security issues, sometimes the President limited who should know about particular activities. Often these were his decisions. I know there is criticism that differing views were ignored or not consulted. That was the tradeoff to protect classified activities. In a perfect world we get everyone's views, but we do not live in a perfect world. On some of these more sensitive issues it would be a really close hold, and there would be a limited number of people involved in making the recommendation to the President.

The President's surveillance program is a good example. Literally within the White House—and this is a program that existed for two or three years without anyone ever knowing about it, other than a few Members of Congress. It was the President, the Vice President, the Chief of Staff, myself, David Addington, and, after a period of time, Condi Rice, but no one else. The Presidential authorizations didn't go through normal staffing. I would take the authorization into the Oval Office, and the President would sign it because he was so concerned about protecting the integrity of that program. I can go into it at a later time.

Ashcroft complained because only he, and for a period of time John Yoo, was aware of that program at DOJ. He felt he needed some additional people looking at this issue. But the President really resisted it. He felt a deep obligation to protect our country. He didn't like the fact that people had been here in this country plotting to hurt America and succeeded, and he was President. Part of the problem again was that we didn't do a very good job collecting information, and the other problem was that we had obviously an enemy that was very patient and very smart, watched carefully what we did, and he was concerned about compromising the decisions we were making to protect America.

Even if we had expanded the circle of people who provided advice on certain decisions, my own judgment is that the outcome probably would have been the same in most of these decisions because I just believe the President would have taken the approach that he felt was absolutely necessary to protect America, no matter how aggressive it was. No matter how much disagreement there may have been within the executive branch. I think the outcome probably would have been the same, but permitting more access to information would have taken away the argument, "You didn't solicit sufficient input. People were cut out of the process." We'll never know because we cannot go back and do it over again what would have been different. But from what I know of the President, I suspect many of the decisions would have been the same.

**Riley:** We didn't ask you about the extent to which the terrorism issue was on your radar. Was it before 9/11?

**Gonzales:** I sat in on some meetings with the National Security Council and the Principals Committee where the threat from al-Qaeda was discussed. I never was involved in a conversation where there was a discussion about a specific and imminent threat by al-Qaeda. We

knew they were dangerous but we did not know they had gone operative.

President Bush did not believe President Clinton had any idea. If either he or President Clinton had had some idea of the 9/11 plot, we would have moved heaven and earth to protect America. I don't recall there being a lot of discussion about specific threats. I think if you look at the 9/11 Commission report it will give you all the information you need about what they found, because they talked to a lot of people in connection with what happened on 9/11.

**Riley:** And your reading about the President's own resolve after 9/11, is his reaction partly driven by a sense of responsibility for not having caught this in advance, justified or not?

**Gonzales:** I've never spoken to him about this. He certainly felt a sense of responsibility going forward as the President, as the Commander in Chief, as the leader of the free world, to hold accountable those responsible for the attacks, and to find out what had happened so that America would not be attacked again. I know he felt that responsibility very much. But did he blame himself for what happened? That I don't know. I've never had a conversation with him about that. I know to some degree you have to. As the Attorney General, if someone in the Department makes a mistake, does something wrong—you're the head of the Department, you're responsible for what happens under your watch.

That doesn't absolve someone from wrongdoing or not doing their job, but knowing him as I do, I think he would feel some responsibility going forward. Certainly you don't like the fact that this happened under your watch.

**Riley:** I asked you earlier if the George Bush you saw in the Oval Office differed from the one you saw as Governor and you said no, it was the same person. Did the George Bush you worked with after 9/11 differ in important ways from the George Bush before 9/11?

**Gonzales:** I don't think so. There were fewer—I was going to say carefree days. There are no carefree days in the Oval Office. But little things, sometimes Bush would call me and say, "Let's go play horseshoes." We never played horseshoes after 9/11. Sometimes we golfed. We never golfed after 9/11. Things changed, but to me he was still the same person.

**Perry:** Did you ever get to talk about baseball?

**Gonzales:** Occasionally, sports generally. I remember discussions when the Texas Longhorns beat USC [University of Southern California] for the national championship. Of course I know now the President is very happy that the Rangers have moved on to play the Yankees.

**Dinan:** We have the anecdote in our briefing book about your throwing out the first pitch. Did you go to Houston—You got it over the plate?

**Gonzales:** Yes, I threw out the first pitch at the Nationals game, but a real treat was throwing out the first pitch in an Astros game, which is my hometown team. They brought back the 1986 team so Nolan Ryan was there, it was just a great event. I'm a great baseball fan. Yes, I got it over the plate.

**Riley:** Well, we have kept you a bit beyond our appointed hour with your permission.

**Gonzales:** Aren't we done? *[laughter]*

**Kassop:** Six more years.

**Gonzales:** Oh, yes, I'm AG.

**Perry:** How much do you like being a political science professor?

**Gonzales:** I'd rather be AG some days. It's fun, I love the kids. They're very inquisitive, and I think they really like hearing from the perspective of someone who has actually been through some of this stuff.

**Perry:** How many courses are you teaching?

**Gonzales:** Just one, it's called Contemporary Issues of the Executive Branch. What we do is we deal with contemporary issues and we talk about how this is really being handled at the White House, how it is handled by a Cabinet Secretary. It's a pretty good course. The kids are great, they are required to participate, and they present a topic and write a paper on that topic. There's no final exam. Small class, 15 students.

**Kassop:** Undergrads?

**Gonzales:** Yes.

**Kassop:** What kind of readings do you use?

**Gonzales:** I've got one textbook and I picked one that has President Obama on the cover and then a lot of articles.

**Kassop:** Do they read documents too?

**Gonzales:** Oh, yes.

**Dinan:** It must be a sought-after class. How do you get in?

**Gonzales:** The first 15 who sign up. Had to say no to a lot of reporters, the chancellor, Senators.

**Riley:** I'd love to see the syllabus.

[BREAK]

**Gonzales:** I can mention it to you and we can talk about it tomorrow. Military commissions and Lord [Peter] Goldsmith, who was the Attorney General of Great Britain.

As I say in my law review article, one of the things I regret is that we couldn't get military

commissions stood up. President Bush really wanted that to happen. In the beginning we captured some British citizens and were holding them, and we were going to try them. Goldsmith and I went into a series of negotiations about the military commissions, and in the end I was unwilling to do what he wanted because I felt it was moving too close to all of the procedure in a criminal trial.

If we had been successful and could have persuaded him otherwise, I think we'd have had military commissions stood up, obviously more quickly than we are today. And it would have involved the cooperation of the British government, which would have been a good thing for President Bush. As it is, because of all the litigation and the statutes passed by Congress, we now have measures that go well beyond what Lord Goldsmith wanted.

**Riley:** Yes.

**Gonzales:** That is one of my regrets, that we didn't just bite the bullet and agree with Lord Goldsmith, "OK, we'll make these changes and Great Britain, you're on board with the military commissions, let's get going with them." We would have been better off going that way.

**Riley:** More time for questions tomorrow. You have a good night.

## **October 15, 2010**

**Riley:** We touched yesterday here and there on President Bush and his preferences in terms of how you interacted with him, but I'd like you to tell us about President Bush's own operating style as a political leader and particularly President, or how he liked to get advice. This is going to be for people who will presumably never have a chance to meet him. What is he like as a person? What are his most notable personal characteristics? You've known him for a long time. You're in a position to give us a really good character sketch of this person who was President. Most of us believe personality is an important feature of being a President, of Presidential leadership, and you can help us understand that.

**Gonzales:** Like all Presidencies, we had a formal staffing process so that every evening when the President would go to the Residence, Harriet Miers or whoever the staff secretary was would prepare a briefing paper for the President. So he would receive briefing papers on subject matter that he would have to deal with in meetings the following day, just like every President, I'm sure.

What I observed in President Bush is he rarely made decisions in big meetings. We would come into these big meetings, even on very controversial decisions, everybody would have their say, but rarely did he announce a decision. Oftentimes he would go back to the Oval. He might have a conversation at that point with a much smaller group and make a decision. Or he would come into the meeting with his mind already made up and still allow people to give their presentation, but it wouldn't affect his decision.

He liked to receive input, but he liked to make those big decisions in much smaller groups. He really welcomed the opportunity to see people one-on-one, face to face. It gave him an opportunity to gauge the conviction of the person's beliefs. It also was more likely than not that the information he was receiving was much more up to date than a briefing paper that might be 24 hours old. It also gave him the opportunity to challenge someone and ask questions.

My sense was that he liked to receive information orally. Most of the information I communicated to him was oral. We would have these quiet conversations in the morning, and I would give him information and he would make a decision. He would ask for my thoughts or recommendations. I suspect a lot of the decision making with the other senior advisors was the same way.

**Riley:** He'd known you for a long time, and I would guess that you probably had a level of rapport with him so you were very efficient in the use of his time.

**Gonzales:** I certainly tried to be. I could pretty well anticipate how he would decide an issue just based on what I had observed in the past and what I believed was important to him. But sometimes he'd surprise me. I can't give you an example of when, but normally it would be because he had information I didn't have. There would be times he would make a decision that surprised me.

He was very decisive. He understood that a big part of the job of being President was being a decision maker. The President would try to be very careful in making a decision. He relied a lot on his subordinates in giving him information and recommendations, and he would make the decision. He didn't often fret over decisions. On some decisions he took longer, for example the affirmative action, on stem cell. I saw him use a process, receive more information, thinking about it. But once he made the decision, he was very decisive and he moved on to something else and didn't fret about it.

Someone like me, I might worry about how the Supreme Court is going to deal with this. He didn't worry about that. He'd made the decision, he'd done his job, it was time to move on to something else. My sense was that was his character, but by necessity I think he sensed that he had to be that way to do the job effectively because the next big decision was waiting outside the Oval Office door. I saw him be very decisive. He tried to make the right decision, but once he made it he moved on.

**Riley:** His principal decisions were made out of these oral presentations, but he did his homework also with the documentation.

**Gonzales:** No question.

**Riley:** So he's a reader also?

**Gonzales:** Yes. I never went over to the Residence and saw him reading his briefing book, but I always had a sense that he was well informed of the issues, at least when I discussed them with him. I would come to him in these quiet conversations and say, "By the way, this is coming down. In a week or so you're going to have to make a decision." Many times he would already be aware that it was out there. We would talk about it. At some point ultimately I would present



the issue to him and he would make a decision.

**Riley:** There is a sort of caricature of the President, or more so of the administration, that of a lot of very light-thinking people who reach a decision and move in lockstep in a particular direction. This leads to the question about the comfort level with dissent within the inner circle and within the people who are advising him. Was this a President who did not like confrontation or is this a President who liked to see issues openly combated in front of him?

**Gonzales:** I don't know that any President would want to see the advisors go toe to toe with each other in disagreement over every issue. My sense was that people who knew him well, like Karl and Karen Hughes, there was never a problem with them telling the President, "Mr. President, this is a bad idea. I don't think this is the right decision."

I can't tell you if that is true for other people who came into the administration and didn't have that same kind of relationship—It's hard not to be intimidated by a President; it's hard not to be intimidated when you're in the Oval Office. There may have been some of that. But I think the people who knew him very well didn't feel at all intimidated about giving him information he might not want to hear. We weren't any good to him unless we were willing to be honest and candid about what we thought he should do. I think he appreciated that.

In the larger discussions he welcomed hearing dissenting views. He would be fairly quiet. He would let people talk about these issues. It was a style I used as well. Maybe it is based on my experience as a judge, letting people just lay out their arguments and really not saying much. Particularly for a President, when he is actively engaged in the conversation, there could be a tendency to intimidate someone. If he is hinting he is going in a certain direction, someone may not want to push him on it. What I observed is that he often listened and took in information in these bigger meetings before making a decision.

**Riley:** Do you ever remember him critiquing meetings privately after they were over? "This person is pulling his punches or this person is not—"?

**Gonzales:** No, the only thing I can remember is him being critical of having to have the meeting. Like, "This is a waste of time, I didn't get any new information. I've made my decision." But I think he felt it important that others felt they had an opportunity to present their views directly to the President. I think the President also believed it important that the world, the American people believed he had really taken the time to hear dissenting views and he had considered this and gone through a very elaborate process in making an important decision. He was and is a very decisive guy.

**Kassop:** In the literature written by Presidential scholars, Presidents have two different managerial styles in terms of decision making. One is what's called the spokes of the wheel, which is the idea of being surrounded by your advisors and allowing them to go at each other to try to debate an issue, and the other is the Chief of Staff model where essentially the information gets filtered up the line to the President, the hierarchical model.

Of course President Bush was known as the first MBA [master's in business administration] President, so everybody was watching to see what his managerial style would be. It sounds like you're suggesting—For example, you said there are some meetings where he would go in and

already have his mind made up, but he would have the formality of having people discuss it in front of him.

**Gonzales:** I think so.

**Kassop:** Was his mind ever changed under those circumstances?

**Gonzales:** I'd have to think about it. I can't give you an example. Of course I might not know that he'd already made up his mind and that something that someone has said—because generally, if you have something good, a strong argument, you're going to put it in that memo that he is going to read the night before. He will have already heard the strong competing arguments. I hope there were times in these meetings that it wasn't a complete waste of time and that we did give him new and helpful information for making his final decision. I just can't give you any examples.

My own sense is that he liked to hear directly from his advisors as opposed to having everything filtered up. One of the things I admired about Andy, he was very comfortable in allowing people to have access to the President whom the President wanted to have access to. There are certain people who had walk-in privileges to the Oval Office. Most of my meetings with the President were just one-on-one. Occasionally Andy would come in and listen to what was going on, but he was very comfortable allowing people to have access to the President whom the President wanted to have walk-in privileges.

**Perry:** You mentioned yesterday, Judge, about this very issue, that President Bush 43 had talked about his father and he didn't want to have the same kind of staff structure or hierarchical system. In these meetings or other times in one-on-one discussions with him, did he talk about his father and say, "In other situations, I want to follow in his footsteps and do X, or I don't want to do what he did so I'll do Y"? Did he also talk about other Presidents and other historical precedents?

**Gonzales:** I can't recall that he ever did so in terms of the process of decision making. In terms of important decisions I never heard him talk about his father and Iraq. There is this notion I've read that some people believe Bush's decisions with respect to Iraq were driven in part by what his father did or didn't do in the first Iraq war. I never heard him talk about that. On the other hand, I did hear him say or at least indicate that he didn't want to have the same thing happen to him with respect to Supreme Court appointment that happened to his father. But beyond that I don't recall him mentioning decision making or decisions by other Presidents.

**Riley:** One of the interesting things about Nancy's observation is that I think I'm correct in saying that the scholars who work in this field largely say that the spokes of the wheel model doesn't work very well, that the strong Chief of Staff model is the preferred model based on the historical record. Yet we have a President whose staff structure seems to have suited him fairly well and to have done what he wanted it to do. I think it must be a credit to Card and to others that they figured out how to use a model that (a) shouldn't work very well, and (b) is a bit atypical of what you might expect from a Harvard MBA.

**Gonzales:** I don't know about that. I don't know what you should expect or want from a Harvard MBA. I do know, and this is one of the things I tell my students, one of the most important

functions or responsibilities of a Chief of Staff in the beginning is to try and understand how a President makes decisions and what is the best way to give him the best information most efficiently. That's very important. The Chief of Staff has to sit down, has to know that President fairly well and try to understand how he is going to make those decisions.

You have to have a formal structure. The staff secretary and that whole process is very important because there are so many decisions that have to be made and vetted. The right people have to look at it and make recommendations to the President. But there are going to be some other decisions that don't go through that same kind of process. He'll want to deal with it differently because there will be some decisions the President takes more personally. He owns that decision. There will be a different structure that he's going to put in place in making that decision.

**Riley:** You indicated earlier that sometimes you would detect a little impatience on the President's part when he was having to sit in a meeting where he felt maybe it wasn't the best use of his time.

**Gonzales:** Most of those, by the way, were international meetings.

**Riley:** With foreign leaders?

**Gonzales:** Yes. And as a Cabinet Secretary I endured some of that myself because foreign leaders, my counterparts, want to sit down with the U.S. President or the U.S. Attorney General and they want to sign something to indicate some kind of agreement. Then we have to have a press conference. You do that because it is important to help your counterpart, but on more than one occasion I heard the President say, "This is silly, this is a waste of time." He was impatient about that.

**Riley:** He didn't like State dinners.

**Gonzales:** Ceremonial, State dinners, things like that, he wasn't a big fan.

**Riley:** How could you tell when he was getting impatient in a meeting?

**Gonzales:** Probably a look, certain mannerisms, I can't describe them now but if I were in a meeting and I was briefing him, I could look at him and I could tell, *Stop, just stop*. And I would cut off my briefing.

**Riley:** You can't define it but you know it when you see it.

**Gonzales:** Yes, I felt like I could.

**Riley:** What about his other personal characteristics? What are some of the other defining attributes?

**Gonzales:** He's extremely funny. He very much has his mother's personality. He likes jokes. I often tell people I think it is very hard to be around him and not like him as a person. You might think he's a terrible President and you might disagree with his policies, but it's just hard not to like him. He's a very likable fellow. He and I have very different personalities. I'm much more

introverted, he's very extroverted, but we got along pretty well.

**Riley:** He didn't call you Judge, did he?

**Gonzales:** No. His nickname for me was "Fredo." I don't know where that came from. He had nicknames for most of the people who worked with him closely and mine was Fredo. No, he didn't call me Judge. Everybody else in the White House called me Judge, but he called me Fredo.

**Riley:** What were some of the other nicknames?

**Gonzales:** I'd have to think.

**Riley:** There's a published one on Karl Rove that I'm not sure I can use in mixed company.

**Gonzales:** Really? I don't know, I'd have to think about it.

**Riley:** Discipline? This is a disciplined President, expects discipline from others?

**Gonzales:** My observation was he was very disciplined. You weren't late for meetings. I know certain people like Israel Hernandez and others who travel with the President—If you were late he would leave you, so you weren't late when you were traveling. He felt it was rude to be late and keep people waiting. Everyone is going to wait for the President, and he felt that was terribly rude. He liked to start meetings on time and finish early. He is an extremely disciplined guy. If you look at his life, he was fairly undisciplined for much of his younger life, and then one day he decided he was going to stop drinking and he stopped drinking.

He had a level of discipline that was just waiting to come out. I saw it in the way he did his job as President of the United States.

**Perry:** Did he talk to you about those two very different periods in his life? I was saying on the way here that I had the opportunity to see him speak to a small group of students back in '07, and he started the conversation with that discussion about his early life. I guess he thought that would resonate with students. Did he talk to you about that?

**Gonzales:** I've heard him tell the story many times, but the only time I saw it reflected in his decision making was in connection with pardons. When I would come to him and bring him pardon requests involving someone who had used drugs or had an alcohol problem, I could see him being sympathetic and understanding of that situation because of his past. Beyond that I don't think we ever had any conversations about his drinking or his younger days.

We did have some conversations, of course, when I was in Texas and he was called for jury duty and he finally had to 'fess up to me what he had done.

**Riley:** That's the first time you learned about the DUI [driving under the influence]?

**Gonzales:** Yes, that was the first time. He had been called to jury duty and that's when he told me that he had this DUI and he was worried it would come out. He had not told his daughters.

He was thinking, *I'm going to have to disclose this.*

**Riley:** But he did not disclose it.

**Gonzales:** There's a big story behind that. There are some stories about what happened, most of them inaccurate.

**Riley:** Go ahead. Texas may want to pick this up later, but I'd be interested in hearing it.

**Gonzales:** He got called to jury duty and the form was filled out by his aide, Israel Hernandez, and there is a question about previous convictions and it was left blank. I don't know if Izzy asked the Governor what he should put there, but it was left blank and it was turned in.

We didn't know what kind of case it was going to be when he was called, but there was a 50 percent chance it was going to be a DUI. This is right before he had to report and he told me about it. He said, "Contact somebody in Maine and get the details." I contacted the President's father's Secret Service lead guy in Maine and got information about what had happened, and sure enough, he had been stopped for driving under the influence.

So we're thinking, *If Bush is put on a DUI case, this is going to come out, because someone is going to ask him.* He felt that he had to do his duty and show up, and he did show up. You show up at a coliseum in Travis County, and there are rows and rows of people but they had reserved the first two rows just for him. He sits down and I sit down next to him, and he's terribly uncomfortable because he's just sitting there by himself.

Of course the press is all around. Finally, he just gets up and sits with the other people. He gets assigned to a judge and he has to come back in a week or two. He comes back and that's when we find out it is a DUI case. I remember we're waiting outside the courtroom and there is media everywhere. So here you have the Governor with Karen Hughes with him, and they're just kidding around. Karen is very worried because the way it is going to come out is not going to be good. She asks me, "Can you do something?"

I go in and talk to the defense attorney. Later I found out that he is a big Democrat because he brags about being a big Democrat and wanting to get Bush under oath to ask him about his drug use. I said, "The Governor is here ready to serve, but have you thought about the fact that if he sits on your guy's jury, your guy will never get a pardon from the Governor and he may never get a pardon from another Governor because a Governor participated in his conviction?"

The defense attorney said, "I've already thought about that. I'm going to strike him." I said OK. I then go talk to the prosecutor and I was going to raise it with him and he says, "I've thought about that too, but I'm uncomfortable just saying that a Governor can never serve. We haven't looked at the issue, I'm just not comfortable with that." I said OK.

Then I leave and I'm in the hallway, and I get word the judge wants to see me back in his chambers. The defense attorney and the prosecutor are there, and the judge asks me about this. I said, "Judge, the Governor is here to serve, he will serve. I have just raised this as an issue." The defense attorney says, "I've already thought about it and I want to strike him."

The judge asked the prosecutor, “What do you think?” The prosecutor again said, “I’m uncomfortable taking the position that a Governor can never serve.” Then the judge asked me again, “What should I do?” I said, “Judge, he is ready to serve, he’s here to serve, but if you’re going to strike him, let’s just strike him now and let him get back to work.”

The judge doesn’t say anything and then we’re dismissed. We go back into the hallway and I’m called back into the courtroom. Now we’re on the record. On the record the judge asks the defense attorney, “Do you have a motion to make?” The defense attorney says, “Yes, I’d like to strike juror number whatever it was, for these reasons.”

Then he asked the prosecutor and the prosecutor says, “I have no objection.” Then he asked me, “Do you have anything to say?” I said, “I have nothing to say, Judge, he’s here to serve.” He says, “I hereby grant the motion” and the Governor is struck.

**Riley:** But the background information had never gotten outside of your inner bubble there?

**Gonzales:** Not that I’m aware of.

**Riley:** It must not have if there was a big Democrat on the other side who would probably have leaked the news.

**Gonzales:** Afterward the defense attorney said, “I’m a big Democrat. I would have loved to get Bush under oath to ask him questions about his prior drug use.” He laughed about it.

They all said, “The Governor didn’t want to serve, he wanted to get out of this,” but he would have served and he would have answered the question. So that’s what happened in connection with the jury service.

**Riley:** Were you nervous in subsequent years? Was the decision taken not to—particularly during the Presidential campaign, not to—?

**Gonzales:** It was always my expectation that he was going to tell his daughters and this would come out, that *he* was going to disclose it. I never had any subsequent conversations about his DUI. But following that incident he mentioned to me, “OK, I need to tell my daughters and we need to get this out.” I just expected him to do it.

**Riley:** Which didn’t happen.

**Gonzales:** It just didn’t happen.

**Riley:** Thank you. I appreciate that because it is something that obviously shows up, and you’re in a better position than most to know.

You said often the President would meet in a large group and then would decide to meet with a smaller group to make his decision. There at least in theory is a problem with that if people felt that the initial meeting was for show purposes and that others were making end runs with the President.

You sometimes see the Vice President, for example, charged with this sort of offense, that he would be silent and then would have the President's ear at some point and then a decision would be taken. Are you aware of any circumstances where people became unhappy with the practice of his making decisions in a smaller meeting? Or more directly, was there unhappiness with others who were seen as skirting the process to take their case directly to the President rather than airing it out?

**Gonzales:** I can't speak for others and I'm not aware of any discomfort in something like that happening. I think as a Cabinet Secretary the most I felt I could expect would be to have the opportunity to present my case to the President. Then he would hear from other sources and he would make a decision. But just give me an opportunity to present my case. There were times he just disagreed with me.

Others may have felt differently. Others may have felt they wanted to be that last person in the room with the Vice President, so they may have felt very uncomfortable with the process, but I wasn't.

**Riley:** Part of the prompt for this question is the experience with interviewing a lot of Clinton administration officials, where there was the large fear that whoever got the President's ear last was the person who was most persuasive with him. Was there any parallel in your administration with that?

**Gonzales:** Cheney is going to be persuasive whether he's last or first. Again, the President is President. He can receive the information he wants, in any way he wants to, and as a Cabinet Secretary as long as I feel I've had my shot, I've made my argument, hopefully directly to the President, then I've got no complaints. If I don't like it I can quit.

**Riley:** But you have known him for a long time. In some sense with that level of rapport it is more understandable in your case why you might not be aggravated because the confidence in your personal relationship probably helps you step past that. I wonder if people who didn't have that kind of personal relationship with him before wouldn't have that level of confidence simply because they were speaking the words that meant the President was genuinely considering their views.

**Gonzales:** If I gave the impression that the President never considered people's views—

**Riley:** No, not at all.

**Gonzales:** Because that's not true.

**Riley:** I'm just probing about this in pieces of what we're picking up and trying to get a picture based on what we know from other administrations as to how this one operated.

**Gonzales:** There probably were times when that happened. I can't give you any examples. Maybe I was a little bit flippant in saying, "I make my case to the President and he decides." There were times, particularly when I was AG and I would make a recommendation to him and it wasn't accepted, that it bothered me. But again, I'm just a Cabinet Secretary, he's the President.

**Riley:** I don't want to get too far down this road because I'd like to continue to stay on process, but one possible example would have been the January 2002 memo.

**Gonzales:** On Geneva?

**Riley:** Right, where the prompt for that memo, if I recall correctly, is that Secretary Powell wanted something reconsidered. What prompted Secretary Powell? Was he not involved in the original discussions?

**Gonzales:** My recollection is that the original discussions involved the lawyers in debating the issues, and then me presenting to the President, "These are the positions, this is what OLC believes." I'd staked out the position that OLC has the definitive word on all legal issues. Based on that he made a decision. I don't know how much Will Taft had informed Colin Powell about what was going on. But after the decision—This is almost immediately; it wasn't recorded to writing or anything like that—somehow State became aware of it and Powell asked—and I'm not sure how he asked, maybe he asked through Will, through me, but the President decided to reconsider the decision.

Then we went through a more formal process involving the principals. That was the genesis for that memo, which reflected what I believed to be at the time the positions of the parties as we were about to head into this more formal process. That was the purpose of the memo for the President, the one that was leaked.

**Riley:** I wanted that as an example of this bigger question about unhappiness with process. I'd like to tie up process and we can come back to the issues.

**Perry:** I guess what you're asking is was Will Taft included in the initial conversations about the original memo and then—

**Gonzales:** The original memo or the original decision?

**Perry:** The memo that came from OLC.

**Gonzales:** OLC had given guidance. Was Will Taft involved in those discussions? My recollection is that he was, that Defense and State had had an opportunity to provide input on this decision and OLC had decided this was their interpretation of the law, but I could be wrong about that.

**Perry:** You also said OLC is the definitive interpretation of the law, so when you went to the President and said, "This is what OLC says," you felt comfortable going with that.

**Gonzales:** I do remember having this conversation with him early in the fall of the previous year, "There is a strong disagreement about this issue, on the law and on the policy." I'm quite confident that when I said, "This is OLC's position," I would have said, "State feels very strongly otherwise as a legal matter."

**Perry:** And if you disagreed with the conclusion of the OLC memo, even though you believed they had the institutional memory and the precedent to know what the law should require, would



you have felt comfortable saying you thought the memo was misguided?

**Gonzales:** No question about it. I don't know if I would have said "misguided," I would have said I disagreed and these are the reasons why. Then I would have said that OLC had the definitive word and they would have to defend it. The Department of Justice is going to have to defend this position in the courts. My own sense is that at that point Bush would have said, "What do you think?" or "What do you recommend?" I would have said, "I'm recommending that you continue to follow the Department of Justice's guidance." He would have followed that; he would have accepted it.

**Riley:** We may want to come back to that and dig into it a little more because I have a couple of questions about it.

I mentioned the practices of the Clinton administration. Were there discussions about "we're not going to do things the way Clinton did them"? Was there an understanding and a culture of the new administration that this was going to be a different kind of White House, not in consequences but in the way that it operated?

**Gonzales:** I think the President really prided himself on having a White House—running the trains on time, having the meetings on time. Clinton was apparently notorious for starting really late and going late into the night. The President liked to get to work early and go home early.

**Riley:** That's a different kind of President, yes.

**Gonzales:** Andy was very careful to make sure the President was well rested, well fed, and had worked out. Andy thought this President should have time to do that, it would make him a more effective decision maker. In that sense it was my understanding and perception that that was a major difference between the Bush White House and the Clinton White House.

**Riley:** Did you have any problems with the office when you came in? Was the W key missing from your keyboard?

**Gonzales:** Oh, there's a big story about all that. I was shocked. The inaugural was on Saturday. We weren't supposed to come in until noon on Sunday, but I went in Saturday and I was *shocked* at how terrible, particularly the Old Executive Office Building, it was *trashed*. A lot of it was because furniture had been moved around, but it just seemed to be—I was shocked. It wasn't as bad in the West Wing but it was bad. I can't tell you about missing W's, but it was a mess. Bush didn't want to push it. For him that was the old administration, let's focus going forward. But the Republicans on the Hill wanted to make it a big deal.

GAO [Government Accountability Office] began an investigation. Once they began their investigation I had one of my lawyers do an investigation and interview people who were involved. In the end we had competing investigations and competing reports. All I can tell you is what I observed, and it was a mess. I was disappointed.

**Riley:** By your interpretation was the mess a purposive mess rather than the—?

**Gonzales:** I don't know that it was a purposive mess.

**Riley:** It was just a mess.

**Gonzales:** It surprised me. This was the White House, for God's sake.

**Perry:** I have a question about James David Barber, the late political scientist, who used to talk about a model of Presidents. Some are active, some are passive, some are positive toward the job, some are negative toward the job. There are issues about that theory, but it has always fascinated me and I think a lot of students particularly seem to understand it. Do you feel that this President Bush was very positive about the job? Did he embrace it—?

**Gonzales:** He loved it.

**Perry:** —with gusto? He didn't just do it as a duty.

**Gonzales:** One of the things I really admired about President Bush, if my family or close friends came into town I'd drop down to the Oval and ask, "Is the President in?" If he was in, he'd always invite me in with my friends or family and he would tell them about the Oval Office. You could just see the way he described it. "This is the rug, this is the desk, these are the paintings I've chosen." He just beamed about what it was like to work in the Oval Office. Those were good examples of seeing in him the joy and the pride he felt in being the President of the United States.

**Perry:** Which desk did he use?

**Gonzales:** He used the desk used by Reagan and Kennedy and Roosevelt, the one that was built out of the USS *Resolute*. His father didn't use that desk, but his father used that desk in the office in the Residence. For some reason his father didn't use it, but Bush 43 liked that desk.

**Dinan:** We were talking about the reaction to the previous administration, and you discussed the discipline and meetings as opposed to the free-for-all. We touched on it yesterday, but on the pardon issue, the Marc Rich matter was being discussed, is there a situation where you come in and the President says, "We're not going to handle pardons like that. We're going to make sure these are vetted in every respect and not let this happen"?

**Gonzales:** It probably had an effect. I think it carried over to the very end, and it may have affected his decision with respect to [I. Lewis] Scooter Libby. Of course there were pardons at the end of his father's administration that were a little controversial. I think he wanted to be careful, and I tried to be careful in terms of the recommendations that I would make to him on pardons. By nature he is a very forgiving guy because he remembered the mistakes he made when he was a young man.

Particularly as we got near the holidays, he would say, "OK, give me some pardons, I want to make some pardons." Oftentimes I would look at a case, particularly in the first term, I might give him a negative recommendation and with maybe one exception he always followed my recommendation of whether to grant a pardon.

**Perry:** I have a question about the First Lady. When he would tell you the story of his young life and his indiscretions, there is a story that Mrs. Laura Bush gave him somewhat of an ultimatum

about excessive drinking. Did he relay that part of the story to you at all?

**Gonzales:** I don't know if it is part of the story, and he never discussed that with me.

**Perry:** When you were White House counsel you were very close to the President. Did you see interactions between him and the First Lady? You must know them as a couple, know them socially. What are your impressions of her and her influence on him as a person and as President?

**Gonzales:** I don't know that I would say I know them socially. The word that I would use to describe her would be *grace*. She's a very classy woman. She understood the importance of staying within her lanes publicly. Privately I know she had conversations with the President on various issues, but publicly she understood that she was the First Lady, nobody elected her to do anything. There were things that were important to her, certain causes, that every First Lady embraces and wants to champion. But I didn't see her that often over in the West Wing. Occasionally I would go into the Oval Office and she would be there.

I never saw them cross with each other, although given the personalities I'm sure that happened from time to time. But I never saw it publicly.

**Perry:** Did he talk to you about his daughters and some of the episodes they had at college?

**Gonzales:** No, not in the White House. We probably had more discussions in Austin about it but not in the White House. There may have been one or two instances where somebody was going to use one of their images, and he wanted to know the legal ramifications of doing something like that, but I don't have a clear recollection about it.

**Riley:** This President had surrounded himself with a number of very powerful minority figures and women, which historically is quite striking. I'd like you to comment a little bit about not just his comfort with working with people who were different from him, but his seeming reliance on that as part of his operating style.

**Gonzales:** One of my earliest meetings with Bush when he was Governor, we were talking about the budget. Albert Hawkins was our budget guy, he's an African American. Albert was talking about the funding priorities for the coming year and the fact that we would need more money for prisons. I remember Governor Bush saying, "Why are we spending more money for prisons when we have these poor Hispanic kids on the border who can't get a good education?" It really struck me.

Very early on he staked out the position that "I don't care whether you're the son or daughter of an illegal immigrant or not, you're going to get educated if you're in Texas." It's something he really believed in. I don't know where it came from. But I think one of the reasons he and I got along so well, I think he really liked my story. He liked what I had accomplished. The Hispanic community sensed in him a genuine concern, understanding about their issues.

He went to Harvard, went to Yale, the son of a President, so very different. Nonetheless I think they sensed in him someone who understood their issues, and that's why he was so popular in the Hispanic community. He just felt very comfortable.

He had a very strong-willed mother. Karen and Condi and Margaret Spellings were all very strong-willed, personality-type women. He wasn't intimidated by that at all. He liked that.

**Kassop:** As long as we're talking about family members and you mentioned that you didn't see a lot of reflection on his part about comparing himself to his father, but were there at all times in decision making where he would make that connection or that comparison?

**Gonzales:** No, only the Souter statement. I can't remember if what I'm remembering is what I've read or heard others say about Iraq and his father. I have no specific recollection of him talking about, "I am not going to do the same thing my father did on Iraq." I don't remember.

**Kassop:** Was it your sense that he talked to his father a lot to get advice about current issues?

**Gonzales:** Not a lot but from time to time. Occasionally I'd go down to the Oval Office and his father would be there. Not very often but occasionally.

**Perry:** What was your sense of their one to one?

**Gonzales:** Very close. Both men are extremely emotional and not afraid to show that emotion.

**Perry:** With each other? With others around them?

**Gonzales:** President Bush and I had some very emotional conversations through some of the difficult times. He is just that kind of guy.

**Riley:** Do you remember any specific instances of this that you can talk about?

**Gonzales:** During the difficult times when I was being attacked as AG, like in connection with the U.S. attorney firings. When we had a discussion about my resignation. Those were *extremely* emotional. People ask me what I think about both men and I say, "They're good men. Imperfect like all of us, but good men who did their best."

**Riley:** You mentioned that you thought President Bush liked your personal story, which is a wonderful personal story. But my perception from what I recall in reading through the briefing book is you really avoided trading on your personal story very much when you came to Washington.

**Gonzales:** What do you mean? How would I do that?

**Riley:** In Washington when you've got a nugget of something that is compelling like your story—

**Gonzales:** Trade it for what? I'm counsel to the President, I'm the Attorney General.

**Riley:** But you didn't go out of your way to—

**Gonzales:** I'm not sure I had to. There were a lot of stories written about me.

**Riley:** That's true. But there's a certain celebrity culture in Washington, a lot of which is self-

promotional or if you've got a press person—

**Gonzales:** If you're a staffer to the President, the last thing you want to do is create a lot of publicity about yourself.

**Riley:** That answers my question, I suppose. Let's return then to the counsel's portfolio and get through that. We talked a lot yesterday about what the OLC did and how it fit in, but I don't think we heard from you directly what your perception of the counsel's primary job is or what the dimensions of the job are.

**Gonzales:** There are a number of areas that I think every counsel has to deal with, beginning with protecting the institutional prerogatives of the Presidency. We also worked on litigation. I viewed myself as the primary interface between the White House and the Department of Justice. Oftentimes the Department of Justice would make the decision without any input from the White House on important matters of litigation, but there were some cases like the Michigan affirmative action cases that the President cared about, and eventually he wanted to have a say in that. I would be the primary interface between the White House and the Department of Justice on all pieces of litigation. We'd look at every piece of legislation and provide input to both the President and his advisors about the legality of legislation, how to write the legislation.

Clemency is another big area. We had the primary responsibility for clemency. National security wasn't a big issue for me until 9/11, but after that it became an important part of the work of the counsel's office. We were the ethics advisor for the White House and we had to deal with a lot of ethical issues. Moose Cobb was the initial ethics advisor on my staff and an expert on that. We were the clearance counsel. We gave the sex, drugs, and rock-and-roll interviews to high-level appointees. Judicial selection was another very important component of what we did. We helped develop a policy.

Those were the things we worked on. In a sense we were kind of like the general counsel of a small company. Then we used the outside counsel, the Attorney General, to provide the tough legal work for us. It was a relatively small staff, 12 lawyers or something like that. They were a great, fantastic team of lawyers.

**Riley:** All of those change with each administration or are there—?

**Gonzales:** Sure.

**Riley:** Is there any permanent staff in the counsel's office?

**Gonzales:** No. We had two or three legal assistants and two or three assistants plus the lawyers. It is a very close-knit group, all of whom are very loyal to the President. These are political appointees and believe in the President's mission and want to support the President.

**Dinan:** One of the particular tasks you mentioned that folks think about is the advice on legality or constitutionality of legislation. Are there particular pieces of legislation that were notable during that time?

**Gonzales:** McCain–Feingold. What I remember about that, of course the President wanted to

sign the bill. The Department of Justice had concerns with it. They were worried that portions were unconstitutional. They were telling the White House, “We have an issue with it.” I was on vacation because I remember standing like in a cotton field with a cell phone telling the Department, “Go back and see if there is a basis to defend a law because the President really wants to sign it.” Finally the Department said, “OK, we can get comfortable with it.” Of course, parts of it were struck down eventually, many years later. That’s an example where—because I had my lawyers look at it and we felt we could make a legitimate good faith constitutional argument when it goes to the Court. The Department ultimately agreed, “Yes, we can make that argument.”

**Dinan:** The President wanted to sign it. Was that the end of the line for discussion within your office on that?

**Gonzales:** Oh, no. If there was no legal basis then I would have urged him not to sign.

**Dinan:** Was there dissent within your office? That you can independently come to the same position as the President or can we get to where the President—?

**Gonzales:** No, because the goal here is to determine if you can make a defensible argument before the Court. We felt we could. If the Department had said no, I would have told the President, “Mr. President, no.” Now he might have said, “I’m going to sign it anyway,” but I do not believe so, after reflection he probably would not sign it.

I remember one time when he was Governor they passed legislation that allowed the Lieutenant Governor and the Speaker to make an appointment to a board. I thought it was unconstitutional because the appointment power is an executive power and the Speaker in particular should not have that authority, that’s for the Governor. I told the Governor, “You ought to veto this bill because it is unconstitutional to give the Speaker the appointment power,” and the Governor responded, “I like the Speaker” and that was the end of it. I did my job. I gave him my advice.

**Riley:** That’s a really interesting story, because that is history you carry with you into the White House. So you know how hard to push or not to push.

**Gonzales:** Hopefully you learn. It’s like being married, you know how hard to push.

**Kassop:** I know that when the new White House staff begins their job right after inauguration and those of us who have studied the counsel’s office know that there is nothing. There’s no paper in there, there are no memos with the exception of what we’ve been told is one little book, which has the 25th Amendment and the war powers process.

**Gonzales:** I’m not sure what we had. Maybe we had those things, It wasn’t much.

**Kassop:** What we’ve been told in the past is that there are a couple of notebooks that stay there and are passed along.

**Gonzales:** I remember reading that there are binders that stay there.

**Kassop:** Were they really there?

**Gonzales:** Probably, but I felt we were prepared, whether they were there or not. We did our work beforehand. We briefed the President on the 25th Amendment before the inaugural. I think like all lawyers we would look with some degree of suspicion upon these binders that had been left by the previous administration, and we would do our own work.

**Kassop:** But they were left because that is essentially the only institutional memory, because everything else goes—according to Presidential records—to the National Archives, leaving nothing.

**Gonzales:** Yes, but rather than relying on those binders, I would pick up the phone and call OLC. There's the institutional memory.

**Kassop:** They're not necessarily from the previous administration in terms of policy.

**Gonzales:** Yes.

**Kassop:** I interviewed a number of previous White House counsels. I remember talking to Bernie Nussbaum about when he was counsel. He said, "I walked into the office directly from the inauguration, the phone started ringing off the hook, people asked me what my position is on this or that." He said, "I don't have a pencil, I don't have paper, I don't have a secretary, I have *nothing*."

**Gonzales:** I had a secretary.

**Kassop:** You rated. When we were talking about your advice on pending legislation, the counsel's office also vets the Executive orders, and another issue in the Bush administration was your use of signing statements. Two questions about the signing statements. The purposes, as I understand them, are first, either to provide the President an opportunity to be able to direct other agencies as to what part of a law perhaps not to execute. The second reason for signing statements that has sometimes been suggested is to have essentially the executive intent of the law, so at the time when something gets challenged in the courts, not only is there legislative intent from Congress, but you have sort of an equivalent or competing executive intent from the President. That part was somewhat new, recent.

**Gonzales:** We thought the use of the signing statement was actually more efficient, kinder to the Congress than simply vetoing a bill because of one provision that we felt was unconstitutional, that the President wanted to go ahead and sign the bill even though there was a problematic provision in it. So the purpose of the signing statement was to inform—And we thought this was good. Everyone was accusing Bush of being secretive. This is the President informing the world, the courts, the Congress, the executive branch, the American public, "This is how I'm going to implement, execute this law." I don't know that it is so much saying we were not going to execute or implement this provision of the law, I think it is more that this is the way we're going to implement it, we're going to execute it in a way we believe is lawful and we're informing the world this is what we're doing.

This was a way for the President to be able to sign the bill even though there were problematic provisions in it. And there was some thinking that executive intent might be helpful, although as a judge I don't pay much attention to legislative intent and I'd probably pay less attention to

executive intent. I'd look at the words of the statute and draw my own opinion about what they mean. But there was some thinking that if the legislature gets to do it, why shouldn't we?

**Riley:** How early do you recall this beginning?

**Gonzales:** It wasn't a significant enough event for it to form a memory.

**Riley:** So you don't know who was involved in helping to make this a prominent piece of the executive agenda.

**Gonzales:** I would not characterize this as a prominent piece of the executive agenda. We didn't go out of our way to have the President sign signing statements and generate controversy. It just happened that there were a lot of laws passed in which there were concerns primarily raised by the lawyers about how some of these things would be interpreted and executed.

**Riley:** Which lawyers?

**Gonzales:** Both within the White House and within OLC because OLC was very much involved in drafting the statements as well.

**Kassop:** It was certainly not a new practice. The Clinton administration had done the exact same thing for the exact same reasons.

**Gonzales:** We didn't view it as particularly controversial because it had been done before. This is not an instance where we say, "This is an executive power that we will restore to the President." It had been used before, quite often, by President Clinton.

**Riley:** So it just evolved into something that became more prominent.

**Gonzales:** Again, I would not say more prominent. It continued, and I don't know how you want to count them. Critics in particular want to count the number of signing statements, although what you really need to do is within each signing statement you may have a President who objects to only one provision, or within a signing statement you may have a President interpreting a hundred provisions. That's what you really need to look at as opposed to the number of signing statements.

**Dinan:** Could you give us some illustrations or examples of times when there was discussion within your office about a signing statement?

**Gonzales:** I can't. Maybe if you had some high-profile ones I might be reminded.

**Kassop:** The reason for the signing statement is that you were not able to smooth through with Congress the provisions that you're objecting to? In other words, there weren't efforts to try to—so that there wouldn't need to be a signing statement?

**Gonzales:** I'm assuming that there were strong efforts to try to fix the legislation. Let me tell you Bush's position on vetoes, which is consistent with this notion. The President didn't like to veto legislation. He didn't veto any during his first term because he felt a veto reflected a failure on



the part of the White House in doing its job, particularly if you had a Republican-controlled Congress. If the Congress ultimately passes legislation you don't like, either you failed in your position or the Congress really wants to do it, and if that's the Congressional will, he's going to go ahead and sign the bill. That was just his feeling about it. He thought that it was our job, if we had a problem with legislation, to fix it or somehow get it killed. But once it became law, the legislative body had manifested its will.

In the second term there were some vetoes. He vetoed more legislation as Governor, but Governors, certainly in Texas, veto legislation more often than I think a President does. And on the signing statements, he would expect the White House, the people in the legislative shop and the policy makers, if we had a problem with it we needed to work with Congress and fix it.

**Kassop:** A controversial one that stands out was the Detainee Treatment Act where he interpreted how he understood the meaning of the terms in that law, and it was tacked onto some Hurricane Katrina legislation, I believe. It was in December 2005, so it was at the end of your time as counsel, but you were probably still in the office at that point.

**Gonzales:** December 2005? I was the Attorney General.

**Kassop:** Right, I'm sorry, it was January 2005. You came in as Attorney General in February.

**Gonzales:** If it was in January I was still the counsel.

**Kassop:** Sorry, but I believe that legislation was December 2005, which would have been after your time.

**Riley:** Was there anything in conventional Texas practice that looked like a signing statement, or was it just a veto or not? Were there expressions of executive intent in Texas?

**Gonzales:** Yes, there were veto proclamations, but I don't recall there being anything comparable to a signing statement.

**Perry:** This is a general question and a pre-9/11 question that somewhat relates to coming into an office and first of all being a little bit taken aback by the conditions under which the offices are left even though you said in the West Wing it wasn't so bad, not having a lot there to go on. This is all new to you because you've not worked in Washington before, you've not worked in the White House before. In addition to what I'm sure was a sense of awe, was there a sense of feeling overwhelmed?

**Gonzales:** No. There was a sense of having a job to do, and to getting it done.

**Perry:** Does anything then surprise you about the Washington culture or about media and how media are reporting on the President in those first few months?

**Gonzales:** I didn't get a chance to experience Washington culture. We didn't get out at all because of the demands of the job.

**Perry:** How about Washington political culture?

**Gonzales:** You're operating in a much different league when you work in the White House and you work in Washington. There was probably an inordinate amount of attention or interest in me because I'm Hispanic and because I might go on the Court. There were a number of stories about me. Most of them were background stories, which was fine.

Before 9/11 I really thought we would be successful in reaching bipartisan consensus on a number of pieces of controversial legislation because I had confidence that Bush could make it happen. We saw it with No Child Left Behind, but that didn't happen. I don't recall ever being overwhelmed. I knew the client very well. I had done my work in preparing for the issues, knowing at least the processes we would use. Tim Flanigan, my deputy, had been head of OLC, so he had experience dealing with some of these issues. All my lawyers were superstars. I wasn't at all worried that we couldn't do the job for this President and for the American people, not even for a second. And I say this not with arrogance, but with confidence.

**Perry:** In talking about the stories that were being done on you, did you cooperate with those? Did they come and interview you about your backstory?

**Gonzales:** The White House encouraged those interviews, so when the press shop asked me to do an interview, I would do the interview.

**Perry:** And you felt they were fair and in fact probably laudatory?

**Gonzales:** For the longest time I didn't read press stories at all about anything. Even during all the investigations about me as AG, my wife would read every word and she would go bananas, but I didn't read them because most of the time I just thought they were either silly, inaccurate, or incomplete. I didn't really pay attention to them.

**Perry:** What were they leaving out that you thought should be in there?

**Gonzales:** I don't know.

**Perry:** Did your wife tell you?

**Gonzales:** She would just tell me they were often awful. I'm talking about during the times when I was the Attorney General and there were discussions that I'd politicized the Department and things like that.

**Perry:** In those early days when you were often spoken about as a possibility for the Supreme Court, did you have a sense that in the post-Bork era you wanted to be careful about what you said or with whom you did an interview?

**Gonzales:** Sure, because I didn't want to take away from the President the option of putting me on the Court. I wasn't sure I wanted to go on the Court. A lot of people have asked me this a number of times, "Do you want to go on the Supreme Court?" I told you about the conversation I had with Bush in Texas when he asked me if I wanted to go on the Court. If he'd asked me again I would have probably responded the same way, "Do *you* want me to go on the Court?" I never aspired to go on the Supreme Court. Would I have gone if he had asked? Of course. If the President of the United States wants you to take a historic appointment to the Court, yes, you take it. But it is not something I ever aspired to do.

**Riley:** Did you have conversations with him about the possibility?

**Gonzales:** We had numerous comments; there were hints.

**Riley:** Can you tell us a little bit about those?

**Gonzales:** What I can say is that the President sometimes communicated by making a comment or a joke or a snide remark. In front of others in particular is when I considered it significant, but from time to time he would say something that would lead me to believe, *He's thinking about me going on the Court*. Yet there were other conversations where he told me that he wanted me to stay. We had several conversations where he would ask me, "Are you going to stay to the end?" I would say, "I'm not sure we can afford it. Becky wants me to leave."

He would say, "No, you need to stay. I think about your being Attorney General." So early in the administration I had a sense that I was either going to go on the Court or I was going to become the Attorney General if I stayed. Maybe in the second term becoming the Attorney General. We did have a few conversations about that.

**Perry:** You said earlier that that was one instance when he did talk about his father's Presidency, and he wanted to avoid another situation where a perception of David Souter thinking that he would be conservative and in fact there was a waggish statement that people would say, "Oh, the conservatives—"

**Gonzales:** Say, "Gonzales is Spanish for Souter."

**Riley:** Let me cite for the tape record that there was a rolling of the eyes.

**Perry:** Did the President talk to you as decisions were being made, getting close to 2005, over those years when you first got there and he didn't ask you to go on the Court, did he talk to you about not only that he didn't want to have a situation like his father and the David Souter issue, but that he was beginning to worry about how conservatives were viewing the selection?

**Gonzales:** Yes. He also worried about how certain incidents like the Michigan cases hurt me because that had been teed up as Gonzales versus Olson and Ashcroft. Gonzales versus the conservatives. Gonzales had facilitated a decision by O'Connor that the conservatives hated, so he worried about that.

I remember one of those conversations after his decision on the Michigan affirmative action cases, walking out of the Oval Office and Dan Bartlett walking in and overhearing the President say, "Dan, I need you to protect Al in the media, I need you to protect Al over at Justice." I remember also after the decision the President had dinner with Robert McCallum [Jr.]. Robert McCallum was the President's roommate at Yale and third in line at Justice, the Associate Attorney General. They were good friends.

I think it may have been the night the President made his decision about the affirmative action brief or shortly thereafter, but the next morning the President said, "I had dinner with Robert and I told Robert to go back and tell those folks at Justice that this decision was not Al's. This decision was my decision and the counsel's office and the Department need to work closely

together, so get off Al's back."

I certainly understood that those kinds of events did not help my chances. Of course, the 2004 event with Ashcroft and the hospital visit and all that further expanded the divide between me and the conservatives over at Justice. I think they were suspicious of me. They were not going to support me regardless, even though I'd helped nominate great conservative judges and surrounded myself with great conservatives and helped the President push forward conservative policies. They never got comfortable with me. I think the President worried about that.

**Dinan:** Did you at any time have discussions with the conservatives to try to get them to understand your view? How big a concern was it for them to explain where you were coming from?

**Gonzales:** We tried a few things. Once the White House asked me to give a speech to a very conservative group in McLean. I can't remember the name of the group now, but what I remember about that speech—I was talking about the fact that the Supreme Court, whether we like it or not, decides what the Constitution means, and *everyone started booing*. I thought, *What did I say?* What they'd wanted me to say was the Constitution means what it says and it shouldn't matter what judges say.

Yes, that's true, but the reality is the Supreme Court, whether we like it or not, decides what it says and what it means. That's why elections have consequences and why Supreme Court appointments are so important. We tried that and it fell flat. The view was that it was better for people like Tim Flanigan and Brett Kavanaugh and Noel Francisco to go out. They had much more credibility than I did, no matter what I said. But from time to time Tim would tell me, "I went and talked with this group, talked to these people about you." Because Tim and others knew there was a great deal of suspicion and fear about me going on the Court.

It was a combination of events and the whisper campaign. I think the President probably decided fairly early on that my going on the Court was not going to happen. I had a pretty good idea that it wasn't going to happen, and I'll tell you something I have not told anyone else. The day O'Connor announced, I got a call from Harrier Miers, "Come over to the White House because we have a vacancy on the Court." We sit down in the Oval Office; I think it was Andy and Karl and Harriet and me and Cheney. We talk about how we're going to say goodbye to O'Connor, the process we're going to use to find her successor. Then everyone leaves but the Vice President and the President because the President wants to talk to me. This is July 3rd or something like that, and he says, "I'm not going to put you on the Court."

I said, "Not a problem. I like being Attorney General. I will work hard to get your nominee confirmed." He knew immediately, at least for that position, that he didn't want to put me on the Court. I said, "That's fine, I'm happy where I am." But I think also he didn't want to publicly take me off the table because politically it was probably helpful to him, with both the left and the right. If the right was still concerned that he might put Gonzales on the Court, whoever else he appointed they would support gladly, I suppose. He also gets some credit from the left for having a Hispanic under consideration.

**Perry:** I think I've read that you had met individually with John Roberts [Jr.], at that point Judge

Roberts, pretty early in 2005, not for thinking that Justice O'Connor would leave, but by that time everyone knew Chief Justice Rehnquist was ill.

**Gonzales:** What people don't know is when I was counsel I had private interviews with many of the top names, people who were at the top of our list. I went out to Mike Luttig's home, for example, and sat with Mike for a while.

**Perry:** One to one?

**Gonzales:** I think Tim was with me, they were good friends. I'd known John, asked him to consider being deputy counsel. Of course I interviewed him in connection with the D.C. [District of Columbia] Circuit. I didn't know him that well. David Leitch had worked with him and loved him. We were coming to the end of that term, and I just wanted to sit down with Roberts and get a sense of him. He came by the Department of Justice one evening. We spent about an hour together and just talked. I asked him a number of questions. After that meeting I was convinced, *This is the guy we ought to go with.*

**Perry:** What about him convinced you?

**Gonzales:** He's extremely bright and very thoughtful. You'd ask him about how he would interpret the Constitution—Precedent to me was very important, his answers on precedent. I asked him about reliance upon foreign law. I asked him, "Should societal norms affect in any way your decisions as a member of the Supreme Court?" I asked him a number of questions and he was extremely thoughtful. He has a very warm, soothing personality, a very confident personality.

**Perry:** Then I understand you met as a group at the Vice President's residence in May of '05.

**Gonzales:** Yes, after the vacancy occurred we had our formal interviews, our little group of five that included me, Harriet, Karl, Card, and Cheney. Interestingly, Scooter was in those interviews. I guess the Vice President wanted his lawyer there, even though he wasn't part of the group, didn't have a vote.

We also had a series of interviews in the White House Mess sometime later for a smaller number of people. We interviewed Roberts, [Samuel] Alito, [J. Harvie] Wilkinson, and Luttig. Going in Luttig was our number-one choice, but coming out Alito was our number-one choice with Roberts second.

**Riley:** Do you remember what happened?

**Gonzales:** Luttig seemed nervous. He did not interview as well. Also I'd had a number of conversations with the President through the years about Mike Luttig and always told him, "This is the conservatives' conservative. He is viewed as the superstar of the right. If you want to have a war, this is the guy you want to nominate. If you want to have a war on abortion, this is the guy you want to nominate." In the end the President did not want to have that war.

There were others, like Cheney, who weren't afraid of having that war, but the President was worried about how it would affect the rest of his agenda. He wanted to get a good person on

there who was conservative but who would get confirmed. Sam interviewed extremely well. I had interviewed Alito when I was counsel. I had a private session with Alito, and he also seemed nervous. But in that interview session for the O'Connor seat what I recall about Alito is that his answers were so precise that we got to the end of the interview and ran out of questions before the end of our time because bam-bam-bam. We were all very impressed with that. John was great. Wilkinson was fine. I think Mike Luttig ended up third in the ranking.

**Perry:** These were interviews being conducted after Justice O'Connor created the vacancy.

**Gonzales:** That's right.

**Perry:** But prior to that you were thinking in terms of replacing the Chief because of his illness?

**Gonzales:** There was some thinking that the Chief would be the one to go first. The morning Harriet called me to come over to the Oval Office, she was extremely cagey, she said, "We have a vacancy." I said, "Really." She said, "It's not the one we thought." She didn't tell me who. She just said, "I'll see you at the White House." So I hung up and went over there. But I thought it would be O'Connor.

**Riley:** Your relationship with the Vice President was good?

**Gonzales:** I think so. I think it was good. He's pretty wise and experienced. I think he probably appreciated my relationship with the President, and therefore it helped him to have a good relationship with me. I respected him deeply. The Vice President is a little more conservative than I am, but he loves our country. I saw it all the time. He just genuinely loves America. The advice he gave the President, I never worried about him being the last in the room because I always felt his advice was based on what he thought was best for the country, not what was best for the party. I think it was pretty good, although sometimes we were in disagreement, like on the affirmative action cases.

There was one incident where he ended up being the go-between with the President and Olson and Ashcroft when things got a little sticky toward the end. The President would tell the Vice President, "OK, tell Ted he has to write the brief this way." One time I got a call and his assistant said to come down to the Vice President's office. I went down there and the Vice President—I could tell he wasn't happy. He said, "You have a Brett Kavanaugh working for you?" I said, "Yes, sir." He said, "I just got off the phone with Olson or Ashcroft and they said this Kavanaugh guy called over there and said, 'The White House counsel's office is taking over the brief and send over all the materials now.' What are we doing interfering with the Solicitor General?"

I said, "I haven't talked to Brett, Mr. Vice President, but knowing Brett I can promise you he would never do that. I don't know what's going on." I did tell Brett to call over there and give Paul Clement, who was then the Deputy Solicitor General, the President's position, make sure they understood it because they had written the brief a certain way. The President had read it, he didn't like it and wanted to go back to the way it finally turned out.

The Vice President was frustrated. He finally said, "I'm not sure Olson is going to sign the brief. I'm done with this." He was unhappy with me and maybe unhappy with the President in terms of

the position the President was taking. Usually he was a cool customer. That's probably the only time I ever saw the Vice President get flustered or irritated, certainly at me.

**Riley:** Part of the reason I raised the question is in wondering whether he was somebody who might have not endorsed but at least provided some cover with more conservative constituencies for you.

**Gonzales:** I believe the Vice President would lobby the President for the person he thought best. But once the President made his appointment I think the VP would support the appointment, whether it was me or someone else.

**Riley:** Exactly. But I'm getting the impression maybe that wasn't—

**Gonzales:** I don't know how the Vice President felt about me going on the Court. We never talked about it. I suspect he would have talked to David about it. What I do know is that we had a Supreme Court vetting process within the counsel's office, but later I learned that very early on Andy Card asked Tim Flanigan to set up a separate one for me. I wasn't going to order one on myself, and Andy felt he owed it to the President to have that work done on me.

**Riley:** I understand.

**Gonzales:** I don't know if David had any role in that. I don't know what the feelings were within the White House about me going to the Court.

**Riley:** There are a lot of issue areas that we've got to get through. Why don't we take a break?

[BREAK]

**Riley:** There are all of these issue areas related to the War on Terror, and I know we can't get through everything. Yesterday we talked a little bit about the military tribunals, which was one of the early things in the queue. I suppose I could throw that out to see if there are questions from my colleagues. Nancy, I'm looking particularly at you, to see how the decisions were made. You said that your model for that was President Roosevelt.

**Gonzales:** Yes.

**Riley:** Was there a great deal of internal debate about whether this was the appropriate way to go or was everybody on board with the idea of using military tribunals?

**Gonzales:** My recollection was that it was a pretty small group of individuals who knew this was under consideration. I'd had some conversations with the President, this was discussed I think in my law review article, where I raised it with him as something Roosevelt had done and he thought, *Wow, this is pretty strong, this is a pretty aggressive move for a Commander in Chief.* He liked it and felt that it should be one option. The way I presented it to him was that there

might be some issues in trying to bring some of these folks to justice if you ultimately wanted to do that, but this was another alternative and he thought we should have that as an alternative.

There was a small group of individuals involved in at least putting the infrastructure in place, the initial order to have military commissions as an option. Maybe that helped contribute to the limited number of people who knew this as an option. Based on what I remember sitting here today, I don't remember thinking this was especially controversial. It had been done before and upheld by the Supreme Court, and we weren't saying we were putting anybody in the military commissions, we were simply saying this was an option that the President would have going forward.

So we did that. My recollection is there was an immediate "*What?*" from people within the administration. "What is this?" But this was something the President wanted as an option, so it was presented to him.

**Kassop:** The way in which the military commissions decision came about from the *Washington Post* series by Barton Gellman and Jo Becker and also the book they wrote about Cheney afterward, the way they described it is that you're absolutely right, there were maybe four or five people involved in this decision, and it was a very secure process going from those people to the President's desk. I believe excluded were Condi Rice and Colin Powell and perhaps even Ashcroft.

**Gonzales:** Oh, no.

**Kassop:** He was in on that?

**Gonzales:** Yes. The initial thinking about it didn't include John Ashcroft, but as I said in my article, I had very preliminary conversations with the President as an option. I raised it with him because I wanted to make sure he was OK with us continuing to look at it, and he was always positive in his response.

I'd had no conversations with Ashcroft about it. I don't know whether or not I encouraged or told John Yoo to talk to John Ashcroft about it, but I do know that in one meeting with the President, Ashcroft, unsolicited, raised with the President the possibility of using military commissions. I don't know if Ashcroft knew that I had already had some preliminary conversations. I have a sense that what had happened is that John Yoo, after our conversations, had gone to John Ashcroft, laid it all out for him and Ashcroft had agreed that military commissions made sense as an option.

In a meeting with the President and John Ashcroft, John raised it as something the President should consider. So Ashcroft clearly knew about this.

**Kassop:** But Rice and Powell and their lawyers did not?

**Gonzales:** I like to think that the Department of Justice lawyers are the lawyers for Rice and Powell and everyone else in the administration, but I do not believe Rice and Powell were informed. I think the reporting confirms that they weren't informed about what the President was doing here.



At the time I didn't think this was a monumental decision that would create backlash because it had been done before and we weren't putting anybody in military commissions, we were just putting in place the possibility that someone might undergo a military trial.

**Kassop:** But you didn't think that the legal counsels to both Rice and Powell should have been included in this discussion?

**Gonzales:** I was the legal counsel to Rice, I was legal counsel to the White House, including Rice, and as for Powell, whether or not to involve Will Taft? I don't know what my thinking was about that other than State equities were not as strong as DoD [Department of Defense] on this issue. I don't recall whether or not the President said, "Don't talk to anybody else about this, put this in place."

**Riley:** One question about the routines at this point. I know there are a lot of ad hoc meetings going on, but was it unusual for State to be excluded? Were there decisions taken that maybe the State perspective was not one that was essential?

**Gonzales:** Sure. If their perspective wasn't essential or necessary, they wouldn't be invited to a meeting. But the same would be true with respect to Defense or CIA. If there weren't equities involved there, then they wouldn't be involved.

**Riley:** Was there a sense that State was overly concerned about the international niceties and that they would gum up the works?

**Gonzales:** It wasn't a concern. Our concern was the premature disclosure as we developed this alternative for the President. We certainly understood that this is part of their job. Part of their portfolio is to understand, appreciate, and recognize the international reaction. But as lawyers, we were looking at the domestic and international legal obligations, not whether we were going to hurt somebody's feelings or issues relating to international policy or relations.

**Riley:** If I understand correctly, during the period we're talking about there is a great deal of concern about being able to move quickly and decisively. Was there a worry that engaging State on these issues compromised your ability to move quickly and decisively on some of these core issues?

**Gonzales:** I don't remember making a conscious decision, "We don't need State" or "We're not going to include State because they're going to disagree with this." This was a case for the lawyers of looking at the legal authorities involving the President and DoD.

This is another example of where, given what I know about the President, and I can be wrong of course, the fact that if I'm telling the President, "Mr. President, this is something that has been done before and all we're doing is giving you the possibility of this option in the future," if State or anyone else had said, "Mr. President, the present allies aren't going to like you doing this," I think he would have said, "I'm not saying I'm going to do it, but if I have to do it to protect our country I want that option." I don't think informing others of this option would have made a difference in this case on the decision to use commissions, but it may have hurt us if the policy leaked prematurely.

**Riley:** This is why I phrased the question more generically about State's engagement on this because there is surely an understandable logic that if you engage the international perspective on State, it will complicate the business of reaching a quick decision.

**Gonzales:** Yes, but to me that's not a reason to cut State out if in fact they should be involved in the discussions about legality or legal options. I'm just not sure it was necessary that they be involved in this decision. Now in the decision about, "OK, we're going to put this British citizen in a military commission," yes, they should be involved in that since it would directly affect international relations.

**Riley:** Sure.

**Gonzales:** But in setting this up as an option, whether or not, the question is should the President have this authority under the Constitution? To me that's more of a White House decision and a Department of Justice decision as to whether or not he has the authority under the Constitution, than a State decision as to what our allies are going to think about it.

**Riley:** I wanted to ask about John Yoo's network of communications within the Justice Department. You indicated that you had asked or instructed Yoo to have a conversation with Ashcroft about one of these decisions.

**Gonzales:** I think what I said was that that might have happened, I'm not sure. I know somehow John Ashcroft became aware that there was some thinking about using this as an option.

**Riley:** To your knowledge, were there contacts between Yoo and the White House where he was not communicating vertically within the organization? In other words, were there instances where your contact with this OLC officer was so closely held that he didn't communicate to the Attorney General?

**Gonzales:** Not that I'm aware of and I hope not. I would never instruct John Yoo to not inform the AG. I can't tell you that John communicated with John Ashcroft everything he was doing. I know I never told him, "Don't tell the Attorney General what you're doing" because I didn't think that would be appropriate. I don't know who John communicated with. I know there were times we told him, "This is very close hold." To me that would mean, "Only talk to Bybee or Larry Thompson or John Ashcroft, but don't go beyond that without checking with us first." That doesn't mean John couldn't ask one of the people in OLC to look at this issue and not explain why, which is what I understood that he did at least. I heard he did that.

**Kassop:** But what you're saying is you're giving him permission to talk to only those two or three people. What you're saying is he might have chosen not to.

**Riley:** I just wonder. The reporting on this obviously is feeding my question, which is there were decisions taken within OLC, or there were communications back and forth with the White House for which there was no internal reporting outside OLC with Justice, maybe not even within OLC, depending on the timeline.

**Gonzales:** I'm not aware of any reporting of John Yoo giving advice on substantive matters that the Attorney General didn't know about. What reporting is that?

**Kassop:** In Karl Rove's book, I believe.

**Gonzales:** Do you remember the issue?

**Kassop:** I believe it was on interrogations.

**Gonzales:** I remember now, there was a meeting on a Saturday in the Roosevelt Room where Ashcroft was talking to the White House about an issue. I think David Addington told Ashcroft, "OLC has already said we can do this." Ashcroft, according to the reporting, said, "Then we're done talking, it's over." But I can't remember the issue.

**Kassop:** I believe it may have been on the interrogations matter. I think it had something to do with the fact that John Yoo had not told Bybee what he was doing and Bybee had not told Ashcroft, so it was really the White House and Yoo that were in contact, but the upper echelon of Justice was not familiar with the issue.

**Gonzales:** I would have been surprised if John had not been talking and telling John Ashcroft what he was doing. That would have been my expectation, because that only protects John Yoo. Why wouldn't he do that? I would never tell John Yoo, "Don't tell the Attorney General."

**Perry:** I think I can clarify, from that particular book—

**Gonzales:** I thought it was on NSA [National Security Agency] surveillance, is it not?

**Perry:** I'm thinking it is not on interrogation. I'll look back on surveillance, but on the standards of conduct for interrogation it says that John Yoo was the principal author and worked with David Addington and that drafts were sent to John Ashcroft and Larry Thompson.

**Gonzales:** Yes. What I've heard John either say or report is that John Ashcroft and Larry Thompson, even Mike Chertoff looked at those so-called torture memos or torture opinions and signed off on them.

**Perry:** Now I'll look under the surveillance.

**Kassop:** On the military commissions order it was also specified that it was for noncitizens, aliens only who would be subject to the possibility of a military commission. So was there discussion then about making certain not to include American citizens?

**Gonzales:** What I recall, and I think this is also in the law review article, is the President telling me before the order that he was concerned about putting American citizens into these commissions. Maybe I'm affected by the article that is in this binder, very critical about the wording. We probably wanted the wording ambiguous enough to give the President all the flexibility he needed because he might change his mind. But based on that one conversation with the President, it was always my belief that no American citizen was going to be subject to military commissions, no matter what the order said.

**Kassop:** The order does specifically say "aliens." It doesn't say it specifically excludes American citizens.

**Gonzales:** That would have reflected what the President wanted.

**Perry:** Is it surprising to you now that in fact the military commissions are being challenged because they are unequal?

**Gonzales:** Nothing surprises me about the ingenuity of lawyers and the arguments that can be made. I'm not surprised by anything anymore.

**Kassop:** A couple of questions about the President's authority to issue the military order and to proceed with military commissions if and when those occurred. Was there any discussion about whether you thought you needed Congressional authorization to do this, or did you assume it was something the President had constitutional authority for on his own?

**Gonzales:** I don't recall discussion about going to Congress and getting additional authorization beyond the AUMF. Given the fact that Roosevelt had done it, the Supreme Court had passed on it, I don't remember any conversation that it would be helpful to go to Congress. Maybe the thinking was that we were just putting in place a framework. Once we start looking at the regulations, there is always time to go to Congress because we felt it would take us a little time to get these things stood up. Not ten years but—

**Perry:** Even though Congress has constitutional authority to regulate the military, to make rules?

**Gonzales:** Yes, I agree. There is certainly a lot in the Constitution that would seem to indicate this authority does belong to Congress. But because of the AUMF and because there was a precedent, it was believed by Justice that this is something the President could do.

**Kassop:** So you're saying it never even came up as a topic of conversation?

**Gonzales:** I am saying I do not remember. It may have come up at Justice, I don't know. It is conceivable that it came up at the White House, but I'm assuming if Tim Flanigan or David Addington had concerns about it they would have raised them with me, and I don't remember them doing so.

**Dinan:** What is your reaction then when each of these series of Supreme Court decisions comes down in 2004, 2006, 2007?

**Gonzales:** My reaction is that in a time of war that's unusual, where you cannot tell who the enemy is and mistakes can be made with respect to detention that might involve innocent American citizens, where the battlefield may be here in America, I think the Court is going to be a lot more careful about the authority of the President. That's what these decisions reflect. I think they are affected by public opinion and members of the Court are affected by public opinion. I think the circumstances made a difference in the outcome of these cases. Nevertheless, our job as lawyers in the administration is to try to anticipate where the Court is going to come out, and we got it wrong, according to the Court. Would I do it differently? Of course. If in fact we'd known the Court was going to say, "No, you can't do any of this without Congressional approval," then the President would have had to make a decision whether to seek Congressional approval. In the early days I suspect he would have gotten that Congressional approval. But it is not at all clear as times goes by that he could have gotten that approval, certainly not without compromising some

of the things he wanted to do to protect our country.

My reaction is we misjudged the Court. I think it has to do with the fact that we're fighting a different kind of war where mistakes can mean innocent Americans may have their rights infringed upon. If I'm on the Court, that would matter to me.

**Dinan:** It's interesting that their response is "We got it wrong, the Court got it right." I could imagine a different response even from a—The Court may have gotten it wrong. In 2006 we might have been right in thinking, *We've got Congress on our side here*.

**Gonzales:** I'm not suggesting that I agree with the Court. I fundamentally disagree with the Court's decision about Guantanamo and that jurisdiction exists. Based upon their precedent, looking at *Johnson v. Eisentrager*, they shouldn't have the right of habeas corpus. If they're in the United States I agree, but in looking at their precedent I think all of us were surprised, even military commanders were surprised at the Court's decision. I'm not saying I agree with the Court's decision, but it is definitive. That's the approach the President took. We don't second-guess it. We don't come out like President Obama in the State of the Union and say the Court got it wrong. We might say we respectfully disagree, but we will abide by the wishes of the Court.

**Perry:** That probably leads into some discussion of the administration's view of the scope of executive power and the notion of the President's power as Commander in Chief. It seems as if, in addition to the AUMF, there was the idea that you thought you had constitutional authority from the President's power as Commander in Chief to have total control over these military commissions. The understanding I got from reading your testimony at the confirmation hearings as Attorney General when they were going back over your views of executive power was that the President's power was exclusive, inherent, and absolute.

**Gonzales:** That's not what I said in my confirmation hearing.

**Perry:** You said it was inherent.

**Gonzales:** What I said was that there was a spectrum. At one end of the spectrum was the clear authority of the President as Commander in Chief and at the other end of the spectrum were the clear authorities of the Congress to do certain things like the declaration of war, appropriations, and things of that nature. Then you have this vast middle where through different Presidents' administrations, through different conflicts and circumstances, people fight over the limits of the authority of the President as Commander in Chief. Sometimes those answers are provided through accommodations, sometimes they're provided through a strong-willed President and a weak Congress. Sometimes vice versa. That's where the big fight is. What are the limits of the Commander in Chief?

I also said in my confirmation hearing, or if not in that hearing in other hearings, that the country is always better off when you have both branches of government working together on behalf of the American people and dealing with crises.

**Perry:** It was John Yoo's memo that talks about the President's power as Commander in Chief as inherent, as absolute. But you agreed with his memo or you didn't disagree with it?

**Gonzales:** I stand by the memo. That's all I can say when people say, "John Yoo's memo says this and you didn't jump up and down and say no and you didn't kill John." I have to stand by it. In hindsight as I look at some of these memos, there are things I disagree with and I wish had not been in those memos because they recognize broad inherent powers that the President never relied upon, that the analysis perhaps should have been different. But that's all in hindsight.

I stand with the memo. In general terms, I agree with John's position on certain matters. On others, I acknowledge that Congress has a role to play, even in times of crisis. I do think it is fair to say that the scope of that role, the scope of the authority has varied over time depending on the Court's interpretation of the circumstances. It is just tough to anticipate sometimes how the Court is going to come out, and we didn't anticipate very well.

**Riley:** The memo you're talking about is the August 1, 2002, memo.

**Gonzales:** The so-called torture memo, which I like to call the anti-torture memo, but OK.

**Riley:** In fact, at your confirmation hearings for Attorney General you did say that you reject that memo.

**Gonzales:** I think what I said was that memo had been pulled down. It was no longer the position of the Department of Justice; therefore I wasn't going to support it. It was no longer the position of the Department.

**Kassop:** John Yoo wrote another memo, the September 25<sup>th</sup> one, which is the actual laying out of the major authority of the President under the War on Terror. That was not included in the briefing book.

**Riley:** But the one, this is out of your confirmation hearings, the August 1 opinion has been withdrawn. "I reject that opinion; it has been rejected." Part of what we're trying to determine is what the process is. How do we get to a point where what was the governing logic—?

**Gonzales:** How did it change?

**Riley:** Exactly.

**Gonzales:** I encouraged all the lawyers and OLC to continually reevaluate their legal position because circumstances change, people change, the Supreme Court issues decisions that inform us. It is important in dealing with these kinds of issues that we continually reevaluate and change. Sometimes the positions change. The Supreme Court sometimes changes its position on the issues when there is a change on the Court, for example, and circumstances change. I welcome that. I thought it was important. I think it gave people comfort.

I did worry. When Jack Goldsmith became head of OLC, all of a sudden the position of the Department was changing a lot. That caused some discomfort in the White House, like, "What are you guys doing? Don't you know what you're doing?" That bothered me. I also worried that perhaps some of the lawyers were backing off previous opinions because they had become controversial. I didn't think that was right, and I didn't think it was fair to people who had relied upon those opinions. I worried about that. But as a general matter, I thought it was important that

we continually evaluate these positions on behalf of the executive branch.

**Riley:** Goldsmith quotes you in his book as saying, “I guess we weren’t well served by the original team at OLC because of this business of the memos being withdrawn.” Do you remember saying that?

**Gonzales:** No. I don’t know what the context of that statement would have been.

**Riley:** I think it was in relation to this process of having some of those earlier memos withdrawn and then reversed.

**Gonzales:** With respect to Jack, the big one for us was the opinion with respect to the President’s surveillance program and backing away from the President’s authority to authorize some of those activities. But I don’t remember in what context I would have made that statement.

**Kassop:** I had some other questions about the President’s authority as Commander in Chief.

**Riley:** Let’s go ahead.

**Kassop:** I don’t know if it was a phrase you subscribed to but Senator Leahy in your confirmation hearings talked about the Commander in Chief override, or the theory that the Commander in Chief’s power was so absolute and of such a full scope that it could override acts of Congress if the President believed that Congress’s acts interfered with his authority as Commander in Chief.

**Gonzales:** I do believe it’s possible that Congress could pass laws that would be unconstitutional, and in that sense I could make the argument that the President could exercise his Commander in Chief authority. I don’t want to say ignore, but he could rely upon that authority and take certain actions to protect our country under the Commander in Chief authority that might be in contravention of an unconstitutional statute passed by Congress.

For example, Congress passes a statute and says the President cannot commit troops into battle on any Monday of the month. I’d say that’s unconstitutional. “Mr. President, if you want to put troops into battle on a Monday, go for it if we need to protect our country.” There are limits on a President’s Commander in Chief authority and, practically speaking, Congress isn’t going to want to be, nor can they be, involved in day-to-day decisions about conducting a conflict or a war. I don’t believe the Commander in Chief authority is absolute. I do believe, however, that the American people and probably the courts, depending on the circumstances, are going to cut the President a break in terms of exercise of authority depending on the circumstances.

If the President is popular and what he is doing is popular, Congress is not going to say much about “You don’t have the authority to do this,” or “You’re infringing upon our authority as a Congress.” Quite the contrary, I think they’ll pass a resolution saying, “Go for it.”

I emphasize this to my students. I believe it is important that a President be constrained by law or by rule. It makes people uncomfortable, particularly critics of a President, political opponents, to have a President who is not constrained to some degree by something. It makes our allies very uncomfortable that the most powerful nation in the world isn’t constrained in some way. They

want to know what rules you are playing by. So, while we all want the President to be successful in protecting our country, I think we all want the President to do so consistent with the rule of law, consistent with our Constitution. I believe President Bush believed that as well.

While I believe very much in a strong executive, I felt it was important that whatever the President did, he did within some kind of legal framework. Otherwise I just think it is wrong.

**Riley:** I was just going to ask about your own personal engagement with the issue of this idea of the unitary executive.

**Gonzales:** The unitary executive—I'm not sure what it means to people. To me it means that you have an executive branch and at the head of the executive branch is the President of the United States, and at the end of the day he has the final say for the executive branch. I don't know what meanings others ascribe to it. I think some view it as some dark, unconstitutional, unholy theory or characteristic of a President or a Presidency, but to me it is simply we have three branches of government and within each branch of government somebody is in charge. As far as I'm concerned it is the President—for the executive branch.

**Riley:** The rationale for my question was because this was the underpinning legal theory or constitutional theory that Yoo was relying on in the development of his memos. There is at least some evidence among people who study these things that people like Addington and others had been plumping for this idea for years, that it had arisen during the Reagan administration. I didn't think John Yoo had been a party to this debate before you came into the White House, but I wanted to be clear about that.

**Gonzales:** We had hundreds of discussions about Presidential power. I just explained my view about who is in charge for the executive branch.

**Riley:** I understand.

**Gonzales:** To me it is the President. He has the authority or he doesn't. I never could understand, what was this discussion or concern about a unitary executive? To me that's what the framers intended, the President is head of the executive branch. Is there something more than that?

**Perry:** There are a couple of different ways to describe it, although yours is certainly one of them. The other is the idea that the President's authority would be exclusive and absolute, so his word would count over either Congress or the courts.

**Gonzales:** That's not what that term means to me. Unitary executive means within the executive branch you've got someone in charge and it is the President of the United States. That doesn't say anything vis-à-vis the Congressional authority and the judicial authority as far as I am concerned.

Where I got offended about the unitary executive theory was this notion that Congress could create these Inspector General positions who would report both to the President or Cabinet Secretary and to the Congress. That was contrary to my notion of a unitary executive. You're in the executive branch or you're not. This notion that you sit in both branches—although I guess one could say the Vice President sits in both branches of government.



**Riley:** That got to be a complicated issue.

**Gonzales:** It did.

**Perry:** That is constitutionally required.

**Gonzales:** OK, there we go.

**Riley:** Did you have to deal with that in any way?

**Gonzales:** Sometimes. David Addington had very strong views of the powers of the Vice President in both branches. Sometimes when I'd press him on the issue of the authority of the Vice President he'd say, "He's acting in this other branch of government authority."

**Riley:** You threw your hands up. Other questions about this in particular?

**Dinan:** When you go to the authorization for Iraq in October 2002, the President signs that and in one of the paragraphs there he says, "By signing this, though, I do not mean to change any understanding of the long-held view of the President's inherent power with regard to his Commander in Chief role." So that's a concrete way of saying, aside from the unitary executive debate, "We do not need Congress here, but we sought Congress in this case."

**Gonzales:** To me that is all part of that long-running debate about war powers.

**Dinan:** So that's just a continuation and those had appeared in some of the previous—

**Gonzales:** As I recall.

**Dinan:** So there's not a big debate for instance when the President said that in '91 when George H. W. Bush had signed—so it's not a big deal.

**Gonzales:** Not that I recall.

**Riley:** There are a variety of interpretations of the unitary executive, but one piece of it is that essentially the executive power is the President's alone. Those of us who were trained in a certain generation of Presidential scholars were always taught that we didn't have separation of powers, we had separated institution-sharing powers so that there were executive powers allocated in the Congressional branch, and that was the way our system was constructed.

The unitary executive says that the President has all the executive powers and that if the war power effectively is an executive power then Congress may not, but for funding issues and the declaration of war, intrude on the President's right.

**Gonzales:** But there are some other constitutional provisions. Authority is given to the Congress to provide and maintain armies, raise and support navies, and regulations et cetera. Those have to be respected as well.

**Riley:** I'm not disagreeing with you. I suspect if you had John Yoo seated here he might disagree with you. We're going to be seeing him in December, I think.

**Gonzales:** That will be good. I think you'll find John to be very confident in his beliefs.

**Riley:** We'll ask him. On through a number of these issues. We didn't ask you about the Patriot Act, which occurs fairly early on.

**Gonzales:** Right.

**Riley:** In at least one of the accounts that I saw, you were the drafter of the Patriot Act.

**Gonzales:** As with other important pieces of legislation for the President, I certainly was involved in looking at the legislation, but the Department of Justice had the lead in terms of the additional authorities we need to gather information more effectively. So we had people like Mike Chertoff and Viet Dinh, who was head of Office of Legal Policy, ping-pong the other divisions within the Department. What authorities do we need? I was involved in some of the drafting going up to the Hill and discussions about certain provisions of the Patriot Act, but the notion that I drafted the Patriot Act is just not true. I may have wordsmithed it some.

**Riley:** What were the key decisions you had to make? Were there components you wanted that did not get in?

**Gonzales:** I'm sure there were. I relied upon DOJ, the law enforcement professionals, to tell me what they needed, such as sneak and peek and administrative—subpoenas, rolling wiretaps, things of that nature. Then of course we had discussions about provisions to protect civil liberties, sunset provisions, and reporting requirements. These were all things in the discussion.

**Riley:** This happened in a very short period of time, yes?

**Gonzales:** Surprisingly. It is one of the few examples of seeing Congress taking immediate action. Of course, it followed a historic event in our nation's history.

**Riley:** Were there pieces of it that in retrospect you should have asked for, or were there components of it that didn't work well that you wish you didn't have?

**Gonzales:** I haven't gone back and studied the Patriot Act. I think it has been effective, and I was a forceful advocate for the reauthorization of the Patriot Act at the end of 2005. My guys were telling me, "We need this, it has been helpful." My recollection is that we had been very careful in its use, there had not been abuses, although we found out later that there was an abuse with respect to national security letters. But I thought it was a good story for the Department, and I think it did contribute. Bob Mueller told me, "This has been important, it has been helpful," and I believe it.

**Riley:** Any other questions about the Patriot Act?

**Kassop:** It's interesting that after 9/11 the only two actions taken by Congress were the AUMF and the Patriot Act. In fact, all of the other policy-making apparatus that came out of the post-9/11 period was executive.

**Gonzales:** Wasn't there also some legislation providing for compensation to the families of

victims in New York City? That may have come a bit later.

**Dinan:** Coming from the airlines.

**Gonzales:** There may have been some stuff on the airlines as well because there was genuine concern that two or three of them were going to go under if we didn't do something. There may have been some economic stuff.

**Kassop:** There were some financial and economic measures, but in terms of setting domestic policy in the War on Terror there were just those two pieces of legislation.

**Riley:** Do you remember the discussions leading up to the decision to use Gitmo [Guantanamo Bay] as the—

**Gonzales:** That's in the law review article. A lot of the speculation is that we chose Gitmo to avoid habeas, but in my analysis we chose Gitmo because it was the best of the short list of bad options. We did ask the Department, "If we move the detainees to Guantanamo will they have habeas rights?" and they concluded probably not, but they weren't sure, so it was a qualified opinion. There weren't any good options.

We thought about keeping them in Afghanistan, but we thought it would be unsafe for them and for the soldiers guarding them. We thought about returning them all to their home countries, but we didn't feel that that was in the best interest of our national security. Most of them were from Afghanistan and there wasn't a government we trusted to continue to detain them, so that was really off the table. We did talk briefly about bringing them into the United States but thought that was politically a disaster, would not be accepted by the American people.

I remember there was some discussion about putting the most dangerous ones on some kind of ship, but we thought, *No, we're not going to do that.*

**Riley:** Why not?

**Gonzales:** It just didn't seem viable long term. We wanted to find something a little more permanent. The notion of this floating brigade out there just wasn't that popular. Finally Guantanamo seemed to make sense. It was remote, it was secure. We'd have control over it. It was really the only option on the table for the United States.

**Riley:** The legal status of Guantanamo is unique?

**Gonzales:** We believed that it was not U.S. territory and therefore based upon our interpretation of the law, these aliens who had never been in the United States, who had committed war crimes outside the United States, would not have the right to habeas to challenge their detention. That was the interpretation by OLC and I agreed with that. That seemed right to me.

Some people believe we chose it to avoid any kind of regulations or laws, but of course at the time Bush had not made his decision on the Geneva Conventions so arguably we assumed it would apply here. We still had the Convention Against Torture, we still had the anti-torture statute that we were bound by. It wasn't true that Gitmo was chosen to avoid any kind of

oversight, any kind of regulation or law.

**Riley:** What about the black sites?

**Gonzales:** I can't comment on the black sites other than to say I had very little to do with any of that. I never knew where the locations were, it wasn't something that was talked about with me.

**Riley:** So the reliance on those is not of a piece with Guantanamo?

**Gonzales:** Much different.

**Riley:** The procedures.

**Gonzales:** I don't know what the procedures were with the black sites.

**Kassop:** We were talking about your interactions with counsels in the other departments and agencies. What was your relationship with the counsel of CIA, John Rizzo?

**Gonzales:** I thought he was very good. I liked John, I respected him. He had a wealth of experience, a lot of institutional memory about the organization. I also worked well with Scott Muller. He was only there a short time. There were a lot of controversial issues involving the CIA. I believe that both Scott and John Rizzo had a number of conversations with OLC that I wasn't a part of.

**Kassop:** What would be the process with the CIA counsels for you to be kept informed of what they were doing?

**Gonzales:** If we were talking about certain highly classified things, I wouldn't necessarily know about it unless it involved the President's constitutional authority.

**Riley:** That would go through NSC?

**Gonzales:** No, it wouldn't go through NSC. For example, John Rizzo might come by and tell me, "We're thinking about doing this" and I would always say, "Make sure it's lawful. Go talk to the Department of Justice." The lawyers at CIA would have to be comfortable and then they'd have to get sign-off from the Department of Justice. Beyond that, I wouldn't involve myself in the most highly classified matters at CIA unless they required Presidential action.

**Kassop:** How many or who at the Department of Justice would have clearance to talk to them about—?

**Gonzales:** That I don't know for programs that did not involve Presidential action.

**Kassop:** So skipping ahead, when you were Attorney General would you have known that at that point?

**Gonzales:** I would have been aware if it involved Presidential action or was super sensitive or high level. I assume they would have come to Steve Bradbury and Bradbury would brief me periodically on matters he was advising.

**Riley:** My question about NSC was in terms of keeping whoever in the White House needed to be in the loop on these things. What would be the channel from CIA? Would it be directly to the President in the daily brief?

**Gonzales:** No, because there would be some things we might not want the President to know immediately, or we might want to limit the amount of detail he would get. On a controversial matter I would say George Tenet, because he was CIA Director then, would either first raise it in a Principals Committee meeting in the Situation Room or he would take it directly to Andy Card, and Andy would decide if this was something that needed to go to the President and through which process.

**Riley:** In the briefing materials there was indication that there was, for a time, detailed discussion about interrogation techniques within the White House among the principals, with you included.

**Gonzales:** Yes, among the lawyers but also among the principals because George Tenet did not want to go down that road unless all the principals were holding hands in agreement.

I remember, early on, going into the Oval and telling the President we were having discussions about interrogation techniques. I had decided he did not need to know the specifics and I told him that was my recommendation and he agreed. And he said, "But it has to be lawful." I told him, "The Attorney General is involved. He'll tell us whether it is lawful."

He said, "OK, that's all I need to know. The CIA will determine what's effective, what's necessary to protect our country. The Department of Justice will tell us whether or not it's lawful, and that's what I need to know."

I believe there were subsequent conversations that I was not a part of where he began to learn the specifics of, or was given information about, some of these techniques, but I never gave him a formal briefing about what we were doing.

**Riley:** Do you know where he was getting his information on these techniques? Was it coming from Tenet or from press leaks?

**Gonzales:** I had a sense that in conversations with Andy or maybe with George something would be said and he would learn about it, and over time there was discussion about it in the press.

**Riley:** You were trying to protect him from exposure.

**Gonzales:** I thought it was best and he thought it was best as well that certainly in the beginning he didn't need to know the specifics. He needed to know that it was necessary and it was lawful. And Andy agreed as did the others.

**Riley:** What you're suggesting is that there were others who were forwarding to the President who didn't take the same—

**Gonzales:** I suspect that over time as some members of the administration raised concerns, or

questions raised by Congress, or following a news story, someone like Andy may have concluded the President needs to know. There may have been reasons. An issue may have come up. I could foresee a situation where Tenet is telling the President something and the President said, "How did we get this information? How do you know this?" Tenet might have said, "During interrogation." He might have asked, "What did you do?"

**Dinan:** Could you elaborate on that decision not to share too many of the specifics with the President? What is the logic behind that and what was the benefit?

**Gonzales:** I had the mindset, and I think Andy Card and others agreed, that there were certain bits of information not necessary for the President to know. Generally you don't want to bring things into the Oval Office if you don't have to because if it becomes a problem we can say, "The President didn't know about it," particularly if it is not necessary. This requires a level of trust that the President has in his advisors, and requires the advisors to know what information the President would want to know.

**Perry:** Could you talk about your trip to the prison at Guantanamo Bay in 2002 and then I think you stopped off at the military brigs on the way back? Maybe this could lead to a discussion of *Hamdi* and [José] *Padilla*, talk about those cases. We know now what the Supreme Court did, but could we back up to 2002 and how you were making these decisions, those two particularly but tied to Guantanamo as well?

**Gonzales:** I think I went to Guantanamo three times. Jim [William, II] Haynes was going to go down and see the conditions and the future site of military commissions. He asked if I would be interested in going. He also asked individuals at the Department of Justice, and we were all interested in seeing the facility. That was the sole purpose of the visit, to see the conditions. The same thing with our visit to the brig at Charleston.

**Perry:** What did you discover?

**Gonzales:** The area around the Gitmo facility is a nice place to vacation if you are not a detainee or working, it's sunny, it's very tropical. The facilities were pretty tough, but I've visited a lot of Texas prisons. I visited a jail in New Orleans right after the hurricane and it was much tougher, much more spartan than what I saw in Guantanamo even in 2002. In my subsequent visits the conditions got noticeably better. It appeared with each visit that the detainees acquired additional rights and privileges over time. I wasn't surprised by what I saw. These were what I believed to be terrorists and people who had fought against the United States and been captured on the battlefield.

I was led to believe, and I think it is probably true, they were receiving better health care and were probably better fed than they would have been in Afghanistan. But there was nothing motivating that visit other than an interest in seeing what those conditions were like and examining the future site of military commissions.

I went with Jim Haynes every time and there may have been others who went on these trips as well, again to see the conditions, to see the construction of the courtroom and the facilities.

**Riley:** Were there any practical consequences to these trips? Were any changes made as a result

of your visual inspections or is this more for your own edification?

**Gonzales:** More for my own edification. I don't know if Jim Haynes conferred with Rumsfeld about his observations and his thoughts, maybe he did. But I never talked to Rumsfeld about it. Bush was curious and I would tell him my thoughts. But that was the purpose of these visits.

**Perry:** Back to Hamdi and Padilla and their incarceration at the military brigs and their, of course, U.S. citizen status. Could you take us through the decision making about that?

**Gonzales:** I gave a speech to the American Bar Association I think in 2002, 2003 that goes into great detail about the decision making. Are you aware of that speech?

**Perry:** I am.

**Gonzales:** It would probably be better, for purposes of the record, to refer to that speech because I don't remember most of it other than I know with Hamdi who was captured on the battlefield we relied upon traditional methods of assessing whether someone captured on the battlefield is an enemy, supported by military, often courts, but for Padilla, arrested in Chicago, it was a very deliberate process that we went through conferring with, beginning with the CIA, working with the DoD, both of them confirming this is a dangerous individual, this in fact is an enemy combatant and should be designated as such by the President. That information with the recommendation going to the Department of Justice, with the FBI giving an independent assessment whether the individual is dangerous and OLC looking at all the facts, giving a legal opinion, "Yes, in fact the President does have the authority, and the circumstances exist to designate Padilla as an enemy combatant."

All that information coming to me, then I go and talk to the President. I sit down with the President and tell him all this information and the President makes the determination, "I'm going to designate Padilla as an enemy combatant." We had a very detailed process in place.

**Perry:** I recall that you went step by step through all the different levels of process to make the judgment about whether this person was an enemy combatant.

**Gonzales:** We thought the Court would be much more deferential toward the decision about an American citizen if it was in fact made by the President of the United States, and that's why we thought it important to have the President make that decision.

**Perry:** Did it permit battlefield designations? Were there battlefield hearings?

**Gonzales:** Yes, I believe for those cases where initial capture is on the battlefield.

**Perry:** The process to determine whether somebody who was picked up on the battlefield was, in fact, detained as a combatant. Were there actual hearings on the battlefield initially?

**Gonzales:** Yes, I believe so for battlefield captures. My understanding is that there was a process that occurred generally with these individuals. If you detain someone, there is an initial assessment. Is this person a threat to the United States? Then that person goes to a central holding facility and, this is early on in the war, let's say to Bagram and then another

determination is made about this person. Then a third evaluation is made: is this someone who should go to Guantanamo? So a series of decisions is made about a person, which is far more than you would have gotten out of the Geneva Conventions. There you're only entitled to a battlefield determination.

I'm assuming with respect to Hamdi, that sort of process occurred as well.

**Riley:** Do you know if there were people winnowed out during this process?

**Gonzales:** Oh, sure.

**Riley:** What's the—?

**Gonzales:** I'm not sure where you would find that information. Even after someone got to Guantanamo, there were assessments every six months or regularly and people were released. Of course some of those people came back to fight against Americans. It was not a perfect process, but I think Rumsfeld put in place the best process he could to ensure that only those who had information important to the United States and were no longer a threat to the United States remained detained at Guantanamo.

**Perry:** I think there was some discussion early on that in fact Geneva required battlefield hearings, which were not the ones used in Afghanistan and that there was some distinction. I don't remember what the distinction was, but there was some sentiment early on from some of your critics who said that the Geneva-type hearings would have been more appropriate and since they were not used, the ones that were used were not as wide ranging.

**Gonzales:** I find it hard to believe that if you have six levels of review it would not be as thorough as a determination on the battlefield.

**Perry:** The question then is why didn't you use the Geneva determinations?

**Gonzales:** You mean why didn't we—the United States of America—use the Geneva determinations. I believe in reality everyone captured on the battlefield received a Geneva-type determination irrespective of what you called it. Of course as a legal matter that was part of the President's decision with respect to Geneva in the first place. With respect to al-Qaeda, you're not entitled to any kind of Geneva determination and with respect to the Taliban, the President can make the determination that as an initial matter every member of the Taliban is an enemy combatant. I think John Ashcroft and John Yoo gave us the advice that the President did have the authority to interpret the Geneva Convention treaty in such a way that the President could determine that if you're a member of the Taliban, a battlefield determination would not be necessary.

**Perry:** But isn't the timing of it such that that determination about whether Geneva would or would not apply was in January–February of 2002?

**Gonzales:** That's true.

**Perry:** And weren't you starting to pick up battlefield combatants?



**Gonzales:** So the question is, were we doing Geneva-type determinations?

**Perry:** Right.

**Gonzales:** Again, it is my understanding that some type of Geneva determination was applied to everyone we captured.

**Perry:** The term “unlawful enemy combatant” is also a term that does not appear in the Geneva Conventions, so one of the criticisms was that you created this term in a way that had not been used before. Why didn’t you use the terms the Geneva Convention provides?

**Gonzales:** I did not create the term. It was a collective decision by the lawyers and adopted by policy makers. If there’s criticism of the term, the criticism should be targeted at the entire Bush team. Sitting here today I would say it was probably an intent to reflect the fact that you can be an enemy combatant and still be entitled to certain privileges and protections. But if you’re an unlawful enemy combatant, you forfeit those rights and protections. Maybe that was the purpose of that term. I don’t remember the discussions about who ultimately decided we were going to use “unlawful enemy combatants.” It was a collective decision and use.

**Perry:** It was probably first used in print in the November 13 military order.

**Gonzales:** I’m wondering whether it was used in the Roosevelt order.

**Perry:** They used “enemy belligerent.”

**Riley:** In your public comments as counsel and Attorney General, you make a great deal out of the fact that the President has pledged to apply the principles of the Geneva Convention to the people we capture.

**Gonzales:** Yes—as it relates to humane treatment.

**Riley:** It is not clear to me if we are pledging to apply those principles, we don’t just agree to follow the conventions. Why are we rejecting the specific application of the Geneva Conventions while at the same time saying we are going to abide by the principles in the treatment of people who are captured?

**Gonzales:** But why say you are bound to every term in a treaty if you are not legally bound, and if saying so harms your ability to get information that is nonetheless humane? For the President the principles were important, the values of the Geneva Convention are important. They are consistent with American values as a matter of policy. The President wanted our soldiers to be afforded Geneva protections and he wanted other countries to adhere to the values of the Geneva Conventions. Again, this is the question as a legal matter, what are we legally obligated to do. He wanted maximum flexibility to do what needed to be done to protect our country. He would decide, once I told him where the box was, how close to the edge of that box we were going to get. Winning the War on Terror requires winning the war of information. I think that to impose a restriction on yourself not to ask detainees anything beyond name, rank, and serial number was something the President was not prepared to do and had no legal obligation to do.

The Geneva Conventions were important, and he really took to heart what he was hearing from the Joint Chiefs in terms of the treatment of our soldiers. He wanted to send a clear message: “Don’t mistreat our soldiers. Even though Geneva doesn’t apply as a legal matter, we’re going to treat people humanely and consistent with military necessity in a manner consistent with the Geneva Conventions” because he did believe in them.

Again, this was a question of what are we legally required to provide, because it would affect not so much the detention but the questioning, the gathering of information, which to him was extremely important.

**Riley:** But there were subsequent internal discussions about what forms of interrogation methods were consistent with those principles.

**Gonzales:** Of course, we had instructions to abide by our obligations in the Convention Against Torture, to which, as you know, the U.S. took certain reservations as to cruel, inhumane, and degrading treatment. Under the CAT, the U.S. passed an anti-torture statute, which we followed. The lawyers would look at whether interrogation methods met our domestic and international legal obligations, and policy makers debated whether those same methods were consistent with our values and the values of the Geneva Convention.

**Riley:** OK. The abuses that later appear at Abu Ghraib. Can you tell us how that information first comes to your attention and what you made of that information? Was it evidence to you that the President’s principles were not being upheld?

**Gonzales:** Generally on something like that, Jim Haynes would call me and say, “Al, tomorrow the press is going to report so-and-so that would affect the DoD.” I suspect that’s probably how I learned about it. What was described was well beyond the guidance given by the lawyers.

I worried for the detainees and I worried about what critics would say, which is what they did say, that the President’s decisions on the application of Geneva laid the foundation for this kind of behavior. I’ve been very forceful in responding to that claim. I think it’s unfair to the thousands of soldiers who follow the rules. They understood what the rules were just as much as the knuckleheads on that night shift on that cell block. No one else at Abu Ghraib, no other shift abused the prisoners.

I think people fail to remember that the policies put in place that many people are uncomfortable with related to interrogation, gathering of information and intelligence. Abu Ghraib was not about interrogation, it had nothing to do with interrogation, it was just some soldiers mistreating some of these detainees. It made me angry because it hurt prisoners and I knew it would hurt us and I thought the criticism would be unfair. As I feared, people tried to connect the two. There were a number of studies. Senator [Carl] Levin did a long, detailed examination of the connection. I think it is unfair to label our policy of tightly protected interrogations as wrong based on the actions of a few idiots at Abu Ghraib. It was unfortunate and shouldn’t have happened, but I also try to remind people that in every conflict you have people who operate outside the rules. You also have to remember that these are young kids operating in a theater of combat or war zone. We have abuses that occur here in our country by people who all know what the Constitution requires, and yet those abuses occur. It’s human nature, unfortunately. It is

not surprising that in the theater of combat abuses like Abu Ghraib happen.

**Riley:** Let me turn your attention away from Abu Ghraib then to the accounts we get of the use of extreme interrogation techniques.

**Gonzales:** Enhanced.

**Riley:** Some of which reportedly have led to deaths.

**Gonzales:** I am not aware of any deaths that followed the appropriate use of sanctioned techniques. The safeguards and procedures imposed by the lawyers were intended to prevent harm to the prisoners. The abuses at Abu Ghraib were never sanctioned, of course, and from everything I know were all investigated and people were held accountable. They should be because based upon my knowledge and my review of the advice given by Justice and by OLC, all of the techniques approved by DOJ were prefaced by a medical examination and a psychological examination, and as these techniques were being administered the doctors were there. Every care is taken to ensure the safety and well-being of these detainees as they're undergoing these techniques. If someone dies, the procedures weren't followed. The advice given by the Department of Justice as I know it is that if you follow these procedures you're going to be OK, lawful, in terms of a defense of reliance on DOJ guidelines. If you don't follow the procedures, you have no protection from the Department of Justice.

In those instances where there were deaths it is my understanding that there were investigations and there was accountability.

**Kassop:** You raised the point that there will be protection for those people who were the interrogators if they followed the rules.

**Gonzales:** They were relying upon advice from the Department of Justice. That doesn't mean they're not going to be prosecuted or they're not going to get sued. But DOJ guidance is a defense that can be used. Of course people still have to incur the cost of defense. But I think everyone—Our current President and certainly President Bush believed this, people should be able to rely on advice given by the Department of Justice. If you're acting in good faith and relying upon the advice from the Justice Department, you should be protected from liability or prosecution.

**Perry:** And some of the reporting has said the reason for not applying the Geneva Conventions, which in some ways goes back to your original query about acting consistent with Geneva but not acting pursuant to the Geneva Conventions, the idea has been raised that the reason the administration chose not to apply the Geneva Conventions directly was to allow for the greatest possible flexibility and maximum protection for anyone who would be interrogating.

**Gonzales:** I think the reason the President chose not to apply the Geneva Conventions as a legal matter was because it doesn't apply as a legal matter as determined by the Attorney General. That was the President's determination based upon the recommendation from the lawyers. He could have disagreed with that. Now much is made of this point in connection with some statements in my memo, but Attorney General John Ashcroft also sent a letter to the President making the same point at about the same time the President made the decision.

John believed very strongly about this as well. All we're trying to do is inform the President, "Mr. President, this is a consequence of making the decision one way or another." I don't think John Ashcroft ever intended to say, "Mr. President, you need to go this way because we need to do some pretty harsh things and this will ensure protection from prosecution." We simply wanted to tell the President one of the consequences of the decision he was going to make.

**Riley:** Let me ask you about the efficacy of these extreme interrogation techniques. Was your opinion, based on what you were getting, that this worked?

**Gonzales:** I was not the expert on the implementation or effectiveness of enhanced interrogation techniques, that wasn't my expertise, thank goodness. It wasn't my role. However, the need to use these techniques was important for purposes of the legal analysis and support and giving an opinion as to whether or not something like this can be done in a lawful manner. It was important to know these techniques were effective. Based on the sworn testimony before Congress of individuals like Mike Hayden and George Tenet, they were effective according to those experts. This was not a determination by the lawyers.

I know there is literature out there that says they can't be effective, people are going to simply tell you what you want to hear in order to avoid the pain. But my understanding is that these techniques don't work that way. You gather bits of information that have to be corroborated with other bits of information and that's where it could be useful. You don't rely solely on what someone says in response to a specific technique.

I've been asked, "Do you think it's effective?" Some experts say that it is effective, some say it's not effective. Based on the information I got from people within the administration, it was effective. That was a part of our legal analysis because if it wasn't effective, it would make a difference in terms of whether or not we would say, "Yes, this is lawful, you can do this."

**Riley:** So you're not aware of any specific hard cases where information was gotten that then had—You always hear the "ticking time bomb" metaphor used.

**Gonzales:** I think there is testimony by the DNI [Director of National Intelligence] and CIA Director and the FBI Director and NSA that we did get information that led us to this case or this arrest or helped protect American lives here in this country or overseas. Sitting here today I can't give you an example, but I know people have testified to that effect under oath; it is in the public record.

The CIA is very good at covering their butts, and as they began this process they made sure that certain key Members of Congress knew about what they were doing. As far as I know, Congress never said, "Stop doing these things." They were informed by the CIA, as I understand it, that these methods were effective and were protecting American lives.

**Riley:** [John Davison, IV] Jay Rockefeller had—

**Gonzales:** Jay Rockefeller couldn't even remember that meeting we had at the Situation Room the night of the hospital visit in 2004, even though his staff says he was there and even though we have White House logs that say he was there. I know better than anyone that sometimes you just forget things and sometimes people on the Hill feign ignorance for political reasons.

**Riley:** You've mentioned the hospital visit a couple of times. We have one account that is going to be the prevailing account forevermore unless we get additional people who were involved to talk about it.

**Gonzales:** Andy and I know what happened that night.

**Riley:** Can you tell us what happened?

**Gonzales:** It all began probably a week before when Jack Goldsmith and Pat Philbin said, "Oh, my gosh, there's a portion here of the President's surveillance program (PSP) that we can't find legal authority going forward." They never said, "What we've been doing is illegal." They were very careful about that. But they said going forward—And I'm not talking about the terrorist surveillance program, which involved listening in on international conversations and where we had reason to believe one party was a member of or affiliated with al-Qaeda. This was about something much less sinister, much more technical. But they were all authorized under a Presidential authorization. Let's call this specific technique the Miller Program.

So you have these overall activities authorized by the President. You've got the terrorist surveillance program, you've got the Miller Program, it's all part of a multiprong program. All of this had been approved by the Attorney General for two years.

**Riley:** These were by virtue of the original Yoo memos on these things.

**Gonzales:** Yes, but every 45 days, the AG does a new analysis and approves the authorization as to form and legality and then the President formally approves the program for another 45 days or so. Jack Goldsmith comes on board and Jack is going to review all these memos, which is great, I welcomed that. Jack started indicating about six months out that he had some concerns. Pat Philbin and he started looking at all this stuff. Philbin was a communications expert, law expert. He knew this stuff very well, or so we thought.

They even went out to NSA, talked to people there. Finally they come to us. This was four or five days before the expiration of the authorization and said, "Oh, my gosh, we didn't realize how the Miller Program was being operated, this technical piece." There were people in the White House who understood the Miller Program, who didn't believe what DOJ was saying. How could they not know? They'd been authorizing this for two years. Pat had been there for two years, Jack had been there almost a year. I know Jack and Pat pretty well and had no reason to doubt they were acting in good faith, but there was some suspicion about this. How could they not know? What are you telling us?

Some in the White House became doubly suspicious because John Ashcroft got sick, and John had been approving this for two years. A small group, including the VP, Card and myself tried to persuade Jim Comey, the Deputy Attorney General, to authorize PSP for an additional period of time, and when I say authorize it, to approve it because the President can authorize it without the Attorney General's approval. We felt Jim at least should do that. It was a period of heightened threat reporting, a dangerous time, and John Ashcroft was sick. John would be back in 45 days and so we asked Jim to let PSP go forward, at least until Ashcroft was well, to deal with this issue. Jim didn't want to do that.

**Riley:** If I could bore down on this a little bit—

**Gonzales:** Yes, let's do it.

**Riley:** Are you suggesting that it was motivated by a lack of nerve on their part?

**Gonzales:** No. We didn't know what was going on. There was suspicion because people found it hard to believe, particularly that Pat Philbin didn't understand how this technical piece, the Miller Program, was working.

**Riley:** And the fact that they'd reauthorized it so many times and the only player who would have changed was Goldsmith.

**Gonzales:** Goldsmith and Comey. Comey had now been read into the program.

**Riley:** Right.

**Gonzales:** So some people in the White House were wondering what was going on. We had a big meeting at the White House. People were there to persuade Jim to go ahead and at least do this for an additional period of time until the Attorney General could come back, and he refused to do so with respect to the Miller Program. The other parts of PSP could go forward.

After this meeting was when Andy and I first took it to the President because we had thought we could work this thing out to get by Ashcroft's illness, but now we're told it's not going to happen. We have to take it to the President. I think Jim Comey in some of his Congressional testimony makes a big deal about the fact, "The President didn't know what the problem was."

We weren't going to take it to the President until we knew we couldn't fix it. So Andy Card came back from vacation in Florida early. Dick Cheney and a number of us met over the weekend to try to find a resolution. We were working as hard as we could to resolve this thing. Finally we couldn't get it done. Andy and I later told the President and he thought about it. He asked me what I thought we should do. I told him, "The options are fairly limited. One, you could discontinue everything, PSP. Two, you could continue some of the programs but not the Miller Program. Three, you could continue all of PSP forward."

There was a problem with going forward without the Attorney General's signature because there were third parties involved. We knew without that signature we'd probably have to shut the program down anyway because the third parties would probably discontinue their assistance.

**Riley:** Because they wouldn't have—

**Gonzales:** You get comforted when you have the Attorney General saying what you're doing is lawful. There weren't many options for the President. I remember him asking me, and I said something like, "This is what you can do if you think it is worth it. You can continue forward if you think it is worth it." He said, "It doesn't sound like it is."

When I heard that, what I heard was the President saying, "I'm going to stop it, I'm not going to go forward." He told Andy to get Cheney and set up a meeting in the morning and he would tell

Cheney that he was going to discontinue. I knew the Vice President would not be happy with that. And rightly so given all the circumstances. People were very unhappy with the Department. We didn't understand how this could be. We were in a heightened threat period, and we were worried about what was going to happen.

The next morning the President delivered the news to the Vice President and told him, "I want you to set up a meeting with the Congressional leadership for tonight because I want them to know we're going to do this. I don't want to be out there by myself stopping the most important intelligence program we have. If something happens, like an attack on the U.S., and I'm hanging out there, I want them to know what I'm doing." The current authorization was set to expire the following day.

So the meeting is set for the Situation Room around four o'clock on March 10, and you have the chair and ranking of the intel committees for the House and Senate. You have the Speaker, the minority leader, the Senate majority leader, the Senate minority leader, they're all there, the Democrats and the Republicans. In that meeting they first get a technical briefing from General Hayden and some of his people at NSA, who explained to some of them who had never been briefed before, like the leadership of the House and Senate. The intel committee chairs knew what we were doing, they had been briefed before, multiple times, but some of the people there had not been briefed before, so Hayden and some of his team presented a half-hour technical briefing about how it works and the importance of PSP.

Then the NSA team leaves and now it's Cheney, Card, Addington, and me and Hayden. I think Tenet had to leave early. John [O.] McLaughlin was there. I don't believe Mueller was there. We explain to them that we have a problem with the Department of Justice as to one portion of PSP and that the President has to decide what he is going to do. Cheney makes the pitch: can we get legislation to cover this? The consensus is that we can't without compromising the program. There is no way to pass legislation without what we're doing becoming public. The consensus is that we should continue the program until we find a fix.

I was very clear. In the meeting I said, "The Deputy Attorney General does not believe the President has the authority under the Constitution to do this," this being the Miller Program. "Nonetheless, the Congressional leadership says to tell the Deputy Attorney General we're OK, go forward." That was the consensus. I remember thinking, *Wow*. I know Hayden, I talked to him, he was surprised. I remember him saying he went home happy and told his wife that for once the Republicans and Democrats had come together on a decision to help the American people.

Cheney and I and Card go over to the Residence to tell the President what happened. I'm shocked. I'm thinking we're going to have to shut the program down. Now we're being told by the Congressional leadership, "Go forward." We get to the Residence and tell the President. I don't remember who came up with the idea of seeing if Ashcroft is competent enough to receive this information because we thought as a former Senator it would carry a great deal of weight for him that he had the backing of the Congressional leadership, and since he had already approved this for two years, perhaps he would agree to another extension.

The President calls the hospital room. I don't know whether he talked to Ashcroft or to his wife.

There are differing accounts from what I've read, but they know he is sending me and Andy over to see Ashcroft and the purpose of the visit is to tell him about this meeting and to see whether or not that makes a difference. I do carry with me the authorization.

As Andy and I were leaving the Residence and walking through the Rose Garden, we talked for the first time about whether Ashcroft was going to be competent. What we didn't want were stories that we were taking advantage of someone who was incompetent, which is of course exactly what happened. Andy and I talked about what kind of signal should we have and we didn't agree on anything. But we go back and get our stuff.

**Riley:** A signal to each other that yes, this works or—?

**Gonzales:** A signal if one of us felt uncomfortable that Ashcroft was not competent to make a decision. But we didn't come to a resolution. We go back to our offices. David Addington prepares the authorization and comes with us. Riding over to the hospital, Andy and I again talk about having a signal, and we both just realize we'll be able to tell. If one of us feels uncomfortable we'll just say thank you and leave.

So we get there. I tell David to wait. There's a history between Addington and Ashcroft, and I didn't want to aggravate the Attorney General. I took the authorization and Andy and I went up to the room. We walk in and John is lying in the bed. Mrs. [Janet] Ashcroft is at his 11 o'clock as I'm facing him, Andy and I are at his six o'clock, and I could sense that there were other people in the room but I never looked over there, I never knew who they were. I just looked at Attorney General Ashcroft. He looked pale. He had the hint of a mustache and he looked like someone who just had serious surgery.

We exchanged a few pleasantries and then he immediately went off into a discussion—a soliloquy—about the legal issues, which in my mind told me he understood what was going on and was competent to make this decision. But at the end of his talk he said something like, "It doesn't matter. I've been told it would be improvident"—I remember him saying the word "improvident" because that was John Ashcroft. He said, "It would be improvident for me to sign and besides I'm no longer the Attorney General."

It surprised both Andy and me. The President would not have sent me and Andy over to visit Ashcroft if he had known John was not the Attorney General, or at least could not act as the Attorney General. While it is true Ashcroft can designate Jim Comey as the Acting Attorney General, he can take back that designation anytime he wants. So we're surprised. He has done almost all the talking.

Then he complains, "All these agents at the FBI, at the NSA, know about the program, but I can't even read my chief of staff in." He's complaining about that. That tells me he's OK. I said, "The President decides who gets read in, I don't do that, but I'll convey your concerns to the President." Then we leave. I remember getting in the car saying, or at least thinking, *Yes, he was competent*. But we never got so far as to tell him anything about the Congressional meeting.

We never told him anything about the authorization because he did all the talking. As soon as he said he was no longer the Attorney General, as far as I was concerned we were done. We left after he complained about the staffing levels.



**Riley:** To the other folks in the room you're never—?

**Gonzales:** It wasn't until we got back to Andy's office that I asked Andy, "Was anybody else in the room?" He says, "Yes, Jim Comey, Pat Philbin, and Jack Goldsmith were in the room." I never even knew that. I just was focused on John Ashcroft. Andy called the President and said, "It didn't go well." I could only hear from Andy's end, and apparently the President told Andy to talk to the Vice President. Then there was a series of phone calls afterward about what to do.

Andy called Comey while I was in his office and from what I could hear it was a very tough conversation. Jim apparently said he had just witnessed the most outrageous thing he had ever seen; we were trying to take advantage of a sick man. I think Andy tried to calm him down and said, "Come on and see me, I want to talk to you."

Comey said, "I don't want to do that," in essence saying, "I don't trust you guys."

**Riley:** Wasn't Ted Olson—?

**Gonzales:** At some point Jim said, "I'm not going to come over unless I have a witness with me." That's when they got Olson involved. They came over much later and we had a conversation.

**Riley:** Later the same night?

**Gonzales:** That same night. The authorization was due to expire the next day. That's why the urgency of doing all this. We're told by the NSA that they need 12 to 14 hours to shut everything down. We have to have a decision by the morning. So we're sitting there talking in Andy's office and we can't resolve this, so they leave; there's no resolution.

Early the next morning Jack Goldsmith comes by my office. He's got a final proposal from the Deputy Attorney General. I remember thinking the President was going to be furious that the Deputy Attorney General wants to negotiate with the President over this issue. I get this proposal from Jack. I talk to the Vice President, and he rejects it immediately, but we present it to the President around seven o'clock and the President rejects it. He says, "I'm not negotiating with the Deputy Attorney General over this. I've got the support of the Congressional leadership" and he goes ahead and authorizes it.

Of course that morning the Madrid train bombings had occurred. So now Congressional leadership is damn happy that they've said go forward, they're happy about it.

So that's the hospital visit. Now some of what I have described may not be entirely clear. This is because this program is classified, I cannot get into details.

**Riley:** How much longer is it before you get the full legal coverage you were seeking?

**Gonzales:** We never did. I guess the hospital visit was on Wednesday and the President reauthorizes on Thursday. That Friday is when the President has his conversation with Comey and Mueller, and they indicate this is a serious issue for them at the Department. There were threats of resignations and the President cared about Mueller resigning. So when Mueller is

saying he has concerns, then the President understands he has to do something. He directs Mueller to work with me to try and find a solution.

He calls me and I go and see the President. Mueller has now left, and the President tells me we've got to try and find a solution, but he and I both knew it was temporary anyway because without the AG's signature we couldn't go forward with the program, at least not for very long. The Department worked all weekend to try and find the solution. Over the course of the next week we tried to find a solution and we could not. The President ultimately decided, after notifying the Congressional leadership, to suspend the Miller Program that had caused the disagreement.

**Riley:** And that stayed suspended for—?

**Gonzales:** It stayed suspended for a short period of time and then we found a way—We were able to persuade Judge [Colleen] Kollar-Kotelly to authorize us to do it under FISA [Foreign Intelligence Surveillance Act], I believe.

**Riley:** I see.

**Gonzales:** Some might say, "You could have done it under FISA from the very beginning." I don't think so. Judge Kollar-Kotelly was extremely—I don't want to say she was deferential, but she was very understanding about the predicament we were in. We now were aware of the Madrid train bombings and this program was important for our country to gather information. Some may believe she stretched herself a bit under the law, it was lawful, but was creative with how we were able to do it under FISA. I don't know that would have been the case three years earlier. I think it was the combination of the unique circumstances we found ourselves in, which was enough to get her to approve this activity. Again, it wasn't eavesdropping—not content collection—this was a very technical thing we were doing.

I'll just say there were ten different programs—The number is not ten; it's classified. Each of them could operate independently of each other and each of them operating independently was helpful, but in combination the ten were very helpful.

**Riley:** We left David Addington on the first floor of the hospital?

**Gonzales:** David is waiting in the car. In hindsight I'm so happy he didn't go into the hospital room with us. Most people don't know that David was there at the hospital with us, but he was. I don't think he ever got out of the car.

**Perry:** But you ordered him and he listened to you.

**Riley:** You must have had to fill him in on what happened once you got back to the car.

**Gonzales:** Oh, yes.

**Riley:** That must have been quite a trip back to the White House.

**Gonzales:** Actually we didn't say much because we were riding in the car with the detail. All we

said was, “We didn’t get the signature.” But that’s the hospital visit. Now Andy and I are tagged forevermore with trying to take advantage of a sick man.

**Riley:** You’re such nice people and reading these things you wonder how could such nice people—

**Gonzales:** If you knew Andy Card, he’s one of the most decent, kindest men I’ve ever known. I’m not going to speak about me, but the thought that *he* would ever try to take advantage of someone is ridiculous. Of course the first time I saw John Ashcroft afterward, about three weeks later, he came over to the office on some other matter. He stayed afterward and I told him I regretted that we had gone to see him in the hospital. But I told him I couldn’t apologize because I’d gone on the orders of the President.

**Perry:** What did he say to you?

**Gonzales:** He regretted it too. I think he regretted the whole episode.

**Perry:** He had full memory of what had happened?

**Gonzales:** I assume so, I think so.

**Riley:** Was he informed by that point about the Congressional meeting? You said you never got a chance—

**Gonzales:** At that point? When I first spoke with him?

**Riley:** Yes, when you first spoke with him.

**Gonzales:** I assume so. I never spoke to him about it, I don’t know if anybody else did. Jim would have known about it.

**Riley:** Interesting.

**Gonzales:** I assume they told him. I testified to this finally, I was getting hammered so much in the press and by the President’s critics that the White House said, “You have to disclose this.” So at a hearing, I think in July of ’07, I disclosed it. It’s funny, I remember trying to tell this story and Chairman Arlen Specter didn’t want to hear it. He said, “Even if what you say is true—” and he didn’t want to hear it. Finally, thank God, Senator Hatch, who was the next questioner for the Republican side, teed it up for me. He wanted to give me a chance to tell this story, but people like Specter, a fellow Republican, didn’t care and that was so disappointing.

**Kassop:** But you said Ashcroft could have simply given his approval 45 days later and that never happened?

**Gonzales:** I think John did what I would have done as Attorney General. If your people are now telling you, “We misunderstood, we can’t find a legal basis to go forward,” I think John did the right thing by saying, “I’m sorry, Mr. President. We screwed up and we can’t find a basis to do this process any further.” Even after he came back—

**Kassop:** That's my question.

**Gonzales:** The Miller Program was not continued until Judge Kollar-Kotelly approved it. I've read accounts where apparently right before he got sick Ashcroft received a briefing from Comey and according to the account John agreed with Comey, "We can't go forward." I am not sure anyone ever told us that John agreed with Comey but even if he had, we believe that Congressional meeting was important and may have counted for someone like John Ashcroft. He may have still said, "I have to stay with what my guys are telling me," but then again given the heightened threat reporting, maybe not. But allegations of misconduct are simply baseless. And the account by others of these events are exaggerated. I wish we never went to the hospital.

It has hurt me personally, it has hurt me professionally. I know Andy's wife has told my wife that it has hurt Andy in the same way. We were just doing what the President asked us to do in order to protect America. Remember, this was not about content collection or eavesdropping.

**Riley:** This has been a long morning. Let's break.

[BREAK]

**Riley:** You said there are a couple of points you want to make about the hospital business?

**Gonzales:** Yes, there was some criticism about the White House not inviting the Department of Justice to the meeting with the Congressional leadership. I've read some criticism about that. There was never any thought about inviting the Department of Justice, because the meeting was to inform the Congressional leadership, "This is the Department's position," it wasn't to say we disagree with it. It was simply, this is a fact. This is our position. Is it possible to get legislation to allow us to do this?

And we didn't think it was necessary to have the Department there. We could convey the Department's position. There was never any thought that we would try to persuade the Congress to agree with us the Department was wrong. That wasn't the purpose of the meeting. That's why no one ever thought about inviting them.

When I look back at what we might have done differently to avoid this whole mess, maybe we could have called Jim Comey to notify them that we were going to go talk to Ashcroft. I don't know. But I do know that the President of the United States wanted to communicate directly with his Attorney General and there was never any discussion about, "Let's let Jim Comey know we're doing this." Maybe if we had done that, it would have eased their concerns that we were trying to do an end run around him.

**Dinan:** What happened the next time you saw Jim Comey after this, or were there just developments there?

**Gonzales:** I do not remember the next time I saw Jim. I didn't deal with Jim directly very much.

My deputy counsel would deal with the Deputy Attorney General more often than not, so I don't remember the first time I saw Jim.

**Perry:** I can certainly understand going into what you knew was going to be a rather difficult setting like that and being completely focused on the Attorney General there lying in his hospital bed. When you went out with Andy Card and he said, "Oh, Jack Goldsmith was there," did he say where they were? I suppose if you're the Attorney General you get a pretty big private room in a hospital. Did he say they were off to one side? They were sitting down? Or behind a curtain?

**Gonzales:** Not behind a curtain. What I remember Andy saying—and this was back in his office—We didn't talk about that in the Suburban heading back.

**Perry:** In front of the detail.

**Gonzales:** Well, that was a detail we could talk openly but it just didn't come up. What I remember is the impression I got is that they were sitting at—Jim Comey was sitting in a chair, probably at Ashcroft's one or two o'clock, to the side and out of my line of sight, and Jack and Pat were standing behind Jim Comey is what I remember Andy telling me.

**Perry:** But they didn't obviously say hello when you came in.

**Gonzales:** No one said a word.

**Perry:** Surprise, we're here, too.

**Gonzales:** And I didn't say anything because I didn't look at them. I was looking just at John and Janet.

**Riley:** Anything else on that? Just a couple more things and then I think we're going to have to proceed to the AG stuff.

**Gonzales:** OK.

**Riley:** Let me ask about your recollections of your engagement with the 9/11 Commission.

**Gonzales:** I spent an incredible amount of time dealing with the 9/11 Commission, and it supported the President's concern about the Commission in the first place. He had concerns about it and wasn't supportive of having a 9/11 Commission in the beginning. He thought it would become politicized. He also worried that it would really distract us from the mission of protecting our country. In the beginning he was not in favor of it, and over a period of time he became in favor of it and supported it. But this was a Commission created in the legislative branch, so it teed up all the issues one has to deal with as the counsel when talking about protecting institutional prerogatives of the White House vis-à-vis the Congress and the executive branch. Even though it was the 9/11 Commission as far as I was concerned, it was like a Congressional committee and to the extent that they wanted access to executive branch information that was privileged and deliberative, we had to wrestle with those issues and there were a ton of them.

We put together a team, led by Dan Levin, over at the Department of Justice to coordinate the responses by the various agencies, but I spent a lot of time meeting with Dan and lawyers in my office and a lot of time meeting personally with Tom Kean and Lee Hamilton and a lot of time on the phone with various members of the Commission as we worked through all of these accommodations.

I think people would be surprised at how much time I spent trying to work through it. In the end, as normally happens, you put up a good fight. You say, “Absolutely not,” and in the end they basically got everything they wanted.

**Riley:** Were you involved in discussions about the President’s own testimony?

**Gonzales:** Oh, sure. For the longest time the President said there was no way he was going to testify. And for the longest time there was no way Condi was going to testify publicly because they had all the information from private interviews with her. This notion, “She has to be under oath,” was silly. We’re subject to statutes that when you are providing information to a commission like that, even if private testimony, if it’s false, you’re subject to a penalty of prosecution, so the notion of the oath was just silly. They just wanted that theater. I really pushed the President hard not to allow Condi’s public testimony. Andy did as well. We both pushed hard, and for the longest time he held the line that he wasn’t going to let Condi testify because they had her testimony. She had met privately with the Commission at least once, maybe twice, and we had persuaded the President that this would set a terrible precedent. Condi was pushing back the other way. She wanted to testify.

**Riley:** She wanted to testify.

**Gonzales:** Yes. Particularly after Dick Clarke’s testimony, where he indicated that we either had some idea of what was happening or was going to happen. Or we should have had some idea and didn’t pay enough attention. I believe Condi wanted to defend herself and the national security team. But we held the line for the longest time.

**Riley:** What changed?

**Gonzales:** I don’t know what changed. My own sense is the President just got beaten down. Condi kept pushing him and pushing him, and I think it was a Saturday afternoon, I was at a track meet for my sons, and the President called me and wanted to talk to me about it again and confirm that the right thing to do was to hold the line. And I got off the call thinking, *OK, we’re OK*. By that afternoon he had changed his mind. The next morning when I showed up, he had changed his mind.

**Riley:** That’s atypical of this President, isn’t it?

**Gonzales:** I was surprised and disappointed. As was Andy, I think. We both had urged him, “Don’t do this. For the institution of the White House and future Presidents, don’t do this because they have the information they need. There is no reason to have to do this in a public testimony.”

**Riley:** The Vice President was taking the same position?

**Gonzales:** I don't remember him weighing in. I'd be shocked if he weren't in the same position. But what was interesting about this is about the same time he made the decision on Condi, I think he decided he'd had enough with the 9/11 Commission because he also said, "OK, inform the Commission, Kean and Hamilton, they can have Condi. Inform them that Cheney and I will meet together with the Commission privately," because up to then he had said no to Cheney and himself. He made it clear they were going to meet with the Commission together and see what they said to that.

When I called Kean and Hamilton, I said, "Here is our proposal. What do you think?" And they said, "What do you think we think? This is great." *[laughter]* They were surprised.

**Riley:** Why have the two of them testify together?

**Gonzales:** I never asked them why together. He wanted to do it together. I think he just wanted to get it over with at one time. It's a big production to bring in the ten commissioners and get a van for them, clear them and all that, and I think he just wanted to get it all done.

**Riley:** There was no tape made of that?

**Gonzales:** No tape. There were notes made. They brought in Phil Zelikow, their chief staffer, to take notes. Was Andy there? I can't remember if Andy was there or not. I know Condi wasn't there. I was there and I had two aides who had done most of the coordinating work, so they had been working a long time on this and maybe they were in there as well taking notes. But there was no tape that I recall.

**Dinan:** Do you think something was lost by giving in as the President did that is for posterity, for precedent?

**Gonzales:** We won't know until the next time someone wants to interview the National Security Advisor, not for a criminal investigation but solely to get her or his views on policy. I promise you they are going to raise the Condi Rice testimony as precedent. My recollection is that we had both the 9/11 Commission chairman and vice chairman and I believe the Speaker and the majority leader send letters acknowledging, "Thank you for allowing this to happen. This will not be cited as precedent in the future." Of course, that means absolutely nothing. *[laughter]* But we're not going to know until the next time when they want to talk to the counsel to the President or the National Security Advisor or the Chief of Staff on a question related to policy, because they are going to say, "Condi did it."

Of course, the White House will say, "That was different. That was in response to a national emergency." We'll see how far that goes.

**Riley:** This was not purely a Congressional investigation, was it?

**Gonzales:** I'm not sure I understand the question.

**Riley:** Your position was that it was, effectively, an external branch doing investigations into the executive, and I'm trying to—

**Gonzales:** Well, it wasn't an executive branch investigation.

**Riley:** No, but it was a hybrid, right?

**Gonzales:** My recollection is that the legislation created this Commission within the legislative branch.

**Riley:** OK, but did the President have appointees on the Commission?

**Gonzales:** I do not believe so. Half appointed by the Speaker and the other half by the minority leader.

**Riley:** I thought there was some question about the parentage of the Commission. I don't have the stuff in front of me.

**Gonzales:** I don't remember whether or not he had any say on who the commissioners would be. I know the Republicans picked five and the Democrats picked five, and I always felt the Democrats did a better job of picking their five. They were more partisan, more aggressive, and I worried a little bit about the Republicans who were chosen. I salute their service and I honor their service. They all did a great job.

**Riley:** Did it matter that Philip was designated the executive director?

**Gonzales:** I'm not sure that it mattered to me. Philip is another one of those gentlemen, very confident in themselves, so he could come off at times as being somewhat arrogant. Extremely bright, capable man. No question about it. He had some history with Condi and that was viewed as maybe a plus, maybe a negative, but for me it didn't make a difference.

**Kassop:** The notes that were taken of the President's and Vice President's testimony, will those be part of the National Archives?

**Gonzales:** I assume they will be.

**Kassop:** Are they considered Presidential records?

**Gonzales:** I don't know why they wouldn't be.

**Riley:** I think they are part of the Commission's archives. Or maybe it depends on who made them.

**Gonzales:** Our guys took notes and I'm assuming those are Presidential records.

**Riley:** That would be Presidential record.

**Gonzales:** Zelikow took notes. I don't know what happened to those notes.

**Kassop:** Were they intended to be confidential? Or classified?

**Riley:** Probably there was a ground rule about that.



**Gonzales:** I can't remember now. I can't remember whether there was an understanding or an agreement about the notes.

**Kassop:** If somebody from your office took them, then ultimately if they're part of the National Presidential Records, they would be in the counsel's office's records when the Bush administration records are opened.

**Riley:** Exactly. I'm guessing that the 9/11 Commission records would be available before then, but I don't know.

**Kassop:** We haven't talked specifically about the War in Iraq except for the authorization that you worked on, so maybe this is an opportunity to say how that had an impact on everything you were doing in the category of the War on Terror, particularly as it related to detainees and—

**Gonzales:** We didn't have the same kind of issues. It didn't take near as much time because the Geneva Conventions applied, so all the issues we wrestled with—We didn't have the same kind of meetings, the same kind of decisions to make in connection with the War in Iraq.

**Kassop:** It really didn't complicate your work or your life at that point?

**Gonzales:** Not really.

**Kassop:** And you accepted that it was part and parcel of this global War on Terror?

**Gonzales:** No. In my mind when people ask me why we went into Iraq—Was it for the oil? To finish daddy's war? What was it? Based only on what I observed and what I heard, there was consternation about violations in the no-fly zone and things of that nature in Iraq, but it was really that the President was concerned that Saddam Hussein did have weapons of mass destruction and that those might fall into the hands of al-Qaeda. He really worried about that and that's why he went into Iraq, because he didn't want to see that happen.

But there was very little legal work for the counsel's office that I recall that was unique or special about the conflict in Iraq.

**Kassop:** I was struck by that decision to send the authorization up to the Hill over your signature.

**Gonzales:** I don't remember doing that. And with Nick Calio's?

**Kassop:** Yes.

**Gonzales:** I read that as well and I said, "I don't remember that."

**Riley:** And you don't have anything to add about the President's decision-making process about going into Iraq? There are all kinds of claims about Iraq being on his radar screen very early in the administration.

**Gonzales:** Certainly there were discussions of it in the summer of 2001 because of violations of

UN [United Nations] resolutions. And after the 9/11 attacks, that first weekend at Camp David, there was discussion, “Is Iraq responsible in any way?” But also, “Is North Korea responsible? Is Iran responsible in any way?” It would have been irresponsible for the administration to simply not talk about Iraq. But very quickly we concluded, and even the Vice President agreed with this, there appeared to be no connection with Iraq.

After the conflict in Afghanistan began, there was a refocus on Iraq and what we should do in Iraq because we had issues of violations of the UN resolutions. I didn’t notice an obsession, and maybe that’s too strong a word, with the situation in Iraq. It just seemed to be a problem that was out there that needed to be dealt with, and the more I heard about the concern about weapons of mass destruction, to me that was the basis of the President’s decision. And, unfortunately, the intelligence was wrong.

**Kassop:** Were there voices of dissent in conversations about whether to invade Iraq?

**Gonzales:** I know Secretary Powell urged, “Be very careful.” He had that statement about, “You break it, you own it.” He was worried about the consequences. This is the kind of thing where I would hope if people had strong views about it, they would have a private conversation with the President and tell him quite honestly. I don’t know what people may have said. I don’t recall there being strong disagreement in the meetings in the Situation Room with the larger group.

**Riley:** You mentioned yesterday the issue of immigration, which, if my notes are correct, in January of ’04, the President announces an immigration initiative. You want to talk a little bit about that?

**Gonzales:** I don’t remember the January ’04 initiative.

**Dinan:** Was it ’05?

**Riley:** It could be that I have it wrong. Let me ask you more generally then, not tied to any date, but just to talk a little bit about your own sense of what went right or didn’t go right when trying to deal with the immigration issue during the course of the administration.

**Gonzales:** I think one thing that was wrong was timing. I think the President would say that he should have tried to pursue it sooner. My own view is that it got politicized as things often do in Washington, and this is another example of where the President was probably to the left of many people in his party.

He was very sympathetic. First of all, he very much believed in the rule of law. If we had laws they had to be respected and our border needed to be enforced. And in a post-9/11 world, we needed to know who is in our country and why they are here.

But, being from Texas, he was also sympathetic to the notion of people coming across the border every day and working and trying to find a better life for themselves. That was a story that he liked, I think. He wanted to pursue a policy that is both law and order, secure our borders, and also compassionate. One that reflected the realities of our country. One that was consistent or promoted our economic interests. And there are some in his party who believe that the only thing we should be focused on is securing our borders, then we’ll talk about everything else. But there

was no way of ever getting that passed, because I think people viewed it likely that once we secured the borders, people would stop talking about immigration and there would be no further reforms. So nothing got done.

**Dinan:** Did the President seek your counsel on this? Did you have frequent conversations with him?

**Gonzales:** We did not have any substantive conversations about immigration policy, but from our days in Texas I knew his position and he knew mine.

**Dinan:** You did a number of interviews during 2006, when that movement started. I saw some on CNN [Cable News Network] where they would have you on, so you became an advocate during the 2006—

**Gonzales:** The President wanted comprehensive immigration reform. I advocated because that's what he wanted, although I also believed in it. I think we needed it as a country.

**Kassop:** So you're saying that you didn't have frequent conversations with him about it because your views were so well known to him it wasn't necessary to talk about it?

**Gonzales:** That I don't know. Not frequent. We had conversations, policy discussions about immigration in the White House, oftentimes without him. I remember better the discussions we had about immigration reform when I was the Attorney General, but I don't recall having long substantive conversations with him about immigration.

**Riley:** Is there anything else about your time in the counsel's office in particular that you think we ought to work on before we move ahead?

**Gonzales:** Not that I can think of.

**Riley:** OK. We can spend two weeks talking about this, but we are grateful to get the day and a half.

When do you become aware that there may be a pending change at Justice?

**Gonzales:** Either on Election Day or the day after. I have a conversation with Card because Tim Flanigan, who's now gone, is hearing scuttlebutt within the conservative circles that the Attorney General is leaving. Tim calls me to say, "The Attorney General is resigning." I call Andy and say, "Andy, what's happening?" and he tells me that, on Election Day, the Attorney General submitted a letter of resignation, and I think Andy may have said that the President was probably going to accept it. I had a pretty good idea then that there was going to be a vacancy at Justice.

**Riley:** And did you also have a pretty good idea that you were going to be moving over there?

**Gonzales:** I didn't know. What happened is, of course, [John] Kerry did not concede until the following morning and after that concession there was going to be a big rally at one of the government buildings downtown. And before going over there the President and I met and he said something like, "Are you ready? Get your uniform on. You're going in." He likes to talk in

these sports metaphors. *[laughter]* He was telling me, “You’re going to be the Attorney General.” And we get back from the rally, we talk about it some more, and I guess we make the announcement a few days later.

**Perry:** Now you said a little earlier today that your wife was rather anxious to get back to Texas or at least would have been happy to leave Washington. How did she feel about this extension of your tenure?

**Gonzales:** I think she had mixed feelings about it. I think she knew that this could be hard. I would continue to be a federal employee for another period of time and we would continue to stay here, but she also loves the President and he had asked me to do this, so there was no other choice.

**Riley:** Did you keep your home in Texas?

**Gonzales:** No.

**Riley:** So what do you do to get prepared to leave?

**Gonzales:** We had to find my successor. The President and I had conversations about who that should be. I gave him my views and ultimately he decided to go with Harriet Miers.

**Riley:** Was that your recommendation?

**Gonzales:** My thought on my possible successor I reserve for the President.

**Riley:** OK.

**Gonzales:** Harriet is a great lawyer. During this time I began getting ready for my confirmation hearing. The Department of Justice prepares all these briefing books and you have to read everything and then you have to participate in the moots. I was well prepared. I don’t think I was asked a single question during my confirmation that I didn’t anticipate. Then on the 3rd of February I was confirmed.

**Riley:** There was never any doubt that this would go through smoothly?

**Gonzales:** Only a fool would have no doubt. *[laughter]* I felt that I would be OK, but you’re out there working for as many votes as you can. Even before the vote, Leahy and [Charles] Schumer both called to say, “I’m not going to vote for you. We know you’re going to be confirmed, we look forward to working with you, but I’m not going to vote for you.”

Schumer was interesting. He said, “You’re too close to the President, so I can’t support you. I’ve enjoyed working with you as counsel, but I’m not going to vote for you.”

So I got voted out of committee on a party-line vote, and we had the votes in the Senate and [Joseph] Lieberman liked me and I knew the [Clarence William and Earl Benjamin] Nelson Senators would support me. I had a pretty good idea that I’d be confirmed, and on the 3rd Becky and I were sitting in my office in the West Wing and we had boxes, all my stuff had been boxed

up, and we just watched TV, watching the votes. After I was confirmed, the President called me; he was traveling, and he called me to congratulate me. And I called Ashcroft to thank him for his service, called the DOJ command center to inform them that I was AG, and then we got in the FBI Suburbans and headed over to the Department of Justice and there we began.

**Riley:** What do you find over there?

**Gonzales:** An empty office. *[laughter]*

**Riley:** Not even the binders?

**Gonzales:** I have a picture that I'm just sitting at a desk. There is nothing. And what's interesting is for about a month I used this secretary's desk. They used to have a grand old desk, but they had given it to somebody in the Kennedy family because apparently it had been used by Robert Kennedy or something. But there wasn't an AG desk. I've got a beautiful desk that I used when I was a partner in private practice, so I had it brought up and I used my own furniture.

**Dinan:** These courtesy calls of people saying, "I'm voting against you." Are these kind of somber calls? Are they almost joking calls? What's the tone of this?

**Gonzales:** They're not joking calls. I'd had a number of conversations with Leahy and Schumer on judges in the past and met with them many times. We knew each other pretty well. I'd met with them about my nomination. It was very matter of fact, almost congratulatory, "You're going to be confirmed, but I'm not going to vote for you." Which is fine.

**Riley:** Is somebody from Congressional Relations going with you or do you have your own—

**Gonzales:** I think on these courtesy visits someone from Leg [Legislative] Affairs is with me. It's the only time I've met President Obama—when he had just been elected. He was in his temporary office down in the basement and I sat down with him and asked for his support. Of course, he didn't vote for me. That's the only time I ever met him or talked to him.

**Dinan:** What's the character of these courtesy visits? I guess it differs depending on which Senator you're talking to, but are you getting the same kinds of questions there that you later get in the public hearing?

**Gonzales:** It depends. These visits are covered by the press. In most cases, the Senators want them covered by the press so they can show the people back home, "I've met with a Supreme Court or Cabinet Secretary nominee." Often they are very ceremonious and the Senator might say, "Listen, at the hearing I'm going to ask you questions about these topics so I'm just letting you know." It would be unusual for a Senator in these meetings to ask a substantive question and expect an answer right then and there. I understand that happened to Harriet and she wasn't prepared, and that caused people like Specter to become alarmed, "Hey, she doesn't even know how to answer this question." He was not fair. You're not really there to do that. That's not the hearing. That's not the place to do it. Most Senators don't ask those kinds of questions. Most Senators will simply tell you, "These are some areas I'm probably going to ask you questions about."

**Dinan:** Was that your experience when you were going for these visits?

**Gonzales:** Oh, yes.

**Dinan:** “Here’s what I’m going to ask you about.”

**Gonzales:** Yes, although, I think for me there weren’t that many Senators who even said that. I had dealt with all of these Senators for four years, so they knew me pretty well.

**Riley:** Were there any particularly perilous areas that you felt you had to deal with in the—

**Gonzales:** I knew everything related to the War on Terror would be on the table and I’d have to deal with that. We spent a lot of time prepping for that and talking about how I would answer those questions.

**Riley:** We talked earlier about the withdrawal of the earlier Yoo memo and the substitution of the Goldsmith. The timing of that had some people suspicious that it was related to your confirmation.

**Gonzales:** It happened in the summer of ’04, didn’t it?

**Perry:** No. It was like a week before your confirmation hearing.

**Gonzales:** That it was pulled down?

**Perry:** The Goldsmith replacement.

**Gonzales:** Oh, I didn’t control that. I have no idea the timing of that.

**Riley:** And you’re unaware of any communications about the necessity of getting the decks clear before you come into this office.

**Gonzales:** Not by me. There may have been communications otherwise.

**Kassop:** I have a question that would refer to both you and Condi Rice when she went from National Security Advisor over to State. It’s not unheard of but it’s unusual to have two members on the White House staff—

**Gonzales:** How about three? Margaret Spellings.

**Kassop:** Yes, that’s true, Margaret as well, who then to go into Cabinet positions. You come from positions that are not Senate confirmed and then you’re going up before the Senate for confirmation hearings. In going through your hearings I didn’t really see any evidence of this, but it was certainly possible that you could be asked for information or documents for which you claim executive privilege because of the fact of having discussed matters with the President. And the same thing would be true for Condi and for Margaret.

Was just the idea that that could pose a difficulty at your hearings something that was considered in advance, and did you recognize that could come up?

**Gonzales:** I did. I don't think it mattered to the President. I think he would have said, "You can handle it. You'll deal with it." But it's only something that we discussed during my moots. And it's certainly true that as we evaluated candidates for the Supreme Court, it's something I thought about.

This is not really on point, but we did a great disservice to Harriet in her nomination. One reason it was a huge mistake was because Harriet was White House counsel during the day, and at night she tried to read all these binders that the Department of Justice had prepared for her on all these constitutional issues. She just couldn't do it. It could not be done by anyone.

The lesson I gleaned from that is you have to be a full-time nominee. I'd almost argue for always nominating a sitting judge who does have the time and probably has a lot of experience on dealing with some of these issues, but nominating someone in the executive branch when they are still trying to do their job is problematic and it tees up the whole question of internal communications and memos. That was another reason I had my doubts that I would ever get nominated to the Supreme Court, because it would tee up all these memos, all these decisions. It's one thing to receive an executive branch appointment, but a lifetime appointment, the arguments would be stronger in favor of the Congress to be able to see those documents.

**Kassop:** I think it did actually arise with Roberts.

**Gonzales:** John Roberts, yes it did. Although it's less of a problem if you're talking about someone whose documents are 20 years ago as opposed to one year ago.

**Kassop:** It always struck me as unusual that the three of you came up through that same process and that those issues could certainly be out there.

**Gonzales:** Yes, I think the thing that cut in our favor was that Republicans controlled the Senate, so we had a sympathetic chairman who could control that. At the end of the day, the committee was not likely to issue a subpoena if we said no. But I don't think it would have ever gotten to that.

**Riley:** I want to ask a corollary question out of that same set of facts. With the three of you going into these other positions and the consideration of Miers in a fourth position, was there thinking on the President's part about expanding the scope of his community into the broader executive branch?

**Gonzales:** I have not talked to him about this, so this is just my speculation about his thinking. I think in the beginning, even though he is the son of a former President, it's new to him. He's the President. So he surrounds himself in the White House with people he knows and trusts. People who are closest to him physically and in terms of experience. In the second term, he's an old hand, he's experienced. He's much more comfortable moving people out. I think that's part of it.

I also think part of it is as an acknowledgment of thanks. Margaret, Condi, and I had been there for four years for him. "OK, I'm going to make you Cabinet Secretaries." I think that's part of it. This notion of wanting to get more control within the agencies? Maybe that's part of it. Maybe feeling more comfortable that there is more control at Justice and at State and at Education by having us there, but if I had to weigh the three I think probably the most important thing was to

say thanks. He had confidence that we could do the job, but it's sort of a reward for the service.

**Perry:** I wonder if this is the time to talk a little more about the press. You mentioned earlier today about the press features on you when you first came to Washington, that you didn't really even look at them, and your wife had some issues with them. Just before you become Attorney General, you go up to the Hill to do your testimony, and there are stories that begin to come out about the War on Terror and the various memos, which those are some negatives. But I noticed in going back through the early months that you're Attorney General, there are very positive reports and reports on how Members of Congress and the Senate in particular are really praising you and that they see a difference in tone.

**Gonzales:** But not in substance, which is true.

**Perry:** But at that point the press is focusing on what the Members of Congress are saying about your tone and about how respectful you are and more easygoing and seemingly open. Do you just let the press say what the press says and you're not concerned about whether at one point it's negative and another point—

**Gonzales:** As Attorney General?

**Perry:** Yes.

**Gonzales:** No, I think at that point there is a difference. Then I am more worried. I'm the point person for the President on law enforcement issues in front of the press and in front of Congress. I do care about what's being said. I think it does make a difference when you're a Cabinet Secretary. And you have a media team within the agency whose job it is to help you shape the message you want the press to convey to the American people. After I became Attorney General I did pay more attention to the press.

**Perry:** And when you met with the media team, would you typically say—

**Gonzales:** I didn't meet with the media team generally.

**Perry:** OK. Did you have a go-between with them so that you could say, "This is the message I'd like to get out," or "I think this would be good for the President"?

**Gonzales:** I would meet with the head of our communications office. She would come to our staff meeting every morning and, of course, if I was going to have an interview she would come up ahead of time and brief me and prep me about the possible questions.

Our communications teams was always in contact with the White House communications team to make sure we were all synchronized, that we were all sending out the same message. If the President had a big initiative on faith-based, for example, or protecting children, he was going to be going out this week talking about that, part of my message for that week was to be consistent with what the President was trying to do that week. There was a lot of communication and coordination between our press team and the White House press team.

**Dinan:** You mentioned yesterday that the White House Communications Office was very eager



to have you profiled. Are you cooperating with profiles in the Attorney General's office?

**Gonzales:** Sure.

**Dinan:** So in a sense you're happy to do these things.

**Gonzales:** Yes.

**Perry:** And again, you're a symbol to be the first Hispanic Attorney General. Do you feel that responsibility that you want to get that word out and be a role model?

**Gonzales:** I think that it helps the Hispanic community, it helps the President, for that message to be out there. The White House wants this to happen, and in my travels around the country I've had a lot of people with young Hispanic kids say, "We were so proud when you were made Attorney General. It was a very important day in our lives."

**Perry:** We were speaking last night about Justice [Sonia] Sotomayor, noticed on C-SPAN [Cable-Satellite Public Affairs Network] speaking to a lot of diversity groups and to Hispanic groups and Latino groups. Did you make a point to do that? You must have gotten lots of speaking invitations.

**Gonzales:** I didn't make a point of doing it. I gladly accepted those kinds of invitations, but I also understood that I wasn't the Attorney General for the Hispanic community. I understood how important it was to have outreach to other groups and communities.

**Riley:** What did you find at Justice when you went over there?

**Gonzales:** The Department of Justice has 120,000 employees, about 400 political appointees. That's a big ship being driven by career people, and it could operate just fine without the Attorney General or the Deputy Attorney General, quite honestly.

I found a great Department. Very dedicated people. Very smart. And it was easy. I found a Department that I thought was well run and well organized. I did marvel at this. I stepped in as Attorney General knowing the President and the White House apparatus and how it worked and how the White House dealt with agencies. I felt that was a big plus for the Department. I also stepped in having dealt with the leadership at the Department. I knew who the players were so I thought that was a plus. I also stepped in knowing all the issues. I'd been dealing with them for four years. In my mind the President made a wise choice. *[laughter]* It just seemed that I was prepared to be the Attorney General because I knew the players and the issues. I knew the interagency process, and I thought that was good for the Department. I so much enjoyed being the head of the Department.

**Riley:** I stipulate all that because that's really easy to follow and understand. I just wondered if, you live next door to somebody and you think you know them really well and if you move into their house for two weeks you sometimes find out things on the inside don't look quite like they do on the outside.

**Gonzales:** No. I thought the Department was in pretty good shape. Obviously things weren't

perfect, but I thought the Department was in good shape.

**Riley:** OK. One of the pieces of criticism, and this is inevitable. If you go in and you don't know the President they're going to say you don't have any connection with the White House.

**Gonzales:** You have no access. If you have no access you have no power.

**Riley:** You didn't have that problem. You came in with the exact opposite vulnerability, shall we say. Was there any effort on your part to find an issue or to develop some mechanism for communicating to the broader Washington community that Alberto Gonzales is going to be his own man and is not the White House's—

**Gonzales:** What you're really asking is, can you give me an example of when you disagreed with the President or the White House? And typically you don't talk about those things. But I'll talk about two of them. I'll talk about three of them.

**Riley:** If you've got four, we'll take those.

**Gonzales:** The first one is the Miers nomination.

**Riley:** This occurs pretty soon, right?

**Gonzales:** Yes, 2005.

**Riley:** Just a few months.

**Gonzales:** The rumors are flying that the President is going to nominate Harriet, and I'm surprised because I'm thinking, *What? What happened?* My counsel's office team had worked for four years adding and subtracting names of possible nominees based on qualifications and ideology. And our search was not just limited to current and former judges. We looked at professors, Members of Congress, and community leaders. Over time we considered over 400 names and we narrowed it down to 100, then 50, then 20, and did extensive write ups on the 20. Harriet Miers never appeared on that list. We had put this thorough process in place at the President's request to avoid a David Souter-like mistake.

**Riley:** Did you have somebody teed up?

**Gonzales:** In hindsight, Harriet probably should have been on our list. That was my failure. What I always encouraged the President to do is go with the best athlete on the board, and I felt it should have been Alito or Luttig. While Harriet was great and would make a great Justice, I felt they would be better.

So when there is a vacancy and I show up at the White House to meet with the VP, Card, Rove, and I thought Harriet, to discuss names for the O'Connor seat now that Roberts has been tapped for the Rehnquist seat—Harriet is not there and it is immediately clear she is not because she is on the short list for the O'Connor seat. Afterward I meet privately with Card and ask him what happened. And he says that POTUS [President of the United States] was seriously considering Harriet. I expressed surprise and a little frustration that we were not going with what I considered

the best choice. Card suggested I talk to the President directly if I believed he was making a mistake. But I felt it would be too awkward to do so because of my friendship with Harriet, as well as the President's friendship with Harriet.

But stories are starting to trickle out, and after I return to the Department my staff comes to me and say, "You've got to go to the White House and tell the President, 'Don't do this.'" Which puts me in an extremely awkward position because here is someone who's being talked about as a nominee and I'm going to go to the President and say, "Don't nominate this person." I was very uncomfortable doing that, especially since I was being mentioned as a possible nominee, but I remember Kyle Sampson telling me, "You owe it to the President. Give him your best advice and if Harriet hasn't shown up on any lists in four years, that says something."

I went over and met with the President. We sat down and I knew by our conversation that he'd already decided. He wanted to know what I thought and I told him, "I think you would do better going with Michael Luttig or Sam Alito. If you nominate Harriet, I'm going to fight for her, don't worry about that. But my job is to tell you what I think." And he thanked me, but I knew he had decided. I went back and told my staff, "OK, I told him, but it's done. I think it's done." And sure enough. So that was one time when I disagreed with him.

**Riley:** What was it about Harriet that was setting off alarm bells everywhere? Was it just that she wasn't ready or were there worries about her ideological—

**Gonzales:** For four years this team of lawyers, we had vetted hundreds of people carefully, we'd seen Harriet every day and maybe we couldn't—

**Riley:** Got too close.

**Gonzales:** Perhaps we got too close. But she had never been a judge and she had limited litigation experience and academic scholarship. She was not known at all in conservative social or legal circles. Why would the conservatives support *her*? They would do the same thing to her that they would do to me. I had some concern about that, and the President had said he'd been reassured by Karl that the conservatives would support her.

But the Washington legal establishment is a little snobbish. If you're not from here, working on K Street from an Ivy League school. For me it was a plus that at least I went to Harvard Law School, but I was just this Texan, this old friend of Bush's. That's the only reason I'm up here. In the end, that is why there was not full-throated support, I believe.

**Kassop:** When you drew up your short list, were there certain criteria you were looking for and would you say that Harriet just didn't fit those criteria?

**Gonzales:** Well, first of all you can be qualified to serve and not be on the list, and Harriet was certainly qualified. She had been a partner at a major law firm, had attained senior positions in the ABA. However, as I said, she had no judicial experience and little academic scholarship. She had worked in the White House for four years, but was relatively unknown in social and legal conservative circles. Harriet fit the criteria, but in my mind she wasn't the best of the group we were looking at. Clearly the President and others in the White House felt differently. I wouldn't characterize her as a superstar or a historic pick, it would be a safe, solid pick. This was difficult

for me. I love Harriet, she's a great lawyer and after her nomination I was out there campaigning for her, talking to Senators about her because the President nominated her and he deserved to have his nominee confirmed.

But having worked on developing names for the Court for so long, I felt the pick was so important that the President ought to go with the absolute best people that, as our vetting group collectively, we thought he should put on the Court. And in our judgment that was someone like Mike Luttig or Sam Alito.

**Perry:** But was he bound and determined by this point to choose a woman?

**Gonzales:** I didn't realize it then, but I came to realize later that he thought it was important to put a woman in this seat. Even though Harriet had not gone through the process he knew Harriet. Unlike his father not knowing Souter, he knew Harriet and that gave him comfort. I didn't realize how important it was for him to put a woman in that seat. And the truth of the matter is we did not have any women that we viewed as superstars or sure picks at the top of our list. That may have been wrong on our part. We looked at a lot of women and in hindsight we probably should have taken a better look.

**Kassop:** So Edith Clement and Edith Jones—

**Gonzales:** All being considered, but we felt that for various reasons, like experience and jurisprudence, someone like Mike Luttig or Sam Alito would be better. And there were other issues, and sometimes you can't talk about these other issues, that were problematic.

So I had that episode and that's one area where—I didn't really have an argument with the President about it because he had already decided, but I did disagree with the President about that decision.

**Riley:** Let me stop and ask one more follow-up before we get to number two and three. You mentioned, probably three times so far, that the President recalled the experience with his father and Souter. You haven't mentioned Clarence Thomas in this regard. Is there a sense that—

**Gonzales:** But Clarence Thomas got confirmed and Clarence Thomas was as advertised.

**Riley:** Right.

**Gonzales:** So there was no surprise there.

**Riley:** OK. And there were no lessons to be learned about that experience or how bruising it was.

**Gonzales:** I think the President was concerned about a big fight over a nomination, and that's why I think Mike Luttig never got nominated because he'd have been—

**Riley:** OK.

**Gonzales:** Mike would have been a really fine Justice, would have done a good job. I think we could have gotten him confirmed, but it would have been very tough.

**Riley:** At great cost. OK. Thank you.

**Dinan:** When Harriet withdraws, does it go directly to Alito? Is there much more discussion before you get to the nomination of Alito? What happens in that intervening period?

**Gonzales:** Here is a lesson I talk to my students about. When you are in the White House you really are close to the President and involved in a lot of decision making. When you're a Cabinet Secretary, it's not always that way. So, for example, take the selection of John Roberts to be Chief, OK, here is someone, myself, who for four years has been involved in the Supreme Court nomination process and I know the candidates well, but I wasn't even consulted about the decision to move John from the O'Connor seat to the Chief's seat, which of course I would have said, "Absolutely." That decision was made entirely within the White House.

But the same thing with Alito. Andy Card called me about Harriet's selection, about John's selection, but nobody even called me about Alito's selection. If I had been in the White House I'd have been right there in the middle of everything, but I'm out here as a Cabinet Secretary and those decisions get made and I'm not even told about it.

**Riley:** So, in effect, you're not trading on your prior relationship with the President, notwithstanding all the worries that that was going to be—

**Gonzales:** Remember, Harriet has as much or even more of a relationship with the President. For me it was a lesson in what it's like if you're a Cabinet Secretary and you have no relationship with the President. Man. *[laughter]* It's kind of lonely out there.

**Kassop:** Except that of all the Cabinet departments, yours is the one that deals most directly with the Supreme Court.

**Gonzales:** I know. Tell me about it. But maybe the folks in the White House said, "We know Al will support Sam Alito," which I did. But that was a lesson—I didn't like that very much.

So that's one instance where I had a disagreement with the President. The second instance involved the President's surveillance program. There is an office within the Department of Justice called the Office of Professional Responsibility, and they ensure that the lawyers working for the Department meet the professional standards of ethics in providing counsel to the U.S. government and the American people.

They wanted to do an investigation of John Yoo and the opinions he had written about this program. In order to do that, they had to be read into the program. They had to get clearances to understand the program, otherwise they couldn't do the investigation. I was the Attorney General, and they came to me because they had been denied those clearances. The President himself decides who gets read into this program. He, himself, personally. I was contacted by the Office of Professional Responsibility and they said, "We had to stop our investigation of John Yoo because we can't get read into the program." I thought that was a mistake for a number of reasons.

One, I felt it important for the American people that all the lawyers at the Department be subject to the oversight of the Office of Professional Responsibility. Two, I had confidence in John's

work and I felt we had to stand by it, and if there was a problem we ought to know about it. Three, I thought it was the absolute wrong thing to put the President in a place where he is blocking an investigation.

I had Kyle talk to the White House a few times. We couldn't get any movement. Finally, I went to speak to the President. I think Josh Bolten was there and Harriet Miers, and I talked with him and laid out my case. Gave him the reasons why, but again, it was one of those conversations where I knew where the President was based on the conversation. I suspect he and Harriet had already talked about it and the answer was going to be no. He didn't tell me no in that meeting. Harriet called me later to say, "The President is not going to read Marshall Jarrett into the program."

Well, you know what happens, of course. Word gets out that the investigation has been blocked and there are newspaper reports that it's blocked. All of a sudden Senators, Members of Congress, write a letter to me asking, "Why did you block the investigation? Did the President say 'no' in order to protect you because it might get you, Al Gonzales?" There are nasty stories about how either I've done something unethical or the President has done something to block the investigation. It's a big mess.

So you've got stories out there saying that I'm blocking the investigation and the President is doing it to protect me. Yet I disagreed, had asked the President to reconsider.

**Riley:** Especially since they probably have you on the White House logs going in to meet with the President on this very subject.

**Gonzales:** I don't think that they had access to the logs but at the end of the day, I believe some people in the White House saw I was getting clobbered in the press, accused of acting unethically. And the President agreed finally to read OPR [Office of Professional Responsibility] into the program so they could do their evaluation, but the damage to my reputation is done at that time.

**Riley:** The President agrees?

**Gonzales:** The President agrees to allow the investigation to go forward and they get read into the program, but the damage to me is already done because now there are all these stories out there that I acted in my own self-interest in asking the President to block this investigation.

**Riley:** What was it that originally prompted the investigation into John Yoo?

**Gonzales:** I suspect it was just the many stories questioning the program and its legal support. Maybe internally. Maybe externally. I don't know.

**Riley:** Questions on this one? All right.

**Gonzales:** The third one dealt with the Jefferson search, when the FBI and the senior leadership at the Department thought that there was evidence of corruption in his office on the Hill. Even though we had recovered \$9,000 in cash and had these guilty pleas by two associates, investigators and prosecutors believed that this search had to happen. I really struggled over this

because I knew it would be precedent setting. We had done searches of Members' homes and their cars but never a Capitol Hill office.

After a few days of wrestling with this, we have the FBI saying, "We have to do this," we have OLC saying, "It is lawful, we can do it in a way where we have a filter team that goes in. They are not associated with the investigative team. They'll go in, make an evaluation as to what might be privileged. Whatever is not relevant will be turned back; whatever may be privileged, we'll create a privilege log and then we'll take it to a judge and get an answer to the question as to whether or not it's privileged under the speech-and-debate clause."

We do the search and I was flying back from Houston on a Sunday, and I get a call from the Chief of Staff, "The White House wants to talk to you." I said, "Can it wait until I get back?" They said no. So I get on the call and you've got Harriet Miers, David Addington, and Josh Bolten, and there is a serious concern with the search. They are not happy, nor is the House leadership, with the search. I didn't give them a heads-up and I said, "I'm not going to give the White House a heads-up when we do a search. And I'm not going to give the House a heads-up when we do a search." I talk about the circumstances, and why this is important to the case, this is unique, all this kind of stuff. We couldn't reach an accommodation with the House, they wouldn't honor a grand jury subpoena, this was the only option we had.

The people on the call were not persuaded. They were worried about it. The President wanted to talk about it in the morning. We meet in the Situation Room the next morning and I lay out the reasons why—Cheney is not there but he is on secure video teleconferencing, and he's been well briefed by Addington. He says, "This is the legislative branch privilege. Why should we decide what that privilege should be? Let's let the legislative branch decide the scope of that privilege."

I said, "It's not just going to be the executive branch deciding this, there will be a federal judge involved." At the end of the meeting, Bush says, "We're going to support the Attorney General, we're not going to undercut him." Great. OK. He says, "Contact the Speaker and explain what's happened and we need to calm him down."

By the way, I never spoke to the Speaker again the rest of my tenure. Never did I see him; I tried repeatedly, but never did I speak to him. But that evening Harriet calls me at home and says, "This thing is spiraling out of control. The people in the House are upset. You need to send a team up there."

So I sent a team up there on Monday night to try to calm things down. But it cannot be calmed down. The Speaker is furious that we have done this. He views this as an institutional challenge to his authority. It's never been done before. He's not going to allow it to happen under his watch and he wants the documents returned.

My team is telling me, "There is no way we can return documents to someone under investigation during an investigation. It sets a terrible precedent. We just can't do it." The next day I go over to the White House with Paul McNulty and meet with Josh Bolten privately, then we meet with Harriet and Paul McNulty, but Josh and I are talking and Josh says, "We have concerns about—" Josh is so understated, he's hilarious, he says, "We have some concerns about the search. What would your reaction be if the President ordered you to return the documents?"

At this point I get very concerned because I know he would not be raising this unless it was under serious consideration. I said, "I think it would be a bad idea. It would involve the President in an ongoing investigation. If you want the documents returned, he has to order me to return the documents." And Josh said to me, "I think it would be better if you returned them voluntarily."

I said, "It's better for *me* if you order me. Otherwise I lose all credibility in my building." Josh and I discuss it for a while and then Paul comes in with Harriet and we talk about it some more. Paul, to his credit, says what a terrible idea it is to return the documents. That investigation began in the Eastern District of Virginia when Paul McNulty was the U.S. attorney. He knows this case very well. He's only been Deputy Attorney General for two months, so he's got a lot at stake in this decision. And he's in there fighting and talking about how important this decision is and we need to let the documents stay with the Department of Justice.

The next day things get worse. There are all kinds of stories about all kinds of bad things happening, and we can't get it resolved. But I have a conversation with Bob Mueller where, for the first time, he says, "I have the documents in my possession. If I am ordered to return them I may not return them. I might quit." That gets my attention and then I realize, if Bob quits over this, I have to quit. I can't let the FBI Director quit over this and me not resign. I couldn't be effective as the Attorney General.

So discussions continue. I send another team back up the Hill about ten o'clock one night to offer compromises. They hear them out. We can't work it out or anything like that but then, apparently in a phone call, Paul says to the Speaker's chief of staff, "You don't want another Saturday Night Massacre on your hands." The Legislative Director for the White House is on that call. So what she hears is "mass resignations." She tells Josh Bolten. Josh Bolten calls me and now his tone is completely different. He's very serious. He's the Chief of Staff. And he says, "Are you guys talking about resignations?" I said, "No, we're not. What are you talking about?"

And he tells me about Paul's comment. I said, "No, that's not going to happen."

This is now Wednesday night and Kyle Sampson is asked to go over to the White House and meet with Josh. He comes back about 10 or 11 o'clock and the news is very grim. He says, "The President is going to want the documents returned." We were in Paul's conference room and we're just stunned because now I know there is a real possibility I'm going to resign. I go home that night and tell Becky what happened, and I wake up the next morning and write a resignation letter. I put it in my pocket and Josh calls and says, "The President wants to see you."

So at eight o'clock on Thursday morning I go to see the President. I sit down with him and the first thing I said was, "We've been through some hard times together." And he laughed and said, "Yes, but this is the worst one." And I remember thinking, *How could it be the worst one? This is not a constitutional crisis. Let's let this thing work itself out in the courts.*

I was very honest with him. I said, "You told me you would support me, but all along we've been trying to reach an accommodation with the House and the White House has undercut me. The House isn't going to agree to an accommodation because they know you will give them whatever they want." The President said, "But I've got to think about other things. I've got to think about comity." And I said, "I've thought about comity, too. This is about what's right or



wrong. We're doing an investigation. You need to stay out of this."

He asked me, "Will it help you if we stay the investigation for a number of days for you guys to reach an accommodation?" And I said, "Yes, it would help me," but I'd already proposed this to the House. I'd proposed turning the documents over to the Sergeant at Arms, turning them over to the Court, but it had been rejected by the House. Right before that meeting, Bob Mueller had met with Josh Bolten and told him, "If I'm ordered to return the documents, I'm probably going to resign." And in that meeting with the President he said, "Is there talk of resignation over there?" And I said, "Paul made that unfortunate comment, but I don't think so."

He said, "Bob Mueller's told Josh he may resign." I said, "I guess he may resign." And that's when I told him, "Mr. President, if Bob Mueller resigns I have to resign." And he said, "Why? We're in the war against terror. You can't resign." I said, "I'm not going to have any credibility in the building." You see I felt that the people in my building were watching me to see if I sided with law enforcement or with my friend the President trying to please his political ally the Speaker.

That's when he made the proposal about staying the investigation and I left. He didn't order me to return the documents, so I felt great. We still had the documents and I think the next day he ordered us to turn the documents over to the Solicitor General. It was ironic, too, because as we were talking about resignations, I'm talking about 2004, when the Department threatened mass resignations over the hospital visit and I thought, *What goes around, comes around. Here we are again*. It was just so ironic to be in the middle of that. But that would be another instance when I disagreed with the White House. I'm sorry that took so long.

**Riley:** No, riveting details and fascinating story.

**Gonzales:** But you don't talk about these things publicly—at least not in real time. There was a story in the *Washington Post* the next day that Mueller, McNulty, and I had threatened to resign. We never threatened to resign and I never would have threatened. I would have just resigned.

**Riley:** I'm trying to think what else I've got on the Attorney General period. Hurricane Katrina happens in August of that year.

**Gonzales:** Yes.

**Riley:** Tell us what piece of that you have.

**Gonzales:** We had to look at the whole issue of the President's authority to deal with this crisis vis-à-vis the authority of the state and local governments.

**Riley:** Had that been teed up at all in anticipation of what might happen or is this all post facto?

**Gonzales:** It had been. In fact, we had had a hurricane preparedness meeting at the White House during the whole Jefferson thing because I remember getting a phone call and leaving that meeting early to deal with it.

We'd had meetings and discussions about what to do about it. For me the big component was the

whole law enforcement piece and the administration of justice in Louisiana if police records were destroyed, evidence was destroyed, if the courts couldn't function, if the jail was under water. How would all that function? That was my focus.

**Riley:** And were you also engaged in the question about possible federal takeover?

**Gonzales:** Yes. Federalizing the troops. Mike Chertoff and I pushed hard for the President to send in federal troops just for the appearance that there was law and order and control. And my recollection is that that was resisted by Don Rumsfeld because Don felt we needed the troops elsewhere. We were fighting wars overseas. Ultimately the President agreed with Don. But Mike and I thought it wouldn't hurt—We needed to have the troops in there at least to give the appearance of law and order and some control.

**Riley:** But there wasn't an issue or a question at that stage about the potential adverse consequences of having federal troops in a state setting. My recollection is that some of the Governors had—

**Gonzales:** Oh, there was clear pushback from the Governor of Louisiana. The hope was that the Governor would ask us to come in, but she wasn't inclined to do that, so the President had to make the hard decision, "Do I just go in or not?"

**Riley:** Do you recall that there were negotiations with the Governor to try to get her to change her mind on this?

**Gonzales:** I don't think I ever spoke to the Governor, but I know there were a number of conversations with the Governor about what we should do and how we could help her.

**Dinan:** Just to understand this, the Governor of Louisiana has already said, "No, I don't want them to come in," and some folks, including you, are saying, "You should still send them in despite the Governor's rejection."

**Gonzales:** My lawyers had looked at the law and the precedents and I think that there is a way to do that. I can't remember now the specifics of it, but there is a way where the President can make some kind of declaration and send in federal troops even without being invited by the Governor. The objective here would not be to usurp local authority but to reinforce it.

**Kassop:** Would that be under Posse Comitatus?

**Gonzales:** No, my recollection is Posse Comitatus was a prohibition of the use of federal troops for law enforcement purposes. The query is how much of what we expected the troops to do would be law enforcement? Obviously, they could provide support and services and things like that.

My judgment was, and I think Mike Chertoff agreed, it would be helpful simply to have them there on the ground to help local law enforcement in a support role. For people to see them there. I don't know what they would be doing, but having them there would be very helpful.

**Dinan:** The Insurrection Act allows—so it would be how you would be fitting this into the

circumstances.

**Gonzales:** Yes, perhaps. I can't remember now the specifics of our thinking about this, but we had an argument where we thought the President could do this.

**Riley:** Did the President want to do it?

**Gonzales:** Being a former Governor, I think he's very deferential to the wishes of the sitting Governor. We had asked and been declined, and you've got the Secretary of Defense saying not to do this, so that carried the day.

**Riley:** What about Mississippi?

**Gonzales:** This is going to sound derogatory of Louisiana, but I think the state and local officials in Mississippi were much more on top of it. They were more accommodating and more willing to work with us. I don't think you saw the same level of damage in Mississippi, although there was quite a bit, as existed in New Orleans.

**Riley:** There were no urban centers along the water.

**Gonzales:** Right. It was a different situation.

**Riley:** But still there was no request by Mississippi for federal?

**Gonzales:** I don't think so.

**Riley:** I wonder if Haley Barbour had made the request might it have given the Louisiana Governor cover.

**Gonzales:** Maybe. I don't know.

**Riley:** A conventional narrative has emerged about the Bush Presidency where Katrina plays a critical role in winnowing away popular support because there is a perception of a lack of competence or caring. I'm not endorsing this one way or the other, I'm asking you about your sense as to whether there was frustration within the administration about what was happening at this time?

**Gonzales:** Of course, I wasn't in the White House, so it's hard for me to answer that question. I was frustrated because I felt that knowing the President, he had a number of conflicting emotions about the whole thing. This deference to state and local officials and if they can handle it and want to handle it themselves, we should be deferential to that. His concern about people. People in need and trying to address their concerns. I think he really struggled with this and I didn't like the image, the caricature of this administration and this President. I tried to stay focused on the law-and-order side of things, and even there it was extremely frustrating because we couldn't get cooperation from the local DA [district attorney], who was a very powerful Democrat in New Orleans. Even though some state folks were asking us to intervene, there was only so much we could do. There was even talk about, "How can this person be removed? Does that go to the legislature?" It was very frustrating for DOJ to deal with the situation in New Orleans, and I can

just imagine it was even worse for the President.

**Riley:** A lot of the fallout from Louisiana, the human migration into Texas, do you have any piece of that? I don't whether there were any law enforcement issues related to that.

**Gonzales:** No.

**Riley:** Or even personal connections with Texas that come into play?

**Gonzales:** No.

**Dinan:** Was it the district attorney of New Orleans who was being particularly uncooperative and the discussions even ranged to whether he could be removed?

**Gonzales:** Yes, as I recall there was some difficulty.

**Riley:** Did you make any significant personnel changes when you first came to Justice in the higher reaches?

**Gonzales:** Sure.

**Riley:** Who did you place where and what was your rationale?

**Gonzales:** One final comment on that New Orleans situation. I was present in discussions when this was ongoing between locals and state officials. They weren't seeking my advice on the removal of a local official. *[laughter]* It wasn't a coup by the federal government.

Within a year or so Jim left and I wanted Tim, my deputy in the White House, to be the Deputy Attorney General, but Tim had gone to work for a company called Tyco and the whole [Jack] Abramoff thing was an issue for them, so that was never going to happen. We looked at a number of people and finally I decided that someone who had been a prosecutor would make sense, so Paul McNulty became the Deputy Attorney General. Ted Olson had left. Paul Clement had been the acting Solicitor General. I asked Ted who he would recommend and he recommended Paul Clement, so he became the Solicitor General. I made Alice Fisher the head of the Criminal Division. Alice had been Mike Chertoff's principal deputy when he was the head of the Criminal Division, so that seemed like a natural position.

I am trying to think of other prominent appointments. We stood up a new National Security Division in Ken Wainstein, who had been the U.S. attorney in D.C. and had worked as chief of staff of the FBI Director. Whoever I wanted in key positions at Justice the White House let me have—except there is a story about the Deputy Solicitor General position involving Pat Philbin.

Some people at the White House were unhappy with Pat Philbin because of the whole episode with the hospital visit and the program that had been discontinued. When Paul Clement was going to be Solicitor General, he wanted Pat Philbin to be his deputy. If someone wants someone, particularly as your principal deputy, I believe you should have them unless there is a compelling reason not to. I was fine with that. Pat is a great lawyer and while it was unfortunate what happened with the President's surveillance program, nonetheless I had confidence in Pat as

the Deputy Solicitor General. I took that name to the White House and got a cool reaction. I talked to Andy and said, “Andy, this is who I want.” And Andy said, “I’ll get back to you.”

So Andy came back to me and said, “OK, you’re the Attorney General, if this is who you want as Deputy Solicitor General, you can have him. It wouldn’t be my recommendation, Al.”

**Riley:** With no clarification?

**Gonzales:** No, but I knew it’s important for the White House and the counsel’s office to have complete confidence, particularly in the Solicitor General and the Deputy Solicitor General. If there is any kind of discomfort or suspicion, it wasn’t good for the White House and it wasn’t good for the Department. I called Pat and said, “Pat, this is my decision. I’m not going to recommend you.” I bit the bullet on that, but there were stories that Cheney and Addington killed Philbin. I don’t know who was talking over there. It very well may have been Cheney and Addington. If I had wanted it, Pat could have been the deputy, but I didn’t think that was good for the Department so I said no, after all we all worked for the President and there should be confidence in members of the team.

**Kassop:** The National Security Division was a new division within the Department, so could you talk a little bit about how that unfolded?

**Gonzales:** It seemed to make sense to me and others that we ought to be more coordinated, more centralized in decisions affecting national security. And we saw the stand-up at the Homeland Security Department. Other agencies had similar concentrations of authorities, so it just made sense. It was included as part of the Patriot Act reauthorization. It was something I supported and I think it was good for the Department to have that kind of concentration of talent and authority in one place.

**Kassop:** Was there any controversy over it or was it pretty smooth sailing to get it up and approved as part of the Patriot Act reauthorization?

**Gonzales:** The only controversy that I recall was internal, in terms of who would go in—

**Kassop:** Turf.

**Gonzales:** Yes, turf. Exactly.

**Kassop:** Academics know about that.

**Gonzales:** That’s the only thing I can remember in terms of controversy.

**Kassop:** OK. How would the distinction be made in terms of—or would they be working together, the National Security Division and, given all the other War on Terror connections, OLC?

**Gonzales:** The National Security Division would be primarily responsible for the investigation and prosecution of terrorism-related cases, intelligence-related cases. OLC would simply provide legal advice on those issues.

**Kassop:** Would the National Security Division, in that respect, work closely with the SG [Solicitor General]? In terms of investigation and prosecution of cases?

**Gonzales:** I'm not sure how closely they worked with the SG on every issue. I'm assuming they worked some with the SG on high-profile cases as they are appealed to the Supreme Court. Most of these would have been criminal matters but because they did involve some pretty novel issues, I suspect they probably had some good interaction with the SG.

**Kassop:** And then OLC, your appointment there after Philbin was shot down was Steve Bradbury?

**Gonzales:** Philbin was never—

**Kassop:** He didn't get to that point.

**Gonzales:** Philbin never was considered seriously for head of OLC. There was some discussion about Dan Levin, I remember reading something. After Jay Bybee we had an acting with Dan Levin for a period of time. And Dan wanted to be head of OLC, but typically the people who head up OLC are scholars. These are brainiacs. And Dan is a great lawyer, very talented, but he was really more of a prosecutor and had a lot of administrative experience. He had a different skill set. He didn't fit the model and we were dealing with such incredibly difficult issues, I wanted someone who was more of a scholar.

The deal was that Dan would go over and be the legal advisor for the NSC. I told Dan, because I told Harriet this, that when the U.S. attorney position in Los Angeles opened up, I'd like to put Dan in that position. I couldn't make Dan any promises if or when it would open up but I told him, "If it opens up, I'm going to recommend you for that position and would you do this? Would you go over to the NSC?"

So Dan is at the NSC. Eventually Dan got frustrated and left. I think something happened over there. I'm not sure what because one day he just left. I've read accounts that we shafted Dan, we promised him this and he didn't get it and he left. I don't think it ever got to that point. Debra Yang was the U.S. attorney in Los Angeles and she hadn't left yet. I'd made Dan a promise and I would have recommended him, but it never got to that point and he left.

So then we have Steve Bradbury. Steve Bradbury is acting as the principal deputy at that time. I can't remember when Steve came on board, but Steve had what I was looking for in terms of brain power and he had experience with some of these issues. The White House had dealt with him and was comfortable with him, so the decision was made based upon my recommendation that we would try to get Steve Bradbury nominated and confirmed as head of OLC.

**Kassop:** But he never got confirmed.

**Gonzales:** He never got confirmed. I think for a period of time he may have taken a recess appointment. He certainly was acting for a long period of time. He never got confirmed.

**Kassop:** Right up through the beginning of Obama as a matter of fact.

**Gonzales:** Yes. He never got confirmed.

**Kassop:** And there is still not a confirmed OLC head. Even in this administration.

**Gonzales:** Really?

**Kassop:** Correct. Yes. Because Dawn Johnsen's nomination fell apart and the acting right now—

**Gonzales:** What happened to her nomination?

**Kassop:** She was highly critical of the torture memos and a lot of the work of OLC under the Bush administration and that came back to bite her.

**Gonzales:** Payback is hell.

**Dinan:** It would have been filibustered and they withdrew her. They withdrew her once and they put her forward again and—

**Gonzales:** Yes.

**Perry:** We're coming chronologically to the end of 2005. Can we talk about Congress passing the Detainee Treatment Act? Also, *Hamdan* is working its way up to the Supreme Court for them to decide in June of 2006. Can you talk a little bit about the difference between being White House counsel and working with the SG's Office? You certainly did on the University of Michigan cases. On *Hamdi* and *Padilla* had you made your views known to the SG's Office when you were in the White House counsel's office? If not, that's OK too, but is there a difference now that you are Attorney General and *Hamdan* is working its way through, you're now in the Justice Department, are you working with the SG's Office on that?

**Gonzales:** I certainly am aware of what the SG's doing and the positions taken, which is where I would be if I were in the White House. I would have read the briefs. I might have had a conversation with someone in the SG's Office. This is when I'm in the White House, but I don't recall this being like the Michigan cases where the President says, "This is the direction I want to go." That didn't happen with respect to these other cases.

And as Attorney General, I may have had conversations with Paul Clement about the position and the arguments we were going to make. I probably read the briefs but I wasn't involved like I was in the Michigan cases.

**Perry:** Chief Justice Roberts is in place as of the start of the 2006 term, he came in in 2005. Alito will be there as of the end of January of '06. Does that give you a better feeling about *Hamdan* in the pipeline at the Court?

**Gonzales:** Sure.

**Kassop:** Remember that Roberts excused himself from that case.

**Gonzales:** Yes. He had been on the D.C. Circuit panel.

**Kassop:** But also when you say that you might have had conversations with Paul Clement about the *Hamdan* briefs, this was the military commissions, this was what you were most invested in when you were White House counsel.

**Gonzales:** I suspect that I did, but I just don't remember.

**Kassop:** It was an important issue when you were in the White House and now it's being tested in the courts.

**Gonzales:** And I get pinged every once in a while when I see the President, "Where are our military commissions?" And I would say, "We're being sued." And he got frustrated and I got frustrated.

**Riley:** But that also raises a point about the downside of a Harriet Miers nomination. The number of recusals she would have had to have made on a wide variety of issues.

**Gonzales:** How about if I had been nominated? And we're sitting—Elena Kagan. That is another downside when you bring someone in an administration. Absolutely.

**Riley:** Very closely balanced Court.

**Gonzales:** That's true. The argument to that is, "The American people and the Congress knew that when she was confirmed, so don't complain."

**Perry:** Can we go back to the Detainee Treatment Act and your thoughts about that having worked its way through Congress? Did you feel, *At least now we have Congress on board?*

**Gonzales:** Sure. You feel better about it. You feel like, *OK, the Courts say involve Congress; Congress is involved.* The *Hamdan* decision was probably the most disappointing decision because, in essence, it was saying, "We don't care what the President and the Congress have decided, we decide differently."

Saying that Common Article 3 applied, to me—probably of all the decisions that was the most disappointing and surprising to me.

**Riley:** Was the surprise of it in any way a reflection on the quality of the legal work that you were getting out of OLC that you were relying on to make these decisions?

**Gonzales:** No, because it wasn't just OLC. The SG believed strongly in it, and when I sat down with the President he was not happy. I don't know if he was angry, but he couldn't understand it either.

**Kassop:** Did your office work closely with Congress when they went back to try to redraw the military commissions and the Military Commissions Act?

**Gonzales:** Oh, yes. Primarily through Steve Bradbury.



**Kassop:** Right. So it would be Bradbury as opposed to, or perhaps in addition to, Legal Policy? Who was the head of OLP [Office of Legal Policy] at that point?

**Gonzales:** Probably Rachel Brand.

**Kassop:** Because the questions were constitutional.

**Gonzales:** Yes. That's why. So Steve was the one, because I remember he would call me as the negotiations went on and tell me, "This is where we are. What do you think?" So Steve was involved in the negotiations for the Department primarily.

**Riley:** Who on the Hill was really important on your side for the story of getting some of these things through? You've said on a couple of occasions that you were surprised at how quickly Congress was able to act on a certain piece of these things. Iraq intrudes and the degree of comity begins to fade, but you're getting help on the Hill, maybe only from Republicans, but who are you relying on and who is a good soldier in these battles on the Hill?

**Gonzales:** There are different categories. The best Senator I dealt with, the one who was the most reliable, and not just because he was a good Republican, Senator Hatch was probably the best friend I had and the most—He loved the President and he and I consulted often about my future. This is when he was chairman, and he said, "Don't worry, Al, if you're nominated to the Supreme Court, I'll get you through." He was great.

But in terms of this discussion of the War on Terror, people like [John] McCain and [Lindsey] Graham, McCain because of his experience and Graham because he was very vocal and viewed as an expert in this area. Those two were important, and obviously there were key Democrats like Lieberman who we felt we could get on these kinds of issues.

**Riley:** Is Graham somebody you view favorably as an influence on these things?

**Gonzales:** Not necessarily favorably. He was kind of a wild card. Unpredictable. Where would Lindsey come out? For the record, I sometimes use first names and I don't mean to be disrespectful. He was unpredictable. Sometimes he would go off on a tangent that we felt was contrary to the interest of our country, but he had a voice. He had served in the JAG [Judge Advocate General's Corps] or was a Reserve JAG officer, so we felt he was someone who could be helpful.

**Kassop:** He was knowledgeable too.

**Gonzales:** He had more knowledge than perhaps your average Senator on this issue. *[laughter]*

**Kassop:** But he actually gave you a tough time at your confirmation hearing.

**Gonzales:** Yes.

**Riley:** Did he warn you in advance he was going to give you a tough time?

**Gonzales:** I don't remember.

**Perry:** What about Senator McCain and the discussions on interrogation techniques?

**Gonzales:** What he said carries great weight when he talks about torture. He's a great American. He is a hero just because of his service. I respected his views. We didn't always agree, but we knew there would be a lot of American people and certainly the press that would also listen carefully to what he had to say. So he was important.

**Perry:** You told us earlier that you knew from the CIA and others who had said when these enhanced interrogation techniques did work and helped make us safer as a country. But then you would hear what Senator McCain had to say about his own personal experience. How did you reconcile that? Were you able to?

**Gonzales:** No, I didn't try to reconcile it. The Senator was subjected to physical abuse, to torture. I had to depend on what the people I was working with were telling the President, telling the Department of Justice. Senator McCain is a war hero. I don't discount in any way Senator McCain's experiences and how horrific they were, but what he experienced is not what we were doing. Just be very clear about that. What the Department of Justice authorized was a set of procedures under very strict guidelines and protections that simply didn't exist with respect to Senator McCain.

I know that some people argue the slippery slope, once you go down this road, where do you stop? You have to stop. That may not be a satisfactory answer to some, but the answer is there is a line and if you cross the line, then it's unlawful. But if you're on the right side of the line then there is no violation of law according to the Justice Department. You may not like it. It may make you uncomfortable. But the question is not whether it makes you uncomfortable, the question is whether it's lawful.

**Riley:** Let's take a break now.

[BREAK]

**Dinan:** I was reading through the briefing materials and saw a number of mentions of your focus on obscenity, your plans to give that some attention in your role as AG. Obscenity prosecutions and the like.

**Gonzales:** Probably my greater focus was on child pornography.

**Dinan:** We were focusing so many of our questions on terror issues, but I'd be interested in hearing about other initiatives you had as AG.

**Gonzales:** OK. The War on Terror was the top priority. But there were other law enforcement needs that had to be met. We focused on child pornography. We focused on fighting the war against methamphetamines. We focused on white-collar crime, particularly health fraud, and public corruption was a big focus for us. We prosecuted a number of public officials, including a

lot of Republicans, which is why the notion that we were punishing U.S. attorneys for prosecuting Republicans or not prosecuting Democrats was disappointing, but we did have a number of public corruption cases.

We did get a push from the White House to make sure we were doing a good job enforcing immigration laws. That was one of the reasons Carol Lam, the U.S. attorney in San Diego, was asked to leave because the number of immigration prosecutions, her gun prosecutions were way down. Carol is a great lawyer and a great prosecutor, but she was interested in more of the big white-collar prosecutions and she liked to prosecute cases herself, which you have to do in a smaller U.S. attorney's office, but in a larger office like that you don't really have the time. It was a problem for us because the administration was facing a great deal of pressure from the Republicans to enforce our immigration laws. If you have a district like San Diego that's not doing it, that's not a very good story to tell.

Those are some of the things we focused on. Antitrust prosecutions, tax prosecutions. The Department did great work despite all of the circus, the distractions that came from the investigations of some of my actions as Attorney General.

**Dinan:** You mentioned what a big ship it is. How much opportunity is there as an AG to say, "This is a priority"?

**Gonzales:** You try to limit the number of priorities because every U.S. attorney and every career prosecutor hears it every time there is a new AG, "This is now a top priority." You try to limit the number.

You have to understand that there are priorities within each particular district, so a U.S. attorney has to balance what the Attorney General is telling him or her is a priority with what he knows is also a priority in that district. When you have limited resources, sometimes that can be very difficult. The Attorney General can say, "This is a top priority for us and we're spending this much money on it," but how much of a change you can effectuate, sometimes it just depends and sometimes it's not very much. And sometimes you're not doing much more than putting public attention, the media spotlight on an issue.

**Riley:** So it's more rhetoric?

**Gonzales:** I don't want to ever concede it as just rhetoric. I like to think that when I tell a U.S. attorney, "This is a priority for me and it's important for the President," that U.S. attorney is at least going to try to find a way to prosecute more of those kinds of cases.

It usually means they have to give up something within that district, and they may not like giving up that something because it may be important for that district. But they are Presidential appointees and they are the President's field generals. When the President says or the Attorney General says, "This is a priority," we expect them to follow that directive.

**Riley:** Do you have much flexibility in budget reallocations and so forth in order to make things a higher priority than they were when you came in?

**Gonzales:** You have some flexibility. The battle over the budget is a very interesting one. Even

for someone who is close to the President and has a relationship with the people in the White House, you're still in there fighting with OMB [Office of Management and Budget] to get dollars that you think are important for the President's policies and priorities. Of course, every Cabinet Secretary is saying, "Those dollars are important for these very important programs, too." More often than not you lose those arguments, but at least you go back to the Department and tell your folks, "I tried, I fought for you." That's what they want to see Cabinet Secretaries do. They understand that there is only so much money to go around.

**Riley:** OK. So to the question about how much discretion there is to refocus the agency, there is the Attorney General's personal time in highlighting an issue to the public. There is some potential for reallocation of resources to focus.

**Gonzales:** Yes.

**Riley:** But the most important one you've identified is the potential, at least, to get the U.S. attorneys to reallocate their time to areas that you wish them to focus on.

**Gonzales:** And it's not only the U.S. attorneys. For example, we may want to have gun prosecutions up along the border. We go to ATF [Bureau of Alcohol, Tobacco and Firearms] and say, "We need to put more investigators along the border to help us get the prosecutions up." After you do those investigations, hopefully our U.S. attorneys will have time to prosecute those cases. But oftentimes it does involve other agencies. DEA [Drug Enforcement Agency], ATF.

**Riley:** You mentioned earlier, in another context, your engagement with foreign officials. Are there important aspects of your work apart from the purely ceremonial that related to those things, and can you tell us about where those transnational contacts were important during your tenure?

**Gonzales:** Many of the crimes we have to deal with today are international in scope and don't stop on the border. So whether you are talking about trafficking, intellectual property theft, terrorism, we cannot be successful in dealing with that here in this country without cooperation, coordination, and consultation with our foreign counterparts.

It's even more true for them. Without our cooperation, without the information that we're able to gather utilizing our technology, they can't be as successful in protecting the citizens within their countries, so those relationships are extremely important. I visited close to 30 countries, and every time you go meet with your counterpart, you meet with the DOJ team at the embassy in that country. From time to time we would have bilateral, trilateral meetings, meetings with the Justice Ministers of the G8 [Group of 8], so there was a fairly significant international component to being Attorney General because the scope of the problems is so great and so much of it is international.

Much has been written about how the Bush policies hurt our standing around the world. That's not what I discovered. My counterparts were *delighted* that we were being so tough and aggressive in getting information that could be shared with them to protect their citizens. They love the United States. They know they cannot be successful without our help. Talking with my counterparts, I'm sure they wouldn't say it publicly, but they would tell me how important it was what we were doing.

Like this notion about Geneva Conventions and revisiting the Geneva Conventions. Is it applicable today? Should it be revisited? Some of my counterparts said, “You know, you’re right.” Now they also said, “But the United States may not be the right country to bring that up. Maybe it ought to be other countries that bring that up.” They acknowledged it may be out of date given the kind of conflict we find today, but I can’t overemphasize the importance of those relationships.

**Riley:** And the contacts that you’re talking about are global? Were they focused on the greater Middle East region?

**Gonzales:** I’d say global. But it would depend on the issue. Trafficking, for example, there’s a lot of focus on that in South America. Same thing with intellectual property theft, a lot of concern about what’s going on in Brazil and eastern Europe. Terrorism was always a big issue, although I probably would spend a lot more time talking about terrorism with our European friends than when I sat down with the Chinese.

**Riley:** Sure.

**Gonzales:** They were less concerned about it. We were more concerned about their ability to deal with intellectual property issues and trafficking, those kinds of things.

**Riley:** Did you have an especially good relationship with Latin American countries?

**Gonzales:** Because of being Hispanic?

**Riley:** Yes. I presume you speak Spanish.

**Gonzales:** Not very well. But that didn’t matter because all our business is conducted in English. I did everything in English and everybody was fine with that. But was there a special—? I guess you’d have to ask them. I felt a special relationship with the Mexican Attorney General. In fact, a couple stories about that. During one period of tough stories about whether or not there had been some political wrongdoing at the Department over the U.S. attorney firings, President Bush went to Mexico and in one of the meetings the Mexican President, [Felipe] Calderón, whom I’d met, asked unsolicited, “Would it be helpful to Attorney General Gonzales if I said something publicly in his support?”

The President said no. [*laughter*] And a little later on, the Mexican Attorney General came to visit as he sometimes would do, and he wanted to have a big public thing because he said, “I want to help you.” That was very nice.

**Dinan:** We talked a little bit about immigration before. You mentioned here again border enforcement became a priority. Was that consistent from January or February 2005 onward?

**Gonzales:** There was certainly something I emphasized when I became Attorney General because at that time there was this discussion about immigration reform, and we all knew that an important component of that would be border enforcement. The Department of Justice had a big role to play in that, working with the Department of Homeland Security. This was something I emphasized to our U.S. attorneys, particularly those on the border states, Arizona, New Mexico,

California, Texas.

**Dinan:** And what are the range of—You see the Obama administration, some of the decisions they're making in regard to, there I guess it's a focus on immigrants with criminal records, for instance, there is discretion.

**Gonzales:** Clearly there has to be discretion. And when you have limited resources and limited jail space, you're going to focus primarily on felons, traffickers, and smugglers as opposed to those who are simply crossing into the country and it's the first time they've ever been caught and they're just trying to find a better life.

But I think it's a mistake to publicize that that's what you're doing. And one of the complaints I've heard about the Obama administration, there appears to be more of a public acknowledgment, "Hey, we're not going to prosecute the bad guys. We're just going to go after this category of people." I think that's a mistake. In reality that may be what you do, but I don't think it's a good thing to say we're just going to ignore this part of the law.

**Riley:** Did you have any portfolio in either Afghanistan or Iraq with respect to the attempted emergence of new legal systems there?

**Gonzales:** Yes. We had a team over there, in Iraq in particular—Afghanistan, of course, I wasn't the Attorney General in the beginning—

**Riley:** But there would not have been any counsel involvement in—

**Gonzales:** No. As the Attorney General I was aware of our efforts. We had a team over there working with the government in terms of the drafting of the Constitution and things of that nature. We were involved in providing training for the police officers.

**Kassop:** And you went to Iraq.

**Gonzales:** Three times.

**Kassop:** Yes. And met with counterparts there and the Prime Minister as well about these very issues.

**Gonzales:** Right. Met with the troops. My nephew was stationed in Iraq, and on the day before my third visit they went to him and his platoon and said, "You're going into Baghdad," and he said, "Why?" and they said, "Your uncle is going to be there."

**Riley:** No kidding.

**Gonzales:** And it was a treat for members of the platoon. It also made me a little sad because when they saw how the troops lived in Baghdad and they saw the mess hall and the air conditioning, they said, "Man, this is like being in heaven," because they were sleeping in an abandoned meat locker and—Those men and women who serve our country, they're just heroes.

**Perry:** You talked about when you were in the White House at times you thought, *At some point*

*maybe I'll be on the Supreme Court or The President talks to me at some point about being Attorney General?* And now you are Attorney General and it appears that the Court situation is going in another direction. Did you begin thinking about how long you might want to stay? Would you want to stay through the rest of the term?

**Gonzales:** I intended to stay.

**Perry:** Through the rest of the term.

**Gonzales:** To the very end.

**Perry:** Right. And then did you begin to think about things that you would want to do after—

**Gonzales:** Not really. In the beginning I always envisioned I'd go back to my old firm and practice law again. As you might imagine, a lot of people said, "When you get out, come talk to us." But I just envisioned that I'd go back to practice law again in Texas.

**Perry:** So adding this international component to your experience wasn't taking you in another direction for your career.

**Gonzales:** It might have taken me in another direction. I just didn't think about it.

**Riley:** You have mentioned a couple of times the controversies and maybe now is a good time for us to ask you to give us your account.

**Gonzales:** Which controversy?

**Riley:** The one I'm most mindful of is the U.S. attorneys. I'll allow my colleagues to probe in other areas.

**Gonzales:** I don't know how much more there is to say after countless hearings, the productions of thousands of pages, at least one IG report and another report by a special prosecutor, no finding of wrongdoing. I don't know what else can be said.

It's *extremely* disappointing to me to have had to undergo that process, and while I admit that I could and should have done some things differently in connection with the U.S. attorney dismissals, the repercussions of it are extremely disappointing.

**Riley:** One of the things I have often told my students is not to underestimate the importance of doing away with the independent counsel statute because of the sand that that tended to throw. As difficult as your situation was, which is the most valid representation multiplied about what things are like in an investigative culture in Washington.

**Gonzales:** There were a number of mistakes, but one of the biggest mistakes we made was not recognizing that when the Democrats took control of the Congress in November of '06 it meant they could control investigations. I blame myself for not recognizing it, but it's also interesting that, of course, the White House signed off on these dismissals. Karl Rove and others didn't see it either. And maybe we were naïve because this was a move to try to make changes to improve

our U.S. attorney personnel, and we didn't think it was going to be that big a deal, other than the fact that, instead of doing it one at a time, we did seven at a time.

But in hindsight, the process took too long. It should have been completed before November of '06, and then after the Democrats took control of both houses we should have abandoned the idea.

**Kassop:** After the Democratic victory in '06.

**Gonzales:** Yes. Because it became politicized.

**Kassop:** But your description, for example, about the San Diego, you said the U.S. attorney there—

**Gonzales:** Carol Lam.

**Kassop:** Right. Was that how you were thinking of these? Because when you stated it that way it sounded rather benign.

**Gonzales:** That's the way I testified.

**Kassop:** And somewhat political but in a way that was—

**Gonzales:** There was nothing improper about it. These are political appointees—

**Kassop:** Exactly. I was just going to say proper.

**Gonzales:** Yes. These are political appointees and however you define political, the question really is, was it politically improper? For example, it would be politically improper to punish someone for not prosecuting a Democrat or punish someone for prosecuting a Republican. That would be improper. Likewise, it would not be improper to ask someone to leave because the President wants to put someone else in there and that someone else might be a contributor. You might not like it much, but there is nothing improper about doing something like that. You have to remember that all these U.S. attorneys served their full statutory term of four years and the statute, even with that four-year term, says they serve at the pleasure of the President, so he can remove them for any reason, for no reason, it just cannot be an improper reason.

**Riley:** Sure. Was it the New Mexico case that was—

**Gonzales:** David Iglesias was probably the hardest one. At the end of the day, even the Inspector General had found that Carol Lam had been removed for failure to prosecute the immigration and gun cases. Kevin Ryan and Margaret Chiara both demonstrated mismanagement of the office.

So we were at seven, we're down to four. Paul Charlton was dismissed because he wanted to impose unilaterally a policy that would affect all U.S. attorney offices on death-penalty cases, and he was insubordinate. So that takes it down to three. John McKay, in Washington state, misrepresented a letter on behalf of the Deputy Attorney General to other U.S. attorneys in



relation to a software system. When he left, he went to work for that software company.

**Riley:** He's making good money.

**Gonzales:** That's why he was asked to leave. Now we are down to two. Dan Bogden in Nevada is the only one that really concerned me because when I pressed people, they really didn't give me any good reasons other than he wasn't a very strong U.S. attorney, didn't really prosecute obscenity cases. Dan is the only one, after this whole thing became an issue, whom I called personally and said, "Dan, I'm not going to change my mind on this, but I will help you get another position. If you want another position in the Department of Justice I'll help you get that." But he was the only one because though there was nothing wrong with his removal, no one gave me what I thought to be a very compelling reason.

That left David Iglesias. David's case is the one that had some troubling facts because there were political folks in New Mexico who had approached Karl and others and complained about David. Senator [Peter] Domenici had called David Iglesias right before the election about an ongoing case and there were some troubling facts.

But the IG found no wrongdoing in connection with that one because the IG could not investigate the White House or Senator Domenici. The IG asked [Michael] Mukasey to appoint a special prosecutor to look into that. Nora Dannehy was the prosecutor chosen and she could not find evidence of wrongdoing, although she was critical, saying there was too much politics in that whole thing.

So what was supposedly a big scandal, removing seven U.S. attorneys for political reasons, improperly politicizing the Department, in truth, may have been possibly about one, David Iglesias. And even then that was investigated and there was no finding of wrongdoing.

Most people who know me would tell you that I'm not political, and the notion that I would politicize the Department really bothered me. Troubled me.

**Kassop:** Would you say that some of the blowing up of all of this was because of political comments made by some of your underlings? That when those conversations became public, the conversations they had with the attorneys they were in the process of removing or conversations they had among themselves in terms of whom to remove and why—when the media got hold of that, it blew it up and made it much more exacerbating than it needed to be?

**Gonzales:** I will say that there were self-inflicted wounds in the Department. There were things that people said and did that created confusion and provided ammunition to our critics. There were things I said that hurt our cause and either made people suspicious or gave people an excuse to claim to be suspicious and make allegations that we were hiding something. To me, it just seemed odd that if I were hiding something—I volunteered very quickly to come up and testify, to have everyone on my staff testify, to produce documents, which, by the way, I had no authority to do. Many of these were internal documents, some involving the White House, but I promised Leahy because I felt that was the only way to kill this investigation at the outset. If I had something to hide, I would not have done that.

This may have been another situation where I was naïve. I knew I had done nothing wrong; I

didn't believe anyone else had done anything wrong, and I thought by being fully cooperative this thing would blow over. In hindsight, I probably should have just said no to Congress, stiff-armed Congress and said, "I'm going to let the IG do an investigation, Congress. I'm not going to cooperate one bit."

**Riley:** Yes, but you would have been murdered in the press.

**Gonzales:** Probably, yes, the press would ask what am I hiding? It wouldn't have been good. But I got murdered anyway. My wife in particular believes that I didn't defend myself, that I should have been out there, a scorched-earth policy. But I was a spokesperson for the Department of Justice and I had to think about the Department and what was good for the Department. It was an incredible experience.

**Riley:** Maybe your wife should have been in the press office and your problems would have dissolved immediately. *[laughter]*

**Gonzales:** I don't think so. The Democrats had so much pent up frustration after years of being out of power. The Bush policies were getting tired and controversial. I was the President's friend and viewed as the author of some of the more controversial policies, and they were going to get me.

**Kassop:** I think I mentioned to you yesterday that I've looked at some of the memos that each Attorney General issues at the beginning of his or her term regarding contacts with the press.

**Gonzales:** Yes.

**Kassop:** I don't have Ashcroft's memo. I have yours and the ones from Mukasey and [Eric] Holder and there are slight variations among them. I wondered—

**Gonzales:** There was a change. Senator [Sheldon] Whitehouse had this display that he showed at a hearing showing the differences in who could contact whom. And a change occurred when I was Attorney General, and I have to tell you I don't remember that change occurring and I don't remember why the change occurred. I asked my staff, "When did this happen and why?" and no one could give me the answer. I think that's another thing that hurt me. It was another reason to criticize me as politicizing the Department to allowing more contacts between the Department and the White House. But I can't remember authorizing that change or why that change was made.

**Kassop:** As I said, I don't have the one prior to yours so I can't see where yours changed from the early ones. I can see the changes between yours and the later ones. The one thing that's interesting is the standard line, "All requests for formal legal opinions from the Department of Justice shall be directed to the Attorney General or the Assistant Attorney General for OLC." Mukasey has that same line but by the time you get to Holder, the *or* becomes an *and*. I wondered if there was a significance to that.

**Gonzales:** To OLC *and* the Attorney General.

**Kassop:** Right. In other words, it's not either/or, so you couldn't go to OLC without going to the

Attorney General. You'd have to go to both together.

**Gonzales:** Every OLC opinion? Even as to formal legality and Executive order and things of that nature?

**Kassop:** This is the Holder one, quite a bit after your time. It was much more detailed actually than either of the previous ones. "All requests of the White House for formal legal opinions shall come from the President, the counsel to the President, or one of the deputy counsels to the President." So there is no Vice Presidential counsel included there and I thought that was interesting, although it was not included on the earlier ones either. That was a question I had, whether the Vice President's counsel could make contact with the Department of Justice or with OLC directly?

**Gonzales:** We had a detailed contacts memo. I don't remember whether or not we had an understanding, formally, informally, about David contacting John Yoo officially on opinions. I don't think David would have had the authority to ask for an opinion, but if an opinion came over to the White House and the White House was asked to comment on it, David would often read it and comment. He might call John and say, "These are my thoughts or comments on the opinion."

**Kassop:** My understanding from reading this is that the initial contacts had to be at the top and after that they could be designated and he could be included.

**Gonzales:** Exactly. I would be surprised if it were different when I was in the White House.

**Kassop:** But when they say the White House counsel here, that does not mean in addition that the Vice President's counsel would be—

**Gonzales:** I understand that.

**Kassop:** OK. I just wanted to clarify that.

**Riley:** Are there any more of these scandal questions that you want to deal with?

**Dinan:** The record said that at a certain point you just decided you could not be effective anymore and so called the President. Is that conversation something that happens within a week, is it a gradual process? Did something finally happen that makes you throw up your hands? Is there anything you want to add to the record on how you came to make that call?

**Riley:** From your perspective—you asked me which parts of the scandal. Are there others that you want to talk about?

**Gonzales:** You remember when Toyota was first having problems with their cars, and it seemed like every week a new problem popped up? It was like an avalanche of disasters. That happened during the U.S. attorney firings investigation. A document would pop up that would reflect something wrong someplace, there would be questions raised about a prosecution in Minnesota, maybe there was politicization there, so there was a series of events that just seemed to come together at one time.

**Riley:** But all of them related to this core issue of politicization within the Department?

**Gonzales:** Yes. Politicization of the Department. I think it is obvious this is how opponents felt they could hurt me. I'll give you an example. In the reauthorization of the Patriot Act there was a change made in the appointment of U.S. attorneys in the event of a vacancy, where the Attorney General could make an appointment for an unlimited period of time and that person could serve without Senate confirmation.

And it was put in the Patriot Act for those cases of an emergency where there is an attack and the U.S. attorney's office is wiped out or something like that and we need to have a U.S. attorney in there. However, it began with Senator [Dianne] Feinstein. She questioned whether or not I had removed these U.S. attorneys so I could put in U.S. attorneys without Senate confirmation.

I assured her I hadn't. Because I felt that U.S. attorneys who are confirmed are in a much stronger position to deal with the FBI SAC [Special Agent in Charge], with DEA, with state and local officials, and it would be detrimental to the work of the Department to have nonconfirmed U.S. attorneys.

This began a steady drumbeat among the Democrats that this was one of the reasons for the change in U.S. attorneys. [Harry Earnest, III] Bud Cummins, the U.S. attorney in, I believe, the Eastern District of Arkansas, was asked to leave in June 2006, not November but five months earlier. We had asked Bud to leave because we wanted to put in a guy named Tim Griffin. Tim had worked in Karl Rove's shop. Having said that, Tim was more qualified than Bud Cummins was to serve as a U.S. attorney, and we simply wanted to make a change there. Senator Mark Pryor viewed Tim Griffin as a potential rival. If we credentialed Tim Griffin, he might run against Senator Pryor. He didn't want Tim Griffin to be the U.S. attorney. He was concerned we were going to put Tim in under this new Patriot Act provision and I assured him, "No way. I wouldn't do that to you."

I liked Pryor. He was one of the few Democrats who had voted for me and I told him, "Whoever we put in there has to be acceptable to you, and we'll submit him to Senate confirmation." That was my word to him.

He continued to be uneasy about Tim Griffin and when he told me he would not support Tim, I said we would pull down the nomination, something which made the White House unhappy. But, I had given my word. Then as we started releasing these document dumps about the U.S. attorneys, there was an email from Kyle to the White House, basically saying, "We'll stick Tim Griffin into the U.S. attorney position under this new provision, and we'll gum up the works and by the time Pryor can do anything about it the term will be over."

Pryor reads this and believes this is Gonzales's plan, to stick in Tim Griffin under this provision. So Pryor goes on the Senate floor and calls me a liar. He says I've lied to the American people; I've lied to the Senate Judiciary Committee.

What do you do when a Senator goes on the floor and says that? As I said, before that happened I had talked to Pryor and once he told me he could not support Griffin, I called Tim Griffin and I said, "You're not going to be a U.S. attorney." It infuriated the White House because I was out of my lane, but I had given my word to Pryor that we wouldn't do that to him.

Now, because these documents have come out, Pryor thinks I've lied to him. So the investigators had to investigate whether or not I misled Congress in connection with the use of that Patriot Act provision, and they found there was no evidence that I intended to do that. Kyle's actions were taken without direction or approval by me. This was just an example of things that continued to mount and mount against me.

**Riley:** Where did the Patriot Act provision originate? Do you remember?

**Gonzales:** There was a discussion about that. I think it may have originated at the Department of Justice. I can't really recall, but I think it did originate with us.

**Riley:** And there weren't any stipulations out there about triggering events?

**Gonzales:** One of the reasons for the change is because under the old law, if a vacancy occurs and it cannot be filled within a certain period of time, then the head district judge can fill the vacancy.

I found that problematic for a number of reasons. One, I didn't want to have a judge tell me who is on my staff. The judge could appoint someone who didn't have a security clearance to deal with important matters. The judge could appoint someone who was a total boob, and I just thought it was dangerous. There were potential issues of conflicts of interests. A stupid provision and I wanted it changed. I supported the change.

**Riley:** Sure. And the fact of Kyle's service with Karl didn't raise any alarm bells that this might be a bit radioactive?

**Gonzales:** I don't know if I ever thought about it that way. I will say that if you look at the narrative after this became a scandal, it wasn't just the seven who were asked to leave in November. Political critics always included Bud Cummins leaving in June as part of the scandal because it made the narrative stronger. It was politicized because it involved Karl Rove's guy in the dismissals.

**Riley:** Sure.

**Gonzales:** But I never thought about it.

**Riley:** This was when Karl was still political advisor, right?

**Gonzales:** He was still in the White House.

**Riley:** It's not clear to me why that shop would need somebody who is—

**Gonzales:** It wasn't needing someone. I think they knew Tim. Tim had worked in that office and they wanted to reward him. And there may have been some thinking that, yes, we'll have him take on Senator Pryor in the future. I don't know. But as I said, Tim had done legal work in Iraq, he had worked in the Criminal Division, he had more experience coming in as a U.S. attorney than Bud Cummins did when he was appointed. He was qualified to serve.

**Perry:** Talking about your time in the White House and when you could stroll down to the Oval Office early in the morning and have discussions with the President, were you routinely in touch with the President during your three years as Attorney General?

**Gonzales:** No.

**Perry:** And during this most difficult time for you was there any effort on his part to reach out and buck up your spirits?

**Gonzales:** He would call me from time to time to say, “Hang in there and fight.” Otherwise I probably would have resigned because it wasn’t good for the Department. It wasn’t good for me and my family. It wasn’t necessarily good for *him*. And having been in the counsel’s office, if I had been White House counsel and a Cabinet Secretary was undergoing this kind of attack, I probably would have been recommending to the President, “Mr. President, we need to make a change here.”

I suspect that that was going on in the White House, but he told me to stay and fight. So I stayed and fought.

**Riley:** What were the major pieces of the War on Terror that you had as Attorney General?

**Gonzales:** All the legislation that occurred I was involved with. The reauthorization of the Patriot Act, I was making calls to Members of Congress.

**Riley:** Were there major modifications in the reauthorization that we should note?

**Gonzales:** I think 14 of the 16 became permanent. There were concerns about civil liberties infractions and there were additional safeguards included in this new legislation that we were quite comfortable with, but beyond that I don’t know.

**Riley:** OK. In the immediate aftermath of 9/11 there was an enormous degree of alarm and by the time you get to the end of the term, at least publicly, there is a sort of return to normalcy in the population at large. Is that an artificial return to normalcy?

**Gonzales:** For the population?

**Riley:** For the population. For those of you who are in the loop and in the know in the administration, are there still daily things coming to you that indicate there is enormous peril in the country?

**Gonzales:** I would say the threat reporting was probably periodic. When it did occur it was pretty urgent and would consume us, at least for a short period of time. But clearly there were periods in the days and weeks and months following 9/11 when that’s all we focused on. That changed over time. And our view about the American people is that we wanted them to live their lives as normally as possible but to be a little bit more aware or alert because things were different and we still live in a dangerous world. But if we did our jobs right in the government, the American people should be able to live their lives more normally. You now have to take off your shoes and your belt when you go to the airport and things of that nature, but we wanted

people to return to normal as much as possible.

It's a double-edged sword to be effective in preventing another attack because people assume they are no longer in danger, there is no longer a threat. I tell the students in my class, I wish they would play the images from the morning of 9/11 every morning on television. Because it's startling when you see it, the live pictures of the planes hitting and the towers collapsing. Returning to normalcy is expected and we want that to happen, yet at the same time, it's important that people keep at least in the back of their minds the fact of what happened on 9/11 and how in an open and free society like ours, but for the grace of God we haven't had another successful attack.

**Riley:** It makes it more difficult for you to do your job.

**Gonzales:** No question about it. And now, because we have been so effective and because we're dealing with a very smart and observant enemy, tactics have changed. I think it's more likely that the next attacker is going to be someone who looks like you and me, speaks perfect English, actually may be a woman, perhaps an American citizen, operating alone. Now you don't have to go to Afghanistan or Pakistan to receive training, you can receive it over the Internet. Catching that kind of target is much more difficult than what we were dealing with on September 10, 2001.

**Riley:** You were Attorney General when the group was arrested in Miami in June of '06. Can you tell us how that came about?

**Gonzales:** I can only speak generally. If we've done our job right we have some idea of the planning for an operation like this, and there is a key question that arises as to, OK, when are you going to go in and arrest the people? You try to go as long as you can, of course, without in any way putting anyone's life at risk. That's what happened here. Sometimes you're lucky.

I'm amazed when I hear people criticize the Obama administration for the fact that we've been lucky with the Times Square bomber and we've been lucky with the underwear bomber that these explosives didn't work. The truth of the matter is you can be very good but sometimes it just helps to be lucky. In police work and law enforcement you need luck. You really do. I have to hope that the Obama administration is doing everything it can to make America safe, but the fact that they got lucky, that's a good thing, not a bad thing.

**Perry:** Should we mention the media reports that begin coming out in '06 about the NSA wiretapping and the communications collection from domestic communication records and how you are responding to that?

**Gonzales:** The *New York Times* leaked the existence of a portion of the big program. By the way, they had the story for a year before they published it. They had it right before the '04 election, and we had a series of meetings with the *New York Times* management to persuade them not to publish the story.

**Riley:** You were in these meetings?

**Gonzales:** I was in two of the meetings. One meeting occurred in Condi Rice's office involving

Bill Keller, the editor, and Mike Hayden, who was head of the NSA at the time. We explained to Keller why they can't publish this story. It's just too important to the national security of our country. This is right before the '04 election. And to their credit, they don't publish it.

I remember a second meeting, I think it may have been the day before or the day of the election, at Justice with me and Jim Comey sitting down again with Keller and [James] Risen and [Eric] Lichtblau, the reporters. They want to talk to us about our legal analysis, why this is lawful. So we talk about it as much as we can but, again, it's a delicate balance in that we want to educate them, but we don't want to tell them what they don't already know.

So they decide to hold the story, to their credit. They finally publish it in December of '05. They say they published it because the story was ready. I think they published it for two reasons. One, Lichtblau had a book that was going to come out in January that was going to talk about this. I don't think the *Times* wanted to be scooped. And two, I think they wanted to affect the discussion and debate on the reauthorization of the Patriot Act.

Yes, you were going to say something?

**Kassop:** No, no. I'm nodding. [*laughter*]

**Gonzales:** OK. I think that's why they published the story. Now, you have this story that discloses the government has a secret program to listen in on conversations and this is a big thing and I have to go up to the Hill in February 2006 to explain it, to defend it. And we issue this 55-page white paper, which presents our legal rationale, but nonetheless I'm there. The morning of my hearing, I call Andy Card and tell him, "What if they ask me whether there has been any disagreement about this program? I have to tell them that there has been. Not only because that's the truth, but we briefed the Congressional leadership on the problem back on March 10. What can I tell them about this disagreement? I have to be honest." And Andy said, "Let me get back to you."

So Andy calls me back, and I'm assuming he's talked to the President but he says, "You are to answer the question truthfully and completely. Do what your conscience tells you to do."

I get into the hearing and they ask me a question about possible disagreements—They know something. There are some rumblings about this and they ask me about disagreements or something like that. I said, "The disagreement was not about the terrorist surveillance program, it was about other capabilities." Words to that effect because it wasn't about the terrorist surveillance program, content collection activities, the activities leaked in the *New York Times*, it was about this technical aspect that earlier I called the Miller Program. Nonetheless, over a period of time, some people on the Hill began to say, "Gonzales is lying. There *was* a disagreement and it *was* about the terrorist surveillance program." People are either not very careful about what the disagreement was really about or they were just playing politics and wanted me to be investigated. And, of course, the IG looked at this and concluded that it was not about the terrorist surveillance program, the disagreement was about something else, as Gonzales said, but then they also criticized me for not being clearer in talking about a classified program in an open setting.

So, yes, a part of my job as Attorney General, certainly in early '06, was to defend the



President's authority to authorize these activities, most of which were still classified. I did have classified briefings with the intel committees and went through much greater detail about all this.

**Riley:** When you became Attorney General did your clearance level increase?

**Gonzales:** I don't think it increased. I think I had top clearances, all the clearances we needed, when I was White House counsel.

**Riley:** You had said that there were some special programs where people had to be read in.

**Gonzales:** But those guys probably only had secret clearances. This was above top secret.

**Dinan:** There was some scholarly, journalistic, discussion about the U.S. prosecuting journalists for publishing material.

**Gonzales:** I will tell you there was some discussion about that because the espionage statute not only punishes those who leak, but those who publish. There was some discussion. I had meetings at the Department about it. As you might imagine, there were those in the White House who wanted a prosecution. We kept looking at it and never reached a point to pull the trigger. But I did hear arguments. Some in the administration argued that if you're not going to prosecute under this scenario, when are we ever going to use this statute? But we decided not to do that.

**Riley:** Did you cooperate with Bob Woodward when he was writing his books?

**Gonzales:** I don't think so, but you know what's interesting, my wife reminds me of this, my name is not mentioned one time in his three books. I don't know what that says. What I tell people is, "OK, that must mean I'm not responsible for all this crap you're blaming me for."  
[laughter]

**Kassop:** No, you were a good White House deputy. You had a passion for anonymity and you actually succeeded.

**Gonzales:** Once she told me, I thought, *That's kind of interesting.*

**Riley:** But there was cooperation, right?

**Gonzales:** I may have sat down with him. But I don't think so. There was a clear understanding in the White House that there would be cooperation with Bob Woodward, and of course, the President spoke at length with Bob. I can't remember for sure because we got to become friends with Bob and his wife, but I can't remember whether or not I ever sat for an interview. If I did, it was probably a pretty brief one.

**Riley:** If you sat I can't imagine your name wouldn't have been in there.

**Gonzales:** I don't know.

**Riley:** I would have thought maybe as counsel somebody would have touched base with you about whether it's advisable to have him in—

**Gonzales:** Yes, my sense was it was pretty far down the road when I first learned that it was going to happen.

**Riley:** And was the same level of cooperation true throughout?

**Gonzales:** For Bob Woodward?

**Riley:** Yes.

**Gonzales:** I believe so but I'm not sure.

**Kassop:** I agree with you, too. It's exactly the kind of thing you would think the counsel's office would have to—Anybody who walks in to talk to the President has to be cleared through the counsel.

**Gonzales:** But my recollection is, "Boy, there have been a lot of discussions about this and the decision had already been made that we're going to do this."

**Riley:** By the time it came to you.

**Gonzales:** I think they felt that Bob was the right one to tell the story. Someone was going to tell the story and it might as well be Bob.

**Riley:** The first book was as they had hoped.

**Gonzales:** Yes, it got a lot tougher.

**Riley:** It did. You mentioned the FISA courts in one context. Was there an underutilization of the FISA courts? There was a framework set up before 9/11. Was that a flawed framework that could not work in the new environment?

**Gonzales:** What I testified to and what I believe is that FISA is extremely important and continued to be an important tool in fighting the War on Terror, and in certain cases it was the absolute right way to go.

But the FISA process is one that you have to gather up evidence at the FBI or the NSA, and then they have to prepare an application that is worked on by lawyers at the Department of Justice. That takes time. Then it has to come to me and I have to be sold that it meets all of the requirements of FISA.

Sometimes these things can take days, sometimes weeks before the lawyers are comfortable they meet all the requirements of FISA. There is a special provision in FISA that allows me to grant emergency FISAs.

**Riley:** You being the Attorney General.

**Gonzales:** The Attorney General can grant authorization and then go back and get formal approval by the FISA court. However, the law is very clear. I've got to be completely satisfied that it meets all the requirements of FISA. I have to know that the court is going to approve it

before I will give an emergency grant. Otherwise, if you do a FISA like that, there are certain penalties. I think you have to notify the potential target. You don't want to be in a place where you've authorized a FISA and it gets rejected by the court.

**Riley:** That happened, what, once?

**Gonzales:** Because we're very conservative in presenting FISA applications.

**Riley:** All right. It's not because the court is deferential.

**Gonzales:** Believe me, these are federal judges with lifetime tenure and they know it.

It takes time. In most cases, FISA works. But there are some cases when it doesn't work and the NSA needs to go up with surveillance immediately on a target, otherwise they lose a communication that could be extremely valuable and helpful in connecting a dot or something like that. It's in those instances that the President envisioned we would use the present surveillance program. Using FISA when we could, but using this additional authority when it was absolutely necessary.

**Riley:** And the new framework was the President's decision alone?

**Gonzales:** No. I think I read something where it may have initiated with Mike Hayden, who was head of NSA, talking to George Tenet, CIA Director, or vice versa, and they said, "We have this capability. We just don't know whether we have the authority." After it was raised as a capability, the lawyers were asked, "Can this be done lawfully?" And that's when OLC got involved.

**Kassop:** In your white paper, you make the constitutional arguments for the basis for the NSA wiretapping, and you use the phrase that this is part of "the President's well-recognized inherent constitutional authority as Commander in Chief and sole organ of the nation in foreign affairs," coming from the *Curtiss-Wright* opinion. Certainly, in academic circles, *Curtiss-Wright* is not always highly regarded and the "sole organ" phrase.

**Gonzales:** You throw out there what you can. [*laughter*]

**Riley:** I'll underline that.

**Gonzales:** No, I'm not being serious. *Curtiss-Wright* was a Supreme Court opinion and we felt we could rely upon it. Anyone, any professor can write something criticizing a Court decision.

**Kassop:** *Curtiss-Wright*, so I must be right? The old Harold Koh line?

**Gonzales:** No.

**Kassop:** But you talk about the inherent Presidential power, and the other question is that there were certainly some critics of the NSA wiretapping who said that it contradicted FISA and that in fact the two were in conflict with each other.

**Gonzales:** Yes, I know that. I'm aware of that criticism. But there is a provision in FISA that says, and I'm going to paraphrase here, that you can't engage in electronic surveillance unless otherwise permitted by some other statute and we made the argument, as you know, of the AUMF. We put a lot of logs on that wagon.

**Kassop:** Yes, right. You did.

**Riley:** It bore up pretty well.

**Gonzales:** Put yourself in the White House. I try to tell my students this. It's one thing to sit in a sterile classroom ten years after the fact, but put yourself in the White House. You've just lost 3,000 of your fellow countrymen and the President is asking you, "What can you do to protect America?" We did our best. And people like you will judge whether we were right or wrong.

**Kassop:** And you also mentioned Justice Jackson's opinion in *Youngstown* and that, in fact, whenever possible you tried to go with Jackson's first category, when the President has constitutional authority along with Congressional support, it's at its strongest.

Again, critics might say that the President's actions regarding the NSA were in a third category.

**Gonzales:** A third category and a contravention of FISA. I understand that. We always took the position that we were in the first category because of the AUMF, not the third category. I could make that argument, too, if I were in Congress or a critic of the President, that we didn't authorize this. We didn't say anything about surveillance in that authorization.

**Kassop:** It wasn't explicit.

**Gonzales:** It wasn't explicit but again I would rely upon what O'Connor said in *Hamdi* that the AUMF authorized everything fundamentally incidental to waging war. What I can say is this. I know I acted in good faith, and I think the lawyers I worked with acted in good faith and we did the very best we could. Were we aggressive? Yes. I think we needed to be aggressive at that time. All I care about is being judged fairly, and if people disagree that's OK. I can accept that, but I hope they will judge what we did understanding the circumstances in which those decisions were made. That's all we can ask for.

**Riley:** And understanding the particulars, which is why we're doing what we're doing. We care that they judge fairly but judge in an informed way.

**Gonzales:** Of course. And I feel like at the end of this interview, we've only scratched the surface of everything I worked on. I hope this is helpful to the cause. We'll see.

**Riley:** No, it very much is.

**Kassop:** Absolutely.

**Riley:** There are two things we're hoping to do. One is because there are these delays in the access to records, so we're hoping we can create an archive that is usable at some interval in advance of the opening of the Presidential records.

But beyond that, as you noted, there is an absence of writings. For generations we've relied on written documents to make historical judgments, and those written documents are either not going to be there at all or they're going to be silent as to a lot of important influences.

**Gonzales:** But balanced against that, you are going to have emails now and, rightly or wrongly, it's amazing what people put in emails. I suspect there is a treasure trove.

**Riley:** Interesting. I hope so.

**Gonzales:** No, it's true.

**Riley:** Although that could be a needle in a haystack situation.

**Gonzales:** Maybe so, but it's amazing what people write down in emails.

**Dinan:** What are some of the things that we want to add?

**Gonzales:** I can go into much greater detail about many of these topics. That's all I'm saying.

**Dinan:** Are there other topics that we haven't taken up that we should?

**Gonzales:** I don't know. I can't think of anything.

**Riley:** And you're working on a memoir.

**Gonzales:** There will be far greater detail in that.

**Riley:** There will be detail in that that wouldn't be in here.

**Kassop:** And in your law review article and I guess your book, too, you have an opportunity to reflect. Have you come to conclusions now that were different than, say, after you left public service?

**Gonzales:** Conclusions about what?

**Kassop:** About your work and about the work of the administration? Do you see things differently now that you've had a chance to think about it in quiet and solace?

**Gonzales:** I don't know if you're asking if I would have done some things differently.

**Kassop:** Maybe yes, maybe no.

**Gonzales:** Obviously I would in hindsight. I wouldn't give the same advice to the President on a particular case if I knew the Supreme Court was going to rule against me. There are some things I would have done differently, sure. I mentioned how, in hindsight, on the military commissions, it would have been helpful to have Lord [Peter] Goldsmith and the British involved, and I should have changed those procedures or at least argued that they be changed. I might have lost that argument, but I think it would have carried great weight and we may have stood up military commissions.

It might be easy to become discouraged or ashamed or worried, “Man, I didn’t do my job. I failed,” when I hear the criticism, but I’m not going to allow myself to do that because I know I did the very best I could and that’s all I can do. I have every expectation that all those I served with did the very best they could under very difficult circumstances. I always tell people I’m proud of my service. I am. I know that I served in the White House during one of the most monumental times in the history of our nation on a wide variety of issues, and I played a part in that. Sometimes a significant part, sometimes an insignificant part, but I was there and I stepped up and tried to serve our country. That’s all you can ask for.

**Riley:** I think the judgment that scholars and historians will make inevitably will be more measured than the immediate assessments because of the passions that were invoked by those who were worried about what was being lost during the period. Protection of civil liberties and so forth. Even these institutional battles that scholars treat very seriously as part of our life’s blood, the passion begins to fade over time and you can take a more dispassionate historical perspective on those very lively questions.

**Gonzales:** But it’s not just time. I tell my students that the measure of the Bush administration will also be affected by circumstances. If the United States is attacked again, for example, and President Obama implements the same measures or even harsher measures, it’s going to put the Bush administration in a much different light. Those things you can’t really anticipate.

**Riley:** And you don’t know what’s going to happen in Iraq still or Afghanistan.

**Gonzales:** And that’s a big one.

**Riley:** If the predictions of a more stable Middle East occur, as unlikely as it may seem now because of great instability, then the historical judgments will be very different.

I think also that we are unlikely to lose, at least until all of us who were alive on September 11 are gone, the sense of shock of that day. I don’t know that we have to look at the video every morning because if you come back and reflect on it, you’re still—

**Gonzales:** But not enough people reflect on it.

**Riley:** That’s true but that’s Americans. We don’t want them to. The President said, “Go shopping.” People criticized him for saying it and I understand the criticism, but in some respects he was saying, “The terrorists are going to defeat us if we don’t lead normal lives.”

**Gonzales:** Right.

**Riley:** And that’s a valuable thing to hear. But the point I am trying to make is that I think the profound shock to the system of September 11 is not likely to be lost on people who are examining this Presidency as long as I am alive. And I think beyond that.

**Kassop:** I would compare it with my generation to the same shock as Kennedy’s assassination. You never forget that day. A different kind of context but still the same sort of unimaginable scope, just beyond belief.

**Riley:** And because that shock resonates continually, it creates a frame of reference for understanding what happens in the immediate aftermath. There are things people will disagree with about particulars, and the Iraq piece of it is always going to raise more complicated questions, but I think that by and large that shock is going to be the framework. People aren't going to forget that and make judgments about what happened in the administration apart from that.

The other piece of it is the success in not having something else happen. I think you're exactly right, it's a two-edged sword. I wrote a short piece about what happened in 2006, that the midterm elections were a direct result of the success of the Bush administration in not having another attack. People were comfortable enough to entrust their government back to the Democrats again. It's a perverse consequence, but it's a measure of success as well as a kind of political failure.

**Perry:** What do you look back on in your period of service with President Bush with greatest pride in your achievement and your contribution?

**Gonzales:** Right or wrong I think the Bush Presidency is going to be remembered as a terrorism Presidency. That dominated his focus and our focus, so it has to be whatever role I played in keeping America safe. That to me has to be the most important part of my service.

**Perry:** I'll suggest another. I know the Court didn't always go the way you wanted, but the Roberts Court, presuming he lives a long and healthful life, will be, I think, a tribute to all the prep work that you did on that.

**Gonzales:** Then it really is a tribute to the President and it is his most lasting legacy, there is no question about it. It remains to be seen if more Justices continue to leave during this administration how effective they're going to be if people who think like Roberts and Alito become the minority, but I'm very proud of Alito and Roberts. I think they're really good for the country, good for the Court, and you're right, I'm proud of that effort.

But not just those two. We put a number of fine judges into place throughout the judiciary, so that's another legacy.

**Riley:** Would you go back into the government?

**Gonzales:** If my wife were sitting here, she would say, "Absolutely not." But if a President or a Governor were to say, "I need you to do this," it would be hard to say no.

And while I know that nothing is permanent in government service, and I knew that you go to Washington and at some point it's over. You go back to your community, you're better informed, better educated, and better able to serve in your community, but you miss being involved in those kinds of decisions. It's very heady stuff and it's a privilege. Even to be a staffer, but to go to work at the White House every day, boy, that's pretty cool.

I would be tempted. I'll say that.

**Riley:** OK. We'll not ask your wife that question. *[laughter]* It's funny. I had interviewed

somebody at one point, and I often tell my students this, he got the call to go back in and I think it was a Republican administration and some Cabinet position and he went out on his balcony and told his wife, and she immediately burst into tears.

**Gonzales:** Of joy?

**Riley:** No. It's hard for my students to grasp how somebody could feel that way, but that just means that I have to do a better job of teaching what the obligations are.

**Perry:** This is a question I've put to others from the administration. I had mentioned seeing the President speak to a small group of students in March of 2007, college students, about 40 of them, and he exhibited all of the personality traits that you told us about in this interview. Witty. Funny. Articulate. Empathetic. I was shocked at what a different personality I saw in that room in that small setting. Why didn't that come across on television?

**Gonzales:** If you asked my wife, Becky, she would tell you that it's one of the most disappointing and unexplainable things about Bush. In person, particularly in a small setting, he is so different, and particularly off the cuff. When he's behind a lectern or something like that, before a big audience, it's just very different. I don't know why.

I know some people are critical of the legal work during the Bush administration. I worry about our communications effort. I don't think we did a very good job explaining what we were doing and why, and I think that hurt the President and hurt what we were trying to do. I don't know why Bush doesn't come across the same way in different mediums but certainly, we've noticed it as well, those of us who know him. It's not the same Bush we know.

Maybe that's true of most people. I don't know. I have a perception of President Obama based upon what I see. I have no idea what he's like in person.

**Riley:** What we heard about Reagan was exactly the opposite, that Reagan was charming on television but very private and introverted. If you were in a room with 30 people and Reagan was there, he would be likely standing off in a corner by himself. But on camera he had an amazing ability to communicate with people.

**Perry:** The camera was his friend and it doesn't strike me that President Bush 43 felt that way.

**Riley:** Or his dad.

**Perry:** Or his dad. But did President Bush 43 change as he came up to a lectern and before a big audience or with the camera out there, or was there something about the media that did not portray well what we saw in this small-group setting?

**Gonzales:** I think depending on the setting, the more serious the speech, the more important, I think you saw less of the personality. And maybe it's because he felt that it wasn't appropriate to show that personality.

**Perry:** It's hard to be funny at the State of the Union. Some very serious issues to be discussed.



**Gonzales:** Exactly. Maybe that's part of it. I don't know.

**Riley:** I don't know whether you've had a chance to read things that were written about the administration or whether you've avoided them as you did the press.

**Gonzales:** I've read a few of the chapters of some of the most critical books because, in connection with the law review article, I had a student pull some of it together so I could just look at it. I must say I was shocked at reading it.

**Riley:** Shocked because?

**Gonzales:** It was so harsh.

**Riley:** OK. Are there things you read about either the administration generally or more particularly your service that you think resonate with you as being fair and an accurate portrayal of reality?

**Gonzales:** I'm not saying that everything I've read has been inaccurate. Some have been accurate. I haven't read enough of the stuff out there to point you to what I would recommend you read as a fair portrayal. I'm really interested in what the President's book is going to say.

**Riley:** Me too.

**Gonzales:** Hopefully, I'll appear in that book. *[laughter]* Or maybe not. Maybe I should hope that I'm not going to get in.

**Riley:** Did you read Karl's book?

**Gonzales:** No. I didn't read Karl's book.

**Riley:** I haven't yet either.

**Gonzales:** Karl is a very interesting fellow. He is painted as the devil by many Democrats, but he has been the most loyal, the best friend to me and my family in the aftermath. He came to Lubbock a few months ago promoting his book, and he began by talking about what had happened to me and how unfair it was. He almost came to tears.

Oftentimes it is true that what you see on television or in the public is not a very accurate reflection of a person. That was certainly true with Bush, it was certainly true with Karl.

**Riley:** That's why I'm asking. Nobody gets it perfect, but if there are portraits out there it's helpful for us to know what you've looked at and find—

**Gonzales:** I didn't contribute to the [William] Minutaglio book. I haven't read it. My wife has read it and said there are many portions of it that are inaccurate. I don't know how much you're going to rely on that.

**Riley:** The Woodward books, you've read or not?

**Gonzales:** I haven't read the Woodward books. I suspect much of the Woodward books—I just wouldn't know about quite honestly.

**Riley:** We've gotten reports from other administrations that some of it's manufactured.

**Gonzales:** Some of what's manufactured?

**Riley:** Some of the accounts are manufactured. I don't think Woodward manufactures accounts. I think he retells accounts that are given to him by people who have agendas and therefore would tilt their accounts to serve whatever purpose they want served because of the fact that he is writing contemporaneously. I'm sure Woodward is an honest broker of the information and would not knowingly publish something false. Although the stuff he wrote about Bill Casey is still very controversial. Just in full disclosure Woodward has been on the advisory board of the Miller Center and knows what we're doing. He's very interested in what we're doing. I think mostly because he's concerned that we may be getting different accounts than the ones he got, but it will be years before anybody would know that.

**Gonzales:** Yes.

**Riley:** We never exhaust all the possible topics, but we usually do a pretty good job of exhausting the person in the hot seat. It's not possible in even two full days, or probably two full weeks, to cover everything that could be covered. But that's not the purpose here. It's to try to capture a portrait as best we can of your time.

**Gonzales:** So do you have a better sense?

**Riley:** Oh, absolutely. It's been extremely useful, and you've been a very good sport about making yourself our specimen over the last two days.

**Gonzales:** As long as you feed me I'm OK.

**Riley:** We have a very broad definition of public service at the Miller Center and your public service has included spending a day and a half reflecting with us on this. It is going to be invaluable at some future point when people can come in and get your take on what happened.

These correctives are good for historical purposes. All of us are trained as scholars and believe in the value of truth and history, but beyond that I think there are implications for citizens and policy makers, in terms of knowing what happened. So thank you so much for doing this.

**Gonzales:** Yes, happy to do it.

**Riley:** If you get contacted by your colleagues who have been contacted by us, let them know it's not overly painful and that we'll feed them well. If you hear from people at the library, the foundation, tell them the same thing because I'm sure they'll want to know whether we're keeping up our end of the bargain on this.

**Kassop:** This has been invaluable.

**Riley:** Thank you.