

Brigadier General David M. Brahms (Ret. USMC)
Brigadier General James Cullen (Ret. USA)
Brigadier General Evelyn P. Foote (Ret. USA)
Lieutenant General Robert Gard (Ret. USA)
Vice Admiral Lee F. Gunn (Ret. USN)
Rear Admiral Don Guter (Ret. USN)

General Joseph Hoar (Ret. USMC)
Rear Admiral John D. Hutson (Ret. USN)
Lieutenant General Claudia Kennedy (Ret. USA)
General Merrill McPeak (Ret. USAF)
Major General Melvyn Montano (Ret. USAF Nat. Guard)
General John Shalikashvili (Ret. USA)

The Honorable Members of the Senate Judiciary
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

AN OPEN LETTER TO THE SENATE JUDICIARY COMMITTEE:

Dear Senator

We, the undersigned, are retired professional military leaders of the U.S. Armed Forces. We write to express our deep concern about the nomination of Alberto R. Gonzales to be Attorney General, and to urge you to explore in detail his views concerning the role of the Geneva Conventions in U.S. detention and interrogation policy and practice.

During his tenure as White House Counsel, Mr. Gonzales appears to have played a significant role in shaping U.S. detention and interrogation operations in Afghanistan, Iraq, Guantanamo Bay, and elsewhere. Today, it is clear that these operations have fostered greater animosity toward the United States, undermined our intelligence gathering efforts, and added to the risks facing our troops serving around the world. Before Mr. Gonzales assumes the position of Attorney General, it is critical to understand whether he intends to adhere to the positions he adopted as White House Counsel, or chart a revised course more consistent with fulfilling our nation's complex security interests, and maintaining a military that operates within the rule of law.

Among his past actions that concern us most, Mr. Gonzales wrote to the President on January 25, 2002, advising him that the Geneva Conventions did not apply to the conflict then underway in Afghanistan. More broadly, he wrote that the "war on terrorism" presents a "new paradigm [that] renders obsolete Geneva's" protections.

The reasoning Mr. Gonzales advanced in this memo was rejected by many military leaders at the time, including Secretary of State Colin Powell who argued that abandoning the Geneva Conventions would put our soldiers at greater risk, would "reverse over a century of U.S. policy and practice in supporting the Geneva Conventions," and would "undermine the protections of the rule of law for our troops, both in this specific conflict [Afghanistan] and in general." State Department adviser William H. Taft IV agreed that this decision "deprives our troops [in Afghanistan] of any claim to the protection of the Conventions in the event they are captured and weakens the protections afforded by the Conventions to our troops in future conflicts." Mr. Gonzales' recommendation also ran counter to the wisdom of former U.S. prisoners of war. As Senator John McCain has observed: "I am certain we all would have been a lot worse off if there

had not been the Geneva Conventions around which an international consensus formed about some very basic standards of decency that should apply even amid the cruel excesses of war.”

Mr. Gonzales’ reasoning was also on the wrong side of history. Repeatedly in our past, the United States has confronted foes that, at the time they emerged, posed threats of a scope or nature unlike any we had previously faced. But we have been far more steadfast in the past in keeping faith with our national commitment to the rule of law. During the Second World War, General Dwight D. Eisenhower explained that the allies adhered to the law of war in their treatment of prisoners because “the Germans had some thousands of American and British prisoners and I did not want to give Hitler the excuse or justification for treating our prisoners more harshly than he already was doing.” In Vietnam, U.S. policy required that the Geneva Conventions be observed for *all* enemy prisoners of war – both North Vietnamese regulars and Viet Cong – even though the Viet Cong denied our own prisoners of war the same protections. And in the 1991 Persian Gulf War, the United States afforded Geneva Convention protections to more than 86,000 Iraqi prisoners of war held in U.S. custody. The threats we face today – while grave and complex – no more warrant abandoning these basic principles than did the threats of enemies past.

Perhaps most troubling of all, the White House decision to depart from the Geneva Conventions in Afghanistan went hand in hand with the decision to relax the definition of torture and to alter interrogation doctrine accordingly. Mr. Gonzales’ January 2002 memo itself warned that the decision not to apply Geneva Convention standards “could undermine U.S. military culture which emphasizes maintaining the highest standards of conduct in combat, and could introduce an element of uncertainty in the status of adversaries.” Yet Mr. Gonzales then made that very recommendation with reference to Afghanistan, a policy later extended piece by piece to Iraq. Sadly, the uncertainty Mr. Gonzales warned about came to fruition. As James R. Schlesinger’s panel reviewing Defense Department detention operations concluded earlier this year, these changes in doctrine have led to uncertainty and confusion in the field, contributing to the abuses of detainees at Abu Ghraib and elsewhere, and undermining the mission and morale of our troops.

The full extent of Mr. Gonzales’ role in endorsing or implementing the interrogation practices the world has now seen remains unclear. A series of memos that were prepared at his direction in 2002 recommended official authorization of harsh interrogation methods, including waterboarding, feigned suffocation, and sleep deprivation. As with the recommendations on the Geneva Conventions, these memos ignored established U.S. military policy, including doctrine prohibiting “threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation.” Indeed, the August 1, 2002 Justice Department memo analyzing the law on interrogation references health care administration law more than five times, but never once cites the U.S. Army Field Manual on interrogation. The Army Field Manual was the product of decades of experience – experience that had shown, among other things that such interrogation methods produce unreliable results and often impede further intelligence collection. Discounting the Manual’s wisdom on this central point shows a disturbing disregard for the decades of hard-won knowledge of the professional American military.

The United States' commitment to the Geneva Conventions – the laws of war – flows not only from field experience, but also from the moral principles on which this country was founded, and by which we all continue to be guided. We have learned first hand the value of adhering to the Geneva Conventions and practicing what we preach on the international stage. With this in mind, we urge you to ask of Mr. Gonzales the following:

- (1) Do you believe the Geneva Conventions apply to all those captured by U.S. authorities in Afghanistan and Iraq?
- (2) Do you support affording the International Committee of the Red Cross access to all detainees in U.S. custody?
- (3) What rights under U.S. or international law do suspected members of Al Qaeda, the Taliban, or members of similar organizations have when brought into the care or custody of U.S. military, law enforcement, or intelligence forces?
- (4) Do you believe that torture or other forms of cruel, inhuman and degrading treatment – such as dietary manipulation, forced nudity, prolonged solitary confinement, or threats of harm – may lawfully be used by U.S. authorities so long as the detainee is an “unlawful combatant” as you have defined it?
- (5) Do you believe that CIA and other government intelligence agencies are bound by the same laws and restrictions that constrain the operations of the U.S. Armed Forces engaged in detention and interrogation operations abroad?

Signed,

Brigadier General David M. Brahms (Ret. USMC)
Brigadier General James Cullen (Ret. USA)
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Lieutenant General Robert Gard (Ret. USA)
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**BIOGRAPHICAL INFORMATION
ON SIGNATORIES OF LETTER TO SENATE JUDICIARY**

Biographical information on:

Brigadier General David M. Brahms (Ret. USMC)

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General John Shalikashvili (Ret. USA)

Brigadier General David M. Brahms (Ret. USMC)

General Brahms served in the Marine Corps from 1963-1988. He served as the Marine Corps' senior legal adviser from 1983 until his retirement in 1988. General Brahms currently practices law in Carlsbad, California and sits on the board of directors of the Judge Advocates Association.

Brigadier General James Cullen (Ret. USA)

General Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General's Corps and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.

Brigadier General Evelyn P. Foote (Ret. USA)

General Foote was Commanding General of Fort Belvoir in 1989. She was recalled to active duty in 1996 to serve as Vice Chair of the Secretary of the Army's Senior Review Panel on Sexual Harassment. She is President of the Alliance for National Defense, a non-profit organization.

Lieutenant General Robert Gard (Ret. USA)

General Gard is a retired Lieutenant General who served in the United States Army; his military assignments included combat service in Korea and Vietnam. He is currently a consultant on international security and president emeritus of the Monterey Institute for International Studies.

Vice Admiral Lee F. Gunn (Ret. USN)

Admiral Gunn served as the Inspector General of the Department of the Navy until his retirement in August 2000. Admiral Gunn commanded the USS BARBEY and the Destroyer Squadron "Thirty-one," a component of the U.S. Navy's Anti-Submarine Warfare Destroyer Squadrons.

Rear Admiral Don Guter (Ret. USN)

Admiral Guter served as the Navy's Judge Advocate General from 2000 to 2002. Admiral Guter is currently CEO of Vinson Hall Corporation/Executive Director of the Navy Marine Coast Guard Residence Foundation in McLean, Virginia.

General Joseph Hoar (Ret. USMC)

General Hoar served as Commander-in-Chief, U.S. Central Command. After the first Gulf War, General Hoar led the effort to enforce the naval embargo in the Red Sea and the Persian Gulf, and to enforce the no-fly zone in the south of Iraq. He oversaw the humanitarian and peacekeeping operations in Kenya and Somalia and also led the U.S. Marine Corps support for operations in Rwanda, and the evacuation of U.S. civilians from Yemen during the 1994 civil war. He was the Deputy for Operations for the Marine Corps during the Gulf War and served as General Norman Schwarzkopf's Chief of Staff at Central Command. General Hoar currently runs a consulting business in California.

Rear Admiral John D. Hutson (Ret. USN)

Admiral John D. Hutson served as the Navy's Judge Advocate General from 1997 to 2000. Admiral Hutson now serves as President and Dean of the Franklin Pierce Law Center in Concord, New Hampshire.

Lieutenant General Claudia J. Kennedy (Ret. USA)

General Kennedy is the first and only woman to achieve the rank of three-star general in the United States Army. Kennedy served as Deputy Chief of Staff for Army Intelligence, Commander of the U.S. Army Recruiting Command, and as Commander of the 703d military intelligence brigade in Kunia, Hawaii.

General Merrill A. McPeak (Ret. USAF)

General McPeak served as the Chief of Staff of the U.S. Air Force. Previously, General McPeak served as Commander in Chief of the U.S. Pacific Air Forces. He is a command pilot, having flown more than 6,000 hours, principally in fighter aircraft.

Major General Melvyn Montano (Ret. USAF Nat. Guard)

General Montano was the adjutant general in charge of the National Guard in New Mexico from 1994 to 1999. He served in Vietnam and was the first Hispanic Air National Guard officer appointed as an adjutant general in the country.

General John Shalikashvili (Ret. USA)

General Shalikashvili was Chairman of the Joint Chiefs of Staff (Department of Defense) from 1993 till 1997. Prior to serving as Chairman, he served as NATO's Supreme Allied Commander for Europe, and also as the commander-in-chief of the United States European Command. He was until recently a visiting professor at The Stanford Institute for International Studies.