Excerpts From Gonzales's Legal Writings

As a justice on the Texas Supreme Court, Alberto R. Gonzales wrote a majority opinion issued on June 22, 2000, in a case in which a minor was seeking to have an abortion without notifying her parents, as state law required. Then as counselor to the president, Mr. Gonzales drafted a memorandum dated Jan. 25, 2002, about the application of the Geneva Convention on Prisoners of War (G.P.W.) to the conflict with Al Qaeda and the Taliban. Following are excerpts from those writings:

An Abortion Ruling

Our role as judges requires that we put aside our own personal views of what we might like to see enacted, and instead do our best to discern what the Legislature actually intended. ... Once we discern the Legislature's intent we must put it into effect, even if we ourselves might have made different policy decisions. ...

The dissenting opinions suggest that the exceptions to the general rule of notification should be very rare and require a high standard of proof. I respectfully submit that these are policy decisions for the Legislature. And I find nothing in this statute to directly show that the Legislature intended such a narrow construction. As the court demonstrates, the Legislature certainly could have written section 33.033(i) to make it harder to bypass a parent's right to be involved in decisions affecting their daughters. ... But it did not. Likewise, parts of the statute's legislative history directly contradict the suggestion that the Legislature intended bypasses to be very rare. ... Thus, to construe the Parental Notification Act so narrowly as to eliminate bypasses, or to create hurdles that simply are not to be found in the words of the statute, would be an unconscionable act of judicial activism. As a judge, I hold the right of parents to protect and guide the education, safety, health and development of their children as one of the most important rights in our society. But I cannot rewrite the statute to make parental rights absolute, or virtually absolute, particularly when, as here, the Legislature has elected not to do so.

Prisoner of War Status

As you have said, the war against terrorism is a new kind of war. It is not the traditional clash between nations adhering to the laws of war that formed the backdrop for G.P.W. The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities or war crimes, such as wantonly killing civilians. In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions requiring that captured enemy be afforded such things as commissary privileges, scrip (i.e., advances of monthly pay), athletic uniforms and scientific instruments.

Although some of these provisions do not apply to detainees who are not P.O.W.'s, a determination that G.P.W. does not apply to Al Qaeda and the Taliban eliminates any argument regarding the need for case-by-case determination of P.O.W. status. It also holds open options for the future conflicts in which it may be more difficult to determine whether an enemy force as a whole meets the standard for P.O.W. status.

By concluding that G.P.W. does not apply to Al Qaeda and Taliban, we avoid foreclosing options for the
future, particularly against nonstate actors.