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An interesting article on Judge Gonzales' work in the national security area that will give you a little feel -- albeit from a critic's perspective -- for some of the work I've been doing on the military commissions and on enemy combatant issues and detainee policy.

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Wall Street Journal  
November 26, 2002

White House Counsel's Methods Outrage Military Legal Experts  
By Jeanne Cummings, Staff Reporter Of The Wall Street Journal  
Washington -- Most people assume Attorney General John Ashcroft is the Bush appointee responsible for legal decisions that critics say place national security above civil liberties. But the real architect of many of those moves is someone most Americans have never heard of: White House Counsel Alberto Gonzales.

Since the Sept. 11 attacks, the former commercial-real-estate attorney from Texas has been rewriting the laws of war. From his corner office in the White House, he developed the legal underpinnings for presidential

orders creating military commissions, defining enemy combatants and dictating the status and rights of prisoners held from Afghanistan battles. And he may well hold the most sway in President Bush's coming decision on whether to begin appointing military commissions to prosecute Afghanistan war prisoners.

He believes he is striking the right balance between American security and personal liberties. But his methods have evoked outrage from the State Department and even the Pentagon, which say they resent being cut out of the process.

Career Pentagon lawyers in the Judge Advocate General's Office were furious that they read first in news reports that Mr. Gonzales had devised the legal framework for military commissions. National Security Council legal advisers unsuccessfully tried in January to stall his controversial decision asserting that the Geneva Convention didn't apply to Afghanistan detainees. And Secretary of State Colin Powell launched an intense internal campaign to undo that decision.

"Essentially, a bunch of strangers are deciding the issues and you're outside the door not being heard," complains retired Rear Adm. John Hutson, who served as the Navy's judge advocate general until 2000 and who remains close to his former colleagues at the Pentagon.

The 47-year-old Harvard Law School graduate remains secure in his post mainly for one reason: President Bush. "I love him dearly" was how Mr. Bush introduced his former Texas chief counsel last year. Because of that bond, Mr. Gonzales is considered a likely candidate for nomination to the U.S. Supreme Court.

What makes the San Antonio native's role remarkable is his willingness to go toe-to-toe against Defense Secretary Donald Rumsfeld's department lawyers and Mr. Powell himself -- to try to bend powerful insiders to the will of his client, Mr. Bush. Mr. Gonzales is the president's final sounding board on issues that in previous administrations were largely handled by experts in the National Security Council or the departments of State and Defense. "There is a reason you have trusted aides in key positions. It's to get their judgment after hearing everyone else's judgment," says Dan Bartlett, the president's communications director.

The way Mr. Gonzales sees it, the war on terrorism requires a re-examination of the conventional rules, and it is his job to push Congress, the courts, and the international community to do that. "Some of these principles have never been addressed in a court of law," says Mr. Gonzales. "People think it is obvious that an American citizen, for example, would have a right to counsel if detained as an enemy combatant. But that's not so obvious."

Before Sept. 11, Mr. Gonzales's only brush with the Geneva Conventions was in death-penalty appeals, such as the 1997 case of Mexican native Tristan Montoya. Under the Geneva agreement, Mr. Montoya had a right to contact his consulate office, but Texas authorities failed to inform him of that right. Mr. Gonzales argued that omission wasn't significant enough to overturn Mr. Montoya's murder-robbery conviction. He asserted Texas was under no obligation to enforce the agreement anyway since the state wasn't a party in ratifying it. Mr. Montoya was executed and the U.S. State Department sent a letter of apology to Mexico for the agreement's violation.

After the terrorist attacks, Mr. Gonzales took a new look at those agreements. The reference book "The Laws of War" is the newest addition to his research shelf. It was given to him by John Yoo, a former University of California, Berkeley professor now serving in the Justice Department's Office of Legal Council. Mr. Yoo built a formidable

reputation in elite international law academic circles -- the "academy" as they call themselves -- for his provocative writings asserting profound presidential powers during time of war. He quickly became the White House counsel office's "go to guy," says Mr. Gonzales. But the Gonzales team's first venture into the international-law arena was a rocky one. On Nov. 13, 2001, Mr. Bush announced his intention to revive World War II-style military commissions. He released a framework that excluded explicit assurances of unanimous verdicts, rights to appeal, public trials, and a standard of proof beyond a reasonable doubt. The legal community -- particularly military experts -- exploded. Over the next four months, Pentagon attorneys, who had complained about being kept out of the loop, wrote regulations for the commissions that guaranteed most of those rights. Still lacking, critics say, is the right to appeal to an outside court. "Our political leaders just can't have the ultimate say on guilt and innocence," says Tom Malinowski, a Washington advocate and director of Human Rights Watch. Mr. Gonzales was "surprised" by the sharp reaction to the commission ruling, but acknowledged it may have been written and released too hastily. He says he conducts wide-ranging consultations, but that there are times when others within the administration just don't agree with his final recommendation for action. Two months after the commission order, Mr. Gonzales was readying another critical wartime recommendation -- that the president deny Geneva Convention coverage to detainees housed in a makeshift prison in Cuba's Guantanamo Bay Naval Base. National Security Council lawyers tried to slow the order, but, on Jan. 18, Mr. Bush adopted that stand. "They are not going to become POWs," Mr. Gonzales said. The move immediately drew objections from the State Department. Mr. Powell, fearing captured U.S. servicemen or spies could face reprisals, demanded the president reconsider the ruling. The secretary's discomfort was compounded by a Jan. 25 memo written by Mr. Gonzales that misstated Mr. Powell's position and concluded that the secretary's arguments for "reconsideration and reversal are unpersuasive." Mr. Powell argued that while the detainees didn't deserve prisoner-of-war status, the administration must use the Geneva Conventions to reach that conclusion. After two intense NSC meetings, Mr. Bush opted to reverse course -- but, for Mr. Gonzales, it was only a technical loss. Today, federal judges are grappling with Mr. Gonzales's interpretation of the rights of U.S. citizens, the "enemy combatants," who have been held for months without charges or access to attorneys. That is an issue that is unlikely to be resolved until it reaches the Supreme Court. Mr. Gonzales readily admits the White House might lose some ground in those court cases. While being "respectful" of constitutional rights, the administration's job "at the end of the day" is "to protect the country," he says. "Ultimately, it is the job of the courts to tell us whether or not we've drawn the lines in the right places."

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