

# Intense Senate Fight Weakens Gonzales

by Edward Spannaus

After three days of Senate floor debate on the nomination of Alberto Gonzales for U.S. Attorney General, 35 Democrats and one Independent (Jim Jeffords of Vermont) voted against the confirmation of Gonzales—far more than anyone would have imagined when Bush first offered the nomination. Only two Attorney General nominees in U.S. history have received more opposing votes.

On the first day of debate, Minority Leader Harry Reid (D-Nev.) announced that there would not be a filibuster, but that there was a consent agreement which would allow ten full hours for Senate Democrats to debate the nomination. When asked what kind of a message this sends to the President, Reid responded: “I think it sends a message that the chief legal advisor to the President has a real problem when he starts.” After the agreed-upon three-day schedule was announced in the Senate, Judiciary Committee Chairman Arlen Specter (R-Pa.) took to the floor to acknowledge that Gonzales was being weakened by the debate: “It is still my hope he will be confirmed with some bipartisanship, but it will not be the kind of strong vote that would have given him a much stronger position as Attorney General.”

For weeks after Nov. 10 announcement of the Gonzales nomination, not a single Democrat had expressed an intention to oppose it, and a number of Judiciary Committee Democrats even spoke favorably of the nominee. Although Lyndon LaRouche immediately called for blocking the Gonzales nomination (see *EIR*, Nov. 26, 2004), his call was not echoed by any Congressional Democrats until the point of Gonzales’s confirmation hearing on Jan. 6; when the Committee finally voted on Jan. 26, all eight Democratic Senators on the Committee voted against the nomination—unexpected even the day before.

## How the Fight Developed

What had happened? First, the White House and Gonzales himself were their own worst enemies. Their stonewalling of the Committee’s questions and document requests—and particularly Gonzales’s implausible memory lapses regarding crucial decisions involving prisoner interrogation techniques—created a backlash.

Secondly, during December and January, new revelations about prisoner abuse and torture kept pouring out. Most damaging were the documents concerning the pervasive torture and abuse at Guantánamo, many of which came from FBI

agents who were eyewitnesses to torture and who had put their observations and complaints in writing.

Third, when 12 retired generals and admirals issued a letter on Jan. 4, raising their serious concerns about Gonzales's role regarding the torture memos and the rejection of the Geneva Conventions, this added a significant new dimension to the fight. One of the 12, retired Adm. John Hutson, presented powerful testimony against Gonzales's confirmation at the Judiciary Committee hearing (see *EIR*, Jan. 21).

And finally, a significant factor operating in the background was the widespread discussion of the precedents—even the precise legal arguments—from Nazi Germany, for the Administration's actions regarding treatment of prisoners of war, and its discarding of the Geneva Conventions and other treaty obligations. *EIR*'s interview with international law expert Scott Horton, published Jan. 18 in *EIR Online* and in the Jan. 28 print edition of *EIR*, was used by prominent military figures to put convince Senators to oppose the Gonzales nomination.

### **No One Above the Law**

During the three days of debate, Senate Democrats repeatedly took to the floor to stress fundamental Constitutional principles, especially regarding the role of the Executive and the Senate. With respect to the President, the crucial point was that he is not above the law, and he cannot simply override a law with which he disagrees. As to the Senate, it has a Constitutional obligation to examine a Presidential nomination closely—as opposed to the absurd charge made by numerous Republicans that Democrats were only opposing Gonzales because they are secretly biased against Hispanics.

When the debate began on Feb. 1, Sen. Patrick Leahy (D-Vt.), the senior Democrat on the Judiciary Committee, said that nothing is more basic in this country than the principle that no one is above the law; but Gonzales believes the President can override the law, and can authorize others to override the law. "This is as extreme a view of Executive power, as I've ever heard," Leahy declared. "Since the time of George Washington . . . we've always maintained that, in our country, no one is above the law: not the President, not a Senator, not a judge, no one."

Leahy pointed out that it's been up to the courts to provide what little check there has been on this President's unfettered power, since Congress has failed to perform any real oversight. A number of others also spoke to this point.

Sen. Mark Dayton (D-Minn.) noted that an Attorney General is entrusted to uphold the laws, not reinterpret them or ignore them, nor instruct the President that he can reinterpret them or ignore them. "There is no election mandate for secretly ignoring or reinterpreting the laws of this Nation, or acting contrary to those laws or in violation of the Constitution of the United States," Dayton warned. "Unfortunately, there is tragic precedent in this country's proud history, for the demise of administrations who deviated from the rule of law,

who considered themselves above the law or beyond the law. . . . This occurred more often than not during second terms, even after receiving that most special of electoral mandates: re-election."

Most eloquent on this point, was Sen. Robert Byrd (D-W.Va.). Referring to the argument in the most infamous of the "torture memos"—written at the request of Gonzales—Byrd said the White House believed that the President, as Commander-in-Chief, can declare a law invalid if he disagrees with it. "What an astounding assertion. . . . A President is placing himself above the Constitutional law—in effect crowning himself King!

"Has the White House no appreciation of the struggle this nation endured upon its creation?" Byrd asked, quoting from Alexander Hamilton's explanation, in *Federalist* No. 69, of how the American system is distinguished from the British monarchy: "There is no comparison between the intended power of the President, and the actual power of the British sovereign. The one can perform alone, what the other can only do with the concurrence of a branch of the Legislature."

Byrd continued: "No one man or woman, no President, not his White House Counsel, nor all the attorneys in the Office of Legal Counsel of the Justice Department, can, on their own, act in contravention of a law passed by Congress. No President can nullify or countermand a United States law, or shield from prosecution those would commit, or attempt to commit, torture. But that was the result sought by this White House."

Byrd noted that under Article II, Section 3 of the Constitution, the President has a legal duty "to take Care that the Laws be faithfully executed." But, "the President, and his Counsel, must be held accountable for not only *failing* to faithfully execute our laws, but for also trying to undermine, contravene, and gut them."

In contrast to many supporters of Gonzales, who ranted how terrorists are not entitled to any legal protections, an important statement was made by Sen. Chris Dodd (D-Conn.). Citing the recent 60th anniversary of the liberation of Auschwitz, Dodd recalled that his father had been a participant in the Nuremberg Tribunals which soon followed. Dodd noted that there were loud calls for summary executions, rather than trials, of the Nazi war criminals, coming from, among others, Winston Churchill. Yet the United States stood up for something different, Dodd said; we insisted at Nuremberg that the rule of law, not the rule of the mob, was the rule. "Even those despicable and depraved human beings," who were responsible for the Nazi terror, "were given an opportunity to retain counsel and to testify in their own defense.

"We were different. It did not depend on who the enemy was. It depended on what *we* stood for," Dodd said. "At that very moment in history, the world learned something very important about the United States of America . . . that this nation would not tailor its eternal principles to the conflict of the moment."