

# Senators Assert Constitutional Role Over Rice and Gonzales Nominations

by Edward Spannaus

The Jan. 6 Joint Session of Congress—in which a handful of fighting Democrats forced suspension of the session to consider a challenge to the Ohio Electors—marked a significant shift in the willingness of Congressional Democrats to stand up to the quiet coup d'état being conducted by the Bush-Cheney gang. And now, to that, must be added the historic events of Jan. 26.

On that day, 13 Senators (12 Democrats and one Independent) voted against the confirmation of Condoleezza Rice as Secretary of State—the most votes against a Secretary of State nominee in 180 years. And in the Senate Judiciary Committee, all eight Democrats voted against the confirmation of Alberto Gonzales to become U.S. Attorney General—a development which seemed inconceivable just a few weeks ago.

The big fight, of course, will be Social Security privatization, and on that score, the White House is already having big problems with Republicans on Capitol Hill, while at this point Congressional Democrats are standing firmly opposed to Bush's looting scheme.

However, a well-placed Washington source warned that Democrats should not get over-confident or complacent about the White House's difficulties, pointing out that Karl Rove & Co. are well aware of the stakes involved, and will seek a compromise if necessary to stave off an outright defeat.

## The Revolutionary Opportunity

The necessary perspective for the upcoming battles, taking it far beyond a question of party politics, was laid out by Lyndon LaRouche at an international seminar in Berlin on Jan. 12. LaRouche was responding to an earlier presentation by a military leader from India, who had discussed the notion that the world is passing through a period of discontinuity.

"You're right about the discontinuity," LaRouche said. "We're sitting, as of now, in the weeks before us, we're sitting on the edge of a discontinuity. And the discontinuity will be decided—it could have been decided this past week. But, when people stood up in the Congress, and said, 'We do not support the certification of Bush in the vote for Ohio,' that was a turning-point, in the politics of the United States. Now, the fight will be on two things. The Gonzales issue, the question of Abu Ghraib—that's important; it's not decisive. The Social Security question is decisive. If we lose the Social



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Security question, if that goes through, then we've lost. And if we've lost, the world's going into a Dark Age.

"If we *win* the Social Security issue, then Bush is a lame duck. And the government will now fall back into the hands of the Congress, through a combination of Republicans and Democrats. Under those conditions, we have a change.

"You're right: There is a discontinuity. But, there's also a revolutionary opportunity."

Underscoring this opportunity, were the dramatic events of Jan. 26 in the U.S. Senate, swirling around Condoleezza Rice and Alberto Gonzales.

## The Rice Debate

The nine-hour debate on the Senate floor on the Condoleezza Rice nomination, on Jan. 25-26, featured repeated assertions of the Senate's Constitutional responsibility with respect to Presidential nominations, under the Constitution's framework of checks and balances among the three branches of government.

In response to Republican attacks on those speaking against Rice's confirmation for making "petty" attacks on the nominee, and stooping to low-level partisan politics, a number of Senators—most notably Sen. Robert Byrd (D-W.Va.) and Barbara Boxer (D-Calif.)—made it clear that it is the Senate's Constitutional responsibility to "ponder" each nomination, and to use their judgment, and not to simply rubber-stamp the President's choice.



*Sen. Barbara Boxer (D-Calif.): "I will never be deterred from doing a job the Constitution requires of me, or it would be wrong to have taken the oath and raise my right hand to God and swear to uphold the Constitution, if I did not take this role seriously."*

Declared Senator Boxer: "I will never be deterred from doing a job the Constitution requires of me, or it would be wrong to have taken the oath and raise my right hand to God and swear to uphold the Constitution, if I did not take this role seriously."

Senator Byrd recalled that he had risen many times "to defend the prerogatives of this institution," i.e. the Senate, and the separate-but-equal powers of the three branches of government. He noted that a "unique power" of the Legislative branch is its role in providing advice and consent on Presidential nominations. "It is not a function of pomp and circumstance, and it was never intended by the Framers to be used to burnish the image of a President on Inauguration Day. Yet that is exactly what Senators were being pressured to do last week, to acquiesce mutely to the nomination of one of the most important members on the President's Cabinet without the slightest hiccup of debate or the smallest inconvenience of a rollcall vote."

Democrats also hit the Administration on its pre-emptive war doctrine (Byrd specifically denounced it as unconstitutional); its policy of torture; and its systematic lying on all matters related to the war in Iraq. Rice's role as an architect of the pre-emptive war policy was frequently stressed.

From the lone Senate voice of Barbara Boxer opposing the certification of the Ohio Electors on Jan. 6, there were now 13 Senators willing to stand and fight. The other Democrats who joined the revolt were Edward M. Kennedy and John Kerry of Massachusetts, Carl Levin of Michigan, Jack Reed of Rhode Island, Richard Durbin of Illinois, Daniel Akaka of Hawaii, Evan Bayh of Indiana, Frank Lautenberg of New Jersey, and Tom Harkin of Iowa. Many are well-known senior Senators with important committee positions. Bayh's participation was noteworthy, in that he broke with his former Democratic Leadership Council ally Joe Lieberman (Conn.), who supported the Rice nomination.

As to the charges that Democrats were were only making personal and partisan attacks, and were demonstrating disunity in a time of war, Sen. Harry Reid, the new Democratic

Leader of the Senate, who voted for Rice, retorted: "'Shut up and vote,' is not democracy." He noted that the Democrats had four hours to debate on the most important nomination a President can make. Most people take more time to buy a car or a television set, Reid pointed out. That is not a "burden to our country," but, "on the contrary, that is the meaning of the the Advice and Consent Clause of the Constitution," Reid said in the closing statment of the session.

Since World War II, three Secretary of State nominees have faced stiff opposition, but none received so many opposing votes. Henry Kissinger was opposed by 7 votes in 1973, and Al Haig and Dean Acheson by 6 votes each. Rice managed to match Kissinger and Haig combined—not an enviable position to be in.

### Unified Opposition to Gonzales

On the same day that the full Senate voted on Condi Rice, the eight Democrats on the Senate Judiciary Committee voted unanimously against confirming White House Counsel Alberto Gonzales as U.S. Attorney General. As recently as the previous afternoon, there were still a couple of Democrats who were regarded as probable votes for Gonzales.

"A dramatic shift" was the way one military figure who has opposed the nomination, described it to *EIR*. Another source, who has worked closely with the military leaders who oppose the nomination, noted that Gonzales's almost-unanimous confirmation was originally regarded as a sure thing, and that Senate Democrats were saying that "he's not as bad as Ashcroft," and "the President deserves to have his nominees approved," only a few weeks ago.

A crucial factor in the unanimous Democratic vote against Gonzales, was the issue of the "imperial Presidency"—a President who asserts he cannot be subject to any restraints from the Legislative or Judicial branches—as well as Gonzales's stonewalling in responding to Senators' questions during his confirmation hearings, which is preventing the Senate from carrying out its advice-and-consent and oversight responsibilities.

A number of Senators also stated that, although they were voting to confirm Rice, they were opposing Gonzales, because a stricter standard must apply to the Attorney General. Sen. Joseph Biden (D-Del.), for example, said that if Gonzales were being nominated for Secretary of State, he might well vote for him. He noted that Condoleezza Rice "did a lot of stupid things," exaggerating the imminence of threats, and so on. "But, her job there was to be the public face to the President. It wasn't to be an independent voice, as well, in interpreting the Constitution."

This was also a factor with two other Senators who were initially leaning toward confirming Gonzales: Russ Feingold of Wisconsin and Charles Schumer of New York.

Senator Schumer said that he was originally inclined to support Gonzales, because Gonzales was "a much less polarizing figure" than John Ashcroft. But this isn't enough. An



*Sen. Richard Durbin (D-Ill.): "If there was unspeakable cruelty in those dimly lit prison cells [in Iraq], there was also a cruel process under way in the brightly lit corridors of power in Washington."*

Attorney General "must have the independence necessary to be the nation's chief law enforcement officer." This position requires more independence than the Secretary of State, whose obligation it is to advance the President's interest abroad. "The bottom line is, it's hard to be a straight shooter if you're a blind loyalist," Schumer said.

Senator Feingold pointed out that he normally gives a great deal of deference to the President's Cabinet nominees; he had even voted to confirm Ascroft. But he could not support this one. Feingold pointed to the courage shown by Attorney General Elliot Richardson and his deputy William French Smith, when they both resigned from their offices in 1973, rather than carry out President Nixon's order to fire special prosecutor Archibald Cox.

Most disturbing, Feingold said, was that Gonzales "refused time after time to repudiate the most far-reaching and significant conclusion of the OLC [the Justice Department's Office of Legal Counsel] memo—that the President has the authority as commander-in-chief to immunize those acting at his direction from the application of U.S. law. . . . We cannot have a person heading the United States Department of Justice who believes that the President is above the law."

### **Oversight Needed To Check Executive Power**

The senior Democrat on the Judiciary Committee, Patrick Leahy (Vt.), emphasized the theme of the imperial Presidency at the outset, saying: "I cannot in good conscience vote to confirm his nomination. And my reasons for voting against this nomination arise from the need for accountability, and derive from the nominee's involvement in the formulation of a number of policies that tarnished our country's moral leadership in the world, and they put our soldiers and our citizens at greater risk." What disturbs him the most, Leahy said, is Gonzales's view that the President has the power "to override our laws," and "to immunize others to perform what would otherwise be unlawful acts."

"That's about as extreme a view of Executive power as I have ever heard," Leahy said. "I believe it is not only dead

wrong as a Constitutional matter, but it's extremely dangerous."

Leahy pointed out that he had been in Congress for 31 years, and there has been less oversight—an important component of checks and balances—in the past four years, than at any other time in those 31 years. Only "the Federal courts have provided what little check there is, on this President's claim of unfettered Executive power."

Senator Kennedy, who had conducted the most extensive questioning of Gonzales in the committee hearing, went after Gonzales for his refusal to provide documents pertaining to the key torture memos, and his refusal to even search for them. "It's hard to imagine a more arrogant insult to this committee's oversight responsibility," Kennedy said. "If we allow this nominee to proceed to a vote without insisting on answers to our questions, we'll be abdicating our advice and consent responsibility, and weakening our oversight function precisely when it is needed the most."

Senator Durbin addressed the abuses at Abu Ghraib and Guantánamo, noting that some had declared this to be the demented conduct of a few low-level renegades. "But we now know that if there was unspeakable cruelty in those dimly lit prison cells, there was also a cruel process under way in the brightly lit corridors of power in Washington. At the center of this process, at the center of this Administration's effort to redefine the acceptable and legal treatment of prisoners and detainees, was Alberto Gonzales. . . . Gonzales . . . and others found the loopholes, invented the weasel words, and covered the whole process with winks and nods. Over the strenuous objection of Secretary of State Colin Powell and the Joint Chiefs of Staff, Mr. Gonzales recommended to the President that the Geneva Convention should not apply to the war on terrorism. The clarity of the Geneva Conventions crumbled as these people rationalized tortures and inhumane treatment."

Durbin concluded by saying that he will vote against Gonzales, not in the expectation that the Democrats can defeat him in the Republican-controlled Senate, but rather "as a statement that some of us continue to believe that our nation must lead the world by example."

While no Republican Senator has said that he will vote against Gonzales, at least two have expressed strong reservations. As we previously reported (*EIR*, Jan. 14), Sen. Lindsay Graham (R-S.C.), a Judge Advocate in the Air Force Reserve, lashed out at Gonzales's support for ignoring the Geneva Conventions, at the Jan. 6 confirmation hearing.

And Sen. Charles Grassley (R-Iowa), often a fierce critic of the Justice Department and the FBI, stated in his written questions to Gonzales, the importance of Congressional oversight, declaring that "I take those responsibilities very seriously." And he stated that Gonzales had better respond in a timely and complete manner to any questions and document requests, warning: "I also want to be sure that you know that delays, ducking or just plain ignoring my requests are not acceptable."