

# Will Congress Buck Administration's Latest Abuse of Constitutional Powers?

by Carl Osgood and Nancy Spannaus

In the wake of the aggressive Congressional opposition, led by Republicans, to the unconstitutional midnight raid carried out by the FBI against the offices of Rep. William Jefferson (D-La.), Administration sources told the media that Attorney General Alberto Gonzales, FBI Director Robert Mueller, and Deputy Attorney General Paul J. McNulty had threatened to resign if President Bush failed to uphold their raid. Lyndon LaRouche had an immediate response: If they wish to be helpful to the President, in this, his hour of need, all three *should* resign.

In fact, it's not at all clear that the President will back up the raid, which was a blatant violation of the Constitution's protections of the Legislative branch. Within hours, Bush announced that the materials seized in the raid should be placed under seal, until the legal issues were resolved.

But this action did not stop the Republican Chairman of the House Judiciary Committee, Rep. James Sensenbrenner (R-Wisc.), from convening an extraordinary hearing the day after Memorial Day, when Congress was technically out of session. The subject was the FBI's violation of Article I, Section 6, of the Constitution, which protects members of Congress from arrest or prosecution for anything that they say during the course of legislative business. Sensenbrenner took testimony from three Constitutional scholars and a former member of Congress (all of whom opposed the raid), and declared that this was only the first of three hearings to be held on the subject.

The final hearing will call Gonzales and Mueller themselves.

It should be obvious that this is an open-and-shut case. The Framers, seeing before them—among other things—the intimidation of members of the British Parliament by the monarchy and other forces, gave members of Congress the explicit privilege of immunity for their “speeches and debates.” Despite much talk of “executive privilege” of late, neither the Judiciary nor the Executive Branch has any privilege specified in the Constitution; only the Legislature has. And this privilege has long been correctly interpreted by courts to cover all written and oral work-product prepared in the legislative process, not merely public speeches on the floor or in committee. That is why no such raid has ever been conducted for the last 219 years.

This raid on Congress, Lyndon LaRouche said, amounted to “the end of a dying regime.” He said that it was grounds for impeachment of Attorney General Gonzales.

## An Extraordinary Hearing

With at least six members of Congress present, Sensenbrenner, in his opening statement, placed the raid in the context of the “speech or debate” clause of Article I, Section 6, of the Constitution. We include the bulk of his remarks below, along with excerpts of the statement by ranking Democrat John Conyers (Mich.). These are followed by portions of the presentations by the three law professors who testified: Prof. Charles Teifer of the University of Maryland, who also served as Counsel to the House of Representatives from 1984 to 1995; Prof. Jonathan Turley of Georgetown University Law School; and former Reagan-era Deputy Attorney General Bruce Fein.

## The Next Step

It was only about one year ago that Congress, in that case the Senate, acted decisively and bipartisanly to stop another attack on the Constitutional separation of powers, by blocking Vice President Cheney's threat to end filibusters with the “nuclear option.” Now that the Constitution is challenged again, Congress as a whole cannot afford not to act.

The Administration itself is in quite a bind. Press leaks have suggested that the raid was actually *opposed* by the foremost proponent of Presidential dictatorial powers, Vice President Cheney's Chief of Staff David Addington. According to one high-level Washington source, the reason was his opposition to any action by the Department of Justice in its own right, because, as in the case of the appointment of Independent Counsel Patrick Fitzgerald, it might be a threat to the Administration itself.

It is widely known, of course, that the Department of Justice has a good number of other Congressmen in its sights, including Republicans. Some high-level Washington sources indicate that number could rise to as many as 20. But it would be wrong to see, as the public largely does, the bipartisan opposition to the raid as merely self-protective. What is at stake is the Constitutional separation of powers, no more, no less.