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From: David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
To: David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP]), Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO]), Alberto R. Gonzales (CN=Alberto R. Gonzales/OU=WHO/O=EOP@Exchange [WHO])
Subject: : Fw:

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)
CREATOR:David G. Leitch (CN=David G. Leitch/OU=WHO/O=EOP@Exchange [WHO])
CREATION DATE/TIME:18-MAY-2003 21:14:31.00
SUBJECT:: Fw:
TO:David S. Addington (CN=David S. Addington/OU=OVP/O=EOP@EOP [OVP])
READ:UNKNOWN
TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
READ:UNKNOWN
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Here's the Time article on "unassuming AI."

-----Original Message-----

From: P6/b(6)
To: Leitch, David G. <David_G_Leitch@who.eop.gov>
Sent: Sun May 18 21:09:36 2003
Subject:

Monday, May. 26, 2003

Bush's Supreme Challenge

With a court retirement likely, Al Gonzales is a Bush favorite. But is that enough?

By JOHN F. DICKERSON AND VIVECA NOVAK

Even for a White House in which staff members pride themselves on being

low-key, Alberto Gonzales is inconspicuous. The flashiest thing he has done recently is briefly regrow his mustache. And yet the modest, Harvard-educated lawyer has a riveting story. The son of migrant workers in Texas, he grew up in a house his dad built, sharing two bedrooms with seven siblings. With no running hot water, the family boiled their bathwater on the stove. No phone meant that Gonzales had to walk to the corner pay phone to call his friends. Even the town's name was Humble. Gonzales, 47, has all the traits of the people George W. Bush brought up from Austin — loyalty, discretion and self-effacement — but his personal history is what really captures the President. "It isn't that WASPY 'Isn't that lovely?' kind of thing," says a source close to Gonzales, "but something the President feels in his heart and soul. He gets emotional about it."

Bush has an almost mystical faith in his ability to take the measure of people by looking them in the eye. Within the next few months, he may be measuring some candidates for a long black robe. It is almost certain that by the end of June, when the Supreme Court adjourns for summer recess, at least one Justice will have announced his or her retirement. Chief Justice William H. Rehnquist, 79, and Justice Sandra Day O'Connor, 73, have expressed a desire to leave. Rehnquist has serious back trouble, and O'Connor would like to return to Arizona with her husband. Both want a Republican President to name their replacement, and they know that retiring in 2004, an election year, would provoke a confirmation storm that could keep the court in limbo for months. Then there's the wild card, John Paul Stevens, 83, a liberal who is likely to stay but is the court's oldest member.

Among the many names floated for the post, no candidate has the President's trust like Gonzales. But the irony is that Bush may have a harder time selling his first choice to his allies than to his antagonists. Democrats, who are locked in a pitched battle with the White House over lower-court nominations, would find it tough to block the first Hispanic nominee to the high court, who has a short and unrevealing record on the bench. They might give him a hard time as payback for his treatment of them while he was White House counsel, but a rejection would play badly with Hispanic voters, whom the Democrats are eager to court.

For conservative Republicans, however, Gonzales is not even on the top10 list. They crave a Justice who is strict and outspoken on core conservative issues, namely abortion and affirmative action, and for them Gonzales is too much of a cipher, perhaps too moderate. "To Bush's core constituency," says Phyllis Schlafly, president of the conservative action group the Eagle Forum, "the appointment to the Supreme Court ranks as the No. 1 issue that they care about. Bush went through the campaign saying his favorite Justices were [Antonin] Scalia and [Clarence] Thomas. We are not going to put up with another [David] Souter." Bush the elder's first Supreme Court pick was Souter, and the fact that he has turned out to be a more liberal Justice than anyone expected deeply upsets conservatives.

The fuss may seem a little curious, given that Bush's nominations to the lower courts have been so solidly planted on the right. In fact, some skeptical conservatives believe that Bush has been true blue on the lower courts in order to pave the way for nominating the more moderate Gonzales. And perhaps to burnish his conservative credentials, Gonzales has helped

select and then sell these judicial nominees. He has personally met nearly all the candidates for district and appellate seats and says they are never asked their opinions on any hot-button issues.

Overall, 124 of Bush's judicial nominations have been approved, and the judiciary has its lowest vacancy rate in 13 years. But those numbers belie the intensity of the struggle over the White House selections. Senate Democrats have in recent months filibustered two nominees for appellate-court seats: Priscilla Owen, who is fiercely antiabortion, and Miguel Estrada, who has given Senators too little information about how or what he thinks. Republicans are irate and are considering trying to bar filibusters of judicial nominations.

Despite the laurels Bush wins from his base for seeding the lower courts with judges it considers ideologically correct, the Supreme Court pick is seen in a different league. "It doesn't do any good to pick good lower-court guys and throw the Supreme Court" to a moderate, says conservative activist Grover Norquist. The Supreme Court is the Holy Grail for the right and not to be bargained or traded away. The firmness of conservatives on the high court casts some doubt on one option that White House strategists are considering: elevating Scalia to Chief Justice if Rehnquist leaves, thereby earning enough credit with the right to put Gonzales in the vacancy.

So what's the problem with unassuming Al? Pro-life advocates believe that if the right jurist replaces either O'Connor or Stevens, the court will finally have a chance to overturn Roe v. Wade, the 1973 ruling that established the right to have an abortion. Though Gonzales' views on the

matter are not known, opponents cite his vote — and the concurring opinion he wrote — as a Texas Supreme Court judge allowing a girl to use a bypass provision of a state parental notification to get an abortion. "Pro-life conservatives will oppose him for that," says Terry Jeffrey, editor of Human Events, a conservative magazine.

Gonzales opponents also see the White House counsel as having a hidden hand in what they regard as the President's too soft position on the Michigan affirmative-action case. For that case, the White House filed a Supreme Court brief opposing the University of Michigan's admissions program but did not push to end affirmative action outright. And Gonzales did not help himself with a speech to a group of Evangelical leaders last year in which he did not strongly call for reversing Roe. The rock ribbed just find him squishy. "He is the counsel to a conservative President rather than a conservative counsel to the President," says Clint Bolick, vice president of the libertarian Institute for Justice.

The judge's defenders argue that he has had a strong hand in many issues that have pleased the Republican base: the order setting up military tribunals to try suspected terrorists, the fight with Congress over releasing information about Dick Cheney's energy task force and ending the American Bar Association's role in rating potential judicial nominees. More important, they point out, he's not a legal activist but a strict constructionist — one of the sacred judicial tenets of conservatives. "He was ruling on the existing statute, not legislating," a conservative Washington lawyer says of the Texas abortion ruling. "We've complained about legislating from the bench for years. We can't now start doing it ourselves." On affirmative action, top White House aides say Gonzales was not pushing his own views but finding the legal rationale for

what the President believes, which is that race should be a factor in hiring but not the deciding one. It's a rule Bush believes he applied to Gonzales back in 1995 for the first of four jobs that Bush has given him. "Of course it mattered what his ethnicity is," said Bush when he appointed Gonzales to the Texas Supreme Court, "but first and foremost, what mattered is, I've got great confidence in Al. I know him well. He's a good friend."

Gonzales' resume isn't going to provide much fodder for conservatives — or liberals, for that matter — looking to deep-six Bush's close ally. He was a pro-business jurist in Texas for two years but no ideologue on social issues. He spent 13 years at Enron's law firm, Vinson & Elkins, doing deals in the go-go Houston of the 1980s but before the controversial Enron transactions took place. He was generally known as a stick-to-the-law kind of attorney in Bush's office. "Very seldom, if ever, did I hear his personal views on issues," said Terral Smith, who worked with Gonzales in Austin. "He was very careful in staff meetings to stay within the law."

Why should conservative dissent worry a President who is so wildly popular with members of his party? If the President isn't good enough for them, what are they going to do — sign on with Howard Dean? The answer is simple — and plenty scary for the White House. "We'll stay home," says Schlafly.

That is not an idle threat. Since arriving in Washington, political adviser Karl Rove has pointed out that 4 million Evangelicals who voted for Republicans in the G.O.P. congressional rout of 1994 stayed home in

2000, contributing to the closest election in modern history. Bush's displays of faith have brought many of those voters back into the fold, but they are still alert for an apostasy. Rove also wants to attract Hispanic voters. In the case of a Gonzales nomination, his two aims could clash.

Ultimately, what Gonzales has going for him is that Bush has looked him in the eye for years and liked what he has seen. He also seems to like what his support for Gonzales seems to say about himself: that the aristocratic President is an egalitarian guy capable of rewarding up-by-the-bootstraps achievement. All this may be important enough to Bush that he's willing to take some political heat for his loyal pal, whose life story he cited in his second inaugural address as Governor of Texas. "I think of my friend Al Gonzales, recently sworn in as a supreme-court justice," Bush said back in 1999. "His parents reared eight children in a two-bedroom house in Houston. They sacrificed so that their children would have a chance to succeed. Al Gonzales has realized their dream." They are words one can imagine hearing again this summer in the Rose Garden if Bush decides to make another dream come true.

With reporting by Cathy Booth Thomas/Houston

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