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From: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Subject: : FW: P6/(b)(6) if the Judge sees any mistakes

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CREATOR: Ashley Snee (CN=Ashley Snee/OU=WHO/O=EOP@Exchange [WHO])
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-----Original Message-----

From: Mike Allen [mailto:allenm@washpost.com]
Sent: Monday, April 28, 2003 5:03 PM
To: Snee, Ashley
Subject: P6/(b)(6) if the Judge sees any mistakes

The White House counsel, Alberto R. Gonzales, is kidded even within the West Wing about his ability to coyly hide his views and emotions until late in a debate or when he has his client--President Bush--to himself.

The soft-spoken Texan even emulates Bush's technique of letting subordinates argue competing points of view in front of him, then surprising them with his arbitration as if he were a court handing down an opinion.

But administration officials said that as inscrutable as Gonzales prides himself on being, he has left a clear stamp on his office by providing Bush with the legal grounding for an aggressive assertion of executive authority in disputes with Congress and government power in the war on terrorism.

&We push the envelope, but never beyond what the Constitution permits, in my judgment, Gonzales said in a rare interview.

Well before the terrorists attacks in the seventh month of his presidency, Bush made it clear that his administration would push to reestablish many of the powers that he believed presidents had unwisely ceded to Congress since Watergate. He resisted sending documents or witnesses to Capitol Hill, imposed vast new restrictions on access to the papers of former presidents and rapidly filled the confirmation pipeline with hard-core conservative candidates for judgeships.

As Bush refocused his administration around the war on terrorism, he issued orders making himself the personal arbiter of which terrorist suspects will be subject to military tribunals, and limiting the rights of captives from the war in Afghanistan and detainees in terrorism cases, some of whom were held for long periods without charges or access to lawyers.

Courts have not immediately overturned any of Bush's major decisions, but Gonzales acknowledges that could eventually happen.

&We do believe very strongly in the protection of civil liberties, but there is a competing interest of the protection of the national security of this country, 8 Gonzales said. &The key for the government is to try find the appropriate balance. We think we find that. But ultimately, quite frankly, it is going to be up to the courts to tell us if we ,ve made the right decision. 8

Gonzalez is known around the West wing as &The Judge 8 for his brief service as a Bush appointee on the Texas Supreme Court. People involved in vetting Bush ,s potential nominees for the U.S. Supreme Court say Gonzales has a strong chance of one day being called &Justice 8 if, as expected, Bush has the chance to fill an opening or two.

Bush ,s aides have made no secret of their thirst to put the first Hispanic on the high court. And Gonzales, 47, has a long and quietly comfortable relationship with Bush, who made him counsel in the Texas governor ,s office, then appointed him Texas secretary of state and a justice on the state Supreme Court before bringing him to Washington.

A note of considerable drama has been added to Gonzales ,s prospects for the high court by the objections of several powerful conservatives, including some high-level appointees in the Justice Department. These critics, several of whom have expressed their reservations to the White House privately, regard Gonzales as insufficiently conservative, or at least are suspicious about how committed he really is to their most important issues, including the elimination of affirmative action.

&The judge follows the model of treating the president as his client, 8 an associate said. &He is not as conservative as a lot of people around Bush, but Bush is not as conservative as some of the people around him. 8

Democrats on the Senate Judiciary Committee tried to bolster the impression of Gonzales as a moderate during a confirmation hearing last year for one of Bush ,s appellate court nominees, Texas Supreme Court Justice Patricia Owen, who was blocked and was renominated this year. The Democrats used dissenting, moderate-sounding quotations from Gonzales to try to portray Owen as being too conservative for the court ,s mainstream.

Many conservatives were disappointed that Bush did not issue a sweeping condemnation of affirmative action when he weighed in against the University of Michigan ,s race-conscious admissions system earlier this year. Sources involved in the process said Gonzales played a crucial role in convincing Bush to take the narrow of calling Michigan ,s system unconstitutional but remaining silent on the broader question of affirmative action.

&It took five or six meetings before the judge showed where he was, 8 said a senior administration official who participated in the decision. & But his view was the one that the staff coalesced around. It was taken to the president and he eventually approved it. 8

The conservatives , biggest complaint is that in 2000, Gonzales voted with the majority of the Texas Supreme Court to narrowly construe a law Bush had championed requiring a minor to get parental permission before an abortion. Opponents of the decision, which split the court, said it would make it easy for girls to qualify for exceptions to the law. Steven Goode, a law professor at the University of Texas, said Gonzales was &a middle-of-the-road conservative who was less disposed toward business interests than the more conservative members of the court. 8

White House officials said that in addition to serving as a moderating influence in the affirmative-action case, Gonzales played a similar role during debate over the status of captured combatants at Guantanamo Bay Naval Base in Cuba who had fought for Afghanistan ,s Taliban regime. The administration originally denied them the protections a prisoner of war

would receive under the Geneva Conventions.

That bothered the judge, he said a person involved in the case. Protests flowing in from around the world and Bush reversed himself, declaring that the principles of the Geneva Conventions would apply to Taliban soldiers but not to members of the al Qaeda terrorist network.

Nevertheless, a private group called Human Rights Watch has concluded that the Geneva Conventions are being ignored or applied narrowly, with enemy combatants being held without charges or access to lawyers. The U.S. has a history of being a leading proponent of the laws of armed conflict, he said James D. Ross, the group's senior legal adviser. This administration is ignoring that.

Several of the administration's Gonzales-guided decisions have been upheld by courts. In January, the U.S. Court of Appeals for the Fourth Circuit, in Richmond, ruled that a wartime president can indefinitely detain U.S. citizens captured as enemy combatants and deny them access to lawyers. Steven G. Calabresi, a Northwestern University law professor and Federal Society founder, said Bush's approach looks reasonable compared to President Harry Truman's decision during the Korean War to try to seize steel mills, which was overturned by the Supreme Court.

A few conservative leaders said opposition to Gonzales appears to be waning, partly because Bush's inner circle has made it clear that they have heard the objections, and have assured critics that Gonzales would not be the automatic first choice for a Supreme Court vacancy.

Members said Gonzales was well-received when he spoke to the conservative Federalist Society, hotbed of his critics. The speech drew 250, a heavy attendance for the society's luncheon events. One conservative leader praised Gonzales for putting on a tuxedo and attending the group's 20th anniversary gala in November, even though he was not a speaker.

Conservatives have been burned by uncertainty and unpredictability in the past, so they're a lot less willing to cut any slack with someone like Judge Gonzales who has less of a clear record on many issues, he said one well-known conservative who refused to be identified. One of the things you hear is that he's not comfortable with conservatives, but I don't think that's ultimately true.

For now, Gonzales is clearly comfortable with only audience that counts: Bush. Gonzales is one of the very few aides who meets with Bush alone, and he recently recalled standing quietly on the Truman Balcony, thinking how far they had come together.

Bush's style gives his counsel considerable sway. He delegates a lot, he Gonzales said. We have the ability to make to make decisions that have to be made and not burden him with those decisions, but to exercise good judgment in going to him with decisions that he needs to make and he needs to be aware of.

A.E. Dick Howard, a constitutional law professor at the University of Virginia, said Gonzales's record on the Texas Supreme Court was in the mold of Justice Sandra Day O'Connor, a moderate conservative who emphasizes a fact-based approach to cases, while his record as White House counsel suggested more the approach of Justice Antonin Scalia, who is more disposed to an expansive view of government power.

Which is the real Alberto Gonzales? Howard asked. If he gets on the Supreme Court, we'll find out.