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Gonzo for Gonzo

Maybe Alberto Gonzales was brilliant yesterday—and everybody missed it.

By Dahlia Lithwick

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So, I've changed my mind. On sober second thought, it occurs to me that when I find [myself in enthusiastic agreement](#) with "[White House insiders](#)" and the [National Review](#) that Alberto Gonzales disgraced himself yesterday, I may have missed something important. Assuming the president watched so much as 10 minutes of his attorney general being poleaxed by even rudimentary questions from the Senate judiciary committee, it strains credulity to believe that Gonzales still has Bush's "[full confidence](#)."

Until you stop to consider that the president wasn't watching the same movie as the rest of us and that Gonzales wasn't reading from the same script. Perhaps what we witnessed yesterday was in fact a tour de force, a home run for the president's overarching theory of the unitary executive.

The theory of the unitary executive is a [radical vision of executive power](#) in which the president is the big boss of the entire executive branch and has final say over everything that happens within it. At its core, the theory holds that Congress has very limited authority to divest the president of those powers. An expanded version of this theory was the legal predicate for the [torture memo](#): "In light of the president's complete authority over the conduct of war, without a clear statement otherwise, criminal statutes are not read as infringing on the president's ultimate authority in these areas. ... Congress may no more regulate the president's ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements on the battlefield."

One of the key issues in the early battles over unitary executive theory was the president's firing power. In its first incarnations, the notion of a unitary executive shored up the president's claim that he was entitled to fire executive officials—including the independent counsel and agency heads—as the mood took him.

If you watch the Gonzales hearing through this prism (and in this White House, even the bathroom windows look out through that prism), they were a triumph. For six impressive hours, the attorney general embodied the core principles that he is not beholden to Congress, that the Senate has no authority over him, and that he was only there as a favor to them in their funny little fact-finding mission.

Consider how Gonzales rebuffed Republican Sen. [John Cornyn](#) when he suggested a future Senate hearing about the convictions of two Texas border patrol officers. (That's executive branch business, son.) Consider the [attorney general's inability to explain](#) why Kyle Sampson pushed ahead with a plan to do away with Senate confirmation for U.S. attorneys, if as he claimed, Gonzales didn't approve it. (That's between me and the president and Kyle Sampson, son.) Consider Gonzales' [skirmish with Democratic Sen. Chuck Schumer](#) over who bore the burden of proof at the hearings. (How can there be a burden of proof when you have no authority to sit in judgment over me, son?) And listen to [him tell Republican Sen. Charles Grassley](#): "I'm here to provide what I know, what I recall as to the truth in order to help the Congress help to complete the record."

Finally, consider this [telling colloquy with Republican Sen. Lindsey Graham](#):

I tried to have dialogue with the Congress, to try to be as forthcoming as I can be, to

reassure the Congress. I've tried to inform the Congress that I don't have anything to hide. ... I didn't say no to the document request. I didn't say, "No, you can't interview" to my internal staff. ... I've done—everything I've done has been consistent with the principle of pursuing truth and accountability.

This man was doing the Senate a favor by showing up at all. Turning over documents? He deserves a medal!

This record reflects either a Harvard-trained lawyer—and former state Supreme Court judge—with absolutely no command of the facts or the law, or it reveals a proponent of the unitary executive theory with absolutely nothing to prove. Gonzales' failure to even mount a defense; his posture of barely tolerating congressional inquiries; his refusal to concede that he owed the Senate any explanation or any evidence; his refusal to even accept that he bore some burden of proof—all of it tots up to a masterful display of the perfect contempt felt by the Bush executive branch for this Congress and its pretensions of oversight. In the plainest sense, Gonzales elevated the Bush legal doctrine of "Because I said so" into a public spectacle.

Viewed in that light, Gonzales did exactly what he needed to do yesterday. He took a high, inside pitch to the head for the team (nobody *wants* to look like a dolt on national television) but hit a massive home run for the notion that at the end of the day, congressional oversight over the executive branch is little more than empty theatre.

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