

Click to find your nearest store.



Read our Ideas Contributors

Driving the Conversation:

Sonia Sotomayor: yea or nay

August 4 2009

[expand all](#)



Roger Pilon, Vice President for Legal Affairs, Cato Institute:

Judge Sonia Sotomayor's odyssey is certainly inspiring. But after her confirmation hearings, it's unclear just who she is. To be sure, at least since the searing examination of Judge Robert Bork in 1987, Senate confirmation hearings have been more political theater than honest inquiry about judicial qualification. Chalk that up to several factors, including a deep divide in the nation about the role of a Supreme Court justice. We are a long way from Hamilton's conception of that role in Federalist 78.

But what was so perplexing about the Sotomayor hearings was their extraordinary unreality. Billed by the president as "empathetic," Judge Sotomayor clearly distanced herself from that characterization. Likewise, she disowned her oft-repeated "wise Latina" speeches and gave us a wooden vision of the judicial function, plainly aimed at assuring conservative skeptics, but infuriating many of her liberal supporters in the process.

Her record as an appellate judge, bound by Supreme Court precedent, coupled with her answers to probing questions that amounted simply to stating "the law," reveal relatively little about how she would rule as a justice, which is why her extra-judicial speeches took on added weight, as probative of how she might view her function if confirmed.

Her discussion about the one decision that did predominate during the hearings, involving the New Haven firefighters, gave little comfort to those of us who believe that her panel simply ignored the important legal principles at issue in the case – indeed, as brought out by all nine Supreme Court justices who reviewed the decision.

At the end of the day, therefore, we have a very mixed, often contradictory, picture of Judge Sotomayor. If I were to put weight on any one factor in her history to help clarify that picture, it would be on those many speeches she has given over the years, and they reveal a result-oriented conception of the judicial function. That conception is inconsistent with our system of separated powers. On the Supreme Court it is a prescription for judicial lawlessness. Accordingly, I would not support this nomination.

Full Archive List

© 2008 Capitol News Company LLC

Please read our Privacy Policy. By using this site, you accept our Terms of Service.