



**“How can a judge objectively apply the law if she believes there are multiple realities and multiple versions of the truth?”**

Issue

Today, Republican Senators seized on language in a speech Judge Sotomayor gave in 2001; the speech was published in the Berkeley La Raza Law Journal under the title “Judge Mario G. Olmos Memorial Lecture: Latina Judge’s Voice. 13 La Raza L.J. 97 (Spring 2002). In this lecture, Judge Sotomayor made the point that each person is shaped by his or her experiences and thus, people in general and judges in particular may approach matters with different perspectives. Senator Cornyn morphs this into the notion that Judge Sotomayor does not believe in objective legal standards because there are multiple realities and multiple versions of the truth.

Judge Sotomayor’s Statements

In the speech cited by Senator Cornyn, Judge Sotomayor discussed her Latina identity and her perception of its influence on her. She identified a tension between the American pride in ethnic diversity and the notion of a race and color-blind societal ideal. She went on to say that she “believes that judges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law,” but “wonder[ed] whether by ignoring our differences as women or men of color we do a disservice to both the law and society.” Ultimately she concludes as follows:

I am reminded each day that I render decisions that affect people concretely and that I owe them constant and complete vigilance in checking my assumptions, presumptions and perspectives and ensuring that to the extent that my limited abilities and capabilities permit me, that I reevaluate them and change as circumstances and cases before me requires. I can and do aspire to be greater than the sum total of my experiences but I accept my limitations. I willingly accept that we who judge must not deny the differences resulting from experience and heritage but attempt, as the Supreme Court suggests, continuously to judge when those opinions, sympathies and prejudices are appropriate.

Republican Attacks

Senator Cornyn criticizes Judge Sotomayor for agreeing with the statements of two law professors – Judith Resnik of Yale who wrote that “to judge is an exercise of power” and Martha Minow of Harvard who wrote that “there is no objective stance but only a series of perspectives--no neutrality, no escape from choice in judging.” Senator Cornyn then quotes extensively from Professor Minow’s article *Justice Engendered*, 101 Harv. L. Rev. 10 (1987), and assumes that Judge Sotomayor agrees with everything Professor Minow wrote. The crux of the passage cited by Senator Cornyn discusses the fact that there are default assumptions that society makes that may not be shared by all members of a society and that minority groups may have different perspectives.

Professor Minow then pointed out that courts have the capacity to evaluate competing points of view in certain cases (for example, cases raising the issue of bilingual education) and suggested that courts should take minority perspectives seriously by asking the question: “[W]ill courts reinforce the illusion of one reality, or devise ways to take minority perspectives seriously?”

Senator Cornyn lampoons this and posits that Judge Sotomayor should be asked about how she would “approach the application of objective legal standards,” “resolve the claimed ‘serious struggles over which version of reality’ she would embrace,” and “resolve the tension she apparently sees between the reality of the ‘dominant culture’ and the ‘alternate views that have been ignored or suppressed’?”