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Cover Story
Sonia Sotomayor To The U.S. Supreme Court
A "Safe" or Visionary Choice?
Between The Lines
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President Barack Obama has made his imprint on the history of the federal judiciary with the nomination of the first Latina to the United States Supreme Court. Federal Appeals Court Justice, Sonia Sotomayor, was at the top of the President's "short list" from the time Associate Justice David Souter announced his retirement.

There had been a very heavy lobby to appoint a Latino, and the feminist lobby suggested that the court was going backward instead of forward after baby Bush didn't replace retired justice Sandra Day O'Conner with a woman. Justice Ruth Gingsberg has also signaled that she doesn't appreciate being odd woman out in the nation's highest and most exclusive grumpy old male's club.

Supreme Court picks usually come with a lot of scrutiny for the nominee and political grief for the President. Criticism will not be avoided. However, Justice Sotomayor represented a "two-fer" for President Obama and had the potential to quail criticism from two significant stakeholder groups, women and Latinos. He couldn't have made a safer pick in the selection of Sotomayor.

Safe usually means "status quo" when it comes to judiciary selections. This month celebrates the 55th anniversary of the *Brown* decision, the last time this country engaged a major culture shift stemming out of the courts. Since that time, this country has engaged in a 50 year battle to avoid what pundits called "judicial activism," courts that seek to interpret the law based on contemporary cultural interpretation—not "original intent" of the law or even legal precedence. Original intent theorists offer judicial views based on how the law was interpreted when originally written—no matter when it was written. So laws formulated when the Constitution was ratified over 220 years ago offer opinions that excluded ethnic minorities and women, and affirmed cultural norms as slavery and segregation as legal.

Former California Governor Earl Warren changed the whole temperament of a right leaning high Court in 1952 when he was appointed Chief Justice in the midst of the most controversial case of the twentieth century, a case to desegregate public schools. In the aftermath of the *Brown* decision came a ten year massive resistance movement, attempts to repeal the decision, attempts to impeach the Chief Justice and attempts by Congress to affirm cultural norms through a public "manifesto" to offset what they called attempts by the Court to overreach into the legislative branch of government by "legislating from the bench."

Since that time, there has been a high and low, day and night watch for the appointment of "judicial activists." The calls of "activist" have already been waged. Sotomayor doesn't fit that bill. She could, given her "raised from a single parent" background (which is what conservatives fear), inasmuch as she certainly would have certain sensibilities toward poor and disadvantaged people. But she was appointed by a conservative (Daddy Bush) and elevated to the federal appeals court by a centrist (Clinton), it would be a difficult argument to frame Sotomayor as an activist jurist.

What is visionary about the pick is that Sotomayor is a reflection of the nation's future, given the projected growth of Latinos, and not rooted in the ideological conflicts that have torn up the country the past 30 years. At 54 years old, Sotomayor will sit 30 years (if her health holds up) right beside an ideologue, Chief Justice Roberts, also in his mid-fifties to counteract attempts to stranglehold the Supreme Court in a judicial restraint mentality.

It was a visionary pick to try and bring some semblance of gender balance to the Court (though they have a ways to go on that one). However, most important about the selection was that it was a "gimme" in terms of what Obama was expecting, in terms of Supreme Court picks. He will still get four more, in he serves eight years, as the older members of the court in their late seventies and mid-eighties will certainly give way to younger replacements over the term of the Obama administration. While the look-out for activist jurists will not stop, a Democrat controlled Congress and a desire to have a Court that looks like America, will aid President Obama's vision to bring the Supreme Court into the 21st Century. In that regard, it was the one of the safest visionary picks he could have made.


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