

May 27, 2009
NEWS ANALYSIS

Nominee's Rulings Are Exhaustive but Often Narrow

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New York Times

WASHINGTON — Judge Sonia Sotomayor's judicial opinions are marked by diligence, depth and unflashy competence. If they are not always a pleasure to read, they are usually models of modern judicial craftsmanship, which prizes careful attention to the facts in the record and a methodical application of layers of legal principles.

Judge Sotomayor, whom President Obama announced Tuesday as his choice for the Supreme Court, has issued no major decisions concerning abortion, the death penalty, gay rights or national security. In cases involving criminal defendants, employment discrimination and free speech, her rulings are more liberal than not.

But they reveal no larger vision, seldom appeal to history and consistently avoid quotable language. Judge Sotomayor's decisions are, instead, almost always technical, incremental and exhaustive, considering all of the relevant precedents and supporting even completely uncontroversial propositions with elaborate footnotes.

All of which makes her remarkably cursory treatment last year of an employment discrimination case brought by firefighters in New Haven so baffling. The unsigned decision by Judge Sotomayor and two other judges, which affirmed the dismissal of the claims from 18 white firefighters, one of them Hispanic, contained a single paragraph of reasoning.

The brief decision in the case, which bristles with interesting and important legal questions about how the government may take account of race in employment, will probably attract more questions at her Supreme Court confirmation hearings than any of the many hundreds of much more deeply considered decisions she has written.

Judge Sotomayor's current court, the United States Court of Appeals for the Second Circuit, in New York, is a collegial one. But Judge Jose A. Cabranes, writing for himself and five other judges, used unusually tough language in dissenting from the full court's later refusal to rehear the firefighters' case.

Judge Cabranes said the panel's opinion "contains no reference whatsoever to the constitutional claims at the core of this case" and added that "this perfunctory disposition rests uneasily with the weighty issues presented by this appeal."

That assessment, which was directed at the work of all three judges on the panel, may have carried extra weight with Judge Sotomayor. Judge Cabranes was a mentor to her, and he administered the judicial oath to her twice — in 1992, when she joined the Federal District Court in Manhattan, and again in 1998, when she was elevated to the Second Circuit.

The case, *Ricci v. DeStefano*, is now before the Supreme Court. In the next month or so, that court will render an unusually high-profile judgment on the work of a judge who hopes to join it. Based on the questioning at the argument in the case last month, the majority's assessment is likely to be unflattering.

In an interview shortly before she joined the district court in 1992, Ms. Sotomayor spoke about what awaited her, saying that "95 percent of the cases before most judges are fairly mundane."

"I'm not going to be able to spend much time on lofty ideals," she said. "The cases that shake the world don't come along every day. But the world of the litigants is shaken by the existence of their case, and I don't lose sight of that, either."

Judge Sotomayor's six years on the trial court and more than a decade on the Second Circuit probably confirmed those intuitions, in part because of the idiosyncratic dockets of the federal courts in New York. They hear many important cases involving business, securities, employment, white-collar crime and immigration. But they do not regularly confront the great issues of the day.

One exception is on the horizon. The full Second Circuit, including Judge Sotomayor, recently reheard the case of Maher Arar, a Canadian who contends that American officials sent him to Syria in 2002 to be tortured. A divided panel of the court had dismissed Mr. Arar's case. The decision from the full court should provide clues about Judge Sotomayor's views concerning how far the government may go in its efforts to combat terrorism.

Thomas C. Goldstein, a lawyer who argues frequently before the Supreme Court and founded Scotusblog, a Web site that covers the court, said there could be no doubt about Judge Sotomayor's intellectual capacity.

"She's got the horses, for sure," Mr. Goldstein said.

Nor, he added, was there any question of her fundamental orientation, based on a review of her decisions. "From the outcomes," Mr. Goldstein said, "she's certainly on the left."

Judge Sotomayor's rulings have sometimes anticipated decisions of the Supreme Court. In 1999, for instance, she refused to suppress crack cocaine found by police officers who were executing a warrant that had been vacated 17 months before but never deleted from a police database.

That kind of error, Judge Sotomayor said, did not require suppression. The Supreme Court came to the same conclusion in January, a decade after Judge Sotomayor's decision.

On other occasions, Judge Sotomayor has been content to wait for definitive guidance from the Supreme Court. In January, she joined an unsigned decision rejecting a Second Amendment challenge to a New York law prohibiting the possession of chukka sticks, a weapon used in martial arts made up of two sticks joined by a rope or chain.

The decision reasoned that the Supreme Court's ruling last year establishing an individual right to bear arms, District of Columbia v. Heller, had not yet been applied to the states. The Second Circuit's decision may well reach the Supreme Court.

In a 2004 dissent, Judge Sotomayor seemed to be in agreement with Justice Ruth Bader Ginsburg's observation in a recent interview with USA Today that female judges can be more sensitive to claims that strip searches of young girls are unduly intrusive.

The majority opinion in the 2004 case, by two male judges, upheld the legality of some strip searches of girls held at juvenile detention centers in Connecticut.

In her dissent, Judge Sotomayor wrote that the majority had not been attentive enough to "the privacy interests of emotionally troubled children" who "have been victims of abuse or neglect, and may be more vulnerable mentally and emotionally than other youths their age."

That was in line with Justice Ginsburg's questioning from the bench last month in Safford Unified School District v. Redding, which concerned what

she called a “humiliating” strip search of a 13-year-old middle school student by school officials in Arizona.

In her dissent, Judge Sotomayor also emphasized how “embarrassing and humiliating” the searches of the girls in Connecticut had been. “The officials inspected the girls’ naked bodies front and back, and had them lift their breasts and spread out folds of fat,” Judge Sotomayor wrote.

In a 2002 dissent, Judge Sotomayor said she would have ruled that the First Amendment has a role to play in protecting anonymous racist communications made by a police officer. Saying she found the communications “patently offensive, hateful and insulting,” Judge Sotomayor nonetheless would have allowed the officer’s case against the police department that fired him to proceed to trial.

She said the majority should not “gloss over three decades of jurisprudence and the centrality of First Amendment freedoms in our lives because it is confronted with speech it does not like.”