

Sonia Sotomayor and the Real Meaning of Republican Talking Points

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Posted: July 15, 2009 11:45 AM

The problem with reading Republican talking points as your questions at confirmation hearings is that sometimes the racism comes through pretty strongly. Senator Jeff Sessions' (R-AL) comment to Sonia Sotomayor "You have suggested that a judge's background and experience will impact their decision, which goes against the American ideal that a judge will be fair to every party, and every day when they put on that robe they will put aside their personal prejudices," reveals the extent to which Sessions seems to believe that the real American backgrounds do not include those of people like Judge Sotomayor.

Comments by Senator Jon Kyl (R-AZ) "You seem to be celebrating (experience and background)...You understand it will make a difference...And not only are you not saying anything negative about that. But you are embracing (that difference)," make this point even more strongly.

Asserting that a judge's background and experience influence their decision is not unlike asserting that the Pacific Ocean is wet. Of course background and experience influences judicial decision making. That is why we tend to prefer judges who have had the background of a good education and some experience advocating and adjudicating on a range of issues. Many of us also believe that life experience can also help judges understand complex legal questions.

Sessions wasn't really taking issue with Sotomayor's belief that background and experience matter. He was more concerned with the specifics of her background and Sotomayor's assertion that the views of a "wise Latina" are valuable on judicial decisions. This was perhaps an unfortunate thing for Sotomayor to have said, but only because sometimes stating the obvious can sometimes be unfortunate. Again, of course Sotomayor will be a valuable addition to the Supreme Court because of her education, experience and because she is wise and brings a different perspective than the other eight members of the court.

Implicit in Sessions' comments about Sotomayor is the idea that she brings experience and background due to her ethnicity, but the six white men on the court are the norm and therefore do not bring any kind of specific background and experience. There is a troubling and not so subtle, form of racism at play here, suggesting that the white male experience is the normal, American one against which all others are measured. Justices John Roberts and Antonin Scalia clearly have had their views influenced by their background and experience, but this does not seem to come up during confirmations. It would be valuable to have asked Roberts how he was able to understand the legal arguments of people who have not enjoyed a lifetime of the subtle privilege of race and gender that he has had or if he could really relate to the urgency of equal protection although nothing in his background suggests that he can.

Sessions' and Kyl's questions, and this line of questioning towards Judge Sotomayor in general, make it clear that that background and experience is only suspect, or relevant, when it is different from the norm. Or to phrase it more clearly, background is only a problem if you are not white or male because judges are expected to be those things.

Kyl's comments are less subtle than Sessions, if that is possible. His use of the word difference is very revealing because it relatively explicitly answers the question "different from what?" The answer of course is different from white people who, in Kyl's bigoted world are the base of normalcy against whom all Americans are measured. White people, in this view, and more specifically white men, in this scenario have the truth-everybody else has background, experience and difference.

Moreover, Kyl seems to be upset that Sotomayor is "celebrating" and "embracing" her "difference". This is a somewhat startling thing for somebody to say on the floor of the US Senate in the 21st Century. Kyl seems to be upset that Sotomayor is proud and aware of her background. His comments evince a preference for people like Sotomayor to keep quiet about who they are and keep their differences to themselves. Sadly for Kyl, but not for the rest of us, it is now 2009 and, at least in many respects, that is not how America works anymore.

What makes this Republican line of questioning so intriguing is that Sotomayor's confirmation is not really in doubt. While derailing a Supreme Court nominee is usually a significant defeat for the president's party, with sixty Democratic senators and a highly qualified noncontroversial nominee, it will almost be impossible for the Republicans to achieve that victory now.

That suggests that Sessions, Kyl and other Republican senators ask these questions either because they actually believe such simplistic, not to say offensive ideas, or because they think it is politically advantageous to once again frame their party as the voice of the disenfranchised white male. It is not at all clear which possibility is worse.