

Sotomayor is a fine choice for the U.S. Supreme Court

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By David R. Fine

The debate over the nomination of Judge Sonia Sotomayor to the United States Supreme Court has highlighted - among other things - the twin notions of diversity and inclusivity and their underlying assumption: that a diverse organization all of whose members feel ownership of the group's mission is objectively better than a homogeneous organization.

In upholding the University of Michigan Law School's use of race as one potential factor in admissions decisions, Justice Sandra Day O'Connor was influenced by briefs submitted by corporate America and the military. 3M and General Motors, among others, argued that "the skill needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." High-ranking retired officers and civilian leaders of the U.S. military contended that a "highly qualified, racially diverse officer corps is essential to the military's ability to fulfill its principle mission to provide national security."

Unlike in the business world and the military, diversity efforts have fallen short in the legal profession. Many persons of color who join law firms find that they are never quite accepted into the culture and face myriad subtle obstacles to advancement, most of them unintended.

Diversity has proved similarly elusive to the federal courts, particularly the United States Supreme Court. The first woman named to the Court was Justice O'Connor in 1981, and there has never been more than one woman and one African American on the Court at one time. As Peter Baker noted in a May 31 New York Times article, of the 110 people who have served on the Court, only four were not white males.

Judge Sotomayor possesses the academic bona fides for the Court (Princeton undergraduate, Yale Law). She has more judicial experience than any other sitting justice had when they joined the Court. She was a district attorney, a corporate litigator and a trial judge.

Despite her achievements, Judge Sotomayor speaks of the same doubts many persons of color feel as minorities in traditional law firms. According to a May 27 New York Times article, Judge Sotomayor once said in a speech that she feels "not completely a part of the worlds I inhabit." At the same, some opponents of her nomination have questioned her intelligence and her experience.

The Colorado Campaign for Inclusive Excellence is a local non-profit dedicated to promoting diversity and inclusiveness in the legal profession.

The Denver City Attorney's office, along with a number of prominent law firms, the legal department of Qwest and the Colorado Attorney General's Office are part of CCIE's pilot program to promote inclusiveness in private and public law firms.

Inclusiveness, which goes beyond mere numerical diversity, is the notion that every member of a firm brings his or her own experience and should be empowered to contribute to the greatest extent. That is, each employee should feel a sense of ownership in the organization.

As Pauline Higgins eloquently discusses in a January 14, 2008 Texas Lawyer article, a diverse and inclusive group necessarily makes better decisions than homogeneous groups. Why?

Ms. Higgins cites James Surowiecki's book "The Wisdom of Crowds," in which he shows how the collective wisdom and give and take inherent in a diverse group in which everyone's views are valued brings different observations and information to the discussion. Such a group necessarily knows more than any of its individual members, no matter how talented and bright those individuals may be.

I believe this is what Judge Sotomayor was saying - perhaps not with the best choice of words, in the speech for which some have criticized her.

The addition of someone like Judge Sotomayor, who brings life and professional experiences and qualities heretofore lacking on the Court, in addition to a strong academic pedigree, will expand the Court's collective wisdom.

Will Judge Sotomayor be a better justice because of her experience? We hope so. Will the Court be a better institution? No question.

David R. Fine is the city attorney for Denver. EDITOR'S NOTE: This is an online-only column and has not been edited.

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