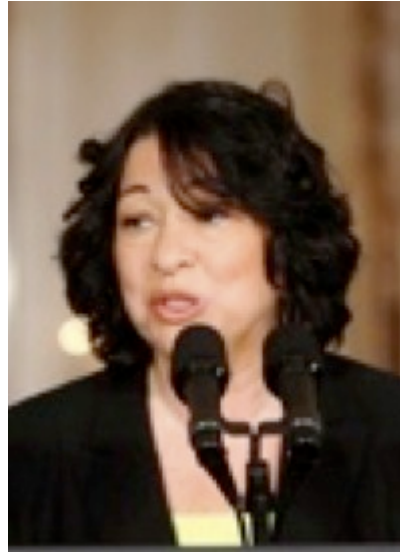




Written by [Jack Kenny](#) on June 3, 2009

Is Sotomayor Obama's "Gift" to the GOP?

Indeed, the federal appeals court judge and the vice president appear to have much in common: a keen intellect, an apparently gregarious disposition, and a lively interest in the law and its possibilities for development in and by "interpretation." Biden, let us not forget, was for many years chairman of the Senate Judiciary Committee and presided over the hearings 22 years ago this summer in which President Reagan's nominee, Judge Robert Bork, was skewered, virtually flayed alive, and lynched for holding fast to the view that the Constitution says what it says and does not decree as "constitutional law" what it does not say.



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But Sotomayor and Biden also share a penchant for wading in where angels fear to tread. The comparison is somewhat limited, to be sure. Sotomayor has not, so far as we know, claimed portions of Neil Kinnock's biography as her own, as Biden did when running for president in 1988. But she says things she knows she shouldn't, acknowledges that she "should never say that," and then expands rather generously on what she never should have said in the first place.

A classic, and alarming, example was her statement at Duke University Law School in 2005 that "the court of appeals is where policy is made." Oh, she said, catching herself almost, but not quite, before the end of the sentence reached the back row of spectators. "I know this is on tape and I should never say that." Oh, my! Silly me. (Chuckle, chuckle, chuckle.) "I know, I know, we don't make law. I know. I know." Then she went on to explain how the appeals court judge weighs his or her decision less on the facts than the district court judge and more on what effect the ruling will have on "a whole class of cases" and on "the next step in the development of the law."

But it was not this admission against interest that caused the White House to try to rescue her from her own words. The damage control was made necessary by a statement the judge made in 2001, perhaps not thinking that she might one day be elevated by a president to sit before a panel of U.S. senators to justify the selection of her to the U.S. Supreme Court. It was something she said in a speech she had prepared and delivered at the University of California at Berkeley, where faculty and students have been careful to avoid making an idol of judicial or any other kind of restraint. The statement, which is and will be so troubling, is this:

I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.

Remember that this, unlike the off the cuff comments at Duke Law School referenced above, was in a prepared speech. It was no a "slip of the tongue," or a hastily improvised answer to a "gotcha" question. It has clearly left the Obama White House with egg on its portico. It has given pundits on the right, like Pat Buchanan, plenty of ammunition in the "culture war" that has defined much of American politics in



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the post-Reagan years.

"Imagine," wrote Buchanan, "if Sam Alito had said at Bob Jones University, 'I would hope that a wise white male with the richness of his life experience would more often than not reach a better conclusion than a Hispanic woman, who hasn't lived that life.'"

Buchanan continued: "Alito would have been toast. No explanation, no apology would have spared him. He would have been branded for life a white bigot." Alito, of course, made no such comment and is now on the Supreme Court, having been appointed by President George W. Bush and confirmed by the U.S. Senate in 2006. Among those voting against his confirmation was the junior senator from Illinois, one Barack Obama, who also voted against the confirmation of Chief Justice John Roberts. Perhaps those old (or middle aged) white guys lacked both the "richness of life experiences" and the kind of judicial restraint Obama seeks.

But Buchanan's point has resonated and the White House has felt the vibrations. The judge is now in the position of Lucy before Ricky Ricardo in the old *I Love Lucy* show. The lady has some 'splainin' to do. But when it comes to explaining controversial statements by Judge Sotomayor, the last person the White House might want doing the 'splainin' is Judge Sotomayor. That's what a White House spokesman is for. Enter Robert Gibbs.

"I think if she had the speech to do all over again, I think she'd change that word," Gibbs said, in an apparent reference to the word, "better," as in the Latina woman would make a "better" conclusion than a white man. Perhaps she should have said "different."

"She was simply making the point that personal experiences are relevant to the process of judging," Gibbs said. It's a shame Ralph Branca didn't have a spokesman to tell the world, after the Dodger hurler had thrown the pitch that Bobby Thomson of the Giants hit for the pennant-winning home run, that if he had to do it all over again he would have thrown a different pitch.

Perhaps Barack Obama will have to say at some point that if he had to do it over again, he would make a different pick for his first Supreme Court nominee. That's not likely, at least not yet. But when Judge Sotomayor has to do the 'splainin' herself, the senators on the Judiciary Committee won't wait for an answer from Robert Gibbs. Then we will see if the judge has learned to restrain her errant tongue or if she will, indeed, be Obama's second "gift that keeps on giving" to a needy Republican Party.

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