

GOP Questions Whether Pick's 'Empathy' Is Desirable Trait

By JONATHAN WEISMAN and NAFTALI BENDAVID

WASHINGTON -- In the 3½ weeks since Supreme Court Justice David Souter announced his retirement, President Barack Obama said he was seeking a jurist who could bring not just legal expertise, but empathy and a common touch. The nomination of Judge Sonia Sotomayor, a 54-year-old New Yorker, was aimed at that promise -- and the emerging debate over her confirmation is focused as much on the propriety of those values as on her judicial record.

Mr. Obama also is seeking to make history. He picked a Hispanic who rose from public housing in the Bronx to an extensive legal career as a prosecutor, corporate lawyer, trial judge and appellate-court judge on the Second Circuit in New York.

The president is banking on a strong Democratic majority in the Senate to deliver her confirmation in time for the Supreme Court's October session. Democrats, liberal activists, Latino organizations and women's groups hailed the pick and said they'd fight for her quick approval.

Reporter Jonathan Weisman discusses President Obama's choice for the Supreme Court, including controversy over Sonia Sotomayor's statements about the role of the Court of Appeals in a video circulating on YouTube.

Conservative judicial activists are seeking to slow down the nomination process, and potentially derail it. Their main line of criticism is focused on Mr. Obama's desire for a nominee with empathy -- remarks seized on by opponents as a signal his court pick would use overly wide discretion in interpreting the Constitution, veering from interpreting the law to making it.

"Some decisions she's made do raise questions about whether she will decide cases based on the law or on her personal outlook and feelings and preconceived notions," said Sen. Jon Kyl of Arizona, the No. 2 Senate Republican and a Judiciary Committee member. "We will want to examine that carefully."

Critics of Judge Sotomayor are highlighting comments she made at a 2001 lecture at the University of California, Berkeley: "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion [as a judge] than a white male who hasn't lived that life."

They also circulated a YouTube video of a 2005 appearance at Duke University, where Ms. Sotomayor said that the "Court of Appeals is where policy is made." She joked that she shouldn't speak on tape, but went on to say the law percolated at the appellate-court level before its final interpretation by the Supreme Court.

"To hear the nominee, in her own words, say the job of a judge, particularly an appeals court judge, is to make policy, is troubling," said Sen. John Cornyn (R., Texas), a Judiciary Committee member and former Texas attorney general.

The Berkeley quote, White House aides said, backed up the president's contention that life experience is vital if the Supreme Court is to understand the real-world implications of its decisions. And in its original context, the video was a quip on why legal organizations and law firms liked to hire appellate-court clerks, one official said. Conservatives seeking to derail the nomination face an uphill battle, if only because Senate Republicans probably can't muster the 40 votes needed to mount a filibuster. Republicans on the Senate Judiciary Committee, which takes the first look at Ms. Sotomayor, voiced concerns Tuesday. "Give me a break," said Sen. Orrin Hatch (R., Utah), a senior member of the panel. "Courts are not supposed to make policy." Executive Washington editor Jerry Seib discusses how Republicans will need to consider President Obama's Supreme Court nominee Sonia Sotomayor if they hope to gain a larger share of Hispanic voters.

In 1998, Mr. Hatch voted with 24 of the Senate's 54 other Republicans to confirm Ms. Sotomayor when President Bill Clinton promoted her to the appeals court. But that doesn't guarantee support this time around. "I had questions, but I supported her because I believe the president deserves deference," Mr. Hatch said. "And at that time, we didn't have an awful lot of statements from her."

In the days after Justice Souter announced his retirement on May 1, Mr. Obama quickly narrowed the field of potential nominees to nine candidates. Of those, four were brought in for extensive interviews and a formal sit-down with the president: Solicitor General Elena Kagan and Appeals Court Judge Diane Wood, who met with Mr. Obama last Tuesday, and Homeland Security Secretary Janet Napolitano and Ms. Sotomayor, who were at the White House Thursday.

Of the four, only Ms. Sotomayor didn't know the president personally, and the two met for an hour in the Oval Office, part of a seven-hour White House visit that eluded media notice. Mr. Obama had spent several nights reading her writings and decisions. White House staffers reviewed her taxes and financial records, her decisions and electronic-records trail, as well as the diabetes she has had since childhood. They were satisfied that opponents would not have too much fodder, and that she was healthy enough to serve on the court "for years to come," as one aide put it.

On Friday, Mr. Obama told his team he was inclined toward Ms. Sotomayor, but wanted the weekend to think it over. He made his decision at 8 p.m. Monday, and then called the "final four" from his East Wing study that night.