For President Dwight D. Eisenhower, it was Earl Warren. In Richard M. Nixon's case, it was Harry Blackmun and Lewis Powell. And for George H.W. Bush, it was David Souter. In those instances, justices appointed to the Supreme Court voted contrary to the way those appointing them had expected.

Could Judge Sonia Sotomayor join that list?

At this point, there is no way for us to know. I began to have second thoughts about this nomination when I realized that the same president who appointed Clarence Thomas to the Supreme Court also appointed Sotomayor to the federal bench. Bill Clinton elevated her from a federal district judge to the Second Circuit Court of Appeals but that does not change the fact that the elder Bush selected her first.

Most civil rights leaders immediately jumped on the Sotomayor bandwagon, largely because President Obama said she will make an excellent Supreme Court justice. But that's not good enough. We do ourselves a disservice by accepting someone – especially an appointment as critical as this one – simply because the first African American president picked her or that, if confirmed, she will become the first Latina to serve on the Supreme Court.

Of course her life story is inspirational. Her parents moved from Puerto Rico to New York during World War II. Sotomayor's father died when she was nine-years-old and her mother, a nurse, reared Sotomayor and her brother in a South Bronx housing project. She graduated summa cum laude from Princeton University and distinguished herself at Yale Law School, where she was editor of the Yale Law Journal.
The emphasis on Sotomayor's background is an eerie reminder of how Clarence Thomas' nomination to the Supreme Court was orchestrated. There were endless stories about his humble upbringing in Pinpoint, GA. His father left when Thomas was two-years-old and the family home was destroyed by fire. Those handling his nomination conveniently neglected to point out that at the age of seven, Thomas moved in with his grandfather, a businessman in Savannah, assuring him of a life more comfortable than most Blacks in the city. After completing Catholic schools, he enrolled in Holy Cross College and Yale Law School. Clarence Thomas' upbringing didn't cause him to have empathy for the plight of African Americans.

A. Leon Higginbotham Jr., former chief judge of the U.S. Court of Appeals for the Third Circuit, said, "I have often pondered how is it that Justice Thomas, an African American, could be so insensitive to the plight of the powerless. Why is he no different, or probably worse, than many of the most conservative Supreme Court justices of the century? I can only think of one Supreme Court justice during the century who was worse than Justice Clarence Thomas: James McReynolds, a White supremacist who referred to Blacks as 'niggers.'"

Though there is no indication that Sotomayor is another Clarence Thomas, neither is there evidence that she will become another Thurgood Marshall.

The most alarming aspect of Sotomayor's record was discussed in a May 31 Los Angeles Times article titled, "Two Sides to Sonia Sotomayor." It noted that Thomas Goldstein, a Washington lawyer and expert on the Supreme Court, had reviewed 50 appeals court cases

involving race in which Sotomayor's was a participating judge. Of the 50 discrimination cases, a three-judge panel rejected 45 of them. Sotomayor declined to lodge a single dissent in any of the 45 cases.

The McClatchy News Service reported, "Of 90 criminal-law cases considered by an appellate panel on which Sotomayor had served since January 2002, she's sided with the government 65 times and prisoners and defendants 25 times."

Prosecutors are required by law to turn over any evidence to defense lawyers that might exonerate their client. But in at least one instance, Sotomayor demonstrated that even when that requirement has been violated, she still favored the prosecution.

"In 1995, for instance, a man convicted of bribery and conspiracy named Wlodek Jan Lech sought to sanction federal prosecutors who'd kept secret information that would've helped the defense," the McClatchy story noted. "Sotomayor agreed that the prosecutors' actions were 'disturbing' and 'astonishing,' and she said she was 'placing them on notice' that a recurrence could bring more serious consequences. Nonetheless, she sustained the prosecution's case."

It will be good if we can learn during the Senate confirmation hearings what type of Supreme Court justice Sotomayor will make. However, if the past is any indication, she's likely to refuse to reveal her views on many substantive issues because, she will argue, they are issues that might come before the court in the future. And she'll provide the usual pabulum about making her decisions based on the facts before her.

As I said at the outset, we don't know what kind of Supreme Court justice Sotomayor will make. We do know that presidents have been wrong before when they made such appointments. It would be a mistake to support Sotomayor because of her humble background or because President Obama vouches for her. We need to learn as much as we can about her now – not after the fact.

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