

## SONIA SOTOMAYER: "ARMED" AND DANGEROUS TO THE AMERICAN LEGAL SYSTEM

PINE BLUFFS -In May 2009, when Justice David Souter, 68, announced his intention to retire from the United States Supreme Court at the end of this term, Liberals and Conservatives immediately geared up for a brawl reminiscent of the scraps staged by the worst Chicago street gangs. This is the Court's first vacancy since Barack Hussein Obama moved into the White House. Because it's probably the most long-lasting and important domestic decision a president will make, interest—and concern—are running high to say the least.

Souter, appointed in 1990 by former President George H. W. Bush, turned out to be more liberal than anyone expected. With his disregard for precedent except when it suited him, and his tendency to legislate from the bench, he was sometimes a tie breaker, even more so than Justice Sandra O'Connor was during the 1990s, and Justice Anthony Kennedy has been since the turn of the century.

During his speech to Planned Parenthood in 2007, candidate Obama took a slap at the Justices on the Supreme Court and the judges on all the federal courts, as he set out his criteria for the men and women he would nominate to serve on the courts if he were elected: "We need somebody who's got the heart - the empathy - to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old. And that's the criteria by which I'm going to be selecting judges."

Apparently, Obama, back at that time, did not feel that the federal judiciary, although made up of many blacks, women, and other minorities, could possibly understand and/or empathize with those he mentioned above. Instead, he wants to see judges and Supreme Court justices giving special preferences to people whose cases are based upon their sex, age, income, ethnicity, disability, and sexual behavior. What's wrong with that? Tony Perkins, President of the *Family Research Council*: "This is an attack on the bedrock American principle[s] that for more than 200 years have set America apart and that other enlightened nations have sought to emulate." What's Mr. Perkins talking about? The time-tested ideas that justice is blind; she does not favor some over others, and that America is based upon the Rule of Law; no person is above it.

After Justice Souter made his announcement, who did President Obama consider to fill the vacancy? Despite rampant speculation by the press, which cannot seem to wait for news to happen, only three names appeared on his "short list:" Solicitor General and former Harvard Law Dean Elane Kagan, Diane Pamela Wood, 58, a judge on the U.S. Court of Appeals for the 7<sup>th</sup> Judicial Circuit (which hears cases arising in Wisconsin, Illinois, and Indiana)—she's also a lecturer at the University of Chicago Law School —and Sonia Sotomayer, a judge on the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit (which hears cases arising in New York, Connecticut, and Vermont). Guess what? All his prospects were – surprise, surprise, women. Apparently he searched high and low for a qualified man, but could find none. Or he did not bother to consider any men at all.

Well, Ms. Kagan was jettisoned as too conservative by Obama's standards. Judge Wood used the RICO statute (a racketeering law enacted by Congress specifically to combat organized crime) against a pro-life group in the case of *NOW v. Schindler* and watched horrified as her decision was overturned on appeal by a unanimous decision of the Supreme Court, which included liberal Justices Ginsberg and Breyer. That was deemed a fatal mistake. Last man, err . . . woman standing? Sonia Sotomayer, the absolutely *perfect* choice if you're a liberal, woman *and* Hispanic, but care little about respect for our Constitution, knowledge of the law, and judicial temperament. Or, if you're a president whose political party base is made up of liberals, women, and Hispanics.

On May 2, in his remarks about Justice Souter's retirement, President Obama had expressed his intention to consult with Republican and Democrat congressional leaders in his search for a new justice. More than 50 conservative groups under the mantle of The Judicial Confirmation Network took him at his word and began gearing up for the first time since helping to defeat former President George W. Bush's nomination of the obviously unqualified Harriet Miers and pushing the nomination of brilliant Judge Samuel Alito, instead. Groups like the well-respected American Center for Law and Justice, the Coalition for a Fair Judiciary, and the Committee for Justice all did background research on potential candidates, seeking to find the best and most qualified individual out there, only to see their efforts ignored by Mr. Obama, as he nominated – Sonia Sotomayer.

On June 24, 2009, Senator Jim DeMint (R-South Carolina) met with Judge Sotomayer, who is considered well to the left of Justice Souter. She's been meeting with senators for weeks in preparation for her confirmation hearing scheduled to begin in the middle of July. Senator DeMint characterized their meeting as one that "covered a broad range of issues." One of them is a shocker. "When I asked if an unborn child has any rights whatsoever," Senator DeMint continued, "I was surprised that she said she had never thought about it. This is not just a question about abortion, but about respect due to human life at all stages . . ."

Given Sotomayer's admission, Senator DeMint questions whether she has what is required of all Supreme Court Justices – an unwavering commitment to the Constitution and equal justice for all Americans. He's right. Her answer should concern us all – whether anti-abortion or not, but especially those who are pro-life. In this day and age, how can an intelligent, concerned person not have thought about whether an unborn child has rights? The Declaration of Independence, one of our nations' founding documents, clearly states that "we are endowed by our Creator with certain inalienable rights; that among them are the rights to life, liberty and the pursuit of happiness." Does Sotomayer's admission indicate a lack of knowledge or understanding about our founding documents and what they contain? That would not be surprising, considering that many American schools, public and private, no longer teach anything about these documents that underpin America. It's been settled for many years that without the right to life, a person cannot enjoy *any* rights at all. Therefore, unborn infants must be guaranteed safety in their mothers' wombs.

Moving quickly, the Senate Judiciary Committee submitted a questionnaire to Judge Sotomayer. An issue of lawyer's ethics surfaced. In answer to one of the questions, Sotomayer, a former practicing lawyer, stated that while she was a prosecutor and later a member of a law firm, she "practiced alone" in a side legal business from 1983 to 1986 "as a consultant to family and friends." She listed the name of this side business as Sotomayer and Associates.

But the American Bar Association's Canon of Ethics says that advertising a solo practice as if it had more than one lawyer is unethical. "All state bar opinions are in agreement that a lawyer may not use the term 'and Associates' if there are in fact no associates in the firm," the ABA says.

According to an editorial in *The Washington Times* on June 24, 2009, New York state Personal Injury Law blogger Eric Turkewitz was the first to discover this detail. "In New York," he reported, "the conduct would fall under DR 2-102 of the Lawyer's Code of Professional Responsibility, which bars misleading advertising on a letterhead. If in fact Sotomayer had no associates at her firm, it would appear she overstepped the bounds of self-promotion by making her firm seem bigger than it was."

In this shading of the truth, Judge Sotomayer seems to have much in common with many of Mr. Obama's governmental appointments who apparently believe they need not obey the same rules that apply to the rest of us. It's an unfortunately popular saying that "Rules are made to be broken." But if you or I failed to pay our taxes for years, we'd wind up in prison. When a lawyer violates one of the Canons of Ethics she will be censured or worse, disbarred. But no action has been taken against Judge Sotomayer.

Another troubling point. Sotomayer recently tried to argue that the Belizean Grove Club to which she belongs isn't a woman's club, even though membership in that ritzy organization is open to women only. That was too much even for liberal columnist, Michael Kinsley, who said this was a "preposterous argument." He called her statement a "brazen whopper" and an "insult to the citizenry." I agree with him and with *The Washington Times*, which commented: "This calls her veracity into question . . . her misleading advertising back in the 1980s [and these statements about her woman's club] look less like oversights and more like a mark of questionable character."

On the issue of her judicial temperament, the current Almanac of the Federal Judiciary, which publishes evaluations of all federal judges, is telling. The evaluations come from lawyers who have appeared and argued cases before the 2<sup>nd</sup> Circuit Court of Appeals. These lawyers gave 18 of the 21 judges on that Court positive to glowing evaluations. Two judges received mixed reviews. Judge Sotomayer, however, was the only one to receive extremely negative comments. She was called "nasty," "angry," and "a terror on the bench." "She really lacks judicial temperament. She behaves in an out-of-control manner. She makes inappropriate outbursts," one lawyer told the almanac. Another said she "abuses lawyers."

Whether or not a person possess judicial temperament – what his or her demeanor is on the bench – will be one of the issues the Senate Judiciary Committee will examine at her confirmation hearing. A lack of the proper temperament has been used successfully to attack nominees in the past. *The Washington Times* cites the example of Judge Robert Bork, whose Supreme Court nomination was defeated by liberals.

Further, when one considers the poor quality of her decisions – 60% of Sotomayer's cases that have come before the Supreme Court have been reversed – one must question her competence and knowledge of the law. A 60% reversal rate is extremely high. Three out of five decisions of the 2<sup>nd</sup> Circuit Court of Appeals written by this 54-year old Hispanic woman have been reversed. "Her high reversal rate alone should be enough for us to pause and take a good look at her record . Frankly, it's the Senate's duty to do so," said Wendy Wright, President of *Concerned Women for America*.

And the case of *Ricci v. DeStefano* makes it six. A 5-4 decision handed down by the Supreme Court on "decision day," Monday, June 29, 2009, may add to Sotomayer's problems. In *Ricci*, the Court ruled that white New Haven, CT firefighters were discriminated against when the city threw out a promotion test because not enough minorities did well on it. In fact, no blacks passed it. Judge Sotomayer was one of three judges who ruled in favor of New Haven and part of a majority that rejected a full hearing before the 2<sup>nd</sup> Circuit Court of Appeals. The plaintiff, Ricci, appealed.

"This court decision," said Representative Tom Price (R-GA), who heads up the Republican Study Committee, "is enough to [cause us to] slow down her confirmation process and study her record."

And that's exactly what Senate Republican leader, Mitch McConnell wants to do. He said that the committee preparing for hearings on Sotomayer's nomination needs time to review 300 boxes of records that recently turned up in connection with her work for a legal advocacy group; the Puerto Rican Legal Defense and Education Fund. "The Committee needs to have access to that material and time to work through it so we don't – so we know all the facts before we vote on a person who's up for a lifetime job," he said.

Article II, Section 2, Clause 2 of the U.S. Constitution deals with the Senate's duty to give "advice and consent" to a president's judicial nominations. But as Alan Drury's best-selling novel by that name makes plain, the duty to advise and the duty to consent are two different matters. The Senate has a long history of simply sitting on nominations instead of bringing them to a vote. Former President George Bush advanced the argument that the Senate has a duty to vote a presidential nomination up or down. Many Senators have recently accepted Mr. Bush's argument. But in this case, time is certainly not of the essence. The Senate has no duty to consent to the appointment of an unqualified individual simply because the president has placed that name in nomination. Its duty, as in the cases of Justice John Roberts, who was widely considered by his peers to be "the smartest lawyer in America," and Justice Samuel Alito, who was known as "an exceptional, brilliant jurist" and "the best judge on the circuit, maybe in the country," is clearly to reject mediocrity and consent only to the appointment of men and women of the highest quality. The effectiveness of the American juridical system is at stake.

Finally, Judge Sotomayer has made some disturbing statements. She thinks that judges should decide cases based on "their experiences as women and people of color," which should "affect our decisions." In 2001, she said, "I would hope that a 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." Hmm. Aside from her obvious failure to consider life experiences like education or the lack thereof, knowledge and understanding of the law, and work ethic, isn't that a sexist remark? What she and Obama are really talking about here is empathy and compassion. They are saying that we need more judges who are compassionate and who empathize. The process of voter's electing judges is how we get compassionate people who empathize *while applying the law*, on the bench. Isn't it stereotyping to say that white male judges lack those qualities? If a white male had said that, he'd still be defending himself from liberal media attacks.

The truth about judge Sotomayer is that she is unqualified, lacks the proper judicial temperament, does not respect our Constitution, and if appointed, would destroy the Constitutional concept of Equal Protection under the Law. She does, however, fit Obama's criteria for judges. That's bad for America. Laws should be clear and predictable, not based upon the whims of judges. If the Senate confirms President Obama's nominee, she will be the first of many federal judges who will be in a position to decide that:

1. Some groups are more equal than others,
2. Homosexual activists should be favored over those who believe in traditional morals regarding sexual behavior, and who want to protect children from that lifestyle,
3. Abortionists should be favored over innocent unborn children,
4. The government should be favored over individuals,
5. The ACLU should be favored over those who publicly share their faith,
6. Liberals and their causes should be favored over Conservatives.

