

JUDICIAL WATCH SPECIAL REPORT

June 17, 2009

Judge Sonia Sotomayor and the Puerto Rican Legal Defense and Education Fund

Introduction:

On May 26, 2009, President Obama nominated 54-year-old Appeals Court Judge Sonia Sotomayor to replace the retiring Justice David Souter on the U.S. Supreme Court. Throughout her years on the U.S. District Court and then the U.S. Court of Appeals, Judge Sotomayor rendered more than 3,000 decisions and authored roughly 400. This judicial record will undergo significant scrutiny throughout her vetting process.

However, Judge Sotomayor's career prior to her time on the federal bench is also worth serious consideration, including her organizational ties and affiliations. This Judicial Watch Special Report focuses on Judge Sotomayor's work on the Board of Directors for the Puerto Rican Legal Defense and Education Fund (PRLDEF) (The organization is now known as Latino Justice PRLDEF).

The PRLDEF bills itself as an organization that provides legal services to the Latino community. However, a review of the organization's activities reflects a mission that embodies the worst aspects of liberal judicial activism: identity politics, race baiting, and judicial activism.

As noted by *The American Spectator*: "Among radical left-wing groups, [the PRLDEF] has a fairly garden-variety agenda. A captive of identity politics, it pushes for enforced multiculturalism, diversity, bilingual public education, race-based gerrymandering of electoral districts, race-based employment quotas, tenants' rights, and illegal immigrants' rights."¹

Judge Sotomayor served on the PRLDEF's Board of Directors for 12 years. However, the key question is this: Was Sonia Sotomayor a disinterested member of the Board or an active participant in the organization's activities? How much of the PRLDEF agenda can be attributed to Sotomayor's guidance and leadership?

Sotomayor's Leadership Role in the PRLDEF

Throughout the 1980s, the PRLDEF was the main civil rights law group for Latinos in the Northeast. And during that time, according to one former staff lawyer, "Sonia [Sotomayor] displayed an increasing amount of leadership on the board." *The New York Times* characterized Sotomayor as the "top policy maker" on the PRLDEF Board of Directors.^{2, 3}

Clearly, Judge Sotomayor helped shape the policies of the PRLDEF. But what about the legal cases undertaken by the organization during her tenure? Was she involved in the nitty-gritty details?

According to the *New York Times*:

Ms. Sotomayor stood out, frequently meeting with the legal staff to review the status of cases, several former members said. And so across her 12 years on the board — she left when she was appointed a federal judge in 1992 — she played an active role as the defense fund staked out aggressive stances on issues like police brutality, the death penalty and voting rights.

The board monitored all litigation undertaken by the fund's lawyers, and a number of those lawyers said Ms. Sotomayor was an involved and ardent supporter of their various legal efforts during her time with the group.⁴

In other words, Sonia Sotomayor was an active, aggressive participant in the PRLDEF's activities during her tenure. She not only helped shape the organization's liberal, activist public profile, but also helped set the legal agenda and manage the legal caseload.

Indeed, in her responses to the Senate Judiciary Committee's questionnaire related to the Supreme Court nomination, Judge Sotomayor confirmed her leadership role at PRLDEF.

According to Judge Sotomayor, "I served at various points during this time frame in the following capacities: Member and Vice President, Board of Directors Chairperson, Litigation and Education Committees for the Puerto Rican Legal Defense and Education Fund from 1980 until October, 1992."⁵

The PRLDEF's Radical Legal Agenda:

The following are examples of the PRLDEF's radical agenda during Judge Sotomayor's tenure there:

- In 1980, when then-New York City Mayor Ed Koch criticized a Supreme Court decision that upheld racial quotas, the PRLDEF signed a statement characterizing the comments as "'ill-informed, rhetorically excessive and unnecessarily divisive."⁶
- In a March 1981 memo to the directors of the PRLDEF, Sotomayor and two colleagues argued against the death penalty because it is, "associated with evident racism in our society" and because it "creates inhuman psychological burdens for the offender." The memo, which Sotomayor initially failed to turn over to the Senate Judiciary Committee, argued that the PRLDEF should oppose the restoration of the death penalty in New York State.⁷
- In 1981, the PRLDEF supported a lawsuit that contended an entry level government test, known as Professional Administrative Careers Examination, had an adverse impact on the African and Hispanic Americans who failed the exam. The lawsuit argued the test, therefore, violated the 1964 Civil Rights Act of the

failed candidates. Ultimately the government eliminated the exam and replaced it with an alternative “race-sensitive” version.⁸

- In 1981, the PRLDEF applauded a decision by a federal judge that forced teachers at an Ann Arbor Michigan elementary school to undergo “consciousness raising” about a dialect spoken by young black children called “Black English.” The training program cost taxpayers \$44,000. The civil rights attorney who handled the case, Gabe Kaimowitz, worked for the PRLDEF. He said his intent was to make the lawsuit the “basis of suits against schools in Chicago and New York, and to extend the suit to embrace not only poor blacks but poor Puerto Rican students,” who supposedly spoke a dialect known as “Spanglish.”⁹
- In 1983, the PRLDEF filed a complaint against Elizabeth, New Jersey, Mayor Thomas Dunn following a City Hall directive requiring staff to speak English while on the job. Ignacio Perez, a staff attorney with the PRLDEF, admitted that no one in the mayor’s office had filed any complaints related to the directive.¹⁰
- In 1983, the PRLDEF lost a lawsuit when a federal judge ruled the organization did “not have a right to immediate access to general charitable contributions by federal employees and military personnel to the Combined Federal Campaign (CFC).” The Office of Personal Management had a policy that dictated that an organization could not receive “undesignated” CFC funds until it had compiled at least a five-year track record of receiving funds that had been specifically “designated” to the group. The PRLDEF called the policy “discriminatory, vague and arbitrary.” The judge disagreed.¹¹
- The PRLDEF represented two employees of the Victims Services Agency who were dismissed from their jobs in 1983. The two employees claimed the firings were racially motivated and filed a lawsuit. Ultimately, Judge Henry F. Werker ruled that the PRLDEF and its clients “failed to show sufficiently serious questions” to support the lawsuit. The PRLDEF filed a court notice voluntarily dismissing the case under federal rules.¹²
- In 1988, the PRLDEF engaged in a battle with the New York City Police Department over its “racist” promotion exam, ultimately presiding over a radical redesign to allow more minorities to achieve a passing grade. According to *The New York Times*: “The new test, a four-part exam prepared with the help of an expert designated by the Puerto Rican Legal Defense Fund...involved changes in format, including the addition of open-book questions and a video portion.”¹³
- In 1990, the PRLDEF attacked then-New York Mayor David Dinkins after the mayor labeled three Puerto Rican “nationalists” who shot five members of Congress in 1954 “assassins.” The radicals were members of a violent Puerto Rican terrorist group *Fuerzas Armadas de Liberación Nacional* (FALN). The PRLDEF said the mayor’s comments “lacked sensitivity.” Reuben Franco, President of the PRLDEF said: “[Mayor Dinkins] doesn’t recognize that to many

people in Puerto Rico, these are fighters for freedom and justice, for liberation, just as is Nelson Mandela, who himself advocated bearing arms."¹⁴

- In 1990, the PRLDEF opposed a bill under consideration by the New York City Council that “would have required retailers to post at their storefronts English language signs explaining the nature of their businesses.” A spokesman for the PRLDEF said the bill, introduced by Queens Councilwoman Julia Harrison (D-Flushing), would “create more animosity between different groups.”¹⁵
- In 1991, the PRLDEF filed a lawsuit against a consortium of non-profit organizations in New York City seeking to renew some of the city’s worst slums by developing middle class housing projects. The program had been enormously successful. At the time of the lawsuit, 3,350 new houses and apartments had been built. Another 2,370 were in construction with an additional 1,400 in development. According to estimates, 80% of the new homeowners were African American, Asian or Hispanic. The PRLDEF argued that the city and state subsidies that helped drive the project should be allocated for low income housing. Specifically, the PRLDEF tried to prevent the partnership from including two sites in East Harlem.¹⁶

Sotomayor’s Radical Ties

President Obama has been crystal clear when it comes to the types of judges he favors for appointments. During the presidential campaign, Obama said he favored judges with the "empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old."¹⁷

When Justice Souter recently announced his retirement, Obama tipped his hand regarding the type of justice he would appoint to replace Souter when he said, "I view that quality of empathy, of understanding and identifying with people's hopes and struggles as an essential ingredient for arriving at just decisions and outcomes."¹⁸

Now, in Judge Sotomayor, Obama offers the personal embodiment of his liberal judicial activist philosophy that places “empathy” above the rule of law. Judge Sotomayor’s leadership positions with the PRLDEF suggest she is more than willing to advance a liberal, race-based agenda through the court system. And for this, Judge Sotomayor owes an explanation to the American people.

ENDNOTES

¹ Matthew Vadum, “Sotomayor’s Radical Legal Group Helped Kill the Estrada Nomination,” *The American Spectator*, AMSPECBLOG, May 26, 2009 <<http://spectator.org/blog/2009/05/26/sotomayors-radical-legal-group>>.

² Juan Gonzalez, "Day of pride for Latinos as Obama nominates Sonia Sotomayor for Supreme Court," *NYDailyNews.com*, May 26, 2009 <http://www.nydailynews.com/news/politics/2009/05/26/2009-05-26_day_of_pride_for_latinos_across_us.html#ixzz0HwPmHfPE&D>.

³ Jan Hoffman, "A Breakthrough Judge: What She Always Wanted," *The New York Times*, September 25, 1992 <<http://www.nytimes.com/1992/09/25/news/a-breakthrough-judge-what-she-always-wanted.html>>.

⁴ Raymond Hernandez and David W. Chen, "Nominee's Links With Advocates Fuel Her Critics," *The New York Times*, May 28, 2009 <<http://www.nytimes.com/2009/05/29/us/politics/29puerto.html>>.

⁵ United States Senate, Committee on the Judiciary, Nominations; "Associate Justice of the U.S. Supreme Court – Sonia Sotomayor – Questionnaire," accessed June 10, 2009 <<http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/upload/Questionnaire-2009.pdf>>.

⁶ Joyce Purnick, "KOCH ATTACK ON JOB QUOTAS CONTRADICTS CITY'S '79 BRIEF," *The New York Times*, July 10, 1980, Archives <<http://select.nytimes.com/gst/abstract.html?res=F10B16F9385C11728DDDA90994DF405B8084F1D3&scp=1&sq=Purnick%2C+KOCH+ATTACK+ON+JOB+QUOTAS&st=p>>.

⁷ Ronald Kessler, "Sotomayor Called the Death Penalty Racist," *Newsmax.com*, June 6, 2009 <http://www.newsmax.com/kessler/Sotomayor_death_penalty/2009/06/06/222329.html>.

⁸ *U.S. Office of Personnel Management*, Outstanding Scholar and Bilingual/Bicultural Programs (Luevano Consent Decree), "Background Information for both Programs," accessed June 6, 2009 <http://www.opm.gov/luevano_archive/luevano-archive.asp>.

⁹ Edward B. Fiske, "Education; BLACK ENGLISH DEBATE FADES IN ANN ARBOR WHERE IT BEGAN," *The New York Times*, May 5, 1981 <<http://www.nytimes.com/1981/05/05/science/education-black-english-debate-fades-in-ann-arbor-where-it-began.html>>.

¹⁰ AP, "Order for Only English Leads to a Complaint," *The New York Times*, July 22, 1983 <<http://www.nytimes.com/1983/07/22/nyregion/order-for-only-english-leads-to-a-complaint.html>>.

¹¹ Al Kamen, "Law Groups' Charity Claims Rejected," *The Washington Post*, April 1, 1983, <http://pqasb.pqarchiver.com/washingtonpost_historical/access/129841082.html?dids=129841082:129841082&FMT=ABS&FMTS=ABS:AI&fmac=&date=Apr+1%2C+1983&author=By+Al+Kamen+Washington+Post+Staff+Writer&desc=Law+Groups%27+Charity+Claims+Rejected>.

¹² Arnold H. Lubasch, "ORDERS FOR A LAWYER TO PAY LEGAL FEES IS REVERSED," *The New York Times*, February 3, 1985 <<http://www.nytimes.com/1985/02/03/nyregion/orders-for-a-lawyer-to-pay-legal-fees-is-reversed.html>>.

¹³ David E. Pitt, "Despite Revisions, Few Blacks Passed Police Sergeant Test," *The New York Times*, January 13, 1989 <<http://www.nytimes.com/1989/01/13/nyregion/despise-revisions-few-blacks-passed-police-sergeant-test.html?pagewanted=all>>.

¹⁴ Todd S. Purdum, "Praising Mandela, Dinkins Shakes Fragile Coalition," *The New York Times*, June 16, 1990 <<http://www.nytimes.com/1990/06/16/nyregion/praising-mandela-dinkins-shakes-fragile-coalition.html>>.

¹⁵ Manuel Perez-Rivas, "No Welcome for English Sign Plan," *Newsday*, November 2, 1990 <<http://pqasb.pqarchiver.com/newsday/results.html?st=basic&QryTxt=%22No+Welcome+for+English+Sign+Plan%22&x=45&y=9>>.

¹⁶ Alan Finder, "Homes for Middle Class Rise on Blighted Blocks," *The New York Times*, April 9, 1991 <<http://www.nytimes.com/1991/04/09/nyregion/homes-for-middle-class-rise-on-blighted-blocks.html>>.

¹⁷ Richard A. Epstein, "Beware of Empathy; What we should expect of our next Supreme Court nominee," *Forbes.com*, May 5, 2009 <<http://www.forbes.com/2009/05/04/supreme-court-justice-opinions-columnists-epstein.html>>.

¹⁸ By the Associated Press, "Quotes from Obama on Supreme Court nominees," *wtop.com*, May 1, 2009 <<http://www.wtop.com/?nid=116&sid=1666490>>.