

July 7, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Jeff Sessions, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Judicial Misconduct by Judge Sonia Sotomayor

Dear Chairman Leahy and Senator Sessions:

Judicial Watch, Inc. is a non-partisan educational foundation that seeks to promote transparency, accountability, and integrity in government, politics, and the law. Judicial Watch represents millions of Americans concerned about the ethics of our nation's public officials.

I write to you out of concern that out-of-court statements and activity by Judge Sonia Sotomayor violate various provisions of the Code of Conduct for United States Judges ("Code of Conduct").¹

In fact, Judge Sotomayor may be in violation of the Code of Conduct as a result of the following:

- Repeated prejudicial and racist comments.
- Recent membership in an organization that practices "invidious discrimination" based on sex.
- Improper political activity.

Prejudiced and Racist Comments

On October 26, 2001, Judge Sotomayor delivered the Judge Mario G. Olmos Memorial Lecture. The lecture was at the University of California Berkeley School of Law symposium titled "[Raising the Bar: Latino and Latina Presence in the Judiciary and the Struggle for Representation](#)." The symposium was co-hosted by the La Raza Law Journal, the Berkeley La Raza Law Students Association, the Boalt Hall Center for Social

¹ This complaint relies on the [Code of Conduct](#) effective July 1, 2009, a copy of which is enclosed with this letter.

Justice, and the Center for Latino Policy Research. The speech, in its entirety, is objectionable. More specifically, Judge Sotomayor said the following:

Whether born from experience or inherent physiological or cultural differences, a possibility I abhor less or discount less than my colleague Judge (Miriam) Cedarbaum, our gender and national origins may and will make a difference in our judging. Justice O'Connor has often been cited as saying that a wise old man and wise old woman will reach the same conclusion in deciding cases. I am not so sure Justice O'Connor is the author of that line since Professor Resnik attributes that line to Supreme Court Justice Coyle. I am also not so sure that I agree with the statement. First, as Professor Martha Minnow has noted, there can never be a universal definition of wise. Second, 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.²

Judge Sotomayor's statement that "inherent physiological and cultural differences" will result in different judicial outcomes is racist on its face. In another racist comment, Judge Sotomayor states that the "gender and national origins" of judges "may and will make a difference in our judging." In addition, for Judge Sotomayor to "hope" that a "wise Latina 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" is also racist and sexist.

This comment (and the speech in its entirety) is in violation of various canons of the Code of Conduct.

It violates Canon 1, which mandates that judges "uphold the integrity and independence of the judiciary." By suggesting that race, gender, and national origin can and do influence the decision making of judges, Judge Sotomayor's statement undermines "public confidence in the integrity and independence" of the entire judiciary. Judge Sotomayor's comments suggest that a litigant before the court may receive disparate treatment based on the litigant's background, race, gender, and national origin. And Judge Sotomayor's attack on the judicial decision making of "white males" clearly tends to undermine the public's confidence in their courts.

Accordingly, these comments also violate Canon 2, which states that "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities." Canon 2 requires judges to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." By embracing race/gender/national origin-

² See Exhibit 1, Sonia Sotomayor U.S. Senate Questionnaire, "A Latina Judge's Voice" <<http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/upload/Question-12-a-No-6-A-Latina-Judges-Voice-13-Berkeley-La-R.pdf>>. This speech was also published in the Spring 2002 Berkeley La Raza Law Journal.

conscious judicial decision-making, and by denigrating the decision-making of “white male” judges, Judge Sotomayor has undermined public confidence in “the impartiality of the judiciary.”

Indeed, the Code of Conduct’s commentary for Canon 3A(3) states:

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

The 2001 speech is part of a pattern of improper activity by Judge Sotomayor with respect to prejudicial and racist comments. Judge Sotomayor made similar comments in other speeches through the years.

On March 17, 1994, Judge Sotomayor gave a speech to a panel on “[Women in the Judiciary](#)”³ at Revisa Juridica de la Univesidad Interamericana de Puerto Rico. In this speech she also said:

Justice O'Connor has often been cited as saying that “a wise old man and a wise old woman reach the same conclusion” in deciding cases. . . . I am also not so sure that I agree with the statement. First, if Professor Martha Minnow is correct, there can never be a universal definition of “wise.” Second, I would hope that a wise woman with the richness of her experiences would, more often than not, reach a better conclusion.

Judge Sotomayor made this exact point again in April 30, 1999, to the [Women's Bar Association](#)⁴ and in October 22, 2003, at [Seton Hall School of Law](#).⁵

The questionnaire responses Judge Sotomayor recently filed with the U.S. Senate’s Judiciary Committee show that she made similar remarks about race and judging at least

³ See Exhibit 2, Sonia Sotomayor U.S. Senate Questionnaire, “Women in the Judiciary” <<http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/upload/Question-12-d-No-5-3-17-94-women-in-the-judiciary.pdf>>.

⁴ See Exhibit 3, Sonia Sotomayor U.S. Senate Questionnaire, “Women in the Judiciary” <<http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/upload/Question-12-d-No-28-4-30-99-Tarrytown-speech.pdf>>.

⁵ See Exhibit 4, Sonia Sotomayor U.S. Senate Questionnaire, “Women as Judges: A Latin Judge’s Voice” <<http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/upload/Question-12-d-No-56-10-22-03-Seton-Hall-speech.pdf>>.

three more times in 1999 and 2000 (Yale Law Women and The Collective on Women of Color in the Law, September 27, 1999; CUNY School of Law, March 22, 2000; Yale University Law School on April 28-30, 2000).

Membership in an Organization That Practices “Invidious Discrimination” Based on Sex

In her Senate questionnaire, Judge Sotomayor also discloses she has been a member of a group called the Belizean Grove, “a private organization of female professionals from the profit, non-profit and social sectors.” (Sotomayor Senate Questionnaire, *See* p.11.)

Question 11 (b) of the questionnaire reads:

The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, religion, or national origin. Indicate whether any of these organizations...currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices. (Sotomayor Senate Questionnaire, *See* p. 14.)

Judge Sotomayor’s response was as follows:

None of the above organizations, other than the Belizean Grove, discriminates on the basis of race, sex, religion, or national origin. The Belizean Grove is a private organization of female professionals from the profit, non-profit and social sectors, but I do not consider the Belizean Grove to invidiously discriminate on the basis of sex in violation of the Code of Judicial Conduct. (Sotomayor Senate Questionnaire, *See* p. 15.)

Judicial Watch believes that Judge Sotomayor’s membership in the Belizean Grove was, in fact, a violation of Canon 2 (c), which states that “a judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.”

The front page of the *BelizeanGrove*’s Internet site states the following:

Having observed the power of the Bohemian Grove, a 130-year-old, elite old boys' network of former Presidents, businessmen, military, musicians, academics, and non-profit leaders, and realizing that women didn't have a similar organization, Susan Stautberg and 26 other founding members created the *Belizean Grove*, a constellation of influential women who are key decision makers in the profit, non-profit and social

sectors; who build long term mutually beneficial relationships in order to both take charge of their own destinies and help others to do the same.⁶

The reference to the group being a counterweight to the “old boys’ network” suggests that men are not welcome and that the group practices invidious discrimination on the basis of sex. Indeed, reports suggest that men are not welcome at the group’s retreats and that no male is a member of the group. The *Politico* quotes founder Susan Stautberg as saying “that male ‘spouses, partners and adult children’ are permitted to go on the optional post-retreat expeditions (last year’s was to Machu Picchu and the Sacred Valley) and said that even though ‘no man has ever applied to be a member. . . . If they did, we would certainly vote on it.’”⁷

In an obvious acknowledgement of the impropriety of her participation in the group, Judge Sotomayor recently resigned her membership.⁸

Improper Political Activity

On April 17, 2009, Judge Sotomayor made a political and [race-conscious speech](#) to the Black, Latino, Asian Pacific American Law Alumni Association.⁹ During this speech she made the following statements:

“The power of working together was, this past November, resoundingly proven.”
(*See* p. 6.)

“The wide coalition of groups that joined forces to elect America’s first Afro-American President was awe inspiring in both the passion the members of the coalition exhibited in their efforts and the discipline they showed in the execution of their goals.” (*See* p. 7.)

“On November 4, we saw past our ethnic, religious and gender differences.”
(*See* p. 10.)

⁶ *BelizeanGrove* <http://www.belizeangrove.com/grove_overview.pdf>.

⁷ *See* Exhibit 5, Kenneth P. Vogel, “Sotomayor found friends in elite groups,” *Politico*, June 4, 2009 <<http://dyn.politico.com/printstory.cfm?uuid=ADC37F27-18FE-70B2-A8F7E8C6D16DFC33>>.

⁸ *See* Exhibit 6, Sonia Sotomayor’s June 19, 2009, letter to Chairman Leahy and Senator Sessions of the United States Senate Committee on the Judiciary, regarding her resignation “effective today” from the Belizean Grove <http://www.politico.com/static/PPM118_090619_sotomayor_leahy.html>.

⁹ *See* Exhibit 7, Sonia Sotomayor U.S. Senate Questionnaire, “Being the Change We Need for Our Communities” <<http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/upload/Question-12-d-No-78-4-17-09-BLAPA-speech.pdf>>. Indeed, the title of Judge Sotomayor’s speech echoes President Obama’s campaign themes.

“What is our challenge today: Our challenge as lawyers and court related professionals and staff, as citizens of the world is to keep the spirit of the common joy we shared on November 4 alive in our everyday existence.” (See p. 11.)

“It is the message of service that President Obama is trying to trumpet and it is a clarion call we are obligated to heed.” (See p. 13.)

Canon 5 plainly states that “A judge should refrain from political activity.” (See also Canon 5 (a) (2), which states that a judge should not “publicly endorse or oppose a candidate for public office.”) Her obviously partisan support and excitement for the election of President Obama in this speech seems a clear violation of Canon 5.¹⁰ The speech also violates Canon 1 and Canon 2, as it tends to undermine the independence, integrity and impartiality of the judiciary.

In 2005, in a similar matter, the Judicial Council for the Second Circuit sanctioned a judge for making partisan comments concerning the election of President George W. Bush.¹¹

In another improper political comment, in an article published in the *Suffolk University Law Review*, Judge Sotomayor co-authored the following the statement:

The response that can give the public confidence in our profession is our own leadership in weeding out the fraudulent and wrongful conduct that the public rightly condemns at the same time as we challenge overreactions that undermine the principles of our judicial system. For example, legislators have introduced bills that place arbitrary limits on jury verdicts in personal injury cases. But to do this is inconsistent with the premise of the jury system.¹²

The footnotes show that Judge Sotomayor is specifically criticizing a then-pending piece of tort reform legislation. The relevant footnote (51) reads: “See Common Sense Product Liability Legal Reform Act of 1996, H.R. 481, 104th Cong. (limiting punitive damages in

¹¹ See Exhibit 8, “Memorandum and Order,” United States Court of Appeals, The Judicial Council of the Second Circuit, April 8, 2005 <<http://www.ca2.uscourts.gov/Docs/CE/4-8-05%20Second%20Circuit%20Judicial%20Council%20Order.pdf>>

¹² See Exhibit 9, Hon. Sonia Sotomayor and Nicole A. Gordon, “Returning Majesty To The Law and Politics: A Modern Approach,” *Suffolk University Law Review*, 1996 <http://www.law.suffolk.edu/highlights/stuorgs/lawreview/documents/Sonia_Sotomayor_Donahue_Lecture.pdf>.

certain cases).” (This *Suffolk University Law Review* article is based on a speech that Judge Sotomayor gave on February 17, 1996.)

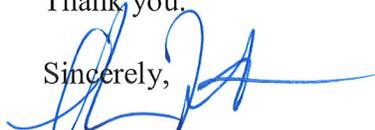
Judge Sotomayor’s repeated criticisms of a pending piece of legislation are, again, in violation of Canon 1, Canon 2, and Canon 5.

We request that the Judiciary Committee investigate these apparent violations of the Judicial Code of Conduct by Judge Sotomayor. Frankly, in light of these apparent ethical violations, it ought to give the Judiciary Committee and the full Senate further reason to reject her nomination for the High Court.

To that end, Judicial Watch requests the opportunity to present testimony on these and other matters at Judge Sotomayor’s confirmation hearings.

Thank you.

Sincerely,



Thomas Fitton
President

Enclosures

By: Hand-Delivered

cc: The Honorable Herb Kohl, Member
The Honorable Dianne Feinstein, Member
The Honorable Russell D. Feingold, Member
The Honorable Charles E. Schumer, Member
The Honorable Richard J. Durbin, Member
The Honorable Benjamin L. Cardin, Member
The Honorable Sheldon Whitehouse, Member
The Honorable Ron Wyden, Member
The Honorable Amy Klobuchar, Member
The Honorable Edward E. Kaufman, Member
The Honorable Arlen Specter, Member
The Honorable Orrin G. Hatch, Member
The Honorable Charles E. Grassley, Member
The Honorable Jon Kyl, Member
The Honorable Lindsey Graham, Member
The Honorable John Cornyn, Member
The Honorable Tom Coburn, Member
The Honorable Mitch McConnell
The Honorable Harry Reid
The Honorable Al Franken