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PUERTO RICAN BAR ASSOCIATION

*file -
Sotomayor*

FACSIMILE TRANSMITTAL SHEET

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RE:	
Judge Sonia Sotomayor	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

This went out on Tuesday and we expect to have something in the New York papers on Thursday.



FOUNDED 1957

PUERTO RICAN BAR ASSOCIATION, INC.

FOR IMMEDIATE RELEASE
September 29, 1998

Contact: Nicole Rowe
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WOMEN, HISPANIC AND ASIAN AMERICAN GROUPS CONDEMN SENATE INACTION

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The Puerto Rican Bar Association has joined a coalition of prominent legal, women's Asian American and Hispanic organizations, to call on the Senate leadership to schedule an immediate vote on the nomination of Judge Sonia Sotomayor to the United States Court of Appeals for the Second Circuit. Members of the coalition include the National Conference of Women's Bar Associations; the Hispanic National Bar Association; the Cuban American Bar Association of the Northeast; the Dominican Bar Association; the Asian Bar Association of New York; the League of United Latin American Citizens (LULAC); the National Council of La Raza; the National Association of Latino Elected Official (NALEO); and the Women's Bar Association of the State of New York.

The first Puerto Rican woman to serve in a federal court in the continental United States, Judge Sotomayor had been a prosecutor in Manhattan and a litigation partner practicing in the field of commercial law at the firm of Pavia and Harcourt prior to her appointment to the district court. In 1992, President Bush appointed her to the Southern District of New York. There she has developed a brilliant record, as was widely reported and recognized during her handling of the National Labor Relations Board baseball strike injunction case in 1995. She was nominated to the United States Court of Appeals for the Second Circuit on June 25, 1997. The Senate Judiciary Committee voted her nomination out on March 15, 1998, with an overwhelming bipartisan 16 to 2 vote.

As the Congressional session comes to an end, the coalition has become stronger in its appeal to the Senate to schedule a vote for the Judge's confirmation. "We find the explanations offered last week that difficulties with President Clinton's legislative agenda are holding up the confirmation to be insufficient. Judge Sotomayor has been waiting for confirmation for over 14 months. Countless other nominees, including 3 to her own Circuit, have been confirmed since she was named and voted out of committee" said Lillian Apodaca, President of the Hispanic National Bar Association. "It is time for the Senate to explain to the Hispanic-American community why a highly qualified and respected judge is not being elevated to the United States Court of Appeals for the Second Circuit."

"Judge Sotomayor is a highly respected federal judge in the Southern District of New York and is widely recognized as a scholarly and serious judge who applies the law as written and on precedent and does not "legislate" from the bench," said Melinda Aikins Bass, President of the Women's Bar Association of the State of New

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York. "Judge Sotomayor's record as a jurist is outstanding. Her decisions reflect her intelligence, character, maturity and seasoned judicial temperament."

Hispanic leaders also expressed deep disappointment over the lack of confirmation of Latino judges, an issue that has resonated loudly with the U.S. Hispanic-American community. "It is unacceptable that the Senate has refused to vote for any of the highly qualified Hispanic judges currently awaiting appointment," said **David Matta, Chair of the Federal Affairs Committee of the Puerto Rican Bar Association.** "Senator D'Amato has assured us on several occasions that he was working to make it happen; and we believe that only through his leadership will the confirmation become a reality. We want the Senate leadership to know that the New York community is fiercely proud of its daughter and is watching this issue very closely," he added.

Coalition members are confident that the Senate will bring the nomination to a vote before the end of the 105th Congress. "A judicial candidate with Judge Sotomayor's excellent record and background certainly deserves approval, whether or not she happens to be a Hispanic woman," added **Carmen Torrent, President of the Puerto Rican Bar Association.** "We cannot believe that the Senate will conclude that we are not welcome in the upper levels of our government and society."

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[Additional information attached]

The following are in response to some of the unfounded statements found in the Wall Street Journal:

FACTS ABOUT JUDGE SONIA SOTOMAYOR'S RECORD

- Judge Sotomayor spent over four years as a prosecutor in the New York County District Attorney's office. Among her successes was the first prosecution under New York's child pornography statute after the Supreme Court's upheld the statute's constitutionality.
- While in private practice as a partner of Pavia & Harcourt, Judge Sotomayor was instrumental in securing the passage of New York State's anti-counterfeiting law.
- On the federal bench, Judge Sotomayor has compiled an impressive record as a thoughtful jurist who combines sensitivity to the rights of individuals with a proper respect for the role of the judiciary and the deference due to the political branches. Some pertinent facts about her record as a federal judge include:
- In a sentencing about which she was extensively questioned by members of the Judiciary Committee, United States v. Gonzalez, Judge Sotomayor expressed her belief that, in certain cases where justice required, Congress and the President should consider granting judges the freedom to sentence according to the Sentencing Guidelines where those guidelines dictated a sentence below the statutory minimum. One year later, Congress amended the law to provide for exactly such a "safety valve" provision. Despite this belief that the law should be changed and despite the fact that defendant had offered a legal argument that under existing law the statutory minimum did not need to be applied, Judge Sotomayor in the Gonzalez case did apply the statutory minimum in accordance with the law.
- In fact, far from being reluctant to sentence according to congressional dictate, Judge Sotomayor has faithfully applied the Sentencing Guidelines in her criminal cases. In her first five years on the bench, Judge Sotomayor departed downward (other than when requested by the government) in only 6.5% of her sentences, a rate well below the national average of 10% and less than half the 15% average compiled by her colleagues in the Second Circuit. Moreover, her upward departure rate of 2.7% is higher than the 0.9% national average.
- Among the dozens of suppression motions which she has addressed, the record indicates only one case in which Judge Sotomayor granted a defendant's motion, and that on the ground that the information supplied to the Magistrate Judge who issued the warrant was misleading and incomplete.
- Judge Sotomayor has never refused to apply a criminal law statute on the grounds that it was unconstitutional. In fact, she has upheld several federal statutes specifically against constitutional attacks, among them the Hostage Taking Act, 18 U.S.C. § 1203, the electronic device provisions of the Wiretap Act, 18 U.S.C. § 2512, and the statute of limitations provisions of the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244.

- In a recent opinion which has attracted some media attention, Archie v. Grand Central Partnership, Judge Sotomayor found that the clear provisions of the Fair Labor Standards Act dictated that the plaintiffs, homeless or formerly homeless persons performing work for a nonprofit coalition of businesses, were employees who must be paid minimum wage. The work performed by these employees was legitimate, valuable work which the defendants used to underbid and replace work done by other businesses which were paying their employees minimum wage or more. In the face of claims by the defendants that the value of their program in providing training to the homeless warranted an exemption from the FLSA, Judge Sotomayor found that, although there was a training program exemption in the FLSA, the defendants' programs were not structured to meet the requirements of that exemption as defined by the relevant regulations and case law. The judge did not disagree that the programs had significant value but held that "it is not the function of this Court to legislate an exemption . . . that does not otherwise exist." Congress, she said, must create the exemptions or the defendants must persuade the Secretary of Labor to grant one, a procedure available to the defendants but not taken advantage of.
- Finally, in another recently criticized decision, Bartlett v. New York State Board of Law Examiners, Judge Sotomayor held that the Americans with Disabilities Act required the defendants to give accommodations in administering the bar exam to the plaintiff. Ms. Bartlett suffers from a neurological impairment that prevents her from automatically recognizing words, thereby requiring her to read and reread sentences in order to decode their meaning. Judge Sotomayor ruled that, under the language of the ADA and the implementing regulations of the EEOC, Ms. Bartlett was "substantially limited" in a major life activity and therefore disabled, and that the bar examiners were therefore required by the ADA to give Ms. Bartlett extra time in which to take the exam. Judge Sotomayor's decision, including the finding of disability and the specific accommodations ordered, was recently affirmed by a unanimous panel of the Second Circuit Court of Appeals, in an opinion written by Republican (Ford) appointee Judge Thomas J. Meskill.

SONIA SOTOMAYOR

EDUCATION:

YALE LAW SCHOOL, New Haven, Connecticut

J.D., June 1979

Editor, Yale Law Journal

Managing Editor, Yale Studies in World Public Order

Semi-finalist, Barristers Union

PRINCETON UNIVERSITY, Princeton, New Jersey

B.A., summa cum laude. June 1976

Member, Phi Beta Kappa

Co-winner, M. Taylor Pyne Honor Prize - prize awarded annually to the senior(s) who has most clearly manifested excellent scholarship and effective support of the best interests of Princeton University

Honorable mention, Senior Thesis, Latin American Studies

EMPLOYMENT HISTORY:

UNITED STATES DISTRICT JUDGE

Southern District of New York

10/2/92 to present

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Partner

1/1/88 to 9/30/92

Associate

4/84 to 12/87

International commercial litigation, including the drafting of pleadings, all phases pre-trial discovery, depositions, motion practice; trials, and appellate briefs and arguments. Extensive experience in the arbitration of commercial and commodity export trading cases.

NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE

New York, New York

Assistant District Attorney

9/79 to 3/84

Responsibilities include investigation and evaluation of felony cases, grand jury presentations, pre-trial motion practice, bench and jury trials, appellate briefs and arguments.

PUBLICATIONS:

Statehood and the Equal Footing Doctrine: The Case For Puerto Rican Seabed Rights, 88 Yale Law Journal 825 (1979).

Sonia Sotomayor & Nicole A. Gordon, *Returning Majesty to the Law and Politics: A Modern Approach*, 30 Suffolk U.L. Rev. 35 (1996).

ASSOCIATIONS:

Adjunct Professor, New York University School of Law.

Member, American Bar Association.

Member, Hispanic Bar Association.

Member, Puerto Rican Bar Association.

Member, Association of Judges of Hispanic Heritage.

Former Member, Second Circuit Task Force on Gender, Racial and Ethnic Fairness
In the Courts.

Former Member, New York City Campaign Public Finance Board (Mayor's Appointee),
1988-1992.

Former Member, Board of Directors, State of New York Mortgage Agency (Governor's
Appointee), 1987-1992.

Former Member, Board of Directors, Puerto Rican Legal Defense and Education Fund,
1980-1992.

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