

# Sotomayor Hearing, Day 4 (07/16/2009), Parts 83 to 86

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XXX who received that?

CHAVEZ: No, I don't. And in fact, what is interesting about Judge Sotomayor's tenure at Princeton University is that she has said that she was admitted as an affirmative action admittee because her test scores were not comparable to that of her peers.

But she has also has talked about what happened to her when she got there, and that she recognized that, in fact, she was not particularly well-prepared, that she did not write well and that one of her professors pulled her aside and said she had to work on her writing skills.

(UNKNOWN): So that would...

CHAVEZ: I admire...

(UNKNOWN): Excuse me. That would make it a pretty amazing story, then...

CHAVEZ: That's right. And I wish that that was the story that she was telling Latinos, that she...

(UNKNOWN): I think the story of her life that I'm describing...

CHAVEZ: Well, I wish that what she was telling Latinos is that, if you do what Ben Vargas has done; if you do what Frank Ricci has done; if you take home the books and you study them, and you memorize what you need to know so that you can pass the test like I did when I took home grammar books and learned how to write standard English, that that should be the story, not that she should be insisting on racial quotas and racial preferences.

(UNKNOWN): Ms. Chavez, I think that the story of her life is one of achievement, overcoming some odds that many people have never faced, in her family life and personal life.

Mr. Morgenthau, when you were alerted about her skills in law school, did they tell you that they had an opportunity, here, for you to hire a "wise Latina lawyer"?

Is that what you were the market for?

MORGENTHAU: Absolutely not. I mean, I took one look at her resume, you know, summa cum laude at Princeton, Yale Law Journal, and I said -- and then I talked to her, and I thought she was common-sense and judgment and willingness to work. The fact that was Latina or Latino had absolutely nothing to do with it. And may I just use this opportunity to say that I was one of the founding directors of the Puerto Rican Legal Defense Fund. And the reason I did that was I thought it was important for what was then a way-underrepresented minority. You know, you're looking back 35, 40 years -- to

have an organization which was dedicated to help people in housing court, discrimination cases.

So I urged her to join the Puerto Rican Legal Defense Fund. And, I mean, I had become a life member of the NAACP in 1951. I'd been on the National Commission of the Anti-Defamation League.

I think that, you know, one of the great strengths of the United States is its diversity. And -- but we've got to help people from the various minority groups make their way and advance.

And I must say I'm very critical of some of my friends and relatives who want to forget where they came from. And it's to her credit that she remembers where she came from.

(UNKNOWN): And, Mayor Bloomberg, I believe you had a quote that I read about Washington being, maybe, the only place -- would you recall that quote on the Puerto Rican Legal Defense Fund?

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XXX Legal Defense Fund?

BLOOMBERG: Yes, I think that public service is something that, certainly, you, Senator, know the value of and the satisfaction when you do it. And in New York City, we value those who are willing to give their time and help others. They walk away, in many cases, from lucrative careers to serve as public defenders or outside of the legal profession in myriad other ways.

And the fact that the organizations that they work for sometimes do things that you or I disagree with doesn't take away from the value that they provide in other things that they do.

(UNKNOWN): I just made a note the other day. This is my third nomination for the Supreme Court. I've been honored to serve on this committee and consider three nominees. The two previous nominees, Chief Justice Roberts, Justice Alito, both white males, and the questioning really came to this central point. "Do you as a white male," to each of these nominees we asked, "have sensitivity to those unlike yourself"? Minorities, disadvantaged people. And those questions were asked over and over again.

In this case where we have a minority woman seeking a position on the Supreme Court it seems the question is, are you going to go too far on the side of minorities and not really use the law in a fair fashion?

BLOOMBERG: Senator, isn't the reason that the founding fathers, at least I assume the reason the founding fathers said nine justices is that they wanted a diverse group of people with different life experiences who could work collaboratively and collectively to understand what the founding fathers meant generations later on. And so the fact that I said before in my testimony I do not think that no matter how compelling Justice Sotomayor's life experience and biography is, that's not the reason to appoint her. Certainly we benefit from having a diverse group of people on the Court in the same way as my city benefits from a diverse group of citizens.

(UNKNOWN): Mr. Chairman, if I could ask one last question. I might say, Mr. Mayor, you're getting dangerously close to empathy. But I happen to agree with you.

Mr. Morgenthau, when Judge Sotomayor worked in your office did you notice whether or not she treated minorities any differently in...

MORGENTHAU: She was right down the middle, Senator. She didn't treat minorities any differently than she treated anybody else. Right down the middle. Looked at the law. Tough but fair.

(UNKNOWN): Thank you very much. Thank you, Mr. Chairman.

LEAHY: Thank you. Senator Sessions indicated that Senator Graham will be next to inquire.

GRAHAM: I'd like to thank my colleagues for the courtesy here. I've got to run back and do some things. This has been a very good panel by the way. I think we're sort of grappling with issues right here in the Senate the country is grappling with, and I'll try to put it in perspective the best I can.

Now Ms. Chavez, identity politics I think I know what you're talking about. I asked the Judge about it. It's a -- a practice of politics I don't agree with and I think overall is not the right way to go. But having said that I've tried to look at the Judge in totality.

The well-qualified and ready from the ABA when it was given to Judge Alito and Roberts, we all embraced it, and I used it a couple of times to say that if you thought this person had a rigid view of life or the law it'd been very hard for the ABA to give them a well-qualified rating. Does that impress you at all that the ABA had a different view in terms of how she might use identity politics on the bench?

CHAVEZ: Well I'm not sure they dealt with that question. I think they did deal with her record as a judge and the decisions that she has made as a judge. The ABA and I often disagree on...

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XXX often disagree on...

GRAHAM: Ma'am, I totally understand.

(CROSSTALK)

CHAVEZ: (inaudible).

GRAHAM: I totally understand, but I guess the point I'm making, I don't want to sit here and try to have it both ways. You know say the ABA's a great thing one day and means nothing the next.

Have you ever known a Republican political leader to actively try to seek putting a minority in a

position of responsibility to help the party?

CHAVEZ: I think that the idea of giving due deference to making sure that people are representative in -- in diverse ways is a standard way of operating -- in political circles. I don't...

(UNKNOWN): Well, the only reason I mentioned that is the statement you made, the way we pick our judges should be based on merit, the way we pick our firefighters. I totally agree with that. I mean, it's -- but politics is politics in the sense that I know that Republicans sit down and think, OK, we've got some power now. Let's make sure that we let the whole country know the Republican Party is just not a party of short white guys.

(UNKNOWN): I think that's different, though, Senator, then, as she suggested in her speech that there are to be some sort of proportion...

(UNKNOWN): Yes, that's right. You can go -- that's right. I -- I totally agree.

(UNKNOWN): I -- I -- and I think that's farther. And I also think it matters that we're not just doing that because we want to see diverse opinions. But it seems to me that what she was saying in her speech was that we do that because blacks, Latinos and women are different, think differently, and will behave differently. I mean, she said that explicitly, that it...

(UNKNOWN): Yes, I...

(UNKNOWN): ... maybe as a result of physiological differences. I think any white man that said such a thing about minorities or women would be laughed out of this room.

(UNKNOWN): Well, since I'm the white guy that said that, I agree with you.

(LAUGHTER)

But the point is that I'm trying to get the country in a spot where you're not judged by one thing, that we just can't look at her and say that's it. You know, when I looked at her, I'd see speeches that bugged the hell out of me, as I said before, but I'll also see something that very much impresses me.

And the ADA apparently sees something, and Louis Freeh sees something, and Ken Starr sees something. And, you know, what I want to tell the country is that Republicans very much do sit down and think about political picks and appointments in a political sense to try to show that we're a party that looks at all Americans and intends to give an opportunity. And that's just life, and that's not a bad thing.

Now, Mr. Ricci, I would want you to come to my house, if it was on fire.

(LAUGHTER)

And I appreciate how difficult this must have been for you to bust your ass and to study so hard and -- and to have it all stripped at the end. I just want you to know if the country that we're probably one generation removed to where no matter how hard you study, based on your last name or the color of your skin, you'd have no -- no shot. And we're trying to find some balance.

And in your case I think you were poorly treated, and you did not get the day in court you deserve, but all turned out well. It was a five-four decision, and maybe we can learn something through your

experience. But please don't lose sight of the fact not so very long ago, the test was rigged a different way.

Mr. Vargas, you're one generation removed from where your last name would have been it. Do you understand that?

VARGAS: Yes, sir.

(UNKNOWN): What did you go through personally to stand with Mr. Ricci? What came your way? Does anybody criticize you?

VARGAS: I received lots of criticism.

(UNKNOWN): Well, tell me the kind of criticisms you had.

VARGAS: But I have -- I have a thick skin. I believe that I'm a person with thick skin.

(UNKNOWN): Well, did people call you an Uncle Tom?

VARGAS: Yes, sir.

(UNKNOWN): People thought you were disloyal to the Hispanic community? VARGAS: Absolutely, yes.

(UNKNOWN): Well, quite frankly, my friend, I think you've done a lot for American-Hispanic community. My hat's off to you.

VARGAS: Thank you, Senator.

(UNKNOWN): Finally, Mayor, having to govern a city as diverse as New York must be very, very difficult. It is also a pleasure?

BLOOMBERG: It is a pleasure, and we -- I said before you came in that some of Judge Sotomayor's views I don't happen to agree with some of her decisions. I think on Ricci, for example, I disagreed with what the city of New Haven did.

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XXX of New Haven did.

BLOOMBERG: In New York City, you should know that our city is a defendant in a case, a class action suit in the Justice Department where the challenge is to entry-level tests for our fire department, one given in 1999 before I became mayor, and one afterwards in 2002. And we're defending it on the grounds -- the suit alleges that the written portions of the test were not germane to

the job and had a disparate impact.

I've chosen to fight this. I think that in fact the tests were job-related and were consistent with business necessity. This is a case that's going to go to trial sometime later this year. What we've tried to do is to approach it from a different point of view, aggressive recruiting to try to get more minorities to apply to be firefighters. And we have revised our test. We've had a substantial increase in the number of minorities taking the test, passing the test, and joining our fire department.

I really do believe that that's a better way to solve the diversity problem, which does affect an awful lot of fire departments around this country, rather than throwing out tests and thereby penalizing those who pass the test.

CARDIN: Senator Klobuchar?

KLOBUCHAR: Thank you. I'm going to let Senator Specter, who is -- I guess I'm more senior to him only because of a technicality, but also he's been here longer. So I'm going to let him go and then I will go after.

CARDIN: Senator Specter?

SPECTER: No, no, I'll defer to Senator Klobuchar.

(LAUGHTER)

KLOBUCHAR: OK. Here we go.

I first wanted to thank both firefighters for your service. As a prosecutor, we worked extensively on arson cases and I just got a little sense of what you go through every day and how dangerous your job is. So thank you for that.

I just wanted to follow up on one thing. Ms. Chavez, when you talked about your clearly know Ms. Sotomayor's history and her record, but when you talked about how she got into Princeton, you didn't point out the one thing that I think Mr. Morgenthau did, and that is that she ended up graduating from there summa cum laude, and that certainly is all about numbers and grades, I would think, and not affirmative action. Would that be correct?

CHAVEZ: That's absolutely right, and I wish that was the message that she was giving to her Hispanic audiences, that she was able to do it; that she was able to overcome adversity; that she was able because she applied herself and worked hard and put in the hours studying to be able to succeed. And that is not the message.

KLOBUCHAR: OK. But she also was valedictorian of her high school class. Where I went to high school, that was all numbers and grades and nothing to do with anything else. Is that true?

CHAVEZ: I am only quoting what she has said herself. I don't have any idea what her test scores were. I don't think anyone but she does. But she has said that she got in to Princeton and also Yale based on the affirmative action programs of those universities.

KLOBUCHAR: OK.

Mr. Morgenthau, it's just an honor to meet you. When I was district attorney, I hired a number of

people that learned everything they knew from you and your office, so thank you for that.