

**CONFIRMATION HEARING ON HON. SUSAN H.
BLACK, SONIA SOTOMAYOR, LORETTA A.
PRESKA, AND IRENE M. KEELEY**

THURSDAY, JUNE 4, 1992

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:02 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy presiding.

Present: Senators Kennedy and Thurmond.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. The committee will come to order.

The Constitution gives the President and the Senate a shared responsibility to ensure that qualified men and women serve on the Federal bench. As Senators, we have few more important responsibilities than our role in the confirmation process. The judges and Justices whom we approve will serve for life, and their decisions will determine, in large measure, the quality of justice in America.

I am please to note that today, for the first time, the Judiciary Committee has scheduled a nominations hearing in which all of the nominees are women. This is a welcome development and underscores our commitment to increasing the representation of women on the Federal bench.

In the past 12 years, the proportion of women in the legal profession has almost doubled, from 13 percent during the last year of the Carter administration to 23 percent today. Yet, only 16 percent of President Bush's judicial nominees are women, about the same as the 15-percent rate President Carter achieved during a time when there were far fewer women lawyers. Less than 9 percent of the sitting Federal judges are women. There is ample room for improvement and improvement in the number of blacks and other racial minorities, as well.

Today's nominees are fortunate to have distinguished Members of the Senate here to introduce them, and I look forward to their testimony and to the testimony of the nominees.

Senator Thurmond.

Senator THURMOND. Mr. Chairman, I welcome the nominees today and their witnesses, and I hope we can get expeditious decisions on these nominees.

I want to thank you for your hasty consideration.

In closing, I believe that Susan's 20 years of service to the State and Federal judiciary, the respect and admiration she has earned from her colleagues and community, and her commitment to judicial restraint indicate that she is well qualified to fill this vacancy on the eleventh circuit.

I am confident that she will continue to be an asset to the Federal judiciary, and I urge the committee to vote favorably on her nomination.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

I see our colleague Senator Moynihan here. Judge Black, with your patience, we will hear from Senator Moynihan and other Senators that are here to make presentations, and then come back and consider your nomination.

Judge BLACK. Thank you, Mr. Chairman.

Senator KENNEDY. We thank our colleagues for their presence here.

Senator GRAHAM. Thank you, Mr. Chairman.

Senator MACK. Thank you, Mr. Chairman.

Senator KENNEDY. Senator Moynihan.

**STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S.
SENATOR FROM THE STATE OF NEW YORK**

Senator MOYNIHAN. Mr. Chairman, Senator D'Amato cannot be here at the moment, but both of his nominees are here, so we have two, if I might ask to indulge your patience and bring them both forward.

Senator KENNEDY. Please do.

Senator MOYNIHAN. Ms. Sotomayor and Ms. Preska.

Now, this is a happy moment for a New York Senator to have two judges before this committee. Senator D'Amato will be here later, Mr. Chairman and Senator Thurmond, but if I can, I would simply like to introduce these distinguished nominees.

I think in terms of rank order of nomination, Ms. Sotomayor is first. As you know from the papers you have, she is a graduate of Princeton University, where she received the M. Taylor Pyne Honor Prize for the graduating senior who best demonstrated the qualities of scholarship and concern for the community. If you are Princeton, it is the last thing that can happen to anyone that matters.

She went on to do other things. She went to Yale Law School and was an editor of the Yale Law Journal. After graduating from law school she worked as an assistant district attorney in Manhattan. Since then she has continued to practiced in the city of New York and has been active in a whole range of activities. She is a member of the board of directors of the New York State Mortgage Agency, and also of the Puerto Rican Legal Defense and Education Fund and the New York City Campaign Finance Board, and she comes highly recommended by a bipartisan group that has for 15 years now been choosing nominees that I have brought to this committee.

Ms. Preska is a graduate of the College of St. Rose, in Albany. She is an Albanian. She went to Fordham Law School and then to

New York University Law School, where she studied international trade and took an advanced degree. She practiced in the city of New York and has been active in community affairs there.

I would like to say that she is accompanied here this morning, just as a form of fellowship, by Lloyd Abrams, one of the most distinguished first amendment lawyers in our generation, and he is happy to be associated with this very able nominee.

I commend them to you, sir, and to Senator Thurmond, and I think I had best stop talking there, because I do not think I have made any major mistakes yet.

Senator THURMOND. We thank you very much for your presence. Is Senator D'Amato going to be here, do you know?

Senator MOYNIHAN. He will be here and it will be a bit later, sir.

Senator THURMOND. At least he endorses them highly, I understand. He spoke to me about it.

Senator MOYNIHAN. Most assuredly. He knows them personally and, in the case of Ms. Preska, he—

Senator THURMOND. Thank you for your presence.

Senator KENNEDY. Thank you very much, Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman.

Senator KENNEDY. We are delighted to welcome you to the committee and we certainly appreciate your good words of endorsement and support of the nominees.

We will move along with the nominees. If our colleagues come in, with the patience of the nominees, after we conclude the questioning, we will recognize them for whatever brief comments that they might have to make.

We will go back to Judge Black. Would you rise and raise your hand, and we will swear you in: Do you swear that the testimony you give is the truth, the whole truth, and nothing but the truth, so help you, God?

Judge BLACK. I do.

TESTIMONY OF HON. SUSAN H. BLACK, OF FLORIDA, TO BE A U.S. CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Senator KENNEDY. I noted with interest, Judge Black, your opinion in the *DeBailey v. Lynch-Davidson Motors* case, involving section 1981. That law bans race discrimination in the making and enforcement of contracts.

In the *Patterson* case in 1989, the Supreme Court cut back on the scope of section 1981, holding that it did not prohibit race discrimination in the terms and conditions of a contract, once it was made. And you found in the *DeBailey* case that the plaintiff, who had been denied a promotion because she claimed that she had been the victim of racial and sexual harassment, could maintain her suit, in spite of *Patterson*.

As you know, the Civil Rights Act of 1991 overruled the *Patterson* case. Would you share with us your views on the *Patterson* decision and on Congress' response to it, based on your experience in the *DeBailey* case?

Judge BLACK. Mr. Chairman, the *Patterson* case, in my reading of the case, cut out a very narrow exception, and that is—

in what people are doing in the pro bono work or work within their community. I think it helps one's understanding of what is happening in the real world.

This group, as I understand it, identifies the needs of children and the elderly in the community and, in response to a report by the committee of the local church, established summer programs. Could you tell us a little bit about it?

Judge BLACK. The church is a very old church and it is in a changing neighborhood. We have had a difficult time bringing the neighborhood into the church, and so we decided that one way to do that would be to establish outreach programs for the children in the neighborhood. Many single parents live in the neighborhood, and so we started programs on the weekend and fashioned them as arts programs, not baby-sitting or day care, but substantive programs. It has been very successful and has brought children into the church.

Senator KENNEDY. You also, as a State court judge, had concern that there were no alternatives to sentencing available for women, even though men could be placed in a probation residence program. You were involved in developing a program for women like that?

Judge BLACK. Yes, sir.

Senator KENNEDY. Could you tell us a little bit about that?

Judge BLACK. This was many years ago. We had alternatives to incarceration in the State of Florida, and available to us were halfway houses for men. We had a female defendant and we had no place to put the individual, except institutionalize in prison or on probation, and so I worked with the probation department in establishing that program.

Senator KENNEDY. Has it worked pretty well?

Judge BLACK. Yes, sir.

Senator KENNEDY. That is very commendable.

I also notice that you are an active member of the advisory board of trustees at the Jacksonville Health Education Program, to provide interns and nurses for large northeast Florida hospitals serving the indigent.

Judge BLACK. Yes, sir.

Senator KENNEDY. You have a very solid recommendation, not only from our friends and colleagues from Florida, but also from all of the local organizations whom you have been working with over a period of years, and I think your involvement in the community is certainly something that I find personally very impressive, and I would be delighted to support your nomination for the circuit.

Thank you very much.

Judge BLACK. Thank you, Mr. Chairman.

Senator KENNEDY. We will go to Ms. Sotomayor.

While you are standing, do you swear that the testimony that you will give is the truth, the whole truth, and nothing but the truth?

Ms. SOTOMAYOR. I do, Senator.

TESTIMONY OF SONIA SOTOMAYOR, OF NEW YORK, TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Senator KENNEDY. We welcome you to the committee.

Your commitment to pro bono activities has really been very impressive. Could you tell us a little bit about those activities? Then we are going to ask you how you can convince lawyers of the need to make real commitments to public services. But tell us about your activities.

Ms. SOTOMAYOR. Senator, I have been a member of the board of directors of the Puerto Rican Legal Defense and Education Fund for about 12 years now. I have served in various capacities on that board, including its first chairperson and the head of its litigation and education committees.

I am sure you know of PRLDEF and its important work in promoting the civil and human rights of Hispanics, particularly of Puerto Rican background. PRLDEF was instrumental in establishing the Espira Board of Education case, which promoted bilingual education in the public school system. I personally, in my work for the fund, have been involved in not selecting cases, because, board of directors or not, but in directing its policies.

In particular, in recent years, we have been turning our attention to housing issues, which segues into my other involvement with the State of New York Mortgage Agency. That agency provides lower than market rate mortgages for first-time homeowners. Those homeowners are governed by certain Federal income limitations, and the mortgages we attempt to target to blighted areas throughout the State of New York.

The second component of that program involved providing mortgage insurance for development projects where private banking will not step in. The board, during my 4- or 5-year tenure, has developed a low-income mortgage availability project. A key component recently has been to assist families with closing costs, which is one of the greatest difficulties in purchasing homes today.

I have also been involved in the foundation and development of the New York City campaign fund, which is modeled partially, but somewhat significantly differently than the Federal campaign fund.

I have been involved in the Stanley Heckman Scholarship Committee and the Maternity Center Association of the State of New York.

In answer to your second question, I as an individual believe that those of us who have opportunities in this life must give them back to those who have less. It is never easy to encourage others to do the same, but I do think it is important for public figures, for legal educators, for the bar to constantly and repeatedly encourage public service. As you know, the ABA has made it part of its professional code, and almost all of the State codes have done the same.

Senator KENNEDY. I should have asked you, do you have any family here?

Ms. SOTOMAYOR. I do, Senator.

Senator KENNEDY. We would be delighted, if you would introduce them, and if they would stand, we would appreciate it.

Ms. SOTOMAYOR. There is my mother, Salina Sotomayor, our friend, Domar Lopez, my Princetonian college roommate, Mary Cadette, two of my dearest friends, Don Cardi and Ken Kinser. And just in back of them, my brother, Juan Juiso Sotomayor, my sister-in-law, Tracy Sotomayor, and my somewhat shy niece, Kia Sotomayor.

Senator KENNEDY. Very nice. Well, we are glad to have them here.

Do you have intentions of continuing your activities?

Ms. SOTOMAYOR. Well, we are restricted by the Judicial Code from doing that. We are permitted to serve in charitable institutions, and I would presume, given my inclination, that I would.

We are also permitted to serve in judicial professional organizations or legal organizations, and I will continue in that way.

Senator KENNEDY. A good deal of your recent practice has been devoted to enforcing the trademarks of products against counterfeiters. These laws are in this committee's jurisdiction. Do you have any comments about the adequacy of those laws, or any suggestions?

Ms. SOTOMAYOR. I answer that on two levels. There are some strengthening of the laws that could be made. In fact, the International Anti-Counterfeiting Coalition has made many suggestions to this committee that I endorse, as well.

I think, on a more practical basis, the greater problem is not the law, although it does need some changes, but the fact that there are not enough resources for prosecutors to bring very important cases against violators of the law, and so it is one of those unfortunate situations, as many others, where more pressing problems of our society are not permitting the effective use of existing laws.

Senator KENNEDY. Is that both, do you think, on the trademarks and also with regard to prosecuting counterfeiters, as well?

Ms. SOTOMAYOR. Yes, sir. The numbers are just terribly small.

Senator KENNEDY. I note that you are on a selection committee for a trust that awards scholarships to minorities and first-generation immigrants. We have been working in the Congress for the past 2 years on a bill to overhaul the laws on Federal aid to college students. I am chairman of the Human Resources Committee, and we are in conference now on the higher ed bill. Do you have any suggestions for us about changes in the law?

Ms. SOTOMAYOR. No, Senator. It is not an area that I, unfortunately, have studied with any extensive attention. I served on this committee, because I thought its work was important.

Senator KENNEDY. Do you find that there is great need out there for that kind of scholarship program?

Ms. SOTOMAYOR. Increasingly, and particularly for minorities and low-income families. With many higher education institutions suffering tremendous financial losses, one of the first areas, unfortunately, that they cut is scholarships and that does affect the already disaffected portions of our society.

Senator KENNEDY. Well, I see that you have written the statehood and the equal footing doctrine in the case for Puerto Rico seabed rights. The issue of the Seabed Treaty was always something that was kind of interesting personally to me. Elliot Richardson was very much involved in working on that issue. It never

reached fruition, but it is interesting that you have been interested in that program, as well.

I want to say that we are enormously impressed with your qualifications and the very positive reaction that all the members of the bar have had in support for your candidacy, and I look forward to supporting it in the committee and on the floor. Congratulations.

Ms. SOTOMAYOR. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

Ms. Preska, we are delighted to have you here.

I want to tell Ms. Keeley that we have not forgotten about you.

Ms. PRESKA. Thank you, Mr. Chairman.

Senator KENNEDY. Would you stand, please: Do you swear that the testimony that you give this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. PRESKA. I do, Senator.

TESTIMONY OF LORETTA A. PRESKA, OF NEW YORK, TO BE A U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Senator KENNEDY. Perhaps you would introduce any of your guests or family.

Ms. PRESKA. Thank you, Senator.

I would like to introduce my husband, Thomas Kavalier, my children, Matthew and Kathryn.

Senator KENNEDY. Do they want to stand up? Are they missing school today? [Laughter.]

Ms. PRESKA. It is a great treat for them to be here.

Senator KENNEDY. We are delighted.

Ms. PRESKA. My friend and mentor, Floyd Abrams, my father, Victor Preska, my friends, Peggy Brown and her husband Jim Brown. My friends, Lawrence Houseman and Joyce Ozenberg. My friend David Rigney is in the back of the room, and my cousins Mary Louise and Fred Barnes are here, as well.

Senator KENNEDY. Very fine. You are all very, very welcome.

Ms. PRESKA. Thank you, Senator.

Senator KENNEDY. Ms. Preska, community service is a fundamentally important activity for all Americans, particularly for attorneys, and I notice that you recently received the Lefkowitz Public Service Alumni Award of the Fordham University School of Law Public Interest Resource Center. Would you tell us how you came to receive the award and about your pro bono activities, generally?

Ms. PRESKA. I would be happy to, Mr. Chairman.

Fordham has just begun a public interest resource center and a group of approximately a dozen alumni provided the initial funding of over \$1 million for that center. My husband and I were two of those alumni, and the funding has gone for and will go for activities from legal services to soup kitchens, the whole range of activities.

It has also been supported very heavily by the students, who just this past spring raised \$37,000 themselves, through a goods and services auction at the law school. But it is the feeling of the Fordham Law School, and particularly Prof. Constantine Cartores, who is running the public service interest group, that, as Ms. Sotomayor

medical profession has been willing to police itself in terms of malpractice. What is generally the condition in West Virginia, in terms of the medical profession policing itself in cases?

Ms. KEELEY. Mr. Chairman, as part of my practice, I have been very involved with physicians and hospitals that undertake peer review. I believe that part of the development of peer review has been a recognition on the part of physicians, particularly those emerging from the medical schools today, of their responsibility to police themselves, otherwise it results in the policing by the courts through the medical malpractice litigation, in which I have been involved.

I think it is very important, however, to recognize that, as you request physicians and hospitals to police themselves, there has to be some protection in terms of confidentiality for the process, because, otherwise, it could become a vehicle to an increasing amount of medical malpractice litigation.

In West Virginia, as you are aware, Mr. Chairman, Senator Rockefeller and others have addressed the crisis in rural health care that we are experiencing there, and in order to encourage physicians to both remain there and to relocate to West Virginia, balancing is important.

Senator KENNEDY. Well, it is an enormously complicated issue, because you have the rights of privacy and then whether doctors have rights in various hospitals, whether excluded, whether there is monopolistic kind of activity in excluding some of them, and then you have the whole question of privacy in medical records. It is very, very complicated and a matter of enormous importance, in terms of maintaining quality health care, and so it is an interesting experience you have, and I am sure that, as well as your other past experience, as a teacher and your many other activities in the community, you certainly bring broad understanding to the law.

Well, we want to congratulate you. We certainly look forward to supporting your nomination, and we are delighted to see your extended family.

Ms. KEELEY. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

Senator D'Amato, we would be delighted to hear from you. We have listened to two very outstanding nominees. They are on the fast track, so we are glad to hear whatever additional information that you might want to give us.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Let me say this, if they are on the fast track, I do not intend to say anything that might slow that down.

I am delighted to be here, Mr. Chairman, and I ask to incorporate in the record, as read in their entirety, the statements I have on behalf of Loretta Preska and Sonia Sotomayor. Both are outstanding nominees.

I might mention that, in the 11 years that both Senator Moynihan and I have been making recommendations to the White House, with the confirmation of Loretta and Sonia, this will bring seven women who will have been appointed to the Federal bench from

our State. Five have already been and are presently serving, and these two will bring that total up to seven, so I think we can be quite proud of that accomplishment, and we have at least one other who I believe is pending in the Justice Department at the present time.

I might say that I think both candidates bring something that we can be terribly proud of. They are children of immigrants, they bring esprit de corps, striving for excellence which they have achieved academically, professionally, and, in the very real sense, a great deal of credit has to go to their families.

I am not going to go further, but I have had occasion to speak to both Sonia last evening, a great, great story of what America can and is about, and the same thing with Loretta and her magnificent and wonderful family.

So in addition to their great backgrounds that they bring in terms of scholarship and their achievements before the bar, as practicing attorneys, I think they epitomize the best of America and I am delighted to be able to recommend both for speedy consideration and approval.

And I might say that the court certainly needs their talent as quickly as possible. The loads are increasing, and I thank the Chair for your consideration.

[The prepared statements of Senator D'Amato follow:]

Sonia Sotomayor

Mr. Chairman,

I am pleased to join my good friend and colleague Senator Moynihan in introducing Sonia Marie Sotomayor as a nominee by the President to be a United States District Judge in the Southern District of New York.

Presently a partner at the firm of Pavia and Harcourt, Ms. Sotomayor

is a Summa Cum Laude graduate of Princeton University and a graduate of Yale Law School, where she served as editor of the law school journal.

Subsequent to law school, Sonia was an Assistant District Attorney for New York County for a period of five years prior to joining her present law firm in 1984.

I am pleased that Sonia has received the nomination of the

President and the recommendation of the Justice Department for this nomination and I am confident that your assessment will agree that she will be a fine addition to the Federal Bench.

Thank you, once again, Mr. Chairman, for moving so quickly on this nominee after the designation was made.

Senator KENNEDY. Thank you very much, Senator D'Amato.

We know that you have gone out of your way to be here, as Senator Moynihan indicated that you would be coming later in the morning, and we are delighted to have you here, as well as our other colleagues, and we certainly agree with your assessment. We appreciate very much your willingness to be here with us.

Senator THURMOND. Senator, I want to congratulate you on recommending such outstanding ladies.

Senator D'AMATO. Thank you very much.

Senator THURMOND. I have always known you were a ladies' man, anyway. [Laughter.]

Senator KENNEDY. I am going to leave that alone. [Laughter.]

Senator D'AMATO. That is not in the record, I hope. [Laughter.]

Thank you very much, Mr. Chairman.

Senator KENNEDY. Thank you very much.

Senator Rockefeller, we are glad to have you here. We have had a very impressive response by the nominee and we have read into the record the excellent statement of endorsement of your colleague, Senator Byrd. We know that you want to make a comment and we are delighted to have you here.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator ROCKEFELLER. Mr. Chairman, I apologize. I was downstairs giving testimony in front of Senator Dodd's Subcommittee on Children, and Irene Keeley understood that. I apologize very much to the chairman.

I will make a two-sentence statement about Irene Keeley, to show the depth of my feeling for her and respect for her. I think she is one of the most impressive people I have ever met.

I have been in the Attorney General's office twice in my life. The second time was to go on behalf of Irene Keeley, to talk to Attorney General Dick Thornburgh, because—and I have never done that before about anybody or anything, but I felt so strongly that she is so good and it was so important for her to be a Federal judge, that I wanted to do that.

The first and the only other time that I have ever been there, Mr. Chairman, was when I went to see your brother, the late Robert Kennedy, to discuss going to West Virginia as a VISTA volunteer, which he encouraged me to do.

So those are two pretty big visits, as far as I am concerned, and I hope that expresses in some measure my feeling about Irene Keeley.

Thank you.

Senator KENNEDY. Very fine. As I mentioned, we are very much impressed with her legal background and her extraordinary background and the variety of her pro bono work. It is certainly something that we are very interested in trying to encourage among those who are going to serve on the bench—being involved in pro bono work. It is interesting that virtually all of the nominees today have extraordinarily, impressive records in that area, and it is an excellent example for all the members of the bar.

Senator Thurmond.

Senator THURMOND. We are glad to have you here, Senator, and glad to get your high opinion of the nominee.

Senator ROCKEFELLER. Thank you.

Senator KENNEDY. Thank you very much.

Again, we appreciate all of our colleagues being here and we are delighted with the nominees, impressed by their qualifications, and I personally look forward to supporting all of them and urge our committee to act swiftly and do everything we can to move them along on the Senate floor.

Senator THURMOND. Mr. Chairman, I might just say that, in looking through the records of these fine ladies, I have been deeply impressed and I am glad to see the President choose some ladies for these positions.

Senator KENNEDY. The committee stands in recess.

[Whereupon, at 11:10 a.m., the committee adjourned.]