# HNBA

HISPANIC NATIONAL BAR ASSOCIATION

# JOURNAL OF LAW AND POLICY


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THE HNBA'S QUEST FOR THE FIRST HISPANIC SUPREME COURT JUSTICE
*Dolores S. Atencio*

A SEAT AT THE TABLE:
THE FINAL DAYS OF THE HNBA EFFORT TO REALIZE A HISPANIC ON THE U.S. SUPREME COURT
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**HNBA Leaders Supported the HNBA Sotomayor Confirmation Hearings Effort**

Former HNBA Presidents and other HNBA leaders gathered in Washington to lend support to the HNBA effort on the Sotomayor confirmation hearings. After the HNBA testified at the Sotomayor hearing via its National President, Ramona Romero, the HNBA held a special reception to celebrate its work and achievement.

Left to right: Front row , HNBA Founder Baltazar Baca; Past HNBA President Jimmie Reyna (2006-2007); Past HNBA President Lillian Apodaca (1998-1999); HNBA President Ramona Romero; Past HNBA President Dolores Atencio (1991-1992); Past HNBA President Mary Hernandez (1994-1995); Past HNBA President Carlos Ortiz (1992-1993); Back row, President-Elect Roman Hernandez (2008-2009); Past HNBA President Lorenzo Arredondo (1982-1983).

# THE MAKING OF AN AMERICAN JUSTICE: THE HNBA'S QUEST FOR THE FIRST HISPANIC SUPREME COURT JUSTICE

DOLORES S. ATENCIO*

> Like most noteworthy organizations and group efforts, the Hispanic National Bar Association was founded in times of adversity. It was a conscientious response to the increasing struggles and burdens facing the Hispanic community in the United States. And, it was time for the first nationally orchestrated protest by the Hispanic community for a nominee to the United States Supreme Court. The year was 1971, and there was no Hispanic on the Supreme Court.
>
> —Honorable Francisca Cota [1]

Until 1967, the United States Supreme Court had been Anglo and all male when President Lyndon Johnson appointed Thurgood Marshall, the first African American, to the Supreme Court. Almost twenty years later, Sandra Day O'Connor was appointed the first female Supreme Court Associate Justice.

By the fall of 1971, there were only five Hispanics on the nation's federal district courts and none on the country's appellate courts, the prime recruiting pool of choice for nomination to the U.S. Supreme Court.[2] Though not yet adopted as a formal strategy,

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* Dolores Atencio is a partner at GCR, L.L.P. in Denver, Colorado. She served as HNBA President from 1991 to 1992. By virtue of her service as a former female President of the HNBA, she is s life-time member of the HNBA's Commission on "The Status of Latinas in the Legal Profession" which she co-chaired from its inception in 2008. She is also a member of the current HNBA Supreme Court Committee.

[1] In November, 2006, then HNBA National President Jimmie Reyna created the Office of the HNBA Historian and appointed the Honorable Francisca Cota (Phoenix, AZ) to serve as the first HNBA Historian. Since then, Judge Cota has contributed to numerous programs and projects involving the HNBA history.

[2] Nearly two-thirds of the 111 Supreme Court Justices were judges prior to their elevation to this bench. JEFFREY A. SEGAL & HAROLD J. SPAETH, THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED 182 (2002). Over the

Hispanic lawyers in the 1970's knew that their candidates must have judicial experience to be credible and considered as serious contenders for the high court. The pool of Hispanic judicial candidates, at that time, was slim to non-existent.

The first Hispanic/Mexican-American appointed to a federal district court was Reynaldo Guerra Garza, appointed to the Southern District of Texas by President John F. Kennedy on April 14, 1961.[3] President Lyndon Johnson appointed three Hispanics to federal district courts, Manuel L. Rael in 1966 (C.D. Cal.) and two others in 1967, Hiram Rafael Cancio (D.P.R.) and Juan B. Fernandez (D.P.R.). President Richard Nixon appointed two Hispanics to the District of Puerto Rico, Jose Victor Toledo in 1970, and Hernan Gregorio Pesquera in 1972.

Driven by the tradition of presidents to nominate federal district and circuit court judges to the Supreme Court, the Hispanic National Bar Association's quest for a Latino Supreme Court Justice became a mandate to create a pipeline of Latino federal district and circuit court judges.

In November 1971, the United States Senate Committee on the Judiciary began interviewing William H. Rehnquist to be the next Associate Justice of the United States Supreme Court. The lawyer members of the Mexican American Legal Defense and Educational Fund ("MALDEF"), which was founded in 1968, strongly opposed Justice Rehnquist's appointment due to various reported actions taken and comments made by Mr. Rehnquist against the civil rights of minorities, and sought the appointment of a Latino to the United States Supreme Court.

The La Raza National Lawyers Association ("La Raza"), which later became the Hispanic National Bar Association

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past fifty years, the trend has been to select nominees who have served as federal circuit judges. RUSSELL WHEELER, GOVERNANCE STUDIES AT THE BROOKINGS INSTITUTE, THE CHANGING FACE OF THE FEDERAL JUDICIARY 6 (2009), *available at* http://www.brookings.edu/~/media/Files/rc/papers/2009/08_federal_judiciary_wheeler/08_federal_judiciary_wheeler.pdf. Of the last eleven appointees to the Supreme Court, ten were federal circuit judges. Supreme Court of the United States, Biographies of Current Justices of the Supreme Court, http://www.supremecourt.gov/about/biographies.aspx (last visited June 30, 2010).

[3] Judge Garza served on the Southern District of Texas for 18 years until August 1, 1979. *See* HNBA Table of Hispanic Federal Judges, Appendix at 73.

("HNBA"), was founded in California in 1972, by Mario G. Obledo, the Honorable Cruz Reynoso, Ben Aranda III, Louis Garcia, Miguel R. Méndez, Ed Peña, Baltazar Baca, Al Gonzalez, Lorenzo Arredondo, John Huerta and Donato Tapia. The group's immediate intent was twofold: to officially voice their objection to the William Rehnquist nomination and to join MALDEF in advocating for the first Latino to the United States Supreme Court by submitting the name of Judge Reynaldo Garza, by that time a seasoned federal district court judge, as the first Latino to the United States Supreme Court.

A *Western Union* telegram on behalf of La Raza was crafted, signed by each founder, and transmitted to President Nixon and the Senate Committee on the Judiciary, calling for the withdrawal of William Rehnquist's nomination under allegations of racism. In the same telegram, La Raza submitted the name of Judge Reynaldo Garza for nomination as Associate Justice of the Supreme Court.

The hearings before the Senate Committee on the Judiciary on the nomination of William Rehnquist took place during November 1971 and were televised daily. Witnesses from Phoenix, Arizona, in opposition to Rehnquist's appointment, gave testimony regarding the actions of then Assistant United States Attorney Rehnquist, which were viewed as hostile to the general civil rights of Mexican Americans, African Americans, Native Americans and other minorities. Despite the protest lodged by the Hispanic community and the probing into Rehnquist's background, the Committee on the Judiciary approved his nomination. On January 7, 1972, William Rehnquist was sworn in as an Associate Justice of the U.S. Supreme Court.[4]

The first official La Raza Board of Governors meeting took place in San Francisco, California, on October 7, 1972, and the First Annual La Raza National Lawyers Convention was held in Albuquerque, New Mexico, in 1973. Under Mario Obledo, the first president (1971-1976), the organization continued to grow and became the voice of the estimated 3,000 Hispanic lawyers in the country. During those years, Mario Obledo and other members

[4] Supreme Court of the United States, Members of the Supreme Court of the United States, http://www.supremecourt.gov/about/members_text.aspx (last visited July 7, 2010).

carried forth the quest to get a Latino appointed to the Supreme Court. Between 1973 and 1976, the number of Hispanic federal judges however, had only increased by one—President Gerald Ford nominated Juan R. Torruella to the District of Puerto Rico on November 18, 1974.[5]

The Honorable Benjamin Aranda, III, took over the La Raza presidency from 1976 through 1980. As a Los Angeles Municipal Court judge, Judge Aranda compiled and published the first listing of all minority judges in the United States.[6] Due to President Jimmy Carter's unprecedented appointments of sixteen Hispanics to the federal bench, there were more Latino judges to add to the list. Most notably, Jose D. Cabranes was the first Puerto Rican appointed to the federal district court in the continental United States (D. Conn.), where he served from December 10, 1979 to August 12, 1994. Judge Carmen Consuelo Cerezo was the first Latina appointed to the Federal District of Puerto Rico in 1980 and Judge Reynaldo Garza was nominated by President Carter to the Fifth Circuit Court of Appeals in 1979.[7]

In addition to Judge Garza and Judge Cabranes, President Carter appointed the following Latino judges: William Castagna (M.D. Fla. 1977), Santiago Campos (D.N.M. 1978), Jose Alejandro Gonzalez, Jr. (S.D. Fla. 1978), Juan Guerrero Burciaga (D.N.M. 1979), Valdemar Aguirre Cordova (D. Ariz. 1979), James DeAnda (S.D. Tex. 1979), Juan Manuel Perez-Gimenez (D.P.R. 1979), Alfredo Chavez Marquez (D. Ariz. 1980), Hipolito Frank Garcia (W.D. Tex. 1980), Gilberto Gierbolini-Ortiz (D.P.R. 1980),

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[5] Judge Torruella served as a federal district judge until October 30, 1984, when he was nominated to the United States Court of Appeals for the First Circuit. Federal Judicial Center, Biographical Directory of Federal Judges, http://www.fjc.gov/servlet/nGetInfo?jid=2400&cid=999&ctype=na&instate=na (last visited June 30, 2010).

[6] DIRECTORY OF MINORITY JUDGES OF THE UNITED STATES is in its Fourth Edition as published by the American Bar Association and is dedicated to Judge Aranda.

[7] With that appointment, Judge Garza became the first Mexican-American to serve on the Fifth Circuit. He assumed senior status in 1982 and "continued to work until a month before his death" on September 14, 2004. In Memoriam: The Honorable Reynaldo G. Garza, 1915-2004, http://www.utexas.edu/law/news/2004/091604_garza.html (last visited June 30, 2010).

Raul Anthony Ramirez (E.D. Cal. 1980), and Filemon Bartolome Vela (S.D. Tex. 1980).

From 1983 to 1984, Mari Carmen Aponte served as the first female president of what is now known as the HNBA.[8] At the top of her agenda was the decade-old goal of getting the first Latino appointed to the United States Supreme Court, from among the pool of twenty-two federal Hispanic judges.

"It was the Reagan years . . ." recalled Mari Carmen Aponte, when Walter Mondale announced his candidacy for President of the United States. At the time, she did not know any big funders or big names, but was invited to a gathering in Washington, D.C., where Walter Mondale appeared. Mari Carmen approached candidate Mondale and proudly introduced herself as President of the Hispanic National Bar Association, to which Mondale replied, *"What organization is that?"* Aponte, never one to waste time, told candidate Mondale that she had only a moment and if he were elected president, "You *must*, you must appoint a Hispanic to the United States Supreme Court."[9] It was a plea that successive HNBA Presidents were to make over the next twenty-five years, and a goal Mari Carmen Aponte never gave up.

During Gilbert Casellas' tenure as HNBA President from 1984 to 1985, the HNBA focused on a few critical goals: producing the first national directory of Hispanic lawyers, which was completed at the beginning of HNBA President Robert Mendez's term;[10] providing letters of support for the Latino lawyers who were being nominated by President Reagan for federal judgeships; advocating for increased diversity in the legal profession, especially of Latino lawyers in the private sector (law firms and corporate law departments) by testifying at ABA-convened hearings and forums as well as with state and local bar associations; and establishing a

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[8] The following served as HNBA Presidents from 1980 to 1983: John Roy Castillo (Michigan) from 1980 to 1981, Robert Maes (Colorado) from 1981 to 1982, and Lorenzo Arredondo (Indiana) from 1982 to 1983.

[9] Quote taken from the HNBA video documentary on the HNBA's work on achieving the first Latino on the U.S. Supreme Court (projected to be released fall 2010) [hereinafter HNBA Video Documentary].

[10] Robert Mendez (California) served as HNBA President from 1985 to 1986. He was succeeded by William Mendez (New York) from 1986 to 1987, Michael Martinez (Utah) from 1987 to 1988, and Mark Gallegos (Florida) from 1988 to 1989.

meaningful relationship with the American Bar Association, action that led years later to the establishment of "diverse" seats in the ABA House of Delegates for national minority bar associations.

During President Ronald Reagan's first term in office, he appointed seven Hispanics, including the first Latina in the Continental U.S., to federal district courts. Those appointed were Raymond L. Acosta (D.P.R. 1982), Lenore Carrero Nesbitt (S.D. Fla. 1983), Edward J. Garcia (E.D. Cal. 1984), Ricardo Hinojosa (S.D. Tex. 1983), Hector M. Laffitte (D.P.R. 1983), Jaime Pieras, Jr. (D.P.R. 1982), Edward C. Prado, (W.D. Tex., 1984). On October 4, 1984, President Reagan appointed Judge Juan Torruella to the First Circuit Court of Appeals, making Judge Torruella the first Puerto Rican appointed to the First Circuit.[11]

During President Reagan's second term in office, he appointed six Hispanics to federal district courts: Ferdinand F. Fernandez (C.D. Cal., 1985), José Fusté (D.P.R. 1985), Emilio M. Garza (W.D. Tex. 1988), Rodolfo Lozano (N.D. Ind. 1988), Joseph H. Rodriguez (D.N.J. 1985), and Ernest C. Torres (D.R.I. 1987). President Reagan also appointed two U.S. Supreme Court Justices, Antonin Scalia on June 24, 1986, and Anthony Kennedy on November 30, 1987. At the time, the HNBA did not have a Judiciary Committee and thus, did not orchestrate any formal approval or opposition to these nominees.

From 1989 to 1990, Jimmy Gurule served as president of the HNBA. He spent much of his year actively lobbying the White House for the first Latino Supreme Court Justice. On July 25, 1990, President Bush nominated David Souter to the Supreme Court. *USA Today* reporter Tom Mauro documented Gurule's reaction:

> When President Bush walked into the White House briefing room Monday to announce his Supreme Court nominee with a white male at his side, Jimmy Gurule's heart sank. Gurule, head of the Hispanic National Bar Association, for a year has

[11] Judge Torruella served as Chief Judge from 1994 to 2001, succeeding Judge Stephen Breyer, who was appointed as Associate Justice of the U.S. Supreme Court. Federal Judicial Center, Biographical Directory of Federal Judges, http://www.fjc.gov/servlet/nGetInfo?jid=2400&cid=999&ctype=na&instate=na (last visited June 30, 2010).

> been lobbying hard for a Hispanic to be named to the Supreme Court. Bush's appointment of David Souter meant Gurule's campaign had failed, for now. "I thought, 'Aw, shoot,'" said Gurule, a law professor at Notre Dame Law School, who watched the announcement on television. "There was definitely a feeling of disappointment."[12]

The HNBA supported Souter's nomination and testified on his behalf at the Senate Judiciary hearings.[13]

Just before his term ended, Jimmy Gurule concluded that it had been too long (seven years) since the HNBA had a female president and recruited Dolores Atencio, who successfully ran for HNBA President and became the second HNBA female president, serving from 1991 to 1992.

After his HNBA term expired, Jimmy Gurule was appointed Assistant Attorney General for the Office of Justice Programs by Attorney General William Barr. It proved to be a momentous appointment for the HNBA. In his capacity as Assistant U.S. Attorney, Gurule opened the doors to the first Bush administration by introducing the new HNBA leadership to White House Counsel and staff, including Associate Counsel to the President, Lee Liberman, who was in charge of judicial appointments to the federal bench and the U.S. Supreme Court.[14] Liberman and Gurule effectively trained the HNBA group on the judicial vetting and nomination process. John Trasviña, then General Counsel to Senator Paul Simon, also worked with the HNBA to achieve its goals of developing a pipeline of federal judges for consideration and appointment to the Supreme Court. Behind the scenes, this group became intimately acquainted with the political minefield involved in

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[12] Tony Mauro, *Women, Minorities 'Disappointed' at Bush's Choice*, USA TODAY, July 25, 1990.

[13] HNBA, NOTICIAS (Aug./Sept. 1991); *Hearings Before the Senate Committee on the Judiciary on the Nomination of David H. Souter to be Associate Justice of the Supreme Court of the United States*, 101st Cong. 719–22 (1990) (statement of Robert Ruiz, President, HNBA).

[14] Liberman was known as the "ideological gatekeeper of President Bush's judicial selection process." *Hispanic Bar to Boost Pressure for Judgeships*, L.A. DAILY J., Sept. 29, 1992; HNBA NOTICIAS, *Special Judiciary Report*, (May 1992).

advocating Hispanic appointments to the federal bench and the Supreme Court.

In July 1991, the HNBA was invited to the White House on the eve of Clarence Thomas' nomination to the Supreme Court to meet with Chief of Staff John Sununu and White House Counsel C. Boyden Grey, ostensibly, to discuss the future appointment of a Hispanic Supreme Court nominee. The Bush Administration had leaked the names of four potential Hispanic nominees, all federal judges—Emilio M. Garza, Ricardo H. Hinojosa, Jose Cabranes and Ferdinand F. Fernandez. Only Judge Garza was interviewed the weekend before Thomas was chosen.[15] The HNBA tendered the names of Judges Juan R. Torruella and Federico A. Moreno, to no avail.

Then HNBA President-Elect Atencio led a delegation of Latino bar leaders from throughout the country, including the Mexican American Bar Association, the Cuban American Bar Association, the Puerto Rican Bar Association of New York, and other bar associations. Atencio conveyed the delegation's deep disappointment that a Hispanic had not been nominated. When asked why a Latino Supreme Court nominee had not been selected, the group was told it was due to a "lack of unity" within the Hispanic community. Without exception, each Latino bar association's representative communicated its unequivocal support for a Latino nominee, without regard to ethnicity. It was a theme that was to be replayed by both political parties.

During Atencio's tenure as HNBA President, she appointed Christopher Miranda to serve as the HNBA's Judiciary Committee Chair.[16] Atencio, along with HNBA President-Elect Carlos Ortiz and the HNBA Board of Governors, adopted a two-year plan that included 1) overhauling and adopting a stringent and thorough HNBA judicial due diligence and endorsement process; 2) a formalized strategy designed to increase the pool of Latino federal judicial candidates, as well as state judges; and 3) the establishment of the first HNBA Supreme Court Committee.

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[15] *Will the Next Justice Be Hispanic,* L.A. DAILY J., Sept. 8, 1992.

[16] Chris Miranda served as the HNBA Judiciary Chairman for the next three years under HNBA Presidents Carlos Ortiz, Wilfredo Caraballo and Mary Hernandez, and institutionalized the HNBA vetting and judicial endorsement process. Chris prematurely passed away in October 2003 at the age of 46.

By May 1992, the nominations of six Latino candidates for the federal bench and two Latino candidates for U.S. Attorney, endorsed by the HNBA, had stalled in the Senate.[17] Included in this group was Sonia Sotomayor, an independent who had been nominated by Senator Daniel Patrick Moynihan to the U.S. District Court for the Southern District of New York. Then Governor Bill Clinton's bid for the presidency was picking up steam, causing Democrats to shut down the senate confirmation process.

Meanwhile, the HNBA, through the efforts of President-Elect Carlos Ortiz, undertook a national survey of federal and state courts, the results of which was released on May 18, 1992, and which documented the dearth of Hispanic judges.[18] The results were appalling. At the time, Hispanics constituted 9.9% of the total U.S. population. Hispanics held only twenty-two of the 828 federal judgeships and 644 of the 28,475 state judgeships.[19] More than half of the twenty-two Hispanic federal judges were from just two states, California and Texas, states that were still grossly underrepresented in relation to their much larger Hispanic populations. Many of the states with large concentrations of Hispanics, including New York, Pennsylvania, Illinois, Colorado and Washington, D.C., had never had a Hispanic on the federal bench.[20]

On May 18, 1992, in conjunction with Congressman Jose Serrano (D-New York) and under the leadership of Atencio and Ortiz, the HNBA and twenty-three Hispanic bar and legal organizations staged a national press conference in New York on the steps of the New York Supreme Court Building and simultaneously released its findings in press conferences held in fourteen cities

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[17] The six Latino nominees were Sonia Sotomayor (S.D.N.Y.), Lourdes Baird (C.D. Cal.), Irma Gonzalez (S.D. Cal.), Eduardo Robreno (Pa.), Federico Morales (Fla.), and Carlos Bea (N.D. Cal.). The two U.S. Attorney candidates were John Mendez (N.D. Cal.) and Roberto Martinez (S.D. Fla.).

[18] HNBA Nationwide Summary of Hispanics in the Federal Judiciary (1992) (on file with author).

[19] The HNBA Census excluded Puerto Rico; with Puerto Rico, however, there were only twenty-five federal judges at the time of the census. *See* HNBA Table of Hispanic Federal Judges, Appendix at 73.

[20] HNBA, NOTICIAS, *Hispanic American Representation in the Federal Judiciary: Better Than Before—But Still Not Good Enough* (Winter 1996).

throughout the United States.[21] The HNBA called on both political parties and the Senate Judiciary Committee to take immediate action by moving on the six HNBA-endorsed nominees to the federal bench whose nominations would lapse within the next sixty days.[22] The strategy proved effective. On June 11, 1992, the Senate Judiciary Committee approved Sonia Sotomayor's nomination, prompting HNBA President Atencio to comment:

> The historical exclusion of Hispanics from the New York federal bench finally has been broken . . . Sotomayor symbolizes the talent that Latinas have long contributed to this country.[23]

On August 12, 1992, the Senate confirmed Sonia Sotomayor, Lourdes Baird, Irma Gonzalez and Eduardo Robreno.[24] The HNBA played a direct role in securing the appointments of these four new federal judges, among them and unbeknownst to the HNBA at the

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[21] Deborah Pines, *Group Urges Appointment of More Hispanic Judges*, N.Y.L.J. (May 19, 1992). The HNBA called upon the Senate to "(1) Expedite the confirmation process of the six Latino nominees currently pending . . . (2) Expedite the confirmation process of Roberto Martinez and John Mendez for U.S. Attorney . . . (3) Prioritize the nomination and appointment of Latinos to state and federal judgeships, particularly in those states with significant Latino populations; (4) Ensure that nominees, including Latino candidates, have a record of positive involvement in the Latino community; (5) Ensure the appointment of Latino attorneys to quasi-judicial boards and other high level, policy making positions; and (6) Eliminate state at-large elections for judges and replace them with single-member districts." Dolores Atencio, President, HNBA, Press Statement (May 18, 1992).

[22] Throughout 1992, the HNBA leadership met with the Senate Judiciary Committee and their staff to push the appointment of the Latino nominees, in particular with Senator Joe Biden (aide Cynthia Hogan), Senator Edward Kennedy (aide Suzanne Ramos—now Judge Ramos) and Senator Orin Hatch (aides Anna Cabral and Mark Disler). After the HNBA press conference, Senators Biden, Kennedy and Simon voiced their commitment and prioritization of women and minority judicial nominees. HNBA, NOTICIAS, *Special Judiciary Report* (May 1992).

[23] *Hispana Moves Closer to U.S. Judgeship*, HISPANIC LINK WEEKLY REPORT, June 22, 1992.

[24] *3 Latinas Get Judgeships*, HISPANIC LINK WEEKLY REPORT, Aug. 24, 1992. Roberto Martinez and John Mendez also were confirmed. John Mendez was later appointed to the federal bench by President George W. Bush.

time, the woman who would become the first Hispanic Associate Justice of the Supreme Court.

The 1992 fall national congressional elections proved pivotal to the HNBA's cause for a Latino U.S. Supreme Court Justice, as Nydia Velasquez (D-NY) emerged on the national scene and would later play a crucial role in the push for the first Hispanic Supreme Court Justice.

The HNBA then turned its full attention to increasing the federal pipeline of Latino judges and building unity around the issue of the first Latino on the United States Supreme Court. On November 13, 1992, the HNBA commenced its "Campaign for Unity" in New York, with its first summit, which was intended to promote unity, build bridges and strengthen relationships between the HNBA and state and local Hispanic bar associations across the nation.[25] Federal Judge Sonia Sotomayor was present and briefly addressed the participants, thanking the HNBA for its work on her behalf.

The HNBA, having convened its first Supreme Court Committee[26] in September 1992 was, by January 1993, sending letters, personal data questionnaires, and the newly-revised judicial endorsement policies and procedures, to 300 federal and state judges, academicians and prominent attorneys in the country. In early January 1993, invitations were sent to state and local Hispanic bar associations in the country soliciting their participation in the Committee's work. On February 5 and 6, 1993, the Committee worked with fifteen Hispanic bar associations and evaluated approximately eighty candidates.[27] From this group of eighty, the

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[25] HNBA, NOTICIAS, *HNBA Conducts Unprecedented Regional Meeting to Promote Unity* (Fall 1992).

[26] Committee members included: Art Garcia (Ariz.); Fernandez Caranza (Ill.); Richard Gonzales (Colo.); Peter Guerrero (Ariz.); Bernando Garcia (Ariz.); Jennifer Rivera (Colo.); Teresa Ledger (N.M.); Yvonne Gonzales Rogers (Cal.); Mary Hernandez (Cal.); Carlos Ortiz (N.Y.); Martha Romero (Cal.); Dolores Atencio (Colo.); Robert Anchondo (Tex.); Enrique Ramirez (Cal.); Bob Hernandez (Mass.); Aurora Ares (Fla.); Christopher Miranda (Colo.).

[27] *Hispanic Bar Lists 7 For Top Court*, CHI. DAILY L. BULLETIN, Apr. 1, 1993.

Committee selected twenty candidates to interview. On March 6, 1993, the Committee selected the final candidates for endorsement.[28]

On April 1, 1993, the HNBA released its first list of Latino Supreme Court candidates, dubbed the "Magnificent Seven" by the national press: Joseph F. Baca (D.N.M.), Fortunato P. Benavides (Tex.), Jose A. Cabranes (D. Conn.), Vilma Martinez (private practitioner, Cal.), Daniel Morales (Tex. Attorney General), Cruz Reynoso (Cal.) and Ricardo Urbina (D.C.).[29] The timing could not have been better. Justice Byron White announced his retirement on March 19, 1993 and President Bill Clinton was to make his first Supreme Court appointment. By letter dated April 1, 1993, the Congressional Hispanic Caucus wrote President Clinton, urging the appointment of a Hispanic to replace Justice Byron White.[30] The Caucus, applauding the HNBA's efforts, did not endorse any particular judge on the HNBA's list but used it in soliciting President Clinton. "We're sticking to the issue of 'Mr. President, it's time for a Hispanic justice.' But we would be happy with any person on the list," said Rep. Jose Serrano (D-N.Y), the Caucus chairman.[31]

On June 3, 1993, the HNBA and twenty-seven national Latino organizations comprising the National Hispanic Leadership Agenda, met with President Clinton, who was "very noncommittal about naming a Latino to the Supreme Court."[32] Reminding him of his campaign promise to "make the court look like America,"[33] HNBA President Carlos Ortiz urged him to appoint the first Hispanic

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[28] HNBA, NOTICIAS, *Hispanic National Bar Association's Selection Process for the First Hispanic American Supreme Court Justice* (Spring 1993).

[29] *Hispanic Group Pushing Former McAllen Attorney for High Court*, STATES NEWS SERVICE, Apr. 1, 1993; *Hispanic Bar Offers 7 for Supreme Court*, N.Y.L.J., Apr. 2, 1993; *Hispanic Bar Group Lobbies for High Court Slot*, S.F. CHRON., Apr. 2, 1993; *Panel Endorses 7 for Supreme Court*, ALBUQUERQUE J., Apr. 2, 1993; *Hispanic Lawyers Offer Supreme Court Choices*, PHOENIX GAZETTE, Apr. 2, 1993; *Los 7 Magnificos*, EL DIARIO, 2 de Abril de 1993; HNBA, NOTICIAS, *Hispanic National Bar Association Leads Nationwide Efforts to Secure Hispanic American Supreme Court Justice* (Spring 1993).

[30] Letter from Congressional Hispanic Caucus to President William Jefferson Clinton (April 1, 1993).

[31] Lisa Richwine, *Hispanic Group Pushing Former McAllen Attorney for High Court*, STATES NEWS SERVICE, Apr. 1, 1993.

[32] *Clinton Confers with Latino Leaders*, HISPANIC WEEKLY REPORT, June 7, 1993.

[33] *Hispanics Pressing for High Court Post*, SAN JUAN STAR, Apr. 8, 1993.

to the Supreme Court from the HNBA's list.[34] After Governor Mario Cuomo withdrew his name from consideration, Judge Jose Cabranes appeared as the leading Latino candidate.[35] "Twenty-five million Hispanics in this country are without a voice at the nation's highest level of the legal system," said Ortiz, "Hopefully, we won't have to wait any longer."[36]

But waiting another sixteen years is what the HNBA and the Latino community would do as President Clinton nominated Ruth Bader Ginsberg to the Supreme Court.[37] The HNBA, though deeply disappointed, endorsed Ginsberg and testified on her behalf on July 23, 1993.[38] In addressing the Senate Judiciary Committee, HNBA President Carlos Ortiz stated:

> On a related and important note, we urge you, the members of this committee, to remember that the Hispanic community today faces the same formidable barriers of neglect and opposition that Judge Ginsburg encountered in her early career. In your own judicial recommendations, nominations and confirmations, we encourage you to draw from among the talented pool

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[34] *Seven Worthies on 'Short List' of High Court Recommendations*, KANSAS CITY STAR, Apr. 15, 1993; *Hispanics Seek Spot on Court*, DALLAS MORNING NEWS, Apr. 18, 1993.

[35] *Update*, N.Y.L.J., Apr. 6, 1993; *Cuomo Withdraws Name from Court Consideration*, ASSOC. PRESS, Apr. 8, 1993; Paul M. Barrett & Jeffrey H. Birnbaum, *Clinton Must Reconsider Nominee List After Cuomo Declines High-Court Post*, WALL ST. J., Apr. 8, 1993, at A2; *Cuomo Bows Out; Hispanics Rally For Supreme Court Seat*, ORLANDO SENTINEL TRIB., Apr. 8, 1993; *Hispanics Press for Judgeship*, N.Y. DAILY NEWS, Apr. 8, 1993; David Margolick, *At the Bar*, N.Y. TIMES, Oct. 29, 1993.

[36] Michelle Mittelstadt, *Hispanic Bar Association Urges Clinton to Appoint Hispanic Justice*, ASSOC. PRESS, Apr. 7, 1993; *Clinton Receives Court Candidates*, HISPANIC LINK WEEKLY REPORT, Mar. 29, 1993.

[37] *Hispanics Disappointed that Clinton Passed Them Over For Court*, STATES NEWS SERVICE, June 15, 1993; *No Knock on Judge Ginsburg, But She's Not Hispanic*, PHOENIX GAZETTE, June 21, 1993.

[38] *HNBA Backs Ginsburg for U.S. Supreme Court*, HISPANIC LINK WEEKLY REPORT, July 26, 1993. *Hearings Before the Senate Committee on the Judiciary on the Nomination of Ruth Bader Ginsburg to be Associate Justice of the Supreme Court of the United States*, 102nd Cong. 552–57 (1993) (statement of Carlos Ortiz, President, HNBA).

> of Hispanic-Americans throughout our country's legal communities.
>
> We also ask you to pay particular attention to the pressing need for Hispanic-Americans to sit and serve with distinction on the Nation's Federal courts . . . .
>
> Before concluding our statement, we must express our sincere hope that the next nominee to the U.S. Supreme Court who comes before the Senate Judiciary Committee will be an Hispanic-American. Just as we believe the Nation will benefit from the appointment of Judge Ginsburg, we also strongly believe that our Nation needs and would greatly benefit from an Hispanic American—actually, the first ever Hispanic-American Supreme Court Justice.[39]

On April 6, 1994, Justice Harry Blackmun announced his retirement from the Supreme Court, and President Bill Clinton had a second opportunity to appoint the first Hispanic to the nation's highest court.[40] With the "Magnificent Seven" in hand, the HNBA, together with MALDEF, the Puerto Rican Legal Defense & Education Fund, the Cuban American National Council, the National Hispanic Leadership Agenda, and the National Council of La Raza ("National Council") held an unprecedented national joint press conference on May 4, 1994, urging President Clinton to nominate a Latino. In anticipation of and to thwart the "lack of unity" excuse used in 1991, National Council President Raul Yzaguirre, MALDEF President Antonia Hernandez and HNBA President Wilfredo Caraballo, warned in their collective press release:

> We do not know who fabricated the potentially divisive rumor, nor do we understand why. But one thing we are very certain of is that we will not allow our diversity to be used against us; we will not allow

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[39] *Id.* at 554.

[40] Linda Greenhouse, *The Supreme Court: The Legacy; Justice Blackmun's Journey: From Moderate to a Liberal*, N.Y. TIMES, Apr. 7, 1994, at A24.

> anyone to create divisiveness where none exists . . . From this point forward, let there be no mistake about the fact that we are strongly united.[41]

Thereafter, the HNBA made its case in the press for the appointment of a Latino to the Supreme Court.[42]

Notwithstanding the HNBA's effort and that of the Hispanic community, on May 15, 1994, President Clinton nominated Stephen Breyer to the U.S. Supreme Court. In the Spring 1994 edition of HNBA's *Noticias*, HNBA President Caraballo reported to the membership:

> President Clinton has again passed up an opportunity to make history by naming a Hispanic to the Supreme Court . . . When Justice Blackmun resigned, we immediately began to remind the President of the statement he has made in the past concerning the "face of Justice" and his promise to include ours. We had a press conference in Washington. The Congressional Hispanic Caucus had a press conference. Ours was truly a national effort. We involved every major Hispanic . . . in our effort. Ours was truly a national Hispanic movement. In spite of our efforts and our unprecedented unity, the face of justice continues to exclude us. Our frustration is tangible.

Again, the HNBA was called upon by the White House to testify, and did so, on Judge Breyer's behalf. President Wilfredo Caraballo testified in part:

> When Justice Blackmun announced his resignation, the Hispanic National Bar Association received many calls from Hispanics around the

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[41] HNBA, NOTICIAS, *Hispanic American Representation in the Federal Judiciary: Better Than Before—But Still Not Good Enough* (Winter 1996).

[42] *Who to Pick for the High Court? The Case for a Hispanic Justice*, L.A. DAILY J., May 12, 1993; Carlos G. Ortiz, *The Court Must Look Like Us All*, NAT'L L.J., May 24, 1993, at 15; Carlos G. Ortiz, *The Case for a Hispanic on the High Court*, USA TODAY, June 7, 1993, at A13.

> country. It was universally believed by the members of our organization and others that the 108th Justice to the Supreme Court of the United States was going to be an Hispanic. We believed the promise that the face of justice was finally going to include ours.
>
> We believed this not because there exists some numerical imperative for sitting on the Supreme Court, but because there exists a moral imperative that all who are among the judged have the right to expect that they may be represented in the faces of those who judge. The members of the Hispanic National Bar Association believed that I would be sitting here today testifying about the qualifications of an Hispanic nominee, a prospect which was personally awe-inspiring.
>
> We relate this to you so that you may sense the difficulty our organization has had in coming to grips with this latest disappointment. Nevertheless, as lawyers, we believe that we cannot abdicate our responsibility to consider and evaluate the credentials of the person who was ultimately nominated. As lawyers from the Hispanic community, we must represent our community before you. As Americans, we owe the Nation the benefits of our thoughts. [43]

Throughout 1993 and 1994, in the midst of the Ginsburg and Breyer appointments, under the capable and experienced hands of Judiciary Chair Chris Miranda and HNBA President Wilfredo Caraballo, the HNBA endorsed and successfully lobbied the appointment of Hispanics to the federal bench, including but not limited to, Jose Cabranes (2nd Cir.), Richard Paez (9th Cir.), Samuel Paz (C.D. Cal.), Julio Fuentes (3rd Cir.), Carlos Lucero (10th Cir.), Ricardo Urbina, (D.C. Ct. App.), Ruben Castillo (N.D. Ill.) and

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[43] *Hearings Before the Senate Committee on the Judiciary on the Nomination of Stephen G. Breyer to Be Associate Justice of the Supreme Court of the United States*, 103rd Cong. 611–13 (1994) (statement of Wilfredo Caraballo, President, HNBA).

David Briones (W.D. Tex.).[44] Judge Rosemary Barkett was appointed to the U.S. Court of Appeals for the Eleventh Circuit and became the first Latina Circuit Court Judge. For the first time, Hispanics also were appointed to the U.S. Tax and Immigration Court: Juan Vasquez, Alberto E. Gonzales and Bertha Zuniga, the first Mexican-American woman appointed to this bench.[45] Thus, the pipeline of federal Hispanic judges expanded with President Clinton's historic appointments of twenty-three Hispanics to federal courts.[46]

In September 1994, Mary Hernandez became the third female HNBA president. To institutionalize the HNBA's advocacy of Latino judges, she hired the HNBA's first Executive Director and, through her work with other national bar associations, focused on getting a Latino nominated for Supreme Court Justice, as well as filling vacancies on the Ninth Circuit.[47] Though the next U.S. Supreme Court vacancy was not to occur for another eleven years, the HNBA persisted in its quest and cemented its reputation on the Hill as the leading advocate for the appointment of Latino federal judges and as *the* voice for the appointment of the first Latino Supreme Court Justice.

On May 16, 1996, under the leadership of HNBA President Jose Gaitan, the HNBA participated in a second national Hispanic Unity Conference and held a press conference in which it and other national organizations reaffirmed their unity in support of a Hispanic on the United States Supreme Court.[48] In a private meeting in May 1996 with Vice President Al Gore, the HNBA was assured that

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[44] *Jersey Lawyers Labor to Raise Hispanic Influence,* SUNDAY STAR LEDGER, Sept. 26, 1993; *Hispanics Find Their Political Power*, S.F. DAILY J., Sept. 27, 1993; HNBA, NOTICIAS, *Judicial Committee Report* (Summer 1995); Andrew Grene, *Unity 'Real Winner' in Court Pick: Hispanic Lawyers*, CHI. DAILY L. BULLETIN, Aug. 12, 1993. By this time, the HNBA also was assisting local and state Hispanic bar associations in their efforts to diversify state benches by endorsing and lobbying on behalf of their candidates. HNBA, NOTICIAS (Winter 1993); Gary Spencer, *Ciparick Named to Court of Appeals*, N.Y.L.J., Dec. 2, 1993.

[45] HNBA, NOTICIAS, *Judicial Committee Report* (Summer 1995).

[46] *See* HNBA Table of Hispanic Federal Judges, Appendix at 73.

[47] HNBA, NOTICIAS (Summer 1995).

[48] During the same year, the members of the HNBA judiciary formed the HNBA Judicial Council Section as a means of encouraging the participation of all members of the judiciary in the work of the HNBA.

"unity in the Hispanic community was no longer an issue, if it ever had been." [49]

On December 14, 1996, HNBA President Hugo Chaviano commissioned the second HNBA Supreme Court Committee chaired by Chicago lawyer Martin Castro. In March 1997, the Committee produced a newly comprised Supreme Court list of six candidates, including five of the original "Magnificent Seven:" Judges Joseph E. Baca, Fortunato "Pete" Benavides, Jose Cabranes, Gilbert Casellas, Vilma Martinez and Cruz Reynoso. [50]

Under HNBA President Gregory Vega's tenure from 1997 to 1998, the HNBA organized two significant White House briefings—one on September 23, 1997, with 100 past and current HNBA leaders in attendance, and a second on May 7, 1998, involving for the first time, the minority bar leaders. The failure to appoint a Latino to the Supreme Court and the need for more Latinos on the federal bench were highest on the HNBA's list of priorities. The White House briefings held during Greg Vega's term were purposeful and designed to keep the issue of a Latino Supreme Court justice at the top of the White House's list. Commenting on the absence of a Hispanic on the Supreme Court, Judiciary Chair Martin Castro stated:

> [T]his historic lack of representation must be remedied. The reasons go beyond just statistics . . . it would also send a strong message to Americans across the country that Americans of Hispanic descent are one and the same, that we have contributed greatly to the building of this nation . . . I hope we have an appointment before the next presidential election. This is not a Democratic-Republican issue. This is an American issue.[51]

During Lillian Apodaca's tenure as HNBA President from 1998 to 1999, the paths of then federal Judge Sonia Sotomayor and

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[49] HNBA, NOTICIAS (Spring 1996); HNBA, NOTICIAS, *Hispanic American Representation in the Federal Judiciary: Better Than Before—But Still Not Good Enough* (Winter 1996).

[50] HNBA, NOTICIAS (Spring 1997).

[51] HNBA, NOTICIAS (Sept. 25, 1998).

the HNBA would cross for the second time. President Clinton had nominated Judge Sotomayor for elevation to the Second Circuit Court of Appeals, but her nomination, like her initial federal nomination, had stalled.

The Republican Party held the majority in the Senate with Senator Orin Hatch serving as Chair of the Senate Judiciary Committee and Senator Trent Lott serving as Senate Majority Leader. Lillian Apodaca spent 1998 and 1999 "roaming the halls of Congress, trying to convince the Senate majority leadership to bring these [Hispanic] nominees to a full floor vote . . . vote them up or down."[52]

Apodaca recalled one meeting (unannounced and uninvited) with Senator Lott, Congressman Rudy Becerra (D-Cal.), MALDEF President Antonia Hernandez, and HNBA Board Member Ramona Romero. According to Apodaca, Senator Lott's main reason for refusing to allow a Senate vote on Judge Sotomayor's nomination (a reason he repeated several times to Apodaca and others) was "because the next step was the Supreme Court."[53] *The Nation* documented Senator Lott's *"Latina"* strategy.

> Senate majority leader Trent Lott has established a new rule for the federal judicial selection process. There can be one, and only one, Hispanic woman on the United States Courts of Appeals. Since there is already one such judge (Rosemary Barkett, on the 11th Circuit), other Hispanic women can serve on trial courts, but the appellate courts are officially off-limits.
>
> Too bad for Judge Sonia Sotomayor . . . .
>
> . . . .
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> After all, rules are rules, even if they are quotas. The majority leader can't just make an exception for Judge Sotomayor. It is too dangerous, according to reports citing Senate Republican staff aides, to confirm another Hispanic woman as an

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52 HNBA Video Documentary, *supra* note 9.

53 *Id.*

> appellate judge. Confirming her would be an admission that she is a highly qualified jurist. (Never mind that she is a highly qualified jurist.)
>
> Once they admit that, the Senate majority would be sunk. What if a sitting Supreme Court Justice were to retire? And then what if the President decided to name a Hispanic judge to the vacant seat? And then what if the President ignored the recommendations of the Hispanic National Bar Association, which has not included Judge Sotomayor on its list of proposed nominees for the High Court? And then what if she were nominated for the vacancy? How could the Senate fight her nomination? You can see that the risk is simply too great.[54]

Senator Lott's reasoning, and that of the majority leadership, proved prophetic.

The HNBA was persistent and the Senate majority leadership finally allowed the vote on Judge Sotomayor and other Latino nominees, including Judge Richard Paez (9th Cir.) and Judge Julio M. Fuentes (3rd Cir.).[55] On October 3, 1998, Judge Sonia Sotomayor was elevated to the Court of Appeals for the Second Circuit.[56]

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[54] Deborah Goldberg, *Lott's Hispanic Quota*, THE NATION, Oct. 5, 1998, at 8.

[55] For four years, the HNBA persisted in its lobbying on behalf of Richard Paez, who was nominated by President Clinton for the Ninth Circuit in 1996 but was not confirmed until March 14, 2000. HNBA NOTICIAS, *Judged and Confirmed, The Trials of Judge Richard A. Paez* (Summer 2000). "The story goes that last fall Sen. Barbara Boxer used two words to break the logjam on Los Angeles U.S. District Judge Richard Paez's nomination to the Ninth Circuit . . . Senator Majority Leader Trent Lott wanted a friend, the mayor of Tupelo, Miss., named to the Tennessee Valley Authority. Boxer blocked the mayor, whom she had never heard of, causing a Lott aide to ask what possible interest the Californian would have in the TVA. Boxer is said to have replied, 'Richard Paez.'" Gail Diane Cox, *On the Bench*, March 2000, *available* at http://www.law.com/regionals/ca/judges/9circuit/paez.htm.

[56] Federal Judicial Center, Biographical Directory of Federal Judges, http://www.fjc.gov/servlet/nGetInfo?jid=2243&cid=999&ctype=na&instate=na (last visited July 6, 2010).

By 2000, after nearly three decades of lobbying, it appeared that the HNBA had convinced the American press, if not all Americans, that their time had arrived.

> In judicial politics, Hispanics have arrived. Republicans and Democrats, both eager to reach out to what will soon be the nation's largest minority group, say that odds are that the court's next member will be its first Hispanic. The buzz over a Hispanic justice is so strong that some people pushing non-Hispanic candidates have conceded the next nomination and are focusing on the one after that.
>
> There are now 31 million Hispanics in the USA, and their political influence is rising with their numbers. Hispanic law groups have become effective lobbyists and are touting several lawyers for the Supreme Court. Jose Cabranes, a federal appeals court judge in Connecticut, is high on the informal list Gore would consider. Another appellate judge, Emilio Garza of Texas, would get a serious look from Bush.[57]

HNBA President Rafael Santiago was also confident that it was time for the first Hispanic Supreme Court Justice. Though there was no vacancy, on May 11, 2001, he wrote President George W. Bush, "We believe that you can be the president who will recognize the merits of our people."[58] In the Winter of 2001, HNBA President Rafael Santiago reconstituted the third Supreme Court Committee and appointed Roberta Sistos (the first Latina to chair the HNBA's Supreme Court Committee) and Juan Carlos Iturregui to chair the Committee and to gear up for the next U.S. Supreme Court vacancy, which did not occur during Santiago's tenure.[59]

In November 2004, HNBA President Alan Varela reconstituted the fourth Supreme Court Committee with the charge of compiling a short list, as well as a long list, of qualified candidates

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[57] Joan Biskupic, *Who's Next for the Court? Election May Decide Who Gets to Name Up to 3 New Justices*, USA TODAY, Sept. 28, 2000, at 1A.

[58] HNBA, NOTICIAS (Summer 2001).

[59] HNBA, NOTICIAS (Winter 2001).

for the U.S. Supreme Court. Denver lawyers Ben Ochoa and Gilbert Roman were appointed Co-Chairs.[60]

In March 2005, the members of the Supreme Court Committee evaluated and revamped the HNBA's judicial procedures and criteria and compiled a long list of qualified Latino Supreme Court nominees. In April, the Supreme Court Committee, in teams of two, conducted the due diligence on all recommended nominees. Final due diligence and interviews were conducted in May 2005. On May 13, 2005, the Supreme Court Committee submitted its short and long lists to the HNBA Board of Governors for approval.

For the first time, Judge Sonia Sotomayor appeared on the HNBA's short list. The list of nominees also included Judges Jose Cabranes, Julio M. Fuentes, Emilio M. Garza, Victor Marrero, Carlos R. Moreno, Federico Moreno and Alberto R. Gonzales. In anticipation of a Supreme Court vacancy, the short list, as well as the long list of 100 qualified Latino candidates for the Supreme Court, was presented to President Bush on June 6, 2005, at a meeting between the HNBA and Chief Legal Counsel.[61]

On July 1, 2005, the HNBA issued a press release announcing its short list of nominees.[62] On that same day, the press announced the resignation of Supreme Court Justice Sandra Day O'Connor.[63] The leading Hispanic candidates, though not *the* lead candidates, included Judges Alberto Gonzales and Jose Cabranes. The HNBA was optimistic that President George W. Bush, empathetic to the Hispanic community, would appoint the first Hispanic to the Supreme Court. What the HNBA did not know was

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[60] In addition to the Co-Chairs, the Supreme Court Committee consisted of Lillian Apodaca (N.M.), Juan Carlos Benitez (D.C.), Duard Bradshaw (Ohio), Grissele Camacho (N.J.), Alberto Estrella (P.R.), Dan Gandara (Wash.), Georgia Jacquez Lewis (N.C.), Richard Negrin (Pa.), Dan Perez (Tex.), George Perez (Minn.), Javier Rodriguez (Fla.), John Peter Suarez (Ark.), Damaris Torrent (N.Y.) and Jose Villareal (Cal.). After Gilbert Roman was appointed to the Colorado Court of Appeals, Richard Negrin (Pa.) assumed the role of Co-Chair of the Committee.

[61] Press Release, HNBA, HNBA Urges Appointment of Hispanic Supreme Court Justice (Sept. 5, 2005).

[62] Press Release, HNBA, HNBA Provides White House with Nominee List (July 1, 2005).

[63] William Branigin, Fred Barbash & Daniela Deane, *Supreme Court Justice O'Connor Resigns*, WASH. POST, July 1, 2005.

that President Bush, who had appointed Harriet Miers as head of the search committee in charge of searching for candidates to replace Justice O'Connor, was considering nominating Miers to replace Justice O'Connor.[64] The HNBA's optimism was abbreviated as the President nominated John Roberts on July 15, 2005. The HNBA requested a meeting with nominee Roberts "to gain additional and more recent insights into his views and to ensure that the HNBA position on his confirmation [was] one based on a thorough and fair review of his current positions."[65] The meeting would never occur.

Chief Justice William H. Rehnquist died on September 3, 2005, while Roberts' confirmation was pending before the Senate.[66] Three days later, on September 6, 2005, President Bush withdrew Roberts' nomination as Justice O'Connor's successor and nominated him to the position of Chief Justice of the Supreme Court.[67] President Bush asked the Senate to expedite Roberts' confirmation hearings in order to fill the vacancy by the beginning of the Supreme Court's session in early October. The Senate complied and on September 29, 2005, confirmed Roberts' nomination as the 17th Chief Justice of the Supreme Court.[68]

On October 3, 2005, President Bush nominated Harriet Miers for Justice O'Connor's vacancy.[69] Due to the controversy surrounding her nomination, Miers withdrew her name from consideration on October 27, 2005,[70] fueling HNBA hopes for the long-awaited Latino nominee.

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[64] Joan Biskupic & Toni Locy, *Miers Was Vetted by Few in Administration*, USA TODAY, Oct. 18, 2005, at A4.

[65] Press Release, HNBA, HNBA Renews Its Request to Meet With U.S. Supreme Court Nominee Judge John G. Roberts and Seeks Answers to a Number of Questions and Concerns (Sept. 3, 2005).

[66] Federal Judicial Center, Biographical Directory of Federal Judges, http://www.fjc.gov/servlet/nGetInfo?jid=1988&cid=999&ctype=na&instate=na (last visited July 7, 2010).

[67] Under 28 U.S.C. § 3, Justice John Paul Stevens was Acting Chief Justice from Rehnquist's death on September 3, 2005, until September 29, 2005.

[68] Federal Judicial Center, Biographical Directory of Federal Judges, http://www.fjc.gov/servlet/nGetInfo?jid=3001&cid=999&ctype=na&instate=na (last visited July 6, 2010).

[69] Timothy Williams, *Bush Names Counsel as Choice for Supreme Court*, N.Y. TIMES, Oct. 3, 2005.

[70] Michael A. Fletcher & Charles Babington, *Miers, Under Fire From Right, Withdrawn as Court Nominee*, WASH. POST, Oct. 28, 2005, at A1.

HNBA President Alan Varela immediately called on President Bush to appoint a Latino to fill the vacancy from among the list of eight candidates previously given to him in June.[71] Jimmie Reyna, then HNBA National Vice President-Regions, described the flurry of activity and excitement that transpired during this period as follows:

> We were teed-up wonderfully. We had a short list of eight potential nominees and, in the background, we had an extended list of eighty. We started working very hard and the work got furious. We mounted an organization-wide grass-roots effort, but before we could really get into full gear, John Roberts was nominated. Naturally, we were very disappointed. We resolved to move more quickly the next time a position opened up, but before we could take a second breath, Chief Justice Rehnquist passed away. So now there was another position, and we determined to move quickly, which we did. Within a short period of time, President Bush nominated John Roberts as Chief Justice of the Supreme Court, which meant that the Rehnquist position was filled, but the John Roberts position was now open, and so we started aggressively pushing for that position.[72]

Just three days later, on October 31, 2005, President Bush ignored the HNBA's call, and nominated Samuel Alito to the Supreme Court. Samuel Alito was confirmed on January 31, 2006, as the 110th Associate Justice of the U.S. Supreme Court.[73]

Through President Nelson Castillo, the HNBA announced its reaction:

> The . . . HNBA expresses its profound disappointment that for the third time in the last six

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[71] Press Release, HNBA, HNBA Renews Its Call for Nomination of a Hispanic to the U.S. Supreme Court (Oct. 28, 2005).

[72] Mr. Reyna's description is based on a personal interview taken in June 2009.

[73] David Stout, *Alito is Sworn In as Justice After 58-42 Vote to Confirm Him*, N.Y. TIMES, Jan. 31, 2006.

> months President George W. Bush has ignored the estimated 41.3 million Americans of Hispanic descent in his choice to fill a Supreme Court vacancy.
>
> Today, in nominating Judge Samuel Alito, the President has missed an opportunity to create a historic legacy by nominating the first Hispanic to the Supreme Court. On June 6, 2005, the HNBA presented the President with a list of . . . the brightest minds in the legal profession. The President's decision to overlook them is inexplicable.
>
> This nomination was critical for the Hispanic community, which now represents the largest minority group in our Nation . . . Once again, the President has ignored our recommendations and our community" . . . .
>
> . . . .
>
> Unfortunately, as our country moves forward with an ever-changing America, the Supreme Court will not be representative and instead, will be devoid of the unique perspective and the invaluable contributions a Hispanic jurist could make. Without a Hispanic Justice, the Supreme Court's "robust exchange of ideas" during important deliberations and decisions simply cannot reflect the America we live in today.[74]

President Bush, like all of his predecessors, failed to appoint the first Latino Supreme Court Justice, but made history by appointing the most Hispanics to the federal bench—twenty-seven.[75]

In September 2008, nine years after the last HNBA female president, Ramona Romero took charge of the HNBA. Within two months, Senator Barack Obama was elected President of the United States.

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[74] Press Release, HNBA, The HNBA Responds to President's Refusal to Name Hispanic Supreme Court Justice (Oct. 31, 2005).

[75] *See* HNBA Table of Hispanic Federal Judges, Appendix at 73.

On November 2, 2008, election night, the first HNBA female President Mari Carmen Aponte and the first Puerto Rican female Congresswoman Nydia Velasquez were together in New York. Aponte recalled,

> When Barack Obama won the election, we were together in New York that night and we looked at each other and we didn't have to say much. We knew that Sonia Sotomayor's time had come . . . we were wild with excitement because we knew that for the first time, we had a real possibility ,. . . she knew and I knew that that was going to be our agenda for the next three months.[76]

From nearly the moment Senator Barack Obama was elected president, HNBA President Ramona Romero was on task to ensure that this time, a Latino would be appointed to the United States Supreme Court.

> Soon after President Obama's election, HNBA President Ramona Romero wrote to him, urging him to appoint Latinos to the federal bench and the Executive Branch, and to make history by nominating the first Hispanic American Justice to the U.S. Supreme Court. That letter was followed by other communications, both formal and informal, with the transition team and, after the inauguration, with the White House. These communications included meetings with White House Counsel and senior personnel, letters and discussions.
>
> Anticipating a Supreme Court vacancy during President Obama's first term, President Romero asked Carlos Ortiz and Robert Raben to co-chair a Special Committee on the U.S. Supreme Court focused on the development and implementation of the HNBA's advocacy strategy for the nomination of a Hispanic American to the high court. Ortiz and Raben

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[76] HNBA Video Documentary, *supra* note 9.

> previously led the HNBA's Supreme Court effort during the Clinton Administration. The Special Committee also included six other former HNBA National Presidents who served during the previous twenty-five years—Gilbert Casellas, Mark Gallegos, Dolores Atencio, Mary Hernandez, Greg Vega, Lillian Apodaca, and University of Houston Law Professor Michael Olivas."[77]

The HNBA's fifth reconstituted Supreme Court Committee went into full gear in June 2009. "The Committee developed and implemented a plan to identify potential Hispanic American nominees to the U.S. Supreme Court, educate the public on the need for and importance of that nomination, and advocate for the appointment of a Latino or Latina."[78]

On May 13, 2009, the Committee issued its long list of potential Hispanic American nominees to the U.S. Supreme Court, which included the fourteen Latino judges on the federal courts of appeals, the fifty-seven Hispanic judges on federal district courts, and the eleven Hispanic judges on state courts of last resort.[79] The HNBA was not taking any chances by excluding anyone in the federal pipeline which it had spent forty years developing:

> The HNBA has urged the President to take this opportunity to make history and "to select from the many talented and experienced Hispanic American jurists and lawyers who are both willing and able to serve our country" on the Supreme Court. Hispanic lawyers share the interest of our fellow Americans in preserving the public's trust in the Supreme Court as the ultimate arbiter of justice in our society. We believe that the participation of an outstanding, well-prepared Latina or Latino on the Supreme Court

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[77] HNBA, Sotomayor Confirmation, http://www.hnba.com/news-events/sotomayor-confirmation-resources (last visited July 20, 2010).

[78] *Id.*

[79] Press Release, HNBA, HNBA Issues List of Hispanic American Jurists and Statement Concerning a Hispanic Appointment to the United States Supreme Court (May 13, 2009).

> would enhance its credibility and respect among the large and growing Hispanic community in the United States, which now numbers over 45 million people—15% of the population—and is expected to triple in size by 2050 and to represent 29% of the population. *Most importantly, we believe that this more inclusive participation will be in the best interest of all Americans by expanding the perspectives that inform the evolution of our country's jurisprudence.*
>
> . . . .
>
> The failure of past U.S. Presidents to appoint a Hispanic American to the Supreme Court has been attributed to an alleged absence of a pool of suitable candidates . . . "[T]he HNBA reminds the American people, the Administration and the U.S. Senate that there are now at least 82 Latinas and Latinos on the federal bench and on state courts of last resort, as well as many other gifted and distinguished Hispanic lawyers in academia, government and the private sector. Through the work of its Supreme Court Committee, the HNBA offers the list of 82 judges, which is bipartisan, to illustrate the substantial pool of Hispanic legal talent throughout the United States" . . . [W]e believe that this illustrative list makes it abundantly clear that it can no longer be asserted in good faith that the pool of Hispanic candidates is too small or inadequate.[80]

The HNBA had come full circle. After nearly four decades of building a pipeline of eminently qualified Latino jurists, the time had come for the ultimate appointment. The HNBA no longer had to wait. Its path, and that of Judge Sonia Sotomayor, were to cross a third and final time.

On May 26, 2009, President Barack Obama nominated Judge Sonia Sotomayor to replace retired Supreme Court Justice David

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[80] *Id.*

Souter.[81] Though already familiar with Judge Sotomayor, the HNBA was not taking any chances or shortcuts in its due diligence and evaluation of Judge Sotomayor.[82]

> After her nomination, the Committee commissioned a group of law professors, including Professor Jenny Rivera from CUNY Law School and Professor Michael Olivas from University of Houston Law School, to review and analyze approximately one hundred of Judge Sotomayor's key cases with a particular emphasis on areas of law and issues of concern to Latinos in the United States. The Committee also reviewed many of the Judge's speeches and writings. Based on the Committee's thorough review of her record, the HNBA endorsed Judge Sotomayor for the Supreme Court. All twenty-seven living past presidents of the HNBA, which included Democrats and Republicans, signed a statement in support of Judge Sotomayor's fair and expeditious confirmation.[83]

The nomination of Judge Sotomayor sparked not only the imagination of Americans but generated international interest as well. The HNBA implemented a well-organized strategy for

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[81] Ben Fuller, *Obama Picks Sotomayor for Supreme Court*, ASSOC. PRESS, May 26, 2009.

[82] Judge Sotomayor was on the HNBA's short list of eight potential Supreme Court nominees, which was submitted to President Bush in 2005, after conducting substantial due diligence on their backgrounds and careers. The HNBA also reviewed her credentials and endorsed her when she was nominated for the U.S. District Court for the Southern District of New York and for the Court of Appeals for the Second Circuit. Judge Sotomayor has been a distinguished member of the Hispanic legal community and HNBA honored her as its Judge of the Year in 2004 and Latina of Year (Judiciary) 2005.

[83] HNBA, Sotomayor Confirmation, http://www.hnba.com/news-events/sotomayor-confirmation-resources/ (last visited July 20, 2010). *See* Report of the Hispanic National Bar Association in Support of the Confirmation of the Honorable Sonia Sotomayor as Associate Justice of the Supreme Court of the United States, Appendix at 77; Written Statement of the Hispanic National Bar Association in Support of the Confirmation of the Honorable Sonia Sotomayor as Associate Justice of the Supreme Court of the United States, Appendix at 172.

addressing press inquiries on the Sotomayor nomination. Media from throughout the world contacted the HNBA and its members who were well-versed with Judge Sotomayor's judicial background. The HNBA felt confident that this time, its community could not be overlooked.

The Senate Judiciary Committee held confirmation hearings on Judge Sotomayor's nomination from July 14 to July 17, 2009.[84]

> On July 16, 2009, HNBA President Ramona Romero testified before the Senate Judiciary Committee in support of the confirmation of Judge Sonia Sotomayor as Associate Justice of the Supreme Court of the United States.[85] The HNBA was the only national Latino organization to testify before the Senate Judiciary Committee. In attendance at the Senate Judiciary hearing were seven former HNBA National Presidents, including Mari Carmen Aponte, Lillian Apodaca, Lorenzo Arredondo, Dolores Atencio, Mary Hernandez, Carlos Ortiz, and Jimmie Reyna, as well as HNBA President-Elect Roman Hernandez. Other HNBA representatives included Professor Jenny Rivera, Maria Gonzalez Calvet, HNBA counsel for purposes of the Senate Judiciary hearing, and HNBA member Claudine Martinez.[86]

On August 6, 2009, by a vote of 68-31, the Senate confirmed the nomination of the nation's first Hispanic to the United States Supreme Court.[87] HNBA President Romero commented on this most auspicious occasion,

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[84] *Hearings Before the Senate Committee on the Judiciary on the Nomination of Sonia Sotomayor to be Associate Justice of the Supreme Court of the United States*, 111th Cong. (2009)

[85] *Id.* at 537–38 (statement of Ramona Romero, President, HNBA). *See* Appendix at 167.

[86] HNBA, Sotomayor Confirmation, http://www.hnba.com/news-events/sotomayor-confirmation-resources/ (last visited July 20, 2010).

[87] Amy Goldstein & Paul Kane, *Sotomayor Wins Confirmation*, WASH. POST, Aug. 7, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/08/06/AR2009080601706.html.

> "Judge Sotomayor's historic confirmation is proof positive that we Americans are committed to putting aside our differences and judging one another based on merit. It is also a reaffirmation of the promise of equal opportunity that has attracted so many to our country over the centuries . . . ."[88]

On August 8, 2009, Sonia Sotomayor was sworn in by Chief Justice Roberts as the 111th Associate Justice of the United States Supreme Court. For the first time ever, the swearing-in ceremony was televised to the American public. Also for the first time, the Latino community and the American people had a Hispanic American sitting on the country's highest court.

In 1971, there were only five Hispanic federal district court judges. When the HNBA formalized its strategy to build a pipeline of federal Latino judges in 1991, there were only twenty-two Hispanics on the federal courts. By August 2009, there were eighty-two Hispanic federal judges: fourteen on the federal circuit courts, fifty-seven on federal district courts, eleven on state courts of last resort, and one on the United States Supreme Court.

A major goal of the HNBA, perhaps the most illustrious, to have a Hispanic appointed to the Supreme Court, was fulfilled after nearly four decades of unflinching work and struggle. Another mission—to increase the number of Latinos on federal courts—is not yet completed. Only eight percent of the 678 federal district court judges are Latino.[89] The HNBA struggle to achieve greater representation of Latinos in the federal judiciary will be more difficult given the decreasing numbers of Latinos entering and graduating from our nation's law schools. It is expected, however, that the HNBA leadership and its members will continue the quest to address and overcome this and all other obstacles. Though adequate representation of Latinos on the federal district and circuit courts is yet to be fully realized, the aspiration and vision of the HNBA founders to have a Latino on the U.S. Supreme Court has been met. The baton passes.

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[88] Press Release, HNBA, HNBA Member Judge Sonia M. Sotomayor Confirmed as Associate Justice of the Supreme Court (Aug. 6, 2009).

[89] HNBA Nationwide Summary of Hispanics in the Federal Judiciary (1992) (on file with author).