

## Teachable Moments

*\*By Maria L. Fornella*

At the peak of the summer heat last week Americans turned on their flat TVs to watch the Sotomayor hearings before the House Judiciary Committee. But their anticipation mixed in some cases with a certain sense of foreboding, soon evaporated, and they turned their sets off again with a big yawn. Although the Republican senators who interrogated Judge Sotomayor put in full display the traits that make them a species close to extinction, their questions were tame if compared with those addressed to Anita Hill in 1991, and Sotomayor answered with caution and self-restraint.

Although in that sad historic episode Hill was not the nominee but a witness against the confirmation of Judge Clarence Thomas, the echoes of that summer 18 years ago were still unmistakable: a panel of powerful middle aged white men sitting in the most powerful political institution in the country, aggressively questioning the veracity of each word uttered by a highly educated minority woman. She was questioned on a wide range of valid issues, from her views on the Constitution to her judicial philosophy to her position on several politically charged Supreme Court decisions, but the Southern Republican senators kept coming back to her views on the Second Amendment (right to bear arms), affirmative action and the insinuations of reverse racism and judicial activism. Aware that Judge Sonia Sotomayor will soon become the first Hispanic in the highest court of the United States regardless, rather than go after the votes of the fastest growing majority in the country, they chose to score points with their own right-wing base.

In so doing, some of them appeared outright Jurassic in their tone: Senator Coburn from Oklahoma, in a pathetic imitation of Desi Arnaz's Cuban accent in the classic series *I Love Lucy*, started his interrogation of Judge Sotomayor by telling her she would have "some *'splaining* to do". The implications were that Sotomayor is a reverse racist, an overemotional Latina who cannot control her temper and who lets her cultural identity influence her rulings. The ranking member of the Judiciary Committee, Senator Jefferson Beauregard Sessions III, Republican from Alabama, grilled Sotomayor on part of a speech she gave at Berkeley 17 years ago, where she said that, when making a judging, she would "*hope that wise Latina woman, with the richness of her experience would more often than not reach a better conclusion than a white male who has not lived that life*", a concept that, Sessions insists, implies "reverse racism". There was quite little inquiry into Sotomayor's three thousand decisions on a wider variety of issues as a federal judge.

Sotomayor stoically sat before the panel, answering their questions narrowly and sticking to three main answers: the role of a judge is to apply the laws established by the legislature, not to create new law, in absolute accordance with the Constitution, and precedent. In other words, the wise Latina, a Princeton

lawyer, former prosecutor and currently a judge with 17 years of experience in the federal bench, ignored their worst innuendos and played along. It paid off: she will be confirmed as the first Hispanic Supreme Court judge on the floor of the Senate August 7th.

The country as a whole could then move on to the intense debate taking place in Congress over health care reform. There is consensus that it is imperative to get it done soon: its expenses represent 1/6th of the national US economy, its out-of-control costs affect all Americans and threaten to bankrupt the national economy in the long term. Because of Bill Clinton's failure to get health care reform passed, Obama has from the beginning stressed the importance of speed in passing this bill, and gave Congress a lot of leeway in the details of the plan, and a deadline of early August, which apparently will not be met. Not only is the Democratic proposal unacceptable for most Republicans, who have attacked it with force, but now the Congressional Democrats are divide among themselves into three groups. The Blue Dog Democrats, mostly from the South, are fiscally conservative and do not believe the President can fund the plan without further increasing the deficit to breaking point levels. The progressives or liberals cannot accept anything less than universal coverage with a public plan to compete with the private insurance companies. In the middle, the moderates are willing to sacrifice those principles in order to get some kind of reform passed, because they fear failure more than anything else.

The latter may also be the stance of the President since it is consistent with his style of leadership. His tendency to emphasize consensus and try to reconcile all groups many times results on watered down legislation, which is then claimed as a triumph for the White House. His emphasis on speeding the process and his willingness to accept the lower common denominator has made it impossible for him to get what he needs out of the primary players. With a 70% majority in the House and with 60 seats out of 100 in the Senate, the President will be hard put to explain failure in passing health care reform, since he won't be able to blame the Republicans. Speaker Pelosi, who is a strong leader and has managed to get party discipline in most cases so far, insists that she has the votes and promises to pass substantial reform, but as the deadline approaches, it appears increasingly likely that Congress will leave for its August break without a vote. In the meantime, public anxiety is on the rise: it is a complex topic, the options are sometimes hard to understand and the public is being misled by those opposed to reform.

President Obama had an important opportunity to retool his message and clearly articulate why the country really needs health care reform now rather than later, last Wednesday, during his prime time press conference. He started in cue, but his message became completely obliterated when one of the journalists asked him an unrelated question about a bizarre incident involving a black Harvard professor and a white Massachusetts police sergeant. Seeing this opportunity as one of his famous "teachable moments", the President, who knows the professor personally, got ensnared in an unlikely local issue involving race and police profiling. It seem that returning from a trip to China, a Harvard professor and his driver were trying to unlock the door to his house in an affluent Cambridge neighborhood when a neighbor called the police and reported what looked to her to be an attempted break-in. When the policeman

got there and questioned Professor Gates, a middle aged African American who walks with a cane, he angrily responded that this was his house, that he was a Harvard professor and that the policeman was racist and was using racial profiling in trying to stop him from entering his own house. The exchange continued for a while and ended up with Sergeant Crowley handcuffing and arresting Professor Gates, and taking him to the police station. He was released a few hours later. Obama's answer was that he did not know all the facts and that it appeared it was a misunderstanding but that the police had acted "stupidly". This was enough to ignite a major national debate that overshadowed more important issues at hand, for example, the health care discussions.

While a highly paid tenured professor in the richest university in the world is an unlikely victim, and does not need the President of the United States to defend him, particularly in the city of Cambridge, which boasts a Black mayor, in the state of Massachusetts, which has a Black governor, the episode nevertheless was seized by Obama as an opportunity to have another conversation on race, of those that make Americans so uncomfortable. But the opposition did not lose a moment to portray the President as "against law enforcement", and Fox News misquoted him as saying the policeman *was stupid* (instead of "*acted stupidly*"). Obama then had to intervene again to stop the silliness, apologizing from his comment, explaining how there had been overreaction from both sides involved in the incident and inviting them both for a beer at the White House, which both the Sergeant and the Professor gladly accepted. So all ended well...just like the Sotomayor hearings. But the fact still remains that if you are Black or Hispanic in the United States, your chances of getting arrested or subdued by force by the police are much higher than if you are white Caucasian. And your chances of getting harassed by the Senate Judiciary Committee when nominated for the Supreme Court are apparently as high.

Both the Supreme Court hearings and the arrest of the Harvard professor can be seen through multiple prisms: the race prism, the gender prism and the class prism. All involve unequal relations of power and their effects on the dispensing of justice and on the national psyche.

Judge Sonia Sotomayor's rise from the Bronx projects to Princeton, Yale and the federal bench show that the American system works, in spite of the "ancien régime" Republican Senators from the formerly racist South. She had to overcome being poor, female and Hispanic, but was able to navigate the system and succeed, thanks to the civil rights movement of the 60s and the laws thereby derived. Similarly, Professor Henry Louis Gates, one of the best known Black literary scholars in the country, overcame poverty and a leg injury to attend Yale and the University of Cambridge's Clare College in England. He was the first African American to receive the Andrew W. Mellon Foundation Fellowship and today he is a Harvard Professor and Director of W.E.B Du Bois Institute for African and African- American Research. Both are considered members of affluent intellectual elite, and have thus overcome race and class biases, but occasionally still become the victims of racism. This is deplorable enough when it comes from the less educated and working-class whites who resent their success and upper class status, but utterly shameful when exploited by the

privileged Old Boys in the Senate Judiciary Committee, whose hegemony is threatened by the same laws and the same Constitution they purport to defend.

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