

## Media work from opposition's playbook by advancing smears about Sotomayor's intelligence

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**SUMMARY:** Several media figures have repeated or advanced smears that Sonia Sotomayor lacks the intellect to be an effective Supreme Court justice or is not as intelligent as others President Obama considered.

Following President Obama's decision to appoint 2nd U.S. Circuit Court of Appeals Judge Sonia Sotomayor to the Supreme Court of the United States, several media figures have repeated baseless criticism that Sotomayor lacks the intellect to be an effective Supreme Court justice. As [Tom Goldstein](#) -- a partner at Akin Gump Straus Hauer & Feldmann LLP and "co-head" of the firm's "litigation and Supreme Court practices" who "teaches Supreme Court Litigation at both Stanford and Harvard Law Schools" -- [noted](#) on SCOTUSblog, "Opponents' first claim -- likely stated obliquely and only on background -- will be that Judge Sotomayor is not smart enough for the job" because "[t]he public expects Supreme Court Justices to be brilliant." Goldstein added: "The objective evidence is that Sotomayor is in fact extremely intelligent. Graduating at the top of the class at Princeton is a signal accomplishment. Her opinions are thorough, well-reasoned, and clearly written. Nothing suggests she isn't the match of the other Justices."

Notwithstanding Sotomayor's record, several media figures have repeated the charge that Sotomayor lacks the intellectual abilities worthy of a Supreme Court justice, often quoting only anonymous sources:

- A May 26 CNN.com article [reported](#) that Sotomayor "has suffered through recent stinging criticism in the media and blogs from both the left and right over perceived -- some defenders say invented -- concerns about her temperament and intellect."
- On the May 26 edition of CNN's *CNN Newsroom*, anchor John King [stated](#), "One other quick point, Kiran [Chetry], I do want to make -- that some liberal groups who were involved in helping the White House early on, and some -- I'll call them senior Democratic people outside of the White House -- some of them are voicing surprise at this because they view her as a highly competent and a highly qualified judge, but they do not believe that she was the most, shall we say, of the intellectual firebrands that the president had on his list, those who could go up against a [Antonin] Scalia, or an [Samuel] Alito on the court in the arguments."
- During the May 26 broadcast of his nationally syndicated radio show, Glenn Beck stated: "I have heard that she is -- in the 2nd Court of Appeals, that she is almost a bully at times, that she has the image of not being that intellectually bright. I don't know if this is true or not. This is one -- a piece of analysis that I heard today. She's not that intellectually bright, and she's almost a bully; she just loves to hear herself talk." His guest, Cato Institute vice president for legal affairs Roger Pilon, replied that this view "is widely held" and went on to cite a [controversial](#) May 4 *New Republic* article by legal affairs editor Jeffrey Rosen that relied heavily on [anonymous attacks](#) on Sotomayor.
- On the May 26 edition of *MSNBC Live*, George Washington University constitutional law professor and frequent legal commentator Jonathan Turley [opined](#):

I do think that there is a problem here when we talk about temperament and empathy. You know, we're not selecting a house pet. I mean, we're selecting a Supreme Court justice. And as an academic, I have a certain bias. And that is, does she have the intellectual throw weight to make a difference on the court?

And I have to tell you, the optics are better than the opinions in this case. I've read a couple dozen of her opinions. They don't speak well to her being a nominee on the Supreme Court. She will be historic in many ways, like Thurgood Marshall. But I'll remind you, Thurgood Marshall was not a lasting intellectual force on the court. He was historic because he was first.

And I think that a lot of academics are a little bit disappointed. I am, in the sense that Diane Wood, Harold Koh were not the ultimate people to prevail. These are people that are blazingly brilliant. They would have brought to the court intellects that would frame it in a conceptual way.

*Media Matters for America* previously [noted](#) that Rosen and Fox News' Andrew Napolitano have cited criticisms by unnamed law clerks of Sotomayor. Beyond allowing sources who are not identified to throw darts at Sotomayor, Rosen's and Napolitano's citations of law clerks is problematic for a different reason, according to American University law professor Darren Hutchinson, who [wrote](#), "[T]he use of clerks to determine whether a judge should receive a Supreme Court nomination is extremely problematic," because "[m]ost clerks have just graduated from law school, have never tried a case or practiced law, and do not have sufficient experience or knowledge of the law to make an informed assessment of a judge."

From the May 26 edition of Premiere Radio Networks' *Glenn Beck Program*:

PILON: Well, first of all, she is a judge on the 2nd Circuit. She was, before that, a district court -- federal district court judge named by the first George Bush, elevated to the 2nd Circuit by President Clinton. And she has a very attractive history. She came up the hard way, so to speak. Her father died when she was 9 years old. She was brought up by a single mother thereafter. She went to Princeton, went to Yale Law School, and served as a U.S. attorney -- assistant district attorney in New York. But there is a lot of negative as well, and it's going to come out in these hearings.

BECK: Hang on. I didn't hear really the positives there. I mean, I know she had a tough life, and boo-hoo, cry me a river. A lot of people had a tough life.

PILON: Yup.

BECK: And then she went to Yale and Princeton, which kind of goes against the whole "tough life" thing, but maybe that's just me. What are the strengths that she has? I hate to boil it down to, you know, "content of character" kind of issues, but what has she done that is a -- has she done anything that is a positive when it comes to looking at the Constitution?

PILON: Well, you maybe want to rephrase that question this way: Were she not female and Hispanic, would she be nominated?

BECK: The answer to that is no, and I know nothing about her.

PILON: That's right. And the reason is this -- that the left is fairly salivating for someone who will be intellectually powerful and an effective voice against the intellectually powerful people like Antonin Scalia, John Roberts, and so on. The question is, Is she going to be this kind of person? And there is concern on

the left that she will not.

BECK: OK, I have heard that she is -- in the 2nd Court of Appeals, that she is almost a bully at times, that she has the image of not being that intellectually bright. I don't know if this is true or not. This is one -- a piece of analysis that I heard today. She's not that intellectually bright, and she's almost a bully; she just loves to hear herself talk.

PILON: This is widely held. You can see a piece in *The New Republic* on May 4th by Jeffrey Rosen, their Supreme Court correspondent, that addresses that issue drawing from a number of Democrats who have clerked and who have known her over the years. So there is that. But without question, Glenn, the case that is really going to come to the fore is this *Ricci v. DeStefano*, and that's the New Haven firefighters case.

Just for your audience who may not be familiar with it, this is a case brought by Ricci and several others, white firefighters -- including one Hispanic, by the way -- who got high marks on the exam for officer, firefighter officer. And when the results did not come out right, the city threw the test out. So Mr. Ricci brought suit. He was dyslexic. He had studied long and hard for this. He had spent a substantial amount of money getting the tests put into recorded form so that he could study for it. And he came out number six, I believe it was, in the order, and therefore was a prime candidate for elevation to an officer.

— J.M.

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