

Testimony of
David Cone

July 16, 2009

BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
STATEMENT OF DAVID B. CONE
ON THE NOMINATION OF
SONIA SOTOMAYOR
TO BE ASSOCIATE JUSTICE TO THE
UNITED STATES SUPREME COURT
JULY 16, 2009

Thank you Chairman Leahy and also thank you members of the Committee. My name is David Cone. It is indeed an honor to appear before you again, 14 years and 5 months to the day after my first appearance. I realize many people are perhaps surprised a baseball player would be asked to testify about the nomination of a Supreme Court Justice. Probably no one is more surprised than me. But, on behalf of all Major League players, both former and current, we greatly appreciate the opportunity to acknowledge the unique role Judge Sotomayor played in preserving America's pastime.

As you know, I am not a lawyer, much less a Supreme Court scholar. I was a professional baseball player from the time I was drafted out of high school in 1981 until I retired in 2003. I broke into the Majors in 1986. During my career I pitched for my hometown team, the Kansas City Royals, the New York Mets, the Toronto Blue Jays, the Royals again, the Blue Jays again, the New York Yankees, the Boston Red Sox, and finally in 2003 the Mets once more. Along the way, I was lucky enough to pitch in 5 All-Star Games and 5 World Series, and was especially fortunate that my team won each of those World Series.

I was also a union member and officer. In 1994 the Executive Board of the Major League Baseball Players Association elected me the MLBPA's alternate American League Player Representative. Then the next year I became the American League Player Representative and remained in that position until 2000.

Being a proud union member came naturally. I was raised in a blue collar family in Kansas City. My father was an active member of the United Steelworkers of America. I watched as that remarkable union fought to get fair contracts for its members. I watched as my dad struggled to provide his children with the opportunity to fulfill their dreams, including mine of becoming a Major League baseball player.

Years later, after I had achieved that dream, I was able to be a part of another remarkable union, the MLBPA. As is well known, Major League baseball has a long history of acrimonious labor

relations between owners and players. It was not until the 1970's that the players-- under the leadership and direction of the MLBPA's first Executive Director, the legendary Marvin Miller-- first gained the rights of free agency and salary arbitration. This meant that for the first time ever, players were able to earn what they were worth, and were able to have some choice about where and for what team they played.

The next 20 years were quite tumultuous. In quick succession we endured a spring training lockout in 1976, a short strike in spring training in 1980, a long strike in 1981, a short strike in August of 1985, and another spring training lockout in 1990. To the players, each of these disputes seemed to be grounded in the owners' desires to turn back the clock and roll back the free agency rights that the players had won. Fortunately, due in no small part to the exemplary leadership of Don Fehr, our current Executive Director, we were able to preserve the rights our predecessor had sacrificed so much to obtain.

But the game may have experienced its darkest hours in 1994 and 1995. The owners announced their intention to obtain a salary cap, an artificial limitation on the amount players could earn. We did not believe that their proposal was fair, and could not accept it. The collective bargaining agreement had expired, and the owners refused to promise that following the season, they would continue to live by the rules of that contract. And so, believing we had no choice, the players went on strike in August of 1994.

To our surprise, the owners felt no urgency to negotiate. Before long, they announced the cancellation of the remainder of the season, which meant that there would be no World Series for the first time ever. For the players and many fans, it was one of the worst days in the game's history.

Discussions with the clubs continued throughout the fall and into the winter but proved fruitless. The owners' position never varied and, to many of us, it was clear they had little or no interest in reaching a new agreement. Still, it was a surprise when, in December 1994, the owners announced that they were unilaterally implementing new rules and conditions of employment. Those new rules included not only the owners' salary cap, but changes which they had never before even discussed, much less negotiated. We soon learned that under the new rules the core rights of free agency and salary arbitration essentially would be eliminated. And, it was announced they were preparing to start the 1995 season with so-called replacement players instead of real Major Leaguers.

Needless to say, we did not think the owners were negotiating in good faith, as they are required to do under federal law. Consequently, the Players Association went to the National Labor Relations Board. The NLRB reviewed our situation and agreed with our complaint. Following its statutory procedures, the Board went to federal court to seek an injunction against the owner's unilateral changes. The United States District Judge who drew the case was Judge Sonia Sotomayor.

The rest is history, or at least baseball history. Judge Sotomayor found that the owners had engaged in bad faith bargaining. She issued an injunction. Her decision stopped the unilateral imposition of new terms, ended our strike, and got all of us back on the field. The words she wrote cut straight to the heart of the matter:

"...This strike is about more than just whether the Players and Owners will resolve their differences. It is also about how the principles embodied by federal law operate. In a very real and immediate way, this strike has placed the entire concept of collective bargaining on trial.....Issuing an injunction by Opening Day is important to ensure that the symbolic value of that day is not tainted by an unfair labor practice and the NLRB's inability to take effective steps against its perpetuation."

Obviously I am not a lawyer, but from my years in baseball and my work in the union, I know how complex this case was. I know that Judge Sotomayor had only a few days to read reams of paper, absorb a very detailed set of facts, and sort through numerous intricate arguments, but she clearly understood the issues and what was at stake. She saw how important it was that the sport not resume with the cloud of an unfair labor practice hanging over it. Had the clubs resumed play without real players and then were found to have engaged in unfair labor practices, the damage would have been incalculable. Judge Sotomayor grasped not only the complexity of the case but its importance to our sport.

I should point out that her decision was upheld by a unanimous Circuit Court, a court comprised of judges appointed by different Presidents, from different parties and, as I have been told, of different judicial philosophies.

On the day he announced her appointment, President Obama observed that some have said that Judge Sotomayor saved baseball. Others may think this is an overstatement. But look at it this way: a lot of people, both inside and outside of baseball, tried to settle the dispute. Presidents, special mediators, Secretaries of Labor, members of Congress - all tried to help but were not successful. As all of us who were involved in the negotiations ultimately realized, it is difficult to reach an agreement if one side is not interested in finding a compromise.

With one decision, Judge Sotomayor changed the entire dispute. Her ruling rescued the 1995 season and forced the parties to resume real negotiations. It took nearly two years to reach a new agreement. But from that painful experience, after decades of lockouts and strikes, relations between owners and players finally began to change. We were able to reach a new agreement in 2002 without interrupting play, breaking a string of eight consecutive work stoppages. Today, baseball is currently enjoying a run of more than 14 years without interruption, a record that would have been impossible to conceive back in the 1990's.

Judge Sotomayor's dedication and commitment enabled her to correctly and fairly apply the law in our case. Because of her decision, baseball is in far better shape today than it was fifteen years ago. I believe all of us who love the game - players, owners, and fans - are in her debt.

If Judge Sotomayor is confirmed, maybe the rest of the country will realize, as the players did in the 1990, that it can be a good thing to have a judge in district court or a Justice on the United States Supreme Court who recognizes that the law cannot always be separated from the realities involved in the disputes being decided.

Thank you, Mr. Chairman, for this opportunity. I would be happy to answer any questions you or the Committee may have.