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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	re: United States Senate Committee on the Judiciary Questionnaire for Judicial Nominees (49 pages)	n.d.	P2, P5, P6/b(6)
002. draft	re: Draft Response to Question #8 (1 page)	10/08/1997	P2, P5

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 Counsel's Office
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Committee on the Judiciary Questionnaire

2009-1007-F

jp1534

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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INVENTORY

Office of the Counsel to the President
OEOB, Rm. 128
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Prepared by: Derek V. Howard, intern

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*All files pertain to Sonia Sotomayor

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ENCLOSURES FILED OVERSIZE ATTACHMENTS

12690

NADA 10153

Withdrawal/Redaction Marker

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Final

Sotomayor Senate Questionnaire

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Sonia Sotomayor -- October 1983 to the Present.

**Sonia Sotomayor de Noonan, Sonia Maria Sotomayor de Noonan,
or Sonia Noonan, Married Names -- August 1976 to October 1983.
As part of my divorce decree, I resumed my maiden name without my
middle name.**

Sonia Maria Sotomayor -- Birth to Marriage, August 1976.

2. Address: List current place of residence and office address(es).

RESIDENCE:

New York, New York

OFFICE:

**U.S. Courthouse
500 Pearl Street, Room 1340
New York, New York 10007**

3. Date and place of birth.

**June 25, 1954
New York, New York**

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

**Divorced since October 1983. Engaged to be married to Peter White,
President of Commercial Residential and Industrial Construction
Corporation, 656 Central Park Avenue, Yonkers, New York 10704.**

Sotomayor Senate Questionnaire

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

<u>SCHOOL</u>	<u>DEGREE</u>	<u>DATES ATTENDED</u>	<u>GRADUATION</u>
Yale Law School	J.D.	1976 - 1979	June 1979
Princeton University	A.B., <i>Summa Cum Laude</i>	1972 - 1976	June 1976

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>DATES OF ASSOCIATION</u>	<u>POSITION</u>
United States District Court - Southern District of New York	U.S. Courthouse 500 Pearl Street New York, NY 10007	10/92 to present	Judge
Pavia & Harcourt	600 Madison Ave. New York, NY 10022	1/88 to 10/92 4/84 to 12/87	Partner Associate
New York County District Attorney's Office	1 Hogan Place New York, NY 10013	8/79 to 3/84	Assistant District Attorney in Trial Bureau 50
Sotomayor & Associates	10 3rd Street Brooklyn, NY 11231	1983 - 1986	Counseling and consulting work for family and friends
Yale Law School Mimeo Room	127 Wall Street New Haven, CT 06520	9/78 to 5/79	Sales person
Paul, Weiss, Rifkind Wharton & Garrison	1285 Avenue of the Americas New York, NY 10019	6/78 to 8/78	Summer Associate

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The Graduate, Professional Student Center	306 York Street New Haven, CT 06520	9/77 to 5/78	Sales person
Office of the General Counsel, Yale University	Woodbridge Hall New Haven, CT 06520	6/77 to 9/77	Summer Intern
The Equitable Life Assurance Society of the United States	1285 Avenue of the Americas New York, NY 10019	6/76 to 8/76	Summer Clerk
New York City Campaign Finance	40 Rector Street New York, NY 10006	1988 to 10/92	Member, Board of Directors
State of New York Mortgage Agency	260 Madison Avenue New York, NY 10016	1987 to 10/92	Member, Board of Directors
Puerto Rican Legal Defense & Education Fund	99 Hudson Street New York, NY 10013	1980 to 10/92	Member, Board of Directors
Maternity Center Association	48 East 92nd Street New York, NY 10128	1985 - 1986	Member, Board of Directors

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I received financial assistance in the form of scholarships during my four years at Princeton University and my three years at Yale Law School. I graduated *summa cum laude*, Phi Beta Kappa, from Princeton. Princeton awarded me, as a graduating student co-winner, the M. Taylor Senior Pyne Prize, for scholastic excellence and service to the University. My senior thesis work received an honorable mention from the University's History Department.

While at law school, I served as an Editor of the Yale Law Journal and Managing Editor of the Yale Studies in World Public Order. I was also a semi-finalist in the Barrister's Union competition, a mock trial presentation.

In reverse chronological order, I have received the following awards:

**Secretary of State of Puerto Rico
July 4, 1996
Award as Distinguished Woman in the Field of Jurisprudence**

**Latino American Law Student Association
of Hofstra University School of Law
March 15, 1996
Award in Recognition of Outstanding Achievement
and Dedication to the Latino Community**

**District Attorney - New York County
January 17, 1995
Award for Outstanding and Dedicated Service
to the People of New York County from 8-13-79 to 3-16-84**

**National Puerto Rican Coalition, Inc.
October 20, 1994
Lifetime Achievement Award**

**National Conference of Puerto Rican Woman
New York City Chapter
March 24, 1994
Certificate of Excellence in Grateful Recognition of
Outstanding Achievements and Contributions to the Community**

**Cardinal Spellman High School
Honors Night 1993
Excellence with a Heart Medal**

**Hispanic National Bar Association
Law Student Division
September 25, 1993
Lifetime Achievement Award**

**Hispanic National Bar Association
September 24, 1993
Award for Commitment to the Preservation of Civil
and Constitutional Rights for all Americans**

**Bronx Community College
of the City University of New York
Paralegal Studies
June 17, 1993
Human Rights Award for Service to Humanity**

**John Jay College of Criminal Justice
May 27, 1993
Claude E. Hawley Medal for Scholarship and Service**

**The Puerto Rican Bar Association, Inc.
1993
Emilio Nunez Award for Judicial Service**

9. Bar Association: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

**Member, Budget Committee of the Southern District of New York
("S.D.N.Y."), 1996 to present.**

Member, Pro Se Committee of the S.D.N.Y., 1996 to present.

Member, Puerto Rican Bar Association, 1994 to present.

**Honorary Member, Public Service Committee of the Federal Bar Council,
1994 to the present.**

**Member, Second Circuit Task Force on Gender, Racial, & Ethnic Fairness,
1993 to present (Preliminary Draft Report Attached).**

**Member, Committee on Rules of Practice and Procedure of the S.D.N.Y.,
1993 to present.**

Member, Grievance Committee of the S.D.N.Y, 1992 to present.

Member, Hispanic National Bar Association, 1992 to present.

Member, American Bar Association, 1980 to present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapsed membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court, Eastern District of New York -- March 30, 1984.

United States District Court, Southern District of New York -- March 27, 1984.

New York -- First Department -- April 7, 1980.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Note, Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights, 88 Yale L.J. 825 (1979) (copy attached).

Sonia Sotomayor & Nicole A. Gordon, Returning Majesty To The Law and Politics: A Modern Approach, 30 Suffolk U.L. Rev. 35 (1996) (copy attached).

The speeches I have given, in reverse chronological order, are as follows:

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Sonia Sotomayor, *The Genesis and Need of an Ethnic Identity*, Keynote Speech at Princeton University's Latino Heritage Month Celebration (Nov. 7, 1996).

Sonia Sotomayor, *El Orgullo y La Responsabilidad de Ser Latino y Latina*, Keynote Speech for the National Board of Governor's Reception of the Hispanic National Bar Association held at the Association of the Bar of the City of New York (May 17, 1996).

Sonia Sotomayor, *El Orgullo y La Responsabilidad de Ser Latino y Latina*, Speech at the Third Annual Awards Banquet and Dinner Dance for the Latino and Latina American Law Students Association of Hofstra University School of Law (Mar. 15, 1996).

Sonia Sotomayor, Hogan-Morgenthau Award Address (Jan. 17, 1995).

Sonia Sotomayor, *A Judge's Guide to More Effective Advocacy*, Keynote Speech at the 40th National Law Review Conference (Mar. 19, 1994).

Sonia Sotomayor, *Women in the Judiciary*, Panel Presentation at the 40th National Conference of Law Reviews (Mar. 17, 1994).

Sonia Sotomayor, *Doing What's Right: Ethical Questions for Private Practitioners Who Have Done or Will Do Public Service*, Presiskel/Silverman Speech at the Yale Law School (Nov. 12, 1993).

The drafts of these speeches are attached. I am unaware of any press reports about any of my speeches. I am aware of one press report of a panel presentation of which I was member, Edward A. Adams, *Women Litigators Discuss Battling Bias in Courtroom*, N.Y. Law Journal, April 2, 1993, at 1. This press report is also attached.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. Please note, I am a juvenile diabetic (insulin dependent since age 7). My condition is permanent and subject to continuing treatment. It does not impair my work or personal life. My last physical examination was January 1997.

14. Judicial Office: State (chronologically) any judicial office you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Appointed by President George W. Bush as a United States District Court Judge for the Southern District of New York. I commenced service on October 2, 1992. The United States District Court for the Southern District of New York includes the counties of the Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester, and, concurrently with the Eastern District of New York, the waters within the Eastern District. The jurisdiction of United States District Courts is limited to those matters permitted by Article III, Section 2 of the United States Constitution.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticisms of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) The following, in reverse chronological order, are ten of my most significant opinions, with citations.

1. **United States v. The Spy Factory, Inc., 951 F. Supp. 450 (S.D.N.Y. 1997).**
2. **Krueger Int'l v. Nightingale, Inc., 915 F. Supp. 595 (S.D.N.Y. 1996).**
3. **United States v. Lech, 895 F. Supp. 586 (S.D.N.Y. 1995).**
4. **Refac Int'l, Ltd. v. Lotus Development Corp., 887 F. Supp. 539 (S.D.N.Y. 1995), aff'd, 81 F.3d 1576 (Fed. Cir. 1996).**
5. **Silverman v. Major League Baseball Player Relations Committee, 880 F. Supp. 246 (S.D.N.Y.), aff'd, 67 F.3d 1054 (2d Cir. 1995).**
6. **Modeste v. Local 1199, Drug, Hospital & Health Care Employees Union, 850 F. Supp. 1156 (S.D.N.Y.), aff'd, 38 F.3d 626 (1994).**
7. **United States v. Hendrickson, 26 F.3d 321 (2d Cir. 1994) (sitting by designation).**

8. Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994).
9. Azurite Corp., Ltd. v. Amster & Co., 844 F. Supp. 929 (S.D.N.Y. 1994), aff'd, 52 F.3d 15 (2d. Cir. 1995).
10. Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993).

(2) The following, in reverse chronological order, is a short summary of and citations for all appellate opinions where my decisions were reversed or where my judgments were affirmed with significant criticisms of my substantive or procedural rulings.

1. Hellenic American Neighborhood Action Committee v. City of New York, 933 F. Supp. 286 (S.D.N.Y.), rev'd, 101 F.3d 877 (2d Cir. 1996).

I granted a preliminary injunction on behalf of a contractor which alleged that it was barred from city procurements in violation of its due process rights under the Fourteenth Amendment. The Second Circuit reversed without addressing whether the City's alleged misconduct deprived plaintiff of protected property and liberty interests. The Court reasoned that even if there was such a deprivation, there was no failure of due process because there was an adequate remedy available to the contractor under state law.

2. Aurora Maritime Co., Ltd. v. Abdullah Mohamed Fahem & Co., 890 F. Supp. 322 (S.D.N.Y. 1995), aff'd on other grounds, 85 F.3d 44 (2d Cir. 1996).

The Second Circuit affirmed my decision denying a bank's motion to vacate various Supplemental Admiralty Rule B attachments of plaintiff's bank account. I held that "because plaintiffs obtained Rule B attachments before [the bank] exercised its set-off rights . . . plaintiffs gained a limited property interest under federal law that cannot be defeated by a subsequently executed state law set-off right." Although upholding my ruling, the Second Circuit disagreed with my conclusion "that [the bank's] set-off right and appellees' Rule B attachments d[id] not conflict." Instead, the Second Circuit reached the constitutional issue and found that the dismissal was proper because federal law preempted the bank's right, under Section 151 of state law, to the funds in the disputed account.

3. European American Bank v. Benedict, 1995 WL 422089 (S.D.N.Y. 1995), vacated, 90 F.3d 50 (2d Cir. 1996).

I affirmed a Bankruptcy Court decision rescinding its prior order which had extended the time period for a creditor to file a dischargeability complaint. I reasoned that the Bankruptcy Court did not have the discretion, under the applicable statute of limitations, to extend the time for filing a complaint, and that the Bankruptcy Court was therefore correct when it reversed its initial decision to do so. Recognizing a split of authority on the issue, the Second Circuit determined that the applicable limitations period under the Federal Bankruptcy Rules is not jurisdictional, and that it is therefore subject to waiver, estoppel, and equitable tolling. The Court proceeded to enforce the Bankruptcy Court's initial decision to extend the period for filing, because the debtor had waived its right to object to the extension by failing to raise that objection prior to the expiration of the statutory deadline.

4. Bernard v. Las Americas Communications, Inc., (no written opinion), aff'd in part, vacated in part, 84 F.3d 103 (2d Cir. 1996).

Pursuant to a jury verdict, I entered judgment in favor of plaintiff, an attorney, seeking legal fees in connection with his representation of defendant in proceedings before the Federal Communications Commission. Applying Washington, D.C. law, the Second Circuit approved of my jury instructions on the issues of proximate causation and damages, but found error with respect to my instruction on materiality. Specifically, I had instructed that a material breach "defeats the purpose of [an] entire transaction"; the Second Circuit held that D.C. law requires only that defendant prove that he received "something substantially less or different from that for which he bargained." On remand, a jury again found for plaintiff, and judgment was entered accordingly.

5. **Bolt Electric, Inc. v. City of New York**, 1994 WL 97048 (S.D.N.Y. 1994), rev'd, 53 F.3d 465 (2d Cir. 1995).

I granted a motion to dismiss on behalf of the City of New York (the "City") in a breach of contract action brought by plaintiff Bolt Electric, Inc. ("Bolt"). I found that because the City had undertaken to pay Bolt for general contracting services pursuant to a letter which was not filed and endorsed by the City's Comptroller, as required under New York's Administrative Code, the contract was unenforceable. The Second Circuit reversed, reasoning that compliance with the endorsement provision of the Administrative Code was not a mandatory precondition to the formation of a valid contract. In the alternative, the Court reasoned that, even if the contract was executed without proper authority, it was enforceable because the City had funds available for performance.

6. **Runquist v. Delta Capital Management, L.P.**, 1994 WL 62965 (S.D.N.Y.), rev'd, 48 F.3d 1212 (2d Cir. 1994).

The Second Circuit reversed a decision in which I adopted a Magistrate Judge's recommendation that plaintiff's claims of securities fraud be dismissed. Before the Magistrate Judge, plaintiff failed to file a timely opposition to defendant's motion for summary judgment, and subsequently filed an affidavit which the Magistrate Judge found insufficient to raise a triable issue of fact as to the element of reliance in plaintiff's fraud claim. The Second Circuit found, however, that the affidavit was sufficient to raise an issue of material fact, and that it was error for me to have dismissed plaintiff's remaining claims on the basis of his attorney's repeated noncompliance with applicable filing procedures and deadlines.

(3) The following, in reverse chronological order, are citations for my significant opinions on federal or state constitutional issues, together with citations to appellate court rulings on such opinions.

1. **Estate of Joseph Re v. Kornstein, Veisz & Wexler**, 958 F. Supp. 907 (S.D.N.Y. 1997).

2. United States v. The Spy Factory et al., 951 F. Supp. 450 (S.D.N.Y. 1997).
3. National Helicopter Corp. of America v. City of New York, 952 F. Supp. 1011 (S.D.N.Y. 1997).
4. United States v. Ni Fa Yi, 951 F. Supp. 42 (S.D.N.Y. 1997).
5. Gelb v. Board of Elections, 950 F. Supp. 82 (S.D.N.Y. 1996).
6. United States of America, Louis Menchaca, 96 Civ. 5305, decision unpublished, read into the record on August 26, 1996.
7. Hellenic American Neighborhood Action Committee v. City of New York, 933 F. Supp. 286 (S.D.N.Y. 1996), rev'd, 101 F.3d 877 (2d Cir. 1996).
8. In re St. Johnsbury Trucking Co., Inc., 191 B.R. 22 (S.D.N.Y. 1996); 199 B.R. 84 (S.D.N.Y. 1996).
9. United States v. Jimenez, 921 F. Supp. 1054 (S.D.N.Y. 1995).
10. Lee v. Coughlin, 902 F. Supp. 424 (S.D.N.Y. 1995), reconsideration granted, 914 F. Supp. 1004 (S.D.N.Y. 1996).
11. Ortiz v. United States, 1995 WL 130516 (S.D.N.Y. 1995), aff'd, 104 F.3d 349 (2d Cir. 1996).
12. Senape v. Constantino, 1995 WL 29502 (S.D.N.Y. 1995), aff'd, 99 F.3d 401 (2d Cir. 1995).
13. Clapp v. LeBoeuf, Lamb, Leiby & MacRae, 862 F. Supp. 1050 (S.D.N.Y. 1994), aff'd, 54 F.3d 765 (2d Cir.), cert. denied, 116 S. Ct. 380 (1995).
14. Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994) (cited with approval in Jolly v. Coughlin, 76 F.3d 468 (2d Cir. 1996)).

15. Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993).

16. United States v. Castellanos, 820 F. Supp. 80 (S.D.N.Y. 1993).

Copies of opinions not officially published are attached.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1988 to 1992 -- Board of Directors, New York City Campaign Finance Board, appointed by the Mayor.

1987 to 1992 -- Board of Directors, State of New York Mortgage Agency, appointed by the Governor.

1979 to 1984 -- Assistant District Attorney, New York County, appointed by the District Attorney.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

Yes, with Sotomayor & Associates, 10 3rd Street, Brooklyn, New York, 11231, from 1983 to 1986, but this work was more in the nature of a consultant to family and friends in their real estate, business, and estate planning decisions. If their circumstances required formal legal representation, I referred the matter to my firm, Pavia & Harcourt, or to others with appropriate expertise.

Sotomayor Senate Questionnaire

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

<u>Dates of Association</u>	<u>Organization</u>	<u>Address</u>	<u>Position</u>
4/84 to 10/92	Pavia & Harcourt	600 Madison Ave. New York, NY 10022	Partner (1/88 to 10/92) Associate
8/79 to 3/84	New York County District Attorney's Office	1 Hogan Place New York, NY 10013	Assistant District Attorney

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

See I(b)(2) below.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

From April 1984 as an associate, and from January 1988 until October 1992 as a partner, I was a general civil litigator involved in all facets of commercial work including, but not limited to, real estate, employment, banking, contract, distribution and agency law. Moreover, my practice had significant concentration in intellectual property law involving trademark, copyright and unfair competition issues. I also worked in automobile franchise law, and export commodity trading law under the North American Grain Association Contract. I conducted over fifteen arbitration hearings involving the banking, fashion, grain, and tire distribution industries. My typical clients were significant European companies doing business in the United States.

From August 1979 to March 1984, as a prosecutor in New York County, my cases typically involved "street crimes," i.e., murders, robberies, etc. I also investigated child pornography, child abuse, police misconduct, and fraud matters. I further prepared the responsive papers for five criminal appeals, two of which I argued and all of which resulted in affirmances of the convictions.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared daily in court as a prosecutor and I appeared regularly in court as a civil commercial litigator in New York with a largely federal practice.

2. What percentage of these appearances was in:

	<u>In private practice</u>	<u>As a prosecutor</u>
1. federal courts	approx. 70%	0%
2. state courts of record	approx. 20%	100%
3. other courts	approx. 10%	0%

3. What percentage of your litigation was:

	<u>In private practice</u>	<u>As a prosecutor</u>
(a) civil	99%	0%
(b) criminal	1%	100%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried over 23 cases to verdict. In two of the cases, I was chief counsel and in another, co-counsel. In all other cases, I was sole counsel.

5. What percentage of these trials was:

1. Jury -- 90%
2. Non-jury -- 10%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I list the ten litigated matters in reverse chronological order.

1.

Case Name: Fratelli Lozza (USA) Inc. v. Lozza (USA) & Lozza SpA

Court: United States District Court, Southern District of New York

Index No.: 90 Civ. 4170

Judge: Then District Court Judge Fred I. Parker (sitting by designation)
Federal Building
11 Elmwood Avenue
P.O. Box 392
Burlington, Vermont 05402
(802) 951-6401

Date of Trial: March 16, 1992

Co-Counsel: Allison C. Collard, Esq.
Attorney for co-defendant Lozza (USA)
1077 Northern Blvd.
Roslyn, New York 11576
(516) 365-9802

Adversaries: Charles E. Temko
Temko & Temko
19 West 44th Street
New York, New York 10036
(212) 840-2178

Case Description: I represented the defendant Lozza SpA in this trademark infringement, trademark abandonment, unfair competition, breach of contract, and rescission action. The plaintiff, a corporation owned and operated by a former shareholder of the defendant corporation, claimed the defendant had breached an agreement with the plaintiff for the trademark use of "Lozza" in the United States, had abandoned use of its marks in the United States, and had infringed certain of the plaintiff's trademarks. I conducted the trial for the lead defendant, and secured a dismissal of all of the plaintiff's claims. The Court also issued an injunction against the plaintiff's use of the defendants' marks, and of false and misleading terms in its advertising. Findings of Fact, Conclusions of Law and Order reported at 789 F. Supp. 625 (S.D.N.Y. 1992).

2.

Administrative

Case Name: Ferrari of Sacramento, Inc. v. Ferrari North America

Agency: State of California New Motor Vehicle Board
(Appeared pro hac vice)

Protest No.: PR-973-88

Administrative

Law Judges: Marilyn Wong
c/o New Motor Vehicle Board
1507 21st Street, Room 330
Sacramento, California 95814
(916) 445-1888

Robert S. Kendell (retired)
Contact: Michael Sabian
c/o New Motor Vehicle Board
1507 21st Street, Room 330
Sacramento, California 95814
(916) 445-1888

Dates of Hearing: 10/16/90, 10/17/90, 10/31/90, 11/1/90, and 11/2/90

Co-Counsel: Nicholas Browning, III, Esq.
Herzfeld & Rubin
1925 Century Park East, Suite 600
Los Angeles, California 90067-2783
(310) 553-0451

Adversaries: Jay-Allen Eisen
Jay-Allen Eisen Law Corporation
9A0 9th Street, Suite 1400
Sacramento, California 95814
(916) 444-6171

Donald M. Licker, Esq.
2443 Fair Oaks Boulevard
Room 340
Sacramento, California 95825
(916) 924-6600

Case Description: In or about 1988, Ferrari North America ("Ferrari") terminated the plaintiff dealer. Thereafter, the dealer filed a timely protest of the termination with the California New Motor Vehicle Board (the "Board"). At a prehearing settlement conference, Ferrari and the dealer entered into a Stipulated Settlement that permitted Ferrari to terminate the dealer, without a hearing, if the dealer failed timely to cure specified obligations under its franchise agreement with Ferrari. When the dealer breached the terms of the Stipulated Settlement, Ferrari terminated the dealer, with the Board's approval and without a hearing. The dealer then secured a writ of mandate from a California court directing the Board to hold an administrative hearing.

I had primary responsibility for representing Ferrari at the administrative hearing. The Board determined that 1) the dealer had violated the terms of

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the Stipulated Settlement, 2) the violations constituted good cause for Ferrari's termination of the dealer under California's Automobile Franchise Law, and 3) the plaintiff's loss of its franchise was not an illegal forfeiture under California law.

While the hearing before the Board proceeded after issuance of the mandate, Ferrari also appealed the judgment on the writ, which judgment was reversed on appeal in an unpublished opinion. The California Court of Appeals, Third Appellate District, determined that enforcing the Stipulated Settlement and terminating the dealer, without a hearing, did not violate due process.

Although not listed as counsel for appellant's briefs, I contributed significantly to the drafting of the briefs. The appellate case was captioned Ferrari of Sacramento, Inc., Respondent v. New Motor Vehicle Board and Sam Jennings as Secretary, Appellants, and Ferrari North America, Real Party in Interest and Appellant; No. C008840 in the Court of Appeals of the State of California in and for the 3rd Appellate District; Sacramento Superior Court, Case No. 360734.

3.

Case Name: In re: Van Ness Auto Plaza, Inc., a California Corporation, d/b/a Auto Plaza Lincoln Mercury, Auto Plaza Porsche and Auto Plaza Ferrari, Debtors.

Court: United States Bankruptcy Court, Northern District of California
(Appeared pro hac vice)

Case No.: 3-89-03450-TC

Judge: Hon. Thomas E. Carlson
U.S. Bankruptcy Court Judge
235 Pine Street
San Francisco, California 94104
(415) 705-3200

Dates of Hearing: 1/22/90 and 3/19/90

Co-Counsel:

Nicholas Browning, III, Esq.
Herzfeld & Rubin
1925 Century Park East, Suite 600
Los Angeles, California 90067-2783
(213) 553-0451

Adversaries:

Henry Cohen, Esq.
Cohen and Jacobson
Attorneys for Debtor
577 Airport Blvd., Suite 230
Burlington, California 90067-2783
(415) 342-6601

William Kelly, Esq. (retired)
Address Unknown
Home Tel. No. (415) 641-1544

Case Description:

I represented Ferrari North America ("Ferrari"), a franchisor of a bankrupt dealer, in hearings related to Ferrari's opposition to the rejection of customer contracts, assumption of the dealer's franchise agreement, and confirmation of the proposed sale of the dealer's franchise. At the time, Ferrari was introducing a limited production and valuable new car model to the marketplace. A rejection by the dealer of contracts for that model would have frustrated the expectations of customers and subjected Ferrari to potential multiple claims. After a number of hearings, the Bankruptcy Court ruled that the dealer could not reject the customer contracts, although financially burdensome, and then assume the franchise agreement with Ferrari. The case also involved alleged claims by the dealer and customers that Ferrari had violated the California automobile franchise, antitrust, and securities laws. The case settled with the sale of the dealership and resolution of claims among the bankrupt dealer, the new franchise buyer, Ferrari, and customers.

4.

Case Name:

Fendi S.a.s. di Paola Fendi e Sorelle v. Burlington Coat Factory Warehouse Corp., et al.

Case No.:

86 Civ. 0671

Court:

United States District Court, Southern District of New York

Sotomayor Senate Questionnaire

Judge: Hon. Leonard B. Sand
U.S. District Judge
U.S. Courthouse
500 Pearl Street
New York, New York 10007
(212) 805-0244

Co-Counsel: Frances B. Bernstein, Esq.
(Deceased)

Adversaries: Stacy J. Haigney, Esq.
Herbert S. Kasner, Esq.
Attorneys for Burlington Coat Factory Warehouse and
Monroe G. Milstein
Burlington Coat Factory Warehouse, Corp.
263 West 38th Street
New York, New York 10018
(212) 221-0010

Dennis C. Kreiger, Esq.
Esanu, Katsky, Korins & Sieger
Attorneys for Firestone Mills, Inc. and Leo Freund
605 Third Avenue, 16th Floor
New York, New York 10158
(212) 953-6000

Dates of Trial: 5/18/87 to 5/19/87

Case Description: Combined Case Description in 5 below.

5.

Case Name: **Fendi S.a.s. di Paola Fendi e Sorelle v. Cosmetic World, Ltd., Loradan Imports, Inc., Linea Prima, Inc. a/k/a Lina Garbo Shoes, Daniel Bensoul, Michael Bensoul a/k/a Nathan Bendel, Paolo Vincelli and Mario Vincelli**

Case No.: 85 Civ. 9666

Court: United States District Court, Southern District of New York

Judges: Hon. Leonard B. Sand
U.S. District Judge
U.S. Courthouse
500 Pearl Street
New York, New York 10007
(212) 805-0244

Hon. Joel J. Tyler
Magistrate Judge, U.S. District Court
Home address:
2 Primrose Avenue
Yonkers, New York 10710
Telephone unpublished

Co-Counsel: Frances B. Bernstein
(Deceased)

Adversary: Stanley Yaker, Esq.
Attorney for Paolo Vincelli and Mario Vincelli
Former Address:
114 East 32nd Street
Suite 1104
New York, New York 10016
(212) 983-7241
Telephone not in service. I have been unable to locate Mr. Yaker.

No attorneys appeared for the remaining defendants, who settled pro se.

Date of Inquest

Hearing: 1/6/88

Case Descriptions: From 1985, my former firm represented Fendi S.a.s. di Paola Fendi e Sorelle ("Fendi") in Fendi's national anticounterfeiting work. Frances B. Bernstein, a partner at Pavia & Harcourt (now deceased), and I created Fendi's anticounterfeiting program. From 1988 until the time I left the firm for the bench in 1992, I was the partner in charge of that program. I handled almost all discovery work and substantive court appearances in cases involving Fendi. This work implicated a broad range of trademark issues including, but not limited to, trademark and trade dress infringement, false designation of origin, and unfair competition claims.

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Approximately once every two months from 1989 to 1992, I, for Fendi, applied for provisional injunctive relief in district court to seize counterfeit goods from street vendors or retail stores. These applications required extensive submission of evidence documenting Fendi's trademark rights, its protection of its marks, the nature of the investigation against the vendors, and Fendi's right to ex parte injunctive relief. Generally, the street vendors defaulted but others appeared and settled pro se. Two of these cases filed in the Southern District of New York were captioned Jane Doe v. John Doe and Various ABC Companies, 89 Civ. 3122, the Hon. Thomas P. Griesa presiding (Tel. No. (212) 805-0210), and Fendi S.a.s. Di Paola Fendi e Sorelle v. Dapper Dan's Boutique, 89 Civ. 0477, the Hon. Miriam G. Cedarbaum presiding (Tel. No. (212) 805-0198).

The preceding two cases (A4 and A5) involved a trial and a damages hearing on Fendi's trademark claims against the defendants. In the first, the Burlington case, Fendi alleged that defendants knowingly trafficked in counterfeit goods and Fendi sought triple profits from the defendants and punitive damages. After extensive discovery, submission of a pre-trial order and memorandum, and Fendi's presentation of its expert at trial, the case settled. I was sole counsel present at trial. In the Cosmetic World case, the Court granted Fendi's summary judgment motion on liability and referred the matter to a magistrate judge for an inquest on damages. See 642 F. Supp. 1143 (S.D.N.Y. 1986). I conducted the contested hearing on damages before the magistrate judge who recommended an award in Fendi's favor.

6.

Case Name: Republic of the Philippines v. New York Land Co., et al. (the "Philippines Case") and Security Pacific Mortgage and Real Estate Service Inc. v. Canadian Land Company, et al. (the "Security Pacific Case").

Case Nos.: 90-7322 and 90-7398

Court: United States Court of Appeals for the Second Circuit

Panel: Hon. Thomas J. Meskill
U.S. Circuit Judge
114 W. Main Street, Suite 204
New Britain, Connecticut 06051
(203) 224-2617

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Hon. Lawrence J. Pierce
U.S. Circuit Judge
c/o U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 791-0951

Hon. George C. Pratt
U.S. Circuit Judge
U.S. Courthouse
Uniondale Avenue
Hempstead Turnpike
Uniondale, New York 11553
(516) 485-6510

Co-Counsel:

David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500

David Glasser, Esq.
Levin & Glasser, P.C.
675 Third Avenue
New York, New York 10471
(212) 867-3636

Roy L. Reardon, Esq. (455-2840)
David E. Massengill, Esq. (455-3555)
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017

Adversaries:

Jeffrey J. Greenbaum, Esq.
James M. Hirschhorn, Esq.
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
Attorneys for the Republic of the Philippines
Legal Center
1 Riverfront Plaza
Newark, New Jersey 07102
(201) 643-7000

Date of Argument: 6/15/90 (Argued by Roy L. Reardon, Esq. of Simpson, Thacher & Bartlett)

AND

District Court

Case Name: **Republic of the Philippines v. New York Land Co., et al.** (the "Philippines Case") and **Security Pacific Mortgage and Real Estate Service Inc. v. Canadian Land Company, et al.** (the "Security Pacific Case").

Case Nos.: The Philippines Case: 86 Civ. 2294
The Security Pacific Case: 87 Civ. 3629

Court: United States District Court, Southern District of New York

Judge: Hon. Pierre N. Leval
U.S. Circuit Judge (Then District Court Judge)
U.S. Circuit Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 857-2319

Co-Counsel: David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500

David Glasser, Esq.
Levin & Glasser, P.C.
675 Third Avenue
New York, New York 10471
(212) 867-3636

Participating

Adversaries

Opposing Motion: Jeffrey J. Greenbaum, Esq.
James M. Hirschhorn, Esq.
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
Attorneys for the Republic of the Philippines
Legal Center
1 Riverfront Plaza
Newark, New Jersey 07102
(201) 643-7000

Michael Stanton, Esq.
Weil, Gotshal & Manges
Attorneys for Security Pacific
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Date of Argument: 2/12/90

Case Description: My former firm, Pavia and Harcourt, represented Bulgari Corporation of America ("Bulgari"), an international retailer of fine jewelry, who was a tenant in the Crown Building at 730 Fifth Avenue, New York, New York. The Crown Building was the subject of a foreclosure sale in the Security Pacific Action, and its beneficial ownership was in dispute in the Philippines Action. Bulgari was not a party to these actions. The district court denied Bulgari's request, by way of Order to Show Cause, to approve a rental amount it had reached with the manager of the Crown Building. I primarily drafted the papers presented to the district court and argued the motion. Bulgari's motion attempted to demonstrate that no competent evidence existed to dispute Bulgari's proof that the rental amount agreed upon was at or above fair market value and benefited the Crown Building and its claimants. Bulgari appealed the district court's denial of its approval of the rent agreement on the grounds that the denial was effectively an injunction against Bulgari's exercise of its contractual lease rights to have its rent fixed by agreement during the term of the lease, and that the district court improperly granted the injunction without a hearing. I did not argue the appeal but participated extensively in the drafting of appellant's brief and reply. The district court's Order was affirmed on appeal, without a published opinion. 909 F.2d 1473 (2d Cir. 1990).

7.

Case Name: Miserocchi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.

Case No.: 85-7734

Court: United States Court of Appeals for the Second Circuit

Panel: Hon. J. Edward Lumbard
Senior Judge
U.S. Circuit Judge
U.S. Courthouse
Foley Square
New York, New York 10007
(212) 857-2300

Hon. James L. Oakes
Then-Chief Judge
U.S. Circuit Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 857-2400

Hon. George C. Pratt
U.S. Circuit Judge
U.S. Courthouse
Uniondale Avenue
Hempstead Turnpike
Uniondale, New York 11553
(516) 485-6510

Adversary: Stephen P. Sheehan
Wistow & Barylick
61 Weybosset Street
Providence, Rhode Island 02903
(401) 831-2700

Date of Argument: 9/17/84

AND

District Court

Case Name: Miserochi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.

Case No.: 84 Civ. 6112

Court: United States District Court, Southern District of New York

Judge: Hon. Kevin Thomas Duffy
U.S. District Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 805-6125

Co-Counsel: David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500

Adversary: Stephen P. Sheehan
Wistow & Barylick
61 Weybosset Street
Providence, Rhode Island 02903
(401) 831-2700

Date of Argument: 9/5/84 (argued by David Botwinik of Pavia & Harcourt)

Case Description: This action involved the bankruptcy of an Italian corporation, Miserochi & C., SpA ("Miserochi"), with affiliates in London and elsewhere. The London affiliate of Miserochi breached a grain commodity trading contract with my then client, Alfred C. Toepfer International, G.m.b.H. ("Toepfer"). Toepfer demanded arbitration of the dispute against both Miserochi and its London affiliate under the terms of the grain commodity trading agreement between the parties and a guarantee signed by Miserochi. Shortly before the arbitration hearing was to commence, Miserochi moved to stay the arbitration against it, arguing that it was not a party to the arbitration agreement. Although my partner, David A. Botwinik, argued the motion before the district court, I primarily drafted Toepfer's responsive papers to the motion to stay arbitration and the cross-motion to compel arbitration. Toepfer argued that Miserochi was

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bound to arbitrate both as an alter ego of its London affiliate and under the terms of its guarantee. After the district court ruled in Toepfer's favor, Miserocchi filed a notice of appeal and sought an expedited stay of the district court's Order denying the stay of arbitration and compelling arbitration. I argued the motion to stay. At the conclusion of the argument on the motion, the Second Circuit not only denied the motion for a stay but also dismissed the appeal. I participated extensively as co-counsel in the arbitration that followed and subsequently appeared in the post-confirmation proceedings resulting from the arbitration award rendered in favor of Toepfer. The matter settled before the hearing on appeal of the confirmation order.

8.

Case Name: **The People of the State of New York v. Clemente D'Alessio and Scott Hyman**

Indictment No.: 4581/82

Judge: Hon. Thomas B. Galligan (retired)
Then-Acting Justice, Supreme Court,
c/o Administrative Judge's Office
Juanita Newton
111 Centre Street
New York, New York 10013
(212) 374-4972

Associate Counsel: Karen Greve Milton
Director of Education Training Program
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6690
(212) 382-6619

Adversaries: Steven Kimelman, P.C.
Attorney for Scott Hyman
757 Third Avenue
New York, New York 10017
(212) 421-5300

James Bernard, Esq.
Attorney for Clemente D'Alessio
150 Broadway
New York, New York 10038
(212) 233-0260

Dates of Trial: 2/2/83 to 3/2/83

Case Description: I was lead counsel in this action in which defendants were charged with selling videotapes depicting children engaged in pornographic activities. Defendant Scott Hyman dealt directly with the undercover agent and attempted to raise numerous defenses at trial based upon his alleged drug addiction. The proof against defendant Clemente D'Alessio was circumstantial and he raised a misidentification defense at trial. This action was the first child pornography case prosecuted in New York State after the U.S. Supreme Court upheld the constitutionality of New York's laws in New York v. Ferber, 458 U.S. 747 (1982). The defendants filed a plethora of motions before and during trial. The defendants' request for severance was denied, as were, after a hearing, the defendants' motions for the suppression of statements, evidence, and identification. Other issues addressed at trial included whether the trial court should or could, upon defendants' request, require the government to stipulate to the pornographic nature of the evidence, whether defendant Hyman could present expert testimony on the effects of drug addiction on mens rea, and whether defendant Hyman was entitled to jury charges on diminished capacity or intoxication. The jury convicted defendants after trial. The defendants received sentences, respectively, of 3½ to 7 years and 2 to 6 years. The convictions were affirmed on appeal. See People v. D'Alessio, 62 N.Y.2d 619, 476 N.Y.S.2d 1031 (Ct. App. 1984); People v. Hyman, 62 N.Y.2d 620, 476 N.Y.S.2d 1033 (Ct. App. 1984).

9.

Case Name: The People of the State of New York v. Richard Maddicks

Indictment No.: 886/82

Court: Supreme Court of the State of New York, County of New York

Judge: Hon. James B. Leff (retired)
Justice, Supreme Court
c/o Administrative Judge's Office
Juanita Newton
100 Centre Street
New York, New York 10013
(212) 374-4972

Lead Counsel: Hugh H. Mo, Esq.
Law Offices of Hugh H. Mo
750 Lexington Avenue
15th Floor
New York, New York 10022
(212) 750-8000

Adversary: Peter A. Furst, Esq.
100 Pine Street
Suite 2750
San Francisco, California 94111
(415) 433-2626

Dates of Trial: Almost all of January 1983

Case Description: The defendant was dubbed the "Tarzan Murderer" by the local Harlem press because he committed burglaries by acrobatically jumping or climbing from roof tops or between buildings and entering otherwise inaccessible apartments. If the defendant found a person in the apartment, he shot them. I was co-counsel on the case, and prepared and argued the motion, before Justice Harold Rothwax, that resulted in the court consolidating the trial of four murders and seven attempted murders relating to eleven of the defendant's burglaries. The consolidation was unusual in that up to that point, most New York courts had limited consolidation to crimes in which an identical modus operandi had been used. We argued successfully that the commonality of elements in the crimes, although with some variations in modus operandi, warranted consolidation. I participated extensively in preparing and presenting expert and civilian witnesses at trial. The defendant was convicted after trial, and sentenced to 67½ years to life. The conviction was affirmed on appeal. See People v. Maddicks, 70 N.Y.2d 752, 520 N.Y.S.2d 1028 (Ct. App. 1987).

10.

Case Name: The People of the State of New York v. Manny Morales a.k.a. Joey Hernandez, Joseph Pacheco, and Eduardo Pacheco

Indictment No: 4399/82

Judge: Hon. Alfred H. Kleiman (retired)
Then-Acting Justice, Supreme Court
c/o Administrative Judge's Office
Juanita Newton
100 Centre Street
New York, New York 10013
(212) 374-4972

Adversaries: Ira I. Van Leer (deceased)
(Associates present at portions of the trial: Valerie Van Leer-Greenberg and Howard Greenberg)
Van Leer and Greenberg
Attorneys for defendant Manny Morales a.k.a. Joey Hernandez
132 Nassau Street, Suite 523
New York, New York 10038
(212) 962-1596

Lawrence Rampulla, Esq.
Attorney for defendant Edwardo Pacheco
2040 Victory Blvd.
Staten Island, New York 10314
(718) 761-3333

Stephen Goldenberg, Esq.
Attorney for defendant Joseph Pacheco
277 Broadway, Suite 1400
New York, New York 10007
(212) 346-0600

Dates of Trial: March 25, 1983 to May 12, 1983

Case Description: This multiple-defendant case involved a Manhattan housing project shooting between rival family groups. I was sole counsel in this action on behalf of the government. Prior to trial, I conducted various hearings opposing defense motions to suppress statements and identifications. This

lengthy trial involved witnesses with significant credibility issues. The jury convicted one of the three defendants who was sentenced to 3 to 6 years for Criminal Possession of a Weapon in the Third Degree. The conviction was affirmed on appeal. See People v. Pacheco, 70 N.Y.2d 802, 522 N.Y.S.2d 120 (Ct. App. 1987).

Additional Question under Item 18: In addition, if the majority of cases you list in response to this question are older than five years, provide the name, address and phone number for 10-12 members of the legal community who have had recent contact with you, even if the contact was only an appearance before you as a judge.

I have interpreted this question to be seeking a list of individuals who are familiar with my judicial work because they are knowledgeable about some of my cases or opinions, or because they have appeared before me. If you seek only individuals who have tried cases or made other substantive appearances before me, please advise me. I list these individuals in alphabetical order.

1. Martin J. Auerbach, Esq.
Dormand, Mensch, Mandelstan, Schaeffer
747 Third Avenue
New York, New York 10017
(212) 759-3300

2. The Hon. Miriam G. Cedarbaum
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1330
New York, New York 10007
(212) 805-0198

3. Justin N. Feldman, Esq.
Kromish, Lieb, Weiner & Hellman
1114 Avenue of the Americas, 47th Floor
New York, New York 10036-7798
(212) 479-6210

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4. Leonard F. Joy, Esq.
Attorney-in-Charge
Legal Aid Society, Federal Defender Division
52 Duane Street
New York, New York 10007
(212) 285-2830
5. John Kidd, Esq.
Rogers & Wells
200 Park Avenue
New York, New York 10166-0153
(212) 878-8000
6. The Hon. John G. Koeltl
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1030
New York, New York 10007
(212) 805-0222
7. Sara Moss, Esq.
Vice-President and General Counsel
Pitney Bowes
1 Elmcroft Road
Stamford, Connecticut 06926
(203) 351-7924
8. John S. Siffert, Esq.
Lankler, Siffert & Wohl
500 Fifth Avenue, 33rd Floor
New York, New York 10110
(212) 921-8399
9. Gerard Walperin, Esq.
Rosenman & Colin
575 Madison Avenue
New York, New York 10022
(212) 940-7100

10. Mary Jo White, Esq.
United States Attorney for the Southern District of New York
U.S. Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
(212) 791-0056
19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In the last five years as a judge, my legal activities have spanned the gamut of federal jurisdiction. As part of my daily work, I have addressed many of the complex legal questions of our time in fields as diverse as the First and Fourteenth Amendments to the United States Constitution, antitrust, securities, habeas corpus, immigration, tax, intellectual property, ERISA, employment discrimination, and many other areas of law. The numerous opinions I have cited in Question Number 15 describe in detail many of these significant cases.

A great part of my litigation work while in private practice involved pre-trial and discovery proceedings for cases which were typically settled before trial. I conducted a number of preliminary injunction hearings in trademark and copyright cases, and post-motion hearings before magistrate judges on a variety of issues. My work also involved rendering advise to clients on a wide variety of legal issues, including, but not limited to, product liability, warranty, antitrust, securities, environmental, banking, real estate, patents, employment, partnership, joint venture and shareholder laws; customs, automobile and joint tire regulations; and franchising and licensing matters. I, moreover, conducted over fifteen arbitration hearings involving, predominantly, export grain commodity trading on behalf of foreign buyers but also hearings involving banking, partnership, tire, and fashion industry disputes.

Finally, in addition to my work in establishing a national anti-counterfeiting program for Fendi S.a.s. Paola Fendi e Sorelle, I participated, on behalf of Fendi, in establishing a Task Force of prominent trademark owners to change New York State's anti-counterfeiting criminal statutes. I also supervised and participated in the national dealers and customer warranty relations programs for Ferrari North America, a division of Fiat Auto USA, Inc.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Because my former firm, Pavia & Harcourt, advises me on personal matters, I will continue to recuse myself from any matter in which my form firm or its clients, or a former client with whom I worked are involved. Similarly, I will continue to recuse myself from hearing any matter involving an issue in which I participated while a member of the Board of Directors of the non-profit organizations described in Part III, Question 1. I will further recuse myself from any matter involving a client or associate of my husband-to-be. In all matters, I will follow the dictates of 28 U.S.C. § 455 and the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

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	1996	1997
Salary - U.S.D.J.	\$133,600	\$66,800 to 5/31/97
Interest - Citibank Savings Acct.	\$ 912	\$ 373 to 6/1/97
Rent from Kings Co. Coop [\$1100 a month]	\$ 13,200	\$ 6600 to 6/1/97

My Financial Disclosure Report, A10, is attached.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

My Net Worth Statement and Schedule is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Before my appointment as a judge, all of the non-profit organizations with which I had been affiliated served the disadvantaged either directly or through projects I had participated in developing. The Puerto Rican Legal Defense and Education Fund, for example, promotes, through legal and educational activities, the civil and human rights of disadvantaged Hispanics. I had served, at various times, as the First Vice President of the Board of Directors of the Fund and as Chairperson of its Litigation and Education Committees.

The State of New York Mortgage Agency ("SONYMA") structures affordable housing programs for residents of the State of New York. During my service on its Board of Directors, SONYMA, among many other projects, implemented special mortgage programs for low-income families to purchase homes.

I was also a member, in 1988, of the Selection Committee for the Stanley D. Heckman Educational Trust which granted college scholarships to minorities and first generation immigrants. I had, moreover, served, in 1990-1991, as a member of New York State's Panel on Inter-Group Relations. The Report of that Panel is attached.

Finally, I had been a member of the New York City Campaign Finance Board from its inception in 1988 until 1992. This Board distributes public funds to candidates for certain elective positions in New York City when such candidates agree to limit the amount of the contributions they will accept, and expenditures they will make, during campaigns.

The time I devoted to my service to these assorted organizations varied through the years but it was never less than two hours a week and had been over eight hours a week during certain periods. I devoted an average of approximately six hours a week cumulatively to the various non-profit organizations of which I was a member.

The Code of Judicial Conduct limits my ability to provide legal service to the disadvantaged. While a judge, I nevertheless contribute my time as permitted by law to bar and law school activities. I have served as an honorary member of the Public Service Committee of the Federal Bar Council. I also serve on the selection committees for the Root-Tilden-Snow Scholarship granted to selected New York University Law School students interested in public service and the Kirkland and Ellis New York Public Service Fellowship granted to a Columbia Law School graduate to support a year's employment in public service. I serve on moot court panels and in trial advocacy courses at local law schools and for the office of the District Attorney of New York County; I also speak regularly at bar association functions on issues such as judicial clerkships for minority students and women in the law. Finally, I have lectured about trial advocacy skills at the Office of the Attorney General for the State of New York. It is difficult to quantify the time I spend on these activities because I participate in functions as my schedule permits. I estimate that I attend at least one community service function a month, and often twice a month.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interview in which you participated).

I am not aware of any selection commission which recommended me for this Circuit Court nomination. I was interviewed by the Office of the Counsel to the President in or about March of 1996 and again in March of 1997. Thereafter, the American Bar Association and the Federal Bureau of Investigations interviewed me. The President's nomination followed.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving “judicial activism.”

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this “judicial activism” have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

At the time I was nominated as a district court judge, I answered this question as follows:

"Our Constitution vests the right to make and administer laws in the legislative and executive branches of our government. Judges impermissibly encroach upon that right by rendering decisions that loosen jurisdictional requirements outside of the scope of established precedents and by fashioning remedies aimed at including parties not before the court to resolve broad societal problems.

Judges must provide fair and meaningful remedies for violations of constitutional and statutory rights to the parties before a court. Doing so can, at times, affect broad classes of individuals, may place affirmative burdens on governments and society and may require some administrative oversight functions by a court.

A judge's decision should not, however, start from or look to these effects as an end result. Instead, because judicial power is limited by Article III of the Constitution, judges should seek only to resolve the specific grievance, ripe for resolution, of the parties before the court and within the law as written and interpreted in precedents. Intrusion by a judge upon the functions of the other branches of government should only be done as a last resort and limitedly."

My service as a judge has only reinforced the importance of these principles. Finding and maintaining a proper balance in protecting the constitutional and statutory rights of individuals versus protecting the interest of government, financial and otherwise, is very difficult. Judges must be extraordinarily sensitive to the impact of their decisions and function within, and respectful of, the constraints of the Constitution.

**SONIA SOTOMAYOR SUPPLEMENTAL RESPONSE TO
SENATE QUESTIONNAIRE
PART I BIOGRAPHICAL INFORMATION, QUESTION 12**

12. The following, in reverse chronological order, are speeches I have given since the filing of my Senate Questionnaire:

Sonia Sotomayor, *Speech at the IACC, International Anti-Counterfeiting Coalition Luncheon (October 16, 1997).*

Sonia Sotomayor, *Remarks at the MCC, Metropolitan Correctional Facility Hispanic Heritage Month Program Celebration (October 3, 1997).*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, NEW YORK 10007-1581

CHAMBERS OF
SONIA SOTOMAYOR
UNITED STATES DISTRICT JUDGE

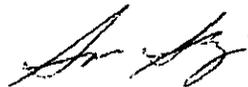
October 8, 1997

Hon. Orin G. Hatch, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Please accept the enclosed materials in response to the questions that have been posed to me by your colleagues.

Very truly yours,



Sonia Sotomayor

cc: Sen. Leahy
tb
encls.

**RESPONSES TO GENERAL AND ADDITIONAL QUESTIONS FOR
SONIA SOTOMAYOR POSED BY SENATOR JOHN ASHCROFT**

Questions For All Candidates

1. *Which current Supreme Court Justice do you most admire, and why?*

I have great admiration for Justice Sandra Day O'Connor. She has demonstrated the highest respect for the separation of powers, and for the sovereignty of the individual states. I have also been impressed by her meticulous consideration of precedent, and by her determination to approach each case on its individual facts. As a judge on the district court, I have made every effort to be guided by these same principles: to honor precedent, to respect the constitutional functions of the legislative and executive branches of our government, and to approach each case on its individual merits.

2. *What Judge or Justice has most influenced your thinking concerning the constitutional separation of powers, and why?*

Chief Justice John Marshall has most influenced my thinking concerning the constitutional separation of powers. Justice Marshall is frequently recognized as one of the greatest judges in our country's history, and for good reason. Marshall set the foundations of our Constitution in Marbury v. Madison, in which the Supreme Court, under Marshall's leadership, decided that the power of each branch of government is based solely in the Constitution, and that no branch of government can expand upon the powers specifically delineated in the Constitution.

3. *What does the discretionary power of the judiciary mean to you?*

The federal courts can exercise discretion only to the extent authorized by Congress. In the Federal Rules of Civil Procedure, for example, Congress has directed courts to exercise wide discretion in structuring discovery to promote judicial economy. In numerous other areas, Congress has more narrowly circumscribed court discretion. In all cases, courts must honor those parameters set by Congress.

4. *Which Judge has served as a model for the way you would want to conduct yourself as a Judge, and why?*

I have many judicial colleagues whom I admire. It is difficult for me to mention one without feeling as if I have unfairly overlooked numerous others. I mention only the Honorable Leo Glasser of the Eastern District of New York, however, because he was a friend to me before I joined the bench. Knowing Judge Glasser on a personal level, I am aware of his extraordinary commitment to family, and of his passionate love of the law. I have always sought to emulate these qualities, and I have tried to devote the same time, care, and attention that Judge Glasser brings to the cases before him.

5. *Which law review article or book has most influenced your view of the law?*

I have an extensive background in intellectual property, and have been most impressed by Nimmer on Copyright, a comprehensive, insightful and authoritative treatment of the complex issues permeating this area of the law.

6. *What role do you think legislative history -- by which I mean the various committee reports, hearing transcripts and floor statements -- should play in the interpretation of the text of a statute?*

First and foremost, a statute should be interpreted and applied according to its unambiguous plain terms. Indeed, legislative history should be consulted only in those rare instances in which the text of a provision is truly ambiguous, and in which precedent has failed to elucidate its meaning. Even in these unusual situations, judges must exercise great care to ensure that the statements of intent they rely upon accurately reflect the Congressional will, and do not more narrowly reflect the views of an individual legislator.

Additional Questions For Judge Sotomayor

1. *You appear to have been critical of mandatory minimums and the sentencing guidelines. Do you think federal judges should have greater discretion in sentencing? Are there other areas in which you think federal courts should have additional discretion?*

As I explained during the hearings held on September 30, I value the Sentencing Guidelines -- with their mandatory minimums -- as an important tool in avoiding arbitrary

results, and as a valuable means of ensuring that the community's standards are reflected in sentencing. Before the adoption of the safety valve provision by Congress, however, it was my view -- and the view of the Judicial Conference -- that the Guidelines and mandatory minimums could be revised to address more fairly those cases involving nonviolent first time offenders. Congress agreed with these concerns and passed the safety valve provision in 1994.

It is, of course, solely the prerogative of Congress to make any additional changes to the Guidelines, or its mandatory minimums, that it deems necessary or desirable. Since Congress passed the safety valve, in 1994, I am not aware of any remaining class of individuals for whom I believe modifications are advisable. As I have throughout my time on the bench, I will continue to apply the mandatory minimums, and the Guidelines, and all laws, in whatever manner prescribed by Congress.

2. *At the hearing, you mentioned that you recently concluded the trial in a case called Holmes v. Artuz, which involved a prisoner who was removed from his food service job because he was an open homosexual. Did you ever rule on a motion for summary judgment or a motion for a directed verdict in that case? If so, how did you rule?*

The defendant prison officials in Holmes did not move for summary judgment. During trial, however, I indicated to the parties that even if the jury were to return a verdict in plaintiff's favor, defendants would have had a strong basis for reasserting their claim of qualified immunity. At the close of the plaintiff's case, the defendants moved for a directed verdict. I reserved decision pending the jury's determination on the potentially dispositive factual questions, *i.e.*, whether the defendant prison officials did in fact remove the plaintiff from his work assignment without his consent and whether there was a genuine security concern motivating defendants' actions. By returning a verdict for the defendants on the first of these issues, the jury obviated any need for me to reach the legal questions implicated by the issue of qualified immunity. Based on the jury's verdict, I entered an order dismissing the action.

3. *In your 1995 opinion in Holmes v. Artuz, you appear to reject a qualified immunity defense, at least in part, on the ground that the prison officials had not provided a rational basis for the plaintiff's removal. Is that a fair reading of your opinion? Did the qualified immunity issue resurface later in the litigation? If so, how did you rule?*

In rejecting the motion to dismiss filed by the defendants in Holmes, I did not find

the defendants' proffered security concerns to be unreasonable or irrational. I was not permitted to make any determination as to the factual merits of the defendants' arguments. In considering the motion to dismiss, I was instead obligated to treat the plaintiff's allegations as true. Accordingly, I had no basis -- in the context of the motion before me -- for rejecting the plaintiff's claim that the defendants had removed him from the food line based solely upon their discriminatory animus towards homosexuals and not because of any genuine concern for prison security.

With respect to the issue of qualified immunity, please refer to my response to Question 2.

4. *In your 1995 opinion in Holmes v. Artuz, you deferred resolution of the case in part to allow the Supreme Court to decide the Romer case. How did you feel that the Court's resolution of that case might be relevant in light of the standard for the application of qualified immunity?*

As I explained in my answer to Question 3, I rejected the motion to dismiss entered in Holmes specifically because I was under an obligation to accept plaintiff's allegations as true. Under well settled Supreme Court precedent, cited in Holmes, discrimination lacking any rational basis, as alleged by the plaintiff, is a clear violation of the equal protection clause. For this reason, I could not at that time make any conclusive determinations regarding qualified immunity. Defendants would have been entitled to qualified immunity, however, if at some later stage of the proceeding they presented evidence demonstrating a rational basis for their conduct. The Supreme Court decision in Romer would not have affected this conclusion. Nevertheless, as a district court judge considering issues similar to those in Romer, I considered it at least possible that the Supreme Court's forthcoming opinion might -- in some way that I could not specifically predict -- effect the legal analysis applicable to the case before me.

5. *In your 1995 opinion in Holmes v. Artuz, you read the pro se plaintiff's complaint in the light most favorable to him and concluded that it might be read to raise a substantive due process claim. What was the precise substantive due process claim that you felt was raised by the plaintiff's complaint, and what precedent supported that claim?*

According to the Second Circuit decision in Jones v. Coughlin, which I cited and relied upon in my Holmes Order, "a prisoner has a substantive due process right not to be subjected to false misconduct charges as retaliation for his exercise of a constitutional

right such as petitioning the government for redress of his grievances" 45 F.3d 677, 680 (2d Cir. 1995). The plaintiff in Holmes, as in Jones, complained that he was retaliated against -- by means of false misbehavior reports -- specifically because he exercised his first amendment right to complain to prison officials regarding perceived mistreatment.

A handwritten signature in cursive script, appearing to read "Smith".

**RESPONSES TO QUESTIONS BY SENATOR STROM THURMOND
REGARDING THE NOMINATION OF JUDGE SONIA SOTOMAYOR**

1. *Judge Sotomayor, in response to one of my questions at the nominations hearing on September 30, you stated that you do not oppose mandatory minimum sentences for drug offenses. However, during your sentencing of Louis Gomez and Victor Gomez on July 26, 1993, you stated: "I am deeply, personally sorry about the sentence that I must impose I hope that yours will be one among the many that will convince our new president and Congress to change these minimums. The only statement I can make is this is one more example of an abomination being committed before our sight. . . . [T]he laws require me to sentence you to the five-year minimum."*

A. Have your views changed since 1993 based on subsequent Congressional action? If not, what did you mean when you said that Congress should "change these minimums."

Yes, my views have changes since 1993. As I explained during the hearing held on September 30, I favor the Sentencing Guidelines -- with their mandatory minimum sentences -- and appreciate the certainty which they provide. As I also indicated, it is solely for Congress, in conjunction with the President, to enact any changes to the Guidelines. In this regard, I believed, in 1993 -- as did the Judicial Conference -- that cases such as Gomez suggested a sound basis for Congressional action, particularly with respect to defendants who were first time offenders and subordinates in drug distribution schemes. In 1994, in enacting the safety valve, Sentencing Guideline § 5C1.2, Congress agreed. It amended the Guidelines to permit departures from mandatory minimums in cases involving defendants like Gomez -- first time offenders, involved as subordinates in nonviolent crimes, who fully disclose all information they have to the Government.

B. What other examples of abominations were you referring to?

I believe that the only sort of situation which struck me as an abomination was the Gomez type situation, a case in which a drug ring leader -- whom I sentenced to the maximum prison term permissible under Guidelines -- would be required to serve only three months longer than one of his subordinates. At the time I imposed sentence in the Gomez case, the Judicial Conference was providing Congress with other examples of cases in which the mandatory minimums -- as they existed at the time -- applied in such a way that drug ring leaders were sentenced no more severely than first time offenders working under them.

2. *During your sentencing of Daniel Gonzalez on July 12, 1993, you stated: "I do hope that . . . your family will appreciate that we all understand that you were in part a victim of the economic necessities of our society, but unfortunately there are laws that I must impose."*

A. What did you mean when you said that the defendant was a victim of economic necessities?

As I made clear in my statements to the Gonzalez family, the defendant before me was only "in part" motivated by economic circumstances. Foremost, defendants are responsible for their misconduct, and have only themselves to blame for the choices that they make to violate the law. In their letters to me, the Gonzalez family indicated that they recognized that their relative bore the brunt of the responsibility for his egregious misconduct.

B. Do you believe the economic circumstances of someone who is convicted of a drug offense should be relevant in determining their sentence?

No, people should not be excused from their misconduct on account of their economic circumstances. As I believe my own life experience demonstrates, people must and can find more constructive ways to respond to economic hardship than to resort to crime.

3. *You stated during your hearing that the jury found against Darrow Holmes in his lawsuit against Superintendent of Security Services in New York, Case No. 95 Civ. 2309 (SS). I am aware that you denied the government's motion to dismiss the case. Did the government later make a motion for summary judgment? If so, did you issue a written order denying the motion.*

The defendants did not make a motion for summary judgment in the Holmes case.

4. *You are quoted in the New York Times on September 25, 1992 as saying that you were "very aware of the controversy surrounding the guidelines" and that you expected to "experience some dislocation with them." Please explain how and why you have had "dislocation" with the Guidelines.*

As Senator Sessions observed during the hearing, "when you set a set of guidelines, everybody's not going to fit perfectly within it." In commenting to the New York Times concerning the responsibilities that I would have as a judge, I expected that it would be difficult -- though necessary -- to impose mandatory sentences in some such circumstances. During my time on the bench, I have come to recognize that, most often, the Guidelines provide welcomed certainty in sentencing.

5. *In the same New York Times article, when asked whether you were "among" those who sat on her hands rather than give [Justice Clarence Thomas] a standing ovation [at a Second Judicial Circuit conference], you are quoted as saying, "I'll take the Fifth."*

A. Please explain exactly what you did and said at that event in connection with Justice Thomas's appearance.

B. Please explain why your conduct was apparently inconsistent with most of the audience.

C. When Senator Sessions approached the topic with you, you stated that you did what you did because you did not wish to make a "political statement" through your actions. However, didn't your conduct, which was apparently inconsistent with most attendees, actually constitute a "political statement?"

As I told Senator Sessions during the hearing, I stood in honor of Justice Thomas when he entered the room at the Judicial Conference. I recall that most other judicial attendees stood as well. Because my conduct was consistent with precedent and protocol, I did not view my conduct as a "political statement." In "taking the Fifth" in response to the reporter's inquiry on the subject, I meant only to offer a humorous proxy for a "no comment." Indeed, as a prospective judge involved in an interview with the New York Times, I was determined to avoid being drawn into a politically charged discussion, and limited my responses mostly to questions concerning such matters as my childhood in the South Bronx and my work as a prosecutor.

Alan S. Berman
10/8/97

10/06/91 10:34 PMA

HON. SOTOMAYOR

011

RESPONSES TO REVISED FOLLOW-UP QUESTIONS FOR SONIA SOTOMAYOR FROM SENATOR SESSIONS

Judge Sotomayor, in Holmes v. Artuz, 1995 Dist. Lexis 15926, you noted that removing a prisoner from a prison job solely because he had declared his sexual orientation may itself state a claim under 42 U.S.C. §1983.

1. *In your legal opinion, is there a constitutional right to homosexual conduct?*

In my legal opinion, based upon the Constitution and Supreme Court precedent, including the Supreme Court's decision in Bowers v. Hardwick, there is no constitutional right to homosexual conduct. Moreover, as is the case with respect to all persons, except for those few who are entitled to the benefits of more heightened scrutiny, actions taken against homosexuals by the state are permissible provided only that they are rationally related to some legitimate state interest.

In the 1986 case Bowers v. Hardwick, the Supreme Court ruled that homosexual sodomy is not a constitutional right, and that a State could criminalize homosexual conduct.

2. *Judge Sotomayor, why did you mention the then pending Romer v. Evans case but not mention Bowers v. Hardwick in your opinion and order in Holmes v. Artuz? Isn't Bowers v. Hardwick relevant to the issue in Holmes v. Artuz?*

The plaintiff in Holmes did not advance any claim that the Constitution protected his homosexual conduct. Accordingly, I saw no reason to cite the Bowers decision.

The Romer case, however, which was pending before the Supreme Court at the time I entered my order in Holmes, might have had some bearing on the issue that plaintiff did raise in his complaint. Specifically, in Romer, the plaintiffs, like the plaintiff in Holmes, raised an equal protection argument concerning their status as homosexuals as opposed to their conduct as homosexuals.

In 1995, the Supreme Court ruled in Adarand v. Peña that all government racial preferences are subject to the strictest judicial scrutiny.

3. *Do you believe that the Adarand decision was correctly decided?*

In my view, the Adarand Court correctly determined that the same level of scrutiny -- strict scrutiny -- applies for purposes of evaluating the constitutionality of all government classifications, whether at the state or federal level, based upon race.

4. *If confirmed, you will preside over many employment discrimination cases as a federal judge. In a suit challenging a government racial preference, quota, or set-aside, will you follow the Adarand decision and subject that racial preference to the strictest judicial scrutiny?*

Yes, as required by the decision in Adarand, I will apply the strictest judicial scrutiny in evaluating any claim before me challenging a government racial preference, quota, or set-aside. I am obligated as a district court judge -- and will remain obligated if appointed to serve on the Second Circuit -- to comply fully with the dictates of Supreme Court precedent.

5. *In your legal opinion, is the California Civil Rights Initiative constitutional?*

As a sitting judge, I hesitate in commenting upon an issue which is directly pending in a case before the Supreme Court on an application for certiori. The Ninth Circuit has examined this issue closely and, in a carefully considered opinion, determined that the Initiative is constitutional. The Ninth Circuit opinion has a foundation in the strong presumption favoring the constitutionality of public referenda and laws and in recent Supreme Court precedents.

6. *Which current Supreme Court Justice do you most admire and why? Which former Supreme Court Justice do you admire and why?*

I have great admiration for Justice Sandra Day O'Connor. She has shown the highest respect for the separation of powers, and for the sovereignty of the individual states. Her meticulous consideration of precedent has also impressed me, as well as her determination to approach each case on its individual facts. As a judge on the district court, I have made every effort to be guided by these same principles: to honor precedent, to respect the constitutional functions of the legislative and executive branches of our government, and to approach each case on its individual merits.

I also admire former Chief Justice John Marshall. Justice Marshall is frequently recognized as one of the greatest judges in our country's history, and for good reason. Marshall set the foundations of our Constitution in Marbury v. Madison, in which the Supreme Court, under Marshall's leadership, decided that each branch of government derives its powers solely from the Constitution, and that no branch is equipped to alter or expand upon those powers delineated in the Constitution.

7. *Is there a current law school professor or academic that you strongly admire?*

I admire Dean John D. Feerick, Dean of Fordham Law School. Dean Feerick throughout his academic life has been an exceptional public servant who has participated in countless committees and commissions dedicated to improving ethical practice in government and in our profession. Dean Feerick is currently chairing the Ethics Committee of the Dispute Resolution Section of the American Bar Association ("ABA"); he also previously chaired a joint committee of the ABA and American Arbitration Association ("AAA") that developed a set of ethical standards for mediators and arbitrators. He is Chair of the Executive Committee of the AAA and Chair of the Fund for Modern Courts. He has been a member of the New York State Law Revision Committee and was chairperson of the New York State Commission on Government Integrity. In short, Dean Feerick is a well-respected academic of high character, with a demonstrated commitment to his community. I admire him greatly for these qualities.

8. *You have been very critical of the federal sentencing guidelines. Please provide a copy of every opinion or order in which you departed downward from the guidelines as a federal district judge.*

I have never issued a published or unpublished opinion or order relating to upward or downward departures from the Sentencing Guidelines. Furthermore, I have never been appealed for a downward departure. I have been appealed twice for upward departures and, in both cases, I was affirmed on appeal. I will forward to you copies of the judgment and commitment orders filed with the Clerk of the Court upon sentencing for all cases in which I have departed.

The overwhelming majority of my departures downward have been at the government's specific request, as authorized by the Guidelines, because of the defendant's substantial assistance to the government and its administration. In other cases, in which the Guidelines range required a sentence of less than one year, I departed

downward due to extraordinary family circumstances, and I substituted a comparable or longer term of either community confinement or home detention. Furthermore, with respect to the cases involving illness, some of these defendants were to be immediately deported because they were expected to live for a very short time.

Overall, in the 217 criminal cases over which I have presided, I departed downward a total of 58 times: 44 of those departures were at the government's specific request for the reasons previously explained. In 3 of the remaining 14 cases, I was mandated by law to depart downward because the criminal statute at issue contained a maximum applicable sentence that precluded application of the Sentencing Guidelines (see Guidelines §5C1.2). My remaining 11 departures were expressly authorized under the Sentencing Guidelines as follows: 5 cases in which the defendant was terminally ill, seriously ill or borderline retarded (departure permitted in those circumstances under Guidelines §5H1.4); 1 case in which the defendant's criminal history category over-represented the seriousness of his past criminal activity as well as the likelihood of recidivism -- the defendant had a high criminal history category solely because of motor vehicle convictions for driving without a license (departure permitted under Guideline §5H1.8); 2 cases in which defendants had extraordinary family circumstances (*i.e.*, in one of those cases, defendant was the sole caretaker of a young child with serious emotional problems due to father's abuse) (departure permitted under Guidelines §5H1.6); 1 case in which the defendant had substantially assisted the administration of justice in his arrest and post arrest conduct with the government and the Court (departure permitted under Guidelines §5K2.0); and 2 cases in which I departed for a combination of the reasons described above, including poor health and a criminal history category that over-represented the seriousness of past criminal activity (in one of these cases, the defendant was of poor health and had a high criminal history category due to convictions that had occurred over 20 years prior to arrest).

Finally, I have departed upwards from Sentencing Guidelines in 6 cases: in 2 of those cases because of the quantity of drugs involved and the defendant's significant role in a drug-related offense; in 2 cases because of the defendant's serious prior criminal history; in 1 case due to the number of guns involved and the defendant's prior criminal history; and in 1 case because of the defendant's disruption of the government's prosecution and investigation (upward departure is expressly authorized in these instances under §5K2.7 of the Guidelines).



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NEW YORK 10007-1312

CHAMBERS OF
SONIA SOTOMAYOR
UNITED STATES DISTRICT JUDGE

FAX

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FROM: SONIA SOTOMAYOR
RE: _____

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UNITED STATES DISTRICT JUDGE

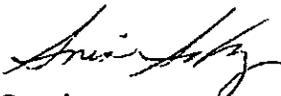
October 22, 1997

Hon. Orrin G. Hatch, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I have enclosed for your review my responses to the additional questions posed by Senator Thurmond.

Very truly yours,


Sonia Sotomayor

cc: Sen. Leahy
tb
encls.

**RESPONSES TO QUESTIONS OF OCTOBER 21, 1997,
BY SENATOR STROM THURMOND FOR JUDGE SONIA SOTOMAYOR**

- I. *Judge Sotomayor, you state in the Judiciary Committee Questionnaire regarding judicial activism, "Judges must provide fair and meaningful remedies for violations of constitutional and statutory rights to the parties before a court. Doing so can, at times, affect broad classes of individuals, may place affirmative burdens on governments and society and may require some administrative oversight functions by a court." Please give examples of proper judicial remedies "which would affect broad classes of individuals, which would require affirmative burdens on government and society, and which would require administrative oversight by a court."*

As I stated in my Judiciary Committee Questionnaire, courts should use such judicial remedies only in limited circumstances and "as a last resort." Where the parties themselves fashion remedies in class action settlements, for example, it may be unavoidable for a court to become involved in administering an agreed upon plan that affects a large class of litigants and imposes burdens on either government or society. Even in those circumstances, however, courts must exercise restraint and not permit remedies that go beyond the specific grievance at issue or which intrude upon the functions of other branches of government.

For example, last Spring, newspapers reported a major class action settlement affecting millions of Prudential policyholders in all 50 states. Plaintiffs in that action raised claims alleging widespread deceptive sales practices and various statutory violations by Prudential's sales agents. It is my understanding that the district court fashioned a judicial remedy consistent with the principles of restraint and deference that I emphasized in my Judiciary Committee Questionnaire. The district court chose to await the findings of a Multi-State Task Force investigating the company's activities, and the endorsement of affected state governments, before approving and overseeing the nationwide remediation of the thousands of policyholder claims.

2. Judge Sotomayor, a recent article in The New Republic on August 25, 1997, entitled "Defining Disability Down," the author referenced your recent opinion in Bartlett v. New York State Bd. of Law Examiners among others and stated, "Several Judges have recently ventured the enterprising claim that any person who is not performing up to his or her abilities in a chosen endeavor suffers from a learning disability within the meaning of the ADA." Is this an accurate representation of your holding in Bartlett? Please explain.

This is not an accurate representation of my holding in Bartlett. As I noted in footnote 4 of my decision denying defendants' motion for reconsideration, I reached my decision in that case only after determining -- on the basis of a painstaking examination of the voluminous scientific evidence placed before me -- that Ms. Bartlett's reading difficulties reflected a verifiable neurological impairment that required an accommodation under the ADA, and were not simply a function of "intelligence, educational, or emotional problems," for which the law does not provide an accommodation.

3. In Bartlett, you write, "I cannot find under these regulations that the practice of law is 'a specialized job or profession requiring extraordinary skill, prowess or talent.'" Please give examples of jobs or professions outside of athletics that would qualify as "specialized jobs or professions" under your interpretation of the regulations.

The regulation at issue states that a person should not be considered disabled if the person is "unable to perform a specialized job or profession requiring extraordinary skill, prowess or talent." 29 C.F.R. Pt. 1630, App. Section 1630.2(j). The EEOC regulation, which I adhered to in my opinion, cites, aside from a baseball player with a bad elbow, only the example of a commercial airline pilot with poor vision. Id. My finding with respect to lawyering must be read in the full context of the governing regulation. As explained at length in my decision, any profession or job qualifies for an exemption from accommodation under the regulation to the extent that the impairment at issue affects a particular skill necessary in performing that job. The Bar Examiners in Bartlett represented that reading speed -- provided that a minimum threshold is met (which Ms. Bartlett concededly did meet) -- is not a necessary professional skill measured by the bar examination. Therefore, because Ms. Bartlett's impairment did not relate to a skill necessary to perform as a lawyer, her impairment was eligible for accommodation under the ADA.

4. *If your reasoning in Bartlett under the Americans with Disabilities Act is followed by other courts, do you believe it will have a significant impact on the ability of test-takers to receive special accommodations? If so, please explain?*

I do not anticipate that my reasoning in Bartlett, if applied by other courts, will have a significant impact on the ability of test-takers to receive special accommodations. My decision was based upon the unique facts of the specific case before me. As I emphasized throughout both of my Bartlett opinions, Ms. Bartlett made an unusually compelling showing -- supported with the presentation of an extraordinary amount of evidence -- confirming the existence of her neurologically based impairment.

5. *You held in Bartlett that the plaintiff should be compared not to the average population, but to the average person having comparable training, skills and abilities, in this case lawyers. Are you concerned that such a test will significantly increase claims brought under the ADA?*

It is the EEOC that has determined that a plaintiff bringing an action under the ADA for a disability affecting the major life activity of working should be compared to the "average person having comparable training, skills and abilities." As a judge, I considered it my obligation to give considerable deference to an interpretation promulgated by the executive agency charged by Congress to enforce its laws. Moreover, I consider it the sole responsibility of Congress to determine whether its laws need to be revised in order to avoid undesirable results, such as a significant increase in claims or accommodations.

6. *Please provide a copy of any published or unpublished ruling that you have issued in favor of the plaintiff in a case in which the Americans with Disabilities Act was the determining law in the case.*

With the exception of Bartlett, I have not issued any rulings -- published or unpublished -- in favor of a plaintiff in a case in which the Americans with Disabilities Act was the determining law in the case.

Anne Sotomayor
10/22/97

QUESTIONS BY SENATOR THURMOND FOR JUDGE SONIA SOTOMAYOR

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4. If your reasoning in Bartlett under the Americans with Disabilities Act is followed by other courts, do you believe it will have a significant impact on the ability of test-takers to receive special accommodations? If so please explain.

5. You held in Bartlett that the plaintiff should be compared not to the average population, but to the average person having comparable training, skills and abilities, in this case lawyers. Are you concerned that such a test will significantly increase claims brought under the ADA?

6. Please provide a copy of any published or unpublished ruling that you have issued in favor of the plaintiff in a case in which the Americans with Disabilities Act was the determining law in the case.

**SONIA SOTOMAYOR
MEETINGS WITH SENATE STAFFERS
SCHEDULE
FRIDAY, JANUARY 23**

- 1:00 Meeting with Jonathan Yarowsky
Room #128/130 Old Executive Office Building
(202/456-7911)
- 2:00 Laurel Pressler
Staff Director
Office of Senator DeWine
Russell #140
(202/224-2315)
- 2:45 Lee Otis (with Chase Huttow)
Chief Counsel of Senator Abraham's Immigration Subcommittee
Office of Senator Abraham
Dirksen #323
(202/224-4822)
- 3:30- Duke Short (tentative -- will call before meeting)
5:00 Chief of Staff
Office of Senator Thurmond
Russell #217
(202/224-5972)