

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                            | DATE                  | RESTRICTION |
|--------------------------|--------------------------------------------------------------------------|-----------------------|-------------|
| 001. form                | re: Personal Data Questionnaire - Sotomayor - draft (17 pages)           | <del>02/28/1997</del> | P2, P6/b(6) |
| 002. letter              | Sonia Sotomayor to Jonathan Yarowsky; re: Preparation of Forms (2 pages) | <del>02/28/1997</del> | P2, P6/b(6) |
| 003. form                | Addendum to Personal Data Questionnaire - draft (24 pages)               | ca. 1997              | P2 744      |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Doug Band  
OA/Box Number: 12689

### FOLDER TITLE:

Personal Data Questionnaire

Jimmie Purvis  
2009-1007-F  
jp1523

### 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.

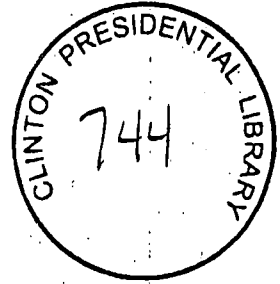
#### Freedom of Information Act - [5 U.S.C. 552(b)]

- 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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Questionnaire

**ADDENDUM TO PERSONAL  
DATA QUESTIONNAIRE**



**QUESTION 11 F:**

A1.

**Case Name:** Fratello Lozza (USA) 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 054-0392  
(802) 951-6401

**Date of Trial:** March 16, 1992

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

**Case Description:** Represented Lozza (USA) and Lozza SpA, Inc. in this trademark infringement and unfair competition action. I conducted the trial on behalf of the defendants and secured a dismissal of plaintiff's claims and an injunction against plaintiff's use of defendants' marks. Findings of Fact and Conclusions of Law and Order reported at 789 F. Supp. 625 (S.D.N.Y. 1992).

A2.

**Administrative**

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

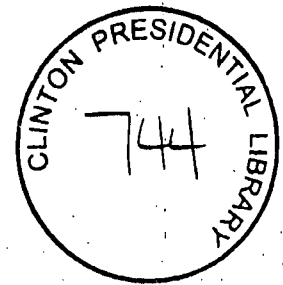
**Agency:** State of California New Motor Vehicle Board  
(Appeared pro hac vice)

Questionnaire

Protest No.: PR-973-88

Administrative  
Law Judges:

Robert S. Kendell  
Marilyn Wong  
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

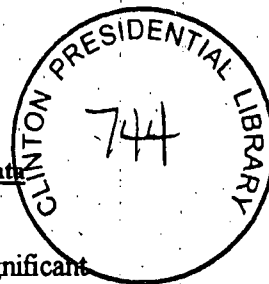
Co-Counsel: Nicholas Browning, III, Esq.  
Herzfeld & Rubin  
1925 Century Park East, Suite 600  
Los Angeles, California 90067-2783  
(213) 553-0451

Adversaries: Jay-Allen Eisen  
Jay-Allen Eisen Law Corporation  
1000 G Street, Suite 300  
Sacramento, California 95814  
(916) 444-6171

Donald M. Licker, Esq.  
701 University Avenue, Suite 100  
Sacramento, California 95825  
(916) 924-9600

Case Description: Represented Ferrari North America in an administrative hearing, ordered pursuant to a writ of mandate, of dealer's petition challenging the termination of his Ferrari franchise under California's Automobile Franchise Law. I had primary responsibility for conducting the hearing before the California Board which confirmed the termination.

Ferrari North America appealed the judgment on the writ, which judgment was reversed on appeal in an unpublished opinion. The appeal addressed the issue whether a Stipulation of Settlement entered into before the California New Motor Vehicle Board could be enforced, without a hearing, to terminate a dealer.



Questionnaire

Although not listed as co-counsel for appellant's briefs, I had significant drafting input. The appellate case was entitled 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 Appeal of the State of California in and for the 3rd Appellate District; Sacramento Superior Court, Case No. 360734.

A3.

Case Name:

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

Case No.:

3-89-03450-TC

Judge:

Hon. Thomas E. Carlson  
U.S. Bankruptcy Court Judge  
450 Golden Gate Avenue  
San Francisco, California 94102  
(415) 556-2250

Dates of Hearing:

1/22/90 and 3/19/90

Co-Counsel:

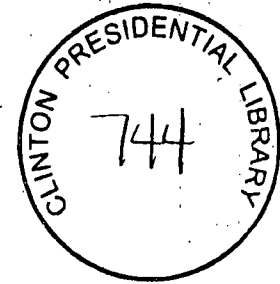
Nicholas Browning, III, Esq.  
Herzfeld & Rubin  
1925 Century Park East, Suite 600  
Los Angeles, California 90067-2783  
(213) 553-0451

Adversaries:

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

Questionnaire

William Kelly, Esq.  
Graham & James  
Attorneys for Buyer, Barry Singh  
One Maritime Plaza, Suite 300  
San Francisco, California 94111  
(415) 954-0200



Case Description: Represented, pro hac vice, Ferrari North America, a franchisor of 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 dealer's franchise. The Court ruled that the dealer could not reject customer contracts, although financially burdensome, and then assume franchise agreement.

Case subsequently settled with sale of dealership and resolution of claims among dealer, new buyer, Ferrari and customers.

A4 - A5

General Description: Since 1985, my firm represented Fendi S.a.s. di Paola Fendi e Sorelle ("Fendi") in its national anti-counterfeiting work. Frances B. Bernstein, a partner at Pavia & Harcourt (now deceased), and I created Fendi's anti-counterfeiting program. From 1988 until the time I left the firm for the bench, I was the partner in charge of that program. I handled almost all discovery work and substantive court appearances in cases involving Fendi. The following are cases representative of various facets of this work.

A4.

Case Name: Jane Doe v. John Doe and Various ABC Companies

Case No.: 89 Civ. 3122

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

Judge: Hon. Thomas P. Griesa  
U.S. District Judge  
U.S. Courthouse  
500 Pearl Street  
New York, New York 10007  
(212) 805-0210

Sotomayor Addendum to Personal Data

Questionnaire

Adversaries:

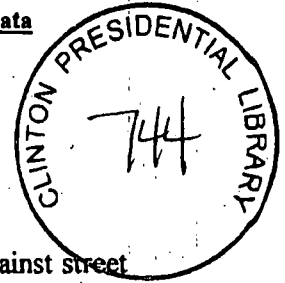
None appeared.

Dates of Hearings:

Multiple appearances from 1989 to 1992.

Case Description:

Provisional relief appearances relating to Lanham Act claims against street vendors of counterfeit goods.



OR:

Case Name:

Fendi S.a.s. Di Paola Fendi e Sorelle v. Dapper Dan's Boutique et al.

Case No.:

89 Civ. 0477

Court:

United States District Court, Southern District of New York

Judge:

Hon. Miriam G. Cedarbaum  
U.S. District Judge  
U.S. Courthouse  
500 Pearl Street  
New York, New York 10007  
(212) 805-0198

Adversary:

Defendant appeared pro se and then defaulted.

Dates of Hearings:

1/23/89 and 2/17/89

Case Description:

Appearances relating to temporary restraining order, preliminary injunction and seizure order under the Lanham Act, and granting of a default judgment.

A5.

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:

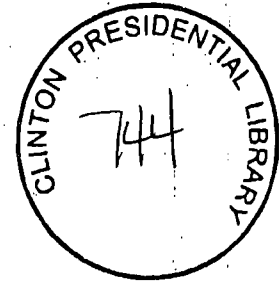
United States District Court, Southern District of New York

Sotomayor Addendum to Personal Data

Questionnaire

Judge:

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



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.  
Cuddy & Fedder  
Attorneys for Firestone Mills, Inc. and Leo Freund  
90 Maples Avenue  
White Plains, New York 10601  
(914) 761-1300

Dates of Trial:

5/18/87 to 5/19/87

Case Description:

Lanham Act trademark infringement claim which settled during trial.

A6.

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:

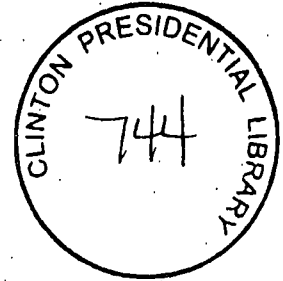
United States District Court, Southern District of New York

Sotomayor Addendum to Personal Data

Questionnaire

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

Adversary:

Stanley Yaker, Esq.  
Attorney for Paolo Vincelli and Mario Vincelli  
114 East 32nd Street  
Suite 1104  
New York, New York 10016  
(212) 983-7241

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

Date of Hearing: 1/6/88

Case Description: Motion for summary judgment in Lanham Act trademark infringement granted. Damages and attorneys' fees were assessed after an inquest before the magistrate judge. Judgment entered after hearing. (Decision on motion reported at 642 F. Supp. 1143 (S.D.N.Y. 1986)).

A7.

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



Questionnaire

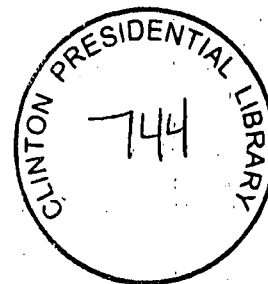
Panel:

Hon. Thomas J. Meskill  
U.S. Circuit Judge  
114 W. Main Street, Suite 204  
New Britain, Connecticut 06051

(203) 224-2617

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



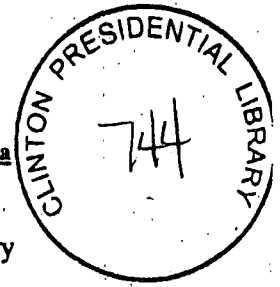
Co-Counsel:

Roy L. Reardon, Esq. (455-2840)  
David E. Massengill, Esq. (455-3555)  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
(212) 455-2000

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)



Questionnaire

**Case Description:** Appeal of District Court's Denial of Motion to Modify Preliminary Injunction by Bulgari Corporation of America. (I had extensive participation in the drafting of appellant's brief and reply and I primarily drafted all motion papers and argued below). The appeal was denied at 909 F.2d 1473 (2d Cir. 1990).

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:**

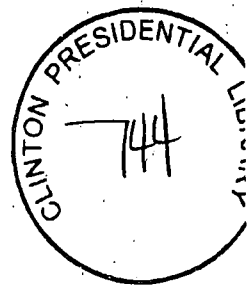
United States District Court, Southern District of New York

**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



Sotomayor Addendum to Personal Data

Questionnaire

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: Order to Show Cause for Approval of Sublease by Bulgari Corporation of America.

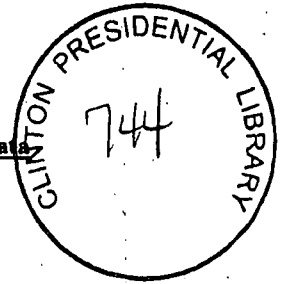
A8.

Case Name: Miserocchi & C., S.p.A. 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



**Questionnaire**

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 & Baryllick  
56 Pine Street  
Providence, Rhode Island 02903  
(401) 831-2700

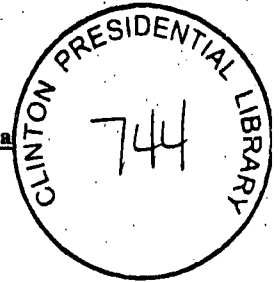
**Date of Argument:** 9/17/84

**Case Description:**

Represented claimant Alfred C. Toepfer International, G.m.b.H. in arbitration and in opposing motion to stay arbitration. Motion to stay was denied and cross-motion to compel arbitration granted. Case involved issue of whether an alter ego of an entity who signed an arbitration agreement could be compelled to arbitrate. The motion was argued by David A. Botwinik of my office, but I prepared the motion papers.

A Notice of Appeal of the Order of the District Court and a Motion for Stay of Arbitration Pending Appeal was brought before the Second Circuit. I argued the motion to stay, which motion was denied and the appeal dismissed during the argument of the motion.

The arbitration resulted in an award in favor of claimant against party who signed agreement and alter ego.



Questionnaire

AND

District Court

Case Name:

Miserocchi & C., Sp.A. 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  
56 Pine Street  
Providence, Rhode Island 02903  
(401) 831-2700

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

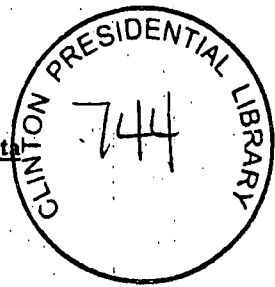
A9.

Case Name:

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

Indictment No.:

4581/82



Questionnaire

Judge:

Hon. Thomas B. Galligan (retired)  
Acting Justice, Supreme Court, 1st Jud. District  
111 Centre Street  
New York, New York 10013  
(212) 374-8005

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  
110 East 59th Street, 33rd Floor  
New York, New York 10022  
(212) 682-4200

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:

The first child pornography case in New York State after the U.S. Supreme Court upheld the constitutionality of New York's laws. Defendants convicted after trial and sentenced, respectively, to 3½ to 7 years and 2 to 6 years.

A10.

Case Name:

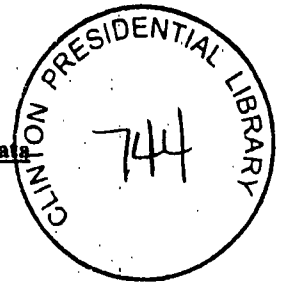
The People of the State of New York v. Richard Maddicks

Indictment No.:

886/82

Court:

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



Questionnaire

Judge:

Hon. James B. Leff (retired)  
Justice, Supreme Court  
100 Centre Street  
New York, New York 10013  
(212) 374-4966

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.  
2316 Funston Place  
Oakland, California 94602  
(415) 531-3904

Dates of Trial:

Almost all of January 1983

Case Description:

Consolidated trial of multiple murders, attempted murders, burglaries, robberies and related crimes. Defendant was convicted after trial and sentenced to 67½ years to life. I was co-counsel on the case and prepared and argued, before Justice Harold Rothwax, the applicability of New York State's consolidation criteria to crimes of violence which were spread over a year's time and which had different modus operandi for each burglary.

**QUESTION 13:**

I have listed these cases in reverse chronological order.

1. United States v. The Spy Factory et al., --- F. Supp. ---, 1997 WL 7582 (S.D.N.Y. 1997).

Daniel J. Fetterman, Esq.  
Thomas C. Rubin, Esq.  
Assistant United States Attorneys  
Southern District of New York  
The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, NY 10007  
(212) 791-9076

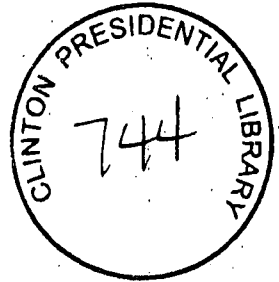
Attorneys for the Government

Gerald B. Lefcourt, Esq.  
Joshua L. Dratel, Esq. (address at time of opinion)  
Gary G. Becker, Esq.  
Lefcourt & Dratel, P.C.  
148 East 78th Street  
New York, NY 10021  
(212) 737-0400

Joshua L. Dratel, Esq. (current address)  
14 Wall Street, 20th Floor  
New York, New York 10005  
(212) 737-0707

Attorneys for defendant The Spy Factory, Inc.

Gerald H. Goldstein, Esq.  
Patrick T. Peranteau, Esq.  
Goldstein, Goldstein & Hiley  
2900 Tower Life Building  
San Antonio, TX 78205  
(210) 226-1463





Sotomayor Addendum to Personal Data Questionnaire

Robert Fogelnest, Esq.  
475 Park Ave. South, Suite 3300  
New York, NY 10016  
(212) 683-8000

Attorneys for defendant Ronald Kimball

Ronald Ederer, Esq.  
601 N.W. Loop 410, Suite 240  
San Antonio, TX 78216  
(210) 525-9919

Marvin Schecter, Esq.  
475 Park Ave. South, Suite 3300  
New York, NY 10016  
(212) 683-8000

Attorneys for defendant Marlin Richardson

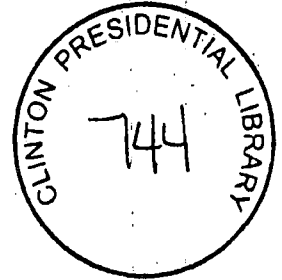
Robert O. Switzer, Esq.  
1515 Tower Life Building  
310 S. St. Mary's Street  
San Antonio, TX 78205  
(210) 299-1053

Ruth M. Leibesman, Esq.  
105 Lexington Avenue  
New York, NY 10016  
(212) 769-7525

Roger Bennet Adler, Esq.  
225 Broadway, Suite 1804  
New York, NY 10007  
(212) 406-0181

Attorneys for defendant Tracy Ford

Since this opinion was rendered, the following attorneys have either been substituted as counsel or joined the defense for trial:



Sotomayor Addendum to Personal Data Questionnaire

Susan Van Dusen, Esq.  
1899 S. Bayshore Drive  
Miami, Florida 33133  
(305) 854-0050



Attorney for defendant The Spy Factory, Inc.

Lawrence Alan Barocas, Esq.  
Barocas & Schmidt, P.C.  
111 Broadway, 13th Floor  
New York, New York 10006  
(212) 346-4666

Attorney for defendant Marlin Richardson

2. Krueger Int'l v. Nightingale, Inc., 915 F. Supp. 595 (S.D.N.Y. 1996).

Allen J. Baden, Esq.  
Kenyon & Kenyon  
One Broadway  
New York, New York 10004  
(212) 425-7200

Attorney for plaintiff

Andrew Baum, Esq.  
Darby & Darby, P.C.  
805 Third Avenue  
New York, New York 10022  
(212) 527-7600  
New York, New York

Attorney for defendant

3. United States v. Lech, 895 F. Supp. 586 (S.D.N.Y. 1995).

Sotomayor Addendum to Personal Data Questionnaire

Mary Jo White, Esq.  
United States Attorney, Southern District of New York  
Jonathan N. Halpern, Esq.  
Assistant United States Attorney  
U.S. Attorney's Office, SDNY  
U.S. Courthouse Annex  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 791-0056



Attorney for Government

Leonard F. Joy, Esq.  
Andrew H. Schapiro, Esq.  
The Legal Aid Society, Federal Defender Division  
52 Duane Street  
New York, New York 10007  
(212) 285-2830

Attorneys for defendant

4. Silverman v. Major League Baseball Player Relations Committee, 880 F. Supp. 246 (S.D.N.Y. 1995), aff'd, 67 F.3d 1054 (2d Cir. 1995).

Fred L. Feinstein, Esq. (address at time of opinion)  
General Counsel, The National Labor Relations Board, Region Two  
Daniel Silverman, Esq.  
Regional Director  
Donald B. Zavelo, Esq.  
Ian M. Penny, Esq.  
Of Counsel  
26 Federal Plaza  
Room 3614  
New York, New York 10278-0104  
(212) 264-0330

Fred L. Feinstein, Esq. (current address)  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, DC 20570  
(202) 273-3700

Sotomayor Addendum to Personal Data Questionnaire



Francis L. Casey, III, Esq.  
Morgan, Lewis & Bockius  
1800 M Street  
Washington, D.C. 20036  
(202) 467-7071

Lisa Klein Wager, Esq.  
Morgan, Lewis & Bockius  
101 Park Avenue  
New York, New York  
(212) 309-6000

Attorneys for respondent

Charles O'Connor, General Counsel (address at time of opinion)  
Major League Baseball Player Relations Committee  
350 Park Avenue  
New York, New York 10022  
(212) 339-7400

Charles O'Connor (current address)  
Morgan, Lewis & Bockius  
1800 M Street  
Washington, D.C. 20036  
(202) 467-7071

George H. Cohen, Esq.  
Virginia A. Seitz, Esq.  
Bredhoff & Kaiser  
1000 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 833-5588

Harold F. McGuire, Jr., Esq.  
McGuire, Kehl & Nealon  
230 Park Avenue  
New York, New York 10169  
(212) 557-0040

Attorneys for Major League Baseball Players Ass'n

Sotomayor Addendum to Personal Data Questionnaire

5. 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).

Kenneth J. Kelly, Esq.  
Claudia M. Cohen, Esq.  
Of Counsel  
Epstein Becker & Green, P.C.  
250 Park Avenue  
New York, New York 10177  
(212) 351-4500

Paul Goodman, Esq.  
Elias, Goodman & Shanks  
444 Madison Avenue  
New York, New York 10022  
(212) 421-6000

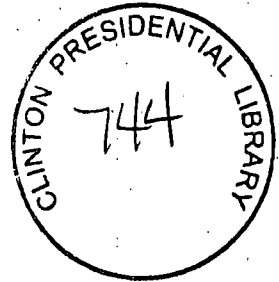
Attorneys for plaintiffs

Henry B. Gutman, Esq. (address at time of opinion)  
Kerry L. Konrad, Esq. (address at time of opinion)  
Jeffrey E. Ostrow, Esq. (address at time of opinion)  
Baker & Botts  
599 Lexington Avenue  
New York, New York 10022  
(212) 705-5000

Henry B. Gutman, Esq. (current address)  
Kerry L. Konrad, Esq. (current address)  
Jeffrey E. Ostrow, Esq. (current address)  
Simpson, Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
(212) 455-2000

Attorneys for defendant

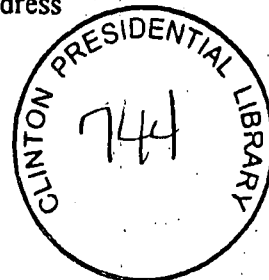
6. Azurite Corp., Ltd. v. Amster & Co., 844 F. Supp. 929 (S.D.N.Y. 1994), aff'd 52 F.3d 15 (2d Cir. 1995).



Sotomayor Addendum to Personal Data Questionnaire

Thomas Szoboszlai, Esq. (address at time of opinion; no forwarding address available)

Jaffe and Asher  
52 Vanderbilt Avenue, 6th Floor  
New York, New York 10017  
(212) 687-3000



Attorney for plaintiff Azurite Corp., Ltd.

Peter C. Neger, Esq. (address at time of opinion; no forwarding address available)

Shea & Gould  
1251 Avenue of the Americas  
New York, New York  
(212) 827-3100

Attorney for defendant Amster & Co.

Herbert Stern, Esq.  
Stern & Greenberg  
75 Livingston Avenue  
Roseland, New Jersey 07068  
(201) 535-1400

Attorney for defendant Barry Stuart Lafer

Donald D. Buchwald, Esq.  
Buchwald & Kaufman  
600 Third Avenue  
New York, New York  
(212) 661-0040

7. United States v. Hendrickson, 26 F.3d 321 (2d Cir. 1994) (sitting by designation).

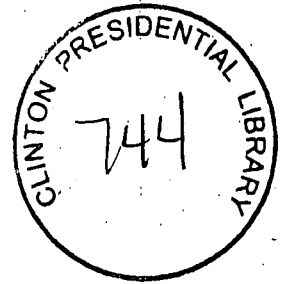
Michael H. Sporn, Esq.  
225 Broadway  
New York, New York 10007  
(212) 791-1200

Attorney for defendant-appellant

Sotomayor Addendum to Personal Data Questionnaire

Peter A. Norling, Esq.  
Stanley J. Okula, Jr., Esq. (address at time of opinion; no forwarding address available)  
Assistant United States Attorneys, E.D.N.Y.  
1 Pierpoint Plaza  
Brooklyn, New York 11201

Attorneys for appellee



8. Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994).

Eric R. Dinallo, Esq. (new address)  
Career Criminal Bureau  
New York County District Attorney's Office  
80 Centre Street, Room 610 A  
New York, New York 10013  
(212) 335-4122

Brian G. Murphy, Esq. (new address)  
Frankfurt, Garbus, Klein & Seiz  
488 Madison Avenue  
New York, New York 10022  
(212) 980-0120

Attorneys for plaintiffs

G. Oliver Koppell, Esq.  
Attorney General of the State of New York  
Barbara K. Hathaway (address at time of opinion; no forwarding address available)  
Assistant Attorney General  
120 Broadway  
New York, New York 10271-0332  
(212) 416-8000

Attorneys for defendants

Sotomayor Addendum to Personal Data Questionnaire

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

Nathan Lewin, Esq.  
Niki Kuckes, Esq.  
James Heavner, Esq.  
Miller, Cassidy, Larocca & Lewin  
2555 M Street, N.W.  
Washington, DC 20037  
(202) 293-6400

Attorneys for plaintiff Rabbi Reuben Flamer

Vincent R. Fontana, Esq.  
Robert P. Pagano, Esq. (address at time of opinion)  
Wilson, Elser, Moskowitz, Edelman & Dicker  
150 East 42nd Street  
New York, New York 10017

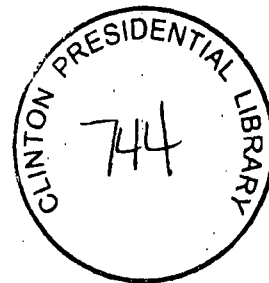
Robert P. Pagano, Esq. (current address)  
Cohen, Hennessey & Bienstock  
605 Third Avenue  
New York, New York 10158  
(212) 455-0402

Attorneys for defendant City of White Plains, New York

10. In re: Arbitration between Coastal Shipping, Ltd. and Southern Petroleum Tankers, Ltd.,  
812 F. Supp. 396 (S.D.N.Y. 1993).

Anthony J. Mavronicolas, Esq.  
Hill, Rivkins, Loesberg, O'Brien, Murray & Hayden  
90 West Street, 10th Floor  
New York, New York 10006  
(212) 669-0600

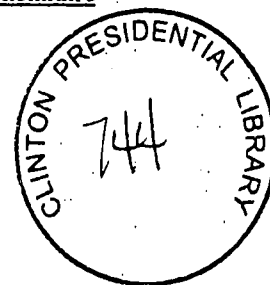
Attorney for petitioner





Sotomayor Addendum to Personal Data Questionnaire

Peter J. Zambito, Esq.  
Dougherty, Ryan, Giuffra, Zambito & Barra  
131 East 38th Street  
New York, New York 10016  
(212) 889-2300



Attorney for respondent Southern Petroleum Tankers and  
intervenor Lineas Agromar

David J. Van Oss, Esq. (address at time of opinion)  
Cichanowicz, Callan & Keane  
61 Broadway  
New York, New York 10006  
(212) 344-7042

David J. Van Oss, Esq. (current home address, received from Cichanowicz)  
Crystal Square Apartments, Apartment 1611  
1515 Jefferson Davis Highway  
Arlington, Virginia 22302-3320  
(703) 413-1655

Attorney for respondent Antilles Transport Line, Inc.

# Withdrawal/Redaction Sheet

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                             | DATE     | RESTRICTION |     |
|--------------------------|-------------------------------------------|----------|-------------|-----|
| 001a. report             | Second Circuit - Sonia Sotomayor (1 page) | ca. 1997 | P2          | 745 |
| 001b. report             | Review of Selected Opinions (7 pages)     | ca. 1996 | P2          | 746 |
| 001c. report             | Update of Selected Opinions (4 pages)     | ca. 1997 | P2          | 747 |

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Dana Simmons  
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ds276

### 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.

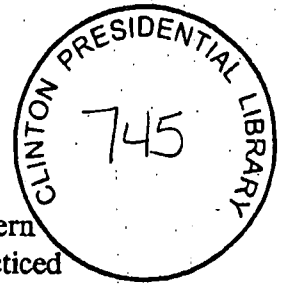
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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]

## SECOND CIRCUIT -- SONIA SOTOMAYOR



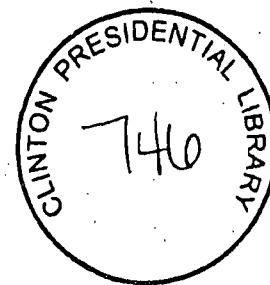
Sonia Sotomayor, 42, was nominated to the United States District Court for the Southern District of New York by President Bush in 1992. Prior to becoming a judge, she practiced commercial litigation for eight years (1984-1992) with the Manhattan law firm of Pavia & Harcourt. Many of her clients were European companies doing business in the U.S. She worked for five years (1979-1984) as a prosecutor with the Manhattan District Attorney's office. She served for twelve years (1980-1992) on the board of the Puerto Rican Legal Defense and Education Fund, and served on the boards of the New York City Campaign Finance Board, the State of New York Mortgage Agency, and the Maternity Center Association. She graduated *cum laude* from Princeton University (1976) and from Yale Law School (1979), where she was an editor of the Yale Law Journal.

Judge Sotomayor was raised in the Bronxdale public housing project and attended Catholic schools. Both her parents were born in Puerto Rico. Her father, who was a tool-and-die worker with only a third-grade education, died when she was nine years old. Her mother worked as a nurse in a methadone clinic prior to her retirement. Because her father spoke only Spanish, Judge Sotomayor did not become fluent in English until after his death.

Senator Moynihan recommended Sotomayor for nomination in March 1991. She was nominated in November 1991, but consideration of her nomination was delayed by the dispute over the nomination of Edward Cames to the 11th Circuit. The ABA Standing Committee rated her qualified, with a minority rating her well qualified. She was confirmed unanimously by the Senate on August 12, 1992. Senator Moynihan commented, "Ms. Sotomayor's qualifications for the bench are most impressive, in the fine tradition of the federal judiciary in New York. My only regret is that it took nearly 18 months to get it done." She also was enthusiastically supported by Senator Kennedy. At the time of her confirmation, she was the youngest judge, and the first judge of Hispanic descent, on the Southern District bench.

Attached are two summaries of her significant judicial decisions.

Review of Selected Opinions of Hon. Sonia Sotomayor  
United States District Judge  
Southern District of New York  
- 1992 - February 16, 1996



**Baseball Strike:**

Silverman v. Major League Baseball Player Relations Committee, Inc., 880 F. Supp. 246 (S.D.N.Y.), *aff'd*, 67 F.3d 1054 (2d Cir. 1995): NLRB sought a temporary injunction under the National Labor Relations Act pending the final disposition of unfair labor practice charges against baseball owners, including claims of violation by unilaterally eliminating salary arbitration for certain reserve players, competitive bargaining for free agents, and of the anticollusion provisions of the Bargaining Agreement. SS finds that NLRB had reasonable cause to believe that the owners committed an unfair labor practice, and that an injunction was proper to avoid irreparable injury and to ensure that the owners and players continue bargaining until resolution, genuine impasse or an NLRB determination.

**Civil Rights:**

McNeil v. Aguilos, 831 F. Supp. 1079 (S.D.N.Y. 1993): A hospital employee sued under Title VII, alleging discrimination based on her status as non-Filipina. She complained of hospital's alleged official policy of allowing nurses to communicate in Tagalog on the job, purportedly in order to isolate and harass her. SS found that issues of fact precluded summary judgment. She noted that "[t]he questions in this case are troubling, and the issues are likely to become more pervasive as our society grows increasingly multiracial and polyglot. There is no simple solution, for just as a workplace English-only policy potentially violates the rights of non-English speakers; plaintiff here contends that allowing co-workers to communicate in a foreign language violates her rights as a native English speaker."

**Constitutional Issues:**

Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993): A rabbi seeking to display a menorah in a city park challenged a municipal resolution barring fixed outdoor displays of religious or political symbols in parks. The city contended that the resolution was a valid time, place and manner restriction necessary to avoid a violation of the Establishment Clause.

SS held that the city parks were traditional, public fora, that the resolution was a content-based exclusion of expressive conduct, and that an equal access policy permitting fixed religious displays would not violate the Establishment Clause.

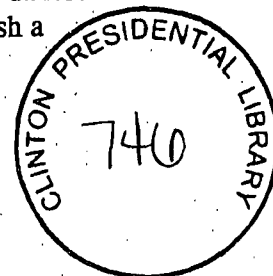
In re St. Johnsbury Trucking Co., Inc., 1996 WL 26575: SS held that the Negotiated Rates Act of 1993, P.L. 103-180, which was intended to establish a procedure for resolving disputes resulting from efforts by trustees for bankrupt motor carriers to collect additional amounts for past transportation, was not an unconstitutional taking as applied. Case was a matter of first impression in the Second Circuit; SS followed Eighth Circuit decision.

### Criminal Law Issues

U.S. v. Castellanos, 820 F. Supp. 20 (S.D.N.Y. 1983): Defendant was arrested and charged with conspiracy to distribute and to possess with intent to distribute five kilograms or more of cocaine. A magistrate refused to issue a search warrant for defendant's apartment when an affidavit was initially proffered. The detective then added handwritten insertions to the affidavit setting forth additional information relating to facts known about defendant's apartment, although such facts were not mentioned at all in detective's contemporaneous report. Magistrate then agreed to issue warrant. Defendant moved to suppress fruits of search. SS found that the handwritten insertions in affidavit were either fabricated or made with reckless disregard for the truth, and that warrant would not have issued with them. "The case at bar is not the familiar one where the constable or magistrate merely blundered..., but the not-rare-enough one where a law enforcement officer not only flouted the Constitution, but intentionally misled a magistrate into issuing a search warrant that she had initially refused to grant. This type of egregious conduct must be deterred if the Fourth Amendment is to have any meaning."

U.S. v. Jimenez, 1995 WL 680944: Defendant moved to preclude the government from using a 1994 deportation order in a prosecution for illegal reentry. SS denied the motion, but noted that she found the conduct of the Immigration Judge in the deportation proceeding to have violated due process by coercing waivers of right to counsel and to appeal. Despite these violations, SS found that there was no prejudice to the defendant in light of the fact that there were no possible avenues of relief from deportation.

U.S. v. Lech, 895 F. Supp. 586 (S.D.N.Y. 1995): Defendant was indicted on conspiracy and bribery charges in connection with an asbestos removal project. On the eve of trial, defense counsel (a federal public defender) learned that a government cooperating witness was formerly represented by another member of the federal defender staff. Defendant sought to bar use of this witness. SS found that government's failure to recognize the conflict was "astonishing." After a hearing, SS held that the conflict was only potential, not actual. SS denied exclusion of witness, but "cannot say that such failures [to disclose conflicts] are so frequent as to warrant extraordinary sanction of preclusion, I am placing the United States Attorney's Office on notice that a recurrence of this sort of problem will lead to a different result in another case." SS directed the United States Attorney's Office to establish a substantive procedure to check for such conflicts.



U.S. v. Real Property Known as 77 East 3rd Street, New York, New York, 869 F. Supp. 1042 (S.D.N.Y. 1994): Jury found that government was not entitled to forfeiture of Hell's Angel's New York Clubhouse. On consideration of the government's motion for judgment notwithstanding the verdict or for a new trial, SS held that the government did not provide substantial evidence of a nexus between the wide-ranging drug conspiracy and the clubhouse to merit forfeiture of the building. "I do not doubt for a minute that individual HAMC members...engaged in criminal activity, often violent and corrupt. However, it is the Building and not the general criminality of HAMC members that was on trial in this case [.]"

Earlier, at 849 F. Supp. 876, SS found that the history of violence committed by club members justified the use of an anonymous jury.

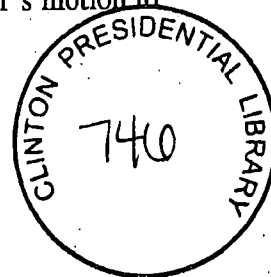
### Foster FOIA

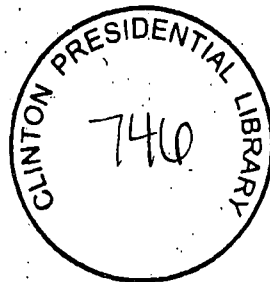
Dow Jones v. U.S. Department of Justice, 880 F. Supp. 145 (S.D.N.Y. 1995): Wall Street Journal seeks disclosure under FOIA of investigative reports by U.S. Park Police and FBI into death of Vincent Foster, as well as the disclosure of the torn-up note found in Mr. Foster's briefcase. In this opinion, SS found that the investigative reports were exempt from disclosure under FOIA exemption (b)(7)(A) because disclosure would interfere with ongoing investigations. Subsequently, portions of the reports were disclosed voluntarily by DOJ.

SS ordered disclosure of the note, finding that in light of the substantial public interest in viewing the note, DOJ's offer to make it available for viewing in Carl Stern's office was inadequate. The new round of media attention on the Foster family did not outweigh the important public interest in viewing the note. SS distinguishes the case in which the New York Times unsuccessfully sought disclosure from NASA of recordings of Challenger crew at the time of the explosion.

Subsequently, at 907 F. Supp. 79 (S.D.N.Y. 1995), SS holds that the Journal's subsequent act of receiving a copy of the note from unauthorized sources (presumably Congressional) rendered the appeal moot.

In a related opinion, at 161 F.R.D. 247 (S.D.N.Y. 1995), SS granted Lisa Foster's motion to intervene as of right and permissively.





## Habeas Corpus

Petitions denied in:

Batista v. Walker, 1995 WL 453299

Epps v. Commissioner of Correctional Services, 1993 WL 213035, aff'd, 13 F.3d 615 (2d Cir. 1994)

Gurne v. Thoubboron, 1995 WL 130517

Ortiz v. U.S., 1995 WL 2491

Phillips v. Walker, 1996 WL 1236

Rivera v. Kuhlman, 1995 WL 594858

## Prisoner Litigation

Burton v. New York State Dept. of Corrections, 1994 WL 97164: Prisoner sued under 42 U.S.C. § 1983, alleging that inadequate medical treatment violated his Eighth Amendment rights. SS found that claims against certain of the defendants sufficiently alleged deliberate indifference to serious medical need to sustain complaint against motion to dismiss.

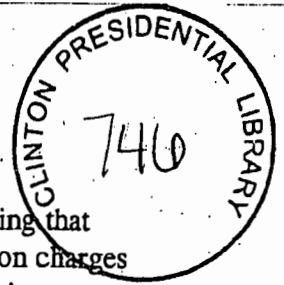
Dellamore v. Stenros, 886 F. Supp. 349 (S.D.N.Y. 1995): SS denied a motion for summary judgment on immunity grounds in a case alleging an unlawful search by a corrections officer of a visitor. There was a factual dispute as to whether the search was a permissible strip search or an unlawful body cavity search.

Holmes v. Artuz, 1995 WL 634995: Prisoner sued under § 1983, alleging that defendants violated his constitutional rights by enforcing a policy that removed him from a prison food service job solely because he is an "overt homosexual." SS denied motion to dismiss, because plaintiff has asserted cognizable claims for substantive due process and first amendment violations, and a possible equal protection violation.

Lee v. Coughlin, 902 F. Supp. 424 (S.D.N.Y. 1995): *Pro se* inmate alleged that the defendant hearing officer denied him due process by denying him an employee-assistant to aid him during a hearing on assault charges. SS granted plaintiff's motion for summary judgment against the hearing officer.

Neri v. Coughlin, 1993 WL 464687: SS rejected claim that inmate's wife was unlawfully denied visitor privileges, finding that the revocation of privileges fully comported with due process.

Phillips v. Ienuso, 1995 WL 239062: Orthodox Jewish Rastafarian sued under § 1983, alleging that defendant's classification of him as "Protestant" and denial of Kosher food violated his rights to religious freedom and equal protection. SS held claim to be moot since plaintiff was no longer in custody.



Rivera v. Coughlin, 1994 WL 263417: *Pro se* prisoner brought § 1983 action, alleging that defendants violated his constitutional rights in conducting an administrative hearing on charges related to a facility room break-in. Plaintiff was not permitted to examine adverse witnesses or to secure the attendance of an exculpatory witness. Defendants contended that the reversal of the hearing determination upon administrative appeal disposed of plaintiff's claims. SS, following Walker v. L. Bates, 1994 WL 161050 (2d Cir.), held that a successful administrative appeal does not cure a purported violation of an inmate's due process rights if there was a punitive confinement during the pendency of the appeal.

Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994), and Rodriguez v. Coughlin, 1994 WL 174298: Plaintiff-inmates sued under § 1983 and the Religious Freedom Restoration Act, contending that a Department of Correctional Services directive prohibiting them from wearing Orisha beads in conformity with Santeria religion violated their rights to religious freedom. Santeria is a religion practiced in Puerto Rico, Cuba and other parts of Latin America and the Caribbean, as well as part of the United States; the practices of Santeria were accorded First Amendment protection by the Supreme Court in Church of the Lukumi Babalu Aye v. City of Hialeah, 113 S.Ct. 2217(1993). DOCS contended that there was widespread use of restrung religious beads to denote gang membership within the prison. Under the directive, unlike other artifacts associated with other religions, Santeria adherents were required to provide a religious-based justification for the possession of beads.

SS notes that the Directive reflects "DOCS's judgment and choice, based on religious practices familiar to defendants, as to which religious items and practices are prima facie acceptable and those which are not." SS notes that the wearing of the beads is a hallmark of Santeria beliefs. While acknowledging the validity of DOCS' interest in prison security and the reduction of prison gang violence, SS finds that the directive does not embody the least restrictive means to achieve those goals. SS grants injunctive relief to plaintiffs barring DOCS from prohibiting plaintiffs from wearing their beads under their clothing or placing beads on non-publicly displayed shrines.

Smith v. O'Connor, 901 F. Supp. 644 (S.D.N.Y. 1995): SS dismisses § 1983 claim arising out of alleged destruction of legal papers during search of cell. SS notes, however, that allegations are "unsettling" if true.

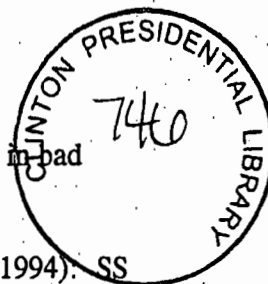
Webb v. Jackson, 1994 WL 86390: Prisoner sues under § 1983 alleging that inadequate medical treatment and failure to provide Timberland boots and Nike sneakers for his foot problem violated Eighth Amendment. SS grants defendants' motion for summary judgment, holding that plaintiff had not demonstrated deliberate indifference to serious medical need.

#### Sanctions

Bowler v. U.S. Immigration and Naturalization Service, 901 F. Supp. 597 (S.D.N.Y. 1995): SS grants sanctions of \$2,500 against an attorney under 28 U.S.C. § 1927 for vexatious and



unreasonable multiplication of proceedings, noting that he filed "baseless" motions in bad faith.



Paese v. New York Seven-Up Bottling Company, Inc., 158 F.R.D. 34 (S.D.N.Y. 1994). SS awards sanctions of \$2,000 against plaintiff's attorney, finding that continued prosecution of an action for breach of duty of fair representation after discovery revealed no evidence of causation was objectively unreasonable.

### Second Circuit Reversals:

Bolt Electric, Inc. v. City of New York, 53 F.3d 465 (2d Cir. 1995): A supplier for a highway contractor sued the City for failure to uphold a guarantee letter. SS dismissed complaint for failure to state a claim because the City had failed to file the guarantee with the Comptroller and the Comptroller had failed to provide the necessary endorsement of available funding. The Second Circuit reversed and held that the absence of the filing and certification did not bar enforcement of the guarantee in light of the City's overall commitment to have this project undertaken and completed. The court noted that SS had failed to address a New York Court of Appeals case holding that the absence of a Comptroller's certification does not bar an action to enforce a contract.

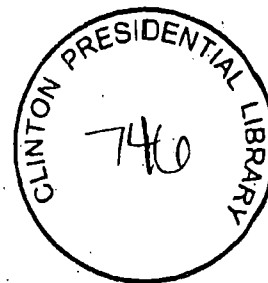
U.S. v. Bauer, 47 F.3d 535 (2d Cir. 1995): A defendant convicted of mail fraud appealed SS's upward departure from the Sentencing Guidelines and the imposition of a five-year term of supervised release. The Second Circuit affirmed the upward departure, but found that under the terms of the Guidelines, the maximum term of supervised release was three years.

### SS Sitting by Designation on the Second Circuit:

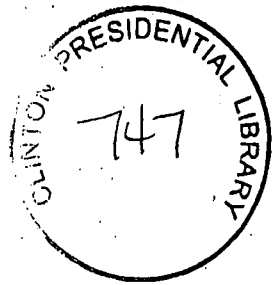
U.S. v. Hendrickson, 26 F.3d 321 (2d Cir. 1994): Defendant was convicted of conspiracy to distribute and possess with intent to distribute in excess of one kilogram of heroin, two counts of distribution of heroin and possession with intent to distribute heroin, two counts of distribution of heroin within 1,000 feet of a public school, and one count of receiving a firearm with an obliterated serial number. The district court sentenced the defendant to life imprisonment on the conspiracy count, 240 months on each of the substantive distribution counts, 480 months on the school zone counts, and 120 months on the firearm count. Defendant appealed the sentence.

The panel found that the sentence on the conspiracy count should be vacated because there was no showing that the defendant actually intended to import the volume of heroin that he discussed with his co-conspirators. Under the Sentencing Guidelines, the sentencing court should calculate the base offense level with reference to the "weight under negotiation," and disregard "puffing" of amounts that the defendant did not intend to produce. The panel further held, in a matter of first impression by the Circuit, that the government bears the burden of proof on the issue of the defendant's intent. In this case, the government was obligated to provide the intent of at least two co-conspirators to traffic in this amount. "Here, however,

the totality of the evidence strongly suggests that Hendrickson was a drug dealer who may have dreamed of importing millions of dollars worth of heroin from Nigeria, but certainly neither intended nor agreed with anyone. . . to do so. . . . We can not countenance a life sentence in this case or any other without more extensive and detailed factual findings by the sentencing court." The case was remanded for resentencing under these principles.



Update on Selected Opinions of Hon. Sonia Sotomayor  
United States District Judge  
Southern District of New York  
February 17, 1996 to present



### Abortion

SS granted a permanent injunction under the Freedom of Access to Clinic Entrances Act ("FACE") against four veteran abortion protesters who sat against the doors of the Women's Medical Pavilion in Dobbs Ferry, New York. She also upheld the constitutionality of FACE. (From press reports)

Population Council v. Pike: SS denied a motion to dismiss a suit by the Population Council, which holds U.S. patent rights to RU-486, against Joseph D. Pike, to whom the Council gave a license to market the drug. The Council alleged that Pike failed to disclose his disbarment as a lawyer and his prior guilty plea to a forgery charge and that his background could compromise the marketing of the drug. Trial is set for March 31, 1997. (From press reports)

### Civil Rights

Black v. New York University Medical Center, 1996 WL 280802 (May 24, 1996): Plaintiff, an associate professor at NYU Medical School, alleged that NYU failed to promote her and pay her equally on account of her gender. SS found that the Title VII claim sufficiently alleged a continuing violation to bring it within the statute of limitations. She found that plaintiff had failed to allege sufficient facts to state an Equal Pay Act claim, so she dismissed that claim with leave to replead it.

### Constitutional Cases

Gelb. v. Board of Elections, 1996 WL 724928 (Dec. 2, 1996): The plaintiff, an unsuccessful candidate for Bronx Borough President, sued under § 1983 alleging that the Board of Elections' failure to provide sufficient instructions and guidance to voters on how to vote for a write-in candidate violated various constitutional rights. SS granted summary judgment for the Board: "[T]he imperfections in the election process alleged by plaintiff do not rise to the level of a federal constitutional violation. Arguably plaintiff has proven that there were violations of certain provisions of the New York State Election Law. Nevertheless, I cannot find that any of these violations rendered either the primary or the general election so pervasively unfair as to require a federal remedy under the due process clause."

Hellenic American Neighborhood Action Committee v. City of New York, 933 F. Supp. 286 (July 31, 1996): A public contractor alleged that it was stigmatized and de facto debarred on substantiated charges of corruption, without being afforded due process. SS entered a preliminary injunction in favor of the contractor, finding that it had liberty and property interests that were implicated by the city's action, that a postdeprivation hearing was inadequate, and that a

predeprivation, "name clearing" hearing was required. The Second Circuit reversed, holding that a state law postdeprivation remedy (an Article 78 proceeding) was a "perfectly adequate" remedy in this situation. The Second Circuit noted that its holding was consistent with its prior rulings "on numerous occasions." 101 F.3d 877 (Dec. 5, 1996).

United States v. Yi, 1997 WL 7672 (Jan. 7, 1997): The defendant was charged with hostage taking in violation of 18 U.S.C. § 1203. He allegedly participated in a scheme pursuant to which several Chinese citizens were smuggled into this country and held captive until relatives paid ransom to secure their release. Because the Hostage Taking Act exempts from United States citizens from liability, the defendant argued that the Act violated his equal protection rights. SS ruled that the "ostensible purpose for the Act -- combating international terrorism -- is undoubtedly a legitimate federal governmental end." She wrote, however, that "[i]t is unfortunate that the federal government...saw fit to criminalize conduct specifically on the basis of the alienage of persons involved. It troubles this Court to contemplate that its holding today might come to be relied upon as authority in support of some other provision or regime which, at bottom, effects no sounder purpose than to discriminate against persons on the basis of their alienage." She also summarily rejected a tenth amendment challenge to the Act.

#### Habeas Corpus

Petition denied in:

Vasquez v. United States, 1996 WL 125589 (Mar. 20, 1996)

#### HIV/Aids

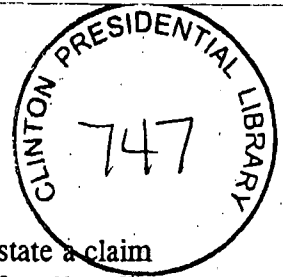
Bowers v. TriStar Pictures, Inc. (Mar. 1996): SS presided over the trial of claims by relatives of a New York lawyer, who was fired by Baker & McKenzie, that the creators of the movie "Philadelphia" misappropriated aspects of Bowers' story. (From press reports)

Haybeck v. Prodigy Services Co., 944 F. Supp. 326 (Nov. 12, 1996): SS dismissed a case against Prodigy Services Co. brought by a customer who contracted the AIDS virus from sexual relations with a Prodigy employee whom she met online. SS ruled that the employee's relationship and failure to disclose were beyond the scope of his employment with Prodigy. She rejected an argument that Prodigy should have taken special precautions to prevent his conduct because it knew of his HIV status. She wrote that if she found Prodigy liable, "I would be setting a precedent under which employers would be forced to monitor, and in some cases control, not only the health of their employees, but also the most intimate aspects of their off-duty lives,"

#### Prisoner Litigation

Camacho v. Keane, 1996 WL 204483 (Apr. 25, 1996): SS granted summary judgment for defendants in a case alleging that a prison disciplinary hearing did not comport with due process requirements. SS found that, under the Sandin case, the disciplinary action taken did not





implicate an inmate's constitutionally protected liberty interest.

Duamutef v. Morris, 1997 WL 37933 (Jan. 30, 1997): SS dismissed for failure to state a claim in a pro se inmate's action seeking monetary damages against several police officers for allegedly orchestrating his arrest on false pretenses and coercing witnesses to testify falsely against him at trial.

### **Punitive Damages**

Linkers (Far East) Pte., Ltd. v. Int'l Polymers Inc. (1996): Plaintiff Linkers alleged that the defendant delivered worthless scrap to plaintiff's Sri Lanka customer, instead of contracted for resin, and that two individuals were the alter egos of the corporation acting in a fraudulent scheme. SS found for plaintiff on both claims and held the individual defendants personally liable. She imposed punitive damages in the amount of \$100,000 following a standard set forth in a 1995 New York Court of Appeals decision, concluding that the defendants were morally culpable and had perpetrated multiple, similar scams against other victims. (A commentator noted that the standard applied by SS was stricter than that used by Judge Chin in a similar case.) (From press reports)

### **Sanctions**

Baba v. Japan Travel Bureau International, Inc., 165 F.R.D. 398 (Mar. 13, 1996): SS dismissed a pro se complaint under Title VII with prejudice for wilful and repeated failures to comply with discovery orders.

Herbstein v. Dabbah Securities Corp., 169 F.R.D. 36 (Sept. 20, 1996): SS dismissed a churning complaint against a commodities broker in light of plaintiff's repeated failure to submit to a deposition and respond to document production requests.

McNeil v. Aguilos, 1996 WL 219637 (May 1, 1996): Plaintiff asserted a claim of racial and national origin discrimination alleging that Filipino-American nurses at Bellevue Hospital spoke in Tagalog, a Filipino language, in order to isolate plaintiff and prevent her from effectively performing her job. SS found that plaintiff had wilfully and repeatedly disregarded discovery orders and failed to prosecute her claim, and thus dismissed it with prejudice "because I see no prospect of inducing plaintiff to prosecute her own case."

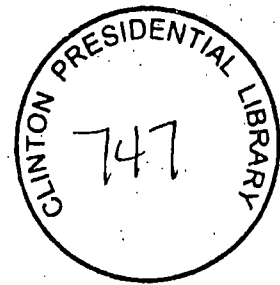
### **Second Circuit Reversals**

Bernard v. Las Americas Communications, Inc., 84 F.3d 103 (2d Cir. 1996): The Second Circuit affirmed in part and reversed in part a judgment following a jury trial on a legal malpractice claim. The Court found that SS gave a jury instruction that overstated the burden on a client for showing that a lawyer's breach of contract was material, excusing the client from paying a contingent fee. This case was governed by District of Columbia law.

In re Benedict, 90 F.3d 50 (2d Cir. 1996): The Second Circuit reversed SS's affirmance of a bankruptcy judge's ruling that Bankruptcy Rule 4007(c), which governs the time period for filing complaints to determine the dischargeability of a debt, was a "strict statute of limitations" that could not be extended. The court noted that this question was a matter of first impression for the

Second Circuit and was an issue on which other courts were divided.

Hellenic American Neighborhood Action Committee v. City of New York, IO 1 F.3d 877 (2d Cir. 1996) (discussed above)



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|--------------------------|---------------|------|-------------|
|--------------------------|---------------|------|-------------|

|           |                                              |            |        |
|-----------|----------------------------------------------|------------|--------|
| 001. note | Sonia Sotomayor to Michael O'Connor (1 page) | 06/18/1997 | P2 748 |
|-----------|----------------------------------------------|------------|--------|

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Doug Band  
OA/Box Number: 12689

### FOLDER TITLE:

Writings

Dana Simmons  
2009-1007-F  
ds275

### 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]
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- 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)]

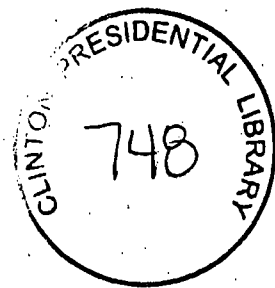
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

WJC LIBRARY PHOTOCOPY

To: Michael O'Connor

From: Sonia Sotomayor

Date: June 18, 1997



Enclosed are the draft Task Force Report and the Report of the Advisory Panel on Inter-Group Relations of which we spoke. I am also enclosing a New York Law Journal article on the draft Task Force Report. I do not have easy access to Nexus, therefore, I could not check on whether the New York Times had printed an article on the Task Force Report. If you need for me to follow-up on the New York Times reporting, please let me know. Finally, I have not sent you the voluminous Committee Report from which the Task Force drew in formulating its Report. The Task Force Report makes clear that we did not adopt the Committee Report and are only providing it as reference material. Let me know if you wish to see the Committee Report. Speak to you soon.



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                    | DATE       | RESTRICTION      |
|--------------------------|--------------------------------------------------------------------------------------------------|------------|------------------|
| 001. memo                | Sonia Sotomayor to Amy Jimenez; re: Rush Limbaugh Tape, 9/30/97 (1 page)                         | 10/21/1997 | P2 755           |
| 002. lists               | re: Judicial Selection Meeting (6 pages)                                                         | 07/09/1998 | P2, P5, b(6)     |
| 003. memo                | Charles Ruff et al to POTUS; re: Court of Federal Claims Decision Memorandum [partial] (4 pages) | n.d.       | P2, P5, b(6) 757 |
| 004. note                | Paul Morris & Eldie Acheson to Mark Childress & Sarah Wilson; re: Judges (partial) (1 page)      | 06/04/1998 | P2, P5, b(6) 758 |
| 005. agenda              | re: Possible Judicial Nominations and So Forth (partial) (1 page)                                | 07/09/1998 | P2, P5, b(6) 759 |
| 006. form                | re: Part of Personal Data Questionnaire - Charles Gibbons (1 page)                               | n.d.       | P6/b(6)          |
| 007. fax                 | Helaine Grennfeld to Sarah Wilson; re: Sonia Sotomayor (5 pages)                                 | 06/08/1998 | P2, P5, b(6)     |

### COLLECTION:

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Counsel's Office  
Doug Band  
OA/Box Number: 12689

### FOLDER TITLE:

Sotomayor - Miscellaneous [1]

2009-1007-F  
jp1528

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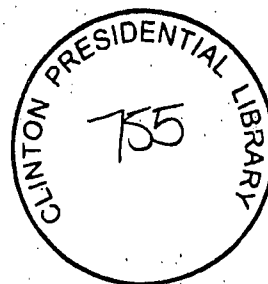
C. Closed in accordance with restrictions contained in donor's deed of gift.

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)]

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**MEMO**

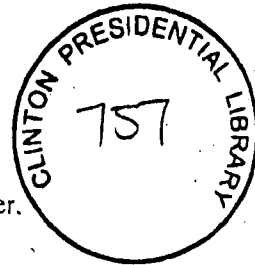
**TO: AMY JIMINEZ**

**FROM: SONIA SOTOMAYOR**

**RE: RUSH LIMBAUGH TAPE**  
**9/30/97**

**DATE: 10/21/97**

Enclosed are two copies of the Rush Limbaugh talk show. The show lasted three hours. However, I am only sending you the first two hours which dealt with me. The callers did not seem particularly interested in me and got sidetracked on flat-tax issues for most of the show. Have fun listening.



# MEMORANDUM TO THE PRESIDENT (Via Erskine Bowles)

FROM: Charles F.C. Ruff, Bruce Lindsey, Mark Childress, Melanne Verveer,  
Charles Burson, Karl Racine, and Michael O'Connor

SUBJECT: Court of Federal Claims Decision Memorandum

## I. INTRODUCTION

The United States Court of Federal Claims is an Article I court with specialized jurisdiction in nontortious money damages against the federal government, patent and copyright infringement claims against the United States, tax refund cases, and appeals from the Indian Claims Commission. Claims Court judges are appointed by the President, with the advice and consent of the Senate, to fifteen-year terms.

Three of the sixteen seats on the court are currently vacant. Harry Baskir was nominated for one of these three vacancies in March 1996. In May of 1998, Lynn Jean Bush and Francis Marion Allegra were nominated for the two remaining vacancies. Furthermore, the expiration of the terms of three other judges by late August of this year will create three additional vacancies on the court. We now recommend that you approve the nomination of Emily C. Hewitt for one of the three vacancies that will occur this summer.

## II. BIOGRAPHICAL BACKGROUND

Emily C. Hewitt, a 54 year-old Caucasian woman, currently serves as the General Counsel for the United States General Services Administration ("GSA"). She received her undergraduate degree from Cornell University in 1966. From 1966 to 1975, Ms. Hewitt studied for the ministry and received her M. Phil. from Union Theological Seminary ("UTS") in New York. During this time, she also pursued graduate studies in the area of religion and education, and worked with the following entities:

1. Cornell University/Hofstra Upward Bound Program (1966-1971) as a Tutor, Counselor, Program Coordinator, Academic Year Director and Consultant;
2. Union Theological Seminary (1967-1971) as a Research Assistant and Tutor;
3. Auburn Theological Seminary (1970-1972) as a Research Assistant;
4. St. Mary's Manhattanville Episcopal Church (1972-1973) as an Assisting Minister;
5. Union Theological Seminary (1972-1975) as a Lecturer;
6. Episcopal Peace Fellowship (1971-1974) Executive Committee;
7. Andover Newton Theological School (1973-1975) as an Assistant Professor; and,
8. Christianity and Crisis Magazine, Inc. (1973-1975) Director.

Ms. Hewitt was one of the first women ordained in the diaconate of the Episcopal Church (June, 1972) and one of the first women ordained to the Episcopal priesthood (July, 1974).

After completing her religious studies, Ms. Hewitt was accepted to Harvard Law School where she graduated in 1978. Following law school, Ms. Hewitt worked with the law firm of Hill and Barlow, P.C. in Boston, where she became a partner (1985) and remained until she began her service with GSA in 1993. At Hill and Barlow, Ms. Hewitt specialized in the area of real estate law. While she did assist in litigation matters, her experience in private practice was predominantly of a business-transactional nature.

Ms. Hewitt has served as GSA General Counsel since the beginning of the Administration. In this capacity, she supervises all legal aspects of GSA's procurement program, including contracting and litigation. She also serves as a member of GSA's Management Council and participates in the leadership of several government reform initiatives, including procurement reform, information technology management reforms and the increased use of alternative dispute resolution.

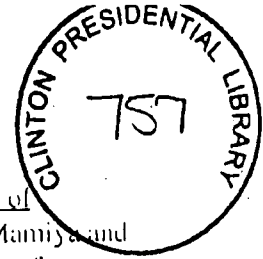
Ms. Hewitt's commitment to public service dates back to the 1960's when she was the Administrator of the Cornell/Hofstra Upward Bound Program at the Union Settlement House in East Harlem. During her career as an attorney, she has become associated with numerous organizations including the ACLU, NOW, the NAACP and People for the American Way. Finally, Ms. Hewitt is a long-time supporter of the President and the First Lady. Her nomination is supported by, amongst others, Senators Kennedy and Kerry, and Walter Dellinger.

### III. ISSUES OF POTENTIAL CONCERN

#### a. Writings

Ms. Hewitt has written extensively about both religious education and about the role of women in the church. Her most widely known writing is a book published in 1973 and co-authored with the Rev. Dr. Suzanne L. Hiatt called Women Priests - Yes or No? This book addresses the theological justifications for ordination of women priests within the Anglican Church. While also providing a positive theological basis for ordination, the majority of this work is directed at countering the traditional theological grounds that have been offered in opposition to such ordination. In a dust jacket endorsement, the then President of the National Council of Churches called it "a remarkable book," which covers the subject "[w]ith great competence, yet in a lively fashion . . . It gives an uncompromising affirmative answer, yet does so with great grace and charity. There is none of the rancor which marks so much of this debate."

As a church educator, she urged church leaders to consider changes in church education and worship which would reduce stereotyping of male and female roles and encourage women to share in responsibility for leadership. Her most technical writings, "A Genuine Pluralism,"



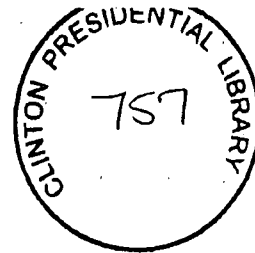
published in 1973 in the journal Religious Education and a 1972 monograph, Models of Secularization in Contemporary Sociological Theory, with co-authors Lawrence H. Mannix and Michael C. Mason, focus on the impact of pluralistic, secular society on the formation of religious beliefs.

Ms. Hewitt's writings express her belief that the Christian gospel has the power "to break into and change human life, literally turning us around and setting us on a new way." She also believes that the gospel affirms the common humanity of women and men. "No matter how much the churches have been pressed to reconsider their teaching by the contemporary women's movement," she wrote in an article published after she began law school, "the only reason that they should respond is faithfulness to the good news that they wish to communicate."<sup>1</sup> While Ms. Hewitt's views with respect to women and the church remain controversial to some, her writings are uniformly clear, well-argued and presented in a positive and charitable tone.

(b)(6)

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<sup>1</sup> "Women, Ministry, and Education," in Foundations For Christian Education in an Era of Change, ed. Marvin J. Taylor, Nashville, Abingdon Press, 1976.



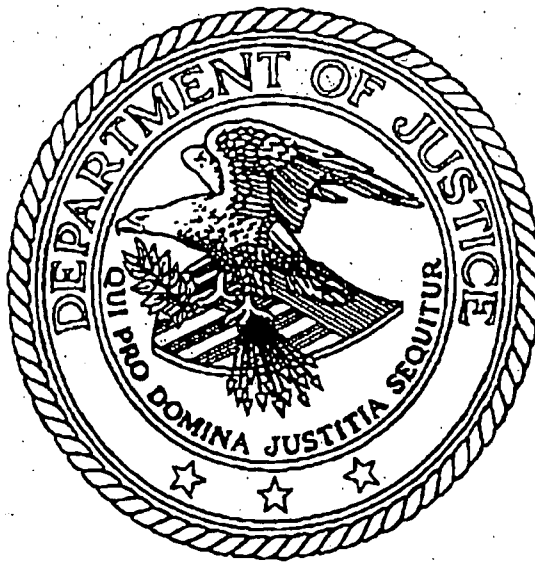
#### IV. DECISION

We recommend that you approve the nomination of Emily C. Hewitt to the U.S. Court of Federal Claims.

\_\_\_\_\_ Approve the nomination of Emily C. Hewitt to the U.S. Court of Federal Claims.

\_\_\_\_\_ Schedule discussion.

ORIGINAL



Office of Policy Development  
United States Department of Justice  
10th and Constitution Ave. NW  
Washington, D. C. 20530

TO: Marc Childress + Sarah Wilson FAX: 456-1647

FROM: Paul Morris/Eddie Acheson VOICE: (202) 514-4601  
FAX: (202) 514-2424

Total Pages (excluding this cover): 8

Additional Message:

We did a preliminary "paper vet" on (b)(6)  
(b)(6) + (b)(6) for whom we  
have a fairly extensive file from previous consideration.  
Let us know if you have any questions.

Bar

**AGENDA**  
**7/9/98**



**I. POSSIBLE NOMINATIONS: WEEK OF 7/6**

- A. William Traxler (4th Cir./SC)**
- B. Legrome Davis (E.D. PA)**

**II. PIPELINE**

**III. DISCUSSION**

- A. Kim Wardlaw Executive Session -- 7/9**
- B. Hearing on July 16, 1998; Possible July 30, 1998 Hearing**
- C. (b)(6)**
- D. 9th Circuit/WA -- Durham**
- E. 4th Circuit/SC -- Traxler/District Court seat**
- F. 2nd Circuit/NY -- Sotomayor**
- G. Texas -- S.D. (Ellison)**
- H. Pennsylvania District Court Seats (E.D. & W.D.)**
- I. (b)(6)**
- J. DOJ vets (Texas (2), Illinois (2), Oklahoma, NMI, California)**
- K. No names received for Connecticut, New Jersey, Oregon, D.C. district court seats**
- L. Kansas**
- M. Court of Claims/Federal Circuit**



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                        | DATE       | RESTRICTION         |
|--------------------------|--------------------------------------------------------------------------------------|------------|---------------------|
| 001a. memo               | Sonia Sotomayor to Amy Jiménez (partial) (1 page)                                    | 09/17/1997 | P2, b(6) <b>770</b> |
| 001b. form               | re: Supplemental Response to Senate Questionnaire - Sonia Sotomayor 15(2) (1 page)   | ca. 1997   | P2, b(6)            |
| 001c. form               | re: Supplemental Response to Senate Questionnaire - Sonia Sotomayor 15(3) (1 page)   | ca. 1997   | P2, b(6)            |
| 001d. form               | re: Supplemental Response to Senate Questionnaire - Sonia Sotomayor Part IV (1 page) | ca. 1997   | P2, P6/b(6)         |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Doug Band  
OA/Box Number: 12690

### FOLDER TITLE:

Supplement - 9/17/97

2009-1007-F

jp1535

### 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]
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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)]

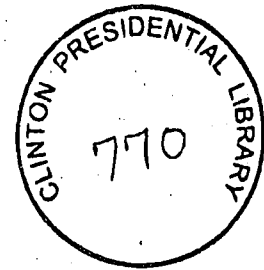
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

VIA FEDERAL EXPRESS

To: Amy Jimenez

From: Sonia Sotomayor

Date: September 17, 1997



I enclose the following items to supplement my Senate submissions and for your consideration:

1. the Physical Qualification Form executed by [REDACTED] (b)(6)
2. a copy of Holmes v. Artuz, 1995 WL 634995 (S.D.N.Y. Oct. 27, 1995), the decision I believe Senator Grassley's chief of staff referenced "as a homosexual rights opinion" in his recent meeting with representatives of the Puerto Rican Bar Association;
3. a copy of a September 9, 1997 New York Law Journal article describing my decision in Tasini v. The New York Times, 1997 WL 466520 (S.D.N.Y. Aug. 13, 1997) (I had previously sent Michael O'Connor earlier news reports on this case);
4. a Supplement to Part IV Confidential, Question No. 4, of my Senate Questionnaire; and
5. a proposed Supplement to Part I Biographical Information, Questions 15(2) and 15(3).

The proposed Supplement to Part I updates Question 15(2) by listing two additional, recent reversals and Question 15(3) by adding two recent constitutional cases. I do not know if the Senate expects updates to Question 15, and if so, when I should submit the supplements. Although I hope not to be reversed frequently, I do expect to issue opinions on significant constitutional questions with some regularity. The question is whether and when I should submit any supplements. Please advise me if you want me to send directly any of this additional information to the Senate. If so, how many copies should I make and to whom should I send them? Should I draft a cover letter?

I look forward to working with you and await our call with Jon on Tuesday, September 23, 1997, concerning issues discussed with the Puerto Rican Bar Association in their recent meetings with the staff and Senators on the Judiciary Committee and of New York, Connecticut and Vermont.

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# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                           | DATE            | RESTRICTION        |
|--------------------------|-----------------------------------------------------------------------------------------|-----------------|--------------------|
| 001. form                | Sotomayor Immigration Addendum; RE: SF-86 Questionnaire for National Security (3 pages) | <del>n.d.</del> | <del>P6/b(6)</del> |
| 002. form                | RE: SF-86 Questionnaire for National Security (14 pages)                                | n.d.            | <del>P6/b(6)</del> |
| 003. form                | RE: Supplement to SF-86 Questionnaire for National Security (2 pages)                   | n.d.            | <del>P6/b(6)</del> |
| 004. form                | RE: Addendum to Supplemental Form SF-86 (3 pages)                                       | n.d.            | <del>P6/b(6)</del> |
| 005. form                | RE: Sotomayor Tax Check Waiver (3 pages)                                                | n.d.            | <del>P6/b(6)</del> |
| 006. form                | White House to Federal Bureau of Investigation; RE: Sotomayor (1 page)                  | 02/27/1997      | <del>P6/b(6)</del> |
| 007. letter              | Erichsen to Berger; RE: Personal address (partial) (1 page)                             | 06/12/1996      | <del>P6/b(6)</del> |
| 008. letter              | Berger to Quinn; RE: Personal address (partial) (1 page)                                | 05/28/1996      | <del>P6/b(6)</del> |
| 009. report              | Review of Selected Opinions (7 pages)                                                   | ca. 1996        | P2 773             |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Doug Band  
OA/Box Number: 12690

### FOLDER TITLE:

Forms [7]

Debbie Bush  
2009-1007-F  
db1211

### 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).

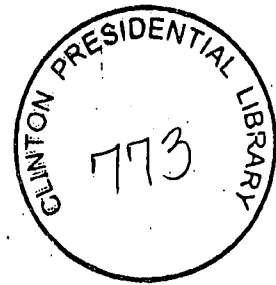
RR. Document will be reviewed upon request.

#### 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]
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- 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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Review of Selected Opinions<sup>1</sup> of Hon. Sonia Sotomayor  
United States District Judge  
Southern District of New York  
1992 - present



**Baseball Strike**

Silverman v. Major League Baseball Player Relations Committee, Inc., 880 F. Supp. 246 (S.D.N.Y.), *aff'd*, 67 F.3d 1054 (2d Cir. 1995): NLRB sought a temporary injunction under the National Labor Relations Act pending the final disposition of unfair labor practice charges against baseball owners, including claims of violation by unilaterally eliminating salary arbitration for certain reserve players, competitive bargaining for free agents, and of the anticollusion provisions of the Bargaining Agreement. SS finds that NLRB had reasonable cause to believe that the owners committed an unfair labor practice, and that an injunction was proper to avoid irreparable injury and to ensure that the owners and players continue bargaining until resolution, genuine impasse or an NLRB determination.

**Civil Rights:**

McNeil v. Aguilos, 831 F. Supp. 1079 (S.D.N.Y. 1993): A hospital employee sued under Title VII, alleging discrimination based on her status as non-Filipina. She complained of hospital's alleged official policy of allowing nurses to communicate in Tagalog on the job, purportedly in order to isolate and harass her. SS found that issues of fact precluded summary judgment. She noted that "[t]he questions in this case are troubling, and the issues are likely to become more pervasive as our society grows increasingly multiracial and polyglot. There is no simple solution, for just as a workplace English-only policy potentially violates the rights of non-English speakers, plaintiff here contends that allowing co-workers to communicate in a foreign language violates her rights as a native English speaker."

**Constitutional Issues:**

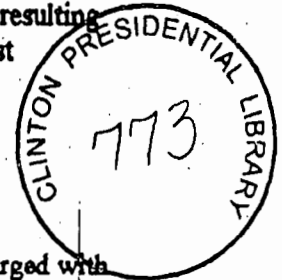
Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993): A rabbi seeking to display a menorah in a city park challenged a municipal resolution barring fixed outdoor displays of religious or political symbols in parks. The city contended that the resolution was a valid time, place and manner restriction necessary to avoid a violation of the Establishment Clause.

SS held that the city parks were true traditional public fora, that the resolution was a content-based exclusion of expressive conduct, and that an equal access policy permitting fixed religious displays would not violate the Establishment Clause.

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<sup>1</sup> A total of 263 district court opinions, dated through February 16, 1996, were reviewed.

In re St. Johnsbury Trucking Co., Inc., 1996 WL 26575: SS held that the Negotiated Rates Act of 1993, P.L. 103-180, which was intended to establish a procedure for resolving disputes resulting from efforts by trustees for bankrupt motor carriers to collect additional amounts for past transportation, was not an unconstitutional taking as applied. Case was a matter of first impression in the Second Circuit; SS follows Eighth Circuit decision.



### Criminal Law Issues

U.S. v. Castellanos, 820 F. Supp. 20 (S.D.N.Y. 1983): Defendant was arrested and charged with conspiracy to distribute and to possess with intent to distribute five kilograms or more of cocaine. A magistrate refused to issue a search warrant for defendant's apartment when an affidavit was initially proffered. The detective then added handwritten insertions to the affidavit setting forth additional information relating to facts known about defendant's apartment, although such facts were not mentioned at all in detective's contemporaneous report. Magistrate then agreed to issue warrant. Defendant moves to suppress fruits of search. SS finds that the handwritten insertions in affidavit were either fabricated or made with reckless disregard for the truth, and that warrant would not have issued with them. "The case at bar is not the familiar one where the constable or magistrate merely blundered . . . , but the not-rare-enough one where a law enforcement officer not only flouted the Constitution, but intentionally misled a magistrate into issuing a search warrant that she had initially refused to grant. This type of egregious conduct must be deterred if the Fourth Amendment is to have any meaning."

U.S. v. Jimenez, 1995 WL 680944: Defendant moves to preclude the government from using a 1994 deportation order in a prosecution for illegal reentry. SS denies the motion, but noted that she found the conduct of the Immigration Judge in the deportation proceeding to have violated due process by coercing waivers of right to counsel and to appeal. Despite these violations, SS finds that there was no prejudice to the defendant in light of the fact that there were no possible avenues of relief from deportation.

U.S. v. Lech, 895 F. Supp. 586 (S.D.N.Y. 1995): Defendant was indicted on conspiracy and bribery charges in connection with an asbestos removal project. On the eve of trial, defense counsel (a federal public defender) learned that a government cooperating witness was formerly represented by another member of the federal defender staff. Defendant sought to bar use of this witness. SS finds that government's failure to recognize the conflict was "astonishing." After a hearing, SS holds that the conflict was only potential, not actual. SS denied exclusion of witness, but "cannot say that such failures [to disclose conflicts] are so frequent as to warrant extraordinary sanction of preclusion, I am placing the United States Attorney's Office on notice that a recurrence of this sort of problem will lead to a different result in another case." SS directed the US Attorney's Office to establish a substantive procedure to check for such conflicts.

U.S. v. Lech, 895 F. Supp. 582 (S.D.N.Y. 1995): Defendant moved in limine to permit him to introduce results from two polygraph exams. SS is "willing to assume" polygraph results are admissible under Rule 702 (under a post-Daubert analysis), but excludes the evidence under Rule

403 because the questions pertained to the legal implications of the defendant's actions, without setting forth the factual circumstances underlying the legal conclusions. In a footnote (#2), SS notes that "different circumstances might be presented" if the answers involved a complete denial of any connection or involvement with the charged conduct.

U.S. v. Real Property Known as 77 East 3rd Street, New York, New York, 869 F. Supp. 1042 (S.D.N.Y. 1994): Jury found that government was not entitled to forfeiture of Hell's Angel's New York Clubhouse. On consideration of the government's motion for judgment notwithstanding the verdict or for a new trial, SS held that the government did not provide substantial evidence of a nexus between the wide-ranging drug conspiracy and the clubhouse to merit forfeiture of the building. "I do not doubt for a minute that individual HAMC members . . . engaged in criminal activity, often violent and corrupt. However, it is the Building and not the general criminality of HAMC members that was on trial in this case [.]"

Earlier, at 849 F. Supp. 876, SS found that the history of violence committed by club members justified the use of an anonymous jury.

#### Foster FOIA

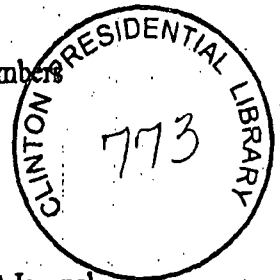
Dow Jones v. U.S. Department of Justice, 880 F. Supp. 145 (S.D.N.Y. 1995): Wall Street Journal seeks disclosure under FOIA of investigative reports by U.S. Park Police and FBI into death of Vincent Foster, as well as the disclosure of the torn-up note found in Mr. Foster's briefcase; in this opinion, SS finds that the investigative reports were exempt from disclosure under FOIA exemption (b)(7)(A) because disclosure would interfere with ongoing investigations. Subsequently, portions of the reports were disclosed voluntarily by DOJ.

SS ordered disclosure of the note, finding that in light of the substantial public interest in viewing the note, DOJ's offer to make it available for viewing in Carl Stern's office was inadequate. The new round of media attention on the Foster family did not outweigh the important public interest in viewing the note. SS distinguishes the case in which the New York Times unsuccessfully sought disclosure from NASA of recordings of Challenger crew at the time of the explosion.

Subsequently, at 907 F. Supp. 79 (S.D.N.Y. 1995), SS holds that the Journal's subsequent act of receiving a copy of the note from unauthorized sources (presumably Congressional) rendered the appeal moot.

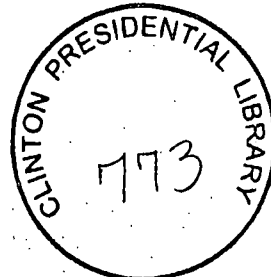
In a related opinion, at 161 F.R.D. 247 (S.D.N.Y. 1995), SS granted Lisa Foster's motion to intervene as of right and permissively.

#### Habeas Corpus



Petitions denied in:

Batista v. Walker, 1995 WL 453299  
Epps v. Commissioner of Correctional Services, 1993 WL 213035, aff'd, 13 F.3d 615 (2d Cir. 1994)  
Gurne v. Thoubboron, 1995 WL 130517  
Ortiz v. U.S., 1995 WL 2491  
Phillips v. Walker, 1996 WL 1236  
Rivera v. Kuhlman, 1995 WL 594858



Prisoner Litigation

Burton v. New York State Dept. of Corrections, 1994 WL 97164: Prisoner sues under § 1983 alleging that inadequate medical treatment violated his Eighth Amendment rights. SS finds that claims against certain of the defendants sufficiently alleged deliberate indifference to serious medical need to sustain complaint against motion to dismiss.

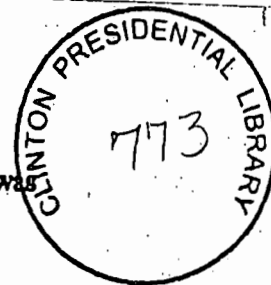
Dellamore v. Stenros, 886 F. Supp. 349 (S.D.N.Y. 1995): SS denied a motion for summary judgment on immunity grounds in a case alleging an unlawful search by a corrections officer of a visitor. There was a factual dispute as to whether the search was a permissible strip search or an unlawful body cavity search.

Holmes v. Artuz, 1995 WL 634995: Prisoner sues under § 1983 alleging that defendants violated his constitutional rights by enforcing a policy that removed him from a prison food service job solely because he is an "overt homosexual." SS denies motion to dismiss, because plaintiff has asserted cognizable claims for substantive due process and first amendment violations, and a possible equal protection violation. Defendants may renew the motion after *pro bono* counsel has been appointed for plaintiff.

Lee v. Coughlin, 902 F. Supp. 424 (S.D.N.Y. 1995): *Pro se* inmate alleged that the defendant hearing officer denied him due process by denying him an employee-assistant to aid him during a hearing on assault charges. SS granted plaintiff's motion for summary judgment against the hearing officer. SS subsequently granted reconsideration (1996 WL 1235), for further review under Sandin v. Connor, 115 S.Ct. 2293 (1995), on the issue of whether plaintiff's confinement as a result of the assault charge constituted an "atypical and significant" hardship sufficient to trigger due process protection.

Neri v. Coughlin, 1993 WL 464687: SS rejects claim that inmate's wife was unlawfully denied visitor privileges, finding that the revocation of privileges fully comported with due process.

Phillips v. Jenuso, 1995 WL 239062: Orthodox Jewish Rastafarian sues under § 1983 alleging that defendant's classification of him as "Protestant" and denial of Kosher food violated his



rights to religious freedom and equal protection. SS holds claim to be moot since plaintiff was no longer in custody.

Rivera v. Coughlin, 1994 WL 263417: *Pro se* prisoner brings § 1983 action alleging that defendants violated his constitutional rights in conducting an administrative hearing on charges related to a facility room break-in. Plaintiff was not permitted to examine adverse witnesses or to secure the attendance of an exculpatory witness. Defendants contended that the reversal of the hearing determination upon administrative appeal disposed of plaintiff's claims. SS, following Walker v. L. Bates, 1994 WL 161050 (2d Cir.), held that a successful administrative appeal does not cure a purported violation of an inmate's due process rights if there was a punitive confinement during the pendency of the appeal. SS also held that defendants were not entitled to summary judgment on qualified immunity.

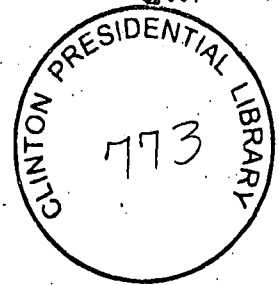
Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994), and Rodriguez v. Coughlin, 1994 WL 174298: Plaintiff inmates sued under § 1983 and the Religious Freedom Restoration Act, contending that a Department of Correctional Services directive prohibiting them from wearing Orisha beads in conformity with Santeria religion violated their rights to religious freedom. Santeria is a religion practiced in Puerto Rico, Cuba and other parts of Latin America and the Caribbean, as well as part of the United States; the practices of Santeria were accorded First Amendment protection by the Supreme Court in Church of the Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217 (1993). DOCS contended that there was widespread use of restrung religious beads to denote gang membership within the prison. Under the directive, unlike other artifacts associated with other religions, Santeria adherents were required to provide a religious-based justification for the possession of beads.

SS notes that the Directive reflects "DOCS's judgment and choice, based on religious practices familiar to defendants, as to which religious items and practices are prima facie acceptable and those which are not." SS notes that the wearing of the beads is a hallmark of Santeria beliefs. While acknowledging the validity of DOCS' interest in prison security and the reduction of prison gang violence, SS finds that the directive does not embody the least restrictive means to achieve those goals. SS grants injunctive relief to plaintiffs barring DOCS from prohibiting plaintiffs from wearing their beads under their clothing or placing beads on non-publicly displayed shrines.

Smith v. O'Connor, 901 F. Supp. 644 (S.D.N.Y. 1995): SS dismisses § 1983 claim arising out of alleged destruction of legal papers during search of cell. SS notes, however, that allegations are "unsettling" if true.

Webb v. Jackson, 1994 WL 86390: Prisoner sues under § 1983 alleging that inadequate medical treatment and failure to provide Timberland boots and Nike sneakers for his foot problem violated Eighth Amendment. SS grants defendants' motion for summary judgment, holding that plaintiff had not demonstrated deliberate indifference to serious medical need.





### Sanctions

Corporate Printing Co., Inc. v. New York Typographical Union No. 6, 886 F. Supp. 340 (S.D.N.Y. 1995): SS confirmed arbitration award and awarded sanctions against the attorney contesting the award; attorney knew or should have known of frivolousness of position, but because there was no subjective bad faith and because the attorney "was an advocate caught up in a contentious litigation in which he lost perspective," a public reprimand was sufficient sanction

Bowler v. U.S. Immigration and Naturalization Service, 901 F. Supp. 597 (S.D.N.Y. 1995): SS grants sanctions of \$2,500 against an attorney under 28 U.S.C. § 1927 for vexatious and unreasonable multiplication of proceedings, noting that he filed "baseless" motions in bad faith.

Paese v. New York Seven-Up Bottling Company, Inc., 158 F.R.D. 34 (S.D.N.Y. 1994): SS awards sanctions of \$2,000 against plaintiff's attorney, finding that continued prosecution of an action for breach of duty of fair representation after discovery revealed no evidence of causation was objectively unreasonable.

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### Second Circuit Reversals:

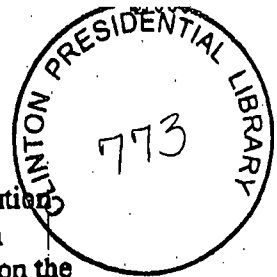
Bolt Electric, Inc. v. City of New York, 53 F.3d 465 (2d Cir. 1995): A supplier for a highway contractor sued the City for failure to uphold a guarantee letter. SS dismissed complaint for failure to state a claim because the City had failed to file the guarantee with the Comptroller and the Comptroller had failed to provide the necessary endorsement of available funding. The Second Circuit reversed and held that the absence of the filing and certification did not bar enforcement of the guarantee in light of the City's overall commitment to have this project undertaken and completed. The court noted that SS had failed to address a New York Court of Appeals case holding that the absence of a Comptroller's certification does not bar an action to enforce a contract.

U.S. v. Bauer, 47 F.3d 535 (2d Cir. 1995): A defendant convicted of mail fraud appealed SS's upward departure from the Sentencing Guidelines and the imposition of a five-year term of supervised release. The Second Circuit affirmed the upward departure, but found that under the terms of the Guidelines, the maximum term of supervised release was three years.

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### SS Sitting by Designation:

U.S. v. Hendrickson, 26 F.3d 321 (2d Cir. 1994): Defendant was convicted of conspiracy to distribute and possess with intent to distribute in excess of one kilogram of heroin, two counts of



distribution of heroin and possession with intent to distribute heroin, two counts of distribution of heroin within 1,000 feet of a public school, and one count of receiving a firearm with an obliterated serial number. The district court sentenced the defendant to life imprisonment on the conspiracy count, 240 months on each of the substantive distribution counts, 480 months on the school zone counts, and 120 months on the firearm count. Defendant appealed the sentence.

The panel found that the sentence on the conspiracy count should be vacated because there was no showing that the defendant actually intended to import the volume of heroin that he discussed with his co-conspirators. Under the Sentencing Guidelines, the sentencing court should calculate the base offense level with reference to the "weight under negotiation," and disregard "puffing" of amounts that the defendant did not intend to produce. The panel further held, in a matter of first impression with the Circuit, that the government bears the burden of proof on the issue of the defendant's intent. In this case, the government was obligated to provide the intent of at least two co-conspirators to traffic in this amount. "Here, however, the totality of the evidence strongly suggests that Hendrickson was a drug dealer who may have dreamed of importing millions of dollars worth of heroin from Nigeria, but certainly neither intended nor agreed with anyone . . . to do so. . . . We can not countenance a life sentence in this case or any other without more extensive and detailed factual findings by the sentencing court." The case was remanded for resentencing under these principles.

Judge Winter, dissenting in part, disagreed that the government must identify particular co-conspirators as having agreed to supply the precise negotiated amount. "Because negotiations over a particular amount together with a capability to produce the amount negotiated are not enough in my colleagues' view to prove that the quantity negotiated was a goal of the already proven conspiracy, the government's burden at sentencing is heavy indeed, and, in many cases perhaps insurmountable. It is in the nature of uncompleted buys that some details will be lacking, particularly where foreign suppliers are involved. To hold, as my colleagues do, that negotiations are of little weight in determining the applicable quantity for sentencing purposes will unnecessarily allow defendants who are by common sense standards highly culpable to escape well-deserved sentences."

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|--------------------------|--------------------------------------------------------------|------------|------------------------|
| 001. draft               | Sotomayor Addendum (20 pages)                                | nd         | P2 774                 |
| 002. form                | Financial Statement. (2 pages)                               | nd         | <del>P6/b(6)</del>     |
| 003. report              | Financial Disclosure Report (4 pages)                        | 02/27/1997 | <del>P2, P6/b(6)</del> |
| 004. form                | RE: Questionnaire for National Security Positions (23 pages) | nd         | <del>P6/b(6)</del>     |
| 005. form                | Immigration Addendum to SF-86 (3 pages)                      | nd         | <del>P6/b(6)</del>     |

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Counsel's Office  
Doug Band  
OA/Box Number: 12690

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Personal Data Questionnaire [4]

Debbie Bush  
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db1195

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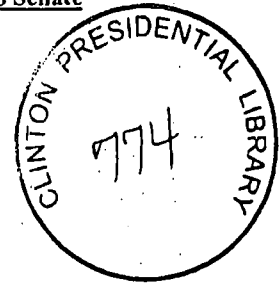
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Questionnaire

Sotomayor Addendum to Senate

**ADDENDUM TO  
SENATE QUESTIONNAIRE**



**Question 15:**

**(1) Ten Most Significant Written Opinions**

United States v. The Spy Factory et al., --- F. Supp. ---, 1997 WL 7582 (S.D.N.Y. 1997).

Krueger Int'l v. Nightingale, Inc., 915 F. Supp. 595 (S.D.N.Y. 1996).

United States v. Lech, 895 F. Supp. 586 (S.D.N.Y. 1995).

Silverman v. Major League Baseball Player Relations Committee, 880 F. Supp. 246 (S.D.N.Y. 1995), aff'd, 67 F.3d 1054 (2d Cir. 1995).

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).

Azurite Corp., Ltd. v. Amster & Co., 844 F. Supp. 929 (S.D.N.Y. 1994), aff'd, 52 F.3d 15 (2d Cir. 1995).

United States v. Hendrickson, 26 F.3d 321 (2d Cir. 1994) (sitting by designation).

Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994).

In re: Arbitration between Coastal Shipping, Ltd. and Southern Petroleum Tankers, Ltd., 812 F. Supp. 396 (S.D.N.Y. 1993).

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

**(2) Appellate Reversals and Significant Criticisms**

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 reliance. The Second



Sotomayor Addendum to Senate Questionnaire

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.

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).

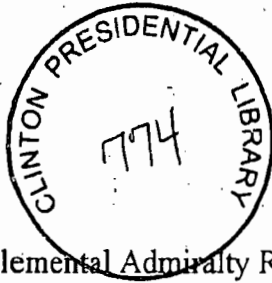
I granted a motion to dismiss on behalf of the City of New York in a breach of contract action brought by Bolt Electric, Inc. I found that because the City had undertaken to pay Bolt for general contracting services pursuant to a letter which was not filed and endorsed by the City's Comptroller, as required 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.

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 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." 84 F.3d at 109 (citations omitted). On remand, the jury again found for plaintiff, and judgment was entered accordingly.

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



Sotomayor Addendum to Senate Questionnaire

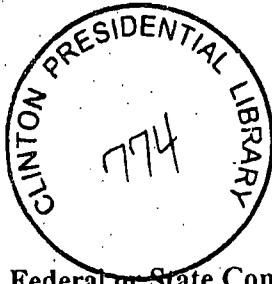
various Supplemental Admiralty Rule B attachments of plaintiff's bank account. I held that "because plaintiffs obtained Rule B attachments before [the bank] exercised its set-off rights . . . plaintiffs gained a limited property interest under federal law that cannot be defeated by a subsequently executed state law set-off right." Though 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.

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 extending 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 appropriate time for filing a complaint, and that the 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 Circuit 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.

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 14th Amendment. The Second Circuit reversed without addressing whether the City's alleged misconduct deprived plaintiff of protected property and liberty interests. The Circuit 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.



**(3) Significant Opinions on Federal or State Constitutional Issues**

United States v. Ni Fi Yi, --- F. Supp. ---, 1997 WL 7672 (S.D.N.Y. 1997).

National Helicopter Corp. of America v. City of New York, --- F. Supp. ---, 1997 WL 32261 (S.D.N.Y. 1997).

United States v. The Spy Factory et al., --- F. Supp. ---, 1997 WL 7582 (S.D.N.Y. 1997).

In re St. Johnsbury Trucking Co., Inc., 191 B.R. 22 (S.D.N.Y. 1996).

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).

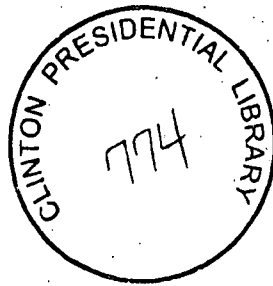
United States v. Jimenez, 921 F. Supp. 1054 (S.D.N.Y. 1995).

Lee v. Coughlin, 902 F. Supp. 424 (S.D.N.Y. 1995).

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)).

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

Fisher Scientific v. City of New York, 812 F. Supp. 22 (S.D.N.Y. 1993).



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**QUESTION 18:**

**A1.**

**Case Name:** Fratello Lozza (USA) 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 054-0392  
(802) 951-6401

**Date of Trial:** March 16, 1992

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

**Case Description:** Represented Lozza (USA) and Lozza SpA, Inc. in this trademark infringement and unfair competition action. I conducted the trial on behalf of the defendants and secured a dismissal of plaintiff's claims and an injunction against plaintiff's use of defendants' marks. Findings of Fact and Conclusions of Law and Order reported at 789 F. Supp. 625 (S.D.N.Y. 1992).

**A2.**

**Administrative**  
**Case Name:**

Ferrari of Sacramento, Inc. v. Ferrari North America

**Agency:**

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

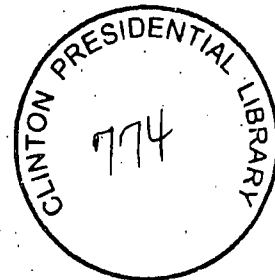
**Protest No.:**

PR-973-88



**Administrative  
Law Judges:**

Robert S. Kendell  
Marilyn Wong  
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  
(213) 553-0451

**Adversaries:**

Jay-Allen Eisen  
Jay-Allen Eisen Law Corporation  
1000 G Street, Suite 300  
Sacramento, California 95814  
(916) 444-6171

Donald M. Licker, Esq.  
701 University Avenue, Suite 100  
Sacramento, California 95825  
(916) 924-9600

**Case Description:**

Represented Ferrari North America in an administrative hearing, ordered pursuant to a writ of mandate, of dealer's petition challenging the termination of his Ferrari franchise under California's Automobile Franchise Law. I had primary responsibility for conducting the hearing before the California Board which confirmed the termination.

Ferrari North America appealed the judgement on the writ, which judgment was reversed on appeal in an unpublished opinion. The appeal addressed the issue whether a Stipulation of Settlement entered into before the California New Motor Vehicle Board could be enforced, without a hearing, to terminate a dealer.

Although not listed as co-counsel for appellant's briefs, I had significant drafting input. The appellate case was entitled Ferrari of Sacramento, Inc., Respondent v. New Motor Vehicle Board and Sam Jennings as Secretary,

Sotomayor Addendum to Senate Questionnaire

Appellants, and Ferrari North America, Real Party in Interest and Appellant; No. C008840 in the Court of Appeal of the State of California in and for the 3rd Appellate District; Sacramento Superior Court, Case No. 360734.

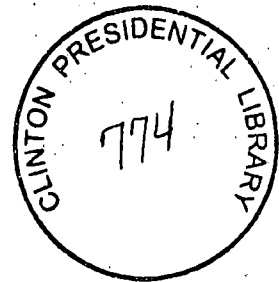
A3.

Case Name: 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

Case No.: 3-89-03450-TC

Judge: Hon. Thomas E. Carlson  
U.S. Bankruptcy Court Judge  
450 Golden Gate Avenue  
San Francisco, California 94102  
(415) 556-2250

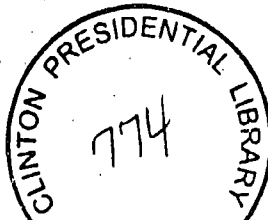


Dates of Hearing: 1/22/90 and 3/19/90

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.  
Graham & James  
Attorneys for Buyer, Barry Singh  
One Maritime Plaza, Suite 300  
San Francisco, California 94111  
(415) 954-0200



Sotomayor Addendum to Senate Questionnaire

**Case Description:**

Represented, pro hac vice, Ferrari North America, a franchisor of 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 dealer's franchise. The Court ruled that the dealer could not reject customer contracts, although financially burdensome, and then assume franchise agreement.

Case subsequently settled with sale of dealership and resolution of claims among dealer, new buyer, Ferrari and customers.

**A4 - A5**

**General Description:**

Since 1985, my firm represented Fendi S.a.s. di Paola Fendi e Sorelle ("Fendi") in its national anti-counterfeiting work. Frances B. Bernstein, a deceased partner of Pavia & Harcourt, and I created Fendi's anti-counterfeiting program. From 1988 until the time I left the firm for the bench, I was the partner in charge of that program. I handled almost all discovery work and substantive court appearances in cases involving Fendi. The following are cases representative of various facets of this work.

**A4.**

**Case Name:**

Jane Doe v. John Doe and Various ABC Companies

**Case No.:**

89 Civ. 3122

**Court:**

United States District Court, Southern District of New York

**Judge:**

Hon. Thomas P. Griesa  
U.S. District Judge  
U.S. Courthouse  
500 Pearl Street  
New York, New York 10007  
(212) 805-0210

**Adversaries:**

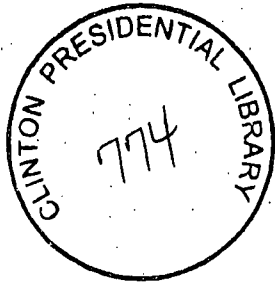
None appeared.

**Dates of Hearings:**

Multiple appearances from 1989 to 1992.

**Case Description:**

Provisional relief appearances relating to Lanham Act claims against street vendors of counterfeit goods.



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OR:

Case Name: Fendi S.a.s. Di Paola Fendi e Sorelle v. Dapper Dan's Boutique et al.

Case No.: 89 Civ. 0477

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

Judge: Hon. Miriam G. Cedarbaum  
U.S. District Judge  
U.S. Courthouse  
500 Pearl Street  
New York, New York 10007  
(212) 805-0198

Adversary: Defendant appeared pro se and then defaulted.

Dates of Hearings: 1/23/89 and 2/17/89

Case Description: Appearances relating to temporary restraining order, preliminary injunction and seizure order under the Lanham Act, and granting of a default judgment.

A5.

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

Case No.: 86 Civ. 0671

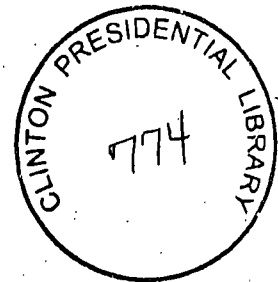
Court: United States District Court, Southern District of New York

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

Adversaries: Stacy J. Haigney, Esq.  
Herbert S. Kasner, Esq.  
Attorneys for Burlington Coat Factory Warehouse and

Sotomayor Addendum to Senate Questionnaire

Monroe G. Milstein  
Burlington Coat Factory Warehouse, Corp.  
263 West 38th Street  
New York, New York 10018  
(212) 221-0010



Dennis C. Kreiger, Esq.  
Cuddy & Fedder  
Attorneys for Firestone Mills, Inc. and Leo Freund  
90 Maples Avenue  
White Plains, New York 10601  
(914) 761-1300

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

Case Description: Lanham Act trademark infringement claim which settled during trial.

A6.

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

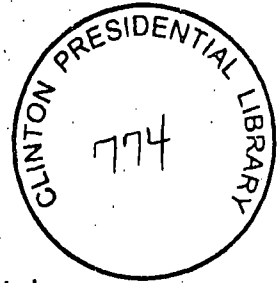
Court: United States District Court, Southern District of New York

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

**Adversary:**

Stanley Yaker, Esq.  
Attorney for Paolo Vincelli and Mario Vincelli  
114 East 32nd Street  
Suite 1104  
New York, New York 10016  
(212) 983-7241



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

**Date of Hearing:**

1/6/88

**Case Description:**

Motion for summary judgment in Lanham Act trademark infringement granted. Damages and attorneys' fees were assessed after an inquest before the magistrate judge. Judgment entered after hearing. (Decision on motion reported at 642 F. Supp. 1143 (S.D.N.Y. 1986)).

A7.

**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

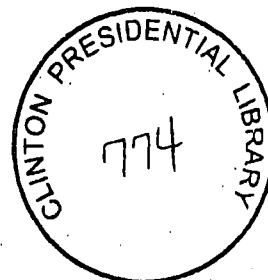
**Panel:**

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

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

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



**Co-Counsel:** Roy L. Reardon, Esq. (455-2840)  
David E. Massengill, Esq. (455-3555)  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
(212) 455-2000

**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)

**Case Description:** Appeal of District Court's Denial of Motion to Modify Preliminary Injunction by Bulgari Corporation of America. (I had extensive participation in the drafting of appellant's brief and reply and I primarily drafted all motion papers and argued below). The appeal was denied at 909 F.2d 1473 (2d Cir. 1990).

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

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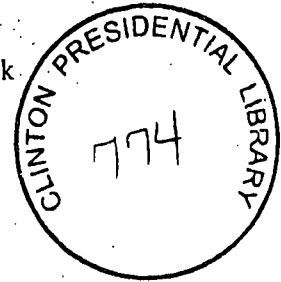
The Security Pacific Case: 87 Civ. 3629

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

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: Order to Show Cause for Approval of Sublease by Bulgari Corporation of America.



Sotomayor Addendum to Senate Questionnaire

A8.

Case Name: Miserocchi & C., S.p.A. 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

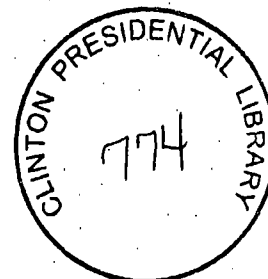
Hon. James L. Oakes  
Then-Chief Judge  
U.S. Circuit Judge  
U.S. Courthouse  
40 Foley Square  
New York, New York 10007  
(212) 857-2400

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 & Baryllick  
56 Pine Street  
Providence, Rhode Island 02903  
(401) 831-2700

Date of Argument: 9/17/84.

Case Description: Represented claimant Alfred C. Toepfer International, G.m.b.H. in arbitration and in opposing motion to stay arbitration. Motion to stay was



Sotomayor Addendum to Senate Questionnaire

denied and cross motion to compel arbitration granted. Case involved issue of whether an alter ego of an entity who signed an arbitration agreement could be compelled to arbitrate. The motion was argued by David A. Botwinik of my office, but I prepared the motion papers.

A Notice of Appeal of the Order of the District Court and a Motion for Stay of Arbitration Pending Appeal was brought before the Second Circuit. I argued the motion to stay, which motion was denied and the appeal dismissed during the argument of the motion.

The arbitration resulted in an award in favor of claimant against party who signed agreement and alter ego.

AND

District Court  
Case Name:

Miserocchi & C., Sp.A. v. Alfred C. Toepfer International, G.m.b.H.

Case No.:

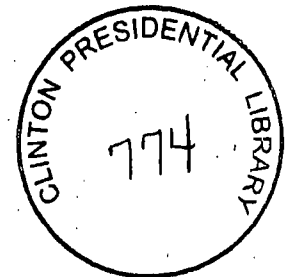
84 Civ. 6112

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  
56 Pine Street  
Providence, Rhode Island 02903  
(401) 831-2700

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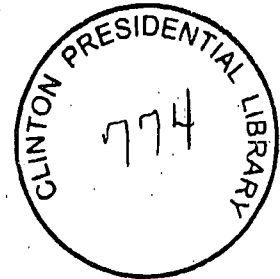
Date of Argument: 9/5/84 (argued by David Botwinik of Pavia & Harcourt)

A9.

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)  
Acting Justice, Supreme Court, 1st Jud. District  
111 Centre Street  
New York, New York 10013  
(212) 374-8005



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  
110 East 59th Street, 33rd Floor  
New York, New York 10022  
(212) 682-4200

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: The first child pornography case in New York State after the U.S. Supreme Court upheld the constitutionality of New York's laws. Defendants convicted after trial and sentenced, respectively, to 3 ½ to 7 years and 2 to 6 years.

Sotomayor Addendum to Senate Questionnaire

A10.

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

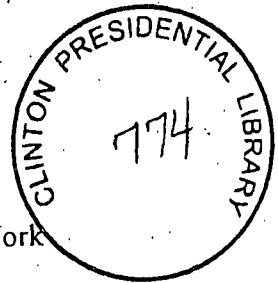
Judge: Hon. James B. Leff (retired)  
Justice, Supreme Court  
100 Centre Street  
New York, New York 10013  
(212) 374-4966

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.  
2316 Funston Place  
Oakland, California 94602  
(415) 531-3904

Dates of Trial: Almost all of January 1983

Case Description: Consolidated trial of multiple murders, attempted murders, burglaries, robberies and related crimes. Defendant was convicted after trial and sentenced, consecutively, to 67 ½ years to life. I was co-counsel on the case and prepared and argued before Justice Harold Rothwax, the applicability of New York State's consolidation criteria to crimes of violence which were spread over a year's period of time and which had different modus operandi for each burglary.

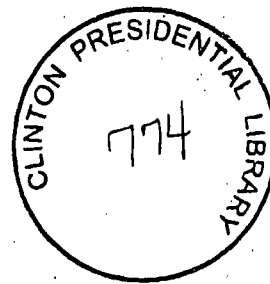


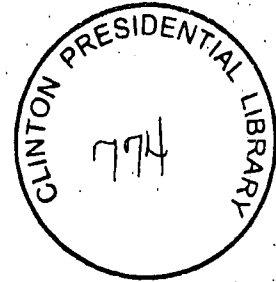
Sotomayor Addendum to Senate Questionnaire

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.

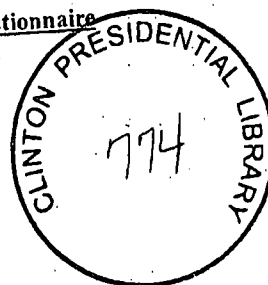
I have interpreted this question to be seeking a list of individuals who are familiar with either my judicial work because they have appeared before me or with my work in other legal activities such as a speaker or conference panelist. If you seek only individuals who have tried cases or made other substantive appearances before me, please advise me.

1. 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
2. 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
3. John S. Siffert, Esq.  
Lankler, Siffert & Wohl  
500 Fifth Avenue, 33rd Floor  
New York, New York 10110  
(212) 921-8399
4. Justin N. Feldman, Esq.  
Kromish, Lieb, Weiner & Hellman  
1114 Avenue of the Americas, 47th Floor  
New York, New York 10036-7798  
(212) 479-6210
5. Dean John D. Feerick  
Fordham Law School  
140 West 62nd Street  
New York, New York 10023  
(212) 636-6875





6. Gerard Walperin, Esq.  
Rosenman & Colin  
575 Madison Avenue  
New York, New York 10022  
(212) 940-7100
7. Mary Jo White, Esq.  
United States Attorney for the Southern District of New York  
or  
Jane Booth, Esq.  
Chief, Civil Division, U.S. Attorney's Office for Southern District of New York  
or  
Jay Holtmeier, Esq.  
(most recent AUSA who tried case before me)  
United States Attorney's Office  
Southern District of New York  
U.S. Courthouse Annex  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 791-0056
8. Leonard F. Joy, Esq.  
Attorney-in-Charge  
or  
Andrew H. Schapiro, Esq.  
Legal Aid Society, Federal Defender Division  
52 Duane Street  
New York, New York 10007  
(212) 285-2830
9. John Kidd, Esq.  
Rogers & Wells  
200 Park Avenue  
New York, New York 10166-0153  
(212) 878-8000
10. Arthur N. Abbey, Esq.  
Abbey & Ellis  
212 East 39th Street  
New York, New York 10016  
(212) 889-3700



11. Sara Moss, Esq.  
Vice President and General Counsel  
Pitney Bowes  
1 Elmcroft Road  
Stamford, Connecticut 06926  
(203) 351-7924
12. Martin J. Auerbach, Esq.  
Dormand, Mensch, Mandelstan, Schaeffer  
747 Third Avenue  
New York, New York 10017  
(212) 759-3300

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                        | DATE       | RESTRICTION            |
|--------------------------|----------------------------------------------------------------------|------------|------------------------|
| 001. fax                 | Fax cover sheet (1 page)                                             | 04/01/1997 | P2 776                 |
| 002. form                | RE: Personal Data Questionnaire (20 pages)                           | n.d.       | <del>P2, P6/b(6)</del> |
| 003. form                | Addendum to Personal Data; RE: Home address (25 pages)               | n.d.       | <del>P2, P6/b(6)</del> |
| 004. form                | Addendum to Personal Data Questionnaire; RE: Home address (27 pages) | n.d.       | <del>P2, P6/b(6)</del> |

### COLLECTION:

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Doug Band  
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### FOLDER TITLE:

Personal Data Questionnaire [8]

Debbie Bush  
2009-1007-F  
db1198

### 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]

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- 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]
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- 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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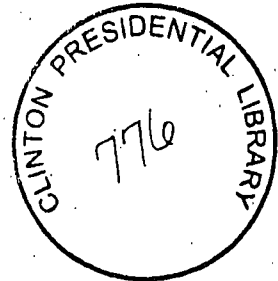


04/01/97 18:28 FAX

HON. SOTOMAYOR

001

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

NAME: Mike O'Connor

DATE: April 1, 1997

TELEFAX NO.: (202) 456-1647

TELEPHONE NO.: \_\_\_\_\_

FROM: Sonia Sotomayor

RE: \_\_\_\_\_

TOTAL NUMBER OF PAGES INCLUDING THIS SHEET: 19

Attached is my final draft of the ABA Personal Data Questionnaire. I will Federal Express the Addendum. Thank you both for your continued graciousness and attention.

If you do not receive the correct number of pages, or if you receive a transmission that is not meant for you, please call Theresa at (212) 805-0250/51.

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|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------|
| 001. article             | 6th Story of Level 1 printed in Full format. Federal Information Systems Corporation Federal News Service. Hearing of the Senate Judiciary Committee (annotations) pages 24-28; 30-31.(partial) (7 pages) | 09/30/97 | P2, P5 777  |

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### FOLDER TITLE:

Miscellaneous Searches

Rhonda Young  
2009-1007-F  
ry705

### RESTRICTION CODES

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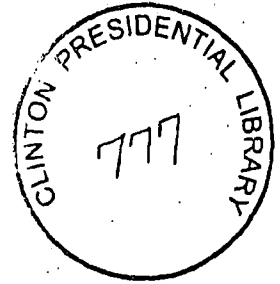
RR. Document will be reviewed upon request.

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Federal News Service, SEPTEMBER 30, 1997



the law, and analysis of where the law is, and what's happening in that area. And I receive their publications and read them for that purpose. I am aware, obviously, as any reader of newspapers, that they have taken larger positions on social issues. I believe, like Mr. Gilman, that that perhaps would not be terribly helpful to them, generally, because it undermines their effectiveness on the central issues of their mission, which is the education of lawyers.

SEN. THURMOND: My next question is for you.

It is a sad fact that many young people get involved in selling drugs. Based on your experience as a judge, why do you believe many young, poor youth become drug dealers?

MS. SOTOMAYOR: Senator, I wish I had the answer. If we had the answer, we'd have solutions to one of the worst ravages on our society, drugs. And I don't. The reasons why kids become in drugs, as I've learned as a judge, vary enormously: some because of the lure of easy money -- something that perhaps they should not be tempted by, but they are; others through their own self-ignorance about the damage they're doing to society and to themselves. I simply don't have one reason I can give you. The reasons are myriad and complex.

SEN. THURMOND: Now, another question.

Do you oppose mandatory minimum sentences for drug offenses?

MS. SOTOMAYOR: No, sir.

SEN. THURMOND: Another question.

Some argue that the federal sentencing guidelines do not provide enough flexibility for the sentencing judge. And some even say they should be abolished. What is your view of the federal sentencing guidelines, based on your experience with them?

MS. SOTOMAYOR: Thus far, sir, in the vast majority of cases I have found the guidelines to be very helpful in giving some comfort to me, as a judge, that I am not arbitrarily imposing sentences based on my personal feelings.

I believe that congressional sentiment, as reflected in the guidelines, is important, because it permits me, not to impose my personal views, but to let the democracy impose the society's views.

With respect to your second point, Senator, the guidelines already provide mechanisms for departures in appropriate circumstances.

In my experience, when there are principles and reasons, grounds to depart, the guidelines already permit it.

Now, there's obviously discussions going on, I'm very well aware of it, of issues that the Senate is taking up on changes within the guidelines, with respect to some crimes or others, or with respect to some issues or other. I expect, as has happened during the last ten years, that the Sentencing Guidelines Commission will continue to take up those issues, and revisit them when they're appropriate.

SEN. THURMOND: Thank you both for your presence and your testimony.

SEN. DEWINE: Senator Sessions.

SEN. JEFF SESSION (R-AL): Mr. Gilman, I think you're correct that we do need to look for ways to develop alternatives to litigation. I think we can do a better job of settling controversies many times without the expense and trauma of a full-fledged litigation.

I am impressed that you've tried 37 cases, according to the record, to judgement. I think that helps you bring something to the circuit that would be the kind of experience and understanding of what it's like to be in the pits, trying cases. So, I congratulate you for that.

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Luis Gomez' case -- will be 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 sights. You do not deserve this, sir. I'm deeply sorry for you and your family, but the law requires me to apply the minimum. I have no choice." Would you like to comment on that?

MS. SOTOMAYOR: Sir, that's the case where the facts and my personal feelings would have imposed a different result. But I didn't. I imposed what the law required. If that is -- I'm sorry, the name of the case is?

SEN. SESSIONS: I think it's Luis Gomez.

MS. SOTOMAYOR: Can you tell me how far back that case was, sir?

SEN. SESSIONS: In '93.

MS. SOTOMAYOR: If I am not mistaken, sir, that was before the safety valve provisions that were passed by Congress.

And I believe, and I could be completely mistaken, because it's been a very long time, and I've have many sentences since, that I may have been talking about the mandatory minimums that met more of the guidelines, in a first offense -- exactly what Congress later did, which was to say, in a first offense situation, with someone who's willing to cooperate, as that gentleman was, but had nothing to give, and he has no history of violence and none was used, that you could depart from the guideline minimums in that regard, or lower them.

So I may be mistaken, sir, but I do believe that that was the situation, and that Congress did do what I had earlier stated, which was to look at the factual situations and the impact, and make changes when they're appropriate.

SEN. SESSIONS: Well, I think the Congress should do that, and I don't disagree with a judge calling on Congress and suggesting that they should consider making any changes in the law.

However, I do think that a judge, would you not agree, has to be careful in conducting themselves in a way that reflects respect of the law.

MS. SOTOMAYOR: Absolutely. But --

SEN. SESSIONS: Do you have any second guess about --

MS. SOTOMAYOR: Maybe I wouldn't have called it an abomination, but I was thinking more of the factual outcome in that case.

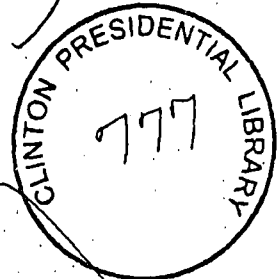
But no question, that all I meant in the context of that case, was the fact that that particular case, which Congress did come, very shortly thereafter, to change.

So obviously my strong feelings were reflected sufficiently that Congress, not because of me obviously, I doubt they knew who I was at the time. And may not all know who I am now, but it was because of the hardship that was created in many situations that caused the safety valve provision to be passed.

I do agree, however, that great respect, both for the law, and for the process, is terribly important. And as I underscored there I do what the law requires. And I think that's the greatest respect I could show for it.

SEN. SESSIONS: Well, I think it is important to follow the law, and I think, though, in cases like this, had you not, it would have been reversed, I suppose. But I think that perhaps had you expressed your criticism with the skill you've done today, it might be a little better, as far as conduct for a judge.

I just think, as you know, when you set a set of guidelines, everybody's not going to fit perfectly within it. And maybe you have a responsibility to help that defendant to understand that, though it may be unfortunate, and you personally wouldn't have given as much, that there is a rationality to this law that so much drugs require so much sentence.



114 minutes



MS. SOTOMAYOR: I have done that on numerous occasions, Senator. And there I was very, it was very shortly, at the time that I took the bench. And I believe that since then I have always been very careful, and I say it repeatedly at sentencing, when I am faced with emotionally difficult situations for the defendants and their families, often I get a lot of letters from heart-broken family members.

And at sentencing I would explain to them that as much as I understand their pain, that I have a greater obligation to society, to follow the law in the way that it's set forth.

SEN. SESSIONS: One more thing. I notice the New York Times article that indicated that you had not applauded or not stood and applauded Justice Thomas appeared at the Second Circuit conference.

MS. SOTOMAYOR: Well, I never did say that, sir.

I took the Fifth Amendment when the New York Times asked me that, because of the raging controversy at the time. I thought it made no sense for a prospective nominee to enter that kind of political fray, by any statement. But I don't think I ever did, sir.

SEN. SESSIONS: Okay. Well, that might explain this. The question in the article was, when Justice Clarence Thomas was introduced at the Second Circuit conference, the question of the reporter was, were you among those who sat on her hands, rather than give him an ovation, a standing ovation. And you said, I'll take the Fifth. MS. SOTOMAYOR: I explained to her clearly, as I did to you now, I did that because I thought, at that point, as a confirmed nominee, and as judge, that I should never be making political statements to the press, or anyone else. And I thought that was a politically charged question.

SEN. SESSIONS: Well, let me just ask you. Did you see fit to stand and applaud when --

MS. SOTOMAYOR: He was my Supreme Court Justice of my circuit. I stood up.

SEN. SESSIONS: Thank you very much.

SEN. DEWINE: Sen. Ashcroft.

SEN. JOHN ASHCROFT (R-MO): Thank you, Mr. Chairman. I appreciate the opportunity.

Mr. Gilman, I was interested in Senator Sessions' question about the Boy Scouts, who for a time were deprived of an opportunity to conduct the ceremony at the zoo, because their organization espoused a belief in a supreme being. I was more interested in your response. You seemed to express some uncertainty about whether or not there could be a disabling characteristic of an organization. Do you think that organizations, or groups of people that express a religious belief in a supreme being, should be subject to differential access to public facilities, or should have fewer rights than others?

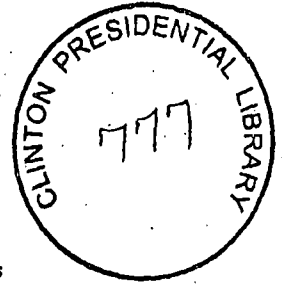
MR. GILMAN: Oh, absolutely not. I think I just expressed I was not familiar with that situation, Senator. No, I certainly would be -- frankly, I'm shocked that that would be basis for denying the Boy Scouts of America access to a public facility.

SEN. ASHCROFT: I would hope that that would be the way you would approach the First Amendment. Thank you for clarifying that. It wasn't something I knew anything about, but I've come to trust my colleague from Alabama.

SEN. SESSIONS: I'm relying on an Eagle Scout, Mike Enzi, who examined that recently.

SEN. ASHCROFT: Judge Sotomayor, at one time you were asked to rule on a case of a prisoner who was removed from his food service job in prison because he was an open homosexual.

The plaintiff sued, under the 1983 provisions, arguing that prison officials violated his Constitutional rights by transferring him from the food service job.



Prison officials argued that he was reassigned from his food service job to prevent disciplinary problems that could arise from having open homosexuals prepare food. Sotomayor denied -- you denied the motion for a summary judgment on procedural grounds.

But you wrote that a person's sexual orientation, standing alone, does not reasonably, rationally, or self-evidently implicate mess-hall security concerns. You ruled that prison officials did not present evidence that having homosexuals prepare food was a real threat.

I wonder, as a federal judge --

MS. SOTOMAYOR: Sir, may I --

SEN. ASHCROFT: -- how much deference --

MS. SOTOMAYOR: Sir, may I just interrupt one moment, and I apologize greatly. It wasn't a motion for summary judgment. It was a motion to dismiss, which has a different standard.

And so, I'm somewhat surprised when you say that I criticized them for not producing evidence. Because on a motion to dismiss they don't produce evidence. I have to take the prisoner's allegations on their face.

And I'm sorry, but I wasn't -- I didn't know if that affected your, the premise of your question.

SEN. ASHCROFT: I'm going to find out here in a minute, when I get the question out.

MS. SOTOMAYOR: Okay.

SEN. ASHCROFT: I guess what I really want to know is, what level of deference does a federal judge owe the prison officials, when trying to figure out what security risks there are in prison?

MS. SOTOMAYOR: Enormous.

The rational basis, which means any government interest, as long as there's a reasoned, rational basis for it, and it's not arbitrary and capricious, prison officials can do what they like.

In that particular case, sir, as I said, it was a motion under 12-B-6. I believe it's 12-B-6. It could have been 12-B-6 or 5. But under either, you take the prisoner's, you take the plaintiff, in this case the prisoner's fact, as stated. You don't in any way pay attention to what the defendants are saying. You take just the pleading.

And the pleadings in that case, alleged that there was, the plaintiff claimed that there were no security threats against overt homosexuals whatsoever. That he was not aware of any threats. None had been directed in prison.

Sir, the reason I know this case so well, Senator, is I just tried it last week. And it turns out the jury found in favor of the prison guards, because there was one fact that was slightly different. The prison claimed that it never removed him from the food line. That was a factual dispute between them. They say that they asked him to leave, and that he consented to leave because of the threats that had been made. And in fact the jury credited the prison guards on that claim, and held for the defendants.

SEN. ASHCROFT: You say, you just tried this case last week?

MS. SOTOMAYOR: Yes.

SEN. ASHCROFT: Is this on a second appearance before you, then? Is this the Holmes v. Artus (sp).

MS. SOTOMAYOR: Holmes v. Artus.

SEN. ASHCROFT: I have that as a 1995 case. Am I mistaken about that?

MS. SOTOMAYOR: It was. What happened, sir, in that case, is if you noticed, because it was a motion to dismiss I had invited pro bono counsel to take on the case. They came on a bit later. I don't remember exactly when. And we just

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judge must be to deal with prisons.

I have a little familiarity with that. When I was Lt. Governor in Ohio, one of my jobs was to oversee our prison system. So I have a great deal of sympathy with judges who have to deal with the litigation. And there's a tremendous amount of litigation.

And so I say that and preface it by way of apology because I'm going to turn to one more prison, prison question, if I could. And I do not have a name for this case, but I suspect you will recall it.

Now the date I have is 1994, and the issue is multi-colored necklaces, under the clothing of prisoners. Do you remember that case?

MS. SOTOMAYOR: Yes I do.

SEN. DEWINE: Do you remember the case?

MS. SOTOMAYOR: It's my Campos (ph) case. It's better known as the Santeria Beads Case, or at least colloquially known that way, I should say.

SEN. DEWINE: My understanding is that there was a dispute involving the wearing of these beads. And again, I'm going to summarize, and you can correct me and then tell me a little bit about this case. What I'm trying to get is how you reason as a judge.

My understanding is that prison officials argued that the beads were gang symbols that provoked fights. Contrary to that, I assume, the argument is, this is a religious freedom question.

Do you want to walk through for me how you balance that. And ultimately to we get back to what we were just talking about a minute ago, a factual question?

MS. SOTOMAYOR: In that case, sir, yes, prison officials had taken the position that the wearing of beads of colors were a symbol of gang membership. The prisoners in turn had asked the prison officials to permit them to wear the beads under their shirts, as opposed to visibly. So the question for me was, was it rational for the government not to permit that alternative, when I was balancing a religious right against a security concern.

The Supreme Court in these cases has held that you must give heightened deference to prison security concerns and other concerns, but that prisoners do not lose fundamental rights, like religion, in prison. And so that, unlike the standard rational basis review that is given -- this is before the Religious Restoration Act, Senator. It's not a part of --

SEN. DEWINE: I understand.

MS. SOTOMAYOR: -- the jurisprudence tied to that. The court has said that it's a slightly different review in that context, that the context there is that you must balance, as a judge, the security concerns with readily accessible alternatives.

There is no bright line rule. But there, unlike the traditional rational basis test, where you take, as a presumption, that the government is doing what it thinks is right, that as a jury or a fact-finder, you must weigh whether there are reasonable alternatives that could be just as effective.

And, my reasoning, in that particular case, is the opinion stated, was that, in essence, hiding the beads was a reasonable alternative, because they couldn't show.

I don't know if any opinion, but I know when I spoke to the prison officers later, I said to them, if it turns that they're finding ways to evade that, then obviously we can steps that are different.

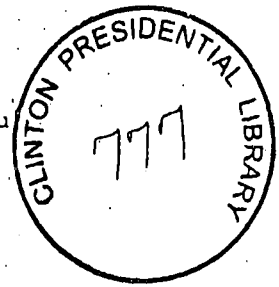
But until that was tried first, because it was a reasonable inexpensive alternative, and not terribly costly, that I felt that that was consistent with the Supreme Court precedent on this area.

SEN. DEWINE: I appreciate that explanation.





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Let me move to one final case. 1993, Gonzalez (sp) case. Let me quote from you in the case.

"We understand that you," referring to the defendant -- "were in part a victim of the economic necessities of our society. But unfortunately there are laws that I must impose."

Do you recall that case at all?

MS. SOTOMAYOR: Not much, sir.

SEN. DEWINE: I --

MS. SOTOMAYOR: I do --

SEN. DEWINE: I understand that because, you know, we sit up here and we can look at all these cases, and you have to try on the spot to remember a case that may have occurred, in this case, four or five years ago.

MS. SOTOMAYOR: I've had two or three Gonzalez (sp) cases, and I can't, meaning not the same defendant, but different ones.

SEN. DEWINE: Let me give you additional facts, and if it refreshes your memory, fine, and you can tell me about it. If it doesn't, we'll just move on.

My understanding is Gonzalez (sp) had been convicted of constructively possessing at least 600 grams of cocaine. He exercised dominion control over an apartment in which the cocaine was found. He also stated he knew someone else was supposed to pick up the cocaine, to sell it, and distribute it to others.

Do you recall anything about it? MS. SOTOMAYOR: No. I am terribly embarrassed to say that type situation is also extraordinarily common.

SEN. DEWINE: And I can understand that. I appreciate it.

Any other questions from any members of the committee?

Senator Sessions.

MS. SOTOMAYOR: If you would like me to, I'm sorry, Senator --

SEN. DEWINE: Go ahead.

MS. SOTOMAYOR: I think if you have a question generally about something I might have said, perhaps --

SEN. DEWINE: Well, I think it's difficult, frankly, if you don't recall. I think it would be unfair to you to ask you any further about that, if you don't recall it.

MS. SOTOMAYOR: Thank you, sir.

SEN. DEWINE: Senator Sessions.

SEN. SESSIONS: You mentioned that you appointed a pro bono counsel in this prison case?

MS. SOTOMAYOR: We don't appoint them, sir.

In our -- there are no funds to appoint counsel in civil cases, as you may know. What we do is put the case on a pro bono list, which is made up of volunteer lawyers.

And the volunteer lawyers decide whether they want to take the case or not. And so, if I used the word, appoint, the lawyer there, what it means, in essence is putting them on the list, so that they are eligible to get a lawyer, from that volunteer list, if a lawyer chooses to take the case.

SEN. SESSIONS: Those turn out to be, often, very expensive processes and I think sometimes it's easy for a judge to call in a lawyer, and encourage them to the state. I'm not saying you did, but I've seen that before.

But the state has the expense of going through this whole process -- it went on from '95, until I guess last week. And a lot of expense goes into that. I think we've got to learn to do a better job in determining what's worthy of the courts time, and what's not.

MS. SOTOMAYOR: Senator, if I may add, I put people on a pro bono list very, very rarely. I'm on the pro se committee of our court. I do it only when, generally after some discovery has happened so I can take a look at what's there and determine whether there's some substance to the claim, and not initially, in

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pro bono issues*

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                          | DATE       | RESTRICTION |
|--------------------------|--------------------------------------------------------|------------|-------------|
| 001. letter              | Letter from Sonia Sotomayor to Sarah Wilson. (2 pages) | 09/15/1998 | P2 778      |

## COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Doug Band  
OA/Box Number: 12754

## FOLDER TITLE:

Sonia Sotomayor [1]

Adam Bergfeld  
2009-1007-F  
ab712

## RESTRICTION CODES

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

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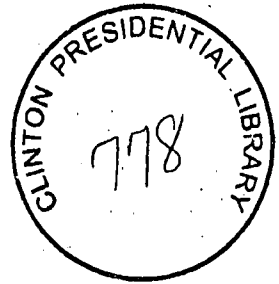
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURTHOUSE  
500 PEARL STREET  
NEW YORK, NEW YORK 10007-1312



CHAMBERS OF  
SONIA SOTOMAYOR  
UNITED STATES DISTRICT JUDGE

September 15, 1998

Sarah Wilson  
White House Counsel Office  
Executive Office Building  
Room 128  
Washington, D.C. 20050

Dear Sarah:

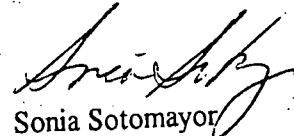
Because of the extensive publicity my decision engendered in Bartlett v. New York State Board of Law Examiners, I am enclosing a copy of the Second Circuit's decision on the appeal of that case, as well as an article from today's New York Law Journal reporting on the decision. Bartlett involved the learning disabled law school graduate who had sought accommodations during the New York State Bar Examination. The Second Circuit affirmed my determinations that:

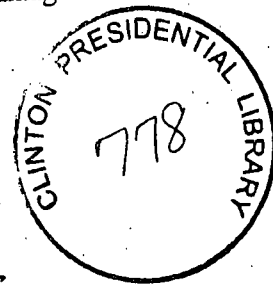
1. The plaintiff, Dr. Marilyn Bartlett, was disabled and entitled to special accommodations in taking the Bar Examination;
2. Courts cannot and should not defer to the determinations of a state administrative agency about the disabilities of an applicant when that agency has no expertise in identifying such disabilities and has expertise only in defining the qualifications necessary for licensing;
3. Section 504 of the Rehabilitation Act applies to the New York State Board of Bar Examiners because two state entities receive federal funds; and
4. The plaintiff proved intentional discrimination by the defendant Board and was entitled to damages.

I note that the Second Circuit concluded that Dr. Bartlett was disabled and entitled to special accommodations for different reasons than I had expressed in my opinion. Whereas I had found that the plaintiff, due to her neurological condition, was substantially limited in her major life activity of "working," the Second Circuit found her to be substantially limited in her major life activities of reading and learning. The Court reversed and remanded the case for the limited purpose of recalculating damages on the basis of further findings of fact to be made in three of the five plaintiff's Bar Examination attempts which formed the basis of my damage award.

If you have any questions about this matter, please contact me.

Very truly yours,

  
Sonia Sotomayor



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                      | DATE       | RESTRICTION     |
|--------------------------|----------------------------------------------------|------------|-----------------|
| 001. note                | Handwritten note (1 page)                          | nd         | P2, P5, b(6)    |
| 002. list                | Second Circuit - New York (1 page)                 | nd         | P2, P5, b(6)    |
| 003. list                | Second Circuit - New York (2 pages)                | 1/31/96    | P2, P5, b(6)    |
| 004. list                | Old List 1994 (2 pages)                            | nd         | P2, P5, b(6)    |
| 005. list                | Second Circuit - New York (1 page)                 | nd         | P2, P5, b(6)    |
| 006. article             | New York Law Journal May 27, 1994 (4 pages)        | 05/27/94   | P2, P5, b(6)    |
| 007. article             | New York Law Journal, September 22, 1995 (2 pages) | 09/22/95   | P2, P5, b(6)    |
| 008. article             | New York Law Journal, November 18, 1993 (2 pages)  | 11/18/93   | P2, P5, b(6)    |
| 009. article             | New York Law Journal, December 14, 1995 (6 pages)  | 12/14/95   | P2, P5, b(6)    |
| 010. article             | New York Law Journal, October 14, 1993 (1 page)    | 10/14/93   | P2, P5, b(6)    |
| 011. letter              | Mary Jo White to Sonia Sotomayor (10 pages)        | 02/02/1996 | P2, P5, P6/b(6) |
| 012. letter              | Sonia Sotomayor to Peter Erichsen (1 page)         | 03/13/1996 | P2 789          |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Peter Erichsen  
OA/Box Number: CF 934

### FOLDER TITLE:

Second Circuit-New York

2009-1007-F

ry701

### 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.

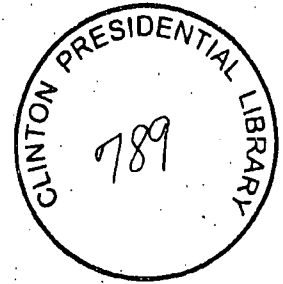
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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]

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

March 13, 1996

Peter Erichsen, Esq.  
Old Executive Office Building  
Room 125  
Washington, D.C. 20500

Dear Mr. Erichsen:

It may appear strange that a meeting of our type could be described as enjoyable, but I do describe it as such. I enjoy meeting people who think deeply about the issues confronting the judiciary and the legal system. Please extend my gratitude to Eleanor Dean Acheson, L. Anthony Sutin and Robert Van Cort for the time they spent with me.

Enclosed is a draft of the speech I recently delivered at Suffolk Law School. It is scheduled to be printed in the Suffolk Law Journal this fall. As I mentioned earlier, the speech still needs to be revised and tightened, and the law journal editors will have their own input. But this draft contains the essence of what I spoke about.

If you require anything further, let me know.

Very truly yours,

Sonia Sotomayor

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                              | DATE | RESTRICTION     |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|------|-----------------|
| 001. note                | Handwritten note (1 page)                                                                                                                  | n.d. | P2, P5, P6/b(6) |
| 002. note                | Handwritten note re: Sotomayor (1 page)                                                                                                    | n.d. | P2 795          |
| 003. letter              | Letters in support of Sotomayor for United States Court of Appeals, Second Circuit; RE: Personal addresses and SSN's (partial) (110 pages) | 1998 | P6/b(6)         |

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Sarah Wilson  
OA/Box Number: 15130

### FOLDER TITLE:

Sonia Sotomayor - 2nd Circuit (NY) [1]

Debbie Bush  
2009-1007-F  
db1202

### 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).

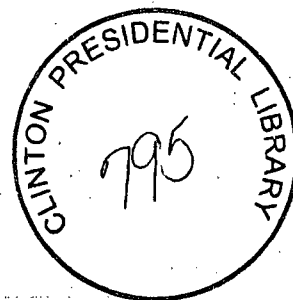
RR. Document will be reviewed upon request.

#### 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]
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SOTOMAYOR



NSF

COMMITTEE VOTE 16-2 [KYL, DEWINE]

D'AMATO / MIKE CONNELLA / DEAR COLLEAGUE LETTER

HISPANIC CAUCUS

2nd CIRCUIT - CHF JUDGE

YALE / PRINCETON

NYC BAR ASSOCIATION

W's BAR ASSOCIATIONS

HISPANIC BAR ASSOCIATIONS

TALLY SHEETS

COMMITTEE VOTE

TALKING POINTS

PRESS COVERAGE RE. CASE

FORMER CLIENTS

BUSH ADMIN SENATE VOTE



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                             | DATE | RESTRICTION  |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|------|--------------|
| 001. letter              | Letters in support of Sotomayor for United States Court of Appeals, Second Circuit; RE: Personal addresses and SSN's (partial) (94 pages) | 1998 | P6/b(6)      |
| 002. list                | Letters Mailed; RE: Personal addresses (partial) (2 pages)                                                                                | n.d. | P6/b(6)      |
| 003. report              | Re: Sonia Sotomayor (3 pages)                                                                                                             | nd   | P2, P5 796   |
| 004. report              | Report (4 pages)                                                                                                                          | nd   | P2, P5, b(6) |
| 005. list                | Board of Governors (partial) (5 pages)                                                                                                    | nd   | P6/b(6)      |
| 006. report              | Re: Robert Menendez (partial) (1 page)                                                                                                    | nd   | P2, P5, b(6) |
| 007. note                | Handwritten note (2 pages)                                                                                                                | nd   | P2, P5, b(6) |

### COLLECTION:

Clinton Presidential Records  
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Sarah Wilson  
OA/Box Number: 15130

### FOLDER TITLE:

Sonia Sotomayor - 2nd Circuit (NY) [4]

2009-1007-F  
db1205

### 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]
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- 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.

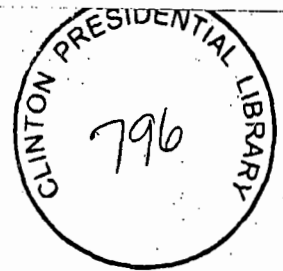
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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## SONIA SOTOMAYOR



Sonia Sotomayor, a 43 year-old Hispanic female, was appointed to the Southern District of New York by President Bush in 1992 following a recommendation from Senator Moynihan. President Clinton nominated her for the Second Circuit in 1997. Although she has an engaging personality and is very intelligent, her nomination has posed more problems than any of the other Hispanic judges sitting on the federal bench [with the possible exception of Richard Paez for the Ninth Circuit]. Sotomayor was voted out of the Senate Judiciary Committee with only two negative votes, her nomination has been stalled on the floor for almost a year. Senate resistance to her confirmation is rooted in the fear that she will be elevated to fill the next Supreme Court vacancy. See Wall Street Journal article attached.

### Biographical Background

Sotomayor's life story is compelling and her educational credentials are unmatched. Both her her parents emigrated from Puerto Rico. Her father, a tool-and-die worker with a third grade education, died when she was 9 years old. Sotomayor's widowed mother entered college at night to become a nurse while working full time during the day to support her children. Because her father spoke only Spanish, Judge Sotomayor did not become fluent in English until after his death. Notwithstanding this late start, she excelled in school. Her mother pinched pennies to pay for an encyclopedia set, and placed "almost a fanatical emphasis on education." Following a public education in the predominantly Hispanic Bronx community where she grew up, Sonia earned a scholarship to Princeton. She graduated with honors from Princeton (1976) and earned her J.D. from Yale Law School (1979), where she served as an editor of the Yale Law Journal.

Sotomayor's professional credentials are strong. Following law school, she worked as a prosecutor for five years in the Manhattan District Attorney's office. She then joined Pavia & Harcourt, a litigation 'boutique' that specializes in intellectual property law. In addition to her corporate litigation practice, Sotomayor served as a member of the Puerto Rican Educational and Legal Defense Fund, and on the boards of the New York City Campaign Finance Board, the State of New York Mortgage Agency, and the Maternity Center Association.

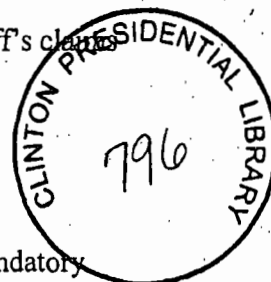
Despite the business orientation of her corporate legal practice, and her stint as a prosecutor, Sotomayor has been portrayed as a judicial activist by Senate Republicans. Republicans have focused on several controversial judicial decisions, profiled below.

### Controversial Issues

#### Prisoner Litigation

In a 1995 case, Sotomayor refused to dismiss a pro se prisoner's claim that he was removed from a food service line because he was an open homosexual. Although prison officials did not move for summary judgment, and a jury ruled against the prisoner, Sotomayor's decision to let the case go forward to trial was sharply criticized at her confirmation hearing.

Unfortunately, Sotomayor's explanation that she is required by law to accept a plaintiff's claims as true at the dismissal stage was expressed in somewhat condescending terms at her confirmation hearing.



### **Sentencing**

While sentencing two drug-ring defendants in 1993, Sotomayor criticized "mandatory minimum" sentences, expressing deep, personal sorrow about imposing a mandatory five-year prison term. She characterized the sentence as "one more example of an abomination being committed before our sight," and hoped that "yours will be among the many that will convince our new President and Congress to change these minimums." Sotomayor claimed during her confirmation hearing that she had only opposed the imposition of mandatory minimums on first time offenders and subordinates in drug distribution rings. (Congress has in fact changed the law by enacting a "safety valve" provision excepting certain first-time offenders.) As a result of these and other comments sympathizing with criminal defendants as victims of economic circumstances, Sotomayor has been targeted as soft on crime. In fact, she has never been appealed for a downward departure, and has been affirmed twice for upward departures. Where she has departed downward from the Sentencing Guidelines she has done so at the government's request. However, a dispassionate analysis of her sentencing record has been overshadowed by her bench statements during sentencing hearings.

### **Disabilities Law**

A year ago, after her confirmation hearing, Sotomayor held that the Americans with Disabilities Act (ADA) entitled a dyslexic to additional time on the New York state bar examination. The case turned on whether a learning disability that impairs reading speed and the ability to work as a lawyer rises to the level of a substantial limitation recognized by the ADA.

### **Minimum Wage Ruling**

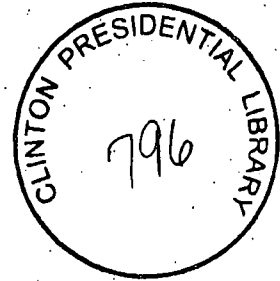
Sotomayor recently ruled that a Grand Central redevelopment program that employed homeless individuals as "trainees" violated the Federal Labor Standards Act (FLSA) because it paid less than minimum wages. Sotomayor reasoned that creating an exception to the FLSA for programs intended to transition the homeless into gainful employment is not an appropriate measure for a judge, but rather a legislative prerogative. Notwithstanding this "judicial restraint" reasoning, her decision has attracted negative attention from conservatives.

### **Alleged Criticism of Justice Thomas**

Sotomayor "took the Fifth" when asked by a *New York Times* reporter in 1992 whether she sat on her hands instead of standing to applaud Justice Thomas at a Second Circuit Judicial Conference. Senate Republicans have locked onto her off-the-cuff comment as proof of her alleged disrespect for Thomas. Sotomayor has repeatedly explained that she did in fact stand to applaud him, and "took the Fifth" to avoid entering the political controversy swirling around the Thomas protest. Again, her explanation has been overshadowed by the negative implication

created by the newspaper article.

This profile highlights the issues that have, to date, plagued Sotomayor's nomination for the Second Circuit. A number of her other cases and writings could be controversial if she were nominated to the Supreme Court. Her fierce independence, and her no-nonsense style are admirable, but her nomination to the Supreme Court may prompt a vicious attack by Senate Republicans.



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                              | DATE       | RESTRICTION          |
|--------------------------|--------------------------------------------------------------------------------------------|------------|----------------------|
| 001. memo                | Charles Ruff et al to the President (via Erskine Bowles) (partial) (4 pages)               | 03/26/1997 | P2, P5, b(6) 803     |
| 002. report              | Third Circuit (New Jersey) Vacancy (4 pages)                                               | nd         | P2, P5 804           |
| 003. report              | Fifth Circuit (Texas) Vacancy (partial) (6 pages)                                          | nd         | P2, P5, b(6) 805     |
| 004. memo                | Charles Ruff et al to the President (via Erskine Bowles) duplicate 001 (partial) (4 pages) | 03/26/1997 | P2, P5, b(6) Dup 803 |
| 005. report              | Third Circuit (New Jersey) Vacancy (4 pages)                                               | nd         | P2, P5 Dup 804       |
| 006. report              | Fifth Circuit (Texas) Vacancy (partial) (6 pages)                                          | nd         | P2, P5, b(6) Dup 805 |
| 007. memo                | To the President from Jack Quinn et al (2 pages)                                           | 01/27/97   | P2, P5 809           |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Sarah Wilson  
OA/Box Number: 22017

### FOLDER TITLE:

Decision Memo: 3/26/97 - Sotomayor; Raymar; Rangel

2009-1007-F  
ry704

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

RR. Document will be reviewed upon request.

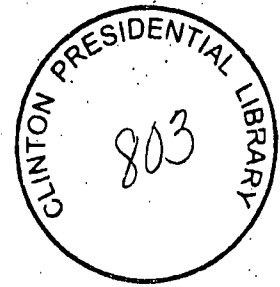
#### Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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THE WHITE HOUSE

WASHINGTON

March 26, 1997



MEMORANDUM FOR THE PRESIDENT (via Erskine Bowles)

FROM: *CF* Charles F. C. Ruff, Bruce Lindsey, Jonathan Yarowsky, Melanne Verveer  
Charles Burson, Eleanor Acheson and Michael O'Connor

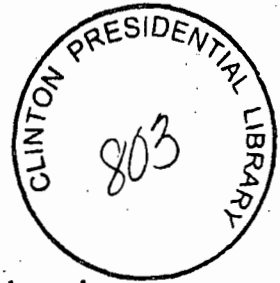
SUBJECT: Nomination of Judicial Candidates to Circuit Court Vacancies:  
Decision Memorandum

This memorandum presents our recommendations on candidates to fill three vacant Circuit Court of Appeals judgeships -- one in New York, one in New Jersey, and one in Texas -- and seeks your decisions regarding these vacancies.

There are currently three vacancies on the Second Circuit in New York, and we now recommend that you approve the nomination of Judge **Sonia Sotomayor** to fill one of these vacancies. Sotomayor is a judge on the United States District Court for the Southern District of New York and is well known and well respected not only for her compelling life story but also for her legal acumen and work ethic. Under separate cover, another memorandum discusses for your review the possible candidacy of Chester Straub to fill a second of these three vacancies.

In New Jersey, we recommend that you approve the nomination of **Mr. Robert S. Raymar** to the Third Circuit Court of Appeals. Raymar is an experienced civil and commercial litigator who clearly has the expertise and intellect to become an important voice on the Third Circuit.

In Texas, we recommend that you approve the nomination of **Mr. Jorge C. Rangel** to the Fifth Circuit Court of Appeals. A former state trial court judge, Rangel is now a private practitioner with a sophisticated and diverse private civil litigation trial and appellate practice. He is also involved in numerous public service activities in Corpus Christi.



**I. SECOND CIRCUIT (NEW YORK) VACANCY**

**A. BACKGROUND**

There are three vacancies currently on the Second Circuit, resulting from the retirement of Judge Frank X. Altimari (December 1995); the death of Judge J. Daniel Mahoney (October 1996); and the disability of Judge Robert J. Miner (January 1997). A fourth vacancy, arising from the retirement of Judge Jon O. Newman, will arise on July 1, 1997. As presented below, we recommend that you nominate Sonia Sotomayor for one of the three vacancies.

**B. RECOMMENDATION: NOMINATE SONIA SOTOMAYOR**

We recommend that you nominate Sonia Sotomayor, 42, a sitting judge on the United States District Court for the Southern District of New York. Judge Sotomayor was appointed to the bench by President Bush in 1992.

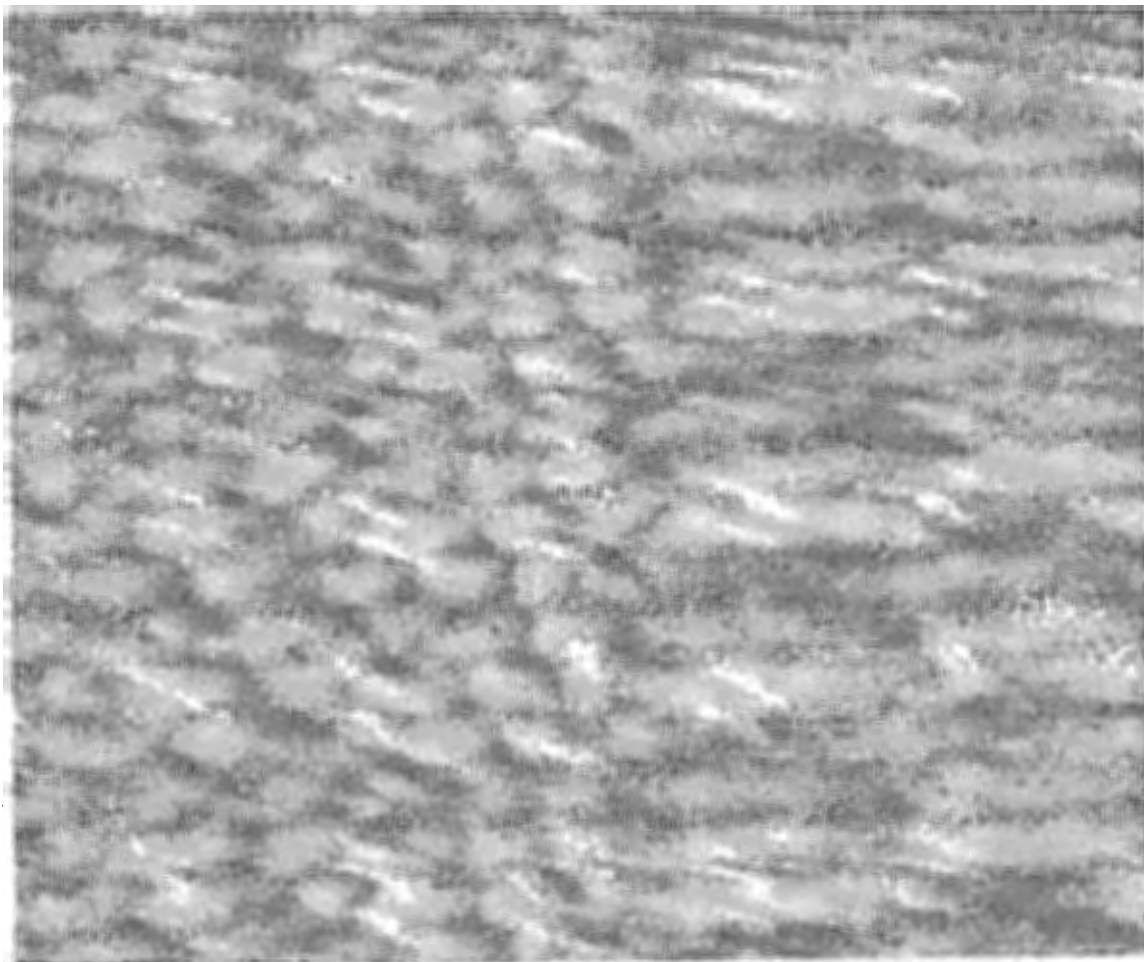
Born in New York, Judge Sotomayor was raised in a Bronxdale public housing project and attended Catholic schools. Both her parents were born in Puerto Rico. Her father, who was a tool-and-die worker with only a third-grade education, died when she was nine years old. Her mother worked as a nurse in a methadone clinic prior to her retirement. Because her father spoke only Spanish, Judge Sotomayor did not become fluent in English until after his death.

She graduated cum laude from Princeton University (1976) and from Yale Law School (1979), where she was an editor of the Yale Law Journal. After graduating from law school, she worked for five years (1979-1984) as a prosecutor with the Manhattan District Attorney's office. She then practiced commercial litigation for eight years (1984-1992) with the Manhattan law firm of Pavia & Harcourt. While at the firm, she had a general civil litigation practice (specializing in intellectual property issues) in which she represented a number of U.S. and European companies. She also represented clients in more than fifteen arbitration hearings, primarily involving export grain commodity trading.

Prior to becoming a judge, Sotomayor spent twelve years as a board member of the Puerto Rico Legal Defense and Education Fund and also served on the board of the State of New York Mortgage Agency, where she helped give mortgage insurance coverage to such projects as low-income housing and AIDS hospices. She also was a founding member of the New York City Campaign Finance Board, which distributes public money for city campaigns.

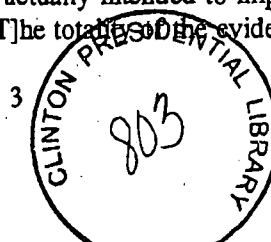
Judge Sotomayor was recommended to former President Bush by Senator Moynihan. Her candidacy also was strongly supported by Senator Kennedy. The ABA Standing Committee rated her qualified, with a minority rating her well qualified. She was confirmed unanimously by the Senate on August 12, 1992. At the time of her confirmation, she was the

youngest judge, and the first judge of Hispanic descent, on the Southern District bench.



During her tenure on the district court, Sotomayor has gained a reputation for being a hardworking and thoughtful judge, unafraid to confront difficult legal issues. She received national attention for her handling of the 1995 professional baseball players' strike, in which she entered an injunction restoring the terms of the expired collective bargaining agreement.

Her rulings have not attracted significant public or media criticism. However, it should be noted that while sitting by designation on the Second Circuit, she authored a decision vacating a sentence of life imprisonment on a conviction for conspiracy to distribute heroin. U.S. v. Hendrickson, 26 F.3d 321 (2d Cir. 1994). The 2-1 decision concerned the burden of proof and level of evidence of intent required to establish the "base offense level" under the Sentencing Guidelines. Judge Sotomayor, for the majority, wrote that the government had not proven that the defendant actually intended to import the volume of heroin that he discussed with his co-conspirators: "[T]he totality of the evidence strongly suggests



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that Hendrickson was a drug dealer who may have dreamed of importing millions of dollars worth of heroin from Nigeria, but certainly neither intended nor agreed with anyone . . . to do so. . . . We cannot countenance a life sentence in this case or any other without more extensive and detailed factual findings by the sentencing court." Judge Winter, in dissent, stated that the majority's ruling "will unnecessarily allow defendants who are by common sense standards highly culpable to escape well-deserved sentences." The case was remanded for resentencing.

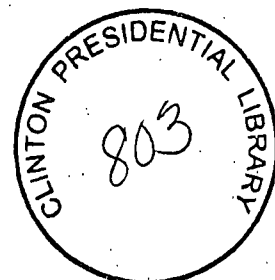
We believe that Judge Sotomayor would serve with distinction on the Second Circuit; and we strongly recommend her nomination.

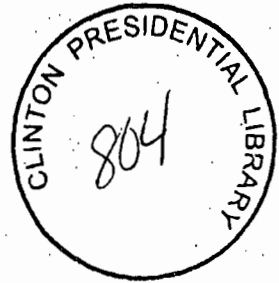
 **C. DECISION**

           **Approve Sonia Sotomayor for the Second Circuit**

           **Submit additional names, including** \_\_\_\_\_

           **Schedule discussion**





## II. THIRD CIRCUIT (NEW JERSEY) VACANCY

### A. BACKGROUND

This Third Circuit vacancy was created in July 1996 by the retirement of Judge Lee Sarokin, whom you appointed to the Court of Appeals in 1994. **Robert S. Raymar** has been, and remains, the leading nominee for this vacancy. However, in May of 1996, we recommended that you delay a Raymar nomination until 1997. At that time, we were concerned that "[i]n the wake of Bud Stack's withdrawal, Raymar could also revive charges of cronyism." Although politically motivated attacks against your nominees continue in the new Congress, we believe that it is now time to move forward with Raymar's nomination, that further delay will not be beneficial to this nomination, and that time can best be spent from this point forward by building support on the Committee by the efforts of home state Senators Lautenberg and Torricelli as well as by Raymar's many friends in the business and legal community.

### B. RECOMMENDATION: NOMINATE ROBERT S. RAYMAR

We recommend that you nominate **Robert S. Raymar** to the Third Circuit Court of Appeals. Raymar clearly has the experience and the intellect to make an excellent jurist and to become an important force on the Third Circuit.

Raymar is a native of New Jersey and now lives in Watchung, New Jersey, with his wife, Ronnie Fran Liebowitz, and his two daughters.

He earned his undergraduate degree from Princeton University ('69) and earned his law degree from Yale Law School ('72), where he was on the Yale Law Journal. From 1972 to 1973, he clerked for Judge Leonard Garth, United States District Court for the District of New Jersey. From 1973 to 1976, Raymar worked as a prosecutor in the New Jersey Attorney General's Office and drafted legislation as an Assistant Legal Counsel to the Governor of New Jersey. As a Deputy Attorney General, Raymar handled a variety of criminal matters in state and municipal courts, including white collar investigations, grand jury presentations, prosecutions, drunk driving trials, and standard criminal jury trials.

Since 1976, Raymar has been a private civil practitioner and is currently a partner in Hellring Lindeman Goldstein & Siegal, a Newark, New Jersey law firm. Raymar specializes in civil and commercial litigation, and nearly all of his litigated matters involve extensive document discovery, numerous depositions, and the use of expert witnesses. He has represented clients in a wide range of substantive areas, as both a counselor and a litigator and at both the trial and appellate levels.

Raymar has extensive federal experience, with approximately fifty percent (50%) of his

caseload in federal court. His areas of practice include antitrust, trademark and intellectual property, bankruptcy, environmental, employment discrimination, labor law, civil rights, and constitutional law. His clientele is as diversified as his practice: he has represented individuals and corporations, plaintiffs and defendants, and Republican and Democrat politicians alike.

### C. AREAS OF POTENTIAL CONCERN

Because of the current political climate surrounding judicial nominations generally and issues touching upon campaign financing specifically, Raymar's nomination will certainly receive increased scrutiny and likely criticism by some opponents of the Administration. Below, we briefly review these issues as pertaining to Raymar:

#### 1. 1992 Campaign

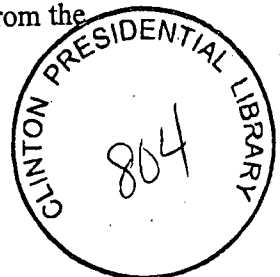
Since 1992, Raymar has been a member of the D.N.C. Finance Council (or Board). He also was on the Executive Committee of the Yale Law School Graduates Committee ("Yale Committee"), which raised approximately \$2 million for your 1992 campaign. After the 1992 elections, Raymar wrote a letter to members of the Yale Committee to inform them of ticket availability for various Inaugural events. In the letter, Raymar stated the following:

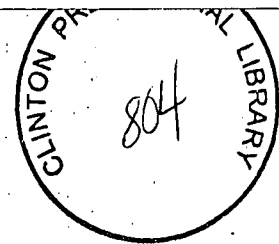
"You may wish to offer your law firms and major clients the opportunity to purchase tables to the Presidential Inaugural Dinner (\$15,000 each) through you and us, on a first come, first served basis. Every dollar of the \$1.6 million we raised thus far has been identified to Bill and Hillary and the Yalies have been credited with every non-Yalie dollar they bring in. . . ."

Later in the letter, Raymar stated that:

"Finally, Bill and Warren Christopher recently established procedures whereby all of the 5-6 page transition memoranda and resumes that Bob received from Yale Law School Graduate Committee Members and submits to Bill and Hillary are then distributed for appropriate follow-up. So continue to send them, but only from graduates who have been among our membership of 1,500" (emphasis in original).

Raymar received some strongly-worded negative publicity in newspapers and on national television for circulating this letter. For example, the New York Times derisively characterized Raymar's letter as promising rewards "in that most special coin, special attention from the President-elect."





## 2. Visits to the White House / Campaign Finance

Because the Senate Judiciary Committee staff has already notified us that White House visits will be scrutinized as part of the oversight process, we will note this aspect for Raymar and other candidates, where pertinent.

Raymar believes that he has visited the White House complex as many as forty times since you were elected in 1992 and has met with you on White House grounds as many as twenty times during these visits. We have not examined the purpose of each of these visits, but we are aware that Raymar attended a coffee with you at which Bud Stack was also in attendance. Mr. Stack's presence at the coffee is noted because critics of the Administration might attempt to analogize the Stack and Raymar nominations. In fact, in May 1996, the New Jersey Law Journal specifically linked Stack and Raymar, suggesting that both were fundraisers who had no judicial experience, and additionally noting that Raymar "could face ugly confirmation battles like Stack's."

Raymar has also flown on Air Force One on three occasions.

During the 1992 campaign, Raymar personally contributed \$1,000.00 to "Bill Clinton for President" and, in 1995, gave \$250.00 to "Clinton/Gore '96". He also contributed \$3,250.00 to the Presidential Inaugural Committee--93. As indicated above, Raymar was a driving force behind the Yale Law School Graduates Committee, which raised substantial funds for the 1992 campaign.

## 3. Law Review Articles

More than twenty years ago, Raymar wrote three law journal articles. The articles contain many statements that, if taken in isolation, might be criticized. For example, in an article written while Raymar was still in law school, he stated:

- "[I]t might not seem prudent to allow an inmate convicted of bombing public buildings to study materials on the technology and construction of explosive devices, yet rehabilitation must relate to fundamental attitudes, not merely skills. If a correctional program is effective, the inmate will seek noncriminal endeavors; if it is not, withholding technical information during his incarceration will not inhibit his acquiring further criminal skills upon his release."
- "Perhaps an incarcerated sexual deviant should not be permitted to read material favorably describing sex crimes. Arguments such as these, however, rest upon the implicit factual assumption that there is a correlation between the type of reading matter an inmate is exposed to and his later conduct -- an assumption which has no empirical basis" (citation omitted).

Whatever controversy might be twisted out of these or other statements, it should be remembered that the articles were written long before his views as a practicing lawyer and professional had developed.

#### D. RECOMMENDATION

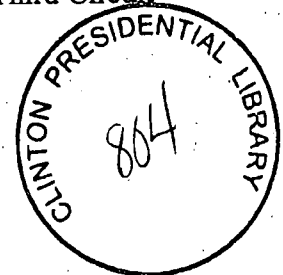
Although a Raymar nomination would require careful attention by the White House during the confirmation process, we believe that Raymar's overall qualifications and general demeanor should assist in ultimately counteracting any unjustified opposition that is not based on the merits of his candidacy. Obviously, we will need the backing of New Jersey's home state Senators. Last year, Senator Lautenberg was decidedly unenthusiastic about Raymar, primarily because of a disagreement over the appointment of one of Raymar's associates as U.S. Trustee in New Jersey. This year, Lautenberg's support seems on firmer ground but should not, in any way, be taken for granted. However, Senator Torricelli, who sits as a new member of the Judiciary Committee, is an enthusiastic advocate. With tenacity on the Senators' part, and determination on ours, we believe that you should proceed with Bob Raymar's nomination to the Third Circuit Court of Appeals.

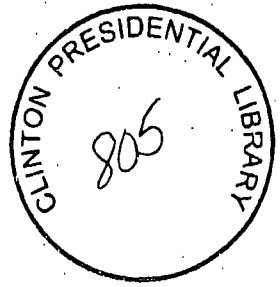
#### E. DECISION

☒ Approve Robert S. Raymar for Third Circuit

☐ Submit additional names, including \_\_\_\_\_

☐ Schedule discussion





### III. FIFTH CIRCUIT (TEXAS) VACANCY

#### A. BACKGROUND

Judge William Garwood, a Texan who was appointed to the Fifth Circuit Court of Appeals by President Reagan in 1981, took senior status in January 1997. This Texas vacancy is the only current vacancy on the Fifth Circuit.

Jorge C. Rangel, a 49-year-old Hispanic man, has emerged as the strongest candidate for this vacancy.

In 1993, Senator Krueger publicly recommended to you that Rangel be considered as one of four qualified candidates for two Fifth Circuit seats that were vacant at that time. However, Rangel's name was later withdrawn from consideration because Rangel had recently been a member of the A.B.A.'s Standing Committee on the Federal Judiciary, which prohibits committee members from accepting nomination to the federal bench within one year following service on the committee.

Rangel is now eligible to sit on the federal bench. He is an impressive candidate, and we recommend that you approve his nomination to the Fifth Circuit Court of Appeals.

#### B. RECOMMENDATION: NOMINATE JORGE RANGEL

Jorge C. Rangel, 49, is a native of Alice, Texas, and now lives in Corpus Christi.

He earned his college degree, with honors, from the University of Houston in 1970 and earned his law degree from Harvard Law School in 1973.

Since then, Rangel has taught law, worked in private practice, served on the bench, and dabbled in politics.

Rangel was an Assistant Professor of Law at the University of Houston during the 1975-76 school year. Thereafter, he practiced law for several years and unsuccessfully ran in the 1982 Democratic primary for a newly created seat in the U.S. House of Representatives. In 1983, Governor Mark White appointed Rangel to a state district court judgeship, where Rangel presided over civil, criminal and domestic relations issues.

Rangel returned to private practice in 1985, and he is now a partner in Rangel & Chriss, a three-attorney civil litigation firm in Corpus Christi, Texas. Specializing in personal injury, libel and general media litigation, he has a broad and sophisticated trial and appellate practice, and he regularly represents both plaintiffs and defendants and both individuals and

corporations. He also defended a publishing company in a complex state antitrust case of first impression in which the Texas State Supreme Court ruled in favor of Rangel's client.

As with all active litigators, there may be cases in which Rangel's trial performance will draw criticism. For example, Rangel represented a plaintiff, on appeal, after the plaintiff was sanctioned by the trial court for discovery violations. However, the published appellate decision does not state whether the trial counsel was complicit in the discovery violations or even whether Rangel was the trial counsel in the case. If you approve Rangel's nomination, we will carefully scrutinize such issues during the vetting process.

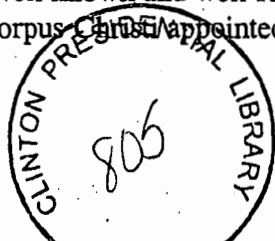
Rangel's continued commitment to bar activities is impressive. He has been Vice-Chair of the Anti-Trust and Business Litigation Section of the State Bar of Texas; Chair of the Texas Board of Legal Specialization; a Member of the Board of Directors of the Texas-Mexico Bar Association; and a Member of the Board of Governors for the Bar Association of the Fifth Circuit.

Furthermore, from 1989 to 1993, he served as the Fifth Circuit's sole representative to the A.B.A.'s prestigious fifteen-member Standing Committee on the Federal Judiciary, the committee that rates the fitness of nominees to serve on the federal bench. Rangel sat on the committee when it unanimously rated Justice Souter "well qualified" for appointment to the U.S. Supreme Court, and Rangel testified on Souter's behalf at Souter's Senate confirmation hearing. Rangel also sat on the committee when a majority of the committee rated Justice Thomas "qualified" for appointment to the Court. Two of the fifteen members of the committee gave Justice Thomas an "unqualified" rating, but the names of these two individuals have never been publicly released.

After Senator Krueger recommended Rangel in 1993 for a previous Court of Appeals vacancy, an article was written in the Houston Chronicle that questioned whether Rangel slowed the A.B.A.'s judicial approval process for Bush nominees in Texas during 1992, thereby benefitting Rangel's own 1993 candidacy for the federal bench. We expect that such past accusations again would be asserted by current critics of both the A.B.A.'s judicial ratings process and the Administration.

Rangel has continually participated in nonpartisan public service activities. For example, Rangel has served in leadership positions in the Boy Scouts of America, the Corpus Christi Housing Authority, the Texas Youth Commission (which operates rehabilitation programs for troubled youth), the Food Bank of Corpus Christi, the Corpus Christi Chapter of the National Conference of Christians and Jews, and the United Way of the Coastal Bend. Furthermore, in 1992, he served on the Search Committee for the Selection of a New President for the United Way of America.

Rangel is both well known and well respected in the Corpus Christi area. For example, the City of Corpus Christi appointed Rangel as the Chairman of the Selena Memorial



Committee after Selena, the Tejano music star from Corpus Christi, was murdered in March 1995. During the subsequent murder trial, Rangel also served as the chief legal correspondent for Univision, the internationally broadcast Spanish-language television network. (He did, however, receive some local criticism about serving contemporaneously as Chairman of the Memorial Fund and as a media consultant.)

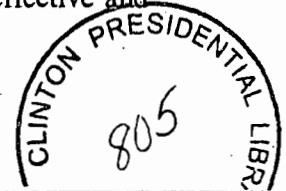
Rangel was an Alternate Delegate to the 1988 Democratic Convention. He also was a member of a Texas contingent that met with you at the White House in February 1995, at which time the issue of international border crossing fees was discussed. However, with one notable exception, there are few public accounts of Rangel's personal beliefs.

The exception is that in 1972, while a student at Harvard Law School, Rangel coauthored a law review article on the segregation of Chicanos in Texas schools. In discussing the history of discrimination against Chicanos and the practicable remedies to such discrimination, the authors briefly discuss several issues that are now controversial. For example, the article implicitly criticizes both intelligence tests and "English Only" laws that restrict Chicano participation in school and government proceedings. However, we believe that this article does not present a serious problem, not only because the article was written more than twenty-five years ago -- as both Rangel and the relevant case law were maturing -- but also because the article honestly portrays the real issues that faced Mexican-Americans in Texas in the early 1970s.

Rangel has indicated that he has visited the White House only once -- on Texas Day in February 1995 -- at which time he met with a number of people. Numerous Texans were on White House grounds that day, and you held a widely-attended Texas gathering that night. In the campaign finance area, it is our information that Rangel and his wife have given \$10,000.00 to the D.N.C., \$2,000.00 to your campaign, and \$1,500.00 to the August birthday celebration.

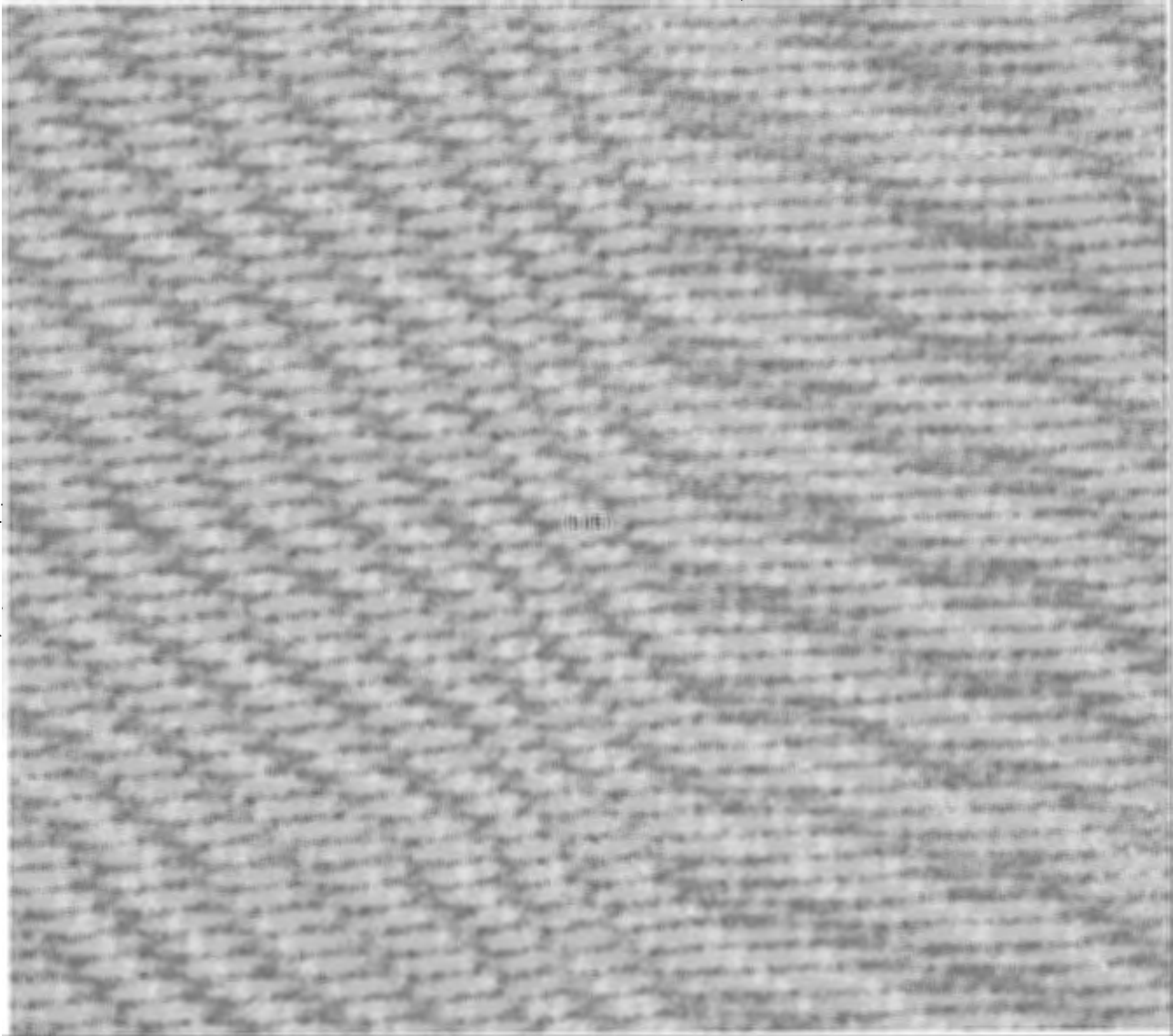
To conclude, Rangel is an outstanding candidate for the federal bench. He is a former judge and an experienced litigator who has demonstrated a sustained commitment to both the legal profession and the Corpus Christi community. He would likely prove an effective and distinguished judge on the U.S. Court of Appeals for the Fifth Circuit.

### C. OTHER CANDIDATES

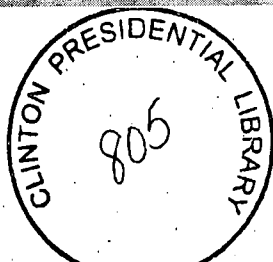
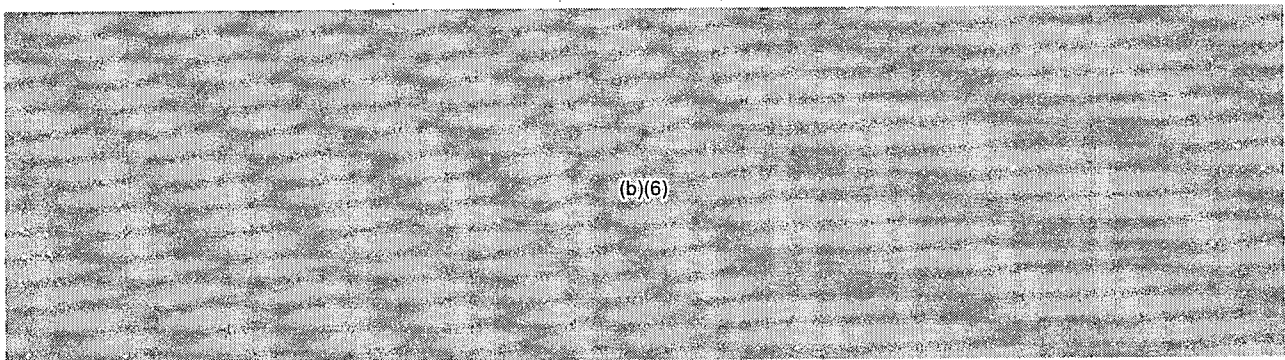


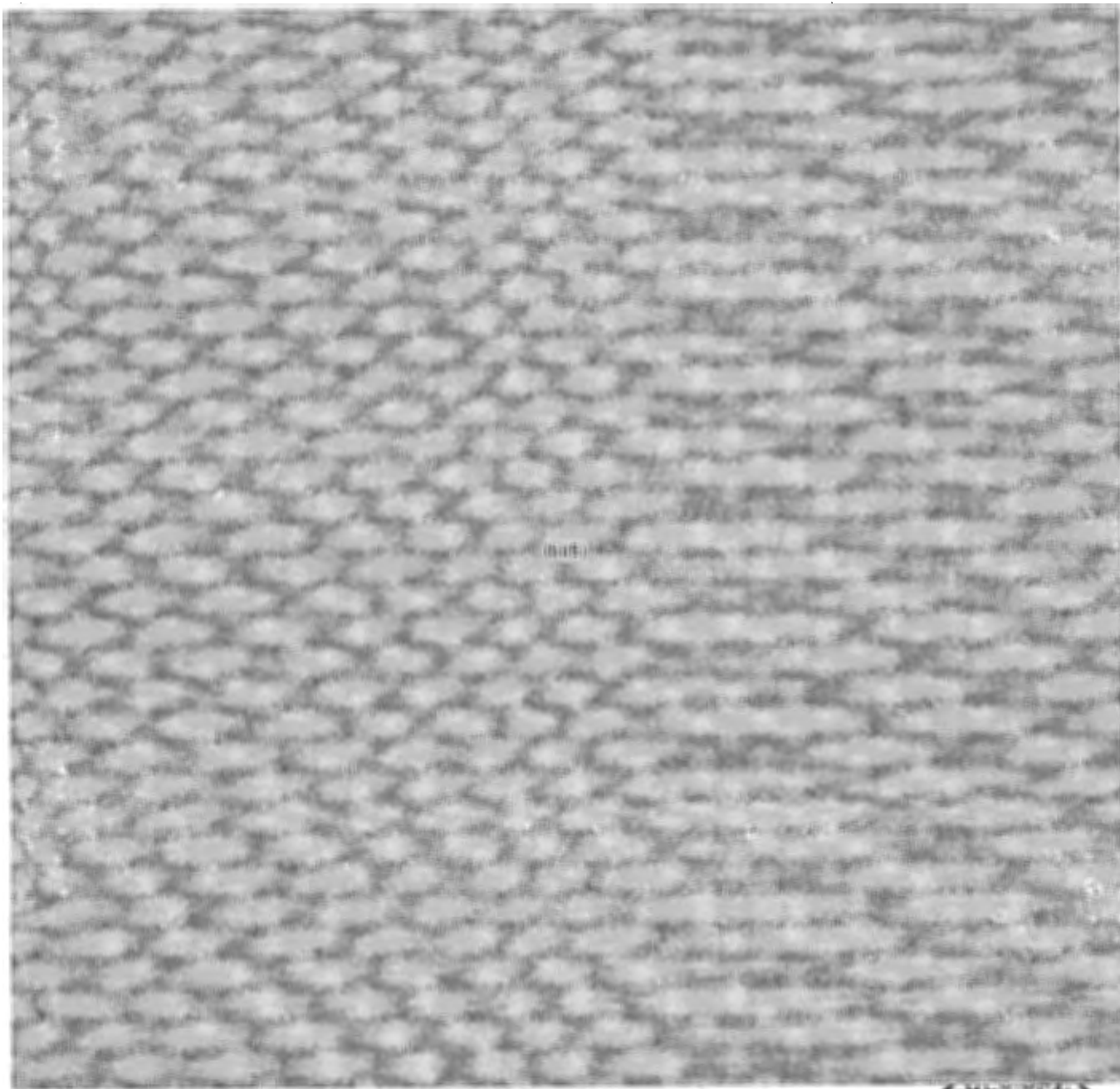
(b)(6)





2. **OTHER NAMES RECEIVED**





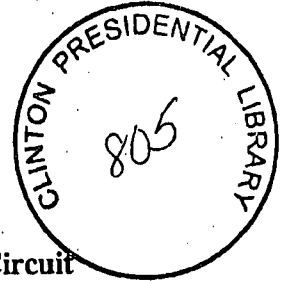


**D. RECOMMENDATION**

We recommend that you approve Jorge Rangel's nomination to the Fifth Circuit Court of Appeals.

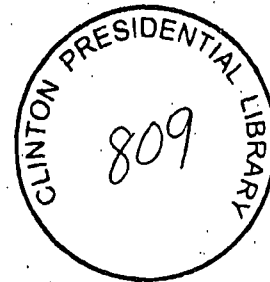
**E. DECISION**

- \_\_\_\_\_ Approve Jorge C. Rangel for the Fifth Circuit
- \_\_\_\_\_ Approve \_\_\_\_\_ for the Fifth Circuit
- \_\_\_\_\_ Submit additional names, including \_\_\_\_\_
- \_\_\_\_\_ Schedule discussion



*Call her or Nick  
I thought I'd  
submitting  
Am pulling  
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submitting*

THE WHITE HOUSE  
WASHINGTON



January 27, 1997

97 FEB 3 AM 9:15

MEMORANDUM FOR THE PRESIDENT (via Erskine Bowles)

FROM: JACK QUINN, KATHLEEN WALLMAN, BRUCE LINDSEY,  
CHERYL MILLS, JONATHAN YAROWSKY & PETER ERICHSEN

SUBJECT: D.C. SUPERIOR COURT VACANCY -- DECISION MEMORANDUM

I. BACKGROUND

Two of your nominees to the District of Columbia Superior Court were not confirmed during the 104th Congress. One nominee, Mary Terrell, received a hearing in the final days of the session but the Government Affairs Committee did not have time to take action on her nomination. The other nominee, Patricia Broderick, was nominated too late in the session to be acted upon. This memorandum seeks your approval for their renomination.

II. CANDIDATES' BACKGROUNDS

1. Patricia A. Broderick, 46, has worked since 1992 for the Department of Treasury as chief of the International Section of the Office of Financial Enforcement. She has been on detail to the Justice Department's Violence Against Women Office since August 1995. Broderick also served in the Justice Department's Criminal Division and as an Assistant U.S. Attorney in the District of Columbia. Broderick, who is wheelchair-bound, received lukewarm but not negative reviews for her general legal ability. You will recall that nine present or former public defenders or private defense lawyers told the FBI that she was an overzealous and intemperate prosecutor. She was also involved in two instances of alleged prosecutorial misconduct while serving as an AUSA; these resulted in new trials but not in disciplinary action against Ms. Broderick. No other bar or Office of Professional Responsibility action has ever been brought against her.

We received a letter of support from former Treasury Undersecretary Ron Noble, who also spoke to us at length and in a very positive way about Ms. Broderick's professionalism and temperament. We also received letters of support from VAWA Office Director Bonnie Campbell, Michael Zeldin, Gladys Kessler,

one of your appointees to the District Court in Washington, and Superior Court Judge Henry Greene. Jamie Gorelick also urged that you select Broderick.

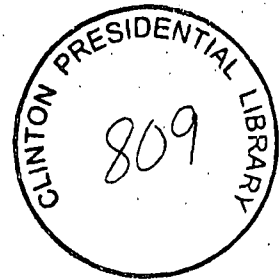
2. Mary Ann Gooden Terrell 51, is Associate Director, Office of Legal Programs at the FDIC. She was formerly a senior counsel at the Resolution Trust Corporation. Terrell, who is African-American, was also responsible for the RTC's Minority and Women Outreach Unit. Terrell earned her B.A. at Howard University, an M.A. in Teaching from Antioch College, and her J.D. from Georgetown University Law Center. She served as Executive Assistant to the D.C. City Council Chairman before joining the United States Attorney's Office. Terrell spent five years as a prosecutor and then moved to the Federal Home Loan Bank Board and then the RTC.

Terrell enjoys considerable political support, including the endorsements of Mayor Marion Barry, three members of the D.C. City Council, Jesse Jackson, and the National Bar Association. She was also recommended by the N.A.A.C.P.'s Washington office and by Deputy Attorney General Jamie Gorelick and Assistant Attorney General Deval Patrick.

### III. RECOMMENDATION: RENOMINATE BRODERICK AND TERRELL

Although neither of these nominees has generated tremendous enthusiasm, both can do the job and we previously recommended each to you as the best from a lackluster field. Several of the competing candidates also had serious issues in their backgrounds. Because of the delay in the 104th Congress, both Broderick and Terrell are likely to be confirmed relatively quickly. For all these reasons, we recommend their re-nomination.

|                                     |                                  |
|-------------------------------------|----------------------------------|
| <input checked="" type="checkbox"/> | Nominate Patricia Broderick      |
| <input type="checkbox"/>            | Need Discussion/More Information |
| <input checked="" type="checkbox"/> | Nominate Mary Terrell            |
| <input type="checkbox"/>            | Need Discussion/More Information |



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                          | DATE       | RESTRICTION      |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------|------------|------------------|
| 001. email               | Jennifer M. O'Connor to Janice A. Enright at 11:32:05.65. Subject: Pls pass on to Harold. (2 pages)                                    | 06/03/1996 | P2, P5, b(6)     |
| 002. email               | Amy W. Tobe to Estela Mendoza at 13:56:21.00. Subject: Guidance Needed (1 page)                                                        | 02/04/1998 | P2 812           |
| 003. email               | Estela Mendoza to Stacey L. Rubin at 11:10:05.00. Subject: Searching for Guidance on Judicial Nominations (1 page)                     | 02/04/1998 | P2 813           |
| 004. email               | Estela Mendoza to Amy W. Tobe at 12:03:57.00. Subject: Guidance Needed (1 page)                                                        | 02/04/1998 | P2 814           |
| 005. email               | Beverly Barnes to Estela Mendoza at 13:46:17.00. Subject: Guidance Needed (1 page)                                                     | 02/04/1998 | P2 815           |
| 006. email               | Virginia Rustique to Mark Childress at 13:42:34.00. Subject: Sotomayor Info (1 page)                                                   | 06/24/1998 | P2 816           |
| 007. email               | Virginia Rustique to Jennifer DeMarco at 13:26:17.00. Subject: Re: Nominations Mtg. (1 page)                                           | 06/24/1998 | P2 817           |
| 008. email               | Jeffrey Farrow to Sara Wilson at 19:09:53.00. Subject: Sonia Sotomayor (1 page)                                                        | 06/30/1998 | P2 818           |
| 009. email               | Geronimo M. Rodriguez Jr. to Ricardo M. Gonzales at 18:26:55.00. Subject: Re: Rep. Becerra & US Attorneys (1 page)                     | 07/06/1998 | P2 819           |
| 010. email               | Ricardo M. Gonzales to Geronimo M. Rodriguez Jr at 11:25:32.00. Subject: Re: VP Mtg. w/Hispanic Caucus on July 17. (partial) (3 pages) | 07/13/1998 | P2, P5, b(6) 820 |

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System [Email]  
WHO ([Sotomayor])  
OA/Box Number: 500000

### FOLDER TITLE:

[03/11/1996 - 10/02/1998]

2009-1007-F  
ab698

### 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]

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                             | DATE       | RESTRICTION      |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|------------|------------------|
| 011. email               | Ricardo M. Gonzales to Geronimo M. Rodriguez Jr at 15:35:55.00. Subject: Appointees & VP mtg. w/CHC on Friday, 7/17. (partial). (3 pages) | 07/14/1998 | P2, P5, b(6) 821 |
| 012. email               | Jeffrey L. Farrow to Sara Wilson at 18:16:19.00. Subject: Re: Sonia Sotomayor. [partial] (1 page)                                         | 07/17/1998 | P2, P5, b(6) 822 |
| 013. email               | Glen M. Weiner to Jonathan Becker at 16:42:02.00. Subject: Judges Question (1 page)                                                       | 07/22/1998 | P2 823           |
| 014. email               | Jeffrey L. Farrow to Sara Wilson at 17:25:33.00. Subject: Sotomayor Nomination (1 page)                                                   | 09/17/1998 | P2 824           |
| 015. email               | Sara Wilson to Jeffrey L. Farrow at 15:41:55.00. Subject: Re: Sotomayor Nomination (1 page)                                               | 09/18/1998 | P2 825           |

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System [Email]  
WHO ([Sotomayor])  
OA/Box Number: 500000

### FOLDER TITLE:

[03/11/1996 - 10/02/1998]

2009-1007-F  
ab698

### 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]
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- 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]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Amy W. Tobe ( CN=Amy W. Tobe/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 4-FEB-1998 13:56:21.00

SUBJECT: Re: Guidance Needed

TO: Estela Mendoza ( CN=Estela Mendoza/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Beverly J. Barnes ( CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

This is definately a Yarowsky deal...I don't know. Let me know if you have trouble getting him. I can yank his chain if need be.

Estela Mendoza  
02/04/98 12:03:51 PM  
Record Type: Record

To: Beverly J. Barnes/WHO/EOP, Amy W. Tobe/WHO/EOP  
CC:  
Subject: Guidance Needed

I've left messages for both Doug Band and Jon Yarowsky on this, but might you have guidance already on file.

I have a press request from Hispanic Magazine and Hispanic Link News Service looking to answer the following questions:

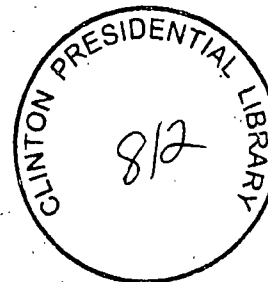
Can you tell me the status of the following nominations:  
Richard Baez, U.S. Ct. of Appeals, 9th Circuit  
Sonya Sotomayor, U.S. Ct. of Appeals, 2nd Circuit  
Carlos Moreno, U.S. Central Distric of CA  
Hilda Tagle, U.S. Southern Distict of Texas

What is holding up the process?

Are we disappointed with the process or are we preceding normally?

...I know so much is being tied to Lee nomination, but what and how can we tell the press?

Thanks so much for your help.





RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Estela Mendoza ( CN=Estela Mendoza/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 4-FEB-1998 11:10:05.00

SUBJECT: Searching for Guidance on Judicial Nominations

TO: Stacey L. Rubin ( CN=Stacey L. Rubin/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Janet suggested I speak to you to get the Admin. line on judicial nominations.

I have a press request from Hispanic Magazine and Hispanic Link News Service looking to answer the following questions:

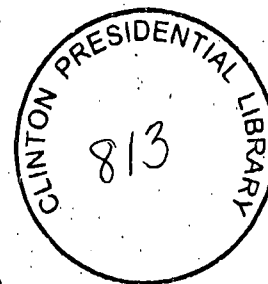
Can you tell me the status of the following nominations:  
Richard Baez, U.S. Ct. of Appeals, 9th Circuit  
Sonya Sotomayor, U.S. Ct. of Appeals, 2nd Circuit  
Carlos Moreno, U.S. Central District of CA  
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What is holding up the process?

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Thanks so much for your help.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Estela Mendoza ( CN=Estela Mendoza/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 4-FEB-1998 12:03:57.00

SUBJECT: Guidance Needed

TO: Amy W. Tobe ( CN=Amy W. Tobe/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Beverly J. Barnes ( CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

I've left messages for both Doug Band and Jon Yarowsky on this, but might you have guidance already on file.

I have a press request from Hispanic Magazine and Hispanic Link News Service looking to answer the following questions:

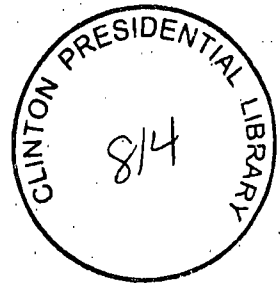
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Sonya Sotomayor, U.S. Ct. of Appeals, 2nd Circuit  
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What is holding up the process?

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Thanks so much for your help.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Beverly J. Barnes ( CN=Beverly J. Barnes/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 4-FEB-1998 13:46:17.00

SUBJECT: Re: Guidance Needed

TO: Estela Mendoza ( CN=Estela Mendoza/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TEXT:

i'm not aware of where we stand. i know, as you probably do, that stacie has been working on message points on judges, in general. you're welcome to come look at my file on the last judges package. bb

Estela Mendoza  
02/04/98 12:03:51 PM  
Record Type: Record

To: Beverly J. Barnes/WHO/EOP, Amy W. Tobe/WHO/EOP  
cc:  
Subject: Guidance Needed

I've left messages for both Doug Band and Jon Yarowsky on this, but might you have guidance already on file.

I have a press request from Hispanic Magazine and Hispanic Link News Service looking to answer the following questions:

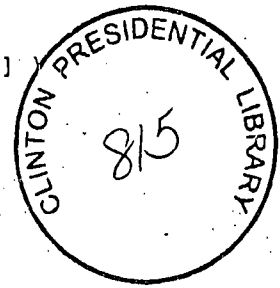
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Richard Baez, U.S. Ct. of Appeals, 9th Circuit  
Sonya Sotomayor, U.S. Ct. of Appeals, 2nd Circuit  
Carlos Moreno, U.S. Central District of CA  
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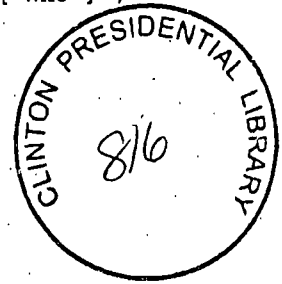
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Virginia N. Rustique ( CN=Virginia N. Rustique/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 24-JUN-1998 13:42:34.00

SUBJECT: Sotomayor info

TO: Mark Childress ( CN=Mark Childress/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN



TEXT:

We're putting together a packet for Daschle and Dorgan's staff re: nominations. Personnel is providing nominations statistics and profiles on key nominees.

We want to add Sotomayor to the list. Can you provide a blurb (Biographical, Sponsors & Holds/Problems)?

FYI - Our weekly Noms meeting w/ Stein and Nash is tomorrow, THur, @ 11:30.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Virginia N. Rustique ( CN=Virginia N. Rustique/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 24-JUN-1998 13:26:17.00

SUBJECT: Re: Nominations mtg

TO: Jennifer A. DeMarco ( CN=Jennifer A. DeMarco/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TO: Dorian V. Weaver ( CN=Dorian V. Weaver/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

CC: Tracey E. Thornton ( CN=Tracey E. Thornton/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TEXT:

We'd like to add the following profiles to the packet:

Hormel  
Donald Barry  
Sally Anne Harper  
Mike Smith  
Seth Harris  
Bill Lann Lee  
Paul Igasaki  
Ray Barmucci

Edit to Catro profile:

Strike the first line of "Holds" Paragraph ("Larry Stein is negotiating ...").

Replace with: "The White House is discussing with Republican leadership regarding how to move the Castro/Igasaki nominations."

In the second to last line: replace "Senator Lott's" with "Republican Leadership's"

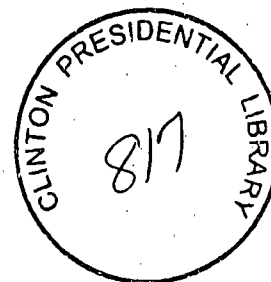
We're also asking Childress to add profile on judicial nominee, Sonia Sotomayor.

----- Forwarded by Virginia N. Rustique/WHO/EOP on  
06/24/98 01:16 PM -----

Jennifer A. DeMarco  
06/24/98 12:35:34 PM  
Record Type: Record

To: Virginia N. Rustique/WHO/EOP  
CC:  
Subject: Re: Nominations mtg

Was the packet ok, is there anything we need to add/change?



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jeffrey L. Farrow ( CN=Jeffrey L. Farrow/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 30-JUN-1998 19:09:53.00

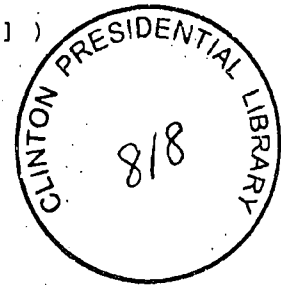
SUBJECT: Sonia Sotomayor

TO: Sara Wilson ( CN=Sara Wilson/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

CC: Mark Childress ( CN=Mark Childress/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TEXT:

I coordinate Puerto Rico issues here. I just had a call from the Governor of Puerto Rico's Director here, Xavier Romeu, re Judge Sonia Sotomayor's nomination. He is organizing support for her and will be in touch with you about it.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Geronimo M. Rodriguez Jr ( CN=Geronimo M. Rodriguez Jr/OU=WHO/O=EOP [ WHO ]

CREATION DATE/TIME: 6-JUL-1998 18:26:55:00

SUBJECT: Re: Rep. Becerra & US attorneys

TO: Ricardo M. Gonzales ( CN=Ricardo M. Gonzales/O=OVP @ OVP [ UNKNOWN ] )

READ:UNKNOWN

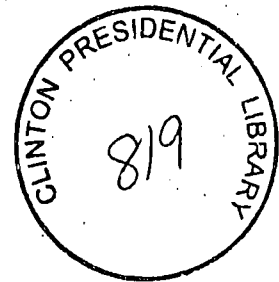
TEXT:

Judges pending in the Senate: The Caucus would like to assist in confirming all Hispanic judicial nominees that are presently pending before the Senate. Becerra recently noted that President Clinton has done more to nominate Latinos to the bench, but unless they are confirmed, they will have no impact. The Caucus would like to know how they can assist in working the confirmations of the outstanding Latino judicial nominees. To that end, they recently met with Senator Daschle to discuss possible strategy.

Of the judicial nominations made by Clinton, 7% are Latino

Pending Latino Judicial Nominees:

Emilio Cividanes, DC Court of Appeals  
Jorge Rangel, 5th Circuit Court of Appeals  
Richard Paez, 9th Circuit Court of Appeals  
Sonia Sotomayor, 2nd Circuit Court of Appeals  
Anabelle Rodriguez, District Judge, Puerto Rico



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ricardo M. Gonzales ( CN=Ricardo M. Gonzales/O=OVP [ UNKNOWN ] )

CREATION DATE/TIME: 13-JUL-1998 11:25:32.00

SUBJECT: Re: VP Mtg. w/Hispanic Caucus on July 17

TO: Geronimo M. Rodriguez Jr ( CN=Geronimo M. Rodriguez Jr/OU=WHO/O=EOP @ EOP [ WHO  
READ: UNKNOWN

TEXT:

Geronimo- thanks for your assistance. Can you please provide background (2-3 paragraphs) and talking points (1-3 per subject) on the following personnel issues:

(1) latino appointments throughout the Administration (White House/including NEC, DPC, OMB; departments and agencies, particularly those w/the worst records such as Treasury, State, Justice)

(2) US Attorneys

(3) federal judgeships

(4) recent appointees

and any other relevant info you feel is necessary

\*If possible, please provide info by COB Tuesday, or early Wednesday.

This will give me time to consolidate all the info into one memo. thanks for your help.

Below is the info I used for the recent call to Becerra. You may want to use this as a guide.

APPOINTMENTS

Background

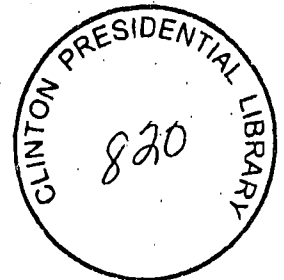
United States Attorneys. At present, there are zero United States Attorneys of Latino descent. You should let Becerra know that the Administration is working hard to rectify this situation by actively seeking qualified candidates. You should also know that Jose de Jesus Rivera, a candidate for US Attorney in Arizona, is currently awaiting Senate confirmation. (See next point)

Latino candidates for United States Attorney positions in San Diego and Los Angeles.

Los Angeles: Rep. Becerra supports Alejandro Mayorkas for US Attorney in Los Angeles. Mayorkas is currently an Assistant US Attorney in that office, in charge of training. At one point, Mayorkas was a leading candidate to be the deputy in the Criminal Division at Justice. Mayorkas was interviewed by several people at the DOJ and they had a positive impression of him. Becerra has been working with Senator Feinstein to gain her support for Mayorkas.



San Francisco: WH Personnel indicates that Mike Yamiguchi, US Attorney in San Francisco, may resign as of August. WH Personnel is working to

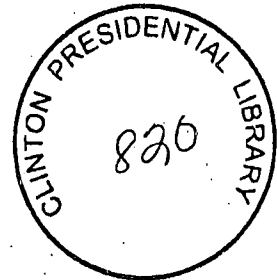




identify candidates.

Federal Judgeships. Rep. Becerra and the Caucus would like to assist in confirming all Hispanic judicial nominees that are presently pending before the Senate. Becerra recently noted that President Clinton has done more to nominate Latinos to the bench, but unless they are confirmed, they will have no impact. The Caucus would like to know how they can assist in working the confirmations of the outstanding Latino judicial nominees. To that end, they recently met with Senator Daschle to discuss possible strategies. You should know that, of the judicial nominations made by Clinton, 7% are Latino.

Pending Latino judicial nominees include:  
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Richard Paez, 9th Circuit Court of Appeals  
Sonia Sotomayor, 2nd Circuit Court of Appeals  
Anabelle Rodriguez, District Judge, Puerto Rico



#### Talking Points

#### US Attorneys & Federal Judgeships

You are right about the need to increase the number of Latino federal judges and US Attorneys. You all have been great in forwarding qualified applicants for these positions. We appreciate your help and want you to keep working with us.

I'm sure you're aware that Jose de Jesus Rivera is currently awaiting Senate confirmation for US Attorney in Arizona.

Latino candidates for US Attorney positions in San Diego and Los Angeles [Generally, you should listen to Becerra's recommendations and thank him for his input]

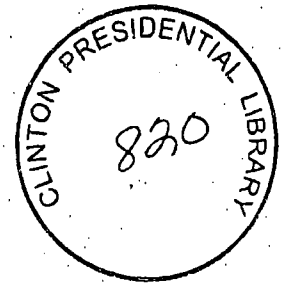
(b)(6)

Geronimo M. Rodriguez Jr @ EOP  
07/11/98 04:10:41 PM  
Record Type: Record

To: Ricardo M. Gonzales/OVP  
cc: Dawn V. Woollen/WHO/EOP @ EOP, Veronica DeLaGarza/WHO/EOP @ EOP  
Subject: Re: VP Mtg. w/Hispanic Caucus on July 17

As you know, Marie Therese has left. Over the last few months, our office has had a number of meetings with the caucus regarding Latino appointments and we will be glad to be of help.

Please send Veronica, Dawn and I any requests for background/talking points.





RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ricardo M. Gonzales ( CN=Ricardo M. Gonzales/O=OVP [ UNKNOWN ] )

CREATION DATE/TIME: 14-JUL-1998 15:35:55.00

SUBJECT: Appointees & VP mtg. w/CHC on Friday, 7/17

TO: Geronimo M. Rodriguez Jr ( CN=Geronimo M. Rodriguez Jr/OU=WHO/O=EOP @ EOP [ WHO  
READ: UNKNOWN

TEXT:

Per our discussion, the VP will be meeting with the Hispanic Caucus this Friday, July 17. Please review and revise/edit the material currently included in the draft memo below. It would be great if we could receive your input by tomorrow afternoon. Thanks for your help!

Appointments

Lack of Latino United States Attorneys. At present, there are zero United States Attorneys of Latino descent. You should let Becerra know that the Administration is working hard to rectify this situation by actively seeking qualified candidates. You should also know that Jose de Jesus Rivera, a candidate for US Attorney in Arizona, is currently awaiting Senate confirmation. (See next point)

Latino candidates for United States Attorney positions in San Diego and Los Angeles.

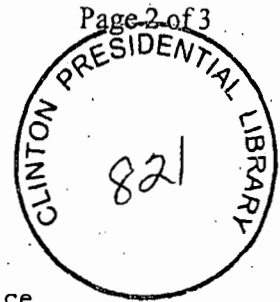
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San Francisco: WH Personnel indicates that Mike Yamiguchi, US Attorney in San Francisco, may resign as of August. WH Personnel is working to identify candidates.

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Pending Latino judicial nominees include:



Emilio Cividanes, DC Court of Appeals  
Jorge Rangel, 5th Circuit Court of Appeals  
Richard Paez, 9th Circuit Court of Appeals  
Sonia Sotomayor, 2nd Circuit Court of Appeals  
Anabelle Rodriguez, District Judge, Puerto Rico

Appointment of high-level staff person in the Office of the Vice President. As part of its continued effort to encourage high-level Latino appointments within the Administration, Becerra and the Caucus continue to urge that you appoint a Latino to a high-level position within your office. You should let Becerra know that you have six Latinos on your personal staff and you will continue to consider Latinos for any high-level positions that open within your office. You should also let him know that you continue to work closely with Maria Echaveste, Mickey Ibarra, and Janet Murguia.

Latinos on OVP Staff: (1) Rick Gonzales- Deputy Director of Legislative Affairs, (2) Moe Vela- Chief Financial Officer, (3) Miguel Bustos- Policy Advisor to Mrs. Gore, (4) Irwin Raij- Counselor's Office, (5) Anthony Bernal- Scheduler, and Alejandro Cabrera- Deputy Press Secretary. Alejandro Cabrera worked for Rep. Becerra before coming to OVP.

Thanks for the appointment of Bill Richardson to Secretary of Energy and Maria Echaveste to Deputy Chief of Staff at the White House. The Caucus may offer thanks for these two recent appointments. Maria Echaveste's ascension to the Deputy COS position makes her the highest ranking Hispanic official to ever serve in the White House. These appointments are significant and appreciated in the Hispanic community and among Hispanic advocacy groups.

Talking Points:

#### US Attorneys & Federal Judgeships

You are right about the need to increase the number of Latino federal judges and US Attorneys. You all have been great in forwarding qualified applicants for these positions. We appreciate your help and want you to keep working with us.

I'm sure you're aware that Jose de Jesus Rivera is currently awaiting Senate confirmation for US Attorney in Arizona.

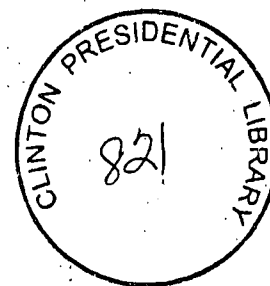
Latino candidates for US Attorney positions in San Diego and Los Angeles [Generally, you should listen to Becerra's recommendations and thank him for his input]

(b)(6)

Appointment of high-level staff person in the Office of the Vice President [Latinos on your staff include: Rick Gonzales, Moe Vela, Miguel Bustos, Irwin Raij, Anthony Bernal and Alejandro Cabrera. Alejandro worked for Rep. Becerra before coming to OVP.]

I'm still working on this. As you probably know, I have six Latinos on my personal staff and I rely heavily upon three of our top Latino White House officials, including Maria (Echaveste), Mickey (Ibarra) and Janet (Murguia). I will, however, continue to consider Latinos for

any high-level positions that open within my office.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jeffrey L. Farrow ( CN=Jeffrey L. Farrow/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 17-JUL-1998 18:16:19.00

SUBJECT: Re: Sonia Sotomayor

TO: Sara Wilson ( CN=Sara Wilson/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

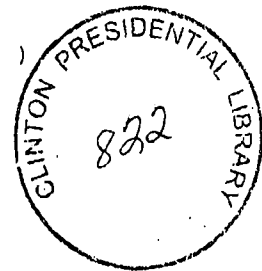
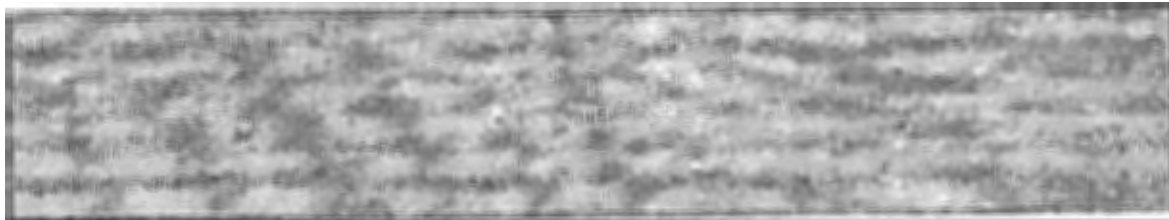
CC: Janet Murguia ( CN=Janet Murguia/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

CC: Fred DuVal ( CN=Fred DuVal/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TEXT:

This is not re Sonia Sotomayor but the District Court in Puerto Rico and the U.S. Attorney in Guam instead. At the Congressional Hispanic Caucus meeting with the VP today, Cong. Romero of Puerto Rico raised the former issue and Cong. Underwood of Guam raised the latter.

On the first, we have a nominee who was part of a package that also involved leaving the current U.S. Attorney in Puerto Rico in office. Romero asked the VP today for a new nominee for the court. Puerto Rico's Senate President also made the request in a recent letter to the President. We may need to revisit the issue but haven't yet. The judicial nominee, Annabelle Rodriguez, is from one local political party and strongly supported by Reps. Gutierrez and Velazquez but has not moved in the Senate. The U.S. Attorney is Romero's candidate and that position was the priority for Romero and the Governor.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Glen M. Weiner ( CN=Glen M. Weiner/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 22-JUL-1998 16:42:02.00

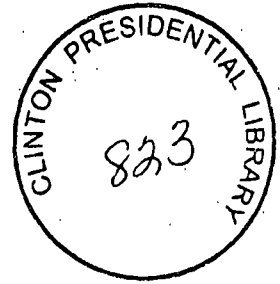
SUBJECT: Judges Question

TO: Jonathan Becker ( CN=Jonathan Becker/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TO: Douglas J. Band ( CN=Douglas J. Band/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TEXT:

Do either of you guys know the ABA rating for Judge Sonia Sotomayor?



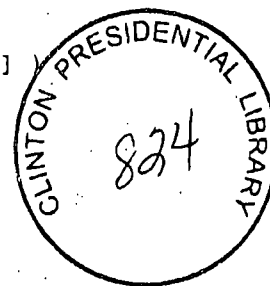
RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jeffrey L. Farrow ( CN=Jeffrey L. Farrow/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 17-SEP-1998 17:25:33.00

SUBJECT: Sotomayor nomination

TO: Sara Wilson ( CN=Sara Wilson/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN



TEXT:

Anything new re Sotomayor nomination? Xavier Romeu is coming to see me tomorrow (9:30 am) and this is on his agenda. Do you want to see him? I can bring him by.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sara Wilson ( CN=Sara Wilson/OU=WHO/O=EOP [ WHO ] )

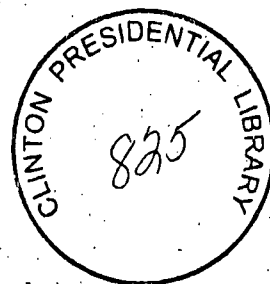
CREATION DATE/TIME: 18-SEP-1998 15:41:55.00

SUBJECT: Re: Sotomayor nomination

TO: Jeffrey L. Farrow ( CN=Jeffrey L. Farrow/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ: UNKNOWN

TEXT:

Sorry, I just opened up your message. We met with Xavier & others today re. Sotomayor. We are pushing Lott very hard; D'Amato is not being helpfu.



# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                          | DATE       | RESTRICTION        |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------|------------|--------------------|
| 001. email               | Wilfredo Ferrer to Cabinet Affairs at 16:21:58.00. Subject: Weekly Report - March 11, 1998 (12 pages)                                  | 06/23/1998 | P5 826             |
| 002. email               | Triana D'Orazio to Triana D'Orazio at 09:28:54.00. Subject: MALDEF Concerned about Ashcroft-statement. [partial] (1 page)              | 01/09/2001 | <del>P6/b(6)</del> |
| 003. email               | lgbt-politics@egroups.com to lgbt-politics@egroups.com at 17:57:34.00. Subject: (lgbt-politics) Digest Number 255. [partial] (3 pages) | 01/13/2001 | <del>P6/b(6)</del> |

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System [Email]  
Default ([Sotomayor])  
OA/Box Number: 1100000

### FOLDER TITLE:

[06/23/1998 - 10/07/1999]

Adam Bergfeld  
2009-1007-F  
ab697

### 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]

WJC LIBRARY PHOTOCOPY

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Wifredo Ferrer ( CN=Wifredo Ferrer/OU=DOJ/O=GOV [ UNKNOWN ] )

CREATION DATE/TIME: 23-JUN-1998 16:21:58.00

SUBJECT: Weekly Report - March 11, 1998

TO: Cabinet Affairs ( Cabinet Affairs [ UNKNOWN ] )  
READ: UNKNOWN

TEXT:

===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

PRINTER FONT 12\_POINT\_COURIER  
March 11, 1998MEMORANDUM FOR THE OFFICE OF CABINET AFFAIRS, THE WHITE HOUSE  
FROM: THE ATTORNEY GENERAL  
SUBJECT: THE DEPARTMENT OF JUSTICE WEEKLY REPORT TO THE  
PRESIDENT

## I. Key Department News

## ? Supreme Court Rules on Same Sex Discrimination Suit:

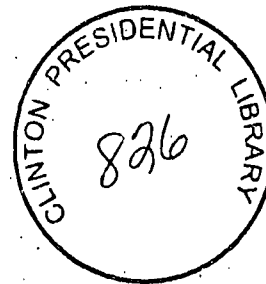
The Supreme Court unanimously held in Oncale v. Sundowner Offshore Services, Inc. that sex discrimination consisting of same

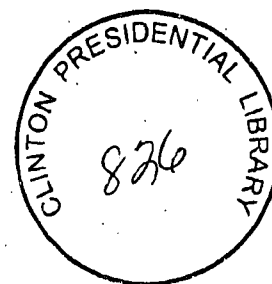
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-sex harassment is

actionable under Title VII of the Civil Rights Act of 1964. The Department contended in an amicus brief in support of the petitioner that Title VII protects employees from sexual harassment regardless whether the employee and the harasser are of the same sex. We argued that Title VII prohibits harassment as long as the claimant asserts that the challenged conduct occurred "because of" the victim's sex; the sex of the alleged harasser is irrelevant.

? Pan Am 103 Litigation: On February 27, the International Court of Justice (ICJ) at The Hague handed down a decision rejecting the Preliminary Objections filed in 1995 by the United States and the United Kingdom to the jurisdiction of the ICJ to decide Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, (Libyan Arab Jamahiriya v. United States of America). Libya had submitted the case to the ICJ in 1992, in an attempt to prevent the United Nations Security Council from voting on the imposition of sanctions for Libya's failure to surrender the two indicted Libyan intelligence operatives for trial in the United States or Scotland. Libya argues that under the provisions of the Montreal Convention it has the right to try the defendants, and that the U.S. and U.K. breached their obligations to Libya under the Convention by ignoring requests from the Libyan investigating magistrate for the evidence on which the





charges were based. In June 1995, the United States,

represented by the State Department's Legal Adviser, raised three preliminary objections: first, to the jurisdiction of the Court; second, to the admissibility of the Libyan Application; and third, that the Libyan claims had become moot by virtue of the Security Council's imposition of sanctions. The ICJ's decision rejected these grounds, finding that there is a dispute under the Montreal Convention; that the Court has jurisdiction to resolve that dispute; and that this dispute cannot be decided at this stage. Consequently, the case will proceed to the merits phase, which involve further written submissions and oral arguments. After consultation with the parties, the ICJ will fix time

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-limits for further proceedings.

? Pakistan Air Force (PAF) Major Sentenced for Narcotics Smuggling: On February 25, in the Southern District of NY, PAF Major Farooq Khan was sentenced to 366 days for smuggling heroin into Dover AFB in a PAF C

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-130 transport

aircraft. Khan's sentence was a downward departure from the guidelines because he cooperated with Pakistan authorities in the prosecution of his co

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-conspirator, Major Bhatti, who

was sentenced to ten years in Pakistan. Pakistan has expressed a desire to seek extradition of Khan but never submitted a request. Because of DEA's undercover investigation in Pakistan of Major Bhatti, Pakistani military authorities court

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-martialled local DEA employee

Ayyaz Baluch for "seducing a military officer," and he is now serving a five year prison term.

? Former ADM Official Pleads Guilty: On March 6, in the Northern District of GA, Sidney D. Hulse pleaded guilty to a Superseding Information charging him with one count of conspiracy and one count of filing a false income tax return. Hulse was formerly vice president of Archer Daniels Midland (ADM) Bioproducts Division. He and a co

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-conspirator defrauded ADM of \$995,400 by submitting false invoices for work that was not done. In addition, Hulse under

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-reported his total income for

calendar year 1992 and falsely stated that he did not have an interest in or signature authority over foreign bank accounts.

? Former ADM Executive Sentenced: On March 4, in the Central District of IL, Mark E. Whitacre was sentenced to nine years of imprisonment and ordered to pay restitution totaling \$11,403,698 to Archer Daniels Midland Company (ADM). Whitacre pleaded guilty in October 1997 to charges of wire fraud, interstate

transportation of stolen property, money laundering,

conspiracy to defraud the Internal Revenue Service (IRS), and filing false income tax returns. Whitacre was a former president of the Bioproducts Division of ADM, headquartered in Decatur, Illinois. He admitted that he had fraudulently taken approximately \$9 million from ADM through a scheme of submitting a series of fictitious invoices. Whitacre also admitted to extensive use of foreign bank accounts to conceal his thefts and to defraud the IRS.

? Two Indictments Unsealed in Operation EL CID: On March 2, in the Western District of VA, two indictments were unsealed in connection with Operation EL CID. Operation EL CID was a long

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-term undercover

investigation targeting the Cali Cartel. Using an undercover money laundering operation as a pretext, two cooperating witnesses were able to establish and sustain direct contact with Cartel leaders and their high level financial associates. These two cooperating witnesses were able to penetrate the Cali Cartel in an unprecedented fashion, providing highly reliable and significant information concerning drug trafficking tactics, routes, laboratory sites, and individual drug traffickers. The cooperating witnesses were solicited by numerous drug trafficking groups to launder drug money. These two indictments involve two of the groups from whom the undercover agents received drug money.

? Internet Hate Crimes: In one of the first known prosecutions for sending electronic hate mail by computer, a defendant was found guilty of transmitting hostile and threatening e

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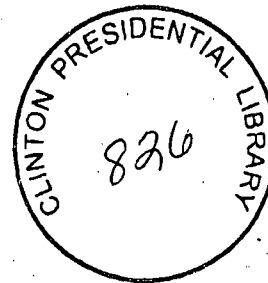
-mails to approximately 60 Asian students at the University of California in Irvine, CA. In his e

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-mails, the defendant declared his hatred of Asians, accused them of being responsible for all campus crimes, and threatened to make it his "life career" to "find, hunt down, and kill" these individuals if they did not leave the University.

? Correction Officers Charged with Civil Rights Violations: Two sergeants, a lieutenant, and five officers of the CA Department of Corrections, Corcoran State Prison, were charged with conspiring to deprive inmates of their civil rights. One officer is also charged with perjury. The defendants sent inmates from rival groups into the exercise yard together, knowing a fight would likely result. One inmate was shot and killed during the incident. Following the shooting, the five officers prepared false and misleading written reports to conceal their involvement.

? Emergency Aircraft Landing: A defendant was sentenced to six months in prison and ordered to pay \$40,653 in restitution to USAirways for causing a flight to make an emergency landing in Dayton, OH, in October 1996.



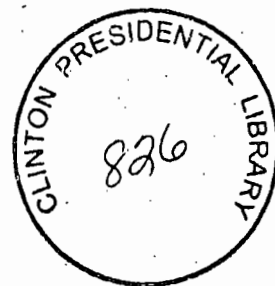
The flight emergency began when an attendant placed the defendant's carry

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-on bag in an overhead compartment.

The defendant commented, "Be careful, that's where I keep my pipe bombs." In the evacuation following the emergency landing, eight people were injured.

Incredibly, the defendant slept through the landing and, when awakened, told emergency personnel that he had 13 sticks of dynamite in his bag and a transmitter in his pocket. No bomb was found.



? Twenty Defendants Charged with Drug Smuggling: Twenty defendants were charged for their participation in an organization that smuggled cocaine into the United States hidden in the soles of oversize tennis shoes. The defendants in this case now number 72. Couriers for the drug trafficking enterprise were recruited in central OH and flown to Mexico where they received pairs of oversize tennis shoes stuffed with cocaine and were instructed to wear the shoes back to the United States.

? Appeals Court Affirms Conviction of La Cosa Nostra Associates: The First Circuit Court of Appeals affirmed the extortion convictions of two La Cosa Nostra associates, and the sentencing of one of the defendants under the Three Strikes statute. The court found that the extortion was a serious violent felony under the Three Strikes statute. One of the defendants demanded \$250,000 and title to a restaurant from one victim, and both defendants attempted to extort \$5,000 from a car dealer.

? Arms Export Control Act: Two individuals were arrested and charged in Norfolk, VA, with conspiring to violate the Arms Export Control Act by attempting to export certain aircraft parts from the United States to Iran without the approval of the U.S. Department of State. According to the complaint, in February 1992, the U.S. Customs Service and the Naval Criminal Investigative Service began an investigation into the possible illegal exportation of U.S. Navy fighter aircraft parts to Iran. The complaint alleges that the two defendants and others, during monitored telephone conversations, consistently indicated that the ultimate destination of the parts would be to Iranian buyers.

? Ninth Circuit to Hear Argument in Pornography Prevention Act Case: The Free Speech Coalition v. Reno, No. 97

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-16536 [9th

Cir.; N.D. CA]. On March 10, the Ninth Circuit heard oral argument in this First Amendment challenge to the expanded definition of child pornography adopted by the Child Pornography Prevention Act of 1996, which defines child pornography to include visual depictions that "appear to" or "convey the impression" that they are of children engaged in sexual activities. The district court upheld the constitutionality of the statutory definition, relying on the Government's interest in protecting children from

materials that might be used in the sexual exploitation of children, as well as the statute's safe harbor for depictions that use actual adults and are not affirmatively represented to be of children.

? Ninth Circuit to Hear Argument on March 13 in Constitutional Challenge to Funding Restrictions on Legal Services Corporation Grants: Legal Services Corp. of Hawaii, et al. v. Legal Services Corp., No. 97

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-16567 [9th Cir.; D. HI].

The plaintiffs in this case -- several legal services organizations, clients, and legal aid lawyers -- brought this action challenging the constitutionality of restrictions that Congress imposed on Legal Services Corporation (LSC) grants in 1996. The restrictions, which apply to private as well as LSC funds, prohibit LSC grantees from engaging in litigation on certain topics (such as abortion, welfare reform, and redistricting), participating in class action suits, lobbying, and (in certain circumstances) representing illegal aliens and prisoners. The district court upheld the restrictions. Plaintiffs appealed, and the United States filed a brief as intervenor, defending the constitutionality of the LSC restrictions. Oral argument will be held on March 13. The Second Circuit will hear argument in a similar challenge on March 20. Velazquez v. Legal Services Corp., No. 98

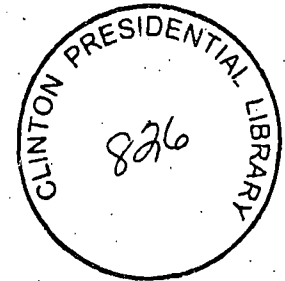
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-6006 [2d Cir.; E.D. NY].

? Former HUD Contractor Dismisses Suit: On March 4, the plaintiffs in Hamilton Securities v. HUD (D.D.C.) voluntarily dismissed their suit against the Department of Housing and Urban Development and its senior officials. Plaintiffs were under contract to handle HUD's bulk auction sales of defaulted mortgages that HUD acquired under its mortgage insurance programs. With regard to two sales, plaintiffs admitted committing errors that reduced sales proceeds to HUD by \$3.8 million. As a result, HUD withheld payment of \$1.5 million in contract payments claimed by plaintiffs. Plaintiffs also contend that HUD effectively

debarred them without due process, that HUD personnel and its Office of Inspector General leaked confidential information about them, and that the Inspector General issued overbroad administrative subpoenas.

? Court Denies Relief to IRS Employee Group: On March 2, Judge Sam Sparks denied plaintiffs' request for declaratory and nationwide injunctive relief in Christian Fundamentalist Internal Revenue Employees ("CFIRE") v. IRS (W.D. TX). This was the religious fundamentalist employee group's second attempt to sue the IRS for alleged violations of the First Amendment; the first lawsuit was dismissed as moot after the IRS agreed to afford CFIRE the same treatment and support services as other IRS employee groups. In this action, CFIRE alleged that the IRS had not lived up to this commitment. The court held that the IRS did not violate CFIRE's First Amendment rights when the agency delayed in making a decision on whether the organization's articles could be published in several employee newsletters, and rejected claims that the top levels of IRS management had



engaged in a nationwide conspiracy against the organization.

? Decision Threatens U.S. Army Corps Of Engineers? Ability to Issue Wetlands Permits: United States v. Mango (N.D. NY). Defendants were indicted on a charge of violating a Clean Water Act permit issued by the Army Corps of Engineers. The Corps controls damage to wetlands through this system of permits. Last week, the district court dismissed the indictment on grounds which could severely limit the authority of the Corps to issue permits under the Clean Water Act. The court concluded (1) that the permit is invalid because the Chief of Engineers lacks authority to delegate to lower

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-ranking officials the task of issuing permits; (2) that provisions of the permit are invalid because the Corps has no authority to impose permit requirements aimed only at preventing damage to wetlands; and (3) that other provisions of the permit were beyond the substantive regulatory authority of the Corps.

? Company President Pleads Guilty to Illegal Storage of Hazardous Waste: United States v. Stephen J. Schrang (E.D. MO). Last week, Stephen Schrang pled guilty to two counts of making false and fraudulent statements and two counts of illegally storing hazardous wastes. Schrang was the president of Neese Coated Fabrics, a company that produced coated fabrics that were used by the Government as tents during military operations in the Middle East. In its production process, Neese generated ignitable hazardous waste. When Neese stopped its operations in June 1990, it left behind hundreds of containers of chemical waste. After

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-alarm fire broke out at the Neese facility, the City of St. Louis ordered that defendant take action to remediate and clean up the building by July 1, 1991. Defendant failed to take any action.

? Wastewater Treatment Supervisor Sentenced to 21 Months in Prison: United States v. Juan Ruiz Orengo (D. PR) Last week, Juan Orengo was sentenced to 21 months in prison after pleading guilty to falsifying reports in violation of the Clean Water Act. Orengo was the former supervisor of the wastewater treatment plant at Warner

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-Lambert's facility in Vega Baja, PR. Before this job, Orengo was acting chief of the Permit Office for the Environmental Quality Board of PR. Despite this background, he began falsifying reports as soon as he arrived at Warner

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-Lambert. Warner

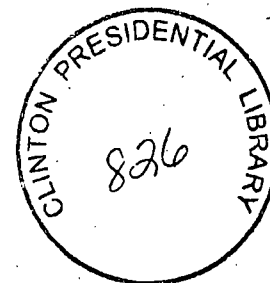
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-Lambert agreed to pay \$3.6 million in penalties.

II. Department Work on Presidential Initiatives  
Nothing to report.

III. Congress

? Whistleblower Bill: The Senate will begin debate today on S. 1668, which would allow government employees to





disclose to members of Congress evidence of possible misconduct at federal intelligence agencies. The provision was dropped from the FY 1998 intelligence authorization bill because it was opposed by the Administration. The Department has recommended a veto threat of this measure if passed.

? Political Status of PR: On March 4, the House passed (209

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-208) H.R. 856, establishing a series of referenda as part of a process to determine the political status of PR. During debate of the bill the House defeated a Solomon amendment that would have designated English as the official language of the United States and imposed language restrictions if PR became a State. The House adopted instead (238

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-182) a bipartisan substitute supported by the Department. The substitute would declare applicable in a State of PR any language requirements generally applicable to the other States. The Department worked closely with the White House on the bill and sent a letter to the Speaker supporting the substitute.

? Disadvantaged Business Program: Last week the Senate debated an amendment to the ISTEA legislation offered by Senator McConnell to remove the Disadvantaged Business Program. The Associate Attorney General wrote

to the Minority Leader stating that the Department believes the program is constitutional and then met with Senators on Thursday. Additionally, the Attorney General co

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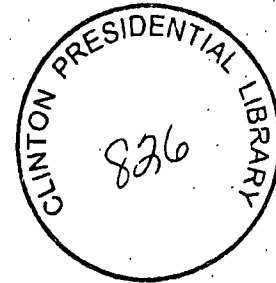
-signed a letter with Transportation Secretary Slater responding to specific questions about the program. The Senate voted to table the amendment by a vote of 58

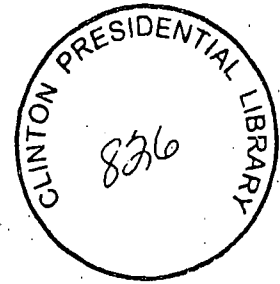
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-36 on Friday, March 6.

? Department of Justice Authorization Bill: On March 2nd the Department had a lengthy meeting with the staff of the House Judiciary Committee and the House Legislative Counsel's office to discuss draft legislation that would authorize appropriations for the Department of Justice. On March 3, the bill was introduced as H.R. 3303, a bill to authorize appropriations for the Department of Justice for fiscal years 1999, 2000, and 2001; to authorize appropriations for fiscal years 1999 and 2000 to carry out certain programs administered by the Department of Justice; and to amend title 28 of the U.S. Code with respect to the use of funds available to the Department. The House Judiciary Committee held a hearing on H.R. 3303 on March 11. Deputy Attorney General Holder and Assistant Attorney General for Administration Colgate testified on behalf of the Department. Mark up of the legislation is expected on March 24.

? Nominations: On March 5, the Senate Judiciary Committee approved the following nominations by voice vote: Susan Graber, to be a United States Circuit Judge for the Ninth





Circuit; Sam Lindsay, to be a United States District Judge for the Northern District of TX; Hilda Tagle, to be a United States District Judge for the Southern District of TX; Judith Barzilay, to be a Judge of the United States Court of International Trade; Delissa Ridgway, to be a Judge of the United States Court of International Trade; and Brian Scott Roy, to be United States Marshal for the Western District of KY. Sonia Sotomayor, to be a United States Circuit Judge for the Second Circuit, was approved by a roll call vote of 16

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-2, with Senators Kyl and Ashcroft voting against the nomination. The nomination of Richard Paez, to be a United States Circuit Judge for the Ninth Circuit, was held over by Senator Hatch.

The Senate Judiciary Committee will hold a second hearing on the nomination of Frederica Massiah

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-Jackson

to be a United States District Judge for the Eastern District of PA on March 11.

?

Tobacco Settlement: The Senate Commerce Committee will

continue hearings on tobacco issues on March 17 and will mark up the tobacco agreement implementation legislation on March 25. The Senate Labor Committee marked up S. 1648, tobacco legislation introduced by Chairman Jeffords on March 11. In addition, the Senate Indian Affairs Committee will mark up Indian provisions of three tobacco bills currently pending in the Senate on March 18.

? Teamsters Election: On March 10, the Oversight and Investigations Subcommittee of the House Education and the Workforce Committee marked up the authorization of the issuance of subpoenas in the oversight investigation of the International Brotherhood of Teamsters election for the Democratic National Committee, Peter D. Hart Research Associates, Carey Campaign, November Group and the International Brotherhood of Teamsters.

? Immigration: On March 10, the Immigration Subcommittee of the Senate Judiciary Committee marked up S. 1504, a bill that would provide permanent residence for about 15,000 Haitian refugees who sought asylum in the early 1990s.

? Selection of U.S. Marshals: On March 10, the Senate Judiciary Committee held a hearing regarding legislation to amend the process for the selection of U.S. Marshals (H.R. 927). Director of the U.S. Marshals Service Gonzalez testified in support of the legislation.

? Applying Federal Law to Bailbondsmen and Bounty Hunters: On March 12, the Constitution Subcommittee of the House Judiciary Committee will hold a hearing on H.R. 3168, a bill to clarify that bail bond sureties and bounty hunters are subject to both civil and criminal liability for violations of federal rights under existing federal civil rights law.

? Line Item Veto: On March 12, the Legislative and Budget Process Subcommittee of the House Rules

Committee will hold an oversight hearing on the implementation and procedures of the line

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-item veto.

? Encryption: On March 17, the Senate Judiciary Committee will hold a hearing on "Privacy in the Digital Age: Encryption and Mandatory Access." Principal Associate DAG Litt will testify on behalf of the Department.

? Vacancies Act: On March 18, the Senate Governmental Affairs Committee is holding a hearing on the Vacancies Act. The Department has been invited to testify.

? Aviation Agreements: On March 19, the Antitrust, Business Rights and Competition Subcommittee of the Senate Judiciary Committee will hold a hearing on international aviation agreements and their antitrust implications.

? Extending U.S. Immigration & Wage Laws to Marianas: On March 31, the Senate Energy and Natural Resources Committee will hold a hearing on legislation that would extend U.S. immigration and federal minimum wage laws to the Commonwealth of the Northern Mariana Islands. The bills also would require U.S. labor participation of 50 percent or greater in order for products made in the Marianas to carry the "Made in USA" label and would limit duty free treatment of products unless the U.S. labor requirement is met.

IV. Attorney General's Schedule

THURSDAY, MARCH 12, 1998

11:30a Attend National Association of Attorneys General Meeting; The White House

FRIDAY, MARCH 13, 1998

8:00a Address Children's Welfare League  
Grand Hyatt Hotel; Washington, DC

10:45a Address Violence Against Women Act/National Association

Attorneys General Meeting

Washington Court Hotel; Washington, DC

11:30a Address National Association of Attorneys General Meeting; Washington Court Hotel; Washington, DC

4:45p Address Close

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-Up Students

DOJ Great Hall

6:30p Address American Judicature Society Reception  
Supreme Court, Thurgood Marshall Bldg.; Washington, DC

MONDAY, MARCH 16, 1998

4:30p Meeting with Under Secretary Kelly, INS Commissioner Meissner and Commissioner Banks

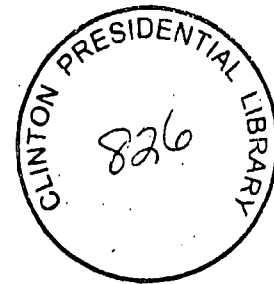
TUESDAY, MARCH 17, 1998

10:30a Visit Raymond Elementary School  
Washington, DC

WEDNESDAY, MARCH 18, 1998

2:00p Address FBI Legal Attache Conference  
FBI Headquarters

FRIDAY, MARCH 20, 1998



11:00a Address National Community Reinvestment Coalition  
Washington Marriott Hotel; Washington, DC  
11:50a Address National Newspaper Association  
Hyatt Regency Washington Hotel; Washington, DC  
SUNDAY, MARCH 22, 1998  
PM Attend Gridiron Dinner  
Capitol Hilton Hotel; Washington, DC

V. Sub  
□  
-Cabinet Schedule  
Eric H. Holder, Jr.  
Deputy Attorney General

Mar. 21 Address the National District Attorneys Association  
Clearwater, FL

Raymond C. Fisher  
Associate Attorney General

Mar. 18 Meeting with local law enforcement leaders and tour 311  
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-emergency center; Dallas, TX  
Mar. 19 Address the Souther District of TX' Weed and Seed Rally  
Corpus Christi, TX. Meet with Houston Mayor Brown;  
Houston, TX.

Tom Constantine  
Administrator, DEA

Mar. 22 Host the 16th Annual International Drug Enforcement  
Conference in San Jose, Costa Rica

VI. Press/Media Inquiries

? We continue to get calls about disciplinary actions that

could be taken against Ken Starr.

? There have been several inquiries into the Justice  
Department's investigation into Haley Barbour.

? There have been several inquiries about the possible  
reorganization of agencies investigating the bombings in the  
South.

? There have been several inquiries about Iraqis who were  
denied asylum this week.

? There have been calls about what will now happen to Johnny  
Chung.

? The Washington Post and The Economist are both working on  
profile pieces of Antitrust Assistant Attorney General  
Klein.

? The Newshour with Jim Lehrer will do a story about the  
Microsoft case.

? Congressional Quarterly has interviewed Deputy Chief of  
Staff Markus about juvenile justice legislation.

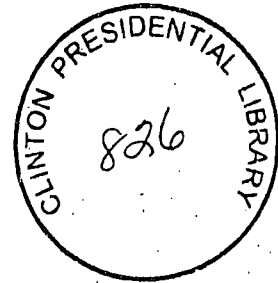
? VAWA Director Campbell has talked to several media outlets  
about the issue of trafficking women in the country for  
illegal purposes.

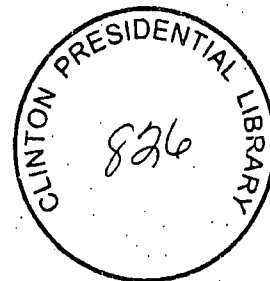
? Elle Magazine is working on a story about peer mediation and  
will interview the Attorney General.

? The New York Times is working on a story about computer  
generated counterfeit currency.

? Oregon media continues to call about the Justice  
Department's opinion of physician assisted suicide.

? Associate Attorney General Fisher was interviewed by the New  
York Times for a story on the affirmative action review.





? Dateline may interview one of the prosecutors who prosecuted the officers in the Rodney King case.

? The Washington Post is working on an editorial about the Administration's efforts to enforce CALEA.

? Legal Times is considering a story on a bill that would move 200 attorneys out of Main Justice to U.S. Attorney's offices. The Justice Department is strongly opposed.

? AP is doing a story on the vast number of criminal civil rights complaints we receive, and the few investigations we launch.

? ABC News will finish their two part piece tonight on the mistreatment of hispanic poultry workers.

VII. FOIA Requests

Nothing to report.

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#### I. AMPLIFICATION FOR THE PAST WEEK

? Last Thursday, the COPS Office awarded \$37 million to police departments around the country to hire 467 new officers, as part of the Administration's effort to put 100,000 new cops on the street. The COPS Office officials conducted radio interviews in New Orleans. (see clips)

? Last Thursday at the Weekly Press Availability, the Attorney General made another pitch for the new center being established to protect the nation's infrastructure.

#### II. AMPLIFICATION FOR THE WEEK AHEAD

? Tomorrow, Thursday, the Attorney General will celebrate her 5th year as Attorney General with DOJ press regulars before her weekly news availability.

#### III. AMPLIFICATION FOR THE PAST WEEK - OTHER AGENCIES

? Last Thursday, the Attorney General held a press availability with Rochester, NY media immediately following the swearing in of Robert Warshaw at the Office of National Drug Control Policy.

? Last Monday, Mark Calloway, U.S. Attorney in Charlotte, a press conference to announce the arrest of a suspect in a \$17 million armored car heist, along with six others involved with the plot. All local TV affiliates, NBC National News, The Associated Press and the Washington Times covered of the story.

? Last Friday, Scott Lassar, U.S. Attorney in Chicago,

press conference to announce the arrest of a woman who is alleged to have killed her 7

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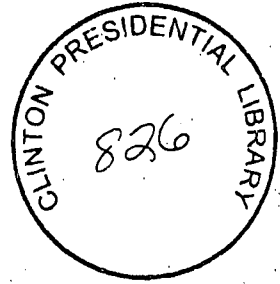
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daughter in 1995, so she could collect the proceeds of a \$200,000 life insurance policy. The Chicago Tribune and the Chicago Sun Times ran articles.

? Last Wednesday, Mary Jo White, U.S. Attorney in Manhattan, held a press conference to announce that 14 owners and managers of six off

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-shore sports betting companies have been charged with conspiracy to transmit bets and wages over the internet on sports events. (see clips)



? Last Tuesday, Frances Hulin, U.S. Attorney in Springfield, Il, held a press conference to announce the arrest of three Gangster Disciple gang leaders who were charged with distributing cocaine and crack in Decatur, Il. Two local TV affiliates, the Decatur Herald and Review, and the Urbana News Gazette covered the press conference.

? Last Thursday, Wilma Lewis, U.S. Attorney in Washington, D.C., held a press conference to announce the arrest of 23 members of the violent drug gang "L Street Crew." All three local TV affiliates ran stories, along with the Washington Times and the Washington Post.

? Last Friday, Scott Lassar, U.S. Attorney in Chicago, met with the press after a jury returned guilty verdicts against two men in the Operation Silver Shovel undercover public police corruption probe. All local TV affiliates, the Chicago Tribune, the Chicago Sun Times, and the Daily Southtown ran stories.

? Last Sunday, Bill Lee addressed the National League of Cities Celebration of Diversity, where he discussed the Administration's commitment to race relations.

#### IV. AMPLIFICATION FOR THE WEEK AHEAD - OTHER AGENCIES

? This Friday, the Attorney General will address the Children's Welfare League, where she will highlight the Administration's effort in reducing juvenile crime.

? This Thursday, the Attorney General will address the Association of Attorneys General Meeting, where she will tout the Administration's crime fighting efforts.

National

? Next Thursday, the Attorney General will open her weekly Press Availability by discussing the successes of the Anti

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-Violent Crime Initiative, which was launched five years ago.

===== END ATTACHMENT 1 =====

# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                  | DATE       | RESTRICTION  |
|--------------------------|----------------------------------------------------------------|------------|--------------|
| 001a. fax                | Sonia Sotomayor to Michael O'Conner re: Questionnaire (1 page) | 06/24/1997 | P2 2012      |
| 001b. fax                | Sonia Sotomayor to Michael O'Conner re: Questionnaire (1 page) | 06/24/1997 | P2 Dup. 2012 |
| 001c. fax                | Sonia Sotomayor to Michael O'Conner re: Questionnaire (1 page) | 06/24/1997 | P2 Dup. 2012 |
| 001d. fax                | Sonia Sotomayor to Michael O'Conner re: Questionnaire (1 page) | 06/24/1997 | P2 Dup. 2012 |
| 001e. form               | Senate Questionnaire (49 pages)                                | n.d.       | P2, P6/b(6)  |
| 002a. letter             | Sonia Sotomayor to Michael O'Connor re: Questionnaire (1 page) | 05/12/1997 | P2 2013      |
| 002b. form               | Senate Questionnaire (28 pages)                                | 05/12/1997 | P2, P6/b(6)  |
| 003. form                | Addendum to Senate Questionnaire (19 pages)                    | n.d.       | P2 2014      |

### COLLECTION:

Clinton Presidential Records  
Counsel's Office  
Doug Band  
OA/Box Number: 12689

### FOLDER TITLE:

Update Senate Draft [1]

Jimmie Purvis  
2009-1007-F  
jp1533

### 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.

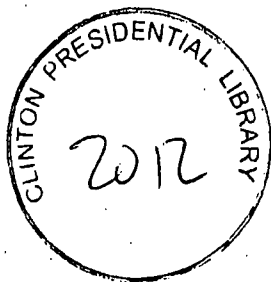
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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]

**CLINTON LIBRARY PHOTOCOPY**



## FAX TRANSMISSION

FAX:

**To:** Michael O'Conner

**Date:** June 24, 1997

**Fax #:** (202) 456-1647

**Pages:** // , including this cover sheet.

**From:** Sonia Sotomayor 

**Subject:** Revised Senate Questionnaire

**COMMENTS:**

This is the latest revision we spoke about. I await your next reaction.

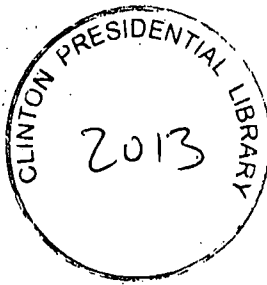
CLINTON LIBRARY PHOTOCOPY



To: Michael O'Connor

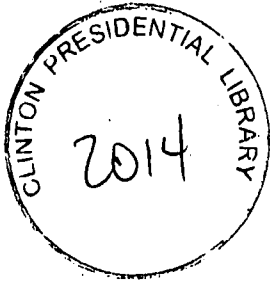
From: Sonia Sotomayor

Date: May 12, 1997



Enclosed is the revised draft of the Senate Questionnaire, with attachments. Please let me know if you think all the speeches I included are necessary. My standard speech on my background and hispanic issues does not appear to be encompassed by the question. Nevertheless, I thought showing you everything was better than making a judgment on my own to withhold. I have also amended my financial disclosure form and am disclosing that one, not the original, because the Judicial Committee who reviewed my original filing found mistakes and asked me to correct them. [Attached is a copy of the letter I sent the Committee explaining the changes. Should I disclose this letter to the Senate?] Finally, I have not redone my net worth statement because I am waiting till the last revision that needs to be made. A net worth statement is a snap shot of my financial condition for a day, and each month that changes. I expect no appreciable changes in the near future (unless I "hit" the lottery) but doing the math each time is burdensome (when you do not like math). I look forward to hearing from you with your reactions.

- ① Get all writings
- ② Get by laws of current clubs
- ③ Lawerke



Sotomayor Addendum to Senate Questionnaire

**ADDENDUM TO  
SENATE QUESTIONNAIRE**

**QUESTION 18:**

A1.

**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

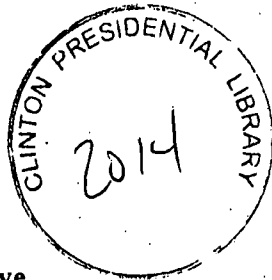
**Judge:** Then District Court Judge Fred I. Parker (sitting by designation)  
Federal Building  
11 Elmwood Avenue  
P.O. Box 392  
Burlington, Vermont 05402  
(802) 951-6401

**Date of Trial:** March 16, 1992

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

A co-counsel

**Case Description:** I represented the defendants Lozza (USA) and 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 corporations, claimed the defendants had breached an agreement with the plaintiff for the trademark use of "Lozza" in the United States, had abandoned use of their marks in the United States, and had infringed certain of the plaintiff's trademarks. I conducted the trial for the defendants, 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).



Sotomayor Addendum to Senate Questionnaire

A2.

**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:**

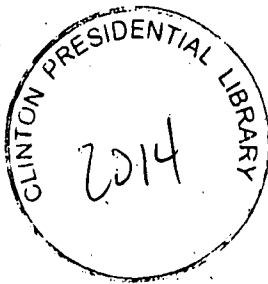
10/16/90, 10/17/90, 10/31/90, 11/1/90, and 11/2/90

**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



Sotomayor Addendum to Senate Questionnaire

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.

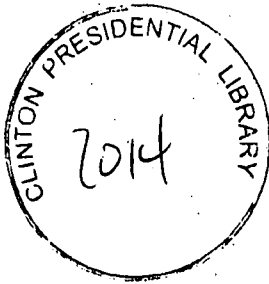
Co-Counsel

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

Co-Counsel

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.



Sotomayor Addendum to Senate Questionnaire

A3.

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

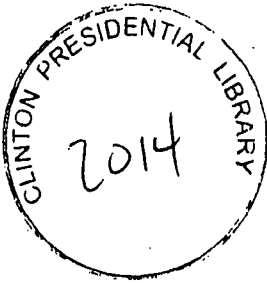
Co-Counsel: Nicholas Browning, III, Esq.  
Herzfeld & Rubin  
1925 Century Park East, Suite 600  
Los Angeles, California 90067-2783  
(213) 553-0451

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)  
Home Tel. No. (415) 641-1544

ACO-counsel/2

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 very 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



Sotomayor Addendum to Senate Questionnaire

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.

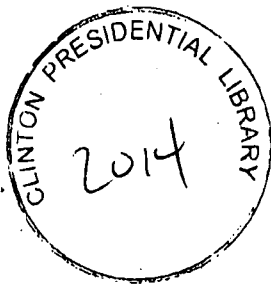
A4. - A5.

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, 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.

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, presided over by the Hon. Thomas P. Griesa (Tel. No. (212) 805-0210), and Fendi S.a.s. Di Paola Fendi e Sorelle v. Dapper Dan's Boutique, 89 Civ. 0477, presided over by the Hon. Miriam G. Cedarbaum (Tel. No. (212) 805-0198).

The following 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 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



Sotomayor Addendum to Senate Questionnaire

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.

A4.

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

Judge:

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

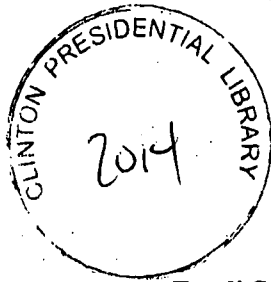
Adversaries:

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



Sotomayor Addendum to Senate Questionnaire

A5.

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

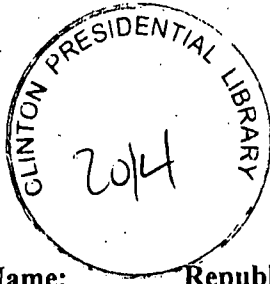
Adversary: Stanley Yaker, Esq.  
Attorney for Paolo Vincelli and Mario Vincelli  
Former Address:  
114 East 32nd Street  
Suite 1104  
New York, New York 10016  
(212) 983-7241  
Telephone not in service. I have been unable to locate Mr. Yaker.

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

Date of Inquest  
Hearing:

1/6/88





Sotomayor Addendum to Senate Questionnaire

A6.

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

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: Roy L. Reardon, Esq. (455-2840)  
David E. Massengill, Esq. (455-3555)  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
(212) 455-2000

Sotomayor Addendum to Senate Questionnaire

**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.:**

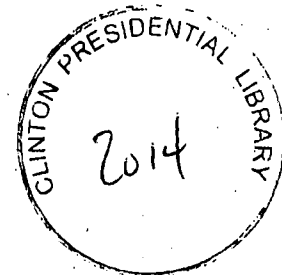
The Philippines Case: 86 Civ. 2294  
The Security Pacific Case: 87 Civ. 3629

**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

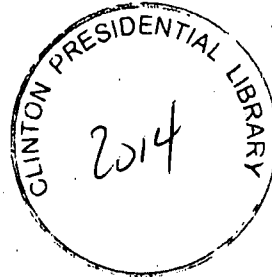
**Participating**

**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.

Sotomayor Addendum to Senate Questionnaire

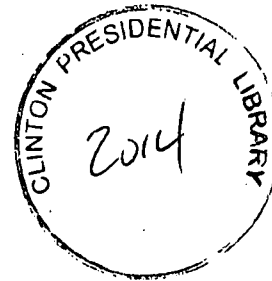
A7.

**Case Name:** Misericchi & C., S.p.A. 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

Sotomayor Addendum to Senate Questionnaire

**Date of Argument:** 9/17/84

AND

**District Court**

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

**Case No.:** 84 Civ. 6112

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

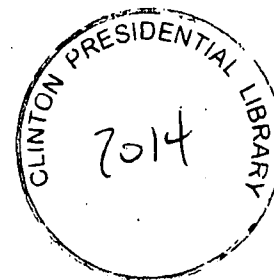
**Judge:** Hon. Kevin Thomas Duffy  
U.S. District Judge  
U.S. Courthouse  
40 Foley Square  
New York, New York 10007  
(212) 805-6125

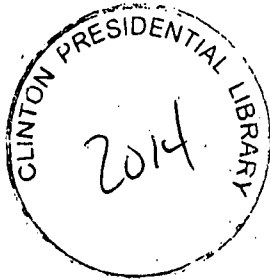
**Co-Counsel:** David A. Botwinik, Esq.  
Pavia & Harcourt  
600 Madison Avenue  
New York, New York 10022  
(212) 980-3500

**Adversary:** Stephen P. Sheehan  
Wistow & Baryllick  
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, Miserocchi & C., SpA ("Miserocchi"), with affiliates in London and elsewhere. The London affiliate of Miserocchi 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 Miserocchi and its London affiliate under the terms of the grain commodity trading agreement between the parties and a guarantee signed by Miserocchi. Shortly before the arbitration hearing was to commence, Miserocchi moved to stay the arbitration against it, arguing that it was not





Sotomayor Addendum to Senate Questionnaire

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 Miserocchi was 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.

A8.

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

Indictment No.: 4581/82

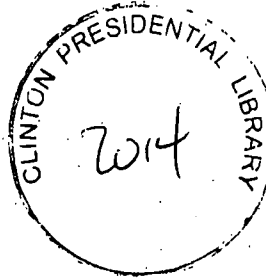
Judge: Hon. Thomas B. Galligan (retired)  
Then-Acting Justice, Supreme Court,  
c/o Administrative Judge's Office  
Juanita Newton  
111 Centre Street  
New York, New York 10013  
(212) 374-4972

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).

A9.

**Case Name:**

**The People of the State of New York v. Richard Maddicks**

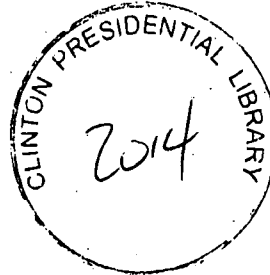
**Indictment No.:**

886/82

Sotomayor Addendum to Senate Questionnaire

**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 for 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).



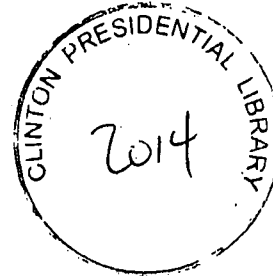
Sotomayor Addendum to Personal Data Questionnaire

A10.

**Case Name:** The People of the State of New York v. Manny Morales aka 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



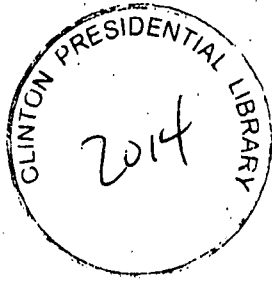
**Adversaries:** Ira I. Van Leer (deceased)  
(Associates present at portions of the trial: Valerie Van Leer-Greenberg and Howard Greenberg)  
Van Leer and Greenberg  
Attorneys for defendant Manny Morales aka Joey Hernandez  
132 Nassau Street, Suite 523  
New York, New York 10038  
(212) 962-1596

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



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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.

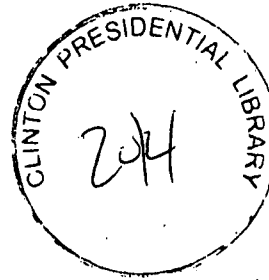
I have interpreted this question to be seeking a list of individuals who are familiar with my judicial work because they are knowledgeable about some of my opinions or because they have appeared before me. I also list individuals who are familiar with my work from other legal activities such as a speaker or conference panelist. If you seek only individuals who have tried cases or made other substantive appearances before me, please advise me.

as long  
on judge  
law clerk  
etc...

- 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
2. 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
3. John S. Siffert, Esq.  
Lankler, Siffert & Wohl  
500 Fifth Avenue, 33rd Floor  
New York, New York 10110  
(212) 921-8399
4. 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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5. Dean John D. Feerick  
Fordham Law School  
140 West 62nd Street  
New York, New York 10023  
(212) 636-6875
6. Gerard Walperin, Esq.  
Rosenman & Colin  
575 Madison Avenue  
New York, New York 10022  
(212) 940-7100
7. Mary Jo White, Esq.  
United States Attorney for the Southern District of New York  
or  
Jane Booth, Esq.  
Chief, Civil Division, U.S. Attorney's Office for Southern District of New York  
United States Attorney's Office  
Southern District of New York  
U.S. Courthouse Annex  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 791-0056
8. Leonard F. Joy, Esq.  
Attorney-in-Charge  
or  
Andrew H. Schapiro, Esq.  
Legal Aid Society, Federal Defender Division  
52 Duane Street  
New York, New York 10007  
(212) 285-2830
9. John Kidd, Esq.  
Rogers & Wells  
200 Park Avenue  
New York, New York 10166-0153  
(212) 878-8000



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

