

# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 10, 2009

The Honorable Sonia Sotomayor  
Office of the Counsel to the President  
The White House

Dear Judge Sotomayor:

Thank you for providing your questionnaire, assembled materials, and June 6, 2009 questionnaire supplement to the Judiciary Committee. Committee staff are reviewing your questionnaire responses and attachments and have noted a number of apparent omissions. In addition, we believe that some of your responses are incomplete. In view of these concerns, we would respectfully ask that you revisit the questionnaire and provide another supplement as soon as possible. If you believe that your questionnaire is fully responsive, we would appreciate an explanation to that effect.

To assist you in completing your questionnaire, below are some of the potential omissions detected to date:

- 1) Question 6 asks for your employment record. Although you indicate that you were a member of the board of directors of the State of New York Mortgage Agency, it appears that you also served on the Administration and Personnel Committee (or the Program Committee) and as a member of the board of Community Planning Board #6. In addition, you indicate that you served as a member and vice president of the board of directors of the Puerto Rican Legal Defense & Education Fund; however, in response to Question 25, you indicate that you served as First Vice President. Please clarify your response and supplement as necessary.
- 2) Question 12(a) requires lists and copies of materials written *or edited*. You have been widely described as an editor of the Yale Law Journal and as Managing Editor of the Yale Studies in World Public Order. However, you have not provided any copies of materials from either publication. Please provide the Committee with copies of any materials you edited during your tenure as an editor of both law reviews.

- 3) Question 12(b) requires copies and or/descriptions of certain reports, memoranda, or policy statements prepared by specified organizations. You have stated that “As a member of various court committees, I have prepared and contributed to numerous reports and memoranda on court issues, which relate to internal court deliberations and are not available for public dissemination.” However, the question is not limited to publicly available reports. Please provide such reports and memoranda.
- 4) Also with respect to Question 12(b), you initially omitted a report concerning the death penalty that you drafted during your time on the Board of the Puerto Rican Legal Defense & Education Fund. We would appreciate confirmation that a thorough review of those records has been completed, given the initial omission, and that you have provided all relevant documents to the Committee in response to this question.
- 5) Question 13(g) requires a brief summary of and citations for all opinions where decisions were reversed by a reviewing court or where the judgment was affirmed with significant criticism. For opinions not officially reported, copies are requested. Although you indicate with respect to *Bernard v. Las Americas Communications, Inc.*, that there was no formal opinion, you make no such representation with respect to the *United States v. Gottesman* opinion or the *United States v. Bauers* opinion—yet it does not appear that copies of these opinions have been provided. Please clarify your response.
- 6) Question 16(d) asks about trial experience and requires “opinions and filings” for cases going to verdict, judgment, or final decision. For three cases you have indicated that “The Manhattan District Attorney’s Office is searching its records for information on this case.” Please provide us with this information as a supplement to the questionnaire.
- 7) Also with respect to Question 16(d), you state: “I tried an additional 14 cases during my time as an assistant district attorney, from 1979 to 1984. The Manhattan District Attorney’s Office is searching its records for further information on these cases.” Please provide us with this information as a supplement to the questionnaire.
- 8) Question 16(e) asks about appellate practice. Nominees are asked to provide copies of briefs and (if applicable) oral argument transcripts. You state: “I have requested the briefs and any available transcripts from these cases from the Clerk of the Court of the Second Circuit on May 30<sup>th</sup> and will forward to the Committee as soon as I receive them.” Please provide us with this information as a supplement to the questionnaire.

We are also concerned that some of your responses fail to provide the Committee with the information to which it is entitled in reviewing your nomination.

- 1) In response to Question 11(b), you state that you are a member of an organization, the Belizean Grove, that discriminates on the basis of sex. However, you indicate that you “do not consider the Belizean Grove to invidiously discriminate on the basis of sex in violation of the Code of Judicial Conduct.” Please explain the basis for your belief that membership in an organization that discriminates on the basis of sex nonetheless conforms to the Code of Judicial Conduct.
  
- 2) Question 12(d) requires a list of speeches, remarks, lectures, etc., given by the nominee or, in the absence of prepared texts/outline/notes, then a *summary* of the subject matter (not a topic or a description). We believe that numerous entries in your list do not provide a “summary” of your remarks; instead, they set forth general topics. For example:
  - “I spoke on Second Circuit employment discrimination cases”;
  - “I spoke at a federal court externship class on Access to Justice”;
  - “I spoke on the United States Judicial System”;
  - “I participated in a symposium on post-conviction relief. I spoke on the execution of judgments of conviction”;
  - “I spoke on the implementation of the Hague Convention in the United States and abroad”;
  - “I participated in an ACS Panel discussion on the sentencing guidelines”;
  - “I participated in a roundtable discussion and reception on ‘The Art of Judging’”;
  - “I contributed to the panel, ‘The Future of Judicial Review: The View from the Bench’ at the 2004 National Convention. The Official theme was ‘Liberty and Equality in the 21<sup>st</sup> Century’”

This list is not exhaustive.

In addition, we are concerned about the fact that you have failed to provide a draft, video, or transcript for more than half of your speeches, remarks, lectures, etc. According to your questionnaire, you have identified 191 occasions responsive to the questionnaire. For 98, you stated that you could not locate any record, for one you stated that you gave a standard speech, for two you cross-referenced a different speech, for 81 you provided a draft or video, and for eight you provided news clippings instead of a draft, transcript or remarks. We are particularly troubled because there may well be transcripts available for certain remarks: for example, a

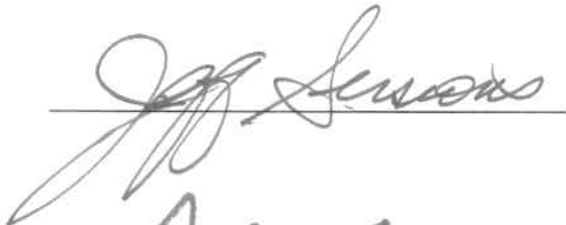
transcript of the 2004 panel entitled "The Future of Judicial Review: The View from the Bench" was available online.

Please advise us of the process you undertook to search for these speeches, and for those that you are unable to provide to the Committee, please provide a more thorough explanation of the content of each speech.

Although you have provided a great deal of information to the Committee, and we appreciate your efforts, it is important that your information be complete to permit the Committee to properly evaluate your record in the short time that has been provided.

Thank you for your attention to this matter. We look forward to your receiving your supplemental answers as soon as possible.

Sincerely,



Jeff Sessions



Chuck Grassley



John Cornyn



Tom Kyl



Tom Coburn



J. Th



Devin Hatch