

UNITED STATES SENATE
 COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Sonia Sotomayor -- October 1983 to the Present.

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

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

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

RESIDENCE:

New York, New York

OFFICE:

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

3. Date and place of birth.

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

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

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

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

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

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

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

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

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

No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Member, Puerto Rican Bar Association, 1994 to present.

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

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

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

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

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Member, Hispanic National Bar Association, 1992 to present.

Member, American Bar Association, 1980 to present.

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

None.

Please list all other organizations to which you belong.

None.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Copies of opinions not officially published are attached.

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

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

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

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

17. **Legal Career:**

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

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

No.

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

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

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

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

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

See I(b)(2) below.

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

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

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

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

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

2. What percentage of these appearances was in:

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

3. What percentage of your litigation was:

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

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

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

5. What percentage of these trials was:

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

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

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

I list the ten litigated matters in reverse chronological order.

1.

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

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

Index No.: 90 Civ. 4170

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

Date of Trial: March 16, 1992

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

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

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

2.

Administrative

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

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

Protest No.: PR-973-88

Administrative

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

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

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

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

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

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

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

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

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

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

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

3.

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

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

Case No.: 3-89-03450-TC

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

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

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

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

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

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

4.

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

Case No.: 86 Civ. 0671

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

Solomayor Senate Questionnaire

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

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

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

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

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

Case Description: Combined Case Description in 5 below.

5.
Case Name: Fendi S.a.s. di Paola Fendi e Sorelle v. Cosmetic World, Ltd., Loradan Imports, Inc., Linea Prima, Inc. a/k/a Lina Garbo Shoes, Daniel Bensoul, Michael Bensoul a/k/a Nathan Bendel, Paolo Vincelli and Mario Vincelli

Case No.: 85 Civ. 9666

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

Sotomayor Senate 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

Co-Counsel: Frances B. Bernstein
 (Deceased)

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

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

**Date of Inquest
 Hearing:**

1/6/88

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

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

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

6.

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

Case Nos.: 90-7322 and 90-7398

Court: United States Court of Appeals for the Second Circuit

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

Sotomayor Senate Questionnaire

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

Hon. George C. Pratt
U.S. Circuit Judge
U.S. Courthouse
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Co-Counsel:

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Roy L. Reardon, Esq. (455-2840)
David E. Massengill, Esq. (455-3555)
Simpson Thacher & Bartlett
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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

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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
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David Glasser, Esq.
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(212) 867-3636

Sotomayor Senate Questionnaire**Participating
Adversaries****Opposing Motion:**

Jeffrey J. Greenbaum, Esq.
James M. Hirschhorn, Esq.
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
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(201) 643-7000

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

Date of Argument: 2/12/90

Case Description:

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

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7.

Case Name: Misrocchi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.**Case No.:** 85-7734**Court:** United States Court of Appeals for the Second Circuit**Panel:** Hon. J. Edward Lumbard
Senior Judge
U.S. Circuit Judge
U.S. Courthouse
Foley Square
New York, New York 10007
(212) 857-2300Hon. James L. Oakes
Then-Chief Judge
U.S. Circuit Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 857-2400Hon. 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
61 Weybosset Street
Providence, Rhode Island 02903
(401) 831-2700**Date of Argument:** 9/17/84

AND

Sotomayor Senate Questionnaire**District Court****Case Name:** Miserocchi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.**Case No.:** 84 Civ. 6112**Court:** United States District Court, Southern District of New York**Judge:** Hon. Kevin Thomas Duffy
U.S. District Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 805-6125**Co-Counsel:** David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
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(212) 980-3500**Adversary:** Stephen P. Sheehan
Wistow & Barylck
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 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

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

8.

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

Indictment No.: 4581/82

Judge: Hon. Thomas B. Galligan (retired)
Then-Acting Justice, Supreme Court,
c/o Administrative Judge's Office
Juanita Newton
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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
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(212) 382-6619

Adversaries: Steven Kimelman, P.C.
Attorney for Scott Hyman
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(212) 421-5300

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

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

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

9.

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

Indictment No.: 886/82

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

Sotomayor Senate Questionnaire

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

Lead Counsel: Hugh H. Mo, Esq.
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New York, New York 10022
(212) 750-8000

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

Dates of Trial: Almost all of January 1983

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