AMERICAN BAR ASSOCIATION

STATEMENT

OF

KIM J. ASKEW

STANDING COMMITTEE ON THE FEDERAL JUDICIARY
AMERICAN BAR ASSOCIATION

concerning the

NOMINATION OF

THE HONORABLE SONIA SOTOMAYOR

to be an

ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES

before the

COMMITTEE OF THE JUDICIARY
UNITED STATES SENATE

JULY 16, 2009

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

VerDate Nov 24 2008 11:18 Jun 24, 2010 Jkt 056940 PO 00000 Frm 00781 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\56940.TXT SJUD1 PsN: CMORC

56940.367

Mr. Chairman and Members of the Committee:

My name is Kim J. Askew of Dallas, Texas, and it is my privilege to chair the American Bar Association Standing Committee on the Federal Judiciary. I am joined today by Mary M. Boies of New York, our Second Circuit representative and the lead evaluator on the Standing Committee's investigation of Judge Sonia Sotomayor. We are honored to appear here today to explain the Standing Committee's evaluation of the professional qualifications of Judge Sotomayor to be Associate Justice of the Supreme Court of the United States. I am pleased to report that the Standing Committee gave her its highest rating and found her "Well Qualified."

The Standing Committee has conducted its unique and comprehensive evaluations of the professional qualifications of nominees to the federal bench since 1948. Our Committee is composed of fifteen distinguished lawyers from every federal circuit in the United States. These lawyers, who voluntarily provide hundreds of hours of service to this Committee every year, each conduct a thorough, non-partisan, non-ideological peer review of each nominee using long-established standards that measure a nominee's integrity, professional competence, and judicial temperament. The Standing Committee does not propose, endorse or recommend nominees. Its sole function is to evaluate the professional qualifications of a nominee and then rate the nominee either "Well Qualified," "Qualified," or "Not Qualified."

The Standing Committee's investigation of a nominee for the United States Supreme Court is based upon the premise that the nominee must possess exceptional professional qualifications. The significance, range, complexity and nation-wide impact of issues that such a nominee will confront on the Court demands no less. As such, our investigation of a Supreme

VerDate Nov 24 2008 11:18 Jun 24, 2010 Jkt 056940 PO 00000 Frm 00782 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\56940.TXT SJUD1 PsN: CMORC

56940.368

Court nominee is more extensive than nominations to the lower federal courts, and procedurally different in two principal ways.

First, Standing Committee members conduct investigations into the nominee's professional qualifications in every federal circuit in the United States, not only in the resident circuit of the nominee. Standing Committee members conducted hundreds of confidential interviews concerning Judge Sotomayor's professional qualifications. Each Standing Committee member prepared a confidential circuit report which is included in the comprehensive confidential final report on which the Standing Committee bases its rating.

Second, the Standing Committee commissioned three Reading Groups of distinguished scholars and practitioners to review the nominee's legal writings and advise the Standing Committee. Judge Sotomayor has been a prolific writer over her nearly seventeen years of service as a judge. Two of the nation's leading law schools, Georgetown University Law Center and Syracuse University College of Law, formed Reading Groups composed of professors who are recognized experts in the substantive areas of law they reviewed. Collectively, these professors have decades of practice in law firms, non-profit organizations and state and federal government.

The Practitioners' Group is composed of nationally recognized lawyers with substantial trial and appellate practices. All of the readers are familiar with Supreme Court practice and most have briefed and argued cases in the Supreme Court or are former law clerks to Justices on the Supreme Court. The Reading Groups are guided by the same standards that are applied by the Standing Committee, and assist in evaluating the nominee's analytical skills, knowledge of the law, application of the facts to the law, and the ability to communicate effectively.

VerDate Nov 24 2008 11:18 Jun 24, 2010 Jkt 056940 PO 00000 Frm 00783 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\56940.TXT SJUD1 PsN: CMORC

56940.369

As with every nomination, the Standing Committee undertook an extensive investigation into the professional qualifications of Judge Sotomayor. We initially contacted some 2,600 persons who potentially had knowledge of Judge Sotomayor's professional qualifications, including every federal judge in United States, state judges, lawyers, and community and bar representatives. The Committee received responses from over 850 persons, and Standing Committee members personally interviewed or received letters or emails from over 500 judges and lawyers who knew Judge Sotomayor or had appeared before her. Lawyers and judges often provided court transcripts, speeches and briefs for the Standing Committee's consideration. The Committee Members and the reading groups collectively analyzed over 1,000 of Judge Sotomayor's opinions, speeches and other writings.

The Standing Committee based its evaluation on these interviews with more than 500 judges, lawyers, law professors and community representatives from across the United States; analyses of the opinions, speeches and other writings of Judge Sotomayor; reports of the three Reading Groups; and an in-depth personal interview of the nominee that was conducted by Second Circuit Representative Boies and Chair Askew on June 26, 2009. Each member of the Standing Committee reviewed the final report and individually evaluated the nominee using one of the three ratings previously mentioned. The 2008-09 Standing Committee unanimously concluded that Judge Sotomayor was "Well Qualified" to be Associate Justice of the United States.

The Standing Committee concluded that Judge Sotomayor's integrity, professional competence and judicial temperament meet the high standards for appointment to the Supreme Court of the United States. Judge Sotomayor has distinguished herself throughout her career as a prosecutor, lawyer in private practice, judge and adjunct professor and legal lecturer. She has

VerDate Nov 24 2008 11:18 Jun 24, 2010 Jkt 056940 PO 00000 Frm 00784 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\56940.TXT SJUD1 PsN: CMORC

56940.370

served with distinction for almost seventeen years on the federal bench, as a District Court Judge and as a member of the Second Circuit Court of Appeals. She has shown leadership through her service on court and judicial administration committees, including budget, technology and court administration and case management committees. She has taught for ten years at Columbia University School of Law and New York University School of Law. Her work in the community is well-known. The nominee is the recipient of honorary degrees and many awards that recognize her professional excellence and contributions to the profession. She is admired and respected by her peers and colleagues.

Judge Sotomayor has a reputation for integrity and outstanding character and is universally praised for her diligence and industry. Her professional competence places her at the top of the profession. She has an outstanding intellect, strong analytical abilities, sound judgment, an exceptional work ethic, and is known for her detailed courtroom preparation and thorough decisions. As a judge, she has written on a range of complex issues and has mastered even the most difficult or arcane areas of law. Her judicial temperament meets the high standards for appointment to the Supreme Court.

Concerns were raised during our evaluation regarding the nominee's writing and some aspects of her judicial temperament. We have carefully reviewed these concerns through interviews and reviews of her writings, and have resolved them to our satisfaction. These are set forth in detail in the accompanying correspondence to this Committee, which we ask to be made a part of the record. In determining that these concerns did not detract from the highest rating of "Well Qualified" for Judge Sotomayor, the Standing Committee was persuaded by the judge's overall record of seventeen years of distinguished service on the court, and the overwhelming

VerDate Nov 24 2008 11:18 Jun 24, 2010 Jkt 056940 PO 00000 Frm 00785 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\56940.TXT SJUD1 PsN: CMORC

56940.371

responses of lawyers and judges who praised Judge Sotomayor on all three criteria, including her professional competence as demonstrated in her writings and her overall judicial temperament.

On behalf of the Standing Committee, thank you for the opportunity to present these remarks.

VerDate Nov 24 2008 11:18 Jun 24, 2010 Jkt 056940 PO 00000 Frm 00786 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\56940.TXT SJUD1 PsN: CMORC

56940.372

CHAIR
Kim J. Askew
Suite 2800
1717 Main Street
Dallas, TX 75201-7342

FIRST CIRCUIT
William J. Kayatta, Jr.
1 Monument Square
Portland, ME 04101-4033

SECOND CIRCUIT
Mary M. Boies
333 Main Street
Armonk, NY 10504

THIRD CIRCUIT
Edward B. Deutsch
P.O. Box 2075
1300 Mount Kemble Avenue
Morristown, NJ 07962-2075

FOURTH CIRCUIT
Harry S. Johnson
7 Saint Paul Street
Baltimore, MD 21202-1626

FIFTH CIRCUIT
David W. Clark
Suite 450
One Jackson Place
188 East Capitol Street
Jackson, MS 39201

SIXTH CIRCUIT
José C. Feliciano
3200 National City Center
1900 East Ninth Street
Cleveland, OH 44114-3485

SEVENTH CIRCUIT
Richard J. Gray
Suite 4100
330 North Wabash Avenue
Chicago, IL 60611

EIGHTH CIRCUIT
Maury B. Poscover
Suite 600
190 Carondelet Plaza
Saint Louis, MO 63105-3441

NINTH CIRCUIT
Allan J. Joseph
10th Floor
311 California Street
San Francisco, CA 94104-2695

Alan Van Etten
Suite 770
Pauahi Tower
1003 Bishop Street
Honolulu, HI 96813

TENTH CIRCUIT
Mary A. Wells
Suite 1020
1700 Broadway
Denver, CO 80290-1001

ELEVENTH CIRCUIT
Leonard H. Gilbert
P.O. Box 1288
Tampa, FL 33601-1288

D.C. CIRCUIT
Carolyn H. Williams
725 12th Street, N.W.
Washington, DC 20005-5901

FEDERAL CIRCUIT
Joseph M. Potenza
Suite 1200
1100 13th Street, N.W.
Washington, DC 20005-4056

BOARD OF GOVERNORS
LIAISON
W. Anthony Jenkins
Suite 4000
500 Woodward Avenue
Detroit, MI 48226-3403

STAFF LIAISON
Denise A. Cardman
202-662-1761
cardmand@staff.abanet.org

AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

July 15, 2009

The Honorable Patrick J. Leahy
Chair, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Standing Committee Evaluation
Nomination of the Honorable Sonia Sotomayor to be
Associate Justice of the Supreme Court of the United States

Dear Mr. Chairman:

This letter is submitted in response to the invitation from the Senate Committee on the Judiciary to the American Bar Association Standing Committee on the Federal Judiciary ("Standing Committee") to present its statement on the evaluation of the Honorable Sonia Sotomayor to be Associate Justice of the United States Supreme Court.

President Obama announced his nomination of Judge Sotomayor for Associate Justice on May 26, 2009. The Standing Committee began its evaluation that very day and continued its work for the next several weeks. This letter outlines the nature, scope and findings of the Standing Committee's evaluation. The Standing Committee unanimously concluded that Judge Sotomayor merits our highest rating and is "Well Qualified" for appointment to the Supreme Court of the United States.

56940.373

As with nominations to the lower federal courts, the Standing Committee's evaluation of Judge Sotomayor is based on a comprehensive, non-partisan, non-ideological peer review of the nominee's integrity, professional competence and judicial temperament. The Standing Committee did not base its rating on or seek to express any view regarding Judge Sotomayor's ideology, political views or political affiliation. It also did not seek to determine how Judge Sotomayor might vote on specific issues or cases that might come before the Supreme Court of the United States.

THE STANDING COMMITTEE'S EVALUATION PROCESS

I. The Process

As set forth in the ABA's *Backgrounder*:

> To merit the Committee's rating of "Well Qualified," a Supreme Court nominee must be a preeminent member of the legal profession, have outstanding legal ability and exceptional breadth of experience, and meet the very highest standards of integrity, professional competence and judicial temperament. The rating of "Well Qualified" is reserved for those found to merit the Committee's strongest affirmative endorsement.[1]

In arriving at its conclusion that the nominee meets these criteria, the Standing Committee considered four primary sources of information:

A. Solicitation of Comments from Persons Likely to Have Relevant Information

The fifteen members of the Standing Committee contacted in writing or by phone over 2,600[2] individuals from all over the country whom the Standing Committee believed might have information to provide that would be relevant to our evaluation. The individuals from whom we

[1] American Bar Association, *Standing Committee on the Federal Judiciary What it is and How it Works* ("Backgrounder") at p 10.

[2] The Standing Committee contacted over 2,600 persons who might have knowledge of the professional qualifications of the nominee. We received responses from some 850 persons. The Committee obtained input on Judge Sotomayor's professional qualifications from over 500 lawyers, judges, law professors, and members of the community.

solicited input included justices of the Supreme Court of the United States, judges on the Courts of Appeals and District Courts, United States Magistrate Judges and United States Bankruptcy Judges. These judges included all of Judge Sotomayor's colleagues on the United States Court of Appeals for the Second Circuit ("Second Circuit") and her former colleagues on the United States District Court for the Southern District of New York. As a result of this outreach, we received substantive input from federal judges from around the country who had sat both regularly and by designation on hundreds of panels of the Second Circuit with Judge Sotomayor and on judicial and court administration committees.

As part of this process, the Standing Committee also contacted state court judges, co-counsel, opposing counsel and lawyers who had appeared before Judge Sotomayor during her near 17-year tenure as a federal judge. These included lawyers from across the country, many who won their particular cases and many who lost.

Those from whom the Standing Committee sought input also included all lawyers and judges identified in the nominee's Personal Data Questionnaire who had knowledge of her professional qualifications. In addition to information on their knowledge of the nominee's professional qualifications, judges and lawyers provided information for the Standing Committee's consideration such as court transcripts, briefs and speeches. They also identified other lawyers and judges with knowledge of the nominee's professional qualifications who were then contacted by the Standing Committee. The Committee interviewed law school deans, law school faculty and legal scholars, many with personal knowledge of the nominee's professional qualifications and others who regularly studied her opinions in various substantive areas of law. Because of Judge Sotomayor's long-standing and extensive community service, the Committee also interviewed many non-lawyers.

B. Review of the Nominee's Writings

The Standing Committee members read the Second Circuit opinions of the nominee, all of her District Court opinions that had been reversed, criticized, or vacated on appeal, and various speeches and writings. We also commissioned three "Reading Groups" to provide us with detailed feedback regarding the degree of professional competence demonstrated in a wide and representative range of the nominee's writings. These groups independently evaluated the nominee's legal writings for analytical ability, clarity, knowledge of the law, application of law to facts, and the ability to communicate effectively.

Two of the nation's leading law schools, Georgetown University Law Center and Syracuse University College of Law, assembled groups of accomplished law professors with specialized knowledge in the substantive matters covered by the opinions they analyzed and decades of legal practice in law firms, non-profits organizations, and state and federal governments. Michael Gottesman, Professor of Law, led the Reading Group of 13 professors at Georgetown. Lisa A. Dolak, Board of Advisors Professor of Law, led the 12 professors who participated in the Syracuse Reading Group. Roberta D. Liebenberg and Thomas Z. Hayward, Jr., both former Chairs of this Standing Committee, led the Practitioners' Reading Group, which consisted of 11 distinguished lawyers from around the country with substantial trial and appellate practices. Many of the readers are former law clerks to Justices on the Supreme Court and have briefed and argued cases in the Supreme Court. The members of the Reading Groups and the substantive areas of their expertise and review are listed in Exhibits A, B, and C appended to this letter.

The law libraries at Georgetown and Syracuse greatly facilitated the analyses of the nominee's writings by establishing a courseware site containing the nominee's published and

unpublished opinions, articles, previous confirmation testimony, and speeches. This voluminous collection of material was indexed according to more than 50 subject matters, with categories ranging from constitutional and individual substantive areas of law to federal statutes and state laws. The Standing Committee and the Reading Groups had full access to this site.

While the Reading Groups focus primarily on the nominee's professional competence, their analyses also provide useful guidance in assessing the integrity and judicial temperament of the nominee. The Standing Committee and Reading Groups collectively reviewed over 1,000 of Judge Sotomayor's published and unpublished opinions, articles, immigration orders, *en banc* decisions and speeches. The Standing Committee again thanks the Reading Groups for their thoughtful and insightful work.

C. Prior Ratings

The Standing Committee considered its evaluations of Judge Sotomayor when she was nominated to the United States Court of Appeals for the Second Circuit in 1997 and to the United States District Court for the Southern District of New York in 1991. Her rating in 1997 was "Well Qualified," with a minority of the Standing Committee finding her "Qualified." The 1991 rating was "Qualified," with a minority of the Committee found her "Well Qualified."[3]

D. Interview of the Nominee

Second Circuit representative Mary M. Boies and Chair Kim J. Askew personally interviewed Judge Sotomayor in her chambers at the United States Courthouse in Manhattan.[4]

---

[3] The majority rating of the Standing Committee is the official rating. The minority rating is given for informational purposes only.

[4] Following its usual practice, the Committee interviewed the nominee after it reviewed her writings and had conducted most of the interviews with persons having knowledge of the nominee's personal qualifications so that adverse information, if any, could be fully discussed with the nominee in her interview.

THE EVALUATION OF JUDGE SOTOMAYOR'S PROFESSIONAL QUALIFICATIONS

1. Integrity

In evaluating integrity, the Standing Committee considers the nominee's character and general reputation in the legal community, as well as the nominee's industry and diligence. The Committee also considers the extent to which there have been any findings of ethical violations or the like by a nominee. Judge Sotomayor has earned and enjoys an excellent reputation for integrity and outstanding character. Lawyers and judges uniformly praised the nominee's integrity as follows:

> "Integrity - the highest. She is impeccable in this regard."
>
> "She always acts as a judge with integrity."
>
> "She is a totally upright judge. She is devoted to the law."
>
> "[She gets] the highest possible marks on character. She is totally incorruptible. She has extraordinary dedication to being a good judge and she works very hard."
>
> "Judge Sotomayor displayed the highest level of character possible."
>
> "She has great integrity."
>
> "She is a person of utmost integrity and good character…"

Judge Sotomayor is universally praised for her industry and diligence and is recognized as one of the hardest-working judges on her court. On the basis of hundreds of interviews with members of the legal profession and community and a review of her writings, the Standing Committee concluded that Judge Sotomayor possesses the integrity required to receive a "Well Qualified" rating.

2. Professional Competence

"Professional competence" encompasses such qualities as intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience. A

Supreme Court nominee must possess "exceptional professional qualifications," including an especially high degree of legal scholarship, academic talent, analytical and writing abilities, and overall excellence. The nominee must be able to write clearly and persuasively, harmonize a body of law, apply the law to the facts, and give meaningful guidance to the trial and circuit courts and the bar.[5] Judge Sotomayor's professional competence is exceptional.

Judge Sotomayor possesses a strong educational background and a broad range of professional experience. She graduated from Princeton University, *summa cum laude*, in 1976 where she was a member of *Phi Beta Kappa*. She obtained her law degree from Yale Law School in 1979 and served as an Editor of the *Yale Law Journal*. Upon graduation from Yale, Judge Sotomayor began her legal career as an Assistant District Attorney prosecuting criminal cases in the New York County District Attorney's Office. She next spent eight years in private practice handling trials and arbitrations.

In 1992, she began six years of service as a judge on the United States District Court for the Southern District of New York. Since 1998, she has served as a Circuit Judge on the United States Court of Appeals for the Second Circuit. During her tenure as a judge, she also served as a Lecturer-in-Law at Columbia University and as an Adjunct Professor at New York University Law School. Lawyers and judges identified Judge Sotomayor's broad-based experience as a prosecutor, litigator, and trial and appellate court judge as significant strengths she would bring to the Supreme Court.

Throughout her career, Judge Sotomayor has shown an outstanding intellect, industry, and a superior work ethic. In her early career, she was known as a "tough and skilled" prosecutor whose trial skills and abilities often exceeded those of her peers and more senior prosecutors. As

[5] *Backgrounder* at p. 9.

a United States District Judge, she had a well-known ability to command a courtroom and move cases to trial. She has a reputation for being one of the hardest working and best prepared judges on the Second Circuit. She is well informed and her judgment is sound. She is industrious and possesses a work ethic described as "amazing," "extraordinary," and "exceptional." She is known among the bar and her colleagues for her preparedness at oral argument and the vigor and incisiveness of her questioning. Judge Sotomayor has been awarded several honorary degrees and long recognized for her service to the community and profession by community organizations and bar associations.

Lawyers and judges spoke of the nominee's professional competence:

> "Her professional competence and intellectual capacity are at the top. She has the superior breadth of experience."
>
> "Judge Sotomayor is held in the highest regard for her abilities as a jurist, including her strong intellect, scholarship and knowledge of the law. She is greatly respected for her integrity, fairness and civility and her work ethic is virtually legendary. As a member of the United States Court of Appeals for the Second Circuit, Judge Sotomayor has decided some of the most difficult legal issues of the day with intelligent, well-reasoned decisions that have won her the respect of her colleagues and the entire legal establishment. On the District Court, she was widely regarded as a stellar trial judge who could command a courtroom and move the toughest cases expeditiously."
>
> "Judge Sotomayor is a gifted, bright and good judge."
>
> "The judge enjoys a phenomenal reputation and her legal acumen is well known and highly praised in legal and judicial circles."
>
> "She is just outstanding, brilliant and hard working."
>
> "I have the highest regard for Judge Sotomayor's intellect and legal ability. She has the great ability to zero in on the key issue."
>
> "She has impressive intellectual capacity and her writing and analytical skills are top-notch."

The Reading Groups addressed her professional competence:

> "[T]he opinions I have reviewed speak very highly of Judge Sotomayor's professional competence. In particular they demonstrate that she has excellent analytical abilities."
>
> "My review of Sotomayor's work indicates that she has exceptional professional qualifications. She is highly competent and has a well-demonstrated judicial temperament. Her knowledge is both broad and deep. She writes clearly and reasons with great intelligence."
>
> "Her decisions are detailed and quite comprehensive, as she strives to address all of the relevant facts and argument of the parties, the decision being reviewed, and the applicable case law. She consistently demonstrates intellectual vigor and honesty and her opinions provide meaningful guidance to the parties, lower courts and practitioners. ...Accordingly, Judge Sotomayor easily satisfies the criterion of professional competence."

In her nearly 17 years on the federal bench, Judger Sotomayor has been a prolific writer. Her opinions are well-reasoned, well-organized, meticulously researched, easily understandable, and demonstrate a profound command of the law, even when sophisticated and complicated factual and legal issues are presented. Her writing style is direct. As a reader succinctly noted: "As a matter of style, Judge Sotomayor's opinions are precise, confident and decisive." She has written on a range of issues and has demonstrated an intellectual mastery[6] of the varied subjects on which she has written. Another Reading Group member noted: "No issue, no matter how arcane or difficult, escaped the nominee's grasp." Her opinions are respectful and professional in tone and approach even when she writes in dissent or disagrees with the position of another judge or party.

Reading Groups made the following additional assessments regarding Judge Sotomayor's opinions:

> "[H]er writing and analytical skills are top-notch."

---

[6] All of the Reading Groups noted that Judge Sotomayor had been exposed to a wide range of issues and had demonstrated the ability to master complex and often arcane areas of law and to write cogently in resolving those issues.

56940.381

> "Without exception, each and every opinion ... could be characterized as exhaustingly thorough ... scrupulously researched, transparent in the analysis, and clearly organized. No shortcuts to results without impressive and overwhelming background research and analysis of every claim. No stone unturned, no path avoided."
>
> "[I] find the written opinions of Judge Sotomayor to be even-handed, extremely articulate and carefully reasoned. They are analytical, logical and appropriate nuanced. They betray a keen intelligence, a wonderful writing ability and an extraordinary grasp of both facts and law pertinent to the cases."
>
> "Her opinions are well organized and she is able to write about complicated legal theories and complex transactions in a way that can be easily understood."
>
> "Her opinions are clear, fluid, meticulously reasoned and supported point-for-point with applicable case law."
>
> "Judge Sotomayor's opinions are precise, confident and decisive. She does not engage in extraneous editorializing."

The Standing Committee also considered comments, including some from members of the Reading Groups, that criticized Judge Sotomayor's opinions as less than imaginative, lacking in flourishes, and lengthy. These criticisms are about writing style, not substance. All of the Reading Groups noted her careful approach to drafting opinions, which one group aptly described as follows: "In virtually every opinion, she provides an extremely detailed recitation of the facts, a list of every argument advanced by each side, and a lengthy articulation of the applicable law. She then addresses and resolves every argument advanced." The aspects of her writings that drew some criticism, specifically the lack of rhetorical flourishes and the lengthy discussions of all issues raised, are each signs of strong analysis and an attempt by the nominee to show litigants that their positions are thoroughly and carefully considered by the court.

She also seeks to give guidance to the lower courts. A judge commented that Judge Sotomayor writes opinions that allow judges to "figure out the holding and then understand where to go from there." Another applauded her opinions as "clear, forceful and helpful to the lower courts." She "understands the consumers of our opinions: the parties, the district courts

and the practicing bar. Judge Sotomayor writes with clarity for these groups." A noted law professor teaches from Judge Sotomayor's opinions in her civil procedure class because they are good examples "of careful, lawyerly writing."

Judge Sotomayor's opinions show an adherence to precedent and an absence of attempts to set policy based on the judge's personal views. Her opinions are narrow in scope, address only the issues presented, do not revisit settled areas of law, and are devoid of broad or sweeping pronouncements. Analyses from the Reading Groups include:

> "Judge Sotomayor is a very strong adherent of judicial restraint. She applies and follows Supreme Court and Second Circuit precedent faithfully, without attempting to find artful ways to distinguish it."
>
> "She is clear regarding those issues she is deciding and those she is not. She does not address issues not properly before her."
>
> Her opinions "do not appear to be platforms for the nominee to express political or philosophic views."

Judges and lawyers confirm her adherence to judicial precedent:

> "She is not an activist. … She focuses on the issue the court has to decide rather than pontificating on big, big issues. She is a business-like judge who focuses on deciding the cases before her, on the particular set of facts and body of laws."
>
> "She is "so on-the-books-law-and-order" and "so not a judicial activist."
>
> "She follows precedent. Some opinions for which she is criticized are the ones in which she is following precedent."

Based on the foregoing, the Standing Committee concluded that Judge Sotomayor has consistently demonstrated the highest level of professional competence.

3. <u>Judicial Temperament</u>

In evaluating "judicial temperament," the Standing Committee considers the nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law.

56940.383

A. Compassion and Decisiveness

Lawyers and judges consistently give Judge Sotomayor the highest rating on compassion and decisiveness. The Standing Committee received no adverse comments in this regard. A judicial colleague noted that she goes out of her way to know everyone in the courthouse, including the maintenance staff and janitors who might be invisible to others. She works to give her full time and attention to the litigants and issues before her.

During the nominee's interview, the Committee raised the issue of "empathy" and whether she believes it has a proper role in judging. Judge Sotomayor stated that:

> [E]mpathy is listening, reading all the briefs and knowing the record. But listening is not judging. You listen intently to completely understand a party's position, but then you apply the law, wherever it takes you. Empathy does not decide cases. The law does. Nor does empathy towards one party result in prejudice to another.

She told the Committee, "If I understand one party's motivations or intentions, that does not minimize those of the other party. The law decides the case."

Judge Sotomayor is unquestionably decisive. Many attribute this to her broad experiences as a prosecutor, private lawyer and trial judge.

B. Concerns Regarding Judicial Temperament

Two areas of concern regarding judicial temperament were raised by a very small number of those interviewed: (a) her "aggressive" questioning at oral argument, which resulted in the occasional comment that she was discourteous, condescending, did not listen to arguments, and did not always display appropriate judicial demeanor; and (b) a concern that comments such as those in the "wise Latina woman" or "wise woman" speeches reflect a possible lack of commitment to equal justice under the law or suggested that the nominee was result-oriented and

not free from bias, especially on issues of national origin, race or gender.[7] These concerns were thoroughly examined through interviews, a careful review of her opinions and in our interview with the nominee.

i. Style of Questioning at Oral Argument

While judges and lawyers overwhelmingly praised Judge Sotomayor's courtesy and patience, a very small number criticized her for her "aggressive" questioning during oral argument, her purported lack of courtesy and patience, and her failure to listen to arguments. After thoroughly investigating each criticism, the Standing Committee ultimately agreed with the overwhelming weight of opinion, shared by judges, lawyers, courtroom observers, and former law clerks, that her style on the bench is: (a) consistent with the active questioning style that is well known on the Second Circuit; (b) directed at the weak points in the arguments of parties to the case, even though it may not always seem that way to the lawyer then being questioned; (c) designed to ferret out relative strengths and shortcomings of the arguments presented; and (d) within the appropriate bounds of judging.

Judge Sotomayor is unquestionably an assertive and direct questioner of lawyers who appear before her and is an active participant in debating the merits of cases with colleagues in conference. As noted above, this sort of interaction is not unusual for the Second Circuit on which she sits. According to the comments of those interviewed, she comes to arguments well-

[7] Judge Sotomayor used the words: "I would hope that a wise Latina woman [or a wise woman] with the richness of her experiences would, more often than not, reach a better conclusion than a white male." Judge Sotomayor made these comments during at least four speeches presented at: the 40th National Conference of Law Reviews in Puerto Rico (1994); the Woman's Bar Association of the State of New York at the Tarrytown Conference Center (1999); a Symposium at the University of California, Berkeley School of Law Symposium (2001); and the Princeton Women's Network of New York City at the Princeton Club (2002).

prepared and is known for her thorough knowledge of the record. The vast majority of lawyers who offered comments appreciated her style:

> "She is everything you would want in a judge. Although she is tough, her temperament is very good. She is respectful of the lawyer."
>
> "She was incredibly prepared at the argument. She had the most detailed knowledge of the case of anyone on the Panel, and she asked about the weakest part of my case. She did the same with my adversary."
>
> "She was courteous but forceful with her questions. She always asked the right questions. She gets right to the point and doesn't mince words."

The Standing Committee interviewed over 500 lawyers and judges around the country and received negative comments from fewer than ten on these issues. Of course, the Standing Committee discussed these criticisms in detail with the nominee during our interview. She expressed suitable concern, while at the same time describing her approach at oral argument in a manner consistent with that described by the overwhelming majority of those interviewed. She assured the Standing Committee that while she is an assertive and active questioner, her purpose is only to understand the arguments on both sides. She prepares thoroughly and asks questions because it is her way of getting to the heart of the issues she must resolve. She says that her intent is to thoroughly probe conflicting positions to obtain all relevant information before making a decision.

The comments of judges on the Second Circuit, others who sat by designation with Judge Sotomayor, and courtroom observers confirm that the nominee's judicial temperament is appropriate:

> "I have never seen her be unkind to a lawyer. I have sat with two judges who were overbearing – but Judge Sotomayor has never done that."
>
> "Yes, she can be characterized as brusque. She is a forceful and assertive questioner especially if she perceives a weakness in the lawyer's case that the lawyer is trying to cover up. A lot of lawyers do not like that. She will point out

56940.386

> what the lawyers are trying to mask out. I see no basis for criticism in that regard."
>
> "She does not suffer unprepared lawyers easily. She is sharp with lawyers who are not prepared or who do not answer her questions. A lot of judges are like that and they should be. Basically, she's normal. She's not out of the mainstream. Some may feel intimidated, but I have seen judges who are a lot tougher than she."
>
> "She is an active questioner, maybe the tone is a bit off-putting to some lawyers, but the good practitioners recognize that while she occasionally adopts a sharp tone, she is not mean or demeaning."
>
> "She might be tough with lawyers who aren't prepared but I do the same thing. While she is hard-nosed and asks hard and direct questions, she is not rude. I have been judging long enough to know the difference between brusqueness and demanding preparation; I sit on many Circuit Courts around the country."

While the Standing Committee took all of the criticisms seriously and investigated each one, the Committee was persuaded by the overwhelming number of judges and lawyers who praised Judge Sotomayor for her patience, courtesy, and collegiality; believed her style of questioning was appropriate and temperate; and appreciated her preparedness and ability to hone in on the issues, and commitment to making decisions based on a thorough analysis of the facts presented and the law. Moreover, most lawyers regard a vigorous form of questioning as apt and desirable, providing counsel an opportunity to know the judge's mind and to respond accordingly.

ii. Freedom from Bias and Commitment to Equal Justice under the Law

The Standing Committee also addressed comments made by Judge Sotomayor in speeches, some of which recently raised questions as to whether she is biased in her decision-making or lacks a commitment to equal justice under the law. While the Standing Committee reviewed all of the nominee's speeches, we comment here on the statements in the speeches that

are frequently referred to as the "wise Latina woman" comments. We also addressed her comment in a 2005 symposium that the "Court of Appeals is where policy is made."[8]

We discussed these comments in great depth with Judge Sotomayor during her interview. She noted that the "wise Latina woman" comment needed to be evaluated in the context of the speeches in their entirety, which focused on the need for diversity in the judiciary. These speeches discussed several civil rights cases and how the presence of women and people of color on the federal bench might have affected the results in those cases. The Standing Committee read the speeches in their entirety and considered the overall context. Nevertheless, viewed in isolation, the comment could be seen as expressing a view that could suggest bias in her perspective. The Standing Committee thus considered whether bias of any type was evident in the lengthy record of the nominee's conduct and decisions as a judge.

Based on the review of the written record described above, and the comments of lawyers and judges familiar with the nominee and her work, the Committee unanimously found an absence of any such bias in the nominee's extensive work. Lawyers and judges overwhelmingly agree that she is an absolutely fair judge. None (including those many lawyers who lost cases before her) reported to the Standing Committee that they have ever discerned any racial, gender, cultural or other bias in her opinions or any aspect of her judicial performance. Lawyers and judges commented that she is open-minded, thoroughly examines a record in far more detail than many circuit judges, and listens to all sides of an argument.

The Standing Committee received the following statements addressing the lack of bias in Judge Sotomayor's judicial performance and opinions:

[8] This statement was made at a Duke Law Symposium in 2005.

56940.388

> "She absolutely does not show the slightest bias be it racial, cultural or ethnic in her performance, opinions or conduct. We have many cases in which we can tell that a party is Hispanic and she has never shown the slightest indication of bias."
>
> "Absolutely nothing in her performance, opinion or conduct indicates racial, cultural or other bias."
>
> "She is not biased in any way. She tries to follow the law."
>
> "She has no racial or ethnic bias whatsoever."
>
> "I have never seen any indication of bias or tendency to favor one cultural or ethnic group over the other."
>
> "[I] has never seen any bias on her part. A lot of what is in the press right now is 'otherworldly.' She follows precedent."
>
> "Judge Sotomayor has no bias, no thumb on the scale."
>
> "It is 'just crazy' to claim that she has any bias, racially, culturally or otherwise.... She cares about the Hispanic community, and she will speak to those groups, but she leaves those views at home when she goes on the bench."
>
> "There is absolutely no racial or cultural bias in her decision-making. She is absolutely not a biased judge. Her opinions are shaped by her experiences as are everyone's -- whether they think that is true or not.... She does not paint the evidence into something based on a personal point of view."
>
> "She has never, never showed any racial or cultural bias."
>
> "[I have] never seen Judge Sotomayor act from any cultural or ethnic bias."
>
> "Judge Sotomayor has 'absolutely never' shown in her conduct, performance or opinions any bias if tendency to favor one group of class or party over another."

The Standing Committee also examined the statement made by Judge Sotomayor at a legal symposium that the "Court of Appeals is where policy is made." The Standing Committee concluded that the eontext of the statement makes it clear that she was referring to the fact that the courts of appeals, unlike the district courts, set precedent. Those interviewed believed that: "She is an absolutely straight judge. Every time a judge decides a case, that judge is making policy. Let's be honest about it." "That's just true. The Supreme Court statistically takes only

about 80 cases per year, so that means that for most cases the buck stops in the Court of Appeals."

While the Standing Committee is sensitive to any suggestion that a judicial nominee may lack appropriate judicial temperament and has accordingly given careful scrutiny to Judge Sotomayor's opinions, conduct and comments on and off the bench, the nominee's extensive record and the comprehensive scope of first hand feedback by the Standing Committee from sources all around the country allowed the Standing Committee to conclude unanimously that her judicial temperament meets the high standards for appointment to the Supreme Court.

CONCLUSION

Judge Sonia Sotomayor has distinguished herself in every aspect of her legal career. Whether as a prosecutor, lawyer, judge, or legal lecturer, Judge Sotomayor has set the highest standards for herself and, as recognized by numerous honorary degrees and awards, is a model of excellence in the profession. She is a highly intellectual and hard-working jurist. She understands the issues at many levels of tbe federal judicial system because she has seen them first-hand and addressed them through her work on administrative and judicial committees. She fosters excellence in the legal profession by teaching law students and sharing with them her vast experience and insights about the law and effective lawyering. She is well known for her volunteer work in the community over the years. She is deeply admired and respected and is clearly a role model to many.

The Standing Committee carefully examined all concerns that were raised. Our own investigation of these matters and the overwhelmingly positive feedback from lawyers and judges who have worked with her in various capacities led us to conclude that none of these

concerns detracted from the exceptional professional qualifications of this nominee. Indeed, Judge Sotomayor's distinguished background in practice and her exemplary performance on the federal bench for almost 17 years strongly override any of the concerns raised.

Judge Sotomayor meets the highest professional standards of professional competence, integrity and temperament. It is the unanimous opinion of the Standing Committee that she is "Well Qualified" to serve as Associate Justice of the Supreme Court of the United States.

In accordance with our procedures, the Standing Committee reserves the right to re-open this evaluation any time prior to the confirmation of Judge Sotomayor to be Associate Justice of the Supreme Court of the United States if new information of a material nature develops that warrants additional investigation and re-examination of this rating.

Thank you Mr. Chairman and Members of the Committee for the opportunity to participate in the confirmation hearings of the Honorable Sonia Sotomayor.

Respectfully,

Kim J. Askew
Chair

cc: Members, Committee on the Judiciary, United States Senate
H. Thomas Wells, Jr., President, American Bar Association
Members, ABA Standing Committee on the Federal Judiciary

EXHIBIT A

READING GROUP
GEORGETOWN UNIVERSITY LAW CENTER

Hope Babcock, Professor of Law
(Administrative Procedure, Environmental Law, Freedom of Information Act, Indian Law, Justiciability, Regulated Industries, Statutory Interpretation)

Michal J. Cedrone, Associate Professor of Legal Research and Writing
(Death Penalty and Habeas Corpus, Federal Sentencing, Other Criminal Law & Procedure, First Amendment – Religion, Prisoner Civil Claims/Eighth Amendment, Health Law and Insurance Programs)

Stephen B. Cohen, Professor of Law
(Federal Taxation)

Sherman L. Cohn, Professor of Law
(Civil Procedure, Appellate Procedure, Jurisdictional and Choice of Law, Professional Responsibility, International Law)

Michael R. Diamond, Professor of Law; Director of the Harrison Institute for Housing and Community Development, Georgetown Law
(Corporate Law)

Michael H. Gottesman, Professor of Law
(Equal Protection, Substantive Due Process, Second Amendment, Twenty-First Amendment, Separation of Powers, Employment Discrimination, Voting Rights, Other Civil Rights, Labor and Employment)

Vicki C. Jackson, Carmack Waterhouse Professor of Constitutional Law; Associate Dean (Transnational Legal Studies)
(Federalism, Government/Government Officers Immunity Law)

56940.392

Donald C. Langevoort, Thomas Aquinas Reynolds Professor of Law; Co-Director, Joint Degree in Law and Business Administration
(Securities Law)

Naomi Mezey, Professor of Law
(Procedural Due Process, Statutory Interpretation)

Julia L. Ross, Professor of Legal Research and Writing
(First Amendment – Speech, Intellectual Property, Fifth Amendment, Sixth Amendment, Arbitration and ADR)

Paul F. Rothstein, Professor of Law
(Substantive Criminal Law, Fourth Amendment, Evidence, Antitrust, State Tort Law)

Philip G. Schrag, Professor of Law; Director, Center for Applied Legal Studies and Public Interest Law Scholars Program
(Asylum)

Carlos Manuel Vazquez, Professor of Law
(International Law)

William T. Vukowich, Professor of Law
(Contract Law/Interpretation, Bankruptcy, Consumer Protection)

56940.393

EXHIBIT B

READING GROUP
SYRACUSE UNIVERSITY COLLEGE OF LAW

Lisa A. Dolak, Chair, Board of Advisors Professor of Law
(Intellectual Property, Procedure, Internet Law and Policy)

Aviva Abramovsky, Associate Professor of Law
(Commercial Transactions, Insurance Law, ERISA, Contracts and Remedies)

Hannah R. Arterian, Dean and Professor of Law
(Constitutional Law, Employment and Labor Law)

William C. Banks, Board of Advisors Distinguished Professor
(Constitutional Law, National Security Law)

Jeremy A. Blumenthal, Associate Professor of Law
(Criminal Law, Property, Law and Social Science)

Keith J. Bybee, Associate Professor of Law
(Constitutional Law, Civil Rights, Legal Theory)

Sanjay Chhablani, Assistant Professor of Law
(Criminal Law and Procedure)

Evan J. Criddle, Assistant Professor of Law
(Administrative Law, International Law, Immigration Law)

David M. Driesen, University Professor
(Environmental Law, Administrative Law, Structural Constitutional Law)

Gregory Germain, Associate Professor of Law
(Corporate, Bankruptcy and Tax Law)

Margaret M. Harding, Professor of Law
(Arbitration Law and Practice, Securities Law)

William M. Wiecek, Congdon Professor of Public Law & Legislation, Professor of History
(Constitutional Law and History, Law and Religion, Federal jurisdiction, Civil Rights History, Property)

* * * * *

Thomas R. French, Professor of Law, Associate Dean, H. Douglas Barclay Law Library

56940.394

EXHIBIT C

PRACTITIONERS READING GROUP

Landis C. Best, Cahill Gordon & Reindel LLP, New York, NY
(First Amendment Speech, including Religion, Equal Protection, Substantive Due Process, Procedural Due Process, Official Immunities, Federalism and Congressional Power)

John J. Bouma, Snell & Wilmer, Phoenix, AZ
(State Substantive Law – Contracts and Torts)

David S. Friedman, Massachusetts Attorney' General's Office, Newton, MA
(Title VII – including Employment Discrimination, Americans with Disabilities Act, Age Discrimination in Employment Act, Voting Rights Act, Fair Housing Act, Other Civil Rights and Administrative Procedure)

Thomas Z. Hayward, Jr., K& L Gates, LLP, Chicago, IL
(Admiralty and Professional Responsibility)

Richard B. Kapnick, Sidley & Austin, Chicago, Illinois
(Corporations/Securities, Bankruptcy, Banking, Tax, Health Law and Insurance Programs, General Statutory Interpretation and Jurisdictional and Choice of Law)

The Honorable Timothy K. Lewis, Schrader Harrison Segal & Lewis LLP, Washington, DC
(Sixth Amendment – Jury Right, Confrontation, Counsel, Speedy Trial; Sentencing, and Other Criminal Law & Procedures)

Roberta D. Liebenberg, Fine, Kaplan & Black, Philadelphia, PA
(FOIA, RICO and Antitrust)

Andrew M. Low, Davis Graham & Stubbs, LLP, Denver, CO
(Election Law, Immigration, Labor and Employment – ERISA, FSLMRA, NLRA/LMRA/LMRDA)

Aaron M. Panner, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., Washington, DC
(Evidence, Arbitration & ADR and Bankruptcy)

56940.395

Sri Srinivasan, O'Melveny & Myers, LLP, Washington, DC
(Justiciability, Indian (Native American) Law and Indian Claims Act)

Paul Watford, Munger Tolles & Olson LLP, Los Angeles, California
(Death Penalty and Habeas Corpus, Fourth Amendment (Search and Seizure), Fifth Amendment (Rights against Self-Incrimination, Double Jeopardy and Forfeiture) and Substantive Criminal Law)

Laurie Webb Daniel, Holland & Knight LLP, Atlanta, GA
(Appellate Procedure, Intellectual Property and Environmental Law)

Marie. R. Yeates, Vinson & Elkins LLP, Houston, TX
(Civil Procedure – Federal Rules and Personal Jurisdiction)

56940.396

[redacted] [redacted] [redacted] [redacted]

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

CHAIR
Kim J. Askew
Suite 2800
1717 Main Street
Dallas, TX 75201-7342

FIRST CIRCUIT
William F. Kayatta, Jr.
1 Monument Square
Portland, ME 04101-4053

SECOND CIRCUIT
Mary M. Jones
133 Main Street
Auburn, NY 10204

THIRD CIRCUIT
Edward B. Deutsch
P.O. Box 3075
1300 Mount Kemble Avenue
Morristown, NJ 07962-3075

FOURTH CIRCUIT
Harry S. Johnson
7 Saint Paul Street
Baltimore, MD 21202-1626

FIFTH CIRCUIT
David W. Clark
Suite 450
One Jackson Place
188 East Capitol Street
Jackson, MS 39201

SIXTH CIRCUIT
John C. Fleming
3200 National City Center
1900 East Ninth Street
Cleveland, OH 44114-3485

SEVENTH CIRCUIT
Richard J. Gray
Suite 4100
330 North Wabash Avenue
Chicago, IL 60611

EIGHTH CIRCUIT
Mary B. Pascoval
Suite 600
190 Carondelet Plaza
Saint Louis, MO 63105-3441

NINTH CIRCUIT
Allan J. Joseph
10th Floor
311 California Street
San Francisco, CA 94104-2695

Alan Van Etten
Suite 770
Pacific Tower
1003 Bishop Street
Honolulu, HI 96813

TENTH CIRCUIT
Mary A. Wells
Suite 1020
1700 Broadway
Denver, CO 80290-1001

ELEVENTH CIRCUIT
Leonard H. Gilbert
P.O. Box 1288
Tampa, FL 33601-1288

D.C. CIRCUIT
Carolyn D. Williams
725 12th Street, N.W.
Washington, DC 20005-5901

FEDERAL CIRCUIT
Joseph M. Hoffman
Suite 1300
1100 13th Street, N.W.
Washington, DC 20005-4050

BOARD OF GOVERNORS LIAISON
W. Anthony Jenkins
Suite 4000
500 Woodward Avenue
Detroit, MI 48226-5403

STAFF LIAISON
Denise A. Cardman
202 662-1762
cardmandenish.abanet.org

Please respond to:
Kim J. Askew, Esq
[redacted]

VIA FACSIMILE AND FIRST CLASS MAIL

July 7, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of the Honorable Sonia Sotomayor to the United States Supreme Court

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of the Honorable Sonia Sotomayor who has been nominated for an Associate Justice position on the United States Supreme Court. As a result of our investigation, the Committee is of the unanimous opinion that Judge Sotomayor is "well qualified" for a position on that Court.

A copy of this letter has been provided to Judge Sotomayor.

Sincerely,

Kim J. Askew
Chair

cc: The Honorable Sonia Sotomayor
The Honorable Gregory B. Craig
The Honorable Cassandra Q. Butts
Jonathan E. Meyer, US Department of Justice
ABA Standing Committee on the Federal Judiciary
Denise A. Cardman, Esq.

[redacted]

July 7, 2009
Page 2

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 7, 2009.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Russell D. Feingold
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Benjamin L. Cardin
Hon. Sheldon Whitehouse
Hon. Ron Wyden
Hon. Amy Klobuchar
Hon. Edward E. Kaufman
Hon. Arlen Specter

Minority:

Hon. Jeff Sessions, Ranking Member
Hon. Orrin G. Hatch
Hon. Charles E. Grassley
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Tom Coburn

56940.398