

Testimony of
Mary Boies

July 16, 2009

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

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 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.

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 4 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 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.