

Statement of

# **The Honorable Dianne Feinstein**

United States Senator  
California  
June 11, 2009

Thank you very much Mr. Chairman. First of all I want to thank and commend you for setting the date July 13th date to begin these hearings.

I think it's pretty clear to this side of the aisle that Judge Sotomayor is a mainstream federal judge, and that she actually will bring to the court more judicial experience than any nominee of the last 100 years.

Her personal story is a very inspiring example of the American Dream. And I have a hard time understanding why the other side of the aisle can't understand that.

I'm very disappointed at what seems to be now a protracted delay that goes on and on. The July 13th hearing means there would be 48 days from the time of her nomination, from the time it was announced, to when her hearings would begin.

And this is exactly the same number of days that were agreed in the schedule for Judge Roberts in 2005. No more, no less.

And that schedule was agreed to before Roberts' questionnaire had even come in. And yet the Senate and the public have had access to Judge Sotomayor's questionnaire for almost a week, and access to most of her public writings from the moment she was nominated.

We all know she's spent 17 years as a federal judge - first on the District Court, then on the Court of Appeals - and the majority of her opinions have been publicly available. In addition, she has been very cooperative with the Senate.

She has been through FBI vetting. We received her questionnaire within nine days of President Obama's announcement that she would be the nominee. This is record time -- almost a week faster than we received Chief Justice Roberts' questionnaire, and three weeks faster than Justice Alito's came in.

Now, when Chief Justice Roberts' nomination was before us, the production of documents was very different. His writings were not part of the public record. Instead, there were over 75,000 pages of documents, primarily from the Reagan Library and the National Archives, stored from his years working in the Executive Branch.

This enormous amount of information was not produced all at once, but rather piecemeal throughout the month of August, and even in the very days leading up to the hearing. And our side did not complain.

Although the hearing was scheduled to begin on September 6th, on September 2nd the National Archives delivered 15,000 new documents to the Senate. But the hearing went ahead on September 12th.

Justice Alito had written two to three times as many opinions as Judge Sotomayor, and he, like Chief Justice Roberts, had also spent time in the Executive Branch. Judge Sotomayor's materials simply do not compare in volume.

The situation we find ourselves in today is very different. Judge Sotomayor has already produced her speeches and writings outside the court. She has produced 500 opinions, two and a half boxes, 191 speeches, and a 300-page questionnaire with answers.

She has also gone to extraordinary lengths to meet members of this chamber from both sides of the aisle, even with a broken ankle. And having broken mine last August, I know what that's like. By some reports, she will by the end of this week have met with 75 to 80 members of the Senate. And we are reviewing a judge that we have already confirmed twice.

The time frame set by Chairman Leahy for this nomination is eminently reasonable.

The Senate confirmed Chief Justice Roberts in 72 days. There is simply no reason that we can't follow the same time frame for Judge Sotomayor's nomination.

Additionally, this time frame will give the nominee time to take on the extraordinary new responsibilities before her. It will allow her to close out her previous work, move to Washington, hire law clerks, and begin preparing for the upcoming merits arguments of the Supreme Court's fall term.

Now, we're talking about a Supreme Court Justice. It is in all of our interests to have a reasonable process.

I strongly believe that Senators should perform their due diligence on nominees. And I think it's important for nominees to be questioned thoroughly at hearings. But neither of these gives cause for the delay of this nomination. Now, why is it that those of us on our side can do their due diligence in 74 days, and the other side cannot?

Delay for due diligence may be one thing. But delay for the sake of delay is another. And I've got to tell you, candidly, that's what I believe is going on. It's Machiavellian delay. It's the way to obfuscate. It's the way to prevent. And it's the way to hope and pray that something is going to surface that the other side can use to bombast this nominee.

Now, there are plenty of groups out there, we all know, that want more time. They want more time for attack. They want more time for sound bites. But it is the hearing, in which we in the Senate that have the responsibility, will be able to ask the nominee real, substantive questions, and where the nominee gets a fair chance to respond.

As the Chairman has said, the nominee can't respond to public attack. So figure out why this delay is there: To allow time for more public attack to which the nominee cannot address herself.

And I've got to tell you, I've been on this committee for 16 years, I've sat through the hearings for four Supreme Court nominees, and I don't understand this.

This is a woman who's qualified, who is brilliant, who has worked her way up, who has been a good judge, we have confirmed twice, she's had 17 years on the bench -- and yet the mode on the other side is delay and delay.

And the only thing I can ferret out of this, is to give more room for attack in which a potential Supreme Court justice cannot respond. And I don't think that's right - I really don't. And I would really prevail to my colleagues from the other side, let's have this hearing. Ask your questions. Make them as difficult as you want. But let's do it in the fair and open forum that our confirmation rules and laws provide for.

So, Mr. Chairman, I'm very pleased. I support you. If we have to give up our vacations, so be it. There is no reason why this nominee, or her background, merits any more delay, any more elapse of time than the Chief Justice of the United States did. So I thank you for your time.

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