

Obama's Nomination of Sonia Sotomayor to the U.S. Supreme Court. When is A Lie by the President An Impeachable "High Crime or Misdemeanor"

Determining the circumstances under which a lie told by the President may be deemed by "We the People" and our representatives in Congress to constitute an impeachable 'high crime or misdemeanor'

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1. The U.S. Constitution provides in Article II, Section 4, thus: "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors".

2. The Constitution does not state what constitutes "High Crimes and Misdemeanors". Nor can the Federal Judiciary do so since there is no right to appeal an impeachment to any of its courts. An impeachment is a political, not a judicial, decision, and so is the definition of "High Crimes and Misdemeanors". At stake is not the impeached officer's property, liberty, or life. Rather, We the People, the source of all political power, take back through our representatives in Congress the office that we gave the officer. Thus, whether the President commits an impeachable 'High Crime or Misdemeanor' when he lies to the People is a matter for the latter and their representatives to decide.

3. Had the Constitution provided for impeachment only for "High Crimes", the conduct underlying the impeachment would have to attain a particularly conspicuous level of unacceptability to become a 'High Crime'. But also "Misdemeanors" support an impeachment. Hence, the level of unacceptability of a certain conduct does not determine whether it is impeachable. Nor does it affect the punishment, for impeachment always leads to the officer being "removed from Office".

4. An impeachment is in the nature of a recall, that is, the procedure under the federal Constitution for effectuating the principle, "the People giveth, and the People taketh away". They are the masters in government of, by, and for them. Officers are public servants and as such are answerable to their masters, the People, who can impeach them.

5. Therefore, the impeachability of an officer who lies must be determined in light of:

- a. the circumstances evidencing that he knew that his statement was counterfactual so that his making it anyway was deceptive, a lie, and as a result, a betrayal of public trust on which his forfeiture of public office can be predicated;
- b. the motive for lying, and

c. the consequences of the lie, even if unintended, for an officer who due to incompetence cannot foresee the consequences of his lie is also impeachable.

A. The circumstances evidencing knowledge of a counterfactual statement

6. Let's make such determination concerning President Obama's vouching to the American public for the honesty of his first nominee to the Supreme Court, Then-Judge Sotomayor(*>http://Judicial-Discipline-Reform.org/OL/DrRCordero-Honest_Jud_Advocates.pdf>jur:65§1). The circumstances evidencing his knowledge that his statement was counterfactual are these:



a. The New York Times, The Washington Post, and Politico^[107a] had suspected her of concealing assets. Concealment of assets is a crime^[ol:5fn10] committed to evade taxes or launder money of its illegal source and bring it back with the appearance of being lawful so as to invest it openly without the risk of self-incrimination attached to investing dirty, unlawfully obtained money.

b. The FBI must have investigated such suspicion of concealment of asset, for it could have derailed J. Sotomayor's confirmation. Using its subpoena and search and seizure power, it must have compelled production of, and obtained, documents that even those three major news entities could not obtain employing only the means of lawful investigative journalism. Had the FBI found a satisfactory explanation that dispelled the suspicion, it would have given it to the President, who would have made it public to put the issue to rest and spare himself a major embarrassment, much worse than that experienced by P. Bush when Harriet Miers withdrew her name under criticism that she lacked the qualifications needed to be a justice.

No such explanation was ever publicized. Far from it, these news entities dropped the issue inexplicably and simultaneously. Yet, each could have reasonably expected to win a Pulitzer Prize had it found the concealed assets of J. Sotomayor or led her or the President to withdraw her name, or even caused her to resign as a circuit judge, never mind be indicted for concealing assets. Was there a quid pro quo between the President and those entities?(jur:xlvi)

c. J. Sotomayor filed "complete" financial statements with the Senate Committee on the Judiciary in response to its two judicial nomination questionnaires and questions in letters. The Committee posted them on its website^[107b]. To avoid embarrassing surprise(cf. jur:93¶211), the FBI must have done its due diligence by checking them against the statements that she had submitted to the President while he was considering candidates for his nomination. It would have been cause for grave concern if she had submitted inconsistent statements. After tabulating the figures in the statements filed with the Senate,

they lead to this conclusion:

Judge Sotomayor earned \$3,773,824 since 1988 + received \$381,775 in loans = \$4,155,599 + her 1976-1987 earnings, yet disclosed assets worth only \$543,903 thus leaving unaccounted for in her answers to the Senate Judiciary Committee \$3,611,696 – taxes and the cost of her reportedly modest living^[107c.i]

7. President Obama's lie can be established or dispelled by circumstantial evidence, and also objectively, e.g., by his agreeing to release unredacted all the FBI vetting reports on J. Sotomayor.

B. The motive for lying

8. The motive of the President to lie about J. Sotomayor's honesty was to curry favor with those who were petitioning him to replace Retiring Justice Souter with a woman and the first Latina, and from whom he expected in return their support to pass through Congress the Obamacare bill. That was the central piece of his legislative agenda, the one in which he had a personal interest because its continued validity by the Supreme Court upholding its constitutionality would make him go down in history as the president who managed to pass universal health care while many others had failed trying to do so.

C. The consequences of lying

9. The consequences of the President's lying by vouching for J. Sotomayor's honesty are substantially harmful and lasting. With respect to those who supported her confirmation for the Supreme Court, it constituted fraud in the inducement, for he told them a lie to induce them to support the confirmation of a person whom on his word they took for honest.

10. With respect to those petitioning for another woman and the first Latina, it constituted fraud in the performance, for they could reasonably expect that out of a population of over 300 million people and the pool drawn from it of women and Latinas qualified to be justices, he would choose one who was also honest and would not disappoint and embarrass them by being exposed later on as dishonest.

11. The president heads the Executive Branch. His duty is to execute the bills of Congress enacted into law. His execution of Congress's acts through his enforcement of the law is his function; it is not optional with him. His office carries neither discretionary power to enforce the law nor the power to exempt at will anybody from its enforcement. The president must enforce the law on everybody equally, as provided by law, including tax, financial, and criminal laws.

12. By failing to enforce those laws on J. Sotomayor, President Obama committed dereliction of duty. By so failing, he also compounded the crime because he knew of her concealment of assets, and should have known if instead of looking with willful blindness at NYT, WP, and Politico's suspicion that she had concealed assets, and looking away with willful ignorance(jur:90§§b-c), he had diligently performed his duty to vet her properly.

13. Since Obamacare had not been passed by Congress yet, the President could not possibly have nominated J. Sotomayor for a justiceship because she happened to agree with its provisions, for nobody knew what the bill would look like in its final form, that is, if it were ever passed. Moreover, the Democrats have been criticized for having rushed Obamacare

through Congress with almost no debate so that the members had barely any opportunity to read it. The fact that the bill ran well in excess of 1,000 pages made it all the more difficult for anybody to read it in its entirety. Thus, it is reasonable to assume that she had not read it either.

14. By the President not enforcing the law on J. Sotomayor upon an explicit or implicit agreement that in exchange for nominating her to the Supreme Court she would support the constitutionality of Obamacare when, as expected, it came before the Court for review, he committed bribery. In that unlawful swap of benefits, the President abused his power of nomination to turn his nomination of her into the benefit that he gave. In exchange, he obtained the benefit of an agreement to prejudice Obamacare to be constitutional, whereby he intended to deprive the challenging party of its right to its day in court before a fair and impartial judge; and intended to obstruct justice. Since J. Sotomayor was a public officer, the President committed an act of corruption of a public officer.

15. To vouch for J. Sotomayor's honesty, President Obama covered up her concealment of assets. Since that is a crime, *id.* he became an accessory after the fact for the crime already committed. He also became an accessory before the fact for the crime that he knew she would continue to commit, for J. Sotomayor could not thereafter declare her concealed assets without her sudden and unexplainable possession of such assets incriminating her. Therefore, relative to her continuing crime of keeping assets concealed, the President incurs continuing accessorial liability.

16. Assets are concealed to evade taxes and launder money of their unlawful origin. When the President lied to cover up J. Sotomayor's concealment of assets, he abetted and continues to abet her evasion of taxes, which are collected for the common good. So he inflicted a financial injury in fact on the people and still inflicts a continuing financial injury in fact. By allowing her to engage in money laundering, he facilitated and continues to facilitate financial corruption.

17. A judge who breaks the law shows contempt for it and those whose interests it intends to protect. She cannot reasonably be expected to respect the law enough to apply it fairly and impartially. In fact, due to practical considerations, she cannot because a yet to be exposed law-breaking judge is impaired by a conflict of interests: She has a duty to apply the law, but her application of it can lead to investigations and the incrimination of third parties. They can expose her law-breaking and cause those parties to enter into a plea bargain whereby in exchange for leniency they provide information or testimony exposing the judge's law-breaking.

18. The risk of exposure undermines her resolve to apply the law and renders her vulnerable to, and extortionable by, third parties. She owes a debt of survival to those who did not, or have agreed explicitly or implicitly not to, expose her. Her mutually dependent survival, assured through coordination(88§a) becomes her first concern; doing justice is downgraded to only a request of litigants. Her unfitness to discharge the duties of her office is foreseeable. Such foreseeability makes applicable the principle that a person is deemed to intend the reasonable consequences of his acts.

19. By the President nominating for a justiceship J. Sotomayor, whom he knew to be breaking the law by concealing assets, and by causing senators to shepherd her confirmation through Congress(78§6), he exercised power irresponsibly since he exercised power irresponsibly since he intentionally caused a person known to him to be unfit for

office to be vested with it. He also intentionally and knowingly undermined the institutional integrity of the Supreme Court, the Federal Judiciary, and the process of judicial confirmation.

20. By so doing, the President has intentionally and knowingly inflicted on the American people the dishonest service of J. Sotomayor. For her next 30 years or so on the Supreme Court, just as she helps shape the law of the land that she will hold others to obey, she will continue to break it and harm others so as to resolve her conflict of interests in favor of her survival(jur:xxxv), her peers(jur:71§4), and those who can expose a source(jur:66§§2-3) of assets to conceal and the whereabouts of her concealed assets.

D. Action that the readers, journalists, and We the People can take

21. The readers of this article may share it with journalists and the rest of the national public. Informed of its considerations at the start of the mid-term election campaign, the public may demand that all candidates and politicians ask the President to release unredacted all the FBI vetting reports on Justice Sotomayor. If they raise concerns about her asset-concealing or other law-breaking, then he had at least circumstantial evidence requiring that he not vouch for her honesty because to do so was counterfactual and knowingly deceptive: a lie. Given his motive for, and the consequences of, lying, We the People and our current and would-be representatives can determine whether his lie constitutes an impeachable 'High Crime or Misdemeanor'.

22. Journalists can pursue an investigation(ol:66) guided by a proven devastating query(jur:4¶¶10-14) that can dominate the campaign: What did the President know^[23b] about J. Sotomayor's concealment of assets and when did he know it?(ol:54)

Dare trigger history!(dcc:11)...and you may enter it.

NOTE:

All (parenthetical) and [bracketed] blue text is references to supporting passages and footnotes, respectively, found in the study, Exposing Judges' Unaccountability and Consequent Riskless Wrongdoing: Pioneering the news and publishing field of judicial unaccountability reporting. That study is in the file downloadable through the external link http://Judicial-Discipline-Reform.org/OL/DrRCordero-Honest_Jud_Advocates.pdf. In the study and everything else in the file, the blue text represents active cross-referential internal links that facilitate jumping to supporting passages and footnotes to check them.

Dr. Richard Cordero, Esq.; and its link accompanies it:
http://Judicial-Discipline-Reform.org/OL/DrRCordero-Honest_Jud_Advocates.pdf >ol:70-72.
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