

INTRODUCTION

JUSTICE SOTOMAYOR AND THE SENSE OF RESPECT

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Justice Sotomayor appeared before students at Albany Law School on April 3, 2017, to receive the Kate Stoneman Award, which honors the first woman to graduate from the law school, who successfully campaigned to become the first woman admitted to the bar in New York State. The Justice took every opportunity to engage with students, holding a series of off-the-record meetings with small groups before the appearance transcribed here. And in that appearance, she went well past the announced time to continue taking questions from students.

The theme to which she returns over and over throughout her remarks is respect. In this introduction, I want to call attention to three kinds of respect that she emphasizes in those remarks: respect for one's self and one's human feelings; respect for the legal system; and respect for one's adversaries.

Respect for one's self and one's feelings. The Justice draws careful lines when she describes the role that feelings play in her judging: the judicial voice, she says, is "not the voice of fiction and not the voice of emotion but the voice of explanation." But she is fiercely insistent on being a flawed and human person, freely describing what she sees as her own flaws, like her tendency to sometimes stare unnervingly at litigants, and her feelings of being embarrassed by her family (like the aunt she caught stealing napkins from the White House), and how long it took her to learn to be open with family members about her feelings. Judges are people, she insists, and human feelings are nothing to be ashamed of.

"I do not know that as a judge that I have to either hide my human reactions or stop myself from probing the strength and weaknesses of any legal issue because it evokes emotion." And when a student ask about the role of anger in the judicial process,

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she responds that “[u]nchecked anger” has no role, but “If you are talking about pointed anger—anger that you recognize as anger, anger that is serving a purpose, and that you are utilizing in a directed fashion—that has value.” Targeted, thoughtful anger gets people’s attention, both in protest movements and in judicial writing. Being human is not a deficiency.

Respect for the legal system. The Justice uses questions on a variety of subjects as opportunities to express a positive vision of different components of the legal system. Of Congress—an institution only sixteen percent of Americans see positively¹—she speaks in strikingly positive terms: “[V]irtually all laws are written for a reason.” She sees legislatures as trying to reconcile the competing visions of the good that exist in society, and legislators as reflecting community priorities. Legislative solutions are often “not ideal,” but she attributes this to compromise, not corruption or incompetence. “There are always reasons for laws, and generally it is because laws want to protect people.”

She uses a question about hard cases to express a similarly positive view of the judiciary: her job on the Supreme Court, she says, is difficult because the Supreme Court tends to take cases involving circuit splits, and “most circuit court judges are trying real hard to get it right.” If a case reaches the Supreme Court, then, it’s because “respected” judges of good faith have been unable to agree. And she respects her colleagues on the Court, saying that the key to disagreeing with them constructively is remembering “that they are not motivated by ill will” but “by seeing things differently than I do.” In each answer, it is as if she is looking for opportunities to affirm the good faith of her counterparts in each part of the justice system.

She speaks most stirringly about her respect for lawyers, a respect she feels they should demand: she wants to see legal ethics taught in the first year, because “no lawyer should leave and graduate from law school without being passionate about being a lawyer.” And she wants law students to be ready to defend their profession against criticism: “Anyone who talks to you about what the bad lawyers do, you should be able, in an instant, to tell them all the good we have accomplished, because there is so much of it.” She warns, “Do not ever let anybody tell you a lawyer joke.”

Her faith in the legal system is not naïve optimism; Justice

¹ See John Haltiwanger, *Congress Approval Rating Hits Lowest Point of Trump Era*, NEWSWEEK (Sept. 13, 2017), <http://www.newsweek.com/congress-approval-rating-hits-lowest-point-trump-era-664144>.

Sotomayor fully perceives the system's capacity for injustice. In her much-discussed dissent in *Utah v. Strieff*,² she wrote, describing the victims of suspicionless stops by police, "Until their voices matter too, our justice system will continue to be anything but."³ Her insistence on respect for the system, then, is a practical one: the system will work best, and we will get the best results from it, if we adopt the attitudes she models. Having respect for, and faith in, one's counterparts and adversaries is, for Justice Sotomayor, both the right way to see things and the best way to get results. Thus her passionate insistence on respect for the people with whom one interacts—especially those with whom we disagree.

Respect for others. Being respectful is a sound judicial strategy. On writing dissents, the Justice says: "you have to be careful, because if you want other people to join you, you cannot go so far to the extreme that the verbiage of your opinions will turn people off from joining you." But respect isn't just a matter of governing one's tone; it's a strategy for mitigating the effects of sexism in the profession and for achieving many other goals.

When one student, Charlotte Rehfuss, asks a question about sexist double standards, and how to be assertive as a woman lawyer, given social standards that judge women as "aggressive" when they assert themselves, the Justice describes a process of constructive engagement: first working to understand your adversary's views, asking, "[W]hat is raw for them[?]", and then "acknowledging that spot, and not denigrating it, but explaining to the person why their own spot is important, and legitimate, and needs recognition, and then pivot to how whatever solution you have gives them that, even if they did not know it." The key to being assertive is to "do it always with human kindness."

Another student, Sydney Taylor, asks the Justice about conversations with people whose views are fundamentally different than one's own. Her answer is to keep engaging, to be patient to the point of relentlessness, to help the other person understand the source of your passion, with compromise—not victory—as the ultimate goal: "[E]ventually, somebody brokers a compromise. What made that happen? The talking. The talking it through."

She spoke about the need to respect and engage others—and she acted on that sense of respect through each of the decisions she made about the event itself. Instead of delivering a speech, she

² *Utah v. Strieff*, 136 S. Ct. 2056 (2016).

³ *Id.* at 2071.

wanted to answer the students' questions. Instead of staying at the front of the auditorium, she roamed the audience, looking to make contact with as many people as possible.

The kind of respect she describes, and models, is not a grudging, tolerant, passive respect. It is boundingly energetic; it looks for excuses to show itself; it creates opportunities to engage with others. In her remarks, she finds reasons to express respect for her counterparts and adversaries even when it requires going on a bit of a tangent. Her presence at the law school was itself a part of her campaign to spread this energetic form of respect for the legal system; long after her visit was over, her passionate energy was reflected in students' conversations about the law and their work.

What can't be fully captured in a transcript is the Justice's personality and affect. The transcript can't show how happily she roamed the room, how determinedly she made eye contact with as many people as possible, or how much her face lit up when she sensed a connection with the students to whom she was speaking. Her demeanor communicated, more clearly than words could, her sense that everyone in the room was worth meeting and, if it were only possible, getting to know. To see her in person is to understand how her philosophy of respect—respect for one's self, for the justice system, and for other people—is so sincere, so positive, and so personal, that it sometimes seems indistinguishable from hope.