

## TRANSCRIPT

### A CONVERSATION WITH JUSTICE SONIA SOTOMAYOR

ALBANY LAW SCHOOL  
Dean Alexander Moot Courtroom  
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*The following is a transcript of Justice Sonia Sotomayor's conversation on April 3, 2017, with Albany Law students, as well as Alicia Ouellette, the President and Dean of Albany Law School, and Andy Ayers, Visiting Assistant Professor and Director of the Government Law Center, who clerked for Justice Sotomayor when she was a judge on the U.S. Court of Appeals for the Second Circuit.*

**Prof. Ayers:** Here we go. My name is Andy Ayers. I'm the director of the Government Law Center and a visiting assistant professor here at Albany Law School. I'll be co-moderating tonight's discussion.

As you know, every year Albany Law School honors Kate Stoneman, who was the first woman to be admitted to the New York Bar—due in large part due to a campaign that she orchestrated to make that possible—and who graduated as our first woman graduate in 1898, one hundred and nineteen years ago. Every year we give an award to someone for bringing about change and opportunities for women in the legal profession. Nobody could possibly deserve it more than our guest this evening.

Born in the Bronx in 1954, she graduated *summa cum laude* from Princeton University. [*Applause.*] She went to Yale Law School, where she was an editor of the *Yale Law Journal*. Yeah, I see one hand pumping in the air. She was an assistant district attorney in Manhattan and in private practice for a few years. [*Cheer.*] All right, we've got one of those, too. And she was nominated to the United States District Court for the Southern District of New York by the first President Bush, to the Second Circuit Court of Appeals by President Bill Clinton, and to the Supreme Court of the United States

by President Barack Obama in 2009.

She'll be joined tonight on the panel by our President and Dean, Alicia Ouellette. Please join me in welcoming Justice Sonia Sotomayor.

*[Applause. Justice Sotomayor enters with Dean Ouellette and poses for a picture with the panelists.]*

**Justice Sotomayor:** You know, Andy, you get into this position and you learn how to give up not liking yourself in pictures. *[Laughter.]* Many of you may know I was once married, and at my wedding back then, you paid for the pictures you got, a hundred of them, and it was a package fee. At picture number 68, I told the photographer, go away. *[Laughter.]* I have stopped doing that now.

**Dean Ouellette:** Well, Justice, we are so, so happy to have you here. It is really an honor of a lifetime for every member of the Albany Law School community to welcome you here. And we are especially glad to have you here as we celebrate Kate Stoneman Day, which is a day on which we honor women who make a difference, who take chances, are bold, and change the world for the people who come after them, particularly for women and people of color. And adding you to that legacy makes us a better place forever, and we're just so grateful to have you here.

We have a tradition on Kate Stoneman Day of having a keynote address. Our keynote address this year will be a little nontraditional. We're going to have a conversation. And Andy and I will start out by asking you a couple of questions, and then we've got some students who are eagerly awaiting the opportunity to ask you some question as well.

***"I Hope My Opinions Will Become More Engaging, More Readable, More Everything."***

**Dean Ouellette:** So I'd like to start by asking a question about personal style in both your public appearances and your book, and your judicial opinions. In your public appearances and throughout your book—which I loved, and I hope you all buy and read, it's really wonderful—you share your vulnerabilities, you talk about struggles, you talk about your imposter syndrome at times, and you share your big personality. In your judicial opinions, you are incredibly professional, brilliant, of course, but there aren't the rhetorical flourishes in the same way that we see in your book and when you talk in public. And we start to see a little bit of that when you write dissents, a little bit of your personal style in the recent dissents. But

I'm wondering what your thoughts are on the tension between your public persona as a vulnerable, strong, but very human justice, and your personal style in your judicial opinions, and if you are starting to develop more of a personal style in your judicial dissents.

**Justice Sotomayor:** Well, Dean, when my book came out, Nina Totenberg, who is a commentator, famed commentator for NPR, read the book, and she interviewed me. And one of her initial observations was that my book read like fiction. [*Laughter.*] And then she said, why not write opinions like that? And I looked at her, and I said, because it is not fiction. [*Laughter.*] It is a simple answer. But opinions are real life. And opinions are about making pronouncements that deeply affect people. And, to the extent that that is what an opinion is doing, I feel an obligation, especially when I am writing for The Court, because it is a capital "T" and a capital "C," to ensure that our voice is not the voice of fiction and not the voice of emotion but the voice of explanation, of explaining how we reached our conclusion and what in the law compelled the answer we gave.

And to that extent—and I mentioned this to some of the students I spoke earlier to—I work very hard at making my opinions understandable to anyone who bothers reading them. [*Smiling.*] I am laughing only because in this room there are mostly lawyers. How many lawyers in this room have actually read a Supreme Court decision from cover to cover when it came out? Not half the audience. [*Laughter.*] Most people do not read our decisions. Most people form their opinions from popular press, from reports of what we say. But I want to ensure that anybody who picks up one of mine, if you took the legal cites out, you would not need more than a fifth-grade education to follow what I am saying. And I hope with most of my opinions that I have taken you through the logic of how I reach my conclusion. By the time you get to the last page, I hope you can say, now I know why I should rule this way, and why you should rule the way I want you to. [*Laughter.*]

Now, it does not obviously mean the same thing when you are a dissenter, because you are not speaking for the Court, you are speaking for yourself and what you believe the Court has gotten wrong in its analysis. And there you can have a more personalized voice, but even with that personalized voice, 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. I have had more colorful writings by more colorful colleagues, and you will notice in many of those instances that people

will forbear from joining their dissents, or might write separate concurrences if they are in the majority, because they do not like the expression of how that person is saying things.

And so you are always sort of walking that fine line as a justice. If most of you will see almost any dissent that I author, there is probably two-thirds of it—this is my formula—where it is pure legal analysis. I show why the majority got it wrong. Only the last third tells people why it is important, meaning what the consequence is of the wrong decision. And I do that because I do believe that laws affect people, and one has to acknowledge that when you are writing and telling people they have lost. You have to make them understand that they were heard, so even if they are losing, that they feel that their statement had some value.

But I do believe that it is a different vehicle than a book, and to the extent that any justice grows—and every justice should grow and does grow—I often tell the story of my first year with Justice Stevens. I called him up one day after reading one of his opinions and said to him, John, I am in awe of you. This is just a brilliant opinion, and I am a little frightened that I could never do something like this. And he paused and he said, “Sonia, no one is ever born a justice. You are born a person. You grow into becoming a justice. You have all the tools necessary to make your own mark.” I was eternally grateful to him for that that first year, because I spend a lot of time trying to improve my work as a justice, and I realized that that is a natural progression in growing, which is why I hope my opinions will become more engaging, more readable, more everything, as I am a justice for longer.

**Dean Ouellette:** Thank you.

***Who Is The Government Lawyer’s Client? “You Are A Lawyer For All Of Them.”***

**Prof. Ayers:** So my question picks up on one of the first conversations we ever had. It was about the very first piece of writing that I gave you. I had drafted something, and you said, “Take it back and do it again.” [*Laughter.*] “This isn’t right because you haven’t been fair to the losing side.” You said, “This does a good job of articulating the argument that’s going to win, but it doesn’t do a good job of articulating the argument that loses.” You said, “I want you to think about judges as public servants, whose clients are the public, including the losing side.” And I took that with me when I became a government lawyer and now that I teach professional responsibility,

because I think that for a lot of people who go into government—and a lot of Albany Law students do go into government—figuring out who the client is can turn out to be an amazingly complicated question.

If you're a prosecutor, at least you have a specific ethical rule that tells you you're supposed to do justice, so you can start from there. But for somebody who's a government litigator representing an agency—is it the public, is it the agency, is it the people at the agency who think they're the client? So these different candidates for being the client all have a claim on you and your loyalty. I'm wondering if you have any advice about this. You certainly see plenty of government lawyers in your current position and in your earlier jobs. So how do you recommend people think about this question as they go out into practice?

**Justice Sotomayor:** To answer that you are a lawyer for all of them, which feels contradictory. In certain moments it may well be contradictory, because there are always competing interests claiming or clamoring for both attention and for position of precedence. But the reality is that, unlike a defense attorney whose role is always well defined—it is the interest of your client. But even then—and I talk to defense attorneys about this, particularly when they are arguing before the Supreme Court—yes, your paramount interest is your client, but you better figure out how to harmonize your client's interests and the interest in the development of the law before you come to the Supreme Court, because our job is not to protect your client. Our job is to develop the law in the right direction, and to the extent that your arguments are asking us to take a wrong step, we are not going to listen to you. So you are going to lose, just because you have forgotten what our purpose is, and you have not crafted your argument to take us to a place where we believe the law would develop properly.

So just that answer gives you a clue, which is, if you stop and realize as a government attorney you represent a very fractured society—and not fractured because that's the nature of our country today, but fractured because we are a community, as is every community in the world, with competing interests. People have competing interests. They have competing needs. They have competing passions. They have competing drives. We are different. What law is trying to do, and what government is trying to do, is to harmonize those interests along lines that we can live with. Not ideal lines, because ideally we would have endless resources that would satisfy everybody's needs. But we do not have that. If we had the

ability to tell people, your needs are great, so are mine, and why do we not shake hands? Well, it does not work, because sometimes needs are so competing that we cannot do anything about it. But when you are a government attorney, what you are trying to do is to promote that harmony within a position in court that will promote the needs of all of those groups to the best of your ability as a lawyer. To have judges understand what the intent of the law was and to give effect to that intent, because virtually all laws are written for a reason.

Legislatures do not get together and say, we want to do X because we want to, or we want to do Y because we think it is okay today, and tomorrow we will do Y. They have a set of priorities that generally develops from needs that are being expressed within their community, and they have solutions, often that are not ideal because they have been compromised into imperfect solutions, but they have an intent about what they hope the law will do. And it is judges and lawyers that give the bones to that intent. They give it a meaning. And so, if you start with trying to figure out who you represent, you will get lost in the morass. I think you have to, as a lawyer, step back from it and figure out what it is that the law intends, first and foremost. And then try to bring those other competing views into line with an answer that moves the law forward in a positive way.

**Prof. Ayers:** Thank you for that. We're going to have a great talk about that in my PR class on Wednesday. [*Laughter.*]

***“You Get Tortured By Those Cases For Which There Is Little Precedent.”***

**Dean Ouellette:** One more question from us, and then we'll turn to the students.

One of the things that I love to hear from judges about is what they find to be especially hard. Are there cases or categories of cases that keep you up at night, that are especially challenging? And you've been a judge at the district court level, the circuit court level, the Supreme Court level. Does it make a difference at what level you're judging in answering that question?

**Justice Sotomayor:** As a district court judge, sentencing decisions are the ones that I think keep most trial judges up at night. It is the one where the direct impact on a defendant and his or her family is most vivid and present for a judge. So, to the extent that in every sentencing decision every judge is receiving a presentence report, where that defendant's life has been gone into since birth, basically, and the impact of your decision—not just on the defendant

but on everybody involved in the case, including the victims, but also the defendant's family, defendant's workplace when there is one, community-at-large—all of that is, and I think does, prey on almost every single judge.

On the circuit court, a good percentage of the cases we dealt with were answered by existing precedent in an almost direct way. The principles of precedent, the issues that came before us seemed to fall fairly cleanly into the clear parameters of those principles that had been set by the Supreme Court, or by circuit precedent, because that is how circuit court judges rule. They look at what the Supreme Court has said first, they second look at what the law of other panels, prior panels, on the circuit court have decided, and decide that issue. You get tortured by those cases for which there is little precedent, or for which precedent exists but it is not really firmly guiding an answer in one direction or the other. And those cases can keep you up at night. When you are on the Supreme Court, all of the cases are like that. [*Laughter.*]

**Dean Ouellette:** Yeah. You're not sleeping much!

**Justice Sotomayor:** No. No. If you recall, the United States is divided up into thirteen circuit courts. Those thirteen circuit courts cover all of the district and territorial and lower courts of the federal government. And every legal issue that arises under law comes up and percolates through the circuits, so that one legal issue can be visited by all thirteen circuits. Now, we do not generally wait, on the Supreme Court, for all thirteen of the circuits to speak. We wait, however, always, or almost always, for a circuit split. That means that a good number of the courts below and a countervailing number of the courts below—it does not have to be equal numbers but a fair number of both—have taken the identical legal question and come to different answers.

Now, if you start from the proposition I do, which is that most circuit court judges are trying real hard to get it right, that they are by definition, because they have been well trained in the law for a long period of time before they got on the circuit court, and that most of them would not have gotten to the circuit court unless they were respected—because, remember, it is a presidential nomination, and they're subject to strict scrutiny, pardon the term, not in its legal sense [*laughter*—that those circuit court judges are disagreeing because there is a real problem in getting at the answer. That it is not crystal clear. And that makes every single case we take a Supreme Court case, and it makes it hard.

And the other thing I did not appreciate as much before I got to this

job was, I had not recognized how much easier it was to come to decision making as a district and circuit court judge, because I knew I was not on the final court. That if I really, really got it wrong, there were at least one or two courts above me who could fix my mistake. There is no court that fixes our mistakes now.

**Dean Ouellette:** No.

**Justice Sotomayor:** And Congress can fix some of the interpretive mistakes we make with respect to laws, but that is a very hard process. It happens on occasion but not with the kind of frequency that helps all of those people affected by bad decision making by us. And I should not say bad—erroneous decision making by us.

And so I had not understood how terribly hard this job would be, much, much harder, and it is every single case, because in every case, I realize that no matter how right I feel my vote is, and I do not vote unless I think it is right, no matter how right I feel the answer I have given is, there is a loser. That is what Supreme Court cases are about—deciding who wins and who loses. And I cannot help but know how the loser will suffer, because before the Supreme Court, every single case we get, we get a presentence report from the world. We get amici briefs from every interest group that will be negatively affected by our decision in any way. They file an amicus brief telling us exactly what the bad things are that will happen to them. And that makes the job very hard.

**Dean Ouellette:** It sounds like it.

*“Learning How To Be Assertive Means, First, That You Have To Understand Your Own Position . . . But Equally Understand The Positions Of Your Adversary.”*

**Prof. Ayers:** Our first student question comes from Charlotte Rehfuss.

**Justice Sotomayor:** [*Stands up.*] All right. Let me tell you what I am going to do. Surrounding this room are men and women standing up. If you look closely enough, they have little things in their ears. They are here to protect me from me. [*Laughter.*] I like walking through the audience. I get bored sitting down. And, more importantly, I think it engages you more if I walk up to you and say hello. But you cannot jump up unexpectedly, because it scares those guys [*laughter*], and they will pull me out of the audience and back here. So I want to be among you, so just sit. I do give an occasional hug. Sometimes it is because I recognize somebody. Do not be



jealous. [*Laughter.*] But I will walk around. I hope that the audience in the overflow room gets to see me. Tell somebody if you do not, and I will come down a little further.

So, hello, how are you? There is one thing I am going to do is take a picture with all the students who ask me a question. [*Applause.*] So ask your question. Go ahead.

**Charlotte Rehfuss '18:** My name is Charlotte Rehfuss, and I'm a second-year student here at Albany Law School. So on a daily basis, I'm striving towards being confident in standing my ground without compromising my relationships with others. In doing so, I'm trying to find the balance between appearing assertive and aggressive—assertive and confident, without being perceived as aggressive or abrasive. As a woman in the legal field, how have you dealt with double standards, and how would you advise young women as we enter our legal careers? Thank you.

**Justice Sotomayor:** Now I am not the best person to be asking this question of, because I have been called abrasive [*laughter*], and assertive, and nasty, and a couple of other adjectives. Every time people say that about me, I go, "Me?"

I have learned, through time, and it has taken people pointing it out to me, that when I get caught up in legal argument, I will stare at you, but I am not staring at you because I am trying to play tough with you, or to make you to feel uncomfortable, but because I am trying to listen to you. And my mind is working and trying to figure out what you are saying and why. And that stare, though, becomes menacing to people. [*Laughter.*] So much so that I disclosed earlier that during my preparation for the Senate confirmation hearing, the people who were prepping me were telling me to look away periodically. [*Laughter.*] That I was way too intimidating, and seemed nasty when I stare. So I had to train myself to look away, and to start taking away from that. But I still do it in the courtroom. I still sometimes find myself sort of engaged with people in a way that makes them feel uncomfortable. So do not take my answers as the right answer.

But I will give you the best that I have come to. Some of it I learned from having a teacher who I co-taught with when I was a judge, and he taught me that one of the approaches that teachers have is that whenever you do a performance, the first thing the teacher will do is compliment you, even if you blew it. They are taught—hello [*shaking hands with audience member*—to look for the best thing that you have done, and to shore that up, and to tell you all the positive whatever you did. The same thing with an answer you give. Think

about when it is not a pure Socratic teacher, when it is one with more sensitivity. [*Laughter.*] That teacher will sit there and pull apart the best things that your answer gave—what you recognized, what insight you had that was better than other people’s might be—hello, hello [*shaking hands with audience members*], and they will tell you that first, and then they will pivot into the things that they need for you to learn. And so they will pivot in a way that engages you in understanding the weaknesses in your presentation.

Well, I have found that that formula works well in about everything you do in life. If you listen to people very carefully, and listen not just to what they are saying, but what is motivating what they are saying. What are the emotions that are driving them to their position? In other words, what is that person feeling? What is raw for them, and makes them take the position that they are taking? If you can identify that spot, and you lead off 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. That has been my formula for success.

And that is why when I spoke to Andy that time, when—that first assignment, I said to him, we do have to explain what our reasoning is, but we are going to leave the loser unsatisfied if we do not acknowledge their point, and not in a way that says it was a stupid argument [*laughter*], but in a way that acknowledges the strength of what they are saying, but then points out why it cannot win the day in law.

And so I do that almost as a formula for my opinions, but also for my formula for life, as a woman and as a lawyer, which is, yes, learning how to be assertive means, first, that you have to understand your own position, its strength and its weaknesses, but equally you have to understand the positions of your adversary, and acknowledge their strengths, because if you can respect someone else’s position, it does not show weakness, it shows human understanding. And I think that people find that valuable. That is why most people like women. [*Laughter.*] That is why they think we are nurturing. [*Laughter.*] And it is why it is a strength that if played properly—if you can get to the place where you can admire yourself for understanding other people in a positive way—it will be easier to live with being assertive yourself. Because if you do it always with human kindness, people will respond to it. And do not stare at them the way I do. [*Laughter.*]

***“We Have To Take Our World With Us And Never Leave It Behind.”***

**Prof. Ayers:** Our next question is from Adriana De León.

**Justice Sotomayor:** Now, you can ask the question, then come chase me for a picture, okay? [*Laughter.*] Because I cannot walk down there and back up again.

**Adriana De León ‘17:** Es un privilegio estar con usted esta noche. I’m a 3L student, puertorriqueña, from El Barrio, and also a 1999 graduate of Cardinal Spellman High School.

**Justice Sotomayor:** Oh my gosh! [*Applause.*] For years I have been visiting Cardinal Spellman, but since I have become a justice, I have gone even more. And it is amazing. It is a totally different school than when I was there. The size is much smaller.

**Adriana De León ‘17:** Is it? Oh, well yeah. They started downsizing when I was there.

**Justice Sotomayor:** Yes. And when I was there, there were nearly two thousand students. It is nothing close to that now. No. No.

**Adriana De León ‘17:** Not at all.

**Justice Sotomayor:** But it is a place that really affected my life, and I hope it affected yours positively.

**Adriana De León ‘17:** Very much so.

**Justice Sotomayor:** Ask me your question.

**Adriana De León ‘17:** As someone who has achieved great success in your career, how would you advise people like us to go back into our communities and help the students who share our background on many facets to understand the value of a fine education, like the Ivy Leagues or any other top schools in the nation? Thank you.

**Justice Sotomayor:** I visit schools constantly and have throughout my entire career. I have not only visited my grammar school and my high school, but I go to schools all the time, all across the country. Most of the time when I am visiting places, I am visiting middle schools, high schools, colleges and universities, and law schools. Why do I do it? I do it because if kids do not know what is possible, they cannot aspire to anything.

That is what education generally is about. It is teaching you about what the possibilities are in the world. And so, for me, how we make a difference, you and I, is by continuing to go back and being both a role model but talking to kids, explaining it to them, showing them what the importance is, and opening their worlds for them. You know, I look at every audience of kids and I say to them, you are

already light years ahead of me, because you know there is a Supreme Court. [*Laughter.*] When I was your age, I had no idea what that was. And every time you meet someone who is different than you are, who is not from your neighborhood, ask them what they do. Ask them why it is important. Talk to them about how they got there. And almost always, if not always, they are going to say to you, because I studied to get there.

And that is how I talk about education, as opening their worlds for them, in a way nothing else can. But we have to take our world with us and never leave it behind. You know I tell people that my family, not just my mother and my brother, but my cousins, my aunts and uncles, my grandmother, those who are no longer living, they came to every institution I have ever been a part of. I was probably one of the few kids at Princeton University whose family would regularly come to visit her, and they slept in the small room I had as a student. My mother was the eldest—when she was the eldest, she would sleep on the bed, and the rest of us would sleep on blankets with pillows on the floor, because no one in my family could afford a hotel room. It was bad enough to afford a bus ticket. But they came. And to every major event in my life, my family has been front and center. To my district court induction, about a quarter of my family was late, and I knew they would be [*laughter*], because Latinos are not very punctual [*laughter*], but they learned their lesson. For the second and third inductions, they were there early. [*Laughter.*]

So we learn. When I got inducted to the Supreme Court, and the President held a White House party, they all came, from New York, from Puerto Rico, from anywhere that they were, they came. And at a certain point, I took a break, and I went into the bathroom, and there was my aunt, my then eighty-odd-year-old aunt, in a wheelchair, sitting by the basin, with her pocketbook open, stuffing it [*laughter*] with plastic—with the paper cups that had the emblem of the White House on it [*laughter*], and the napkins. [*Laughter.*]

**Dean Ouellette:** That's awesome.

**Justice Sotomayor:** And I looked at her and I said, Titi, por favor! [*Laughter.*] Titi, please. Aunt, please! At any rate, she said, Sonia, no se van a fijar, no te apures. They are not gonna notice. Do not worry. [*Laughter.*] I ran out of there shaking my head, went up to my mother and told her in Spanish, go take care of her, okay? [*Laughter.*] Now, that moment was not internally embarrassing, and I thought it was only my aunt, my family.

Well, last year I was invited to the White House Christmas party, and the President talks to the invited guests at a certain juncture,

and he talked to us and welcomed us and did his—the rest of his speech, and at the end he just went off script, and was joking around with the audience and said to them, do not take the silver, they count it. But you can take the paper cups and the napkins. [*Laughter.*] We know—we know everybody takes them, and we put them out for you. [*Laughter.*]

Big lesson that moment was for me. I realize that, for all those moments where I thought my family was a little too loud, where they dressed a little bit too boisterously, where they did things that were different than other—than I thought different than other people did, that I was probably wrong. They were not. Everybody has a crazy Titi Gloria. [*Laughter.*]

I describe her in my book. You have something comparable in every culture. Every culture has the relatives who are a little too loud, the crazy ones, the silly ones, the everything ones, and that it is important for us to include our family in the way we are growing, to let them see and play a part in the world that we are moving in, and to ensure that they are with us, side by side, at every step, as difficult as it may be of our new worlds. They may never be able to join it completely, but if they know that we are including them, that we are talking to them about it—not at them, but with them—that they will learn to be at our sides, and we will take them with us. You know, most of my cousins have now graduated from college, and I am very proud of that. And I think the fact that I did, and my brother did, and a couple of my other cousins of our comparable age did, means that the next generation of cousins is taking it for granted that they are going to college. And that is not something that was necessarily a given for me, but it is for them. And so that is the role we can play. Bring them with you.

**Adriana De León '17:** Thanks.

**Justice Sotomayor:** You are welcome.

***“It Took Me A Long, Long Time . . . To Learn How To Be More Open With People. But It Took Me Longer To Do With My Family.”***

**Prof. Ayers:** Thank you. The next question is from Brenda Baddam.

**Justice Sotomayor:** Brenda, ask me your question from down there and then come up.

**Brenda Baddam '17:** Okay.

**Justice Sotomayor:** All right? Go!

**Brenda Baddam '17:** Justice Sotomayor, my grandmother also hides plastic cups in her wheelchairs. [*Laughter.*]

**Justice Sotomayor:** So just remember, the President says everybody does it. [*Laughter.*]

**Brenda Baddam '17:** So my question also piggybacks off of what you just said. You stated in your book a disagreement with your brother, Junior. You called it “domestic politics.” Coming from a Hispanic background myself, I know how close Hispanic families can be. So how have you managed such a public position while keeping your family close to you but out of the limelight, or out of the public eye? And, also, in which ways have your familial experiences influenced or shaped your rulings?

**Justice Sotomayor:** You know, during the confirmation process—. Well, no, let me back up. I will tell a different story. For years, when I saw my mother with someone else, she would start bragging about me, and it would mortify me. Every word she said would just make me cringe with embarrassment. And finally one day, I looked at her and said, you cannot do this. If you do this I am going to walk away. I am not going to talk to you ever again. You cannot brag about me. And I was that upset. And that bought some lack of embarrassment for a long period of time. She stopped bragging about me in front of me

And then one day, a newspaper—not a newspaper, a TV station—asked us to do a documentary about mothers and daughters. And they came to our house, and they started asking us questions, and I started speaking, and my mother was giving, basically, monosyllabic answers. And I am like, what is going on? And so, I call a break, we go into the kitchen, and I go, Mama, why are you so quiet? You can talk anybody into silence. [*Laughter.*] Why are you not talking? And I said, you know, you are supposed to say things, but you are not saying hardly anything. Are you afraid? What is wrong with you? And she got this little smile on her face, and she looked up at me and said, payback is a bitch. [*Laughter.*] You told me not to talk.

I looked at her and I said, oh boy, Mommy, you got me. I said, okay, I take it back. You can say anything you want. She smiled, and she laughingly went in—back into the room and started talking. And started, thankfully, bragging. But we then had a really good understanding. And I said to her, and I talked to her about it, and said, it embarrasses me for you to brag about me. And more importantly, you do not know what that other person’s situation is. You do not know if they are having difficulty with a child, if something has gone wrong in their life. And when you brag, you

make other people feel badly. So I think you have to use some judgement about when you do things like that. And please, if you can, do not do it in front of me. At least do not—. You can do it but not when I am in front of you, okay?

And we actually have had a perfect relationship over this issue since. She is really very good. So even when we went to plan her will, and the lawyer—I was a court of appeals judge—and the lawyer looked at me, because I had just given him my name and said I was a judge, but not what kind of judge, and he looked at me and he said, well, are you a traffic judge? [*Laughter.*] I could feel my mother about to say something [*laughter*], and I went like this [*motions to audience member*] and grabbed her arm, and she said—afterwards she said, why did you not say something? And I said, it was not necessary. He did not know who I was. I did not care. I just needed information from him, and for him to do something for us. So, you know, there was no need for you to brag, and no need for me to say anything. He may feel differently today, but I do not know. [*Laughter.*]

So how do I do it? It took me a long, long time, and I describe a lot of this in my book, for me to learn how to be more open with people. But it took me longer to do with my family and my mother than it did with strangers. I was more open and vulnerable with my friends in telling them about the things that were moving me in life and troubling me in life than I ever was with my own mother, and certainly with my own family. I was much, much older in life before I could learn that I could trust them to love me, both through the good and the bad, when I could tell them how I had messed up, or what I had done that I was ashamed of, or the things that had broken my heart, or the things that were weighing on me, before I could learn to talk to them about it.

And sometimes their reactions were not what I hoped for. And sometimes I know I said things that they really did not fully understand. But the fact that I shared it with them, I think, gave them a greater sense of belonging and a greater sense of knowing, not just how much I valued them, but how deeply I appreciated that they valued me, too, because it is a mutual relationship. But it takes a long time to get there, and a long time for them to say to you, I was uncomfortable. And I have had my mother in certain situations come back to me and say, they did not really pay any attention to me. And I could hear the pain in her voice, they were a little bit rude to me. Not anymore. Now that I am a Supreme Court justice, they do not do that as much. [*Laughter.*] But before, it did, and to talk about

things is often the only way you can get them to do that, and that takes your courage and your growing into a place where you are more comfortable with yourself, so that you can be more comfortable with them. So good luck with it.

**Brenda Baddam '17:** Thank you.

***“If What You Think Neutrality Is, Is Heartlessness, Then I Disagree With You.”***

**Corey Reisman '18:** As a second-year law student, one of the things I've learned is that law students are some of the most passionate and opinionated people I've ever met when it comes to legal, social, and political issues. As a person whose position requires them to be impartial and unbiased, but also places you in a position to make decisions that affect millions of people, when you're on the bench, how do you generally reconcile your own personal convictions and beliefs with your responsibilities of remaining neutral, unbiased, and impartial?

**Justice Sotomayor:** Well, I do not think there is anything wrong in being sympathetic to something that requires sympathy. If you have heard that someone has been hurt, physically, emotionally, psychologically, as a lawyer, on either side of the issue, for that person or you have been hired to defend the position against that person, acknowledging that person's injury does not diminish you or your argument, because hurt is hurt. And saying to someone, whether I am on their side—Hello, hello. [*Shaking hands of audience members.*]

There is nothing wrong with a judge who reacts to a situation by saying, is that not horrible? What happened to that person is not a good thing. It is not something that I am proud of as a judge or as a human being. But that is different than, as a judge, saying, does the law provide a remedy for that hurt? And engaging that person's lawyer in explaining how the law does that and questioning them about the limits of the law and its ability to remedy that particular situation.

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. We do that all the time when we are having discussions with people. Have you ever heard of a really horrible situation where you have not said, that is really terrible? And if you have not been able to do that, then you are a pretty cold human being. And if that is what you want a judge to be,



you should ask yourself, what is the value of that? But it could be a really horrible situation that the law does not provide a remedy for.

And I am not the law maker, I am the law interpreter and applicator, and to the extent that I am unable to look at someone who is hurt and say, I cannot help you, and this is why I cannot help you, and I understand why this feels badly to you, and why this is bad for you, but this is why the law is doing what it is doing in this situation. If I cannot do that, then there is something wrong with me as a judge and a lawyer, because I have not been able to articulate the reasoning of the law.

And so, I guess what I am saying to you is, if what you think neutrality is, is heartlessness, then I disagree with you. If you think what neutrality is, is a judge being able to say, if I chose, and I were God, I would do this, then I agree with you. That is not the kind of judge I want. I want the judge who will be able to say, I choose because this is what the law requires, and that— if you do not have that kind of judge who can say, this is what the law requires and I am doing it even if I do not like it, then that is what a neutral judge is.

***“Anger That Is Serving a Purpose, and That You Are Utilizing in a Directed Fashion—That Has Value.”***

**Prof. Ayers:** I’m terribly dismayed by how quickly the evening is coming towards an end. I think we can do—.

**Justice Sotomayor:** So unless you have to pay for the room, I will go a few more minutes.

**Prof. Ayers:** All right! [*Applause.*] So our next question, then, comes then from Mary Ann Krisa.

**Justice Sotomayor:** Hello. [*Shaking hands of audience member.*]

**Mary Ann Krisa ‘19:** Hi, my name is Mary Ann Krisa and I’m a 1L. Politics often evokes strong emotions, and that certainly seems to be the case at this particular moment in time. Throughout history, anger has driven political movements. It can be an extremely powerful tool in any movement that demands rights for people whose rights are not recognized. On the other hand, political diplomacy and compromise have also been powerful tools for movements that seek the recognition of rights. On the Supreme Court, you’ve described the process of judging as a very collegial one, but anger sometimes plays a role in the judicial process, too. It’s sometimes what gives people the energy to pursue their rights in court and sometimes it’s what drives a judge to write a dissent. Do you think anger ever has an appropriate role to play in the judicial process?

**Justice Sotomayor:** I do not think unchecked anger has a role to play in any process. When you are letting anger out without controlling it, then all you are doing is letting emotion rule. And, for me, I don't think that is positive in any human interaction. Unchecked anger, in my judgement, is self-indulgence, because all you are doing is spewing out your venom for no purpose. 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.

That has a significant—in my judgement, a significant amount of value, and has the value of serving a measured end. And so, some would call protest controlled anger, and an expression of controlled anger. And protest has, through our history, proven very effective in getting people to pay attention. You can have controlled anger in writing, and sometimes you read passionate dissents and you can see the underlying anger, but it is there for its own purpose.

Generally, among colleagues in a collegial court, it is rarely effective to express anger person to person, because the one thing that gets people to listen is your passion about an issue, but not your anger about it. There is a big difference between the two. And, yes, pointed passion has its place in a collegial court when you are talking to each other, but it will not if you are angry, because what people will do is sit down and become silent, and silence usually will not get you agreement. And so, I describe the two things as very different, and the effect that they can have is very different.

But in a collegial court, if you respect that the other side is as well intentioned as you are—That is why the Supreme Court gets along so well, because we know we disagree, but we know that we all share an equal amount of passion about the law, about our system of government, about the Constitution. We can disagree about what we think the best answer is to promote those things, but it is all born from the same dedication to the betterment of the law. And, because I understand that, I can disagree with my colleagues, I can be angry at them at times, I want to shake them and tell them, why do you not see this my way? [*Laughter.*] But in the end, I respect that they are not motivated by ill will. They are motivated by seeing things differently than I do. And that is much more effective to engage then.

***“And you try yet again, and, eventually, somebody brokers a compromise. . . . What made that happen? The talking.”***

**Sydney Taylor '18:** Hi, Justice Sotomayor.

**Justice Sotomayor:** Hello.

**Sydney Taylor '18:** My name is Sydney Taylor. I'm a 2L here, and I sit on the Executive Board of the Black Law Students Association. I have a lot of conversations with my peers where it feels as if I'm essentially trying to persuade someone to shift their perspective on some of their fundamental views. For instance, I find myself in conversations trying to persuade people that racial and gender bias are still pervasive in American society, and some people have a strong negative reaction to that view. How do you go about trying to persuade your colleagues to accept things that go against their basic understanding of how the world works, and have you yourself ever been persuaded to change a fundamental view on something?

**Justice Sotomayor:** Let me answer your last part first. I was blessed being a state prosecutor with a boss who did not believe in the death penalty—Bob Morgenthau. He has retired from being the district attorney of Manhattan, and part of the issues that he is still working on is, working on getting the death penalty repealed. So he is an almost ninety-eight-year-old man. He is going to make it to a hundred. We just celebrated his brother's hundredth birthday a few months ago. And his anti-death penalty sentiments are notorious. I felt that way when I was a DA, and I had to confront my emotional feelings about—emotional and well-substantiated feelings about many of the things Bob Morgenthau talks about, which is the unequal imposition of the death penalty and the cost to society. There are a lot of strong arguments that people should consider on this issue. But when I became a judge, I had to deal with the question of whether I would enforce the death penalty. And I had to think about that.

And I had to put myself in the position of people who do believe in the death penalty, and the people who do believe that it is justified because some crimes are so horrific that nothing else but the death penalty can articulate society's negative reaction to the nature of particular crimes. And having prosecuted some cases where I actually met some really bad people that were incorrigible, I understood why it was important for me not to bring my personal feelings into my jurisprudence as a judge, so that I could honestly say when asked, would I enforce the federal laws on the death penalty, and I do. Now, some of you may have read some decisions where I have questioned some death penalty laws and some death penalty processes, because I am a judge, but that does not and should not stop me from ensuring that we apply all laws with due process. And I still will do that. But there are many, many, many cases for review of

death penalty cases that come before me where I do not vote a dissent, where I vote with the majority. And I do that because my values were shifted from experience and from reading and thinking about an issue in a different way. And so fundamental values can shift, but it takes a while for the understanding of the reasons why, for people to come to those things.

Have you ever—. I tell kids all the time, do you sometimes talk to your parents about something, and what do they say to you, first time? No. [*Laughter.*] They talk about two-year-olds? Think about your parents. That seems to be their favorite line for a lot of their life. And your life with them. And you talk with them today, and you try again tomorrow, and you try again the next time, and you try yet again, and, eventually, somebody brokers a compromise. What made that happen? The talking. The talking it through. Their understanding of the passion of the issue for you. Their talking sometimes to other people who have said, you know, it is not quite as bad as you think. And in the end, they move. You move. You are not going to stay out 'til three in the morning, but maybe they start letting you stay out 'til eleven, and then eleven thirty, and then midnight, and then on prom night, they let you stay out a lot later. [*Laughter.*] But, if you stop talking, there is no chance for change. If you stop trying to explain.

With time, people may grow to understand. And so, for me, that talking, that engagement, that explanation, the providing of examples, that is what my book was about. I mentioned many of the incidents of discrimination that I had endured and have been subjected to, and try to get people to see it from my side, and perhaps if they could, they might understand why the marshal who called me honey, even though he did not mean to, he was still offending me. And he did not really mean to offend me. But it is important to understand why, when I was in a room full of lawyers, all of them male, and one of them turned to me and said, go get us coffee, honey, why that would be insulting to me. And why the senior partner who looked at him and said, no, she cannot. She is a lawyer. I will order some coffee. Why he made me feel so good. And why he took a stand that others should in similar situations. But we have got to talk about it. Do not give up, because people do change. It just takes time.

***“No Lawyer Should . . . Graduate From Law School Without Being Passionate About Being a Lawyer.”***

**Thomas Morosco '19:** My question was what, in your opinion, can

current law students, lawyers, judges, and even Supreme Court justices do to increase faith and trust in the judiciary at a time when faith and trust in that institution seems to be ebbing away in our country?

**Justice Sotomayor:** Talk to people about what we do. You know, I—. Dean, you haven't asked me this question today, so I am going to tell you anyway, okay? [*Laughter.*] I am often asked what law schools can do better. I start with one bit of advice, recently, and I stole this idea from someone else, but I think it made a very good point. Why is it that we are teaching ethics in the third year?

**Dean Ouellette:** It should be earlier.

**Justice Sotomayor:** All right? Why is it that we're preparing people for an ethics exam at the end of their time in law school as opposed to the beginning? Because that—the issues that young lawyers will face, the ethics questions, should be at the forefront of their minds at the very beginning of their legal training. They should be engaging in those conversations with each other and with you as professors from the very beginning of their time in law school.

And, more importantly, no lawyer should leave and graduate from law school without being passionate about being a lawyer. 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.

Do not ever let anybody tell you a lawyer joke, and one where they are criticizing lawyers. When people start, I look at them and I say to them, why do you think we have all these laws that help people? It is because lawyers protected people's rights and made others understand what we needed as a society. There is so much criticism about tort law, and I sit there and I say, there is a lot of reform we can do. I am the first one to talk about that. But understand that tort law is what has kept products from blowing up when you use them. It is what sensitized companies to understanding that they should test their products before they test them on you. There are always reasons for laws, and generally it is because laws want to protect people.

And so, for me, that passion is what we need lawyers to have. We should never be apologetic about the good we do for people and for society. We should be proud of it. And we should be passionate about the roles that lawyers play in helping society and people. And if we could show that passion, and communicate it to people, I think there would be less distrust of lawyers and more respect for the law and for what judges and lawyers are trying to do.

And I am the first one that looks at people and say, when you do not like a decision we have rendered, how often do you read it? How often do you actually try to understand what motivated a judge to come to a decision they came to? And I can assure you that it has been never [*laughter*], that I have had a person who has disagreed with a decision tell me they have actually read it. [*Laughter.*]

And so, if you can disarm people that way, you start them, and you say, if you read my thinking, you will understand that there were actual reasons I came to my conclusion. When you can be in a place to talk with me about those reasons, then we can have a real conversation. And that is what, most of the time, we should challenge people to do. Engage with talking with us, not with the emotion of the outcome, because that is what motivates most people's reactions—the outcome, and not the reasoning. If you point out to people that in a lot of cases people from different backgrounds have come to the same conclusions—. As someone recently pointed out, Justice Thomas and I agree sixty percent of the time.

There is a lot in law where you can come easily to agreement around, but there are the more contentious issues that require a different perspective and a different approach that lead people to different conclusions. And there we may disagree on a lot of fundamental things, but it is because we have a different approach, and if you do not understand what our respective approaches are, you really cannot talk about what the basis of our differences is. But most people react to conclusions, not process, and that is what lawyers and judges are doing. They are working within a process, and to understand that process is to understand why different conclusions are very, very possible. That is why circuit courts disagree. That is why judges can disagree. And that is why you want a bench where there is disagreement, because you want to ensure that the final answer is as right as we can get it—after having heard as many voices as we have.

**Dean Ouellette:** And with that, can we all give the Justice a big round of applause? [*Applause.*] Thank you. Thank you.

*“Kate Stoneman was someone whose footsteps I have followed. But mine are not ones that I want people to follow in. I want them to join and make them with me.”*

**Dean Ouellette:** I'm going bring up two of our professors, the chair of our Stoneman Committee and our Stoneman Chair—Professor Melissa Breger and Professor Mary Lynch—to give the

Stoneman Award to Justice Sotomayor.

**Prof. Mary Lynch:** Justice, I have something to show you—my Spellman ring. [*Showing ring.*]

**Justice Sotomayor:** Oh my god! [*Laughter.*] Oh. I still have mine. But it does not fit anymore.

**Prof. Melissa Breger:** Justice, it is a true pleasure and privilege to be honoring you today, one of the most esteemed jurists of our time. The Kate Stoneman program is an integral part of Albany Law School. Tonight you join our prestigious circle of Stoneman folks that now brings the total number to seventy-five. At this time, I'd like to ask those in the audience who have earned a Stoneman Award to please stand and be recognized.

[*Applause as Stoneman Awardees stand.*]

**Justice Sotomayor:** I am in amazing company!

**Prof. Breger:** You are! You in fact are. Now, I've always read and taught your opinions, especially many of your dissents [*laughter*], with great pleasure. One of the Justice's most famous thought-provoking quotes that I think is especially fitting for tonight—and I know it's especially fitting now for me. I have a new role model. She says, "A role model in the flesh provides more than inspiration. His or her very existence is confirmation of possibilities one may have every reason to doubt. Saying yes, someone like me can do this." Both Kate Stoneman, a role model in her day, and Justice Sotomayor, a role model for so many of us today, allow the rest of us to follow the paths they have bravely paved, so we can walk in their footsteps. With so many parallels in the pioneering and trailblazing spirits of these two women, we at Albany Law School are so, so delighted and grateful to be able to award you the two thousand seventeen Kate Stoneman Award. It is now my pleasure to introduce another role model of mine, another strong spirit, who hails from the Bronx, who hails from Cardinal Spellman High School. I introduce the newest Kate Stoneman Chair in Law and Democracy, to bestow the Award upon you.

**Prof. Lynch:** So, about a hundred and thirty years ago, just a little over a hundred and thirty years ago, Kate Stoneman broke the barriers for every woman ever admitted to the practice of law in New York State, including those of us here. She simply would not accept arbitrary limits imposed upon her. Similarly, Justice Sotomayor, at each stage of your rise, from the schools of the Bronx to the highest court of the land, you did not accept arbitrary limits, not for yourself and not for any other sister or fellow human being. And we have all benefitted from your keen intellect, your inspiring mentorship, and

your wisdom born of a most beloved life experience. So on behalf of the entire Albany Law School community, for your extraordinary achievements, for your inspiring mentorship, and for your fierce commitment to fairness and equality, I am so, so proud to bestow upon you the two thousand and seventeen Mimi Netter Kate Stoneman Award.

[*Applause.*]

**Justice Sotomayor:** Can I just say one thing? [*Laughter.*] Kate Stoneman was someone whose footsteps I have followed. But mine are not ones that I want people to follow in. I want them to join and make them with me. So I invite every woman and man in this room to know that the light she lit is for all of us, and we should be doing this together. To raise the banner of equality as high as we can, and to lead under that banner to new and better places for all of us. I am honored to receive this Award. Thank you.

[*Applause.*]

**Prof. Ayers:** As some of you may know, there's a tradition among judges and justices who care deeply about the people who work for them—and nobody cares more than this person here about the people who work for her—of referring to the children of their clerks as grandclerks. So here to give you a special present on behalf of the next generation are your grandclerks Violet and Evelyn.

[*Evelyn and Violet Ayers, age nine, present the Justice with Albany Law teddy bears.*]

**Justice Sotomayor:** Thank you! And the bears are going to sit on my shelf, it is very low, with toys for every grandclerk who visits to play with. Thank you. [*Applause.*]

**Prof. Ayers:** Thank you. I can hold those for you if you want. [*Justice Sotomayor hesitates.*] I'll give them back, I promise. I'll give them back!

**Justice Sotomayor** [*to audience*]: He promised. [*Hands over the bears.*]

**Dean Ouellette:** We're almost, we're almost done here. So, at Albany Law School, we're proud of many things, many, many things. One of the things we're proud of is that we have a basketball court at the heart of our law school. And—

**Justice Sotomayor:** I was there. [*Laughter.*]

**Dean Ouellette:** You were there, and many of our students and illustrious graduates have, have played basketball in that court, and we want us—we want you to remember us, and so we have for you an official Albany Law basketball. [*Laughter; applause.*]

**Justice Sotomayor:** Thank you!



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**Dean Ouellette:** You're welcome.

**Justice Sotomayor:** My big kids, the big law clerks, will play with it. [*Laughter.*]

**Dean Ouellette:** Excellent.

**Justice Sotomayor:** Thank you.

**Dean Ouellette:** And that concludes our program. Thank you so much, Justice. [*Applause.*]

**Justice Sotomayor:** Thank you.

**Dean Ouellette:** We'll never forget this.