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The 2016 Stein Lecture

A Conversation Between U.S. Supreme Court Justice Sonia Sotomayor[†] and Professor Robert A. Stein^{††}

RS: Welcome, Justice Sonia Sotomayor, to the University of Minnesota Law School. We're thrilled you're here.

SS: I did not know it was this big.

RS: This is one of our larger classrooms.

SS: Oh. Well, all those people up there, I hope you can see.

RS: Fortunately, we have a screen behind us that will—

SS: Ah, okay.

RS: —will help some. And to all of you students, attorneys, friends filling this 2700-seat Northrop Auditorium, welcome to all of you as well. We heard just before we came on, I believe, that the first, second, and third balconies are all full, and so additional people, I assume, are moving to another theater to be able to see us on closed-circuit television.

Now, as Dean Jenkins told you, this is the format we'll follow this afternoon. Justice Sotomayor and I will have a conversation, and following my questions, there will be an opportunity for you to ask Justice Sotomayor questions yourself. Please remain in your seats during my conversation with Justice Sotomayor. I think you'll see the reason for that later.

Justice Sotomayor, in order for the students and others in the audience to get to know you, I'd like to ask you some questions about your life and career, your remarkable career, starting in the tenements in the Bronx in New York City, to Princeton, where you graduated *summa cum laude*; to Yale Law School, where you were on the law review and, I learned this morning, were working on another journal as well; to your practice in the DA's office in New York, a private law firm, and

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then all three levels of the bench—the District Court, the Court of Appeals, and now the Supreme Court. So there’s a lot for us to talk about.

You began your beautiful book, *My Beloved World*, by describing being diagnosed as having type 1 diabetes when you were eight years old, and the effect of this disease has been with you ever since that time. Can you talk about what you remember about learning of that diagnosis and how diabetes has influenced the course of your life?

SS: I will start by answering the second question first.

RS: Okay.

SS: Being diagnosed at an early age with a chronic disease, I think for anyone who experiences it, whether it is with diabetes or with any of the other countless silent diseases or conditions that people do not show but live with, gives you a vulnerability that most children do not live with, and that vulnerability can set you up for two things, I think. It can make you scared about life, or it can do what it did for me—give you a sense of prizing life.

I learned, because I then thought—it is no longer true today, but when I was diagnosed in 1963, the prognosis for my life was one that would be very short, and I learned that through the reactions of all of the people I loved in my life—I saw the fear in their eyes, and at age seven, you do not really understand death, but you do know from watching their eyes that this is something very serious. And I had a sense very early on that my life would be short, because that is what I was learning about this disease at the time, and I thought long and hard about what I had to do because of it.

I actually went about thinking about, well, isn’t this horrible? You know, why was I picked? None of my other cousins had this condition. Why was I the one who was afflicted with it? And then one day, a few months after getting out of the hospital, I was in my aunt’s home playing with my other cousins, and I had a sugar low, and I went to my mom. She got hysterical and ran for the orange juice and sat me down at my aunt’s porch and made me sit there and said, “you can’t play.” And I was seething, because I drank the orange juice and I was feeling better, and I was just angry. “Mommy, why can’t I play?” *Cállate, Sonia. Siéntate ahi.* “Shut up, Sonia. Sit there.” Okay? There’s no nicer way to translate that, all right?

And I seethe and I seethe and I seethe, and, you know, it was not doing much, because my mother was not paying atten-

tion to me by that point. And next to me was my cousin—at birth, her arm had been broken, and it was not noticed by the doctors, and so her arm atrophied, and it didn't grow, and so she had a very tiny hand, and her arm didn't move. And her parents were, like my mother was inclined to do at the time, treating her like an invalid. And I kept looking at her and looking at myself—and thinking within myself, you know, I would rather have what I have and not what she has, because if I take care of myself, I will be okay and I will be able to do everything, but she has to make a lot more adjustments than I do.

And I learned very quickly that no matter how bad you think you have it, there is somebody who has it worse, and that taught me to prize the life that I have, to try to squeeze out of every minute that I have as much good as I can, to learn as much, to have as much fun, to work as hard as I can, and to just capture enough of living that if I died young, I would not miss anything. I never, ever thought of taking a year off from school—and I encourage kids to do that now. But I always thought I can not waste time; I have got to do everything really fast and really young.

So my condition actually stimulated me to appreciate that we should live every minute of our lives as if the next won't be there, and I think that is the greatest gift I have ever received from my condition, that understanding of the value of living. And so I tell kids all the time, "you don't need to have a condition or a disease to appreciate that. You should just go around and about your life as if each minute is a joy to have and something to make meaningful." And so that is the greatest gift of my diabetes.

The second was my determination and discipline. You know, when you have to treat a condition, you grow to be disciplined. I learned when I needed to give myself shots and how to monitor internally my body and its state, what to do when I did not feel well, how to get by when I did not feel well, and to push myself out of bed so I could get things done. Those are lessons that you have to teach yourself, and, regrettably, most of us do not learn them until you have something happen in your life that makes you understand that you have to reach deep within yourself sometimes to get past those tough times.

RS: Well, thank you for sharing that with us. A repeated theme in your book is that you always wanted to be a judge. You write about watching the TV program *Perry Mason* when you were young—in fact, you may need to explain what *Perry*

Mason is.¹ And that may have influenced your decision to be a lawyer.

SS: Robert, that shows us—shows everybody our age.

RS: I guess so. Well, there are still reruns on, I think, right now. What inspired you to want to be a judge? Did you have an understanding of what judges did when you were a child? And, I think, significantly, how did the goal of being a judge affect the course of your life?

SS: No, in answer to the middle question.

RS: Okay.

SS: I grew up in a housing project in the Bronx. There were no lawyers in the housing projects. There were no lawyers in my family. I really had no idea of what lawyering was, outside of television, and the idea television gave me through *Perry Mason*—and for those of you who don't know who Perry Mason was, he was the first TV lawyer with a weekly series, but he was a very unusual lawyer. Every week he got a client who was charged with a murder of some sort or another, and at the end of the show, he would prove that his client did not do it.

RS: He always won.

SS: He always won. Now, I have been a judge for—I have been a judge for twenty-five years, and I practiced twelve before that, and I have read a lot of cases. I have never seen that happen in real life. And if I know a lawyer in this room who can say that they proved their client innocent in the courtroom, not by a jury verdict but by getting someone to admit they committed the crime, I will be shocked. But it was not realistic, so my understanding of what lawyering was was not based on any reality.

But what I did know, or thought about law and being a lawyer was that Perry Mason was helping someone who was in trouble, and he was helping them by helping them not only navigate the legal system but by helping them to figure out what had really happened. And so that was my first sense of what being a lawyer was—it was helping people in their relationships with authority, because that was the only kind of case that I saw Perry Mason handling.

So how did I fall in love with being a judge? At the end of one of the *Perry Mason* episodes, he turned around after the

1. For background information about the *Perry Mason* television series, see *Perry Mason*, IMDB, <http://www.imdb.com/title/tt0050051> (last visited Apr. 23, 2017).

witness had confessed to being the killer, and he looks at the judge and says, “your Honor, I move to dismiss the charges against my client and release him from bail.” And in that moment, the judge responded, “I order the charges dismissed, and, bailiff, please, let the defendant go,” or something similar, and I had a very bright light go off in my head. Perry did all the work, but the final word was the judge’s. I wanted to be the judge.

[Applause]

SS: You laugh, but, in fact, judges do have the final word. Woe to the lawyer who forgets that. No, seriously, there is a roomful of lawyers here who should realize this. That unsophisticated drive to become a lawyer and a judge, over time, became more educated by just the process of living my life, learning more about the law and its impact in society. I tell kids all the time we all, every one of us, forgets how integral the law is to our daily existence. From something as simple as leave your home, go to the corner, and you stop at the red light—why are you stopping? Now, kids will tell me, “Because that’s what Mommy told me to do,” but the reality is Mommy is telling you to do that because the law has told us that we must stop on red and go on green. What the law is, is helping us as a community establish a relationship about how we are choosing to travel from point A to point B. And in that relationship, the law is forcing all of us to give up a little tiny bit of our time in traversing from one place to another for the greater good of our society so more people can reach their destination safely.

And if you think about all of the other ways we interact, whether it is as married couples, as parents responsible for our children, as workers working with each other, as employers hiring people, all of our relationships are in many ways controlled by laws, and what those laws are attempting to do is to take conflicting interests and ensure that we move forward as a society in a better way in relationship to one another.

Now, there are times you are not going to like the compromise that the law has reached. You are going to think you are giving too much and that the other person is giving too little up, but the point is that is what the process of law is, of finding that, finding that right balance of interrelationship with one another. And I began to understand that for me, I wanted to be a part of that process. I wanted to be a participant in that way of helping people. People choose a multitude of different ways, different professions that help people, but for me the law had a

majesty to it that I wanted to be a part of, because it is a community builder, and that is what I wanted to do—help to better the community in which we as people live with one another.

RS: Well, I'm happy that *Perry Mason* got your attention and sent you down this path. I'd like to ask another question before we get into your role on the Court, and ask you about the importance of mentors, and mentors in your life, and what you learned from them and how they influenced you. José Cabranes, founder of the Puerto Rican Legal Defense and Education Fund and Yale General Counsel, and who later became your colleague on the Second Circuit Court of Appeals, was one of your mentors, and a great district attorney in New York City, well known throughout the country, Robert Morgenthau, your boss—I think you may have called him boss.

SS: I still call him boss.

RS: They were two important mentors for you. Did you have some women mentors also? Can you just talk a little bit about the importance of mentors in your life?

SS: Well, I did, but not in those earliest stages of my life. You have got to remember, when I graduated from law school, there were no women Supreme Court Justices. The first came in 1981 when Sandra Day O'Connor was appointed to the court. And it took another twelve years before Justice Ginsburg was appointed as a second female Justice. There were no females on the New York State Supreme Court. I think there may have been one or two female supreme court justices across the country in 1979. When I got to Princeton, it was only the third year of women being admitted to Princeton University, and although the law school had been admitting women—my law school, Yale—for a number of years, the numbers were still relatively tiny, about fifteen percent of the population.

There were not a whole lot of women that I could look to, either in my personal world or even in a larger world, that could set an example of what it was or should be like for a woman to practice law, so what I had to rely on in my earlier parts of my career was looking to men of good will, of which there were so many. And we often forget that. As much as sexism and racism and so many of the other isms have been perpetuated by people in power, we sometimes forget that in all of those systems there have been people of good will, people who care about the quality of individuals as individuals and who have sponsored and promoted their growth. And I had that through José Cabranes and Bob Morgenthau, who put me on

the path to believing that I could be successful in my practice of law.

My first woman mentor happened at my law firm about five years after I graduated from law school, and she was a partner at my firm, Pavia & Harcourt. It was one of the reasons I joined the firm, because it was a firm of eleven partners—no, nine partners, and two of them were women. This was in an age where big law firms were of 100, 200 lawyers, and they prided themselves on having one woman partner. Well, the second woman partner was Cynthia Fischer, a graduate of the University of Minnesota.

RS: Who is here today.

SS: Who is here today.

[Applause]

SS: So I had two women role models in the earlier part of my law practice, and they taught me both how to be really tenacious in ensuring that I would stand up to all the men we worked with, but, more importantly, that we were as passionate and as committed to practicing law as anyone else, and they really were instrumental in teaching me how to be a good lawyer and how to be a woman and be—and wear it with pride.

You know, a number of years back, I was at a law school in Washington—and I am not the best dresser in the world. Cynthia and Fran were, and still are. But they taught me that I could wear earrings, like bracelets, be feminine, and still be respected and feared as a lawyer.

[Applause]

SS: And once a young woman, or a group of young women, came up to me and surrounded me and said, “It is really so nice to see a female judge who looks like a woman and dresses like one.” And I looked at them, and they said, “Look, all of the other ones are so stately. Do—do we have to give up women—being a woman to be a lawyer?” And I said, “Never.” And so those small things are so important in how young people perceive themselves and their ability to move forward and be successful in life. And so, yes, that is what role models have done for me.

RS: That’s wonderful. Well, let’s move into your judicial career, if we can. You were appointed to the U.S. District Court in the Southern District of New York—for those who aren’t familiar, that’s New York City—by President George H.W. Bush in 1992.

SS: Do you mind if I start moving around now?

RS: No, please.

SS: All right. You will learn, if you read my book, that as a child I was a little bit active, overactive, and my mother called me *Aji*, which is jumping pepper in Spanish, because I never sat still. I am an adult now, and I do not like sitting still, so I am going to walk around the audience. That will keep me more focused and more engaged with you. The only problem is that this auditorium is filled with these people dressed in suits with little things in their ears. They are my marshals, and they are here to protect me from myself, because they do not like me doing this. So if you get up unexpectedly, they get nervous and they threaten to pull me off the floor. So if you stay seated as I walk around, you will make them much happier. So I am going to go walk around—

RS: Please, Justice Sotomayor.

SS: You can—I will listen to you. How is that?

[Applause]

SS: Robert, I can multitask, so you can ask the questions.

RS: Yes, I'm planning to. I've never really played solo before on the stage. Justice Sotomayor, I want to start with your District Court appointment by President George H.W. Bush in 1992. When you were appointed, you were the youngest federal judge, only thirty-seven years old, in the Southern District of New York, which is New York City, the first Hispanic federal judge in New York State, and the first Puerto Rican judge in New York City. Now, your reputation as a trial judge was that you were well prepared in advance of a case, moving a case along a tight schedule, and lawyers who appeared before you viewed you as plainspoken, intelligent, demanding, and not having much patience for lawyers who tried to snow you.

Do you think that reputation was accurate? I was going to ask you did you enjoy being a trial judge, but I heard you say earlier today if [you] ever resign from the Supreme Court, that rather than sitting on a court of appeals, you said you'd enjoy going back on the trial bench and trying cases, which is quite a surprising statement. So tell us about your time as a trial judge. Were the lawyers right?

SS: Well, everything was right except for one thing. It was not that I did not stand for people trying to pull things over my eyes. I think I suffer fools easily. You know where I sit, right?

[Applause]

SS: I was jesting. I was jesting. But what I do not tolerate is unprepared lawyers. You should know one thing. Mistakes in

law by lawyers is a human condition, because no human being is perfect. In whatever profession that you are dealing with, mistakes are going to be made. And the law forgives an awful lot of lawyer mistakes. If I told you all of the rules that you have to go through to hold a lawyer liable for their mistakes, you would likely be shocked.

Habeas corpus, which is what gets someone who is imprisoned to go to court and say, “I’m being held unconstitutionally, something—some error was committed in the judicial process that got me convicted, and I’m in jail for a non-legal reason,” well, we have a law that Congress passed that says if the court below has made a mistake but it is a reasonable mistake, you stay in jail. So the mistake can be wrong and it should not have happened, but you stay in jail anyway. Imagine someone who is in jail knows a mistake was made and they are sitting there and thinking, “but I get to stay here?”

So what makes the process fair? Lawyers make the process fair. They make it fair when they give their best to representing their clients. Accepting that we are human and we can make mistakes is one thing; to be lazy about representing a client or to not spend the time giving them your best, that is unacceptable to me. And there, yes, I am harsh, and so I take the criticism that there were moments when lawyers came in and were unprepared, and I challenged them to be more prepared and to think about what they were doing and why and to come back, because I am not making judgments about how law should be changed or not about mistakes. I accept them as a given. But I do think that if you practice the profession—this is an old friend. Two old friends.

RS: Yes. I should say these are some great friends in the front row, so don’t expect to be kissed when she comes by.

SS: And their son and daughter-in-law, and their daughter. But I do—I told you I love being a lawyer. I love the profession of law, and I want those who practice it to be as passionate as I am, to love it as much and to try as hard. And so if we do that, then we can give clients the sense that if we make a mistake, it’s just that, and that, to me, is the most important part of being lawyer—the trying, that heart to want to help people.

[Applause]

RS: Justice Sotomayor, in 1997, President Clinton nominated you for appointment to the Second Circuit Court of Appeals, and you sat on that court for ten years, hearing over 3000 cases and writing 380 majority opinions. Now, you had a

reputation for running a hot bench in the panels on which you sat, where judges asked the lawyers arguing the case a lot of questions. And truth to tell, you're a pretty active questioner on the Supreme Court as well, I think rivaling Justice Scalia at some point along the way. But could you talk about—

SS: It is not bad to be a rival to him in something.

RS: Talk about questioning of counsel. What's the purpose of it? Are the judges really trying to raise issues for other judges, or are you trying to steer the lawyer to make arguments that will help make his or her case successful?

SS: Both things. When you are—especially on the Supreme Court, though, but most appellate panels—appellate panels is the court of appeals, the court between the trial court, then there is a court of appeals, the intermediate appeals court, and then the Supreme Court. The appellate courts are generally three judges. The Supreme Court is nine. Well, for most appellate courts, the first time the judges are talking to each other is at oral argument. That is the first time, because you have been studying the case up until then, but you have not really talked with each other about it. And so through our questioning of the lawyers, we are also sending signals to one another about what is bothering us, what issues are creating problems in our thinking or in our resolution of the case.

It always shocks me, and I figured out it is because now I am a judge and I am so involved in the process, that I will hear the legal pundits and lawyers leave the courtroom and say, "I think that judge is going to vote that way, and I think that judge is going to vote this way." And I think to myself, "are they crazy?" Because I know the judges, I know what bothers them, and so I am listening with an attuned ear to what the issues are that I know will trouble them.

We all play a little bit of devil's advocate with both sides, we ask tough questions, often, of each side, but it is to sort of get the lawyer to give us the best answer for what is the most difficult question on their side. And so we are doing both things—we are talking to each other, and we are engaging the lawyers in an attempt to give us their very best answer to the question we think is the toughest in deciding the issues.

RS: In May 2009, President Obama nominated you for the Supreme Court, succeeding Justice David Souter, who retired that year, and you joined the Court on August 8, 2009, as the 111th Justice in the history of the United States.

SS: My grandmother is in heaven playing that number.

RS: Can you describe what it was like to join the Court and be colleagues with these Justices with whom you had had such a high esteem for so many years? Was that a feeling of exhilaration? A feeling of humbleness? Or what were your thoughts—what was going through your mind as you went on the Court?

SS: I was scared. No, seriously, I was petrified. The—the most fearful moment of my career as a Justice was that first argument, which happened to be a very tiny little case called *Citizens United*.² And the newspapers are filled with the press wondering what would be my first question, and I had prepared for over a month for that argument and had thought long and hard. I had two pages of questions. I knew I could not ask two pages of questions, but I really did not go in with a first question in mind. And I was also very fearful about being the first questioner. I do that more easily now, but not then. And the first question came sort of naturally from the conversation that was going on.

But it—you know, there is a sense of fear in taking on a position with so much responsibility. You know, when you read our cases as the public, you read one decision, you read the other, and you say, “this one is right,” or, “that one is right.” It seems perfectly clear to you. Right? You wonder why we are finding it so hard to make up our minds. But you have to understand something. When the Supreme Court takes a case, almost always it is because there is a circuit split.

There are thirteen circuit courts throughout the United States. The fifty states and territories are divided up among those circuits, and the circuit decisions affect only those courts in that circuit, in those states that that circuit supervises. And each of those circuits is getting new legal issues all the time, and they are deciding them. Occasionally, they are deciding them the same, but a lot of times, they are differing in their opinion. When you think about it, most courts are composed of judges who are trying very hard to be reasonable people, and so if reasonable people in the United States are differing in their interpretation of a law, there has to be something that is unclear. There are always arguments on both sides. There are always different ways of looking at what is coming to the Court, a gray area of law, because if it was not gray, they would all

2. *Citizens United v. FEC*, 558 U.S. 310 (2010).

agree. But it is gray, and so those reasonable people are coming to different answers.

What happens when we write our opinions—most of us are pretty good lawyers. We have been taught how to write powerful and persuasive opinions, because that is our training. We have now decided this is the answer, and we are going to convince you it is the answer. But you have to read our footnotes, you have to read the dissent to understand what the other side is, and you have to realize that answers among reasonable people can differ and that no answer is as clear-cut as you believe it to be, because you are obviously seeing it from your human perspective. We are applying a very different mode of analysis to the question. We have been trained in a particular way to approach a problem and dissect it and put it back together to reach an answer, and so the way we do it may differ from the way the public does it. But you are reacting to the outcome; we are reacting to the process. We are approaching it in a way that each as judges believes is the appropriate way to interpret that issue of law. Clearly, we are applying similar principles, but we are ordering them in different ways, and because of the guideposts in our own interpretive process, we can come to different answers.

RS: Justice Sotomayor, a couple of years ago I heard a panel discussion among all four of the women Justices who have been appointed to the Court, and the three current Justices, including yourself, were asked where they were and what they felt when they heard the news that Justice Sandra Day O'Connor had been appointed to the Court as the first woman to serve on the Court. And I'd like to ask you a multi-part question today. First of all, that question, where were you, and what did you feel when you heard that a woman Justice was appointed to the Court? And further, would you expand on that and describe the experience of serving on the Court with two other women Justices? So for the first time in history, we have three women Justices. And, I think it's more than a little significant, what are your feelings about being the first Hispanic Justice and the first woman Justice of color to serve on the Court?

SS: That is a loaded question. Let me start with where was I. I was in my office in the DA's. At the time at the DA's office, there were five trial bureaus—six, I think, trial bureaus in the DA's office. There was not one trial bureau chief who was a woman. There was no assistant chief who was a woman. There

were six male judges who were the heads of the all-purpose parts of the court system. The six divisions corresponded to one of those judges. There were female judges, but all of the people in power were males.

So you are a young lawyer, a young female lawyer, there are, as I said earlier, no role models, and all of a sudden, the front page of the *New York Times* and the newscasts of the day are featuring this woman, a mother, someone who graduated from law school and could not get a job, although she graduated top of her class. She beat out the guy who had become the chief judge in her court. She and Chief Justice Rehnquist had gone to law school together. She scored higher than he did. But yet, despite that, she did not become Chief, but she became an Associate Justice.

What did it mean to me? Hope. Not about being a Supreme Court Justice, but about having a career where I could aspire to become anything I wanted, just like you can. I did not have to be a Supreme Court Justice, but I wanted to become some—somebody who was doing really important work, and to do that, I understood that the doors had to be open, and so that's what Sandra Day O'Connor's appointment meant to me, the opening of opportunity, and so it changed the course of my life and the life of thousands and thousands of young girls and women. She is an icon to me, and remains so to this day.

I didn't get to serve with her, but my first day in Court, after I was sworn in—I had gone to the gym. I had the gym bag over my shoulder, and I come back to my office, and sitting with my assistants is Justice John Paul Stevens. And I am blathering away, saying, "Justice," and he is saying, "You call me John," and I am saying, "Justice." And we sit and talk, and I'm sort of shaky inside, and a few minutes later, I hear a voice, followed by this woman who comes in, and it is Sandra Day O'Connor, and the two most senior members of the Court had come to my office to welcome me there. What an amazing experience.

RS: Yes.

SS: Sitting at my desk that morning was the bench memo—bench book, and I will explain what that is—with a note from Ruth Bader Ginsburg that said, "I hope you will find this useful." What a bench book is, is the creation by each individual judge of their practices in chambers. You get lots of things that are repetitive in the Court, motions for extension of time, and each Justice has different practices around those mo-

tions. Justice Ginsburg's book told me what her practices were and why—because the bench book is created for her law clerks who come in each year so they know what she is looking for and how she is reacting to different things and what is important to her in judging issues. It also gives you examples of opinions and things that she has valued.

For a new Justice starting out, that was like the Bible for me. I have created my own since, because I have taken her base and figured out what works for me and what doesn't work for me, but having someone else's bench book was the greatest gift any colleague can give you, because it gives you a start to understanding the process of decision-making on the court you've just joined. So she too has become a mentor and a friend.

What is it like? I do not know what it is like or how to describe being with three—three female Justices, because I don't know what it was like when they were there alone. You know, Sandra Day O'Connor went about her business alone for thirteen years. Ruth was alone for many years before I came to the bench. I know each of them has talked about how much they love their brothers, as I love the brothers I have. And is there something different in my relationship with them as opposed to my relationship with my brothers? No more different than any of the individual relationships we have. You know, Justice Alito and I love—both love jazz. I do not know how much he loves opera. All the others like opera. But he and I end up going to jazz performances in the city back to back. I will go one night, they will tell him I was there the next night, that sort of thing.

Is there a difference? It is hard to tell. It is hard to tell, because we are friends, and friends who are supportive of one another. But I do not think our brothers are less supportive. When Justice Ginsburg's husband was ill and dying, Justice Breyer arranged to have food delivered to her every night, because Marty Ginsburg was the cook in the family, and he knew Ruth just would not eat if he was sick. And so that is an act that when I heard about it I thought he really cares, but it was an act of human decency that can come from males or females. It is really only about what your personal relationships are about, and I think that those are very special to me, my relationships with Justice Ginsburg and Justice Kagan.

RS: Would you comment about the feelings that you have of being the first Hispanic Justice on the Court?

SS: You know, I am often asked about that, and I do not know how to answer. I really wish I had not been the first, be-

cause I really wish there had been others before. And I tell young Hispanic kids who come up to me and say, “You took my place. I wanted to be the first—” and I tell them, “I’m not going to be here forever, so come.” I don’t know that there’s—I certainly do not feel that I am a Justice just for Hispanics. I am a Justice for everyone, for every citizen in this country affected by law—in a good or bad place, because that is what we are asked to adjudicate, when the law is doing something to you as a person. And I really do not think of myself as looking at it through a lens of being Hispanic or anything else. I am trying to look at you as a person and trying to look at how the law is affecting us as a general society, not as a particular group in that society.

But having said that, I think what has taken my breath away is to see the emotion that other Latinos have in seeing me in this position. For many of them, I see it—I see in them a source of pride that gives them hope. It gave me a better understanding of, when they talked about our current President being elected, how so many young African-American children were seen crying because they had not seen a person who looked like them or shared their background in such a visible position of power, and I understood better what they were feeling when I saw people from my own community experiencing that.

When we see the doors open for any group who has experienced being outsiders anywhere, it makes us a better place, because it gives people that sense of possibility. When I welcome new citizens to this country, I often tell them, “we are not perfect. No place is perfect. We have much to continue doing. We are better because you are a part of that process of improving us.” So what makes America different from other countries? It is that we have the possibility of dreaming and having those dreams come true. When we can make them real, it is something powerful.

[Applause]

RS: We’re getting close to the time we’ll throw this open for questions from the audience, but I think it’s important for us to reflect on the change of the Court in the last year. Justice Sotomayor, can you talk both in personal terms how Justice Scalia’s absence has affected the Court, on the bench and in relations with colleagues, and then what’s it like being on an eight-person Court? Has that caused a change in the culture of the Court?

SS: Well, perhaps I should relay to you the day that we walked out in the Great Hall of the Court to await the arrival of Justice Scalia's casket—we had a day of laying in mourning at the Court, and thousands and thousands of people came to pay their respects, including everyone in the higher echelons of our government. We were in the back, lined up to go out, and since I am near the end of seniority, I was near the front of coming out, and I came out first behind Justice Kagan, and we took our spot, and I was seeing my colleagues come out. And I could actually see every one of them, including myself, catching our breath when we saw his portrait, and I could, as I stood near each of them, feel each one of us holding back our tears. Losing him was losing a member of my family, and every Justice felt that way.

We fought. Many of us fought continuously with him. We disagreed on so many things, but we really deeply were friends with each other. It is well renowned that Justice Ginsburg and Justice Scalia, their families—their spouses and they traveled the world together. There is a picture of Justice Scalia and Justice Ginsburg on camels together. They went to the opera often. Justice Kagan hunted with him. I've been to his home and had dinner with him and his wife. We sparred, and we laughed together—but so does everybody on the Court. We get angry at each other. There are moments where you want to take one of them and shake them. I have told people there are things he said on the bench where if I had a baseball bat, I might have used it.

But when you work so intimately with people, you get to know the really personal, good side of them, the things that made them who they were and that made them human. Nino truly, truly was a religious man. He truly, truly believed in the morality of law—in a different way than I did, but I could respect his passion, just as he respected mine. I told a story earlier that one day he said, "Sonia, you're a bulldog. You get a bone in your mouth, and you don't let it go." And he then stopped and he said, "That's why I like you so much. I'm the same way." And I knew he meant it, because he did mean it. It has been a deeply, deeply felt loss. What I am describing I think every member of the Court felt in one way or the other.

So has the Court changed, and what do we do as eight instead of nine? Well, we try to come to decision-making as best as we can. Where we can find a very, very narrow way of deciding a case, we use it. And you might ask why don't we do that

all the time? Well, because when we take cases, it is because there is a pressing legal problem that has divided the courts below, and justice across the country is being administered in an unequal way, because courts in different parts of the country are deciding the exact same issue in a different manner. And so the reason we have granted cert and agreed to hear the case is to resolve that vexing legal question, and to the extent that we keep it unresolved, we continue that uncertainty. And so many will tell you that there is value to having a decision, even when it is a split decision, because whether you agree with that split or not, at least people across the country are being treated equally, and so that has a great value that having a court of nine gives you. It is much more difficult for us to do our job if we are not what we are intended to be, a court of nine.

RS: Well, now it's time for you to ask some questions. As Dean Jenkins indicated, there's a microphone on each side of the auditorium right inside the door, so those of you in the balconies, if you want to ask a question, can make your way down to the main level and step inside the door. If you will line up behind the microphone on each side, I'll recognize you, and when I do recognize you, I'd like you to first give your name and indicate if you're a law student or an attorney—oh, my goodness.

QUESTION AND ANSWER SESSION

SS: All right. I'm going to do this.

Q: Hi.

SS: Hello. How are you? Hello. Hi.

Q: Hello.

SS: Hi. Thank you.

RS: This is not your ordinary Justice.

SS: Thank you for being all the way in the back.

Q: It's an honor. Thank you.

SS: All right. Where are we going to start?

RS: I'll pick up here. Line up behind the microphones, give your name. If—if you can't see, the Justice is sliding down an aisle past everybody in that row—

SS: All right. Which microphone are you going to start with? These guys are letting me through. This is wonderful. Thank you.

RS: They're standing up so she can get by.

Q: Thank you for coming. Thank you.

SS: Thank you for being here. Thanks.

RS: Give your name. If you're a law student, indicate whether you're a 1L, 2L, 3L or an LLM student. If you're a lawyer, indicate you're a lawyer or some other member of the University or Minneapolis community. And we'll alternate between sides in taking the questions. I think we're going to begin while Justice Sotomayor is still walking, so that being the case, let me take the first question on the left side of the hall here. Please, give your name and identify yourself.

Q: Hi. I'm Kate Sievert. I am a freshman here at the University, an undergrad, and I was wondering when and how is empathy useful in the courtroom.

SS: How and what?

Q: How—or when and how are empathy useful in the courtroom?

SS: Empathy. All the time. If you are a judge, you are being asked to listen to the arguments of two sides. Each side feels aggrieved or entitled, depending on whether they are a claimant or a defendant, in different ways. Each side wants to be sure that you understand not only what they are saying but the why and the feeling of it, and the only way that you can give them that sense of really hearing them is if you can empathize with their pain. And that does not mean one side; it means both sides. And empathy does not mean that you rule on your feelings, but it does mean that if you are going to rule, you should at least understand each side. That's a very different thing than believing that a judge who cares is someone who rules just for you because they feel sorry for you. I do not think that that gives anyone a sense of vindication in a meaningful way. What does give them a sense of vindication, even when they lose, is to hear a judge say, "look, I ruled for this reason, but I do appreciate what the other side is experiencing."

I cannot tell you how many people have come to me when I have written a dissent and said, "look, I lost, but at least I understand that someone understood what I was saying." And that is the only comfort you can give a loser—because, remember, in every single case in court, somebody wins—and what happens to the other side? They lose. And when they lose, they often do not think justice has been done. Would you? So the only way I think people can feel that sense of justice is if they think they have been fairly heard, even if they lose.

RS: Let's take a question on the right side of the hall.

SS: Now, would you do me a favor? I'm going to take a picture with people who are asking questions. For the guys up there, if you get to ask a question, come down and look for one of my marshals. They are the guys with the little things in their ears. They will get you to me so you can take a picture with me.

RS: I guess we've got some photo sessions going on in the aisle. Okay, I'm sorry, I'll recognize the questioner there. Could you state your name and ask your question?

Q: Hi. My name is Anna Kaningia, and I'm a Master of Public Policy student here at the University. I'm currently taking Professor Stein's Rule of Law class, which is where my question is coming from. So a lot of what he talked about in class was that the U.S. law is often used in other nations to produce or create their own laws and to look to U.S. law as an example. However, I was wondering if you think that the U.S. should, and can, look to other nations and to international law as an example, or if you think that U.S. law is superior to other nations' law and should be only used as an example for other countries. Thank you.

SS: The last question is easy. Laws are culturally based, to the extent that—because I've already defined for you the function of law, which is to regulate people's relationships with one another—law often becomes a symbol to people of their cultural relationships with one another. So every country you go to—none have taken the American legal system in total. They have taken the pieces that they can accommodate to their senses of what is right or wrong, and they have to do that, because everything we do is not going to be compatible with what they think is right to do or how people should relate to one another. And so none—no legal culture is superior to another; each adjusts to the needs of their own society.

Yes, we are privileged, because we are one of the oldest current legal systems, by the way, because there are older legal systems—Roman law, Greek law, Genghis Khan's law. I mean, there have been laws through the centuries by other cultures, but in more recent modern times, we are one of the oldest legal systems, being over 240 years old, and so many, many countries do look to what we have done, because they are looking to the experience that we have had.

But you get more current legal systems—for example, South Africa's. South Africa has created a constitution that Ruth Bader Ginsburg said is a better example of a modern con-

stitution than the U.S. Constitution. Now, do I agree with her or not? I'm not going to take a position. But it is a law that is somewhat different than ours. One of its fundamental rights is a right to education. We do not have a constitutional right to education. We have created it through state constitutions and through expectations, et cetera, but it's not part of our constitutional entitlement, and so that is a sort of different approach to the issue that a place like South Africa takes.

Could we learn something? We do it without knowing it. You know, the one thing about ideas is they—and I'm quoting one of my colleagues from the Second Circuit, Guido Calabresi. He said, "Ideas don't recognize barriers; they travel freely." And so to the extent that people in Congress are looking at what other countries are doing, and some of them are studying that—look at the conversation we had during our debates about healthcare, what other countries experience, what they—the problems they had, the solutions that worked, the things that did not work. They were very much a part of that ongoing conversation about healthcare. So too are issues on big law questions, like personal jurisdiction over people, where they can be hauled into court or not hauled into court.

We participate in treaties all the time around very serious legal questions, and those treaties are attempting to capture the sense of development in the world around legal issues that affect everybody. So we have treaties surrounding evidence and the production of evidence across borders. We have treaties on the abduction of children. We have treaties on the use of nuclear warfare. We have environmental treaties. All of those treaties have been created by the experiences of different countries and their legal systems, and the countries get together and then try to find commonality in a way that each can tolerate.

So, yes, we can learn from each other. We teach each other. Could Americans be more respectful of international law and foreign law? There are situations in which we could be. Yes, you are right. Some debates among my colleagues in some cases surrounded our—those other colleagues' use of international law to help inform some of our decision-making, and it was criticized, and there was actually some discussion in Congress about prohibiting us from citing foreign law in our decision-making. How you put thoughts in a box I do not know, but people were actually discussing that.

So I think it is an open question. I think the study of international law is critically important to the world today. In this

smaller world that we live in where we can reach the farthest reaches of the world through the Internet, we had better get to know each other better, because if we do not figure out how to live together, we are going to continue in the kind of warfare, regional and otherwise, that we're involved in, so it really behooves us to figure out a better way to do things. Good luck to you on your endeavors.

[Applause]

RS: On your point about citation of foreign authority in Supreme Court opinions, I once heard a debate between Justice Scalia and Justice Breyer in which Justice Breyer said to Justice Scalia, "Are you telling me what I can read and not read when I'm deciding a case?" And Justice Scalia said, "I don't care what you read. Just don't cite it." Over here on the left side of the auditorium, please, state your name.

Q: My name is Ian Taylor, Jr. I'm a 1L at the University of Minnesota Law School, and I just want to thank you, Justice Sotomayor, for coming and sharing all your wisdom with us. I had a question I wanted to ask as a law student, but also as a son of a Jamaican immigrant. I wanted to ask what is your view on the—the role of immigration in terms of building our community here at the—in the United States? You talked earlier about—in your allusion about traffic signals and how law helps build community. What's your opinion on how immigration builds community in the United States, and how does law play a role in that?

SS: Look, this question for me is usually nonsensical, because except for the Native Americans in the room, and there may be just a handful of them, nobody else is native to the United States.

[Applause]

SS: We are all children, grandchildren, great-grandchildren—however back you want to go, every one of us can trace our background to an immigrant. Somebody came from somewhere and landed here. Now, saying that does not really address the hard question. You know, when the nation was first being built, we needed open borders to permit the development of our country in terms of industry and just basic infrastructure. Think of the immigration of the Chinese to build our trans[continental] rail lines. The level of discrimination that they were subjected to was pretty horrible. If you read perhaps the most famous dissent in U.S. history, it was *Plessy v. Fergu-*

son,³ in which Justice Harlan wrote that segregation was constitutionally prohibited⁴—that was after the majority decision that said separate but equal was okay.⁵ And as everybody knows fifty-odd years later, the Court went with Justice Harlan. It is a masterpiece of a dissent in terms of constitutional analysis, yet, despite that, he talked about “those yellow people.” He called them “yellow creatures.” He was a man of his time, and he didn’t have the openness to be able to see those yellow people as people; they were creatures.

We have to struggle as a nation to define what it is that is important to us in terms of being open to the world, what is helpful for our country and its development, and how to do things in a way that everyone will feel is fair. That is an ongoing political discussion, but it is a discussion about our hearts as well. We have to look within us to figure out how we balance very critical needs, both for our population as it exists and for the people who are running away from persecution elsewhere, et cetera. I do not know what the balance should be. I think I know what I would like it to be. I have my own personal opinions. But that is not what is going to control this dialogue.

What is going to control the dialogue is the country talking about it, the country debating these questions, the country being open to discussion on issues that affect it so much. And it means that people, everyone, citizens and non-citizens, have to talk with each other about it. The solution is not one solution, the solution may be many different things, but we have to continue the dialogue about it in the hopes of finding a place where we are comfortable, that we remain the great nation that we’ve always been.

But you cannot do that alone. We have to do it by participating in the dialogue. I tell kids who ask me about immigration—and I get a lot of kids who come from backgrounds similar to my own who are talking to me about the hardships of their illegal parents, and I tell them, “I understand, so get out there and start knocking on doors. Start talking to your neighbors. Start writing letters. Start acting like citizens act when they need change. Speak up.” And so if you do not like something, do something about it. That is the fact.

3. 163 U.S. 537 (1896), *overruled by* *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

4. *See id.* at 560 (Harlan, J., dissenting).

5. *See id.* at 551–52 (majority opinion).

[Applause]

RS: We'll take a question from the right side of the audience.

Q: Hello. My name is Megan Guptal. I'm a 1L at St. Thomas Law, and I'm wondering what your favorite—

SS: Where is St. Thomas?

Q: Six—six blocks, maybe? [Laughter]

SS: No, no, no, I am at the University of Minnesota, guys. Give me a break.

Q: Well, there's three law schools in the Metro area.

SS: Ah, great. Okay. Thank you.

Q: It's one of the competitors, but, you know, they still invite us here. My question is what has been your favorite United States Court case to rule on, and then historically as well?

SS: I can tell you my favorite to rule on. When I was a Circuit Court judge, I was a dissenter in a case called *Croll v. Croll*,⁶ and I was heartbroken, because I really thought I was right—but so do most dissenters. The comfort I took, it was an issue on the Hague Convention on the Abduction of Children, and it was a question that got addressed by higher courts across the world, and the vast majority of them ruled in a way that said—they adopted my view of the Convention and not the majority's view. And I felt pretty proud of that. I did not win here, but I won elsewhere. A year after I got to the Supreme Court, my first year, the same issue came up in another case, and the Court granted certiorari. Guess what? I won.⁷

[Applause]

SS: The losing judge in the court below, who is a dear friend of mine, wrote to me and said, "Sonia, this is highly unfair. You had to get promoted to overrule me." But it was strange to—to be a part of a Court addressing an issue that I had decided on the court below. It was not a normal situation, but it does often happen, because if you are a judge on the courts below, remember, you are dealing with those open questions that the circuits are splitting around, and so it is not unusual for you to be the judge on the Court when the same issue arises.

SS: And the last question is what is my—

RS: Your favorite case.

6. *Croll v. Croll*, 229 F.3d 133 (2d Cir. 2000) *abrogated by* *Abbott v. Abbott*, 560 U.S. 1 (2010).

7. *See Abbott*, 560 U.S. 1 (abrogating *Croll*, 229 F.3d 133).

SS: Historically.

Q: *Roe v. Wade*?⁸ *Brown v. Board*?⁹

SS: Look, I was born on June 25, 1954. You can now calculate my age. *Brown v. Board of Education*¹⁰ was decided May 17, 1954, and although New York was not segregated formally or completely at the time, it did have segregation in many de facto ways, as did the rest of the country. It changed my life. It changed your life, because the issue of segregation impacted not just people of color, but women as well, and those laws began to change when the Civil Rights Movement awakened.

A decision that changes the life of so many to me is of historical and personal value and one that I admire, because it was the Court who had decided that separate but equal could exist and that it would truly be separate but equal, and it was the record compiled by the lawyers who brought the *Brown* case that showed that there was no equality in the separate facilities that existed between the races, and it was that factual reality that the Court could no longer ignore and made it go back to first principles and decide that Harlan was right the first time. When the Constitution in the Thirteenth and Fourteenth Amendment talked about equality, it meant equality. So, yes, that is the most important case for me.

RS: Let me tell the questioner from St. Thomas we're delighted you're here, and we're happy to have students from Mitchell–Hamline and St. Thomas join us at the University of Minnesota. We're happy to have all of you.

SS: Now, I think, Robert, you should tell them that at lunchtime I told the Law School and the faculty that regional law schools should be working together to improve each other's offerings to the entire regional student body, so I think all of those law schools should be thinking about better ways [of] getting together and improving life for all of their students.

RS: Exactly. Over here on the left side, the question?

SS: All right, I am going to come back around this way.

Q: Madam Justice, my name is Dawn Van Tassel. I'm a private practice civil litigation attorney here in Minneapolis, but I'm ceding my question time to my daughter's fourth grade class at Park Spanish Immersion Elementary in St. Louis Park, which is a suburb of Minneapolis. When their teacher, Nydia

8. 410 U.S. 113 (1973).

9. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

10. *Id.*

Napier, found out that I was coming here today, she saw that as an opportunity, because her students have studied you and they have read your biography.

SS: You have no idea how extraordinary that is to me. No, no, no, truly. You know, I walk into a room like this and I see so many people, and I am still shaken by it. It still moves me to the core. But the idea that kids would be studying about me, you know, it is strange. No, no, it is strange, because I am only me. Does that make any sense to you? I am them, and so that they are studying me seems very unusual to me.

Q: Well, I have a whole stack of questions here, which I promise I won't—I won't ask you, but if you do have that moment of disbelief, you are certainly welcome to have them. I would love to give them to you. By far, the most popular question was, "will you come and visit our class?" I figured you were a little busy. But—but the second-most popular question—

SS: Well, I will put it on somebody else. Tell some—one of the people I am visiting tomorrow to give up some of their time. Unfortunately, I do not think they will.

Q: No. But a lot of the questions centered around our current election and—because fourth graders don't understand the separation of powers. So my—then again, neither do some candidates, but that's my own political commentary.

[Applause]

Q: But my question to you is, as a parent, how do we engage our young people in civil discourse and learning about government in an age where I can't even be sure that my child can watch the evening news?

SS: You know, I thought you were going to ask me what they probably asked you, which is what do I think. You are shaking your head yes, which I get that question a lot, which is who do I think should be President? And I look at them and say, "I only have one vote. I go into that booth, like everyone else who is entitled to vote, and my vote is equal to everybody else's." Who we vote for is who you think we should vote for, not who I think we should vote for. And you should not vote until you are informed about the issues and you have thought clearly and carefully about the consequences of your vote, because that's what makes a republic. A republic is a representative form of government, but it relies on the active participation of its citizens. I say citizens because that is who votes, but others who are non-citizens can help inform you. But in the end, every one of us will stand in that box—and this you have to explain to

your child. Someday he or she will have the opportunity to make that choice, and they should be teaching themselves how to think about that choice starting now, because as they think about it, they will help you think about it, and they will help other people think about it more too.

We can all make a difference when we act together, and so, please, tell them that what I hope for them is a life filled with whatever adventure they seek, whatever dream fulfillment they want, but, most importantly, one of giving, of giving to the community they are a part of, and helping all of us grow together. So tell them they can tell me who they want to vote for. Good luck to you.

[Applause]

RS: Justice Sotomayor, we're getting very close to the last question, and I don't know whether you want to be on the stage when we finish—

SS: I guess I had better be, huh?

RS: But let me recognize the questioner over here on the right side of the hall.

SS: All right, then, let me walk over there, take the picture, but I won't answer it until I get back there.

Q: Good afternoon, Madam Justice. Thank you so much for being here. It's a real privilege. My name is Ron Goldser, and I'm Yale class of 1975. I wanted to make sure you knew that we had some of our alums here, as well as—

SS: I know. I have met quite a few of them at the Law School today.

Q: They're on—there are many on the faculty—as well as University of Minnesota Law School, class of 1978. I was going to bring my kindergarten class, but I guess they wouldn't come because the fourth graders couldn't come either, but, oh, well. My question, however, is related to the last question. It has to do with the current political climate. I am greatly troubled by what appears to me to be a great disrespect for our government institutions. As I was practicing law, I got mad at many judges who ruled against me, and, of course, a lot of the judges who ruled for me, but I would get mad at the judge and I would get mad at the individual decision and, you know, so it goes, and that's been true for a long time. But I would never disrespect the robe. I would never disrespect the Court. I would never disrespect our President. But in the current environment, there seems to me to be such great disrespect for all of our governmental institutions, no matter who sits in the office or who sits

on the bench. Do you feel that disrespect in the Court? Do you see it? And if so, how can we change that? How can we regain that respect for these institutions? Thank you so much.

SS: I am pausing, because do I feel it on the Court? You know, one of the reasons that we are such good friends with each other on the Court, despite vehemently disagreeing about so many issues—and you only have to read our opinions to know that our disagreement can get very animated at times. But the reason that we can continue to interact and actually like each other is because we respect each other. We respect one fundamental truth—we know that each other has an equal amount of passion and love for the Constitution, for our system of government, and for doing what is right under the law. We can disagree what the answer to that is in any particular situation, but we know we are motivated by that equal passion, and that can forgive a lot.

When I get a dissenter who is less than nice, I remind myself I won. No, no, no, seriously. They have to vent, and sometimes you just have to let people vent. Sometimes we rise to the challenge and we vent back, and it's never so pretty, but, often, we try to control ourselves, understanding that that venting is born from that desire to take that person, and what you said, shake them and say, "why can't you see it my way?"

But the reality is that if we have lost anything, it is remembering that differences do not have to and do not stem necessarily from ill will, because if you can keep that in mind, you can resolve almost any issue, because you can find that common ground to be able to interact with each other. What do families do every day of the week? Who wants to eat what? Who wants to see this on television? Who wants to go to that movie? Who wants to do that amusement park versus that playground? And families manage to find a way to compromise it. We will do this tonight and that tomorrow. We will eat this this week and that next week. It sounds silly, doesn't it? But it is how we find that commonality with each other.

And I think the best that we can do is live our lives setting that example, because it is the only way we can change what exists. And we can also be demanding citizens. We can ask our politicians to do the right thing. And you can vote them in—and what else? You can vote them out. But it takes that affirmative decision on your part about what it is you want, and make sure that that's communicated in a way that shows what you expect of your country. So does the Court feel it? I mean, I do not like

it when I read the polls, that we are held in less respect. It is one of the reasons I do things like this. I want you to know that I am a human being. I want you to know about the things that worry me, about my intentions, so the day you disagree with me—and you will, because I won't be a good Justice unless I render a decision you do not like someday. But the day you disagree with me, that you will disagree with me but not hate me. Those are two very different things, and so that is why I do the kind of outreach I do.

[Applause]

SS: I do not have an answer. There are plenty of people in this room who do and who are actively working at trying to change things. You should be very proud of your elected leaders in this state. They are to be admired.

[Applause]

SS: Thank you.

Q: Thank you so much.

RS: Please, join me in thanking Justice Sotomayor.