

## Judicial Profile

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# Hon. Sonia Sotomayor U.S. Circuit Judge, U.S. Court of Appeals for the Second Circuit

JUDGE SONIA SOTOMAYOR radiates warmth. From the moment I walked into her chambers and she offered me a cup of coffee, and throughout the time she spent patiently answering my questions, her kindness, compassion, and sense of humanity were palpable.

By now, the details of Sotomayor's awe-inspiring trajectory to the pinnacle of the legal profession are well-known. As a former clerk describes it, Sotomayor's is a "real-life Horatio Alger story." She was born in 1954 in the South Bronx. Her father died when she was a young child, and her mother raised her and her brother single-handedly. After growing up in the housing projects, her next stop was Princeton University, from

where she graduated summa cum laude in 1976. Next was Yale Law School, where she was an editor of the *Yale Law Journal*. She graduated in 1979.

Sotomayor spent the next 12 or so years as a practitioner: approximately five years as an assistant district attorney under Robert Morgenthau, and approximately seven at the firm of Pavia & Harcourt, handling commercial litigation cases.

Sotomayor began her judicial career as a trial court judge. She was appointed to the U.S. District Court for the Southern District of New York by President George H.W. Bush in 1991, and spent over six years on that court before her elevation to the Second Circuit. Excerpts of my recent interview with the judge follow. Among other issues, we discussed the ways in which her time as a trial judge has shaped her approach to the cases she hears.

*Q: What, if anything, about your experience as a trial judge do you bring to the appellate level in terms of how you approach a case?*

A: If, in the appellate brief, there's an argument that I see the district court hasn't addressed, nine and a half times out of 10 times I know that's because the argument was not raised below. And [if] it was missed, [it is because] our district judges are human and extremely busy, so they are not without the capacity to occasionally overlook an argument, but it is rare. And it always surprises me how often some of my colleagues who haven't sat on a district court bench are not thinking about waiver questions as much as I am. ... I think also I am a little bit more curious [about how a case ended up before the Second Circuit]. ... As a trial judge, ... you are watching the lawyers sort of play their chess game in front of you, and you understand it. ... And so, every once in a while, I'll look and say [to the attorneys]: This is not going to affect you but, I'm just curious, why did this happen this way?

*Q: Have you noticed any changes in the makeup of the docket over the years that you have served on the Second Circuit?*

A: The main change ... has been the increase in the petitions for review of asylum denials. ... In the last year and a half, our total docket has doubled as a



result of the filing of those petitions. It is attributable to a number of factors, the least of which is a streamlined mechanism in the Bureau of Immigration Affairs in which the number of BIA judges was decreased. ... As a result of that streamlined process and some other expedited procedures, they cleared the backlog there, but they created backlog here. ... We had hardly seen any petitions for review in the past.

*Q: Do certain asylum petition denials typically proliferate from particular countries?*

A: Absolutely. ... There are a significant number of claims from China arising from China's family-planning one-child policy and abortion practices of that country. ... There are an equally large [proportionally speaking] number [of claims] coming from Albania and other Eastern European countries based on either political or religious persecution.

*Q: Is there anything that you miss about your days as a practicing lawyer, either as a prosecutor or a law firm attorney?*

A: There is nothing I miss, but that is a misleading answer. I am one of those people who has loved every job I have taken. There has been a learning experience from every one of my work situations. I have been blessed with working with people that I admire and like, and I have been blessed with working with clients when I was in private practice whom I adored, many of whom are still friends today. So to the extent that I have had positive experiences in all of my work-life endeavors previously, it is not that I miss those things but I value what they gave me. And so if I stayed, I think I would have continued to be happy, but I love judging so much that I've never regretted leaving those experiences.

*Q: What was the process for applying to the district court? Is there an interview, and with whom? During the interview, were you asked how you might rule on a particular case or issue?*

A: At that time, ... Senator Moynihan [had a selection committee] generally made up of practicing lawyers, retired judges, and professors. ... A panel ... [of 12–20 people interviewed me]. There was a very lengthy questionnaire [as well]. ... [During the interview], most of the questions were questions about ... the degree of my experience in federal court and state court. It was more about my qualifications in terms of experience in various areas ... [rather] than asking how I would rule on an issue. At that time, people were more sensitive and so no one even came close to that. The closest it came was someone asked if I felt okay about the death penalty. My response was no one should feel okay about the death penalty — that is a serious matter — but if you are asking me can I follow the law, that is

a different question.

*Q: What views, if any, do you have about judicial nominees being asked about how they would rule on a particular case or how they view certain issues? Is that a line of questioning that you think is appropriate?*

A: I don't know how anyone can answer a question like [how he or she would rule on a particular case or issue], who is a judge. Once you have been a judge, you understand that whatever your personal views are upon an issue, and obviously all of us have thoughts about social issues, ... few of us can make decisions in the abstract because that is not the nature of judging. The nature of judging is looking at a set of facts and applying [the facts] to law. ... My nature resists coming to a conclusion to legal questions until I have really had an opportunity to understand the case, and I think that most judges would tell you [the same].

*Q: I understand you do some teaching. Where do you teach, and what?*

A: I teach Appellate Advocacy and Trial Advocacy at Columbia Law School.

*Q: You are involved in other civic activities as well, correct?*

A: The Development School for Youths, which is an after-school supplemental education program. It takes inner-city school kids [for a 12-week program and introduces them to life in the professional world]. They come in, and the first thing they are taught is how do you dress for work, how do you prepare a résumé, how do you sit through an interview, how do you talk to people. ... There are weekly workshops with corporate sponsors who introduce the kids to some different aspect of their work. ... The more interesting workshops for the kids are the TV stations, the radio stations, investment bankers, advertising persons. ... I run the "Goldilocks" trial. I get lawyers to help me ... and invite them to come spend a couple of hours putting Goldilocks on trial. She is charged with burglary in the third degree, entering and remaining in the three bears' home, stealing their porridge, and breaking their chair. ... The kids are split up into six groups, one doing an opening [under the supervision of a prosecutor], one an opening for the defense, closings for each side, and [direct and cross-examinations]. Each of the lawyers takes a group and works with the kids in developing the script for their performance in the drill, and the kids come in before me and try Goldilocks. And it is so much fun. **TFL**

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