

## Courting SoSo

By Claude Ducloux, Hill, Ducloux, Carnes & de la Garza

**T**he Scene: Washington, D.C.; a room in the Executive Office Building, where Ernie Krindler, Justice Department legal assistant, is preparing Justice Sonia Sotomayor for her appearance before the Senate Judiciary Committee.

**Ernie:** So, Judge, did you receive the resumes of the Senators on the committee and the videos of hearings involving previous nominees?

**SoSo:** Yes, thank you. But ... it took days to review. Is all this necessary?

**Ernie:** Of course, Judge. This is theater. We have to make you likeable, heroic, intelligent, contemplative, and thoughtful.

**SoSo:** I guess so. And I've really brushed up my knowledge of recent precedent. All the second amendment cases on gun control, due process, Title VII, death penalty, abortion, and ...

**Ernie:** Whoa there, Sotorita. Why?

**SoSo:** So if I'm asked any questions about those areas, I can properly respond.

**Ernie:** [incredulous] Why would you do that?

**SoSo:** Do what?

**Ernie:** Respond to questions. For gosh sakes, do you want to be "Borked?"

**SoSo:** Isn't that what I'm supposed to do? Answer questions?

**Ernie:** No!! Never respond substantively. That's the worst thing you can do!

**SoSo:** I'm sorry, I'm confused. Won't they want to know what I think?

**Ernie:** Of course! That's why it's a trap!

**SoSo:** Knowledge is ... a trap?

**Ernie:** Of course. Haven't you watched the confirmation hearing tapes I gave you?

Anytime you express an opinion on the law, you're providing ammo for whichever fringe wacko supports the other side. And every wacko has a constituency ... and a cable show.

Look, nowadays, ambitious judges must refrain from commenting on anything legal or your career will go down in flames.

**SoSo:** So I can't comment on anything legal? Okay. What else shouldn't I discuss?

**Ernie:** Keep away from issues involving money, religion, society, race, sports, firearms, and law enforcement. It's all in the memo.

**SoSo:** Good grief! [Sarcastically] Anything else?

**Ernie:** Mexican food.

**SoSo:** But doesn't that include the entire spectrum of what judges consider?

**Ernie:** Of course it is, Chula, but you have to re-package your opinions in acceptable vernacular.

**SoSo:** Vernacular? You mean slang or something?

**Ernie:** Exactly. Little pithy colloquialisms that make politicians smile. You work 'em into your responses. You know, things like, "I just call balls and strikes," or "it's not my job to legislate from the bench."

**SoSo:** Hmm ... Okay, but what if I'm asked a direct question on an interpretation of law? What do I say?

**Ernie:** Try me.

**SoSo:** Okay, let's say I'm asked, "Do you believe the Second Amendment's prefatory clause supports a private right to bear arms or the right of a militia?"

**Ernie:** Ahem: "Sorry, it's inappropriate for me to address hypotheticals not in factual context."

**SoSo:** But I couldn't say that with a straight face; it's not a hypothetical. That's the issue in *Feinty v. Heller*, the Washington D.C. ban on handguns.

**Ernie:** You're not getting this, Robo-Judge. Any answer you give will send the pinheads on either Fox News or MSNBC into drooling attack dogs. And anyway, the senators won't know that. They're reading off cue cards drafted by the NRA. Try it again.

**SoSo:** Okay, how's this: "There is

a long string of precedent protecting our constitutional rights, and I intend to follow that precedent. I will not legislate from the bench."

**Ernie:** And ...

**SoSo:** um ... "I only call balls and strikes?"

**Ernie:** Perfect. Now we gotta neutralize your comment about using your perspective as a "wise Latina" to influence your decisions.

**SoSo:** Wait a minute. When Alito was questioned about his opinions on racial discrimination during his confirmation hearings, he specifically told the Judiciary Committee that his experience and his family's experiences as Italian immigrants could not help but provide "context." How's that different?

**Ernie:** It's not! But they love him on Fox News. You? Not so much. So, you need to distance yourself from your earlier comments.

**SoSo:** How? I said it to inspire young women to exercise independent judgment.

How do I "distance" myself from my comments?

**Ernie:** Can you cry?

**SoSo:** Can I what?

**Ernie:** Can you cry? Alito's wife cried. Can you?

**SoSo:** I'm pretty sure that would send the wrong message. Hey, but I make clerks and lawyers cry. Will that help?





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**Ernie:** Ix-nay on making others cry. Hmm ... Okay. Plan B. Can you look contemplative?

raise your eyes and look into the distance and whatever you say, speak slowly.

**SoSo:** I AM contemplative ... when I’m not yelling at staff.

**SoSo:** What do I say?

**Ernie:** No yelling. Here’s what you do ... tilt your head to the side ... that’s it ... now touch your fingertips together and look at your hands ... Perfect! Now ...

**Ernie:** Say something nice about the senator or his state. They eat that up. Here, let’s practice: I’m Senator Lindsay Graham from South Carolina. I ask you, “Why are you trying to shred our

constitution with your evil Latina judicial activism?” How do you respond?

**SoSo:** Okay, I contemplate my adjacent fingertips, and say, “Senator, as your wise Governor Sanford said, and, using words that inspired us all, I, too, look to the future with the courage of an umpire who knows when to pass the ball, strike a trail through the Appalachians. As dead fish go with the flow, I, too, have a love story of my own which shall be marked by judicial restraint of one who would never legislate from the bench.”

**Ernie:** And ...

**SoSo:** And ... and ... what?

**Ernie:** “I only ... ”

**SoSo:** “I only call balls and strikes. My job is not to legislate. That’s for you wise male Senators.”

**Ernie:** Sniff ... I think I’m going to cry. Fly, mi pajarita, fly. - *AL*



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