

JUSTICE SAMUEL ALITO

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Location: West Conference Room

Host: Brian Lamb, C-SPAN

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BRIAN LAMB, HOST, C-SPAN: Justice Samuel Alito, can you remember what it was like the first day you came to this Court?

SAMUEL ALITO, ASSOCIATE JUSTICE, UNITED STATES SUPREME COURT: I will never forget it. I watched the vote in the Senate over in the old Executive Office Building, and this was right in the middle of the court term because Chief Justice – former Chief Justice Rehnquist had died during the fall, creating the vacancy. So this was in – this was on January 31, 2006. I watched the vote over in the old Executive Office Building and immediately was brought over here to the Court and sworn in by the chief justice and they showed me to my office and I think that very day I received a very difficult application for a stay of execution in a capital case, so it was - I was thrown right into the heart of the Court's work.

LAMB: What happens when you get something like that? Do you have to operate on your own in that case?

ALITO: I was operating on my own. I was operating entirely on my own, I didn't even have a staff here at the time.

LAMB: So what do you do in those cases?

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ALITO: Well, you – I did what I had been doing for 15 years as a court of appeals judge, I studied the case and came to my conclusion about what I thought we should do in that particular instance.

LAMB: So, first day and forward, what goes on then?

ALITO: Its – I think it's different depending on whether you start in the middle of the term like I did or whether you start at the beginning of the term, which is usually what happens when the replacement is due to a planned retirement.

For me, I just was plunged right into the work. So I immediately got the briefs on the cases that were coming up for argument in two weeks and started reading those – reading those briefs. I had the benefit of having the assistance of two of Justice O'Connor's law clerks who stayed over and helped me and they were familiar with the Court's internal operating procedures. But it was sort of baptism by fire.

LAMB: Does anybody give you a briefing on what to expect and what you can do and can't do and what the traditions and customs are?

ALITO: I little bit about the traditions and customs, but I don't really remember any sort of formal training, it was learn as you go, but it may have been just because it was sort of hectic right in the middle of the term.

LAMB: We've heard often in our discussions with the justices that the junior justice has special privileges and responsibilities in the conference. Can you explain how that works?

ALITO: I don't think the junior justice has any special privileges, but the junior justice has two duties, the first and the less onerous is to open the door in the conference room. We meet in the conference, there are no staff members present. And occasionally someone will knock on the door, it's the job of the junior justice to get up and answer the door, and usually it's somebody's glasses or a memo or something like that.

And then the other duty is to keep the official vote of grants of *cert* or a decision to hold a case. When we have a conference we'll go through a long list of cases and we'll vote on whether we're going to take the case or deny it or do something else and it's the junior justice's responsibility again, since there are no staff present, to keep the official vote.

LAMB: And what about the way justices speak in Congress. I understand its seniority to the most junior and is that an advantage or disadvantage.

ALITO: Well, I think it's a disadvantage to the junior justice, because by the time he or she speaks everybody else has spoken and voted. So when I was the junior, which has been up until now, by the time they got to me I was either irrelevant or I was very important, depending on how the vote had come out.

LAMB: You mentioned that you got a couple of clerks who had served as clerks for other justices and I noticed in your background you were a clerk.

ALITO: Yes.

LAMB: For the third circuit court and you served on the third circuit.

ALITO: Yes.

LAMB: So, what's that experience like and I eventually want to ask you about picking your own clerk.

ALITO: It's an advantage if you've clerked on the court where you're serving that you know the internal operating rules and practices of the Court and there are – in any court there are a lot of things that go on internally. Some important, some not so important that people on the outside, even practitioners who argue cases before the Court are not familiar with. So it's an advantage in that sense.

When I clerked on the third circuit, some of the judges who had been – who had been on the Court when I was a law clerk were still serving. So that was an interesting – that was an interesting change of roles. I sat with the judge for whom I clerked shortly after I joined the court and that was different. I think he sort of expected me to write bench memos for him in the cases.

LAMB: So I got on the web and found the 12 – the 20 clerks you've had so far and you have four a term?

ALITO: Four, that's right.

LAMB: And I noticed that nine of the 20 that you've had clerked for you before on the third circuit. Explain how that works and what's that advantage to you?

ALITO: Well, they were – they were absolutely known quantities to me. And I think I have a very good relationship with my clerks. We work closely together and those were people who had done a great job for me and I knew exactly how they would perform as a clerk, so that was a big advantage. I'm pretty much running out of former clerks now, but they have served me very well.

LAMB: What do they do and how important are they to a justice?

ALITO: They're very important. They do two – they do two main things, they help me decide how I'm going to vote and they help me prepare to make the decision on how to vote. And they help in the process of drafting opinions. So those are the – those are the two – those are the two main things. Now, they don't make the decisions for me and they don't decide the substance of what goes in any opinion that I write. But they provide a lot of help with research. And here, it's especially important they're – they give me the opportunity to discuss the case and the strengths and weaknesses of the arguments that are made before going into the oral argument and before voting at conference.

LAMB: Is it apocryphal or true that when you interviewed Justice Byron White about becoming his clerk that he mostly talked about football?

ALITO: It's apocryphal.

LAMB: It is.

ALITO: It is. Yes it is.

LAMB: What's it like when you interview – I mean I know you're interviewing your clerks, what was it like when you interviewed with Justice Byron White?

ALITO: You know I don't remember too many of the details, I – he was very gracious and I don't think he said anything about football. I think I saw a football in his chambers, but he was very gracious and substantive and he asked me about the things that I had done, things of that nature.

LAMB: How do you pick your clerks? What are your criteria?

ALITO: Well, I look for people who can do the two things that I mentioned, help me analyze cases, analyze difficult legal issues and help in the process of writing the opinions. Now, it's not easy for me to identify the people who are best able to help me with those two – with those two duties. Here we have – and this was true as well in the court of appeals, an enormous number of tremendously qualified applications. So it's really hard to go wrong and I feel very disappointed every year that I have to decline the applications of so many people who I'm sure would do a fantastic job.

LAMB: In the middle of this project, in the documentary on the Supreme Court and the building, you're getting a new colleague, you're not going to be junior any longer. Have you

talked to Justice Sotomayor and if you have, or haven't, what would you advise her about being a new justice?

ALITO: Well, I have spoken to her a little bit and I think we'll have a chance to talk a little bit more about these two big junior justice duties before she actually has to take them on. I remember when Justice Breyer, who had been the junior justice for almost a record length of time, I think 11 years before I started, he took me aside and he sort of briefed me. But it took - it took him a while to adjust to not being the junior justice. I remember very distinctly at the first conference there was a knock at the door and I was sort of processing this, someone is knocking at the door, it's my job now to get up and answer the door, and before I could even start to get out of the chair, Justice Breyer was out of his chair and headed for the door and the chief justice had to say, Steve, sit down, that's not your job anymore. So I haven't been in that role quite as long and I - but I bet I'll feel sort of the same way.

LAMB: What about the supposed practice that a new justice writes his or her first opinion after it's been a unanimous decision on a particular case.

ALITO: I think that's something the Court has tried to do. They did that with me, my first opinion was an opinion in which we were unanimous. And I think it's a good practice. I remember when I sent it around and I had gotten back approvals from everybody with a few changes. Somebody said, don't think it's going to be this easy all the time in the future, and that certainly has proven to be the case.

But I do - I distinctly remember drafting that opinion. I had - before I came here I had been a court of appeals judge for 15 years and I had written hundreds of opinions and I thought I

had done my best on all of those, but when I wrote – when I drafted that first opinion, realizing where I was now, I went back over it and over it and over it. I have never revised an opinion as many times as I did before I sent that out.

LAMB: How much of it do you remember writing yourself and how much did the clerks do, or have to say that first opinion.

ALITO: Well, they always do a draft for me and most of the time what finally emerges is not very similar to what I get originally from the clerk. But it's a – it provides a good starting point. I'm a very – I'm a very fussy editor and kind of a fussy writer. So I like to – I tend to like to say things in a particular way.

LAMB: Who taught you how to write?

ALITO: Mostly my father. He was a former English teacher, among other things, and I remember when I had a paper for school, I would write it and then we would sit down and we would painstakingly go over it, word for word, sentence by sentence and he would suggest better ways of saying things. And any writing ability that I have was mostly the result of that laborious process.

I think writing well is very difficult and it takes – it takes a lot of intensive one on one instruction and I had that opportunity with him.

LAMB: Is there one or two rules you have that you use in writing?

ALITO: There are rules. I like very clear organization, that's the most – probably the most important thing. I like everything to go in its place and in the proper place. And the old – you know the old rules about writing a topic sentence for each paragraph and I don't put anything in that's superfluous and don't put anything in that's unclear.

My father used to say if you can't – if you're having problems saying it, you're probably having a problem with the thought. If the thought is clear then you can translate it into understandable prose. I do think that's mostly true.

LAMB: You suggested that things got a little tougher after that first opinion that you wrote. Can you explain what changed after you got into votes that may have been not so unanimous?

ALITO: Well, when it's not – when it's not unanimous then obviously you have to be ready to respond to the dissent and the dissents here are very – they are rigorous and they don't pull punches. So I think it ultimately improves the quality of the majority opinion, but it's something you have to anticipate. And then, there's always a problem, or if the Court is not entirely of one mind, not just on the results but on the reasoning, there is the problem if you're drafting a majority opinion of writing something that will get five votes, six votes, seven votes, whatever - whatever the number is. There may be certain things that you can't say, certain things that you have to put in a particular way. You have to think about not just what you would like to say if you were writing just for yourself, but what the majority as a group wants to say.

LAMB: Did I read correctly that you argued before the Court when you worked for Rex Lee, Solicitor General, 12 times?

ALITO: That's right. Yes.

LAMB: What's the difference between standing in front of the Court and arguing for the government or whomever and being on the other side of the bench?

ALITO: It's a lot easier to ask questions than it is to answer them. That's the biggest thing. And when you're – when you're a judge or a justice, you know you can anticipate what you're going to say, what you're interested in asking about. When you argue a case it's hard sometimes to anticipate as much as you may try to anticipate what the justices or judges will be interested in.

LAMB: I've never asked this question, but I read the transcript of the argument of the unanimous decision that you wrote the opinion on and I was trying to track when justices jumped in and asked questions and for a long time it was a new justice all the way and then it mixed up. Is there a rule among your colleagues that everybody gets a chance to ask a question before the next one starts in?

ALITO: No there is no – there is no rule like that. And I learned when I got here that it's a lot harder to get in a question on a bench of nine than it is on a bench of three. It had been my practice on the court of appeals to try to wait for sort of the end of the lawyer's paragraph before interrupting with a question and here I learned if you do that – or even if you, in a hot

case, if you end – wait until the end of the sentence, you will never get a question in. You have to be – you have to interrupt to make your voice heard.

LAMB: What would you tell a lawyer if they came to you – and I know they can't and asked for advice on arguing before the Court? What would you tell them about what you expect of them?

ALITO: Well, most of the – the most important things are the things that everybody knows but tends to forget in the course of an argument. You have – you want to – the best advocates understand exactly where they want to go and I think have in mind alternative routes to get there and they can anticipate – they can evaluate based on the questions. Whether route A is going to work and if it isn't then they – they will be open to talking about route B, route C, route D. They're not rigid and they certainly know where they want to go.

Less experienced advocates don't pick up the signals that they get from the questions, less skillful advocates. They are much more rigid in their approach and I think they lose – they lose opportunities by doing that.

LAMB: What has been your sense after what, 16 years on the circuit court?

ALITO: Fifteen, yes.

LAMB: And you've been here about three years, three and a half years?

ALITO: Yes.

LAMB: What's your sense of oral arguments importance? Have you ever changed your mind after an oral argument?

ALITO: Oh yes, certainly, certainly. Less frequently about the bottom line, affirm or reverse than about other things, about how the case should be decided but sometimes on the bottom line that that will change.

We do an awful lot of preparation before we go into the oral argument. I will have read hundreds of pages of briefs and opinions and other materials before the argument begins. So I've thought about the case pretty thoroughly. But still here particularly, I find it helpful because every case that gets here, even the ones that end up being nine to nothing involve cases – are cases in which there's a good argument on both sides. So if you have a case like that where there are good arguments on both sides and you have skillful lawyers, and we really do have a very high level of advocacy here. It's – I find it a very helpful last step in the decision making process. It tends to crystallize things for me.

LAMB: As you watch an attorney in front of you, is there any way to describe what you as a justice like and dislike in the way they perform. In their – the approach they take to it, the volume they use, all those little things that people practice?

ALITO: Yes, there's a big difference between arguing a case in an appellate court and arguing a case to a jury. We don't get many lawyers here who think they're arguing to juries, but sometimes on the court of appeals we would get that. Every court has its own style and I

think it's a mistake for any advocate to argue before a court without having seen arguments there if they haven't before because the style is different and what's expected is different.

LAMB: In your lead up to being a member of the Supreme Court, you did everything from argue before it and working for the solicitor general, working in the justice department, circuit court judge, U.S. attorney, assistant U.S. attorney, go down the list, did you – were you editor of the law review at Yale?

ALITO: I was an editor. One of the editors, yes.

LAMB: So, of all those experiences what prepared you the most for the job?

ALITO: I think they all helped me. The working in the solicitor general's office was most directly related to it and it was a tremendous experience for me, tremendous learning experience ...

LAMB: Explain it? What do they do, what's the solicitor general do?

ALITO: The solicitor general handles all of the – all of the U.S. government's litigation in the Supreme Court and also must authorize any appeal that is taken by the government in any of the lower courts, or any request for rehearing *en banque*. So while I was there I had the opportunity to brief many cases here and argue 12, as you mentioned, and it was a tremendous learning experience for me.

LAMB: Also another quote that I saw of yours that supposedly ended up in your Princeton yearbook, and you can explain this one, that you hoped quote, to eventually warm a seat on the Supreme Court, end quote.

ALITO: I did write that. But it was – it was really a joke. It was like saying my ambition is to be the quarterback in the Super Bowl or the winning pitcher in the World Series. It was – it was a dream that I never thought I would come close to realizing.

LAMB: When did you first know that you had a good chance of being on the Court?

ALITO: Well, I – I knew I was a possibility, I wouldn't even term it a good chance. When I was first called down for an interview with the White House and that was in 2001. So after that point I knew that – you know I'm sure they were – they had – they were interviewing many other people, but at least I was among that group.

LAMB: How long was it from the first interview until it was made public?

ALITO: It was a long time because they interviewed me in 2001 in anticipation of the possibility of a resignation, which did not take place. So then I was not interviewed again until 2005.

LAMB: Was that hard on you? Knowing that they are interested?

ALITO: It's – yes, in a way. In a way it is. Because I – I told myself that I – it was very unlikely that it would happen and I should – I loved my job on the court of appeals and so I

should continue to do my best there, enjoy that with the expectation that that's where I would serve out my career and if something else developed that would be – you know that would be great but I didn't want to put myself in a position of thinking that it would happen and feeling disappointed if it didn't.

LAMB: And you came here in January of 2006.

ALITO: Yes.

LAMB: We're three and a half years – three and a half years later, how long did it take for you to feel comfortable?

ALITO: I felt pretty comfortable with the substance of the work pretty quickly. It took me - it takes a while to learn the rules of the Court, if you're not familiar with those, the internal practices of the Court, there are a lot of little things about it, to get a feel for the dynamics of a nine person group rather than generally a three – the three judge panel on the court of appeals, to get a feel for the difference in the docket. Our docket is entirely – almost entirely discretionary. We choose almost all of our cases, there are a few where the party has a right to an appeal, but for the most part we choose our cases. On the court of appeals, it's exactly the opposite. Almost all the cases are cases that parties have a right to take to the court of appeals, very few are chosen. So it takes a little while to get used to that.

But I think really every single year is a learning process. I've now been a judge for I think 19 years and I think I've learned something every year and I hope I will continue.

LAMB: What's the major difference between being a circuit court judge and being a Supreme Court justice?

ALITO: The biggest thing is the difference in the docket. The number of cases, the nature of the cases.

On the court of appeals you have a huge number of cases, we had a little under 300 a year per judge. On some courts of appeals they are up to almost 500 a year. Here we are around 80 merits cases. But the cases here are much harder. Court of appeals they're kind – they're often kind of messy, many issues. Here, generally one narrowly focused legal issue. But here they're all difficult issues, as I mentioned, that's why we take them.

LAMB: Now, since you've been on the Court, has your relationship with people outside that you knew changed? And what do they, in general, think you're doing here?

ALITO: I don't think it's changed too much. Obviously I don't see my old court of appeals colleagues the way I used to and we've moved from New Jersey to the Washington area. But other than that, I don't think the people – my relationship with the people I knew before has changed.

A lot of people are very knowledgeable about what we do. Although I think even people who are on the outside who are very knowledgeable don't appreciate some sort of ineffable aspects of this job.

LAMB: From what you know, what is – what role does this institution play in the overall American society?

ALITO: The simplest answer, and I think it's an accurate answer actually is the answer that I saw on the website for the – where they have sample questions that are given to people who are taking the naturalization test and it said, "What is the role of the Supreme Court?" And they had a nice short answer which if I remember correctly was to interpret and apply the Constitution and laws of the United States and that's it. Now, it's not – in truth it's not simple. It's not a mechanical process. We're – no computer could take over what we do. But that is what – that is what we do. We have the Constitution and the laws and I think they mean something. They don't necessarily mean what I want them to mean in every instance. They mean something and I think the people of the United States trust us to interpret and apply those laws fairly and even handedly and objectively and that's what – that's the great responsibility that we have.

LAMB: And what about this building? How does it feel in your life? In other words, what do you think of it? Is it what it should be for the Supreme Court of the United States?

ALITO: It is. It's a great building, I think we're indebted to Chief Justice Taft, whose portrait is behind you who arranged – he had been president and he became chief justice and he was in my understanding a moving force in constructing a separate building for the Supreme Court. It's very impressive, I think it's very impressive to visitors, the lawyers who argue here, to people who come to hear the arguments and it's impressive to me.

I experience the building in really two ways, most of the time it's the place where I'm going to work. So I drive to work, I drive into the garage, it's like the other places where I've worked on a day to day basis, usually coming in in the morning. But often when I go home at night the building is vacant and it's dark and I walk through the great hall on my way to the elevator and I look around at the pillars and it really – the building impresses upon me the importance of the work that we're doing. As many times as I've walked through that hall, it never ceases to have that impression on me.

LAMB: What about this job is not what you expected it to be?

ALITO: Its – it's a much more public job than my old job on the court of appeals and I don't think I had thought about that. Now we're not – we're not like politicians, we're not out in public and you know conferring with constituents the way they do, but still there's a lot more public attention focused on what we do than I was used to in my previous position.

LAMB: Often you read about the Court and it's portrayed as right versus left, conservative versus liberal, republican versus democrat. What's it feel like inside?

ALITO: No, I don't – republican versus democrat, no. And many of the cases do not break down along the so called conservative/liberal lines. There are – I think the public and the media tend to, understandably, to focus very heavily on the most controversial cases, but those are just one part of our docket and most of our cases, for example don't involve interpretation of the Constitution and most of them don't involve hot button issues and there are plenty of instances in which the – even when the Court's divided the makeup of the

majority and the dissent is not what anybody would have expected if they thought along the lines that you mentioned.

LAMB: Last question. Do you have a pet peeve about how this institution is portrayed by outsiders?

ALITO: Well, I – it would be exactly what I just mentioned. I think – it’s understandable, but I think that people don’t appreciate the full breadth of what we do. And unfortunately I think a lot of people think that we are deciding what the rules should be in cases. I talk to a lot of school groups, high school kids, college kids, some elementary school kids, middle school kids. They usually think of questions before they come in and very often, particularly high school kids, will ask me what do you think about this or what do you think about that. All the most controversial issues, as if that’s what I’m doing. There’s a confusion in the minds of I think a lot of people between what we do and what the elected branches of the government do.

LAMB: Justice Alito, thank you for your time.

ALITO: Thank you.

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