

JUSTICE SONIA SOTOMAYOR

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Location: West Conference Room

Host: Susan Swain, C-SPAN

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SUSAN SWAIN, HOST, C-SPAN: Justice Sotomayor, 20 years plus, Justice O'Connor could remember vividly the details of her first oral argument, vividly telling us stories about what it was like in the room, what are the impressions you're going to take away from yours?

SONIA SOTOMAYOR, ASSOCIATE JUSTICE, UNITED STATES SUPREME COURT:

Well, the moment that I sat down and was able to look out and see all of the people in the audience, that's probably the moment I will most intensely remember because there were lawyers who I've known for years sitting at the table in front of us ready to argue, but then watching the intensity of everyone's face and I'd forgotten how much people believe – believe and know that they're affected by the Court's decisions. And you see the anticipation and I can't actually say that it's pleasurable. You note in people's faces their concerns and clearly I knew the sides some parties in the audience were in because some of the actual parties were there and I forget how important it is to people sometimes. Because when you're in your office reading the briefs you understand the voices that they're giving you, but when you see their faces it just reinforces that importance in a way nothing else can.

What's the other emotion? Absolute fear. You don't know what it's like to sit with eight other colleagues. I've sat *en banque* when I was on the circuit court, but to sit on the Supreme Court and listen to the questions of your colleagues is somewhat humbling. Somewhat completely humbling.

And so yes, just like Justice O'Connor I will always remember that day.

SWAIN: You had to have the awareness that everyone in that room was waiting for your first question.

SOTOMAYOR: Yes. And what is interesting is that I had gone in prepared with any number of questions, most of them except the two I asked were asked by other justices. And so yes, I was aware, but I didn't know what the first question would actually be because I didn't know what direction my colleagues were going to go with their questions and what would be left for me to ask. And so the questions I eventually did were a product of the flow of the conversation.

SWAIN: So it felt natural? It wasn't like OK, now dive?

SOTOMAYOR: Something most people will learn about me, I get so intensely engaged in argument that it's never fake. Every question I ask has a purpose, it has some importance to something that is troubling me or that I'm curious about and so no it wasn't fake.

SWAIN: What was all of that week, very recent week, like for you with the investiture ceremony, your family coming here to be with you for that, all of the media coverage that you got? Is it – are you able to process all of this?

SOTOMAYOR: I haven't connected physically with my mind and body yet. I'm still somewhere out here looking down and saying, oh wow, is this really happening to me? And that's what that felt like.

One question that you probably wouldn't know to ask was what was the most symbolically meaningful moment for me during my public investiture and it was sitting in Justice Marshall's chair and taking the oath with my hand on Justice Harlan's bible. It was like history coursing through me and not – it's a sort of interesting admission to make. I don't think any person can be assured that they're up to the task. I don't know that. And so those moments are at one point incredibly meaningful and in a different way, incredibly frightening. It's hard to convey the coursing of emotions that goes through one at a moment like that.

SWAIN: Describe what you think your role as – well largely the role of this Court is on our society?

SOTOMAYOR: It always thrills me, amazes me, and gives me faith in our country to know how much people trust the courts. Despite the skepticism with which some decisions are received, in the end, I think the American people and the world has confidence that the nine justices are rendering decisions based on their best ability to arrive at a fair answer under the law and fair being defined as what does the law say. And that to me is the most meaningful part of what role we serve in – among the three branches of – of government. The branch that the public looks at and says, ah there is an objective viewpoint, there are people who are not a part of a party, who are not part of an executive branch agenda. They are there to look at this subjectively in a neutral way and help us come to a resolution about whatever dispute

there may be in an objective way. It's a real testimony to our founding fathers that they created our branch in this way.

SWAIN: And at the same point, going back to the sense of responsibility, it's the Court of last appeal.

SOTOMAYOR: It is. Very much so. And isn't it wonderful that we also have the ability to rethink issues over time. And look at them and think about them and review them and consider whether the answers we've given should be revisited at any point. Shouldn't be done lightly and it never is, but it is a gift to America that we can do that.

SWAIN: I believe this might be the first time that you sat down with television since your appointment was announced. I'm wondering if you would mind, for history, telling us the story of when you got the telephone call?

SOTOMAYOR: I was told that Monday that the President would – I had been told all weekend that the president would be making up his mind, making his decision sometime on Monday, and I had been sitting in my office from 8:00 that morning waiting for a phone call. The phone calls I got instead were from my family telling me, or asking me what was happening, and I was getting the calls almost hourly. And almost – and every hour I would say, 'I don't know.' Two o'clock was arriving and my family had been told that they would have to start moving to the airport shortly, and so they were more and more anxious about whether they should be going to the airport or not and my response was, 'I don't know.'

Finally, at about 5:00 p.m., they're at the airports and they're still calling asking me whether they should get on the planes, and my response was, 'I still don't know. If they haven't pulled you back, I guess you should.' My brother calls me from, I think its Baltimore, he had to make a stop at Baltimore and then take a shuttle over to Washington and he says, 'Should I keep going?' I said, 'if they haven't told you to stop you should.'

It's now nearly 7:00 in the evening, and I call the White House and say, 'Well you're getting my family to Washington, have any of you given any thought about how I'm going to get there?' And they stopped and said, 'Oh I guess we should figure that out, shouldn't we?' Literally that was the response. What I was told was that the president had gotten distracted with some important other business that was going on at the time, and that he would call me at about 8:00 p.m. but that I should go home and pack to come to Washington, and that they would prefer that I didn't take a plane.

So I rushed out of my office, home, put a suitcase on top of my bed, and with my assistant, Theresa (ph), who had come home with me, we started packing a suitcase, and I called a friend to ask him to drive me to Washington. And he came, or was on his way and at 8:10 p.m. I received a call at my – on my cell phone. The White House operator tells you that the president is on the line.

SWAIN: And you were somewhere on the road at this point?

SOTOMAYOR: Nope, I was in ...

SWAIN: Still at home.

SOTOMAYOR: Still at home, still packing. I actually stood by my balcony doors, and I had the – my cell phone in my right hand and I had my left hand over my chest trying to calm my beating heart, literally. And the president got on the phone and said to me, ‘Judge, I would like to announce you as my selection to be the next Associate Justice of the United States Supreme Court.’

And I said to him – I caught my breath and started to cry and said, ‘Thank you, Mr. President.’ That was what the moment was like.

SWAIN: And then what?

SOTOMAYOR: He asked me to make him two promises. The first was to remain the person I was, and the second was to stay connected to my community. And I said to him that those were two easy promises to make, because those two things I could not change. And he then said we would see each other in the morning. Which we obviously did.

SWAIN: And did you in fact drive?

SOTOMAYOR: Uh-hmm.

SWAIN: What was that drive like?

SOTOMAYOR: Well, it was – it went very quickly in parts because I was working the entire time on my speech for the next day, so I had a draft that they had told me to anticipate making a speech, so I had a draft, but I was still working on it.

SWAIN: It's about – for most people watching this who aren't from this part of the country, it's about four hours plus from New York to Washington?

SOTOMAYOR: It took us a little longer because it started to – a torrential rain started on the drive and it knocked out our GPS, and so we got lost and all of sudden I'm in Virginia and looking up because I had been scrambling on the piece of paper – scribbling on the piece of paper and making changes and all of a sudden I look up and I look at my friend and say, 'Tom, we're not going into Washington, we're going away from Washington, we'd better stop.' So we pulled over on a road and I started calling up a friend and saying please get on the computer and figure out how we get back to where we have to go. And I had a law clerk who was also – my law clerks and my staff and my assistant and everybody had been driving down in separate cars, and he was from Washington and he actually talked us back onto the road and to the hotel.

So it was a very busy five and a half, close to six hours between the rain and getting lost, it was a very eventful night.

SWAIN: It sounds like it, not much sleep before the next day.

SOTOMAYOR: No, we arrived in Washington at 2:30 a.m. I practiced my speech for an hour. The last thing I did before I went to bed was to reread it and try to commit it again to

memory. And three hours later when I got up, the first thing I did was to give the speech without the papers in front of me and when I was able to do that I said, I got it. And then I was able to shower and get dressed comfortably.

SWAIN: You mentioned your clerks, can you talk to us a bit about how you're setting up your office here?

SOTOMAYOR: I had a – I have, not had, a colleague who is a – like a brother, and – on the second circuit. And when this process was going on I was getting applications for clerkship and I didn't – I didn't want to jinx the process by becoming involved in thinking about picking clerks, so I asked him to look over all the applications and review them and pick a handful of people that he thought would be suitable for me and suitability was measured by one – by two things, I want smart people but I want people who are good people too. They have to be kind and caring and really smart.

SWAIN: Well, how did he do?

SOTOMAYOR: He batted 100. And I have four people I'm absolutely delighted with. I interviewed them shortly after the hearings concluded and I had pretty much made up my mind and the day that I was sworn in I was able to call them and they came – two of them started that Monday and two the Monday after.

SWAIN: Referencing the hearings, you've had the opportunity – in fact in history you're one – I think one of the few associate justices who have severed in all three levels of the federal court system, but – which means you've gotten to go through the nomination and

confirmation process three times, what are your perspectives on how it works for our society today?

SOTOMAYOR: Interestingly enough, within a couple of months of my actual hearings I had moderated a panel for the Federalist Society at Yale law school and on the panel were a couple of professors and a couple of people involved in the process and each of them had a different perspective on the meaning of the process and fair statement criticisms about the process and my very last question to the panelists was, 'OK, so what would you do instead of what we do?' And they all basically had some minor tinkering fixes, as I call them, except for one.

But one of the panelists looked up and said the purpose of the nomination process today and the confirmation hearing process is to introduce a perspective justice to the America people so they can get to know that justice, because once the selection is made most Americans will never again have an opportunity to actually hear the justice talk or to learn anything about them until the end of their service and so it gives the American people that chance. I think that's what I learned, he was right. That may be the most important purpose of the confirmation hearings.

Questions even over three days are not going to tell you much about a prospective judge, you have to look at their life work. That will be a clearer reflection of who they are and how they think and what they will do.

In the end though, getting to know the person is very hard from an artificial setting like a hearing. But I think over three days that you get a – you get some sense of what the person is and that I think must – and it does have value.

SWAIN: The White House numbers were that you ended up visiting 89 United States Senators.

SOTOMAYOR: Ninety-two.

SWAIN: Ninety-two? How about that, I looked at an earlier document.

SOTOMAYOR: Because I interviewed with three others after the hearing, but before the hearing it was 89.

SWAIN: What was that like? What is necessary? Do you look back on that and say that was time well invested?

SOTOMAYOR: I think I am the first justice who has met with that many senators. I may not have been the only, but certainly among the more recent justices yes. Necessary. It's a – I don't know that I can answer that question. I think it was helpful. I think there were many – with many senators I had very meaningful conversations and I think that it is important, just like for the American people to see a potential nominee. I think it's helpful for the senators to also look someone in the eye, to borrow a phrase that one of them used, and to sit with them and chat personally and talk openly.

Obviously when one speaks about openly there's lots of topics that they would like to cover that I can't talk about for the very reasons that I explained during the hearing. You can't comment on current issues. And it would be totally inappropriate to speak about my personal views on questions because that's not how I decide a case. I decide a case in the ways I described during the hearing which is based on the arguments that are presented – what the constitution or a statute says and what precedent teaches us about those things.

But there is still something about the informality of a personal meeting that gives both they and me an opportunity to talk and I think talk is important in people's decision making processes.

SWAIN: You suspect it changed any minds?

SOTOMAYOR: Actually I do. I'm smiling, there were six unexpected votes.

SWAIN: You mentioned this last time that the American public sees people after they are sworn in and take their seats on the Court in fact throughout your career, most observers of you have noted that you've made a special effort to mention that panel session that you were involved in to be visible, to be out talking about the role of the courts. Is that something you intend to continue here?

SOTOMAYOR: Yes, that I think was part of the president's request of me which was to stay committed to my community.

My community is not defined in any one way it is – it is everyone who’s interested in the court system. I think it is important for justices to help people understand our system better and there’s no way of doing that unless you’re a part of the process of talking with them and yes, I fully expect to stay involved in all of the activities I did before and I fear more now. I say fear because given the number of invitations that I’m receiving, I think I have a wider audience now.

SWAIN: Are you intending to make your primary home in Washington or stay in New York?

SOTOMAYOR: Right now I – like many other Americans, it would not be wise for me to sell my home in New York because the market is so low. So I’m going to keep my home in New York. I think I am going to be like many other people, have two homes, one in New York and one in Washington.

SWAIN: Americans did hear a great deal about your biography as I went through the confirmation process and you talk about the invitations you’ve gotten. Has anyone approached you yet to write a memoir? Your life story?

SOTOMAYOR: Many people have.

SWAIN: Do you intend to do it?

SOTOMAYOR: Eventually, yes.

SWAIN: Eventually. Many of the justices that we've talked to in this process have told us that it takes years to be comfortable in this Court. Do you anticipate given your service on the federal bench that you'll – it will take you years to feel comfortable here?

SOTOMAYOR: Yes.

SWAIN: Why?

SOTOMAYOR: I've found both – when I started on the district court, I don't think that any start would have that same amount of anxiety, new learning, need for reaching deep within yourself to absorb new information. I tell people that in giving a speech during my first year on the district court, near the end of the first year I said I have finally understood why the mind is a muscle, because there were days at the end of which, on the district court after I had spent a day in conferences where I would be dealing with 25, 30 different subject areas of litigation, 25 and 30 and sometimes 60 to 100 different legal questions that parties were asking me to rule on.

Where my – I didn't have a headache, I had a brain ache. It was as if I had stretched the muscles of my brain to their outer limits and they would throb with the amount of information that I was asking my brain to absorb. I don't think I'll ever experience that again, but at each type of judging – process of judging there is new information to learn. Even in this last month as I've been reviewing *cert* petitions, there are areas that I wasn't – of controversy that I wasn't aware existed. And I, as a circuit court judge, thought that I had and knew about whatever – what all of the areas of legal contention were. That's not true. There are so many new areas of law that I will have to become involved in, new processes

that the Court's involved in that I'll have to become aware of. So I think – I have no reason to doubt it will take years to feel some degree of comfort in this process.

SWAIN: In the process of getting acclimated, are you finding that you have any particular mentors?

SONIA SOTOMAYOR: All of the justices. All of my colleagues have been extraordinarily warm and welcoming. Each one of them has offered advice; each one of them has invited me to call them with questions. And I don't know if there's – I can identify any one in particular that I've been turning to. Actually it depends a great deal on whether I'm meeting them in the hall because there's always a question on my mind and when I meet them in the hall I just go up to them and say can you or would you and they've each been delightfully generous in giving me time to walk me through whatever it is that I'm asking about. And so not just one person yet, but they've been all wonderful.

SWAIN: Do you have any sense as to whether or not the workload might actually be lighter than what you experienced at the appellate level?

SOTOMAYOR: I found when I was on the court of appeals that most district court judges had no real idea about the workload of court of appeals judges. I'm finding that most people outside the Court have very little understanding of the burdens of the Court. Reviewing *cert* petitions of which the numbers have been growing exponentially each year is an extraordinarily time consuming process. I obviously have only had an occasion to work on one case so far but reading the briefs and the *amicus* briefs that came in was also quite time

consuming. It's too early in my tenure to really talk about that yet, I don't have enough experience with it, but I don't anticipate that it's as light as the public perceives it to be.

SWAIN: What can your colleagues expect from you in the opinion writing process?

SOTOMAYOR: I welcome the views of my colleagues on every draft that I do and I share with my colleagues my views of ways in which to insure that each issue we're addressing is also – and each draft that we're issuing is addressing the important points that the parties are making and so I guess what they could expect from me is a very interactive colleague both in welcoming their suggestions and incorporating them into drafts and sharing with them my own views as well.

SWAIN: Do you anticipate doing that here? Are you – do you intend to work in chambers or do you think better in your own environment?

SOTOMAYOR: No, I think better in chambers.

I also draft on the computer and so I like being at my desk and having everything around me. I also like being able to call out to my law clerks with an idea and – or popping out of my desk and running in to them and saying how about this and engaging them with the idea. But I do like working at my desk.

SWAIN: You've only experienced one and certainly it was a shortened one, but conference and we've learned so much in our interviews with the other justices about that room and when that door closes what that experience is like. What was it like for you?

SOTOMAYOR: There's a real gift in the – in the practice of the Court of letting all of the other justices speak in turn. I didn't expect any less, but was – had my expectation pleasantly confirmed that the justices are actually very thoughtful about what they're doing and each one was very thoughtful about giving their reasons for their vote and as I said, I didn't expect any less, but I was very pleased that my expectation was confirmed.

SWAIN: Now, as the junior justice, you will be last in line in the first to go around to make the arguments in the case, how do you intend to use that to your advantage?

SOTOMAYOR: I don't have a preset intent. I – my sense is that if you go in with a plan it's likely to go awry. When I was a lawyer I always knew that you can – you had to plan everything to the last detail but the best lawyer was the one who went in and just did what was right at the moment and so that's how I think I will approach everything I do in my judging process.

SWAIN: Justice Alito has the chance to turn over to you all of the responsibilities of the junior most justice, did he brief you on how to handle the small things and the traditional things such as answering the door in conference?

SOTOMAYOR: Well that I don't think he had to brief me on. We actually spoke about that, but my first day of conference, at the end of conference I brought cookies from an Italian bakery in Brooklyn and so I was having coffee and cookies come in and the court personnel who was helping us with that wanted to open the door as the justices were leaving and I said

to him, 'no you can't take my job, I just got here.' And so I jumped ahead to open the door.

But in fact that part he didn't.

I haven't sat down with him yet on recording the Court's decisions and that process we're going to do in the next couple of weeks, before the first conference day on the 29th.

SWAIN: And overall with regard to being the junior justice, that role in – people watch it so carefully, where you sit in the Court and the like. What about the traditions that go with that? Why are they important to an institution such as this?

SOTOMAYOR: Why are traditions important to families? And I've often thought about that because tradition very important to me, what holidays – what I do on holidays, who I spend them with, the roles that each person plays. I think because those traditions anchor us in a process that's greater than ourselves, they remind us that the role that we're playing is not a personal role and not a role that should have a personal agenda, but one that has an institutional importance and that that institutional importance is bigger than us and I think that that is an important role for tradition, to underscore that for us. And so yes, where you sit, what order you sit in, how you vote, all of those traditions, all of those practices remind us of our institutional importance, not our individual importance. I like them, I like traditions. I think that they measure our history and they give us history to pass on to others and that that is what's kept us alive as a nation for over 200 years and you know it's rare in the history of mankind that any form of government has lasted as peacefully as we have for as long.

SWAIN: In our last couple of minutes together, you referenced the sense of history streaming through you as you took the oath and knew that you were getting this job. Do you have touchstones as you've studied the history of the Court, of certain justices who you return to, who inspire you for the way they approach their jobs?

SOTOMAYOR: I'm smiling only because when you do that – when you select a justice there is a perception that you're selecting a way of judicial philosophy, a way of reaching decisions. I think there's some danger in that perception because I think that the history of the Court is not one individual justice, the history of the Court is how each of the justices of the Court has contributed a view, a way of writing, a way of thinking, a way of approaching one topic or another and that each justice has made valuable contributions, but that no justice has defined the Court as a whole and I think that's the beauty of this Court and of the fact that its – that decisions are not made by just three judges, but by nine now. And so no I won't select one justice as setting sort of a definition of that history, I would say that it is the combined body of work that I draw from and that we all draw from in coming to decisions in each new case that comes before us.

SWAIN: Now I'll close with a biographical question because we heard in meeting you as a nation about how the importance of meeting characters in contemporary culture like Perry Mason were important as a young child in leading you in the career direction. What would you say to young people in America in 2009, 2010, even contemplating a career in the law?

SOTOMAYOR: Hadn't anticipated that question, but what I tell young people in selecting careers at all is pick the career that every day gives you some joy in the task that you're doing. And that sounds simple, but it's very, very hard. If you like working with your

hands, then find a career that lets you do that because that will give you joy. If you like figuring out puzzles and things of that nature, you might like computers because that will give you a moment of joy each day. If you like thinking about problems that people are having and you like reading in a way to solve those problems, as opposed to actually sitting in the room and working them out with the person, then you might like to be a lawyer because you can do both as a lawyer.

You can sit in a room and help people talk through their problems and give them a framework to do that in. Or you could be a judge like I am, and read about their problems and listen to their problems and go back to books and try to figure out how to answer their problem. But in the end what I give most young – advice I give most young people is the law will let you be a part of everyone's lives because the law affects every part of our society and as a lawyer or as a judge, you will get to learn about what other people do and you will help them figure out how to do it better because we help solve their problems. That to me, I think, is the fascination of law. I get to review cases that involve every facet of our society and as a judge, I don't have a voice in resolving those problems because those are decided by the law, but I have a part in that process of deciding their issues. And so I would tell young people, if you want to follow a career in law, figure out if that will give you joy. And if it will, then follow your heart's dream.

SWAIN: At these very early days of your tenure in the Supreme Court we thank you for spending time with us.

SOTOMAYOR: Thank you.

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