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INSTITUTE OF JUDICIAL ADMINISTRATION (IJA)
Oral History of Distinguished American Judges

HON. SONIA SOTOMAYOR
ASSOCIATE JUSTICE, U.S. SUPREME COURT

An Interview

with

Matthew Shahabian ('11)
Orrick, Herrington & Sutcliffe

November 3, 2017

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[START RECORDING]

MR. MATTHEW SHAHABIAN: Justice
0:00:18 Sotomayor, thank you for meeting with
me today. As you know I'm Matt
Shahabian. As your former clerk,
graduate of NYU Law and an IJA
Fellow, it's really my honor to
conduct this oral history with you
for the Institute of Judicial
Administration. Thank you for being
here today.

JUSTICE SONYA MARIA SOTOMAYOR: Matt,
I
0:00:38 always love seeing you. But what a
switch in roles. You now get to ask
me questions.

[Laughter]

MR. SHAHABIAN: So let's jump into
it. You've been remarkably open
about your early life for a Supreme
Court Justice. Did the process of
writing your memoirs affect how you
viewed your childhood and
0:00:59 your early life and how it led you to
where you are now?

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JUSTICE SOTOMAYOR: Well you have to understand the impetus for the book¹. I started writing it in the summer of 0:01:10 2010. I had been nominated 14 months before, and I had, during that previous summer of 2009, gone through the hectic pace of the Senate confirmation period, much of which became a blur. And much of the first year on the Court was a blur. I was all of a sudden catapulted from a life I loved in New York City to a totally new stage that was worldwide, 0:01:41 and it felt as if I was on a rocket ship that just wasn't quite slowing down. Writing the book was my way of putting the brake on what was happening around me. And it was a way for me to get back in touch with who Sonya was. I really felt sometimes as if I were out of control. There was so much happening, so many new things. My

¹ Sonia Sotomayor, *MY BELOVED WORLD* (2013), *New York: Knopf, 2013.*

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0:02:10 meeting so many new people, and I really wanted to pause and remember where I came from and who I was so that I could find a way of memorializing it and not forgetting

0:02:26 it. I often describe it as "keeping Sonya". And that really was what the intent of the book was. And I think I accomplished it. It's a positive book about my life that didn't have a whole lot of positive things happen to me [Laughing].

MR. SHAHABIAN: [Chuckling]

JUSTICE SOTOMAYOR: I had a lot of challenges in life, but the bottom

0:02:53 line was that those challenges made me who I am. They propelled me to the next step in my life as I took each step forward. And more importantly I was able to see the good out of the bad. And a lot of times we don't pause to look for the good. We experience bad and it stays with us as bad. And we rarely if ever revisit issues and think about

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0:03:22 the positive ways in which they shape
us. And so, yes, it changed my
perspective and it permitted me to
write my beloved world, because I
realized it really was despite all

0:03:39 the flaws and all the warts.

MR. SHAHABIAN: Was that a surprising
process for you? Looking for the
good in the bad things that you had
gone through and overcome?

JUSTICE SOTOMAYOR: Well, I don't
know if it was surprising. I'm a bit
of an optimist, and as a result, I
tend to look for the good in people,
but I had spent very little time
thinking about

0:04:03 my own life and its good. I think we
live our life. Occasionally, a
trauma will force us to reflect and
ponder our life a little more deeply.
And in some ways getting nominated to
the Supreme Court was a major trauma
in my life. It was certainly a major
change in my life.

MR. SHAHABIAN: One of the positive

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things that you've written

0:04:26 beautifully and spoken beautifully
about is the influence of your
Abuelita, your grandmother. And I
was wondering if you had to pick one
piece of advice or guidance

0:04:39 that she gave you that still
resonates strongly with you today,
what would that be?

JUSTICE SOTOMAYOR: Ah. There are
two. One's funny and one's not. So
I'll tell both, okay? Abuelita was
one of the strongest influences in my
life. During my confirmation
process, people just didn't focus any
questions on her. My mother, in the

0:05:03 middle of the process, actually
commented that everyone was focused
on her alone but that my Abuelita
wasn't talked about at all and that
she knew how influential Abuelita was
in my life. But the funny episode
that always resonates is Abuelita
telling me, "Sonya, comprate zapato
nuevo" [Transl. "Sonya, go buy

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Some from her. Others from their own family members. And she always was sad about it and would always say to me the most important people in your life are your family. They will be there essentially through thick and thin. And when you need them the most they will be the ones who will hold you up. And that advice is one that I've recognized throughout my life. And as you can see from my book, I keep my family which includes now friends who have become part of family. And so to me, that advice guides I guess the basic principle of my life.

MR. SHAHABIAN: You have a very big circle of family and friends that I know that you've kept close to you even on the Court. How important was that to you when you were going through the confirmation process for the Supreme Court and lost some of the anonymity that you had before that?

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JUSTICE SOTOMAYOR: It really was
traumatizing to be on a world stage.
It also costs you a sense of knowing
with any sense of security whether
0:07:35 the new people in your life are real
friends or not. Regrettably people
are attracted to positions of power
or those they perceive to be powerful
positions, and with it comes a bit
0:07:48 of falsity in the sense of who's a
true friend or not. Having that
cadre of family, and as I said I
include not just blood relations but
the people who have been adopted in
my life, they got me through
everything. And they still get me
through everything. Because I never
have to question with them whom do
they love: the Supreme Court Justice
or
0:08:12 Sonya. And the answer with them is
always very, very clear. And that's
critically important to me. I tell
the story that the most moving moment
for me during my confirmation process

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was watching a TV episode in which my brother appeared at our old high school.² And he was talking about our days at our high school, and he came to a trophy display area outside the

0:08:41 gym which they had made as a tribute to me. And my brother³ was looking at it and he began to cry, and I realized in that second how deeply he loved me. You know that your

0:09:03 siblings love you but to actually have a moment where you could see it and feel it, touch it, that's rare. Sometimes we experience it if you're going through a medical trauma. But to experience it in a moment like that: that was both exciting and a little scary for me. It was something that has stayed with me. And we have grown so much

0:09:31 closer. We were always close but that moment changed him from my

² Justice Sotomayor attended Cardinal Spellman High School in the Bronx, New York.

³ Juan Sotomayor is a doctor living in upstate New York.

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little brother to my brother. And that was a big, big change.

MR. SHAHABIAN: Going back to when he was still your little brother and you guys were watching *Perry Mason*⁴ on the television, you've written about how watching that television show really influenced your decision to become a

0:09:57 lawyer. So how did what you think being a lawyer would be match up to your experience in law school?

JUSTICE SOTOMAYOR: Well the first thing everybody has to realize is that

0:10:08 Perry Mason won almost all of his cases. I understand he only lost three trial cases of which he won them again on appeal, two; and he really only lost one both on the trial level and the appellate level. In real life that rarely happens for defense attorneys [Laughing].

⁴ *Perry Mason* was a fictional television drama from the late 1950s-60s about a criminal defense attorney named Perry Mason.

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0:10:30 JUSTICE SOTOMAYOR: They work their entire lives for those isolated instances of hearing not guilty for their clients, but that's a reality that television wasn't showing back then. But also one of the dangers of television whether it's in the medical profession or in the law profession, in any profession that they document or they present you is that they cut out all of the boring parts.

0:10:57 They cut out the hours of waiting. You know they show a TV show with policemen watching someone else on surveillance. They don't show you the 24, 48, 36 hours of those police

0:11:10 officers basically sitting in a car watching a doorway where nothing ever happens. Same thing with courtrooms. You don't see the hours of boring testimony [Laughing] where you're laying the foundation to get a document in. What they highlight is the one or two minutes of excitement.

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0:11:41 Life is that way. We go through a lot of preparatory work, a lot of waiting, to accomplish things that are exciting. And so those moments are what you savor as a lawyer. And so they capture some of that but they don't capture the reality of life [Laughing]. And so in those ways lawyering is very different. But that sense I started with of how often lawyers lose, lawyers lose a lot of their cases. We can't write

0:12:12 law. We don't write law. We can't make law. We don't make law. We have to just help clients maneuver a legal system in situations in which oftentimes they weren't fully

0:12:25 appreciative of what they had to do or not do and as result they lose their cases. And so you have to take joy from *trying* to help clients because if you are trying to win every case, you will live a disappointed life too often. So, for me that's what law it: its service to

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0:12:56 people. It's that *trying* to help them maneuver a world that most of them are unfamiliar with and trying to strike the best deal, the best route, for their futures. And so, yes, TV was very different than the reality. But in the end I came away watching *Perry Mason* and liking so very much how much he was trying to help his clients. And as a lawyer that's what I try to do: to help as much as I could.

0:13:25 MR. SHAHABIAN: When you were in college did you ever turn away from your interest in the law and think maybe there's another path for me or were you always set on becoming a

0:13:35 lawyer?

JUSTICE SOTOMAYOR: Really I didn't turn away from thinking about being a lawyer. I did pause. In my junior year as I was preparing to think about applying to law school, I stopped and said to myself, should I really continue on this path? Should

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I leave myself open to alternatives?
And I often tell the story of what I
0:13:59 did. I sat down, you must remember
this was in the age before PCs,
personal computers, but I sat down
with yellow paper and a pen and I
started writing down every profession
I could think of off the top of my
head. And I had three rows of 8 by
11 and I filled about three and half
pages, and all of a sudden, it hit me
as I kept adding and adding and
adding and
0:14:26 adding occupations that this was an
endless enterprise and I was never
going to finish. And it wasn't
really helping me narrow my focus.
So I stopped and I rethought the
0:14:38 approach. And what I started asking
myself was, all right, what don't you
want to do? What aren't you good at
and what don't you like? Well I knew
what I wasn't good at. I am not
artistic, creative. I can't sing,
dance, or draw. And so I realized

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that pursuing a career in those areas was useless and would be totally unsatisfying for me. So I started

0:15:09 crossing out all the professions related to that. And then I thought, all right, what is it that you don't want to do, even if you're good at it. And I had been diagnosed with diabetes at age 7. I had been giving myself shots from that time forward. My finger was pricked at the hospital for blood once a month, and blood was

0:15:34 drawn from my arm once a month. I had had my fill of doctors, hospitals and nurses. And there are many people who suffer challenges like I did or conditions of the kind I have

0:15:48 and they are inspired to find a cure or to help other people navigate those conditions. My reaction was different. My reaction was I don't want to do this. I want to get as far away from hospitals and doctors as I humanly can. And so I started to eliminate all sort of medically

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and science-related occupations.

Then I thought about, okay, what is
it you like to do? And

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the first answer was help people.

But you can help people in so many
different ways. You can be a doctor
and help people. And I have
explained why I didn't want to do
that. You can be a teacher and you
can certainly help people come to
learn and understand things that they
might not otherwise find out on their
own. But that, I realized, didn't
satisfy my sense of

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puzzles and curiosity. I like
putting things together. I like
putting a puzzle together. Finding
out how things fit together. And
with that I started to realize that's

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what you do in law. You help people
put together the pieces of an answer
for their problem: the law. And you
take from different doctrines and you
take from different principles of law
and you come up with an argument

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hopefully to help that person. And so there I realized after a very short period of time, I'm slated for the thing I want to do [to be a lawyer]. The

0:17:24 pause was more a sort of stop, think about this, make sure I was on the right path, but the answer was very clear even after I finished that moment.

MR. SHAHABIAN: So you're sitting in Princeton your junior year thinking about do I really want to be a lawyer, do I want to go to law school. You ended up continuing on

0:17:45 the legal path, going to Yale Law School. What was it like being one of the first Latina women from the Bronx to enter the worlds of Princeton and then Yale Law School?

0:17:59 JUSTICE SOTOMAYOR: I've used different ways of describing it. A stranger in a strange land. An alien landing in a new universe. One of my college roommates with whom I

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discussed this feeling while I was there said to me you are like *Alice in Wonderland*.⁵ And I often tell the story- I looked at her and said, "Who is *Alice in Wonderland*?"

0:18:24 Because my family was Spanish-speaking, I didn't start to really learn English until I was in school. But my mom didn't know about *Alice in Wonderland* and so she never had me read that book. And for whatever reason I had not come across it. But those small but important cultural clues that I wasn't a part of were ubiquitous in both Princeton and

0:18:54 Yale. This was a totally different world than the one I had grown up in. You know there were trees and grass at Princeton. There was a cricket that I spent the whole week thinking

0:19:09 it was in my room until I was told it was in a tree outside my dorm room window. Those were the small

⁵ *Alice in Wonderland* is the 1951 animated film adaptation of the book *Alice's Adventures in Wonderland* by Lewis Carroll.

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differences. The larger ones involved my classmates who were traveling the world on vacations, who had homes in very prestigious places, who did activities that I had heard of but never imagined I would ever do like riding on a sailboat or things of that nature. Those are the small things. But the bigger ones like *Alice in Wonderland*, those showed me that I had so much to learn about the world I was a part of then but also the world that I was going to be navigating for the rest of my life. It is a very, very disconcerting feeling. It's why so many kids of color end up leaving college and so many of them don't even bother attending after they're accepted. Not "bother" that's the wrong word; they are too scared to attend because there is some fear generated by being, feeling that much alone in a new environment. It's what leads to programs like

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Posse⁶ where the colleges are accepting students, a number of students from the same neighborhood at one time so the kids will have a community when they come to the school that they can rely upon to keep them there. I think that's why programs of that kind can be

0:20:44 successful. But even today I am in the Supreme Court, I am very much a part of the Court, but I'm still very different. Different than my colleagues, different from their backgrounds. The closest in terms of my economic level growing up was Clarence Thomas. But I tell people, you know my colleagues like the opera, I like jazz. Small

0:21:14 differences. But they do continue to remind you that you are a little bit outside the norm.

⁶ The Posse Foundation "identifies public high school students with extraordinary academic and leadership potential who may be overlooked by traditional college selection processes... placing them in supportive, multicultural teams—Posses—of 10 students. Posse partner colleges and universities award Posse Scholars four-year, full-tuition leadership scholarships." Taken from <https://www.possefoundation.org/about-posse>

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MR. SHAHABIAN: While you were still
in law school- and you've
0:21:26 written about this- that one
challenge, "a kick in the teeth" I
think you called it, was when you
were not offered a fulltime associate
position with Paul Weiss⁷ after you
had spent a summer there as a summer
associate. And then the year after
that when you were applying for jobs,
you filed a public complaint against
another law firm where a partner had
0:21:52 said the only reason you got into
Yale was because of affirmative
action. What was it like to take
that kind of public stance when you
were still a law student looking for
a job?

JUSTICE SOTOMAYOR: It was easier
then than it is now. And the reason
for that is the internet. I think an
act like that today would have been
known
0:22:15 within the virtual world immediately

⁷ Paul, Weiss, Rifkind, Wharton & Garrison LLP.

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and everyone would have known about it, including other law firms. I was aware that some law firms would hear about what I had done, but I was sure that I didn't want to work for a law firm that didn't want me for that reason. And so it was an easier choice for me to make back then because it was a more private act, private in that it was going to be known mostly at Yale itself.

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Although it turned out that word of mouth spread throughout the country and for weeks I received letters from other people of color who had experienced similar episodes in their interviews and who were expressing both hope and gratitude that someone had said something for them. I don't know that I thought of it as courage.

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At the time when I took the step I thought it was an important point to make. It was a matter of principle that drove me. Even though Paul Weiss had not accepted me and for

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0:23:49 very good reasons; I was not a very good associate that summer. But that had little to do with the fact that I was, because of affirmative action, a student who had accomplished a lot.

I had graduated summa cum laude, Phi Beta Kappa⁸ from Princeton University. My senior thesis had received honors. I had done very well at Yale. I was an editor of the *Yale Law Journal*. I was a managing editor of its *International Law Journal*. I had recommendations from some very, very fine lawyers. I knew I'd have

0:24:20 alternatives no matter what. And so I could take that step because I was protected by that. It is not easy to speak out. It is never easy to find the courage and support that I found from my friends to do what I did. But I also knew that we do, those of us who can, have to take principled

⁸ Founded in 1776, Phi Beta Kappa is America's oldest academic honor society.

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positions.

0:24:50 MR. SHAHABIAN: Did that factor into your decision, the knowledge that you had accomplished so much and come so far and had people behind you, did that make you feel like you had an obligation to speak out --

0:25:02 JUSTICE SOTOMAYOR: [Interposing] Oh, absolutely. But I lived my life that way. When people ask me why I'm a Supreme Court Justice, it's not because I wanted the position for me. In fact it destroyed a life I loved. I was a very happy Second Circuit Judge.⁹ I had an exceedingly happy life in New York City. I loved living in New York City. I was wrenched into Washington.

[Laughter]

JUSTICE SOTOMAYOR: I serve because it's my obligation to serve. I serve because those of us who are privileged in life have to give it

⁹ Justice Sotomayor served as a judge on the U.S. Court of Appeals for the Second Circuit from 1998 to 2009.

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back. And I believe that to my very core. And so for me service is never a choice, it's a duty. And some duties are pleasant. I've had some wonderful moments as a Supreme Court Justice, but it is service. And the minute you forget that, then the job becomes valuable just as a job and that's not enough for me to live my life. I truly need something more.

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0:26:07

MR. SHAHABIAN: Well you started your legal career in public service as a New York City prosecutor. Now you've developed a reputation as a Supreme Court Justice who's willing to ask tough, probing questions at whether our criminal justice system is fair to defendants who are accused of crimes. How do you compare those two aspects of your career -starting as a prosecutor and the opinions you've written now on criminal justice at the Court?

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JUSTICE SOTOMAYOR: When I was a

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prosecutor,¹⁰ now I'm sounding like my mother, when, in the past. [Laughter]

When I was a prosecutor in New York County, New

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York's jurisprudence was known as being very pro-defendant. And it was actually more pro-defendant than the federal system was. It was harder as a prosecutor in the state system to

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secure convictions. We had more rules limiting the type of evidence we could introduce, rules that restricted the kind of hearsay evidence that federal prosecutors were able to use. We had limitations on the use of accomplice evidence which the federal system doesn't have. That [state] system made me work harder to secure my convictions.

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And I never felt that those rules were a handicap. They were for me a challenge to figure out how to get my convictions in the *right* way, in the

¹⁰ Justice Sotomayor was an Assistant District Attorney in the New York County District Attorney's Office from 1979 to 1984.

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fair way, and that sense of fairness has always stayed with me. That sense that if you're going to be a prosecutor, harkening back to a line [the character Hamilton] Burger on *Perry Mason* once said, "If you're a prosecutor your

0:28:13 job is to do justice, convict the 6 guilty and ensure that the innocent are proven innocent". And for me that has been the mainstay of my jurisprudence -even now- which is: you

0:28:28 follow the law because our laws were made in our Constitution and in our statutes to be fair. To be fair to not just the accused defendants but to our sense of due process. They are there to ensure that we convict people in the right way. And so I don't see there being a contradiction between what I did as a prosecutor and what I do as a judge or justice.

0:29:00 To me they're the same coin. And they're the same goal and have the

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same goal. So, no, I don't see myself as pro-defendant. I see myself as pro-justice.

MR. SHAHABIAN: Have your views changed on any of these issues as you sat on the bench as opposed to being at the prosecutor's table --

JUSTICE SOTOMAYOR: Well,

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yes... that's a hard question to answer. You understand the nuances that law is addressing or that law can't address because when laws are passed, legislators are often looking

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at a situation that has outraged them for whatever reason or a situation that has created some sense of injustice in them and so they write a law to try to fix that problem.

Well, human nature doesn't repeat

itself identically; human life

dynamic is such that every situation

has a new nuance. And that's what

judges are being asked to do all the

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time is to take the new nuance and

see whether it fits within the law or

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not. And if it was identical to what created the law it would be an easy answer but law is grey areas all the time. And so, yes, I think about a problem in one context and I come back now and see the greater context and I also see the greater arguments for and against positions that I may

0:30:38 have taken in the past. And so, yes, even on this Court, meaning the Supreme Court, I have ruled in ways that I had ruled differently on the Second Circuit. So there are cases

0:30:50 in which I've done that because being here has led me to see more in the briefing than I originally understood when I dealt with it on the Second Circuit.

MR. SHAHABIAN: You've talked about how legislatures are trying to design solutions to problems they see in society and as a judge you're trying to figure out if that fits the case in front of you. Do you think the role of law in society and fixing

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societal problems has changed since
you first became a lawyer?

JUSTICE SOTOMAYOR: Hard question.

When I grew up as a lawyer it was not
quite the beginning of the Civil
Rights Movement because the Civil
Rights Movement some would say,
started a century before. But we can
start at let's say the 1954 Brown v.
Board of Education¹¹ decision which
really revolutionized the law's way
of thinking about equality.

"Separate but equal" was no

0:31:54

longer acceptable [after *Brown*]. I
went to college in 1972. The Civil
Rights Movement is still proceeding.
You still have by 1991 I think the
Voting Rights Act¹². You still have
talk about the Civil Rights Act [of
1964]¹³ and how to change it and how
to make it better. The law was
viewed by many as an engine of

¹¹ Brown v. Board of Education (1954).

<https://www.oyez.org/cases/1940-1955/347us483>

¹² For history: <https://www.justice.gov/crt/history-federal-voting-rights-laws>.

¹³ Civil Rights Act of 1964 42 U.S.C. § 2000e et seq (1964).

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0:32:27 change. And it wasn't that Brown v. Board of Education relied on a new law. It relied on a new *look* at a Constitutional provision [i.e., the Equal Protection Clause of the Fourteenth Amendment] that many of us today would say is pretty clear: you have to treat people equally. But Plessy v. Ferguson¹⁴ in 1898 had seen "separate but equal" as being adequate to treating people the same. The Court in *Brown* looked at it and realized

0:32:57 that in that 50-odd year history the United States had not been able to reach equality anywhere using the principle of separate but equal. When I started law school, people viewed courts and lawsuits

0:33:17 as a way of forcing change. And so it was viewed as, I think, a more proactive engine of change. In many ways that has altered. There is much

¹⁴ Plessy v. Ferguson (1896). Summary at: <https://www.oyez.org/cases/1850-1900/163us537>

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more appreciation, understanding, I don't know exactly how to describe it, but more emphasis on laws not being made by judges but laws being made by the legislature and the executive branch of government.

0:33:50 And as a result a lot more change is happening through legislation rather than through court decisions. And so the practice of law and its emphasis is somewhat different than it was when I started out and people's view of it is dramatically different -- for the better, for the worse, I don't know that I can describe it either way. I think that respect for the

0:34:17 functions of our democracy and each branch's role in it is something that we should be appreciative of. I still think of the law as a positive thing though. I do still think that

0:34:32 it serves people and their needs. And so for me I do think the law is something positive in our society.

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And it breaks my heart when people say it's not.

MR. SHAHABIAN: What made you decide to continue your public service as a judge?

0:34:56 JUSTICE SOTOMAYOR: That's an interesting question. I was all of 36 years old when a partner in my law firm,¹⁵ the managing partner of our litigation department, came to me with an article in the *New York Law Journal* that said Senator Moynihan (D-NY) is seeking applicants for his consideration as appointees to the United States Southern and Eastern District Courts. And he is also committed to diversity. And

0:35:29 David [Botwinik], my partner, came to me and put the article in front of me and said "you're diverse: apply". And I looked at him and said I'm 36 years old. They're going to laugh at me when I

0:35:41 apply. I actually didn't believe

¹⁵ Pavia & Harcourt, LLP.

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that I would be picked; I was much, much too young. But David insisted and continued insisting. And in fact a number of dear friends came to me and echoed his sentiments and told me I should apply. I finally listened to them, begrudgingly by the way. It's a long story that people can read in my book, but David

0:36:09

actually had to get the application and put it on my desk and order me to fill it out which I did. But I still did not believe it was a possibility. And even after my interview with Senator Moynihan's committee, and it was a good interview, I was still dead sure that I was too young. Well, they disagreed.

[Laughter]

0:36:37

JUSTICE SOTOMAYOR: Thankfully for me. At any rate the Senator did ultimately meet me and offered to support my nomination, his part in the nomination, and I became a District

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0:36:48 Court Judge. What led me to say yes?
It is the role of the judge. We get to say what the law is in interpreting the law and finding the answer under the law. We are not advocating for a particular individual, institution, or person. We are advocating for that right answer under the law. And to me that's the highest service I can do

0:37:22 for people, which is to be a part of being able to look at a person's problems and tell them what the law is. You know if you're a lawyer in your advocacy for your client you end up convincing yourself they're right. It's very hard to maintain that objectivity that tells you, well maybe they weren't [Laughing]. You have to convince yourself they're right or at least have an argument worth making. As

0:37:51 a judge you only have to convince yourself that this is what the law requires.

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MR. SHAHABIAN: Well you are the only
judge in the country who's served at
0:38:01 every level of the federal system: on
the District Court, the Court of
Appeals, and the Supreme Court. How
did each of those roles affect how
you view judging or influence your
views on judging and jurisprudence?

JUSTICE SOTOMAYOR: This is how I
describe the difference between --
among the three courts. On the
District Court, District Court
0:38:27 Judges, mostly, are interested in
doing justice for the parties. They
get an individual case. They get two
parties. They're trying to figure
out an answer to those two parties'
problems. And their focus is on
resolving that problem. And that's
why in fact there are always
negotiations for settlements and/or
for plea agreements -- although
judges
0:38:56 don't participate actively in plea
agreements in the federal system at

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least with respect to guilty or not
guilty [plea]. They do have to
approve whatever plea agreements are
entered

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into. And so there you're still
focused on the individual case and
the individual's difficulties. When
you're on the Court of Appeals,
you're thinking about what justice is
for the law in your circuit. You're
not thinking about the individual
applicants or parties because the
facts are found by the District
Court. Now you're thinking about

0:39:39

what should the law be, given Supreme
Court precedent, for these parties as
it affects the law as will be applied
in this jurisdiction. And so you're
doing justice for the law as you see
it. The Supreme Court, every single
case we get is virtually never
controlled by Supreme Court precedent
because if it were the guys below us,
the Court of Appeals and the District
Courts, would follow the precedent.

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It's because every single case we take involves that grey area of our own precedent or non-precedent, as the case may be. We're basically ruling

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on what the law should be, because we're thinking about how every principle of law we announce is going to affect not just the cases before us but the direction of the future cases that judges below and society will be addressing. And so that's why Supreme Court cases often are talking about the principles that will guide judicial

0:40:56

rulemaking in interpreting this law as it applies to all those variant situations in the future. And so that's a very different focus. I think I've been gifted by having worked in all three perspectives. I, think my approach to law because of that does take a little bit of all of it into account even now as a Supreme Court Justice. I

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0:41:29 know that there are many critics who say I'm too fact bound as a Supreme Court Justice. I want to know what the record says. Well that's a product of my District Court days.

0:41:39 And it's a little bit of a product of my Court of Appeals days. But I do think that the perspective it gave me is one, for me at least, makes my view of what I'm doing as a Justice more well-rounded. I never forget the people I'm dealing with. I never forget the consequences to the Court of Appeals below in struggling to define a way of helping

0:42:08 the courts below it. And I also think about, now as a Supreme Court Justice, how laws will develop in the future.

MR. SHAHABIAN: So you did not clerk but you've repeatedly emphasized clerking to law students and young lawyers. And you've obviously developed a very loyal and tight-knit clerk family. Why didn't you clerk?

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0:42:35

And have your views on clerking
changed?

JUSTICE SOTOMAYOR: Dramatically. I
didn't clerk for the reason that many
people of color don't clerk now:

0:42:46

money. And it was as simple as that.

I had been in seven years of college
and law school education. My family
was very poor. I was very poor. I
had student debt which was nothing
compared to what students have today.

So this reasoning has more impact

today because student debt is so much
higher, and the difference in salary
between clerking and going to a law

0:43:13

firm is dramatically large. And I

just thought to myself that clerking
just meant more research and writing.

You would be stuck in a library all

day long engaged in research and

writing, and you really wouldn't get

to practice. You wouldn't get out

there to be a real lawyer right away.

Did I change my mind? Yes, as soon

as I started working with law clerks,

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because I

0:43:40 realized that clerking gave you an experience that no job can substitute for. In part because there is no job that can expose you to as many different aspects of practicing law

0:43:54 as a clerkship can. You go to a law firm, you're going to be given a little folder of cases that you work on. Each of those cases will have one, two, three legal issues. And so, in a year you might deal with a dozen, if you're really lucky, two dozen legal issues. Judges, especially federal judges, but all kinds of judges deal with hundreds

0:44:19 and hundreds of new legal issues every single day. You're not looking at all of them all of the time but you are dealing with a multitude of different legal questions every day. And you're seeing how different lawyers from different backgrounds and different law firms are approaching the question and how

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they're trying to convince the
0:44:42 clerk and the judge that their answer
is the right one. You're being
exposed to different styles of
practice in every case you pick up
and that helps you see what you can
0:44:56 do better in your approach to
practicing law. So for me that
exposure to different areas of law,
to different ways of practice, to
understanding what happens in a case
from its very beginning to its very
end, substitutes for anywhere from
five to ten years of practice.
That's why law firms pay you more
money when you've had a clerkship.
That's why
0:45:27 law firms trust you with greater
responsibility when you come from a
clerkship than when you come from law
school, because you've been trained
by the judge. Putting aside, I
think, what can be the most important
experience which is having a mentor
relationship with someone who

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0:45:53 hopefully cares about you and will help develop your career and help you even in giving you personal advice even when you don't want it --

MR. SHAHABIAN: [Interposing] I don't know what that's like --

JUSTICE SOTOMAYOR: -- [Laughing].

But

0:46:01 that kind of mentorship is so important in life: having someone who you can call when you're having a difficult moment or making a difficult choice I think is invaluable. And I certainly have had friends throughout my life who have helped me with that, but judges tend to have experience in the law that others don't. And as a result I

0:46:24 think their advice can often be sort of game-changing in terms of your view of what you're doing. And so for me, that's why my attitude about clerking has changed and why I encourage every student who has the opportunity to try to clerk and do it

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0:46:52 even as a permanent clerk or while
you're in law school. I know NYU,
for example, has a program during the
school year where students intern in
judges' chambers. Whatever clerking
experience you can get is valuable.

MR. SHAHABIAN: So at the beginning
of our conversation you mentioned the
0:47:04 trauma of going through the Supreme
Court confirmation process. But
you've actually gone through this
process three times.

JUSTICE SOTOMAYOR: [Laughing].

MR. SHAHABIAN: You were nominated by
three different Presidents --

JUSTICE SOTOMAYOR: [Interposing] Oh.

MR. SHAHABIAN: -- George H. W. Bush,
Bill Clinton, Barack Obama. How has
0:47:20 that process changed since the first
time you went through it?

JUSTICE SOTOMAYOR: It's always hard
[Laughing]. And the thing I said
when I finished my Supreme Court
confirmation hearing was I went into
the back and said, "Thank God, I'm

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never doing this again.”

[Laughter]

JUSTICE SOTOMAYOR: And I meant it.

It

0:47:45 is -- look, on all three levels it's political. During my District Court nomination process my views were unknown because I had not been a judge, and so people were not

0:48:01 holding me up because of any views I had expressed. I had done very little writing of anything controversial, and I had practiced in a fairly standardized way and one that would commend me to most Senators which was I was a former prosecutor, in private practice I was representing corporations and doing mostly defense work, not plaintiff's

0:48:26 work which sometimes can create a problem for some Senators. But despite that, my nomination was being used by people who wanted to get Senator Moynihan to help in pushing along their agenda. So at every

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stage of my nomination process, I would get calls from people saying your Senator is not being helpful on this. This might not get you to the next stage. And I would call his office and relay what I was told and they would laugh and say, "Yeah, we're negotiating this, don't worry Sonya, it'll get settled before the night's over." And it would and there'd be a compromise where some other Senator would get what he or she wanted passed and they would then move me to the next stage in my process. It didn't feel personal. When I was nominated to the Court of Appeals, the morning that I was walking into the Senate hearing, Rush Limbaugh had had a radio show in which he had told the public that I was being considered for nomination to the Court of Appeals and that I had to be stopped "because I was on a rocket ship to

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the Supreme Court". I'm quoting him.
Now you have to understand back then
I thought he was crazy. I had just
been a judge for six years. I had
thought it was laughable that anybody
would think of me for the Supreme
0:50:06 Court, and I was outraged that he
would make this announcement based on
his study of two or three cases, all
of which had very legal answers. And
so I was a little bit annoyed. But
0:50:21 there it became a bit more political
but personal. And that was
traumatizing. I was held up for 18
months. My nomination was held up
for 18 months. It took politics to
get it un-hung up, but I finally got
both nominated and confirmed.
Different story altogether from the
Supreme Court. There I felt it
wasn't about me. Not in the way
0:50:53 people think. The Supreme Court is
about what people's hopes are that I
will do on the issues that are
important to them. People really

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feel that their Supreme Court Justice has to be a person who will vote their way on the issue of importance to them. So for people who are pro-life and for people who believe in pro-choice, they're

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looking at only that issue as defining whether this is a jurist that they want or don't want. The same thing with death penalty or any of the big hot button issues that

0:51:38

face the Court. People are not really thinking about you as a jurist: what your philosophy is in terms of approaching law or how you view law in terms of service or non-service to people; and that makes the disconnect of the politics from the reality so much greater. I was no longer being judged whether I am a competent jurist. The issue now was very

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different: am I a jurist that's going to vote in a certain way. And that is so alien to a judge who relies on

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keeping an open mind and making a
promise that I adhere to, which is I
won't make up my mind until I hear a
person's arguments, until I've
actually seriously considered both
sides of an issue that's before me.
So the public's never going to be
0:52:34 satisfied in the Supreme Court
[confirmation] process because
they're never, if the judge is a good
one, they're never going to give an
answer to those big questions; but
the process is
0:52:46 different among nominees and the
emphasis is different as well.
MR. SHAHABIAN: How do you hope
you'll be remembered?
JUSTICE SOTOMAYOR: I felt very
sensitive the first time I was at a
jazz concert in Washington, D.C. And
someone screamed out of the audience
"the People's Justice". And I
thought to myself, what? I want to
0:53:10 be a Justice, I don't want to be the
People's Justice. And I also thought

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it was an insult to the Justices, I think all of whom, like me, are really very passionate and dedicated to the Constitution, to the laws, to our system of government. I don't think I'm any different than they are. Our passions are equal. But I've grown to understand that when

0:53:34 people are saying that, what I think they're commenting on is that in my jurisprudence I always try to recognize the impact of the decisions I'm making on people and on

0:53:50 institutions. It doesn't mean, at least to me, that I rule in their favor, because I don't know what "in their favor" is. In every case there's a winner, which means there has to be a loser on the other side. And so every time I rule in favor of someone if that's the way they perceive it, I also know that I have ruled against someone else's favor.

0:54:21 But so it's not that for me. If what they mean is that I take the time to

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include in my discussions that human impact and they can see that I care about them, even if I can't rule in their favor in an individual case, then I think the title's okay. Then being a People's Justice is okay, I'll accept that.

0:54:53 MR. SHAHABIAN: Justice Sotomayor on behalf of NYU Law and the Institute of Judicial Administration, I just wanted to say thank you again for taking the time to meet with us today and share your experiences and your
0:55:04 views with us.

JUSTICE SOTOMAYOR: Thank you, Matt.

[END RECORDING]