

JUSTICE STEPHEN BREYER

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Location: Justice Breyer's Chambers

Host: Brian Lamb, C-SPAN

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BRIAN LAMB, HOST, C-SPAN: Justice Breyer, what room is this in your chambers?

STEPHEN G. BREYER, ASSOCIATE JUSTICE, UNITED STATES SUPREME COURT:

This is where the clerks are and, this is where quite a lot of the work gets done. I've our messenger, Brian (ph) and Alene (ph) and Seth (ph) and, they're here for a year. And I have four clerks and everyone in the building – the nine of us each have four law clerks. And they're invaluable, indeed crucial. They do a lot of work.

LAMB: Before we talk about some specifics, what does this building mean to you? You're a man that's interested in architecture and art?

BREYER: Well, this is the last neoclassical building built in America. It was built – Cass Gilbert built it in the 20s and 30s and, Taft got the money. He was chief justice and he had been president of the United States. And he went to his friends in Congress and got money for it. And they built this building, it's a very attractive building. It's become the symbol of the Supreme Court. So it's the symbol of justice in America.

Two interesting points. Van Devanter who was one of the justices at the time and did a lot of work on it, didn't want to leave the former chambers which were in the basement of the Senate. And he said if we leave these offices in the Senate, no one will ever hear of us again. But he was wrong. Brandeis said he wouldn't come in here. The reason Brandeis – Justice

Brandeis wouldn't come is he said this building is so elaborate it will go to their heads. And maybe he was right. But it's become over time a symbol of the court system, the third branch of government. And the need for stability, rule of law which is what America stands for.

LAMB: As you know, the public knows very little about how the Court works. What is in this room that you can illuminate on that subject? How it all works, how the cases come here?

BREYER: What we actually do? What is it I do everyday? The – first, you have to keep in mind that law in the United States, 90 percent, 95 percent of all law is made in the states. I – every state has a system for making law. It has legislature, governor, a court system. And when I talk to the school children I say where is the law made that affects you? It's not Washington, D.C., its Sacramento. I say well how – if you're from California. And I'll say well, over there, you'll see it from my office, the Congress which is right a block away, they do pass quite a lot of laws. Those are federal laws. But they still make up only a small percentage. There they are. See those are the federal laws, in those books right there. Those are the laws passed by Congress.

LAMB: How do those ...

BREYER: Now, that's ...

LAMB: ... how do those books end up on your shelf?

BREYER: We all have copies. Anyone can get one. Anyone in the United States. You could write to the federal government. Probably over here see you have a West Publishing Company puts them out but, this is U.S. Code with cases in it. Here it is, here's a statute book. You can get a copy, it's in every library. This happens to be how you get a request for identifiable records in a patent case. I just turned to it by chance.

But you see there are words in it. Now 400 hundred years ago the great French philosopher, Montaigne, pointed out that every word in a statute is a possibility of an argument for lawyers. Does it mean this or does it mean that? So each of these statute books contains thousands of words and each of those words could produce an argument.

LAMB: Now are these all the laws that have been passed over the years?

BREYER: These are all the federal laws that are still in existence. There they are. And there's a – that – they're even shorter when you take the cases out. That over there is the actual code itself without any cases interpreting them.

LAMB: And all of that is available ...

BREYER: That's federal. That's available every city of the county, every rural district, wherever you want to go. It's available on the internet. You can find the law of the United States. Anyone can.

LAMB: How does a case come to you?

BREYER: Now, think of all – remember, they're all – they're state laws and there are federal laws. And you can have a case in a court system that's a state system, in fact, 95 percent of all the cases in the United States are in state systems. More than that. Or you can have a case in the federal system. And the laws for getting which is which are complicated.

But maybe three percent or four percent are in federal courts. But any of those cases could involve a federal issue of law. An issue of the law, what does it mean? Or what does the Constitution of the United States mean? That's a question that we could decide. We decide just the federal questions. Those statute books and, what the Constitution of the United States means in cases where people are disagreeing about it.

There are trials, there are appeals and, finally, by the time you get to the final appeal, maybe there are oh, 80,000 cases, 100,000 cases in the United States that have questions of federal law. What does this word mean? Does it mean this or does it mean that? What does the word liberty in the 14th Amendment mean? How does it apply to someone who wants assisted suicide? That's a case we have. Does he have a constitutional right to it or not? It can be an important case or, it could be the meaning of one of those patent code words.

Now of those 80,000 cases, 8,000 ask us each year to hear the case. That means about 150 a week. A hundred and fifty what? One hundred and, fifty requests to hear the case. Well here they are for this week, right here.

LAMB: For this week?

BREYER: For this week. This week. So what we do is read through these. And we all read all of them. I'm going to qualify this in a minute. But we all look at all of them and then we vote. We meet at conference and we vote. And if there are four of the nine of us who want to hear any of these cases, we'll hear it. There's one here and a petition, just picked at random. This is a person who can't afford to pay for the printing. So he proceeds *In forma pauperis*. If he's a criminal defendant, the government will pay for this.

LAMB: Is there a certain – does this have to be a certain length?

BREYER: Yes it does. Usually it's I think it's under usually 15 or 20 pages. Usually – this is 21 pages. Here's one here that they paid for.

LAMB: And that's in a booklet form?

BREYER: Yes. And here's the – this the lower court, they ask for the petition. See, they say please take our case. And here's the opinion below saying why we should take it. And here's the response saying please don't take it.

Now, you might wonder how could I read all these in one week? Somebody might wonder that. I'd like to say oh, because I'm so clever but, that isn't the reason. What we do with these in fact is it would be impossible for one person to read all these every single week. Is one of the things these wonderful law clerks do is we have a pool for most of us and, we'll pool our four clerks and say there are about 30 clerks and those 30 clerks will divide these and the clerks will read five or six.

Thirty into 150 or so is about five or six. Well they can do that and, moreover, they can do it very thoroughly. So if I were just to skim through this, maybe I would think this petition – see look, here’s somebody writing here, it’s sort of these maybe he’s a little scrawled, I don’t know I might, maybe he’s right. Now if I had to read 150, I wouldn’t necessary find that. They by reading five or six are going to find out whether there is a case that we should hear. So what I’ll really receive is a pack of memos like this. Now I go through that pack of memos. And now I will tell you something – although I say it and, all my colleagues say it, almost nobody hears it. It is how we decide what to hear.

Think of these memos like this. Now I go through that stack in probably a few hours – a couple of hours. How could I do that? Go through that stack? They’re each two to 10 pages, sometimes 20 pages. And I’ll end up with a small stack like this. Maybe 10 or fewer. These are the ones I really think maybe we’ll hear. Now, how did I get from that big stack to this small stack? Well, once I tell you the criteria I’m using, you will understand.

Again, Taft, the chief justice explained it. He said we are not here to correct mistakes of the lower court. Already that person, every one of these persons has had a trial, they’ve had one appeal, maybe they’ve had two appeals, maybe they’ve had three appeals. We couldn’t do it if what our job was, was to look through all these decisions and decide whether it was right or wrong. They’re good judges too. Maybe they’re right, maybe we’re wrong. Who knows? But the primary job is, said Taft, to take the case where there is a need for a nationally, uniform decision on the meaning of the particular law. Now suppose all of the lower court judges come to the same conclusion about the meaning of the law, is there a need for us? What do you think?

No. It already is uniform. But suppose they reach different conclusions. Now is there a need for us? Yes, probably. It's not uniform. So the basic rule, it isn't the entire rule but, the basic rule is if they've reached different conclusions, we'll probably hear it. If they've all reached the same conclusion, we probably won't. That isn't 100 percent of it, but that's the basic idea.

Now you see what I'm looking for. Now you can see how I could do this. Now you see how it's possible.

LAMB: Let me ask you about the atmosphere of this, your chambers.

BREYER: Yeah.

LAMB: It seems a lot different than the Capitol where you used to work, over in the Senate.

BREYER: No, it's quiet.

LAMB: Is it like this? I mean you have two clerks in here? How many clerks do you ...

BREYER: I have two up, two upstairs and they change places in the middle of the year.

LAMB: And this is basically the atmosphere they work in all the time?

BREYER: Yes. It's quiet. They're reading.

LAMB: Doesn't get any more exciting than this?

BREYER: Oh, yes. I can rant and rave from time to time. But I try to do it quietly.

LAMB: But it's a much different atmosphere than when you were say, working on the Judiciary Committee?

BREYER: Yes, it is. The judiciary committee, something's happening every minute. And here, what we're doing is we're methodically going, let's say through the *certs* and then through the cases. This, by the way, after we grant a case, here we are. This is what happens next. The parties, that is the people who are going to have their case – we grant about 80, by the way, during the year. I think that's 80 out of 8,000 who asked us. Out of maybe 80,000 that were possible. Out of say, eight million in the whole country. We're getting the ones where different judges have disagreed.

LAMB: Let me stop you and ask you about the 80. Does that mean that there are 80 times that these parties come together in the court room that you listen to ...

BREYER: Eighty different sets of parties. Correct. Eighty times during the year they'll come together in the court room. And we'll divide those into two week sessions. That's the mechanics of it. Two weeks in October, November, December, January. Last two weeks of February, March, April. And roughly, we'll hear between eight to 12 cases during those two week sessions. They each have an hour to argue orally. But before I go into that session, before I've gone into the April sitting, I have, here we have let's say March or, here we go,

here's April. These are the cases that were filed in April. This is what we heard in April.

See those – each one of these boxes – is a case.

LAMB: What's in the box?

BREYER: Now, let's look at one. Here's a good, it's a perfectly good case.

LAMB: You heard this case already?

BREYER: Yes, yes we've heard them all. And by the way, before I go into the oral argument, I have read these booklets. And this time I've read them. I mean I've read the whole book. I go through it. And my law clerks go through it. And they write memos analyzing it, which I ask them to do. And we discuss it once or twice.

So I've already read this and here's one here, OK. This is an interesting case. We – this is what we get. We get – this is the blue brief. This is 50 pages or so where the lawyers say why the district court – why the courts below were wrong. All right? Then we have a red brief. That tells us why they're right. Then ...

LAMB: Who writes them?

BREYER: Well, the other side. This case involved a school district wanted – they lost below and they want us to reverse. They have a view of what the rule of law in search and seizure is. They say it's our view of the rule of law some particular thing. And the other side

says no, the lower court was right and they accepted our view of what the law is on search and seizure.

LAMB: Is there a length that they have to be.

BREYER: Yes. About 50 pages. It's word length, so they sometimes they're a little longer.

LAMB: Now what if you're poor and can't afford to do this? What do you do then?

BREYER: You do it – well, if your case is granted, then we'll – and, even if you don't have a lawyer, we'll appoint somebody to represent you and it'll be paid for.

LAMB: And how much – how often do you have people that can't afford to pay for it?

BREYER: Well, quite – fairly often. Because that whole docket there, all those white pieces of paper, are all the people who couldn't afford to pay for it. So that's why they didn't print those. I mean if they're case is granted, then they'll get the money to print it.

LAMB: What is your feeling about those numbers, 8,000 and 80 and ...

BREYER: Well since what we're looking for is we're looking for the legal issues where people have disagreed below. And maybe a few others. I mean I'm not saying if a court below holds a statute of Congress unconstitutional, we'll hear that case. And if maybe you could have Guantanamo. You know some huge issue for the country. But the key to what they have in common is that four of us, at least, think there is a need in this case to have a

uniform rule of federal law in the country. Therefore, we need to decide it because we're the court that can do that.

LAMB: In that box, what else is in there?

BREYER: Alright, what else do we have? This is a reply brief.

LAMB: What does that mean?

BREYER: That means after this side who filed a blue brief, read everything else, he filed a reply.

LAMB: And they have to be those colors?

BREYER: Yes. Helps us – government, the government is always gray. They file ...

LAMB: Is there a reason for that?

BREYER: Well, I don't know, you have to ask them.

But the – they – here they're supporting – they're supporting the petitioners here. So then there are these briefs, *amicus curiae* briefs that any group can file. That's what's called a friend of the court.

Any group can file a brief. Here we have some people, a group, here's some group filing the one side – oh, these got mixed up with some other cases.

LAMB: And they're always light green?

BREYER: The light green is on the side of the petitioner. The dark green is on the side of the respondent. And this is the record below. The opinions below are in here.

So what I will do is, as I say, I'll go read these 12 sets of briefs. And you know if they're – like here, look at the number of *amicus* briefs here. As I discover they get repetitive, I might not read them quite as thoroughly. But I'll look at them all. And I'll be sure that I've seen what's in each one.

LAMB: Does it ever feel like there's too much?

BREYER: Well we're reading continuously. Now, if I'm flying somewhere, I'll have briefs in my bag. I read it on the airplane, I read it at home, I read where I'm – briefs follow me around during the year and, I read them.

LAMB: What about security in an office like this, in a building like this where you're worried about – with the computers that people could hack ...

BREYER: It's pretty secure, we have a – they can't hack in. We have a very secure computer system. And it's really impossible. They can't.

LAMB: So you all communicate among your offices ...

BREYER: Yes.

LAMB: ... here also?

BREYER: Yes you can.

LAMB: Different justices?

BREYER: You can. We can.

But with judges, normally it's better to communicate in writing.

If, for example, I'm talking about this case. They're complicated, these cases. You know if I want to talk to you about it, we might not even think we're even talking about the same case. But if I have to put in writing, I have to be very clear. And then you know just what I mean. So writing is a good way to communicate. Though that's not the only way. We also talk to each other.

LAMB: May I ask you this?

BREYER: Yes.

LAMB: After you read all this and you've talk to your clerks ...

BREYER: Yes.

LAMB: ... and you – on the bench ...

BREYER: Yes.

LAMB: ... how often do you change your mind sitting up on the bench?

BREYER: Well, if you – it depends. If you say how often, when I hear the oral argument ...

LAMB: Yes.

BREYER: ... do I think differently about the case? Quite often. If you'd say 40 percent, that's probably a little high. Thirty percent could be in the ballpark. If you say how often do I come in thinking this side wins, now I think the other side wins, I'd say it's a much smaller number. But five percent maybe, 10 percent, somewhere in there.

LAMB: So you ...

BREYER: I do change my mind.

LAMB: So the oral argument does matter?

BREYER: It does matter. It helped me – law clerks think it doesn't. And ask them. I think it does because it helps me characterize the case. And I see what my colleagues are thinking very often. I listen to their questions.

So anyway, once you know once we hear the oral argument, we go to the Conference Room that week and we sit around the table and we talk about it. No one else is in the room. And then we vote. And the vote is tentative but, it's always becoming firmer. And on the basis of that vote, it's pretty apparent how it's going to come out. Maybe about 40 percent are unanimous. Five, four perhaps, 25 percent of the time, 20 percent of the time. Not always the same five and four.

That's because people don't usually understand. I mean look at this, this is a case involving the tonnage clause. You know that's not going to be in the newspaper. But it's important to the parties and to many people in business who own ships and who want to tax ships. So many of these cases are quite significant, but the press isn't going to write about them and so people won't know about them.

But they will write about those very controversial issues where maybe we might divide five, four. So I think the impression of division is greater than it really is. Now...

LAMB: The next room is what?

BREYER: Now, this is where my office is and I have two assistants, and they are kept pretty busy. I mean Amy's (ph) job here is primarily to keep all of these papers in order and to keep everything – lots and lots of pieces of paper are flowing around. The – each case as it

comes up and the papers in the case, and then people begin to decide it, then they begin to write opinions, circulate opinions. And Toni (ph) keeps track of the rest of the world coming in here, which in my case is a quite a lot, and she's – the people who want to give a talk or friends, or my family might call, or other judges or who knows? I mean it's – she's the face of the world.

LAMB: One of the things I noticed just standing where you are, you can hear the noise – and I don't mean to call it noise, but the tourists that are visiting the Court down the hallway.

BREYER: Yes, that's true.

LAMB: But you get a sense that not many people ever get back here.

BREYER: They don't because it's a secure area, and it used to be – I'm afraid unfortunately there are fewer people who come to the building now. But when I was first appointed, there were about a million people a year who came through the building, which was a wonderful thing, wonderful thing, and now I think it's dropped somewhat. But that's not who comes to these offices. The offices are in this area, which is kept secure.

LAMB: Let me ask you a question; if I'm an attorney and I'm representing a client, and they're going to be before the Supreme Court ...

BREYER: Yes.

LAMB: ... can I call you up and come visit with you in the office?

BREYER: No.

LAMB: Why not?

BREYER: Because the basic rule of our court system is that – that's what's called an *ex parte* communication. If you – if you have two people in a case and they're suing each other, or it's the government against one. These two parties are represented by lawyers, and the judge shouldn't have anything to do with the lawyers without the other one being present, and we have a really very formal system for making presentations.

LAMB: Do you ever have to say to a friend or an acquaintance I'm sorry I – you've gone too far in asking me questions?

BREYER: Well, it'd be unusual that – it'd be unusual that I would be talking in a context to a – it could happen, but it'd be very unusual to talk to somebody who's representing somebody in a case, but if we're just at dinner and you start talking about a case, I usually say you can ask what you want, but I am very restricted in what I can answer. And that usually ends the conversation on that subject.

LAMB: On a lighter note, I see some bobble head dolls over there.

BREYER: Yes, well, I think somebody's making those, so they send them to us ...

LAMB: I don't see one of Justice Breyer up there.

BREYER: No, I guess for better or for worse I'm not there.

LAMB: What – up on the bookcases in this office are a lot of photographs. What are ...

BREYER: Oh, these are my law clerks. I – we had a law clerk reunion, and I was a judge for 13 years in Boston, Court of Appeals there, and you know I've been 15 years here. We had a reunion of my clerks. They were – I've had 111 law clerks, and 87 of them came to the reunion a couple of weeks ago, absolutely wonderful. It's like having this marvelous family, and they're married and they have children, so I feel like a grandparent of 1,000 children, but it's really nice.

LAMB: What's the job of the law clerk?

BREYER: Well, the law clerk – first of all, they're going through all of the *cert* petitions. Then when we hear the case, they'll read those briefs too. So I'll talk to them about it, and I'll ask them to do research, and they'll write memos. Then when we've decided the case, the next step is to write an opinion, and that's divided among the judges. So in a particular case, if it's my job to write the opinion, well, I'll first get the law clerk to produce a long memo, maybe 40 pages or a draft, or whatever they would like to call it. But I'll then take that memo and I'll take the briefs, which you saw, and I will read them. So we're now over here. So this is where this goes on. So what I do is I read them, and then – looks like I'm reading the newspaper this morning, but then having done that, see these are the systems. I go over here. See we have two. This is the computer going to the outside world, and if I

want the secure system – which I'd use for that – I just push that button and it's totally separate.

And I sit here and I write a draft. So a lot of my day is spent writing a draft. Now I'll write a draft of the opinion. I give it back to my law clerks. They look at it and they think, medium. And then they will write a draft based on my draft. I'll get their draft. I'll do it again. And this goes back and forth.

I usually discover, its personal style. But I usually have to spend, write two or three drafts pretty much from scratch before I'm reasonably satisfied that we're going somewhere. And then we edit them back and forth. And when – after they're edited back and forth, I circulate it and I hope four other judges join. If four other judges join, I have the Court. I'd like nine to join. I'd like nine to join.

LAMB: Who decided in the first place that you'd write the...

BREYER: Oh, the chief justice if he's in the majority. And he's constrained because he has to have the same number of opinions for everybody over the years. So everybody's first assigned one, everybody's first then two then three and so forth. But it'll be up to him if he's in the majority, same side I'm on.

If he's not in the majority then whoever's senior – could be John Stevens, for example – they'll make that decision. But it balances out over the year.

LAMB: Let me ask you about your office. These are some very old looking books.

BREYER: Oh, they are. They're my uncle's. He liked to collect books. I don't know if they're very valuable, but some are nice. And he spent his life, he was a philosophy professor. And he spent a long time collecting different books. And this is...

LAMB: Where was he a philosopher?

BREYER: In Cambridge. He was at Johns Hopkins and then he went to Harvard and then he started working the library and he spent most of his life working in the library. Didn't have a lot of money, but he loved these books. And I have some here and I have some up in Cambridge.

LAMB: Did you clerk?

BREYER: Yes, I did. There's the man I clerked for.

LAMB: Arthur Goldberg from New York.

BREYER: Yes. Well, he was from Chicago.

LAMB: And what year?

BREYER: In 1964 or '65.

LAMB: And what did that do to you, that experience?

BREYER: Oh, it was wonderful. It was wonderful. I loved Arthur Goldberg, his clerks loved him. It was great fun working for him, and I learned a lot about the Court and I learned a lot about the law.

LAMB: How were you picked for that?

BREYER: Oh, I think I was recommended by faculty people at Harvard and then he interviewed and I...

LAMB: And how do you pick your hundred and how many?

BREYER: Well, each year we have four, 111, I think. I have a committee of former clerks that acts as a screening committee. And then I'll probably – other judges call me on the Court of Appeals and say I have a wonderful clerk for you who would be very good. And we get quite a few, maybe several hundred applications. But the screening committee between that and the calls from the different Court of Appeals judges, I might interview 10 or 15 and then pick four from that.

LAMB: This room, we're standing here in the middle of the summer, there's a roaring fire in the fireplace.

BREYER: That's because it's cold today and rainy. I don't usually have the fire going in the summer.

LAMB: Are you a fireplace type person?

BREYER: I love the fire. I love it. I love it.

LAMB: And it's real wood?

BREYER: Yes, it's real wood. I mean, I wouldn't normally have it on today except I built the fire because I was cold when I came in and it was pouring with rain. It's cold.

LAMB: Normally when I see you, certainly in the court room, you've got robes on and otherwise. Do you normally work without a coat on?

BREYER: Yes. Yes. This is what I normally wear around.

LAMB: And what kind of an atmosphere do you like – have you created for yourself in this room?

BREYER: Oh, it's pleasant. It's pleasant. I like the pictures. I like the books. People give me odd things. This is an Indian tribe's talking stick. Somebody gave me that. I think that's sort of fun. And it's supposed to be when you hold it up, people will listen to you. It doesn't work, but I can pretend it might. And I don't know, somebody sent me that from Japan.

LAMB: What about this piece of art right here behind you...

BREYER: That was – we can – we have the privilege, as many government appointees do, of going to the museums here and seeing if there are paintings they're not displaying. And if not, they'll lend them to us for the office. I went to the Museum of American Art and they had some pictures they were not displaying. And so I borrowed them. And here they are. They can take them back.

That's New England and those are some designs in the courthouse in Wisconsin which I like. And that's actually a nice one. I think that's a woman by Gilbert Stuart. I mean, they're all nice but I mean that's a famous artist.

LAMB: What's your favorite thing in this office? Anything in particular?

BREYER: I like this baseball, which is – this was a great thing for me because see I got an invitation from the Red Sox to throw out the baseball. Now, that's not so easy to do, I'm not the world's greatest thrower. And the Boston Red Sox fans are not great at forgiving people who can't throw the ball. So I practiced, then we worked out, see, if you look very carefully, here's how we did this. We got Clara (ph), who is my 4-year-old granddaughter. Now Clara (ph) went out there and she threw the ball to grandpa. Then grandpa threw the ball to Joanna, my wife, and – who is a very good athlete – and Joanna threw the ball right over the plate. So – and she works at Dana-Farber, which is a cancer hospital in Boston, and the Red Sox do a lot for Dana-Farber. So the announcer said I was throwing the ball but that Joanna was going to do this for the children at Dana-Farber. Perfect. So she got a lot of applause for that. So I like this very much.

LAMB: Why don't you sit over there and we can continue chatting a little bit. What do people not know about this Court that you want them to know? The average person that's not a lawyer and doesn't understand it, where does it fit in?

BREYER: I think two things. One is the job of the Court is much more a straight legal job than people think. What they think is that we just decide what we like. That isn't true. I mean, I feel I never decide what I like. The reason that there's division is very often these questions are hard and the law is not clear.

Say, well, 14th Amendment says no person shall be deprived of life, liberty, or property without due process of law. Does that mean you cannot be deprived of a right to ask a doctor to – if you're at the end of life and you're seriously ill – to commit suicide? Do you have that constitutional right or not? Well, you can look at that word liberty 50 times and it's not going to tell you the answer.

So there are ways of finding out. That really have nothing to do with my preferences, but it isn't surprising that people divide on such questions. It's hard. And that doesn't mean that they're just deciding according to their preferences. That's one thing.

But there's a more important thing, I think, and I'm looking here for a copy of my constitution. Wait a minute let me get it. The main thing as I see – so you look at this document. I mean, it's very, very thin document. But it's been in existence for 200 years.

Now, what I see every day in my job which amazed me the first day and continues to amaze me is sitting up in the bench I see in front of me people of every race, every religion, every

nationality, every point of view imaginable. And we have 300 million people; probably have 900 million points of view. I mean, people in this country don't agree about a lot of things.

And despite enormous disagreement, they've decided to resolve their differences under law.

But I see that every day. I mean, we're seeing countries on the television non stop where they don't have that tradition. And what happens is they shoot each other.

And here we don't. We decided even when people think that this document is being misinterpreted by the Court, they'll still follow what the Court says. Now, that hasn't always been true. I mean, think, we had to fight a civil war for that. We had 80 years of racial segregation. A lot of bad things have happened in the country.

But over time people have come to the realization that it's better to follow the law, including interpretations that you don't agree with, than it is to take to the streets. Now that's a tremendous, tremendous treasure for the United States of America. And people have agreed to follow that document. And we're entrusted with its interpretation.

LAMB: Let me ask you about the proximity of this building. As you referred to earlier, there used to be – the Court used to be over inside the Capitol.

BREYER: Yes, there it is. If you look out the window, you will see the Capitol.

LAMB: You worked over there in the Senate.

BREYER: Yes.

LAMB: This building is, in some ways – you can look at it two ways. It's either surrounded by the Congress or the Congress is looking up at the Supreme Court. How does it fit in in our...

BREYER: I think the overall impression that I had working in Congress is that's where the power is. We're a democracy, and power flows up from the people. And you cannot work there without thinking every minute that we are responsible directly to the people.

I can remember one day I had a small office over there. And I came in my office and there was someone looking through my law books. So I said, 'Excuse me, can I help you?' And I think it was probably a student. She said, 'Well, I had a question I just thought I'd come in and look at these books.' So I thought shall I be a little one annoyed? No. Maybe she's a constituent.

Do you see? That is the thinking that people have when they're elected. And they should because they are representing the people.

But over here what we're doing with this document is not telling them over there what they can and cannot do. We're looking at this as the ground rules. These are the ground rules. What they say in this document is one. We'll have a democratic process. We will have a democracy. And basic rules are here.

It's a certain kind of democracy. It insists on a degree of equality. It insists on protection for fundamental rights. It insists on separating powers into pockets, state, federal and executive, legislative, judicial, so no group becomes too powerful. And it insists upon a room of law.

Those things don't say how to live in society. They tell you the ground rules as to how to live in society. And we apply those ground rules to what people themselves, through democratic processes, decide to do. They're the ones who have to figure out what kinds of cities, towns, countries they want. But they have to follow these rules.

And our job is a very different one. It's to take the product of what others have done – like Congress – look at it carefully – where lower court judges have disagreed about what it means about whether it's constitutional – spend time – we'll probably spend two, three, maybe four months on a case – look into it with care and then come up with a conclusion about what it means or whether it's consistent with the Constitution.

And most importantly here is the end product. When we're finally finished and everybody's written the dissent or everybody's written a majority or everybody's joined the majority or everybody's written anything he wants to say, the next argument day – there's no strategizing or anything – the next argument day that opinion is released and here it is in the books.

All these cases it's a little essay. Here's an essay I'm just taking at random, something called *Jones vs. the United States*. I don't know what that was about but here's a dissent by Justice Brennan so I guess they're were some people in the majority and there were some people dissenting. There were three people dissenting and I guess six in the majority. And it's about, oh, 20, 30 pages – 25 pages. And that's it.

Now, the key to that document is the judges in those opinions are giving their real reasons – not some made up reasons – they're giving their real reasons as to why they think the law is the way they've written.

It's very different from Congress because Congress isn't supposed to tell you why the statute is on the book. The statute just tells you what to do. But of course there's an inside story because it doesn't tell you why Congress decided to have you do it, but these documents tell you why the judge came to the conclusion. And the up shot is the inside story of the court is there isn't one. Not much of one.

LAMB: So often you'll see concurring opinions and dissenting opinions.

BREYER: Yes.

LAMB: Do those have any impact on the decisions?

BREYER: I think yes. I would say yes because the part you haven't seen is the first time I say write an opinion and you say write a dissent. I read what you say and I think, 'Did I really say that?' Oh dear. He has a good point. I better rewrite what I did. I better be certain that my argument is as good as I thought it was the first time.

And the impact of your dissent will be, at the least, to make me write a better decision.

LAMB: So you get the dissents before you write the final decisions?

BREYER: Oh absolutely. And then when I write the final – I revise my decision, you'll read what I wrote. And then you'll revise your dissent. And then ultimately I hope – and it doesn't always work this way but most of the time it does – we narrow our differences to the point where I think an objective person would have to say, most of the time, these differences

are within the range of reason. Nobody's really made a mistake here. It's simply different people reaching reasonable conclusions for somewhat different reasons, but I can understand how people can differ.

LAMB: So when – is there a time when there's a deadlock?

BREYER: No. A deadlock?

LAMB: Say you have nine members of the Court.

BREYER: Yes.

LAMB: Let's just say for talking purposes, nine members of the Court, they all concur, they all agree. Who decides when it's the final word typed and you say, OK, we have an opinion that we can now announce?

BREYER: At the conference – remember the conference where we were going to have the four votes to grant, the conference where we were going to discuss how people tentatively thought about the case – the first order of business of that conference is always a list of opinions that are circulating. And what the chief justice always says – and he knows because he keeps track, as do we all – is everyone in on this? That means, has everyone written what he has or joined. And when everyone has joined and everyone agrees, I have nothing more to say, that's when it comes out.

LAMB: What if it – you can't get to that point?

BREYER: We get to it. It doesn't happen that we can't get to it. The job is to get to it. We're not here and in a (INAUDIBLE) to spin out theories. We're not here producing works that are never going to see the light of day. We're here to decide things. The job is to decide. We decide.

LAMB: So what's the longest period of time that you can remember – what, you've been on the Court 15 years?

BREYER: Yes.

LAMB: The longest time you can remember from the moment you accepted a case, granted it *cert*, to the moment you announced the decision on the bench?

BREYER: Well, I won't have to remember but I know the longest that it can be possible and that would be we'd hear argument in the week of October and we wouldn't get it out until the end of June. That's the longest it could take.

LAMB: It can't go over to the next June?

BREYER: No. No. Now, I'm being slightly more absolute than is warranted, that is it can happen. If you can't, we have the power to hold the case over for the next term. I don't think that's happened since I've been here. If you were to find a counter an example, fine. But I don't think it's happened since I've been here. It's rare.

LAMB: Let me ask you some questions again about the building. What's your favorite place in this building?

BREYER: I like this office, to tell you the truth. I've become a home body. There we are. I mean what I do most of the day. I say the job you know is reading and writing. I told my son this. I've used this joke a hundred times but it's true. I mean, I say the job, if you do your homework really well then you'll get a job you can do homework the rest of your life. But that's – I'm reading and I'm writing.

And this is a very, very pleasant room to work in. And I like it. And I occasionally go out to the you know – every two weeks I'm hearing oral argument. Sitting in the courtroom is always an impressive experience and I very much like that, too.

But – you know I can't say I really like the exercise room the most. It's the hardest work. There is a track, a Nordic track, down there. But this is comfortable. I like it in the winter and I like it in the summer. It's a very nice view. It's a very great privilege to be here.

LAMB: You know you often read that there are nine different law offices basically among the Court. Is that the way it works from your perspective?

BREYER: To a degree. It's a somewhat of an overstatement because the suggestion there is we don't talk to each other and try to figure out what the others are thinking. That's an overstatement. We do talk to each other. We do try to think – we have ways of finding out – mostly by memo but sometimes directly – what other judges are thinking.

But it's an individual law office in the sense that when I'm writing an opinion, as I'm doing, I'll have my draft. I have my law clerks. They will go there – you know they will do the research necessary. And I want to know something, they'll look it up. And the library here is fabulous. It is connected to the Library of Congress, to the whole world.

If I wanted to know what the French statute of limitations is in some kind of commercial action, I can ask them and the next day it will be on my desk. I mean, they're very, very good.

LAMB: How often do you find yourself on a point that you can't resolve and you get out of your chair and you walk down the hallway to another justice's office?

BREYER: Sometimes.

LAMB: So there is that kind of back and forth?

BREYER: Yes, sometimes. Sometimes. I mean, the first thing I want to know from my law clerks, what's the answer? And of the – there are two different kinds of questions I might say. Well, gee, what is the statute saying on this? What are the cases? Oh, I'll go ask the clerks or I'll go ask the library. But sometimes I've got all that and I say, 'My God, I see I wonder how I should factor that in or how does that – I'm having a problem here.' I might go ask someone else and say what are you thinking?

You can't do it all the time or you couldn't get the work done. To just say you never do it would be an exaggeration.

LAMB: When you were back in Boston on the Circuit Court, you had something to do with the courthouse.

BREYER: Yes.

LAMB: You were right into the architecture.

BREYER: Well, it was because we got the money to build a new courthouse. We needed one. And two of us, Judge Woodlock on the District Court and I in the Court of Appeals, were the judges in charge. And we spent a long time trying to get a decent building built. And it took, I think – I hope it's a – I think it is a nice building. This is Ellsworth Kelly produced this and he was the artist. And this was a kind of award because they liked the design of the building.

And he put his paintings in, and Harry Cobb was the architect, was selecting that architect. And finding the painter and the decoration, we probably spent, my guess would be an afternoon a week for three or four years. I mean, it required meeting after meeting after meeting after meeting because you're working - government architecture is not easy.

And Harry was fabulous in getting the money and getting it built. And I hope you look at it some time because I think it's a – the theme of that is it's a public building, judges are part of the community, and that building should be used for community activity. We want to bring people into it. So there is, in fact, a staff there that really does nothing other than try to get the lawyers to bring high school classes in or to bring public school students so they learn something about the Court. And also it's used for all kinds of community activities. And

private people can rent out part of it. It has a very pretty view. And the jury room is used for meetings of all different kinds. It needn't be legal.

LAMB: What's the difference in the feel that you have in that courthouse in Boston and the one here at the Supreme Court?

BREYER: Well, that's a district court, trial court, and court of appeals. Go to London and look at the courthouse on The Strand, and that's the feeling we wanted. The feeling is there's business going on. The public's business is being conducted. It is not a procession to a throne where the judge sits. Rather it is a marketplace – or has an architectural feeling – of the lawyers who are going back and forth and they're carrying on the business of their clients. The judge is there, in a sense, as part of the furniture.

LAMB: But here.

BREYER: Here – here is not quite that feeling. This is a different court. I mean, this is more sort of processional. But it's viewed as symbolic and it is – it's a very important building. If you say, do I like the activity more? Well, I worked at the Senate, but this is a different job.

LAMB: What about this building, if you were – if you had to do it over again, would you do it the same way?

BREYER: I might have it a little bit more open. But I'm not an architect. And the person who did design this building, Cass Gilbert, was a very good architect. I'm happier when there were a million people a year visiting us than I am with 500,000.

LAMB: Why has it gone down?

BREYER: I think it's because of the general concern in Washington and also because we're redoing it. I mean, this building has been under construction for the last I don't know how many years. And slowly bit by bit they're redoing the heating system and the air conditioning system, the electricity system. It was built in the '30s and apparently everything wore out.

So the appearance won't change but the insides will change.

LAMB: So just a couple questions. You're going to move out of this office and they're going to work on it for a year or so. Are you going to come back? And if you are, why?

BREYER: I'm going to come back. I mean, I like this office.

LAMB: I mean, was there any other office you'd want in the building?

BREYER: No. I was very lucky to have this office. It was Harry Blackmun's office. He was my predecessor here. It's a lovely office. And I think the year before Ruth Ginsburg was appointed and everybody moved because you gain offices by seniority, really. And I

was the most junior. But then when I was appointed, no one wanted to move. I said that's fine with me. I was lucky.

LAMB: So when you come back is your fireplace going to be here?

BREYER: Boy, I'll certainly, certainly expect it to be. I certainly hope so. We'll be all right for a year. You know its fine.

LAMB: Mark, anything you need? Justice, anything you want to say about anything?

BREYER: What have I forgotten? Is there something?

LAMB: Oh, you've been great. I mean, it's really been – this is our first one. This has been a terrific start for us explaining the system and how it works in the office.

MARK FARKAS, C-SPAN PRODUCER: Are there any traditions that you find interesting, you know the justices getting together for lunch?

BREYER: Yes. Before we go into the oral argument, in the weeks we have oral arguments, usually 10:00 to 12:00 pm, so we gather at 5 minutes to 10:00. You'll see the room. We have a – it's a dressing room where our robes are hanging up. We put it on. We walk into the conference room in back of the Court and we all shake hands with each other.

And when we have conference we always shake hands with each other before the conference.

And then I was the most junior member of this Court for 11 years. And it was always when

we had our conferences – since no one else was in the room – I had the special job of opening the door in case somebody knocked. Somebody knocked – usually somebody forgot a paper. Once they had coffee for Justice Scalia. I said, ‘Well, I’ve been doing this for 10 years,’ and I said, ‘I think I’ve gotten pretty good at it.’ And he said, ‘Well, I’m not sure.’

We get on very well. I mean the nine of us get on very well.

LAMB: What about other traditions? Do you have lunch every week together?

BREYER: We have lunch – not everyone comes to every lunch but we – when we’re in session when we’re hearing oral argument or we have a conference, we usually have a lunch together in the dining room.

LAMB: Let me ask you one more question on the conference itself. There are no staff in there?

BREYER: No.

LAMB: Is there any recording device?

BREYER: No.

LAMB: Are there any notes taken?

BREYER: Yes. Each of us takes notes about what everybody else says. And that's necessary. I mean, if – and we go – oh, very two, very good customs and rules I'll mention. First, everybody takes notes because if I'm writing the opinion, I better know what you think because if I don't know what you think you're not going to join my opinion. So that helps produce the consensus.

And we keep track of everyone's tentative vote because there's a little section where I'll put down the essence of what you're saying. Now, one of the best rules – and I think it's true for any group – the rule of that conference is no one speaks twice until everyone has spoken once. Of course, I was the most junior so it helped me, but I think it's a very good rule. It produces very good feeling because everyone feels that he's been heard.

And the other rule which is absolute is what I call, "tomorrow is another day." You and I, we're the greatest allies in the world on this case. We thought we are 100 percent right and those who disagree with us are completely wrong. And we are going to convince them; so we are complete allies.

Now the case is over. The next case. We're on totally opposite sides. The fact that you were my ally in case one has nothing to do with how I will decide or you will decide case two. There is no linkage as there is sometimes in the political system.

That's good, too, because it also produces good human relations because when you disagree, you know tomorrow we may agree.

LAMB: Thank you, sir.

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