Justice Stephen Breyer On What The Court Does Behind Closed Doors, And Hamilton

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Justice Breyer.

*Ariel Zambelich/NPR*

One of the members of the nation's highest court dropped by the [NPR Politics Podcast](http://www.npr.org/podcasts/510310/npr-politics-podcast) last week for a wide-ranging conversation about the inner workings of the Supreme Court, and Washington, changing global realities and why he loved the musical *Hamilton*.

It's been 16 years since I last saw Justice Stephen Breyer in person. The first time we met was under more awkward circumstances when I was a student at Stanford Law School. He came to speak, my parents attended with me, and when the event was over, my tiny Chinese mother body-blocked him in the courtyard so he would take several pictures with us. My mom never takes no for an answer, and Justice Breyer seemed to quickly intuit that. I was mortified, but struck by how gentle and congenial the man was up close.

Justice Stephen Breyer

Last week, Breyer dropped by our studios to promote his book, *The Court and the World*, in which he argues that interpreting the law increasingly requires an understanding of complex global realities — why a case about copyright or child abduction or national security could be complicated when two different courts in two different countries disagree about what the law compels.

It had been a tough week at the Supreme Court, with major cases argued involving affirmative action and the concept of one-person, one-vote. So NPR Legal Affairs Correspondent Nina Totenberg and Senior Editor Ron Elving, who joined me for the podcast, thought it would be a good idea to lighten things up with a "lightning round" of questions for the justice — questions about his life. Was he a ditch digger as a teenager because his mother worried he was too bookish? Answer: yes. And this question, about Justice Breyer's run-in with the law when he was in college:

Because interpreting law involves knotty questions and a lot of debate. It takes the justices months of preparation — combing through statutes, past decisions and sometimes hundreds of legal briefs — before oral argument for a single case even begins. And then after oral argument, all nine justices sit around one table and talk out the merits of a case. That's followed by more debating and writing, drafts of opinions get exchanged back and forth, often leading to more re-writing.

We spoke to Justice Breyer about that process, what goes on behind closed doors, why Washington doesn't work as well as it used to, and yes — *Hamilton.*

And yes, we did ask him a version of a question the 77-year-old justice is used to these days. "Nothing lasts forever," he admitted, and said, yes, at some point he will retire. "And the question is, 'what point?'" he continued. "If you know the answer to that, you know more than I do. Because at this moment I'm not sure."

**Interview Highlights**

**On the person he'd most like to have dinner with**

I just went to see — we got to see — the play *Hamilton*. And it was terrific. I mean — And I'm not someone who would naturally say, 'I want to see two hours of rap music.' But I came away thinking, well, it was an opera, it was a ballet, it was a story, it communicated the values that I believe from all I've read the Framers really did have. And it did so in a way that the next generation and the generation after that will understand and absorb and like it. And I thought that's such a good thing. And I learned a lot about Hamilton. So I'd love to have Hamilton at that dinner. I think he would be very interesting to talk to. Very interesting, indeed.

**On how the justices approach questions in oral arguments**

It's horrible for the poor lawyers! Because we do not think that that half hour, each side, is for them to make their argument. We think we know the argument. And we think that half hour is for us to pose questions that will make a difference to us. ... And sometimes the following happens, which I just think is terrific, just terrific: difficult issue — really difficult — and what's going on in that question is the judges are, through their questions, talking to each other with the help of the lawyer. And the lawyer is drawn into a conversation. And every so often I'll come off the bench and others will too and say, 'you know, we really made progress in that argument.' And progress means it's a kind of work of art.

**On the closed-door conference where the Justices discuss cases**

We go around the table. ... The chief justice starts and he says, 'the issue is this case is thus-and-so. And I think I'm leaning this way because,' and then he gives his reasons. And then it goes to Justice Scalia and then it goes to Justice Kennedy, and then Justice Thomas, Justice Ginsburg, me, Justice Alito, Justice Sotomayor, and Justice Kagan. Nobody speaks twice until everyone has spoken once. That's an excellent view. I mean, that really is a good rule. And by the time we're finished, you see, with that part of the discussion, we know where people are beginning and where they stand. And then there can be some back and forth.

**On what he learned from working for Sen. Ted Kennedy**

I kept telling my law clerks these things and they gave me a cup with these things engraved. And it says, for example, 'the best' — and he believed this, my goodness — 'the best is the enemy of the good.' Absolutely, go for the good. Hold out for the best, you'll end up with nothing. 'Don't try to get credit — for yourself or even your boss.' I mean, he'd say to us, 'look. If you get a project and you get a law and it's successful, there will be plenty of credit to go around. And if it's not successful, who wants the credit?' And therefore I saw him do this so many times — he's with someone who has a very different point of view of a different political party and they're talking about how to produce some kind of compromise. His reaction is, as soon as he sees the opening, 'what a good idea *you*have. What a good idea. Let's see how we can work with that.' And when it comes time to have the press conference, there he was, pushing the other person out, so that other person would be able to become more popular in his constituency, which is important for elected officials. The process used to work — and I hope it still does in many respects — work at that kind of level. Always.

**On Congress has a harder time compromising now**

I know what Senator Kennedy thought in part was the cause, because he used to talk about that. He'd say it's the jet plane. You see, the jet plane means that it's possible for the elected representative to be home on the weekend. And if he can be home on the weekend, his constituents want him home. So there they are, Friday, Saturday, Sunday, Monday, travelling or home. And they don't get to know each other as people.

**On the advice he got from his predecessors**

Harry Blackmun, who was my predecessor in my particular seat on the court, he told me 'you will find this an unusual assignment.' And it is. David Souter told me, 'you are never off-duty.' And you're not. And the point is that all nine of us take this job very seriously. There is no letting up. There just isn't. And as you get older, that's an advantage. It's tiring, but it's an advantage. Because it calls for you to give whatever you have — the best of what you have — virtually all the time.

<http://www.npr.org/2015/12/13/459365840/justice-stephen-breyer-on-what-the-court-does-behind-closed-doors-and-hamilton?utm_source=facebook.com&utm_medium=social&utm_campaign=npr&utm_term=nprnews&utm_content=2040> You can listen to this article by following this link!

WRITE IN COMPLETE SENTENCES!!!

1. Why does it take months for the Supreme Court Justices to prepare for a case? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2. What system do the justices have for discussing a case, why does it work? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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3. What has Justice Breyer learned from Senator Kennedy?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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4. Why does he think Congress struggles to compromise now?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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