JUDY PERRY MARTINEZ: Justice Breyer, thank you for joining us for the ABA 2020 Virtual Annual Meeting.

JUSTICE BREYER: Thank you for inviting me.

JPM: Let me start with a question about your recent book, “The Court in the World: American Law in the New Global Realities.” Could you briefly share its premise and whether if you published it today, would it read differently? In other words, is the world more or less connected then when you wrote it in 2015?

BREYER: I want to show people that the world, having nothing really to do, not much to do with politics, is connected. We're connected through the Internet, which works occasionally. We are connected via fast transportation, we're connected via trade, we're connected in 1,000 different ways. And it's those connections that make a difference to a significant percentage of the cases before our court. We're a local court. We consider American law, treaties America has entered into, and the American Constitution. But nonetheless, there are more and more cases where we are affected, and the answer to the legal question is affected. Whether it's constitutional law or antitrust law or securities law, by the nature of this interconnected world, which means what happens beyond our own shores. That's what I want to show people.

If I've written this book 20 years ago, and indeed, that's where I got the idea. We’ve been to Europe with Sandra O’Connor and met some judges and I came back and a professor asked me both give me an example of something that’s really made a difference. And I was a little hard pressed. And I wouldn't be hard pressed today. And I wouldn't be hard pressed last year, the year before, to not every case, but it is 10%, 15% involving all kinds of things. And that's what I want people to see.

JPM: That's interesting. So, let me ask you this. What do you see as the biggest threat to the rule of law in the United States? And also, I'd love to hear with regard to the world. And then also, as you think about that, what do you see as the biggest hope for the rule of law in the United States? And yes, again, the world.
BREYER: I’m tempted to say, give you an answer, which I think was a group at Stanford I was talking to — students and the students and we’re talking about free speech. And they’re talking about division and why the country is so divided politically and how bad that is, how really terrible it is. I said I agree with you. And while we’re on the subject of speech, you know, of the Constitution, there is a method of dealing with that. It’s called convince other people. Talk to them. Don’t shout at them, and convince them you’re right. And then we have an election, and we see. And if you can’t convince people this time, maybe you will next time. I see that’s awfully elementary. But if you want to convince other people and you don’t want so much division, I can tell you the first place to look. And this was fairly tough. So, the students said, “Where?” I said the mirror. And indeed, but I’m optimistic because we have a long tradition and we have many ups and downs in this country. We did have slavery. We did have a civil war. We did have a legal system of segregation. We had all kinds of things, but somehow we do overcome them.

And the most optimistic thing for me as a judge, I’d say the most optimistic thing is when I go to work and I see the case. And I look who has come before us and it’s everybody. It’s every race, every religion, every point of view. My mother used to say, you know, there’s no point of view so crazy that there isn’t someone who doesn’t help hold it. With apologies to the town that’s going to be mentioned, I’m from San Francisco. So, my mother would say — and most of those people live in Los Angeles, she’d say. There was a hostility there. But they’re all over. Okay, fine. So, we work things out. We get together, we try to build things. You need to level, maybe where we can do it or maybe states or maybe otherwise. But we’re natural cooperators as well as being naturally hostile to each other. So, we have the two. And I think the cooperation predominates. That may be overly optimistic, but I think not. And I hope not. And we eventually come around to working on projects.

Watch a little personal ... When I was in fifth grade, Miss Squatawatsa, who is my fifth-grade teacher, said, “We’re gonna have a project about San Francisco. And here’s what I want. The class will be divided into groups of four and you’ll each work on a project and you’ll get a grade, but the grade is going to be for the group.”

Now when you’re getting a grade for a group, you cooperate with the other group. If you try to figure out what they’re thinking, and I thought in microcosm that’s the better part of America. That’s what we’re like. Of course, I’m optimistic.

JPM: A common perception of the Supreme Court is that it’s almost evenly divided into conservatives and liberals, which produces some would say predictable results. What would you say to those who believe that the court simply reflects the political views of the presidents who appointed its members?

BREYER: Oh, very good question. But note that there are three parts: predictable results, conservative-liberal, and political. Alright, let’s think about those three separate parts. Start with political.

I was a teacher for most of my career before being a judge, but I’d worked for a couple of years for Senator Kennedy in the Senate. And to me, in that office, I mean political meant do you accept first for the senator a call from some secretary of something rather or a mayor of Pittsfield? The mayor of
Pittsfield, that's political. I mean, those are the electors. And who comes to the meeting — the Republicans first, the Democrats first, both? And what is popular and what isn't popular? I mean, that's a whole world of politics. I don't see that on the court.

It may have influenced the appointment of the judge, but once he's a judge, once she's there, she's a judge. Alright, and the politics goes out the window. And I've never seen politics, in that sense. It doesn't really exist, I don't think. Maybe some minor influence somewhere, but I don't think it's a significant thing.

But there's a different thing: ideology. I mean, are you an Adam Smith free enterprise follower, or are you a Maoist Marxist troublemaker? I don't know, that's ideology. If I find that I'm following ideology, if I find I'm trying to say what's good for people in general in the biggest sense, I know I'm not doing the right thing. This case is in front of me and I better decide that.

But there's still a third thing. And the third thing is what I've already mentioned. It's your background. I'm from San Francisco. I went to a public school. I mean, I've had the life I've had and by the time, which you don't know yet, but by the time you're in your 50s, you begin to have views. Not views about specific things, but a kind of jurisprudence if you're a lawyer. What's law really about? What am I doing here? What's the country, sort of in general terms? And law is not computer science. I mean, it isn't logically reaching an answer for the machine. Human beings are involved, and all those things that count of the kind of jurisprudence do make a difference in some cases. Why? In some cases, they just need to make a difference because the freedom of speech has no specific definition in the Constitution of the United States. The word liberty doesn't explain itself. So, will you be influenced by your background? Probably. Probably, when you're trying to answer very difficult questions involving those words.

Now, is that a good thing? I used to think no. I used to think, why doesn't everybody follow me since I'm always right, or something like that, you know. I mean, no. But over time, I began to think, yeah, it is a good thing.

There are 325 million people in the United States. As I said, every race, every religion, every point of view, every nationality. And they come to our court or go to a court, they'll go to you as a lawyer, they'll go to places to get their problems resolved. Important ones, too, even though they strongly disagree. So, we've helped, the court. The Constitution's helped more. And the bar association helped hold people of different views together. It's a miracle this country has survived, but it has it has. And we're all part of that. So pure politics? No. Differences, a point of view? Yeah. But philosophy, basic philosophy. Some people, everybody. You want me to stop now? Or do you want me to go on with one more thing?

Okay. All judges have certain tools. All of them look at the text. All of them look at the history of those words. All of them look at our traditions and precedent, at the values or purposes underlying the words and its consequences related to the particular subject. All of them look at those six things and some put more weight like ... You know, Scalia and I used to debate this all the time before groups of students. We loved it. We were very polite. We obviously liked each other. So, he puts more weight on text, history, than I do. I put weight on it, but I'm more interested likely, I think it's going to solve the problem we're easily in most cases to look at the purposes of the values or the consequences. He'd say, well, your system's too complicated. And I'd say your system will be, you know, we each have criticisms of each other's system. But my point here is, it's a matter of degree. It's a matter of degree. And that's why you often can predict how a case will turn out in advance. Even when that case is very, very difficult and
involves very abstract constitutional words. Because if you follow the court you know how people feel about what tools they use and what weight they put on it. Fine. Why shouldn't there be those differences. Those are not political.

JPM: So, what's your advice to those in the audience who may not just disagree with a court ruling, but see it as an intolerable threat to the rule of law or to equality? Where do you see the line between fair criticism and personal attacks on the jurist?

BREYER: Oh, two separate things. One for criticism, with no matter what criticism we get, I say hey, you know, I have tenure – I hope. And no, fine, you're free to say everything you want. Say what you want. If you're not polite, that's your problem, not my problem. And I better be prepared to listen to a few criticisms. Of course, people can criticize. That isn't a problem.

Now court decisions that you disagree with ... Well, some years ago, a woman who is the president of the Supreme Court of Ghana. And she was trying to make very good improvements in their system and was trying to bring in democracy, human rights, protection and so forth. And she asked me this question, “Why do people do what you say?” Why?

And I'd say that's a good question. Go. I have to give some examples, which I won't do right now, that you have to give examples in history. It's a matter of habit. It's a matter of what you consider ordinary behavior. And I said, that's true of court decisions. I heard Senator Reid, Democratic leader one time in the Senate, he said the most remarkable thing about Bush vs. Gore. He says, it never remarked that even though, one, it was important, two, people strongly disagreed — at least half the country, maybe more — but they disagreed with it strongly and they were wrong. He thought it was wrong. I thought it was wrong. I dissented it, but they followed it. They didn't shoot each other. They didn't throw rocks. They didn't physically injure other people. And after a while, I said, Oh, I know what half of you were thinking. Half of you were thinking that's too bad there weren't a few riots. And I'd say really before you decide that, turn on the television set. And you see what happens in countries which decide their differences according to riot and physical injury. I mean, look at that. Is that what you want? No. The rule of law itself is in fact accepted if and only if even though people disagree with the decision, even though it's important to them, even though they think it's totally wrong, they'll accept the judicial decision.

And you can say, well, what about Hitler? Well, that's not Hitler. We're not Hitler. I don't know, there's some line with Hitler. But it's not Hitler, even if you strongly disagree with the decision. So, I'm optimistic.

JPM: So, looking back at your entire career from law school until this very moment, share with us what you say was the most rewarding for you, personally, in terms of experiences. And, also, if you don't mind if I may, share something with us that was most humbling.
BREYER: The most humbling thing is to be notified or told by the President of the United States that he would like to nominate you to a seat on the Supreme Court. I mean you [unintelligible] for three years. According to David Souter, Justice Douglas used to say it takes three to five years before you think can I do this job, even though you pretend there's no problem. And then after a few years, you think, well, maybe I can't, but I can give it my best.

And that's one of the most rewarding things about the job is you have to continue to do your best all the time. And in a way that's true about the legal system. That's true for lawyers. That's true for judges. You know, the problem is important to this person – your client who's the person in front of the court. And one of the more rewarding things internally, internally for me – it's a little odd but it really did, it sticks with me. Absolutely. When I first was made a judge on the First Circuit Court of Appeals, we had a case that was I would say the general view after reading through the briefs and the oral argument is judges thought the person who's brought this case, who is a government employee, was complaining that the government higher-up officials that treated him wrongly and badly. Well, the general view was he doesn't have that much of a hope. He doesn't seem exactly a born winner in this situation, and it was assigned to me.

So that's what I thought. But I began to read through the records, which is not so short. And I read it for quite a while. And finally, towards the end of this thing, I think, my God. He's right. You know, he's right. And then I wrote an opinion, and he won. And that's what pleases me internally, because I thought I've joined this system where, what it is, is a judge, the lawyers, that a judge is a government official, fairly high level, and the job is to devote your time, whatever it takes, to the problem in front of you, whether that problem is brought, is suffered by a person who is the most far out, who is the most poor, who is the most unpopular or the most popular or the richest or whatever it is, that's the job. And that's a great job to have, a great job to have. And you see that as a lawyer. I mean, my God, you're working for a client and that's just it. And you do your best. And, at least that person, at least you can help that person. At least you can try. There we are. That's the great thing I think about the legal profession.

JPM: It's the old to the world you may be one person, but to one person, you may be the world.

BREYER: That's a good point. That's good, I like that.

JPM: So, if we look at the role and value of the American Bar Association to its members and to the legal profession and frankly to society, you'll get differing answers about that role and value depending on whom you ask. So how would you characterize the ABA’s role and value as you sit today.

BREYER: There are a lot of different roles. But I mean, I remember two bits of advice given to me when I started teaching law many years ago. Libby Hall, who is a professor, said, you know, you should go to meetings. Go to bar association meetings. You'll meet other members of the profession. You will meet other people with other problems. You will participate actively. And I heard much the same thing from
Bob Meserve, who once was president of the ABA, and he said, you know, lawyers love meetings. That's okay. That's great. And I think it's great, even by Zoom. They like them, they like, that's fine. And one of the reasons that I sometimes tell the college students that, I like it, is because of what Tocqueville says. Amazing Tocqueville, I mean 1840s, 1830s, he wrote about the United States then and now. He said, you know the first thing I hear when I approach the shores is a clamor. A clamor. Hmm, okay. Little loud, maybe it could be quieter. But it is people disagreeing and trying to work out their differences and trying to take a point of view.

And that exists. That's how I explained we make laws. We don't make laws, just Congress, we make laws by discussing them. We may fight about them, but we have, what about the privacy in the future. I say, I don't know. I don't know the answer, but I know how we'll get there. We'll get there through endless discussions, discussions in organizations like the ABA. And I usually say, you know, the ABA – with its 200,000 members and 500,000 committees – has all kinds of people who are thinking about these problems and they'll discuss them.

And there are civil rights associations, and there are law enforcement associations. And there are schools and universities and newspapers, and they'll have all kinds of views and columnists. And we may try things in the states, and we may try things in the city council and we may try things administratively, and they may not work. Then we’ll try something else.

That's one of my favorite sayings is Roosevelt, Franklin. You know that he said, I'm thinking, he said, well, in the middle of the depression – and we're in a bad, not a great situation now – is we'll try something. We'll try it. And if it doesn't work, we'll try something else. And the important thing is to keep trying. You know, that's a little obvious, but there we are.

And that again is, I think, is our strength and I think it's a strength of the bar. And I think it's the strength of the ABA. And so, I would encourage people very much to go to meetings. That's what Bob Meserve told me. Go to ABA meetings when you have the chance.

JPM: So, I think any advice that you would welcome beyond that wonderful advice of a moment ago to go to ABA meetings, but any advice that you would offer to our members would be most welcome. But let me ask you if you can focus on our law students. What's the one piece of advice or maybe two that you would give to law students? And then I'd ask you to offer a piece of advice for more senior attorneys and maybe even retired attorneys.

BREYER: Well, for the students what I usually say I have two things. I would say I would like I want you to learn about the government. That's the first thing, because you’re a part of it. I wished civics was restored as a necessary course everywhere. And it is a document that Constitution is written to make you in charge. It is your government. And then I’d say another thing, particularly for those who are graduating. I say, I can't tell you, you know, how to live your life. That's going to be up to you. I can hope for you. I can hope you'll find someone to love. I can hope you'll have a job that is rewarding, and I can hope you will participate. Participate in public life. And there are a million ways to participate. You can
join a local library association. You can try to be a school board member. You can vote. You can learn about the issues going on. You can talk to others.

So, I can tell you that one thing where I do have a little, not a lot, but some knowledge, the Constitution of the United States, that's part of my job. And it doesn't tell people what to do. It puts limits around what government can do. It tries to create a society where you're part of it, and I can tell you, I believe that Adams and Madison and Hamilton – I like the musical – and Hamilton and the others, they would have thought if you don't participate this document won't work. And so that's what I'd like to see.

As for the seniors ... Well, my God, I understand. I tell myself. You just keep going. Keep going. It's fun. If you're interested, it's your lot. Good idea.

JPM: Well, this has certainly been fun and insightful and such an honor and privilege for the American Bar Association to hear from you, Chief Justice Breyer. Thank you so much for making the time and the effort that you've put in to connect with us in a way that makes our hearing from you possible during the 2020 ABA Annual Meeting, the first virtual meeting of the American Bar Association. Thank you for all you do and each and every way for our country. Thank you so very much.

BREYER: Thank you.