

Supreme Court Script:

Video: Justice Broderick arrives – pile of papers in hand. “Good morning”

Track: There’s no such thing as a typical day at the Supreme Court. That’s because the justices perform different duties on different days. But always, it seems, they carry a heavy burden. Literally.

Video: Justice Galway approaches door – hands are full with papers and coffee – looks around for help – Laura gets door “I’ll help you.”

Track: The greater part of the of the Justices’ work takes place before any court appearance. They must read – and process – the details of each case.

Bite: (Justice Dalainis) The way I do them is I go through the briefs and look at the appendices provided. I have a pretty good sense of what I need to read and what I better be absolutely sure of before I go out there and I make little notes about what each case concerns and what issues are there.

Video: Justice Dalainis puts on robe – then Galway

Track: Only then do the justices don their robes and proceed into the court for oral arguments.

Track: These are the days - usually about 3 a month - when the court wears its most public face. On this oral arguments day, the justices heard 8 different cases – civil and criminal. They covered a wide range of the law including impaired driving, wrongful death, and a lawsuit over fees paid by the state. In that case, the dept. of Health & Human Services had refused to pay fees that a hearing panel had found were owed to a home for children.

Bite: (Broderick) They appeal to the hearing panel, the hearing panel says you’re right, they should have paid you at the \$100 million rate – but the fiscal year is over. You say – nice to hear from you but we’re immune. The fiscal year has run and you can’t order us to manage our money differently. So I’m glad we got those \$6 million for free. That’s really what you’re saying. (Lehman?attorney for HHS) We’re saying the hearing panel lacks the authority to require the dept. to pay money.

Track: The court now accepts virtually all appeals from the state’s trial courts, though the wait can take about a year and a half. More than half those appeals are ruled on simply with a published opinion, but about 40% do get time in court.

Bite: (Proceedings during Oral Arguments) At the root of this case is an inappropriate and impermissible use of a stalking order.

Track: This case involved a woman seeking to void a conviction for stalking an employee of the nursing home where her mother lived.

Bite: (Proceedings during Oral Arguments) (Justice Duggan) Hadn't there been a series of phone calls to ms. Fisher? (Patrick) No the evidence shows there was one phone call, at best, a 45 min call was talked about, the rest of the conduct was with other employees of the facility not Renee fisher. (Duggan) Didn't she threaten to retaliate against Renee fisher? That's the evidence we have to take.

Bite: (Justice Duggan) Oral arguments have an important effect. Most of the time you come away from the briefs thinking you're going one way or another and the oral arguments may solidify you in that position but its happen more times that I can count where myself, where all 5 of my colleagues go out there thinking the case is going to go one way and we come back in and we vote the exact opposite way.

Bite: (Proceedings during Oral Arguments) Good morning may it please the court, my name is larry Forsley and I represent Renee Fisher who is the plaintiff in the stalking case.

Bite: MANY ATTORNEYS TALK ABOUT HOW NERVE-WRACKING ORAL ARGUMENTS CAN BE. IS IT DELIBERATELY SO? (Broderick) I think there's no way to make that process comfortable. I argued here a number of times before I became a judge and never found it comfortable. And you have a client pressure on you – the client wants to succeed. You want to professionally acquit yourself well. And there are a lot of people listening and watching. So it's uncomfortable by its very nature.

Bite: (Proceedings in Oral Arguments)and keep in mind there were three letters sent to Ms. Minnichielo. (Justice Dalainis) Right, you go off and you get a restraining order then, you make her stop, that's not stalking though. (Larry Forsley) beyond that there were three visits by the Hampton police as a result of this behavior. (Dalainis) because shes grouchy and she's yelling at them. (Larry) I think that the word grouchy is something less than what happen in this case. (Dalainis) That may be true, I am characterizing that for the sake of our discussion, point being that it seems to me that what we have here is a very disagreeable individual who was making her disagreeableness well known to all of these people and they didn't want to have to deal with her.

Bite: (Broderick) It is about us for those 15 minutes or 30 minutes because once they leave, I don't have the chance to call them on the phone and say hey, I had another question. And that's why we have to spend a lot of time reading the briefs and understanding the issues so that when we do have those 15 minutes, we can use them well. People waited here in line for a long time, they spent a lot of money in the process of getting here, and they are entitled to 5 people who have a pretty good grasp of the case, and so they each understand that we're deciding the case either that moment or within an hour of that time.

Track: Within the hour of hearing a case, the justices gather behind closed doors and take a straw vote.

Bite: DID YOU REACH PRETTY GOOD CONSENSUS WITH WHAT YOU ALL HEARD THIS MORNING? (Justice Galway) yes. I don't think, all of us had read the briefs, all of us had felt strongly about the cases, one way or another and then we come in here and remember oral argument is for us so we can answer the questions that we had regarding research prior to the arguments. Then we come in here and independently arrive at a vote and in this case, most of our decisions this morning were in fact unanimous, they may have been for different reasons, and they will come out in the writing process.

Track: With preliminary voting done, the next step is to unlock the conference room cabinet.

soundup: (Justice Broderick) "This pitcher we have used now for almost 5 decades now at the court to draw cases.

Track: As the pitcher goes around the table, each justice draws a card representing a case, for which they will write the opinion.

soundup: (Justice Dalianis) And on the days when we can't find the key, we just use a Farberware pot.

Track: Once the justices - with assistance from their staff - have written the opinions and circulated them for comment, they meet for conference day. On these days, they may deal with a range of court business, but the main focus is conferring on the cases. Three quarters end up with a 5-0 vote, but there is dissent - and room for persuasion.

Bite: DOES THE OPINION OF OTHER JUSTICES – DOES IT EVER CHANGE YOUR MIND? (Broderick) Absolutely, absolutely. This is a very collaborative process. We're really five different law firms here. We get along extremely well but I value your opinion if you're a fellow judge here, and I'd be foolish not to listen to it.

soundup: "So we're breaking out with them?" "That's right – this is your first time with Leadership NH". "I'm new around here."

Track: Gary Hicks is the latest addition to the court, joining it in January, 2006.

Bite: GIVE ME THE BIGGEST DIFFERENCE BETWEEN BEING ON THE SUPERIOR COURT AND THE SUPREME COURT? (Justice Hicks) this is a much more cloistered atmosphere, I'm used to interacting with lawyers and juries and doing trials in the superior court and that of course doesn't occur here, I enjoy the academic aspect of this job at the appellate level but I do miss action with a lot of people, I consider myself very fortunate that the five of us are close friends and it's a very collegial atmosphere here, and I don't know how I would survive without it.

Track: To the highest court goes the greatest challenge - and that now appears to be an all-out effort by lawmakers to find a way around the court's ruling in the Claremont school funding case.

Bite: (Gov. Lynch/1/04/07) We must recognize that the Court's interpretation of the Constitution makes it difficult to implement an effective targeted aid law. To implement the best education policy for our state, I strongly believe that we must be open to considering a narrow amendment to our Constitution.

Track: A recent forum on amending the constitution attracted nearly 100 lawmakers who heard some harsh words for the court.

Bite: (Ed Mosca/ Attorney) Letting 5 lawyers in black robes have the final say on education policy is as likely to get you an adequate education, as Soviet style central planning got the Soviet Union an adequate economy.

Bite: (Justice Broderick) If the court is criticized because its opinions aren't respected, that's democracy. If the court is punished because its opinions aren't approved, that's not democracy in my view - that's dangerous. And so I think it's as old as American life to say I disagree with that court, they didn't know what they were doing or saying - that's America. And that's perfectly fine. I would be the last person to say you can't criticize the courts. What I hope wouldn't happen - and think shouldn't happen - is that there's some retribution. **(Richard DO YOU THINK THERE HAS BEEN RETRIBUTION IN THE PAST?** (Broderick) You know something, I went through a tough patch as you know and I'll leave that for others to decide. And I don't want to question people's motives or intentions, I've never done that and I don't intend to start now.

Track: Broderick says courts are drawing more criticism because increasingly, courts are where contentious issues are fought out.

Bite: (Justice Broderick) In the old days, they were resolved in the legislature, or the town hall, or around the kitchen table. Increasingly, they're coming to the courts. We don't ask for them. Our doors are open. So when they come here, we have to resolve them. It's pretty hard to say to litigants - that's a pretty sensitive topic - I don't want to deal with that. We don't get that option, when you take this job..... **YOU HEAR CHARGES SUCH AS "LEGISLATING FROM THE BENCH, FOR EXAMPLE."** Sure, and often times people who say that believe we could have done anything we wanted and we did that because we chose to do it. I often find myself coming to conclusions because I am restricted in some ways. (23:19)

Track: Despite the political challenges, Broderick says his greatest concern is making the courts - and legal representation - more accessible. He says forcing litigants with no money to represent themselves - known as pro se - is as immoral as denying medical care for lack of insurance.

Bite: (Justice Broderick) There are as many life altering moments in state court rooms as there are in state emergency rooms, but somehow we think it's foolish in the medical world and fine. It's not fine – and otherwise, the constitution doesn't have a lot of meaning it seems to me. So we need to find a way to do it.

Track: To make a start, Broderick is basing most of his current budget requests on recommendations made last year by a 100-member citizens' commission. It is a way to improve the law, while upholding it – part of the mission of the third branch of our government.

Bite: (Justice Hicks) This is the consummate challenge, at the same time it's a profoundly humbling experience to be charged with the responsibility to the citizens of NH to which we are charged, responsible as justice Galway alluded to, the formation of common law, the protection of individual rights, I cannot imagine a more gratifying responsibility to have as well as challenging responsibility to have.

Track: The New Hampshire Supreme Court accepted 673 cases in 2006, nearly double the caseload in 2003. For NH Outlook, I'm Richard Ager

Video: Justices line up to go into court **

END OF SCRIPT