THE YALE LAW JOURNAL

DONALD AYER

A Man for All Seasons

William H. Rehnquist will be remembered as the principal intellect behind the Supreme Court's conservative retrenchment from the Warren era. From the time he arrived at the Court in 1972, he began advocating, at times quite fiercely, a different approach on a broad range of issues, which for years led him to frequent dissents. The guiding thrust of that approach was to challenge on a number of fronts the near-total federal legislative and judicial superiority over the activities of states, which was the principal legacy of the New Deal to late-twentieth-century America.

He was ultimately quite successful in this thirty-three year endeavor. By the end of his tenure on the Court, the constitutional and legal landscape had been critically transformed in the areas of criminal procedure, habeas corpus, the relationship between church and state, and the power of Congress to impose burdens on the states, to name a few.

But that is surely not the only way he will be remembered. And for those who knew him well, including those of us so lucky to be among his 105 law clerks, it is not the first thing that comes to mind. Far more striking and memorable are a number of personal qualities that have rarely if ever coexisted in a single human being tapped by history to play such a pivotal role in the affairs of his nation.

On the one hand, he obviously had the mental horsepower, force of will, and intensity without which there would be no chance at all of impacting the law as he did during his three-plus decades on the Court. True stories are legion of his extraordinary intellect, photographic memory of the Supreme Court's decisions, strong beliefs and confidence in his own judgments, and razor-like writing style that went directly to the heart of the matter.[1]

1. That style was most rousingly reflected in dissents during his early years on the Court, many of which invoke vignettes from history that were near to his heart. On the occasion of the clerks reunion celebrating his twenty-fifth anniversary on the Court, an informal

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He had strong and clear convictions—based most centrally on the facts surrounding the creation of the federal union as a "Government of enumerated powers," which was intended to leave appreciable powers and sovereignty to the states.[2] He was no handwringer, and believed in getting to the point. And as Chief, he admonished his colleagues to get to the point and stay on schedule.[3]

But the Chief's remarkable intellect, self-confidence, intensity, and insistence that the trains run on time were matched by a sense of balance and perspective about the choices one makes in life. As important as it was, the Court's work was only one aspect of his life. For him, family came first—*before* work.[4] He also took a very great interest in the people he worked with, including his law clerks. And history, painting, geography, writing books, singing (loudly), playing tennis, charades, and poker, and betting on elections (among other things) were also high on his list of priorities. He was a person of wide-ranging interests and vast knowledge on a broad range of subjects. Somewhat remarkably, throughout his time on the Court, he generally left work each day before four o'clock in the afternoon, in part to pursue these interests. In hindsight it is clear that doing so enhanced his effectiveness on the Court.

Most importantly, the Chief never confused the importance of his work on the Court with the question of his own personal importance. In his dealings with his colleagues, it was never about Bill Rehnquist. And that was obvious to everyone.

Thus, for all of the intensity of his disagreements with other Justices over the years—and none were more fundamental than those he had with Justice Brennan during the 1970s, some of which I observed from the perspective of his law clerk—the disputes were never personal. In those days, I never saw a

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competition was held based on nominations of passages deemed by his clerks so characteristic of the Chief's colorful and emphatic style. The winner was the opening paragraph of his dissent in *Carey v. Population Services International*, 431 U.S. 678, 717 (1977) (Rehnquist, J., dissenting), in which he pondered the likely reactions of revolutionary patriots and civil war soldiers to the Court majority's conclusion that the Constitution barred New York State from prohibiting the sale of condoms through truck-stop vending machines.

2. United States v. Lopez, 514 U.S. 549, 552 (1995).

3. *See, e.g.*, Justice Sandra Day O'Connor, *In Memoriam, William H. Rehnquist*, 119 HARV. L. REV. 3, 5 (2005) ("He did not encourage longwinded debates among us, but he gave each Justice time to say what was needed. Because he was concise, he thought we should be too."); Justice Ruth Bader Ginsburg, *In Memoriam, William H. Rehnquist*, 119 HARV. L. REV. 6, 6 (2005) ("[H]e kept us all in line and on time.").

4. His son, Jim, noted at the funeral that "his family came first and there was no second."

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sign of anything but the most genuinely cordial relations with his colleagues. This cordiality and mutual respect seemed back then also to be a key to the majorities he was able to build by regularly securing the support of Justices more toward the center of the Court. It also must have something to do with why he was so revered by his colleagues at the time of his death, even though he often disagreed with many of them.[5]

For one who served so successfully for so long in such an important position, he remained unpretentious and unassuming. This was no less true after he became Chief Justice in 1986 than before. Personal wealth held no attraction for him. Nor did he spend any time cultivating his public image, or worrying what people would think. He wore the clothes that appealed to him, which in our time ran toward colorful ties, striped shirts, and Wallabies. Later he added the famous stripes to his robe, not as a sign of any pretension but for the fun of imitating the Chief Justice in Gilbert & Sullivan's *Iolanthe*. Throughout it all, not surprisingly, he remained little known to the public and, as Chief Justice Roberts has noted,[6] was so generally unrecognized on his walks around the Court that he was often asked by strangers to stop and take their picture on the Court's front steps.

Thus the Chief's great success, as a jurist and a person, may have much to do with the fact that he avoided the sin of pride more successfully than is common of great men and women in this day and age. He never got carried away with himself, perhaps because he was carried away with so much else in his life.

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5. Ginsburg, *supra* note 3, at 6 ("We held him in highest esteem and deep affection . . . .").

6. Chief Justice John G. Roberts, Jr., *In Memoriam, William H. Rehnquist*, 119 HARV. L. REV. 1 (2005).

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THE YALE LAW JOURNAL

RICHARD W. GARNETT

William H. Rehnquist: A Life Lived Greatly, and Well

On February 1, 1952, a young man recently graduated from the Stanford Law School, having just completed the long drive from Wisconsin in his 1941 Studebaker, reported for duty in Washington, D.C. as a law clerk to Justice Robert H. Jackson. It was, as the young lawyer would later put it, "a highly prized position; I was surprised to have been chosen for it, and I did not want to be late for the start of my work."[1]

I know the feeling. I was more than surprised, in June of 1995, when by-then-Chief Justice Rehnquist invited me to interview for a law clerk position in his chambers. And, I likewise approached my interview with "fear and trembling," all too aware that the opportunity owed much to "[a] large element of luck."[2] Later, the Chief's incomparably able assistants, Janet Tramonte and Laverne Frayer, would needle me for arriving at the meeting such a mess. Fair enough: I can only imagine how obviously disheveled, in appearance and mind, I seemed (and was) as I waited outside the Chief's office, sweating badly from the combined effects of the humidity and my unfamiliar lawyer suit.[3]

Here is how the Chief remembered his interview with Justice Jackson:

> I met with Justice Jackson . . . , and his pleasant and easygoing demeanor at once put me at ease. After a few general questions about my background and legal education, he asked me whether my last name was Swedish. When I told him that it was, he began to reminisce about some of the Swedish clients he had had while practicing law in upstate New York before he had moved to Washington. I genuinely enjoyed listening to the anecdotes, but somehow I felt that I should be doing

1. WILLIAM H. REHNQUIST, THE SUPREME COURT: HOW IT WAS, HOW IT IS 17 (1987).

2. *Id.* at 19.

3. *See* Richard W. Garnett, *Tennis and Top Buttons: Remembering William H. Rehnquist*, SLATE, Sept. 4, 2005, http://www.slate.com/id/2125686/?nav=tap3.

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> more to make a favorable impression on him. He, however, seemed quite willing to end the interview with a courteous thanks for my having come by, and I walked out of the room sure that in the first minutes of our visit he had written me off as a total loss.[4]

In my own case, I remember the Chief greeting me casually—right on time—in short sleeves, and then showing me matter-of-factly around his chambers and the Court's conference room. We sat down in his office, decorated with Romantic landscapes on loan from the National Gallery and pictures of friends, family, and law clerks, and had what I'm sure he tried his best to make a friendly, relaxed conversation about my childhood in Alaska, his law practice in Arizona, hitchhiking strategies (we agreed that carrying a sign with a pleasant, responsible-sounding destination worked well), *The Brethren,* and the death penalty. I'd been warned that the Chief's interviews did not last long, but when the Chief smiled and stood up after only ten minutes, I started working in my mind on a "it was great just to have the chance to meet him" speech. But then he remarked, seemingly off-handedly, that he thought Alaska might be the only state from which he had not hired a clerk. I remembered the role that a connection with Sweden—another cold place—had played in his own clerkship interview, and started to think that maybe I had a chance.

Now, of course, the point here is not that I happen to remember my own clerkship interview much the same way as the Chief remembered his. It is, instead, simply to recall that for many of us who knew, worked with, learned from, and cared about William Rehnquist, his unassuming manner, the care he took to put people at ease, and his evident desire to serve as a teacher and mentor, as well as judge and employer, are as salient in our memories of him as his reinvigoration of the "first principles" of our federalism,[5] his refocusing of Fourth Amendment doctrine on reasonableness, or his reminder that the "separation of church and state," properly understood, has as its aims limited government and the authentic freedom of religion, not a judicially enforced program of secularization. In my view, the Chief never forgot what it felt like to arrive at the Court as a slightly awestruck and appropriately apprehensive law clerk. He never lost his sense of gratitude, to the Court and to Justice Jackson, for the opportunity to learn and serve the law in that great institution. And he never outgrew or got tired of teaching young lawyers how to read carefully, write clearly, think hard, and live well.

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4. REHNQUIST, *supra* note 1, at 20.

5. *See, e.g.*, United States v. Lopez, 514 U.S. 549 (1995).

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I clerked for William Rehnquist in October Term 1996, during the year that saw the twenty-fifth anniversary of his confirmation to the Court and in which we marked his ten years of service as Chief Justice of the United States. In keeping with tradition, my coclerks and I were charged with organizing the annual June law clerks' reunion, and also with planning and providing the evening's so-called entertainment. To celebrate the milestones, and against the advice of friends with literary scruples, I composed a poem for the occasion. My tribute purported to be inspired by John Greenleaf Whittier's *Barbara Frietchie*, a stirring account of an elderly Maryland woman, "bowed with her fourscore years and ten," who waved the Union flag in defiance at invading Confederate troops. Chief Justice Rehnquist had quoted Whittier's poem at length in his passionate dissent in *Texas v. Johnson*,[6] opposing the protection of flag-burning as free speech. My effort, *The Lone Ranger*, opened with these forgettable lines:

> First from Wisconsin's cold and sleet,
> Then east from the desert's arid heat,
> He came with sideburns and overwide ties,
> "Do strict construction!", Nixon advised,
> "and from Warren's antics bring relief!"
> So came the Lone Ranger, our Boss, (now) the Chief.

("Actually, President Richard Nixon remarked, after meeting the future Chief Justice in 1971, that 'Renchberg' looked like a 'clown,' with his pink shirt, psychedelic tie, and mutton-chop sideburns."[7])

We also collected for the reunion from the clerks a variety of the best lines and most memorable quotations from the Chief's many opinions—a kind of law geeks' top ten list. Our litany, I admit, was a bit different from the collections published by, say, the *New York Times*[8] and includes entries that probably do not enjoy bold-face status in the hornbooks. I have to think the Chief appreciated this; after all, when paying lighthearted tribute at the Fourth Circuit's Judicial Conference to the Court's nonblockbuster decisions, he liked to invoke Thomas Gray's *Elegy Written in a Country Churchyard*, describing the latest Term's sleeper cases as "flowers which are born to blush unseen and waste their sweetness on the desert air."[9]

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6. 491 U.S. 397, 424-25 (1989) (Rehnquist, C.J., dissenting).
7. Richard W. Garnett, *Right On*, LEGAL AFF. Mar./Apr. 2005, at 34, 34.
8. *Excerpts from Eight Decisions That Helped Shape Doctrines*, N.Y. TIMES, Sept. 5, 2005.
9. *See* Jennifer Myers, *No Talk of Retirement at Circuit Meeting*, LEGAL TIMES, July 9, 2001, at 8.

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So, several of the entries captured nicely the Chief's dry, sharp-because-understated humor: Dissenting in *Anderson v. Liberty Lobby*, he had quipped that the Court's opinion—involving a libel action filed by presidential candidate John Anderson—"sounds much like a treatise about cooking by someone who has never cooked before and has no intention of starting now."[10] He described the matter under review in *Heckler v. Chaney* as the "implausible result that the FDA is required to exercise its enforcement power to ensure that States only use drugs that are 'safe and effective' for human execution."[11] After noting that "[t]he term 'alphabet soup' gained currency in the early days of the New Deal as a description of the proliferation of new agencies such as WPA and PWA," he lamented in *Chrysler Corp. v. Brown* that "[t]he terminology required to describe the present controversy suggests that the 'alphabet soup' of the New Deal era was, by comparison, a clear broth."[12] And, he offered this in response to the Court's ruling in *Carey v. Population Services International*:

> Those who fought valiantly but vainly defended the heights of Bunker Hill in 1775 made it possible that men such as James Madison might later sit in the first Congress and draft the Bill of Rights to the Constitution. The post-Civil War Congresses which drafted the Civil War Amendments to the Constitution could not have accomplished their task without the blood of brave men on both sides which was shed at Shiloh, Gettysburg, and Cold Harbor. If those responsible for these Amendments, by feats of valor or efforts of draftsmanship, could have lived to know that their efforts had enshrined in the Constitution the right of commercial vendors of contraceptives to peddle them to unmarried minors through such means as window displays and vending machines located in the men's room of truck stops, notwithstanding the considered judgment of the New York Legislature to the contrary, it is not difficult to imagine their reaction.[13]

To be sure, a few other entries touched on substantial doctrinal disputes and struck the notes, in the tone, that one might expect in "important" opinions: In *Dolan v. City of Tigard,* for example, the Chief insisted that "[w]e see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or the Fourth Amendment, should

10. 477 U.S. 242, 269 (1986) (Rehnquist, J., dissenting).

11. 470 U.S. 821, 827 (1985).

12. 441 U.S. 281, 286 n.4 (1979).

13. 431 U.S. 678, 717 (1977) (Rehnquist, J., dissenting).

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be relegated to the status of a poor relation."[14] Dissenting in *Trimble v. Gordon,* he complained that "this Court seems to regard the Equal Protection Clause as a cat-o'-nine-tails to be kept in the judicial closet as a threat to legislatures which may, in the view of the judiciary, get out of hand and pass 'arbitrary,' 'illogical,' or 'unreasonable' laws."[15] And, in *Wallace v. Jaffree,* he observed that "[i]t is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history, but unfortunately the Establishment Clause has been expressly freighted with Jefferson's misleading ["wall of separation"] metaphor for nearly 40 years."[16]

Two other ranked quotations, taken together, capture well Chief Justice Rehnquist's "big picture" view of our Constitution, the government that it constitutes, and the task of federal judges that it authorizes. First, we remembered that he framed his opinion in *United States v. Lopez* around this statement of "first principles":

> The Constitution creates a Federal Government of enumerated powers. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."[17]

Next, there was this, from his dissent in *Texas v. Johnson*: "The Court's role as the final expositor of the Constitution is well established, but its role as a Platonic guardian admonishing those responsible to public opinion as if they were truant schoolchildren has no similar place in our system of government."[18]

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14. 512 U.S. 374, 392 (1994).

15. 430 U.S. 762, 777 (1977) (Rehnquist, J., dissenting).

16. 472 U.S. 38, 91-92 (1985) (Rehnquist, J., dissenting).

17. United States v. Lopez, 514 U.S. 549, 552 (1995) (quoting THE FEDERALIST NO. 45, at 292-93 (James Madison) (Clinton Rossiter ed., 1961); Gregory v. Ashcroft, 501 U.S. 452, 458 (1991)).

18. 491 U.S. 397, 435 (Rehnquist, C.J., dissenting).

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Certainly, others have explored and will explore, in depth and with care, Chief Justice Rehnquist's constitutional theory, judicial philosophy, and legacy.[19] For now, it is enough to suggest that these two passages go a long way in presenting the vision—or, at least, the disposition—that can plausibly be said to have animated his work and career on the Court. In his view, "We the People," through our Constitution, authorized our federal courts, legislators, and administrators to do many things—but not everything. Because the Nation's powers are few and defined, Congress may not pursue every good idea or smart policy, nor should courts invalidate every foolish or immoral one. The point of this arrangement, though, was not to hamstring good government or throw up roadblocks to democracy, but—by dividing, enumerating, and structuring powers—to "ensure protection of our fundamental liberties."[20]

Now, some of Chief Justice Rehnquist's critics appear to regard the "Platonic Guardians" line and similar calls for judicial modesty, restraint, and deference as little more than disingenuous cover for his own conservative brand of activism. It is worth taking seriously, though, both his claim that it is neither arrogant nor illegitimate for judges to enforce the Constitution's structural features and his insistence that judicial review should not be employed by federal courts as an "end run around popular government," in a way that is "genuinely corrosive of the fundamental values of our democratic society."[21] It seems to me that, running through his opinions on any number of questions—from assisted suicide and abortion to Christmas displays and campaign finance—is a deep commitment to the notion that our Constitution leaves important, difficult, and even divisive decisions to the People.

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Back to the top-ten list. As many lawyers know, the Chief was a big fan of cases involving maps, river boundaries, submerged lands, and historic bays. He joked with my coclerks and me that, when he retired, he would like to serve as a special master charged with investigating a border dispute—preferably, of course, in his beloved northern Vermont. As I learned from the start, during

19. *See* THE REHNQUIST LEGACY (Craig Bradley ed., 2006); *see also* Jeff Powell, *The Compleat Jeffersonian: Justice Rehnquist and Federalism*, 91 YALE L.J. 1317 (1982); William H. Rehnquist, *The Notion of a Living Constitution*, 54 TEX. L. REV. 693 (1976).

20. *Lopez*, 514 U.S. at 552 (citations omitted).

21. REHNQUIST, *supra* note 1, at 706; *see also* Washington v. Glucksberg, 521 U.S. 702, 735 (1997) (observing that "[t]hroughout the Nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician assisted suicide. Our holding permits this debate to continue, as it should in a democratic society").

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my interview, when we discussed the relative Arizona-ghost-town merits of Chloride and Bumble Bee, he was intrigued by topographical trivia and geographical minutiae. So, it was fitting that our list included this, from *Kansas v. Colorado*:

> The Arkansas River rises on the east side of the Continental Divide, between Climax and Leadville, Colorado. Thence it flows south and east through Colorado, Kansas, Oklahoma, and Arkansas, emptying into the Mississippi River, which in turn flows into the Gulf of Mexico. As if to prove that the ridge that separates them is indeed the Continental Divide, a short distance away from the source of the Arkansas, the Colorado River rises and thence flows southwest through Colorado, Utah, and Arizona, and finally empties into the Gulf of Baja California. . . .
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> . . . .
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> . . . The Arkansas River is unique in that the pronunciation of its name changes from State to State. In Colorado, Oklahoma, and Arkansas, it is pronounced as is the name of the State of Arkansas, but in Kansas, it is pronounced Ar-KAN-sas.[22]

My friends and students sometimes laugh, and assume that I must be kidding, when I say that this is one of my favorite Chief quotes. But it is. And this is not because it is endearingly idiosyncratic, or because it reminds me of so many pleasant conversations, or because I do not appreciate the historical and jurisprudential significance of his work in so many important areas and in so many landmark cases. Former acting Solicitor General Walter Dellinger observed that William Rehnquist is one of the three "'dominant'" Justices in our Nation's history, and I agree.[23] Professor Erwin Chemerinsky reported that "'[t]here is not an area of the law where he hasn't had an impact,'" and he is right.[24]

Still, his Arkansas River travelogue stands out for me because of its down-to-earth nature, its rootedness, and its affectionate appreciation for the concrete and the tangible. To me, the passage evokes the Chief's embrace of the

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22. Kansas v. Colorado, 514 U.S. 673, 675-77 (1995).

23. *A Practitioner's-Eye View of the Court*, LEGAL TIMES, Aug. 12, 2002, at 12.

24. Liz Halloran & Angie Cannon, *Rehnquist Death Leaves Second Vacancy*, U.S. NEWS & WORLD REP., Sept. 4, 2005, http://www.usnews.com/usnews/news/articles/050904/4chiefjustice.htm.

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value, interest, and importance of ordinary, everyday life and his attraction to the really human things. These were highlighted by many who reflected on his career during the days following his death. Particularly at the beautiful funeral service, which was so much a celebration of a wonderful life and nothing like a sad farewell or a politically charged retrospective, we were privileged to hear from his friends, children, pastor, and granddaughter about how hard he had worked–and, at the same time, how easy it was for him–to put them at the center of his life. It was nice to be reminded of how the Chief had clearly taken to heart Dr. Johnson's dictum that "[t]o be happy at home is the end of all human endeavor."[25]

As his son Jim recalled, the Chief was all about "balance" well before it became a buzzword. In his 2000 commencement address at George Washington University Law School, he invoked the wonderful old Jimmy Stewart movie (and, before that, play), *You Can't Take It with You,* to urge the assembled, ambitious young lawyers to "[d]evelop a capacity to enjoy pastimes and occupations that many can enjoy simultaneously–love for another, being a good parent to a child, service to your community."[26] And I can say that, perhaps without realizing it, he instilled in me a commitment–one to which I try to call my students–to building and living an *integrated* life as a lawyer, a life that is not compartmentalized, atomized, or segregated but that pulls and holds together work, friends, family, faith, and community. William Rehnquist understood, I think, that the need for such a commitment is particularly acute among lawyers, and he worried–as many law teachers do–that a profession he so thoroughly enjoyed and in which he had thrived was, for many, nothing but well-paid stress and drudgery. A few years before he died, the Chief visited my First Amendment class at Notre Dame Law School; I had rarely seen him so animated and enthusiastic as when he shared with the class his hopes for the legal profession and for their happiness in it.

In his George Washington University speech, he recalled happily that the "structure of the law practice" in Phoenix when he practiced there

> was such that I was able to earn a decent living, while still finding time for my wife and children and some civic activities. Lawyers were not nearly as time conscious then as they are now; this meant that they

25. SAMUEL JOHNSON, *The Rambler, No. 68* (1750), *reprinted in* 2 THE WORKS OF SAMUEL JOHNSON, LL.D. IN TWELVE VOLUMES 430, 431 (London, F.C. & J. Rivington 1823).

26. William H. Rehnquist, Chief Justice of the United States, Commencement Address at George Washington University Law School 6 (May 28, 2000) (transcript on file with author).

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> probably earned less money than they might have, but had a more enjoyable life.[27]

He put before the students the fact that because of their abilities and opportunities, they would have "choices," and that "how wisely [they] ma[d]e these choices will determine how well spent [they] think [their] life is when [they] look back at it."[28]

I like to think that William Rehnquist joined us, last September, when we gathered in St. Matthew's Cathedral to "look back at" his life, and that he concurred in our unanimous judgment that it *was* well spent. For more than three decades, Chief Justice Rehnquist served well the country and the Constitution. Put simply, and in Oliver Wendell Holmes's powerful words, he "live[d] greatly in the law."[29] To his credit, though, William Rehnquist's ambition was not so much to be great, but to live well.

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27. *Id.* at 2-3.

28. *Id.* at 4.

29. OLIVER WENDELL HOLMES, JR., The Profession of the Law, Lecture Delivered to Undergraduates at Harvard University (Feb. 7, 1886) *reprinted in* SPEECHES BY OLIVER WENDELL HOLMES 23 (Oliver Wendell Holmes, Jr. ed., 1891).

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JON KYL

Tribute to Chief Justice William H. Rehnquist

It may be that future legal scholars assessing the judiciary of the late twentieth and early twenty-first centuries will look back and consider one state to have been over-represented on a court that has nine members. I don't consider it anything but a blessing that retired Justice Sandra Day O'Connor of Arizona, and the late Chief Justice William Rehnquist of Arizona, rose to the pinnacle of jurisprudence in this country at the same time. America has been the better for their service on the Supreme Court.

William Hubbs Rehnquist provided steady leadership on the Court through turbulent decades. Appointed to his seat by President Nixon in 1972 and elevated to Chief Justice by President Reagan in 1986, he showed that one man of integrity really can make a difference.

I first met him when he was a lawyer in Phoenix. He spent most of the 1950s and 1960s practicing law in our state, and raising a family there with his wife, Natalie, who passed away in 1991. He made an annual return to Arizona in the last decade of his life, to teach a course on Supreme Court history at the University of Arizona College of Law, my alma mater.

I came of age politically reading Barry Goldwater's 1960 book, *The Conscience of a Conservative*. William Rehnquist gave voice to that conscience—to a resolve that the liberties that Americans hold dear be protected and preserved—in the speechwriting that he did for Goldwater during the Senator's unsuccessful run for President against Lyndon Johnson in 1964.

While others wanted to remake human nature, the Goldwater conservatives appreciated it, as it is. They were alarmed by the ambitions, the growth, and the power of government since the New Deal. This impulse of vigilance came from a deep respect, which Rehnquist evinced time and again, for our founding charter, the Constitution, and the enumerated powers it granted to government. This was the basic platform on which Barry Goldwater and his emerging wing of the Republican Party, including William Rehnquist and also the man who would elevate him to Chief Justice, Ronald Reagan, constructed a conservatism for our time.

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When Rehnquist left his position as Assistant Attorney General of the United States to sit on the Supreme Court, and later be its Chief Justice, he would spend thirty-three years on the Court evaluating cases and the law in a way that generally tried to defer to the other two branches of government—those whose officers are not appointed, as he was, but chosen by the people. He thought judges should always remind themselves to stay within their constitutionally defined role. The reason was that he believed in the right of his countrymen and women to govern themselves through their elected representatives. As Richard W. Garnett of Notre Dame, a former Rehnquist clerk, has said: "'[O]urs is a government of limited powers and . . . the judiciary is limited not to restrict freedom but to protect democracy.'"[1]

The legal opinions that Rehnquist wrote expressed this freedom-loving and majority-respecting view of the proper relationship of citizens to their government. His dissents, which were firm but even-tempered in tone, earned him the nickname "the Lone Ranger." As we know, the passing years saw him become less and less lonely. Rehnquist's notion of balance between the authority of the governments of the fifty states and the federal government in Washington gradually gained broad acceptance. What were minority views are, in many instances, now the law of the land.

The Rehnquist Court's decisions helped prevent the rights of criminal suspects from being overemphasized to the point that law enforcement was hampered in doing its job. They granted police more power to search and question suspects. They made it harder for defendants to slow the wheels of justice with frivolous appeals. They curbed the government's use of racial quotas, deemed by most Americans to be a squandering of the moral authority of the civil rights movement. They reaffirmed the religious freedom clause of the First Amendment. They upheld restrictions on the practice of abortion, again in keeping with the views of most Americans.

William Rehnquist was born in Wisconsin in 1924 of a father who was a paper salesman and mother who was a professional translator. He had a quick, dry wit and a manner that was warm and courteous. He was a straight shooter, devoid of pretentiousness, yet deeply learned in the law and many other things. For such an eminent and erudite person, he did not make a fuss about himself.

One saw in his character generous amounts of that equanimity that I like to think we who were born in the Midwest brought with us out to Arizona. Many marvel at how collegial the nine justices were with one another under his leadership. Justice Ruth Bader Ginsburg—who disagreed with the Chief on a

1. Dan Balz, *As Battlefield Shrinks, Democrats Mute Their Attacks*, WASH. POST, Sept. 13, 2005, at A7.

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lot of things a lot of the time—said upon his death that he "was the fairest, most efficient boss I have ever had."[2]

In short, Rehnquist had strong convictions but they were accompanied by an equally strong sense of decency. Sitting in that center seat on the High Court, he was centered—in his respect for others, in his respect for the Court as an institution, and in his willingness to treat his colleagues in a way that was never overbearing. Another former clerk of Rehnquist's, the stellar jurist who has succeeded him, commented on this during his confirmation hearings shortly after the Chief Justice passed away. John Roberts spoke of the assignment of the writing of the majority opinion, which is a Chief Justice's job:

> [I]f you go back and look at every year that he was the Chief Justice and just pick out what you think are the 10 or 12 biggest cases of that year, I think you will find that those cases are distributed very evenly among the nine justices. . . . [T]he Court had very marked philosophical differences and sharp dissents in some areas, but everybody got along well . . . because the Chief made a priority of being fair in his opinion assignments.[3]

The admiration and affection Rehnquist inspired in people is due also to the superb job he did as the federal judiciary's top administrator, which is also the task of the Chief Justice. He staunchly asserted the independence of the federal court system and fought to see that those who worked in it were adequately compensated. If federal judges were bound to show restraint in their judging, at the same time they had to be able to operate in a way that was utterly independent and free from political influence.

These qualities of his came to the fore at extraordinary times. We had, during his tenure as Chief Justice, a presidential impeachment—over which he presided with a dignity and good sense that were reassuring to all, in and out of the Senate chamber. We had a disputed election—in which he led the Supreme Court in delivering the U.S. government and the country from a nightmare of litigation and partisan combat.

William Rehnquist loved his family; he loved the law; he loved America and its history; and he loved the institution he served. The legacy he leaves includes the histories he wrote, namely his four books on the Court and the

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2. Linda Greenhouse, *Court in Transition: The Justices; News Was Surprising to Colleagues on Court*, N.Y. TIMES, Sept. 6, 2005, at A1.

3. *Confirmation Hearing on the Nomination of John G. Roberts, Jr. To Be Chief Justice of the United States Before the S. Comm. on the Judiciary*, 109th Cong. 447 (2005).

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American legal system: *The Supreme Court: How It Was, How It Is* (1987); *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* (1992); *All the Laws but One: Civil Liberties in Wartime* (1998); and *Centennial Crisis: The Disputed Election of 1876* (2004).

As Jeffrey Rosen commented not too long ago, the Rehnquist years left the United States Supreme Court with "carefully constructed reserves of public trust."[4] That is a precious commodity. William Rehnquist makes Americans, and especially Arizonans, very proud. His position in history as one of the great jurists of our time is secure.

Jon Kyl is a Republican U.S. Senator from Arizona. He holds a B.A. and LL.B. from the University of Arizona. Senator Kyl serves on the Senate Finance Committee, where he chairs the Subcommittee on Taxation and IRS Oversight, and the Senate Judiciary Committee, where he chairs the Subcommittee on Terrorism, Technology, and Homeland Security. As Chairman of the Senate Republican Policy Committee, he is one of six members of the Senate Republican Leadership. Before joining Congress, Kyl practiced law in Arizona and argued before the Supreme Court of the United States the case of Arizona v. San Carlos Apache Tribe of Arizona, *463 U.S. 545 (1983).*

4. Jeffrey Rosen, *Rehnquist the Great?*, ATLANTIC MONTHLY, Apr. 2005, at 79, 90.

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