PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF CHIEF JUSTICE REHNQUIST*

THURSDAY, JUNE 15, 2006

Present: CHIEF JUSTICE ROBERTS, JUSTICE STEVENS, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE THOMAS, JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE ALITO.

THE CHIEF JUSTICE said:

The Court is in special session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to Chief Justice William H. Rehnquist.

The Court recognizes the Solicitor General.

Mr. Solicitor General Clement addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

At a meeting today of the Bar of this Court, Resolutions memorializing our deep respect and affection for Chief Justice Rehnquist were unanimously adopted.

RESOLUTION

Today, the members of the Bar of the Supreme Court honor the life and legacy of a gifted lawyer, a selfless public servant, and a treasured teacher, mentor, and friend. Those

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*Chief Justice Rehnquist died in Arlington, Virginia, on September 3, 2005 (545 U. S., p. XI).

who knew William Rehnquist will remember him as one who, in the words of Justice Oliver Wendell Holmes, "lived greatly in the law." To his credit, however, Bill Rehnquist cared less about being "great" than about doing and living well. As President George W. Bush remarked on the occasion of his funeral, "to work beside William Rehnquist was to learn how a wise man looks at the law and how a good man looks at life."

Rehnquist was born in Wisconsin, on October 1, 1924, the son of a paper salesman and a homemaker who also worked as a translator. Christened William Donald Rehnquist at birth, the future Chief Justice changed his middle name to Hubbs—a family name—in high school. His mother, Rehnquist later explained, had once met a numerologist on a train, and Mrs. Rehnquist was advised that her son would enjoy great success in life if his middle name were changed to begin with the letter "H."

Rehnquist was raised in Shorewood, a Milwaukee suburb on Lake Michigan. Early on, he displayed his love of the friendly wager, betting his sister on a Memorial Day weekend that he could dive into the lake more often than she. He won, and contracted pneumonia in the bargain. Rehnquist graduated from high school in 1942, and after a term at Kenyon College, he joined the United States Army Air Corps. Consistent with his lifelong interest in the weather—a fascination that would be the stuff of many jokes and memories among his friends and law clerks—he signed up for a pre-meteorology program. He was reassigned to work as a weather observer when, as he later put it, "the brass realized that someone had mistakenly added a zero to the number of weather forecasters that would be needed." His wartime service took him not only to Oklahoma, New Mexico, Texas, New Jersey, and Illinois, but also to more exotic destinations such as Casablanca, Marrakesh, Tripoli, and Cairo.

Rehnquist's assignment in North Africa impressed upon him that "if you lived in the right place, you didn't have to

shovel snow for four months a year."[1] Accordingly, after discharging from the service as a sergeant, he headed west, and matriculated as an undergraduate at Stanford University in 1946. There, he supplemented the financial assistance he received through the G. I. Bill with odd jobs, including working as a "hasher" in the dormitory of his future colleague, Sandra Day.

After graduation, Rehnquist thought he wanted to become a professor of political science, so he studied government for a year at Harvard and earned his master's degree. But he later decided against continuing his graduate work, and instead took a standardized occupational examination, the results of which suggested that he might thrive as a lawyer. He then returned to the west, and to Stanford's law school, where he flourished. As he recalled, some 50 years later, in his typically understated manner, "the law curriculum came more easily to me than it did to some others."[2] His friend and classmate, the future Justice O'Connor, was more definitive: "[H]e quickly rose to the top of the class and, frankly, was head and shoulders above all the rest of us in terms of sheer legal talent and ability."[3]

One of Rehnquist's professors had been a law clerk for Justice Robert Jackson, and thought highly enough of Rehnquist to recommend him to Jackson as a prospective clerk. When Jackson hired the young lawyer, the position was Rehnquist's first "honest-to-goodness job as a graduate lawyer"[4] and, more significantly, his first exposure to the institution to which he would dedicate 33 years of his professional life.

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[1] William H. Rehnquist, Seen in a Glass Darkly: The Future of the Federal Courts, 1993 Wis. L. Rev. 1, 1 (1993).

[2] Michael Eagan, One-on-One with the Chief, Stanford Lawyer, Spring 2005, p. 27.

[3] Nominations of William H. Rehnquist and Lewis F. Powell, Jr.: Hearings Before the Senate Committee on the Judiciary, 92d Cong., 1st Sess., 12 (1971) (statement of Sen. Paul J. Fannin) (quoting State Sen. Sandra D. O'Connor).

[4] William H. Rehnquist, The Supreme Court: How It Was, How It Is 19 (1987).

Rehnquist later described his clerkship during the 1951 and 1952 Terms as "one of the most rewarding experiences of my life."[5] His time in Washington proved doubly rewarding, for during this period he began dating Natalie "Nan" Cornell, a San Diegan he had met at Stanford. They started with "Thursday night" dates, until Nan was convinced that she liked the young lawyer enough to move on to Saturdays.

After the clerkship, Rehnquist kept in his study a photograph of his boss, inscribed "To William Rehnquist, with the friendship and esteem of Robert H. Jackson." Later, as a member of the Court, Rehnquist would make the same inscription for his law clerks, recounting Jackson's remark, "You may not be impressed, but it might impress your clients." Perhaps most telling, the personal attributes that the young William Rehnquist admired most in Justice Jackson include many of the same qualities his own law clerks remember and appreciate about him: "[H]is own ego or view of his own capacities was never unduly elevated by any of the successes which he achieved"; he "never succumbed to [the] temptation," so common in Washington, to "become . . . isolated in high public office"; and "[h]e did not have to read the view of some particular columnist, commentator, or editorial writer in order to know what he thought about a particular factual situation."[6]

Characteristically unconventional, Rehnquist passed up opportunities at lucrative East Coast law firms. He thought California too big and too populated, and decided to look for a home in the southwestern United States, hoping to find the American equivalent of the North African climate he so enjoyed. Rehnquist married his beloved Nan in August 1953, and the couple ultimately settled on Phoenix. He later told his law clerks that the descent into Phoenix, without air conditioning, in his 1941 Studebaker, was like "driving into Hell."

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[5] Remarks of the Chief Justice, Dedication of the Robert H. Jackson Center, Jamestown, New York (May 16, 2003).

[6] William H. Rehnquist, Robert H. Jackson: A Perspective Twenty-Five Years Later, 44 Alb. L. Rev. 533, 539 (1980).

He was the ninth lawyer at one of the "large" law firms in Phoenix, and he was paid $300 per month. Two years later, hoping for more courtroom experience, he opened a two-lawyer office, and for a time, Rehnquist took whatever clients came in the door. He volunteered to represent indigent criminal defendants in federal court, but suffered a series of defeats, leading a federal prosecutor to joke that a cell block at Leavenworth had been named after Rehnquist. He delighted in telling stories of his practice before eccentric jurists in Arizona's remote "cow counties." A favorite involved the representation of state legislators in a lawsuit adverse to the State's attorney general, during which Rehnquist made pointed reference to an inconsistency between his adversary's litigating position and previous public statements. Summoned to the judge's chambers after oral argument, young Rehnquist remembered that his "heart almost stopped" as he prepared himself for a trip to the woodshed, only to hear the jurist from Cochise County remark: "I was sure glad to see you tee off on the Attorney General in your argument on that last motion. He's a worthless son-of-a-bitch, and the sooner this state gets rid of him the better off we'll all be."

During his 16 years of private practice, Rehnquist represented a broad array of clients and handled a wide range of litigation matters. He was also active in politics, providing legal advice and draft speeches for the 1964 Goldwater presidential campaign. He wrote op-ed pieces and bar journal articles, spoke before bar and civic groups, served as President of the Maricopa County Bar Association, and was a favorite at continuing legal education seminars. He spent four years as the town attorney for Paradise Valley, was special counsel to the Arizona Department of Welfare, served as Special Assistant Attorney General for the Arizona Highway Department, and represented the State Bar of Arizona in attorney disciplinary matters. In 1971, the Board of Governors of the State Bar of Arizona praised Rehnquist for having "continually demonstrated the very highest degree of

professional competence and integrity and devotion to the ends of justice."[7]

Through it all, Rehnquist maintained a balanced life. He would work typically from 8:30 a.m. to 5:00 p.m., then close the law books, and go home for a family dinner. He and Nan were blessed with three children, Jim, Janet, and Nancy. Even when Rehnquist was in trial, the family dinner was sacred, and he would either bring work home or make the 10-minute drive back to the office after dinner. Keeping a schedule that was unusual then, and virtually unheard of today, for the family of a top litigator, the Rehnquists managed to take a month's vacation every year. Rehnquist especially loved camping vacations across the West, visits to a small cabin in the Bradshaw Mountains of Arizona, and driving fast on country roads, telling his children that a double yellow line was "just a recommendation." The Rehnquists also maintained an active family-oriented social life, including bridge, charades, cookouts, and hikes. Later in life, Rehnquist reminisced that he "had the good fortune to realize long ago, instinctively, what I now see very clearly—and that is that time is a wasting asset." Rehnquist spent abundant time with his wife and young children, "not out of any great sense of duty, but just because I enjoyed it so much."

After the 1968 presidential election, Rehnquist's involvement in politics resulted in an opportunity to serve as Assistant Attorney General for the Office of Legal Counsel in the United States Department of Justice. Upon receiving word of this job offer, Rehnquist visited the Phoenix public library to see what he could learn about the office, and he was sufficiently intrigued by what he read to accept the position. The family moved to Washington, but Rehnquist never lost his deep affection for Arizona or his fond memories of these earlier years. He left Phoenix, as he put it, "very much

[7] Nominations of William H. Rehnquist and Lewis F. Powell, Jr.: Hearings Before the Senate Committee on the Judiciary, 92d Cong., 1st Sess., 7 (1971) (Resolution of the Board of Governors of the State Bar of Arizona).

richer for the experience, but having accumulated very little of the world's goods."

As Assistant Attorney General, Rehnquist was "in effect, the President's lawyer's lawyer,"[8] as President Richard Nixon would later say. Rehnquist served in the Justice Department during challenging years in the midst of the Vietnam War. He helped to hone the position of the Executive Branch on delicate legal issues and carried the message of the Administration around the country in numerous public appearances. He discharged his responsibilities with such great distinction that President Nixon would declare, "among the thousands of able lawyers who serve in the Federal Government, he rates at the very top as a constitutional lawyer and as a legal scholar." When Justice John Marshall Harlan II retired in 1971, Rehnquist was the President's choice to be the 100th Justice of the Supreme Court.

Confirmed in 1972 at age 47, Rehnquist was one of the youngest Justices of the Supreme Court in modern history. Yet his views on important matters of constitutional law were remarkably well formed. Rehnquist once wrote that "[p]roof that a Justice's mind at the time he joined the Court was a complete *tabula rasa* in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias,"[9] and Rehnquist's mind certainly was no blank slate.

In 1976, he summed up his judicial philosophy in an essay entitled, "The Notion of a Living Constitution."[10] He rejected the notion that judges "are a small group of fortunately situated people with a roving commission to second-guess Congress, state legislatures, and state and federal administrative officers concerning what is best for the coun-

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[8] President Richard Nixon, Address to the Nation Announcing Intention to Nominate Lewis F. Powell, Jr., and William H. Rehnquist to be Associate Justices of the Supreme Court of the United States (Oct. 21, 1971), in Public Papers of the Presidents of the United States: Richard Nixon, p. 1056 (1972).

[9] *Laird* v. *Tatum*, 409 U. S. 824, 835 (1972) (Rehnquist, J., in chambers).

[10] William H. Rehnquist, The Notion of a Living Constitution, 54 Tex. L. Rev. 693 (1976).

try." That elected representatives had not solved a particular social problem, he wrote, did not necessarily authorize the federal judiciary to act: "Surely the Constitution does not put either the legislative branch or the executive branch in the position of a television quiz show contestant so that when a given period of time has elapsed and a problem remains unsolved by them, the federal Judiciary may press a buzzer and take its turn at fashioning a solution." Rehnquist was critical of a mode of constitutional interpretation that would allow "appointed federal judges" to impose on others a rule that "the popularly elected branches of government would not have enacted and the voters have not and would not have embodied in the Constitution." This approach, he warned, was a "formula for an end run around popular government," and "genuinely corrosive of the fundamental values of our democratic society."

As an Associate Justice, Rehnquist emerged as a powerful intellectual force. He authored a number of significant opinions for the Court, but also did not hesitate to express his position in solitary dissent,[11] thus inspiring an early group of law clerks to bestow upon him a Lone Ranger doll as a mantlepiece.[12] When Chief Justice Warren Burger resigned in 1986, it was precisely Rehnquist's powerful intellect, his stellar record on the Court, and his consistent judicial philosophy that made him President Ronald Reagan's pick to lead the Court. But no less important were Rehnquist's leadership qualities and the respect he garnered from all of his colleagues, owing to his pleasant and down-to-earth nature, quiet confidence, quick wit, and basic fairness.

On June 17, 1986, the President announced his nomination of Justice Rehnquist to become the sixteenth Chief Justice

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[11] See, *e. g., Allenberg Cotton Co.* v. *Pittman*, 419 U. S. 20, 34 (1974) (Rehnquist, J., dissenting); *Jimenez* v. *Weinberger*, 417 U. S. 628, 638 (1974) (Rehnquist, J., dissenting); *Baker* v. *Gold Seal Liquors, Inc.*, 417 U. S. 467, 478 (1974) (Rehnquist, J., dissenting); *Sugarman* v. *Dougall*, 413 U. S. 634, 649 (1973) (Rehnquist, J., dissenting); *New Jersey Welfare Rights Organization* v. *Cahill*, 411 U. S. 619, 621 (1973) (Rehnquist, J., dissenting).

[12] John M. Nannes, The "Lone Dissenter", 31 J. Sup. Ct. Hist. 1 (2006).

of the United States. During the ensuing confirmation hearings, numerous witnesses testified glowingly to Rehnquist's distinguished service on the Court and his high-powered legal mind. Former Solicitor General Rex Lee, for instance, stated: "Of all the lawyers with whom I am acquainted, I know of literally no one who is better qualified to be Chief Justice of the United States." A representative of the American Bar Association reported the "genuine enthusiasm" felt by other Justices and Court employees about Rehnquist's nomination to be Chief Justice: "There was almost a unanimous feeling of joy . . . . [H]e is regarded as a close personal friend of men who are diametrically opposed to him philosophically and politically."[13]

As Rehnquist took his new seat as the leader of the Court in 1986, President Reagan presciently remarked that he "will be a Chief Justice of historic stature."[14] Rehnquist served as Chief Justice for nearly 20 years, and together with his service as an Associate Justice for more than 14 years, this tenure made him one of the Supreme Court's seven longest-serving members. In that time, Rehnquist left an indelible mark on the Supreme Court, on the functioning of the federal Judiciary, and on the face of American law.

Rehnquist's jurisprudential legacy cuts a broad swath, but it is undoubtedly substantial in the areas of criminal procedure and the constitutional rights of criminal defendants. Rehnquist was appointed to the Court shortly after a series of decisions by the Warren Court had expanded the constitutional rights of the accused in criminal cases, and his early

[13] Nomination of Justice William Hubbs Rehnquist: Hearings Before the Senate Committee on the Judiciary, 99th Cong., 2d Sess., 108 (1986) (statement of John D. Lane, American Bar Association's Standing Committee on Federal Judiciary).

[14] President Ronald Reagan, Remarks at the Swearing-in Ceremony for William Rehnquist as Chief Justice and Antonin Scalia as Associate Justice (Sept. 26, 1986), in The Supreme Court of the United States: Hearings and Reports on Successful and Unsuccessful Nominations of Supreme Court Justices by the Senate Judiciary Committee, 1916–1986, pp. 1272, 1273 (Roy M. Mersky & J. Myron Jacobstein eds., 1989).

opinions made clear that he believed the pendulum had swung too far in that direction. Dissenting from the denial of a stay in *California* v. *Minjares*,[15] he called for reevaluation of the "exclusionary rule" applied to the States in *Mapp* v. *Ohio* in 1961. Complaining that evidence was suppressed "solely because of a good-faith error in judgment" on the part of arresting officers, Rehnquist disputed that the exclusionary rule was necessary to preserve the "integrity" of the courts: "[W]hile it is quite true that courts are not to be participants in 'dirty business,' neither are they to be ethereal vestal virgins of another world, so determined to be like Caesar's wife, Calpurnia, that they cease to be effective forums in which both those charged with committing criminal acts and the society which makes the charge may have a fair trial in which relevant competent evidence is received in order to determine whether or not the charge is true." In another early opinion, explaining the controversial 1966 decision in *Miranda* v. *Arizona*, Rehnquist wrote for the Court in *Michigan* v. *Tucker* that the procedural safeguards recommended by *Miranda* "were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected."[16]

Neither *Mapp* nor *Miranda* was overruled during Rehnquist's long tenure on the Court. Indeed, in *Dickerson* v. *United States*, the Chief Justice wrote for the Court in 2000 that "[w]hether or not we would agree with *Miranda*'s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of *stare decisis* weigh heavily against overruling it now."[17] Yet the pendulum surely swung back, with the Court affording the States more latitude in developing procedures for the prosecution of criminal cases, recognizing the practical needs of the police in

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[15] *California* v. *Minjares*, 443 U. S. 916 (1979) (Rehnquist, J., dissenting from denial of stay).

[16] *Michigan* v. *Tucker*, 417 U. S. 433, 444 (1974).

[17] *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000).

investigating crime, and fashioning clearer rules for law enforcement officials and citizens alike. The exclusionary rule remains in effect, but the suppression of evidence seized in "good faith," decried by Rehnquist in his *Minjares* dissent, is far less common in light of the good-faith exception to the exclusionary rule adopted during Rehnquist's tenure.[18] *Miranda* remains a "constitutional decision," but exceptions and limitations adopted by the Court ensure that it gives way to competing concerns such as the protection of public safety[19] and the strong interest in making available to the trier of fact all relevant and trustworthy evidence.[20] Testifying in support of Rehnquist's appointment as Chief Justice, former Attorney General Griffin Bell aptly observed that Justice Rehnquist had joined in making the right to counsel, *Miranda* rights, and the exclusionary rule "more workable," and cited the good-faith exception as "a good example of saving the exclusionary rule from its own excesses."

Another area where Rehnquist's work had a powerful effect on the shape and development of the law is religious freedom and church-state relations. In First Amendment cases, Rehnquist consistently endorsed the idea that governments *may,* consistent with the Constitution, do quite a bit to accommodate and acknowledge religion, but are not *required* by the Constitution to provide religious believers with special exemptions from generally applicable laws. It is not an "establishment" of religion, he maintained, for politically accountable actors to act in ways that benefit religious believers and institutions or to recognize religious traditions and teachings.[21] That *governments* may not "establis[h]" religion does not mean, he believed, that religion has no place in public life or civil society. At the same time, he insisted, it is rarely a violation of the free-exercise guarantee for

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[18] *United States* v. *Leon,* 468 U. S. 897 (1984).

[19] *New York* v. *Quarles,* 467 U. S. 649 (1984).

[20] *Michigan* v. *Tucker,* 417 U. S., at 450.

[21] *Zelman* v. *Simmons-Harris,* 536 U. S. 639 (2002); *Mueller* v. *Allen,* 463 U. S. 388 (1983).

those same actors to apply to religious people and religiously motivated conduct the same rules that apply generally.[22]

As it turned out, Rehnquist's last opinion was for a plurality in *Van Orden* v. *Perry*, in which the Justices ruled that Texas had not "establish[ed]" religion by including a Ten Commandments monument among the nearly 40 monuments and historical markers on the grounds surrounding the State Capitol. He wrote:

> "Our cases, Janus*like*, point in two directions in applying the Establishment Clause. One face looks toward the strong role played by religion and religious traditions throughout our Nation's history. . . . The other face looks toward the principle that governmental intervention in religious matters can itself endanger religious freedom.
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> "This case, like all Establishment Clause challenges, presents us with the difficulty of respecting both faces. Our institutions presuppose a Supreme Being, yet these institutions must not press religious observances upon their citizens. One face looks to the past in acknowledgment of our Nation's heritage, while the other looks to the present in demanding a separation between church and state. Reconciling these two faces requires that we neither abdicate our responsibility to maintain a division between church and state nor evince a hostility to religion by disabling the government from in some ways recognizing our religious heritage[.]"[23]

In this last opinion, Rehnquist returned to themes that he had developed at length in one of his most famous opinions, a dissent in *Wallace* v. *Jaffree*.[24]

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[22] *Goldman* v. *Weinberger*, 475 U. S. 503 (1986); *Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 450 U. S. 707, 720 (1981) (Rehnquist, J., dissenting); see also *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990).

[23] *Van Orden* v. *Perry*, 545 U. S. 677, 683–684 (2005) (plurality opinion).

[24] *Wallace* v. *Jaffree*, 472 U. S. 38, 91 (1985) (Rehnquist, J., dissenting).

A third area where Rehnquist's legacy is both striking and significant involves the structure and powers of the federal government created by our Constitution and the role and retained powers of the States. From his earliest to his final days on the Court, Rehnquist was committed to what he called "first principles":[25] Ours is a national government of limited, delegated, and divided powers, and the government's structure, no less than the Bill of Rights, is a safeguard for individual liberty. Rehnquist's dedication to these principles, and to enforcing the limits and boundaries that our Constitution imposes on federal power, reflected his understanding that our constitutional design leaves ample room for diverse policy experiments and different answers to pressing social questions.

Rehnquist's commitment to judicial enforcement of enumerated powers and the federal-state balance was perhaps most discernable in the Court's cases interpreting the Commerce Clause. As early as 1975, dissenting alone, Rehnquist argued that the federal government must treat the States like sovereign entities, rather than like individuals. Even when Congress has authority under the federal commerce power to regulate private conduct in a particular area, it could not apply that regulation to the States if doing so would interfere with what he called "traditional state functions."[26]

As happened a number of times during his tenure, Rehnquist's position in dissent ultimately was embraced by a majority of his colleagues. In *National League of Cities* v. *Usery*, a majority of the Court adopted his "traditional governmental functions" test.[27] Although the Court ultimately overruled *National League of Cities* nine years later, Rehnquist, in a pithy reply, thought it not "incumbent on those of us in dissent to spell out further the fine points of a principle that will, I am confident, in time again command the sup-

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[25] *United States* v. *Lopez*, 514 U. S. 549, 553 (1995).

[26] *Fry* v. *United States*, 421 U. S. 542, 558 (1975) (Rehnquist, J., dissenting).

[27] *National League of Cities* v. *Usery*, 426 U. S. 833, 852 (1976).

port of a majority of this Court."[28] And true to his prediction, Rehnquist's promotion of federalism forged ahead, serving as the basis for the Court's declaration of an anti-commandeering principle,[29] its strengthening of the States' sovereign immunity,[30] and its reaffirmation of the existence of "judicially enforceable outer limits" on the commerce power itself, in *United States* v. *Lopez* in 1995.[31]

Rehnquist's dedication to judicial restraint and popular government is perhaps most evident in his writings on the subject of "substantive due process." At his death, Rehnquist was the last remaining member of the Court that had decided *Roe* v. *Wade.* He had dissented from the opinion of the Court, comparing the majority's reasoning to the discredited doctrine of *Lochner* v. *New York*,[32] and commenting that the Court's opinion in *Roe* "partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment."[33] While Rehnquist garnered only four votes for his later view that *Roe* should be overruled, the Court ultimately did adopt his restrained approach to substantive due process. In *Washington* v. *Glucksberg*,[34] Chief Justice Rehnquist wrote for the majority and recognized that "[b]y extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action." The Court declared that it would "exercise the utmost care" whenever asked to "break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." Thus, Rehnquist's opinion was consistent with the view articulated more than 20 years ear-

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[28] *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 580 (1985) (Rehnquist, J., dissenting).

[29] *New York* v. *United States*, 505 U. S. 144 (1992).

[30] *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996).

[31] *United States* v. *Lopez*, 514 U. S., at 565.

[32] *Lochner* v. *New York*, 198 U. S. 45 (1905).

[33] *Roe* v. *Wade*, 410 U. S. 113, 174 (1973) (Rehnquist, J., dissenting).

[34] *Washington* v. *Glucksberg*, 521 U. S. 702 (1997).

lier, in his essay on the "living Constitution," that judicial review under the Fourteenth Amendment should not be employed as an "end run around popular government," in a way that is "genuinely corrosive of the fundamental values of our democratic society." Running through his opinions on any number of questions—from assisted suicide and abortion to Christmas displays, campaign finance, and the death penalty—is a deep commitment to the idea that our Constitution leaves important, difficult, and even divisive decisions to the people.

Rehnquist's legacy on the Supreme Court involves much more than doctrinal contributions and particularly noteworthy decisions. He encouraged and exemplified collegiality, fairness, and graciousness among the Justices, urging them towards greater consensus where possible, and thereby enhancing the respect enjoyed by the Court in American society. To some degree, Rehnquist's achievements as the leader of the Court were the result of a subtle transformation in Rehnquist himself—from Justice Rehnquist, "The Lone Dissenter," to Chief Justice Rehnquist, the consensus-builder.

In his 1986 confirmation hearings, Rehnquist alluded to the role of a Chief Justice in gaining consensus, and allowed that deviation from his personal judicial philosophy may be proper "where there are constraints that there ought to be a court opinion rather than a plurality opinion."[35] Rehnquist later acknowledged, in a 2001 interview, that while his legal philosophy had never changed, since becoming the Chief Justice he had "become a lot more convinced of the need for the Court to get a Court opinion in each case. . . . I'm more conscious of the need for that and also conscious of the . . . lack of need for a lot of concurring opinions."[36]

For those attorneys privileged to argue before the Supreme Court during Rehnquist's long tenure, his legacy is

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[35] Nomination of Justice William Hubbs Rehnquist: Hearings Before the Senate Committee on the Judiciary, 99th Cong., 2d Sess., 209 (1986).

[36] Interview by Charlie Rose with William H. Rehnquist, Washington, D. C., in *The Charlie Rose Show* (PBS television broadcast, Feb. 16, 2001).

probably as much about his commanding presence on the Bench as his approach to the Constitution or the Conference. Rehnquist's view of oral argument was emblematic of his no-nonsense approach to judging and life. He wrote that oral argument "forces the judges who are going to decide the case and the lawyers who represent the clients whose fates will be affected by the outcome of the decision to look at one another for an hour, and talk back and forth about how the case should be decided."

Rehnquist preferred plain-spoken arguments to flowery rhetoric or pretense. Although he was a kind and easygoing man, he adopted a stern and no-nonsense demeanor on the Bench, running arguments with Nordic precision. The moment the red light came on, the Chief thanked counsel for the presentation, even if the lawyer was in mid-sentence, and then called the next lawyer or case. When one lawyer rose to present his rebuttal, the Chief ended the argument by stating, while breaking a wry smile, "the Marshal says you have 5 seconds left, and under the principle of *de minimis non curat lex*, the case is submitted."

Rehnquist's dry sense of humor often was on display during argument sessions. During one argument, a lawyer gave what he described as an "honest and principled answer" to another Justice's question, and the Chief quickly replied, "we hope all your answers will be principled." When a lawyer responded to Rehnquist's recitation of a case by saying "you are correct, Chief Justice," the Chief said, "I'm glad to know that." During his last public session on the Bench, Rehnquist observed that seven different opinions had been written in a case, then remarked, "I didn't know we had so many Justices."

As the Chief Justice, Rehnquist presided over not only the Bench and the Conference, but over the entire Judicial Branch as well. He brought to this role the same collegiality, wisdom, effectiveness, and clarity of purpose that marked his leadership of the Supreme Court itself. As with so many things he did, he impressed all with his ability to perform so effortlessly the myriad tasks of running the Judi-

ciary. His colleague Justice Byron White remarked in 1996 that "of the three Chief Justices with whom I have served, the man who now sits in the center chair . . . seems to me to be the least stressed by his responsibilities and to be the most efficient manager of his complicated schedule."[37] Rehnquist, he said, "reminds me of a highly conditioned cross between a quarter horse and racing thoroughbred."

Rehnquist brought his penchant for innovation and efficiency to management of the Judicial Branch. He adopted changes that dramatically improved the efficiency and operation of the Judicial Conference, including what he termed a "notably strengthened Executive Committee," which became the senior executive arm of the Judicial Conference.[38] He fostered inclusiveness by requiring, for the first time, that members of Judicial Conference committees rotate regularly, and he never asserted his authority as Chief Justice to govern with a heavy hand. A vigorous defender of the Third Branch, Rehnquist effectively used the pulpit provided by his position to support and defend the Judiciary and to improve inter-branch relations. He wisely understood that Congress had an important role to play in overseeing the Judiciary, and he communicated often with congressional leaders, in both formal and less formal settings, to advance the goals of the Judiciary. As he put it, "Judges . . . have no monopoly of wisdom on matters affecting the Judiciary. . . . Legislators and executive officials, no less than judges, are committed to an effective Judiciary."[39]

But Rehnquist also understood full well the importance of an independent and vibrant Judiciary, and he staunchly defended the Judiciary from attacks, often resorting—as he did in other areas—to lessons from history. In 2004, he addressed congressional suggestions for impeachment of fed-

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[37] Byron R. White, Introduction to William H. Rehnquist, 6 The Gauer Distinguished Lecture In Law and Public Policy: Civil Liberty and the Civil War 3, 3–5 (1997).

[38] William H. Rehnquist, Holiday Message, Third Branch 8 (Dec. 1987).

[39] William H. Rehnquist, 1992 Year-End Report on the Federal Judiciary 2.

eral judges who issue unpopular decisions by explaining that "our Constitution has struck a balance between judicial independence and accountability, giving individual judges secure tenure but making the federal Judiciary subject ultimately to the popular will because judges are appointed and confirmed by elected officials."[40] His leadership engendered great loyalty from the members of the federal Judiciary, and in the end, one judge captured the sentiment of a great many, saying that Chief Justice Rehnquist "was our wise leader, our strongest supporter and our true friend."

Above and beyond his demanding official duties, Rehnquist pursued and cultivated a rich array of interests and passions. Family, friends, and law clerks remember well his dedication to afternoon swims and weekly tennis matches, his friendly wagering on football, horse races, or even the amount of snowfall, his love for trivia and charades, and his interest and voluminous knowledge of literature, geography, history, and art. Rehnquist also served as Historian-in-Chief, writing books on the history of the Supreme Court, the impeachment trials of Chase and Johnson, the controversial Hayes-Tilden presidential election of 1876, and civil liberties in wartime. Remarkably, Rehnquist himself became the second Chief Justice in history to preside over an impeachment trial, confronted a disputed presidential election in 2000, and led the Court as it decided pressing questions involving civil liberties and security in the context of the war on terror and the attacks of September 11, 2001.

For those who knew, worked with, learned from, and cared about William Rehnquist, his personal qualities—the unassuming manner, the care he took to put people at ease, and his evident desire to serve as a teacher and mentor—are as salient in memories of him as his re-invigoration of the "first principles" of our federalism, his re-focusing of the Fourth Amendment on reasonableness, or his conviction that the religion clauses of the First Amendment do not require a pub-

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[40] William H. Rehnquist, 2004 Year-End Report on the Federal Judiciary 4.

lic square scrubbed clean of religious faith and expression. Rehnquist 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 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.

William Rehnquist served well his country, his profession, and the Constitution. All the while, he kept and nurtured a healthy focus on real things and places, and he embraced the value, interest, and importance of ordinary, everyday life. We are reminded of how the Chief had taken to heart Dr. Johnson's dictum that "[t]o be happy at home is the end of all human endeavor." In a 2000 commencement address, he invoked the wonderful old Jimmy Stewart movie, *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."[41] He instilled in so many of his friends, colleagues, and law clerks a commitment 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. Rehnquist understood that the need for such a commitment is particularly acute among lawyers, and he worried that the profession he so thoroughly enjoyed and in which he thrived had become marked, for many, by brutally long hours of well-paid stress and drudgery.

In the final years of his life, 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

[41] Chief Justice William H. Rehnquist, Commencement Address at George Washington University Law School (May 28, 2000).

as they are now; this meant that they probably earned less money than they might have, but had a more enjoyable life." He exhorted law school graduates to realize that because of their abilities and opportunities, they would have "choices," and that "how wisely you make these choices will determine how well spent you think your life is when you look back at it." Gathered here together, looking back at his life, the Members of the Bar of the Supreme Court are pleased and honored to announce the opinion that his was a great life, and well spent.

Wherefore, it is accordingly

RESOLVED, that we, the Bar of the Supreme Court of the United States, express our great admiration and respect for Chief Justice William H. Rehnquist, our deep sense of loss upon his death, our appreciation for his contribution to the law, the Court, and the Nation, and our gratitude for his example of a life well spent; and it is further

RESOLVED that the Solicitor General be asked to present these resolutions to the Court and that the Attorney General be asked to move that they be inscribed on the Court's permanent records.

THE CHIEF JUSTICE said:

Thank you General Clement. The Court recognizes the Deputy Attorney General of the United States.

Deputy Attorney General McNulty addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

On behalf of the Attorney General, I am pleased to say that the Bar of the Court met today to honor the memory of William H. Rehnquist, Associate Justice of the Supreme Court from 1971 to 1986, and Chief Justice of the United States from 1986 to 2005.

William Rehnquist served his country with great honor and distinction. He was a patriot who deeply appreciated the virtues and foundations of our constitutional government. He had a giant intellect, but lacked all pretense and was known for his collegiality and sense of humor. And during his 33 years on this Court, he made a profound contribution to the American rule of law.

When he was only a child, William Rehnquist told his elementary school teacher that he was "going to change the government."[42] Not long thereafter, he embarked on a path of public service and accomplishment that would lead him to fulfill that prediction.

His journey of public service began when he joined the Army as a teenager to serve his country during World War II. He served as a law clerk to one of the legendary figures in American law, Justice Robert Jackson, and he later served as an Assistant Attorney General in the Nixon administration.

At the Department of Justice, it has been said that he converted what was then a little known post—the Office of Legal Counsel—into "'one of the key positions of the administration.'"[43] He also successfully argued a case before this Court, after which he remarked he "was drenched with sweat."[44]

But that was just a beginning. In 1971, Rehnquist only in his 40s, was appointed to this Court. He immediately became known for his fierce intellect, lone dissents, and conservative jurisprudence. He also impressed his new colleagues with his affable, down-to-earth Midwestern demeanor, if not his trademark sideburns and thick-rimmed glasses.

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[42] Clare Cushman, ed., The Supreme Court Justices, 1789–1995, p. 496 (2d ed. 1995).

[43] Warren Weaver, Jr., The Chief Justice in Eight Men and a Lady: Profiles of the Justices of the Supreme Court 31 (1990) (citing Professor Arthur S. Miller, George Washington University National Law Center).

[44] William H. Rehnquist, The Supreme Court 20 (2001). The case was *Ehlert* v. *United States*, 402 U. S. 99 (1971).

When Chief Justice Burger retired in 1986, President Reagan saw in Rehnquist the measure of a great Chief Justice. As President Reagan explained, Rehnquist had distinguished himself "for his intellectual power, the lucidity of his opinions, and the respect he enjoys among his colleagues."[45] When asked about his nomination to be Chief Justice, Rehnquist—flashing his characteristic wit and self-deprecation—replied, "I wouldn't call it the culmination of a dream, but it's not every day when you're 61 years old that you get a chance to have a new job."[46]

Chief Justice Rehnquist had a profound impact on the Court and our legal system. He authored close to 1,000 opinions,[47] presided over almost as many oral arguments, and administered the oath of office on five occasions to three different Presidents.[48] He was only the second Chief Justice to preside over impeachment proceedings against a sitting President.

He managed the Court with unrivaled efficiency. And he was uniformly praised by his colleagues for his fairness, impartiality, good humor, and selfless leadership on his watch.[49]

Chief Justice Rehnquist held the public decorum of the Court in the highest regard and had a powerful presence at the center of the Bench. He presided over perhaps the most

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[45] Weekly Compilation of Presidential Papers: Administration of Ronald Reagan 813 (1986).

[46] *Id.*, at 818.

[47] While Associate Justice, he authored 626 opinions, including 242 majority or plurality opinions, 297 dissents, 72 concurrences, and 15 opinions concurring in part and dissenting in part. While Chief Justice, he authored 340 opinions, including 219 majority or plurality opinions, 79 dissents, 24 concurring opinions, and 18 opinions concurring in part and dissenting in part.

[48] Chief Justice Rehnquist administered the oath of office to President George H. W. Bush on January 20, 1989, to President William J. Clinton on January 20, 1993, and January 20, 1997, and to President George W. Bush on January 20, 2001, and January 20, 2005.

[49] See Statements from the Supreme Court regarding the Death of Chief Justice William H. Rehnquist, September 4, 2005, available at http://www.supremecourtus.gov/publicinfo/press/pr09-04-05b.html.

active Bench in the history of this Court. As a result during oral argument, he often assumed the role of "master sergeant"—a role accented by the gold stripes that he wore on his robe in later years.

He made virtually immeasurable contributions to American constitutional law. He was a key participant in the Court's decisions placing limits on the *Miranda* rule,[50] recognizing greater leeway for the police in conducting searches under the Fourth Amendment,[51] and in enforcing the limits of federal habeas corpus review of state court criminal convictions.[52]

His respect for the role of the States in our constitutional government sparked a revitalization of the doctrine of federalism. In 1975, Rehnquist wrote in dissent that "[s]urely there can be no more fundamental constitutional question than that of the intention of the Framers of the Constitution as to how authority should be allocated between the National and State Governments."[53] In time, his dissenting views on the role of federalism and the enumerated limits on federal legislative power secured a majority on the Court in a number of important cases, including the Court's landmark decision in *United States* v. *Lopez*.[54]

Chief Justice Rehnquist believed strongly in the virtues of judicial restraint. He cautioned that permitting "nonelected members of the federal judiciary" to resolve divisive social issues that were not addressed by the Constitution was "genuinely corrosive of the fundamental values of our democratic society."[55] He invoked such principles in his

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[50] See, *e. g., New York* v. *Quarles*, 467 U. S. 649 (1984).

[51] See, *e. g., Michigan* v. *Long*, 463 U. S. 1032 (1983); *United States* v. *Leon*, 468 U. S. 897 (1984); *California* v. *Ciraolo*, 476 U. S. 207 (1986); and *Florida* v. *Bostick*, 501 U. S. 429 (1991).

[52] See, *e. g., Coleman* v. *Balkcom*, 451 U. S. 949 (1981); *Herrera* v. *Collins*, 506 U. S. 390 (1993); and *Felker* v. *Turpin*, 518 U. S. 651 (1996).

[53] *Fry* v. *United States*, 421 U. S. 542, 559 (1975) (Rehnquist, J., dissenting).

[54] 514 U. S. 549 (1995).

[55] William H. Rehnquist, The Notion of a Living Constitution, 54 Texas L. Rev. 693, 694, 695, 706 (1976).

opinion for the Court in *Washington* v. *Glucksberg*[56] in which the Court refused to invoke the Due Process Clause as a means of invalidating a State's assisted-suicide ban.

As an Associate Justice, Rehnquist wrote passionately in dissent that the Court's church-state jurisprudence had broken free from its constitutional and historical moorings.[57] As Chief Justice, he led the Court in a number of important Establishment Clause cases, including the Court's landmark decision of four Terms ago upholding Cleveland's student voucher program.[58]

Chief Justice Rehnquist was an ardent advocate on behalf of the federal judiciary and a champion of an independent judiciary. In his annual reports on the state of the federal judiciary, he addressed head-on and without pretense or partisanship the major issues confronting the judiciary each year. And in his 19th and final, year-end report, he wrote that it is "judicial independence that has made our judicial system a model for much of the world."[59]

Chief Justice Rehnquist was too modest to speak about his own place in history. But he once offered his own insights as to what made John Marshall such a great Chief Justice. He explained that Marshall "had a remarkable ability to reason from general principles"; "he was able to write clearly and cogently"; and, "every bit as important," he "was very well liked."[60]

William Rehnquist shared those same qualities with Marshall. He had a brilliant analytical mind and an encyclopedic knowledge of the law. As he proved in his legendary "Lone

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[56] 521 U. S. 702 (1997).

[57] See *Wallace* v. *Jaffree*, 472 U. S. 38, 91 (1985) (Rehnquist, J., dissenting); *Mueller* v. *Allen*, 463 U. S. 388 (1983).

[58] *Zelman* v. *Simmons-Harris*, 536 U. S. 639 (2002). See, *e. g.*, *Van Orden* v. *Perry*, 545 U. S. 677 (2005) (plurality); *Zobrest* v. *Catalina Foothills School Dist.*, 509 U. S. 1 (1993).

[59] William H. Rehnquist, 2004 Year-End Report on the Federal Judiciary 8, January 1, 2005, available at http://www.supremecourtus.gov/publicinfo/year-end/2004year-endreport.pdf.

[60] William H. Rehnquist, Remarks of the Chief Justice, 52 Duke L. J. 787, 791 (2003).

Ranger" dissents, he was a powerful and lucid writer. And, "every bit as important," he was a beloved man who earned the trust, confidence, and deep admiration of his colleagues.

Chief Justice Rehnquist was a stalwart of the federal judiciary and a faithful guardian of our Constitution. Few Americans have contributed more to this Court or their country in the cause of justice and the rule of law. He deserves his place alongside the Nation's great Chief Justices. And the country owes him an enormous debt of gratitude for a life of devoted public service.

Mr. Chief Justice, on behalf of the Attorney General, the lawyers of this Nation, and in particular, the Bar of this Court, I respectfully request that the Resolutions presented to you in honor of the memory of Chief Justice William Rehnquist be accepted by the Court and that they, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.

THE CHIEF JUSTICE said:

Thank you, Mr. McNulty and General Clement, for your presentations.

Your motion that the Bar Resolutions be made part of the permanent record of the Court is granted. We also extend to Chairman Steve Colloton and members of the Committee on Resolutions, Chairman John Nannes, and members of the Arrangements Committee, and Ronald Tenpas, Chairman of today's meeting of the Bar, our appreciation for the Resolutions that you have adopted today.

William H. Rehnquist was nominated to the Supreme Court by President Nixon on October 21, 1971, and joined the Court as its 100th member on January 7, 1972. In 1986, President Reagan nominated him as our nation's 16th Chief Justice, and he took the oath for that office on September 26, 1986.

In his nearly 34 years on the Court, Chief Justice Rehnquist wrote 458 opinions for the Court—beginning with

Schneble v. *Florida* in 1972 and ending with *Van Orden* v. *Perry* in 2005. He served with 16 other Justices.

Many have described the Chief's legacy in specific areas of the law, such as criminal procedure, federalism, state immunity, and freedom of religion, but perhaps his most significant contribution was broader than any particular area of the law. Over his years on this bench, Chief Justice Rehnquist helped bring a sharper focus to the work of the Court. This manifested itself in many ways. During oral arguments he would maintain focus on the precise question upon which the Court had granted certiorari—often to the frustration of arguing counsel.

An assertion by a lawyer about what a statute *meant* was likely to be met by a question from the Chief about what it *said*. Perhaps his trademark question from the bench, regularly asked whenever a lawyer propounded a broad assertion on a point of law, was "Which one of our cases stands for that proposition?" A tough spot for the advocate who couldn't think of one. What was remarkable was the Chief's ability to distinguish on-the-spot any offered citation that the Chief thought was not on point.

The Chief brought the same rigor he expected of counsel to his own work. His opinions are notable for being clear and concise. They generally exhibit a spareness that the Chief thought was beneficial not only to lower courts and lawyers bound to apply them, but also to proper development of the law. There were exceptions to this rule—an opinion on an obscure Postal Service regulation might contain a fascinating sidebar on the history of the Pony Express, the minutiae of a water-rights opinion might be broken up by a disquisition on the first irrigation project in the arid west. That was just the Chief's love of history and a good story coming through, and the readers of his opinions were richer for it.

The Chief's colleagues on the bench have spoken often of their high regard and genuine affection for him, and the fairness with which he administered the Court. From the time he hung out a shingle in Phoenix for a two-person firm in

which his partner was the head of the Young Democrats, William Rehnquist never allowed differing views on even fundamental issues to prevent him from enjoying warm and close friendships with people from all walks of life.

You heard the Chief Justice described in the Bar meeting as a great lawyer, mentor, teacher, colleague, and friend. There is no doubt he was first and foremost a loving husband to Nan and father to his children Jim, Janet, and Nancy. He managed to make it home for dinner almost every evening, and to take a month's vacation with his family each summer.

Chief Justice Rehnquist was an accomplished historian who wrote four books. He could quote poetry for any occasion. Name just about any city in the world, he could likely tell you its population and weather, and probably the nearest body of water or mountain range. He enjoyed card and board games, was a trivia and charades expert, and was the only person I have ever witnessed lie down on his stomach to line up a shot at croquet.

He was a patriot who loved and served his country. More than anyone I have ever known, he trusted in himself. He was direct, straightforward, utterly without pretense, and completely unaffected in manner.

Ralph Waldo Emerson's 1841 essay, "Self-Reliance," contains a line that the Chief liked: "Trust thyself: every heart vibrates to that iron string." A further passage in the essay aptly describes the Chief's approach to the law and to life. Emerson's words:

> "What I must do is all that concerns me, not what the people think. This rule, equally arduous in actual and in intellectual life, may serve for the whole distinction between greatness and meanness. It is the harder because you will always find those who think they know what your duty is better than you know it. It is easy in the world to live after the world's opinion; it is easy in solitude to live after our own; but the great man is he who in the midst of the crowd keeps with perfect sweetness the independence of solitude."

We pay tribute today to a great man. He will be missed by his colleagues, friends, family, and all those whose lives he touched.