

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.

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.”<sup>1</sup>

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

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

lot of things a lot of the time—said upon his death that he “was the fairest, most efficient boss I have ever had.”<sup>2</sup>

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.<sup>3</sup>

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).

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.”<sup>4</sup> 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.

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