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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 rousing 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

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 handwinger, 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

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.”

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).