

A photograph of a sunset or sunrise over a dark landscape. The sky is a gradient of deep blue, purple, and orange. Several trees are silhouetted against the bright horizon line. The trees are of varying sizes, with the largest one on the right side of the frame.

BY TIM EIGO

ROOTS AND BRANCHES

THE COLLEGIAL INTELLECT OF A CHIEF JUSTICE

After more than three decades of service at
the United States Supreme Court,
William Rehnquist died on Saturday, September 3.

His tenure there, as both an Associate Justice
and as Chief Justice, was marked by intellectual
acuity, controversial opinions, broad collegiality
and sparkling humor. And that body of work—
and his yet-to-evolve legacy—had much of
their origin in 1950s Phoenix.

Those who worked most closely

with him include former partners from those Phoenix days and law clerks throughout his truly life tenure on the Court. They recall a man of uncommon intelligence and down-to-earth approaches. And nothing may have been more down-to-earth than the three-room law office he shared with Keith Ragan in 1955.

An interesting life is filled with anomalies, and there was this: When the young conservative Stanford law graduate Bill Rehnquist looked for a law partner, he extended an invitation to the President of the Young Democrats. Rehnquist's father-in-law had agreed to loan him money to hang out his shingle, and Ragan agreed to become responsible for half of it. So in November 1955, they opened an office in the middle of a construction floor of the old Phoenix Title building.

But what may seem others' anomalies may just be our own partial view. For as Ragan says of Rehnquist, and as many others concur, "[He had] friendships and cordiality with other people [no] matter what their politics was."

Ragan finds that one of Rehnquist's most unique qualities.

"The thing that I always so marvel about him was that he had these—in my view, of course—horribly conservative views, politically. I guess he would think mine are horribly liberal. But it was never a problem what the political persuasion of anybody was; he was just as friendly with them as with anybody else."

In Rehnquist's early years on the Court, Ragan recalls, William O. Douglas was still there, "and he was the most liberal justice we've had in a long time." Despite their differences, Rehnquist would visit Douglas in the State of Washington for weeks at a time, "climbing mountains wherever Bill [Douglas] was."

By the late 1950s, Rehnquist had formed another small firm, this time with his friend Jim Powers. And their first associate was Fred Robertshaw.

"We practiced for seven or eight very happy years," says Robertshaw, who adds that he was made a junior partner in 1964 or '65. The three of them were together until Rehnquist set his sights on Washington in February of 1969.

In that general practice, Robertshaw says, "He was just terrific [to work with]. He was not a slave-driver. He wasn't like a lot of the other law firms of our day, where people would

drool over your billable hours."

"We just worked an eight-hour day and took off weekends, and had a normal life. He was a very, very easygoing boss. I think our firm was almost unique in that regard, for the treatment of associates."

Robertshaw also points to Rehnquist's virtues of courtesy, understanding and being "empathetic with people whose views were different from his."

"He was very, very respectful of opponents. That kind of courtesy toward ideological opponents, I'm sure, was a great help in keeping order in the Supreme Court."

Like many former partners and clerks of Rehnquist, Robertshaw remembers fondly the February visits that Rehnquist made to Arizona. He would teach a course at the University of Arizona on the history of the Supreme Court.

"Then he would come up here and spend a weekend with his good friend Bill Turner"—a prominent businessman and now-former U.S. Ambassador to the Organisation for Economic Co-

operation and Development. "Bill would always have a cocktail party," says Robertshaw, "and I would always see him then."

HE HAD NO PRETENSES
AT ALL AND WAS ALWAYS
FRIENDLY TO JUSTICES
AND STAFF ALIKE. HIS
SENSE OF HUMOR NEVER
LEFT HIM, AND HE
COULD BREAK UP A TENSE
MOMENT WITH A FUNNY
STORY, QUIP OR POEM.

Tucson attorney Mike Meehan clerked with the newest Associate Justice to the United States Supreme Court in the 1971 Term, and to this day regrets only one thing—not saving Rehnquist's offer of a job, sent to him via telegram.

Meehan recalls the work in chambers fondly.

"He was demanding in the sense that he expected a lot of us, and we worked long hours. But he was an extremely good

boss to work for and with."

If ever there was a time when Rehnquist may have struggled to learn the ropes, it was in his first year on the Court. But Meehan, who began six months after Rehnquist was confirmed, saw none of that.

"I got the feeling that he came in there and settled in like he had been doing the job for 10 years."

By the 1981 Term, Rehnquist had been there 10 years, and David Campbell—now a U.S. District Court Judge in Tucson—began his clerkship with the Justice who now was the Chief.

Campbell praises Rehnquist's geniality and genius.

“He was a person without an ego, who didn’t take the trappings of office or power seriously. He cared about the law, he put people ahead of position. He was kind with virtually everybody he dealt with, whether it was a fellow justice, or the guard at the door of the Supreme Court. He knew people by name.”

“He was a genial, affable fellow,” says Campbell, “who treated people like they were equals.”

That simple manner was paired with a far-from-simple intellect. Campbell says that the Chief had a photographic memory.

“If I started talking about a case from the 1800s, he could quote me a paragraph—no kidding. If we were sitting in his office and I mentioned a case by name, he’d often stand up and walk over to the shelf, which had 400 volumes in the *U.S. Reports* on it, and pull out the precise volume and turn right to the page without me giving him either the volume or the page. I saw him do that 30 times probably. He just remembered it all.”

Keith Ragan recalls a similar scene occurring decades before at Ragan & Rehnquist.

“I remember the time we were discussing a legal matter, and he said, ‘Well, I think that issue’s been covered by *Smith v. Jones*, 40 P.2d 81,’” he says, laughing. “So right there I knew I was in for it. He was a brilliant guy from the get-go.”

Collegiality and deep thought characterized Rehnquist, Ragan says. “There are not very many geniuses who also have the ability to be a great guy, and he did.”

When analysis, courtesy and history collided, the Chief especially came into his own. Judge Campbell recalls once when the Chief was leaving the Court at the end of the day, and his secretary asked him a question about a few facts she had learned in an American history course. The subject was an obscure Civil War battle, and she asked if he knew anything about it.

“He sat down next to his desk with his briefcase and his coat in his lap, and for the next half hour described this battle in minute detail, including the officers in charge, their strategies, how many were killed, what influence it had on the war.”

“He was really a remarkable intellect. But you’d never know it if you met him on the street or sat next to him on an airplane.”

Brett Dunkelman also clerked with the Chief in the 1981 Term, and he agrees that he bred collegiality.

“The old saw about to disagree without being disagreeable was his hallmark.”

He says that he heard Justice Ruth Bader Ginsburg remark at the reception after the Chief’s funeral, “I may not have agreed with the Chief Justice very much, but he’s the fairest man I’ve ever met.”

And as a court administrator, Dunkelman thinks Rehnquist was well liked, too. But justices had to get their work done on time.

“He had a FIFO [first in, first out] system: You didn’t get a new opinion to write until you got your older ones circulating. Whereas Chief Justice Burger [had a] management style where

everyone got the same amount, so work would pile up with the people who were slower, and the people who were faster sometimes didn’t have any opinions to do.”

“But Rehnquist had this sort of accounting system where you didn’t get a new one until you got your old ones done. So he really did ride herd on people to get the work out. But that’s the kind of nudging you can’t get mad at.”

Dunkelman relates a story that clearly is a favorite among Rehnquist clerks.

The Chief was notorious for disliking memos and formality, and he would have his clerks accompany him in oral argument preparation during long walks around the block and on Capitol Hill.

“It didn’t matter how hot it was, whether it was raining or snowing: We walked around the block, through all the tourists and everything. Of course, he hardly ever got recognized.”

Those were some of the best moments of the clerkship, Dunkelman and others say. Especially memorable, he says, was the time a tourist stopped them and asked how to get into the Supreme Court tour. “Do you get to meet a Supreme Court justice on the tour?” queried the tourist. After a pause and with a smile, the Chief replied, “Not ordinarily.” But then he added, “Be sure at the end of the tour to look at the pictures of the justices down in the lobby.”

If the tourist followed those instructions, the dawning of recognition must have been a sight to behold, when he realized he had just spoken with the Chief Justice.

Another Arizona lawyer who knew Rehnquist well is, of course, Sandra Day O’Connor, an Associate Justice on the Supreme Court. In her remarks at the September 7 funeral service, she recalled her friend and colleague:

He had no pretenses at all and was always friendly to Justices and staff alike. His sense of humor never left him, and he could break up a tense moment with a funny story, quip or poem. On the last day of our public session, June 27, the Chief noted the seven separate opinions issued in a contentious Ten Commandments case and joked, “I didn’t know we had so many Justices.” It drew hearty laughter from the spectators. He never twisted arms to get a vote on a case. He relied on the power of his arguments, and he was always fair.

...

Thanks to him relations among members of the Court have been remarkably harmonious considering our different viewpoints.

...

I grew up on a ranch. The really expert riders of horses let the horse know immediately who is in control but then they guide the horse with loose reins and very seldom use the spurs. So it was with our Chief. He guided us with loose reins and used the spurs only rarely to get us to speed up with our work.



Bob Schaffer, now with Lewis and Roca, clerked with the Chief Justice in the 1988 Term. He says that the Chief was funny, fair—and competitive.

Rehnquist was known to enjoy betting on games. Usually on a Friday he and the clerks would bet a dollar on an upcoming game.

“He usually came out ahead,” says Schaffer, “but that’s always because he got the edge. Somehow he was able to work the line or work the point spread to get the advantage.”

At Rehnquist’s funeral, one of his granddaughters told the mourners how Rehnquist had taught her how to play cards—poker and bridge—and also how to look in the window behind the other player to see the reflection of their cards.

“We’d play tennis with him every Thursday morning,” Schaffer says. “He has three law clerks, and he always has, even though he’s entitled to more. And I suspect that it’s because he likes to play tennis with his clerks and doesn’t want to leave someone out.”

In cases and interactions with other justices, Schaffer says, Rehnquist “took the long view.”

“He was never too upset about losing any particular case, and he certainly wasn’t going to alienate other justices by pouting about particular losses. He recognized that today’s adversary is going to be tomorrow’s ally.”

That long view may be part of Rehnquist’s legacy. After all, his views did not carry the day in a universally successful way—most evidently in privacy rights and abortion rights. But even there, notes Schaffer, he was able to “put some boundaries on *Roe* and other privacy decisions and to keep the Court from extending those decisions into other areas.”

Putting on the brakes in that and other spheres was elevated by the Chief Justice from a purely reactionary position to a jurisprudence. It was consistent with his view that the legislature was the place where many fundamental policy decisions should be made. In some ways—in fact, in many ways that he probably never thought possible when he first came on the Court—those

views have become part of a more mainstream belief.

That belief is a constellation of ideas, the brightest star of which may be a reinvigorated notion of federalism—“a recognition,” says Mike Meehan, “that state and local governments have a very large role to play in solving the nation’s problems.”

One of the areas in which Rehnquist buttressed the primacy of state prerogatives was in regard to the death penalty and habeas law. He looked at the array of Warren Court decisions in those matters, where others saw rights and due process, and he saw excesses. And “largely,” says Schaffer, “he was successful.”

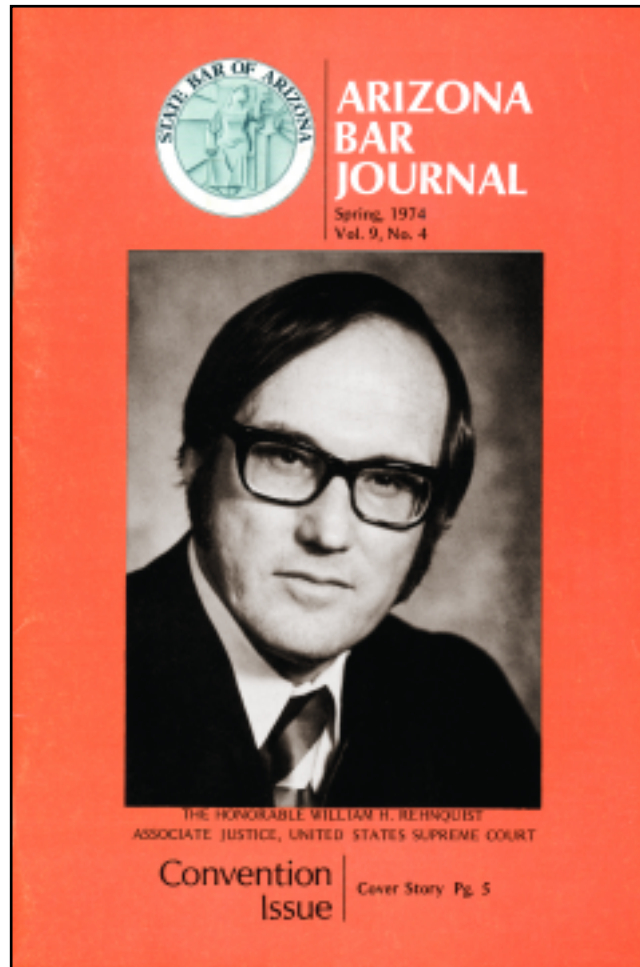
“In terms of criminal procedure,” Schaffer says, “he just wanted to put a stop to the slippery slope that the Warren Court seemed to be on. He viewed a lot of the decisions of the Warren Court as unduly restricting the ability of law enforcement and prosecutors to do their jobs. And I think to a large extent he had much success there.”

Judge Campbell thinks it’s too soon to tell what Rehnquist’s legacy in substantive law will be. But he spots an administrative legacy that is

remarkable and revolutionary in its own way.

“He’s made the Court more efficient: They take fewer cases than they did when he became Chief Justice. And I think that they do that because he recognized that the Supreme Court isn’t a forum for correcting errors in individual cases; it’s a forum for resolving critical issues in the national picture, issues in which there’s a split in the circuits or a division between the federal courts and the state courts.”

Only future Terms will help determine whether William Rehnquist helped foment a conservative revolution. In the meantime, friends and others across the nation remembered a life of service, humor, courtesy and intellect. As Brett Dunkelman says, “He lived 80 years; he wasn’t cheated. And we should all do so well as he did.” **AT**



The newest Associate Justice of the Supreme Court, on the cover of *Arizona Bar Journal* (Spring 1974), the predecessor of *Arizona Attorney*.