



# A Tradition of *Progress*

DANIELS

Arizona's judicial history echoes the pioneering spirit of the first American settlers to break ground in her fertile soil. Though barely a century old, it is an epic story of individuals blazing a trail through seemingly insurmountable obstacles, all in the pursuit of one unifying goal...a better life not only for themselves, or their families, but for *all* Arizonans.

LOCKWOOD

TANG

Join us in a celebration of the lives of seven prominent members of Arizona's judiciary. Learn about the impact their careers have had on not only Arizona's government, but that of the entire nation. The Committee on Judicial Education and Training (COJET) and the Education Services Division offer a look into the lives of Hons. Hayzel B. Daniels, Lorna Lockwood, Thomas Tang, Valdemar Cordova, William Rehnquist, Sandra Day O'Connor, and Francis X. Gordon., in a compelling video series produced and directed by Hon. Wendy Morton.

CORDOVA

REHNQUIST

The series is available online in the Video Center of the Education Services Division's section of the [azcourts.gov](http://www.azcourts.gov) website. Simply go to [www.azcourts.gov](http://www.azcourts.gov) and enter the words "Video Center" in the search field in the upper right-hand corner. The link will take you to the Division's Video Center, where you'll find links to view these videos online.

O'CONNOR

GORDON

**A Tradition of Progress  
A History of Excellence**

# A History of *Excellence*

## Arizona Legends of the Law: William H. Rehnquist



William H. Rehnquist was born on October 1, 1924, in Milwaukee, Wisconsin. His parents were William B. and Margery (Peck) Rehnquist. He grew up in Shorewood, Wisconsin, a northern Milwaukee suburb. After service in World War II with the Army Air Corps from 1943-46, Rehnquist received a B.A. and M.A. from Stanford University in 1948. After obtaining an M.A. from Harvard University in 1950, Rehnquist returned to Stanford to attend its law school, graduating first in his class in 1952. (He actually completed his classes in December 1951, and began working in early 1952.) Current Supreme Court Justice Sandra Day O'Connor also graduated near the top of that same graduating class.

After clerking for Justice Robert H. Jackson from February 1952 through the end of the October 1952 Term (June 1953), Rehnquist moved to Phoenix, Arizona to practice law in a law firm. He remained in Phoenix for 16 years. In 1969, after the election of President Richard Nixon, Rehnquist became a lawyer in Office of Legal Counsel, where he remained for two years. Within one week of one another in September 1971, Justices Hugo Black and John Marshall Harlan, both suffering from terminal illnesses, retired. After the resignation of Abe Fortas in May 1969, Richard Nixon nominated a Southerner, Clement Haynsworth, to succeed Fortas.

The Senate refused to appoint Haynsworth in November by a vote of 55-45. Nixon, determined to nominate a Southerner to replace Fortas (originally from Memphis), nominated G. Harrold Carswell, whose credentials and achievements were much less impressive than Haynsworth's. The Senate again defeated the nomination, this time by a vote of 51-45. Nixon's third choice, Minnesotan Harry Blackmun, was confirmed.

Two years later, Nixon had another chance to nominate a Southerner, and to add a judicial (and political) conservative. Nixon nominated Lewis F. Powell of Richmond, Virginia to replace Black, and Rehnquist to replace Harlan. Rehnquist was questioned at Senate Judiciary Committee hearings about a memorandum he had written for Justice Jackson in 1952 concerning the then-pending case of Brown v. Board of Education (1954). The memorandum concluded that "separate but equal" (the standard in Plessy v. Ferguson, 1896) was the correct constitutional standard.

At his hearings, Rehnquist testified that the memo did not reflect his views, but the views of Justice Jackson, to be used at the conference of the Justices at which *Brown* would be discussed. His testimony was disputed by others (but supported privately by Justice William O. Douglas, the only member of the Court in 1971 who was on the Court in 1952), but the flap subsided, and Rehnquist was confirmed by a vote of 68-26. (Powell, the more moderate nominee, was confirmed by a vote of 89-1.)

As an Associate Justice, Rehnquist was not afraid to write a lone dissent in a number of 8-1 cases, resulting in his being called the "Lone Ranger." In general, Rehnquist considered the Warren Court (and Burger Court, in several respects) of being too "activist" in its decisionmaking, and urged greater judicial "restraint." He was active in policing the boundary between federal and state power, one that the Court had avoided since the constitutional crisis of 1937.

Rehnquist opposed the Court's right to privacy developments, dissenting in Roe v. Wade (1973) and joining the majority in Bowers v. Hardwick (1986). He also was opposed to affirmative action.

At the end of the October 1985 Term (July 1986), Chief Justice Warren Burger retired. President Ronald Reagan nominated Rehnquist to take Burger's seat, and Antonin Scalia to take Rehnquist's seat as Associate Justice. The issue of Rehnquist's conservatism in the Court again arose, along with the disputed memorandum from 1952. The Senate eventually confirmed his appointment by a vote of 65-33. (Scalia, possibly more conservative than Rehnquist, was approved by a vote of 98-0.)

Chief Justice Rehnquist is well organized and politically adept. He has built consensus in numerous cases, and has rarely struck out on his own (Justice Scalia has taken on that role.) Rehnquist remains judicially and politically conservative, but has foregone past positions in favor of consensus. For example, although a longtime opponent to the constitutionalization of the doctrine in *Miranda v. Arizona* (1966) (holding that prior to police interrogation of a person in custody, warnings that statements by the person may be used against him or her must be given, the so-called Miranda warnings known by heart by most Americans through the magic of TV), he recently wrote the Court's opinion affirming (or re-affirming, depending on your point of view) the constitutional basis of *Miranda*.

He also wrote the Court's opinion holding constitutional the Independent Counsel Act, passed in the wake of the Watergate Scandal. *Morrison v. Olson* (1988).

Chief Justice Rehnquist is a popular historian of the Court, author of three books on the history of the Court. *The Supreme Court: How It Is, How It Was* (1987), *Grand Inquests* (1992), and *All the Laws But One: Civil Liberties in Wartime* (paperback 2000) are informative, accessible books about the Court and the American legal system.

He married Natalie Cornell in 1953. She died in 1991. He died on September 3, 2005. They were the parents of three children.

## William H. Rehnquist

William Hubbs Rehnquist (October 1, 1924 – September 3, 2005) was an American lawyer, jurist, and a political figure who served as an Associate Justice on the Supreme Court of the United States and later as the Chief Justice of the United States. Considered a conservative and strict constructionist, Rehnquist favored a federalism under which the states meaningfully exercised governmental power. Under this view of federalism, the Supreme Court of the United States, for the first time since the 1930s, struck down an Act of Congress as exceeding federal power under the Commerce Clause.

Rehnquist presided as Chief Justice for 19 years, making him the fourth-longest-serving Chief Justice after Melville Fuller, Roger Taney and John Marshall, and the longest-serving Chief Justice who had previously served as an Associate Justice. The last 11 years of Rehnquist's term as Chief Justice (1994–2005) marked the second-longest tenure of one makeup of the Supreme Court.

### Early life

Rehnquist was born in Milwaukee, Wisconsin, as William Donald Rehnquist and grew up in the suburb of Shorewood. His father, William Benjamin Rehnquist, was a paper salesman; his mother, Margery Peck Rehnquist, was a translator and homemaker. Rehnquist changed his middle name to Hubbs, his grandmother's maiden name, during his high school years. Rehnquist is a Swedish surname.

Rehnquist graduated from Shorewood High School in 1942. Rehnquist attended Kenyon College, in Gambier, Ohio, for one quarter in the fall of 1942, before entering the U.S. Army Air Forces. Rehnquist served in World War II from March 1943 to 1946. He was put into a pre-meteorology program and was assigned to Denison University until February 1944, when the program was shut down. He served three months at Will Rogers Field in Oklahoma City, three months in Carlsbad, New Mexico, and then went to Hondo, Texas for a few months. He was then chosen for another training program, which began at Chanute Field, Illinois, and ended at Fort Monmouth, New Jersey. The program was designed to teach the maintenance and repair of weather instruments. In the summer of 1945, he went overseas and served as a weather observer in North Africa.

After the war ended, Rehnquist attended Stanford University with assistance under the provisions of the G.I. Bill. In 1948, he received both a bachelor's degree and a master's degree in political science. In 1950, he went to Harvard University, where he received a master's degree in government. He returned later to the Stanford Law School, where he graduated in the same class as Sandra Day O'Connor, who would later serve alongside him on the Supreme Court. Sandra Day and Rehnquist briefly dated at Stanford. It has been said that Rehnquist graduated first in his class, probably based on the fact that he was class valedictorian during graduation ceremonies, but Stanford's official position is that the law school did not rank students in 1952.

## Law Clerk at the Supreme Court

---

Rehnquist went to Washington, D.C. to work as a law clerk for Justice Robert H. Jackson during the court's 1952–1953 term. There, he wrote a memorandum arguing against federal-court-ordered school desegregation while the court was considering the landmark case of *Brown v. Board of Education*, which was later decided in 1954. Rehnquist's 1952 memo, entitled "A Random Thought on the Segregation Cases," defended the separate-but-equal doctrine. In that memo, Rehnquist said:

I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by 'liberal' colleagues but I think *Plessy v. Ferguson* was right and should be reaffirmed.... To the argument ... that a majority may not deprive a minority of its constitutional right, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minority are.

In both his 1971 hearing for Associate Justice and his 1986 hearing for Chief Justice of the United States, Rehnquist alleged that the memorandum reflected the views of Justice Jackson rather than his own views. Rehnquist said, "I believe that the memorandum was prepared by me as a statement of Justice Jackson's tentative views for his own use." Elsie Douglas, long-time secretary and confidante of Justice Jackson, stated during Rehnquist's 1986 hearings that Rehnquist's allegation "is a smear of a great man, for whom I served as secretary for many years. Justice Jackson did not ask law clerks to express his views. He expressed his own and they expressed theirs. That is what happened in this instance." However, the papers of Justices Douglas and Frankfurter indicate that Justice Jackson only voted for *Brown* in 1954 after changing his mind. At his 1986 hearings for the slot of Chief Justice, Rehnquist tried to put further distance between himself and the 1952 memo: "The bald statement that '*Plessy* was right and should be reaffirmed,' was not an accurate reflection of my own views at the time." But, Rehnquist acknowledged defending *Plessy* in arguments with fellow law clerks. Some commentators have concluded that the memo reflected Rehnquist's own views rather than those of Justice Jackson. In any event, while later serving on the Supreme Court, Rehnquist made no effort to reverse or undermine the *Brown* decision, and frequently relied upon it as precedent.

Regarding *Terry v. Adams*, which was about the right of African-Americans to vote in an allegedly private Texas election, Rehnquist wrote the following in a memorandum to Justice Jackson:

The Constitution does not prevent the majority from banding together, nor does it attain success in the effort. It is about time the Court faced the fact that the white people of the south don't like the colored people: the constitution restrains them from effecting this dislike through state action but it most assuredly did not appoint the Court as a sociological watchdog to rear up every time private discrimination raises its admittedly ugly head.

In another memorandum to Justice Jackson regarding the same case (Terry), Rehnquist wrote:

[C]lerks began screaming as soon as they saw this that "Now we can show those damn southerners, etc".... I take a dim view of this pathological search for discrimination ... and as a result I now have something of a mental block against the case.

Nevertheless, Rehnquist recommended to Justice Jackson that the Supreme Court should agree to hear the Terry case.

#### Private Practice

---

Rehnquist moved to Phoenix, Arizona, where he was in private law practice from 1953 to 1969. During these years, he was active in the Republican Party and served as a legal advisor to Barry Goldwater's 1964 presidential campaign. Many years later, during the 1986 Senate hearings on his chief justice nomination, several people came forward to complain about what they viewed as Rehnquist's attempts to discourage minority voters in Arizona elections when Rehnquist served as a "poll watcher" in the early 1960s. Rehnquist denied the charges, and "Vincent Maggiore, then chairman of the Phoenix-area Democratic Party, said he had never heard any negative reports about Rehnquist's Election Day activities. 'All of these things,' he said, 'would have come through me.'"

#### Justice Department

---

When President Richard Nixon was elected in 1968, Rehnquist returned to work in Washington. He served as Assistant Attorney General of the Office of Legal Counsel, from 1969 to 1971. In this role, he served as the chief lawyer to Attorney General John Mitchell. President Nixon mistakenly referred to him as "Renchburg" in several of the tapes of Oval Office conversations revealed during the Watergate investigations. Because he was well-placed in the Justice Department, Rehnquist was mentioned for many years as a possibility for the source known as Deep Throat during the Watergate scandal. (Once Bob Woodward revealed on May 31, 2005, that W. Mark Felt was Deep Throat, this speculation ended, of course.) It was William Rehnquist who first determined that Government National Mortgage Association guarantees constituted a full faith and credit promise of the United States.

#### Associate Justice

---

Nixon nominated Rehnquist to replace John Marshall Harlan II on the Supreme Court upon Harlan's retirement, and after being confirmed by the Senate by a 68-26 vote on December 10, 1971, Rehnquist took his seat as an Associate Justice on January 7, 1972. There were two vacancies on the court at the time; Nixon nominated Lewis Franklin Powell, Jr. to fill the other, left by the retirement of Hugo Black. Black died September 25, 1971, and Harlan passed away on December 29 of that year.

On the Burger Court, Rehnquist promptly established himself as the most conservative of Nixon's appointees, taking a narrow view of the Fourteenth Amendment and a broad view of state power. He voted against the expansion of school desegregation plans and the establishment of legalized abortions, dissenting in *Roe v. Wade*, 410 U.S. 113 (1973), and in favor of state sanctioned prayer in public schools, capital punishment and states' rights. Reluctant to compromise, Rehnquist was the most frequent sole dissenter during the Burger years, garnering the nickname "the Lone Ranger". He voted most often alongside the also conservative Chief Justice Burger.

He expressed his views about the Equal Protection Clause in cases like *Trimble v. Gordon*:

Unfortunately, more than a century of decisions under this Clause of the Fourteenth Amendment have produced .... a syndrome wherein 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. Except in the area of the law in which the Framers obviously meant it to apply — classifications based on race or on national origin, the first cousin of race — the Court's decisions can fairly be described as an endless tinkering with legislative judgments, a series of conclusions unsupported by any central guiding principle.

Yet, nineteen years later, Rehnquist would agree to strike down the male-only admissions policy of the Virginia Military Institute, as violative of this Clause. Rehnquist remained skeptical about the Court's Equal Protection Clause jurisprudence; some of his opinions most favorable to equality resulted from statutory rather than constitutional interpretation. For example, in *Meritor Savings Bank v. Vinson* (1986), Rehnquist established a hostile-environment sexual harassment cause of action under Title VII of the Civil Rights Act of 1964, including protection against psychological aspects of harassment in the workplace. Rehnquist wrote the decision *Diamond v. Diehr*, 450 U.S. 175 (1981), which punched a hole in the dike against software patents in the United States erected by Justice Stevens in *Parker v. Flook*, 437 U.S. 584 (1978); the dike collapsed within a few years and software patenting is now virtually unlimited. In *Sony Corp. of America v. Universal City Studios, Inc.*, pertaining to video cassette recorders such as the Betamax system, Justice Stevens again wrote an opinion providing a broad fair use doctrine while Rehnquist joined the dissent, which supported stronger copyrights. Years later, in *Eldred v. Ashcroft*, 537 U.S. 186 (2003), Rehnquist was in the majority favoring the copyright holders, with Justice Stevens dissenting in favor of a narrower construction of copyright law.

Rehnquist was prescribed the sedative ethchlorvynol (Placidyl) by Dr. Freeman H. Cary, a physician at the U.S. Capitol, for insomnia and back pain from 1972 through 1981 in doses exceeding the recommended limits. However, an FBI report concluded that Rehnquist was already using Placidyl as early as 1970. On December 27, 1981, Rehnquist entered George Washington University Hospital for treatment of back pain and

physical dependency on Placidyl. While hospitalized, he had typical withdrawal symptoms from this "highly toxic" drug, including hallucinations and paranoia — at one point he thought the CIA was plotting against him. In 1981, prior to the hospitalization, Rehnquist had slurred his words for several weeks, but there were no indications he was otherwise impaired. According to USA Today Supreme Court correspondent Joan Biskupic, "There's no sign that [Rehnquist] wasn't keeping up with his work" over the period he was taking Placidyl. Law professor Michael Dorf has observed that, "none of the Justices, law clerks or others who served with Rehnquist have so much as hinted that his Placidyl addiction affected his work, beyond its impact on his speech."

Alexander Charns, a Durham, North Carolina, lawyer, says that when Rehnquist was nominated for Chief Justice, the Reagan administration, like the Nixon administration, used the FBI to plot against witnesses who opposed Rehnquist's nomination. Charns claims his allegations are supported by FBI files that were declassified after Rehnquist's death in response to a Freedom of Information Act request. The file shows that the FBI investigated witnesses testifying both for and against Rehnquist's confirmations, and "the FBI file adds surprisingly little to a balanced assessment of his judicial career."

Rehnquist was known around Washington for his youthful "hipster" appearance, having longish hair, sideburns, and a wardrobe of loudly-colored shirts and ties. This look of his, combined with his relatively early start in the Federal judiciary, caused people not to take him that seriously. In fact, President Nixon referred to Rehnquist several times as "that clown" when discussing his name for a potential Supreme Court nomination.

### Chief Justice

When Chief Justice Warren Burger retired in 1986, President Ronald Reagan nominated Rehnquist to fill the position. During confirmation hearings, Senator Edward Kennedy challenged Rehnquist on his unwitting ownership of property that had a restrictive covenant against sale to Jews; such covenants are unenforceable under *Shelley v. Kraemer*, 334 U.S. 1 (1948). Despite this and other controversies, the Senate confirmed his appointment by a 65-33 vote, and he assumed the office on September 26. Rehnquist's seat as an associate justice was filled by Antonin Scalia.

The two most visible aspects of Rehnquist's tenure as Chief were his presiding over the impeachment trial of Bill Clinton and the *Bush v. Gore* decision. In 1999, Rehnquist became the second Chief Justice (after Salmon P. Chase) to preside over a presidential impeachment trial, during the proceedings against President Bill Clinton. In 2000, Rehnquist wrote a concurring opinion in *Bush v. Gore*, the case that effectively ended the presidential election controversy in Florida. He concurred with four other justices in that case the Equal Protection Clause barred a "standardless" manual recount of the votes as ordered by the Florida Supreme Court. In his capacity as Chief Justice, Rehnquist administered the Oath of Office to Presidents George H.W. Bush (once), Bill Clinton (twice) and George W. Bush (twice).

## Federalism Doctrine

---

Rehnquist was expected to push the Supreme Court in a more conservative direction during his tenure. One area many commentators expected to see changes was in limiting the power of the federal government and in increasing the power of state governments.

Chief Justice Rehnquist voted with the majority in *City of Boerne v. Flores* (1997), and would later refer to that decision as precedent for requiring Congress to defer to the Court as regards interpretation of the Fourteenth Amendment (including the Equal Protection Clause) in a number of cases. *Boerne* held that any statute that Congress enacted to enforce the provisions of the Fourteenth Amendment (including the Equal Protection Clause) had to show "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." The Rehnquist Court's congruence and proportionality theory replaced the "ratchet" theory that had arguably been advanced in *Katzenbach v. Morgan* (1966). According to the "ratchet" theory, Congress could "ratchet up" civil rights beyond what the Court had recognized, but Congress could not "ratchet down" judicially recognized rights. According to the majority opinion of Justice Kennedy, which Chief Justice Rehnquist joined in *Boerne*:

There is language in our opinion in *Katzenbach v. Morgan*, 384 U.S. 641 (1966), which could be interpreted as acknowledging a power in Congress to enact legislation that expands the rights contained in §1 of the Fourteenth Amendment. This is not a necessary interpretation, however, or even the best one.... If Congress could define its own powers by altering the Fourteenth Amendment's meaning, no longer would the Constitution be "superior paramount law, unchangeable by ordinary means."

The Rehnquist Court's congruence and proportionality standard made it easier to revive older precedents preventing Congress from going too far in enforcing equal protection of the laws.

One of the Rehnquist Court's major developments involved reinforcing and extending the doctrine of sovereign immunity, which limits the ability of Congress to subject non-consenting states to lawsuits by individual citizens seeking money damages.

In both *Kimel v. Florida Board of Regents* (2000) and *Board of Trustees of the University of Alabama v. Garrett* (2001), the Court held that Congress had exceeded its power to enforce the Equal Protection Clause. In both those cases, Chief Justice Rehnquist was in the majority that held discrimination by states based upon age or disability (as opposed to race or gender) need only satisfy rational basis review as opposed to strict scrutiny.

Though the Eleventh Amendment by its terms applies only to suits against a State by citizens of another State, the Rehnquist Court often extended this principle to suits by citizens against their own States. One such case was *Alden v. Maine* (1999), in which the Court explained that the authority to subject states to private suits does not follow from

any of the express enumerated powers in Article One of the Constitution, and therefore the Alden Court looked to the Necessary-and-proper clause to see if that Clause authorized Congress to subject the states to lawsuits by the state's own citizens. Chief Justice Rehnquist agreed with Justice Kennedy's statement that such lawsuits were not "necessary and proper":

Nor can we conclude that the specific Article I powers delegated to Congress necessarily include, by virtue of the Necessary and Proper Clause or otherwise, the incidental authority to subject the States to private suits as a means of achieving objectives otherwise within the scope of the enumerated powers.

However, the Court acknowledged that various amendments to the Constitution were intended to give Congress power to abrogate sovereign immunity, one of those amendments being the Fourteenth, and thus Congress may authorize suits for money damages pursuant to (for example) its power to enforce the Fourteenth Amendment, which includes the Equal Protection Clause.

Chief Justice Rehnquist also led the Court toward a more limited view of Congressional power under the Commerce Clause of the U.S. Constitution. For example, he wrote for a 5-to-4 majority in *United States v. Lopez*, 514 U.S. 549 (1995), striking down a federal law as exceeding congressional power under the commerce clause.

*Lopez* was followed by *United States v. Morrison*, 529 U.S. 598 (2000), in which Rehnquist wrote the Court's opinion striking down the civil damages portion of the Violence Against Women Act of 1994 as regulating conduct that does not have a significant direct effect on interstate commerce. Rehnquist's majority opinion in *Morrison* also rejected an Equal Protection argument on behalf of the Act. All four dissenters disagreed with the Court's interpretation of the Commerce Clause, and two dissenters (Stevens and Breyer) also took issue with the Court's Equal Protection analysis. Regarding the Commerce Clause, Justice Souter asserted that the Court was improperly seeking to convert the judiciary into a "shield against the commerce power."

Regarding the Equal Protection Clause, Chief Justice Rehnquist's majority opinion in *Morrison* cited precedents limiting the Clause's scope, such as *United States v. Cruikshank* (1876), which held that the Fourteenth Amendment applied only to state actions, not private acts of violence. Dissenting Justice Breyer, joined by Justice Stevens, agreed with the majority that it "is certainly so" that Congress may not "use the Fourteenth Amendment as a source of power to remedy the conduct of private persons." However, Breyer and Stevens took issue with another aspect of the *Morrison* Court's Equal Protection analysis: they argued that cases that the majority had cited (including *United States v. Harris* and the Civil Rights Cases regarding lynching and segregation respectively) did not consider "this kind of claim" in which state actors "failed to provide adequate (or any) state remedies." In response, the *Morrison* majority asserted that the Violence Against Women Act was "directed not at any State or state actor, but at individuals who have committed criminal acts motivated by gender bias."

The federalist trend set by Lopez and Morrison was seemingly halted by *Gonzales v. Raich* (2005), in which the court broadly interpreted the Commerce Clause to allow Congress prohibit the intrastate cultivation of medicinal cannabis. Rehnquist, along with O'Connor and Thomas, dissented in Raich.

Rehnquist authored the majority opinion in *South Dakota v. Dole* (1987) upholding Congress's reduction of funds to states not complying with the national 21-year-old drinking age. Rehnquist's broad reading of Congress's spending power was also seen as a major limitation on the Rehnquist Court's push towards redistribution of power from the federal government to the states.

### Stare Decisis

---

Many commentators also expected the Rehnquist Court to overrule several of its controversial decisions broadly interpreting the Bill of Rights. The Rehnquist Court, however, specifically declined to overrule *Roe v. Wade* and *Miranda v. Arizona*.

Chief Justice Rehnquist was a foe of the Court's 1973 *Roe v. Wade* decision. In 1992, that decision survived by a 5-4 vote, in *Planned Parenthood v. Casey*, which relied heavily on the doctrine of stare decisis. Dissenting in *Casey*, Rehnquist criticized the Court's "newly minted variation on stare decisis," and asserted his belief "that *Roe* was wrongly decided, and that it can and should be overruled consistently with our traditional approach to stare decisis in constitutional cases."

Rehnquist was not reluctant to apply stare decisis in the fashion he believed appropriate. For example, in *Dickerson v. United States* (2000), Rehnquist voted to reaffirm the Court's famous decision in *Miranda v. Arizona* (1966) based not only on the notion of adhering to precedent, but also based on his belief that "the totality-of-the-circumstances test ... is more difficult than *Miranda* for law enforcement officers to conform to, and for courts to apply in a consistent manner." Shortly after *Dickerson* was decided, the Court dealt with another abortion case, this time dealing with so-called partial birth abortion in *Stenberg v. Carhart* (2000). Again, a 5-4 decision, and again a dissent from Rehnquist urged that stare decisis should not be the sole consideration: "I did not join the joint opinion in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), and continue to believe that case is wrongly decided."

### Gay Rights

---

Among the many closely-watched decisions during Chief Justice Rehnquist's tenure was *Romer v. Evans* (1996). Colorado had adopted an amendment to the state constitution ("Amendment 2") that the Court majority said would have prevented any city, town or county in the state from taking any legislative, executive, or judicial action to protect homosexual citizens from discrimination on the basis of their sexual orientation. Rehnquist joined the dissent, which argued that the Constitution of the United States says nothing about this subject, so "it is left to be resolved by normal democratic means." The dissent, written by Justice Scalia, argued as follows (punctuation omitted):

General laws and policies that prohibit arbitrary discrimination would continue to prohibit discrimination on the basis of homosexual conduct as well. This ... lays to rest such horrors, raised in the course of oral argument, as the prospect that assaults upon homosexuals could not be prosecuted. The amendment prohibits special treatment of homosexuals, and nothing more. It would not affect, for example, a requirement of state law that pensions be paid to all retiring state employees with a certain length of service; homosexual employees, as well as others, would be entitled to that benefit.

The dissent mentioned the Court's then-existing precedent in *Bowers v. Hardwick* (1986), that "the Constitution does not prohibit what virtually all States had done from the founding of the Republic until very recent years — making homosexual conduct a crime." By analogy, the *Romer* dissent reasoned that, "If it is rational to criminalize the conduct, surely it is rational to deny special favor and protection to those with a self avowed tendency or desire to engage in the conduct." The dissent listed murder, polygamy, and cruelty to animals as behaviors that the federal Constitution allows states to be very hostile toward, and in contrast the dissent stated: "the degree of hostility reflected by Amendment 2 is the smallest conceivable." The *Romer* dissent added:

I would not myself indulge in ... official praise for heterosexual monogamy, because I think it no business of the courts (as opposed to the political branches) to take sides in this culture war. But the Court today has done so, not only by inventing a novel and extravagant constitutional doctrine to take the victory away from traditional forces, but even by verbally disparaging as bigotry adherence to traditional attitudes.

The Supreme Court under Rehnquist went on to overrule *Bowers* in 2003's *Lawrence v. Texas*, with Rehnquist again dissenting along with Scalia and Thomas. The Court's result in *Romer*, which seemed to reach the inexplicable conclusion that states could enact sodomy laws targeting homosexuals but could not enact state constitutional amendments denying homosexuals other sorts of rights, was clarified significantly by the *Lawrence* decision.

Rehnquist sometimes reached results favorable to homosexual persons, for example voting to allow a gay CIA employee to sue for improper personnel practices, voting to allow same-sex sexual harassment claims to be adjudicated, and voting to allow the University of Wisconsin-Madison to require students to pay a mandatory fee that subsidized gay groups along with all other student organizations.

#### Civil Rights Act

---

Rehnquist voted with the majority in denying a private right to sue for discrimination based on race or national origin involving a disparate impact under title VI of the Civil Rights Act of 1964, in *Alexander v. Sandoval* (2001), which involved the issue of whether a citizen could sue a state for not providing driver license exams in languages other than English. *Sandoval* cited *Cannon v. University of Chicago* (1979) as a

precedent. The Court voted 5-4 that various facts (regarding disparate impact) mentioned in a footnote of Cannon were not part of the holding of Cannon. The majority also viewed it as significant that §602 of Title VI did not repeat the rights-creating language (race, color, or national origin) in §601.

### Religion Clause

---

Chief Justice Rehnquist also led the way in allowing greater state assistance to religious schools, writing for another 5-to-4 majority in *Zelman v. Simmons-Harris*. In *Zelman*, the Court approved a school voucher program that aided church schools along with other private schools.

In June of 2005, Rehnquist wrote the plurality opinion upholding the constitutionality of a display of the Ten Commandments at the Texas state capitol in Austin. The case was *Van Orden v. Perry*. Rehnquist 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.

This decision was joined by Justices Scalia, Thomas, Breyer, and Kennedy.

### Contribution to Judicial Fashion

---

Chief Justice Rehnquist added four yellow stripes to the sleeves of his robe in 1995, the first such alteration in the history of the Court. He was a fan of Gilbert & Sullivan operas and after appreciating the judge's costume in a community theater production of "Iolanthe", he thereafter appeared in court with the same striped sleeves. Coincidentally, these stripes resemble the insignia of a United States Navy captain; thus the stripes could also be a symbol of Rehnquist being in charge of the Supreme Court. His successor, Chief Justice John Roberts, chose not to continue the practice.

### Personal Health

---

After Rehnquist's death in 2005, the FBI honored a freedom of information request detailing the Bureau's background investigation prior to Rehnquist's 1971 nomination to the Supreme Court.

The files reveal that William Rehnquist had been addicted to Placidyl, a medicine widely prescribed for insomnia. Placidyl can be addictive and it wasn't until he was hospitalized that doctors learned of the depth of his dependency. According to testimony given to the FBI, when Rehnquist stopped taking Placidyl, "...he suffered paranoid delusions". Further, "...One doctor said Rehnquist thought he heard voices outside his hospital room plotting against him and had "bizarre ideas and outrageous thoughts," including imagining "a CIA plot against him" and "seeming to see the design patterns on the hospital curtains change configuration."

## Declining Health and Death

On October 26, 2004, the Supreme Court press office announced that Rehnquist had recently been diagnosed with anaplastic thyroid cancer. After several months out of the public eye, Rehnquist administered the oath of office to President George W. Bush at his second inauguration on January 20, 2005, despite doubts over whether his health would permit his participation. He arrived using a cane, walked very slowly, and left immediately after the oath itself was administered.

After missing 44 oral arguments before the Court in late 2004 and early 2005, Rehnquist appeared on the bench again on March 21, 2005. During his absence, however, he remained involved in the business of the Court, participating in many of the decisions and deliberations from his home.

On July 1, 2005, Rehnquist's colleague Sandra Day O'Connor announced her retirement from her position of Associate Justice, after consulting with Rehnquist and learning that he intended to remain on the Court. Commenting on the frenzy of speculation over his retirement, Rehnquist joked with a reporter who asked if he would be retiring, "That's for me to know and you to find out."

Rehnquist died at his Arlington, Virginia, home on September 3, 2005, just four weeks before his 81st birthday. Rehnquist was the first member of the Supreme Court to die in office since Justice Robert H. Jackson in 1954, and the first Chief Justice to die in office since Fred M. Vinson, in 1953.

On September 6, 2005, eight of Rehnquist's former law clerks, including Judge John Glover Roberts, Jr., his eventual successor, served as his pallbearers as his casket was placed on the same catafalque that bore Abraham Lincoln's casket as he lay in state in 1865. Rehnquist's body remained in the Great Hall of the Supreme Court until his funeral on September 7, 2005, a Lutheran service conducted at the Roman Catholic Cathedral of St. Matthew the Apostle in Washington, D.C. The presiding minister was George Evans, the former chief of Chaplains for the US Navy. Rehnquist was eulogized by President George W. Bush and Justice Sandra Day O'Connor, as well as by members of his family. His funeral was followed by a private burial service, in which he was interred next to his late wife, Nan, at Arlington National Cemetery.

## Succession as Chief Justice

Rehnquist's death, just over two months after O'Connor announced her retirement, left two vacancies to be filled by President George W. Bush. On September 5, 2005, Bush withdrew the nomination of Judge John Glover Roberts, Jr. of the D.C. Circuit Court of Appeals to replace O'Connor as Associate Justice, and instead nominated him to replace Rehnquist as Chief Justice. Roberts was confirmed by the U.S. Senate and sworn in as the new Chief Justice on September 29, 2005. Roberts had clerked for Rehnquist in 1980–1981.

## Family Life

---

Rehnquist's paternal grandparents immigrated separately (although they may have known one another before) from Sweden in 1880. His grandfather Olof Andersson, who changed his surname from the patronymic Andersson to the family name Rehnquist, was born in the province of Värmland and his grandmother was born Adolfina Ternberg in Vretakloster (parish) in Östergötland. Rehnquist is one of two Chief Justices of Swedish descent, the other being Earl Warren, who had Norwegian-Swedish ancestry.

Rehnquist's maternal lineage traces back via New York to the Pilgrims and other early New England settlers.

Rehnquist married Natalie "Nan" Cornell on August 29, 1953. She died on October 17, 1991, after suffering from ovarian cancer. The couple had three children: James, Janet and Nancy. Janet Rehnquist is a former Inspector General of the Department of Health and Human Services.

Rehnquist bought a place in Greensboro, Vermont, where he spent the summer court recess with his family.

From Wikipedia (citations omitted)

## Conservatism, Judicial Restraint Mark Rehnquist Legacy

By Bill Mears  
CNN Washington Bureau  
Sunday, September 4, 2005

WASHINGTON (CNN) -- Born in Wisconsin and schooled at Stanford, the man who set up his early legal practice in the land of Barry Goldwater will be remembered as much for his personal touch on the workings of the Supreme Court as the conservative legal path he charted.

William Hubbs Rehnquist's service on the nation's highest court during seven presidencies leaves a judicial legacy that many legal scholars say rivals that of predecessors John Marshall in the 19th century and Earl Warren in the 20th century. Rehnquist accomplished this by leading what has been called a quiet revolution developed over many years. Supreme Court scholar David Yalof credits Rehnquist for ably moving the court in a conservative, consistent direction.

"He did it by choosing carefully the doctrine of judicial restraint," says Yalof, a constitutional law professor at the University of Connecticut. "You see it in the cases the court hears, and showing the way with his brand of leadership."

### **Supporter of states' rights**

Supreme Court analysts say Rehnquist's judicial legacy is wide-ranging. In the area of federalism, he consistently sided with states that were sued over violating congressional law, including age discrimination, the Americans with Disabilities Act and the Violence Against Women Act. He guided the court to spare states some impositions of the Religious Freedom Restoration Act and the Brady gun control laws.

In the 1995 gun control case -- U.S. v. Lopez -- the high court reversed a federal law banning guns near local schools. Writing the majority opinion, Rehnquist said the Supreme Court had traditionally deferred to Congress, but said its power this time needed to be curbed, or else "there will never be a distinction between what is truly national and what is truly local."

Rehnquist also showed his flexibility in order to have the high court speak forcefully as one in important cases.

In May 2003 the Supreme Court offered a rare rebuke against states rights. In the case of Nevada Dept. of Human Resources v. Hibbs, a state worker was given the right to sue Nevada officials under the federal Family and Medical Leave Act, for denying him time to care for his ailing wife. Rehnquist sided with the majority, departing from his fellow conservatives on the court and agreeing that Congress had the right to address a long, established record of sex discrimination against women and men in the workplace. Part of Rehnquist's strategy on that case and others was to be practical, offering a perk the chief justice enjoys.

"By being on the winning side, he's able to write the majority opinion," says Edward Lazarus, author of "Closed Chambers: The Rise, Fall, and Future of the Modern Supreme Court," a book on the court's inner workings. "And he's able to narrow it just enough to allow some of his views on the larger issue. It's a clever, long-term view of the world." Rehnquist also voted in support of homosexual rights and free speech, although he opposed the court's June 2003 decision to strike down a Texas state law banning private consensual sex between adults of the same sex and to reverse a previous ruling that upheld state sodomy laws.

But Rehnquist has suffered significant judicial defeats. Among his most notable dissents:

- *Roe v. Wade* (1973), which based a woman's right to an abortion on the right to privacy.
- *United Steel Workers v. Weber* (1979), where a white man sued his employer for reverse discrimination. The majority of the Supreme Court found the discrimination against whites did not violate the "spirit" of Title VII of the Civil Rights Act, and thereby was lawful.

#### **Advocate of respectful debate**

A subtler legacy Rehnquist leaves is that of an administrator, observers say. Having already sat on the Supreme Court for 14 years, Rehnquist quickly matured in the role of chief justice when he took that seat in 1986. He cut the number of cases the court agreed to hear, streamlined the conferences and sought clearer, more reasoned opinions.

A Supreme Court chief justice has power both explicit and implied. The chief justice leads the closed-door conferences where justices discuss and vote on cases; assigns who writes the majority rulings; manages the docket; controls the open court arguments; and supervises the 300 or so court employees, including clerks, secretaries, police and support staff.

Justice Oliver Wendell Holmes once described Supreme Court deliberations as "nine scorpions in a bottle," where the trick was to keep them from stinging each other. But Jay Jorgensen, a former clerk for the chief justice, says it has been the little things Rehnquist did in the insular world of the court that built personal trust, loyalty and respect among justices often sharply divided ideologically.

"He set up a system during conferences where every justice, one by one, in order of seniority, is allowed to weigh in on a case," Jorgensen said. "There is no free-for-all debate. The chief justice does not allow bickering. He shuts it down."

Still, legal scholars agree Rehnquist's legacy has some holes. Despite the court chipping away slightly at the 1973 *Roe v. Wade* ruling, the right to an abortion remains the law of the land.

"On affirmative action and Miranda rights, among other things, Rehnquist hasn't gotten everything he wanted," said Tom Goldstein, a partner in a Washington, D.C.-based law firm that only handles Supreme Court cases.

"Across the board there are disappointments. The stakes remain high, there are still many 5-4 votes, but he has been successful keeping the individual battles from turning into larger wars."