

William H. Rehnquist, Jackson law clerk

*John Q. Barrett**
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William H. Rehnquist first came to Washington, D.C., as an adult in early 1952, when he arrived in the capital to begin working as a law clerk to Supreme Court Justice Robert H. Jackson. Rehnquist had graduated from Stanford Law School in December 1951. Some months earlier, his professor Phil C. Neal had arranged for Jackson, who was making a social visit to Palo Alto that summer, to interview Rehnquist for a possible clerkship. Neal had been Jackson's law clerk from 1943-45 and, thanks to his recommendation, Rehnquist got the opportunity to be one of his successors.

Rehnquist worked as one of Jackson's two law clerks during the second half of the Supreme Court's 1951 Term and for all of the 1952 Term. During Rehnquist's first five clerking months (February-June 1952), his co-clerk was C. George Niebank, Jr. During the next twelve months, Rehnquist's co-clerk was Donald Cronson. During Rehnquist's time as a Jackson law clerk, the Supreme Court's work included, among many matters, the momentous *Steel Seizure Cases* (*Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (argued May 12-13 and decided June 2, 1952)) and the initial oral arguments in *Brown v. Board of Education* and its companion cases attacking the constitutionality of school segregation (argued December 9-11, 1952).

In Justice Jackson, William Rehnquist found that he had a boss who was very experienced after ten years on the Court and quite autonomous in his work. Jackson wrote almost all of his own opinions, so the main task for his law clerks, including Rehnquist, was to prepare memoranda on the many petitions the Court received seeking writs of *certiorari*.

Rehnquist also found that Justice Jackson was generous with his clout. An illustration is a February 25, 1952, official letter that Jackson wrote—or at least signed; perhaps this document was Rehnquist's first draft

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on Supreme Court letterhead—to the District manager of Washington’s Chesapeake & Potomac Telephone Company:

Dear Sir:

Mr. William H. Rehnquist, my law clerk, is now residing at 1414 Montague Street, N.W. and to date is without telephone service in his apartment. The work of the Court is such that it frequently is necessary that I be able to reach him after Court hours and I would greatly appreciate it if installation of a telephone in his apartment could be expedited.

Sincerely yours,
/s/ Robert H. Jackson

Rehnquist’s clerkship did, however, include a tense spot in his relationship with Jackson. Almost fifty years later, Chief Justice Rehnquist described it vividly:

I remember only one occasion on which he showed considerable [irritation] with me, and I think he had every right to show it. In those days the Justices held their weekly Conferences on Saturday, and after the Conferences were over and the Justices had left the building some of us law clerks played basketball upstairs. I had developed the habit—without ever asking [Justice Jackson]—of using his private shower after basketball games. One Saturday afternoon I stepped out of the shower with only a towel around my waist, only to see him and a couple of friends from upstate New York standing at the entrance to his chambers. I profusely apologized, and after a few days our relations were back to normal.

Rehnquist developed, in his clerkship, a comfortable (and safe) work schedule: Jackson would come in at 10:00, Justice Rehnquist later explained, so he would arrive at 9:35; Jackson would leave at 6:00, so law clerk Rehnquist would leave at 6:20. He later recalled that Jackson “as an employer, and, in a way, a preceptor, ... was fair, considerate and wise”—he “was a delightful person,” “as ideal an employer as a law clerk could have.” Jackson also, Chief Justice Rehnquist noted, “used an elegant writing style in his opinions, which could be a model for all appellate judges.”

On later occasions, Justice and then Chief Justice Rehnquist often discussed his clerkship experience and paid tribute to Justice Jackson. In

September 1979, Justice Rehnquist delivered a Jackson Lecture, about Jackson himself, at Albany Law School, Jackson's *alma mater*. This Rehnquist analysis of Jackson, based on personal recollections and thorough research and penned when Justice Rehnquist was in his youthful prime (age 55), is extremely insightful. He noted "Robert Jackson's remarkable similarity to Abraham Lincoln in many respects," focusing specifically on Jackson's "character traits" including a Lincoln-like "rare ability to profit from experience, to accommodate his views when that experience seemed to require accommodation, and yet to maintain throughout his life a sturdy independence of view which took nothing on someone else's say-so." Justice Rehnquist described Jackson's "life as a lawyer and judge [a]s a living testament to the fact that the legal profession is indeed a career open to the talents"—Jackson rose to his professional heights, Rehnquist noted, "on the basis of sheer ability" plus "an element of doggedness" that included the "commonsense" and "the value of the Western New York environs where he spent the first forty years of his life." See William H. Rehnquist, *Robert H. Jackson: A Perspective Twenty-Five Years Later*, 44 ALBANY L. REV. 533-41 (1980).

Eight years later—by which time former law clerk Rehnquist had become Chief Justice of the United States—he published a popular history book, *THE SUPREME COURT: HOW IT WAS, HOW IT IS* (William Morrow & Co.). Two of its opening chapters, "A Law Clerk Comes to Washington" and "The Steel Seizure Case in the Supreme Court," are quite autobiographical, recounting many details of his time as a Jackson law clerk. In 2002, Chief Justice published a new book, *THE SUPREME COURT* (Vintage Books), in which he reprised some of this material on his Jackson clerkship.

In May 2003, Chief Justice Rehnquist traveled to Jamestown, New York, Jackson's adult hometown, to dedicate the Robert H. Jackson Center. The Chief Justice's speech on this occasion focused on Jackson's year away from the Supreme Court as chief United States prosecutor of Nazi war criminals at Nuremberg during 1945-46, but it also included warm memories, fifty years old, of having known and worked with Justice Jackson. The speech is available as it was broadcast on C-SPAN (starting at time counter reading 28:00), along with related press material, on the Jackson Center website: www.roberthjackson.org. (Chief Justice Rehnquist subsequently published this material on Jackson and Nuremberg in the afterword to his (WHR's) final book, *CENTENNIAL CRISIS: THE DISPUTED ELECTION OF 1876* (Alfred A. Knopf, 2004).

Although Chief Justice Rehnquist attracted much commentary during his last ten years for designing and wearing a judicial robe with four opera-inspired gold stripes on each sleeve, the filmed record of his May 2003 Jackson Center dedication speech shows that he was not much of a dandy. That early spring day in Chautauqua County, New York, was overcast and cool. The rain had just stopped and it threatened to resume at any moment. And so Chief Justice Rehnquist, apparently without giving it a second thought, stepped to the podium that morning and spoke wearing his rumpled raincoat. This showed his seventy-eight year old sensibility and, perhaps, his determination not again to be caught underdressed in a Jackson situation.

Justice Jackson gave William Rehnquist, in addition to the value of a Supreme Court clerkship experience and credential, a piece of advice that the younger man apparently took, and one that apparently was right on target: “If you ever want to come back to Washington in a policymaking position,” Jackson told young Rehnquist, “go back to where you came from. Get out now. That’s where those guys come from—they’re chosen from the outside.” (When Chief Justice Rehnquist recounted this advice in 2003, he added, “That’s less true now.”)

After his Jackson clerkship concluded, William Rehnquist did return to the west. He settled in Arizona, where he rose in legal practice and in Republican Party politics. He came back to Washington in 1969 when he was appointed assistant attorney general in the Nixon administration. In 1971, he was appointed an associate justice. Justice Rehnquist succeeded Justice John M. Harlan, who in 1955 had been appointed to succeed Justice Jackson.

In a sad coincidence, Chief Justice Rehnquist’s death this month marks the first time since Justice Jackson’s own death in 1954 that a Supreme Court justice has died in office.