

Chief Justice Rehnquist's First Bout With Classroom Instruction

By Donald R. Philbin, Jr. And Pamela J. Minetto

After the grueling and often personal interrogation of President Reagan's nominee for the position of Chief Justice of the United States, Justice William H. Rehnquist might have been expected to be licking his wounds at some secluded retreat. Instead, he and his wife, Nan, boarded a commercial airliner in Washington the day following his release by the Senate Judiciary Committee. Bound for the Pepperdine University School of Law in Malibu, Calif., the Chief Justice Designate was to instruct a two-week seminar on The History of the Supreme Court and Constitutional Law.

Nourished by the outpouring of support these ideological assaults prompted, as well as a dinner provided by law school administrators, which consisted of a hamburger and chocolate chip cookies, Justice Rehnquist fulfilled his 18-month-old teaching obligation. He assumed his post as distinguished Visiting Professor of Law on the first Monday in August of 1986.

His audience was slightly larger than the Committee he had faced the preceding week (25 students), but the topic was less controversial. Though certainly not his first teaching moment, it was his first bout with academic instruction in the manner to which we law students have become accustomed. Following one of the shortest introductions on record, the Chief Justice Designate rose and described the course in a nutshell, began our historical journey, and randomly selected his first Socratic victim. As if this group of third-year Constitutional Law veterans were not already spellbound by the mere proximity (10 to 15 feet) of this towering and preeminent jurist, when that first question was framed, you could have heard the proverbial pin drop. Asked in the characteristically

gentle tone we later became used to, what student of the law would appear to be unprepared, much less admit it?

The class relaxed as time passed. By the second week our instructor was augmenting this historical sketch with songs which depicted the times in which celebrated constitutional doctrines were formed. Justice Rehnquist was not passing around copies of these vintage tunes; rather he sang them acappella in a smooth baritone voice for the class he now called by name, from memory, both inside the classroom and out. During such an extraordinary experience, one cannot help but wonder how it came to pass and why such a high ranking official would take time at such a crucial moment in his career to instruct such a small gathering of law students; especially in light of other impressive alternatives, such as the American Bar Association Annual Meeting in New York.

Conceived as simply as the course itself proceeded, this event had its genesis in a suggestion by Associate Dean James M. McGoldrick, Jr., during a planning conference with Dean Ronald F. Phillips. Why not ask a sitting Justice of the Supreme Court of the United States to participate in the distinguished Visiting Professor Program? This program was initiated in the early 1970s both to expose students to "giants in their respective fields" as well as to expose these "giants" to Pepperdine University, according to Dean Phillips. Given these objectives, Justice Rehnquist seemed the likely choice. After all, he dedicated the Odell McConnell Law Center in 1979 (speech reprinted at 7 Pepperdine Law Review 227 (1980)), is an active member of the Law School Board of Visitors (a group of Bar and business leaders who advise and counsel law school ad-

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ministrators), and has enjoyed a long association with the School of Law and its Dean of 16 years service. Not to dwarf other important factors, Malibu provided a welcome escape from the stifling summer heat of Washington.

The offer was made and accepted. The forum provided an opportunity for Justice Rehnquist to pursue his interest in the history of the Supreme Court and to experience a new phenomenon, "academic instruction." Seminar particulars were crystalized via communication between Washington and London where Associate Dean James M. McGoldrick, Jr. was acting as the Resident Faculty Director of the London Program, a program which offers a semester-length, overseas program for law students.

Finally, in February of 1986, during a casual luncheon in his Washington chambers, Justice Rehnquist and Dean McGoldrick hammered out the final details over ham sandwiches, potato chips, iced tea and apples. A two-week seminar on the history of the Supreme Court from a personal vantage point was envisioned, requiring coverage of fundamental cases, 18 in number, in full unadulterated text (some in excess of 200 pages). Perhaps the reading list best exemplifies the class requirements. The student was responsible for a fundamental understanding of "the commercial development of the steamboat and the railroad; the history of the westward movement; the struggle over slavery; the commercial and industrial growth following the Civil War; the Granger, Greenback, Populist, and Progressive Movements; the Great Depression and the New Deal." To augment this, the "standard biographies of John Marshall, Joseph Story, Roger B. Taney,

Samuel Freeman Miller, Stephen J. Field, Oliver Wendell Holmes, Louis D. Brandeis, and Charles Evans Hughes," were suggested.

It seemed as if the best laid plans of Deans and Jurists would crumble when President Reagan decided to name William Rehnquist the Sixteenth Chief Justice of the United States. Alas and alack, the teaching commitment was now foreshadowed by imminent cancellation. Other obligations that appeared on the Justice's schedule, such as a speaking engagement at the Ninth Circuit Judicial Conference, necessarily fell to the wayside.

Summer marched on as we plowed through the massive reading list. Anxious as children to get to Disneyland, we watched the hearings daily, wondering whether our instructor would be in Malibu on the first Monday in August. The hearings were scheduled to continue into the first week of our class but Justice Rehnquist had been released from Washington. Would he leave town while important questions remained that overshadowed whether he would reach the absolute pinnacle of the legal profession? Could he possibly be in a classroom 2,700 miles away with a three-hour time difference when the Committee resumed hearings on Monday morning?

On that first Monday in August, two dozen enrolled students brought their stacks of history books and unedited cases to the small, isolated, classroom on the first floor of the law school. As students wandered around before class on this quiet Monday morning the grapevine sizzled as the Chief Justice Designate strolled alone toward the building from his rental car. Our anxiousness turned to fear. No one now wondered whether he would be in

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class, but rather, what was he going to do with that expansive reading list when he got there? More than one of us had gone to a law school class with less than a thorough grasp of the material, but not when the highest jurist in the land was firing questions about such broad topics as westward expansion and the Progressive Movement. We had all heard how piercing he could be from the bench; now there was a one in four chance that our number would come up--and it could easily come up today.

As time rolled up on nine o'clock, the entourage entered the room. The Justice took a seat while his co-professors opened the class. After prescribing the credit requirements for the course, Professor Bernard James turned the podium over to his colleague, Robert Brain. Professor Brain briefly introduced our principal instructor.

Justice Rehnquist took the reins and began to lecture seemingly unaffected by the events shaping his life as he spoke. Beginning to breathe again, we listened as he reviewed the scope of the course and set the historical stage for the famous case of *Marbury v. Madison*. He further eased our nerves by offering to take volunteers this first day. There were none. No one volunteered to recite the facts of a case we had all dissected in Constitutional Law and recently read in full, some as recently as an hour before. Did he expect a cursory overview of the facts, the issue, rule and rationale, or were we expected to knit the history, personalities, and case itself into an articulate recitation of some grand constitutional doctrine? Well, it did not matter because he quickly conscripted a playmate. They explored the facts and context of the case in a painless fashion, placing emphasis on the historical aspects of the time as well as the personalities involved,

both inside the Court and out. By then it was break time and we had all survived --- it was not time to learn.

Had Cecil B. DeMille staged this seminar he could not have done a more effective job. Relating anecdotes of historical significance, the Justice was oft to break into song or mimicry of important historical figures, such as President Franklin Roosevelt during one of his fireside chats. Maps and physical illustration took on great importance, as Justice Rehnquist even paced off the size of the original Supreme Court chamber to make a point. During class breaks the Justice was to be found sitting outside the School of Law on a shaded bench casually interacting with anyone who took the time to stop and chat. The door to his office was accessible to all who asked and denied to none.

During this period, idleness and the tranquility one might expect in Malibu was not the tone of the day. Teaching in the morning was followed by an afternoon of receptions and luncheons, often with local Bar leaders and university benefactors.

In addition to our interview, Justice Rehnquist met with Law Review Editors to discuss the possibility of writing a piece for the Pepperdine Law Review. He also played tennis with Professor Brain and local lawyers on university tennis courts in addition to attending a reception hosted by Dean and Mrs. Phillips for the law school student body. It goes without saying that constant contact with Washington was a must, as evidenced by the fact that overnight packages were shuffled in and out of the law school on a frequent basis. At the risk of overstating the obvious, the activities of the Senate Judiciary Committee were closely monitored.

When asked why he honored this commitment over others, Justice Rehnquist related that he felt teaching this seminar was the more important obligation. During the interview, he noted that the top students at law schools are "fungible;" the difference between institutions is the depth, in terms of rank, to which these quality students run. Justice Rehnquist found the experience rewarding, yet emotionally exhausting, analagous to hectic trial work. He genuinely enjoyed interacting with the faculty and students, and they delighted in his frequent company.

Our intitial anxieties had faded into obscurity by the end of our two-week seminar. Ideological debate was without the scope of the course, but each of us, regardless of ideological stance, respected the depth of this instructor's command of constitutional history. During the course, Justice Rehnquist strongly emphasized the importance of individuals, geography, and relative time periods on the development of Constitutional Law. Aided by a vocabulary which exceeded our reading list in breadth, Justice Rehnquist led us through the history and personalities of the Court as smoothly as the fog rolled across the Santa Monica Bay on these temperate Malibu mornings.

Seemingly cast by the Malibu movie machine, the course reached its final day. Having traversed the history of the Supreme Court and constitutional Law, judicial reforms were the topic of the day. Given the three-hour difference in time, we all expected the Senate Judiciary Committee to vote on the Chief Justice Designate's nomination while we were in class. Dean Ronald F. Phillips entered the classroom at 9:30 a.m. P.S.T. (12:30 p.m. E.S.T.) and handed Justice Rehnquist a note at the lectern. Our Professor read the note, smiled, and re-read it aloud for our benefit. We rose and applauded the man who was now only one step removed from the chambers of the Chief Justice (full Senate confirmation). He warmly acknowledged our applause and returned to his lecture, which ironically had broken at the point where he was discussing whether a hypothetical national Court of Appeals should be appointed by the President with the advice and consent of the Senate, or by the Chief Justice.

Our regular break came earlier on this last day as the Justice took a call from the Chairman of the Senate Judiciary Committee, Senator Strom Thurmond. After the call, Justice Rehnquist joined us on the patio where he chatted with us as if it were just another day at school. Upon returning to the classroom, he entertained questions and concluded his portion of the seminar with praise for the class as well as the Pepperdine University School of Law. His teaching colleagues made a few brief observations and took care of remaining housekeeping concerns. Yes, amidst all the grandeur of the moment, there still remained paper deadlines and lurking registration problems. With that we adjourned to the Dean's patio for a light lunch. Justice Rehnquist was more than tolerant of the numerous "photo opportunity" requests and seemed to genuinely enjoy the company of his students, the spectacular Southern California day, and certainly, though never mentioned, the favorable review of the Senate Judiciary Committee.

The spontaneous unravelling of events that morning was nothing short of overwhelming. Only three hours before, we had begun the last day of a law school seminar with an Associate Justice of the United States Supreme Court serving as a distinguished Visiting Professor of Law. It was now virtually assured that this Professor, with whom we were casually talking and taking pictures, would become the Sixteenth Chief Justice of the United States.

The moment was incredible. After lunch, one among our number rose to thank the Justice for his time and attention over the past two weeks. Justice Rehnquist then captivated the moment by rising to note the unusual circumstances in which this seminar had been cast. He thanked us for not only being his students during this trying time, but for being his constant companions as well. He warmly remarked that he would always have special memories for those who shared this two-week period of uncertainty with him. We were mesmerized. And as if the music had stopped, it had only begun. The Sixteenth Chief Justice of the United States then asked us to stand and face the center as he led us in the most emotional rendition of "Auld Lang Syne" these future members of the bar will ever sing.