

# William Rehnquist (1924-2005): Key figure in Washington's rightward trajectory dies at 80

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William H. Rehnquist, a member of the US Supreme Court since 1972 and chief justice since 1986, died at his Arlington, Virginia, home Saturday night, eleven months after being diagnosed with thyroid cancer. During his 33 years on the Supreme Court, Rehnquist played a key role in rolling back the limited political and judicial reforms which accompanied the post-World War II economic boom and solidifying the right wing's grip on all three branches of the federal government.

Following last July's announced resignation of Associate Justice Sandra Day O'Connor and the nomination of United States Court of Appeals Judge John G. Roberts, Jr. to replace her, this second vacancy on the high court provides the Bush administration even more opportunity to solidify extreme right-wing control over the nation's judiciary.

Born in Wisconsin of Swedish immigrant parents, Rehnquist completed two masters degrees in political science before earning his law degree from Stanford University, coincidentally graduating in the same class as O'Connor. Unquestionably bright, affable and prolific, Rehnquist exhibited his right-wing views from the outset of his legal career.

In 1952, while a law clerk for Supreme Court Justice Robert H. Jackson, he wrote that the infamous "separate but equal" doctrine announced by the Supreme Court in *Plessy v. Ferguson* (1892), which sanctioned Jim Crow segregation in the American South, "was right and should be affirmed." Two years later, however, the Supreme Court ruled unanimously in *Brown v. the Board of Education* that governmental-sponsored racial discrimination violated the equal protection clause of the Constitution.

Moving to Phoenix, Arizona to practice law, Rehnquist became a protégé of conservative icon Barry Goldwater, heading up a Republican Party operation known as "Eagle Eye," a deliberate attempt to disenfranchise minority voters in South Phoenix. Several witnesses have recounted that they watched Rehnquist personally interfere with black and Latino voters.

In 1969, Rehnquist joined the administration of President Richard Nixon as a Justice Department lawyer. He approved the notorious plan, drafted by White House aide Tom Huston, under which concentration camps were to be set up to incarcerate hundreds of thousands of opponents of the Vietnam War. He frequently testified on behalf of the Nixon administration in Congress, including once before a Senate committee in support of domestic spying against anti-war protesters by US Army Intelligence.

In one of the more particularly ugly passages on the White House tapes made public after Watergate, Nixon is heard calling "Renchburg" a "Jew," one of a "group of clowns" in the Justice Department. Nixon nevertheless nominated him, along with Lewis Powell, in late 1971 to fill two high court vacancies. During his five-day confirmation hearing, Rehnquist was denounced as a right-wing extremist. Nevertheless, with the support of a majority of Democratic senators, the 47-year-old Rehnquist was confirmed and took his seat as an associate justice in January 1972.

At first, Rehnquist was somewhat isolated on the Supreme Court's right wing. He dissented along with Justice Byron White from 1973's *Roe v. Wade*, which affirmed 7-2 a woman's constitutional right to terminate her pregnancy, and wrote so many dissenting opinions in 8-1 cases—including one from the Supreme Court decision which upheld the Internal Revenue Service's decision to deny a tax exemption to Bob Jones University because it banned interracial dating among students—that he became known as the "Lone Ranger."

Many of Rehnquist's lone dissents, where he was able to express his personal views without regard for the sensibilities of other justices, reveal a jaded and insensitive view of humanity. For example, venting frustration at the legal protections afforded people facing execution, Rehnquist wrote that "virtually nothing happens except endlessly drawn out legal proceedings."

Nevertheless, Rehnquist increasingly mustered majorities for decisions curtailing personal rights and freedoms. In the 1970s, he authored majority opinions limiting the right to sue police departments that falsely accuse people of criminal conduct, governmental agencies that permit children to be abused, and jails that imprison people awaiting trial in cramped and oppressive conditions.

President Ronald Reagan selected Rehnquist to replace Warren Burger when Burger retired as chief justice in 1986. At the same time, Antonin Scalia was appointed to fill the associate justice's seat Rehnquist was vacating. After another acrimonious hearing, Rehnquist was confirmed by a vote of 65 to 33. Scalia, although equally right-wing, was confirmed unanimously.

With control of the court as chief justice and the support of right-wing associate justices Scalia and Clarence Thomas, who was appointed by the elder George Bush and confirmed in 1991, Rehnquist succeeded in achieving many of his goals, including gutting federal workers' protections and civil rights legislation under the guise of states' rights, limiting environmental

protections by constricting Congressional power under the Constitution's Commerce Clause, and rolling back the right to counsel and other important liberties of people accused of crimes.

Among the opinions authored by Rehnquist was a May 2000 decision striking down the provision of the 1994 Violence Against Women Act which gave victims of rape and domestic violence the right to sue their attackers in federal court, and a June decision that same year prohibiting states from using their anti-discrimination laws to prevent the Boy Scouts from discriminating against gays. Rehnquist justified his ruling in the latter case with the argument that a gay scoutmaster "would, at the very least, force the organization to send a message, both to youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior."

Rehnquist consistently attacked the foundations of US democracy. He called Thomas Jefferson's claim that the First Amendment stood as "a wall of separation between church and state" a "misguided metaphor based on bad history." In 2002, Rehnquist "took a pile driver to that wall of separation," as the *World Socialist Web Site* wrote at the time, authoring the majority opinion upholding the use of government vouchers to fund parochial school tuitions. (See "US Supreme Court authorizes school vouchers: a simultaneous assault on freedom of thought and public education").

In what turned out to be his last opinion, *Van Orden v. Perry*, Rehnquist wrote for a plurality of justices that the State of Texas could display a granite monument bearing the Ten Commandments on the grounds of its capitol building. (See "US Supreme Court weakens church/state separation in Ten Commandments rulings").

Rehnquist never succeeded in reaching at least one of his goals—obtaining the fifth vote necessary to overrule *Roe v. Wade*. With the opening of two vacancies on the high court, however, increasingly onerous inroads against abortion rights are inevitable, and the overruling of *Roe* itself more likely.

Perhaps even more critical in the long run than his legacy of reactionary legal decisions, Rehnquist played a decisive role in the Republican right's destabilization campaign against the Clinton administration, and then in subverting the 2000 presidential election and stealing it for Bush.

When allegations were first raised about financial improprieties relating to the Clintons' investment in the Whitewater real estate transactions, Attorney General Janet Reno appointed a prominent New York Republican, Robert Fiske, as special prosecutor. After Fiske indicated that he would likely end the inquiry without taking any action against Clinton, Rehnquist used his authority under the Independent Counsel Act to appoint Court of Appeals Judge David Sentelle, a close associate of the extreme right-wing senator from North Carolina, Jesse Helms, and a well-known Republican Party operative, to head the three-judge panel overseeing the independent counsel. There were 11 more senior judges in line for the appointment.

Sentelle's panel terminated Fiske and replaced him with Kenneth W. Starr, another longtime operative of the Republican right. (Starr was the US solicitor general under Bush the elder, and his chief deputy was Bush's current nominee for Supreme Court

associate justice, John Roberts.) After the Supreme Court ruled in 1997 that Paula Jones' sexual harassment suit could continue against a sitting president, Starr used Clinton's evasive answers about Monica Lewinsky during deposition testimony to concoct a perjury claim and submit a bill of impeachment, which was adopted by the House of Representatives on a party-line vote.

As chief justice of the United States, Rehnquist presided over the 1999 Senate impeachment trial. Putting his quirky personality on display, Rehnquist modified the standard black judicial robe for the occasion by adding four gold stripes to each sleeve, emulating a costume he saw in the Gilbert and Sullivan operetta, "Iolanthe." Rehnquist continued to wear the modified robe for the remainder of his time on the court. The prosecutors of Clinton failed to obtain the two-thirds vote in the Senate necessary to convict, and Clinton served out the rest of his term.

Despite voting repeatedly in favor of "states' rights" and "sovereign immunity" to limit the reach of federal laws intended to protect civil rights, workers and the environment, Rehnquist spearheaded the Supreme Court's unprecedented intervention into the actions of the state of Florida and its courts to stop the counting of ballots in the 2000 presidential election. The result was to install George Bush, who lost the popular vote by more than 500,000, in the White House. In an opinion joined by Scalia and Thomas, Rehnquist wrote that US citizens have no constitutional right to vote for the president.

The Supreme Court is scheduled to begin its next term in four weeks. One possibility under discussion is that Bush will re-nominate John Roberts as Chief Justice, instead of as an associate justice, and O'Connor will delay her resignation. Otherwise, even if Roberts is confirmed before the end of the month, the new term will begin with just 8 justices, and Justice John Paul Stevens, the high court's senior member and one of its most liberal votes, will serve as the acting chief justice.



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