

2000

Chief Justice William H. Rehnquist in Acceptance of the Fordham-Stein Prize

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Recommended Citation

William H. Rhenquist, *Chief Justice William H. Rehnquist in Acceptance of the Fordham-Stein Prize*, 68 Fordham L. Rev. 1061 (2000).

Available at: <https://ir.lawnet.fordham.edu/flr/vol68/iss4/2>

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REMARKS

CHIEF JUSTICE WILLIAM H. REHNQUIST IN ACCEPTANCE OF THE FORDHAM-STEIN PRIZE

THE PLAZA HOTEL IN NEW YORK CITY
OCTOBER 26, 1999

Thank you Dean Feerick for your kind introduction. I am very pleased and honored to be the twenty-fourth recipient of the Fordham-Stein Prize. And I am delighted that my son, Jim, and his wife, Anna, have come from Boston, my daughter Janet and her friend Bob Erikson have come from northern Virginia, and that my daughter, Nancy has come from Vermont for the occasion.

Receipt of the Fordham-Stein Prize tonight leads me to briefly reflect on how extraordinarily fortunate I have been in my professional career. I began my professional career as a law clerk to Justice Robert H. Jackson, Associate Justice of the Supreme Court and formerly a practitioner in Jamestown, New York. Justice Jackson never lost his identification with the private practice of law despite twenty years of service as a government lawyer and a member of the highest court. This made an impression on me.

I then moved to Phoenix, Arizona, a place where my wife and I knew a total of one other couple. But it was a rapidly growing middle-sized city, and a society very much open to newcomers. I spent sixteen years there in a practice largely devoted to civil litigation, and I found it both stimulating and enjoyable. Litigating is probably not the most remunerative form of practicing law, but it does involve the one role for a lawyer which he and he alone can perform—standing up in court and advocating a cause for a client.

I then moved to the Department of Justice in Washington as an Assistant Attorney General in charge of the Office of Legal Counsel. My role as a lawyer for the government combined the privilege of dealing with issues which were larger than those involved in the typical private law suit, with a need for spontaneity of response that is generally absent from the judicial life.

I was appointed an Associate Justice of the Supreme Court of the United States in late 1971, and served in that capacity for more than fourteen years. I was attending a law school dinner not long ago when

I was asked by a third year law student how he could go about obtaining a seat on the Supreme Court. I was reminded of the time when I was a law clerk, and Justice Felix Frankfurter was telling several of us that this was a job which you should not aspire to, because there was no way to position yourself for it. If you want to be a governor, a senator, or even President you can begin by running for a local precinct committee or city council, and gradually elevate your sights as you succeed from one level to another. But it simply doesn't work this way in the case of an appointed judiciary. There are nearly a million lawyers in the United States, and no one would be so bold as to suggest that there was some sort of predestination which placed the nine present members of the Supreme Court where they are. As I told the questioning law student, in the words of another of my predecessors, it is more a question of being there when the bus goes by.

In 1986 I was appointed Chief Justice of the United States, and have now spent thirteen years in that position. The various *ex officio* duties of the Chief Justice in addition to presiding over the Court, give that individual windows on the world which an Associate Justice does not have. A couple of these windows—presiding over the Judicial Conference of the United States, and the Board of Directors of the Federal Judicial Center, have enabled me to become acquainted with a wide variety of other judges in the federal system. It has given me a great respect for that system.

The framers of our Constitution came up with two relatively original ideas. The first was the idea of an executive—the President—whose tenure did not depend upon the support of the legislature. Few, if any, countries changing their form of government after ours came into existence have opted for this presidential system. The second contribution of the framers was an independent judiciary, with the power of the judicial review—that is, the authority to declare an Act of Congress unconstitutional if it exceeded the authority of Congress under the Constitution. This was confirmed by Chief Justice Marshall's opinion in *Marbury v. Madison*, and has been copied by numerous other nations since World War II. Because it is rightly said that the federal judiciary is the guardian of federal constitutional rights, it is easy to overlook the other role that it plays in our legal system, along with the judicial systems of the states. This role is that of forum for resolution of disputes, a role which is becoming more and more important as commercial transactions become more and more global in nature.

We tend to take for granted this dispute-resolving function of our legal system, perhaps because it works so well. I certainly do not believe the American legal system is perfect, but compared to what I know of other systems throughout the world it certainly suits the temper of our country better than any of these other systems.

The federal judiciary during my professional lifetime has changed dramatically. When I began practicing in 1954 there were 238 federal district judges authorized and 68 judges of the courts of appeals. Today there are 646 district judges and 167 judges of the courts of appeals.

The life of a federal judge, and the demands made upon that individual, have also changed greatly during this time. I remember when, in 1953, I was driving from Washington to Phoenix at the end of my clerkship, I stopped in Fort Smith, Arkansas, to find out some information about a judge who had sat there in the latter part of the nineteenth century. During my brief stay, I stopped in at the federal courthouse one morning at about 9:30 a.m. and asked if I might see the judge—a man named John E. Miller, formerly a Congressman and author of the Miller Act—a name that will be familiar to anyone engaged in representing the various elements of the construction industry. I had never been in Fort Smith before, and had never met Judge Miller, but the secretary simply asked my name and showed me into his office—no metal detector! He was sitting there at his desk, and his bailiff was also present. After the initial pleasantries, they told me they were just about to go fishing, because there was nothing on the court calendar that day. We had a friendly chat for about ten minutes, and I went back to my research at the library and they went fishing.

I don't think Judge Miller was alone in having an occasional free business day as a federal judge. During the first nine or ten years that I practiced in Phoenix, we had one resident federal judge there. Each year he would conduct his last court session about the middle of June, and leave for the cooler climates of the west coast immediately afterward. I am sure that he served as a visiting judge in Los Angeles or San Diego at sometime during the summer, but he did not reappear in Phoenix until after Labor Day. And somehow, the state got along without a resident federal judge there for three summer months. I also recall a judge of the Court of Appeals for the Ninth Circuit describing appointment to that court at an earlier day as a "dignified form of semi-retirement."

How all that has changed today. The resources of the federal judiciary are strained to the breaking point, despite the substantial increase in the number of judges over the past forty-five years. The business of the federal judiciary has increased at a far more rapid rate, and both the district court judges and the judges of the federal courts of appeals find that their jobs demand not only judicial talent but a great deal of time.

I know much less about the state judicial systems than I do about the federal system, but whenever we think of the American legal system, we should remember that more than ninety percent of the cases are decided in the state court systems, not the federal. Together,

they provide what must be the finest dispute-resolving forum in the world. And I count it a great privilege to have been a part of that system—first as a private lawyer, then as a public lawyer, then as a judge—for forty-five years.