This painting of U.S. Supreme Court Chief Justice William H. Rehnquist was given to him by his clerks and it now hangs in the West Conference Room of the Court.
I think that a judge’s disposition should be about evenly balanced between sail and anchor. He cannot be anchored to the past mechanically by a line of precedents, but by the same token he ought not to be moved by each puff of novel doctrine which may be generated by one group of litigants or another.

— U.S. Supreme Court Chief Justice William H. Rehnquist in a speech at LSU Paul M. Hebert Law Center

AN avalanche of snow shut down the United States Capitol. Across First Street, at the Rehnquist Court, it was business as usual.

Katrina knocked us down hard, but the day after Labor Day LSU Law was back on its feet. Such is our strength. Our stomachs were in knots, truth to tell. Chief Justice Rehnquist died the preceding Saturday. 1 Sadly, Jim Bowers and I paid our respects in the Law Review Seminar. Rehnquist’s former law clerk John Roberts succeeds him as Chief Justice of the United States. Thus life gives our law reviewers and our courageous students another season — we have witnessed it ourselves — of hurricane, Court, and Constitution. “We are very quiet there, but it is the quiet of a storm centre, as we all know.” 2

As it happens, William H. Rehnquist was a great friend of LSU Law Center, visiting us twice a decade apart — first his Edward Douglass White Lectures in 1983, next his Alvin and Janice Rubin Lectures in 1993. For a Rehnquist tribute, nothing flowery will do. The Chief Justice was not a flowery guy.

One remembers well a few gold stripes on the Chief’s black robe 3 — a Rehnquist touch of Gilbert and Sullivan. As an Associate Justice, he let himself go. I remember seeing him in a loud orange tie and long sideburns during oral argument in what I call the Policeman’s Long Hair Case. 4 The Chief Justice voted with the Chief of Police, our students know.

For my little prayer, I will let The Chief at LSU Law do the talking. I will only set the stage.

William Rehnquist’s courage held on to the very end. The New York Times photograph of a weakened Chief Justice of the United States swearing in President Bush in January 2004 sticks in memory. The news is very sad to those who knew him personally. All of his colleagues loved him. I have this from Justice Brennan. Justice O’Connor’s tears on seeing the casket draped in the American flag being carried up the front steps of the Court touched

William H. Rehnquist † Sept. 3, 2005

The Chief at LSU Law

By Paul R. Baier
Chief Justice Rehnquist’s last opinion is a triumph of brains, conviction, and time: “The question here is whether the Establishment Clause of the First Amendment allows the display of a monument inscribed with the Ten Commandments on the Texas State Capitol grounds. We hold that it does.”

Van Orden v. Perry, June 27, 2005.

I think that a judge’s disposition should be about evenly balanced between sail and anchor. He cannot be anchored to the past mechanically by a line of precedents, but by the same token he ought not to be moved by each puff of novel doctrine which may be generated by one group of litigants or another.

Perhaps Polonius put it as well as anyone when he told Laertes, “To thine own self be true . . . , [and] thou cans’t not then be to any man false.”

Finally, whether it be denominated “com-
mon sense,” some patchwork of knowledge of the human condition gained from experience, or put some other way, the best judges undoubtedly have some sort of understanding of human nature and how the world works. 15

And what of Louisiana’s Great Chief Justice Edward Douglass White, who was regarded by his contemporaries as having “an indefinable ‘plus’ which is very difficult to articulate”: —

Perhaps Edward Douglass White, whom these lectures honor, possessed that more general important quality of being a good judge — equally important for the effective discharge of many other positions of public responsibility —, the quality epitomized by Matthew Arnold’s description of Sophocles that he “saw life steadily, and saw it whole.”

William H. Rehnquist saw life steadily, and saw it whole. Supremely, he was true to himself. Requiescat in pace.

FOOTNOTES


3. Stephen Crowley’s poignant photograph in the New York Times, supra note 1, at A17, catches the Chief’s stripes and The Rehnquist Court for a last time.


6. The figure is Learned Hand’s, his “Society of Jobbists,” — “the mythical assembly of those committed above all to doing their jobs well.” Gerald Gunther, Learned Hand: The Man and the Judge 403 (New York, 1994). “And what were the standards for admission to this guild of Jobbists?”

It is an honest craft, which gives good measure for its wages, and undertakes only those jobs which the members can do in proper workmanlike fashion, which of course means no more than that they must like them. [Its work] demands right quality, better than the market will pass.


7. “The clerkship with Justice Jackson would be my first job as an honest-to-goodness graduate lawyer.” William H. Rehnquist, Introduction, A Law Clerk Comes to Washington, The Supreme Court 4 (Knopf, 2001). Chief Justice Rehnquist’s account of his job interview with Justice Jackson, id., pp.4–5, gives one hope: “I walked out of the room convinced that he had written me off as a total loss in the first minutes of our visit.”

8. Terminiello v. Chicago, 337 U.S. 1, 37 (1949) (Mr. Justice Jackson, dissenting).


16. Id., at 106-07.

ABOUT THE AUTHOR

Paul R. Baier is George M. Armstrong, Jr. Professor of Law at Louisiana State University Paul M. Hebert Law Center. He was the Louisiana Bar Foundation’s Scholar-in-Residence in 1990-92 and was honored by the LBF as its Distinguished Professor in 2004. He is the editor of Lions Under the Throne: The Supreme Court in the Mirror of Chief Justices — The Edward Douglass White Lectures of Chief Justices Warren E. Burger and William H. Rehnquist (Louisiana Bar Foundation 1995).

(Submitted by: Darlene LaBranche, Publications Coordinator, LSU Paul M. Hebert Law Center, Baton Rouge, LA 70803-1000)

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