

TEA WITH THE CHIEF:

I Interview Chief Justice William Rehnquist

Shortly before ten on the appointed morning, our group of three passed through security and, freshly scanned, was admitted to the Maryland Avenue entrance of the United States Supreme Court. It was a Friday in September and time for our interview with the Chief Justice. I was there with my two British colleagues and my allotment of two questions, much practiced on the flight from Fairbanks to Washington. Andrew LeSeuer and Richard Cornes had flown in from London; that made me the all-purpose baggage handler and cab hailer.

The Friday interview with Chief Justice William Rehnquist was to cap the week's interviews. Cornes and LeSueur had taken pains to get their questions framed and emailed to the interviewees in advance. A day with functionaries in the Administrative Office was followed by a meeting with Solicitor General Seth Waxman and Bennett Bosky. Mr. Bosky had clerked for Justice Reed (Charles Evans Hughes was Chief Justice) and then for Harlan F. Stone after he succeeded Hughes as Chief Justice.

Thursday, a complete tour of the Supreme Court: The monumental courtroom, the Library, with all support staff at our disposal for our questions. Thursday afternoon an interview with Justice Ruth Ginsburg. Friday morning our interview with the Chief Justice. The British were here to find out what made a top court run and what to do and to not do in designing a British Supreme Court.

Framing a Supreme Court for the United Kingdom would be a monumental task in institution building; a once-in-a-half millennium undertaking. The questions were dignified and pointed; the British professors had identified shortcomings in *their* current "constitutional settlement" of the United Kingdom. The British know the double and triple meanings of this phrase and it seems (unfortunately) to have no ring at all for us. So how do we connect with an institution that we don't shape? Is there some multigenerational promise that we are obliged to honor, leaving the court to its own devices and doctrines? And what is today's feel good that goes with this restraint, if that's what it is?

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That's why neighbors building an addition on their house attracts our attention. We can imagine them making choices and imagine what it would be like for us to make choices in designing and building or *remodeling* – a verb that encompasses at once the process of sorting out how to do things differently and then doing it.

It seems hardly British that our cousins have to upgrade institutions simply because they chose, in the 1970s, to join a continental political arrangement. What would Americans do if we had to remodel our top court? Just what is it that the men and women do there?

However it has been built, our Supreme Court costs the country a mere \$30 million in annual budget. The entire judiciary, one third of the federal government, consumes only \$4 billion of (barely, as Senator Dirksen would remind us) “real money.” And the Supreme Court runs on a budget separate from even that \$4 billion.

The office into which the three of us were admitted for tea at thirty seconds past ten is vaguely Italianate, evoking the eponymous scene from the film, *Tea with Mussolini*; black marble, gold trim here and there with a merely decent fireplace and a magnificent view of a garden to the rear of the Court's block. Wing chairs with bold colors in yellows and blues and reds and a beige sofa. A coffee table between the four of us with a tea service.

The British academics pose their first questions to the organization of federal judges called the Judicial Conference. The Judicial Conference speaks on administrative issues of importance to federal judges. Supreme Court Justices are not members of the Judicial Conference. They are apart, the Chief Justice explains. There is no value to insights from lower court judges into the operations of the United States Supreme Court. And so the Justices don't participate in the Judicial Conference. Thus, two cadres, ranks, of judges: A top court with a membership of nine, and a club of appellate, trial court and specialty court judges with about a thousand members. “The” federal judiciary is two: With the top court segregating itself from discussion, scrutiny, insight from fellow federal judges.

The budget is prepared at the Supreme Court and goes to the White House and then arrives at the appropriation subcommittees of the House and

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Senate. “I send the two most junior justices to the Hill to defend our budget but they don’t cut anything,” Rehnquist explained. “The committee members like to have someone come up from the Court and explain it to them.” The Chief Justice would know exactly what to do, what levers to leverage, if the Court’s budget were savaged on the Hill. “It’s all on a personal basis, who you know.”

A paltry thirty millions of dollars are put into the Supreme Court’s bank account and then drawn out by the Marshal with the credits and debits posted on his computer. Procurement done by the Clerk and his efficient functionaries, a police staff hired and run by a chief of police inside the building, with its own press room, law clerks, and functionaries. And the papers come in and out. Like the Grand Duchy of Fenwick in Peter Seller’s 1959 classic *The Mouse that Roared*, the Supreme Court has some, but not all, the attributes of sovereignty. It lacks its own landfill, draws water from the public mains, and has no international airport. It coins no money and has no seat in the United Nations. But it makes its own rules of practice, and its own rules of jobsite justice. It frames and obeys its own dress code. The Court is committed to run itself, but no one asks how the judges’ efforts were designed to produce results.

And then there is the bookstore. Filled with the currency of Justices’ speeches, histories, memoirs, and biographies. The bookstore is on its own a singular enclave. It is run by the Supreme Court Historical Society whose website, supremecourthistory.org, gives its address as: 1 First Street, N.E. The website and the handouts at the Gift Shop don’t advertise the charming connection between a public institution and a private nonprofit corporation dedicated to the collection and preservation of the history of the Court. Hence the Society uses history to cheer for the Court. But the development of constituencies of support for the institution is not only in the knickknacks or the child’s introduction to the Justices, in large print and glossy photos. Lawyers are invited to pay \$100 for certificates to practice law before the Supreme Court and the Clerk’s budget solemnly records this financial support, which at once defrays Congress’s foreign aid for this little Fenwick and brands each attorney as a certified supporter of the Court. I had never joined their ranks. Back in Alaska I hustled off my \$100 as soon as I received my Permanent Fund Dividend. There are more than 4,000 new barrister members per year.

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So it is a truly independent institution. No other body of trustees for the American way of law is more *of itself, for itself and by itself*. And the beggar's ransom of thirty million dollars secures this separateness. Separate and higher, segregated into the highest stratosphere of government. The duchy imports and exports papers, trafficking in mountains of paper, from the invited and eagerly perused briefs of the Solicitor General to the prisoner's petition to this last court in the land. We were personally introduced to a vanload of last year's cert petitions.

Fenwick projects itself as a club of mature men and women eager to get on with one another. Perhaps it was the time of year. With so many opinions to write, cases to decide in May and June, the Justices and staff rather enjoy their recess. This isn't how you would run a corporation, Rehnquist told us. But then we're all in the mood to get along with one another. Cordiality is enforced by tradition. We all refer to each other by first name, Justice Ginsburg explained. A note will be clipped to a draft opinion: "Dear Ruth, please read this and let me know your thoughts, David." No email. And no jackets for the male staffers who do the errands in the halls.

But why should people – whether they are consumers of legal rules or involved in litigation as parties and so users of the civil adjudication systems – why should people care about whether the Justices care about the job they do? Dialogue happens, in the broadest sense, when both sides are committed to ask and answer and both sides care about the outcome. Perhaps whatever makes the consumer care more about judicial product is a positive good because it enhances dialogue. If today the vital connection between nine Justices and consumers is nurtured by the schedule of opinions to be completed on time, the public Oyez, the robes (and chevrons), the Gift Shop, these posture an anthropology of comfort between the Court and its consumers. Perhaps one could tease all of this into what it means for an entire nation of consumers to get more vitally connected with designing, producing and managing error in Supreme Court effort. A theory may be required but that can hardly be un-American since we could steer clear of the empty logic of syllogism and rely on our own experience.

"Where do you teach, Professor Aschenbrenner?" the Chief Justice graciously asked me on the way out. "There is no law school in Alaska," I

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answered. In the end I was outed as a gatecrasher, upended on my own questions. Outside it was all bright sunshine and Vermont marble and the guards chased us off the steps after a couple of casual snaps.

It was rather pleasant to take tea with the Chief Justice and not at all what I had expected, which is rather the charm of being from a place too far away.

Apparatus

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