

## FOR THE CHIEF

Brian Morris\*

By the summer of 1992, I had interviewed with numerous prospective employers, including partners in law firms, career prosecutors, and federal appellate judges. Each interview generally included a moment when the interviewer would ask something along the lines of “What do you want to do in your legal career?” I occasionally stumbled over my response as I sought to tailor my answer to what I assumed would impress the potential job-giver. So I was not surprised in the summer of 1992 when Chief Justice Rehnquist posed his version of the question about halfway through my interview for a clerkship position.

I paused momentarily, cleared my throat, and announced that I wanted to return to Montana to practice law and someday start my own law firm. The Chief immediately perked up and described his years of private practice in Phoenix in the 1950s and 1960s. He had chosen this unconventional route after completing his clerkship with Justice Jackson in 1952 when he bypassed the big law firms of Washington, D.C., and New York and instead headed west with his wife.

He initially worked for an established firm, he explained, but eventually branched out to start a new firm with a few colleagues. The fact that lawyers at larger law firms in bigger cities may have worked on higher-profile cases did not faze him. He derived much satisfaction from being in charge of his own cases and clients and from developing strategies to win cases as opposed to simply executing the strategies developed by some senior partner. He relished the intellectual challenge of figuring out how to present or defend a case. And his natural competitiveness spurred him to win more often than not. He took any client who walked through the door and could pay a retainer. Such clients were not always plentiful, he said, and he and his partners sometimes played poker to while away the dead time in the early days of his law firm venture.

The Chief must have liked my answer because his secretary, Janet Barnes, called me the next day to inform me that the Chief was offering me a job. I learned later how much he liked the answer. My two co-clerks and I were

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\* Law Clerk for Chief Justice William H. Rehnquist, October Term, 1993. Justice Morris was elected to the Montana Supreme Court in November 2004, and he assumed office on January 2, 2005.

sitting down one day for our daily morning meeting with the Chief. We normally discussed pending cases, Court scuttlebutt, and geography—the Chief’s pet hobby. On this occasion, however, my co-clerks were discussing their recent job interviews and possible career options. One of them asked me what I planned to do after my clerkship. I responded that I might return to Montana to practice. The Chief butted in, “What do you mean might? That’s the only reason that I hired you.”

Throughout our clerkship, the Chief routinely urged my co-clerks and me to get involved in our communities and pursue interests outside of the law. “Go home first,” he told us, and return to Washington after we had made it, and only if we must. Too many clerks, he felt, took the easy route and the easy money that Washington firms would lavish on them. They would spend their careers as insiders with no real experience in how the world works outside the Beltway. More importantly, from his perspective, they traded the easy money for something much more valuable—time with their families.

The Chief was always jealous with his time. He arrived at work in the morning at the same time and left promptly in the afternoon upon completion of the day’s work. He was an early multitasker. For example, he combined discussion of cases with strolls around the sidewalks outside the Supreme Court building. These strolls proved to be one of the high points of the job: one-on-one discussions with the Chief and a chance to develop my debating skills.

After one of these strolls, I half-apologized to the Chief that he and I did not always agree on cases. He advised me always to express my opinion. He enjoyed what he described as the “give and take” and explained that such discussions helped focus his thinking. These “give and take” sessions served me well in later years when I recalled debating and disagreeing with the Chief Justice of the United States. Why would I have a problem disagreeing with opposing counsel or debating a point of law with a judge?

Even within the confines of his work, the Chief liked to combine his interests. One day, during a particularly dull oral argument, a thought struck me. The Chief looked as bored on the bench as I felt sitting in the audience. I drafted five Montana-related geography trivia questions, and I asked one of the marshals to slip the questions to the Chief under the guise of an urgent message. I watched anxiously as the marshal ducked behind the bench and whispered in the Chief’s ear as he handed him the note. A wry smile crossed the Chief’s lips as he read the note, and he set about answering the questions. At one point he even leaned over to seek assistance from Justice Blackmun. The marshal dutifully delivered the Chief’s responses back to me. A few minutes passed as I sat enjoying my prank, when the same marshal startled me with a tap on the shoulder and another note. It was a message from the Chief: “How did I do?”

I followed through on my promise to the Chief during that job interview in the summer of 1992 by following the less-traveled path back to Montana. Now I am the only former Supreme Court clerk among the more than 2000 active

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members of the Montana Bar and have not regretted my decision for a moment. I may have missed out on some of the splashy cases that my colleagues who opted for large firms and big cities have undertaken. And I certainly have foregone the money that most of them have earned through that route. But like the Chief, I derived great satisfaction from being in charge of my own cases from early in my private practice in Bozeman through my years as the Solicitor for the State of Montana.

I learned firsthand about how the criminal justice system works, and sometimes does not work, when I accepted public defender appointments in West Yellowstone, Montana, in the court of Judge Lewis Scott, another Stanford Law School graduate. I learned eventually how to distinguish between potential clients who could pay the retainer and those who could not. And I learned through experience which strategies work and which strategies do not work in litigating cases.

The Chief and I corresponded sporadically over the years. I would describe my adventures in law practice in Montana, and he would reminisce about his days of practicing in Phoenix. I recently shocked my colleagues on the Montana Supreme Court at one of our conferences when I read an excerpt from a 1997 letter from the Chief in which he asserted his view, based on conflicting decisions over the scope of an arbitration provision, that the Montana Supreme Court seemed to view the United States Supreme Court in the same manner that “South Carolina viewed the Union in the years before the Civil War.”

The Chief and I would have lunch whenever I visited Washington and would pick up the stories from our correspondences. The Chief always wanted to hear about my work, my practice, and my family. Only reluctantly would he offer any tidbits about life on the Court and only when I pressed him.

A local television station interviewed me during the week after the Chief’s death. I realized as I answered the questions how much the Chief had influenced my life in the law. He plucked me out of obscurity and offered me the job that changed my legal career forever. That credential has opened any door that I have sought to pursue. He treated me with decency and fairness throughout the clerkship. And he remained friendly and supportive in the years that followed. When I unsuccessfully applied for a vacancy on the Montana Supreme Court a few years ago, I asked the Chief to send a letter in support to the screening committee. He readily obliged with a classic two-sentence letter lauding my legal abilities and “engaging personality.”

Now, as a new justice on the Montana Supreme Court, I find myself trying to emulate much of the Chief’s practice. I press my clerks for quick turnarounds on draft opinions and encourage them to strive for brevity. I meet with them regularly to discuss the court’s work and anything else of interest. With each new crop of clerks I have to force them to express their views on cases during their first few weeks on the job. Like the Chief, I find it invaluable to engage in “give and take” about the cases and issues with my clerks before meeting in the conference with my colleagues. I explain to them that I will never convince any

of my colleagues of the correctness of my view if I cannot first convince them.

I also try to follow the Chief's advice of retaining numerous active interests outside of work, including coaching my three boys in soccer and basketball. I try to be home for dinner every night and to volunteer in my sons' schools. These experiences validate the Chief's advice to us to go home and to make something of ourselves. I have come home to Montana and I strive each day to make something of myself as a husband, father, member of community, and judge.

I saw the Chief for the last time in the spring before he died. I was coming to Washington for a judicial conference, and I had tried to schedule our usual lunch date. His cancer had advanced to the point where his secretary informed me that lunch was out of the question, but she added that the Chief would like for me to stop by the Court for a visit. We sat in his office and talked. Once again he asked questions about my new job and my family. After about twenty minutes, he politely told me that it was nice to see me and he thanked me for stopping by. He still valued his time, and I managed to take the hint that it was time for me to go.