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Jurist, colleague, friend

Hon. Matthew J. Jasen '39 reflects on Chief Justice Rehnquist's life

William H. Rehnquist, 16th chief justice of the United States, died Sept. 3 of thyroid cancer. He was 80 years old.

Rehnquist's death resonated through the legal world and set in motion a chain of events that recently saw Judge John Roberts confirmed as the nation's top jurist. But for one alumnus of UB Law School, Rehnquist's death hit home on a personal level as well.

Hon. Matthew J. Jasen '39, retired justice of the New York State Court of Appeals, was a friend of Rehnquist's. He tells of a legal scholar whose warmth and humor belied the justice's stern demeanor on the bench of the nation's highest court.

UB Law Forum asked Judge Jasen to think back over the years of his friendship with Rehnquist. Following is that reminiscence:

My first meeting with Rehnquist was in the American Law Institute, where we were both members. It meets twice a year in Washington. Many times he used to open the meetings, as the chief justice. We talked, and we would sometimes have lunch together in Washington.

In 1981, during the time I was on the Court of Appeals, one of my opinions went up on appeal because a federal question was involved. It involved child pornography, *People v. Ferber*. The court decided to declare a law passed by New York State unconstitutional because it

was overly broad. I dissented in that case. It went up to the Supreme Court and they reversed it, nine-zip. Even the so-called liberals on the Supreme Court ruled for reversal. That was a time when you might say our real friendship began, because Rehnquist agreed with my writing, and he told me so.

We met in an official capacity as members of a moot court panel at Syracuse University. So-called liberal students were picketing him because of his views as a conservative judge. There we got to be very close.

Then we sat on another moot court at Boston College and I got to know him even better. The third time we sat together on a moot court was at Notre Dame. How they select them, I do not know, but we happened to be picked for the same groups.

Then another case came up in the midst of our deliberations in the Court of Appeals, in 1985. That was *New York v. P.J. Video*. It also was a question of whether the seizure order for seizure of pornographic material was adequate and whether there was reasonable cause for

believing these materials were pornographic. The court as a whole agreed that the order was inadequate, and they quashed the whole proceeding. I dissented, and that also had a federal question and went to the Supreme Court. And that, too, was reversed.

Rehnquist would mention it to me at the ALI meeting: "Hey, that was some opinion you wrote. We agreed with it, too." That sort of thing.

After I left the court, I arranged for him to speak at Canisius College. He spoke to a standing-room-only crowd and was well received.

I took him on a tour the day after he spoke at Canisius. He made arrangements with Professor (Peter) Galie and another professor and me, to travel with him the next morning. We were going to tour the Niagara Highway on the Canadian side, the one that runs from Fort Erie to Niagara Falls. It was the scene of a War of 1812 battle. He was a history buff, and he wanted to see the actual terrain where the British came down to the gorge and crossed the Niagara.

He had talked to the other professor and said, "Of course, the dress will be casual." But I did not know about that. So in the morning I came to pick him up, the professors were there, and they were dressed very casually. When he came off the elevator, I could hardly recognize him. He had on Army fatigues and a little fisherman's hat.

So we got in the car. He had back trouble, so he sat in the front and I sat in the back; the driver was Professor Galie, and the other professor was in the back



Hon. Matthew J. Jasen '39, retired justice of the New York State Court of Appeals, with William H. Rehnquist, 16th chief justice of the United States

with me. We got to the border and they asked the usual questions, where are you from, where were you born. And Professor Galie said, "We are taking the chief justice of the Supreme Court on a tour of the War of 1812 Niagara Highway site." The customs agent looked inside the car, looked us all over, looked at me and said, "Welcome to Canada, Judge!" Because I was the only one dressed up.

Rehnquist told that story many times, on himself. He had a great sense of humor, but he was reserved. He was very warm once you got to know him.

I wrote him a letter when he went through his confirmation for chief justice. He had quite a going-over by the senators. He went through hell, really; he was exhausted. Three or four days they ques-

tioned him. But they finally confirmed him.

Then when I left the bench, he had occasion to make an appointment to the position of special master to the Supreme Court. In a case in 1987, he appointed me to serve as special master in *State of South Carolina v. James Baker*, secretary of the treasury. The special master files a report, and the report is acted on by the Supreme Court, either for the report or against it.

The issue there was a federal rule that if a state government wanted their bonds to be tax-free for federal taxes, they had to be named bonds, not bearer bonds. There were millions and millions of dollars involved; people would pass them on to

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their sons and daughters in their estates, and the government was being cheated.

In 1988 he appointed me as special master a second time. This is unusual – there are only one or two a year. That was a border dispute between Illinois and Kentucky, over where the border was in the Ohio River. Because the river wanders over 200 years, and the low-water mark had changed. The reason for the dispute was never brought out in the course of the hearing, but it was that Illinois wanted to introduce gambling ships. And they won; Kentucky lost.

So again, he reviewed those two cases and agreed with my writing. He was very proud of me. He said, "I like the way you write and the way you decide cases." So I was four out of four.

We exchanged Christmas cards and occasional letters. When I lost my wife, he wrote me a note. When he lost his wife, I wrote him.

I was just very upset when I learned that he had cancer. I wrote him a letter and he answered it by a phone call. He said, "I am going to stick with business right up to the end. As long as I am able to handle the job, I am going to stay on the court." And he did. He had some difficulties, some trouble speaking, but his mind was clear.

He was very private in his life. He limited his friendships off the court. But he could endear himself to a lot of people. He was very cordial, very warm, contrary to his general appearance. He appeared to be stern, but he was not stern at all. He conducted his sessions with a certain decorum; he managed the court beautifully. I was very fond of him.