

# Rehnquist Takes To Lecture Stump To Air His Views

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Justice William H. Rehnquist, apparently restless in the cloisters of the Supreme Court, is taking to the lecture stump to give increasingly outspoken speeches and insights into the philosophy of the court's youngest, most conservative member.

Three weeks ago Rehnquist signaled that he had no intention of remaining aloof and uncommunicative. He told a gathering of lawyers that they ought to "ask a judge to lunch," which would help the bar and get the judge away from his lawbooks.

And yesterday at the University of Kansas, Rehnquist completed a two-part lecture to a law school audience candidly describing himself as a "libertarian" of the old school—the kind of jurist who might have upheld employer "freedom of contract" claims against workers generations ago.

The topic was privacy. The lecture's formidable title indicated that the jurist didn't mind being controversial: "Is An Expanded Right of Privacy Consistent With Fair and Effective Law Enforcement?" But the subtitle gave more of the flavor of the talk: "Privacy, You've Come a Long Way, Baby."

Rehnquist didn't talk about concrete cases pending before the court, but he clearly indicated that his consistent voting record in favor of police powers of search and seizure were not about to change.

He recommended that "the forces of privacy," rather than seeking restrictions on the way law-enforcement officers gather evidence of crime, should seek repeal of the criminal laws they don't like.

That would be a more effective way to get the government off the backs of citizens, he said, making clear that his old-fashioned philosophy was in tune with what he called "the natural recoiling from

this trend of ever-increasing government involvement in our daily lives."

Citing marijuana laws as an example, Rehnquist said the movement to de-criminalize pot smoking would achieve the privacy sought by marijuana users without frustrating law enforcement.

"It is preferable to repeal a law which makes a particular act criminally punishable, rather than keeping the law on the books but making it very difficult to enforce," the Justice contended.

The important question, he argued, was not whether the government was using proper methods in regulating the lives of citizens but "whether the conduct in question should or should not be subject to regulation by Government."

Rehnquist said his approach "might be called the philosophy of individual freedom or 'libertarianism.' It found expression in some of the decisions of our court in an earlier day about freedom of contract . . ."

The classic example of this type of case, Rehnquist noted, was the 1905 ruling that struck down New York's law establishing a maximum 10-hour day in bakeries. The court held that this violated due process of law by interfering with the freedom of contract—of workers—to negotiate the terms of their labor.

He charged that the Supreme Court majority has been doing much the same kind of thing in recent decisions, over his dissent, "about the marital relationship and abortion." In those decisions, he said, "the courts have strayed" into a very broad concept of the right of privacy.

Rehnquist himself has been getting more privacy lately and apparently enjoying it less. He told a lawyers' group recently that the telephone was not ringing off the hook

the way it did when he was an assistant attorney general in John N. Mitchell's Justice Department.

This isolation, said Rehnquist, is bad for both the bench and bar. Strict ethical codes should not be interpreted in a way that shuts off a judge from the real world, he said.

These remarks had echoes of former Justice Arthur J. Goldberg's celebrated 1963 observation about the difference between the post of Secretary of Labor and that of associate justice.

"The secretary's phone never stops ringing," Goldberg said. "The justice's phone never rings. Even his best friends won't call him." Goldberg left the bench in 1965 to become ambassador to the United Nations.

Rehnquist's remarks can't be taken to mean that at his age—he will be 50 on Tuesday—he is so restless that he wants to attempt "re-entry" into private law practice. But they do seem to say that the former "lawyer's lawyer" for Richard M. Nixon will not sit quietly on the bench and merely watch the "real world" go by.