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Hail to the Chief: Former Law Clerks for William Rehnquist Recall What They Learned and How He Touched Their Lives

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COURT IN
TRANSITION

HAIL *to the* CHIEF

Former Law Clerks
for William Rehnquist Recall
What They Learned and How
He Touched Their Lives



Chief Justice William H. Rehnquist, who died Sept. 3, is remembered for his disarming warmth and humor, breadth of knowledge about the law, and insistence that there is life outside the office.

Few knew him better than the legions of clerks who toiled with and learned from him. Indeed, the sheer number who attended his funeral testifies to how highly he was regarded.

Here, four former clerks from the decades of the 1970s, '80s and '90s write about their own particular memories of the late chief justice.

I FIRST MET WILLIAM REHNQUIST in the winter of 1970-71. I was a newly minted member of the honor graduate program in the Criminal Division of the U.S. Justice Department. Rehnquist was the assistant attorney general for the Office of Legal Counsel. He was also the director of the College Visitation Program, a Justice Department program to send officials to college campuses to show that real people worked in the Nixon Justice Department. I had volunteered to participate.

The meeting involved Rehnquist, Attorney General John Mitchell and 25 or so volunteers for the program. I don't remember much about the meeting but, because of subsequent events, I do remember my impressions of Rehnquist, which were not favorable.

First, I noted the Hush Puppies shoes, the long sideburns and the loud ties that made him, as President Nixon thought, appear somewhat "clownish," though I didn't think in those terms.

Second, I noted that he acted very subservient to Mitchell. While I was very impatient with this kind of behavior, it clearly stood Rehnquist in good stead since Mitchell was ultimately instrumental in Rehnquist's unexpected elevation to the U.S. Supreme Court.

Four years passed. I was an assistant United States attorney in the District of Columbia. Rehnquist, of course, was a Supreme Court justice. I had a notion to apply to the Supreme Court for a clerkship. I wrote each of the justices a letter pointing out that, though they were deciding many cases involving criminal law and procedure every year—the largest single part of the court's docket—none of them, nor their law clerks, had any experience in the field. Therefore, I urged, they should hire me. In my letter to Rehnquist, I noted that I had participated in the College Visitation Program.

Rehnquist invited me for an interview. The interview went well, and he offered me the job as a law clerk, starting in July 1975.

When I arrived to take up my position, he was not there. That was usual for the justices; Rehnquist spent



'He had a way of putting his arguments that always made them seem eminently reasonable.'

—Craig Bradley

his summers in Vermont. He arrived in September and what had seemed like a full-time job during a summer of screening petitions for certiorari now expanded to include the cases on the court's docket. At that time, this was about 150 cases per year.

SHARP, SCHOLARLY

NOT SURPRISINGLY, I CAME TO RECALIBRATE my view of Rehnquist. First, he was one of the sharpest lawyers I've ever known. His command of the full range of constitutional law was truly remarkable, including knowing the volume numbers of most of the court's cases, which greatly facilitated pulling a case off the shelf to look it up.

While I generally didn't agree with his positions, he had a way of putting his arguments that always made them seem eminently reasonable. Normally, I didn't even try to argue him out of his views, but on the few occasions that I did, he re-

spected my arguments and occasionally even came to agree with me.

I also felt that he was a genuinely decent person with whom I shared an iconoclastic sense of humor. One thing that he often did was to call Chief Justice Warren Burger on the phone to try to improve his opinions. This was a touchy business because Burger, who surely recognized that he was not in Rehnquist's class when it came to legal reasoning, could easily have been offended by such a call from the junior justice.

But Rehnquist's highly deferential manner toward Burger allowed him to get away with this, and he frequently got Burger to clean up things in his opinions. In fact, his dealings with Burger were so effective that Burger later backed him for the chief justice position.

One of the jobs that fell to the junior justice in those days was planning the Supreme Court Christmas show. Rehnquist and I conspired in this. The show was called "The Making of a Justice, 1975." It recognized that President Ford was, at that time, about to fill the opening created by Justice William Douglas' retirement. The show consisted of law clerks, representing various lobbying groups, singing to a man in a Michigan football uniform—representing, of course, Ford, who had played there.

The songs were about whom Ford should appoint. These were (mostly) sung to the tune of Christmas carols. The songs included an ode to Rep. Bella Abzug of New York, sung to the tune of "Christmas Bells": "I heard from Bella on Christmas Day, Her old familiar grating bray, Please be a pal, Appoint a gal, Peace on a court that's not just men."

Also, we sang to "Gaudeamus Igitur": "Name a scholar, not a boor. One who will be quick and deft, Fighting pressure from the left."

The show culminated with a song sung to the tune of "Angels From the Realms of Glory": "Liberals from the realms of theory, Should adorn our highest bench; Though to crooks they're always cheery, At police misdeeds they blench." The chorus then fell to its knees and concluded, "Save *Miranda*, Save *Miranda*, Save it from the Nixon four!"

Everyone at the Christmas show laughed uproariously at this, except

one person. It was noted that Chief Justice Burger was not at all amused. Evidently, he thought it was beneath the dignity of the court. He got back at us.

In the next round of opinion assignments, Rehnquist, who normally was assigned several good cases to write, was assigned only one case—an Indian tax case—dry, complicated and unrewarding. The case was the bottom of the barrel as far as we clerks were concerned.

Obviously Rehnquist, normally so deferential to the chief justice, was willing to sacrifice some of his capital with Burger in service of a good joke.

Craig Bradley is the James L. Calamaras Professor of Law at Indiana University School of Law, Bloomington. He is the editor of and a contributor to the forthcoming book The Rehnquist Legacy, to be published by Cambridge University Press. He was a clerk from 1975 to 1976.



L A U R A E . L I T T L E

AS A JURIST, CHIEF JUSTICE Rehnquist sought to hew close to the Constitution's precise words. In fact, some even assign the term "literalism" to his constitutional interpretation style.

What is less known is that literalism often characterized the approach of "the Chief" to day-to-day human discourse as well. So I learned when

I began my job clerking for him.

New Supreme Court law clerks ordinarily pass their early weeks on the job without their bosses in the chambers. The clerks arrive during the summer and enjoy their initiation through training from outgoing clerks.

Only as the first Monday in October approaches do the justices trickle back from their summer activities and begin face-to-face contact with their clerks.

But the Chief was back early when I started in July 1986. That was the year he was nominated to be chief justice and he was preparing for his confirmation hearings.

When I had interviewed with then-Associate Justice Rehnquist in May 1985, my name was Laura Little and I was a single woman.

Upon my arrival in July 1986, Justice Rehnquist greeted me, saying he had heard that I had married the month before.

'Literalism' was a hallmark of his day-to-day discourse, as well as his work as a jurist.

—Laura Little

We discussed how my husband, an assistant district attorney at the time, would stay in Philadelphia, and how we planned to commute on weekends, alternating between Washington and Philadelphia.

He pondered that state of affairs, declared it "fair" and then piped up, "What's your name now?"

"Laura Little," I replied.

With total earnestness he inquired, "Now, you didn't marry anyone named Little, right?"

"No, I kept my maiden name," I answered.

He changed the subject. "Have you finished the court's computer training yet?" he asked.

"Yes," I responded, adding that the computer center had given me "my wings" just a few hours before.

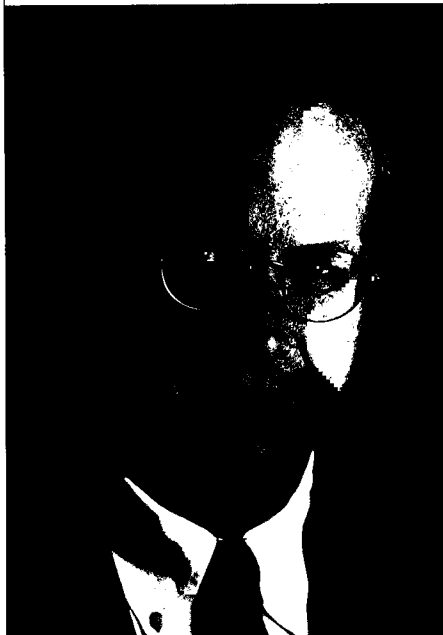
He reacted with surprise: "Oh, I

didn't realize the computer center gave out wings. May I see them?"

As I mumbled that I meant "wings" only as a figure of speech, he looked at me again with an earnest straight face, with neither smirk nor frown.

Silence followed. He then turned and left in what I came to know as his signature: a charmingly ungraceful (and abrupt) departure. And I had an important lesson in choosing my words carefully.

Laura E. Little is the James E. Beasley Chair of Law at Temple University's Beasley School of Law. She was a clerk from 1986 to 1987.



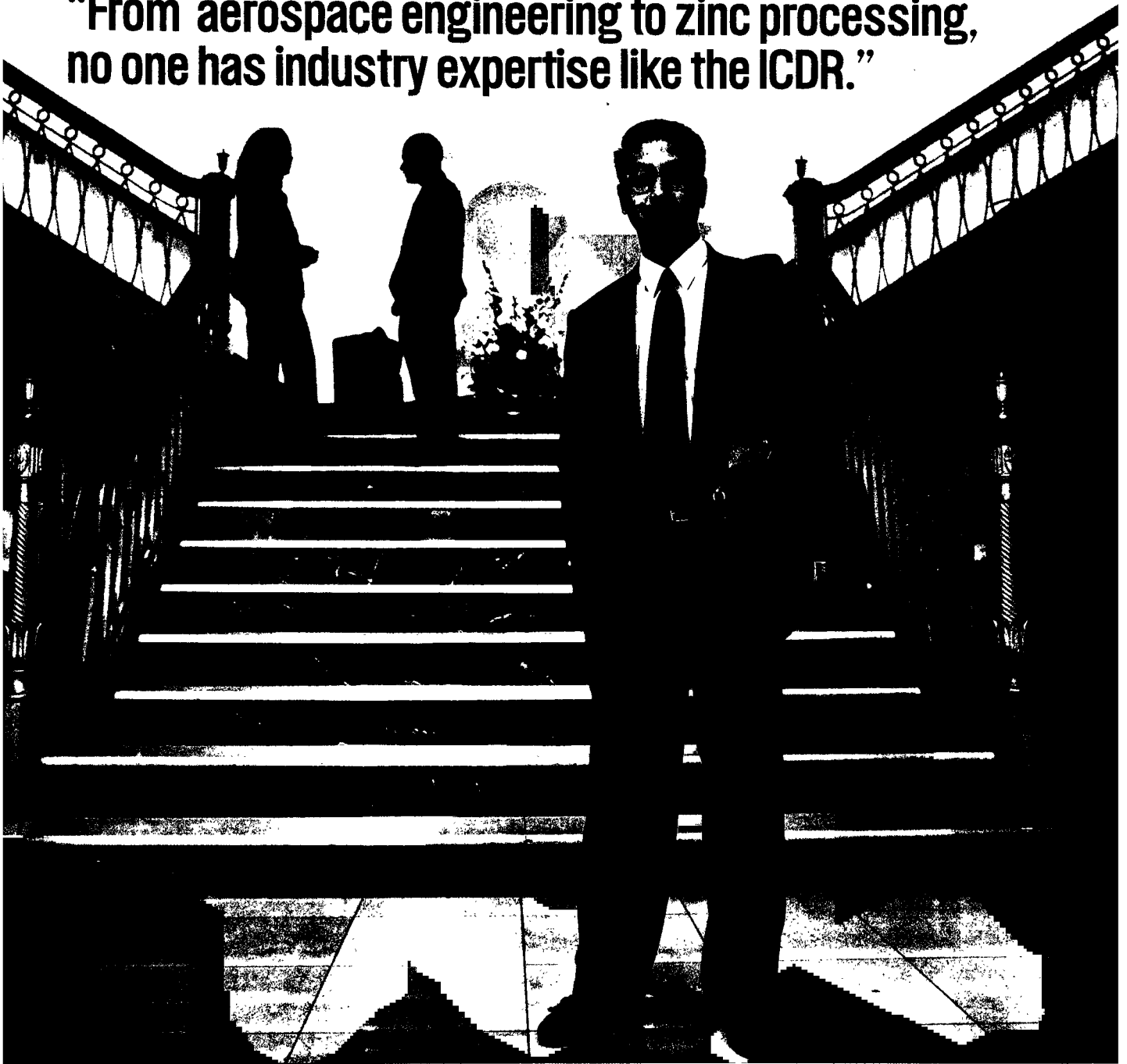
Rehnquist 'was entirely unpretentious, unflaggingly decent and, at times, mischievously funny.'

—John Englander

J O H N C . E N G L A N D E R

IHAD THE GREAT PRIVILEGE TO clerk for Justice Rehnquist during the 1984-1985 court term. While he was not then chief justice, as the years went by we came to know him as "Chief," and so I will call him here.

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The clerkship was a wonderful experience, and the root reason for that, put simply, was that Justice Rehnquist was a terrific boss and an outstanding person.

In reading the various articles, notes and remembrances that have succeeded his death, it now appears that perhaps the secret is out—Bill Rehnquist was not only an extraordinary chief justice but a regular guy. He was entirely unpretentious, unflaggingly decent and, at times, mischievously funny. We learned of the informality very early, when the Chief responded to one of my co-clerks, who called him “your honor.”

“You don’t need that ‘your honor’ stuff,” the Chief replied. “Around here, it’s just, ‘Hey, you.’”

THE PERFECT COMBINATION

THE CHIEF’S INTERESTS WERE FAR-flung; he was just as happy discussing sports, music, geography (one of his great loves) or parenting as he was law or politics. He was just as at home playing tennis or trivia, painting or telling jokes as he was writing opinions. It is this combination of qualities—being both a great man and a good man—that I will treasure.

This is not to overlook the Chief’s intellect. He homed in on the heart of a legal issue more quickly and surely than anyone. And he knew a massive amount of law, seemingly by heart.

I recall once when the Chief and we three clerks were engaged in debate on a particularly obscure constitutional issue. He was standing in our office, surrounded by bookshelves containing the U.S. Reports.

In the middle of the discussion, the Chief stopped talking, walked over to the shelves, picked up a relatively old volume of the U.S. Reports and opened directly to the case—and the exact page—on which the court had addressed the issue we were then discussing.

This was hardly an isolated incident; indeed, it seemed to us that between his time clerking for Justice Robert Jackson and the 14 years he had already served on the court, the Chief either had been involved in, or had actually written, most of the law with which we had to contend.

Beyond this knowledge of the law, however, the Chief was also incredibly efficient and able. He had a long-de-

veloped and thoroughly thought-through view of the Constitution, both its structure and many of its individual clauses.

Once, when a section of a draft opinion I had worked on did not meet his expectations, the Chief simply took the draft into his chambers, sat down with a Dictaphone, feet on his desk and a few U.S. Reports on his lap, and dictated an entire lengthy section of an opinion in less than three hours. When his (unrevised) draft arrived, I suggested he change only two words—one of which he changed back! The structure, logic and writing of the argument were essentially perfect.

But my most lasting impressions of that single year were not of the Chief’s ability but of his humanity. He loved to play tennis, and one day in late spring, as the term was drawing to a close, he invited me to join him to play doubles against some friends on a Saturday morning. I was living with friends just north of Georgetown, and the Chief decided to pick me up. At the appointed time he arrived in his beat-up, light blue Volkswagen Rabbit, and away we went down Wisconsin Avenue to a club northwest of the city.

The drive was fairly long, and we had plenty of time to talk. As with any conversation with the Chief, the topics were far-ranging, but I remember that we talked about his family, his children (his son, Jim, was then in law school at my alma mater, Boston University) and parenting in general.

We talked about my parents—as with the Chief, both had served in World War II in far-flung theaters. As always, the Chief amazed with his knowledge of WWII geography and history, and I quickly became embarrassed by my relative ignorance of the battles my dad had experienced in the Pacific. (Years later I learned that the Chief had corresponded with Dad, managing to recall some details he had learned from me. It is a letter my parents still treasure.)

My lasting impression of that day is how lucky I was to be, however briefly, in the company of such a genuine, great man. I will miss him.

John C. Englander is a partner with Goodwin Procter in Boston. He clerked from 1984 to 1985.



Though expecting a daunting interview, ‘I vividly remember how at ease the Chief made me feel.’

—Celestine Richards
McConville

CELESTINE RICHARDS
M c C O N V I L L E

MY INTERVIEW WITH Chief Justice Rehnquist was not exactly what I expected.

Before the interview, I spent time reading the opinions he had written during the past term, as well as getting up to speed on the history of the Supreme Court and its procedure—by reading the Chief’s book, *The Supreme Court*, of course.

I also worried about the proper way to address him—“Mr. Chief Justice,” “your honor,” or, more simply, “sir.”

I wanted to be as prepared as possible for what I thought would be an intense discussion of the law. So you can imagine my surprise and delight when the Chief opened up

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the atlas in his office and asked me to show him where I grew up.

In the end, the interview was not as daunting as I had anticipated.

While I do not remember much about the rest of the interview (or whether I managed to say, "Hello, Mr. Chief Justice," rather than "Hello, sir"), I vividly remember how at ease the Chief made me feel.

A GLIMPSE INSIDE

THE INTERVIEW, IT TURNED OUT, provided a glimpse into the Chief's personality—his disarmingly charming demeanor, interest in others and interest in topics beyond the law, especially geography.

I also recall walking around the Supreme Court building discussing cases with the Chief, listening to oral arguments, and working diligently to meet the Chief's efficiency-driven deadlines.

But what I remember perhaps

most fondly are the times the three law clerks spent with the Chief not doing work.

Late in the clerkship, for example, we all spent the day at the Chief's cottage in West Virginia helping him with yard work.

During a break, we all listened to wedding music; I was getting married in a few months and needed to begin selecting the music for the ceremony. I will treasure that day always.

Our weekly tennis games—or more particularly the rides to and from those games—were similarly enjoyable. We mostly took my car, which meant the Chief had to squeeze himself into the front seat of my tiny Nissan Sentra.

With classical music on the radio (which the Chief enjoyed), our conversations invariably drifted away from the business of the Supreme Court. These trips provided a wonderful opportunity for the clerks to

learn more about the Chief, and for him to learn more about us.

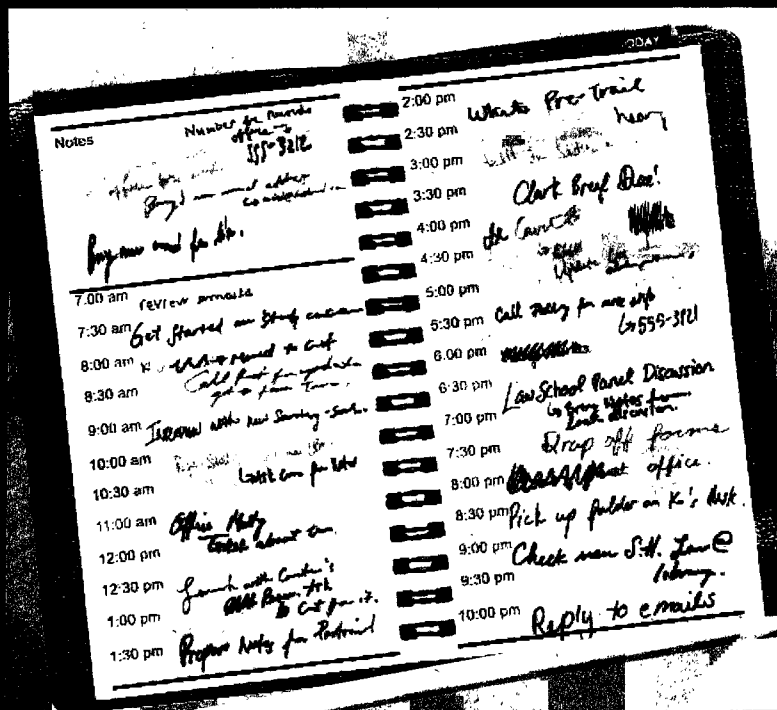
The weekly tennis games were important for another reason.

At first, I viewed tennis as an attempt to grab some exercise during an otherwise hectic workweek. But these games soon began to mean something quite different to me: They represented the importance of making time—no matter how busy we think we are—to take a break from work, and to develop and cultivate our interests. This is but one of many lessons I learned from the Chief.

Without a doubt, Chief Justice Rehnquist made an impact on my life. I will be forever grateful for the opportunity to serve as one of his law clerks. ■

Celestine Richards McConville is a professor at Chapman University School of Law in Orange, Calif. She was a clerk from 1992 to 1993.

Pencil yourself in. ◦



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ACROSS THE TABLE

Will You Negotiate or Litigate?

When a legal battle looms, negotiating with your opponent might seem impossible. But it's never too late to find common ground.

BY RALPH HALVORSEN

THE OWNER OF A MANHATTAN CO-OP APARTMENT spent \$900 to install child-proof window guards on windows in his unit and presented the building's co-op board with the bill. Immediately, a dispute arose over who should cover the cost of the project. The unit's owner argued that the cost should be divided among the building's residents, while the board believed that the owner of the unit should pay the bill in its entirety. The law was unclear on the matter, and neither party was willing to compromise. Whenever a dispute flares up, the parties involved must ask themselves which course of action will yield the best outcome. Should they negotiate, litigate, or simply walk away and accept the status quo? In this true story, the co-op board decided to take the matter to court. Given that

\$900 was not a trivial expense, it seemed like a reasonable decision at the time.

20 years and \$100,000 in legal fees later, the two sides were still fighting in the courts. The co-op board eventually "won" the dispute, but in truth, there were no winners—except, of course, for the lawyers. All of this was brought on by a dispute over \$900 to which neither party was willing to make concessions or to consider the possibility of negotiation.

There are several reasons to pursue litigation rather than negotiation. When the dispute is complex, the stakes are high, legal rights are unclear, and the parties are entrenched in extreme positions and making seemingly irreconcilable claims, it makes sense to obtain legal representation. But litigation is costly; furthermore, it removes control of the dispute resolution process from the disputants and puts it in the hands of lawyers, judges, and juries who have very little, if any, stake in the outcome.

The costs of a lawsuit are often worth the benefits of a legal victory. Before taking on these costs, however, you need to evaluate some important considerations. I'll introduce you to some of the often-overlooked drawbacks of litigation and explain why you should remain open to the possibility of negotiation even after you've gone to court.

The hidden costs of litigation

When considering whether to resolve a dispute through legal action, most people do some cost-benefit shopping among lawyers to try to get a sense of the fees involved. Unfortunately, many critical costs associated with litigation are not visible or salient when you're deciding whether to pursue legal action. Here are some that are often overlooked:

continued on page 2

ACROSS THE TABLE	STRATEGY	THE MIND OF THE NEGOTIATOR	RESEARCH SUMMARIES
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