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September 11, 2001: First person from the US Supreme Court to Law Now

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When the Chief Justice of the United States and I greeted each other with a handshake at about 9:27 a.m. on Tuesday, September 11th, I sensed something was wrong.

I did not know Chief Justice William H. Rehnquist well. This was only the beginning of my third week of my year-long fellowship at the United States Supreme Court, on leave from the University of Calgary.

In fact, precious little is generally known about the inner workings of the Supreme Court of the United States. It is the least public, least expensive, and least dynamic co-equal branch of American government. Best known for its front plaza and Athenian facade, the grand building symbolizes the hope of justice, the authoritative grandeur of the law, and the enormity of government. Most of the Court's business is still done face-to-face and by mail. Every elevator in the building has its own full time employee to operate it.

In this Marble Palace, as some call it, we were preparing for the annual Judicial Conference of the United States, created by 1922 Congressional legislation to "serve as the principal policy making body concerned with the administration of the United States Courts." The Chief Justice of the United States is mandated to preside over the one-day plenary meeting of the most senior two dozen federal judges from around the country to set policy on everything from automation to procedural rules, courthouse security, and judicial vacancies. As the Judicial Fellow working in the Chief Justice's office, I was invited to observe.

At about 9:10 a.m., as I drove through the Washington DC commuting gridlock, I passed the massive and striking Pentagon building, en route to the Arlington Memorial Bridge. It was a beautiful, glittering morning. The DC skyline loomed ahead, against an impeccable pale blue sky.

The congestion broke at the bridge. Circling around behind the Lincoln Memorial, I turned onto Constitution Avenue. Directly ahead of me the Capitol building loomed. It radiated power and prestige. And propriety and respect. I reflected on the perfection of the moment. What a privilege for me to take this famous route, molested only by an exasperating bottleneck of passenger motor vehicles. I would soon park right at the Supreme Court, walk past all the armed courthouse police officers ... with 23 different police forces in the District almost as many police as paving stones ... and convene with a few dozen of the most senior judges in the United States. I was filled with both humility and great expectation.

While I was waiting at a traffic light, I heard "a late-breaking story" on the radio's soft rock station. "This just in. It appears that a small airplane has hit one of the towers of the World Trade Center in New York City. A few minutes later another larger 737 plane then hit the other tower. They are saying there is a lot of debris. We don't have any more information right now."

Then the station was, as quickly, off playing more of the best light favorites. And I reached the Supreme Court and Chief Justice Rehnquist. Of all nine justices, he was appointed at the youngest age, although he is not the youngest now. Having been originally nominated by Nixon, he has already served during six different Presidencies.

His title is Chief Justice of the United States, not the Chief Justice of the United States Supreme Court. This distinction is curious to a Canadian lawyer. Both designations are correct in Canada. In most countries, it is not a dishonor to be the Chief Justice of the Supreme Court.

Moreover, in the United States, unlike in many other countries, the Chief Justice of the Supreme Court has little authority over state law. Most cases that go to court (98%), indeed most of the law that touches the life of the average American, is out of the reach of this country's Chief Justice.

What the distinction in title addresses is the clear separation of the three branches of American government: executive, legislative and judicial. Chief Justice Rehnquist is the head of the judicial branch of government in the country. Most other countries do not make such a clear division. He is, in a sense, equivalent to a Queen, President, or Prime Minister.

As people spoke at the Judicial Conference, I noticed aides entering, handing the Chief Justice notes, and taking his quickly scratched answers away. Someone blurted that "the Pentagon has been bombed".

This was beyond what we could believe. Someone else said the speaker must have confused the Pentagon with the World Trade Center. This was too decorous a meeting for such unsubstantiated alarm. We all knew well that no one's destructive missile could ever penetrate, undisturbed, as far inland as Washington, DC. We all knew the Pentagon does not get bombed; the Pentagon does the bombing. At such meetings, above all, everyone knew of Oliver Wendell Holmes' famous admonition about not crying fire in a crowded theatre.

The politicians and their entourages departed. Those remaining began to listen to the next report to the judiciary. Aides continued to come and go. People were poker-faced. I could hear the Supreme Court's police officers in the hallway shouting "there's a plane in the air now ... and it's heading for us!"

"Should we have a short recess?" several judges thought out loud.

No one seemed to know. The Supreme Court, as a fully independent co-equal branch of government has a fallout shelter and its own generator and water supply. It even has its own police force, health service, fleet of vehicles, seamstress, carpentry shop, food services, photographer, and barber. The Chief, who is ultimately responsible for everything that happens

in the building, is legendary for keeping it open and operating, because that is what taxpayers expect.

As the rest of us waited, someone shouted, "the World Trade Center has been hit hard, now the Pentagon has just been hit. All air traffic has been closed in the country. The Marshall has asked that the Supreme Court be immediately evacuated."

With no time to contemplate the horror of what was happening, we were ushered out the side entrance by the Supreme Court police. It was ironic to see the top federal judges from across the land pour out into the streets of central DC ... as a security precaution. The visiting judges walked back to their hotels. This gave new, unintended, meaning to the concept of security for the judges. It was the first time in its almost 80 year history that the United States Judicial Conference had to be cancelled.

Police had by now flooded the streets, directing traffic away from the centre. Emergency vehicles with lights on and sirens howling wove and sped through the bedlam. Had another plane, bomb, or missile hit its target?

The Capitol police marched out in force to broaden the cordon. They screamed at pedestrians to walk the other way. A few paces in that direction, and we met with other police pushing us back. Chaos. All government buildings were suddenly closed and evacuated. Federal workers nervously poured out onto the streets, with no obvious place to go. The look on their faces was the very definition of fear. Drivers, stalled in traffic, cried as they listened to the news. Cars emptied into the streets as people tried to flee.

For everything that was so important 20 minutes ago ... none of it mattered now.

Media people, identification swinging from their necks, were scurrying around looking for information and eternal images. Police rifles were brought out on the corners and in the middle of the streets. They were raised in readiness and deterrence. It seemed that was all one could do. But who and what were we defending against?

On the street, we were searching the sky and listening intently for anything sounding like a jet engine. I glanced up to the roof at the front of the Supreme Court. There on top was a lone policeman standing. He straddled the peak in a gunslinger pose, just above the prominently sculpted "Equal Justice Under Law" banner, scanning the pristine blue sky ...

Everyone, including the police on horseback shielding the Washington monument, seemed desperate to know and defend at the same time.

I knelt down and wept for humanity amid the ubiquitous, maddening wail of sirens.

In the days that followed, I, as a Canadian, had a difficult time understanding the continued closures of offices, schools, and other buildings, the countless renditions of the national anthem and "God Bless America" on the radio. Every building window, hat, television commercial, vehicle, office desk, Internet homepage, government counter, front porch, and pair of hands was

adorned with the flag. An office mate, in tears, brought a platter of flags through the department to ensure that we were adequately equipped. Another solemnly asked, knowing I was a Canadian, whether I "was in the [flag] mood?"

The country figuratively wrapped itself in the flag. Large department stores ran out of supply. The number of full time employees in the Capitol alone, who were responsible for taking down the flags at night (it is illegal to fly the American flag at night without special dedication and without flood lighting it) went from two to six.

Security precautions sporadically seemed to increase throughout each day after Black Tuesday. Buildings and streets that were open in the morning closed in the afternoon. Some of our neighbors were so concerned that they talked about the value of hoarding provisions and withdrawing their money from the banks.

A succession of superlatives followed, like "America is the greatest country", "we are now at war", and "Osama Bin Laden dead or alive". President Bush even promised to "rid the world of evil", possibly unencumbered by the Rule of Law. This language issued to comfort nerves jangled by genuine fear and anger that few foreigners can fathom. Americans took the attack against their country personally.

Where mere days before, the American Civil Liberties Union and other national groups were vocal in their opposition to a minute of silence in the schools of the nation, there was now only talk of praying and God blessing America. A society that banned disciplinary spanking of children was now united to bomb a large foreign country and strangers into dust.

People stopped in their tracks several days later when they next saw an airplane in the sky. The National Guard with its military fatigues and vehicles stationed at strategic corners in the District, the recognizance flights, the occasional sirens, the bomb threats and evacuations, the anthrax cases and hoaxes, all continue to demonstrate how we have been changed.

Ongoing events remind me of the words over a generation ago of the late Chief Justice Earl Warren. He confided that he "always turn[ed] to the sports pages first." His reasoning? "... they record people's accomplishments; the front-page, nothing but man's failure."
