Announcement of Chief Justice Burger's Retirement Takes Nation By Surprise; President Reagan Nominates Justice Rehnquist to Fill Center Chair

After fourteen years on the Supreme Court as Associate Justice, William H. Rehnquist was nominated by President Reagan to be the Chief Justice of the high bench upon the retirement of Chief Justice Burger.

Born October 1, 1924 in Milwaukee, Wisconsin to William and Margery Rehnquist, the future Justice served in the U.S. Army Air Corps from 1943 to 1946 during World War II. Mr. Rehnquist was discharged with the rank of sergeant and at-

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On Tuesday, June 17, 1986, President Ronald Reagan took the nation by surprise, calling a 2:00 PM press conference to announce several pending changes on the Supreme Court bench. Chief Justice Warren Burger would be resigning said the President. Associate Justice William H. Rehnquist would be nominated to replace his colleague, Chief Justice Burger, in the Court's center chair. And, Judge Antonin Scalia of the U.S. Court of Appeals for the District of Columbia Circuit would be

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Judge Antonin Scalia Nominated to Succeed Associate Justice Rehnquist

Culminating a quarter century-long legal career which included six years in private practice with a large Ohio firm, government service during two presidents' administrations, ten years of teaching at top law schools, and four years as a judge on one of the most important courts in the nation, Antonin Scalia has now been nominated by President Reagan to be an Associate Justice on the Supreme Court.

Born March 11, 1936 to Sicilian immigrant parents in Trenton, New Jersey, Antonin Scalia's biography reads like a classic American success story. As in many American immigrant families, education was held in high regard by the Scalas. The parents of Antonin Scalia were both teachers — his mother a grade school teacher and his father a professor of Italian literature. After graduating from the Jesuit St. Francis Xavier High School in Manhattan, where, according to recent press accounts, Mr. Scalia demonstrated academic promise, he went on to attend the University of Fribourg, Switzerland and, in 1957, graduated summa cum laude from Georgetown University, with an A.B. and as valedictorian of his class. From Georgetown, Mr. Scalia went to the Harvard Law School where, in 1960-61, he served on the law review as note editor. Taking his law degree in 1960, magna cum laude, Mr. Scalia was appointed a Sheldon Fellow by Harvard University for the 1960-61 academic year.

At the beginning of that academic year, on September 10, Mr. Scalia was married to Maureen McCarthy. The Scalas now have nine children ranging in age from the eldest, Ann (Forest), 24, to the youngest, Mary, age three.

Over the next ten years, Mr. Scalia was admitted to the bars of two states: Ohio in 1961 and Virginia in 1970. From 1961 to 1967, Mr. Scalia practiced law as an associate with the Cleveland firm of Jones, Day, Cockley and Rwisa. Following this period as a private attorney, Mr. Scalia began what would be a long attachment to teaching by joining the law school faculty at the University of Virginia for seven years, first as an associate professor and then, as of 1970, as a full professor. Taking leave from Virginia, 1973-1974, Mr. Scalia commenced his sixth years of government service as General Counsel in the Office of Telecommunications Policy under President Nixon, from March 1971 to September 1972, and then as Chairman of the Administrative Conference of the United States until August of 1974. From the Administrative Conference, Mr. Scalia moved to the Department of Justice to serve, until January 1977, as Assistant Attorney General in the Office of Legal Counsel under President Ford, a position which Justice Rehnquist had held from 1969 to 1971.

Mr. Scalia returned to academia in 1977 as Visiting Professor at the Georgetown University Law School; during the same year, Mr. Scalia was also a Visiting Scholar at the American Enterprise Institute where he has been an editor and a regular contributor to AE's publication, Regulation, and a member of the Advisory Council for that organization's Legal Policy Studies Program.

Throughout the 1970s, articles written by Mr. Scalia were being published in law reviews and journals around the country. His 1978 (28 Administrative Law Review 864) and 1979 (Regulation Nov/Dec) articles concerning the constitutionality of the legislative veto are of special interest. Another 1979 article, "The Disease as Cure: In order to get beyond racism, we must first take account of race." (Washington University Law Quarterly 1979), has also been cited in recent press accounts.

Mr. Scalia's tenure in Washington was interrupted in 1972, when he left to teach at the University of Chicago until 1977, during which time he took leave to teach as a Visiting Professor at Stanford. On August 17, 1982, President Reagan appointed Mr. Scalia to the United States Court of Appeals for the District of Columbia Circuit.

Judge Scalia's articles and opinions from the bench reveal a strong intellect which clearly reasons his view of the Constitution. He is also well-known for having developed an expertise in administrative law. As a member of the American Bar Association, Judge Scalia served as Chairman of the ABA's Section of Administrative Law during 1981-82. His membership in the Administrative Conference of the U.S. and on the Board of Directors of the Center for Administrative Justice also reflect this long-standing interest of Judge Scalia.

In his paper entitled "Historical Anomalies in Administrative Law," delivered by Judge Scalia at The Supreme Court Historical Society's 1985 Annual Lecture (printed in the Society's 1985 Yearbook), he argued that the "irrational" development of the doctrine of sovereign immunity and independent regulatory agency law demonstrate that reliance upon the most recent precedent in law is inadequate to understanding the law. Judge Scalia concluded his lecture about the "antihistorical bias" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that has all the historical underpinnings of the morning newspaper."
Eleventh Annual Meeting Opens With Capacity Crowd

For Annual Lecturer Daniel Meador of the University of Virginia

Before taking the podium, Professor Daniel Meador (second from left) met with Society Trustee John Shepherd (far left), Executive Director Cornelius Kennedy (second from right) and Governor Linwood Holton (far right), the Society’s President.

Society members and their guests provided a capacity audience on Monday, May 12, 1986 to hear Professor Daniel Meador of the University of Virginia Law School deliver this year’s annual lecture. Professor Meador, who spoke at the personal invitation of Chief Justice Burger, discussed the 1886 appointment of Associate Justice Lucy Quintus Cincinnati Lamar.

Professor Meador’s lecture was the opening event in a day-long schedule of activities comprising the Society’s eleventh annual meeting. Speaking in the restored Supreme Court chamber in the U.S. Capitol building, Professor Meador discussed the historical ramifications Lamar’s appointment held for the reconciliation of North and South during the post Civil War era. Professor Meador’s approach to his topic was noteworthy for both building the interest of his audience throughout the hour-long lecture and for his inclusion of considerable illustrative detail without the benefit of notes. In one historical aside, for example, Professor Meador recounted for his listeners benefit the composition of the Court and respective years of appointment of each of the justices on the Court during the late 1880s. The full text of Professor Meador’s talk will appear in the 1986 Yearbook.

Following the lecture, a number of members went to the Supreme Court for a special tour of the building. Conducted by an informative guide from the Court Curator’s staff, the tour took members through areas of the building not included on most tours. Among these was the Justices’ Dining Room where many of the Society’s antiques are on display.

Those members who did not attend the Court tour visited the Society’s headquarters building, immediately behind the Court’s grounds, where an informal reception was held. The building’s main floor is furnished in the early nineteenth century style.

Holton, the Society’s President, convened the eleventh annual membership meeting. The Governor opened his remarks by extending a special acknowledgement for the efforts of Annual Meeting Chairman J. Roderick Heller, III who supervised the planning of the day’s events.

Turning to the business of the meeting, Governor Holton delivered a progress report on the Society’s various projects—noting in particular the recent publication of the largest Yearbook in the Society’s history and the first volume of the Documentary History series. Governor Holton also pointed out that the final installment on the loan taken out by the Society to partially fund its headquarters purchase had been retired.

This, he remarked, was a significant step toward securing the Society’s future. Similarly, said Governor Holton, the increases in membership and kiosk revenues realized by the Society this past year “have placed within our reach the goal of meeting our annual expenses from operating revenues.” The continuation of this financial trend, Governor Holton observed, would allow the Society to devote all of its grant solicitation efforts toward funding expanded historical projects.

Following his report, the Governor called on Mrs. Virginia Daly to deliver the report of the Nominating Committee. Mr. Frank Jones, the Society’s Membership Chairman for Georgia and a partner in the Atlanta-based firm of King & Spalding, was nominated and elected for his first term as a trustee. Also nominated and elected for an additional term on the Board of Trustees were: Mrs. Gwendolyn Cafritz, Mrs. Patricia Collins Dwinnell, Mr. Francis R. Kirkham, Mr. William Barnabas McHenry, Mr. Richard Moore, Mr. David A. Morse, Mr. Walter S. Rosenberg, III, Mr. Bernard G. Segal, Mr. Obert C. Turner, Miss Alice L. O’Donnell, Mr. David Lloyd Kreager and Dr. Melvin M. Payne. At the Annual Trustees Meeting which followed the Membership Meeting, Ambassador Kenneth Rush and Governor Linwood Holton were nominated, respectively, for new terms as Chairman and President, and were both subsequently elected by the Trustees.

Following the meetings, members adjourned to the Court’s East and West Conference rooms for the Society’s eleventh annual reception. Entertainment for this event was provided by the U.S. Army Band ensembles. At 8:00 PM, members gathered in the Great Hall of the Supreme Court building for the annual dinner where they were treated to an after-dinner performance by the Army’s Striding Strings and the U.S. Army Chorus.

One of the members who attended the informal reception held in the Society’s headquarters building following the annual lecture. The building’s main floor is furnished in the early nineteenth century style.

Mrs. Virginia Warren Daly, the Society’s Secretary, delivers the report of the Nominating Committee while Annual Meeting Chairman J. Roderick Heller, III follows the proceedings in his notes.

Justice Brennan stops to speak with a member on his way to dinner in the Great Hall.

The U.S. Army Chorus provided entertainment at the annual dinner.

Members, and their guests, as usual, provided a capacity crowd for the annual dinner held in the Court’s Great Hall.
On the night of February 15, 1898, the battleship Maine blew up in the Havana harbor. Sentiment in the United States immediately rose to near fever pitch. Fanning the fires of public opinion, the headlines of Randolph Hearst's paper, "The Journal," told its readers "The Maine is destroyed by treachery!" "Maine split in two by an enemy's infernal machine!" and "Remember the Maine, to Hell with Spain!" The last headline became the rallying cry of the American public who had watched the war between Spain and Cuba over the last three years with increasing interest and anxiety. Congress, reflecting the popular opinion of the time, was ready to declare war almost immediately after the incident had been reported, but the President, William McKinley, and the First Assistant Secretary of State, William Rufus Day (who was the de facto Secretary of State), both advocated moderation with Spain rather than an armed conflict. Thus it was that two men from a small town in Ohio stood at the vortex of a storm that would signal the unraveling of the Spanish colonial era, and the entrance of the United States as a world power complete with a tropical empire she had wrested from the Spanish crown.

The personal history of William Rufus Day is that of an unassuming man almost reluctantly being catapulted into places of power and prestige. Born in the small town of Ravenna, Ohio to a respected family with New England roots, Day was heir to the Puritan ethic, small-town respectability, industry, the Republican Party and a legal tradition. He spent little time in promoting himself, but his ability, loyalty and dedication resulted in his serving as a lawyer, Ohio state judge, Associate Secretary of State, Secretary of State, Chairman of the Commission negotiating the Treaty of Paris at the close of the Spanish-American War, United States Circuit Judge and Justice of the Supreme Court of the United States. Day's Judge Day, as William Rufus Day later was commonly called, was born on April 17, 1849, to a family with jurist traditions. His mother, Emily Spaulding Day, was the granddaughter of Chief Justice Zephaniah Swift, who had been in his graduating class, that "I find myself nearer the head of the Class of '70 than I ever succeeded in getting while in the University." Upon his graduation from Michigan, Day returned home to Ravenna where he read law in a local judge's law office for a time in one of the small counties of Ohio. Day spent his childhood in Ravenna, a small, but prosperous town thirty miles southeast of Cleveland. The political fervor of the Civil War era created many changes in the town. Most of its residents found themselves on the side of the Fessiers, and after the passage of the Ruthe Slave Act, most of the hitherto loyal Democrats changed their allegiance to the alternative anti-slave Republican Party. Day's family was among those who joined the ranks of the Infant Republican Party. In payment for political loyalty, William Day's maternal grandfather, Rufus Spaulding, was nominated to run for a seat in Congress, and his father was appointed Chief Justice of the Ohio Supreme Court.

Day graduated from the Ravenna High school at the age of 16 and in September of 1866 entered the class of 1870 at the University of Michigan in Ann Arbor. There is no indication that his four years of college were marked by any particular triumphs. Indeed, he admitted years later while serving as a Justice of the Supreme Court of the United States and being seated next to the Presiding Chief Justice of the University, Harry Hutchins, who had been in his graduating class, that "I find myself nearer the head of the Class of '70 than I ever succeeded in getting while in the University."
Day and McKinley had several things in common: both had active involvement in Republican politics, and both were interested in the law. A strong and enduring friendship developed between the two, even after McKinley's assassination, the devotion to McKinley. Even after McKinley's assassination, the feeling this showed was significant. He suffered from several serious illnesses during his life, including human interest, legal principle, or money.

Day's son Rufus related an interesting anecdote regarding Day's encounter with some Boston lawyers. During his years in Canton, Day was called upon to represent several corporate clients.

In 1893, while serving as Governor of Ohio, McKinley experienced some financial difficulties. He did some bass fishing, and other serious works. He did some bass fishing, and other serious works.

Despite his involvement in politics, Day was reluctant to be a law partner to support his friend William McKinley in his career. At the age of 34 McKinley was elected to the U.S. House of Representatives and throughout his career, McKinley called upon Day for legal, personal and political advice. Day took an active part in McKinley's presidential campaign in 1896.

In 1899, while serving as Governor of Ohio, McKinley experienced serious financial problems. The crisis was precipitated by the bankruptcy of Robert L. Walker, whose notes were held by Day and Adee. During the trial, Day was called upon to represent several corporate clients.

Despite his involvement in politics, Day was reluctant to be a candidate for any public office. In 1896, he was drafted by both the Republican and Democratic parties. Day, along with Myron T. Herrick and H. H. Kohlsaat came to McKinley's Secretariat. Whatever the reasons were, the end result was indeed unfortunate. Sherman's mental abilities had deteriorated to the point where he was not only ineffective, but at a liability. To remedy the situation, McKinley announced Day's appointment to the position of First Assistant Secretary of State on April 23, 1897.

Sherman's disability became a serious problem and his rather mild manner and appearance were not sufficient to honor all the debts so in order to satisfy the demands, the men raised money from wealthy donors and paid all the notes by taking care that the Governor should pay the bills in an orderly way.

According to Fairbanks, seven or eight of Boston's "finest" had been employed by the bondholders and would be "reorganized against the country lawyer," William Day, who represented the local stockholders and management of the railroad. For the first few days, the Bostomians made many motions and suggestions that were patently unfounded to the current owners, and made numerous allusions to the dull wit of the country lawyer. During this stage of the trial, they outlined their entire plans for reorganization and committed themselves to a procedure which would leave Day's clients "out in the cold.""
Day (continued from page nine)

He [President James A. Garfield] thought that the people's
mind was infinitely worse than the public supposed it to
have been. Day never dared leave home alone for a minute
and always attended the cabinet meeting with it. He
was published at the time and was taken as a joke, said
Day, but he did once declare to declare war
against Austria [while walking] between the State De-
partment and the White House. Didn't Mr. McKinley put
himself in the cabinet to make a speech to the Senate for
Mark Hanna? Innocently asked Mrs. Day. My dear said her
husband, there are some things we do not admit
even to ourselves.

Disability in the Secretaries is not an easy situation
at any time, but it was particularly difficult in early 1898 when
the war in Cuba began to heat up. The Cubans had been con-
ducting guerrilla warfare against the Spanish for some time.
By the end of 1898, the Spanish had sent approximately 15,000
troops to Cuba, of which 50,000 had been killed, and 50,000
disabled by illness or disease. By the summer of 1898, the infla-

The July 9, 1898 issue of Judge depicts "The Spanish Brute"
committing atrocities against American soldiers following the
Maine incident.

as being that of an adviser, rather than a policy maker, and he
sought to carry out McKinley's policies, rather than change
them. Both men were conservative and reluctant to be drawn
into an armed conflict and repeated efforts were made to
maintain peaceful relations with Spain, as well as to mollify
the American public who were becoming increasingly strident in
their demands for intervention. On February 3, 1898 an incident
occurred which further intensified American feelings against the
Spanish.

The New York Journal printed a letter purported to be writ-
ten by the Spanish Minister Duque de Lome to Mr. Jose Can-
elejas, a Spanish agent in Havana. The letter, which had been
written in December of 1897 as a confidential missive, the
Spanish Minister commented on McKinley's annual message,
making many insulting references to McKinley himself.
Printed in its entirety in the February 8, 1898 edition, it infuri-
ated many daily in the newspapers, as they endeavored to in-
crease their sales and circulation by using sensational stories.
Both papers suggested that the administration's reluctance to
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Lome letter to a very glum Judge Day.

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nominated to become the Court’s newest Associate Justice.

The press conference followed a May 27, 1986 meeting between President Reagan and Chief Justice Burger during which the Chief Justice informed Mr. Reagan of his intention to retire from the Court. Citing the pressing demands of his role as Chairman of the Commission on the Bicentennial of the U.S. Constitution, Chief Justice Burger asked to be excused from his duties as Chief Justice at the end of the Court’s current term.

Though four presidents have occupied the White House during his tenure, for the over sixty million Americans born since his 1969 appointment, Chief Justice Burger’s resignation marks the first transfer of leadership in the judicial branch of government in their lifetimes.

Chief Justice Burger was nominated by President Richard Nixon on May 21, 1969 to replace retiring Chief Justice Earl Warren. He was confirmed by the Senate on June 9, 1969 by a vote of 74-3 and took the judicial oath on June 23rd of that year.

Prior to his elevation to the Supreme Court, Chief Justice Burger devoted sixteen years to public service, beginning with a 1953 appointment as Assistant Attorney General of the United States. Three years later, in 1956, President Eisenhower named him to the U.S. Court of Appeals for the District of Columbia Circuit where he served until his 1969 appointment to the high bench.

In addition to his career in public service, Chief Justice Burger had acquired significant legal experience in private practice before joining the Court. Subsequent to graduating magna cum