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—continued on page three

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—continued on page twelve
Judge Antonin Scalia: 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 Scalia family. The parents of Antonin Scalia were both teachers — his mother a graduate 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 an 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 (Forsythe) age 29, to the youngest, Margaret Jane, age 5.

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, Cockey and Ellis. 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 assistant professor and then, as of 1970, as a full professor. Taking leave from Virginia, 1971-1974, Mr. Scalia commenced his six years of government service as General Counsel in the Office of Telecommunications Policy of the Department of Justice to serve, until January 1977, as Assistant Attorney General. From 1977 to 1981, Mr. Scalia served as a judge on the United States Court of Appeals for the District of Columbia Circuit. Judge Scalia's art 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 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 1986 Annual Lecture (printed in the Society's 1986 Yearbook), he argued that the "irrational development of the doctrine of sovereignty 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 "anti-historical bias" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which pervades "modern judicial culture" with the observation that "The result is a decisional literature that is historically biased" which...
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 1880 appointment of Associate Justice Lucas Quintus Cincinnatus 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, to be printed this coming fall.

Following the lecture, a number of members went to the Supreme 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. Rodrick 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 assuring 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. Kirtham, Mr. William Barnabas McHenry, Mr. Richard A. Moore, Mr. David A. Moers, Mr. Walter S. Rosenberg, III, Mr. Bernard G. Segal, Mr. Obert C. Tanser, Miss Alice L. O'Donnell, Mr. David Lloyd Kreeger and Dr. Melvin M. Payne. As 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 Strolling 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.

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.
Editor's Note: The editor would like to thank Jerry Gundlach, a student intern, for his assistance in researching this article.

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"; and "Ah, 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 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 mediation 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 unseating 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, Assistant 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 personal career and the partnership, to prosper. Day spent little time in promoting himself, but his ability, loyalty and dedication resulted in his serving as a lawyer, Ohio state judge, Assistant 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 personal career and the partnership, to prosper. Day spent little time in promoting himself, but his ability, loyalty and dedication resulted in his serving as a lawyer, Ohio state judge, Assistant 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 personal career and the partnership, to prosper. Day spent little time in promoting himself, but his ability, loyalty and dedication resulted in his serving as a lawyer, Ohio state judge, Assistant 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 personal career and the partnership, to prosper. Day spent little time in promoting himself, but his ability, loyalty and dedication resulted in his serving as a lawyer, Ohio state judge, Assistant 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 personal career and the partnership, to prosper. Day spent little time in promoting himself, but his ability, loyalty and dedication resulted in his serving as a lawyer, Ohio state judge, Assistant 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 personal career and the partnership, to prosper. Day spent little time in promoting himself, but his ability, loyalty and dedication resulted in his serving as a lawyer, Ohio state judge, Assistant 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 personal career and the partnership, to prosper.

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 Freesoilers, and loyal Democrats changed their allegiance to the alternative political party. Day's father, Luther, was also a lawyer by profession and served as Chief Justice of the Ohio Supreme Court. It seems that Day's choice to enter the legal profession was almost a foregone conclusion. 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 President of the University, that he was "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 year. In 1871, he returned again to the University of Michigan to spend a year in the Michigan Law School. In the spring of 1872 Day decided to strike out on his own, and moved to Canton, Ohio where he spent the next twenty-five years of his life as a trial lawyer and partner in the city's leading law firm. Lynch was also responsible for introducing Day to Mary Elizabeth Schaefer, who became his wife in August of 1878. This marriage lasted thirty-seven years, until Mary's death in 1912. They were the parents of four sons, William L., Rufus, Stephen and Luther. According to one of his colleagues, he...domestic relations of Judge Day were exceptionally happy. He was a devoted husband and father. He also had many friends, not because he made a conscious effort to gain them, but because he was innately considerate of others and also inspired confidence.

Both Lynch and Day were interested in politics and Lynch ran against Major McKinley, a Civil War hero, in two consecutive elections for prosecuting attorney of Stark County. Lynch was defeated in both elections but naturally in the business of campaigning, Day and McKinley became acquainted.

William Rufus Day: Lawyer, Statesman, Justice

Associate Justice William Rufus Day

(1903 - 1922)

The front page of The World trumpeted the anti-Spanish sentiments evoked by the Maine disaster. Day's able handling of this and other incidents as Secretary of State led to his appointment to the Court in 1903.

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Day and McKinley had several things in common: both had married daughters of a United States District judge, both were active in Republican politics, and both were interested in the law. A strong and enduring friendship developed between the two men which lasted throughout their lives. Loyalty was one of Day's strongest traits. His intense loyalty was evident in his devotion to McKinley. Even after McKinley's assassination, Justice Day continued to observe the anniversary of McKinley's birth by distributing carnations to his brothers on the Supreme Court Bench. Justice Brandeis commented that he felt this showed "a rare loyalty of one man to another, a loyalty that was present in small as well as important matters."

Physically, Day was a small man with a rather frail constitution. He suffered from several serious illnesses during his life and too frequent vacations in an attempt to recover himself. He was described as "rather above the average height, slender, with a scholar's face and the old-fashioned air, light complexion, reddish-brown hair and mustache, and brown eyes which added to the power in the lines of his face when they were not covered by his eye-glasses ... he had a low, but distinct and pleasing voice and a simple and courteous manner ... he looked like a gentle old-fashioned professor." Day did not pursue many leisure activities. According to his son Rufus most of his evening "relaxation" reading was comprised of the Michigan Register and other serious works. He did some bass fishing, played an occasional game of golf and enjoyed a politic baseball game at Fenway Park. His main leisure activity was the national pastime — baseball, and he was reported to have missed very few games while in Washington, often going directly from the Court to the ball park.

Day's son Rufus remember his father's passion for baseball. "In the fall of one year, a case came up in Court which didn't involve very much — not of life and death. I remember one day whenai judge, Justice Day, said to the reporters, "... the country lawyer came forward and modestly interposed a few objections in the interest of his clients. The Boston crowd attempted to throw him down with a rush, but quietly plucked his spear into the weak spots of the armor of everyone of them and drew blood at every thrust. Before the day was over he had them all thoroughly demoralized and quarreling among themselves, while he submitted a few motions to the Court which were immediately sustained. The result ... was that when the case was concluded the country lawyer walked off with the whole thing, leaving the lights of the Boston bar in a semiconfused condition and wondering what had happened to him."

As First Assistant Secretary of State, Day found himself in a very uncomfortable position. Sherman had become so enamored of his own cleverness, so fascinated by the subtlety of position, and paid token courtesy visits to the Secretary, while attempt- ing to pursue their business with the reticent Day, who had been handed the reins of the diplomat's art of the cold. Day was also painfully aware of the inadequacy of his past career experience for the demands of his current post.

President McKinley (far left) meets with his Cabinet in 1898. Day (seated, center, facing McKinley) served as Secretary of State...
Disability in the Secretary of State 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 conducting guerrilla warfare against the Spanish for some time. By the end of 1896, the Spanish had sent approximately 100,000 troops to Cuba, mostly taken from the Philippines, and 60,000 had been injured or killed. The war was costly and difficult for both sides, but it was particularly difficult in early 1898 when the conflict was at its peak. American business interests in Cuba were estimated at approximately $60,000,000. Many of the investments were related to the sugar industry, which was of course severely crippled by the ongoing warfare and the Spanish blockade of the ports. Opium was split between businessmen: some feared a doctrine of self-defense regardless of the consequences as being that of an adviser, rather than a policy maker, and he sought to carry out McKinley’s policies, rather than then create them. Both men were conservative and reluctant to be driven into an armed conflict and repeated efforts were made to maintain peace. The Spanish were no less interested in the situation, and as to maintain peace. However, the continued warfare and the Spanish blockade of the ports began to make it clear that the American public who were becoming increasingly strident in their demands for intervention. On February 8, 1898 an incident occurred that further intensified American feelings against the Spanish.

The New York Journal printed a letter purported to be written by the Spanish Minister Duque de Lome to Mr. Jose Cano, 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, stating that the letter was a warning to the American public who were becoming increasingly strident in their demands for intervention. On February 8, 1898 an incident occurred that further intensified American feelings against the Spanish.

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Burger (continued from page one)
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 laude from the St. Paul College of Law (now Mitchell College of Law) in 1931 he joined a respected Minnesota law firm in which he practiced until 1953. Concurrently he taught law part time at his alma mater from 1931 until 1948. Today he serves as a Trustee Emeritus of the College.

Chief Justice Burger married Elvera Stromberg in 1933. They have two children, Wade Allan Burger and Margaret Elizabeth Burger (now Mrs. Edward Louis Rose). Chief Justice Burger himself is the fourth of seven children born to Charles and Katherine Burger. His parents were Swiss and German immigrants who settled in St. Paul, Minnesota prior to the future Chief Justice's birth on September 17, 1907.

Chief Justice Burger's retirement marks an end to the longest tenure of any twentieth century Chief Justice. During his service on the high court, he devoted considerable effort toward administrative reforms both for the Supreme Court and the federal judiciary as a whole. He has promoted these reforms in coordination with fulfilling his statutory responsibilities as presiding officer over the Judicial Conference of the United States and as Chairman of the Board of the Federal Judicial Center.

Chief Justice Burger has said that the preparations for the celebration of the bicentennial of the Constitution will occupy most of his time during the coming year. However, he is expected to continue his involvement with the Institute of Judicial Administration, Project '87 and the Supreme Court Historical Society— all of which have named him as their Honorary Chairman. Chief Justice Burger will also begin serving as Chancellor of the Marshall-Wythe Law School in Williamsburg, Virginia in early 1987.