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(JUDGE)

SEPTEMBER 26, 1986

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SWEARING IN OF CHIEF JUSTICE WILLIAM
REHNQUIST AND JUSTICE ANTONIN SCALIA

MR. CHIEF JUSTICE BURGER, MR. CHIEF
JUSTICE REHNQUIST, MEMBERS OF THE COURT,
LADIES AND GENTLEMEN/ TODAY WE MARK ONE
OF THOSE MOMENTS OF PASSAGE AND RENEWAL THAT
HAS KEPT OUR REPUBLIC ALIVE AND STRONG /-
AS LINCOLN CALLED IT THIS LAST BEST HOPE OF
MAN ON EARTH /- FOR ALL THE YEARS SINCE ITS
FOUNDING. ONE CHIEF JUSTICE OF OUR SUPREME
COURT HAS STEPPED DOWN. / AND TOGETHER WITH
A NEW ASSOCIATE JUSTICE/ ANOTHER HAS TAKEN
HIS PLACE. / AS THE CONSTITUTION REQUIRES,
THEY HAVE BEEN NOMINATED BY THE PRESIDENT,/
CONFIRMED BY THE SENATE/ AND THEY HAVE TAKEN
THE OATH THAT IS REQUIRED BY THE
CONSTITUTION ITSELF /- THE OATH TO SUPPORT
AND DEFEND THE CONSTITUTION OF THE UNITED
STATES... SO HELP ME GOD. //

MEMBERS -- COURT - L. & G. - U
WLCM. -- W. H. & THANK U -- COMING
-- WITNESS THIS HISTORIC OCCASION.
THIS CEREMONY -- CULMINATION -- OUR
CONSTIT. PROCESS -- INVOLVES EACH --
3 BRANCHES -- GOVT. / 1 HV. HD -- HONOR
-- NOMINATING JUSTICE REHNQUIST -- BE
-- NKT. CH. J. -- U.S. & JUDGE SCALIA
-- BE -- ASSOC. J. -- U.S. SUP. CT.
" SEN. -- CONFIRMED MY NOMINATIONS
& -- NOW ASK THAT CH. J. WARREN
BURGER ADMINISTER -- CONSTIT. OATH --
OFFICE -- JUSTICE REHNQUIST & JUDGE
SCALIA -- MR. CH. JUSTICE.

IN MARKING THIS MOMENT OF TRANSITION/
LET ME FIRST SAY, ON BEHALF OF ALL
AMERICANS, /HOW GRATEFUL WE ARE TO CHIEF
JUSTICE BURGER.) FOR 17 YEARS ON THE SUPREME
COURT AND FOR 13 YEARS BEFORE THAT ON THE
COURT OF APPEALS FOR THE D.C. CIRCUIT, /
THE CHIEF JUSTICE'S SERVICE TO THE NATION
HAS BEEN A MONUMENT OF INTEGRITY AND OF
DEDICATION TO PRINCIPLE /- AND ESPECIALLY
TO THE JUDICIARY ITSELF.) BUT, MR. CHIEF
JUSTICE, WE KNOW YOUR SERVICE ISN'T ENDING
TODAY.) HOW APPROPRIATE IT IS THAT YOU WILL
BE GUIDING THE BICENTENNIAL CELEBRATION OF
THAT CONSTITUTION THAT YOU HAVE SERVED WITH
SUCH DISTINCTION OVER THE YEARS.) AND WHAT
A LASTING CONTRIBUTION THIS WILL BE.
BECAUSE OF YOUR WORK, AMERICANS IN ALL WALKS
OF LIFE WILL COME TO HAVE AN EVEN MORE
PROFOUND KNOWLEDGE OF THE RULE OF LAW AND
THE SACRED DOCUMENT UPON WHICH IT RESTS.

YOUR SERVICE AS CHIEF JUSTICE HAS BEEN
OUTSTANDING /AND IT IS A MARK OF YOUR
GENEROSITY THAT YOU HAVE AGREED TO OFFER
YOURSELF FOR ADDITIONAL SERVICE TO YOUR
COUNTRY AND THE LAW.

OUR NEW CHIEF JUSTICE IS ONE OF
AMERICA'S MOST BRILLIANT JURISTS.) FROM HIS
DAYS IN LAW SCHOOL, (WHERE HE GRADUATED FIRST
IN HIS CLASS) HE HAS BEEN RECOGNIZED FOR
HIS EXTRAORDINARY LEGAL INSIGHT.) ON THE
COURT HE HAS DISTINGUISHED HIMSELF THROUGH
THE BRILLIANCE OF HIS REASON /AND THE
CLARITY, THE CRAFTSMANSHIP OF HIS OPINIONS.
I NOMINATED WILLIAM REHNQUIST BECAUSE I
BELIEVE HE WILL BE A CHIEF JUSTICE OF
HISTORIC STATURE.

ASSOCIATE JUSTICE ANTONIN SCALIA
IS ALSO A BRILLIANT JUDGE.) HE HAD A
DISTINGUISHED CAREER AS A LAWYER AND AS A
PROFESSOR OF LAW BEFORE JOINING THE COURT OF
APPEALS 4 YEARS AGO.

THERE HE BECAME KNOWN FOR HIS INTEGRITY AND INDEPENDENCE AND FOR THE FORCE OF HIS INTELLECT. CHIEF JUSTICE REHNQUIST AND JUSTICE SCALIA, CONGRATULATIONS TO BOTH OF YOU.

WITH THESE TWO OUTSTANDING MEN TAKING THEIR NEW POSITIONS THIS IS, AS I SAID, A TIME OF RENEWAL IN THE GREAT CONSTITUTIONAL SYSTEM THAT OUR FOREFATHERS GAVE US - A GOOD TIME TO REFLECT ON THE INSPIRED WISDOM WE CALL OUR CONSTITUTION A TIME TO REMEMBER THAT THE FOUNDING FATHERS GAVE CAREFUL THOUGHT TO THE ROLE OF THE SUPREME COURT. IN A SMALL ROOM IN PHILADELPHIA IN THE SUMMER OF 1787, THEY DEBATED WHETHER THE JUSTICES SHOULD HAVE LIFE TERMS OR NOT WHETHER THEY SHOULD BE PART OF ONE OF THE OTHER BRANCHES OR NOT AND WHETHER THEY SHOULD HAVE THE RIGHT TO DECLARE ACTS OF THE OTHER BRANCHES OF GOVERNMENT UNCONSTITUTIONAL OR NOT.

THEY SETTLED ON A JUDICIARY THAT WOULD BE INDEPENDENT AND STRONG BUT ONE WHOSE POWER WOULD ALSO, THEY BELIEVED, BE CONFINED WITHIN THE BOUNDARIES OF A WRITTEN CONSTITUTION AND LAWS. IN THE CONVENTION AND DURING THE DEBATES ON RATIFICATION SOME SAID THAT THERE WAS A DANGER OF THE COURTS MAKING LAWS RATHER THAN INTERPRETING THEM. THE FRAMERS OF OUR CONSTITUTION BELIEVED, HOWEVER, THAT THE JUDICIARY THEY ENVISIONED WOULD BE "THE LEAST DANGEROUS" BRANCH OF THE GOVERNMENT BECAUSE, AS ALEXANDER HAMILTON WROTE IN THE FEDERALIST PAPERS IT HAD "NEITHER FORCE NOR WILL, BUT MERELY JUDGMENT." THE JUDICIAL BRANCH INTERPRETS THE LAWS WHILE THE POWER TO MAKE AND EXECUTE THOSE LAWS IS BALANCED IN THE TWO ELECTED BRANCHES. AND THIS WAS ONE THING THAT AMERICANS OF ALL PERSUASIONS SUPPORTED.

HAMILTON AND THOMAS JEFFERSON,
(FOR EXAMPLE,) DISAGREED ON MOST OF THE GREAT
ISSUES OF THEIR DAY / JUST AS MANY OF US HAVE
DISAGREED IN OURS. / THEY HELPED BEGIN OUR
LONG TRADITION OF LOYAL OPPOSITION /
OF STANDING ON OPPOSITE SIDES OF ALMOST
EVERY QUESTION WHILE STILL WORKING TOGETHER
FOR THE GOOD OF THE COUNTRY. / YET FOR ALL
THEIR DIFFERENCES THEY BOTH AGREED --
(AS SHOULD WE) -- ON THE IMPORTANCE OF
JUDICIAL RESTRAINT. / "OUR PECULIAR
SECURITY," JEFFERSON WARNED, "IS IN THE
POSSESSION OF A WRITTEN CONSTITUTION."
AND HE MADE THIS APPEAL / "LET US NOT MAKE
IT A BLANK PAPER BY CONSTRUCTION."

HAMILTON, JEFFERSON AND ALL THE
FOUNDING FATHERS RECOGNIZED THAT THE
CONSTITUTION IS THE SUPREME AND ULTIMATE
EXPRESSION OF THE WILL OF THE AMERICAN
PEOPLE.

THEY SAW THAT NO ONE IN OFFICE COULD REMAIN
ABOVE IT / IF FREEDOM WERE TO SURVIVE THROUGH
THE AGES. / THEY UNDERSTOOD THAT, (IN THE
WORDS OF JAMES MADISON) IF "THE SENSE IN
WHICH THE CONSTITUTION WAS ACCEPTED AND
RATIFIED BY THE NATION... [IS] NOT THE GUIDE
TO EXPOUNDING IT, THERE CAN BE NO SECURITY
FOR... A FAITHFUL EXERCISE OF ITS POWERS."

THE FOUNDING FATHERS WERE CLEAR ON THIS
ISSUE. / FOR THEM, THE QUESTION INVOLVED IN
JUDICIAL RESTRAINT WAS NOT -- (AS IT IS
NOT) -- WILL WE HAVE LIBERAL OR CONSERVATIVE
COURTS? / THEY KNEW THAT THE COURTS, LIKE THE
CONSTITUTION ITSELF, MUST NOT BE LIBERAL
OR CONSERVATIVE. / THE QUESTION WAS AND IS,
WILL WE HAVE A GOVERNMENT BY THE PEOPLE,

AND THIS IS WHY THE PRINCIPLE OF
JUDICIAL RESTRAINT HAS HAD AN HONORED PLACE
IN OUR TRADITION.

PROGRESSIVE AS WELL AS CONSERVATIVE JUDGES HAVE INSISTED ON ITS IMPORTANCE /- JUSTICE HOLMES, FOR EXAMPLE, AND JUSTICE FELIX FRANKFURTER, WHO ONCE SAID, /"THE HIGHEST EXERCISE OF JUDICIAL DUTY IS TO SUBORDINATE ONE'S PERSONAL PULLS AND ONE'S PRIVATE VIEWS TO THE LAW...."

CHIEF JUSTICE REHNQUIST AND JUSTICE SCALIA HAVE DEMONSTRATED IN THEIR OPINIONS THAT THEY STAND WITH HOLMES AND FRANKFURTER ON THIS QUESTION. / I NOMINATED THEM WITH THIS PRINCIPLE VERY MUCH IN MIND. / AND CHIEF JUSTICE BURGER, IN HIS OPINIONS, WAS ALSO A CHAMPION OF RESTRAINT. / ALL THREE MEN UNDERSTAND THAT THE FOUNDING FATHERS DESIGNED A SYSTEM OF CHECKS AND BALANCES / AND OF LIMITED GOVERNMENT / BECAUSE THEY KNEW THAT THE GREAT PRESERVER OF OUR FREEDOMS WOULD NEVER BE THE COURTS OR EITHER OF THE OTHER BRANCHES ALONE.

IT WOULD ALWAYS BE THE TOTALITY OF OUR CONSTITUTIONAL SYSTEM / WITH NO ONE PART GETTING THE UPPER HAND. / THAT IS WHY THE JUDICIARY MUST BE INDEPENDENT. / AND THAT IS ALSO WHY IT MUST EXERCISE RESTRAINT.

SO OUR PROTECTION IS IN THE CONSTITUTIONAL SYSTEM / . AND ONE OTHER PLACE AS WELL. / LINCOLN ASKED, "WHAT CONSTITUTES THE BULWARK OF OUR OWN LIBERTY?" / AND HE ANSWERED, "IT IS IN THE LOVE OF LIBERTY WHICH GOD HAS PLANTED IN US." / YES, WE THE PEOPLE ARE THE ULTIMATE DEFENDERS OF FREEDOM. / WE THE PEOPLE CREATED THE GOVERNMENT AND GAVE IT ITS POWERS. / AND OUR LOVE OF LIBERTY, OUR SPIRITUAL STRENGTH, OUR DEDICATION TO THE CONSTITUTION ARE WHAT, (IN THE END,) PRESERVES OUR GREAT NATION AND THIS GREAT HOPE FOR ALL MANKIND.

ALL OF US, AS AMERICANS, ARE JOINED IN A GREAT COMMON ENTERPRISE TO WRITE THE STORY OF FREEDOM /-- THE GREATEST ADVENTURE MANKIND HAS EVER KNOWN /AND ONE WE MUST PASS ONTO OUR CHILDREN AND THEIR CHILDREN /-- REMEMBERING THAT FREEDOM IS NEVER MORE THAN ONE GENERATION AWAY FROM EXTINCTION.

THE WARNING, MORE THAN A CENTURY AGO, ATTRIBUTED TO DANIEL WEBSTER, REMAINS AS TIMELESS AS THE DOCUMENT HE REVERED.

"MIRACLES DO NOT CLUSTER," HE SAID, "HOLD ONTO THE CONSTITUTION OF THE UNITED STATES OF AMERICA AND TO THE REPUBLIC FOR WHICH IT STANDS /-- WHAT HAS HAPPENED ONCE IN 6,000 YEARS MAY NEVER HAPPEN AGAIN.

HOLD ONTO YOUR CONSTITUTION, FOR IF THE AMERICAN CONSTITUTION SHALL FALL THERE WILL BE ANARCHY THROUGHOUT THE WORLD."

HOLDING ONTO THE CONSTITUTION --

THIS HAS BEEN THE SERVICE OF CHIEF JUSTICE BURGER, /AND A GRATEFUL NATION HONORS HIM TODAY. SO, TOO, I CAN THINK OF NO TWO BETTER PUBLIC SERVANTS TO CONTINUE THAT WORK THAN CHIEF JUSTICE REHNQUIST AND JUSTICE SCALIA. YOU BOTH HAVE OUR NATION'S HEARTFELT WISHES FOR SUCCESS AND HAPPINESS.

THANK YOU ALL FOR JOINING IN THIS IMPORTANT CEREMONY. I KNOW THAT, IN A FEW MOMENTS, OUR NEW CHIEF JUSTICE AND ASSOCIATE JUSTICE LOOK FORWARD TO GREETING EACH OF YOU IN THE MAIN HALL.

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End
Case
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