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Scalia (Judge) (Potemra) 09/26/1986 (2)  
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(Judge/ARD)

September 25, 1986

8:00 a.m. *RR*

PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM  
REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

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."

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 restrained. 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 Department undertakes the duty to say what the law is, while the power to make 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 and specific 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, "[T]he 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 for that reason. They understand that the Founding Fathers designed <sup>a</sup> ~~the~~ system of checks and balances, of limited Government and of federalism, 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.

*per Counsel's  
office*

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.

(Judge/ARD)  
September 24, 1986  
8:00 p.m. *LR*

PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM  
REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

Mr. Chief Justice <sup>*Burger*</sup> and Mr. Chief Justice <sup>*Rehnquist*</sup>, 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 ~~preserve,~~  
<sup>*support*</sup> ~~protect~~ and defend the Constitution of the United States... so  
help me God."

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 <sup>*the*</sup> ~~our~~ 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  
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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



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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.

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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 <sup>a</sup> ~~that~~ small room in Philadelphia<sup>in the summer of 1787</sup>, 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 restrained. ~~But~~ <sup>In</sup> 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<sup>, however,</sup> that the judiciary<sup>they envisioned</sup> 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 Department undertakes the duty to say what the law is, while the power to make those laws is balanced in the two elected branches. And this<sup>idea of restrained judiciary</sup> was a position<sup>concept one thing</sup> that Americans of all persuasions supported.

Hamilton and Thomas Jefferson<sup>, for example,</sup> disagreed on most of the great issues of their day, just ~~about~~ as many of us have disagreed in ours. ~~But~~ <sup>yet</sup> 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. <sup>^</sup>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 and specific 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, "[T]he 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 for that reason. They understand <sup>that</sup> that the genius of our Constitution is in its first three words, "We, the People." We the people created the Government. Its powers come from we the people. ] The Founding Fathers designed the system of checks and balances, of limited Government and of federalism, 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.



<sup>That</sup>  
~~This~~ 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." <sup>yes</sup> We the people are

<sup>we the people created the government and gave it its powers</sup>  
the ultimate defenders of freedom. <sup>And</sup> Our love of liberty, our

spiritual strength, our dedication to the Constitution are what

<sup>in the end,</sup>  
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 <sup>we all</sup> he revered. STET

"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.



MASTER L.S.

(need Mike's A's)

(Judge)

September 24, 1986  
2:30 p.m.

PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

Mr. Chief Justice and Mr. Chief Justice, 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 ~~written into~~ the Constitution itself -- the oath, ~~as it says,~~ "to preserve, protect and defend the Constitution of the United States... so help me God."

In marking this moment of transition, let me first say, on behalf of all Americans, how grateful we are to Chief Justice Burger. For 18 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 our 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~~ <sup>of</sup> your work, Americans in all walks of life will come to have an even more profound

required by

[it's not written in Constitution]

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[sworn in June 1969]

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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. ~~Like the Chief Justice,~~ <sup>college</sup> ~~he was first in his law school class.~~ <sup>check</sup> He had a distinguished career as a lawyer and as a professor of law before joining the D.C. 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 that small room in Philadelphia, 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

↑ not actually  
decided  
until Marbury v. Madison

check

of Government unconstitutional or not. They settled on a judiciary that would be independent and strong, but one <sup>whose power</sup> ~~that~~ would also, they believed, be restrained ~~that would not have a too assertive role in the delicate arrangement of checks and balances.~~

*No It*

STET

~~But 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. They remembered the warning of the French constitutional philosopher Montesquieu, who said, "There is no liberty if the power of judging be not separated from the legislative... powers." Still The Framers of our Constitution believed that the judiciary 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" and its judgments would be strictly limited to the construction of the Constitution. And this was a position that Americans of all persuasions supported.~~

*undertake the*  
STET

Hamilton and Thomas Jefferson disagreed on most of the great issues of their day just about as many of us have disagreed in ours. ~~And yet~~ <sup>BUT</sup> 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. <sup>Yet,</sup> 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 a blank page [of it] 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 was 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 a guide for expounding it, there can be no security for... a faithful exercise of its powers."

~~The Founding Fathers were clear and specific on this issue. For them, the question involved in judicial restraint was not -- as it is not -- will we have liberal or conservative courts?~~ SK

~~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 or by one branch of government that has seized too much power? So they feared a judiciary responsible to no one, dressing up its decrees in Constitutional costume.~~

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, "[T]he highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law... [to] those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

Chief Justice Rehnquist and Justice Scalia have demonstrated in their opinions that they stand with Holmes and Frankfurter on

[perhaps too strong since Justices Brennan and Marshall will be guests]

7" suggest delete to make plain Str

this question. I nominated them for that reason. They understand that the genius of our Constitution is in its first three words, "We, the People." We the people created the Government. Its powers come from we the people. ~~To keep Government out of the hands of passing factions, and in the hands of the people,~~ the Founding Fathers designed the system of checks and balances, of limited Government and of federalism. ~~They did this~~ because they knew that the great preserver of our freedoms would never be the courts or either of the other branches alone: ~~It would not be the States. And it would not be the Bill of Rights or any particular law. They believed that the great~~ <sup>it</sup> ~~preserver of our freedoms~~ would always be the totality of our Constitutional system, with no part getting the upper hand. This 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." We the people are the ultimate defenders of freedom. Our love of liberty, our spiritual strength, our dedication to the Constitution are what 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.

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Thank you all for ~~attending~~ joining  
in this important ceremony. ~~and I~~  
~~hope you will be~~ I know that, in  
a few moments,  
our new Chief Justice and  
Associate Justice look forward  
to greeting each <sup>of</sup> you in the  
main hall.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/24/86 ACTION/CONCURRENCE/COMMENT DUE BY: 5:30 p.m. TODAY

SUBJECT: \_\_\_\_\_ REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM REHNQUIST  
AND JUSTICE ANTONIN SCALIA  
(9/24/86 2:30 p.m. draft)

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MILLER - ADMIN.	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	POINDEXTER <i>None</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MILLER - OMB	<input type="checkbox"/>	<input type="checkbox"/>	RYAN <i>pk</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>BALL</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BARBOUR	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
BUCHANAN <i>None</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN <i>None</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DANIELS <i>None</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WALLISON <i>att'd</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KING	<input type="checkbox"/>	<input type="checkbox"/>	DOLAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
KINGON <del>XXXX</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
MASENG <i>None</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please give your comments/edits directly to Tony Dolan with an info copy to my office by 5:30 p.m. today. Thanks.

RESPONSE:

David L. Chew  
Staff Secretary  
Ext. 2702

(Judge)  
September 24, 1986  
2:30 p.m.

PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM  
REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

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In marking this moment of transition, let me first say, on behalf of all Americans, how grateful we are to Chief Justice Burger. For 15 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 our 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.

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of Government unconstitutional or not. They settled on a judiciary that would be independent and strong, but one that would also, they believed, be restrained, that would not have a too assertive role in the delicate arrangement of checks and balances.

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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 was 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 a guide for expounding it, there can be no security for... a faithful exercise of its powers."

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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, "[T]he highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law... [to] those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

Chief Justice Rehnquist and Justice Scalia have demonstrated in their opinions that they stand with Holmes and Frankfurter on



this question. I nominated them for that reason. They understand that the genius of our Constitution is in its first three words, "We, the People." We the people created the Government. Its powers come from we the people. To keep Government out of the hands of passing factions, and in the hands of the people; the Founding Fathers designed the system of checks and balances, of limited Government and of federalism. They did this because they knew that the great preserver of our freedoms would never be the courts or either of the other branches alone: It would not be the States. And it would not be the Bill of Rights or any particular law. They believed that the great preserver of our freedoms would always be the totality of our Constitutional system, with no part getting the upper hand. This 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." We the people are the ultimate defenders of freedom. Our love of liberty, our spiritual strength, our dedication to the Constitution are what 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.

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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.

(Judge) ARD  
September 24, 1986  
2:30 p.m.

SS

PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM  
REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

Mr. Chief Justice and Mr. Chief Justice, 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 written into the Constitution itself -- the oath, as it says, "to preserve, protect and defend the Constitution of the United States... so help me God."

In marking this moment of transition, let me first say, on behalf of all Americans, how grateful we are to Chief Justice Burger. For 15 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 our 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

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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. Like the Chief Justice, he was first in his law school class. He had a distinguished career as a lawyer and as a professor of law before joining the D.C. 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 that small room in Philadelphia, 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 that would also, they believed, be restrained, that would not have a too assertive role in the delicate arrangement of checks and balances.

But 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. They remembered the warning of the French constitutional philosopher Montesquieu, who said, "There is no liberty if the power of judging be not separated from the legislative... powers." Still the Framers of our Constitution believed that the judiciary 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" and its judgments would be strictly limited to the construction of the Constitution. And this was a position that Americans of all persuasions supported.

(X) Hamilton and Thomas Jefferson disagreed on most of the great issues of their day, just ~~about~~ as many of us have disagreed in ours. And yet 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 a blank page [of it] by construction."

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THE WHITE HOUSE

WASHINGTON



September 24, 1986

MEMORANDUM FOR ANTHONY DOLAN  
SPECIAL ASSISTANT TO THE PRESIDENT AND  
CHIEF SPEECHWRITER

FROM: ALAN CHARLES RAUL *AR*  
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Remarks: Swearing In of Chief Justice  
William Rehnquist and Justice Antonin Scalia

We have reviewed the above-referenced Remarks and have attached a marked-up copy noting a few of our suggestions. We have suggested deletions in a number of places to shorten the speech somewhat and to avoid a confrontational tone that could offend some of the guests at the swearing-in, including Supreme Court Justices, who disagree with the President's philosophy.

cc: David L. Chew

(Judge)  
September 24, 1986  
2:30 p.m.

PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM  
REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

Mr. Chief Justice and Mr. Chief Justice, 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  
~~written into~~ the Constitution itself -- the oath, as it says, "to  
preserve, protect and defend the Constitution of the United  
States... so help me God."

In marking this moment of transition, let me first say, on  
behalf of all Americans, how grateful we are to Chief Justice  
Burger. For 18 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 our 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 <sup>JB</sup> because of your work, Americans  
in all walks of life will come to have an even more profound

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by

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[sworn  
in  
June 1969]

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. <sup>College</sup> [Like the Chief Justice,] he was first in his ~~law school~~ class. He <sup>check</sup> had a distinguished career as a lawyer and as a professor of law before joining the D.C. 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 that small room in Philadelphia, 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

↑ not actually  
decided  
until Marbury v. Madison

check

of Government unconstitutional or not. They settled on a judiciary that would be independent and strong, but one <sup>whose power</sup> ~~that~~ would also, they believed, be restrained <sup>J</sup> ~~that would not have a too assertive role in the delicate arrangement of checks and balances.~~ No H

~~But 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. They remembered the warning of the French constitutional philosopher Montesquieu, who said, "There is no liberty if the power of judging be not separated from the legislative... powers."~~ Still The Framers of our Constitution believed that the judiciary 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" <sup>By exactly</sup> ~~and its judgments would be strictly~~ <sup>Thus, the judicial</sup> ~~department, & duty to~~ <sup>say what the law is, while</sup> ~~limited to the construction of the Constitution. And this was a~~ <sup>the power to make those laws is balanced in the two elected</sup> ~~position that Americans of all persuasions supported.~~ <sup>branch</sup>

Hamilton and Thomas Jefferson disagreed on most of the great issues of their day just about as many of us have disagreed in ours. <sup>BUT</sup> ~~And yet~~ 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. <sup>Yet</sup> 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 a blank page [of it] by construction."

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Chief Justice Rehnquist and Justice Scalia have demonstrated in their opinions that they stand with Holmes and Frankfurter on

(perhaps too strong since Justice Brennan and Marshall will be guests)

PA" suggests delete to make plain Str.

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Thank you all for ~~attending~~ joining  
in this important ceremony. ~~and I~~  
~~hope you will be~~ I know that, in  
a few moments,  
our new Chief Justice and  
Associate Justice look forward  
to greeting each you in the  
main hall.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/24/86 ACTION/CONCURRENCE/COMMENT DUE BY: 5:30 p.m. TODAY

SUBJECT: REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM REHNQUIST  
AND JUSTICE ANTONIN SCALIA  
(9/24/86 2:30 p.m. draft)

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MILLER - ADMIN.	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	POINDEXTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MILLER - OMB	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BALL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BARBOUR	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SVAHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHEW	<input type="checkbox"/>	<input checked="" type="checkbox"/>	THOMAS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WALLISON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KING	<input type="checkbox"/>	<input type="checkbox"/>	DOLAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
MASENG	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please give your comments/edits directly to Tony Dolan with an info copy to my office by 5:30 p.m. today. Thanks.

RESPONSE:

OK

David L. Chew  
Staff Secretary  
Ext. 2702



(Judge)  
September 24, 1986  
2:30 p.m.

SEP 25 1986  
PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM  
REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

Mr. Chief Justice and Mr. Chief Justice, 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 written into the Constitution itself -- the oath, as it says, "to preserve, protect and defend the Constitution of the United States... so help me God."

In marking this moment of transition, let me first say, on behalf of all Americans, how grateful we are to Chief Justice Burger. For 15 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 our 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

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WHITE HOUSE STAFFING MEMORANDUM **URGENT**

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AND JUSTICE ANTONIN SCALIA  
(9/24/86 2:30 p.m. draft)

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KING	<input type="checkbox"/>	<input type="checkbox"/>	DOLAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
KINGON	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
MASENG	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please give your comments/edits directly to Tony Dolan with an info copy to my office by 5:30 p.m. today. Thanks.

RESPONSE: Sep 24, 1986

MEMORANDUM FOR TONY DOLAN  
FROM: RODNEY B. MCDANIEL *Rol for*

The NSC Staff has reviewed subject remarks from a national security point of view and concurs.

cc David Chew

cc David L. Chew  
Staff Secretary  
Ext. 2702

(Judge)  
September 24, 1986  
2:30 p.m.

10:20 AM 9/26/86  
PRESIDENTIAL REMARKS: SWEARING IN OF CHIEF JUSTICE WILLIAM  
REHNQUIST AND JUSTICE ANTONIN SCALIA  
FRIDAY, SEPTEMBER 26, 1986

Mr. Chief Justice and Mr. Chief Justice, 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 written into the Constitution itself -- the oath, as it says, "to preserve, protect and defend the Constitution of the United States... so help me God."

In marking this moment of transition, let me first say, on behalf of all Americans, how grateful we are to Chief Justice Burger. For 15 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 our 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. Like the Chief Justice, he was first in his law school class. He had a distinguished career as a lawyer and as a professor of law before joining the D.C. 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 that small room in Philadelphia, 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 that would also, they believed, be restrained, that would not have a too assertive role in the delicate arrangement of checks and balances.

But 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. They remembered the warning of the French constitutional philosopher Montesquieu, who said, "There is no liberty if the power of judging be not separated from the legislative... powers." Still the Framers of our Constitution believed that the judiciary 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" and its judgments would be strictly limited to the construction of the Constitution. And this was a position that Americans of all persuasions supported.

Hamilton and Thomas Jefferson disagreed on most of the great issues of their day just about as many of us have disagreed in ours. And yet 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 a blank page [of it] 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 <sup>were</sup> was 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 a guide for expounding it, there can be no security for... a faithful exercise of its powers."

The Founding Fathers were clear and specific 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 or by one branch of government that has seized too much power? So they feared a judiciary responsible to no one, dressing up its decrees in Constitutional costume.

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, "[T]he highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law... [to] those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

Chief Justice Rehnquist and Justice Scalia have demonstrated in their opinions that they stand with Holmes and Frankfurter on

this question. I nominated them for that reason. They understand that the genius of our Constitution is in its first three words, "We, the People." We the people created the Government. Its powers come from we the people. To keep Government out of the hands of passing factions, and in the hands of the people; the Founding Fathers designed the system of checks and balances, of limited Government and of federalism. They did this because they knew that the great preserver of our freedoms would never be the courts or either of the other branches alone: It would not be the States. And it would not be the Bill of Rights or any particular law. They believed that the great preserver of our freedoms would always be the totality of our Constitutional system, with no part getting the upper hand. This 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." We the people are the ultimate defenders of freedom. Our love of liberty, our spiritual strength, our dedication to the Constitution are what 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 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.