

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Raul, Alan Charles: Files
Folder Title: Supreme Court Nominations I (1)
Box: OA 19157

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

THE WHITE HOUSE

WASHINGTON

October 23, 1986

MEMORANDUM FOR PETER J. WALLISON

FROM: ALAN CHARLES RAUL *ACR*

SUBJECT: Letters to Rehnquist and Scalia Regarding Photos

Attached for your review are proposed letters from you to Chief Justice Rehnquist and Justice Scalia transmitting photographs taken at the White House.

Attachment

THE WHITE HOUSE

WASHINGTON

October 23, 1986

Dear Justice Scalia:

I thought you might like to have the enclosed "before" and "after" pictures. One was taken in the Oval Office before the President announced his intent to nominate you, and the second was taken in the East Room as you were being sworn in.

With best wishes,

Sincerely,

Peter J. Wallison
Counsel to the President

The Honorable Antonin Scalia
Associate Justice
Supreme Court of
the United States
Washington, D.C. 20543

THE WHITE HOUSE

WASHINGTON

October 23, 1986

Dear Mr. Chief Justice:

I thought you might like to have the enclosed photograph taken at the White House in the East Room as you were being sworn in.

With best wishes,

Sincerely,

Peter J. Wallison
Counsel to the President

The Honorable William H. Rehnquist
The Chief Justice
of the United States
Washington, D.C. 20543

THE WHITE HOUSE
WASHINGTON

October 23, 1986

Dear Mr. Chief Justice:

I thought you would like to have the enclosed photograph taken as you were being sworn in as well as several other photos from that day.

With best personal regards,

Sincerely,



Peter J. Wallison
Counsel to the President

The Honorable William H. Rehnquist
The Chief Justice of the United States
Washington, D.C. 20543

THE WHITE HOUSE
WASHINGTON

October 23, 1986

Dear Nino:

I thought you would like to have the enclosed "before" and "after" pictures as well as a number of other photos taken during the swearing-in.

With best personal regards,

Sincerely,



Peter J. Wallison
Counsel to the President

The Honorable Antonin Scalia
Associate Justice
Supreme Court of the United States
Washington, D.C. 20543

THE WHITE HOUSE
WASHINGTON

October 23, 1986

Dear Mr. Chief Justice:

Enclosed are a number of photographs taken during the swearing-in ceremony for Chief Justice Rehnquist and Justice Scalia.

I am also forwarding pictures taken by the White House photographer the day of the swearing in of my staff. All of us are most appreciative for the time you spent with us that day -- it will be long remembered as a highlight of our careers.

With best personal regards,

Sincerely,



Peter J. Wallison
Counsel to the President

The Honorable Warren E. Burger
Chief Justice of the United States (Retired)
Supreme Court of the United States
Washington, D.C. 20543

As per [unclear]

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

September 26, 1986

REMARKS BY THE PRESIDENT
AT SWEARING IN OF
CHIEF JUSTICE WILLIAM REHNQUIST
AND ASSOCIATE JUSTICE ANTONIN SCALIA

The East Room

11:02 A.M. EDT

THE PRESIDENT: Thank you. (Applause.) Members of the Court, and ladies and gentlemen, welcome to the White House and thank you for coming to witness this historic occasion. This ceremony is the culmination of our constitutional process which involves each of the three branches of government. I've had the honor of nominating Justice Rehnquist to be the next Chief Justice of the United States and Judge Scalia to be the Associate Justice of the United States Supreme Court. The Senate has confirmed my nominations and now -- I now ask that Chief Justice Warren Burger administer the constitutional oath of office to Justice Rehnquist and Judge Scalia.

Mr. Chief Justice.

CHIEF JUSTICE BURGER: Thank you, Mr. President.

Justice Rehnquist, before I ask you to take the oath I would like to make this observation with your lead, Mr. President, that we will have today the 16th Chief Justice of the United States in almost 200 years and Judge Scalia will be the 103rd Justice of the Court. For me it is not only an honor, but a personal privilege to take part in the ceremony involving Justice Rehnquist, who has been a colleague and a friend, a warm friend for 15 years and Judge Scalia, with whom I have worked on extra-judicial activities relating to the administration of justice.

And now, without more, I ask Justice Rehnquist, are you prepared to take the oath?

JUSTICE REHNQUIST: I am, Chief Justice.

CHIEF JUSTICE BURGER: If you will place your left hand on the Bible and raise your right hand and repeat after me:

I, William H. Rehnquist, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

JUSTICE REHNQUIST: I, William H. Rehnquist, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear

... Chief Justice.
CHIEF JUSTICE BURGER: Thank you, Mr. President.

Justice Rehnquist, before I ask you to take the oath I would like to make this observation with your lead, Mr. President, that we will have today the 16th Chief Justice of the United States in almost 200 years and Judge Scalia will be the 103rd Justice of the Court. For me it is not only an honor, but a personal privilege to take part in the ceremony involving Justice Rehnquist, who has been a colleague and a friend, a warm friend for 15 years and Judge Scalia, with whom I have worked on extra-judicial activities relating to the administration of justice.

And now, without more, I ask Justice Rehnquist, are you prepared to take the oath?

JUSTICE REHNQUIST: I am, Chief Justice.

CHIEF JUSTICE BURGER: If you will place your left hand on the Bible and raise your right hand and repeat after me:

I, William H. Rehnquist, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

JUSTICE REHNQUIST: I, William H. Rehnquist, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

CHIEF JUSTICE BURGER: My congratulations. (Applause.)

CHIEF JUSTICE REHNQUIST: Thank you. Mr. President, I know that I speak for all of my colleagues and for all of my family when I thank you for inviting us to these proceedings -- to conduct

MORE

these proceedings at the White House, signifying the transition in the Supreme Court.

Today Chief Justice Burger retires after 17 years of distinguished service. I receive your appointment to be Chief Justice. And Judge Scalia, by virtue of your appointment, becomes Justice Scalia. The process established by the Constitution is thus fulfilled.

At the conclusion of the second part of these proceedings in our Court this afternoon, I will become the 16th Chief Justice of the United States. Forty-five years ago, when Harlan Stone succeeded Charles Evans Hughes in that position, he wrote to his predecessor that he knew realized he must bear some burdens which John Marshall did not know. So, I'm sure, it will be with me.

Mr. President, I am grateful beyond measure to you for affording me the opportunity to serve the Court and to serve my country as Chief Justice of the United States. And I pray that God will grant me the patience, the wisdom and the fortitude to worthily follow in the footsteps of my illustrious predecessors in discharging the responsibilities of this high office. (Applause.)

CHIEF JUSTICE BURGER: Judge Scalia, are you prepared to take the oath of office?

JUDGE SCALIA: I am, Chief Justice.

CHIEF JUSTICE BURGER: Would you approach, and if Mrs. Scalia will hold the Bible, place your left hand on the Bible, raising your right hand, and repeat after me.

I, Antonin Scalia, do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

JUDGE SCALIA: I, Antonin Scalia, do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

CHIEF JUSTICE BURGER: I congratulate you. (Applause.)

JUSTICE SCALIA: Thank you. This is an occasion for thank yous. It's very easy to know where to begin. It's very hard to know where to end. I begin, of course, with President Reagan, who has chosen to think me worthy of this appointment for which I'm very grateful and will do my best to live up to his confidence. I have to thank my wife, Maureen, who is an extraordinary woman and without whom I wouldn't be here or if I were here, it wouldn't have been as much fun along the way. (Laughter.) And I have to thank a lot of other people going way back to teachers in Public School 13 in

Scalia will hold the Bible, place your left hand on the Bible, raising your right hand, and repeat after me.

I, Antonin Scalia, do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

JUDGE SCALIA: I, Antonin Scalia, do solemnly swear that I will support and defend the Constitution of the United States against all enemies foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

CHIEF JUSTICE BURGER: I congratulate you. (Applause.)

JUSTICE SCALIA: Thank you. This is an occasion for thank yous. It's very easy to know where to begin. It's very hard to know where to end. I begin, of course, with President Reagan, who has chosen to think me worthy of this appointment for which I'm very grateful and will do my best to live up to his confidence. I have to thank my wife, Maureen, who is an extraordinary woman and without whom I wouldn't be here or if I were here, it wouldn't have been as much fun along the way. (Laughter.) And I have to thank a lot of other people going way back to teachers in Public School 13 in Queens, Xavier High School in Manhattan, up to my colleagues on the Court on which I presently serve who are here today.

In the course of my last tour of duty on the Court of Appeals for the District of Columbia Circuit, I have come to know in one way or another all of the current Justices on the Supreme Court, I have an enormous respect for that institution and I have an enormous personal regard for each of them. I look forward to working with them in our common enterprise for many years to come.

Thank you all very much. (Applause.)

MORE

THE PRESIDENT: Mr. Chief Justice Burger, Mr. Chief Justice Rehnquist, members of the Court, and 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, the 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've been nominated by the President, confirmed by the Senate and they've taken the oath of office 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 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's a mark of your generosity that you've 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 and 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 four 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 or 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 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. And yet for all their differences they both agreed -- as should be -- 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 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 of either of the other branches alone.

It would always be the totality of our Constitutional system, with no one part getting the upper hand. And that's why the judiciary must be independent. And that is why it also -- 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, and 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 on to 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 on to 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 on to your Constitution, for if the American Constitution shall fall there will be anarchy throughout the world."

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 of either of the other branches alone.

It would always be the totality of our Constitutional system, with no one part getting the upper hand. And that's why the judiciary must be independent. And that is why it also -- 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, and 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 on to 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 on to 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 on to your Constitution, for if the American Constitution shall fall there will be anarchy throughout the world."

Holding on to 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 Cross Hall.

Thank you again. (Applause.)

END

11:20 A.M. EDT

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

September 17, 1986

STATEMENT BY THE PRESIDENT

I am very pleased that the Senate has voted to confirm my nominations of William Rehnquist to be Chief Justice of the United States, and Antonin Scalia as Associate Justice of the Supreme Court. William Rehnquist has served with great distinction as an Associate Justice of the Supreme Court for the last 15 years. Known as an extraordinary legal mind from his early years in law, Justice Rehnquist earned renown in the Court for the brilliance of his reason and the clarity and craftsmanship of his opinions. I have no doubt that William Rehnquist will prove to be a Chief Justice of historic stature.

Judge Scalia is also widely regarded in his profession as a first class intellect, a persuasive jurist, and a warm, caring person. He will make a superb addition to the Court.

This vote in the full Senate is a bi-partisan rejection of the political posturing that marred the confirmation hearings. It's clear to all now that the extraordinary controversy surrounding the hearings had little to do with Justice Rehnquist's record or character -- both are unassailable and unimpeachable. The attacks came from those whose ideology runs contrary to his profound and unshakeable belief in the proper constitutional role of the judiciary in this country. Justice Rehnquist believes, as I do, that our Founding Fathers did not create the Supreme Court as a kind of supra-legislature; that judges should interpret the law, not make it; and that victims of crime are due at least as much consideration from our judicial system as criminal offenders.

Both Chief Justice Rehnquist and Associate Justice Scalia will be strong and eloquent voices for the proper role of the judiciary and the rights of victims; and I am confident that they will both serve the Court and their country very well indeed.

#

THE WHITE HOUSE

WASHINGTON

August 6, 1986

MEMORANDUM FOR PETER J. WALLISON

FROM: ALAN CHARLES RAUL *ACR*

SUBJECT: Supreme Court Nominations

As you requested, I have attached a short list of points regarding the President's Supreme Court nominations.

Attachment

President Reagan's Supreme Court Nominations

General Points

- RR appointed the first woman to the Court (Sandra Day O'Connor) and, if Judge Scalia is confirmed, the first Italian-American.
- Rehnquist and Scalia, like Sandra Day O'Connor, are highly respected in the legal community and universally recognized for their brilliance.
- The search process for RR's Supreme Court nominees was extremely thorough, involving detailed review and analysis by Attorney General Meese, White House Chief of Staff Regan and Counsel to the President Wallison.
- RR personally interviewed Rehnquist and Scalia and found them to share his philosophy of judicial restraint.
- No "litmus" test was applied to any prospective candidate for the Supreme Court, or any other court.
- RR hopes his nominees will interpret the Constitution in accordance with the original intent of the framers, and will respect traditional values.
- Given the life tenure of Supreme Court Justices (and other federal judges), they are entirely independent of the Executive Branch once they are appointed.
- RR's appointments to the Supreme Court provide an opportunity for the composition of that Court to reflect the views and judicial philosophy overwhelmingly affirmed by the majority of American people in 1980 and 1984.
- RR hopes Senate Judiciary Committee will lay politics aside and quickly confirm these two outstanding nominees whose qualifications for the Court are beyond question.
- Instead of being extremists, RR's appointments represent the views of mainstream Americans.
- Conservatives have as much right to be appointed to the Court as anyone else.

- Nation is going to miss Chief Justice Burger who set high standards for his successor during his 17 years as Chief Justice of the United States; RR wishes him good luck in his important new endeavor as Chairman of the Commission on the Bicentennial of the U.S. Constitution.

Rehnquist

- Served with distinction as Associate Justice for 15 years on the Supreme Court.
- ABA gave him their highest rating, "Well Qualified."
- His colleagues on the Court, even the more liberal Justices, were "filled with joy" at the prospect of his elevation to Chief Justice.
- Universally recognized as brilliant, was first in his class at Stanford Law School.
- Has written more majority opinions for the Supreme Court [over the last four years] than any other Justice. [CHECK FACTS]
- Recognizes the crucial role of the states in our federal system of government.
- His opinions show an appropriate respect for the importance of law enforcement in our democratic society.
- Noted for lucidity of his opinions and clarity of his writing.

Scalia

- ABA gave him their highest rating, "Well Qualified."
- Nationally respected law professor of the University of Chicago before RR appointed to the U.S. Court of Appeals for the D.C. Circuit in 1982.
- Harvard law graduate.
- Father immigrated from Italy.
- Personal example shows great appreciation for family values (9 children).

- Written many opinions upheld by Supreme Court.
- Regarded as affable, persuasive and an intellectual power.
- Opinions, legal writings and interviews with RR indicated he is sensitive to rights specifically guaranteed in our Constitution and the proper role of the courts in our democratic system.
- At 50 years of age, will add personal energy and new enthusiasm to the Court.

THE WHITE HOUSE

WASHINGTON

June 26, 1986

MEMORANDUM FOR PETER J. WALLISON

FROM: ALAN CHARLES RAUL 

SUBJECT: Correspondence on Supreme Court Nominations

Please review the attached letters to be used as possible responses to correspondence regarding each of the President's recent Supreme Court nominations. The longer version of the letter could be used to respond to either supportive or critical incoming mail. The second version is essentially a short note thanking correspondents for their support.

Please advise whether you approve these letters or if you would like to make any changes.

Attachments

-----, 1986

Dear

Thank you for your recent letter to the President regarding his nomination of Judge Antonin Scalia to be an Associate Justice of the United States Supreme Court.

The President chose Judge Scalia because of his distinguished judicial and academic career and after a careful evaluation and investigation conducted by the Attorney General and the President's Chief of Staff. The President personally met and interviewed Judge Scalia and is convinced the nominee subscribes to the philosophy of judicial restraint and shares his views on many important legal issues.

We appreciate your taking the time to express your thoughts on the nomination of Judge Scalia.

With best personal wishes,

Sincerely,

Peter J. Wallison
Counsel to the President

-----, 1986

Dear

Thank you for your recent letter to the President regarding his nomination of Justice William H. Rehnquist to be Chief Justice of the United States Supreme Court.

The President chose Justice Rehnquist to succeed Chief Justice Warren E. Burger because of his distinguished fifteen years on the Supreme Court as an Associate Justice and after a careful evaluation conducted by the Attorney General and the President's Chief of Staff. The President personally met and interviewed Justice Rehnquist and is convinced that he subscribes to the philosophy of judicial restraint and shares his views on many important legal issues.

We appreciate your taking the time to express your thoughts on the elevation of Justice Rehnquist.

With best personal wishes,

Sincerely,

Peter J. Wallison
Counsel to the President

-----, 1986

Dear

Thank you for your letter to the President supporting the nomination of Judge Antonin Scalia to be an Associate Justice of the United States Supreme Court.

Your supportive words in behalf of the President's decision are very much appreciated.

With best personal wishes,

Sincerely,

Peter J. Wallison
Counsel to the President

-----, 1986

Dear

Thank you for your letter to the President supporting the nomination of Associate Justice William H. Rehnquist of the Supreme Court to be Chief Justice of the United States.

Your supportive words in behalf of the President's decision are very much appreciated.

With best personal wishes,

Sincerely,

Peter J. Wallison
Counsel to the President

THE WHITE HOUSE

WASHINGTON

June 11, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: PETER J. WALLISON
COUNSEL TO THE PRESIDENT

SUBJECT: Questions for Prospective
Supreme Court Nominees

To assist you in choosing among the candidates for possible nomination to the Supreme Court, I have set forth some brief background information together with a number of potential questions for Justice Rehnquist and Judge Scalia. The questions are designed to elicit answers revealing the candidate's philosophy, commitment to being a judge and other personal qualifications. Justice Rehnquist is a candidate for elevation to Chief Justice. Scalia is also a candidate for Chief Justice, or, if you name Justice Rehnquist as Chief Justice Burger's successor, as a candidate for Associate Justice to succeed Justice Rehnquist.

Background on Justice Rehnquist

Justice Rehnquist has been an Associate Justice of the U.S. Supreme Court since 1971, when he was appointed by President Nixon. He has been described as the intellectual leader of the conservative bloc on the Court and has consistently supported federalism and strong law enforcement positions. Justice Rehnquist is 61 years old and questions have been raised about his health and his continuing commitment to the Court's work. Even if his health is good, he may not be able to serve more than 10 to 15 more years. Justice Rehnquist has a proven track record, and observers of the Court believe that he can forge majorities for his positions. Some of Justice Rehnquist's statements when he was a clerk to Justice Jackson, particularly on race relations, could be controversial. (The Justice Department's summary on Justice Rehnquist is attached.)

You should stress to Justice Rehnquist his excellent contributions to the Court's opinions, and the high regard in which he is held by everyone in the Administration.

Questions

1. What are the critical issues that you think the Supreme Court will face over the next five to ten years?
2. What role should the Supreme Court play in resolving disputes between Congress and the Executive Branch?
3. In which direction do you see the Court moving on the issue of federalism?
4. Should the Supreme Court continue to move away from the decisions of "the Warren Court" in the area of criminal justice and law enforcement, or has a reasonable equilibrium been reached?
5. How should judges interpret the Constitution and define rights?
6. Given the current composition of the Court, how would you establish a consensus among the Justices for your views?
7. Are there any personal or health reasons why you would not be able to make a full commitment to this position?
8. Do you have any hesitancy taking on the additional administrative and other responsibilities of Chief Justice?
9. Would you remain on the Court if someone from outside the Court were nominated for Chief Justice?
10. Is there any reason why you might not want to go through a confirmation process at this time?

JUSTICE WILLIAM REHNQUIST

Before and during his tenure on the Supreme Court, Justice Rehnquist has established himself as the paradigmatic example of a jurist committed to principles of judicial restraint in all of its contexts. In all areas of constitutional law -- e.g., criminal procedure, due process, civil rights, freedom of press and religion -- Rehnquist's jurisprudence has been scrupulously premised on the principles of federalism and separation of powers and he has resisted any attempt to engage in unwarranted judicial evisceration of traditional values or democratic choices through the invention of "rights" discerned in "penumbras" emanating from a "living" Constitution.

Most notably, Rehnquist pioneered the rehabilitation of federalism principles by his landmark decision in National League of Cities v. Usery, 426 U.S. 833 (1976), which revived, albeit temporarily, the presumed - dead Tenth Amendment as an affirmative safeguard against federal encroachment into the states' sovereign prerogatives. See also Rizzo v. Goode, 423 U.S. 362 (1976) (federal courts are prohibited from entering injunctions against local governments absent clear evidence of a continuing pattern or practice of unlawful activity); Pennhurst v. Halderman, 451 U.S. 1 (1981) (Pennhurst I) (congressional statutes imposed on states pursuant to the spending power must be narrowly construed to avoid infringement of state prerogatives); Pennhurst v. Halderman, 465 U.S. 89 (1984), (Pennhurst II) (Eleventh Amendment prohibits federal courts from requiring states to follow state law) (opinion joined, not authored, by Rehnquist). Indeed, in every important (and unimportant) decision during his time on the Court, Rehnquist has penned or joined the opinion which best reflects the intent of the legislative or constitutional authors, not his own personal policy preferences.

In Roe v. Wade, 410 U.S. 113 (1973), Rehnquist dissented from the Court's creation of a right to abortion on demand. In United Steelworkers v. Weber, 443 U.S. 193 (1979), and all the school desegregation cases, Rehnquist strongly resisted distorting legislative and constitutional principles of nondiscrimination into mandates for a particular degree of racial balance. See, e.g., Pasadena Board of Education v. Spangler, 427 U.S. 424 (1976); Columbus Board of Education v. Penick, 439 U.S. 1348 (1978). His dissenting opinion in Wallace v. Jaffree, 105 S. Ct. 2479 (1985), masterfully demonstrated, through exploration of historical evidence revealing the Framers' intent, that the First Amendment's religion clauses were designed to prevent an establishment, not an acknowledgement or accommodation, of religion, a principle he has adhered to in all the religion cases. He also led the Court's effort to cut back significantly on New York Times v. Sullivan, 376 U.S. 254 (1964), in which the Warren Court, notwithstanding 600 years of common law and the Framers' contrary intent, invented First Amendment immunity for false, libelous statements. See, e.g., Time Inc. v. Firestone, 424 U.S.

443 (1976). The same is true of the criminal and prison context, where he has pushed the Court to reverse the excesses of the Warren Court with respect to the exclusionary rule created by Miranda v. Arizona, 384 U.S. 436 (1966), the cases all but abolishing the death penalty and those outlawing legitimate penal practices that "shock the conscience" of liberal judges but not of the Framers. See, e.g., New York v. Quarles, 467 U.S. 649 (1984); Gregg v. Georgia, 428 U.S. 153 (1976); Bell v. Wolfish, 441 U.S. 520 (1979).

Perhaps more importantly, by dint of his personal qualities, intellect and sheer cleverness in reshaping erroneous precedent, Rehnquist has formed a consensus on a generally rudderless Court behind fundamental principles which might well have otherwise been rejected. His landmark desegregation opinion in Spangler, for example, established the fundamental principle that the Constitution does not require racial balance in government programs notwithstanding potentially contrary precedent. His accomplishments in the areas of federalism, libel and criminal law listed above were similarly achieved in the face of inconsistent precedent. Moreover, virtually every beneficial decision listed above grew out of a small seed of legal principle that Rehnquist had planted in a prior, seemingly innocuous case, thus further demonstrating his mastery at looking beyond the facts of an individual case to gradually achieve fundamental reform in constitutional law. In General Electric Company v. Gilbert, 429 U.S. 125 (1976), for example, Rehnquist used a footnote buried in a prior decision, (Geduldig v. Aiello, 417 U.S. 484 (1974)) to establish the principle that pregnancy-based discrimination does not constitute impermissible discrimination on the basis of sex. In Lloyd Corporation v. Tanner, 407 U.S. 551 (1972), Rehnquist persuaded a majority of the Court to distinguish, on the thinnest of reeds, a very recent precedent (Logan Valley, 391 U.S. 308 (1968)), thus effectively reversing the holding that privately-owned shopping centers were state actors for purposes of the First Amendment. He built on this precedent, in turn, to effectively overrule Warren Court precedent that had converted a multitude of purely private activities into "state action" subject to constitutional constraints. See e.g., Moose Lodge v. Iris, 407 U.S. 163 (1972); Jackson v. Metropolitan Edison, 419 U.S. 345 (1974).

Further, Rehnquist possesses all the leadership qualities required to make a superb Chief Justice. No one can question the depth of his scholarship or intellect, the clarity of his philosophical vision or his ability to build a consensus to implant that vision in the Court's decisions. Moreover, he enjoys a warm collegial relationship with, and is genuinely respected by, all of his fellow justices, even those with whom he often disagrees. His fourteen year tenure on the Court has given him valuable insights into the predictions of these justices and the politics and machinations of the Court. Although he had significant problems with his back three years ago, this is no longer a real health problem. In sum, Justice Rehnquist would add immeasurably to the development of proper constitutional jurisprudence if appointed as Chief Justice.

ANTONIN SCALIA

Judge Scalia is also an articulate and devoted adherent to the interpretivist theory of adjudication described more extensively in the memorandum on Judge Bork. Scalia's primary focus has been on separation of powers, justiciability and administrative law questions. He has repeatedly emphasized that the judicial role is solely to decide the rights of individuals. Thus, absent an express statutory mandate, he denies standing to persons who seek to have courts resolve generalized grievances and otherwise assiduously ensures that cases are susceptible to judicial review, most notably in a number of ground-breaking opinions on congressional standing. Scalia couples his appreciation for the limited role of the courts with respect for coordinate branches and has written several very significant opinions dealing with the deference due to the Executive, particularly in foreign affairs and the enforcement of laws.

In short, Scalia's judicial philosophy almost precisely mirrors that of Bork, with the exception of one subtle difference in emphasis which may affect their decision-making in a quite narrow range of cases. In seeking to determine the breadth of rights contained in the constitutional text, Scalia would probably be more inclined than Bork to look at the language of the constitutional provision itself, as well as its history, to determine if it grants an affirmative mandate for the judiciary to inject itself into the legislative process. Absent such an affirmative signal, Scalia's natural belief in the majoritarian process and his innate distrust of the judiciary's ability to implement, or even to discern, public policy or popular will, would probably lead him to leave undisturbed the challenged activity. While Bork certainly shares these precepts of judicial restraint, he will be somewhat more inclined in certain circumstances to give broader effect to a "core" constitutional value. Bork would look less to history, and more to the general theory of government reflected by the Constitution's overall structure, to provide guidance on the limits of judicial action. In the broader scheme of things, this divergence is quite minor, but it is the reason that Scalia severely criticized Bork's "sociological jurisprudence" in the Ollman libel case.

Scalia is obviously a superb intellect and scholar who has produced an extraordinarily impressive body of academic writings on a broad range of issues, particularly administrative law. He has also written probably the most important opinions of any appellate court judge during the last 4 years, without a single mistake. While he has not focused on the "big picture" jurisprudential questions to quite the same extent as Bork, his writings on separation of powers and jurisdictional questions reflect a fundamental, well-developed theory of jurisprudence in an area that had received all too little attention. He also reasons and writes with great insight and flair,

which gives additional influence to his opinions and articles. He has been particularly diligent in ferreting out bad dicta in his colleagues' opinions and otherwise aggressively attempted to reshape the law through dissents and en banc review. Like Bork, he would not slavishly adhere to erroneous precedent. More so than Bork, he is generally respected as a superb technician on "nuts and bolts" legal questions.

Scalia is an extremely personable man, although potentially prone to an occasional outburst of temper, and is an extremely articulate and persuasive advocate, either in court or less formal fora. Unlike Bork, he would have to undergo a relatively brief "get-acquainted" period on the Supreme Court and it is conceivable that he might rub one of his colleagues the wrong way. Scalia's background as a private practitioner for six years, a law professor at the University of Virginia, Georgetown, and Chicago, Counsel to the Office of Telecommunications, Assistant Attorney General for the Office of Legal Counsel, and a judge on the U.S. Court of Appeals for the D.C. Circuit, makes abundantly clear his technical qualifications. While he received only a "qualified" rating from the American Bar Association for the D.C. Circuit, this can only be described as slanderous nonsense. Scalia just turned 50 years old and exercises regularly. Although he smokes heavily, and drinks, he should have a lengthy career on the Court.

Background on Judge Scalia

You appointed Antonin Scalia to the U.S. Court of Appeals for the District of Columbia Circuit in 1982. If you nominated him to the Supreme Court, he would be the first Italian-American to receive that honor. Judge Scalia is regarded as one of the intellectual leaders, along with Judge Bork and Justice Rehnquist, of judicial conservatism. Judge Scalia served as Assistant Attorney General in the Ford Administration, and has been a professor of law at the University of Chicago, Stanford and other top schools. He is an expert in administrative law and has argued against excessive government regulation. His judicial decisions have strongly supported the principle of "separation of powers." He has thus recognized the importance of deference to the Executive Branch in matters involving the military and the conduct of foreign relations. Judge Scalia is regarded as a forceful individual capable of personal as well as intellectual leadership. He is 50 years old. (The Justice Department's summary on Judge Scalia is attached.)

You should stress to Judge Scalia your admiration for his work on the D.C. Court of Appeals.

Questions

1. What are the critical issues that you think the Supreme Court will face over the next five to ten years?
2. What role should the Supreme Court play in resolving disputes between Congress and the Executive Branch?
3. In which direction do you see the Court moving on the issue of federalism?
4. Should the Supreme Court continue to move away from the decisions of "the Warren Court" in the area of criminal justice and law enforcement, or has a reasonable equilibrium been reached?
5. How should judges interpret the Constitution and define rights?
6. Given the current composition of the Court, how would you establish a consensus among the Justices for your views?
7. Are there any personal or health reasons why you would not be able to make a full commitment to this position?
8. Do you have any hesitancy whatsoever taking on the great responsibility of work on the Supreme Court?
9. Is there any reason why you might not want to go through a confirmation process at this time?

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 17, 1986

The President today announced his intention to nominate Associate Justice William H. Rehnquist to be the next Chief Justice of the United States. He would succeed Chief Justice Warren E. Burger. Justice Rehnquist was named to the United States Supreme Court in 1971 by President Nixon.

Prior to joining the Supreme Court, Justice Rehnquist served in the Department of Justice as Assistant Attorney General for the Office of Legal Counsel from 1969-1971. He practiced law as a partner with several firms in Phoenix, Arizona from 1953-1969. He was a law clerk to Supreme Court Justice Robert H. Jackson in 1952-1953.

Justice Rehnquist was graduated first in his class from the Stanford Law School in 1952. He received his B.A., with great distinction, from Stanford University, where he was a member of Phi Beta Kappa. He also received M.A. degrees in political science from Stanford in 1948 and from Harvard University in 1949.

Justice Rehnquist is married to the former Natalie Cornell, and they have three children. He was born on October 1, 1924 in Milwaukee, Wisconsin.

#

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 17, 1986

STATEMENT BY THE PRESIDENT

On May 27, 1986, Chief Justice Burger advised me that he wanted to devote his full energies in the coming year to the important work of the Commission on the Bicentennial of the Constitution, and for that reason would be retiring as Chief Justice of the Supreme Court as of the end of the Court's current term. Today, I received with regret Chief Justice Burger's letter formally notifying me of his retirement.

Immediately after my conversation with the Chief Justice, I directed my Chief of Staff, together with the Attorney General and the Counsel to the President, to develop recommendations for a successor. I am pleased to announce my intention to nominate William H. Rehnquist, currently an Associate Justice of the Supreme Court, as the new Chief Justice of the United States. Upon Justice Rehnquist's confirmation I intend to nominate Antonin Scalia, currently a Judge of the United States Court of Appeals for the District of Columbia Circuit, as Justice Rehnquist's successor.

In taking this action, I am mindful of the importance of these nominations. The Supreme Court of the United States is the final arbiter of our Constitution and the meaning of our laws. The Chief Justice and the eight Associate Justices of the Court must not only be jurists of the highest competence; they must also be attentive to the rights specifically guaranteed in our Constitution and to the proper role of the courts in our democratic system. In choosing Justice Rehnquist and Judge Scalia, I have not only selected judges who are sensitive to these matters, but through their distinguished backgrounds and achievements reflect my desire to appoint the most qualified individuals to serve in our courts.

Justice Rehnquist has been an Associate Justice of the Supreme Court since 1971, a role in which he has served with great distinction and skill. He is noted for his intellectual power, the lucidity of his opinions, and the respect he enjoys among his colleagues. Judge Scalia has been a Judge of the United States Court of Appeals for the District of Columbia Circuit since 1982. His great personal energy, the force of his intellect, and the depth of his understanding of our constitutional juris-

announce my intention to nominate William H. Rehnquist, currently an Associate Justice of the Supreme Court, as the new Chief Justice of the United States. Upon Justice Rehnquist's confirmation I intend to nominate Antonin Scalia, currently a Judge of the United States Court of Appeals for the District of Columbia Circuit, as Justice Rehnquist's successor.

In taking this action, I am mindful of the importance of these nominations. The Supreme Court of the United States is the final arbiter of our Constitution and the meaning of our laws. The Chief Justice and the eight Associate Justices of the Court must not only be jurists of the highest competence; they must also be attentive to the rights specifically guaranteed in our Constitution and to the proper role of the courts in our democratic system. In choosing Justice Rehnquist and Judge Scalia, I have not only selected judges who are sensitive to these matters, but through their distinguished backgrounds and achievements reflect my desire to appoint the most qualified individuals to serve in our courts.

Justice Rehnquist has been an Associate Justice of the Supreme Court since 1971, a role in which he has served with great distinction and skill. He is noted for his intellectual power, the lucidity of his opinions, and the respect he enjoys among his colleagues. Judge Scalia has been a Judge of the United States Court of Appeals for the District of Columbia Circuit since 1982. His great personal energy, the force of his intellect, and the depth of his understanding of our constitutional jurisprudence uniquely qualify him for elevation to our highest Court. I hope the Senate will promptly consider and confirm these gifted interpreters of our laws.

In closing, I want to say a word about Chief Justice Burger. He has led the Supreme Court for 17 years, a

MORE

time of great change and yet a period also of consolidation and stability in the decisions of the Court. Under Chief Justice Burger's guidance, the Court has remained faithful to precedent while it sought out the principles that underlay the Framers' words. He is retiring now in order to devote his full attentions to a momentous occasion in our country's history, the observance in 1987 of the 200th anniversary of the Constitution. This is an endeavor for which all Americans will be grateful, and to which I and the members of the Administration will lend our total support.

I am proud and honored to stand here today with Chief Justice Burger, with Justice Rehnquist and with Judge Scalia, and to discharge my constitutional responsibilities as President of the United States. Thank you and God bless you all.

#