

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPREME COURT OF THE UNITED STATES
ASSOCIATE JUSTICE ANTONIN SCALIA MEMORIAL

SPECIAL SESSION OF THE SUPREME COURT

3:00 p.m.
Friday, November 4, 2016

Courtroom
Supreme Court of the United States
Washington, D.C.

1	C O N T E N T S	
2	AGENDA ITEM	PAGE
3	PRESENTATION OF RESOLUTIONS	
4	IAN H. GERSHENGORN, Acting Solicitor	
5	General of the United States	3
6	REQUEST TO ACCEPT RESOLUTIONS	
7	LORETTA E. LYNCH, Attorney General of the	
8	United States	10
9	RESPONSE	
10	JOHN G. ROBERTS, JR., Chief Justice	
11	of the United States	14
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(3:00 p.m.)

CHIEF JUSTICE ROBERTS: The Court is in Special Session this afternoon to receive the resolutions of the Bar of the Supreme Court in tribute to Associate Justice Antonin Scalia.

The Court recognizes the Acting Solicitor General of the United States.

GENERAL GERSHENGORN: Mr. Chief Justice, and may it please the Court:

At a meeting today of the Bar of this Court, resolutions memorializing our deep respect and affection for Justice Scalia were adopted unanimously.

Today, the Bar of this Court convenes to pay respect to a towering figure in American law, a Justice of conviction, character, and courage, a treasured colleague, an irreplaceable mentor, and a man devoted to his country, its Constitution, and this Court.

In his nearly 30-year tenure on this Court, Antonin Scalia displayed a forceful intellect, a remarkable wit, and an inimitable writing style. His ideas helped to shape the way we think about law. And for those blessed to know him, his compassion, humanity, and commitment to his family, friends, and faith will remain an inspiration.

1 Antonin Scalia was born on March 11th, 1936
2 in Trenton, New Jersey, and grew up in the Elmhurst
3 neighborhood of Queens. After graduating from Xavier
4 High School in Manhattan and Georgetown University,
5 Justice Scalia attended Harvard Law School.

6 Although he relished the academic
7 environment at Harvard, the signal event of his Harvard
8 years occurred outside the classroom, when he met
9 Maureen McCarthy. Their 55-year marriage produced nine
10 children and dozens of grandchildren.

11 Following a stint in private practice,
12 Justice Scalia accepted a post at the University of
13 Virginia School of Law in 1967, and then held a series
14 of government positions that culminated in his serving
15 as Assistant Attorney General for the Office of Legal
16 Counsel in the Department of Justice.

17 In 1977, Justice Scalia returned to
18 academia, joining the University of Chicago faculty. In
19 1982, President Reagan nominated him to the U.S. Court
20 of Appeals for the District of Columbia Circuit. And
21 then, in 1986, President Reagan nominated Justice Scalia
22 to this Court.

23 Over the next three decades, Justice Scalia
24 left his mark on the law in numerous ways, too many to
25 recount in full here. His steadfast commitment to the

1 idea that external legal principles, rather than
2 internal policy preference, should govern judicial
3 decision making made him deeply respectful of the
4 Constitution's allocation of powers and vigilant in
5 respecting legal texts.

6 That commitment showed up first and most
7 often in his views on statutory interpretation. Justice
8 Scalia pressed the proposition that, when interpreting a
9 statutory text, judges must try to discern and enforce
10 the meanings of words enacted by Congress to express its
11 policies.

12 In his view, courts should never rewrite a
13 discernible statutory text to conform it to a law's
14 unenacted legislative purposes. This new textualism had
15 an undeniable impact on the way the Court does business.

16 Just as Justice Scalia believed that courts
17 should do their best to honor a statute's text, he
18 thought the same should be true for the Constitution.
19 As he saw it, the words of the Constitution bear the
20 same meaning today as they did when adopted, neither
21 diminished, nor augmented. He thus voted against
22 recognition of new rights that he believed lacked a
23 foundation in the Constitutional's -- Constitution's
24 original meaning, resisting limitations on Democratic
25 self-government that he believed the people did not vote

1 to impose. At the same time, he insisted on unyielding
2 enforcement of those restrictions that he believed the
3 people did vote to impose in the text of the
4 Constitution.

5 By the end of Justice Scalia's tenure, a
6 focus on the original public meaning of the
7 Constitution's text had become, if not orthodoxy, a
8 thoroughly respectable and commonplace approach to
9 constitutional interpretation. His approach was perhaps
10 best illustrated in two particularly noteworthy
11 opinions: *District of Columbia v. Heller*, holding that
12 the Second Amendment protects an individual right to
13 keep and bear arms for self-defense, and *Crawford v.*
14 *Washington*, interpreting the Sixth Amendment's
15 Confrontation Clause.

16 Although Justice Scalia may be best known
17 for his views on statutory and constitutional
18 interpretation, his first love was an area of
19 substantive law, constitutional structure, which shaped
20 his answers to the underlying questions that appear in
21 every case, who decides, and how.

22 Throughout his tenure, Justice Scalia sought
23 to honor the Constitution's structure, its distinct
24 horizontal and vertical lines of power. He appreciated
25 that men and women were not angels, and that electing or

1 appointing them to government posts did not make it
2 otherwise.

3 Justice Scalia believed that by assigning
4 three distinct kinds of government power to three
5 distinct branches of government, the Constitution
6 prevented the concentration of government power in the
7 same hands.

8 Justice Scalia likewise regarded the
9 Constitution's vertical separation of power, Federalism,
10 as a core feature of the Constitution's structure that
11 needed to be preserved. He joined the Court's
12 decisions, recognizing limits on Congress's power to
13 regulate interstate commerce, and upholding the State's
14 sovereign immunity from suit. In these areas, as in so
15 many others, Justice Scalia had a -- profound effect on
16 the Court's jurisprudence.

17 Of course, no account of Justice Scalia's
18 contribution to this Court would be complete without
19 mentioning his remarkably clear and vivid writing, and
20 the inventive, memorable images sprinkled throughout.
21 The images were memorable precisely because they
22 captured the substance of the legal point the Justice
23 was making. Surely there was a separation of powers
24 problem with the creation of what he called a sort of
25 junior varsity Congress. And surely, there was a deep

1 flaw in a dormant Commerce Clause test that asked judges
2 to divine, as he put it, whether a particular line is
3 longer than a particular rock is heavy.

4 And while Justice Scalia's writing
5 frequently left -- leapt off the page, advocates before
6 the Court often confronted his tenacity and his wit long
7 before he unsheathed his pen. He peppered lawyers with
8 questions, sometimes posing 30 or 40 in a single
9 argument. And if he found an answer unsatisfactory, he
10 pursued the point through short, often flinty-minded,
11 follow-up inquiries.

12 Throughout his judicial career, Justice
13 Scalia maintained his collection -- connection with the
14 law schools by accepting countless invitations to speak
15 with students and professors.

16 And, in one sense, he never really left
17 teaching. His classroom just got bigger. He often
18 thought of the audience of his opinions as today's and
19 tomorrow's law students, and he relished opportunities
20 to talk to students about his theories of judging and
21 about the many useful ways to use a law degree.

22 Justice Scalia's productivity and many
23 contributions to the law could leave one with the
24 misimpression that he left little time for anything
25 else. And, of course, that was not so. This son of

1 Trenton and Queens became an avid hunter and fisherman.
2 He relished meals with friends and colleagues and law
3 clerks, often at the much-beloved A.V.'s, and usually
4 with an anchovy pizza and an occasional glass of red
5 wine.

6 He was an ever-present mentor to his many
7 law clerks. And, of course, he was deeply devoted to
8 his large and remarkably close family.

9 And through it all, the Justice did
10 everything in his brim-filled -- brim-filled life with
11 unstinting vigor, curiosity, engagement, and a twinkle
12 in his eye.

13 Gathered here together, looking back at his
14 life, the members of the Bar of the Supreme Court
15 express our deepest respect for the late Justice Antonin
16 Scalia, our loss at his passing from this life, and our
17 enduring gratitude for the example he set in his life,
18 both within and beyond the law.

19 On behalf of the Bar of the Supreme Court,
20 it is my privilege to present the Court the resolutions
21 adopted today, so that the Attorney General may move
22 their inscription on the Court's permanent record.

23 CHIEF JUSTICE ROBERTS: Thank you, General
24 Gershengorn.

25 The Court recognizes the Attorney General of

1 the United States.

2 GENERAL LYNCH: Mr. Chief Justice, and may
3 it please the Court:

4 The Bar of the Court met today to honor the
5 memory of Antonin G. Scalia, Associate Justice of the
6 Supreme Court from 1986 to 2016.

7 The passing of Justice Scalia has left an
8 enormous void in this courtroom and in the life of the
9 law throughout the United States. With his razor-sharp
10 brilliance and unmatched eloquence, Justice Scalia
11 transformed the way the jurists and lawyers approach the
12 law. He strode like a colossus through some of the most
13 important opinions, concurrences, and dissents of our
14 time, and he had a singular presence both in the
15 courtroom and on the page.

16 His penetrating questions at oral argument
17 did not merely seek to clarify minor nuances; they cut
18 to the heart of a position's flaws. And his writing did
19 not merely state the law, it captivated all who treasure
20 memorable and radiant prose.

21 And even those who disagreed with Justice
22 Scalia could appreciate his inspired wordsmithing, like
23 his assertion that Congress does not hide elephants in
24 mouseholes or his contention that the rule of law
25 requires a law of rules.

1 Justice Scalia's life was a quintessentially
2 American story. His father was a Sicilian immigrant who
3 came through Ellis Island as a teenager, earned a
4 doctorate from Columbia, and became a professor. His
5 mother was an elementary schoolteacher, herself the
6 daughter of Italian immigrants.

7 By all accounts, Justice Scalia's talent was
8 obvious from a young age: From Xavier High School in
9 Manhattan to Georgetown, where he graduated first in his
10 class, to Harvard Law School, where he edited the
11 Harvard Law Review. He was a charismatic student who
12 loved to debate. That charisma and his love of the
13 clash of ideas would come to define him.

14 With these gifts, he could have gone
15 anywhere and done anything. He could have conquered the
16 worlds of commerce or found a home within the business
17 of the law. But rather than pursue material wealth in
18 the private sector, he chose the wealth of ideas to be
19 found in academia. And instead of seeking public
20 acclaim, he turned to public service.

21 Law students at the University of Virginia,
22 as well as the University of Chicago, Georgetown, and
23 Stanford, benefited from his rigorous intellectualism
24 and love of the law. And we at the Department of
25 Justice also benefited from his dedication to public

1 service.

2 From 1974 to 1977, he served as the head of
3 the Office of Legal Counsel at the Department of
4 Justice. The traits that would come to define Justice
5 Scalia's judicial presence were apparent in that role as
6 he provided written opinions that showcased his
7 intellectual rigor, his sharp pen, and his independent
8 mind.

9 He was also known for his fierce support of
10 the independence of the Office of Legal Counsel and of
11 the Department, traditions we are proud to uphold.

12 Justice Scalia's contributions to the
13 Supreme Court cannot be overstated. Countless pages
14 have been written about the textualist approach to
15 statutory interpretation he championed. In his three
16 decades on the bench, he succeeded in changing the very
17 way that lawyers and judges determine the meaning of
18 congressional enactments, and he fundamentally
19 transformed legal argument. As Justice Kagan noted in
20 her Scalia lecture at Harvard Law School, we're all
21 textualists now.

22 Justice Scalia will also be remembered for
23 his robust interpretations of the protections that the
24 Constitution affords those who come in contact with the
25 criminal justice system. His Fourth Amendment and Sixth

1 Amendment decisions regarding searches, the right to a
2 jury trial, and the Confrontation Clause fundamentally
3 shaped the way law enforcement officers investigate
4 potential wrongdoing, and the way prosecutors put on
5 their cases.

6 The opinions are noteworthy for their
7 reliance on Justice Scalia's originalist approach to
8 interpreting the Constitution, a philosophy that looks
9 backwards in order to look forward. It looks back to
10 the founding of this great nation in an effort to
11 understand the protections reserved in the Constitution,
12 and it looks forward to demand that we uphold these
13 protections despite changing times.

14 But Justice Scalia's greatest legacy may be
15 that he brought unmatched conviction and enthusiasm to
16 his jurisprudence. In doing so, he elevated our
17 national legal discourse for all Americans. He
18 challenged even those who agreed with him, and he earned
19 the respect of those who did not.

20 Lawyers who appeared before Justice Scalia
21 found themselves compelled to clarify their positions
22 and to sharpen their arguments. Readers of Justice
23 Scalia's opinions could not disregard the strength of
24 his reasoning and were forced to re-examine their own
25 convictions.

1 Justice Scalia knew that this was the point
2 of debate, and he also knew that debate was the essence
3 of democracy. For decades, he had an outsized role in
4 the debates over the meaning of our most fundamental
5 principles: principles of liberty, justice, and
6 equality. And because of the brilliance, the eloquence,
7 and the unique passion he brought to that debate, he
8 guaranteed that he will continue to shape it for decades
9 to come.

10 Mr. Chief Justice, on behalf of the lawyers
11 of this nation, and in particular, the members of this
12 Court's Bar, I respectfully request that the resolutions
13 presented to you in honor of Antonin Scalia be accepted
14 by the Court and that they, together with the chronicle
15 of these proceedings, be ordered kept for all time in
16 the records of this Court.

17 CHIEF JUSTICE ROBERTS: Thank you, General
18 Lynch. Your request that the Bar resolutions be made
19 part of the permanent record of the Court is granted.

20 The Court extends to the members of the
21 Resolutions Committee, to the members of the
22 Arrangements Committee, and to the Chairman of today's
23 meeting of the Bar our appreciation for the resolutions
24 adopted today.

25 Antonin Scalia was nominated to the U.S.

1 Court of Appeals for the D.C. Circuit by President
2 Reagan on July 15th, 1982. He joined that court on
3 August 17 that same year. And just four years later,
4 President Reagan nominated him to be our 103rd Supreme
5 Court Justice.

6 At the time of the White House announcement,
7 he was not well-known to the public. The press had to
8 ask Justice Scalia how to pronounce both his first and
9 last names.

10 (Laughter.)

11 CHIEF JUSTICE ROBERTS: Antonin Scalia was
12 confirmed on Constitution Day in 1986 by a vote of 98-0.
13 He took the oath of office as an Associate Justice of
14 this Court on September 26th, 1986. Today, every lawyer
15 and journalist in this country, and most other citizens
16 as well know how to pronounce Justice Antonin Scalia.

17 In nearly three decades on this Court,
18 Justice Scalia wrote, by our count, 282 opinions for the
19 Court, beginning with *O'Connor v. United States*, which
20 he announced exactly 30 years ago today, and ending with
21 *Kansas v. Carr*, which he announced on January 20 of this
22 year.

23 He was also known to write separately from
24 time to time --

25 (Laughter.)

1 CHIEF JUSTICE ROBERTS: -- authoring more
2 than 300 concurrences and nearly as many dissents. He
3 served with 17 other Justices during his long tenure on
4 this Court.

5 You have already heard of Justice Scalia's
6 extraordinary legacy. On matters of constitutional
7 interpretation, he championed the judicial philosophy of
8 originalism, a view that the Constitution means today
9 what it meant when it was adopted. He espoused this
10 approach in opinions, both for the Court and in dissent,
11 that are now a central feature of every law school's
12 constitutional curriculum.

13 His opinions explaining our Constitution's
14 structural constraints on governmental power are among
15 the most important intellectual contributions to the
16 study of liberty since The Federalist Papers.

17 Justice Scalia defended the president's
18 power to appoint and remove executive officials, not to
19 aggrandize presidential power, but to maintain the
20 equilibrium between co-equal branches of government. He
21 insisted that Congress perform the duties within its
22 Constitutional charge and leave other matters alone, not
23 to manage the legislative process, but to promote
24 individual freedom through electoral accountability.

25 He approached the judicial branch with the

1 same rigor. Justice Scalia demanded that Federal courts
2 stay within their constitutionally prescribed role of
3 deciding only concrete cases and controversies. He did
4 so not to avoid difficult issues, but to ensure that
5 judges who are insulated from the political process
6 resolve only those matters within Article III's grant of
7 judicial power.

8 Justice Scalia applied originalist scrutiny
9 to interpreting the Bill of Rights. His views were
10 especially influential with respect to the First
11 Amendment's religion clauses, the Second Amendment's
12 right to bear arms, and the Sixth Amendment's
13 Confrontation Clause. He persuasively explained how the
14 guarantees set forth 225 years ago continue to provide
15 vital protections in our own age. Writing for the Court
16 in cases involving the Fourth Amendment, he demonstrated
17 how the centuries-old protections against unreasonable
18 searches and seizures reach contemporary police
19 investigatory tools, ranging from thermal imaging to
20 electronic tracking devices to drug-sniffing dogs. He
21 once commented that his opinions on the scope of
22 criminal law safeguards in the Bill of Rights should
23 make him the favorite Justice among criminal defendants
24 across the country.

25 (Laughter.)

1 CHIEF JUSTICE ROBERTS: Now, whether he
2 wrote for the Court or in dissent, Justice Scalia's
3 incisive analysis and unforgettable prose compelled
4 jurists, lawyers, and citizens alike to think deeply
5 about the meaning of the compact that binds us.

6 Justice Scalia left an equally enduring mark
7 on statutory construction. His insistence on the
8 primacy of a statute's text has enforced greater
9 discipline on the task of construction. As he
10 explained, reliance on the statutory text restrains
11 judicial discretion and thereby promotes democracy.

12 Although Justice Scalia was a keen legal
13 theorist, he was deeply concerned about the practical
14 workings of government, and that intense focus is
15 reflected in his contributions to administrative law.
16 He made enduring contributions to that field as a
17 teacher, scholar, and Chairman of the Administrative
18 Conference of the United States, even before he became a
19 judge.

20 Whatever the discipline, whatever the role,
21 Justice Scalia was committed to finding the right
22 answer. And once he had settled upon what was right, he
23 let the chips fall where they may, and cared not a whit
24 what others thought about it.

25 Justice Scalia's voice is perhaps most

1 deeply missed in this very chamber. From his first day
2 on the bench, he was a vigorous participant in oral
3 argument. His insightful inquiries enlivened debate and
4 brought out the best in his colleagues and the attorneys
5 who appeared before him, on many occasions also
6 confirming that their best was not good enough.

7 (Laughter.)

8 CHIEF JUSTICE ROBERTS: Now, it would be a
9 stretch to say that there was never a dull moment in
10 this chamber --

11 (Laughter.)

12 CHIEF JUSTICE ROBERTS: -- but often, just
13 when things were getting a bit soporific, counsel would
14 make some assertion that would trigger a reaction from
15 Justice Scalia, ranging from explosive to subtle, and
16 the game would be on.

17 His comments in this room also included
18 priceless sotto voce insights shared only with those
19 fortunate enough to sit beside him on the bench.

20 (Laughter.)

21 CHIEF JUSTICE ROBERTS: Justice Scalia was
22 not restrained in stating his views clearly and
23 forcefully, but he never ceased being our dear friend
24 and valued colleague. He wrestled with ideas, not
25 people, and he knew the difference.

1 He made our days warmer, livelier, and
2 happier. He sang loudest and best at our traditional
3 birthday celebrations. He raised his glass highest to
4 toast others' happy occasions, and his rich laughter
5 filled our halls and our hearts.

6 Justice Scalia's life reached far beyond the
7 law. He would never have said that the law was what was
8 most important to him. He was steadfast in his Roman
9 Catholic faith, and he was devoted beyond measure to his
10 beloved wife, Maureen, and the nine children they
11 raised.

12 On occasions such as this, speakers often
13 employ so many laudatory adjectives that the effect can
14 be to sow doubt rather than admiration. But no one who
15 knew Justice Scalia, however they viewed his work, would
16 dispute for a moment that he was patriotic, principled,
17 loyal, courageous, engaging, and brilliant.

18 Those of us on the Court will miss Nino, but
19 we will continue to feel his presence throughout this
20 building. Our ears will hear his voice in this
21 courtroom when advocates invoke his words searching for
22 powerful authority. Our minds will move to the measure
23 of his reason in our chambers when we study his
24 opinions. And our hearts will smile, even as our eyes
25 glisten, when we walk the halls and recall how happy we

1 were whenever we saw him rounding the corner.

2 (Whereupon, at 3:24 p.m., the Special
3 Session was concluded.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25