

1 SUPREME COURT OF THE UNITED STATES  
2 ASSOCIATE JUSTICE ANTONIN SCALIA MEMORIAL

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5 SPECIAL SESSION OF THE SUPREME COURT

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11 3:00 p.m.  
12 Friday, November 4, 2016

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

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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 Constitution'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.)

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