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The Over-the-Top Justice

Editorial
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Supreme Court justices need not be hermits. No one expects them to dwell in a bubble, never venturing out in public or speaking their minds on legal topics before bar groups. But justices do have a duty to avoid off-the-bench behavior hurtful to the court's reputation and mission, which Justice Antonin Scalia, sad to say, keeps ignoring.

In January, Justice Scalia skipped the swearing-in of Chief Justice John Roberts for a trip sponsored by the Federalist Society to a luxury resort in Colorado. In February, he suggested that those who adhere to a vision of an evolving Constitution, rather than his originalist philosophy of judging, are "idiots." This past week found the conservative justice insisting that a hand gesture he used while answering a question about church-state jurisprudence was not vulgar.

And speaking on March 8 at a university in Switzerland, he dismissed as "crazy" the notion that military detainees are entitled to a "full jury trial," and the idea that the Geneva Conventions apply to those held at Guantanamo Bay, Cuba. In the process, Justice Scalia seemed to prejudge key issues in a momentous case involving the rights of Gitmo detainees. That should have caused him to recuse himself when the case, *Hamdan v. Rumsfeld*, was argued in the Supreme Court last Tuesday. Unfortunately, he has not done so, in marked contrast to Chief Justice Roberts, who is properly sitting out the case in light of his participation, before becoming a justice, in the three-judge federal appellate panel that issued a ruling on the same matter.

Justice Scalia was an active questioner at last week's hearing. Still, it is not too late for him to reconsider his decision to take part in the case. His colleagues should help persuade him that it is the right thing to do. While they are at it, they might try to convince Justice Scalia of his duty to take greater care before articulating -- or gesticulating -- his sentiments in public.