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## Scalia's Ill-Chosen Words Justice Crosses the Line - Again

Editorial  
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A Supreme Court case involving Osama bin Laden's former limo driver was complicated and controversial enough without Justice Antonin Scalia shooting off his mouth again.

At a March 8 forum in Switzerland, the ever-feisty Scalia rejected the suggestion that such terrorism suspects held in Guantanamo, Cuba, had rights under the U.S. Constitution or international law. To think they might warrant a jury trial, he said, is "crazy."

"War is war," said Scalia, contending that Guantanamo is the right place for detainees "captured by my army on a battlefield."

Maybe Scalia just got carried away? After all, he reminded the University of Freiburg crowd, "I had a son on that battlefield and they were shooting at my son."

It's great to be a protective dad. But, as he declaimed to his audience, Scalia was only weeks away from sitting in judgment on Osama's former wheelman - whose pending claim before the Supreme Court is all about whether the military tribunals at Gitmo are legal.

(Those tribunals, as well as the detentions, are far short of the fair treatment we'd demand were American soldiers held captive.)

To be sure, Scalia didn't specifically name Salim Ahmed Hamdan, the Yemeni national whose appeal was argued Tuesday. To a layman's ear, though, it sure sounded like Scalia had taken a stand on a critical legal issue in a case he was just about to hear.

No wonder a group of retired American generals and admirals, as well as a civil rights organization critical of the military tribunals, called for Scalia to recuse himself from Hamdan's appeal.

It's evident Scalia's impartiality "might reasonably be questioned," which is the criterion set under court rules for recusal.

In 2004, Scalia made the right decision to drop out of a case on the Pledge of Allegiance "under God" wording after he spoke out at a public rally.

He should have done the same - but refused - in another case that year involving his duck-hunting partner, Vice President Cheney.

When is one of these Scalia missteps going to be greeted by catcalls from the critics who ritually decry "activist judges"? If they're going to knock judges for substituting their personal feelings for law and precedent, shouldn't they blast Scalia's recent antics as a textbook example of that sin?

If you're holding your breath waiting for that to happen, you'd better be an Olympic synchronized swimmer.