

A Great Jurist Gone, A Great Seat Now Sadly Empty

*John Q. Barrett**

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Justice Antonin Scalia, an Associate Justice of the Supreme Court of the United States since 1986, died today, age 79, in Texas.

Justice Scalia served with brilliance, energy, and devotion to his oath and responsibilities. He was, and he will long be remembered and studied as, one of the most consequential Supreme Court justices in U.S. history.

Today is also the 124th anniversary of Justice Robert H. Jackson's birth—he was born on this date, February 13th, on the Jackson family farm in Spring Creek Township, Warren County, Pennsylvania.

That fact is not unconnected to today's sad loss of Justice Scalia. Justice Jackson served on the Supreme Court from 1941 until his death in 1954. Judge John M. Harlan of the U.S. Court of Appeals for the Second Circuit was appointed to succeed Justice Jackson on the Supreme Court. When Justice Harlan retired in 1971, Assistant Attorney General of the U.S. (Office of Legal Counsel) William H. Rehnquist was appointed to succeed Justice Harlan. And when Justice Rehnquist was appointed in 1986 to serve as Chief Justice of the U.S., Judge Antonin Scalia of the U.S. Court of Appeals for the D.C. Circuit was appointed to succeed Rehnquist as an associate justice.

Justice Scalia, in other words, has occupied the Supreme Court's "Jackson seat" for the last thirty years.

More than that, Justice Scalia regularly identified Justice Jackson as his "hero."¹

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Many tonight are feeling, rightly, that they have lost their hero. May he rest in peace.

¹ See, e.g., Justice Scalia's 2008 interview with Bryan Garner & Richard Brust ("I sit in [Justice] Harlan's seat on the court, [Harlan] the second... And he's certainly one of the justices I think highly of. But I guess my—to the extent that I have a hero—it's Robert Jackson, who's one of the great stylists on the court. He wrote beautiful opinions, and was on the right side of things, too—in *Korematsu*, for instance."), available at www.abajournal.com/magazine/article/scalia_interview_transcript; cf. *Cheney v. United States District Court*, 541 U.S. 913, 925-26 (2004) (Scalia, J., mem.) (discussing "a Justice who was one of the most distinguished occupants of the seat to which I was appointed, Robert Jackson"); Justice Scalia speaking to Charlie Rose, Nov. 27, 2012 ("I'll tell you who I like a lot. I like one of the predecessors in my seat on the Court, Robert Jackson.... I like about him that he was normally on the right side of the case, which meant that he was usually adhering to the text, and, secondly, that he was a magnificent stylist. He was the best writer on this Court in the 20th century if not— If not forever. He wrote beautifully."), available at www.charlierose.com/watch/60687225; Justice Scalia at the Brooklyn Bar Association, Sept. 23, 2013 (asked to name the greatest legal mind ever, he demurred; asked, in a follow up question, to name three, he said Cicero, Blackstone, and Robert Jackson); Justice Scalia speaking at the University of Mississippi, Dec. 15, 2014 (asked about predecessors and heroes, Justice Scalia mentioned Chief Justice John Marshall and then said, "If you want to talk about modern judges—I actually sit in his chair—Robert Jackson. A great lawyer, a great justice. He never went to law school. He wrote like an angel."), quoted in Errol Castens, *Scalia, Kagan Share UM Stage*, NORTHEAST MISSISSIPPI DAILY JOURNAL, Dec. 16, 2014, available at <http://djournal.com/news/scalia-kagan-share-um-stage/>. Justice Scalia also inscribed, in a book gift to the Robert H. Jackson Center, that Jackson was his "favorite Justice of modern times."

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February 16, 2016: Justice Scalia's chair on the Supreme Court bench, shrouded in black.
(Credit: Franz Jantzen/Collection of the Supreme Court of the United States.)



October 11, 1954: Justice Jackson's chair on the Supreme Court bench, shrouded in black.