

Justice Alito Rallies Conservatives at Federalist Society Event

With nine of President-Elect Donald Trump's 21 potential Supreme Court nominees scheduled to speak at this week's Federalist Society National Lawyers Convention, one couldn't help but feel like he was sitting among the *Who's Who* of the future of American Jurisprudence.

For Christians, that's not just a good thing—it's everything.

But when it was Associate Justice Samuel Alito's chance to speak, the court's most courageous member—who once looked the President of the United States in the eye and said, "You lie"—did say a word about last week's historic presidential election. He didn't mention the president-elect, nor did he discuss the Federalist Society's outsized role in developing the aforementioned "short list."

Knowing much of his audience was groomed by his late colleague, Antonin Scalia, he instead focused his speech right where it needed to be in order to rally the troops for the historic turn likely to come from a conservative court. His speech wasn't recorded, but the high court's own SCOTUSBlog recounted the event.

Alito remarked that he misses his friend and colleague and shared bits and pieces of the legendary jurist's life away from the bench. Then he shared with the audience a small piece of wisdom he continues to carry with him since Scalia's death: "WWSO."

The SCOTUSBlog reported:

This phrase—standing for "What would Scalia do?"—referred to

a playful and "highly sacrilegious" T-shirt a group of Columbia University law students once gave to Alito. While Scalia lived, Alito observed, the expression remained "academic." As to what Scalia thought on a subject, "one already knew or would eventually know in no uncertain terms." Following his death, the question takes on new significance and serves as a call to action. Alito outlined what he sees as "constitutional fault lines" threatening freedom of speech, especially on college campuses, where Alito claimed a "new orthodoxy rules"; freedom of religion, about which Alito quoted Bob Dylan, "it's not dark yet but it's getting there"; and the right to keep and bear arms.

Protecting these rights, Alito continued, depends more on constitutional structure than the Bill of Rights. To paraphrase Scalia, "Human-rights guarantees are worthless without the constitutional structure of democracy." Alito expressed concern about the expansion of executive and legislative powers, alluding to the Affordable Care Act in a hypothetical about convention attendees engaging in interstate commerce either by drinking or not drinking coffee ("because they could be drinking it"). Judicial activism also worries Alito, and he praised Scalia's articulation of the jurist's proper role under the Constitution as his former colleague's "greatest contribution" to the law. Textualism, which Alito described as now occupying the "pole position" among interpretive approaches, constrains judges by limiting their ability to stray from the plain meaning of a statute or section of the Constitution. When judges use balancing tests rather than hewing to the text of a legal provision, Alito observed derisively, the "balance always just comes out the way the judge would like it to."