

## The Education of a Law Clerk, with Thanks to Justice Scalia

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One afternoon in the late spring of 1991, the home stretch of my law school career, the phone in *The University of Chicago Law Review* offices rang. Usually this signaled an incoming call from an author outraged at our “generous” editing. A Law Review colleague answered, turned to me and said, “It’s Justice Scalia’s chambers.” Not quite sure whether I was being pranked, I hedged my bets: “Hello.”

“Hold for the Justice.” Holding . . . “Hi, Ruth told me I should hire you. Come work for me when you finish with her. It’ll be fun.” I quick(ish) pieced it together—my soon-to-be boss, then-Judge Ruth Ginsburg, must have recommended me to Justice Scalia, with whom I had interviewed (and been duly grilled by his law clerks) several months earlier, after which no further contact had occurred. “Yessir, that would be great,” I stammered and, literally, hung up the phone without saying goodbye, perhaps afraid he’d reconsider if I paused.

When I arrived the following summer for my first day at the Supreme Court, one of the most noticeable elements in the Justice’s Chambers was the massive Webster’s dictionary on its own pedestal. This book was legendary in Chambers, and every clerk will have witnessed the Justice flipping its pages whenever he doubted a clerk’s assertion as to the derivation or primary meaning of a key word in a statute. Only Webster’s chunky tome, this specific edition, was citation worthy.

Quote the wrong dictionary—that was perhaps harmless error—but citing the Justice to the Justice, not so much. When considering a particular cert petition, the Justice asked me how I thought he should vote. I advised that he should vote to grant

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the petition, or write a dissent if the Court denied. “Why?” he asked.

“Well, in [*case*], you dissented from a denial on the same question and wrote the following [*quotation omitted*].”<sup>1</sup>

“I know what I wrote. I’m asking you what you think.” His response was quick and unambiguous.

Those sort of life lessons came often during the clerkship. Form your own view, on its own footing, be rigorous, be skeptical. And keep your sense of humor—attack bad arguments, not the people who make them. Oral argument occurred in his Chambers every day. A consummate teacher, Justice Scalia enjoyed watching his clerks refine their views, respond to challenge from co-clerks and then, and only then, when we had exhausted our analysis, giving us his view. It may be that law school teaches one to think like a lawyer. A Scalia clerk will aver that working for the Justice taught us to think for ourselves.

The fun extended outside the Courthouse. To dinners at the Scalia home, and tennis games at nearby courts, where he enjoyed testing his “Italian drop shot” on willing victims. Those trips from the Court started with a harrowing drive with the Justice behind the wheel, including his consistent refusal to acknowledge one particular stop sign en route—“It’s there for people who don’t know this intersection.”

Clerk lunches at AV Ristorante, a classic, Italian red-checked tablecloth joint not far from the Court, were a vintage component of the clerk term. During the course of every October Term, Justice Scalia invited each Chamber’s clerks to AV for lunch. Pizza with anchovies was the mandatory main course. I dreaded the arrival of this lunch; a native of Chicago, one thing I knew beyond original intent was that anchovies did not belong on pizza.

My culinary anxiety grew as the day approached. When we arrived at AV and sat down, Justice Scalia waved away the menus and proclaimed to the waiter, “We’ll have anchovy pizza all around. Anybody want anything else?”

While the question was certainly rhetorical, I seized the moment. “Justice, I’m afraid I can’t eat anchovy pizza.”

“Why not?”

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<sup>1</sup> I omit the specific case reference out of respect for Court confidentiality, something Justice Scalia passionately supported, with one annual exception noted below.

“Well, you see, Jews don’t eat hairy fish.” This was pure inspiration, or foolishness—no more planned than my reflexive disconnection of that initial phone call. “You can look it up, it’s true.” (Be bold, he’d say . . .)

In my case, this religious exception worked. Lunch proceeded, I ate something—anything—else, and we went back to Chambers. A few hours later, my intercom rang and the Justice asked me to come by his office. When I walked in, his smirk was a clear: “I looked it up, it’s not in there. You made that up!”

“Oh,” I replied, “it must be an interpretation then.” He laughed heartily, though I lost the exemption at our next lunch.

At the end of our term at the Court, the Justice signed one slip opinion chosen by each clerk from the cases on which he had worked. I chose *United States v Dixon*,<sup>2</sup> a 5–4 decision in which the Court, in an opinion written by Justice Scalia, overruled a recent precedent<sup>3</sup> and restored the common-law “same elements” test under the Double Jeopardy Clause as set out in *Blockburger v United States*.<sup>4</sup> The framed signed opinion still hangs in my office, “To Andy, With thanks for his help on this and many other cases in OT ’92. Antonin Scalia.”

Since that sad day in February 2016, I have often thought what I might write in return. It would go something like this, “To Justice Scalia, for his help on the law and so much else. It was *really* fun.”

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<sup>2</sup> 509 US 688 (1993).

<sup>3</sup> See generally *Grady v Corbin*, 495 US 508 (1990).

<sup>4</sup> 284 US 299 (1932).