

## Attorneys Pay Tribute To Scalia, A Beautiful Legal Mind

By **Christine Caulfield**

*Law360, New York (February 16, 2016, 9:38 PM ET)* -- Tough on counsel arguing before the court but a "softie" with clerks, a profound legal mind with a generous heart and a quick wit, that is the Justice Antonin Scalia attorneys will remember. Here, former law clerks and appellate lawyers share their recollections with Law360 of the legendary justice who loved a good intellectual jousting, and a better joke.

### **Floyd Abrams, Cahill Gordon & Reindel LLP**

"Two memories: Justice Scalia and I were both scheduled to speak at a conference in California about First Amendment issues. We spoke for a while as we checked in at Kennedy Airport in New York, he doing so just before I did. When I presented my ticket, I was told that it had been cancelled. I responded that it could not have been, that I needed to be on the plane, that they could not treat it as cancelled. Scalia walked up to me and whispered in my ear '[d]o you want to change your position on capital punishment?'"

"Justice Scalia had written a harsh denunciation of a majority opinion of Justice [David] Souter in a substantive due process case. Believing that Souter had vastly overstepped proper legal bounds in his opinion, Scalia included in his dissent a passage from Cole Porter's great song 'You're the Top,' mocking Souter's broad opinion by using language from the Porter song including 'You're the Top. You're cellophane.' I wrote to him asking which law clerk had recalled the lyrics. 'None,' he responded, 'I DID.'"

### **Richard Bernstein, partner at Willkie Farr & Gallagher LLP, and former Scalia clerk**

"The Supreme Court is kind of like a little village where people have been there for many years and everyone gets to know each other. He [Scalia] was close with the administrative assistants. He was a nice person, not a yeller and a screamer. ... He was also a softie with clerks. At oral arguments, he could be tough on counsel, but that wasn't the case with clerks."

### **Eugene Ingoglia, Morvillo LLP**

"While I rarely agreed with Judge Scalia, I once saw him speak at Hofstra [University] and remember being impressed with his quick wit, intelligence and of course, his bracing sarcasm, which I recall being delivered on that occasion with good humor, but in his opinions could be witheringly harsh. I sometimes

could not help but enjoy his rhetorical flourish. I think his dissent complaining of the majority's 'interpretive jiggery-pokery' from *King v. Burwell* last year is an example of classic Scalia pejorative dissent. And — without joining in his views — I enjoyed his dissent in *PGA Tour v. Martin*, sarcastically noting that the Court was given the solemn duty to decide 'What is Golf?'"

**Eric A. Johnston, McGinnis Lochridge & Kilgore LLP**

"Justice Antonin Scalia was a monumental figure on the highest court in this country. I first experienced his ability to intimidate law students and lawyers during a question and answer session in law school. Justice Scalia was the first member of the judiciary that I ever met, and I was immediately terrified of the judiciary. Sitting in front of a room of 400+, he could recall minute details of cases time and time again. His devotion to textualism will last multiple generations through his beautifully crafted opinions and surgical precision during oral arguments. Justice Scalia's passing represents the loss of a beautiful legal mind."

**Jameson R. Jones, partner Bartlit Beck Herman Palenchar & Scott LLP, and former Scalia clerk**

"I owe Justice Scalia not only for bringing me to Washington, D.C., for a clerkship, but also for telling me to leave it. After the cases for the October Term of 2008 were decided and in the books, I told the Justice that, although I was leaning toward working at a white-shoe D.C. law firm, I was considering flying to Denver to interview at a small trial firm called Bartlit Beck. The Justice exclaimed — 'By all means, Go! Get out of D.C. and build your own life.' As much as the Justice was viewed by the public as being political and a citizen of the District, he viewed the politics of D.C., and the grind of billing by the hour there, as inimical to building a good family life. The Justice was, above almost all else, a family man."

"Justice Scalia also viewed his clerks as part of his extended, professional family. My favorite interaction with the Justice happened when my trial practice at Bartlit Beck improbably landed me back in D.C., arguing before the Supreme Court. The Justice spent much of the argument leaned back in his chair, watching with a smile. But there came a time when he believed I was handling questions too easily. The Justice then leaned forward in his chair, furrowed his brow into a serious expression, and proceeded to lob questions my way. After one or two minutes of legal banter, the Justice leaned back into his chair, again with a large grin. There is nothing quite like experiencing the pride of a parent after a job well done. I felt a little bit of that at the One First Street podium that day. I will forever be grateful to the Justice for the many lessons he taught me (legal and otherwise) and for including me in the Scalia clerk family. Rest in Peace, Justice."

**Jacqueline R.A. Root, Roig Lawyers**

"In law school, some classmates and I camped out on the sidewalk in front of the Supreme Court for 24 hours to be admitted to hear oral argument in the *Heller* case — the DC gun ban case. We were 9, 10 and 11 in line, and made it in. Exhausted, and barely defrosted from the night before, we nearly burst trying not to laugh as Justice Scalia — during oral argument — discussed in extreme detail for the entire court room the steps he would take to stop a home invasion, from rolling over in bed to fiddling with the gun lock, getting his reading glasses, etc. Politics aside, the man's humor and drama will be missed."

**Robert Greene Sterne, Sterne Kessler Goldstein & Fox PLLC**

"Justice Scalia was well-known for being a 'lawyers' lawyer.' He had an intense love and respect for the law and enjoyed discussing and debating legal doctrine. While recognized as one of the most profound legal minds of our generation who could be quite intimidating, he was generous, thoughtful and kind."

"I was humbled and honored to have a guest seat in the court, courtesy of Justice Scalia, at the Biliski Supreme Court oral argument in 2009. During a short meeting in his chambers prior to the oral argument, he asked for my opinion about the case. I told him that, while not involved in the case, it was my opinion that the U.S. needed a flexible and progressive legal test to determine patentable subject matter to offer possible patent protection of emerging areas of technology pushing the leading edge of innovation. Such protection would foster investment in these risky new technologies and such investment is critical to the U.S. innovation pipeline. He smiled and said, 'good answer.' During the oral argument, that very issue of emerging technology areas came up. Justice Scalia sat way back in his chair, looked toward me briefly, smiled and pointed his finger as if to say, 'That is your issue...' After that moment, he returned his attention to the advocate before him as the proceeding continued. Having that brief engagement with Justice Scalia was an unforgettable encounter and a memory I fully appreciate. I know that many others have had similar experiences of meaningful interactions with this legendary Justice who leaves an incredible legacy from imparting his knowledge and understanding of the law through his practice of law and teaching in his early years followed by his public service and time on the court. He is a legal legend that will be missed."

**Eric B. Wolff, partner at Perkins Coie LLP, and former Scalia clerk**

"He was a large presence in my life, though sometimes in small, endearing ways. He cared about proper grammar and word usage. People commonly write 'cites to' or 'citing to.' He caught me doing that once and explained why it was wrong, after calling it 'illiterate.' I think he would smile at my passing that on. I recently learned that he once had lunch with novelist David Foster Wallace, which I think is one of the most awesome lunch pairings ever achieved. I miss them both very much."

**Evan Young, partner at Baker Botts LLP, and former Scalia clerk**

"Early in my clerkship, before the Term really started, a dear law-school friend invited me to spend a weekend with him and his family on the coast of Maine. I had never been to Maine and wanted to go, but it required leaving a bit early on a Friday and getting back to the Court later than usual Monday morning. So I went in to ask the Boss. He listened seriously as I explained my friend's offer and made clear that I was perfectly prepared to decline it. After I finished, he gravely began: 'Evan, if you think that your absence for a few hours will affect the functioning of the chambers, think again!' Then he laughed and laughed, and started telling me about places I should really try to visit while there, a restaurant he really liked in the area we would be — in other words, of course you should go. That was often his way, to teasingly indulge us, slightly masking generosity with witty responses that sometimes might have seemed cutting if delivered without the clear kindness he had for his people."

"True, the Justice expected his clerks to know what they were talking about and to work hard. But his default presumption was that those who worked for him deserved his trust, and that confidence made us work harder than if we had had to earn it. The Boss treated us not like the barely graduated junior lawyers that we were, but as professionals from beginning to end. My co-clerks and I may have had an especially lucky year, but I honestly can say that I never once heard the Boss raise his voice to any of us

— and I can also say that he would have had just cause to do so a few times. And while Justice Scalia was totally in command, frequently — and only part jokingly — reminding us that clerks were largely 'fungible,' he genuinely wanted to hear his clerks' views about cases. He encouraged a lively debate, both because it helped him ensure that he wasn't overlooking anything important, and because he really relished intellectual jousting."

--Editing by Emily Kokoll.

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