

Lessons from Justice Scalia

The Honorable Joan L. Larsen

[Ed. — Justice Larsen delivered her remarks at the Michigan Supreme Court Historical Society’s April 14, 2016 Annual Luncheon; portions also appeared in *The New York Times* on February 16, 2016.]

I am delighted to be here for my first Historical Society luncheon. I very much appreciate Charles Rutherford’s invitation to speak with you today. I am, as you know, the newest member of the Michigan Supreme Court. I am grateful for the opportunity to see many old friends and meet many new ones.

Charles suggested that I spend my time today offering a few words about U.S. Supreme Court Justice Antonin Scalia, for whom I was privileged to clerk. While the nation is consumed with the question of how and when to fill his seat, what I’d like to do today is to step back a bit and reflect on what his service on the Court meant to the fabric of the law and also to the lives of those privileged to know him.

First, the law. I am a law geek. The best evidence of that is not that I was a law professor for nearly 15 years. It is that I have a favorite West headnote. It’s true. It reads:

Where [the] legislative history is ambiguous, [the] court will look to the statutes themselves to find the legislative intent.¹

I knew you would laugh. You and I are lawyers. We find this funny in the same way that my kids still think it’s hilari-

¹ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 91 S. Ct. 814, 815 (1971) (headnote 5), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

ous when I serve them pancakes for dinner. It's funny because it seems backwards.

The fact that that headnote is a surefire laugh line in a crowd of lawyers is a measure of Justice Scalia's effect on the law. It comes not from some rogue lower court, but from an opinion of the U.S. Supreme Court itself, written 15 years before Justice Scalia's arrival.

Justice Scalia pretty much single-handedly inverted the way the legal culture thinks about texts. He turned the interpretive method upside down; or perhaps he put it back on its feet. As Justice Elena Kagan noted at Harvard Law School last November, "[W]e're all textualists now."²

Of course, there are still healthy differences of opinion among jurists. Although we agree far more often than not, and more than you might think, my colleagues on the Michigan Supreme Court do not always see cases the same way. But our different opinions of legal questions and answers should not affect the way we treat one another as colleagues or the way we treat the litigants in our courtroom.

In her tribute to Justice Scalia, his dear friend and fellow opera devotee Justice Ginsburg observed that "toward the end of the opera *Scalia/Ginsburg*, tenor Scalia and soprano Ginsburg sing a duet: 'We are different, we are one,' different in our interpretation of written texts, one in our reverence for the Constitution and the institution we serve."³

Justice Scalia, famously, never let legal disagreements stand in the way of friendship. Judicial philosophy stopped when the writing was over, and he would take in an opera with Justice Ginsburg or go hunting with Justice Kagan even after writing a vigorous dissent to one of their opinions.

² For a video of Justice Kagan's lecture, see <http://today.law.harvard.edu/in-scalia-lecture-kagan-discusses-statutory-interpretation/>.

³ For the tributes of all current and retired Justices, including Justice Ginsburg's, see http://www.supremecourt.gov/publicinfo/press/pressreleases/pr_02-14-16.

Justice Scalia often told us: “I attack ideas, not people.” While he certainly never shied away from aiming his sharp pen at an idea, he believed that the people positing those ideas were to be taken in good faith. He would sometimes joke: “You’d be surprised how many really good people have really bad ideas.” I’m sure his colleagues on the Court often thought the same of him. But that distinction — between ideas and people — was important to him, although it seems, sadly, to have fallen increasingly out of favor in the rough-and-tumble of contemporary government and politics.

Clerking for Justice Scalia taught me, more than anything, what it means to work hard to get the law right. Indeed, his most valued clerks were the ones who would argue with him about why his initial thinking might be wrong.

It took me a few months to learn this. I began my clerkship, as you might imagine, terrified. But I pretty quickly figured out that Justice Scalia loved a good debate — it made him better. It certainly made me better. And once I got over my fear (or got good at hiding it), we developed a nice rapport. I could tell him when I thought he was wrong on the law (which happened sometimes). And I could tell him when I thought his pen was a little too sharp (which happened a little more than sometimes).

My proudest moment as his clerk was convincing him, after two sleepless nights spent with dusty old books, that a criminal defendant should win a case that none of the Justices originally thought he should win. I’m pretty sure that was the moment he was most proud of me, too.

He held us, and himself, to very high standards. And he was sometimes impatient when we fell short of the mark. But he was always quick to forgive, to teach, and to move on.

As much as he loved the work of the Court, the Justice also loved to play. We once had a beer tasting in chambers, when the Justice’s questions at oral argument revealed that he didn’t know the difference between a porter and a pale ale. He was more of a Chianti man and would often take us to lunch at his

beloved A.V. Ristorante Italiano, where he would order a pizza with extra anchovies.

He treated us clerks like his family, and his annual law-clerk gathering — a black-tie dinner, with a comical roast of the Justice and a reading of some of his best zingers from opinions past — was our family reunion. He and his wife, Maureen, took a personal interest in our lives, our careers, and our children, whom the Justice referred to as his “grandclerks.” We still plan to hold our reunion this year, even in his passing.

I will close by telling you about the last time I saw Justice Scalia in person. It was in November, after I had just been appointed to the Michigan Supreme Court, at a large event in DC. And he took the time to find me in the crowd. And with a big embrace and a twinkle in his eyes, he called me “Justice.”

I think about that moment a lot. And it reminds me to try to bring the best of what I learned from him into the daily work of our Court — to be a good mentor to my clerks, to be a good friend to my colleagues, and to try my best to get the law right.

Thank you.