

**Proceedings of the Bar and Officers of the
SUPREME COURT OF THE UNITED STATES
Friday, November 4, 2016**

The Bar of the Supreme Court of the United States and the Officers of the Court met in the Upper Great Hall in the Supreme Court Building at 1:45 in the afternoon.

The meeting was called to order by Acting Solicitor General Ian H. Gershengorn.

**Introduction of Speakers
PAUL T. CAPPuccio**

Thank you, Mr. Solicitor General.

And thank you Mr. Chief Justice, Associate Justices, Justice Stevens, Madam Attorney General, and each and every one of you who are here today to help us with what seems a nearly impossible task—to pay adequate tribute in a few brief speeches and Resolutions to the truly extraordinary life, career and impact of Justice Antonin Scalia.

Antonin Scalia was born March 11, 1936 in Trenton, New Jersey, and was raised in Queens, New York. He is the son of Salvatore Eugene Scalia, an immigrant from Sicily, and Catherine Louise Panaro Scalia, from Trenton, New Jersey. Both of his parents were teachers. While of relatively modest financial means, the household in which the future Justice was raised was by all accounts quite rich in faith, values and the love of and dedication to learning and teaching. Let us not forget today to remember, and to thank, Justice Scalia's parents, who gave our country and the law such a tremendous gift in the person of their only child.

As you will hear presently, Justice Scalia has had a nearly unrivaled impact on the Courts, the law, legal education and the legal profession, as well as on generations of people in law and the academy. I like to think of Justice Scalia's impact as "gravitational," in the way that term is understood by modern science. He is like bright star, whose intellectual mass is so weighty, that it literally bends space in a manner that curves the path of any celestial body that comes anywhere near it. Some of us ended up in his orbit (and proudly so), and others simply had the trajectory of his or her thinking altered. But everyone—in the courts, the academy, and the legal profession—felt the pull of and was affected by the weight of his ideas and the force of his argument. Now, I should add that I once used this gravitational description of his legacy on a panel that he and I did together. When I finished, he looked at me, with that look of equal parts slyness, contempt, self-satisfaction and affection, and simply said: "You're one to be describing me as a large mass."

Justice Scalia was also a treasure in a way that has become all too uncommon today. When he believed he was right, he was uncompromising. And his pen, as we all know, often took no prisoners. But he was also uncompromising in his genuine affection for people who disagreed strongly with him. His deep friendship with, and great affection for, his colleagues is of course well known. But that is not an exception; with Justice Scalia, it was the rule. His life was rich with a seemingly ever expanding list of people with whom he disagreed in broad,

fundamental and even sometimes sharp ways, but whom he nevertheless respected and enjoyed. I never asked him about this, but I suspect if I had, he would have shot back with that signature grin of his and said something about hating the sin and loving the sinner. Of course, this quality—the ability to disagree strongly while maintaining genuine respect for and affection towards each other—is perhaps one of the greatest hallmarks of this Court, but it is nonetheless a great loss to witness the passing of one who possessed so thoroughly this balance of spirit that is so precious to our Republic.

This morning we are going to hear from four speakers, each a former law clerk of the Justice: one from private practice, one from academia, one from Supreme Court advocacy, and one from the bench—about how our great friend, colleague and mentor affected them, as well as their professions. After that, Rachel Barkow, also a former clerk of the Justice, will join us with a few words and to review and vote to recommend Resolutions to the Court.

**Remarks
of
KRISTIN A. LINSLEY**

Thank you, Paul. I will share some thoughts about what we learned from clerking for Justice Scalia and his influence on the legal profession, as well as a few reflections on his faith.

Justice Scalia had been on the Court only three years in 1989, when my co-clerks and I had the good fortune to work for him. He had just begun the process of trying to persuade his colleagues to rethink the way they approached the law, both statutory and constitutional. In discussing draft opinions from other chambers that Term, he would rail against the common phrase—“We begin, as always, with the text of the statute.” “What do you mean, we *begin* with the text?,” he would say. “Why not begin *and end* with the text?” That Term, he insisted on writing separately in cases where the main opinion relied on policy, fairness, or—worst of all—legislative history. He would refuse to join a lone paragraph, simply because the author cited a passage from a house report or a Senator’s statement on the floor. He would write that the only legitimate statutory law is that passed by Congress and signed by the President—not hidden meanings snuck in through such unpredictable and easily manipulated sources.

It soon became clear to us clerks that Justice Scalia’s adherence to the enacted text was not mere formalism but was, as he saw it, an approach compelled by our constitutional structure of government. When judges read statutes in light of purposes or policies not found in the text, they improperly alter the constitutional balance, and transfer legislative power away from Congress—either to the staffer who wrote the house report, or to the lone Senator, or to unelected judges. If that means we must give effect to awkward language that was the product of legislative compromises, so be it—it is not a judge’s job to gloss the language over and thereby change the enacted law.

Justice Scalia’s strong views on constitutional structure were not tentative, or still in formation, when we began our clerkship—or even when he became a Justice a few years earlier. Rather, they were already deeply ingrained, and affected every case he encountered, no matter

how mundane. We all had read his dissent in *Morrison v. Olson*¹—one of his most memorable writings to this day. It was filled with quotable maxims, including my own favorite—“He who lives by the *ipse dixit* dies by the *ipse dixit*.” But these pithy Scalia-isms mattered more because they captured a profoundly coherent vision of the constitutional balance of powers. And no one articulated that vision with more passion and lucidity, on cases large and small, than did Justice Scalia.

As clerks early in the Justice’s tenure, we saw his constitutional vision play out in many ways. He insisted that the constitutional words and structure must control—not the views of a majority of Justices—and that, if any further elucidation is needed, it should come from the historical context of the relevant phrases. This meant that if a right was *enumerated* in the Constitution, it should be given effect and not watered down, or ignored, because of new social mores or technology. Likewise, if a right was *not* enumerated, the Court should not bend the words of existing clauses to include it, no matter how desirable the claimed right might seem. This approach reflected Justice Scalia’s respect for the text, the limited role of federal judges, and the responsibility of the legislature to make the law.

After my clerkship, I entered the practice of law, with support from Justice Scalia. He had worked for several years at a well-regarded law firm and encouraged us, in his fatherly way, to spend time in the practice before going into teaching, government, or other pursuits. If nothing else, he said, you’ll gain a practical understanding of how law actually works, and you’ll have a professional home if academia and government don’t work out.

I decided to stay in the practice, and over the past 26 years, I’ve seen Justice Scalia’s strong influence on the profession. At a high level, the Court’s shift to a more textual approach has greatly simplified—and, I would say, improved—the practice of law, especially in statutory cases. Before Justice Scalia, lawyers would have to analyze volumes of legislative history in search of clues to Congress’s “purpose,” gathering passages from the Congressional Record to support their preferred reading. This was done at significant cost to the clients on both sides, and rarely with tangible, helpful results. Briefing and argument tended to focus on policy considerations and only secondarily on the text.

Now, lawyers focus much more on the text and structure of the relevant statutory scheme, contract, or constitutional provision. This shift can be traced to Justice Scalia, in several ways. The first is his influence on legal teaching—shaped by, among other things, the fact that law professors across the board now assign his opinions as important statements of the law, even if they disagree with his conclusions. And unlike when I was a law student, most law schools now teach statutory interpretation, and legal instruction follows a far more textual and structural approach. The result is that emerging young lawyers, whatever their political stripe, are more inclined to focus on legal text and the proper function of judges within our constitutional structure. And as more and more young lawyers are trained in this way, the profession naturally shifts as well.

This trend parallels changes in the judiciary. Good lawyers always shape their arguments to what judges find persuasive, and judges in the post-Scalia world are less likely to be influenced by policy considerations, general notions of Congressional purpose, or legislative

¹ 487 U.S. 654, 697 (1988).

history, and more likely to focus on the text of a given enactment, contract, or constitutional provision.

All of this has affected the profession, but with one caveat from Justice Scalia himself. As he was quick to tell us with a smile, not *all* judges share *all* of his views, and ultimately a lawyer's duty is to his or her client, not to advance that lawyer's view of what the law should be. So, he would bellow, even if *he* would not accept an outcome driven by a non-textual methodology, "You gotta make the argument!"

Justice Scalia also changed lawyering by pressing hard for clarification of the underlying law. Over the years, he left his mark on virtually every subject covered by federal law, including copyright, taxation, securities, class actions, civil and criminal procedure, and a litany of other areas that he tried, as he would say, to "clean up" by returning to their textual roots. I'll offer one quick example—the field of bankruptcy. Before Justice Scalia, bankruptcy courts were seen as courts of equity, with broad powers to shape outcomes unbound by the operative statutes. Not surprisingly, the field was highly specialized, with only certain lawyers being seen as qualified to navigate the unique and often unwritten rules that governed in those courts. Justice Scalia resisted this view—thinking that, after all, bankruptcy laws are statutes like any other, and should be subject to the same methodology. Over the years, the influence of Justice Scalia's textual approach has made the bankruptcy practice more predictable, evenhanded, and open to participation by non-specialists. The same is true in most other areas of federal law, as many practitioners in this room can attest.

I am deeply grateful to have had the chance not only to assist Justice Scalia and the Court professionally, but to become part of his extended family. Justice Scalia had scores of children and grandchildren to dote on, but somehow he found the time and energy to become a father figure to his 100-plus clerks, rejoicing at our successes; reaching out in times of difficulty; and generally relishing the company of what he affectionately called his "clerkerati." And we *all* have been blessed over the years to know Mrs. Scalia, who likewise has welcomed, into the extended Scalia family, us clerks and our children—a group the Justice sometimes called the "grandclerks." My three kids still talk about the day when we visited chambers, and Mrs. Scalia served them brownies she had made for them at home, and Justice Scalia let them sit at his huge desk and grilled them about their ambitions and interests.

One unexpected area in which the Justice influenced me was on matters of faith. During our clerkship, the issue of personal faith was rarely if ever discussed. It certainly never entered into our discussions of cases—even those, such as *Employment Division v. Smith*,² that involved the religion clauses of the Constitution. Justice Scalia approached these cases as he did any others, by reference to the text and history of the relevant constitutional provisions.

But later, I came to appreciate the Justice's faith through other means. My own spiritual path had led me to Catholicism, so this became yet another reason to engage with Justice Scalia. Having learned from him on matters of legal meaning, I began to understand the depth and breadth of his faith—and the fact that he brought the same intellectual passion and discipline to such matters as he did to legal issues. And although his faith never affected his judicial reasoning, there *were* certain parallels—most notably, the centrality of text within its appropriate hierarchy; a deep intellectual tradition; a belief in right and wrong, and the existence of objective

² 494 U.S. 872 (1990).

truth; and the richness and relevance of historical tradition. The strength of Justice Scalia's faith, like that of his intellect and legal vision, was profoundly humbling to me and to others who engaged him on that topic.

One aspect of Justice Scalia's faith is relevant to his passing, so I want to share it with this group today. Justice Scalia always knew that his life on earth could end in an instant, without warning—"Poof, it's gone," he would say. His faith taught him to be prepared for that moment. It was his job to be ready when the time came, and, if he was ready, he had no need to fear. For that reason, what he would ask from us is not to fight against his passing but to pray for him and take solace in his faith. That solace is welcome for the members of his clerk family, who have mourned his loss as we would that of a parent, as well as a beloved legal hero and mentor. Although we miss Justice Scalia greatly, we clerkerati are strengthened by his legacy, our memories and bonds with each other and the Scalia family, and the knowledge that his deep and abiding faith will guide him from here.

**Remarks
of
BRADFORD R. CLARK**

I clerked for Justice Scalia during the 1989 Term. I'm here to represent the Justice's clerks who became law professors, of whom there are many. In fact, no fewer than 28 of the Justice's former clerks now teach at law schools around the country, including Harvard, Yale, Columbia, NYU, Michigan, Virginia, Vanderbilt, Notre Dame, and many others. At first, I was surprised by how many of us chose that path. But, at the risk of scaring off hiring committees that might consider Scalia clerks in the future, I suspect our numbers reflect the Justice's influence on us. Before becoming a judge, Justice Scalia was a tenured law professor at both the University of Virginia and the University of Chicago. He loved teaching law, perhaps because he loved ideas and understood their power. In fact, he once told me that law professors have their greatest impact through teaching rather than scholarship.

Justice Scalia never stopped teaching. Anyone who clerked for him knows this firsthand. Justice Scalia loved to argue about law, to mix it up in the way that good law professors do with their students. In every case, he'd meet with his clerks both before and after oral arguments to discuss the issues. He didn't want us to come in there and just agree with him. That would have been neither fun, nor helpful. He valued analytical rigor and principled decision-making, and encouraged us to push back when we disagreed with him. Certainly, when he thought us wrong, he made it a teaching moment—showing us the error of our ways. Sometimes, he did it in Latin.

Occasionally, however, we actually managed to convince him that his initial take on a case was mistaken. In these cases, Justice Scalia didn't mind being proven wrong. He wanted us to push him, to test his views, and to help him get it right. In the process, Justice Scalia taught us something else—that this was not personal, that it was not about his ego or ours, that we should be open-minded, and that we should always go where principle—rather than expediency—took us.

Justice Scalia's influence went far beyond what he taught his law clerks. He also taught generations of law students through his opinions. My students always find his clear, vivid, and direct writing style to be both gripping and accessible. This is true whether or not they were inclined to agree with him to begin with. Perhaps because students are usually primed to disagree with Justice Scalia, his opinions routinely beat their expectations. They wow students with their common sense, their entertaining prose, and their commitment to principle. This is true not only in the blockbusters, but also in relatively mundane cases. How could someone ignore an opinion explaining that a loose judicial balancing test is like asking "whether a particular line is longer than a particular rock is heavy." . . . Students got his point.

Justice Scalia's textualism and originalism reshaped legal conversations in the classroom and in the courtroom. When Congress selects words to express its policies, he thought judges should follow those words. Certainly, that was better than judges and their law clerks trying to *imagine* how 535 legislators and the President would have decided a case they never contemplated. In constitutional cases, unless the text precluded the political branches from acting, he saw no basis for the Court to prefer *its* moral judgments over those of the people's elected representatives. The year I clerked for the Justice—in a case seeking to establish a right to die—he wrote that the answers to questions of life and death are not "known to the nine Justices of this Court any better than they are known to nine people picked at random from the Kansas City telephone directory."

Justice Scalia changed the way we approach constitutional and statutory interpretation. And law professors—who by and large did not like it—could not ignore it. They had to discuss Justice Scalia's views in class, and they wrote countless articles analyzing and critiquing his opinions. Academic criticism didn't faze Justice Scalia. It only reinforced his resolve to strengthen, to refine and, when appropriate, to reconsider his ideas.

That is not to say that Justice Scalia saw no role for legal scholarship. He encouraged us to do the kind of scholarship that might *actually* help lawyers and judges in their work. Law has meaning only in context, and he knew that the law's background principles and assumptions are easily lost or forgotten over time. In his view, law professors could provide a valuable service to the Court and to the profession by recovering lost context and meaning. Many of his clerks have taken this advice to heart.

Justice Scalia also published lots of articles and books. And he loved to visit law schools. I think he saw these visits as an opportunity to bypass normal channels and speak directly with law students. These visits had an impact. When I started teaching at George Washington University, I learned that—in 1990—the Justice had allowed us to record a lecture he gave on statutory interpretation. Every year, that lecture is still shown to students taking Legislation. And, every year, it provokes our students to rethink their long-held assumptions.

When Justice Scalia visited law schools, he not only gave lectures and judged moot court competitions, he also made a point to visit ordinary classes. In these exchanges, Justice Scalia relished the opportunity to mix it up with law students. He approached them with openness, honesty, and respect. Students always found his visits stimulating, educational, and fun. And, after those visits, professors couldn't stop students from talking about his ideas . . . no matter how hard they tried.

I can't believe he's gone. But I know that his ideas will long outlast his days on earth. In part, that's because he was such a powerful thinker. But it's also because he was such a great

teacher. His firm belief that we shouldn't be ruled by judges, and his simple idea that the best way to interpret a text is to read it, will continue to shape the way students, lawyers, and judges think about law well into the future. Not all of his clerks who teach law are of one mind. We don't all share a common legal philosophy or agree with everything Justice Scalia believed. But we all take with us his commitment to openness, to the power of ideas, to the value of debate and disagreement, to cherishing friends with whom we disagree, and to the idea that law—done right—is a matter of principle rather than expediency. It falls to all of us, then, to keep that spirit—Justice Scalia's spirit—alive.

**Remarks
of
PAUL D. CLEMENT**

I had my first oral argument before Justice Scalia almost 25 years ago, and it did not go well. He summoned me down from law school to interview for a law clerk position and, after brief exchange of pleasantries, he began to pepper me with questions. My answers needed a lot of work, with “I don't know, I had not thought of that” being among the most concise and truthful, but somehow the Justice hired me.

The next oral arguments with the Justice came in chambers in what he called the clerk conferences, during which the law clerks and the Justice would debate the upcoming week's cases, often loudly, always passionately, and usually punctuated by the Justice's infectious laugh. Those clerk conferences were among the highlights of the clerkship, and why not? The Justice took our views seriously, expected us to speak up when we disagreed with him, and taught us a great deal about advocacy, law, and civil discourse. The results were career-altering for the clerks. Once you have had the opportunity to tangle with Justice Scalia *mano-a-mano* over difficult legal issues, very few subsequent experiences in the law rank as particularly intimidating. It is perhaps no surprise then that so many of the Justice's law clerks have returned to the Court to present oral argument. In last Term alone, eleven of the Justice's former law clerks presented argument in 22 different cases, meaning that at least one of the Justice's former clerks argued in nearly a third of the Court's cases.

As law clerks, we also had the incomparable experience of watching that amazing wordsmith take our drafts and work his magic. He routinely was handed a stone and returned a sculpture. Indeed, the transformation was generally so complete that I often wondered why he asked for drafts at all. I strongly suspect it was because he had no idea how to format a new document on the computer.

The Justice's great gift as a writer was that his memorable turns of phrase so perfectly captured the essence of the legal point he wanted to make. A central point of his *Morrison* dissent was that the independent counsel statute was no wolf in sheep's clothing but a frontal assault on the separation of powers: “this wolf comes as a wolf.” And this was a gift he always had. I recently came across an article he wrote as a young associate professor on the subject of sovereign immunity and nonstatutory review of federal administrative action—a dry topic in the wrong hands. But not in his. In making the point that two phenomena, superficially at odds, were actually mutually reinforcing he evoked “a child's astonishment at watching a tight-rope

walker for the first time—how marvelous that he should not only walk along such a narrow wire, but carry and balance a long stick at the same time!”

The Justice worked hard in chambers, but he made plenty of time for other pursuits. His appetite for travel was legendary—one of my first calls from him as a law clerk came in from India—and he would occasionally emerge from his office in black tie ready for an evening of socializing. While I was privileged to be the Justice’s elbow clerk, I was also his designated racquet clerk. As such, he would frequently drop by my desk in the afternoon, racquet in hand. We occasionally played squash a few blocks from the Court, but his favored game was tennis and his favored venue were clay courts near his home, which were particularly conducive to his “Sicilian drop shot.” Since the courts were near his home, we would often drive separately, and although we left the building at the same time, he invariably arrived there first. When it came to the posted speed limits, he was no strict textualist.

We happy few who were privileged to clerk for the Justice were transformed by the experience. But his influence went far beyond the clerkerati. The Justice had a transformative effect on the Supreme Court and the way it decides cases. His impact on statutory construction, which is the bread and butter of what the Court does, was nothing short of Copernican, with the center of attention returned to the text. He likewise championed a focus on the text and original public meaning of the Constitution. And he strove mightily to ensure that his methodology for interpreting both statutes and the Constitution produced predictable legal results, even when they did not comport with his policy preferences. His votes to vindicate the First Amendment rights of flag burners are famous examples.

But perhaps no area of Justice Scalia’s jurisprudence gave rise to this phenomenon—a phenomenon near and dear to him—more often than criminal law. On a personal level, Antonin Scalia, an appointee of Presidents Nixon, Ford and Reagan, was a law and order kind of guy. And sometimes that description fit his constitutional decisions. For example, he had no love for the exclusionary rule. But very often, Justice Scalia’s commitment to textualism put him in the criminal defendant’s camp. His opinion in *Crawford* revitalized the Confrontation Clause. Fueled by Fifth Amendment due process concerns, he led the Court’s charge to eliminate the amorphous concept of “honest services” fraud. And Justice Scalia’s belief in the Sixth Amendment’s jury-trial guarantee led him to join a host of opinions revolutionizing criminal sentencing.

One such case involved a government effort to overturn a reduced sentence. The lower courts had substantially reduced the defendant’s sentence, and so he was able to attend the Supreme Court argument in the gallery. At one point, when Justice Scalia was peppering the government’s lawyer with questions, the defendant tugged on his lawyer’s sleeve, pointed to Justice Scalia, and whispered, “He so gets me.” Indeed. While Antonin Scalia—a law and order guy—might not have “got” the defendant; Justice Scalia, interpreting the text of the Sixth Amendment, most certainly did.

Justice Scalia had a profound impact not only on the Court’s decisions, but on the way it conducts oral argument. In the 1970’s and early 1980’s, it was common for Supreme Court advocates to be asked only a handful of questions during oral argument. That changed when Justice Scalia joined the Court. Indeed, it changed on day one. The Justice had obviously been told that there was something of a tradition that a new, junior Justice would allow more senior colleagues to lead off the questioning. And while I am sure it took enormous self-discipline, he

waited a good 15 minutes into the argument before asking his first question. He then asked the next ten, and a total of 28 in that first argument as a Justice. Other Justices eventually followed suit, lest the new guy have all the fun.

Things have never been the same, for the Court or for the advocates. Argument before the Supreme Court is now the art of answering questions. Moot courts are no longer optional. It is no accident that the Solicitor General's office formalized its moot court process, and the Georgetown Supreme Court moot court program was founded, *after* Justice Scalia joined the Court.

Justice Scalia's questions were pointed and asked in his inimitable style. And the combined effect of his forceful presence and distinct jurisprudence created unique challenges for the oral advocate. If the legislative history favored a client's case, the advocate could not simply omit any discussion of the favorable committee report or floor statement. But arrive prepared, for the onslaught was coming. Did the President sign the committee report? How many members of Congress actually heard that floor statement? You could not predict the precise form of the question, but you knew the question was coming.

Justice Scalia's distinct jurisprudence meant that having the Justice on your side in a case did not necessarily mean that you would be spared tough questioning, especially if you were urging an alternative means to the same end. In a case where the government urged the Court to deny taxpayer standing without squarely overruling *Flast v. Cohen*, Justice Scalia, the Court's foremost opponent of taxpayer standing, asked the government no less than 20 questions because he found the government's middle ground position incoherent. The Justices who actually disagreed with the government's bottom line had to work hard to get a word in edgewise.

At the same time that he made oral argument a lively affair, he made clear it need not be dour. Justice Scalia injected humor into his colloquies with counsel and asked many questions with a twinkle in his eye. He was routinely ranked the Court's funniest Justice as judged by the court reporter's need to note "[laughter]" in the oral argument transcript.

In the months that followed his passing, I made my first arguments to a Supreme Court that did not include Justice Scalia; he had been on the Court for each of my previous arguments. His absence from the bench was palpable. As I prepared answers that he would not hear and wrote briefs he would not read, I was struck by how much over the years that I and other lawyers were writing and preparing *for him*. And that will not stop. Just as his opinions will continue to shape the way the law is taught and understood, he will continue to shape the ways briefs are written and the way advocates prepare for oral argument.

Let me close with my favorite exchange with Justice Scalia at oral argument. The case involved whether the Court should extend an implied cause of action. The Justice was not a fan of implied causes of action—or implied anything for that matter—and had criticized the Court's practice, in what he called the "bad old days," of inferring causes of action that appeared nowhere in the enacted text. There was some confusion at argument about whether a particular Court precedent was a product of those "bad old days," and Justice Scalia asked me when I thought "the bad old days ended?" My answer, then as now, was of course: "The bad old days ended when you got on the Court, Mr. Justice Scalia." The Justice's nearly 30 years of service were good days indeed for this Court and everyone privileged enough to interact with Justice Antonin Scalia.

**Remarks
of
THE HONORABLE JEFFREY S. SUTTON**

While Justice Scalia would have been grateful for today's ceremony, I wonder if he would have noted, with his wry smile, one potentially awkward feature of it. Isn't what we are doing—with these remarks, this Resolution, and this meeting of the Bar—uncomfortably close to one of his favorite targets in life: after-the-fact legislative history? Might he not accuse us of trying to smuggle a friendly set of submissions into the U.S. Reports in order to varnish this or that part of his life—to make it look like something it was not?

Happily for us, there is no such risk here. If there is one point on which we can all agree, it's that Justice Scalia led an unambiguous life. There's so much evidence, so much clear-eyed text if you will, about where he stood—on just about everything. Want to know what he thought about constitutional and statutory interpretation? Check out *A Matter of Interpretation*. Want to know his views about the canons of construction? Read *Reading Law*. Want to know his views about the interaction of faith and law? Try his many speeches on the topic. And then of course there are his 870 opinions on this Court. For Pete's sake, there has even been an opera written about him and Justice Ginsburg.

So there is little room today for lawyerly construction or deconstruction or even an original song. But there is plenty of room for gratitude and admiration.

Start with the gratitude. Lucky for me, no one in this Hall knew me before I worked for Justice Scalia. Let's just say I was not a promising candidate for arguing cases in this Court or deciding cases in the court of appeals. I am indebted to Justice Scalia for giving me the legal skills and inspiration to reach for what should have been unreachable jobs. But I am most grateful to him for something else—that I have enjoyed *every* job I have had in the legal profession. How life changing—how much fun—to come across someone with such a spirit of curiosity, such a remarkable wit, and such fearless character. Once you had a drink at that well, there was no turning back. If anyone knew how to inspire a young person to turn law into a calling, it was Justice Scalia.

Let me turn to the admiration. As the last 227 years confirm, it's a tricky business to aspire to “a government of laws and not of men” and yet permit a small group of men and women to have the final say over cases that decide the meaning of the Constitution and the rest of federal law. Justice Scalia took that dilemma head on and devoted a career to trying to reconcile the competing considerations. The longer I have been on the bench, the more I have admired his efforts to resolve these vexing questions.

If there is one aspect of Justice Scalia seared into my mind, it is the value he placed on ideas. The proper currency of law in his world was reasoned interpretation, not adding-up-to-five power. It followed that good ideas, not the station of the judge or the advocate who came up with them, drove his approach to the Court's work. That's not a bad thing for a lower court judge or for a legal system. It means that everyone has a chance to influence the process. And it means that a legal culture that must be hierarchical in one way need not be hierarchical in all ways—a feature of our Judiciary that is not only healthy but quintessentially American.

All lower court judges, no matter their perspective, appreciated the oh-so-clear quality of a Justice Scalia opinion. There are 851 authorized federal judgeships, and it's a truth not often uttered in this building that 842 of those judges do a good part of the work. How helpful it was to have a Scalia opinion in hand in addressing our case load. You knew where the law stood when you read a majority opinion by Justice Scalia.

With his clarity of thought and facility with language came transparency of method. To his everlasting credit, Justice Scalia's opinions let the world know how *he* should be judged. The Justice left little doubt about how the Scalia scorecard worked—what the benchmarks were for a fair decision in the case at hand and for equal treatment between that case and the next one down the road. It's one thing to say that justice is blind. It's quite another to prove it by treating seen and unseen cases alike.

While Justice Scalia was no nonsense about doing his best to decide cases impartially, he proved that the task need not be dull. Try being a court of appeals judge—what the Constitution might have called the “superior inferior” judges. There's plenty of repetition, and every time you do something interesting it's subjected to review here. How refreshing to have a Scalia opinion to comfort and startle you. Say what you will about the Justice, his opinions never put anyone to sleep.

Some of his most engaging opinions, some of his best lines, came in the most run-of-the-mine cases. What a powerful example. Instead of wondering what I had done to deserve the fate of deciding a dry-as-dust case, a Scalia opinion on the topic reminded me that there was nothing of the sort. No matter the stakes, he prized coherence—always—and his mind never seemed to come to rest until each string of thought had come into tune. His commitment to the technical controversies showed that all cases, great and small, deserve the same rigor and care.

All of this came easily to him, I suppose, because competitions of the mind came naturally to him. I like to think of him as the chess master who comes to the park on a Saturday morning and is disappointed to see just 10 other chess players willing to take him on. Even his first book, *A Matter of Interpretation*, is done—most revealingly—in a debate format. He chose not to write a book about his views alone. He presented a theory of judging, then asked several prominent professors to challenge him—signaling confidence, humility, and transparency all at once.

Justice Scalia set another valuable example. He invested time in friendships with colleagues, including those with whom he sometimes disagreed, even vigorously. It makes me happy that most lawyers in this country, and nearly all judges, know that Justice Scalia attended one opera after another with Justice Ginsburg and taught Justice Kagan how to hunt. Speaking strictly for me, I am not sure which was the greater example of good-faith collegiality: Enduring 35 years' worth of long, difficult-to-follow operas or teaching a potential adversary how to use a gun?

I have said some nice things about Justice Scalia. And I can add a few more—that he wrote like Jackson and Holmes, thought like Frankfurter and Story, and saw the long-term stakes like Chief Justice Marshall. But all of these talents would have been worthless—truth be told, potentially dangerous—if that's all there was to the Justice. The indispensable thing to say about Justice Scalia is that he passed the bedrock test of judicial character: He respected the line between law and personal opinion. That was never going to be an easy road to travel—and not just because the Justice had a few ideas about how the world should work.

Surely someone as smart as Justice Scalia knew how helpful it would have been to his legacy to bend his views now and then to accommodate public opinion or to be the go-along-to-get-along judge that he most assuredly was not. Surely he knew how difficult it would be to persuade the public that there is a difference between what a previously enacted text requires and what today's public prefers. The judge who travels that road, as he well learned, will be misunderstood and will suffer a double dose of misapprehension: praise he does not want from some quarters and criticism he does not deserve from others.

It's easy to miss something else about the Justice: He did not work alone. There is no Justice Scalia without Mrs. Scalia. And when you add to that his devoted family and his abiding faith, it becomes clear why he was able to retain the courage of his convictions and the conscience to know when they were at risk.

Several years ago, Justice Scalia gave a eulogy in which he said that a mentor of his had run a "good race." In applying that idea to the Justice, I must concur in the judgment but not all of the reasoning. Oh sure, the Justice ran a great race—covering a lot of ground with pace, character, and flair. But instead of thinking of his life as a completed race, I much prefer to think of it as a critical leg of a relay.

It warms my heart to think of the many people who have been, and will be, inspired by Justice Scalia and who will pick up where he left off in ways large and small.

It warms my heart to think of an argument at the Court decades from now when Justices will be asking questions and advocates will be answering them in ways influenced by things Justice Scalia did that seeped into the deepest fabrics of American law—so deep that no one that day will know why they are doing what they are doing.

And it warms my heart to think of perhaps his most lasting legacy. We Americans tend to be obsessed with winning and losing, making it tempting to measure a judicial career solely by how often a justice won or lost the fights of the day. I can't deny the importance of wins and losses or that the winners sometimes try to write the history. But I can say that questions can be just as important as answers over the long term—and the questions Justice Scalia relentlessly posed will be with us for a long time. Those questions, framed by a confident man, reduce to the most humble a judge can ask: Did the People empower us to resolve this dispute? If so, on what grounds is it permissible to do so?

So I give thanks that Justice Scalia served his country faithfully and well, taught us never to lose sight of these essential questions, and offered us a most admirable way of answering them.

Motion to Adopt Committee Resolutions
RACHEL E. BARKOW

When someone passes away, Jewish people often say to those who are grieving, "may his memory be a blessing."

I know I speak for everyone on the Resolutions Committee when I say that working on the resolutions was a labor of love and admiration—indeed, a blessing.

I have always loved reading Justice Scalia's opinions, but even more so since he passed away.

Because you can feel his energy in every word he wrote and hear his voice come off the page as if he's right there beside you.

I still laugh at his best lines, and the days in my class when we discuss an opinion by Justice Scalia are the most energizing.

The students are at their best as they wrestle with the power of his arguments, and I see his legacy play out in real time. His memory is with us all and what a blessing it is.

You have before you the product of the Committee on Resolutions. On behalf of the committee, I have the honor to move their adoption.

Call for Second and Closing Remarks
PAUL T. CAPPuccio

Thank you, Rachel. The Resolutions are before us for adoption. If adopted, they will be presented to the Court by the Solicitor General. Is there a second?

Thank you, I now put the Resolutions to a vote. All in favor of adopting the Resolutions, please signify by saying "Aye." ... Any opposed? Good.

Hearing no opposition, I declare the Resolutions adopted.

This completes our work here, and we will now be adjourning to the courtroom. You should have a card that indicates your seating, and you will be assisted in that by the Court staff. Before we do, I would like to thank everyone at the Court, including Jeff Minear, Sheldon Snook and Angela Frank, and others, who helped us with this memorial.

Given the Justice's love of language, particularly Latin, it is fitting that we close this meeting with the customary declaration: I declare this memorial meeting of the Bar of the Supreme Court to be adjourned *sine die*.

Thank you.