

ORAL HISTORY OF JUSTICE ANTONIN SCALIA

December 5, 1992

Chambers of Justice Scalia

- Mrs. Hope: [The very beginning of the conversation was not taped.] Justice Scalia, it's December the 5th, 1992. We are sitting in his Chambers; the fire is in the fireplace and the purpose of this discussion is to give a little background before the oral history of the D.C. Circuit. You know, quickly, can you just tell us where you were born and what the first part of your life was like, what your family background is.
- Justice Scalia: Sure. I was born in Trenton, New Jersey. I lived there until I was about, oh, I guess five; I went to kindergarten there. Then my family moved to Elmhurst on Long Island, where I went back to kindergarten. I'm a two-time loser in kindergarten. I guess the ages were ... the age of entry was different. And I lived in Elmhurst until I went away to college.
- Mrs. Hope: Public school? Catholic school?
- Justice Scalia: PS 13, for grammar school. Xavier High School in Manhattan, which was a Jesuit military school for high school and then in 1953, I went to Georgetown to college and almost simultaneously, my parents moved from Elmhurst, back to the Trenton area, because that's where my mother's family was from and continue to live.
- Mrs. Hope: Your father was Italian?
- Justice Scalia: My father immigrated to this country when he was about 15 from Sicily with his parents. My mother was born in this country in Little Italy in New York City
- Mrs. Hope: So, both of your parents are Italian?
- Justice Scalia: Right. Well, my father was an Italian citizen, my mother was not an Italian citizen; she was born in this country. Her parents were from - her mother was from near Naples, her father was from [Bari].
- Mrs. Hope: Do you have brothers and sisters?
- Justice Scalia: Nope, I'm the only child.
- Mrs. Hope: You're an only child.
- Justice Scalia: Indeed.

Mrs. Hope: I'm an only child, too.

Justice Scalia: Really? It's great, isn't it?

Mrs. Hope: And your roommate in college, Dick Coleman was an only child. Yeah, there's something about it. Do you think that affected you in your growing up?

Justice Scalia: Well, I think so. I think it's probably a lot easier to raise an only child with high expectations. He always feels he's the center of the universe and has a good deal of security. I think it must be harder to be with brothers and sisters competing for parental attention. That was never an issue in my life. I was the apple of my parents' eye, as I assume you were, and, every only child is. Which is not to say I wouldn't have preferred to have brothers and sisters; I very much would have. I have no cousins. My mother was one of seven - five sisters and two brothers and I am the only grandchild from the whole family and my father was one of two children, he has a sister and I am the only offspring from that side too. So, I am really the last of the Mohicans.

Mrs. Hope: You really are the center.

Justice Scalia: But no cousins, that's...

Mrs. Hope: Was your home when you were growing up, was it a scholarly home? Was it a musical home? How did that work?

Justice Scalia: It was musical from my mother's side in that she played the piano. My father loved music. In fact, he had - he had had an interesting life. For a period, he was a newspaper editor. He bought an Italian newspaper somewhere in Pennsylvania, he was the editor of it - it eventually folded. He studied voice at the Eastman Conservatory in Rochester. And then eventually settled down as a teacher of romance languages at Brooklyn College, which is where he was from the time we moved to New York when I was five, until, gee, until I was in law school - until after I was in law school. Commuting to Brooklyn from Elmhurst on the New York subway at first, and then after they moved back to New Jersey, he commuted in from Trenton on the Pennsylvania Railroad and then the subway.

Mrs. Hope: No lawyers in the family?

Justice Scalia: My uncle was a lawyer. One of my mother's two brothers, Vincent, was a lawyer and I suppose to the extent I had any, you know, any inkling with what being a lawyer was like, it was from Vince.

Mrs. Hope: And when did that begin to be of real interest to you?

Justice Scalia: That's hard to say. I don't think it was ever a passion. I think in my last year of college I didn't know much what else I particularly wanted to do and it seemed to me I would like what law was about and so I went to law school. But I had not been dying to be a lawyer from an early age or anything like that.

Mrs. Hope: Were you scholarly?

Justice Scalia: I was a good scholar. Yeah. I think all my life I had been good in academics. You asked earlier was my family musical or scholarly and I said musical from my mother's side. She was, she played the piano; my father used to sing when he was younger. He had a nice tenor voice. But she always played the piano so there was always a lot of music in the home. He liked to listen to music, classical music, but anyway, the scholar part was my father, my father was a very, really scholarly fellow. You know, I am sometimes regarded as the son of an immigrant, you know, and made it to the Supreme Court, what a guy, but in fact, I'm, you know, I am not the member of my family who made the family fortune, so to speak. It was really my father who came from - his father was not illiterate, but not a scholarly person. He was an engineer, mechanical engineer at a sulphur mine in Italy; he kept the machines running. But essentially a blue collar worker and my father, just by dint of his own brains and effort became a doctor of philosophy and professor of romance languages. So, you know, I sort of riding on his accomplishment and what he wanted and obtained for his child - a good education and so forth. But he was the scholar in the family. He always had a book in front of his face: in French or Spanish, or Italian usually.

Mrs. Hope: And you did, too, when you were growing up.

Justice Scalia: Well, I studied a lot. I'm not sure I was a voracious extracurricular reader. I don't think I was then and I am not now. But I kept my nose to the grindstone and I really think that to try to identify what particular talent you have that helped you to advance in your profession, I think perhaps mine was that - the ability to interest myself in whatever problem happens to be the one that is set before me at the time. Whatever my - I think a lawyer has to do that because not everything that a lawyer does, in fact, relatively little of what a lawyer does is inherently exciting. You have to acquire to get your satisfaction out of figuring out problems, even

relatively dull and even relatively inconsequential problems. I have always had the ability to get enjoyment out of that.

Mrs. Hope: You went to Georgetown, which is a Jesuit school. Now, was Xavier Jesuit also?

Justice Scalia: Yes, it was.

Mrs. Hope: And Jesuits are supposed to be scholarly and analytical and picking apart the most minute arguments to see what the basis of them is. Is that - did that have any effect on the way you approach the law, or the fact that you thought law might be interesting?

Justice Scalia: Oh, I don't know whether it would have pushed me to law in particular. But you are quite right, but in those days at least, I'm not sure it's true anymore, but in those days Jesuits had a system of classical education which placed great stress upon languages (I had Greek and Latin in high school, as well as French), a great stress upon logic, courses in logic and philosophy, not in high school, but later at Georgetown. It was then known as a classical education. A lot of Cicero and the humanities. Not much science, especially laboratory science. Not much of that at all. But I never regretted that background. It's a superb background for law, among other things. It's probably a good background for many professions.

Mrs. Hope: Do you think you're known as a man who really believes in the plain meaning of a statute, for example? Do you think that the Jesuit training and the classical training had any impact on the way you approach statutory analysis and interpretation?

Justice Scalia: I don't know. I can't say that. Perhaps. I might have been the same without it. I have, perhaps I have more regard for language and what it says, what it suggests, what it connotes, simply because I have had so much exposure to language in my life, not just English but French, German and Latin, Greek. So I guess you get to feel comfortable with interpreting words and seeing their relationship with one another. I would not attribute it to the Jesuits in particular, but I think anyone who has had a lot of language probably feels more comfortable placing great stock in his ability to figure out the import of an English sentence from the text without running to extrinsic sources.

Mrs. Hope: I want to talk about your hobbies a little bit, when you were a young boy growing up in New Jersey and New York and then at Georgetown. I know that you are a fierce poker player; I know you're a good singer; I know you play a mean piano. And I want to know when all those things began and how they began and if there are other things. I guess you like baseball, too, as I recall?

Justice Scalia: Well, when I was a kid I played baseball, actually, played more stickball. Queens stickball, not Brooklyn stickball.

Mrs. Hope: What's the difference?

Justice Scalia: Brooklyn stickball is played in the street and on a bounce - the ball is pitched in on a bounce and you hit it with a stick, which is a broom stick or a mop handle or something like that. Queens stickball was always played against a wall, usually a wall in a schoolyard. Either the wall of the school building or wall of a handball court at the other end of the schoolyard. And, you would draw a box on the wall that was about the height and the width of the strike zone and the pitcher (it could be played with two people or with four), the pitcher would throw the person a little [fake?] ball called a "Spaldeen" and the batter, you know, if it went in the box it was a strike, if it was outside the box, it was a ball and the object was to hit it and if you hit it on the ground past the pitcher, it was a single; past another point, a double; if you hit the school building it was a triple; on the roof, a homerun. I used to play that morning to night on the weekends and I played a lot of basketball, you know, with two or three kids on a side with a single hoop. Generally, the hoop being attached to a backboard on a telephone pole down the street. I remember it was a good place to put up a basketball hoop because on the same telephone pole was the streetlight, so you could play at night. But mostly, that baseball, stickball, softball, not tennis which is what I play now or squash. I didn't take up tennis until, I guess I was in practice in law in Cleveland when I first began to play it. And squash I started playing at the University of Chicago when I was on the faculty.

Mrs. Hope: Do you still do that a lot?

Justice Scalia: I still do squash and tennis. Yes. I had a period when I did running, but I've sort of been off of that for a while.

Mrs. Hope: And you lift weights, I know.

Justice Scalia: Well, yeah, you make it sound like it's a competitive enterprise. Where I play squash, they have Nautilus machines I use to stay in shape. I do a round of those after playing squash.

Mrs. Hope: Now, where does the poker come from? Does that help you get through college?

Justice Scalia: No, I didn't play poker a lot. Actually, the first regular poker I ever played was in Cleveland at Jones, Day. After law school that was my first job and some of the younger partners and associates had a regular, once a

month poker game and it was very enjoyable. In fact, one of the regulars was Dick Pogue, who is now the sort of the managing partner of Jones, Day.

Mrs. Hope: And your music? I know you sing. I know you play the piano; I You must have started very young.

Justice Scalia: That started young. It was my father who insisted that I take piano lessons and not only take them, but take them from very good teachers, so that I used to go to a place called the Brooklyn School of Music, which, it was all the way down the other end of New York. I'd take the subway to get there – it would take me about 45 minutes, I think, on the subway to get to this place. I knew there were a lot of music teachers around Elmhurst, but my father wanted me to go to a good piano school and he had identified that one. It's right near - it was near, I think it was near Carnegie Hall. That could be right, I don't remember, but I know it was a long way. And until, at least until I was a junior or so in high school, I used to practice very faithfully and consistently at least an hour a day and got to be pretty good. Then as other demands crept in on my time, I got a little worse every year until I have fallen into the state of pianistic decrepitude that I am now in.

Mrs. Hope: Well, I know it's not too bad.

Justice Scalia: Well, it's pretty bad.

Mrs. Hope: I was going to ask you just one more question about growing up. Who was the person in your family, you think, if there was one, who was the most influence on you?

Justice Scalia: Oh my. That's a very hard question and I don't, I'm not sure that I'd be the one best able to answer it, to tell you the truth. I guess I used to think my father, not because he took me in hand that much, but simply because he was a constant role model of application. He was a very disciplined man. Energetic and believed that one should not waste time, squander one's money or one's talents, either one. So, he doubtless had a great influence on me. But, really the older I get in looking back and talking to some relatives about this or that and seeing how hard it is to raise my own children, I guess I have become more and more aware of how much influence my mother had upon me. Of the two of them, she was by far not the more scholarly. I mean, she was an intelligent woman. A great school teacher and from all I've heard a very good one. I've been reading some letters from parents of her students that she had saved, that were left in her papers after she died, and I think she was a very good teacher. But I am sure not the intellect that my father was, yet I am not sure that she didn't have more to do with how I turned out than my father did. She was very

careful about everything that touched my life. I mean, who my friends were, what organization. I was never aware of all of this as a kid, of course. I just went bouncing along. But in retrospect, I see that she very carefully plotted for me the course that she thought would be the most -- the safest and the most helpful. So, I mean, you know, it's surely either my mother or my father and I can't put either one of them first.

Mrs. Hope: What about teachers? Either high school or grade school or at Georgetown? Before you got to Harvard Law School.

Justice Scalia: I remember a lot of teachers who had an enormous influence upon me. I think I was fortunate to grow up in the days - every cloud has a silver lining. The cloud of discrimination against women had the silver lining of some very good school teachers. I remember I had really wonderful, accomplished, disciplined women as grade teachers in PS 13. Perhaps, maybe the same women today would not be teaching grammar school, they would be on the board, something like that. That was what that particular evil produced. I remember a principal named Miss Lillian Eschenbecker. My mother remained friends with her for many years and she followed my later career I know. I remember Miss [Gowings] and several others at grammar school. I remember a lot of my teachers in high school. Frankly, if I had to pick an age of life where one is most influenced by teachers especially, I think the high school years are probably the most receptive. I remember Father Tom Matthews, who was one of the Jesuits at Xavier who was a wonderful man, of considerable influence on me. Father Morton Hill, who later was the director of the Yorktown project in New York, and several young Jesuits that the - in those days, maybe it's the same, I don't know, the Jesuits had a ten year stint before they were ordained and after studying theology for a couple of years, they would undergo what was called their "regency" and this was a period when they would teach, usually in high schools. And they were pretty young then at that time. I mean, they would have been maybe two years out of college, or something like that. But they were not that much older than the high school students they were teaching, so a real kind of a relationship could develop with them; the close, almost your own generation. I remember they were wonderful teachers and good companions. College. Yeah, I remember a lot of teachers that - I believe in teaching, you know I became a teacher later myself. My father was a teacher; my mother was a teacher. As I look through my life, teachers have had an enormous influence on me at every level. I guess they do on everyone. I don't know whether everyone is as quite aware of it as I am.

Mrs. Hope: Why did you pick Georgetown?

Justice Scalia: I had a scholarship. That helped. I had a full tuition scholarship there. Actually, my first choice was Princeton and I applied to Princeton, indeed

I had a Naval ROTC scholarship, which in those days was very unusual - it was very competitive. I took the .there was an exam, it was mostly, it wasn't an achievement exam, it was an intelligence exam: spatial relations, and that sort of stuff. I recall thinking it was the hardest exam I'd ever taken in my life and I had taken a lot of exams: entrance exams to high school, for example and ended up going to Xavier. I took entrance exams to go to private, mostly Catholic schools like Brooklyn Prep, Regis, they all had their own entrance exams. So I had a lot of exams. I remember never thinking I had taken an exam as hard as the Naval ROTC exam. Anyway, I was very pleased to win the Naval ROTC scholarship, but the hook was that you had to get admitted to a university that had a Naval ROTC. Princeton had it and I really wanted to go to Princeton because my, well because, as I told you, my mother's family was from New Jersey and from Trenton and, gee for Italian-Americans living in Trenton, Princetonians. God! That was really making it - to have one of your kids go to Princeton, so my parents would have wanted me to go there. Anyway, I didn't get admitted to Princeton and

Mrs. Hope: You're kidding.

Justice Scalia: No. And I always remembered thinking: that was the only instance where I thought my background, I wouldn't say it was discrimination against Italians in particular. But I remember having the interview with a Princeton alumnus and I sort of had the feeling I was just, or he thought I was just not the Princeton kind of a person.

Mrs. Hope: What does that mean?

Justice Scalia: And he was probably right. At least at that time. Not from the right school, the right family, good club, not WASPish enough. That may be unfair. It was a long time ago, but I did have that feeling and I must say that's the only time I have ever had the feeling that, you know, that being an Italian-American made any difference to my detriment in my life. Anyway, that's my ... I didn't get into Princeton and Georgetown offered me a full tuition scholarship

Mrs. Hope: You're Not ROTC?

Justice Scalia: No, not ROTC. I was in the ROTC there, but I was in the - they had Army ROTC. I was in that my first two years. Then my junior year I spent abroad at the University of Fribourg in Switzerland and, so I quit ROTC. When I came back, if I had continued ROTC, I would have had to take so many military science courses, that I would have had not much left for anything else. I didn't want to spend my whole senior year nothing but double-doses of military science. So, I just did not continue

Mrs. Hope: Do you have ... did you serve in the military?

Justice Scalia: No. No, I went from there to law school and never got drafted and never volunteered.

Mrs. Hope: Did you have a particular reason for choosing Harvard Law School?

Justice Scalia: Yeah. I thought it was the best. It had the reputation at that time as being number one. I got admitted there and I thought I ought to go there.

Mrs. Hope: You did well at Georgetown - were you, what, magna cum laude? Phi Beta Kappa?

Justice Scalia: No, I was summa. Georgetown didn't have Phi Beta Kappa in those days. It was not really that good a university by whatever standards Phi Beta Kappa evaluates. I don't think the library was big enough to qualify. So, no, I was not Phi Beta Kappa. I was ... I did as well there as anybody could to at Georgetown, I suppose, I was first in the class and valedictorian.

Mrs. Hope: What was your major field?

Justice Scalia: History. History major, philosophy minor. Again, I continued a lot of language studies. I had two years of Latin and Greek, I had two years each of those. And I studied German. I had French at Xavier. Again, it was mostly liberal arts that I studied. Philosophy.

Mrs. Hope: And how about law school? Your roommate from Georgetown was my friend and your still good friend, Dick Coleman.

Justice Scalia: Right.

Mrs. Hope: You both went to Harvard Law School

Justice Scalia: Right.

Mrs. Hope: Dick Coleman told me, "We thought about rooming together at Harvard, but I couldn't stand it because all he wanted to do was think about the law and talk about the law and I wanted to do some other things." You must have been quite a team at Georgetown, because you were first in your class and he was Student Body President.

Justice Scalia: Yeah, he was and very high up in his class, too. He was one of the best students, as well as being one of the most popular people there. We were an odd combination, in a way. He was a good influence - in most respects, he was a good influence on me. Maybe he was more balanced than I was.

He may have been right at Harvard not to get so involved in the law to the exclusion of everything else.

[CHANGED TAPE]

Mrs. Hope: Tell me about law school. You know, what you studied, and what the courses were that you took and why.

Justice Scalia: Well, Harvard in those days was a very serious place. Stories used to be told of competitiveness to such a degree that some students would leave their lights on all night, and go to sleep with their lights on just to panic their classmates into thinking they were studying late into the night. I guess I believed some of those stories.

Mrs. Hope: It happened when I was there, which was not too much later, and I know they were true.

Justice Scalia: Yeah. Anyway, I played the game. I mean not that way, but I entered into the total dedication aspect of it anyway. I cannot say that I look back with misty-eyed mellow reflection upon my years at Harvard Law School. They were years of really terribly hard work and I don't think I have ever studied harder, especially during the first year. It was just a constant round of studying. Second and third year, I spent much less time studying. In fact, I am sure I spent a smaller proportion of my time studying my courses, much smaller proportion of time studying courses, than I did on work for the Law Review. To some extent my grades reflected that. I still got good grades, but they weren't as good as they had been first year. But the Law Review in those days was a wonderful experience. I mean, it did demand that kind of total commitment from you and you gave it willingly because it just seemed the thing to do. I think it was a smaller staff than they have now. We had, for example, only two note editors who edited all the notes. My co-noter at Harvard was Frank Michelman, who is now on the faculty. As for the courses I took, they were pretty much bread and butter practice courses. There really wasn't a whole lot there in those days other than bread and butter practice - I mean there was a little else - international law. But, you know, there wasn't law and poverty, and ...

Mrs. Hope: What do you think about those courses? There are so many of them now.

Justice Scalia: Not much.

Mrs. Hope: Particularly at Yale and what do you think?

Justice Scalia: I don't think much of them. I think, well I think the law schools have grown away from the bar. They were begotten by the bar, not by the University. Harvard Law School is, was started by the bar. Over the years, they have grown closer and closer to the university and further and

further from the practice and I think the courses that they offer very much reflect that nowadays. I think many of the professors at many of the institutions do not have the high regard for the practice that they did in the days when I studied. I remember some of my teachers were active practitioners: A. James Casner, for example, who taught property, had a substantial property law practice.

Mrs. Hope: Well, I guess Alan Dershowitz would say he had a substantial trial and appellate practice, too, which is a different kind of a thing.

Justice Scalia: I think it's a different kind of a thing and I'm not - you can name a few, but I don't think you can name as many. I also learned torts from a sitting federal judge, Calvert Magruder, who is a wonderful judge, was my torts teacher first year.

Mrs. Hope: Did you write a note? Did you write a particular article for the Law Review? If so, what was it about?

Justice Scalia: I was one of the team that did developments in the law during my second year. Every year, Harvard does (or did, I don't even know if they do it anymore) but they did a "developments" which would take a particular broad area of the law and do an intensive analysis of it. They would have five or six students dividing up the subject and that was a wonderful experience. I had never worked as closely with other bright lawyers as I did on that project. One of the other members, as I recall, was David Curry, we became good friends then and have remained so since. He is a ... we later were colleagues together at the University of Chicago, where he still is. The developments subject we did was conspiracy. I also wrote a case note in my first year on the Law Review.

Mrs. Hope: You worked a lot, but somehow you managed to meet Maureen while you were at Harvard Law School and she was at Radcliffe, I guess.

Justice Scalia: That was a close call though, I almost didn't. I think I, we were introduced by mutual friends in December, something like that, and I liked her a lot, but I just immersed in Law Review stuff and I didn't ask her out again until, I think it was late January or something like that. But between then and March or April, we became engaged.

Mrs. Hope: This was your second year in law school?

Justice Scalia: No, this was my last year. That's why I say it was a close thing. I almost didn't meet Maureen, or didn't meet her soon enough, and that would have been a great tragedy.

Mrs. Hope: So, you knew her about two months and you were engaged?

Justice Scalia: Well, a little more, three or four. Something like that. Yeah. Which is extraordinary

Mrs. Hope: And now, it's what, nine children later?

Justice Scalia: Nine children later; nine children and, what, 32 years, something like that.

Mrs. Hope: Do you have grandchildren?

Justice Scalia: Two grandchildren, one on the way.

Mrs. Hope: Can't believe it. And your youngest child is still, what, 12?

Justice Scalia: Youngest is 12, yeah. We still have two at home. One is 12 and one is 17. But, you know, it's really a - it's not the same place it used to be when we had all of them around. It was a lot of fun. And I'm going to miss it. Well, I'm missing it already. You know, just having two doesn't really seem like - well, it's hardly worth the trouble.

Mrs. Hope: Let's see. A number of your children are lawyers.

Justice Scalia: Two lawyers, right.

Mrs. Hope: In thinking about how you grew up with your father, the scholar, and your mother, the teacher who was maybe the power behind the scenes guiding you even though you didn't know it, how would you compare the life in your own family, where instead of one child there are nine, and you were teaching and practicing law and judging and working in the government. How do you [garbled]?

Justice Scalia: No, no. It's about the same. I cannot claim that I had personally had a great, you know, a great hand in the raising of the children. Most of the decisions concerning the children have been made by Maureen. I mean, that is really her full-time job. We sort of joke about, especially since I've been on this Court, our family joke is that I take care of the Constitution and she takes care of everything else. It has been a little like that. But even before that, I must say, I have not been the, what should I say, hands-on kind of a father that some perhaps are. I've always been, in all the jobs I've had, whether it was in the federal government, or teaching, or in practice, I've always been home for dinner, family dinner every night so the kids always know that their father is there if they need anything and if they want to talk to me about anything, I'm there. But, basically, Maureen has shaped their lives much more than I have - looked out to see that they took the right courses at school, that their teachers were good ones and that they were getting the kind of attention they should from their teachers.

When it came time to go to college, figuring out what would be the best college that they were likely to get accepted to, she really became quite an expert on what colleges want what kind of qualifications. Oh, yes, if you have to do it nine times. That's right. Nine times. I told her she should write a book about it. It's a shame to let all that expertise that she's developed go to waste.

Mrs. Hope: Well, to go back to law school, you met her the last semester of your last year at law school. You were engaged in March and when were you married?

Justice Scalia: We were married in September.

Mrs. Hope: After law school, what did you do? Did you go straight to practice?

Justice Scalia: I had a - well - before, I had a Sheldon Fellowship from Harvard, which is a traveling fellowship -

Mrs. Hope: That's the one where you don't have to do anything. That you're not supposed to do anything.

Justice Scalia: It's the one where you can't do anything. Or at least you cannot study for a degree. There are three conditions--they just give you the money and say travel. Sort of an "honest" Fulbright. You do not have to devise some project that requires you to be in Florence, Italy. If you want to go to Florence, Italy, you go to Florence. The three conditions on it are that you cannot stay in any single location more than three months, you cannot enroll for a degree in any university (which I considered that one a laughable condition, it was the last thing I would have in mind after four years of college and three of law school), and finally, you had to write one letter, one letter to the Dean of the Law School saying, "Having a wonderful time, wish you were here!"

Mrs. Hope: What did you do on your Sheldon?

Justice Scalia: Well, I started to say, before I left on it, I took a job with a law firm, Jones, Day in Cleveland which, at that time, I understand it is now one of the largest firms in the country, in those days it was about 60 lawyers in Cleveland and I think three lawyers in Washington. And I worked there that summer to make a little money which would supplement the stipend from the Sheldon Fellowship. Then we got married in September and after a brief honeymoon on Cape Cod, went off to Europe on - - was it the Holland America lines? Was it the Italian lines? I don't know, but in those days, going by boat was much more common than going by plane and we spent close to three months in Frankfurt, because I had thought I wanted to study German law, I'd get a degree in it, but study... It was

probably a stupid thing to do. Frankfurt is certainly not the most [garbled] city in Germany, but I had, that had been recommended by some of my professors and by one in particular at Harvard and then after that we went north into Berlin, Eastern Germany, Poland, Czechoslovakia, Austria ... this was at the time...

Mrs. Hope: This was, what, at the time of Prague's freeing the (garbled]

Justice Scalia: It was the depth of the Cold War. The ... I guess, when did the Wall go up?

Mrs. Hope: Well, the Wall must have gone up in the early '60s.

Justice Scalia: That's right. The Wall went up, I guess, it must have been...

Mrs. Hope: 1961 or 62.

Justice Scalia: Well, I remember we were on that, it was during that year that we were on the Sheldon the missile crisis occurred and the Bay of Pigs invasion flopped. I remember we were in Venice at that time. I remember feeling so ashamed that our foreign policy had become such a cropper. But anyway, we traveled, the Eastern Europe part of it was particularly interesting. It was enough of the depth of the Cold War that I remember when we were in Warsaw we spoke to a student, a group of students from the University there and this whole large group of them just to talk to Americans, they were just so thrilled to have us there. I mean, we were treated almost like visiting royalty. It was absolutely incredible. They were so hungry for contacts with Westerners. I remember Maureen had lost one of the buttons on her coat; she had a blue cloth coat, with a sort of leather button on it and it was dangling, it was close to coming off when we arrived and when we left someone had taken the trouble to sew it on for her. Just one of the little incidents that I remember over there - their courtesy towards us. Then we headed from Warsaw south to Krakow, where from Professor King at Harvard we had an introduction to a professor there called Professor Ehrlich, a wonderful man, he had been the Polish representative on the Court of International Justice at The Hague and so was a very prominent man in Poland. He was not a Communist. In fact, he was a devout Catholic and had a daughter who was a nun, but he was so prominent, they dared not throw him off the faculty or anything. So he was still on the faculty at Krakow and his wife was a wonderful woman - an American from Newport. A blue-blooded Newport aristocrat. I don't know how they had gotten together, but the Communists tried to get her every year to go and vote so that she would lose her American citizenship, but she adamantly refused. Anyway, you don't want to hear about that whole year, but it was a wonderful year.

Mrs. Hope: Do you have a copy of the Sheldon letter that you wrote?

Justice Scalia: I do have a copy of it, because I never sent it. I wrote it when I got back and when we were waiting for our first child to arrive. When we returned, Maureen was I guess in her seventh month of pregnancy, or something like that, and she had the child, our eldest daughter, Anne, on Cape Cod where her mother was then living - at her mother's house. Actually at a hospital near there, Hyannis. But, while we were there, I wrote the letter to Dean [Ridgemont?]. As I say I have it because I said, this is so long after the Sheldon was used, so I never sent it. I always felt a little sheepish.

Mrs. Hope: Well, if you want to publish it for posterity, the D.C. Circuit Historical Society will be very pleased to have it.

Justice Scalia: Yeah, I wonder whether I could still find it again.

Mrs. Hope: You came back; you went to work practicing law? Did you go back to Jones, Day?

Justice Scalia: Went back to Jones, Day. Right.

Mrs. Hope: Took the Ohio Bar?

Justice Scalia: Took the Ohio Bar.

Mrs. Hope: I can't believe it. I'm a member of the Ohio Bar, too.

Justice Scalia: Is that right?

Mrs. Hope: But, I'll tell you, I tried to get a job at Jones, Day and I was a few years after you from Harvard, and they had no women and they weren't about to start with me.

Justice Scalia: That's right. They had one woman when I was there as I recall and she was brought on on some special basis to do Blue Sky work.

Mrs. Hope: That's exactly right.

Justice Scalia: She did nothing else.

Mrs. Hope: Well, they surely were not interested in a woman to be a trial lawyer.

Justice Scalia: That's quite so. They were different days, Judy, no doubt.

Mrs. Hope: I'm surprised they took in an Italian- American.

Justice Scalia: Oh, I wasn't the first. One of their - their chief litigator at the time was a fellow named Victor Marco, who had been, I think he'd been U.S. Attorney or Assistant U.S. Attorney in Cleveland and was a very good trial lawyer. You know, Cleveland was a pretty a - Jones, Day was never a "white shoe" firm. I mean, White & Case you might have trouble or some places like that, but no, not Cleveland. Cleveland was pretty much an ethnic town.

Mrs. Hope: What happened next? You didn't stay in Ohio, I think very long?

Justice Scalia: Oh, I did indeed. I stayed there, that was the job I had longest until I became a federal judge, to tell you the truth. I guess I've still had it longer than any other single job. I was there almost seven years, in Cleveland. Left in '67 to go teach at the University of Virginia. That was - that happened because I had always thought I probably wanted to go into teaching eventually, but I thought I'd practice for a few years anyway to get some experience. In those days, it was thought a lot more useful for teaching than it is nowadays. Another indication of how the academy has grown away from the - or the legal academy has grown away from the bar. But I enjoyed practicing so much that I just sort of forgot that I was going to go into teaching eventually and hung around probably longer than I should have.

Mrs. Hope: What was your specialty at Jones, Day?

Justice Scalia: I didn't have a specialty. One of the attractions of Jones, Day was that they had a system of work assignment that made it easy for a lawyer to do a lot of different things and they positively wanted their young lawyers to get a breadth of experience. So, I did virtually everything: I did some litigation; I did wills; I did real estate; I did financings; I did contracts; I did labor law; I did tax. It was wonderful. I got a really good look at the whole waterfront. One of the advantages of Cleveland was that the overhead was so much lower than in some of the other great legal cities, like New York, that you could afford a first-rate firm like Jones, Day, could have relatively small clients. Its rates could be low enough that a very small corporation could be a client. So after two years at the place, I had my own little corporation that was my client. Any problem they had, they would call me up and it was a really wonderful feeling. I liked it.

Mrs. Hope: When you left to go into teaching, what did you teach?

Justice Scalia: Private law subjects. I taught at Virginia: contracts, commercial law, conflicts, and comparative law.

Mrs. Hope: All at the same time?

Justice Scalia: No. No, that's over the four years that I was there. I only - only two of those subjects any year, I suppose. And not all of them. I taught contracts every year. I don't think any of the others I taught every year.

Mrs. Hope: Then what happened after Charlottesville? Where did you go? What did you do?

Justice Scalia: Well, I came up to Washington. I guess my first exposure to Washington was the summer of, and I cannot remember whether it was '68 or '69, but just principally to make some money over the summer, but also to get a look at the federal government, I suppose. I worked at what was then the Civil Service Commission, in the building that is still there down on Virginia Avenue. And, I worked in the - what was then the Office of Hearing Examiners. Wilson Matthews was the head of it at the time and that was really my first exposure to administrative law, I suppose, because, you know, Hearing Examiners were the, what are now called Administrative Law Judges. They are decision-makers under the Administrative Procedure Act. Anyway, then I came up to Washington on a permanent basis in 196- , no 1971. January of '71 - to be General Counsel of a new agency called the Office of Telecommunications Policy. The office had just been formed, it had not done anything. It had not even been fully staffed and its mission was to give the Executive, the President in particular, policy-making capability in the field of telecommunications. Prior to that the President had really no capacity in that area. The FCC was an independent agency, of course, so the President would not be privy to its policy thinking.

Mrs. Hope: And the President then was Nixon.

Justice Scalia: The President then was Nixon, that's right. And prior to the formation of OTP, he was getting his advice from - was it, I can't remember the man's name now. He was a public relations guy - Klein? I think his name was Klein in the White House. He was giving Nixon advice on broadcasting and what not and the man was not a policy maker; he was a public relations expert, that's all. Anyway, that job as General Counsel at OTP was probably the most fun I've had in government. It was exciting, it really was to be...

Mrs. Hope: Why was it exciting?

Justice Scalia: Well, because it was policy making. You were with a team of people, especially when you're with a team in a new agency, you have an objective you want to accomplish and you're doing it with friends that are in the trenches with you and you strive to achieve those objectives. It was really an exciting time.

Mrs. Hope: Who were the friends? Who were you working with? And how did you [garbled] there?

Justice Scalia: The Director of the office was Clay T. Whitehead, Tom Whitehead, a young man who had been working at the White House and had a particular interest in and capability for telecommunications. Other life-long friends that I made there were Brian Lamb, who is now the head of C-Span. He was the, whatever you call it, press relations officer at OTP. Henry Goldberg, who now has his own law firm here in Washington, was my Deputy General Counsel. I hired him from Covington & Burling. Bruce Owen, an economist. He was the chief economist for the office. He has remained here in Washington. It was, anyway, it was a wonderful team and we had wonderful ideas that were, for the most part, adopted. For example, Open Skies for satellites was the beginning of satellite communications and many people thought, indeed if past practice had been continued, what they thought would have come true, that there should be a monopoly on satellites. That ComBat should be the sole instrument of the United States for satellite communications. Our office opposed that and said it should be free competition for anyone who wants to put up a satellite and rent the transponders. And that's ultimately what happened. We proposed breaking up AT&T in the fashion it was ultimately broken up, although that was done by a court, not by legislation as I think it should have been. But we proposed separating the long lines from the - which is not a natural monopoly, from the local carriage, which was. We had proposals for cable television, which was in its infancy in those days. Anyway, we, you know, our job was to try to induce the FCC to go along with those proposals, and if that was unsuccessful, to support legislation. I stayed in that job for a couple of years, after which I was prepared to go back to Charlottesville. However, I was offered the chairmanship of the Administrative Conference of the United States. Roger Crampton, who was the chairman of it, was a friend of mine. He had been a professor at the University of Michigan, and he was moving on to the Justice Department to be head of the Office of Legal Counsel, to replace Bill Rehnquist, who had just gone on to the Supreme Court from that position.

Mrs. Hope: So, you saw a root?

Justice Scalia: I had no idea.

Mrs. Hope: You saw a pattern.

Justice Scalia: I had no idea it was to be a root, but I was nominated to replace Roger. The Administrative Conference, the Chairmanship of the Administrative Conference, it was very much an academic kind of a job. The Conference consists of a small council ...

[END OF TAPE]

Mrs. Hope: ...about the Administrative Conference, Nino, you say it was sort of an academic pursuit. How did it work?

Justice Scalia: Well, as I say, it had a council and, I think it was called a general assembly. The general assembly was composed of, I think a bare majority were members from federal agencies, usually the general counsel. But in some cases, commissioners of independent regulatory agencies. I remember at the Nuclear Regulatory Commission, one of the Commissioners was a member and would come to all the meetings. The mission of the Administrative Conference was to study administrative procedures throughout the federal government and to make recommendations to the individual agencies and to the Congress and to the President for improving those procedures. In fact, the way the business was conducted was that the small staff of the Conference, and I mean it was a small staff, I think I had maybe four or five lawyers on the Conference staff under me, maybe six -- would, with the help of academic consultants, generally law professors in the field of administrative law from all around the country, study a particular area. The consultant would draw recommendations which would be presented to a committee of the general assembly. And then the committee would make a recommendation to the floor. It would be debated on the floor and the assembly would vote to adopt it or not. So, as you can gather from that description it is -- oh, the other members of the general assembly, besides the agency members who were a bare majority, were private practitioners who would be appointed by, I guess they were all, I'm trying to think who had the appointing power. I think they were all presidentially appointed. So, I did that job and became, I think pretty expert in the Administrative Procedure Act and in administrative law, and grew to love the subject, for a couple of years. I also got to know a large number of academics from all around the country who have, you know, remained good friends of mine in the field of administrative law; hired them as consultants on various projects. And then I was about ready to give it up and move back to Charlottesville, to back to teaching there. All this time, when I was at OTP, and also when I was at the Administrative Conference, I was on leave from the University of Virginia. By now, four years had gone by and I thought it was time to go back and I began moving my belongings back to Charlottesville into the house that we had rented out during that period. It had been inhabited by Attila the Hun in the interim (utterly destroyed it). Then, what should happen but that I should be offered yet another federal job. This time, the successor to Roger Crampton, Bob Dickson, whom I had known from the Administrative Conference, he had been a - one of - I think a consultant that had done some work for us. He was a professor at George Washington before that, then he had succeeded Roger Crampton

as the head of the Office of Legal Counsel. Well, he went back to teaching at St. Louis University, oh no, at Washington University in St. Louis, that's right. And there was a vacancy in that job and I was asked by President Nixon, well, by the then Attorney General, who was William Saxbe.

Mrs. Hope: Of Ohio?

Justice Scalia: Of Ohio, right. Former Senator. To take on that job. This was in the dying years of the Nixon administration, as you would gather from the fact that Saxbe was Attorney General. It was after John Mitchell had departed and practically the only person President Nixon could get appointed as Attorney General after Mitchell was a Senator. And Saxbe was known to be his own man, a fiercely independent sort. So he had become Attorney General. And his deputy was, of all people, Laurence Silberman. Now, the judge on the Court of Appeals and, I think Larry had a lot to do with picking me to be Head of the Office of Legal Counsel. So, anyway, I took that job and resigned from the University of Virginia because four years is enough, four years being on leave is enough.

Mrs. Hope: Let me ask you this. This was the Nixon administration. This was - the Justice Department was basically conservative. They weren't trying to reach out for new interpretations of things. Had you published or spoken or did they have a sense that you were conservative at that time; had your views crystallized, pretty much by then?

Justice Scalia: I'm trying to think. I had never been very politically active and I was certainly off- line in the Administrative Conference. I mean, the Administrative Conference is not a location - one meets a lot people from all around the government. That was the wonderful thing about it because so many of the members of the Conference were general counsels or agency heads from all around the government and when we did studies of various agencies, I'd often interview or speak with the agency heads. So I got to meet a lot of people. But I was not in a political job; it was very much an academic job. I think I acquired a reputation as very good lawyer. I don't - and, what should I say, conservative in my approach to the law.

Mrs. Hope: I can't, for example, see you as heading the Office of Legal Counsel if Bobby Kennedy were Attorney General. I don't think either one of you would have been comfortable with that.

Justice Scalia: I think that's probably right. I think it's important, but, maybe not for the reason you think. OLC, then as now, I think has to be the - it's too tendentious to call it the "conscience" of the Justice Department, but it has to call things straight. It cannot be so swept up in policy passion that it

gives bad legal advice. Its main function is to provide legal advice to the Attorney General and to all the other agencies of the government, most particularly the White House. If you have somebody there who is skewing legal advice because, you know, he wants to favor particular policy ends, you know, you have somebody who is useless. On the other hand, on the other hand, if the head of that office is to be effective, he has to be trusted by the people to whom he is saying "no." And, obviously, a conservative administration is more likely to accept a "no" from someone that it knows is basically himself a conservative sort and has that administration's interests at heart. And likewise, Bobby Kennedy is more likely to take a "no" from someone who is more liberally inclined, I suppose. So, yes, I think it probably an important qualification for the job, but not because it effects the product. Simply because it effects how the product will be received by those to whom it is given. But, you know, the job is a lawyer's job. The job is to say "this is what the law is, take it or leave it, like it or not." And very often you have to say no to a proposal that the administration wants to undertake or the Justice Department wants to undertake and, anyway, it was a very interesting run that I had at OLC. I don't know how long I was there, I guess you can look up somewhere what my dates were. Something like two or two and a half years. One of the first things that I had to confront is who owned the records and tapes of the Nixon Administration.

Mrs. Hope: Is that right?

Justice Scalia: That's right. This case that was just recently decided by a panel of the D.C. Circuit (speaking of the oral history of the D.C. Circuit), a panel consisting certainly not of Republican appointees, it was, as I recall Harry Edwards and Ruth? Was it Ruth Ginsburg? I think Ruth Ginsburg was on that panel, yes. And, I can't remember who the third one was, but in any case ...

Mrs. Hope: How did you call it?

Justice Scalia: I called it the way they did. There really seemed to me no other way to call it. I said, it was a fairly unpopular call at the time, and frankly I'm not sure that it was even a very welcome call to the Justice Department. I think they would have preferred to say the opposite because, you know, there was legislation taking over all of these documents. But anyway, the call I gave was, no, they belonged to President Nixon because it had simply been the tradition of presidents, ever since George Washington that all of the papers of the president belonged to the president. They used to clear out the White House after their administration was over. George Washington took home, as I recall, they even had to go back to Mount Vernon to get a treaty that he had taken with him. It was the only copy. They didn't know what the treaty said. Anyway, that was really the one

opinion that I wrote when I was at OLC that I thought would stand a good chance of being reversed because, although I called it that way, it seemed to me such an unpopular political position that I feared that not every court would agree with it. But, so I was happy to see that upheld just recently.

Mrs. Hope: Fifteen years later; more than fifteen years later. Twenty years later.

Justice Scalia: As far as I know, none of the opinions I gave has been overturned in the courts. Another one I gave was, concerned the status of the American Bar Association Committee on Appointments. You know the Committee I mean? That makes recommendations -

Mrs. Hope: I've had some unforgettable experiences, yes, with that Committee.

Justice Scalia: Yes, I know you have. Well, my predecessor, Bob Dickson, had given an opinion that that Committee was governed by the Federal Advisory Committee Act, which would mean that it has to be chaired by a federal official, subject to adjournment at his whim. All his proceedings would have to be public, etc., etc. And, of course, the American Bar Association Committee said, no thanks. If, you know, we're a private organization, if you're going to impose this on us, we just won't give you advice. We don't want all this to be public and we don't want to be governed by somebody else. So they were not going to give the Attorney General advice on judicial candidates. I mean, well, that was a matter of some concern. So, I was asked, or again, one of the first things I was asked to do when I came on board, to review the opinion of my predecessor to see whether, indeed, there was no alternative to what Dickson had advised. And I looked it over and, frankly, I think, as far as the statutory interpretation was concerned, there seemed to be no way out, but it really did seem to me that as a matter Constitutional law, if the statute mean that the president could not get advice concerning appointments from a private organization, without having that private organization subject to this kind of supervision, that the statute would, in all likelihood, be unconstitutional. So, I wrote an opinion saying that in light of the grave Constitutional issue presented, it should not be interpreted to apply to a committee advising the president on his appointments. And that also came before this Court, either last term or the term before, I didn't sit, of course, and that opinion was also upheld. So I consider myself, so far, with a pretty good batting average. I hope my judicial opinions have lasted as well.

Mrs. Hope: But that was a Supreme Court case, it wasn't in the Circuit.

Justice Scalia: No, that was a Supreme Court case, that's right.

Mrs. Hope: Well, that was a... that's batting a thousand. Maybe you should just quit right there.

Justice Scalia: Yeah, I should have.

Mrs. Hope: All right. I think - our time is running short here, but maybe we can just get you out of the Office of Legal Counsel for today and we're going to have to have one more session, Mr. Scalia.

Justice Scalia: Oh my. Okay.

Mrs. Hope: Alright. But, there you were, in the Office of Legal Counsel, and the hand of fate moved and tapped you on the shoulder. But somehow you were at the University of Chicago, too.

Justice Scalia: Oh yeah. I mean, I didn't come here from there. I mean Rehnquist came here from there, but I did not. No, as you may recall - well, that was not the only thing I did there. I did a lot of other things there. It was interesting, it was an interesting period. Although I had been selected for the job during the Nixon administration, I served in the job entirely under the Ford administration. By the time I had been confirmed, Nixon was no longer in office, so really President Ford.

Mrs. Hope: That's when I met you because I came to work for Ford and that's when we met.

Justice Scalia: That's right. Indeed, my commission as Assistant Attorney General is something of a collector's item. As you know, they all - there is a formula which they all follow. "I," whoever the President is, "Gerald R. Ford, President of the United States, reposing full faith and confidence in the integrity and ability of Antonin Scalia of the State of Virginia -- have nominated and by and with the advice and consent of the Senate, do hereby appoint the said Antonin Scalia to the position of," whatever it is. Well, Gerald Ford could not sign that kind of a commission because he had not nominated me. Richard Nixon had nominated me. So, I have a commission it was, it had to be re-written and it is, I am sure there cannot be many of others around which recite that formula, but they leave out the words "have nominated." They just say "I, Gerald Ford, by and with the advice and consent of the Senate, do hereby appoint the said Antonin Scalia."

Mrs. Hope: So, it didn't say Nixon nominates and Ford appoints.

Justice Scalia: No, no. No, I mean, it's an appointment commission, not a nomination document so it doesn't matter. Anyway, it was, as I say, it was ...

Mrs. Hope: It must have been a very difficult time because...

Justice Scalia: The executive branch was under siege. It was enfeebled, it had a head who had never run for national office and he had been a Congressman from Michigan. It had, you know, one scandal after another, scandal is the wrong word. Congressional investigations of various sorts. One Cointel program of the FBI, which had involved activities that should not have been conducted. CIA programs were under investigation. I recall during my tenure there- I would go to a... I believe it was a daily meeting at the situation room in the White House at which would be present... I'm trying to think of who all the personnel were. The head of the CIA, special advisor to the President, general counsel to the CIA, who had been appointed just to handle these investigations. And every morning we would decide how many of the executives most confidential documents about covert operations and all other matters would be turned over to the Pike Committee or to the, I forget who the House committee - the Church Committee in the Senate and the Pike Committee in the House were both conducting CIA investigations. But we would decide every day what we would do today about the latest requests for various documents. It was a constant exertion. Anyway, that ended on January 20 and we left quietly after the people threw us out, as the Constitution says, and I went. Now, I told you that I started that job under Billy Bart Saxbe, with Larry Silberman as Deputy Attorney General. Saxbe did not last very long in the job. After Ford came on board, he was replaced, he became Ambassador to India, and he was replaced by Edward Hirsch Levy.

Mrs. Hope: Of the University of Chicago.

Justice Scalia: Of the University of Chicago. President of the University of Chicago. Formerly, Dean of the Law School and so I was Ed Levy's legal advisor. There was probably no worse person in the world to be a legal advisor to Ed Levy. He being a very good, and very circumspect lawyer himself. I mean that facetiously, he was a wonderful man to work for

Mrs. Hope: I think he was one of the great Attorney Generals.

Justice Scalia: I think he was a terrific Attorney General. I was always very proud, because he really is a perfectionist in all things. He never changed one of my opinions. Most of ... in the old days, the Attorney General used to sign the opinions, they used to be opinions of the Attorney General and there's a whole series of volumes of opinions of ... OAG. They were cited Opinions of the Attorney General... There are not many of them in modern times because the function of giving the opinions has been almost entirely taken over by the Office of Legal Counsel, so that the opinions go out over the signature of the Assistant Attorney General instead of the AG himself. But on a few occasions, where a Cabinet Secretary requests an opinion of the Attorney General himself, the AG will do it. And I guess I did a few

for him. I don't know how many, but I don't think he ever changed any of them. I was really quite proud of that.

Mrs. Hope: Well, you were really in Constitutional crisis for a good part, then, of your term there.

Justice Scalia: Yeah, well, I wouldn't say Constitutional crisis, but we were certainly under siege. I mean, you know, you had a Congress in control of the opposition political party, an enfeebled executive, an executive in disgrace, and it was just one investigation after another. It was a hard time. It was a hard time for the Justice Department. The Justice Department especially. Because the Department itself had been so much involved in some of the abuses of the Nixon administration, so it was a long road back getting personnel of the Justice Department to be proud of themselves again. I think Ed Levy was just the man to achieve that, and I think he did achieve it. It was a good administration, though, I was proud to be a member of the Ford administration. I mean if you look at the Cabinet slots, it had good people.

Mrs. Hope: Well, yeah, I often think of that because that's the only time I served in government. And you look now at Dick Cheney, who is Chief of Staff and has done a brilliant job as Secretary of Defense, at Carla Hills, who is Housing Secretary and has done a brilliant job as Special Trade Representative.

Justice Scalia: Well, she started there in the Justice Department.

Mrs. Hope: Head of the Civil Division.

Justice Scalia: She was head of the Civil Division when I was head of OLC. That's right.

Mrs. Hope: So, I think in a way, it was a brief era in American history which really served the purpose that was needed, which was healing and a restoring of credibility, and I guess OLC would have a lot to do with that because you had to put the rule of law back in charge of a government that had gotten out of hand.

Justice Scalia: Yeah, well I won't ... I don't ... I think we tried. I don't know that OLC ... I wouldn't take any credit for OLC in particular, but I think that the Ford administration, generally, and the Ed Levy Justice Department, in particular, brought a feeling of integrity to the process that had been lost. But it was a hard time. I remember on one occasion I was nearly held in contempt of Congress, we had provided advice to Rogers Morton, who was head of the Interior Department, concerning the provision to a Congressional committee, headed by John Moss of California, he was a Congressman from Sacramento, of documents that had to be filed by

American exporters, under a statute which said that the contents of those documents would be kept confidential. The documents had to recite whether, among other things, whether the exporter had received any threats from countries regarding the Arab boycott of Israel, which was going on at that time. Arab countries would not deal with American companies that dealt with Israel. And, the Interior Department had to receive these filings. A Congressional committee wanted to get them to see, you know, what companies, in fact, said they had had such contacts and had complied with them, or whatever. We read the statute, OLC did, as saying confidential, and confidential means confidential from a committee of Congress as well. And there were good reasons to interpret it that way. The Congressional committee did not take this well. They discovered that before giving our opinion, we had requested the opinion of Interior itself as to what it thought the answer of the question it had asked us would be and, what they thought we had done was simply to take Interior's answer and make it our own and feed it back to them so that Well, in fact, OLC, for many years, it went back to, I think it might have been even before the time of Attorney General Jackson, for many years we had followed the policy of asking, of requiring that any agency who asks advice of OLC give its own estimate of what it thinks the answer is. To avoid being blind-sided by an agency when you give an answer and they, you know, pull up this piece of their intricate statute that, for some reason, we didn't consider. So, it was a long-standing practice. But, they wouldn't believe that and they demanded that Interior turn over those documents. They also sent investigators around to my office, who interviewed my lawyers. Just burst in upon them, without ever asking my permission; without ever coming to see me. And sought to interrogate them about how our opinion had been prepared. I, of course, told them not to talk to the investigators. I would not turn over, as the Committee demanded, the background documents of our opinion. The drafts and so forth and I would not testify as to the process of that opinion making because I considered all of that to be an attorney's confidential material in giving advice to the client, in this case the client being the Department of the Interior. Well, as I say, because of my refusal, I was scheduled to be considered for contempt of Congress, and I think I would have adhered to the refusal. The only thing that could have saved me, of course, would be the President declaring Executive Privilege, but he would not have done it for such a relatively minor matter. But the problem was solved in the way these problems are usually solved, Rogers Morton decided that the game wasn't worth the fight, so he turned over the, despite our advice that he didn't have to, he turned them over anyway.

Mrs. Hope: And saved your skin.

Justice Scalia: Saved my skin. Yes.

Mrs. Hope: Well, let's get you out of the Office of Legal Counsel and we'll conclude on another day.

Justice Scalia: Well, you have me out of there. I went back ... when the people threw us out, I went back with Ed Levy to Chicago. I'm sure it was largely through his urging that I interviewed at the Law School at the University of Chicago and I spent a half a year after leaving OLC here in Washington so that my children could finish their school year, and during that half a year, I taught at Georgetown, and I was a Resident Scholar, a scholar in residence at The American Enterprise Institute. Where I made friends with some other interesting people that have been my friends since. Such as Irving Crystal, who was also a Resident Scholar that year. Jeanne Kirkpatrick, Walter Burns, and then, the next summer, I guess July or August, I went to Chicago and began resuming my career as an academic. And ...

[END OF TAPE]