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REMEMBERING JUSTICE SCALIA

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In the late 1980s I met Justice Antonin Scalia briefly at a reception at the Supreme Court after I had made a motion for admission of a group of Army Judge Advocates. My wife and I were impressed with his friendliness and good nature. At that time I had no idea I would meet him a few years later under different circumstances.

I applied for the position of Clerk of the Supreme Court when I was preparing to retire from the Army. In January 1991, I was invited to the Court to be interviewed by Justices O'Connor, Scalia, and Kennedy. Wearing my new suit and wondering why I was selected to be interviewed, I was escorted to the Solicitor General's ceremonial office at the Court where I met with the three justices. The hour-long interview was not at all stressful. I felt like I was having a conversation with friends. I had a nagging feeling Justice Scalia would ask me some question of substantive law that I could not answer. That did not happen. A few weeks later I was sworn in as the clerk, and I enjoyed my service at the Court for 22 years. It was a great honor.

Justice Scalia was an intellectual giant. I observed over 1,700 oral arguments in the courtroom and I was always impressed with Justice Scalia's thorough understanding of the cases and his ability to ask penetrating questions. I warned arguing attorneys that they should try to carry on a conversation with the Court and avoid getting into a debate with the justices, especially Justice Scalia. He often broke the tension of the arguments with a dash of humor. It was always spontaneous and well placed.

Justice Scalia was a compelling writer. His opinions were thorough and understandable. He often laced an opinion with appropriate humor. In one case, *Kansas v. Marsh* (2006), he wrote the following in a concurring opinion: "The dissenters' proclamation of their policy agenda in the present case is especially striking because it is nailed to the door of the wrong church—that is, set forth in a case litigating a rule that has nothing to do with the evaluation of guilt or innocence." Justice Scalia's reference to Martin Luther nailing his Ninety-Five Theses to the door of the Wittenberg Castle church in 1517 was pertinent and clever.

Justice Scalia, along with the other 13 chief justices and justices I served, was a staunch supporter of the Federal Bar Association (FBA). Traditionally, a justice speaks at the annual Capitol Hill Chapter spring luncheon at the Court. One year when it was his turn, Justice Scalia said to me, "How can I turn down an opportunity to speak to my FBA friends when I don't have to travel or prepare a speech and I get a good lunch?"

He was consistently available to speak to visiting lawyers, students, and other Court visitors. He and I made a joint presentation several times a year to students attending the George C. Marshall European Center for Security Studies program. Most of the students

were foreign midlevel government and military officers, some from former Soviet Union satellite countries. He spoke to them about our judicial system, downplaying his role of course, and answered their questions. When he was asked about legal matters related to terrorism, he would tell them that he could not discuss issues that might come before the Court. Then, with a serious look and a wink to me, he would say that I was a renowned expert on international law and that I would answer their questions after he departed the courtroom. Once again, his wit was on display.

When I had the honor of introducing him to a group, I always said, "Ladies and gentlemen, Justice Antonin Scalia." More than once he told me that was his favorite introduction.

He respected and loved his colleagues. On one occasion, after he announced his opinion for the Court from the bench, another justice read a summary of his own dissenting opinion. That happens rarely. After the Court adjourned, I went behind the curtain where the justices were removing their robes. Justice Scalia and the dissenting justice engaged in some friendly banter and he said, "Let's go to lunch." They both smiled and walked off to lunch, best of friends. Members of the other branches of our federal government could take a lesson from the civility that exists between the justices and among members of the Supreme Court Bar.

Justice Scalia was remarkably kind to all Court employees, greeting them warmly and speaking to them in a hallway or in an elevator. His kindness extended beyond the Court. A mutual friend of the justice and myself, a retired distinguished college professor, suffered a fall and was hospitalized. I informed Justice Scalia, and he immediately called the professor in the hospital to wish him well. That professor proceeded to tell everyone on his ward that Justice Scalia called him. He later told me that the call was better than any medicine he received.

Justice Scalia enjoyed responsible disagreement more than praise. He stuck to his beliefs and had no regrets. When he believed there was a Fourth Amendment violation making evidence inadmissible, then so be it. The same was true when he believed that rude speech was protected by the First Amendment.

Justice Scalia's passing leaves much more than a vacancy on the Court. He was a great American who was loyal to his faith, his family, his nation, and the law. We learned from him. We will miss him very much. ☺