

# JUSTICE SCALIA THE TEACHER

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Clerking for Justice Scalia was not for the faint-hearted. The Justice did not want his clerks all to think alike or always to agree with him. Instead, he wanted us to debate with him about how the Court should best resolve the matters it was considering. Those chambers discussions were intensely Socratic, with the Justice cast as Socrates and the rest of us as interlocutors. The tone was bare-knuckled rather than genteel. For example, the Justice was quite capable of responding to a clerk's point by saying, "That is the stupidest thing I have ever heard!" Although he gave no quarter to our ideas, he equally expected no quarter for his own.

If this sounds grim, it was anything but. Like Justice Scalia himself, the discussions were playful without losing their seriousness of purpose. The Justice loved few things more than a good argument. Beaming or frowning as the moment warranted, he would let loose a *mélange* of deep legal insights, snappy one-liners, clever hypotheticals, and apt references to the fruits of his classical education. When a clerk scored a point in the discussion, the Justice would happily exclaim, "That's good! I like that!"

The Justice had been a teacher, and in his heart he still was. Chambers discussions were one of the many ways in which he helped his clerks to become better lawyers. He also taught us by demolishing our draft opinions and replacing them with opinions that were shorter, more deeply reasoned, more precise, and vastly more readable. We learned by trying to emulate the Justice's clarity and vigor of expression. Other lessons were more direct. When the Justice detected an analytical or grammatical lapse, he enthusiastically helped us to see the error of our ways. The Justice also enjoyed discussing his theories of writing and grammar. For example, he explained that a good sentence is like an iceberg: Most of it is below the surface. Or as he once put it, "Ten carefully chosen words can do the work of a hundred."

The Justice set us a powerful example by the way he approached his work. Because he had taught regulated

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industries at the University of Chicago, he was very excited at the D.C. Circuit to get the assignment to write the opinion in cases involving the Federal Energy Regulatory Commission or the Interstate Commerce Commission. Although his colleagues on the Circuit must have appreciated his enthusiasm for such cases, some of his clerks at first did not. The Justice's passion was contagious, though. The Justice strove to master each case. He wanted to understand the facts, the practical context in which the arguments arose, and where those arguments fit into the law as a whole. Often, the Justice would get curious about a relatively tangential aspect of a case, and he'd say, "Let's figure that out. We ought to know that."

The Justice did not delegate his responsibilities to his clerks. He said, "It's my job to get it right." He also demonstrated that he meant what he said. When we finished a draft, we prepared a cart full of books and reporters containing every authority cited in the draft. The Justice would take the draft and the cart and start hammering away. Through multiple revisions, the Justice worked to perfect each opinion in all respects: factual and legal accuracy, typographical and grammatical correctness, concision, clarity, and precision.

The Justice's lessons reached outside of law and outside of chambers. When he heard a clerk from another chambers disparaging Mozart, the Justice retorted, "When you listen to Mozart, it is not Mozart who is on trial!" When we confessed our lack of familiarity with concepts such as "hysteron proteron" or "hapax legomenon," the Justice cheerfully enlightened us (sometimes after a brief detour into the sorry state of modern education).

My substantive views were not congruent with the Justice's, and our personalities were quite different. But the two years I clerked for him were the most formative years of my professional life. I still work to live up to the lessons he taught. To be a teacher to my clerks. To take full responsibility for my work. To understand legal issues in the context of the law as a whole. To mix serious work with a sense of fun. To write clearly, simply, and precisely. Finally, to remember that, notwithstanding differences of opinion and personality, people struggling together—in good faith and with good humor—to resolve difficult matters can form ties of respect, friendship, and even love.