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JUSTICE SCALIA
 SPOKE WITH LEVI AT
 A DUKE LAW EVENT
 IN 2015. DUKE
 PHOTOGRAPHY

Dining with the Justice

By David F. Levi

LIKE MANY OTHERS, I HAVE UNUSUALLY VIVID RECOLLECTIONS OF JUSTICE ANTONIN SCALIA. How could it not be? His force field was that powerful. I had the benefit of a strong family connection; the Justice had worked for my father in the Justice Department during the Ford Administration and followed him back to the University of Chicago. They admired each other although cut from different personality cloth and from different generations. The Justice wrote the most touching condolence notes in longhand to my brothers and me when my parents passed away.

In person, he could be disarmingly candid and genial. After I was reversed 7-2 by the Supreme Court in the blanket primary case (*Jones v. Democratic Party* opinion by Scalia, J.), I saw the Justice in chambers. I remarked: "Guess I got that one wrong." He looked up, smiled, and said, "Or not!"

He was a superb teacher. He taught judicial writing in the Duke master's program for sitting judges, and it was surely a highlight of that program. One afternoon, he resumed class after

a break saying, "Now let's talk about footnotes," in a tone that conveyed that this must be the topic that everyone had been waiting for. And was he ever right. Every judicial hand shot up, there was so much to say. This was such a lovely reminder that the craft of judging transcends politics, ideology, and judicial philosophy.

The Justice liked to eat and drink well, and he was impatient of impediments to that goal. Arriving at my home in Durham for a dinner party after a moot court competition, he was greeted by me at the door along with the caterer who had thoughtfully prepared glasses of red and white wine for the guests. The Justice looked at me in annoyance, "Can't a guy get a real drink?" Miraculously, there was a bit of Scotch in the house which did the trick nicely.

We had three famously – only to me – comical dinner engagements. The first was a few years ago in Geneva on a summer Sunday evening. The Justice was teaching in the Duke Law summer institute. Not many restaurants were open – none

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of the elegant ones – and we were given the name of one of the few that would take us. The Justice was told that this was the best restaurant in the circumstances. But somehow the Justice had it firmly in mind that this was the best, most upscale restaurant in all of Geneva. I met him and our small party at the hotel. The Justice was dressed in a handsome dark suit. “I understand that this is the finest restaurant in Geneva, and I have dressed accordingly.” My heart sank. I wore a mere blazer. When we arrived at the restaurant, it was apparent that this could not be the finest restaurant or at least, if it was, it was shockingly informal. Most of the patrons were in blue jeans and t-shirts. The Justice looked around and was not pleased. We sat. We waited unhappily. He asked me: “Can’t a guy get a menu?” I found the waiter and brought back the distressing news that there was only one menu for the entire restaurant. The Justice interrogated, “what?” The waiter explained. There was no choice or as he put it, “you can get steak or steak, frites or frites, salad or salad.” This news sunk in. We were a glum party. The wine arrived; things began to look up. Then the meal. The steak was superb; the quantity abundant. Eventually, the Justice pushed back a bit and with an expansive wave of the arm declared sua sponte, “I quite like this place.” Ah, relief granted. The night would be a success after all.

OUR SECOND DINING ADVENTURE occurred a couple of years ago at the Washington Duke Inn, down the street from Duke Law School. It was just the two of us, and as we arrived at our table, the alarms went off in the restaurant. Apparently there was a tornado warning. There was confusion and noise. He looked at me. “What’s a guy to do?” I knew something that he did not; in the modern university risk aversion is so intense, particularly when it comes to weather, that we close at the hint of snow in the air and we scare the daylight out of everyone if there is the possibility of a tornado anywhere in Eastern North Carolina. “Relax,” I said, “there won’t be a tornado, and if there is, you will be well taken care of.” The hubbub eventually subsided; the tornado recognized that it was in

the presence of a superior power and stayed far away. The Justice was relaxed and expansive.

Our last dining escapade was a little over a year ago in Washington. The Justice and Mrs. Scalia joined my brother and me for dinner. The Justice would be speaking the following day at the anniversary celebration of the Legal Services Corporation of which my brother is chair. We met at a restaurant in the Madison Hotel. I had picked the restaurant based on the Geneva experience, discovering that the Justice particularly liked a good steak. The meal seemed to go well. I was on edge, however, knowing that something surely must go wrong. Eventually it did. We had just finished the main course when the fire alarm went off. The waiter hurried over to the table. No worries. It was just the smoke from the wood fired oven. Happens all the time. Then the waters came. Soon there was almost an inch on the floor. The waiter returned. Apparently the situation was not so simple. In fact, there was a fire in the kitchen. Hence the water on the floor. The Justice was unperturbed. He had just ordered an additional bottle of wine. But this time higher authority intervened. The United States Marshal insisted that he could not permit a Supreme Court Justice to remain in peril of fire and flood. The evening came to a quick end.

The next day he was in fine form. We briefly shared a laugh about the previous night’s watery conclusion. There was a large audience in attendance drawn from the legal services community; there weren’t many originalists in the room. He spoke well: “The American ideal is not for some justice, it is as the Pledge of Allegiance says, ‘Liberty and justice for all,’ or as the Supreme Court pediment has it, ‘equal justice.’ I’ve always thought that’s somewhat redundant. Can there be justice if it is not equal? Can there be a just society when some do not have justice? Equality, equal treatment is perhaps the most fundamental element of justice.” The applause was sincere and enthusiastic. Words to remember him by.

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