

Scalia guarded the integrity of the constitution

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(Photo: Torin Halsey/Times Record News, AP)

President Trump vowed to find a Scalia-like nominee for the Supreme Court. This appealed to many. Four years ago my husband and I got to meet Judge Antonin Scalia and were given a full hour for Q&A. We were told most groups are lucky to get 10-15 minutes and that it is rare to get 30 minutes.

My first impression — he was *short!* The only son of Italian immigrants, Scalia was heavy-set with black curly hair and still carried his nickname from childhood, “Nino.”

When Chief Justice Warren Burger retired, Reagan appointed Justice William Rehnquist as his replacement, and then he nominated Scalia to fill an empty chair. Rehnquist's nomination drew all the focus away from the much more conservative Scalia. In 1986 at age 50, Scalia passed the Senate unanimously (98-0) and was virtually uncriticized.

He said his greatest accomplishment was marrying Maureen McCarthy. Together they had nine children, one becoming a priest and two becoming lawyers. In his typical humor, he added that one priest is worth two lawyers. They also had 33 grandchildren. He was one of six Catholics on the court, the others being Jewish.

He said they did not take cases to correct errors but only to settle disagreements on the meaning of a federal statute or when lower courts have ruled differently on the same issue.

Scalia was closest personally to liberal-minded Ruth Bader Ginsburg on the Court, and they and their spouses often attended operas and spent every New Year's Eve together. He and Ginsburg actually sang in an opera together once.

A Supreme Court observer has noted that if the mind were muscle and Court sessions were televised, Scalia would have been the Arnold Schwarzenegger of American jurisprudence. He was the intellectual leader of the conservatives on the Court. He generally voted to strike down laws which made distinctions by race, gender, or sexual orientation and strongly opposed laws which made racial distinctions, saying: “We are all one race, and that is American.”

Scalia pointed to the formal amendment process as the only legitimate way to change the Constitution. He interpreted the Constitution as it would have been understood when it was adopted, stressing that the issue was what the words meant to the people who ratified the Bill of Rights and Constitution. He was what is called an “originalist.” The only other originalist was Clarence Thomas. Scalia was critical of his colleagues who reinterpreted the Constitution as society evolved. He saw the “living Constitution” theory as a smokescreen for judicial activism with judges illegitimately conspiring to enact their preferred policies in the name of the Constitution. He stated to us: “Non-originalist judges always get *the result that they want*, and that is a seductive philosophy.” Scholars have studied his behavior and opinions systematically and confirmed he practiced what he preached.

His authority was the Constitution itself, and he yielded to this God-ordained document penned over two centuries ago. That alone made him a champion for religious freedom.

He would also not compromise his opinion in order to get five votes for a majority as some would, although he didn't always *like* the rulings he felt compelled to make. For example, he was the fifth vote in the flag-burning case where the Supreme Court found that it was not illegal to burn an American flag if it is your flag. He said he himself would never burn a flag but that the First Amendment of the Constitution gave us the right to express our discontentment in this way.

Someone said the solemn gray figures on the Court sat as silently as crows on a railing, but Scalia stood out like a talking parrot. He said members of the Supreme Court did not talk among themselves on fundamental issues. However, during oral arguments Scalia's questions and comments exceeded all others, getting his position across through what he said as cases were heard. He also attempted to influence his colleagues by sending them what came to be called “Ninograms”— short memoranda aimed at trying to get his views included in others' written opinions.

He felt his greatest contribution to the Supreme Court was that his presence brought greater attention to the text of the Constitution, that he had made reputable what was orthodoxy — that the Constitution still means what it says. Lets pray for another Scalia.

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