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## When it Comes to Sharing a Laugh at SCOTUS, the Late Justice Scalia is Still Supreme

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Rather than standing out for the persuasiveness of my argument or the scholarship underlying my position, my U.S. Supreme Court debut in 1993 appears to have been most notable for what law professor and blogger Josh Blackman called one of the longest laughs he had heard listening to audio of the court's oral arguments.

My experience came to mind when I learned about the latest statistics from professor Jay Wexler of Boston University, who has been tracking the [laughter] notations in argument transcripts since 2005. He recently shared on Twitter that Justice Stephen Breyer was the funniest justice in the 2017-18 term with 38 laughs. But Wexler previously has said that Justice Antonin Scalia "always got the most [laughs]" until his death in 2016. Justice Neil Gorsuch, who succeeded Scalia, garnered 12 laughs for his first year.

Justice Scalia's good humor was on display when, at his expense, I got him and the rest of the court to laugh.

That day in 1993, Justice Byron White was asking whether my case involved a federal question. As part of my answer, I used the term *uberrimae fidei*, I knew well that the term refers to the duty of utmost good faith under admiralty law. Unfortunately, despite all of my rehearsal for argument, I apparently had not uttered the term to anyone who knew to correct my pronunciation.

Justice Scalia interrupted: "Ms. Liberato, does everyone say *uberrimae fidei*, or is it just people from Texas? Is that really how you say that?"

My response: "Justice Scalia, it's only Italians from Texas that say it that way."

My next response was to cringe. Time froze. Then miraculously, Justice Scalia broke into a broad smile. Justice David Souter lightly pushed at Justice Scalia's shoulder and began laughing. So did the other justices. A roar of sustained laughter followed from the audience.

All the justices appeared to enjoy the joke and, with relief, I proceeded uneventfully to finish my argument in *Granite State Insurance Co. v. Tandy Corporation*.

No matter the court, I am genuinely and deeply respectful. That is doubly true for our nation's highest court. Even so, I confess to a natural and occasionally dangerous desire to make people laugh. I did not plan the joke, nor do I recall even thinking before I spoke. But somehow I must have known intuitively that a reference to our shared Italian heritage would play well with Justice Scalia.

My stab at high-court levity lived on. At a Houston Law Day luncheon three months later, I sat on the dais with a different Supreme Court justice, who was the keynote speaker. In introducing me as the president of the Houston Bar Association, the master of ceremonies retold the "Italians from Texas" story. After the justice completed his speech, he strode over to my seat. "I just want to shake your hand," he said. "You really got Justice Scalia."

My oral argument also was reported in the *ABA Journal*. Again, no mention was made of my persuasive presentation. Instead, the short article included a cartoon picturing a long-haired blonde in a cowboy hat arguing to grinning justices. For the record, I do not have blond hair and do not wear a cowboy hat, in court or anywhere else. I did like the fact that the article called me “quick thinking.” My loving Italian grandfather might have put it differently: “smart aleck.”

After hearing the story, people usually ask if I won the case. We settled after argument. But, like the story of the fish that got away, I am certain we would have won. The next term, the court heard a different case raising the same issue and ruled in favor of our position. No doubt the advocates in the second case—who coincidentally also were from Texas—had practiced pronouncing “*uberrimae fidei*” the way New Yorkers say it.

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