

To the Bag

2010) (quoting biographer Joan Biskupic)). When a state loses an original jurisdiction decision and he demurs, the boy who left Trenton at age six is branded a New Jerseyan (*N.J. Justices Dissent in River Case*, A.B.A.J. (April 1, 2008) (available at abajournal.com)). When the Chicago School of legal and economic thought is mentioned, the former professor becomes, like Augie March, a son of the Windy City (Peter Slevin, *Uncommon Ground*, WASH. POST (Oct. 6, 2008) (“Hyde Park . . . is anchored by the University of Chicago, an incubator for some of the nation’s most influential conservatives,” including Justice Scalia)). And we have been reminded that “in 1967, the State of Virginia became [the] home” of the Charlottesville professor and Nixon and Ford Administration official (*Nomination of Judge Antonin Scalia: Hearings Before the Senate Comm. on the Judiciary*, 99th Cong. 3 (1987) (statement of Sen. John Warner)).

Geography as a factor in nominations has receded in importance as considerations of temperament, ideology, sex, race, religion, education, and career path have risen. Citizens in Los Angeles may feel that they have less in common with a nominee from nearby Manhattan Beach than they do with one from Manhattan. It may be some time before the Court again reflects the continental distribution of the American people. Bern, we hardly knew ye.

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JUSTICE SCALIA NODDED

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In reading Joan Biskupic’s biography of Antonin Scalia,¹ I was shocked to see a quotation from the justice’s memorial to Edward Levi. Justice Scalia was describing the scene at his home when, with distinguished guests assembled, the key to the liquor cabinet was nowhere to be found: “I will never forget the image of the Attorney

¹ Joan Biskupic, *American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia* (2009).

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General [Levi], the Solicitor General [Robert Bork], and I . . . crawling around on our hands and knees on the living room Oriental rug, feeling for the missing key.”² The key had apparently been dislodged by a thirsty toddler.

The justice has a deserved reputation for careful writing. Indeed, Biskupic reports that Justices “Blackmun and Scalia . . . shared an obsession with their colleagues’ occasional grammatical gaffes.”³ Given that fact, given that the memorial was published in the *University of Chicago Law Review*, and given that Biskupic’s grammatical mind sometimes wanders,⁴ I assumed she had messed up the quotation. The mistake is obvious and jarring – “I will never forget the image of . . . I . . . crawling around” – and surely nothing so atrocious could have survived proofreading by Justice Scalia and the *Chicago* editors.

I was wrong. I checked, and, except for capitalizing “oriental,” Biskupic got the quotation right. She did replace a parenthetical (“and I think Kate [Mrs. Levi] joined us”) with an ellipsis, but that excision didn’t affect the grammatical structure of the sentence.

I realize most Americans no longer ponder the cases of pronouns, or even realize there’s something to ponder. (Remember nominative, objective, possessive? Probably not.) Our infelicities are no secret; from across the pond, Kingsley Amis ridiculed “between-you-and-I-ing like an American college graduate.”⁵ The justice and the *Chicago* editors should know better, however. And Justice Scalia’s remarks weren’t off-the-cuff. We all misspeak occasionally, but, with words in print, the grammatical standard should approach perfection.

² *Id.* at 61 (quoting Antonin Scalia, In Memoriam: Edward H. Levi (1912-2000), 67 U. Chi. L. Rev. 983, 987 (2000)).

³ *Id.* at 127.

⁴ See, e.g., *id.* at 61 (noting that, at the time of his nomination to the Supreme Court, John Paul Stevens was “just under an informal age limit set by administration lawyers to ensure that *whomever* they named had a significant tenure”) (emphasis added). The “whomever” should be a “whoever,” the subject of the verb “had,” not the object of “they named.”

⁵ Kingsley Amis, *The King’s English* 102 (1997).

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I'd like to think that sabotage was involved, that some left-wing *Chicago* editor wanted Justice Scalia to look bad. But I suspect more benign forces were at work (if grammatical mistakes can ever be benign): the justice and the editors weren't paying attention – this, after all, wasn't the lead article expounding a new theory of the First Amendment – or they were confused by the interposition of the parenthetical about Mrs. Levi. Even Chicago students get confused, and Supreme Court justices do too. Or so I've been told.

Whatever the explanation, everyone involved should be ashamed. It's too bad that the Biskupic biography has given new life to this horrible example of original misunderstanding. As an admirer of the justice, I would have preferred not to know.

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