

Essays, Reviews & Book Notices

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Mary Massaron
(313) 983-4801
mmassaron@plunkettcooney.com

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Nino and Me: My Unusual Friendship with Justice Antonin Scalia. By Bryan A. Garner. Threshold Editions, 2018. Pp. 384, \$28.

Full disclosure: I'm a longtime Bryan Garner fan. I first met him years ago when I attended one of his writing seminars in Detroit. Since then, I've arranged for him to speak at the Michigan Appellate Bench-Bar Conference, the National Foundation for Judicial Excellence's judicial symposium, and the Defense Research Institute's annual meeting. His usage books sit on my desk. And for years, I've resolved any brief-related usage or grammar question by telling my client or cocounsel, "Let's consult Garner." So when I saw his new book, *Nino and Me*, I bought it, of course. And as I'd expected, it's a great read. Garner is not only a terrific writer, but also a deft portraitist. His prose painting of Justice Scalia captures Scalia's passionate commitment to the law, his love of language, his joyous humor, and his occasionally irascible reaction to even those he counted as friends.

I've also long been a keen student of Justice Scalia's jurisprudence, both in my daily work as an appellate lawyer and in my continuing-education efforts. I've taken two of Justice Scalia's seminars on the separation of powers. In both, he offered his perspectives on the Constitution's structure and limitations. In analyzing the case-or-controversy requirement, he emphasized the structural protections it provides. He told attendees that we might never have occasion to argue this point in court but that we should nevertheless understand these structural protections to be good citizens. When Scalia lunched with me and several other lawyers one day, we saw the social side of the man, the side that Garner presents so effectively in *Nino and Me*. (Years later, I sent Justice Scalia a Michigan Supreme Court opinion that resulted from my use of his standing argument, and he took the time to write back.)

In reading *Nino and Me*, I hoped to reencounter Garner and Scalia, so to speak, and to learn more about the friendship behind some remarkable books.

Garner's friendship with Scalia began in an unlikely way – through a book review. Justice Scalia mentioned the word *snoot* during his first breakfast with Garner, explaining that it refers to someone who cares a lot about words and that it was coined by "[t]his man" who wrote a "most amazing piece." Turns out that the man was David Foster Wallace, and the amazing piece was Wallace's rave review of Garner's *Dictionary of Modern American Usage*. (That review is among the essays collected in Wallace's book *Consider the Lobster*.) When Justice Scalia learned that Garner was the subject of

Wallace's raves, he told Garner, "Your stock has just gone way up in my eyes."

After their initial breakfast, Garner and Scalia embarked on a professional and personal friendship that took them through the writing of several books, a series of public lectures and performances, and an array of personal activities. Justice Scalia officiated at Garner's wedding to his wife, Karolyne, whose unflappable presence is seen throughout *Nino and Me*. Garner charms readers with his description of how he and Karolyne met, their wedding, Karolyne's warmth, and her relationship with Justice Scalia.

Garner also recounts the writing process that he and Scalia used for their books, including their exchanging drafts, sitting side by side to edit and write, and stopping intermittently to discuss (or "argue" about) points of advocacy, grammar, or usage. Garner includes enough dialogue to make readers feel as if they've traveled through time and space to spend an afternoon in the company of these two intellectually energized companions. One lively exchange was prompted by Scalia's aversion to contractions in legal writing:

"We cannot use contractions!"

"But we must," I insisted. "A lot of our advice is negative. We can't keep saying 'Do not do this, Do not do that.' It sounds stilted."

"I never use contractions. I don't like them. They're *infra dignitatem*."

"You just used a contraction in that statement!"

"Lookit, I'm talking about formal writing. You know what I mean."

"And why do you say *infra dignitatem*? Most scholars say *infra dig* for short."

"That's a colloquialism. And it's a contraction. It's beneath one's dignity."

"I used to have a bias against contractions myself. But look how the best nonfiction writers of our day write: they use contractions."

"What do you mean?"

"*The New Yorker*. *The Atlantic Monthly*. *Harper's*."

"They're a bunch of lefties."

"Okay, then *National Review*."

"They're magazines. We're writing a book."

"I can cite readability studies showing that contractions make writing more readable. They really help. We want people buying this book and reading it."

“Well, I admit you know about that. I’ll conditionally go along with you for now, but I’m not happy about it. What really upsets me is what you’re doing on gender. You’re neutering my prose.”

“I’ve made it gender-neutral, yes.”

“That’s Jacobin, absolutely *Jacobin*,” he said while walking into the private restroom adjoining his office.

I wasn’t sure what that word meant – even though I recalled that he’d used the word a few times before – but I didn’t want to confess my ignorance. So while he was out of view, I sneaked a look at *Webster’s Second*: “violently radical.” But *Jacobin* was defined as a noun; *Jacobinic*, the big book suggested, would have been the right adjective. Naturally, though, I managed to suppress my urge to correct him – which, in any event, would have been insufferably pedantic. After all, I had been unfamiliar with both words.¹

As you see, *Nino and Me* has plenty to offer even (and perhaps especially) the most ardent snoot.

Garner and Scalia’s first book, *Making Your Case: The Art of Persuading Judges*, is the best book on advocacy that I’ve read. It’s concise, thorough, witty, and useful for beginners and experts alike. The story of how they wrote it – of their disagreements and how they sorted them out – is fascinating. But I especially enjoyed Garner’s description of their team-teaching of the book. The first such event was at the Kennedy Center, and I was in the audience. Garner and Scalia, sitting on stools, spoke to the audience for five hours. Garner explains, “As we got into the substance we relaxed and soon established a rhythm.” Reading Garner’s accounts of their repartee took me right back to that evening. But for the many who weren’t there, the writing is so crisp and the dialogue so sharp that you’ll feel as though you were.

Garner also describes the hours of painstaking work on their second book, *Reading Law: The Interpretation of Legal Texts*, a major treatise on interpretation. Since Justice Scalia is universally recognized as having restored the primacy of textualism to judging, and Garner universally recognized as the most authoritative writer on grammar, usage, and the meaning of words, their book on reading and interpreting texts could hardly have failed to be significant and useful. And while some critics of textualism have put a target on the book, it is quite simply the best such book in print today.

At its core, however, *Nino and Me* isn’t so much about Garner and Scalia’s co-authorship of two groundbreaking texts as it is about the simple joys of human interaction, buttressed by a common passion and mission. Most would agree that Justice Scalia was our most “famous” Justice for some decades. His name, face, and ideas were public property – the stuff of editorials, law review articles, television commentary, judicial emulation, and classroom debate. Garner himself holds a similar fascination for writing-savvy legal professionals and, as David Foster Wallace proved, writers in other genres. Against this public backdrop and the two public personas that have inhabited it, *Nino and Me* offers something singularly *private*.

ESSAYS, REVIEWS & BOOK NOTICES Cont.

As the book nears its end, Garner shares his sense of personal loss from Justice Scalia's unexpected passing. And while Garner also acknowledges the nation's loss, *Nino and Me* is not a book about U.S. history, the law, or civics. It is a book by a friend about a friend.