

## To the Bag

the class valedictorian. And that brought an end to the exclusion of Chinese from the white schools in Cleveland.

Unfortunately the next step, the elimination of segregated schools for African-Americans, took another twenty years, and is even today in litigation because the Justice Department deems the presence of a high school that is evenly divided between the races objectionable because another high school remains virtually all-black. The twists and turns continue.

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## ONE MORE BEARD

To the Bag:

In his excellent contribution to this journal's Supreme Court Top Ten Micro-Symposium, Brian Stewart presents detailed information about past and present justices' mustaches, as well as introductory information concerning past justices' beards.<sup>11</sup>

In one respect, however, Mr. Stewart's analysis is incomplete: He does not discuss the fact that one of the Court's *current* justices sported a beard for a full term of the Court, albeit two decades ago. That justice was Antonin Scalia. According to a contemporaneous Associated Press report, when the Court came out from behind the velvet curtain and onto the bench on the first Monday in October 1996, spectators were surprised to see a beard on Scalia's face. "And a beaut [the beard] is," the report continued. "This was a beard, black-and-white speckled, that came down from the sideburns, across the chin and up the other side."<sup>12</sup> Scalia wore the beard throughout October Term 1996, but it was gone by the time the curtain rose on October Term 1997, and it has not returned.

The fact that someone, even a Supreme Court justice, varied his personal appearance for a year or less might ordinarily pass unnoticed. But in this instance, the most official of the Court's records decree that attention must be paid. For more than a century, the Supreme Court has maintained

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<sup>11</sup> Brian M. Stewart, *Supreme Soup Strainers: Top Ten Supreme Court Mustaches*, 18 GREEN BAG 2D 453, 453 nn.1-2 (2015).

<sup>12</sup> See "To Beard or Not To Beard: That's Question," *Deseret News*, Oct. 7, 1996, at 2.

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a *Journal* as its official record of the business of each term, including a prefatory table of contents listing significant events of the term. For many years, preparing these *Journal* entries was the responsibility of the late Deputy Clerk Francis Lorson, who “included what he call[ed] ‘discretionary’ items that people will want to remember in the future.”<sup>13</sup> And in the *Journal* for October Term 1996, it is memorialized for posterity: “Scalia, J. Wore beard during the Term.”<sup>14</sup> A listing of bearded justices that omits this fact is, I fear, subject to a facial challenge.

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<sup>13</sup> Tony Mauro, *Longtime U.S. Supreme Court Deputy Clerk To Retire* (Aug. 12, 2002).

<sup>14</sup> See *Journal of the Supreme Court of the United States, O.T. 1996*, available at [www.supremecourt.gov/orders/journal/jnl96.pdf](http://www.supremecourt.gov/orders/journal/jnl96.pdf), at iii.