

## *How Scalia Law School Became a Key Friend of the Court*

George Mason University's law school cultivated ties to justices, with generous pay and unusual perks. In turn, it gained prestige, donations and influence.

By Steve Eder and Jo Becker

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In the fall of 2017, an administrator at George Mason University's law school circulated a confidential memo about a prospective hire.

Just months earlier, Neil M. Gorsuch, a federal appeals court judge from Colorado, had won confirmation to the Supreme Court seat left vacant by the death of Antonin Scalia, the conservative icon for whom the school was named. For President Donald J. Trump, bringing Judge Gorsuch to Washington was the first step toward fulfilling a campaign promise to cement the high court unassailably on the right. For the leaders of the law school, bringing the new justice to teach at Scalia Law was a way to advance their own parallel ambition.

"Establishing and building a strong relationship with Justice Gorsuch during his first full term on the bench could be a game-changing opportunity for Scalia Law, as it looks to accelerate its already meteoric rise to the top rank of law schools in the United States," read the memo, contained in one of thousands of internal university emails obtained by The New York Times.

By the winter of 2019, the law school faculty would include not just Justice Gorsuch but also two other members of the court, Justices Clarence Thomas and Brett M. Kavanaugh — all deployed as strategic assets in a campaign to make Scalia Law, a public school in the Virginia suburbs of Washington, a Yale or Harvard of conservative legal scholarship and influence.

The law school had long stood out for its rightward leanings and ties to conservative benefactors. Its renaming after Justice Scalia in 2016 was the result of a \$30 million gift brokered by Leonard Leo, prime architect of a grand project then gathering force to transform the federal judiciary and further the legal imperatives of the right. An ascendant law school at George Mason would be part of that plan.

Since the rebranding, the law school has developed an unusually expansive relationship with the justices of the high court — welcoming them as teachers but also as lecturers and special guests at school events. Scalia Law, in turn, has marketed that closeness with the justices as a unique draw to prospective students and donors.

The Supreme Court assiduously seeks to keep its inner workings, and the justices' lives, shielded from view, even as recent revelations and ethical questions have brought calls for greater transparency. Yet what emerges from the trove of documents is a glimpse behind the Supreme Court curtain, revealing one particular version of the favored treatment the justices often receive from those seeking to get closer to them.

A statue of Justice Antonin Scalia at George Mason University's law school. Hailey Sadler for The New York Times

The documents show how Scalia Law has offered the justices a safe space in a polarized Washington — an academic cocoon filled with friends and former clerks, where their legal views are celebrated, they are given top pay and treated to teaching trips abroad, and their personal needs are anticipated, from lunch orders to, in Justice Gorsuch's case, house hunting.

By law, justices may earn outside income from a limited number of sources: book advances and royalties, investments, and teaching. The judicial code of conduct specifically encourages teaching. Many justices have augmented their government salaries, which now hover beneath \$300,000, by holding classes at schools including Harvard, Duke and Notre Dame.

But Scalia Law quickly moved to the front of the line, in part by offering generous benefits. For teaching summer courses that generally ran for up to two weeks, Justices Gorsuch and Kavanaugh each made salaries that approached the legal cap on certain outside income, roughly \$30,000 in recent years.

The school also creates bespoke programs for the justices in far-flung locations. Justice Gorsuch has traveled to Iceland and Italy to teach; Justice Kavanaugh has taught in Britain. During the first pandemic summer, both justices pressed on with their classes, teaching at stateside resorts. (Only Justice Thomas has routinely held his classes on campus, with two of his former clerks as co-professors.)

“When a justice is with us, we do everything we can to engage the justice with our students,” the law school's dean, Ken Randall, said in a statement. He added, “Law schools serve students, and their education is undoubtedly enhanced by the justices teaching or visiting or speaking with students.”

At times, the justices' teaching has intersected with their positions on the court.

Justices Gorsuch, Kavanaugh and Thomas regularly used employees in their chambers to coordinate their outside academic duties, despite a judicial advisory opinion — which the justices say they voluntarily follow — that staff members should not help “in performing activities for which extra compensation is to be received.”

And in a number of instances, the justices' co-professors filed amicus briefs, trying to sway the court on pending cases, the records show.

A spokeswoman for the Supreme Court declined to comment for this article.

Some of the records reviewed by The Times were obtained through a public-records request, which the university fulfilled only after the court was allowed to review the documents. Many of them were held back or arrived heavily redacted. In a statement, Scalia Law said the court had been consulted for security reasons. (In addition, The Times examined records obtained years ago by the activist group UnKoch My Campus.)

By any number of metrics, Scalia Law's closeness to the justices has coincided with a striking upswing in its fundraising and academic standing. The number of graduates receiving prestigious clerkships has steadily increased, and that has helped the school attract higher-caliber students. Scalia Law is now tied for 30th place in the U.S. News & World Report rankings, a big jump in a relatively short time. In the process, it has become something of a hub of conservative legal thought, and legal society, in the capital.

Scalia Law has hit its stride in part by capitalizing on the conservative outcry against "woke" elite institutions of higher education. Having a robust conservative alternative like Scalia Law "adds to the debate," said C. Boyden Gray, a major donor to the school who held senior positions in both Bush administrations. "It is very healthy."

Yet to a lesser degree, the school has also been able to entice the court's liberals: Justice Elena Kagan, who has called for the court's conservative and liberal wings to rediscover "common ground," joined Justice Gorsuch as a distinguished guest when he taught his summer course in Iceland in 2021. Justice Sonia Sotomayor spoke on a Scalia Law panel with him the same year.

Justices Elena Kagan and Neil M. Gorsuch, center, with Scalia Law students in Iceland in 2021. He taught a course and she appeared as a distinguished guest during the summer program.

In late 2019, Justice Kagan emailed a George Mason professor who had clerked for Justice Thomas. "George Mason," she wrote, "seems a really good place to be."

Justice Gorsuch may have felt the same way when the law school, courting him in 2017, asked him to help choose the Italian city where, for two weeks the following summer, he would co-teach a seminar on national security and the separation of powers. A memo offered options including Padua, a "first-tier city in a picturesque setting," Venice, with its "seven-mile-long-sandbar known as Lido" and Bologna, "Italy's most prestigious academic city."

In the end, the class would be in Padua, where the law school put up the justice and his family in what a listing described as an “aristocratic,” antique-filled apartment in the heart of the old town.

A draft handbook for the trip, emailed to Justice Gorsuch, made clear that his teaching responsibilities would be limited to the mornings, leaving plenty of time for excursions, including planned visits to Bologna and Florence.

“Fantastico!” the justice responded.

## **A Bridge to the Court**

The rebranding as the Antonin Scalia Law School became official on July 1, 2016. Right away, the dean at the time, Henry Butler, began sending out save-the-dates for a dedication. At the top of his mind: ensuring that justices would be there.

The plan was for a day of celebrations in October, framed as a nonideological tribute to a justice beloved by his colleagues on both right and left. The renaming announcement quoted Justice Ruth Bader Ginsburg praising her close friend as “a law teacher, public servant, legal commentator and jurist nonpareil.”

But there was another aim, to raise money, with the justices as a draw. Justices Thomas and Ginsburg were to speak at a banquet in Washington’s historic Union Station. According to a seating chart, there would be tables named for the justices assigned to them: Justice Thomas (to be seated with Mr. Leo), Justice Samuel A. Alito (with former Vice President Dick Cheney) and Justice Ginsburg (with then-Judge Kavanaugh).

The Charles Koch Foundation was listed in the program as a \$100,000 “platinum” sponsor, and the law firms Kirkland & Ellis and Gibson, Dunn & Crutcher were among those with \$50,000 “gold” packages.

That mixing of the justices and the law school’s fund-raising brought a last-minute inquiry from the Supreme Court’s public information office. The court, according to an email to the dean from one of the school’s event planners, said it could not “clear the program” without confirmation that the dinner was “not a fund-raiser, because Supreme Court Justices cannot be involved in any fund-raising activities.”

Ultimately, Justices Thomas and Ginsburg did not speak, though both attended.

“Damn, this thing has be a lot of work,” the dean wrote to Mr. Leo, then the executive vice president of the Federalist Society, the conservative legal organization, and a co-chairman of the dinner. “But it is huge for Scalia Law (much bigger than the money.)”

The conservative legal activist Leonard Leo helped the dean of the law school broker a \$30 million deal with donors to rename the institution after Justice Scalia. Erin Schaff for The New York Times

Mr. Butler, who retired as dean in 2020, referred questions for this article to Scalia Law. The school said it could not answer them, since they related to Mr. Butler's tenure.

The law school, established at George Mason only in the late 1970s, had carved out a distinctive place on the right flank of legal academia. Its Law & Economics Center, devoted to one of the pillars of conservative legal thought — the idea that courts must consider the economic impact of the law — had offered training to more than 5,000 federal and state judges. Among the school's most prominent alumni — indeed its only Supreme Court clerk — was William Consovoy, who had helped persuade the high court to strike down key provisions of the Voting Rights Act.

For all that, a year after Mr. Butler took over as dean in 2015, the law school's U.S. News ranking dropped to 45th. "Falling out of the top 50," administrators wrote, "would be a disaster from which the law school would have a very difficult time recovering."

By then, Mr. Butler had turned to Mr. Leo for help. He was a rising power in the conservative ecosphere, helping to steer money to advance the Federalist Society's mission of filling the courts with judges who would interpret the Constitution according to the founders' intentions. In September 2015, the dean sent Mr. Leo a five-year plan rooted in their shared belief that opportunity, and a deep well of donor money, lay in doubling down on the law school's efforts to become an alternative to the left-leaning institutions that ruled the rankings.

Scalia Law, Mr. Leo wrote in response to questions from The Times, "is a model for what legal education should be in our country — grounded in objective analysis and truth-seeking, respect for the Constitution, and civility and balanced dialogue."

The windfall, and the way forward, came quickly. About two weeks after Justice Scalia's death on a Texas hunting trip in February 2016, Mr. Butler and Mr. Leo struck a \$30 million deal with donors to rename the school for him.

Ten million dollars came from the Charles Koch Foundation; the balance, the school explained, came from an anonymous donor who had approached Mr. Leo. (The benefactor is widely believed to be Barre Seid, an electronics manufacturing mogul and conservative donor who would later make an extraordinary \$1.6 billion contribution to a

political group controlled by Mr. Leo.)

The announcement rewound an earlier controversy set off by revelations that gifts to George Mason from the Koch foundation had come with influence over hiring decisions. The foundation, in a statement, said it was deeply committed to “fostering an open exchange of ideas among a diversity of perspectives.”

The double deal was a master stroke.

The money would, among other things, allow the law school to support new research centers organized around areas of special concern for the legal right, including a Center for the Study of the Administrative State and a Liberty & Law Center.

The renaming would be a bridge to the court.

At the morning dedication ceremony on Oct. 6, Justice Kagan spoke on behalf of the court. In addition to the Union Station dinner, Mr. Leo hosted a private luncheon for justices and other V.I.P.s, offering vegetarian or lobster risotto. (“Lobster is great,” the future Justice Kavanaugh wrote, emailing his menu choice.)

In all, the school collected at least \$750,000 that day, records show. Seven justices — all but Chief Justice John G. Roberts Jr. — attended some portion of the festivities.

That it could not be eight came courtesy of the Senate Republican leader, Mitch McConnell, who had refused to consider President Barack Obama’s choice to replace Justice Scalia before the upcoming presidential election. When Mr. Trump won, he inherited the opportunity to fill the open seat — with a conservative, drawn from a list of candidates developed by Mr. Leo.

It was also a chance for Scalia Law to fast-track its ambitions.

## **Wooing the Justices**

Scalia Law has sent Justice Gorsuch, right, to Padua, Italy, among other destinations, to teach courses.

As Judge Gorsuch moved to the top of the list for the court seat, he convened a war room of confidants to lobby for his nomination and help frame a confirmation strategy. Among them was Jamil N. Jaffer, a Scalia Law professor and founder of its new National Security Institute. Mr. Jaffer had clerked for the judge on the appeals court and counted him as a friend and mentor.

After the Supreme Court confirmation, Mr. Jaffer acted as the Gorsuches' unofficial relocation consultant, meeting with a real estate agent and touring at least one equestrian estate in Virginia. "Thanks, Jaffer 😊," the justice's wife, Louise Gorsuch, wrote after he sent an aerial video of the property. The justice followed up by asking Mr. Jaffer to arrange a tour for his wife.

Mr. Jaffer agreed to take time off from Scalia Law to join the new justice's chambers as a temporary clerk. He also began recruiting Justice Gorsuch to co-teach a law school class the following summer in Italy.

In response to questions from The Times, Mr. Jaffer said it was "terrific opportunity" for students to learn from Justice Gorsuch, whom he described as "an esteemed scholar in his own right." He said he had been glad to volunteer his personal time to help the justice's search for a home, "as I would for any friend."

On the faculty, Justice Gorsuch would join Justice Thomas, who had recently completed his first semester teaching alongside Neomi Rao, a former Thomas clerk who would become a Trump administration official and federal judge. That September, Mr. Jaffer sought Justice Gorsuch's feedback on the draft memo for the Italy program, which laid out why he would be such a prize catch for Scalia Law.

Jamil N. Jaffer, a professor at the law school, helped Justice Gorsuch with his home search after his ascent to the Supreme Court. Rod Lamkey/CNP/Sipa USA

“Justice Gorsuch is, of course, the newest member of the Supreme Court and the youngest to be appointed to the high court in a generation,” the proposal said. “He also holds the seat of the Law School’s namesake, Justice Antonin Scalia, and is widely believed to be a worthy successor to the legacy of that great man.”

The proposal included descriptions of the potential sites, relying in part on advice from Mr. Leo, who could use his “significant connections in Rome and at the Vatican,” should they be required.

Other law schools have hosted justices on expenses-paid trips abroad. New York University, for example, sent Justices Ginsburg and Sotomayor to a conference in Portugal in 2019, though they did not receive teaching salaries. In 2016, Tulane paid Justice Alito to teach in Berlin and Paris, according to his disclosure from that year, and covered his expenses. Notre Dame, which counts Justice Amy Coney Barrett as a longtime faculty member, has recently been vying for the court’s attention, sending Justice Alito to Rome and Justice Kavanaugh to London.

But judicial ethics guidelines require only that the justices make note that such travel took place; they do not have to disclose how much their flights, lodging and meals cost. In Justice Gorsuch’s case, it was not an insignificant amount, according to the records obtained by The Times.

For the justice’s first course in Padua, an email to his staff quoted a price of \$3,771 for airfare. During his Iceland class, the school reimbursed him \$5,250 for his lodging, in addition to paying his salary. The records show the school spent thousands of dollars more on flights and accommodations for special guest speakers — the justice’s friends, colleagues and other notables.

“While our guests are with us, I expect them (from experience in Padua) to want to eat, drink and be merry with us (especially with NMG),” one of the coordinators wrote, referring to Justice Gorsuch.

Amanda Frost, a law professor at the University of Virginia who specializes in legal ethics, said she found such arrangements troubling. “Some of this sounds like all-expenses-paid vacations, with a little teaching thrown in,” she said in an interview.



A redacted email about Justice Gorsuch's lodgings during his Iceland course. He was reimbursed \$5,250.

For Scalia Law, the next piece of the puzzle would be the next Trump appointee, Justice Kavanaugh.

He had taught at Harvard Law School for a decade while sitting on the appellate court in Washington. But that relationship ended amid a campus storm over allegations during his confirmation that he had engaged in sexual misconduct years before. The judge angrily denied the allegations and lamented, "I may never be able to teach again."

Within weeks of his confirmation, Scalia Law came calling. The new justice already had ties to the school. He had spoken there at least twice and was friendly with faculty members and ideologically aligned; he once cited three Scalia Law professors in a single decision.

Mr. Jaffer and another professor scheduled a visit with him at the court, followed by Mr. Butler, who then emailed the justice on Jan. 15, 2019, setting out the details of a proposed multiyear contract.

"Exact terms as the Gorsuch contract," the dean wrote. "The contract will need to make its way through university administrative labyrinth. But things are preapproved. We do not plan to make an announcement of your appointment at this time." (After word got out in March and protests ensued, the dean assured his new colleague that "all the ruckus" had come from the university's main campus, not the law school.)

Like Justice Gorsuch, scheduled to teach in Padua again that summer, Justice Kavanaugh would teach his two-week class abroad — at a university in Surrey, southwest of London, with accommodations for his family nearby in Runnymede, on the River Thames, where Magna Carta was signed. "We will find a nice cottage for them," Mr. Butler wrote.

Now three of the nine justices were ensconced at Scalia Law. "Conservatives always had a network," one donor to the school said in an interview. "Now they had a lounge."

## **Leverage**

After a flurry of events in the fall of 2018 marking the second anniversary of Scalia Law, Mr. Butler sent an email blast to the school's friends and colleagues with the subject line "Five Supreme Court Justices Came to Scalia Law School Last Week ... Here's Why."

The school had spent months pushing for the justices' presence. A highlight was a dinner, with several justices, that collected \$1.4 million. "Last week, Scalia Law made history," wrote the dean, whose message included four photos of the justices.

Scalia Law was walking a fine line: marketing its closeness to the justices amid the court's demands for opacity. In the emails obtained by The Times, court officials repeatedly pushed for media blackouts and tightly controlled announcements about events. "Photos may not be used on social media or for any endorsement, promotional or

fund-raising purposes,” a court employee wrote before an event featuring a justice.

Despite the prohibition against enlisting court staff members to help with paid outside work, records show that much of the labor of keeping up with the justices’ teaching and other activities at Scalia Law fell to their chambers’ administrative staff — organizing class materials and student papers, managing student visits and coordinating guest lectures.

A redacted email from someone working in the chambers of Justice Gorsuch, addressing a class he was teaching.

Justice Gorsuch’s staff used the justice’s login to create an online “forum/discussion” space for students and post readings, and submitted his grades to the school. The staff of Justice Thomas requested his class roster and collected his syllabus, helping to track down missing reading materials. Justice Kavanaugh’s chambers inquired about when he would get his paychecks, and whether he would get a raise.

At the law school, Mr. Butler sought to convert his closeness with the justices — he was on a texting basis with Justices Kavanaugh and Thomas — into bragging rights with donors. He also began calling in favors. The emails show Scalia Law beseeching the justices to attend a host of law school activities, as guests or speakers. Students were given tours of the court, escorted by justices. “I know the students were THRILLED to have the opportunity to get a behind-the-scenes look at the Court,” Jennifer Mascott, a Scalia Law professor who had clerked for Justice Thomas, wrote to her former boss.

And in July 2019, Mr. Butler emailed Justice Gorsuch on behalf of the Property and Environment Research Center, a Montana-based property rights group that describes itself as “the home of free-market environmentalism.” Mr. Butler sat on the group’s board at the time, and Justice Gorsuch, who is seen as generally sympathetic to landowner rights, was a natural ally.

“I believe you will love a visit to PERC and the Yellowstone Club in Big Sky — with its legendary skiing,” Mr. Butler wrote, attaching an invitation from the group’s chairman, Loren Bough. “Or, if you prefer to come in the summer, Loren will treat you to visit to his family’s ranch which is renowned for having some of the best trout fishing in Montana.”

The invitation was extended the month after the Supreme Court agreed to hear a property rights case of interest to groups like PERC. It involved a dispute between a group of Montana landowners and the Atlantic Richfield Company, owners of a Montana superfund site. On Oct. 22, PERC co-filed a brief asking the court to rule in favor of the landowners.

In a statement, PERC said that it had never received a response from Justice Gorsuch and that “there was no connection” between the invitation and the brief it filed “months later.”

But the law school records show that Mr. Butler continued to push, sending two follow-up emails, and, in early October, asking his staff to set up a meeting with the justice to discuss the invitation.

A redacted email from Henry Butler, then the law school’s dean, to Justice Gorsuch about a possible engagement in Big Sky, Mont., involving a property rights group that had interest in a court outcome.

The court ultimately ruled for the company, with Justices Gorsuch and Thomas in dissent.

Law schools and professors also frequently ask the court to take positions on specific cases, by filing amicus briefs. Such “friend of the court” briefs are an approved means by which outside parties can seek to influence the justices. They are often read by clerks, who forward only those making the most salient arguments, though a brief from someone connected to a justice can have an advantage.

Scalia Law professors are not simply regular filers; a quarter of the school’s briefs submitted to the court since the justices joined the faculty have been written by professors who served as the justices’ co-teachers, some while classes were ongoing.

Helen Alvaré, an associate dean, taught with Justice Kavanaugh in Britain in 2019, and again at the Nemaquin resort in Pennsylvania in 2020. In between, she filed a brief supporting the Trump administration’s expansion of exemptions to the Obamacare contraception mandate.

Ms. Mascott filed briefs in two cases in March 2022, while teaching with Justice Thomas, and a third brief that May as she prepared for an on-campus summer program with Justice Kavanaugh.

Justice Thomas appeared to echo her legal reasoning in his dissenting opinion in a case involving state sovereign immunity. Her brief in another case, involving the Department of Veterans Affairs, so caught Justice Gorsuch’s attention that he name-checked her during oral arguments.

“And what do we do with Professor Mascott’s amicus brief?” he asked the government’s lawyer.

Ms. Frost, the legal ethics professor, said that filing briefs in cases before the court while teaching with a justice could create “the appearance of impropriety,” even if the cases were never discussed. “It’s the proximity in time that’s concerning,” she said.

Mr. Randall, the current dean, said the briefs were often signed by many lawyers, some of them known to the justices. “I doubt that familiarity is limited to law professors,” he added.

## **A Place at the Table**