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Charles G. Miller, left, a principal at Bartko Zankel Bunzel Miller PLC, catches up with JAMS neutral James Warren, formerly a San Francisco County Superior Court judge, at a cocktail reception Tuesday for the Association of Business Trial Lawyers in San Francisco.



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From left, Gregory E. Schopf, Marcie Keenan Farano and Blaire Z. Russell, attorneys at Nixon Peabody LLP in San Francisco, mingle at an Association of Business Trial Lawyers event.



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U.S. Supreme Court Justice Antonin Scalia visits with lawyers before his speech Tuesday at an Association of Business Trial Lawyers event in San Francisco.



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From left, Shartsis Friese LLP partner Arthur J. Shartsis and Robert A. Goodin, a partner at Goodin, MacBride, Squeri, Day & Lamprey LLP, past presidents of the Northern California chapter of the Association of Business Trial Lawyers, chat with Manatt, Phelps & Phillips LLP partner Lenard G. Weiss and Justice Terry Bruiniers of the 1st District Court of Appeals in San Francisco.

A chance to rub shoulders

Hundreds gathered for cocktails and mingling at an Association of Business Trial Lawyers event Tuesday at the Four Seasons Hotel in San Francisco. The association's events are designed to encourage frank discussion between the bench and the bar.

The big draw of the evening was an hour-long talk by U.S. Supreme Court Justice Antonin Scalia and legal scholar Bryan A. Garner about their recently published book on textualism. Scalia and Garner entered the hour-long reception about halfway through and attorneys and judges lined up for the chance of a casual conversation with the justice.

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— **Hadley Robinson**

Justice talks of tome on textualism

US Supreme Court Justice Antonin Scalia and legal scholar Bryan Gardner shop book to SF crowd

By John Roemer
Daily Journal Staff Writer

SAN FRANCISCO — U.S. Supreme Court Associate Justice Antonin G. Scalia declined to shed his conservative curmudgeon's persona even as he got deeply into the technical weeds of textualism Tuesday before a crowd of lawyers and judges.

Scalia spoke before the Association of Business Trial Lawyers, filling a large ballroom at the Four Seasons Hotel.

Asked by a listener whether his insistence on a scrupulous concern with the Constitution's original meaning ever led him to a result he disdained, Scalia pointed to the time he'd joined a five-justice majority on the U.S. Supreme Court to invalidate bans on burning the American flag.

"Do you think I wouldn't like to have put in jail that bearded, sandal-wearing weirdo," Scalia growled, referring to Revolutionary Communist Youth Brigade member Gregory Lee Johnson, arrested for dousing with kerosene and lighting a U.S. flag during a political demonstration in Dallas.

"But to give a fair reading on the interpretation of the First Amendment, you are entitled to show your contempt for the government," Scalia added. *Texas v. Johnson*, 491 U.S. 397 (1989).

"I can't tell you how many cases I don't like the result of."

He replied to another questioner that "argle-bargle," the term he employed in June in his furious dissent when the high court overturned much of the Defense of Marriage Act, comes from Scottish dialect for argument.

"I was referring to the majority analysis," Scalia said. "It means nonsense."

Scalia, 77, appeared with Texas legal scholar Bryan A. Garner, 54, to promote their 2012 book, "Reading Law: The Interpretation of Legal Texts." The 500-page tome offers 57 principles and canons plus 13 falsities to guide judges in deciding cases.

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— U.S. Supreme Court Justice Antonin Scalia

But the rules don't work like kitchen recipes. No. 3, the Principle of Interrelating Canons, holds that no canon of interpretation is absolute because each may be overcome by the strength of differing principles that point in other directions. Scalia faulted the late legal realist Karl

N. Llewellyn of the University of Chicago for having tried to debunk the canons by showing they sometimes contradict each other.

"That is absolutely true," Scalia said. "But canons are clues. Clues do point in different directions. It is the job of a good judge to decide which clues have the greatest bearing on the case."

Scalia and Garner presented themselves as an odd couple who differ politically and enjoy mild bickering.

"You called me a big lib," Garner said. "No, I didn't," Scalia said.

To describe how judges must be wary of the alterations words undergo, Garner and Scalia quoted Queen Anne of England's likely apocryphal comment on St. Paul's Cathedral, that it was "awful, artificial and amusing" — by which she meant that it was awe-inspiring, highly artistic and thought-provoking.

"Words mean what they meant when

they were promulgated," Scalia said.

They both relished having caught Associate Justice Stephen G. Breyer in a dictionary error. Breyer, parsing "carry" in the phrase "carry a firearm," wrongly assumed that the first meaning listed for a word in the Oxford English Dictionary is the primary meaning, they claimed, citing *Muscarello v. U.S.*, 524 U.S. 125 (1998).

"Oh yes, he made a blunder," Garner said.

"A boo boo," Scalia said. "The O.E.D. does not list first the most prominent meaning, it lists first the earliest meaning."

Circuit Judge Carlos T. Bea, like Scalia a conservative, introduced the pair, noting that the 9th U.S. Circuit Court of Appeals has cited Garner and Scalia's book six times, once both in a majority opinion and in the dissent.

"Number of mentions by the circuit of Abner Mikva's book?" Bea said, referring to a liberal former judge and President Barack Obama supporter who also wrote about statutory interpretation. "None."

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