

Supreme Court Biographies as a Classroom Resource

John Paul Ryan

In a recent issue of the American Bar Association's Focus on Law Studies, Editor John Paul Ryan moderated a dialogue among a small group of distinguished legal biographers about the challenges they faced and processes they went through in writing about their subjects. Supreme Court biographies can offer students new perspectives on American history and politics, and are a great resource for the classroom. What follows are excerpts from three of the eight conversations contained in the dialogue. To read it in its entirety, please go to the American Bar Association's Division for Public Education website at www.abanet.org/publiced/focus/home.html.



G. Edward White,
University of Virginia
Law School,
Biographer of Oliver
Wendell Holmes Jr.



Joan Biskupic,
USA Today,
Biographer of Sandra Day
O'Connor



Juan Williams,
National Public Radio,
Biographer of Thurgood
Marshall

Ryan: How did early life experiences help shape the decisions, judgments, and professional successes of your subject?

G. Edward White:

The family of Oliver Wendell Holmes Jr. was very prominent, including ancestors who fought in the Revolution; the poet Anne Bradstreet; a grandfather, Samuel Jackson, who was a justice of the Supreme Judicial Court of Massachusetts; and his father, Oliver Wendell Holmes Sr.,

a household word in nineteenth-century America for his editorship of the *Atlantic Monthly*, his novels, and his career as a lecturer and a professor at the Harvard Medical School.

Holmes did not graduate high in his Harvard College class, but his ranking was affected by his leaving to join a volunteer Massachusetts regiment after the Civil War broke out in April 1861. Holmes found that the course of his young life was forever changed by his decision to remain a soldier until 1864

when, having been wounded three times, he declined to reenlist. Holmes entered Harvard Law School, [and] though he stopped attending lectures after one year, he passed the Massachusetts bar after an oral examination and joined a law firm. Nothing like fame came for Holmes until he was nearly 40, when, after 15 years of practicing law and writing scholarly articles, he delivered a series of lectures to write *The Common Law*.

Holmes was not ideally suited to be a judge. He was impatient with the collegial process by which opinions were produced. Opinion assignments were rotated evenly within the court, which meant that Holmes got fewer opportunities to put his legal theories into practice in the form of opinions, something he had coveted on becoming a judge. Most of his cases were on comparatively routine legal issues. At the age of 60, in 1901, he had reconciled himself to a professional life of comparative obscurity and found that situation frustrating, given his ambitions to be known as a legal thinker of significance. Had Holmes not been appointed to the U.S. Supreme Court at the age of 61, and had he not lived long enough to serve for 30 years as a Supreme Court justice, it is extremely unlikely he would have become one of the central figures in American legal history.

Juan Williams:

Thurgood Marshall's lifelong focus on the power of the law began as a child. First, he argued long and hard with his father at the dinner table. These arguments

with his dad, a heavy drinker, became famous because they sometimes argued so loudly that neighbors called the police. Young Marshall was not intimidated by the bellowing old man. To the contrary, he enjoyed the intellectual gamesmanship. And his dad enjoyed taking young Thurgood to Baltimore City Court to watch lawyers argue their cases and then replaying the arguments over dinner.

In his West Baltimore neighborhood, at the Colored High and Training School, Marshall also liked to argue with other students as well as teachers. His love of a good argument led him to become captain of the high school debating team. His inclination to argue with adults led him to become a regular in the school's detention room. And it led the principal to punish him with the added homework of memorizing the U.S. Constitution.

By the time he applied to Lincoln University, 16-year-old Marshall was bold enough to write that his career goal was "lawyer." He began to get serious about using the power of argument to create social change after being challenged by a fellow student, the poet Langston Hughes. The older Hughes wanted to

know why Marshall never raised his voice against a school policy that prohibited blacks from serving on the faculty of the all-black school. Marshall initially resisted the fight, but faced with a persistent Hughes and challenged by some of his white professors, Marshall began to organize the fraternities to support allowing blacks to join the faculty. The effort succeeded, and the next year the first black professor came to Lincoln. The experience brought together Marshall's love of debate with political awareness of the depth of racism—even on a campus full of black students. It inspired in him the idea that the arguments against racism could win the day. It also led him to the idea of using the Constitution—the law—to insist on equal rights for all in an integrated society.

Joan Biskupic:

Sandra Day O'Connor was very much influenced by her father. Harry Day was demanding in the best and worst ways. He challenged her to do her absolute best. But he was quick to anger and difficult to satisfy. Clearly, her dealings with this very tough man (whom she deeply loved)

steeled her for life in a male-dominated profession.

Her mother, Ada Mae, was a strong influence, in that she accepted her fate on the Lazy B [Ranch] and made "a hard life look easy." She was hostess extraordinaire and passed down to her daughter the first-rate social skills that define her still. O'Connor had a younger sister and brother who told me that they were more rebellious toward their father. They protested so much when they were sent away for school that they were allowed to return home and take local classes. Sandra, they said, put up with whatever was thrown her way. "She just handled it," her sister Ann insisted. The future justice took root on that dusty ranch where little else could.

Ryan: Your subjects eventually became U.S. Supreme Court justices. What were some of the key professional steps, contacts, and friendships that led them to the Court?

Joan Biskupic:

Sandra Day O'Connor was an unlikely

TEACHING ACTIVITY

Using Legal Biographies in the Classroom

Tiffany Willey

1. Ask students to research a particular justice's career on the Supreme Court. What cases did he or she help decide? How did those decisions affect the nation? What impact did they have on our daily lives?
2. Invite a judge to your class to discuss how he or she became interested in the law, how they came to the court, and what goes into how they decide a case. Your local or state bar association office may be able to assist you in making connections with judges.
3. Supreme Court and other "Article III" federal judges are nominated by the president, and then confirmed by the Senate. Ask students to research the appointment process. How do presidents select judicial nominees? How important do you think Supreme Court nominees are to our system of government?
4. Have students read biographies of Supreme Court justices and other legal professionals. How much of the biography is spent on the subject's service on the Supreme Court? How much is devoted to the subject's personal life? Do you think it's appropriate to consider how their personal life shaped their judicial career? Why or why not?

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choice for the Supreme Court, even for a president looking for the first woman appointee. When she was selected, she was serving on an intermediate state court and had spent virtually all of her professional life in Phoenix. But she had several things going for her as Reagan's men scouted out the potential first woman justice. She had built an amazing network of friends in California (mostly through her time at Stanford University) and in Arizona. She had served as co-chair of Nixon's reelection campaign in Arizona in 1972. She had society friends in the circles of Nancy Reagan and Reagan cabinet members. The luckiest stroke was a vacation she had spent with Warren Burger in 1979.

When Reagan's lawyers were screening potential nominees in 1981, they looked mainly at female federal judges. Aides Ken Starr and Jon Rose were asked to interview then-Arizona appeals court judge O'Connor at her Phoenix home. Starr told me that he was surprised that O'Connor was in the mix at all. She was

not from a key state or on an important court. When they interviewed her at her house, however, she was ready for them, and Starr was awed. She carefully answered all of their questions on constitutional law (and served them a lunch of salmon mousse salad she had made the night before). She similarly impressed President Reagan, who was intrigued by her pioneering family story and years in the Arizona legislature. After he met with O'Connor, he decided not to see anyone else.

Juan Williams:

Thurgood Marshall took a roundabout path to the Supreme Court. He got to know President Johnson, the man who nominated him to the Court, only after the Texan became president. Johnson knew of Marshall for his leadership of the NAACP Legal Defense and Educational Fund and especially for his legal victory in *Brown v. Board of Education*. Marshall had been on the cover of *Time* magazine and voted the most important civil rights

leader in the country, even after Martin Luther King Jr. led the Montgomery bus boycott. But Johnson had no personal contact with Marshall. Marshall, however, had strong ties and friendships with many of the president's top aides. Several years later when President Johnson was considering Marshall for a Supreme Court nomination, [he] was concerned that Marshall had lost 5 of 14 cases as solicitor general and might be vulnerable to southern segregationists on the Senate Judiciary Committee who wanted to defeat his nomination. Marshall, [however], was a man committed to law and order and willing to go to battle against black militants who did not respect the law.

G. Edward White:

Oliver Wendell Holmes Jr.'s path to the Court was far from easy. Although Holmes was the first choice of Massachusetts senator Henry Cabot Lodge for the vacancy confronting Theodore Roosevelt in 1902, he was distinctly not the choice of Massachusetts senior senator George Frisbie Hoar. As early as 1878, Holmes had been considered for a federal district judgeship, and Hoar had objected. [He] believed Holmes was unpredictable in his views, an intellectual dilettante, and not the "sound" sort of judge that the business community preferred. Roosevelt [was] aware of these views, [but] bypassed Hoar in the nomination process. The public response to Holmes's nomination was quite favorable, but [others] grumbled anyway, writing that Holmes's accomplishments were "literary and social ... not judicial."

Ryan: In your view, to what extent do biographies influence historical understandings of public figures? What was your subject's view of his or her own impact/importance?

Juan Williams:

Thurgood Marshall's first experience with biography blew up when the writer decided to begin the book with stories of

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cases he had lost as a practicing attorney. That came after a best-selling book on the Court portrayed Marshall as a token racial appointment. Marshall's raw, angry, emotional reaction to both attempts to tell his story suggests that he understood the impact of biographies on the historical understanding of a Supreme Court justice. While members of the Court are known to the public, their work takes place out of the sight of television cameras—their conferences, deal making, and opinions are private. Public understanding of the justices' contributions to the Court is almost certainly the result of research and interpretation from the hand of the historian, especially the biographer.

Marshall feared being misunderstood and undervalued by writers. But his biggest fear was being forgotten. Marshall also struggled with the fact that young people in the 1960s readily chose Dr. King and Malcolm X as their heroes, while appearing to forget him and his contributions to history. He could not understand why Dr. King and Malcolm X became so celebrated for their civil rights work while, in his mind, he was overlooked.

Marshall's story is central to American history in the twentieth century and still relevant to the legal and racial issues now challenging our nation. I think future historians will view Marshall to be far more significant to the Court and the nation than today's writers.

Joan Biskupic:

In writing the O'Connor biography, I emphasized the politician who came

to Washington knowing how to count votes and who greatly influenced the law through an ability to work the (ideological) middle. I was interested in showing how this first woman justice bested the men behind the scenes, all the while presenting herself more in the mode of the Junior League president she once was.

Historians' ultimate views of any justice will be determined by time and the authors' vantage points. For my part, I have tried to find out as much as I can about the early influences on my subjects, to build a record of how they operated behind the scenes, and to follow the trajectory of their lives in our times. As much as I have been interested in making my subjects more understandable and relevant now, I have tried to develop enough background to contribute meaningfully to the historical record and the biographers who come after me.

G. Edward White:

I like to paraphrase Holmes's aphorism that all ideas are dead in 25 years. An important part of the power of ideas is their cultural resonance; and as a culture changes, contemporary actors see historical issues and actors differently.

The biographer and his or her perspective can play a very important role in shaping the historical image of a subject. But over time, certain subjects will transcend the historically confined concerns of biographers. When I decided to write on Holmes in the late 1980s, the human dimensions of a judicial life were coming to be considered a relevant part of a portrait of judge, whereas previously

most judicial biographies had not focused much on judges' private lives. Thus, it is not only what a historical subject brings to the biographer—how interesting and multidimensional the subject's life was—but what the biographer chooses to emphasize. And that choice is not entirely voluntary—it is the product of the biographer's culture.

But in the end, "fame" in a historical actor and "scholarly influence" for a biographical work confront the same obscuring forces in the flow of time. Thus, it is a sort of ironically delicious conundrum to confront in choosing to do biography. Is one resurrecting and helping perpetuate the reputation of a historical figure, or only participating in a larger process in which that figure's reputation is consigned to oblivion? 🌐

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RESOURCES

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Women's Legal History Biography Project at Stanford Law School: <http://womenslegalhistory.stanford.edu>.