

## Beguiling Biographies

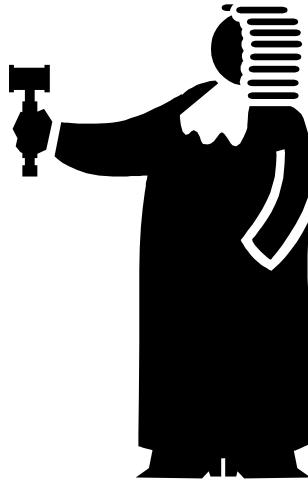
by Elizabeth Harmon

Can we interest you in a *saga*, a *sketch*, a *chronicle* or perhaps a *vita*? The Orange County Public Law Library has all four and then some. In other words, how about a *biography* for your reading pleasure? It wouldn't be surprising if some patrons thought that a law library would not carry much in the way of biographies or perhaps if they did they would focus on famous lawyers, notable judges, or influential Supreme Court justices. In fact, one patron even questioned why a book featuring former President Ronald Reagan was included in the current library display case, when he wasn't a lawyer. The patron was right - unlike former President Richard Nixon (also included in the library display case), who was a lawyer, President Reagan was not. However, this particular display case theme was designed to showcase the *variety* of biographical

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## Obamacare meets the Supremes

by John Patrick Quigley



### Searching for Meaning

In 2010, Congress passed The Patient Protection and Affordability Care Act, commonly called Obamacare. Whether that's flattering or insulting to the President depends on your view of that Act – and that is “complicated.” The then Speaker of the House Pelosi was famous (or infamous) for saying that they had to pass the Act to find out what was in it. As clueless as that statement sounds, it makes a certain amount of sense. There certainly has been no shortage of Judges and Justices attempting to find meaning – no two of whom seem

to have found a common answer (a refreshing change from the frequent pattern of bloc voting by Liberal and Conservative Justices).

One feature that became especially controversial was an “individual mandate” which required most Americans to maintain “minimum essential” health care coverage (as defined by the Federal Government) (26 U. S. C. § 5000A, Floor 3 KF62.5.W45 & Westlaw). Another contentious provision was an extension of Medicaid coverage (26 U. S. C. § 1396, *ibid*), which coerced participation by the States. Twenty-six States, among other parties, sued various agencies and employees of the Federal Government. A Senior District Judge in Florida held that the mandate was unconstitutional and nonseverable, making the entire Act invalid (780 F.Supp.2d 1256, Floor 3 KF105.F452 & Westlaw). The Eleventh Circuit Court of Appeals affirmed the unconstitutionality of the individual mandate, but found that it was severable, reinstating the rest of the Act and affirming the District Court's determination that the Medicaid expansion was constitutional (648 F.3d 1235, Floor 3 KF105.F43 & Westlaw). The Supreme Court reversed both decisions, ruling that the individual mandate was constitutional and the Medicaid expansion was not (National Federation of Independent Business v.

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## November Approaches...

by Kelsey Chrisley

With November approaching, memories flood my mind. I reminisce about my first voting experience. Waiting for what seemed a lifetime before I could vote. I remember the sense of responsibility and the excitement of studying the issues and candidates, making my decision, and the actual act of voting by marking my ballot. As a veteran, November, also reminds me of family, friends, and others who proudly served and serve the United States by donning the uniform of responsibility for protecting our freedom and rights. Veterans Day is a special day set aside to remember those who served in the armed forces in combat or non-combat arenas and those who are living, as well as those who perished. For me, I remember the individuals that have given their life, a limb, or their mind protecting our freedom and rights. I reflect upon the physical and psychological impact on the family members as well. November also prompts memories of thanksgiving celebrations with my family in the mid-west.

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**Obamacare meets the Supremes***(Continued from page 1)*

Sebelius, (132 S.Ct. 2566, Floor 3 KF101.A3A9 & Westlaw).

**No Further Stretching of the Commerce Clause**

In the beginning of his opinion, Chief Justice Roberts referred to Chief Justice Marshall's 1819 opinion in the *McCulloch* case: "The Federal Government is acknowledged by all to be one of enumerated powers." (ibid, p. 2576) Roberts held that the individual mandate did not fall within the power of Congress to "regulate commerce." (Art. I, § 8, cl. 3) He was joined by the other conservative Justices, Scalia, Kennedy, Thomas and Alito.

In dissent, Justice Ginsburg, joined by the other liberal Justices, Sotomayor, Breyer and Kagan, also referred to Marshall's opinion in the *McCulloch* case: the Constitution was of necessity a "great outlin[e]," not a detailed blueprint (ibid, p. 2615). Ginsburg referred approvingly to the 1942 *Wickard* case, which upheld a penalty imposed on a farmer who grew wheat on his own land for his own use (ibid, p. 2619).

That is about as far as the conservative majority is willing to go. (And Thomas objects to going that far - ibid, 2677.) Roberts writes for them: "The individual mandate forced individuals into commerce precisely because they elected to refrain from commercial activity. Such a law cannot be sustained under a clause authorizing Congress to 'regulate Commerce'" (ibid, p. 2591). Similarly, the power to "make all Laws which shall be necessary and proper for carrying into Execution" the powers enumerated in the Constitution (Art. I, § 8, cl. 18) is not available where there is no Constitutional power requiring it (ibid, p. 2591).

**Saving Obamacare**

But there is an inherent conservative dilemma. Attempting to conserve the original intent of the Constitution required that the Court strike down a law passed by the elected representatives of the citizens. Roberts cites Justice Holmes: "[T]he rule is settled that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act." (ibid, p. 2593) Roberts did not "express any opinion on the wisdom of the Affordable Care Act. Under the Constitution, that judgment is reserved to the people" (ibid, p. 2608).

Accordingly, Roberts considered whether the individual mandate could be constitutional if viewed as a tax, under Congress's enumerated power to "lay and collect taxes" Art. I, § 8, cl. 1 (ibid, p. 2593). "The Federal Government does not have the power to order people to buy health insurance. Section 5000A would therefore be unconstitutional if read as a command. The Federal Government does have the power to impose a tax on those without health insurance. Section 5000A is therefore constitutional, because it can reasonably be read as a tax" (ibid, p. 2601).

**When a Tax Is Not a Tax**

But in the Anti-Injunction Act, Congress had enjoined "restraining the assessment or collection of any tax...." (Issues had to be litigated after payment.) And Roberts had justified jurisdiction by holding that the payment in the Act could also be viewed as a penalty rather than a tax. This was too much for the other four conservative Justices, who wanted to keep jurisdiction, but didn't want to uphold the act. Writing for them, Justice Scalia said that Robert's approach "suggests a creature never hitherto seen in the U. S. Reports: a penalty for constitutional purposes that is also a tax for constitutional purposes" (ibid, p. 2650).

The four liberal Justices were happy to go along with the new creature. Heck, they were also in favor of using the Commerce Clause and the Necessary and Proper Clause, knowing few clauses expanding government power that they don't like. However, Justice Ginsburg could see "no reason to undertake a Commerce Clause analysis that is not outcome derivative" (ibid, p. 2629). That's possibly code for future courts that the conservative majority's ruling on the

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*Obamacare meets the Supremes**(Continued from page 2)*

Commerce Clause was only dicta. This was in a note, perhaps hoping to escape Roberts' notice?

But the Chief Justice is nobody's fool. He had gone to Harvard. He responded: "But the statute reads more naturally as a command to buy insurance than as a tax....It is only because the Commerce Clause does not authorize such a command that it is necessary to reach the taxing power question" (ibid, p. 2600) [in order to validate the Act].

**A Consolation Prize For the States**

Roberts struck down the Act's requirement that the States must accept an expensive extension of Medicaid benefits, or risk Federal funding to them for Medicaid- not just the new, increased funding, but also that previously authorized. He was joined by the other four Conservative Justices. Liberal Justices Breyer and Kagan even joined in, they were so grateful that Obamacare had been saved. Some ultra-liberals have gotten into a conniption over the two joining the Conservatives, but they may have gained some gratitude from States Righters, and their votes didn't really matter anyway, given the five Justice conservative majority.

Ginsburg and Sotomayor joined in ruling that the stricken Medicaid extension was severable, thereby saving the rest of the Act. Ginsburg took pains to make clear that he didn't concur in striking the Medicaid extension (ibid, p. 2642). 

**Beguiling Biographies***(Continued from page 1)*


material found in the Law Library's collection.

To begin with, the collection does indeed contain an array of material on law-related biographies. A short list of these books include, among others:

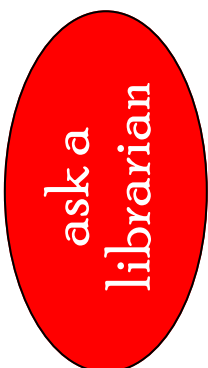
- Hugo Black (KF8745.B55H34) Lawyer and United States Supreme Court Justice {9+ vols.}.
- Louis D. Brandeis (KF8745.B67L5) Harvard Law School alum, lawyer, Supreme Court Justice {5+ vols.}.
- Myra Bradwell (KF368.B712F75) America's 1<sup>st</sup> woman lawyer.
- Salmon P. Chase (E415.9C4N58) Lawyer, Senator from Ohio, 23<sup>rd</sup> Governor of Ohio, U.S. Treasury Secretary, 6<sup>th</sup> U.S. Chief Justice.
- Johnnie Cochran (KF 373.C59A35) Defense attorney in the O.J. Simpson trial.
- Clara Shortridge Foltz (KF368.F64A93) Lawyer, 1<sup>st</sup> female deputy district attorney, 1<sup>st</sup> female lawyer admitted to the California State Bar, 1<sup>st</sup> woman appointed to the State Board of Corrections, 1<sup>st</sup> female Notary Public {2 vols.}.
- Oliver Wendell Holmes, Jr. (KF8745.H6H6) Lawyer, Chief Justice of the Massachusetts Supreme Judicial Court, became known as *The Great Dissenter* {13+ vols.}
- Edmund Randolph (kf363.R35R42) Lawyer, 7<sup>th</sup> governor of Virginia, 2<sup>nd</sup> Secretary of State, and 1<sup>st</sup> United States Attorney General.

In addition to these manifestly informative biographies, the library also includes material on other famous Americans that include Founding Fathers, U.S. Presidents, U.S. Statesmen, and other noteworthy individuals. Again, the short list below includes some of these renowned figures:

- Dean Acheson (E814.18) the 51<sup>st</sup> U.S. Secretary of State, helped design the Marshall Plan, develop the Truman Doctrine, and create NATO.
- Benjamin Franklin (E302.6.F8V32) Founding Father, author, diplomat, inventor, Postmaster, scientist, and the list goes on.
- Thomas "Tip" O'Neill (A748.049C55) Speaker of the House.
- Thomas Jefferson (E322.2m38) 3<sup>rd</sup>; Abraham Lincoln (E457.R42) 16<sup>th</sup>; Theodore Roosevelt (E757.M883) 26<sup>th</sup>; Woodrow Wilson (E767.A45) 28<sup>th</sup>; Dwight D. Eisenhower (E836.G73) 34<sup>th</sup>; Richard Nixon (E856.B74) 37<sup>th</sup>; Gerald Ford (E865.M45) 38<sup>th</sup>; Ronald Reagan (E877.M46) 40<sup>th</sup>: Presidents of the United States.

So, if you are interested in some light reading, as in a *vita* (a brief account of somebody's life) or a *saga* (as in the book *Benjamin Franklin* – 782 pgs.), the Law Library has both and some in-between. Be sure to pick-up the bibliography put together by the OCPLL's Reference Librarian, Mora Prestinary, which lists biographies, their call numbers, and floor locations. 





by Mora Prestinary

Q

Is my current spouse's income going to be counted for child support?

A

"The income of the obligor parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case--"

See California Family Code §4057.5(a).

The current unannotated California Codes are available on the Legislature's website  
[www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)



## Fall Book Display: Biography



Arranged by Elizabeth Harmon.  
Bibliography by Mora Prestinary

*November Approaches...**(Continued from page 1)*

Today, as a librarian, I continue in my own way to serve our nation and protect our freedom and rights along with the right to access accurate information. Sometimes it is hard to shift through the myriad political hyperbole to find a candidate's position on an issue or the real text of a ballot initiative or proposition. How I yearn for my first voting experience, when information seemed so straightforward.

With November elections fast approaching, I encourage you to review the statewide-qualified ballot measures or propositions in the Official Voter Information Guide at the California Secretary of State's website, [voterguide.sos.ca.gov/propositions/](http://voterguide.sos.ca.gov/propositions/). There are eleven propositions whose topics include genetically engineered food labeling, human trafficking penalties and redistricting. Each proposition has sections that provide a summary, what your vote means, arguments, and contacts for additional information. In addition, the text of the proposed law is available and it states whether the measure was placed on the election ballot by petition signatures or by the State Legislature. If you are interested in the funding behind the statewide-qualified ballot measures, the California Secretary of State's Cal-Access Campaign Finance webpage provides these details, <http://cal-access.sos.ca.gov/campaign/>. If you are curious about the measures that did not qualify for the election ballot, with interesting topics that include medical marijuana patient associations, property tax exemptions for disabled veterans, state income taxes for undocumented immigrants and the elimination of the California High Speed Rail Authority, they may be found at [www.sos.ca.gov/elections/ballot-measures/failed-to-qualify.htm#1580](http://www.sos.ca.gov/elections/ballot-measures/failed-to-qualify.htm#1580).

If you decide to exercise your power to change government by launching a statewide ballot measure for adoption as a California statute or constitutional amendment, the necessary requirements are outlined in the State Initiative Guide, [www.sos.ca.gov/elections/ballot-measures/initiative-guide.htm](http://www.sos.ca.gov/elections/ballot-measures/initiative-guide.htm). If that is more than you want to take on right now, you can still exercise your right to vote. Register to vote by October 22, request a vote-by-mail ballot by October 30, and vote on Nov 6 (polling stations are open from 7:00 am to 8:00 pm.)

In the few weeks before November arrives, I invite you to review the statewide ballot measures, mark your calendar for November 6 to vote and observe Veterans Day in your heart or by thanking a veteran. 📖



## Looking at the Web *by Mora Prestinary*

### **The Patient Protection and Affordable Care Act (ObamaCare)**

Public Law 111-148; 124 Stat 119

[www.gpo.gov/fdsys/pkg/PLAW-111publ148/html/PLAW-111publ148.htm](http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/html/PLAW-111publ148.htm)

**VoteSmart** : A website devoted to biographies, voting records, issue positions, ratings, speeches, campaign finance information and politicians.

<http://votesmart.org/>

### **California Ballot Measures 2012: Props 30-40**

[www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm](http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm)

**California Voter Information** : Includes Voting dates to Remember, How to Vote, Online Resources, information about voter registration, etc.

[voterguide.sos.ca.gov/voter-info/](http://voterguide.sos.ca.gov/voter-info/)



# WHAT'S GOING ON

by Molly Solazzo

## Legal Clinic - Special Education Rights

**Date:** October 19, 2012

**Location:** UCI School of Law

**Topic:** Educational Rights Legal Clinic

UCI Law students will work with attorneys from the Legal Rights Learning Center to conduct legal intakes with families regarding their children's special education rights.

By appointment only, please call the Learning Rights Law Center at 213-623-4794 for income qualification requirements and to schedule an appointment for that day.

## Ongoing Workshops at the Law Library

### **Clean Up Your Criminal Record**

Every 2nd and 4th Tuesday of the month, at 2 pm.

You must check-in at 2 pm to be admitted and you must bring your California criminal record(s) from the Court(s) in which convicted, OR, your California Dept. of Justice Rap Sheet; if necessary your own interpreter.

#### Please Note:

"How to Answer an Unlawful Detainer" workshop formerly held at the Library is now offered at the Superior Court Self-Help Center (West Justice Center)

## Library Closed

### Holiday & Furlough Days Closed:

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## Orange County Public Law Library

Monday-Thursday 8 am - 6 pm  
 Friday 8 am - 5 pm  
 Saturday 9 am - 5 pm

515 North Flower Street  
 Santa Ana, CA 92703  
 Civic Center Plaza, Building 32  
 Tel: (714) 834-3397

[www.ocpll.org](http://www.ocpll.org)

Due to a reduction in funding, the Library is closed on alternate Wednesdays and the staff is furloughed. The Library is closed every Sunday.

### Transcript Contributors:

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