



EDWARD M. KENNEDY ORAL HISTORY PROJECT

Interviewer's Briefing Materials **Thurgood Marshall, Jr. Interview, 07/26/2007**

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Miller Center Documents¹

- Thurgood Marshall, Jr. Timeline.
- 1990 Immigration Act Overview Memo, 04/06/2006.

Secondary Source Materials

- Thurgood Marshall, Jr. bio, <http://bingham.com>.
- Paul Horvitz, "Schmoozing his Way through the Corridors of Power," *International Herald Tribune*, 11/15/1993.
- Thurgood Marshall, Jr., "United States: Let South Africa Decide," *Legal Times*, 09/15/2003.

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THURGOOD MARSHALL, JR. TIMELINE

Prepared by Sara M. Henary

Miller Center, University of Virginia, 07/19/2007

1956

August Thurgood Marshall, Jr. (Marshall, Jr.) is born on the 12th to Thurgood and Cecilia Suyat Marshall in New York City, NY. (*1991 Congressional Staff Directory*, Congressional Staff Directory, LTD.: Mount Vernon, VA, 1991, p. 912).

1965

April In preparation for the Senate debate on his poll tax amendment to the Voting Rights Act of 1965, which would outlaw the poll tax in state and local elections, Senator Edward M. Kennedy (EMK) telephones Judge Thurgood Marshall to ask for advice. EMK had heard that Marshall prepared for his oral argument before the Supreme Court in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) by practicing in a “moot court” setting. EMK delivers a long floor speech on the 13th, but the amendment ultimately fails, 49-45. (*The New York Times*, 08/22/1965)

1967

June -August On June 13th, President Lyndon B. Johnson nominates Solicitor General Thurgood Marshall to the U.S. Supreme Court. If confirmed, Marshall would become the first black justice to sit on the Court. EMK is a strong supporter of the nomination in the Senate. Marshall is recommended for confirmation by the Judiciary Committee, 11-5, and is confirmed by the Senate, 69-11, on August 30th. (*1967 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly Inc., 1967, pp. 1041, 1305, 1677).

1968

April On the 9th, EMK, Senator Robert F. Kennedy (D-NY), and Justice Marshall are among the government officials who attend the Atlanta funeral of Dr. Martin Luther King, Jr., who was assassinated in Memphis, TN, on April 4th. (*The New York Times*, 04/10/1968)

1974

Marshall, Jr. serves as an intern on the legislative staff of House Speaker Carl B. Albert (D-OK). (*The New York Times*, 08/06/1974; *International Herald Tribune*, 11/15/1993)

1978

Marshall, Jr. earns a B.A. from the University of Virginia. (*1991 Congressional Staff Directory*, p. 912)

1979

January On the 3rd, EMK attends the inauguration ceremony of Marion S. Barry, the incoming mayor of Washington D.C. Barry is sworn in by Justice Marshall. (*The Washington Post*, 01/03/1979)

1981

Marshall, Jr. earns a J.D. from the University of Virginia School of Law. (*1991 Congressional Staff Directory*, p. 912)

1981-1983

Marshall, Jr. clerks for Judge Barrington D. Parker at the U.S. District Court for Washington, D.C. (*1991 Congressional Staff Directory*, p. 912)

1983-1985

Marshall, Jr. works as an attorney for the Washington-based law firm of Kaye, Scholer, Fierman, Hays & Handler. (*1991 Congressional Staff Directory*, p. 912)

1983

September On the 24th, Marshall, Jr. marries Colleen P. Mahoney.

November On the 22nd, EMK and Justice Marshall both attend a memorial service in Washington commemorating the 20th anniversary of President John F. Kennedy's (JFK) assassination. (*Chicago Tribune*, 11/23/1983)

1985-1987

Marshall, Jr. serves as committee counsel to Senator Albert A. Gore, Jr. (D-TN) on the Senate Committee on Governmental Affairs' Subcommittee on Civil Service, Post Office, & General Services. In addition to serving as counsel for the subcommittee's minority staff, Marshall, Jr. serves as staff director. (*1986 Congressional Staff Directory*, 1986, pp. 217-218; *1987 Congressional Staff Directory*, p. 981).

1987-1988

Marshall, Jr. serves as staff counsel on the Senate Commerce, Science, and Transportation Committee's Consumer Subcommittee. Gore chairs the

subcommittee. (1987 *Congressional Staff Directory*, pp. 228-229, 981; 1989 *Congressional Staff Directory*, p. 727).

Marshall, Jr. shifts from committee work to serve as a deputy campaign manager for Gore's 1988 Democratic presidential campaign. (1991 *Congressional Staff Directory*, p. 912)

1988

April Justice Marshall dissents when a majority of the Supreme Court justices agree, 5-4, to reconsider the Court's decision in *Runyon v. McCrary* (1976). The 1976 ruling held that private schools could not discriminate against applicants on the basis of race under a post-Civil War federal law. Although *Runyon* specifically addressed only discrimination against blacks in private school admissions, the ruling had been applied more generally to cover racial discrimination in all private transactions. EMK urges the Court to uphold *Runyon*. (*The New York Times*, 04/26/1988; *The Wall Street Journal*, 06/29/1988)

1989-1992

Marshall, Jr. joins the Judiciary Committee staff of EMK, who currently chairs the committee. He serves as counsel on the Committee's Subcommittee on Immigration and Refugee Affairs. (1989 *Congressional Staff Directory*, p. 245; 1990 *Congressional Staff Directory*, p. 282; 1991 *Congressional Staff Directory*, p. 299; 1992 *Congressional Staff Directory*, p. XXX).

1989

Marshall, Jr. travels to Nicaragua as part of a bipartisan team in order to monitor preparations for the nation's upcoming election. He takes a similar trip to Chile with the bipartisan American Council of Young Political Leaders. (*International Herald Tribune*, 11/15/1993)

July EMK and Senator Alan Simpson (R-WY) are the lead Senate sponsors of major immigration reform. The bill would increase the immigration cap to 630,000 with 480,000 spots reserved for immediate family of U.S. citizens. An unlimited number of parents, minor children, and spouses would be permitted to immigrate. The bill would reduce the quota for immigrants applying for visas under the "Fifth Preference," which grants entry to adult brothers and sisters of U.S. citizens. Furthermore, adult brothers and sisters could only qualify under Fifth Preference if they were unmarried. These changes were opposed by Hispanic groups who claim that uncles and aunts are as much part of the Hispanic nuclear family as fathers and mothers are in America. The bill would also set aside 150,000 spots for "independent immigrants" (i.e. educated, English-speaking immigrants with particular skills needed in the American workforce). Asian and Hispanic lobbies oppose the English-speaking preference as unfairly advantaging

Western European applicants. Also, the bill creates a two-tiered visa allocation system, allowing family unification but with more of a focus on immediate family than under current law. The two-tiered system also places importance on immigrants' skills. In the first tier, 480,000 visas are for family immigration. This tier is broken down into family preferences. The first category is for unmarried adult sons and daughters of U.S. citizens (24,200 visas); the second is for spouses, and unmarried sons and daughters under the age of 26 for permanent residents (148,000 visas, plus any leftover visas from the first category). The third category is for married sons and daughters of U.S. citizens (23,000 visas, plus leftover visas from the first two categories) and finally, brothers and sisters of adult U.S. citizens (64,800, plus leftover visas from the first three categories). In the second tier, 150,000 visas are for the new independent or immigrant skills category. Finally, the legislation creates an independent commission on immigration reform, increases the quota for Hong Kong immigrants leaving before the British hand over control in 1997, and provides amnesty for spouses who do not fall under the 1986 amnesty law to avoid splitting families apart. EMK manages to organize ethnic, business, and labor lobbies to support the bill to ensure passage. In July, the bill passes by a wide margin, 81-17. (*1990 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly Inc., 1991, pp. 474-475)

September The House Judiciary Subcommittee begins to hold hearings in September but does not take action, although indicating that it will act on its version of the bill in 1990. EMK makes a direct appeal to the new House Judiciary Committee Chair Jack Brooks (D-TX) to encourage House action. (*1990 Congressional Quarterly Almanac*, p. 475; Clymer, p. 478)

1990

October The House passes its version of immigration reform with an increase to 800,000 in the first three years –higher than that passed by the Senate. (*1990 Congressional Quarterly Almanac*, pp. 475-487)

October-November Simpson opposes the changes in conference. Simpson demands a firm cap on immigration, 700,000 in the first three years and 675,000 after that, and an English-language requirement. Senate Republicans including Senators Orrin G. Hatch (R-UT) and Arlen Specter (R-PA) urge Simpson to compromise. Simpson relents on the language requirement but wins the cap. With Simpson satisfied, the bill passes conference. In November, President George H. W. Bush signs the bill into law on November 29th. (*1990 Congressional Quarterly Almanac*, pp. 479-481, 484-487; Clymer, p. 479)

1991

June On the 27th, Justice Marshall announces his retirement from the Court, which will take effect as soon as the Senate confirms a replacement. (*The New York Times*, 06/28/1991)

September In a statement delivered before the Judiciary Committee during the Senate's confirmation hearings on the nomination of Judge Clarence Thomas to the Supreme Court, EMK praises the legacy of Justice Marshall, whose seat Thomas has been nominated to fill. "Justice Marshall has been one of the greatest justices in the history of the Supreme Court...The person who replaces Thurgood Marshall on the Court will be deeply involved in fundamental decisions that will affect the rights of all Americans in the years ahead, and may well determine the very nature of our democracy and the future of the Bill of Rights." ("Opening Statement of Senator Edward M. Kennedy on the Nomination of Judge Clarence Thomas to the United States Supreme Court," 09/10/1991)

EMK is widely criticized by conservatives for his behavior during the Thomas hearings following the release of audio tapes from the 1967 Thurgood Marshall nomination hearings, during which EMK advanced the following position concerning what questions a Supreme Court nominee should answer: "We will have to respect that any nominee...will have to defer any comments on any matters which are either before the court or is very likely to appear before the court." During the Thomas hearings, EMK and his Democratic colleagues on the Judiciary Committee ask the nominee repeatedly about his position on abortion, a matter likely to come before the Court. (*Washington Post*, 09/13/1991)

1993-1997

Marshall, Jr. serves as Director of Legislative Affairs and Deputy Counsel in the Office of the Vice President. (*The United States Government Manual: 1993/1994*. Washington, D.C.: Government Printing Office, 1993; *The United States Government Manual: 1994/1995; 1995/1996; 1996/1997; 1997/1998; International Herald Tribune*, 11/15/1993)

1993

January President Bill Clinton's nominee for attorney general Zoe E. Baird faces deep criticism from the Senate Judiciary Committee and in general for her hiring of two illegal aliens as caretakers for her young child. EMK, a member of the committee and once a strong supporter of the nomination, now expresses reservations, and the White House dispatches Marshall, Jr. to the hearings in order to assess the situation. If elected, Baird would become the first female U.S. Attorney General. Subsequently, her nomination is withdrawn. (*The Boston Globe*, 01/22/1993)

Justice Thurgood Marshall dies on the 23rd at Bethesda Naval Medical Center in Maryland. (*The New York Times*, (01/25/03)

June On the 6th, Marshall, Jr. attends a memorial mass at Arlington National Cemetery to commemorate the 25th anniversary of Robert F. Kennedy's (RFK) assassination. Along with RFK's children, Martin Luther King III, Toni Morrison, and Attorney General Janet Reno, Marshall, Jr. participates in the ceremony by reading from either RFK's speeches or the Psalms. (*Chicago Sun-Times*, 05/17/1993; *USA Today*, 06/07/1993)

1994

May EMK and Marshall, Jr. form part of the official U.S. delegation to the inauguration of Nelson Mandela as South Africa's first black president on the 10th. First Lady Hillary Rodham Clinton and Vice President Al Gore and his wife Tipper lead the delegation, which was handpicked by President Clinton. (*Jet*, 05/23/1994; Vice President Al Gore, "U.S.-South Africa Commitment to a Common Future," 05/15/1994, Johannesburg, South Africa, *U.S. Department of State Dispatch*)

1997-2001

Marshall, Jr. serves President Clinton as Assistant to the President and Cabinet Secretary. In his capacity as Cabinet Secretary, Marshall, Jr. acts as the president's liaison to the various executive branch agencies. (*Ascribe Newswire*, 11/27/2006)

Marshall, Jr. co-chairs the White House Olympic Task Force, which coordinates the activity of federal government agencies in preparation for the 2002 Salt Lake City Winter Olympic and Paralympic Games. ("Thurgood Marshall, Jr. Biography," Bingham McCutchen LLP website, <http://www.bingham.com/Lawyer.aspx?ID=752>)

Marshall, Jr. serves on the Interagency Task Force on U.S. Coast Guard Roles and Missions. (United States Coast Guard website, <http://www.uscg.mil/news/reportsandbudget/21stcentury/signatories.html>)

1997

April *Newsweek* magazine recognizes Marshall, Jr. as one of 100 "People for the New Century." (*Newsweek*, 04/21/1997)

1999

Summer Following the crash of John F. Kennedy Jr.'s plane off the coast of Martha's Vineyard, Massachusetts, on July 16th, tensions arise between the National Transportation Safety Board (NTSB) Chairman James Hall and EMK's Senate office over the agency's handling of information during the investigation. The difficulties appeared early in the investigation—mere hours after the plane crash,

leading the White House to dispatch Cabinet Secretary Marshall, Jr. to help facilitate communication and to coordinate the various efforts of the agencies involved in the investigation. (*The Boston Globe*, 06/24/2000; *The New York Times*, 07/18/1999)

2001-2007

Marshall, Jr. joins Swidler Berlin, a Washington-based law firm, as a partner in 2001 and becomes a managing director of its Harbor Group, LLC subsidiary in 2005. When the Bingham McCutchen firm acquires Swidler Berlin in early 2006, Marshall, Jr. stays on as a partner. He is currently a partner with Bingham McCutchen as well as a principal of its Bingham Consulting Group subsidiary. He specializes in government affairs and corporate law and has assisted clients involved in corporate mergers, professional and amateur sports, commercial aviation, utility and banking regulation, pharmaceuticals, and legal process reforms in developing legislative and regulatory strategies. (*Washington Business Journal*, 03/02/2006; The Harbor Group press release, http://www.harbourgrp.com/news_pr_011005.html, 01/10/2005; “Thurgood Marshall, Jr. Biography,” Bingham McCutchen LLP website)

He currently serves on the board of the Corrections Corporation of America. (“Thurgood Marshall, Jr. Biography,” Bingham McCutchen LLP website)

2003

January Marshall, Jr. testifies before the Senate Committee on Commerce, Science, and Transportation concerning the state of the United States Olympic Committee. (“Thurgood Marshall, Jr. Biography,” Bingham McCutchen LLP website)

2006

June On the 29th, Senator Evan Bayh (D-IN) announces that Marshall, Jr. will serve as a senior political and policy advisor to All America PAC, an organization established by Bayh to support Democratic candidates and to facilitate his run for the 2008 Democratic presidential nomination. (*The Hotline*, 06/29/2006)

November On the 27th, the Ford Foundation names Marshall, Jr. to its Board of Trustees. (*Ascribe Newswire*, 11/27/2006)

December On the recommendation of Senator Harry M. Reid (D-NV), President George W. Bush appoints Marshall, Jr. to the Board of Governors of the United States Postal Service on the 15th. Marshall, Jr. currently serves on the Board’s Audit and Finance Committee as well as on the Capital Projects Committee. He will serve the remainder of former Tennessee governor Ned McWherter’s ten-year term, which expires December 8, 2011. (*Jet*, 10/23/2006; “Thurgood Marshall, Jr. Biography,” United States Postal Service website,

http://www.usps.com/communications/newsroom/leadership/bios/marshall_thurgood.htm; “Thurgood Marshall, Jr. Biography,” Bingham McCutchen LLP website)

Marshall has served on the boards of the National Fish and Wildlife Foundation and the National Women’s Law Center as well as on the Ethics Committee of the United States Olympic Committee. (*Ascribe Newswire*, 11/27/2006)

1990 IMMIGRATION ACT

Prepared by Nadia Shairzay

Miller Center, University of Virginia, 04/06/06

In the late 1980s Senator Edward Kennedy (EMK) collaborated with Senator Alan Simpson (R- WY) to craft immigration reform to change the visa system and let in more skilled immigrants. The effort culminated in 1990 with the passage of PL 101- 649, the 1990 Immigration Act, (S 358). EMK sponsored immigration reform legislation in 1965 to get rid of the national quota system. This had the effect of favoring immigrants with immediate relatives in the United States. An unintended consequence was that 90% of those who subsequently came to the U.S were from Asia and Latin America. Seeking to redress this imbalance and to make it easier for immigrants with needed skills to come to the U.S, EMK and Simpson created a category of “diversity” visas to benefit immigrants from countries who had not benefited from the 1965 law. Of the bill EMK said, “By rejecting the imbalances which have inadvertently developed in recent years, we will again open our doors to those who no longer have immediate family ties to the United States.”

The 1990 Immigration Act also increased immigration from 500,000 to 700,000 for three years, with 675,000 annually thereafter. These numbers did not include refugees or those seeking asylum. As a result of the mid-1980s civil war, many Salvadorans had fled El Salvador to seek refuge and asylum in the U.S illegally. To protect Salvadoran refugees, the bill granted them an 18-month stay of deportation. This provision had its roots in legislation granting a stay of refugee deportation, which passed the House in 1987 (HR 618 and its counterpart, S 332). The 1990 Immigration Act was supported by many ethnic groups for increasing the immigration quota.

The precursor for the 1990 legislation was a bill that was sponsored by EMK and Simpson in 1988 (S 2104). The 1988 bill (enacted as HR 5115--PL 100-658) increased immigration, particularly from Western Europe. It provided for 5,000 visas to go to residents from countries that had little immigration to the U.S in the last 20 years. The main focus of the bill was Ireland in response to a finding by the Irish Embassy in Washington, D.C. that 35,000 to 50,000 Irish were in the U.S illegally and that many were living in Massachusetts. This bill also had a provision to allow for foreign nurses to come and stay in the U.S to alleviate the shortage of nurses.

1987 The Senate Judiciary Committee considered legislation (S 332) to temporarily suspend the deportation of illegal Salvadoran immigrants in the U.S for two years. Senator Dennis DeConcini (D-AZ) was the chief sponsor and Simpson was the chief opponent. During debate in committee, EMK successfully had illegal Nicaraguan immigrants included as well. Simpson was the main Senate opponent to the bill.

On July 28, the House passed HR 618 (its version of S 332). The bill covered about 500,000 Salvadorans and 200,000 Nicaraguans. Opponents of the bill argued that it would embarrass President Ronald Reagan and his support of Salvadoran president, Jose Napoleon Duarte, whom the U.S helped put into power. Proponents of the bill argued that the bill was necessary owing to human rights violations in El Salvador and Nicaragua. While Daniel Ortega, the president of Nicaragua, did not support the bill, Duarte did. He argued, not for human rights

reasons, but because Salvadoran immigrants in the U.S were helping El Salvador by sending \$350 million to \$600 million annually to their families in El Salvador.

1988 On March 15, S 2104, introduced by Simpson and Kennedy and which would later be enacted as HR 5115- PL 100-658, passed the Senate. The House passed the measure on October 5. The bill allowed for more immigrants from Ireland and sought to alleviate the shortage of nurses in the U.S

On November 15, Reagan signed HR 5115--PL 100-658 into law.

1989 In June, the Senate Judiciary Committee discussed S 358, a bill to attract skilled immigrants. The bill was sponsored by EMK and Simpson, although EMK did not support Simpson's immigration point system that would favor English fluency. Asian-American and Hispanic groups were concerned about such language requirements. The language provision was dropped after only Simpson and Senator Strom Thurmond (R-SC) voted to do so.

The Senate approved S 358 on July 13, but the House failed to act on the measure. S 358 sought to put the first ceiling on legal immigration, while also expanding immigration and the emphasis on immigrant skills. The bill put a ceiling on annual visas at 630,000 and created a two-tiered visa allocation system. This allowed for family unification but with more of a focus on immediate family than previous law. The two-tiered system also placed importance on immigrant skills. In the first tier, 480,000 visas were for family immigration. This tier was broken down into family preferences. The first category was for unmarried adult sons and daughters of U.S citizens (24,200 visas); the second was for spouses, and unmarried sons and daughters under the age of 26 for permanent residents (148,000 visas, plus any leftover visas from the first category). The third category was for married sons and daughters of U.S citizens (23,000 visas, plus leftover visas from the first two categories) and finally, brothers and sisters of adult U.S citizens (64,800, plus leftover visas from the first three categories). In the second tier, 150,000 visas were for the new independent category or immigrant skills category.

On November 2, the Senate Judiciary Committee approved S 458, which suspended the deportation of illegal immigrants from El Salvador and Nicaragua for two years. EMK and Senator Paul Simon (D-IL) were supporters of the bill, while Simpson opposed it. Action on the measure was stalled when the House counterpart, HR 45 was stymied in the Senate Immigration Subcommittee.

1990 The House passed S 358 on October 27. Originally the House proposed an increase in immigration to 800,000 in the first three years. In conference the compromise was an increase to 700,000 for the first three years, with a reduction to 675,000 thereafter.

President George H.W. Bush signed S 358- PL 101-649 on November 29.