I Introduction

A. Humbled being in same series of Professors Regnus, Bonevac and Koons to name just a few. I admire many things about them.. I am not a professor, I am and have been a lecturer in Government for the past 31 years and before I went to the Supreme Court in 1974 I was an Assistant professor of Government here. There are two professors named Robbie that I would like be like, Robbie Koons and Robbie George the great professor of Law and Jurisprudence at Princeton. Professor George writes, teaches, speaks around the world and perhaps what I most want to replicate is he can sign and play several instruments. I need also to make one warranty announcement, like the notices on the bottom of your menus that may tell you not to eat raw fish etc.
I was a Judicial Fellow at the Supreme Court on the staff of Chief Justice Burger not a clerk. My interest was as a quantitative social scientist was in the legal and judicial processes.

B.The title for this talk is quite long

1. Read it. Not sure I can live up to this billing

2. Can do a short version kind of like when a Queen asked Rabbi Hillel to tell him what the essence of the law, what was it to guide us, and he said, do not do unto others as you would not have them do unto you.

Comment about divides

Summarize my talk with this picture

(comment on elephant)

Of course now I have to fill up the next 35 minutes or so.

So I will save more talk about Justices Scalia and Ginsburg till the end.

I want to make two introductory points before getting to specific justices

My first point is I will leave you with more questions than answers

How do we surmount the divides between us, I am not totally sure. We will look at

some pairs of justices who were both friends and close to enemies and see what that

tells us.

1 . I have latched on to Professor Jonathan Haidt’s book, The Righteous Mind: Why Good People are Divided on Politics and Religion.

Professor Haidt and I probably have not voted for the same presidential candidate in the last 30 or more years. Still, I find his work important and compelling. For it tells us that we must accept there are good people, however, you want to define good on both sides of many issues.In this book He is not looking for the answer as to how and why did this come about, not how do we cross the divide

So the fsecond point is no matter what I think, there are good people who disagree with me. Truth is, the only personI agree with 100% is me and sometimes I change my mind.

But knowing this about people does not change anything. There is more to conquering the divide.

 My third point is not quite a A corollary to this is no matter where people are in life, they are people much the same as you and me. After I spent a year on Chief Justice Burger’s staff, I went full time to the Federal Judicial Center. Toward the end of that year, I went back to a reception in the West Conference Room of the Court and the chief was there. At one point it was just he and I in a corner talking and I thought to myself finally, this is the time to give him all my good ideas. Now I had written some stuff for him that he once used in his State of the Judiciary Speech. But now I was not limited to his topics. As I began moving the conversation toward some of my “great ideas” it became clear he was more interested in talking about his fall off a tricycle he had bought for his grand son a couple of days before. Yes we are all humans!!!! And I know some of my friends on both sides don’t think this.

First let us define some terms. We political scientists use a couple of dichotomies to analyze cases, ideoloy and method of interpretation.
Sometimes they are the same and sometimes different.
We speak of two great categories of interpretation originalist and what I will call intepretivist also called living constitutionalist There are many forms of originalism as we will see and well as interpretivist. Ideology we often divide as liberal and conservative. Sometimes these overlap with methods of interpretation and sometimes they don’t. As in current politics it may appear that taking one side or the other usually means you don’t want to hear or care to listen to or even attempt to influence someone on the other side. On a Court you usually can’t do this.

I say usually because I found one Justice who supposedly would not listen to another Justice. James Mc Reynolds appointed by the progressive liberal Woodrow Wilson in 1914 was a handsome, bright Lawyer who was born in Ky, grew up in Tennessee and went to University of Va. law school. He was a well known anti-Semite, and would not listen or walk out when Justice Louis Brandeis, the first Jewish Justice would speak. He would turn his chair around when Charles Hamilton Houston, one of Thurgood Marshall’s great teachers at Howard University Law School, argued a desegregation case.

Even his fellow conservatives at times would not put up with some of his behavior. While this is not an excuse he was also known as being extremely charitable, once adopted 33 children who were victims of the German bombing of London. Holmes said of him when he cried at the funeral of Holmes’ wife in 1926, Poor McReynolds is, I think, a man of feeling and of more secret kindness than he would get credit for” To paraphrase Jonathan Haidt the line between good and evil cuts through all of our hearts in different ways.

There are other examples of personal divides among justices, In the mid to late 40’s it was well known that Justice Robert Jackson who presided over some of the Nuremberg War Trials and Justice Hugo Black, the great civil libertarian who had been a Klan Member before he got to the U.S. Senate were at war with each other, in part due to vying for the position of Chief Justice after Chief Justice Harlan Sone 1941-46.
By the way also Stone was not a very good Chief Justice. The dissent rate in the Court sky rocketed when he became Chief Justice because he could not get the Justices to agree on very much.

Justices Frankfurter and Reed both appointed by President Franklin Roosevelt had a very interesting relationship starting long before they both reached the Court. Roosevelt was always trying to tell Reed what to do. In fact he was somewhat condescending about Reeds background. Still they carried on a long relationship by memo and letter and for most of the relationship Reed relished Frankfurters input whether they agreed or disagreed on a particular issue. However, they were not friends outside the Court.
Marian Frankfurter was recluse and Winifred Reed did not like Frankfurter because she was convinced he had spoken out against her husband becoming Chief Justice.

It is hard to find out exactly how these kind of divisions played out beyond the Court.

The Justices are very covetous of their personal relationships and keenly keyed into the optics in Washington There was an 1986 article on Rehnquist pokergame that included then Appellate Court Judge Anton Scalia. In 2009 this was mentioned I another players papers that said when Rehnquist passed away j Roberts took his place, Not much about underlying friendships. And I can understand why they want that out of the press and not for any nefarious reason.