

Thurgood Marshall

Marshall, Thurgood



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Description:

Thurgood Marshall was a federal circuit court judge, solicitor general, and head of the legal department of the National Association for the Advancement of Colored People (NAACP) before becoming the first African-American associate justice of the U.S. Supreme Court.

"On the subject of the racial issue, you can't be a little bit wrong anymore than you can be a little bit pregnant or a little bit dead," the folksy Supreme Court Justice had once said (Hess 1990: p. 18). An uncompromising civil rights radical before Martin Luther King Jr., was even born, Marshall never once participated in a sit-in or civil rights demonstration. He was too busy litigating on behalf of the civil rights of all minorities.

The future Supreme Court Justice was born in Baltimore on a steamy hot day, July 2, 1908. He was named Thoroughgood, after his grandfather Marshall, a name he shortened to "Thurgood" in second grade because it seemed too long to spell. His mother Wilma was an elementary school teacher. His father William quit his job as a Pullman porter to become a waiter at the prestigious Gibson Island Club on Maryland's eastern shore, a club for whites only. Thurgood had an older brother named Aubrey.

Family tradition kept alive the memory of Thurgood Marshall's great grandfather, whom white slave traders kidnapped from Africa sometime in the 1840s. Both of Marshall's grandfathers fought in the Union Army during the Civil War, and both opened up grocery stores in Baltimore afterward, joining the sparse ranks of the black middle class.

Thurgood Marshall's childhood was happy and secure, and he grew into a mischievous child. In elementary school he misbehaved so often that the principal sent him almost daily into "solitary confinement" in the school's basement. Each time he was punished, he had to memorize a section of the U.S. Constitution. "Before I left that school, I knew the entire Constitution by heart," he quipped (Davis 1992: p. 37). He was surprised to learn that the 15th Amendment granted African-American men the right to vote, when nobody he knew, including his father, voted. He was also surprised to learn that the 14th Amendment granted all Americans equal protection under the law, since he knew this was not really so.

Marshall had his first bitter taste of racial prejudice at age 14, after he started a part-time job as a delivery boy for a Baltimore hat company. One spring day, as he was precariously balancing a high stack of hatboxes, he felt someone yanking him off the trolley car just as he was getting on, exclaiming "Nigger, don't you never push in front of no white lady again!" (Hess 1990: p. 18). Marshall not only lost control of the hat boxes, which tumbled into the street; he lost his temper as well and punched the white man. An exchange of blows followed until the neighborhood police officer, who knew and liked Marshall, came on the scene. That was the first and last time that Marshall ever resorted to violence. Instead, his brain became a potent weapon against racial injustice.

Despite his schoolboy shenanigans, Thurgood did extremely well, even graduating from high school early at age 16. Afterward he headed for Lincoln University, a prestigious all-black school in Chester, Pennsylvania. The school was established by a white clergyman in 1854 to give blacks an education comparable to whites. The entire teaching staff was still white when Marshall entered as a freshman.

That first year, Marshall clowning around a lot, playing pinochle or poker all night when other students stayed up studying for exams. Finally, the university expelled him because of his fondness for "hazing," or subjecting incoming freshmen to various forms of humiliation and pranks. Expulsion finally "got the horsin' around out of my system," he recalled (Hess 1990: p. 24). A semester later, he returned to school.

Hints of his future distinction as a lawyer were apparent in his brilliant debating career in college. He wrote home once, "If I were taking debate for credit I would be the biggest honor student they ever had around here" (Davis 1992: p. 46). Marshall soon abandoned all plans to become a dentist—a secure career his mother wanted for him—and turned his thoughts to becoming a lawyer. An incident occurred that convinced Marshall that redressing the wrongs of his people in a court of law would be his life's goal.

By the time that he graduated with honors from Lincoln University in June 1930, he was already a married man. He had met beautiful Vivian Burey ("Buster") at a church social. It was love at first sight. They were both 21 and were soon married. Their happy but childless marriage lasted until Vivian's death from lung cancer in February 1955.

Though only in his early twenties when he graduated, Marshall was sure of himself and of what his future career would be. He had grown into a handsome man—standing 6 feet 2 inches, weighing a little over 200 pounds, and having fine silky hair.

Because he wished to practice law in Baltimore, it was logical for him to apply to the University of Maryland Law School. But the school promptly turned him down on the basis of race.

In the meantime, his only affordable choice remained black Howard University in Washington, D.C., whose law school lacked certification from the American Bar Association. When Harvard-educated Charles Hamilton Houston, Thurgood's future mentor, took the helm at Howard's school of law in 1928, he pushed through reforms that turned the institution into a first-rate, fully accredited law school.

In or out of the classroom, Professor Houston impressed on Marshall and his fellow students that "You are in competition with well trained white lawyers, so you better be at least as good as they are, and if you expect to win, you better be better" (Davis 1992: p. 55).

For the sake of free room and board, Marshall and his wife Buster lived with his parents in Baltimore while he commuted every day to Washington, D.C., 45 miles away, to attend law school. At night, he worked part-time jobs. Marshall graduated first in his class and had won Houston as a lifelong friend and partner. When Harvard University offered him a full fellowship for advanced legal study, Marshall turned it down in favor of "justice on a shoestring"—that is, serving African Americans, most of whom would be too poor to pay him.

The year Marshall graduated from Howard was 1933, the height of the depression. He operated his law practice out of his parents' home because his clients usually couldn't pay, and, thus, he couldn't afford an office. But he loved his work and was excited at each subtle sign of change for the future. A Jewish lawyer from the National Association for the Advancement of Colored People (NAACP) had written a report in 1931 that called for the Supreme Court to overturn its 1896 decision, *Plessy v. Ferguson*. This landmark court case had ruled that segregation was legal, so long as segregated facilities were "separate but equal." The *Plessy* case had paved the way for the Jim Crow laws in the South, which segregated blacks and whites in all public arenas—not the least being the public school system. In reality, wrote the author, "separate" was not and could never be equal, and therefore it violated the 14th Amendment that guaranteed blacks equality.

When Marshall's friend and mentor Charles Houston left Howard University in 1933 to head the NAACP's legal office, he began mapping out a strategy to combat segregation in the courts nationwide, particularly in education. Despite the depression, liberal white individuals as well as organizations were generously funding the NAACP.

This support enabled the NAACP to carry out costly lawsuits in hundreds of cases of racial discrimination.

Houston recruited his gifted former student for NAACP work in Maryland. For the next two years, Marshall drove from Baltimore all over the state of Maryland—in many respects a typical Southern state—investigating cases of racial injustice, taking many of these cases to court, and even organizing boycotts against segregated Baltimore department stores. Marshall successfully sued for equal pay for black teachers, suggesting in court that as an alternative to raising salaries for black teachers, the salaries of white teachers could be lowered. After Marshall's victory against the University of Maryland's law school in 1935, which forced it to integrate, the *Baltimore Afro-American* hailed him as "the nation's biggest race man" (Davis 1992: p. 121). In 1935, Marshall gave up his law practice in Baltimore to join Houston at NAACP headquarters in New York as his legal assistant. For the next ten years, Marshall, sometimes with Houston, traveled throughout the South to assess the state of black education and voting rights and to investigate lynchings and other brutalities against African Americans. Wherever he traveled in the South, Marshall sat at the back of the bus and ate in segregated restaurants. Marshall was biding his time, knowing that the situation in the South would change.

Charles Houston stepped down as head of the NAACP's legal office in 1938 because of his failing health, and Marshall stepped up to replace him. Two years later, the NAACP established the Legal Defense and Education Fund, a bigger, more ambitious effort to step up civil rights enforcement. Marshall headed the fund until 1961, serving as the NAACP's chief lawyer and winning several major cases before the Supreme Court. In 1944, in *Smith v. Allwright*, the Supreme Court declared that the "whites only" political primaries in Southern states were illegal. In Marshall's 1948 victory, *Shelly v. Kramer*, the Supreme Court knocked down "whites only" residential housing agreements prevalent in most U.S. cities. Arguing these cases before the highest court in the land gave Marshall invaluable experience for his biggest battle yet to come—on behalf of nationwide school desegregation. Until the NAACP could find the perfect test case to take all the way to the Supreme Court, the organization continued to patiently chip away at segregation.

With the end of World War II in 1945, human rights issues were in the news. The new United Nations charter even contained a human rights clause. In 1948, President Truman ordered desegregation of the armed forces, and a book by Swedish economist Gunnar Myrdal, *The American Dilemma: The Negro Problem and Modern Democracy*, which criticized segregation, had become a bestseller. Unfortunately, in rural America, especially in the Deep South, many whites didn't care about human rights, and they continued to treat blacks badly, even the returning soldiers who had fought in the war. NAACP lawyer **Thurgood Marshall** discovered, on an investigative trip to South Korea in 1951, that even General Douglas MacArthur was maintaining a segregated army, in defiance of the law. "Every branch of the military was desegregated, but he [MacArthur] wouldn't budge," recalled Marshall (Davis 1992: p. 128). Clearly, overturning "separate but equal" would not be an easy task.

Everybody knew that educational resources for blacks and whites in the South were grossly disparate: for example, the state of Mississippi spent \$117 per year to educate a white child and only \$45 for a black child. Such statistics repeated themselves all over the South. However, getting a Supreme Court decision like *Plessy v.*

Ferguson overturned after more than fifty years would take more than proving disparities in educational opportunities. Legislatures in Southern states could always decide (and several of them did) to improve black educational facilities to the point where, outwardly at least, they looked as good as those for whites. What Marshall and his staff had to prove was that the very concept of "separateness" bred a sense of inferiority among African Americans and opened the door to discrimination in many other avenues of life.

In the late 1940s, Marshall turned to Professor Kenneth Clark of Columbia University for help. An African-American sociologist, Clark had developed a convincing experiment that provided evidence of psychological damage stemming from segregation.

Mr. and Mrs. Briggs of Clarendon City wanted the best education for their five children. Harry Briggs, a World War II veteran, brought suit in court, demanding that the black public school in Clarendon County be brought up to the standard of white schools. Both he and his wife and other couples who joined in the suit were fired from their jobs. With Clark's help Marshall planned to appeal the case, if necessary, all the way to the Supreme Court.

Clark traveled to Clarendon City with Marshall and his assistant attorney and headed for the local black school. He brought one white doll and one dark brown doll to a classroom and asked individual boys and girls which doll was their favorite. He wrote afterward, "One little girl who had shown a clear preference for the white doll and who described the brown doll as 'ugly' and 'dirty,' broke into tears when she was asked which doll was most like her" (Hess 1990: p. 66). Only six of sixteen children preferred the brown doll. These data were used before the Supreme Court as evidence of the harmful effects of segregation on black children. White lawyers laughed it off, convinced that the justices would never take "the doll test" seriously. They were wrong. Meanwhile, two other cases of discrimination in education came to the NAACP's attention: Reverend Oliver Brown in Topeka, Kansas, sued the Board of Education in 1950 for denying his daughter the right to attend a neighborhood white school, forcing her to take a long and dangerous walk over railroad tracks to the black school. This case, known as *Brown v. Board of Education of Topeka, Kansas*, would be combined with the Briggs case as well as a third case. The third case involved a young teenager, Barbara Rose Johns, who persuaded fellow students at her high school in Farmville, Virginia, to boycott classes as a protest against poor conditions in her school. All three cases came under the *Brown v. Board of Education* rubric. All three cases were lost in lower courts, which had upheld the right of states to legislate segregation. Thus, the NAACP appealed them to the Supreme Court.

Marshall, as head of the NAACP's Legal Defense Fund, never worked harder in his life to make the most compelling legal arguments that could overturn *Plessy v.*

Ferguson. He put together a conference of leading experts on the Constitution to get their views and opinions. Lawyers throughout the United States were solicited for their ideas. When the Supreme Court finally put *Brown v. Board of Education* on its calendar and was prepared to hear oral arguments in December 1952, Marshall was ready. The attention of millions of African Americans was fixed on Washington. The opposition was led by a brilliant, elderly white lawyer from South Carolina, courtly and persuasive John W. Davis.

Because of the complexities of *Brown v. Board of Education* and the explosive nature of the case, the Supreme Court ordered further oral arguments to be held nine months later, specifically focusing on the meaning of the 14th Amendment that granted blacks equal protection under the law. In the meantime, the aged Chief Justice and pro-segregationist Frederick M. Vinson died suddenly of a heart attack. Earl Warren, a liberal anti-segregationist, was appointed chief justice by President Eisenhower. After the second round of oral arguments came to an end, Chief Justice Earl Warren, speaking on behalf of all nine justices on May 17, 1954, read aloud the Court's lengthy, much-delayed verdict to a packed chamber. Citing the fact that segregation and democracy were completely incompatible, he added: "To separate black children from others of similar age and qualifications solely because of their race generates a feeling of inferiority. ... that may affect their hearts and minds in a way unlikely ever to be undone" (Davis 1992: p. 177). Warren proceeded to order the desegregation of public schools "with all deliberate speed." Henceforth, individual states would have little say over how the 14th Amendment would be enforced in their states.

To many, this verdict, which nullified *Plessy v. Ferguson* for good, was the most important Supreme Court decision in U.S. history. Justice Felix Frankfurter called it "a day that will live in glory" (Davis 1992: p. 179). A friend said of Thurgood Marshall that he was "so happy, he was numb" (Hess 1990: p. 74). Marshall's only regret was that his beloved former teacher and friend, Charles Hamilton Houston, had died a few years earlier. In the meantime, Marshall's wife had withheld from him that she was dying of cancer, fearing that this would distract him during the trial. She died the next year, February 11, 1955, on her 44th birthday.

Brown v. Board of Education heralded a time when racial discrimination would be illegal everywhere. Immediately, most Southern states declared their opposition to *Brown*. In the U.S. Congress, 19 Southern senators and 63 congressmen vowed to resist the decision. South Carolina filed suit in court (and lost), challenging the decision on the basis that it violated states' rights. The state legislature of Georgia declared that it would fight integration in all of its 159 counties. The NAACP's reaction to this stubborn resistance was further litigation to force compliance with the law. As head of the NAACP's Legal Defense Fund, Marshall initiated and won seven lawsuits involving resistance to *Brown*, all before 1960.

Right after the *Brown* decision, Marshall turned down a job from a prestigious New York law firm, which offered him an annual salary of \$50,000, much more money than he was getting from the NAACP. Widower Marshall married Filipino American

Cecilia ("Cissy") Suyat in 1955. The couple had two sons. Not until 1961 did he give up the NAACP to become a federal circuit court judge in New York. Four years later, Marshall had proved himself so well as a federal judge that President Lyndon B. Johnson appointed him solicitor general, or the nation's chief lawyer, responsible for arguing cases before the Supreme Court on behalf of the United States.

When asked why he wanted Marshall appointed to this position, Johnson answered, "I want the world to know that when the United States speaks it does so through the voice of a Negro." (Davis 1992: p. 248). And speak he did. In his year-and-a-half tenure as solicitor general, Marshall won numerous cases before the Supreme Court on behalf of the U.S. government that resulted in punishment of groups such as the Ku Klux Klan, who carried out racially motivated terrorism against African Americans and other minorities. When Supreme Court Justice Tom C. Clark announced his resignation in 1967, President Johnson considered Marshall to be the best candidate to replace him. After the Senate Judiciary Committee approved the appointment on August 30, 1967, he became the first African American to serve as a justice of the Supreme Court.

Supreme Court justices serve for life. "The only thing I have to do now, Johnny, is stay alive" (Davis 1992: p. 3), Marshall confided to a friend. He would be the staunchest supporter of civil rights in the Court's history. When he resigned for health reasons 24 years later, the Supreme Court lost its last remaining liberal and the strongest defender on the Court of the rights of minorities, women, and the poor. All the other liberal justices had died or resigned and had been replaced by conservatives, to Marshall's great disappointment.

Justice Marshall never lost his penchant for playing practical jokes. Once, when he was in the elevator reserved for the judges and some tourists mistakenly entered it instead of the one for visitors, Marshall coyly acted the role of bellhop, announcing each floor, and ushering out the tourists, who never guessed who he really was. He liked to greet Chief Justice Warren Burger, a formal, straight-laced man, with "What's shakin', Chiefy baby?" (Davis 1992: p. 8). But the whole Court knew that Marshall was dead serious when it came to his opposition to capital punishment (it was mainly minorities, blacks, or Hispanics who were executed), and his support of school busing to speed up desegregation.

To speed up integration, the Supreme Court in 1971 gave lower courts the right, whenever a public school was either all white or all black, to order busing of students to balance the races. Public opposition to busing, mainly from whites, was so severe that President Richard Nixon vowed to replace any retiring or deceased liberal justice with his own conservative choice. By 1974, despite Marshall's vehement dissent, or written opinion, the predominantly conservative Court reversed itself and put an end to court-ordered busing.

Marshall was the only Supreme Court Justice who had ever experienced what it was like to sit in the back of a bus because he was African American, and to fear Ku Klux Klan violence while he traveled alone through the South. Despite the real progress African Americans had made with the Civil Rights Act in 1964 and the Voting Rights Act

of 1965, Marshall was not complacent. He knew how fragile the rights of minorities really were, and not just in the United States. Jews had been a persecuted minority in Germany, after all. When Marshall helped write Kenya's new constitution in 1960, he made sure that the rights of the small white minority there were guaranteed by law.

Increasing health problems and discontent at the conservative turn that the Supreme Court was taking—that is, rolling back achievements in civil rights—**Thurgood Marshall** announced his retirement on June 28, 1991 on the grounds that "I'm getting old and coming apart" (Davis 1992: p. 5). When reporters asked him about his legacy on the Supreme Court, he thought for a moment and answered, "I don't know what legacy I left ... I guess you could say, 'He did what he could with what he had' " (Davis 1992: p. 382).

Marshall became a warrior for civil rights at a time when there were no civil rights demonstrations, no public outcry against lynchings and racial discrimination. Yet his legacy was profound. If it not for the landmark *Brown v. Board of Education*, segregation might still be legal. Moreover, Marshall's dedication to the cause of civil rights as well as his victories were an inspiration to black leaders who came after him.

References and Further Information

By **Thurgood Marshall**

Marshall, Thurgood. "Oral History." *New England Law Review* (Spring 1993)

"Celebrating the Second Circuit Centennial." *St. John's Law Review* (Summer 1991)

"Commentary: Reflections on the Bicentennial of the United States

Constitution." *Valparaiso University Law Review* (Fall 1991)

"The Supreme Court and Civil Rights: Has the Tide Turned?" *USA Today* (March 1, 1990)

Marshall, Thurgood; Mikva, Abner; Posner, Richard. "A Tribute to Justice William J. Brennan Jr." *Harvard Law Review* (Nov. 1, 1990)

About **Thurgood Marshall**

Davis, Michael D., and Hunter R. Clark. **Thurgood Marshall**: *Warrior at the Bar, Rebel on the Bench*. New York: Carol Publishing Group, 1992.

Hess, Debra. **Thurgood Marshall**: *The Fight for Justice*. Englewood Cliffs, NJ: Silver Burdett Press, 1990.

Prentzas, G. S. **Thurgood Marshall**: *Champion of Justice*. Broomall, PA: Chelsea House, 1993.

Rowan, Carl T. *Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall*. Boston-Toronto-London: Little, Brown & Co., 1993.