JUSTICE FOR ALL

THE LEGACY OF Thurgood Marshall

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Thurgood Marshall, 1967

Cover photo: Thurgood Marshall, on September 11, 1962, after his Senate confirmation to the U.S. Court of Appeals for the Second Circuit.

Enlisting the Courts in the Civil Rights Fight

BY MICHAEL JAY FRIEDMAN

The name of Thurgood Marshall may not be as well-known outside the United States as that of his fellow civil rights leader, Martin Luther King Jr. And yet, Marshall's achievement in demolishing the legal structure that sustained racial segregation in the American South advanced the civil rights cause as profoundly as the nonviolent protests led by King.

"No other American did more to lead our country out of the wilderness of segregation than Thurgood Marshall," said his fellow Supreme Court Justice Lewis Powell.

Thoroughgood (actual birth name) Marshall was born in Baltimore, Maryland, on July 2, 1908. His father was a railroad porter and his mother was an elementary schoolteacher. In second grade, young Marshall shortened his name to Thurgood. He graduated from Baltimore's segregated Colored High School and then Lincoln University, "the first institution founded anywhere in the world to provide a higher education in the arts and sciences for youth of African descent." Lincoln produced acclaimed figures such as Marshall's classmate Langston Hughes, a major contributor to the literary "Harlem Renaissance"; Kwame Nkrumah, the first leader of independent Ghana; and his Nigerian counterpart, Nnamdi Azikiwe.

Marshall quickly distinguished himself as a gifted storyteller and a skilled debater. These were among the skills of the successful trial lawyer, and Marshall decided to pursue a career in the law. He aimed to enroll close to home, at the University of Maryland Law School. But, as a segregated school, Maryland would not admit a black student. Marshall did not apply, but it was a harsh lesson in the discrimination and resulting lack of opportunity that held back many African Americans. Maryland Law's stance, ironically, opened the door to unexpected opportunity for Marshall.

He enrolled instead at a black institution, Howard University Law School, in Washington, D.C. His mother pawned her wedding and engagement rings to pay the tuition. Marshall excelled at his studies, graduating number one in his class in 1933. At Howard Law, Marshall encountered one of the major, if under-celebrated figures of U.S. history, Vice Dean Charles Hamilton Houston (see "Charles Hamilton Houston: A Visionary on Racial Equality").

It was Houston who devised the legal strategy that Marshall would employ in courtrooms — from the deep South to the Supreme Court of the United States — to dismantle the legal segregation that still disadvantaged African Americans.

After the 1861–65 Civil War and the freeing of the slaves in the American South, the U.S. government approved the Fourteenth Amendment to the Constitution. The amendment prohibited a state from depriving "any person within its jurisdiction the equal protection of the laws." But, a few years later, white Southerners resorted to segregation of the races, a practice often called "Jim Crow." (This is a term derived from a song in an 1828 minstrel show where a white man first performed in "blackface.") An 1896 Supreme Court decision, *Plessy v. Ferguson*, upheld this practice, ruling that racially "separate but equal" facilities met the "equal protection" standard.

Houston and Marshall determined to overturn the *Plessy* decision in the U.S. courts by demonstrating that, in the real world, separate was never equal. Their strategy required the patient accumulation of facts that supported their point. They also realized that it would take time to get rid of *Plessy*. They would undermine legal segregation one case at a time.

In 1934, Houston began to work for the National Association for the Advancement of Colored People (NAACP), an interracial group founded in 1909 to work for the abolition of segregation and discrimination. He traveled throughout the South to document the appalling state of black schools for the NAACP. Marshall, who had set up a private legal practice in Baltimore, often accompanied him on these trips.

In 1935, Marshall — and Houston as his adviser — won their first victory over legal segregation, in the case *Murray v. Pearson*. The triumph was especially sweet for Marshall, as the defendant was the very same University of Maryland Law School that Marshall once had hoped to attend.

In Maryland state court, Maryland Law's lawyers argued that the school met the "separate but equal"

Charles Houston, Marshall's mentor, argued cases in court during his years as dean of Howard University's law school.

This high-school photograph of Thurgood Marshall was taken around 1921-25.

“White” (top) and “colored” (above) schools in Paxville, South Carolina (1935-1950), where, as in other states in the South, “white” schools often received two to three times more money per student than did schools for African Americans.

requirement by granting qualified black applicants scholarships to enroll at out-of-state law schools. In *Murray v. Pearson*, the state court in Maryland rejected this argument. While the court was not yet prepared to rule against separation in public schools, it did hold that the alternative opportunities Maryland afforded black law school applicants were not equal. Maryland Law was ordered to admit qualified African-American students.

After the *Murray* triumph, Marshall became an NAACP staff lawyer under Houston. In 1940, at the age of 32, he helped found and became the chief of the NAACP Legal Defense Fund, dedicated to providing legal assistance to poor African Americans. In that year, he won his first Supreme Court victory, a ruling that the 14th Amendment's due process clause barred the use of coerced confessions.

During the two decades that followed *Murray*, Marshall, Houston, and the NAACP team of civil rights attorneys struck down one pillar after another of the segregationist order:

- In *Missouri ex rel. Gaines v. Canada* (1938), argued by Houston, the U.S. Supreme Court extended to the entire nation the rule that where a state maintains only one law school or other type of school, it may not limit admission by race.
- In *Smith v. Allwright* (1944), Marshall won a Supreme Court decision barring the "whites only" primary elections in which political parties chose their general election candidates. His biographer, Juan Williams, has described how Marshall considered the case his most important triumph: "The segregationists would [demand that (the candidates) support segregation to capture their party's nomination], and by the time the black and Hispanics and … even in some cases, the women, got to vote in the general election, they were just voting for one segregationist or the other; they didn't have a choice."
- In *Morgan v. Virginia* (1946), Marshall obtained a Supreme Court ruling barring segregation in interstate bus transportation. In a later case, *Boynton v. Virginia* (1960), Marshall persuaded the court to order desegregation of bus terminals and other facilities made available to interstate passengers. These cases led to the "Freedom Ride" movement of the 1960s.
- In *Patton v. Mississippi* (1947), the Supreme Court accepted Marshall's argument that juries from which African Americans had been systematically excluded could not convict African-American defendants.
- In *Shelley v. Kraemer* (1948), Marshall persuaded the Supreme Court to rule that state courts could not constitutionally prevent the sale of real property to blacks even if that property is covered by a racially restrictive covenant. These covenants were a legal tactic commonly used to prevent homeowners from selling their properties to blacks, Jews, and other minorities.

In all, Marshall would prevail in a staggering 29 of 32 cases he argued before the Supreme Court. His stunning record reflected the great legal talent that had congregated at the NAACP Legal Defense Fund, Marshall's shrewdness in selecting cases that would advance the team's long-term strategy of undermining segregation, and his own formidable legal skills. He was, United Press International later concluded:

> … an outstanding tactician with exceptional attention to detail, a tenacious ability to focus on a goal — and a deep voice that often was termed the loudest in the room. He also possessed a charm so extraordinary that even the most intransigent Southern segregationist sheriff could not resist his stories and jokes.

Armed with this potent combination of likeability and skill, Marshall in 1946 persuaded an all-white Southern jury to acquit 25 blacks on a charge of rioting. On other occasions, he escaped only narrowly the beatings or worse that every assertive African American in the "Jim Crow" South risked.

Even as Thurgood Marshall dismantled the lies and evasions that for so long justified racial segregation, he was stockpiling the experience and wisdom that would carry him to the landmark case, *Brown vs. Board of Education,* and beyond.

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The Case of the Century

BY MICHAEL JAY FRIEDMAN

Thanks to Marshall and the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund, the federal courts had ruled that "separate but equal" schools really had to be equal. That was a real achievement, but not the best tool to effect broad change. Poor African Americans in each of the hundreds of school districts in the South could hardly be expected to litigate the comparative merits of segregated black and white schools.

Only a direct ruling against segregation itself could at one stroke eliminate disparities like those in Clarendon County, South Carolina, where per pupil expenditures in 1949–50 averaged $179 for white students and only $43 for blacks. Marshall and his team stepped in to get just such a ruling with the *Brown* case, and in the process changed the face of American society.

When it reached the Supreme Court, the litigation known as *Brown v. Board of Education* included five consolidated lawsuits from four states, including South Carolina (from Clarendon County, see photos of Paxville, Clarendon County schools on page 3) and Kansas. The Topeka, Kansas, case involved grade-schooler Linda Brown, who had been obliged to attend a black school 21 blocks from her house. There was a white school only seven blocks away.

Significantly, the trial court had denied the Kansas plaintiff (technically, the plaintiff was Linda Brown's father, the Rev. Oliver Brown) relief by finding that the segregated black and white schools there were of comparable quality. This gave Marshall the chance

Moments after the *Brown v. Board of Education* ruling, lawyers George E. C. Hayes, left; Thurgood Marshall, center; and James M. Nabrit, right, join hands before the U.S. Supreme Court in celebration of their victory.

to urge that the Supreme Court at last rule that segregated facilities were, by definition and as a matter of law, unequal and hence unconstitutional.

Marshall's legal strategy relied on social scientific evidence. The NAACP Legal Defense Fund assembled a team of experts spanning the fields of history, economics, political science, and psychology. Particularly significant was a study in which the psychologists Kenneth and Mamie Clark sought to determine how segregation affected the self-esteem and mental well-being of African Americans. Among their poignant findings: Black children aged three to seven preferred white rather than otherwise identical black dolls.

The Supreme Court heard arguments on *Brown* on two separate occasions. At the second, December 8, 1953, many people realized that history might be in the making. Lines for the 50 general public seats were long. The fortunate heard Assistant U.S. Attorney General J. Lee Rankin offer the federal government's endorsement of the plaintiffs' argument. He asserted that the justices possessed the "power and duty" to rule that segregation violated the Constitution. Those present also heard Thurgood Marshall's powerful summation: The question, Marshall told the Court, was "whether or not the wishes of these [segregationist] states shall prevail or whether our Constitution shall prevail."

Federal troops escort black students as they arrive at Central High School in Little Rock, Arkansas, during the first week of integration in September 1957. Marshall won the lawsuit that set the stage for the federal government to step in with troops to protect the black students from violent protestors and the Arkansas governor's calling of the National Guard to foil integration.

Linda Brown Smith is shown in this 1952 photo, when she was nine years old. Smith's father started a class-action suit that, together with four other suits, led to the landmark *Brown v. Board of Education* decision.

Thurgood Marshall arrives at the U.S. District Court in Little Rock, Arkansas, on September 20, 1957. His legal skills succeeded in forcing Arkansas Governor Orval Faubus to withdraw the National Guard from Central High School and integrate the previously all-white school.

On May 17, 1954, a unanimous Supreme Court vindicated Marshall's strategy. Citing the Clark paper and other studies identified by plaintiffs, the Supreme Court ruled decisively:

> … in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated … are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Education attorney Deryl W. Wynn, a member of the Oxford University Roundtable on Education Policy, has said of the significance of *Brown,*

> Here was the highest court in the land essentially saying that something was wrong with how black Americans were being treated. … I remember my father, who was a teenager at the time, saying the decision made him feel like he was somebody. … On a personal level, *Brown's* real legacy is that it serves as a constant reminder that each child, each of us, is somebody.

Baltimore kindergarten teacher Gwendolyn Michaels poses a question to her class on September 7, 1954.

The Court did not specify a timeframe for ending school segregation, but the following year, in a group of cases known collectively as "Brown II," Marshall and his colleagues secured a Supreme Court ruling that desegregation proceed "with all deliberate speed."

Even then, resistance continued in parts of the South. In September 1957, when black students were forcibly turned away from Central High School in Little Rock, Arkansas, Marshall flew to the city and filed suit in federal court. Marshall's victory in this case set the stage for President Dwight Eisenhower's declaration of September 24: "I have today issued an Executive Order directing the use of troops under Federal authority to aid in the execution of Federal law at Little Rock, Arkansas. … Mob rule cannot be allowed to override the decisions of our courts."

Ultimately, Marshall would obtain another Supreme Court decision, this one ordering the immediate desegregation of the Little Rock public schools.

In 1956, Marshall — using *Brown* as the key decision — came to the legal rescue of Martin Luther King Jr. and his followers in the Montgomery, Alabama, bus boycott. The boycott began on December 1, 1955, sparked by Rosa Parks' brave refusal to relinquish her seat on a segregated municipal bus to a white man. It was Marshall and the NAACP's legal team who argued for Montgomery's blacks before the courts. A November 13, 1956, Supreme Court ruling held unconstitutional the policy of relegating blacks to the back of the bus. The city of Montgomery yielded and the boycott succeeded at last.

Although many dedicated professionals worked with him, no American contributed more than Thurgood Marshall to the dismantling of legal segregation. Few could boast of a greater record of achievement, but Marshall's career of public service had only begun. He would support the cause of civil rights for all at the highest federal level, as the first African American appointed to the Supreme Court.

ANOTHER FIRST

Supreme Court Justice Marshall

BY MICHAEL JAY FRIEDMAN

By 1961, Thurgood Marshall had contributed as much as any American to the legal defeat of segregation. Thanks to Marshall's efforts, activists like Dr. Martin Luther King Jr. would have the law — and the millions of Americans who respect the law — on their side. By setting the law firmly against public segregation, Marshall and his colleagues contributed to a climate in which laws like the Civil Rights Act of 1964 would outlaw many forms of private discrimination.

Unlike King and other African-American leaders, Marshall waged this struggle through the courts and then from within government. In another measure of the improving climate for blacks, President John F. Kennedy in 1961 appointed Marshall to the U.S. Court of Appeals for the Second Circuit, which serves the states of New York, Connecticut, and Vermont. The Court of Appeals is the second highest level of federal court, and Marshall was only the second African American to serve as a federal appellate judge.

Marshall wrote 98 opinions as a Circuit Court judge. Not a single one was ever overturned by the Supreme Court.

In 1965, President Lyndon B. Johnson appointed Marshall, already the prevailing advocate in nearly 30 Supreme Court decisions, as solicitor general of the United States. This meant he was responsible for arguing the government's positions before the Supreme Court.

Fittingly, his first case as solicitor general was to present the federal case in the murder of the civil rights activists James Chaney, Andrew Goodman, and Michael Schwerner. The three victims, who had been registering black voters, were killed in 1964 in Nashoba County, Mississippi, by racist conspirators. The Mississippi state courts had refused to convict the murderers, but Marshall persuaded the Supreme Court to order a trial on federal civil rights charges.

As Associate Justice Thurgood Marshall prepares to take his seat on the U.S. Supreme Court on October 2, 1967, his wife Cecilia helps him with his robes.

On June 13, 1967, President Johnson nominated Marshall to be the nation's first African-American

President Lyndon B. Johnson, left, after announcing on June 13, 1967, that he was nominating Solicitor General Thurgood Marshall, right, to serve on the Supreme Court.

The Supreme Court justices in 1990: Standing, from left, Anthony M. Kennedy, Sandra Day O'Connor, Antonin Scalia, and David Souter. Seated, from left: Harry A. Blackmun, Byron R. White, Chief Justice William H. Rehnquist, Thurgood Marshall, and John Paul Stevens.

Supreme Court justice. "I believe he has already earned his place in history," the president said. "But I think it will be greatly enhanced by his service on the Court."

Johnson was right. Despite opposition from some Southern senators, Marshall was confirmed and assumed his seat as an associate justice on October 2, 1967. He quickly emerged as a reliable supporter of the rights of "organized labor, racial minorities, the advancement of women, the broadening of rights to freedom of expression, and the narrowing of police authority," Harvard Law Professor Randall L. Kennedy has written. "No member of the Supreme Court has ever been more keenly alive to social inequalities."

Justice Marshall was an unyielding opponent of capital punishment, and voted to overturn every death sentence that came before the Court. He proved as strong a champion of freedom of expression as he had been for civil rights. In 1972, Marshall sided with Earl Mosley, a postal employee who had picketed a public high school with a sign alleging racism at the school. When the city passed an ordinance prohibiting picketing within 50 meters of a school except for labor picketing, Mosley challenged the law. Marshall held that the city could not distinguish between those types of speech it would permit and those it would restrict. He wrote,

> Above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship.

Marshall served on the Supreme Court until 1991. He died in 1993, at the age of 84. President Bill Clinton attended Marshall's memorial service at the National Cathedral in Washington, D.C., which was televised nationwide. Chief Justice William Rehnquist said in his eulogy:

> Inscribed above the front entrance to the Supreme Court building are the words "Equal justice under law." Surely no one individual did more to make these words a reality than Thurgood Marshall.

ON THE FRONT LINES WITH MARSHALL

An Interview With Jack Greenberg

Jack Greenberg was a 27-year-old lawyer in 1954 when he worked with Thurgood Marshall on the *Brown v. Board of Education* case, where the Supreme Court ruled that racial segregation was unconstitutional. In this interview, Greenberg shares his thoughts on the legacy of Thurgood Marshall. A professor of law at Columbia University in New York City, Greenberg is the author of several books, including *Crusaders in the Courts: Legal Battles of the Civil Rights Movement* (2004).

Alexandra Abboud, a staff writer with the U.S. State Department's Bureau of International Information Programs, conducted the interview with Mr. Greenberg.

Question: What would you say was the historical and social significance of the 1954 *Brown v. Board of Education* decision?

Mr. Greenberg: *Brown* was a school segregation case that said that the laws in place in the Southern part of the United States which prohibited blacks and whites from going to school together were unconstitutional. But more importantly, the *Brown* case was like an ice breaker going through the frozen sea of racism. It broke up the racist system that was essentially congealed into the American polity. We had Southern senators who were elected by whites only, and they kept becoming elected and reelected, and their power depended upon them excluding blacks from political participation. The *Brown* case broke all that up.

Question: What were some of Thurgood Marshall's strengths as an attorney that helped win the *Brown* case?

Mr. Greenberg: Thurgood Marshall was focused. He always believed in racial integration and wanted to strike down the segregation laws and practices within the United States. I would liken him to General George Marshall during the Second World War. He was the one who got all the troops together from all different areas, competencies, and abilities, and melded them into a focused unit.

We worked with law professors and practitioners, social psychologists, and historians. He was like the orchestra conductor who brought everyone together and focused them into a single melody.

Question: The *Plessy v. Ferguson* case in 1896 resulted in the "separate but equal doctrine," which said that segregation of blacks and whites was legal as long as the separate facilities were of equal quality. In the *Brown* case, Marshall made the argument for the first time that "separate," by definition, could not be equal. Could you explain how Marshall and his legal team decided that it was time to make the challenge with *Brown*?

Mr. Greenberg: In 1935, there was a Maryland state case involving the admission of a black student to the University of Maryland Law School that Marshall won. The student was admitted because there was no law school for blacks. That case never even went to the Supreme Court; it was won in the Maryland state

Jack Greenberg, second from left, and NAACP chief counsel Thurgood Marshall, far right, argue a 1952 case in Florida.

A 1954 photo shows the lawyers for the NAACP Legal Defense and Educational Fund. From left, Louis L. Redding, Robert L. Carter, Oliver W. Hill, Thurgood Marshall, and Spottswood W. Robinson III.

courts. In 1939 there was a case in Missouri which went to the U.S. Supreme Court, and the University of Missouri was ordered to admit a black to the University of Missouri Law School because there was no comparable facility for blacks within the state of Missouri.

Then in 1950 there were two cases, one out of Texas and one from Oklahoma. As the Texas case proceeded, the state, seeing the handwriting on the wall, built a law school for blacks. It had two rooms, didn't have a law library, didn't have a law review, had no alumni, but the state argued that was equal, which was a ridiculous claim. And the Supreme Court ruled that there is a lot more than just books, bricks, and the mortar involved in evaluating education. There are the intangibles of your relationships with other students and what you learn from them and the lifelong associations that you make while in school.

In the other case, a black student was excluded from the University of Oklahoma Graduate School of Education. As the case went on, they didn't build another school for him; instead they allowed him to sit in the back of the room just outside the door and look in. Ultimately he was admitted into the classroom and to a seat which was marked for "Negroes only." And the Supreme Court said that (action) separated him from the others in a way that interfered with his ability to learn.

So the court was moving more and more towards recognizing the intangible aspects of education and saying that no matter what you did, you could not be equal so long as you were keeping people separate.

In the *Brown* case, the momentum of those earlier cases, or the implication of those cases, was made explicit; separate never could be equal.

Question: What is the historical legacy of the Legal Defense Fund at the NAACP?

Mr. Greenberg: The work of the LDF showed that law could accomplish a great deal. It was the first public-interest law firm and it institutionalized public-interest law. It won decisions in the Supreme Court saying that the practice of public-interest law is a constitutional right and brought an end to racial segregation. Today, we have this great proliferation of public-interest law firms all over the country, which represent a wide variety of political and social issues.

Question: You're a professor at Columbia University Law School. Are there many students today interested in practicing civil rights law?

Mr. Greenberg: An enormous number of students are still interested in practicing public-interest law. When I first came to Columbia University, I started a public-interest law program that offers public-interest fellowships and internships during the summer. The program now enrolls hundreds of students. In fact, there's so much interest in public-interest law, there's not enough room to accommodate all who really want to be in it.

CHARLES HAMILTON HOUSTON

A Visionary on Racial Equality

BY MILDRED SOLÁ NEELY

Charles Hamilton Houston, Thurgood Marshall's mentor and law school professor, was the brilliant thinker who crafted the strategy that ended legalized segregation in the United States. The litigation campaign Houston launched to reverse the *Plessy v. Ferguson* ruling on "separate but equal" facilities paved the way for Marshall's triumph in *Brown v. Board of Education*.

Houston firmly believed in the power of law to create social change. Through the years following *Plessy*, African Americans were conscious that existing "separate but equal" schools — with shoddy facilities, frequent overcrowding, and fewer or no books and supplies — short-changed their children. Houston persuaded the National Association for the Advancement of Colored People (NAACP) that it could end discrimination in education if the organization's court cases succeeded in making it too expensive to maintain segregation with "equality."

The string of cases that Houston and then Marshall won as attorneys for the NAACP confirmed Houston's analysis. Nearly a century after the Civil War, *Brown* gave African Americans access to improved educational opportunities. This includes the opportunity of attending the top colleges and universities in the United States, the ticket to a better life for many Americans, both black and white.

Houston was born in 1895 in Washington, D.C. He was only 19 when he graduated from Amherst College and went on to serve in World War I in a segregated U.S. Army unit. He studied law at Harvard University, becoming the first African-American editor of its prestigious law review. Houston also earned a Ph.D. in juridical science at Harvard and a doctor of civil law degree at the University of Madrid in Spain.

Charles Hamilton Houston in an undated photo.

By 1924, Houston was back in Washington, working part time teaching at the law school of Howard University, a historically black institution. Howard hired him in 1929 to head the law school. In just six years, Houston radically improved the

A young Thurgood Marshall, standing; Donald Gaines Murray, center; and Charles Houston, right, prepare a desegregation case against the University of Maryland in 1935.

education of African-American law students, earned full accreditation for the school, and produced a group of lawyers trained in civil rights. In the book *Black Profiles*, George R. Metcalf said that Houston took the job to turn Howard into "a 'West Point of Negro leadership. so that Negroes could gain equality by fighting segregation in the courts."

While at Howard University's law school, Marshall recalled that Houston "made it clear to all of us that when we were done, we were expected to go out and do something with our lives."

In 1935, Houston became special counsel to the NAACP, and surrounded himself with a select group of young lawyers, mostly from Howard. This team — which included Marshall — began winning court case after court case before the Supreme Court. These racial discrimination cases — on issues ranging from the death penalty to housing — were carefully chosen by Houston to erode the legal underpinnings of segregation.

After undertaking one of the cases that became part of *Brown*, Houston's failing health forced him to resign from the NAACP's Legal Defense Fund. Thurgood Marshall was his successor.

Houston died on April 22, 1950, four years before his star pupil won in *Brown vs. Board of Education*.

At his funeral, Houston's colleague at Howard, William Hastie, said in a tear-filled eulogy: "He guided us through the legal wilderness of second-class citizenship. He was truly the Moses of that journey."

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A BILL OF RIGHTS FOR KENYA

Marshall's Role

BY MARY L. DUDZIAK

In January 1960, the leading U.S. civil rights lawyer, Thurgood Marshall, traveled to Kenya to try his hand at legal change in a new context. Marshall was invited by Tom Mboya, a young Kenyan nationalist leader, to aid his countrymen in negotiations over a new constitution for Kenya, then a British colony. Marshall had achieved landmark legal change in the United States, with victories in cases like *Brown v. Board of Education* outlawing racial segregation in public schools. Law in Africa, however, was entirely new to him.

Marshall confronted a tense political environment. Kenya's colonial government had responded to the Mau Mau resistance movement by imposing a State of Emergency, detaining leading nationalist leader Jomo Kenyatta, and restricting political organizing. But change was coming. Seventeen African nations would achieve independence in 1960 alone, and in January of that year the British government hosted a conference in which, for the first time, African Kenyans were parties to constitutional negotiations as a step toward independence.

Marshall and Mboya traveled to Kiambu, outside of Nairobi, to meet with nationalist leaders. Although they had received a permit required for the meeting, a colonial officer barred Marshall's participation. His permission to attend had been revoked. This incident helped Marshall appreciate the difficulties Africans faced daily under colonial rule. He later told the press that "independence and freedom for Kenya was due now." "These people have had it," he wrote to his wife, "and they are not going to take any more."

Prime Minister of Kenya Jomo Kenyatta, left, welcomes Thurgood Marshall as he arrives in Nairobi, July 11, 1965.

Later that month, Marshall and a group of nationalist leaders left Kenya for London and the Lancaster House Conference on the Kenya Constitution. Four delegations were present. They represented African nationalists; an all-white party; Asian Indians, a minority group in Kenya; and a mixed race group. Marshall was the only person present who was not British or Kenyan.

The conferees reached a rough consensus on voting rights and African majority representation in the legislature. This made the issue of protection for minority rights especially important. Nationalist leader Ronald Ngala told the conference that "the best form of safeguard for all races in Kenya was a Bill of Rights enforced by an independent judiciary." He announced that Marshall, "an expert on minorities and civil rights, had been retained" by his group to draft a proposed Bill of Rights.

Marshall's proposed Bill of Rights would not be a simple American transplant. Even as it seemed to embody pragmatic solutions for problems facing Kenya, it offered an idealized vision of rights that embraced some protections not included in American constitutional law. The preamble stressed that "all persons are equal before the law," and forbade discrimination on the basis of race, color, sex, religion, and other factors. It proposed rights guaranteeing freedom of religion, speech, and press; the right not to be enslaved or deprived of liberty; and the right to vote. Social welfare rights, unfamiliar in the American context, were made explicit: rights to health, education, and welfare, and the right to work, including "just and favourable remuneration insuring ... an existence worthy of human dignity." Marshall was not charting an entirely new path, however. He relied here on the recently enacted Nigerian and Malayan constitutions, which paralleled the Universal Declaration on Human Rights.

The language guaranteeing property rights proved the most controversial. Property was a matter of intense conflict in Kenya. The most valuable land had originally been tribal land, and now was exclusively owned by white settlers. The settlers believed that their property rights must be protected, but nationalists wanted land reform and resettlement. Marshall recommended that provisions of the Nigerian Constitution be adapted to conditions in Kenya. A "taking" of personal property by the government could only be for public purposes, and required just compensation. A modification added a right of appeal directly to the highest court in Kenya. The intent was to protect minority settlers from government abuse.

An argument broke out in committee: What "public purposes" could the government take land for? Some white settlers wanted this spelled out very clearly. But to do that would require the Africans to develop a policy on land reform on the spot — something they were not in a position to do. Differences over this issue were too deep to be resolved at Lancaster House, and the meeting ended with the matter left open. Colonial Secretary Ian Mcleod singled out Marshall's Bill of Rights as a helpful contribution. Later, a land buy-out scheme with World Bank support relieved the pressure to resolve the property rights issue, allowing subsequent constitutional talks to focus on other matters. The final Bill of Rights in the 1963 Kenya Independence Constitution elaborated on many of the rights that Thurgood Marshall had crafted, including property rights, but did not include all the broad social welfare rights he had envisioned.

Tom Mboya reflected on Marshall's involvement in a 1960 letter: "I do not know whether it will ever be enough to write letters to thank you for your good work at the London Conference. ... I am sure I speak the mind of all of us, that you were the easiest man to work with, and that any of us who had apprehension before you came were easily disarmed as soon as we met you." Mboya wrote, "As you yourself said, you were glad to come home, we were glad to receive you home."

In 1963, Marshall returned as the guest of now Prime Minister Kenyatta at Kenya's independence ceremonies. Even as his career took Marshall to important federal appointments, including ultimately the U.S. Supreme Court, he never forgot about Kenya. He was proud to have been there at the beginning, helping to craft constitutional principles from the outset. And from Kenya came some of his most cherished stories, shared with his colleagues, his family, and his friends, to the end of his days.

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THURGOOD MARSHALL:

A Timeline

July 2, 1908: Born in Baltimore, Maryland. Later attends Samuel Coleridge Taylor Elementary School and Booker T. Washington Junior High.

1921-1925: Attends Colored High and Training School, which became Frederick Douglass High School in 1923.

1929: Marries Vivian Burey.

1930: Graduates *cum laude* from Lincoln University, in Lincoln, Pa.

1933: Graduates first in his class from Howard University Law School.

1934: Begins to work for Baltimore branch of the National Association for the Advancement of Colored People (NAACP).

1935: With mentor and friend Charles Hamilton Houston, wins first major civil rights case, *Murray v. Pearson*, desegregating the University of Maryland Law School. This was the law school Marshall could not attend on the grounds of race.

1936: Becomes assistant special counsel for NAACP in New York.

1940-1961: Serves as legal director of the NAACP. In 1940, he wins the first of his Supreme Court victories, *Chambers v. Florida*. Marshall won 29 cases out of 32 he argued.

1950: Wins Supreme Court victories in two graduate school integration cases, *Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents*.

1951: Visits South Korea and Japan to investigate charges of racism in the U.S. armed forces. He reported that the general practice was one of "rigid segregation."

1954: Wins *Brown v. Board of Education* case, the landmark lawsuit that ends the legal segregation of schools in America.

Feb. 1955: Vivian Marshall dies.

Dec. 1955: Marries Cecilia A. Suyat; their union produces Marshall's two sons, Thurgood Jr. and John William.

1961: Nominated and appointed to the U.S. Court of Appeals, 2nd Circuit. Makes 112 rulings, all of them later upheld by the Supreme Court.

1965: Appointed U.S. Solicitor General by President Lyndon Johnson; wins 14 of the 19 cases he argues for the government, 1965-1967.

1967: Becomes first African American appointed to the U.S. Supreme Court, 1967 to 1991.

1991: Retires from the Supreme Court.

1993: Dies at 84 in Bethesda, Maryland.

Thurgood Marshall's widow, Cecilia, unveils a commemorative postage stamp honoring her husband, on July 29, 2002.

Thurgood Marshall's Legacy

Thurgood Marshall's vast achievements, his commitment to equality for all men and women, and the example of courage and dedication he set for generations to come are honored and remembered throughout the United States. These are just some of the institutions and awards in his honor.

Scholarship Funds and Awards

Thurgood Marshall Award
http://www.abanet.org/irr/marshall-award.html

Thurgood Marshall Legal Educational Opportunity Program
http://www.ed.gov/programs/legal/index.html

Thurgood Marshall Scholarship Fund
http://www.thurgoodmarshallfund.org/index.htm

Institutions

Thurgood Marshall College, San Diego, CA
http://provost.ucsd.edu/marshall/
The University of California, San Diego, named one of its colleges after Thurgood Marshall.

University of Maryland School of Law, Thurgood Marshall Law Library
http://www.law.umaryland.edu/marshall/
The University of Maryland School of Law, which Marshall fought to desegregate, renamed and dedicated its law library in his honor.

Texas Southern University, Thurgood Marshall School of Law, Houston, TX
http://www.tsu.edu/academics/law/index.asp

Thurgood Marshall Middle School, San Diego, CA
http://marshallmiddle.org/

Thurgood Marshall High School, Baltimore, MD
http://www.bcps.k12.md.us/School_Info/Index.asp?schoolNum=424&imageField.x=9&imageField.y=8

Thurgood Marshall Academy, Washington, DC
http://www.thurgoodmarshallacademy.org/

Thurgood Marshall Elementary School, Gaithersburg, MD
http://www.mcps.k12.md.us/schools/thurgoodmarshalles/

Thurgood Marshall Learning Center, Rock Island, IL
http://homepage.risd41.org/tmlc/

Buildings

The Baltimore/Washington International Thurgood Marshall Airport
http://www.bwiairport.com/about_bwi/thurgood_marshall/

The Thurgood Marshall Federal Judiciary Building in Washington, DC
http://www.fjc.gov/public/home.nsf/autoframe?openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/104

Thurgood Marshall Memorial in Annapolis, MD
http://www.mdarchives.state.md.us/msa/stagser/s1259/121/6259/html/0001.html

A statue of Thurgood Marshall in downtown Baltimore outside the Federal Building and U.S. Courthouse.
http://www.baltimoremd.com/monuments/thurgood.html

Think Tanks, Law Reviews

Thurgood Marshall Center for Service and Heritage
http://www.thurgoodmarshallcenter.org/

Thurgood Marshall Law Society, Inc. of Rhode Island
http://www.tmls.org

Thurgood Marshall Law Review
http://www.tsu.edu/academics/law/academic/review.asp

Justice Thurgood Marshall poses with his family outside the Supreme Court Building in Washington, D.C., on September 1, 1967, after his swearing in as associate justice.

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WEB SITES

Thurgood Marshall Before the Courts
http://americanradioworks.publicradio.org/features/marshall/
Transcript of a hour-long radio documentary about the life of Thurgood Marshall, with interviews by his contemporaries. The Web site also contains biographical information, materials from the landmark *Brown v. Board of Education* school desegregation lawsuit, and the civil rights struggle.

Thurgood Marshall: American Revolutionary
http://www.thurgoodmarshall.com/home.htm
Companion Web site to Juan Williams' biography of Thurgood Marshall. Includes sections from the biography, Justice Marshall's famous speeches and articles, and segments from interviews with Justice Marshall.

Thurgood Marshall Biography and Timeline
http://chnm.gmu.edu/courses/122/hill/marshall.htm

Thurgood Marshall Photo Gallery
http://www.thurgoodmarshall.com/gallery/gallery.htm

Oral History of Thurgood Marshall From the Lyndon B. Johnson Presidential Library Collection
http://www.lbjlib.utexas.edu/johnson/archives.hom/oralhistory.hom/MarshallT/marshall.pdf
Thurgood Marshall recounts his observations and meetings with President Johnson in this full-text oral history.

Marshall's Appointment to the Supreme Court
http://members.aol.com/klove01/marshall.htm
Contains the video of Marshall's appointment to the Supreme Court.

Thurgood Marshall Bibliography
http://www.founders.howard.edu/moorland-spingarn/MARSHALL.HTM
Written after Justice Marshall's death in 1993, this comprehensive bibliography contains books, book reviews, dissertation, and magazine and newspaper articles by and about Marshall.

Thurgood Marshall: A Register of His Papers in the Library of Congress
http://lcweb2.loc.gov/service/mss/eadxmlmss/eadpdfmss/2001/ms001047.pdf
A description of the archival materials from Marshall files housed at the Library of Congress.

Historical FBI Records on Thurgood Marshall
http://foia.fbi.gov/foiaindex/marshall.htm
Thousands of pages of documents from the FBI files documenting threats to Marshall's life, interviews about his fitness to be a federal judge, and his non-involvement in the Communist Party.

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Left, Cecilia Marshall, widow of former U.S. Supreme Court Justice Thurgood Marshall, before the newly unveiled bust of her late husband. The unveiling was part of a ceremony dedicating the re-named Baltimore-Washington International Thurgood Marshall Airport on June 6, 2006.

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