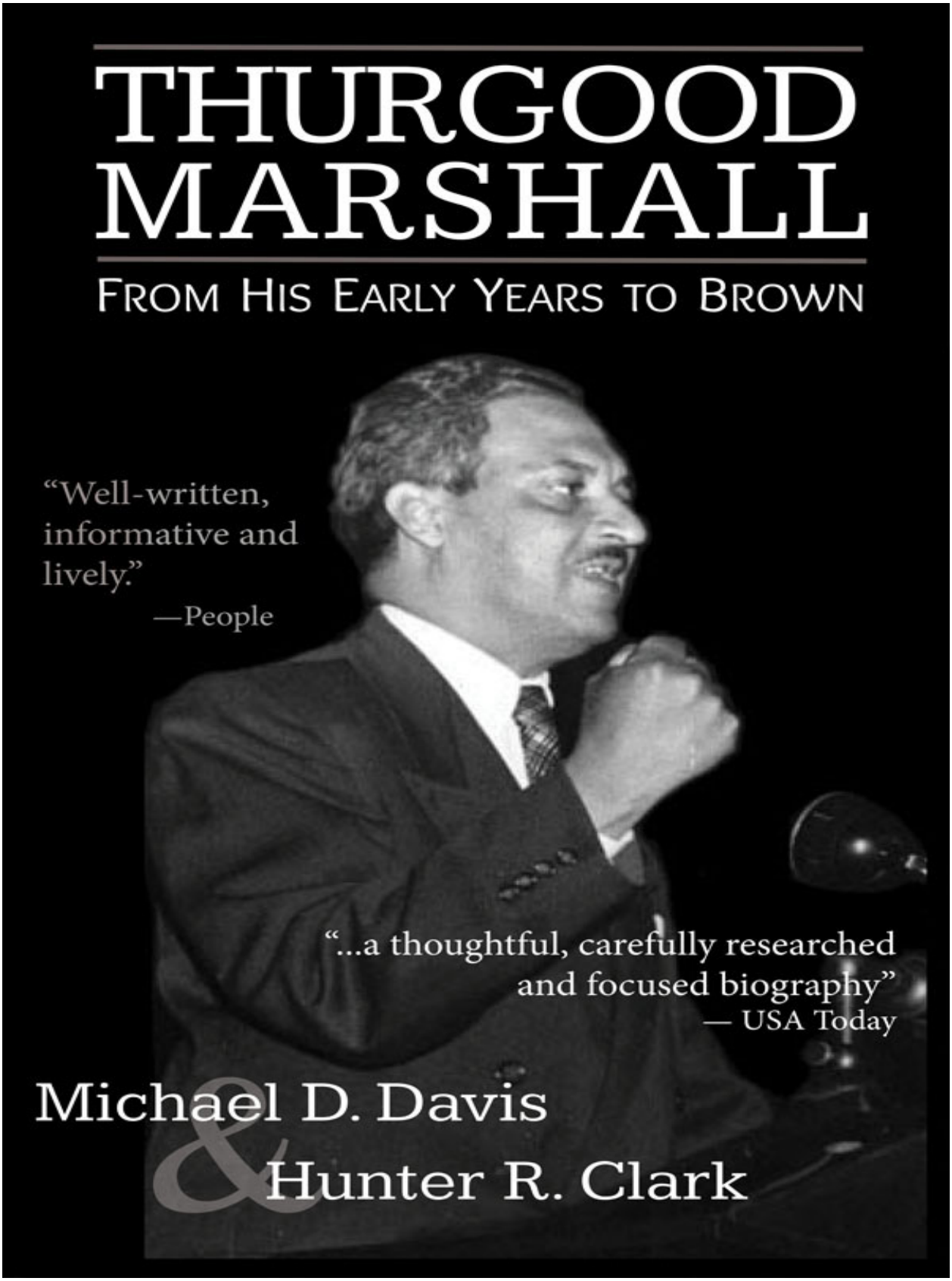

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THURGOOD MARSHALL

From His Early Years to Brown

Michael D. Davis and Hunter R. Clark

Published by Ebooks for Students, Ltd.

Reviews

Thurgood Marshall:
Warrior at the Bar, Rebel on the Bench

by Michael D. Davis & Hunter R. Clark, originally published in 1992.

This ebook edition is the first half of the 1992 print edition. It covers Thurgood Marshall's youth, education, and the legal strategies he used, and the cases he argued leading up to the *Brown v. Board of Education* decision. The reviews below are from the print edition.

"Michael D. Davis and Hunter R. Clark offer a masterfully written tale of an American legend." — Gannett News Service

"Filled with the same fire, passion and humor that drove Marshall's life, Thurgood Marshall is a revealing portrait of a pioneering lawyer." —National Black Review

"Well-written, informative and lively." —People

"This important work, ably chronicled by Davis and Clark, is impressive. Highly recommended." —Library Journal

"As a guide to the legal struggles of this American leader, this book is written clearly and with obvious affection and admiration for Marshall, and the law for which he fought." —Booklist

"Michael Davis and Hunter Clark have crafted a thoughtful, carefully researched and focused biography." —USA Today

“I highly recommend Thurgood Marshall by Mike Davis and Hunter Clark. This impressive book captures the sweeping drama and courageous struggles that have filled Thurgood Marshall’s life and career. The story of Justice Marshall is that of one of the greatest Americans in the twentieth century. Davis and Clark provide a compelling portrait of Marshall’s immense humanity and integrity in this fine biography.” —Congressman John Lewis of Atlanta.

“Thurgood Marshall is a giant of a man at a time when giants are scarce and desperately needed. This wonderful biography takes his measure.” —(Rev.) Theodore M. Hesburgh, C.S.C., President Emeritus, University of Notre Dame

“Davis and Clark have given us an engagingly written and conscientiously researched biography of a twentieth-century icon. It should be widely read and much discussed by all who care about the large, principled issues Justice Marshalls’ life embodies.” —David Levering Lewis, author of *W. E. B. Dubois: Biography of a Race*

“Michael B. Davis and Hunter R. Clark have written an interesting and informative biography of Supreme Court Justice Thurgood Marshall directed toward a general audience. The current work, with its fluid, readable style, reflects the authors’ backgrounds in the popular press, where both have published extensively.”--Mississippi Quarterly

Dedication

This book is dedicated to the memory of Michael Demond Davis (1939-2003), my friend and co-author of Thurgood Marshall: Warrior at the Bar, Rebel on the Bench (1992, 1994), upon which this epublication is based. Scripture admonishes us, "From those to whom much is given, much is expected." (Luke 12:48) Mike Davis sure lived up to that one in the pursuit of justice and human rights.

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Introduction

The Lawyer as Hero: Thurgood Marshall's Legacy

I met Justice Thurgood Marshall (1908-1993) in the early 1970s when I was a teenager working as a page in the U.S. Supreme Court. My parents were his contemporaries, and, like millions of Americans, they knew him as "Mr. Civil Rights." As a lawyer, Marshall had won *Brown v. Board of Education* in 1954, effectively outlawing racial segregation. He became the first African American Supreme Court justice in 1967. But the 1960s had radicalized my generation, and Marshall's commitment to "working within the system" was unacceptable to me. I was "Black and Proud!" I wanted freedom *now*! Little did I know that Marshall, an icon to my parents but an Uncle Tom to me, was one of the most visionary and courageous leaders in our nation's history.

His vision was a hard sell to the black leaders of his day who had grown frustrated with the lack of progress toward racial equality. To some, the American system was irredeemable, and so they embraced Soviet communism. Others called for an alliance of the fledging civil rights and labor movements, but unions refused to let blacks in. Some saw the need for a mass political movement that would rally millions into the streets, but there was fear of provoking a violent white backlash. It would be decades before the advent of the mass media, and the coercive threat of national exposure, would make Rev. Martin Luther King's direct action campaign a viable option. With access to the political process barred—African Americans were routinely denied the right to vote—Marshall's challenge was to convince his colleagues that a litigation strategy was the solution, even though the Supreme Court's "separate but equal" decree in Plessy v. Ferguson in 1896 had permitted racial segregation.

Marshall's courage and skill as a lawyer carried the day. He had attended Howard University Law School where he met his friend and mentor Charles Hamilton Houston, Howard's law dean. Houston, an African American graduate of Harvard Law School, had turned Howard into a "laboratory" for civil rights litigation, calling his

students "social engineers" whose mission was to overturn *Plessy*. Marshall finished at the top of his law class in 1933 and soon he took to the road, often with Houston— hero lawyers travelling through the South and elsewhere, investigating lynchings and filing anti-discrimination lawsuits. Decades later, Justice Marshall regaled colleagues and law clerks with harrowing tales of close call escapes from the Ku Klux Klan and others who threatened to kill him. Undeterred, he went on to establish the chain of legal precedents that laid the groundwork for *Brown*.

As a Supreme Court justice, he championed the view that government has an affirmative obligation to remedy economic, race, and gender inequalities. His conservative opponents accused him of judicial activism. As the Court moved to the right, he often found himself in dissent. Frustrated, he urged rights activists to avoid the courts and seek redress through the political process. That political process has since produced our first black president, Barack Obama.

Meanwhile, militants faulted him for not acknowledging the extent to which their radicalism made Marshall's moderate views more palatable. No matter. By the end of his life—he died in 1991—Marshall had put it all in perspective. "I don't know what legacy I left," he told an interviewer. "It's up to the people. I guess you could say, 'He did what he could with what he had.' I have given fifty years to it, and if that is not enough, God bless them."

Hunter R. Clark
May 17, 2012
Des Moines, Iowa

Meeting regarding announcement of Thurgood Marshall’s nomination as an Associate Justice of the Supreme Court of the United States on June 13, 1967. LBJ Library photo by Frank Wolfe.

ONE

A Rumpled Bear of a Man

Don't worry, I am going to outlive those bastards.
Thurgood Marshall

The day after the U. S. Senate confirmed Thurgood Marshall's lifetime appointment to the Supreme Court in 1967, he told his old friend Harvard Law School graduate John P. Davis, "The only thing I have to do now, Johnny, is stay alive." Marshall, questioned frequently about the possibility of retirement years later, each time scoffed at the idea. "I was appointed to a life term, and I intend to serve it," he said in a typical response. But now, on June 28, 1991, after twenty-four years as the only Afro-American ever to sit on the Supreme Court, the time had come for him to go.

He was just four days away from his eighty-third birthday, and in less than six weeks doctors at Bethesda Naval Hospital would put a pacemaker in his chest to stabilize an irregular heartbeat. The years of chain-smoking three packs of Winston cigarettes a day, his fondness for bourbon, fried chicken, and pigs' feet, and the burden of the nation's legal conscience he had carried since he was a fledgling lawyer in his native Baltimore had finally taken their toll. The day before, in a brief note to President George H.W. Bush, Thurgood Marshall told him and the nation he was retiring because of his "advancing age and medical condition."

Supreme Court press secretary Toni House had prepared the Court's ornate East Conference Room. The Washington press corps snaked its microphones to the lectern atop the red-carpeted dais. Photographers elbowed their way into advantageous positions, ready to capture on tape and film the parting words of the Supreme Court's most liberal justice.

Marshall, whose intimate friends nicknamed him "Turkey" years ago because of his proud, head-high, defiant

strut, entered the room walking slowly, with a cane, but would have none of the thronelike chair House had provided for him. Instead, he sat, facing reporters at eye level, on an antique mahogany chair under an oil portrait of John Jay, the nation's first chief justice. His tie, loosely knotted, was pulled to one side, and his pants were hitched up over his spreading belly, displaying the white surgical socks he wore to prevent a recurrence of the blood clot that had formed in his right leg several years earlier.

His wife, Cecilia "Cissy" Marshall, was there with his law clerks and staff, his son Thurgood, who was a member of Massachusetts senator Edward M. Kennedy's staff, and his daughter-in-law Colleen Mahoney, a lawyer at the Securities and Exchange Commission. They took turns holding their two-year-old son, Thurgood William Marshall, given his middle name in honor of Marshall's closest personal and ideological friend on the Court, retired justice William J. Brennan Jr.

"How do you feel?" a reporter asked.

"With my hands," Marshall replied, displaying his gnarled hands flecked with the brown liver spots of old age. It was vintage Thurgood Marshall. For the next thirty minutes this curmudgeon parried with reporters, punctuating his remarks with his cane and displaying all his legendary fieriness.

The reporter who asked the first question rephrased it, attempting to regain credibility among his smiling colleagues. "What's wrong with you, sir?"

"What's wrong with me?" Marshall barked incredulously in his baritone voice, implying the answer was plainly visible in his sagging shoulders and the deep wrinkles of his eighty-two-year-old face. "I'm old. I'm getting old and coming apart."

Marshall's health had been a subject of Capitol Hill gossip for more than a decade, as both liberals and conservatives speculated about how long the ailing justice could hold on to his seat on the nation's highest court. Marshall had had a heart attack in 1976 and since then had been treated for recurrent bouts of pneumonia and viral bronchitis. In October 1979 he had fallen down the marble steps of the Capitol after an appointment with the Capitol's attending physician, Dr. Freeman H. Carey, fracturing his right wrist and left elbow and sustaining a nasty laceration on his forehead. In August 1990 he had fallen in the lobby of Chicago's Hyatt Regency Hotel, where he was attending the American Bar Association's annual convention. He wore a hearing-aid, and for several years his vision had been clouded by glaucoma.

Even earlier, in July 1970, during Marshall's hospitalization for bronchitis at Bethesda Naval Hospital, aides to President Richard M. Nixon quietly inquired about his prognosis. Marshall's attending physician, Captain C. F. Lambdin, would not release the information without his patient's permission. When Lambdin told Marshall

about the White House inquiry, Marshall grabbed a red felt-tipped marker from the doctor's pocket and scrawled on his medical folder in bold capital letters NOT YET! He was not about to give President Nixon a conservative appointment to the Court by dying.

Later, in a 1987 interview with columnist Carl Rowan, Marshall made no attempt to hide his displeasure with another president, describing Ronald W. Reagan as the "worst president in my lifetime." He said President Reagan "has done zero for civil rights" and noted that "on the racial issue you can't be a little bit wrong any more than you can be a little bit pregnant or a little bit dead."

In 1988, similarly determined, he told a group of judges and lawyers who questioned him about the Supreme Court's increasingly conservative composition, "Don't worry, I am going to outlive those bastards."

At the final press conference, he was asked, "Do you have any plans for your retirement?"

"Yep."

"What are they?"

"Sit on my rear end."

Pointing his cane at another reporter, who referred to his departure as a "resignation," Marshall quickly corrected him. "It's a retirement," he said.

When a reporter asked him to comment on the status of "black people," he said, "In the first place I am not a 'black people,' I am an Afro-American," making clear his recent personal decision to use that term to describe his race. "Now, you want to talk about an Afro-American?" he asked the reporter. "No, I am not free, certainly I am not free."

And then he began one of his characteristic reminiscences, telling the story of a Pullman porter he knew as a child, one of his father's Baltimore friends who worked on the Baltimore & Ohio Railroad. "He had been in every city in this country, he was sure, and he had never been in any city in the United States where he had to put his hand in front of his face to find out he was a Negro. I agree with him," Marshall said. "No, I am not free."

On the day Marshall announced his retirement, the Supreme Court issued its final opinions for the 1990-91 term. As he had done increasingly in recent years, Marshall found himself on the dissenting side of decisions that struck at the heart of issues vital to him during more than fifty years—as chief counsel for the National Association for the Advancement of Colored People (NAACP), a U.S. appeals court judge, the nation's solicitor general, and a Supreme Court justice.

Several reporters suggested Marshall was leaving in anger and frustration after watching the liberal Court of Chief Justice Earl Warren, which he joined in 1967, move gradually to the right as four Republican presidents—

Richard M. Nixon, Gerald R. Ford, Ronald W. Reagan, and George H. W. Bush—replaced retiring liberal justices with conservatives. Marshall had found a comfortable seat on the Warren Court, which saw its role as protecting individual rights, the poor, women, minorities, criminal defendants, and political dissidents. He replaced centrist Justice Tom C. Clark, whose vote at times created a five-to-four conservative majority. Though Marshall's votes at times swung the Court's posture to liberal positions during his early tenure, the judicial pendulum soon began to swing again to the conservative right.

Chief Justice Warren E. Burger and Justice William H. Rehnquist, Burger's eventual successor as Chief Justice, were appointed by Nixon. Two other Nixon appointments, one by Ford, and three by Reagan placed the Court firmly in the hands of conservatives. By the end of the 1980s the only justices with decidedly liberal records were Marshall and his aging friend Justice Brennan, appointed by President Dwight D. Eisenhower.

The solid conservative majority quickly set about the task of dismantling much of what Marshall, Brennan, and their former liberal colleagues had accomplished. As one of the last Supreme Court justices to believe that Americans could depend on the government and the Court to resolve social problems, Marshall increasingly found himself dissenting from majority opinions. By temperament and experience he was suited to the outsider's role. In fact, many Court observers believe Marshall's best opinions were issued in dissent.

Marshall himself said dissenting opinions were important to him and made that clear when he interviewed candidates for clerkships. "For the past four or five years, whenever I interviewed prospective law clerks I always asked them if they liked writing dissenting opinions," he said in 1975. "If they said no, they didn't get the job."

"If there was a leitmotif to Marshall's dissents," said A. E. Dick Howard, professor of law at the University of Virginia, "it was his concern for the unempowered, the poor, minorities, those outside the mainstream."

At the last press conference, Marshall was asked, "Your retirement has been characterized as leaving in anger or frustration, finding yourself on the dissenting side. Is that true? Is that an accurate characterization?" a reporter asked.

"Who said that?" Marshall snapped.

"It's on the front page of the *New York Times* this morning."

"The front page of the *New York Times* said that I was frustrated?"

"And angry at finding yourself in dissent."

"That's a double-barreled lie. My doctor and my wife and I have been discussing this for the past six months or more. And we all eventually agreed, all three of us, that this was it, and this is it."

When asked what major tasks the Supreme Court faced in the years ahead, he said, "To get along without

me."

A reporter asked Marshall if the president should replace him with a black judge. "I don't think race should be used as an excuse one way or the other.... I mean for picking the wrong Negro and saying, 'I'm picking him because he is a Negro.' I am opposed to that. My father told me long ago, 'There is no difference between a white snake and a black snake. They both bite.'"

The humor Marshall displayed at his parting press conference was characteristic of the folksy style he embraced all his life. Marshall said early in his career he intended to "wear life like a loose garment." He delighted in using subtle, often off-color humor and his penchant for earthiness to challenge those who took a more traditional approach to their existence. Marshall's background, of course, was much different from those of his Supreme Court brethren, for, after all, he was the only Supreme Court justice who experienced segregation from the back of the bus, the only justice to be chased from rural southern towns by the Ku Klux Klan, and the only justice who had defended a black man accused of murder.

He was fond of putting Chief Justice Warren Burger ill at ease with black street-corner colloquialisms. "What's shaking, Chiefy baby?" was his customary greeting when he encountered Burger in the court's staid halls. Burger would return Marshall's salutation with a puzzled glare. The two men later developed a cordial relationship.

On one occasion Marshall found great pleasure in allowing several white tourists, who mistakenly entered an automated elevator reserved for the justices, to assume he was the operator. They stepped to the rear and called their floor. Marshall, in his best Uncle Tom voice, said, "Yassah, yassah," and pushed the button. When the car arrived at their floor he stepped back and ushered them out, glowing in triumphant delight as he watched them walk down the hallway, slowly realizing who he was.

"He was earthy and bright," said Jack Greenberg, his successor at the Legal Defense and Educational Fund. "He related to people, not abstract theories." During his years on the Supreme Court, Marshall turned from a quick-witted verbal combatant to a philosophical joker whose wit and humor became legendary. His working habits were a part of the legend. Clerks often commented that Marshall and Justice Potter Stewart met in the halls each day at noon—Stewart on his way to work and Marshall on his way home.

Though his body was now aged, his pants gone baggy and his face in seams, there was no doubt that on the day of his retirement he still possessed the feisty humor, combativeness, and sharpness of his younger days, when he won landmark civil rights cases before the Supreme Court and breached the wall of legal segregation in the United States.

Marshall changed with the years. A 1950 story in *Afro-American* newspapers pictured him as "handsome"

and “the amazing type of man who is liked by other men and probably adored by women. He carries himself with an inoffensive self-confidence…He wears and looks especially well in tweed suits.” In 1955 *Time* magazine called him “a big, quick-footed man, with a voice that can be soft and raucous, and an emotional pattern that swings like a pendulum from the serious to the absurd.” In 1956 the *New Yorker* saw “a tall, vigorous man with a long face, a long, hooked nose above a black mustache and heavy-lidded, but very watchful eyes.” In 1959, *Newsweek* magazine, noting his tweed suits were now rumpled and dusted with cigarette ashes, described him as “a rumpled bear of a man.”

If the *New York Times* wrongly suggested that Marshall was leaving the court in “frustration and anger,” his dissenting opinions delivered on the day of his retirement certainly made clear his displeasure with the current Court and most of his colleagues. On that day the Court closed its 1990-91 term by overturning one of its own precedents. It reversed a decision prohibiting prosecutors in death penalty cases from giving jurors, during the sentencing phase of a trial, evidence about a victim’s character and the impact of the homicide on the victim’s family.

Marshall, who remained adamantly opposed to capital punishment, was on the dissenting side of the six-to-three decision, written by Chief Justice Rehnquist. The opinion—*Payne v. Tennessee*—upheld the death sentence of a Tennessee man convicted of murder. Thurgood Marshall did not like the decision issued just ninety minutes before he announced his intention to retire, and he used his final dissenting opinion to speak his mind plainly about the Court’s composition and its future. He took issue with the Court’s reversal of precedent, suggesting it was a portent of more ominous things to come, including the reversal of *Roe v. Wade*, the controversial and emotionally charged 1973 decision upholding women’s constitutional rights to safe abortions. Marshall wrote:

“Power, not reason, is the new currency of this court’s decision making….

“Neither the law nor the facts supporting Booth and Gathers [plaintiffs in an earlier case that halted executions] underwent any change in the last four years. Only the personnel of this court did. In dispatching Booth and Gathers to their graves, today’s majority ominously suggest that an even more extensive upheaval of this court’s precedents may be in store.

“Cast aside today are those condemned to face society’s ultimate penalty. Tomorrow’s victims may be minorities, women, or the indigent. Inevitably this campaign to resurrect yesterday’s ‘spirited dissents’ will squander the authority and the legitimacy of this court as a protector of the powerless.

“Today’s decision charts an unmistakable course. If the majority’s radical reconstruction of the rules for overturning the court’s decisions is to be taken at face value—and the majority offers us no reason why it should

not—then their over-ruling of Booth and Gathers is but a preview of an even broader and more far-reaching assault upon this court's precedents."

Marshall's defense of precedents in his final dissent was in ironic contrast to the many Supreme Court decisions he won as the NAACP's civil rights lawyer, where his victories resulted from his ability to persuade the Court to reverse precedents of long standing. It was in contradistinction, too, to liberal Justice William O. Douglas, who in 1949 told the Bar of the City of New York he wanted nothing more from past decisions than "a sense of continuity…. a feel for the durability of a doctrine…Even for the experts, law is only a prediction of what judges will do under a given set of facts. We have experience that they [former Courts] never knew. Our vision may be shorter or longer. But it is ours. It is better that we make our own history than be governed by the dead."

Thurgood Marshall began his lifelong pursuit of equal rights as an undergraduate at Pennsylvania's Lincoln University, when, with a group of students, he sat in the whites-only orchestra section of an Oxford, Pennsylvania movie theater. As a student at Howard University Law School in Washington, D.C., he worked with lawyers from the NAACP on important early civil rights cases.

In 1933, after graduating from law school, he opened a one-man civil and criminal law practice in Baltimore, but his increasing involvement in local civil rights activities soon became the major focus of his early career. He traveled through Maryland's Eastern Shore counties for the NAACP investigating lynchings, won salary equalization for Maryland's black teachers, and staged boycotts forcing Baltimore's A & P stores to hire black clerks.

His first major civil rights victory was a case of "sweet revenge." In 1935, with his Howard professor and mentor, Charles Hamilton Houston, he won a suit to integrate the University of Maryland's law school—the same school that had rejected his application because of his race.

In 1936 Marshall became the NAACP's assistant special counsel in New York City. Four years later he was appointed director-counsel in charge of planning the legal strategy for the organization's Legal Defense and Educational Fund.

In 1944 Marshall won voting rights for thousands of disfranchised black southerners when he successfully argued *Smith v. Allwright,* the Supreme Court suit overthrowing the South's Democratic "white primary." After he won that case, just ten years out of law school, the trustees of Howard University awarded Marshall a prophetic citation of recognition:

"Within the short span of the first ten years of your professional career, you have fully justified the exceptional promise of your student days.

"You are winning significant and enduring victories for a disadvantaged people. Your unceasing labors are

opening the way for the achievement of an even greater measure of justice and equality under the law. Your star still rises, and though it is not yet at its zenith, the brilliance of your accomplishment and the value of your service to your fellow man already marked you as an advocate, a legal scholar and humanitarian of the first magnitude."

As NAACP counsel Marshall implemented a legal strategy to integrate graduate schools, where there was less resistance to black and white students attending the same schools than there was at the public school level. Marshall said: "Those racial supremacy boys somehow think that little kids of six or seven are going to get funny ideas about sex and marriage just from going to school together, but for some equally funny reason, youngsters in law school aren't supposed to feel that way. We didn't get it, but we decided if that was what the South believed, then the best thing for the moment was to go along."

Two years later, in 1946, the NAACP gave Marshall the Spingarn Medal, its highest award. In 1948 he argued and won *Shelly v. Kraemer*, a Supreme Court decision striking down the legality of racially restrictive residential housing covenants, and in 1950 he won Supreme Court victories in two graduate school cases—*Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents*—laying the foundation for broader victories.

In 1951 Marshall went to Japan and South Korea for six weeks to investigate charges of mistreatment of black soldiers under the command of southern white officers. And then, in 1954, Marshall and a team of NAACP lawyers won *Brown v. Board of Education of Topeka,* the case that struck down segregation in public education in America. The Warren court ruled unanimously that "separate educational facilities are inherently unequal," overturning the separate-but-equal doctrine established in *Plessy v. Ferguson* in 1896.

His crowning legal achievement was the celebrated victory in *Brown*. *Brown* became the wedge that Marshall and other civil rights lawyers used to dislodge most legalized segregation in America.

On September 23, 1961, eight months after taking office, President John F. Kennedy appointed Marshall to the U.S. Court of Appeals for the Second Circuit, serving New York, Vermont, and Connecticut. Though the judgeship doubled his NAACP salary, the decision to step down as the NAACP's chief legal advisor was a difficult one. "I had to fight it out with myself," he told a *New York Times* reporter. "By then I had built up a staff—a damned good staff—an excellent board, and the backing that would let them go ahead. And when one has the opportunity to serve his government, he should think twice before passing it up." Later Marshall told the *Washington Post* ,"I've always felt the assault troops never occupy the town. I figured after the school decisions, the assault was over for me. It was time to let newer minds take over."

During his tenure as a federal appellate judge he wrote more than 150 opinions—including opinions declaring

loyalty oaths required of New York teachers unconstitutional and limiting the authority of immigration officials to deport aliens summarily—and issued decisions enforcing the Fourth and Fifth Amendments in cases of illegal search and seizure and double jeopardy. None of his ninety-eight majority decisions was reversed by the Supreme Court.

In July 1965 President Lyndon B. Johnson appointed Marshall to the office of U.S. solicitor general, the nation's highest-ranking lawyer. Marshall, the great-grandson of a slave and the grandson of a Union soldier, was the first Afro-American to hold that post. Between 1965 and 1967 he won fourteen of the nineteen cases he argued for the United States, many of them mandating compliance with the Civil Rights Act of 1964. As solicitor general Marshall pleaded the government's position on civil rights and privacy cases, two issues important to him.

On June 13, 1967, standing in the White House Rose Garden with Marshall at his side, President Johnson announced his nomination of Thurgood Marshall to to the U.S. Supreme Court. "I believe it is the right thing to do, the right time to do it, the right man and the right place. I believe he has already earned his place in history, but I think it will be greatly enhanced by his service on the court." The president's nomination spread a tidal wave of joy across black and liberal America.

Marshall became the first Marylander to sit on the Court since Chief Justice Roger B. Taney, who had ruled in the Dred Scott decision, 110 years earlier, that black Americans had no rights protected by the Constitution.

President Johnson had a dream of building what he called "the Great Society" in America. His appointments of Thurgood Marshall as solicitor general and later to the U.S. Supreme Court were integral components of that dream.

Justice William J. Brennan Jr., writing in the November 1991 issue of the *Harvard Law Review*, spoke of Marshall, his closest friend on the Court:

Indeed, he leaves behind an enviable record of opinions supporting the rights of the less powerful and less fortunate. One can add that, for more than twenty-five years before he joined the judiciary, Thurgood Marshall was probably the most important advocate in America, one who used his formidable legal skills to end the ills of discrimination. Thurgood Marshall is simply unsurpassed as a raconteur. On many occasions, some fact or event will remind him of an earlier episode in his richly varied life. When that moment arrives, a flicker of recollected amusement passes over his face, the magic words 'You *know*...'' signal the onset of another tale, and soon Thurgood has plunged his audience into a different world. The locales are varied—from dusty courtrooms in the Deep South, to a confrontation with General MacArthur in the Far East, to the drafting sessions for the Kenyan Constitution.

They are brought to life by all the tricks of the storyteller's art: the fluid voice, the mobile eyebrows, the sidelong glance, the pregnant pause and the wry smile.

The last day Marshall sat on the Supreme Court, retired Justice Brennan came to watch the proceedings. Brennan, now eighty-five and frail, was one of the first people Marshall told about his intention to retire. An architect of some of the Warren Court's most liberal opinions, Brennan was described as the "intellectual leader" of its liberal majority. Until his retirement in 1990, the Court's dwindling liberals could at times sway the vote of conservative justices Sandra Day O'Connor and Byron R. White. But after Justice David Souter replaced Brennan, the conservatives held a solid and commanding five-vote majority.

As news of Marshall's retirement spread across the nation's capital, official reaction came swiftly. In an obligatory White House statement, President George H. W. Bush said Marshall rendered "extraordinary and distinguished service to his country as a civil rights lawyer, a judge on the U.S. court of appeals and in his tenure on the Supreme Court. His career is an inspiring example for all Americans." But less than an hour after the president's comments on Marshall's retirement, Washington radio station WTOP was broadcasting a report that President George H. W. Bush had already narrowed his Supreme Court nomination A-list to several candidates, including a black conservative U.S. appeals court judge named Clarence Thomas.

In a tribute to Marshall, Senator Orrin G. Hatch said, "I don't know of anyone on the bench who has had a more profound effect on American jurisprudence. No other person in the court's history has done more from a legal standpoint, or any other standpoint." Delaware Democrat Senator Joseph D. Biden, chairman of the Senate Judiciary Committee, said, "The Supreme Court has lost an historic justice—a hero for all America and for all times." The chairman of the Democratic party, Ronald H. Brown, characterized Marshall's retirement as "truly a loss for all America and a tragedy for this country. His resignation leaves a tremendous void that George H. W. Bush will never understand."

Voices chimed in from outside Washington as well. "Whether you agree with his opinions or not, he is one of the greatest Americans our legal system has ever produced. He dismantled the American apartheid," said University of Chicago law professor Cass Sunstein, a former Marshall clerk. And in Cambridge, Massachusetts, Harvard Law School professor Lawrence H. Tribe said Marshall's departure meant that "there is no one there who has the slightest idea of what it's like to be seriously oppressed, segregated, the victim of relentless prejudice and who has not led a life of privilege."

Not all the comments pouring into the city's newsrooms that day were complimentary. Richard A. Viguerie, chairman of the United Conservatives of America, rejoiced at the news of Marshall's retirement. "Hallelujah,"

he said, adding that the vacancy created by Marshall's departure would give President Bush the opportunity to "remake the American judiciary and change the face of the country." Douglas R. Scott, vice-president of the Christian Action Council, a group that opposes abortion, said "Marshall is the most activist jurist of this century, and his resignation is good news for the country and the pro-life movement."

Reactions from others did not make the front pages of the next day's *Washington Post* or *New York Times*. Retired Washington, D.C., schoolteacher Evon Stevens sat sipping a glass of white wine at Faces, a popular Georgia Avenue tavern not far from Howard University. "I remember when colored people couldn't try on a dress or a pair of shoes in a downtown department store unless they were going to buy them," she said. "Thurgood had a lot to do with changing all that, and now he's gone."

T W O

A Cunning and Powerful Strategist

I didn't undertake this job for money, but to help redress an evil and errors that go back far beyond our lifetime.
—Howard Jay Graham

Marshall leaned forward on his elbows at the conference table in the Overseas Press Club and inhaled slowly on a Winston cigarette. It was the fall of 1953. The conference he had called as director-counsel of the NAACP Legal Defense and Educational Fund was drawing to a close. For five days, more than a hundred people had been gathered in New York City to answer five questions posed by the justices of the U.S. Supreme Court at the end of the first round of oral arguments in *Brown v. Board of Education.* The conferees included many of the nation's leading educators, historians, legal experts, political scientists, and thinkers of every stripe: historians Howard K. Beale, C. Vann Woodward, and John Hope Franklin; professors John Frank and Walter Gellhorn of Yale and Columbia Law Schools, respectively; Robert K. Carr, a professor of law and political science at Dartmouth College who became president of Oberlin College; and civil rights expert Milton Konvitz, to name but a few.

As the lawyer for black schoolchildren and their parents in *Brown,* Marshall asked the Court to end, once and for all, segregation in public education. He claimed segregation was detrimental to black children, adversely affecting their hearts and minds in a way that denied them the equal educational opportunity to which they were entitled under the Fourteenth Amendment to the U.S. Constitution. Opposing lawyers for the states of Kansas, South Carolina, Virginia, and Delaware and the District of Columbia asked the Court to uphold segregation as a time-honored practice, approved by the Supreme Court in *Plessy v. Ferguson* in 1896 and sanctioned by the Court a number of times since.

The Court listened to both sides argue their cases over the course of three days in December 1952. After the arguments were presented, the justices decided to reserve judgment. Integration was a divisive and potentially

explosive issue. The blacks demanded nothing less than that the Court compel America to live up to its creed that all men are created equal. A ruling that upheld segregation was sure to be viewed as a denial of the inalienable rights promised at that nation's founding by Thomas Jefferson.

At the same time, the justices were aware that school desegregation would likely be resisted violently throughout the South. A number of southern leaders had already expressed their fear that integration in public education would lead to a breakdown of racial barriers in other aspects of American life. Some contended that putting blacks and whites side by side in the classroom at an early age would lead to miscegenation, interracial sex and marriage, and the disappearance of the white race.

Whichever way the justices ruled, opponents of the decision were likely to challenge whether the Court legitimately had the power even to address the issue. For this reason the justices decided they must hear each side's answers to five basic questions concerning the Court's power before rendering what was certain to be one of the most momentous decisions in American history. At the heart of what the Court wanted to know was this: Did the men who wrote the Fourteenth Amendment intend to abolish school segregation?

From the Court's central question, four others followed. If the framers themselves did not intend to end segregation, did they at least intend to give Congress or the courts the power to abolish it at some future time, in light of changed social circumstances? If not, how was it now within the Supreme Court's power to abolish segregation in the public schools? If the Court did have the power to end segregation and chose to do so, should it do so gradually or order it done all at once? And how should the Court handle the particular situations presented in the five cases that were combined into *Brown*—with specific, detailed decrees or with sweeping, general directions to be followed by lower courts?

Adopted in the wake of the Civil War, the Fourteenth Amendment was designed to ensure former slaves and their descendants the equal protection of the laws. The language of the amendment did not squarely address segregation. The crux of the amendment is the equal protection clause, which states simply, "No State shall... deny to any person within its jurisdiction the equal protection of the laws." In *Plessy v. Ferguson* the Supreme Court ruled that the Fourteenth Amendment did *not* prohibit states from separating people by race as long as blacks and whites were treated equally. This became known as the separate-but-equal doctrine.

Marshall called the conference primarily for the purpose of hearing the views of two men: Alfred H. Kelly, chairman of the History Department at Wayne State University, and Howard Jay Graham, a bibliographer at the Los Angeles County Law Library. Both were white. Each was preeminent in his field. Kelly, a lanky, blond-haired, blue-eyed midwesterner, was the coauthor of a widely acclaimed book, *The American Constitution: Its Origins*

and Development. Graham was stone deaf, but his hearing impairment did not keep him from becoming one of the foremost published authorities on the Fourteenth Amendment. Both graciously accepted Marshall's invitation to participate in formulating the NAACP's response, agreeing to contribute their time and effort over the summer in return for payment of their expenses.

Kelly said the chance to work with Marshall "struck a certain point of idealism in me about the role of the Negro in American life." He recalled, "It just seemed to me that the constitutional and statutory impediments to Negro equality were an outrage— almost as bad as slavery in their own way."

Graham felt the same way. He told Marshall, "I didn't undertake this job for money, but to help redress an evil and errors that go back far beyond our lifetime. It promises to be one of the most satisfying experiences of my life."

Marshall crushed his Winston in an ashtray teeming with mashed cigarette butts. He sipped from a glass of milk that his secretary brought him. Milk was recommended by his doctor for his stomach ulcers. He preferred sipping bourbon.

He looked out over the conferees—tall, short, angular, stout, women and men, blacks and whites of all ages, together, the way it should be. He tried to focus on what the historians were trying to say. It was not what he wanted to hear. Research of the Fourteenth Amendment's history revealed, among other things, that when the amendment took effect in 1868, twenty-four of the nation's thirty-seven states had segregated schools. This, together with the fact that segregation was barely discussed in the debates over the amendment's ratification, showed that state legislators of the day did not regard the amendment as having an impact on segregation in public education.

Moreover, public schools in the District of Columbia, controlled by Congress under Article I of the Constitution, had been segregated since 1864, before the end of the war that was fought to free the slaves. And Congress refused to abolish school segregation in the District after the Fourteenth Amendment was adopted, although the question was debated thoroughly during the early 1870s. If Congress had intended for the Fourteenth Amendment to outlaw segregation, then why had Congress itself not abolished school segregation in the District after the amendment was passed?

Marshall had only five lawyers on staff at the NAACP's New York headquarters. Robert L. Carter, his top assistant, specialized in cases involving discrimination in interstate and intrastate transportation. He is now a district court judge for the Southern District of New York, as is Constance Baker Motley, who specialized in housing discrimination. Jack Greenberg, at twenty-eight the youngest staffer, went on to become the NAACP Legal Defense

and Educational Fund's director, succeeding Marshall. He handled military courts-martial, labor law, and criminal cases. David Pinsky and Elwood Chisholm were research attorneys. The six lawyers, including Marshall, were supported by seven secretaries, seven paralegals, and two bookkeepers.

It was an effective but bare-bones operation. *Brow*n was but one of six Supreme Court appeals the office was handling. The legwork, the research, the interviews of witnesses and the reviews of court records from a number of states, were monumental undertakings. And the Supreme Court appeals were not the only business of the office. Marshall himself handled as many as fifty lower court litigations at any given time in addition to the Supreme Court work, and he also oversaw the operations of the office. He logged, on average, sixty thousand miles a year traveling from courthouse to courthouse across the country. The volume of his responsibilities was three to four times beyond that normally demanded of a lawyer.

The NAACP's legal staff had achieved a number of impressive victories in the Supreme Court in recent years. These achievements were, of course, a positive reflection on Marshall, the boss. But he was characteristically modest about the success of his operation. He once told a reporter, "The only reason I look good is that I get expert advice and take it."

Fortunately the New York staff was reinforced by the NAACP Legal Committee, composed of fifty-one attorneys from around the nation, appointed by the NAACP board of directors. These lawyers contributed their services free of charge in the interest of advancing what was known at that time as the "Negro cause." Without their help Marshall would not have had the resources to undertake the rigorous and in-depth research called for by the Court's five questions. Even with the Legal Committee's assistance, however, he felt he needed more help in the form of an interdisciplinary assault on the Fourteenth Amendment's history. For this reason he called together the assembled experts from diverse fields.

William Robert Ming Jr., a black law professor at the University of Chicago, wrote a brief that tried to argue around the historians' discoveries. He took the position that, despite the specifics, the Radical Republican abolitionists who developed and sponsored the Fourteenth Amendment were motivated by humanitarian aims. Achieving an egalitarian society, Ming argued, was their underlying objective. To this extent, he contended, the specific practices of the era should be given secondary consideration. Of primary importance was achieving the overriding goal of full black equality. Compromises may have been forced by political realities or the need to bind sectional wounds that followed the Civil War. Nonetheless, Ming argued, the amendment's broader purpose should be interpreted to include segregation's abolishment. Kelly, who collaborated on the brief, later explained, "Ming had proceeded on the theory that it would not do to get too far involved in specific historical detail with respect to framer intent and that the [NAACP's] case might best be cast in very generalized terms with a deliberate avoidance of the particular."

Kelly and Ming had worked tirelessly on the brief over the course of three days, cloistered with a stenographer in a suite of offices at the NAACP's main headquarters on West 40th Street. Kelly recalled, "The brief drafting was mostly Ming and comparatively little Kelly; in the first place, Ming knew how to draft a brief and I didn't; moreover, I found he had very positive ideas about what he wanted to say. My role, it appeared, was to challenge him repeatedly; to fight and quarrel with him, attack his history and constitutional law as unsound, and so on." Kelly went on, "Since being unpleasant comes naturally both to lawyers and academicians, we got on famously. Evenings, we went back to the general sessions, which invariably lasted until long after midnight. At the end of three days we had a brief which Ming said would do."

Thurgood Marshall was disappointed. The approach was not persuasive; there was nothing concrete in it. Ming's brief hedged; it did not confront the questions. Marshall knew he could not win with it. A week after the conference closed, he asked Kelly to return for a second attempt at composing a brief.

"In the curiously winning manner so characteristic of the man," Kelly said, "he informed me that since I wasn't doing anything anyhow, I might as well come down to New York for four or five days and waste my time there. My help, he said with careful flattery, was needed very badly on the brief. My vanity thus touched to the quick, I came."

"I gotta argue these cases," Thurgood complained to Kelly, "and if I try this approach, these fellows [on the Court] will shoot me down in flames."

With Kelly back on board, the staff began a week-long review of the historical evidence. Marshall urged those involved in the effort to see the bigger picture rather than to focus on or emphasize the uncovering of some "objective" or "empirical" truth. The practice of law, Marshall explained, is *advocacy.* "I am very much afraid that…I ceased to function as an historian and instead took up the practice of law without a license," Kelly recalled. He went on, "The problem we faced was not the historian's discovery of the truth; the problem instead was the formulation of an adequate gloss on the fateful events…sufficient to convince the Court that we had something of a historical case…It is not that we were engaged in formulating lies; there was nothing as crude and naive as that. But we were using facts, emphasizing facts, bearing down on facts, sliding off facts in a way to do what Marshall said we had to do—'get by those boys down there.'"

Marshall drove his staff relentlessly but asked nothing of them that he did not demand of himself. "I have *never* seen a man work so long and so hard," recalls historian John Hope Franklin. "It was nothing for him to say at 1:00 a.m., 'How about a fifteen-minute break?' I never worked for harder taskmasters."

William Coleman was a black graduate of Harvard Law School who clerked for Justice Frankfurter. Marshall

put him in charge of organizing the research efforts of the contributing historians from across the country. Coleman remembers, “There were no prima donnas in that room.”

Kelly was inspired by what he saw as Marshall’s “profoundly moving sense of identity with the Negro’s tragic role in America, and his tremendous moral commitment to the work in which he was engaged.” He wrote, “I came to understand why Thurgood Marshall was such a cunning and powerful strategist in the campaign for Negro rights in America.”

Kelly said years later that another thing he came to understand in those autumn conferences was this: “Thurgood Marshall was…an America patriot. He truly believed in the United States and the Constitution, but that the whole system was tragically flawed by the segregation laws. Wipe away those laws and the whole picture would change.” He added, “Marshall and his colleagues were no rebels. They felt the social order was fundamentally good. What they wanted was the chance to share in it like men.”

Bringing that about, Marshall’s first wife, Vivian, realized, was a daunting task. It was during this period that she really began to worry about him. She commented to friends about how her husband had changed physically during the past five years, how he had aged, that he was nervous where he used to be calm. “The work is taking its toll of him,” she once said. “You know, it’s a discouraging job he’s set himself.”

At times Marshall wondered exactly what that job was. Was it saving the Negro? Or was it saving the white man’s soul? He thought of Clarendon County, South Carolina, where Negro children ran around with bloody, bare feet from walking on the jagged shards of tin roofs blown off their ramshackle lean-tos. He was only forty-five. But how could a young man see that and not be old?

He knew that the Court was ready to end segregation. He believed in the judicial system, that it worked, and was confident that the groundwork for segregation’s demise had been laid by him and his mentor, Charles Hamilton Houston, during the years leading up to the *Brown* litigation. Case by case they had chipped away at *Plessy’s* separate-but-equal doctrine, persuading the Court—in *Gaines, Sipuel, McLaurin, Sweatt,* and other cases—to narrow *Plessy’s* holding here, limit its application there, affirming or extending black rights in certain circumstances, implying their extension to others. Two years earlier, in the *Annals of the American Academy of Political and Social Science,* Marshall had written:

“As a direct or indirect result of these decisions, Negroes are now attending graduate and professional state schools in Arkansas, Texas, Maryland, Delaware, Kentucky, Oklahoma, Virginia, West Virginia, and Louisiana…Thus a major modification in the pattern of American life is in the making…Although its approach has been undeniably cautious, the Court seems to be making a real effort to deal effectively with our most disturbing problem with practical wisdom and insight. If it continues along the path blazed by its recent decisions, the Constitution’s mandate of equal protection of the

laws will eventually accomplish the objective its framers intended—that of prohibiting all forms of community discriminatory action based upon race or color."

Call it a gut feeling, intangible, but throughout the three days of oral argument that past December something ineffable, an air of inevitability, had hung over events. What the Court now wanted, Marshall believed, was the chance to redeem itself for what it had done a half century earlier, when, by adopting the separate-but-equal doctrine, it had consigned African Americans to lives of indignity and second-class citizenship. That was the reason for the five questions. Marshall was sure of it. What the court was looking for was some credible, some legitimate, basis for doing what he was sure it wanted to do, anyway.

Sometimes he wondered what it was like to be a white man. He took it as a given that the average white man did not lose as much sleep worrying about the evils of the segregation systems as Marshall lost trying to correct them. He could not help resenting white apathy.

If Kelly was taken aback by Marshall's resentment, at first he was also puzzled by Marshall's liberal use of the word *nigger,* which Kelly naturally regarded as derogatory. The word made Kelly uncomfortable. Later, however, he arrived at an understanding of how Marshall used it. "That word seemed to epitomize for him the entire tragedy of the black man's situation, but he wasn't somber about it. He could invest the word with as much humor as sadness."

In feigned Negro dialect, Marshall once reminded his secretary sternly "who's the H.N. around here," meaning "Head Nigger." Another time, Marshall came upon a story in a newspaper of Civil War vintage about a black railroad worker who had fallen into a hole. The headline read "Nigger in a Pit!" Marshall rambled around the office yelling, "Nigger in a pit! Nigger in a pit!"

Of course, Thurgood Marshall was no racist. He knew that all white men were not alike. Some—like Kelly and Graham, for instance—were committed to the Negro cause. Others, like his young assistant Charles Black, went so far as to *become* Negroes.

Born in eastern Texas, Black finished near the top of his class at Yale Law School. He went on to become a professor of law at Columbia University in New York City but never really became a part of faculty life there. Instead, he indulged in his eclectic interests: studying the trumpet and frequenting Harlem nightspots; writing poetry and haunting the coffeehouses and bars in Greenwich Village. Eventually Black joined the faculty of his alma mater and became one of the nation's foremost authorities on admiralty law.

He offered his services to Marshall that summer and fall of 1953. "There was a fair sense of social injustice gnawing at him," recalls an associate of Black's at Columbia. When Marshall asked him why he was interested in working for the NAACP, Black made no effort to ingratiate himself with his new boss. Instead, he drawled: "I

come from deep, deep in Texas. I'd heard of this really terrible organization way up North called the N-A-A-C-P. It was an awful place with a great big office all the way up there in New York, they said. And the worst thing of all about it was that right in that big office there was this room, this special secret room….And inside that room, they said, there was nothing but hooks on the walls—hundreds and hundreds of hooks—and do you know what was hanging on each and every one of those hooks? Why, they said that on each of those hooks was a key to the bedroom of a southern white woman. And so I figured *that's* an organization I wanna get involved in!"

Black's efforts were valued greatly, for he was a superb writer. He demonstrated his skill as well as his compassion in the work he did on the five questions. His contribution to the final brief related to the fourth of the five questions: he urged the Court to act swiftly, rather than gradually, and abolish segregation all at once. He wrote:

"These infant appellants are asserting the most important secular claims that can be put forward by children, the claim to their full measure of the chance to learn and grow, and the inseparably connected but even more important claim to be treated as entire citizens of the society into which they have been born. We have discovered no case in which such rights, once established, have been postponed by a cautious calculation of conveniences. The nuisance cases, the sewage cases, the cases of the overhanging cornices, need not be distinguished. They distinguish themselves."

After he read the passage, Marshall was moved to tell Black, paternally, "You are a Negro."

After three days of round-the-clock effort, as if there were a force in the universe that responds to hard work and good intentions, Marshall, Kelly, and company made their hoped-for discovery. It came in the form of a speech delivered by Ohio congressman Thaddeus Stevens in 1866. Stevens, an ardent abolitionist, was the leader of the Radical Republicans and the most powerful man in the U.S. House of Representatives after the Civil War. When the Fourteenth Amendment was introduced by its author, Radical Ohio congressman John A. Bingham, Stevens rose to stamp upon Bingham's proposal the Radicals' interpretation of its meaning. "Where any State makes a distinction in the same law between different classes of individuals," he declared, "Congress shall have the power to correct such discriminations and inequality." Stevens vowed that "no distinction would be tolerated in this purified Republic but what arose from merit and conduct." The term *purified,* connoting absolution from sin, meant "with slavery removed."

Jay Graham then suggested strengthening the brief by adding remarks made by Bingham himself concerning the difference between writing statutes and writing constitutional provisions. Statutes, according to Bingham, should be drafted narrowly and with great specificity. Constitutional provisions, by contrast, should be "writ broad for ages yet unborn." As Kelly put it, "In our minds' eye, Bingham almost seemed to be speaking for our purposes, saying to the Court in the twentieth century that if your age, far beyond our span of time, sees in this amendment a new birth of liberty, it will be altogether legitimate for you to use it for that purpose."

There it was: concrete support for the proposition that the original proponents of the Fourteenth Amendment intended it to be used flexibly to address discriminatory situations as they arose and to correct any distinction imposed by law that was not based exclusively on "merit and conduct."

"Hot damn!" exclaimed Marshall. "Here's something finally that we can use that isn't manipulating the facts."

Next, Thurgood applied a crafty lawyer's inverse reasoning. After all, there were two ways to approach the Court's questions. Either the Court was looking for something that said, "Yes, you have the power to end segregation," or the Court was just making sure that nothing said, "No, you do *not* have the power to end it."

Marshall had found nothing that specifically gave the Court the power to end segregation. But he had come across nothing that explicitly denied the Court that power, either. He decided to tell the justices that the Court had the power to end segregation unless his opponents could point to something that explicitly said the Court did not. He assured his staff, "A nothin' to nothin' score means we win the ball game."

Marshall ordered a rewrite of Ming's brief. He assigned the task to his best writer, Spottswood W. Robinson III, another protégé of Charles Houston's, from Virginia. Robinson hammered out a masterful product, soaring in its eloquence and anchored firmly in historical fact. It attacked the half-century-old separate-but-equal doctrine:

"When the Court employed the old usages, customs and traditions as the basis for determining the reasonableness of the segregation statutes designed to resubjugate the Negro to an inferior status, it nullified the acknowledged intent of the framers of the [Fourteenth] Amendment, and made a travesty of the equal protection clause."

In his conclusion Robinson cried out for justice:

"Segregation was designed to ensure inequality—to discriminate on account of race and color—and the separate-but-equal doctrine accommodated the Constitution to that purpose. Separate but equal is a legal fiction. There never was and never will be any separate equality. Our Constitution cannot be used to sustain ideologies and practices which we as a people abhor."

Now Marshall was satisfied, comfortable in the knowledge that he was giving the Court what it wanted, something to which the Court could peg its redemption. Time would prove him right. In the spring of the following year, when it rendered its final decision in *Brown,* the Court chose to interpret the Fourteenth Amendment in light of modern-day circumstances rather than to be guided by whatever practices were in place at the time of the amendment's ratification. Writing for a unanimous Court in *Brown,* Chief Justice Earl Warren concluded with regard to the amendment's legislative history:

"This discussion and our own investigation convince us that, although these [historical] sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most

avid proponents of the post-(Civil) War Amendments undoubtedly intended them to remove all legal distinctions among 'all persons born or naturalized in the United States.' Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty."

Years later, summarizing the historians' role in *Brown,* Kelly wrote, "The historians had produced at least the 'draw' that Marshall and his colleagues had asked for. It was all they needed in order to win. So we historians can assure ourselves, I think, that we had something to do with the victory." Marshall certainly agreed. Kelly recalled that Marshall thanked the historians who assisted in the research, "assuring us that enlisting the history profession on his side had been the NAACP's smartest move in the whole complicated case."

History, as well as the historians, had proved to be on Marshall's side, assisted by his own cunning and perseverance. But the forces that produced the ultimate victory over segregation were set in motion long before Kelly and the other historians came on the scene. The catalyst for Marshall's success was American society itself, particularly the injustices that steeled his determination to break down racial barriers. He had lived with them all his life.

Thurgood Marshall's parents, Norma and William Marshall in the living room of their Baltimore home in 1947. Marshall's father ordered him to "fight" any one who called him "nigger." (Courtesy Moorland-Springarn Research Center, Howard University.)

THREE

Growing Up in Baltimore

Anyone calls you "nigger" you not only got my permission to fight him—you got my orders to fight him."
—William Canfield Marshall

Thurgood Marshall was born July 2, 1908, in Baltimore, Maryland, in the Chesapeake Bay region that proclaims itself "The Land of Pleasant Living." It was a city where many white people remained proud of being south of the Mason-Dixon Line.

His maternal great-grandfather, a slave whose name the family never knew, was brought to America by slave traders during the 1840s and sold to a plantation owner on Maryland's Eastern Shore. Marshall said his great-grandfather came from the Congo, known as the Republic of Zaire since 1971: "His more polite descendants like to think he came from the cultured tribes in Sierra Leone, but we all know that he really came from the toughest part of the Congo."

In a *Time* magazine interview, Marshall described his great-grandfather as "one mean man." Elsewhere he characterized him proudly as the "baddest nigger" in Maryland. "One day his owner came up to him and said, 'Look, I brought you here so I guess I can't very well shoot you—as you deserve. On the other hand, I can't with a clear conscience sell anyone as vicious as you to another slaveholder, and I can't give you away. So, I am going to set you free—on one condition. Get the hell out of this county and never come back.'

"That was the only time Massuh didn't get an argument from the old boy," Marshall added. Still defiant, his great-grandfather married a white woman and raised his family just a few miles from his former owner's plantation, living there until he died.

Thurgood Marshall speaks fondly of his forebears, often using the word *nigger* because he understands the

expression is spoken affectionately in black social circles, especially among groups of light-skinned middle-class blacks. The words *colored, Negro,* and *black* were equally respectable terms for more than half a century. Then, in the mid-1980s, black Americans sought a linguistic mechanism for identifying with their African heritage by calling themselves "Afro-Americans or African Americans." In his formal writings and speeches, Marshall settled for a while on *African American.* Finally, in 1991, he declared he would no longer employ *black* or *Negro:* "I use the term *Afro-American* because the term is a more respectful reflection of the contributions that descendants from diverse and culturally rich African traditions have made to the mosaic of American society."

Thurgood Marshall traced his family's history and name to Africa. The only name many slaves had was their owner's. Thurgood's paternal grandfather was a freedman—a former slave—known as Marshall. During the Civil War he joined a black regiment, one of 186,000 former slaves to fight with Union troops. Soldiers were required to have first and last names, so he took the first name Thoroughgood to comply with that regulation. "I was named after him," Marshall told an interviewer, "but by the time I was in second grade, I got tired of spelling all that and shortened it."

At the end of the Civil War, Thoroughgood Marshall joined the U.S. Merchant Marine. When his tour ended he settled in Baltimore, the home of his merchant marine vessel, and married Annie, a mulatto from Virginia who was uncertain of her heritage. She had been raised in Virginia by family members whose complexions were much darker than hers. Most likely her father had been a white Virginia slave owner and her mother a slave.

Maryland census takers did not know whether to classify Annie Marshall as black or white. "She never knew her real name, her age, her parents, or her race," Thurgood Marshall recalled. "All she knew was that she was raised by a Negro family in Virginia— and she never changed her story, no matter what the census takers threatened.

Thoroughgood Marshall had saved several hundred dollars while working as a merchant marine and received a military pension. He opened a grocery and produce store at the corner of Dolphin and Green streets in west Baltimore. He used a second name, Thornygood, which allowed him to receive a second pension check from his merchant marine service. Whether he did this deliberately is a matter of dispute. Thurgood Marshall speculates the duplicity of names and the double pension checks may have resulted more from Thoroughgood Marshall's "poor penmanship" than an attempt to defraud the government.

Thoroughgood and Annie Marshall took pride in their home, their neighborhood, and their grocery store. When workmen from the Baltimore Gas and Electric Company arrived to erect a light pole in front of the store, Annie Marshall became furious. She told them the sidewalk in front of the store belonged to her and she did not want a light pole there. The utility company obtained a court order and sent a work crew to raise the pole.

The workmen arrived the next morning and found Annie Marshall sitting firmly in a cane-backed kitchen chair directly over the place where the utility company planned to raise the light pole. The men returned for three days and each day found a determined Annie Marshall sitting in her kitchen chair. The company finally gave up and found another location to erect its pole. In 1965 Marshall told an *Ebony* magazine writer, "Grandma Annie emerged as the victor of what may have been the first successful sitdown strike in Maryland."

Thoroughgood and Annie raised a family at 1838 Druid Hill Avenue in west Baltimore, a racially mixed neighborhood where whites and blacks, Jews, Episcopalians, and Catholics lived side by side. It was a proud neighborhood of three-story brick and brownstone houses with arched doorways and Baltimore's fabled white marble steps, which homeowners scrubbed religiously each Saturday. It was a good house and a good neighborhood, especially for a black family, shortly before the turn of the century, with upwardly mobile ambitions.

Many affluent black families—the Ridleys, the Murphys, the Rhettas, and the Kogers—resided side by side with white families. "If you were a black person and owned a house on Druid Hill Avenue in those days, you had arrived," said Betty Murphy Moss, a member of the black fourth-generation Baltimore family who published the *Afro-American* newspapers.

In other sections of Baltimore, black families of lesser means lived in squalid, cobblestoned back alleys and ramshackle dwellings that were once slave quarters, carriage houses, or stables. Biddle Alley, a short distance from the Marshall house, was known as "lung block" because so many of the people there had tuberculosis. The death rate from tuberculosis in the area was 958 per 100,000 people, compared with 131.9 for the rest of the city. A 1907 housing survey by the Association for the Condition of the Poor found only one outdoor toilet for every two alley houses.

Elite white families who traced their heritage to the revolutionary war lived only four blocks away, in an area now called Bolton Hill. White flight to the surrounding Maryland suburbs would not begin for another forty years.

Today the Marshall family house on Druid Hill Avenue, the birthplace of Thurgood Marshall's father, William Canfield Marshall, stands vacant, its windows and doors covered with half-inch sheets of plywood. Broken liquor bottles, empty beer cans, and spent condoms clutter a yard overgrown with weeds. Druid Hill Avenue has become a black working-class area that suffers the agony of many of America's inner-city neighborhoods—crime, hard-core unemployment, poverty, and drugs.

Synagogues, where the neighborhood's Jewish population worshiped in the early 1900s, have been converted to Christian churches with black congregations or convenience stores where clerks serve customers from behind thick sheets of bulletproof glass. Six-pointed Stars of David remain carved in their stone facades. Only the few remaining wrought-iron boot scrapers at the foot of the marble steps and the chipped marble carriage-mount blocks bespeak the

once-proud neighborhood. Few would imagine they are passing through the neighborhood where a former Supreme Court justice spent his childhood.

Thurgood Marshall's maternal grandfather was a sailor who loved opera. Isaiah Olive Branch Williams, like Thoroughgood Marshall, served in the merchant marine, after completing a three-year tour of duty in the Union army during the Civil War. Williams, who lived in Maryland's Washington County, joined the Seventh Regiment U.S. Colored Troops in October 1863. He was nineteen years old. A year earlier, the Maryland General Assembly had passed a bill providing a three-hundred-dollar payment for the state's white men who enlisted. Black men, however, received only fifty dollars on enlistment and fifty dollars on discharge. Williams's enlistment is recorded on the Bounty Rolls of Colored Troops in the Maryland State Archives in Annapolis.

Williams received a commendation for "coolness and bravery in action" from his commanding officer, Maj. Edelman M. Lockwood. His citation said: "On October 28, 1864, he advanced beyond the skirmish line to a very conspicuous place for the purpose of ascertaining the position of the enemy's artillery."

Black troops of the Seventh Regiment were housed in the Birney Barracks on Holliday Street in east Baltimore. It was there, on November 1, 1864, that Williams and other black soldiers stood in review as General D. B. Birney announced that Maryland's General Assembly, four hours earlier, had adopted a constitutional amendment abolishing slavery in the state.

Williams's name appears on a list of black Civil War soldiers who deposited their military pay at the Baltimore branch of the Freedmen's Savings and Trust Company. His account, number 240, had a balance of fifty dollars in December 1864 when he married Mary Eliza, settled in Baltimore, and opened a grocery store. Thurgood Marshall said Williams spoke often about one of his ports of call, Arica, Chile, where he had attended a performance of Vincenzo Bellini's 1831 opera *Norma.* When the couple had a daughter—Thurgood's mother—they named her Norma Arica. He had also become enamored with the works of William Shakespeare. They named two of their other children Avonia Delicia and Avon—a girl and a boy—after the river near the Shakespeare home. They named their other children Cyrus Mentor and Ravine. Denmedia Marketa was the name they chose for the grocery store.

After the war Williams bought a house in west Baltimore, next door to a white man who attended the integrated St. James Episcopal Church with the Williams family. He did not particularly like living next door to a black family, but when the fence between their houses needed repair, he reluctantly sought Williams's help. "After all," he explained, "we belong to the same church and are going to the same heaven."

Williams told his neighbor, "I'd rather go to hell."

Isaiah Williams was active in public protests to improve conditions for his fellow black citizens. In the 1870s he organized

a mass meeting to protest the beatings of several black citizens by the Baltimore police officers. It was the first time the city's usually passive black community demonstrated that it could unite in a common cause. During the post-Civil War era, when the Ku Klux Klan and other groups were making strident efforts to establish their racial supremacy in Maryland, an act of black defiance was unusual.

Norma Arica Marshall attended Baltimore's segregated schools and, like her mother, became an elementary school teacher. She graduated from Maryland's black Coppin Normal College and later earned graduate credits at Columbia University's Teachers College in New York City. Like her father, she had a passion for music. She sang and played the piano in local opera and theater productions.

Norma and William Canfield Marshall had gone to school together, and though their families operated competing grocery stores in the same neighborhood, they became friends. They married in 1904, when she was seventeen and he was twenty-one, and had Aubrey that same year and Thurgood four years later.

In 1909 the Marshalls moved temporarily to New York City and took a small apartment in Harlem while Norma Marshall pursued graduate studies in education at Columbia. They returned to Baltimore frequently to visit family and friends and moved back there after five years, when Thurgood Marshall had turned six.

Both of Thurgood Marshall's parents were light-skinned. This set them apart in color-conscious Baltimore, where lighter-skinned black people were treated better by white people than those with less white blood in their veins and more black pigmentation in their skin. Black color consciousness and its political ramifications would surface repeatedly throughout Thurgood Marshall's life. But the Marshalls were strong race people, proudly aware of their black heritage as well as the limitations placed on all black Americans, even those like William Canfield Marshall, who had straight hair and blue eyes.

At the time of Thurgood's birth, his father worked for the Baltimore & Ohio Railroad as a Pullman dining-car waiter on the Washington-to-New York run. Though a good job for a black man without a college education, it often required him to be away from home. With two infant sons who needed his love and attention, Will Marshall left the railroad and became a waiter at the whites-only Gibson Island Club, located on a peninsula that juts into the Chesapeake Bay, twenty miles southeast of Baltimore.

Thurgood Marshall's relatives described him as a baby with big, dark eyes and curly hair, a description confirmed by his childhood pictures. His aunt Media Dodson said he was a "timid" child. She told a *Time magaz*ine writer: "One day—he must have been around five—he stopped crying and became a pretty tough guy. Now, I don't know what caused the change. Maybe the boys slapped his head."

His aunt Elizabeth Marshall told an interviewer, "He wasn't any Mama-dress-me-and-send-me-to-Sunday-School sort

of boy. He was always a smart, alert little fella, full of life and laughter."

A friend of the Marshall family, Odell Payne, told *Ebony* magazine Thurgood was "a jolly boy who always had something to say." But she added that he appeared to be harboring serious thoughts at an early age. "I can still see Thurgood coming down Division Street every Sunday afternoon about one o'clock. He'd be wearing knee pants with both hands dug way into his pockets and be kicking a stone in front of him as he crossed Dolphin Street to visit his grandparents at their big grocery store on the corner. He was in a deep study, that boy, and it was plain something was going on inside of him."

Thurgood was high-spirited and rambunctious, traits that often got him into trouble. A *New York Times Magazine* story quotes Thurgood Marshall as saying, "We lived on a respectable street, but behind us were back alleys where roughnecks and the tough kids hung out. When it was time for dinner, my mother used to go to the front door to call my older brother. Then she'd go to the back door and call me."

His elementary school principal would send recalcitrant students to the school's basement with a copy of the Constitution and orders to memorize a passage before returning to the classroom. Thurgood spent many hours in the basement. "Before I left that school," he later told a reporter, "I knew the entire Constitution by heart."

It was in the school basement that he first became concerned about certain provisions of the Constitution, especially the Fourteenth Amendment's guarantee of equal rights. He knew that Baltimore's white children—his neighbors—attended newer schools, while the city's black children went to schools like his own on Pennsylvania Avenue, which needed repair, had no playground, and used outdated, worn books passed down from the white school system.

Thurgood thought the Constitution had special meaning for black Americans, especially the Thirteenth, Fourteenth, and Fifteenth Amendments, passed by the Reconstruction Congresses to protect the rights of newly freed slaves. In 1921 thirteen-year-old Thurgood asked his father why white citizens had more rights than black ones.

William Marshall did not have a formal education, but he possessed an analytic mind and kept abreast of current events, and he, too, had read the Constitution. He studied criminal and civil court cases as a hobby, reading newspaper accounts of trials in the *Baltimore Sun* and spending many of his free hours, frequently accompanied by young Thurgood, as a spectator in Baltimore's courtrooms. When he served on a grand jury—the first black man to do so in Baltimore—he became angry because jurors always asked whether the person under investigation was white or black and blacks were far more likely to be indicted than whites. On his third day of service he suggested the panel abandon the practice of determining an individual's race before deciding whether or not to return an indictment. To Marshall's surprise the white jury foreman agreed with him, and the race question was never again raised by that jury.

William Marshall told his thirteen-year-old son the Constitution was the Founding Fathers' blueprint for the way things

should be, not a description of the way things were. He explained that, shortly after the Civil War, Congress passed bills designed to safeguard the rights of black Americans. But the Supreme Court soon retrenched, handing down decisions sharply restricting the scope and intent of the post-Civil War legislation. These crippling decisions returned control of civil rights to the states, and black Americans lost much of what they had gained.

At its inception, he explained, the Constitution included provisions that recognized slavery in states where it existed, and when questions on the status of blacks came increasingly before the Court, slavery was upheld. He described the separate-but-equal doctrine enunciated by the Court in *Plessy v. Ferguson,* which reinforced emerging practices of segregation and precipitated a flood of state laws putting it firmly and legally in place. At the end of Reconstruction, white political rule in the South was restored. Slavery was no longer the nation's prime racial issue. It had been replaced by the practices of segregation and discrimination.

Thurgood Marshall told a *U.S. News & World Report* writer that it was his father who steered him toward a legal career. "He never told me to become a lawyer, but he turned me into one. In a way, he was the most insidious of my family rebels. He taught me how to argue, challenged my logic on every point, by making me prove every statement I made, even if we were discussing the weather." Though it would make an appealing footnote, Marshall has never claimed that reading the Constitution in the school basement was a catalyst for his legal career.

As Thurgood Marshall grew up, political developments further encroached on the rights of black citizens. Maryland, Oklahoma, and several other states began passing Jim Crow legislation designed to disfranchise black voters and mandating separate facilities for blacks and whites in public accommodations. Many southern states instituted laws providing that only citizens whose ancestors had been entitled to vote before the Civil War could cast ballots in current elections without taking literacy tests. Prospective black voters who could not satisfy the criterion had to take examinations that were designed to make them fail. The result was a severe restriction of black voting rights.

Norma Marshall hoped Thurgood would become a dentist, filling cavities instead of filing briefs. As a second-generation teacher she believed education was important. She challenged her sons intellectually and followed their progress in school closely. It was an easy task. Her brother and her colleagues were her sons' teachers. Thurgood Marshall's uncle "Fearless" Cyrus Williams taught mathematics at the elementary school Thurgood attended and monitored his nephew's schoolwork closely. He gave him an A in algebra and said it was earned. Despite his rambunctious behavior, Thurgood earned good grades in his other subjects, too.

Norma Marshall also exercised other controls over the playful Thurgood. "Mama taught me a lot," Thurgood remembered. "She used to say, 'Boy, you may be tall, but if you get mean, 1 can always reach you with a chair.'"

Despite the high expectations his parents held for his future, Mary Eliza Williams, his maternal grandmother, adopted a practical approach guided by her realization of discrimination and segregation in America. She took her grandson into her kitchen one day and told him she was going to teach him to cook. "I am with your parents in wanting you to be a professional man," she said, "but I want to make sure you can always earn a dollar. You can pick up all that other stuff later, but I bet you never saw a jobless Negro cook." Though he never had to earn his living as a cook, Grandma Mary's lessons were not lost on her grandson. Cooking—especially she-crab soup, a state delicacy made from Maryland's famous blue-claw crabs—became a lifelong hobby.

William and Norma Marshall sheltered their sons in a home filled with love, the necessities of life, and protection from the brutality and violence spawned by racism. But there came a time when young Thurgood discovered that the world outside was much different from the protected and nurtured existence he enjoyed.

Years later he told a *Time* magazine reporter about the incident that brought this awakening, "I heard a kid call a Jewish boy I knew a 'kike' to his face," Marshall explained. "I was about seven. I asked him why he didn't fight the kid. He asked me what would I do if someone called me 'nigger'—would I fight? That was a new one on me. I knew 'kike' was a dirty word, but I hadn't known about 'nigger.' I went home and wanted to know right that minute what all this meant. That's not easy for a parent to explain so it makes any sense to a kid, you know."

Will Marshall indeed had difficulty defining the racial slur, but he had no problem telling young Thurgood how he should respond when anyone called him "nigger." "Anyone calls you 'nigger,' you not only got my permission to fight him—you got my orders to fight him." It was an order Thurgood Marshall would follow physically and legally for the rest of his life.

The first occasion that inspired Thurgood to carry out his father's command took place in 1922, when Thurgood was a fourteen-year-old high school student with an after-school job delivering supplies for a Baltimore hat company. It was the first time he met racial hostility face-to-face. One Saturday, the day before Easter, he was carrying a tall stack of hatboxes and could barely see over them. While he waited for the streetcar he chatted with one of his father's friends, a black man named Truesdale. When the streetcar arrived, Thurgood juggled the hatboxes as best he could and stepped up the platform. A white man grabbed his arm and yanked him backward. "Nigger, don't you push in front of no white lady again," the man said.

"I hadn't seen any white lady," Marshall recalled. "I tore into him." The hatboxes fell to the pavement as Thurgood and the white man went at each other. Truesdale tried in vain to separate them.

Several minutes later, policeman Army Matthews arrived and broke up the fight. His handling of the incident was far different from what another officer's might have been. In the early twentieth century, especially in the South, a black man

striking a white man was almost certain to be arrested and might well be beaten by white onlookers or even the police. Few white policemen would have been willing to listen to a black person's side of a racial dispute. But Matthews, a white policeman with a neighborhood reputation for racial tolerance, asked Truesdale to describe the events that precipitated the fight. He then took Marshall and the white man to the police station and released them a short time later without filing charges.

The second event that made Marshall painfully aware of segregation took place one Saturday shortly after that hatbox incident. He discovered there were no public restrooms for black people, not even in the department stores where their patronage and dollars were welcomed. He hopped aboard the trolley, hoping it would carry him quickly to his home. He made it as far as the front door. It was an indignity he would never forget.

Though he had become a defender of his rights, dignity, and self-worth, Marshall soon learned that pragmatism pays. His father helped him obtain a summer job as a waiter where he once worked, on the Baltimore & Ohio Railroad. Thurgood would use the money to help pay his college expenses. On his first day at work the dining-car steward gave him a pair of waiter's pants. The tall, lanky teenager found the pants too short and asked for another pair. "Boy," said the steward, "we can get a man to fit the pants a lot easier than we can get pants to fit the man. Why don't you scrunch down a little more?" Years later Marshall, with a laugh, recalled, "I scrunched."

One of the qualities that endeared Thurgood to his friends and colleagues over the years was a pragmatic tendency not to take himself too seriously. As a young man of twenty-one, in 1929, he worked as a waiter at the posh Gibson Island Club in the Chesapeake Bay, which is separated by a narrow causeway from the mansion-strewn Maryland mainland near Annapolis.

The club, in its grandeur, was a haven of exclusivity for the white power elite that came thirty-five miles from Washington to dine on the finest crab dishes and oysters in the world while politicking under portraits of Confederate generals. Marshall's father had been working there for a number of years as the head steward, and he hired Thurgood that summer so he could earn money for his law school tuition. One evening a U.S. senator from a western state entered the dining room escorting two attractive young women. "Nigger, I want service at this table!" he announced, summoning young Thurgood. Throughout the evening, and on other nights that followed, Marshall served the senator and his coterie adroitly, despite the senator's prodigious use of the word *nigger* while Marshall attended to him.

Disturbed by the man's incivility, one of the club members, Senator "Cotton Ed" Smith of South Carolina, finally called Marshall aside and asked, "Thurgood, what's that senator callin' you?" Marshall replied that the senator was merely calling him "boy," racially derogatory but acceptable in civilized white society.

Thurgood could not lie to his father, however, who from the doorway heard the abuse to which his son submitted

sheepishly. It was too much to take for a man who taught his son early to fight anyone who called him "nigger." The elder Marshall scolded him: "Thurgood, you are a disgrace to the colored people!"

That prompted a confession from Thurgood. Each night when the offending senator left, he tipped Thurgood twenty dollars. As Marshall confided to a friend many years later, "In a few days, I got myself almost enough money to pay off all my bills." So he told his pal in a jocular, folksy drawl, "Anytime you wanna call me 'nigger,' you just put your twenty dollahs down on this table. And you can keep doing it all day. But the second you run outta them twenties, I'm gonna bust you in the nose."

Thurgood completed high school in 1925, at the age of sixteen, and worked that summer to earn money for tuition and books at Lincoln University. At the end of the season he had not earned enough, so Norma Marshall pawned her wedding and engagement rings and gave him the money. She never redeemed them.

Thurgood's brother, William Aubrey Marshall, had completed his undergraduate education and was now attending medical school at Howard University in Washington, D.C., on his way to becoming an eminent chest surgeon. Norma Marshall held fast to her desire for Thurgood to become a dentist, for she was convinced the medical profession would be a safe harbor for her sons and ensure their economic success.

During the 1920s the choice of black students destined for college was limited. White southern colleges did not accept them. That was the law. Very few black students attended integrated schools in other parts of the United States. Thurgood applied to Lincoln University in Chester, Pennsylvania, the nation's oldest black college and his brother's alma mater. It had been founded in 1854 by a Presbyterian minister and his wife. Lincoln's charter called for "the scientific, classical and theological education of colored youth of the male sex." Though it now accepts male and female students of all races, it was all black and all male and had an all-white faculty at the time Marshall attended. Known as the "black Princeton" because most of its faculty had been educated at that Ivy League institution, Lincoln attracted students from America's black middle class and from African and Asian countries.

More than half of the school's alumni went on to graduate work and professional careers. Marshall's classmates included educators William V. Fontaine, Therman B. O'Neal, Fannin Belcher, and W. Edward Farrison. Toye Davis would become a noted physician with degrees from Harvard University. Kwame Nkrumah was a future president of Ghana, and Benjamin Nnamdi Azikiwe became the first African governor general of Nigeria. Cabell Calloway, Marshall's childhood friend from Baltimore, attended Lincoln with him for two years before dropping out to become internationally renowned as bandleader Cab Calloway. Langston Hughes, who had already started his literary career, was another classmate and one of Marshall's closest friends. He would become the poet laureate of Harlem's Black Renaissance and black America's strongest literary voice.

During his first semester at Lincoln, the seventeen-year-old Marshall, no longer under the guidance of his parents, continued his pranks. He was a founding member of the school's Weekend Club, a group of happy-go-lucky, party-going students who proudly boasted they never opened a book or could be found studying on the Lincoln campus on weekends. He played pinochle and poker frequently and later confided to friends that he played well enough to keep himself in spending money.

In his sophomore year, Thurgood and several fellow students delighted in hazing freshmen. One night they descended upon the freshman dormitory and shaved the heads of most of the underclassmen. The school's administration did not look kindly upon their tonsorial zeal and charged twenty-six sophomores, including Marshall and Hughes, with the deed. Hughes drafted a statement acknowledging collective guilt, which was signed by each member of the group. They were collectively fined $125, and Marshall, Hughes, and several others were suspended for two weeks. "I got the horsin' around out of my system," Marshall recalled.

Despite his antics and his assertion that he "never cracked a book," Marshall obtained good grades. He maintained a B average and read prolifically. He was impressed with the writing of educator W. E. B. Du Bois, a founding member of the NAACP and author of *The Souls of Black Folk,* a pointed collection of essays on black life in America. Du Bois was also editor of the NAACP's *Crisis ,* and his searing editorials in the magazine struck right at the heart of America's racial inequities. During his final two years in college, Marshall became interested in the emerging literature of the Harlem Renaissance, an era that produced a prolific outpouring of contemporary black writers, including Countee Cullen, Claude McKay, Jean Toomer, and Hughes. His exposure to these "race writers" stimulated his intellectual curiosity about the role of black people in America.

"Lincoln was a school of all Negroes with one or two exceptions," Marshall told the *American Bar Association Journal.* "And an all-white faculty. We argued over general principles. And we were brainwashed. We discussed it [discrimination]," he recalled. "What we discussed was, why did we have to take it? Why shouldn't we do something about it?"

One night Marshall went with a group of six fellow students to a movie theater in nearby Oxford. After they purchased their tickets, an usher reminded them that black patrons were restricted to the balcony, commonly referred to as the "nosebleed section" or "nigger heaven." The students ignored the usher's admonition and took seats in the theater's whites-only orchestra. When the usher ordered them to move, they kept their seats, seemingly engrossed with the western movie. Thurgood recalled hearing a bitter voice in the theater's darkness saying, "Nigger, why don't you just get out of here and sit where you belong?"

Marshall told the man that he had paid for his ticket and did not intend to move from his comfortable orchestra seat. Recalling the incident in a letter to his parents, he wrote, "You can't really tell what a person like that

looks like because it's just an ugly feeling that's looking at you, not a real face. We found out that they only had one fat cop in the whole town and they wouldn't have the nerve or the room in the jail to arrest all of us. But the amazing thing was that when we were leaving, we just walked out with all those other people and they didn't do anything, didn't say anything, didn't even look at us—at least, not as far as I know. I'm not sure I like being invisible, but maybe it's better than being put to shame and not able to respect yourself."

Thurgood said the Oxford movie theater incident started his civil rights career. "The leader of that group at Lincoln was a guy named U. S. Tate. "He was the leader who said we ought to do something about it. We desegregated the theater in the little town of Oxford. I guess that's what started the whole thing in my life."

As a religion-based institution, Lincoln encouraged students to attend church services, and Marshall and several of his friends frequently went to Philadelphia's Cherry Street Memorial Church. Years later Marshall provided an explanation for their becoming churchgoers: "We went there [Cherry Street Memorial Church] because we learned that's where all the cute chicks went."

Vivian Burey, a University of Pennsylvania undergraduate, was the "cute chick" who quickly caught Marshall's eye. They dated on weekends, sometimes attending the Oxford movie theater he had integrated with his classmates, and they soon fell in love. "First we decided to get married five years after I graduated, then three, then one, and we finally did, just before I started my last semester," he recalled. They were both twenty-one years old when they married on September 4, 1929. It was a childless marriage, with four miscarriages, that was to last for twenty-five years, until Vivian's death from cancer in February 1955.

Thurgood and Vivian, who had already received her degree, moved into a small apartment in Oxford, not far from the Lincoln University campus. Vivian "Buster" Marshall, who had a reputation for being a smart and levelheaded woman, had a stabilizing influence on her husband's life. His days of campus carousing and drinking with classmates came to an abrupt end. It was time to get down to the hard and serious business of supporting a wife and paving the financial path for his continuing education. He took part-time jobs as waiter and bellhop to meet the rent on the small apartment, pay tuition, and buy textbooks for his last semester at Lincoln. Vivian worked full-time as a secretary.

Marshall, who had honed his forensic skills in combative discussions with his father, joined the college's debating club his sophomore year. He was the star of Lincoln's debating team and led the squad to a long string of impressive victories against white schools, including Bates, Bowdoin, and Colby. His oratorical skills and fiery delivery earned him the nickname "the Wrathful Marshall." "If I were taking debate for credit, I would be the biggest honor student they ever had around here," he wrote in a 1929 letter to his father.

That year, while Lincoln's debating club flourished, its football team suffered a series of crushing defeats. At a pep rally the night before the homecoming game, Marshall leaped to the stage and delivered an enthusiastic twenty-minute-speech. The next day Lincoln's football team played its finest game of the season. The result was a scoreless tie, but Marshall took credit for it, saying that the team had put an end to its long string of defeats and at least had not lost the important game.

In June 1930 Marshall marched to receive his bachelor's degree with honors as his proud parents and wife sat in the first row. He had majored in American literature and philosophy. As Norma Marshall watched her son receive his diploma, she knew he was not going to be a dentist.

William and Norma Marshall offered their son and daughter-in-law a home in their Baltimore row house. It was a graduation present, for the elder Marshalls understood the young couple would need to save every dollar they could for Thurgood's law school expenses. Buster and Thurgood accepted. Norma Marshall liked Buster and believed she would be a settling, stabilizing influence on her son. The two women were kindred spirits with a common interest—Thurgood Marshall. Buster redecorated Thurgood's old third-floor bedroom, and the couple settled in, ready to take on the challenge of law school.

The Man Who Killed Jim Crow. Lawyer, NAACP litigation director and former Dean of Howard University Law School Charles Hamilton Houston. He was involved in nearly every civil rights case brought to the Supreme Court between 1930-1954. Houston also trained Supreme Court Justice Marshall. Source: http://www.the root.com.

FOUR

Howard Law School and the Social Engineers

Build a law school and train men to get the constitutional rights of [your] people. Once you train lawyers to do this, the Supreme Court will have to hand your people their civil and constitutional rights.—Louis Dembitz Brandeis

Thurgood applied to the University of Maryland's Law School in 1930. It was a logical choice. The law school was located in downtown Baltimore, on Redwood Street, a ten-minute trolley ride from the Marshall family home. As a Maryland resident, Marshall would pay less tuition than he would at an out-of-state law school. After graduating, he would be well steeped in Maryland law and ready to begin his Baltimore law practice.

But as Baltimore Sun columnist H. L. Mencken later observed, there had never been an "Ethiop among the Aryan, larval Black-stones" at the state law school, and the University of Maryland was not about to make an exception for this black native son. Thurgood Marshall would avenge that decision later. In the meantime he applied for, and was quickly admitted to, Howard University's law school in Washington, D.C.

Howard University was founded in 1867 in an old red-brick dance hall on a Georgia Avenue hill two miles north of the nation's Capitol. It opened as a school for freed slaves, but its charter did not specifically mandate the race of prospective students. Federally funded, Howard produced most of the nation's black lawyers, scientists, doctors—including Aubrey Marshall— dentists, nurses, pharmacists, educators, engineers, and architects. It was the citadel of graduate and professional education for America's black students.

Marshall committed himself to the study of law and the twice-a-day forty-mile rides in segregated rail cars, reading law books all the way. It was a grueling schedule. During his first year in law school, Thurgood left Balti-

more every weekday at 5:30 A.M., attended classes until 3:00 P.M., then returned to one of his part-time jobs as a waiter, a bellhop, and a baker at Preece's Bakery on Pennsylvania Avenue. Then he studied until midnight. "I heard law books were to dig in," he said, "so I dug deep. I got through simply by overwhelming the job, and I was at it twenty hours a day, seven days a week."

Despite the rigorous routine, during which time the weight on his six-foot frame dropped from 170 to 130 pounds, law school proved a rewarding and challenging experience. Remembering his first week at Howard, he said, "This is what I wanted to do for as long as I lived." Thurgood said that he enjoyed the forensic debates and the verbal sparring that went along with his studies and that he believed his oratorical skills would be an asset in the practice of law.

In 1929, the year before Marshall arrived at Howard, Charles Hamilton Houston was appointed the law school's vice dean. This was one of the most significant events in Thurgood Marshall's legal career and in the lives of hundreds of other black law students who earned their degrees at the "school on the hill." Houston was the man who transformed Howard's law school into a fully accredited institution and then used it as the NAACP's "legal laboratory" to plan strategies for important civil rights cases. Houston became Marshall's teacher, his mentor, his colleague, and his friend.

Howard's law school opened on January 6, 1869. The part-time evening program was coeducational, interracial, and non-denominational, but it received little recognition in legal academic circles because it lacked accreditations from the American Bar Association (ABA) and the Association of American Law Schools (AALS), the professional organizations that set standards for legal education. Their approval was essential for the important professional recognition a law school's students needed if they were to become successful lawyers. The ABA and the AALS did not look favorably upon Howard's part-time evening program, with its understaffed faculty, its inadequate law library, and its small physical plant, at 420 Fifth Street NW. Even Washington's black bourgeois community jokingly called it "Dummies' Retreat."

A 1922 Carnegie Foundation study of legal education in America concluded that the nation's part-time afternoon and evening law schools were incapable of providing quality legal educations because they operated under lower educational standards than full-time day schools. Despite these allegations of inadequacy, Howard University Law School had already produced an impressive number of black and white graduates who had distinguished themselves professionally. Its alumni included William H. Hart, LL.B., 1887, who, while a law school professor at Howard, successfully litigated Hart v. State (of Maryland), a Jim Crow rail transportation case in which the state court held that forced separation of the races was unconstitutional in interstate travel. George

W. Atkinson, a white graduate of the class of 1891, represented West Virginia in the U.S. House of Representatives while a Howard Law School student and, in 1896, became governor of his state.

Another of Howard's white graduates, Emma M. Gillett, became a founder of the Washington College of Law, now part of the American University in Washington, D.C. Ironically, the coeducational law school that Gillett helped found did not accept blacks. In fact, most of the nation's law schools not only did not admit blacks; they did not accept women of any race. In the 1920s other graduates included a U.S. registrar of the treasury, several municipal judges, and Charlotte Ray, a black woman who became the first American woman to graduate from a university-affiliated law school when she received her Howard degree in 1872. (The 1870 census had reported only five female lawyers in the United States.) She was also the first woman admitted to practice law in the District of Columbia.

In 1926 Dr. Mordecai W. Johnson was appointed Howard University's first black president. A thirty-six-year-old Baptist minister, Johnson earned degrees at the Atlanta Baptist College (now Morehouse College), the University of Chicago, Harvard University, and Rochester Theological Seminary. He came from Tennessee and served briefly as pastor of a church in Charleston, West Virginia, before coming to Washington. Johnson, a light-skinned man with thin lips, a sharp nose, straight hair, and heavy, dark eyebrows, might easily have crossed the color line and passed for a white man. Instead, he fiercely reminded friends that his Caucasian features did not result from the "sexual aggressiveness" of his female slave forebears, because many slave owners had fathered mulatto children.

Only two of Howard University's ten graduate schools—the dental and medical schools—were accredited at their inception, and in 1925, the year before Johnson arrived, the university's federal appropriation totaled a meager $217,000. White southern professional and graduate schools did not accept black students, and only a few black high school graduates had the money and backgrounds to attend a few of the mostly white northern or western colleges. Mordecai Johnson inherited a university charged with the awesome responsibility of educating a large number of America's black students who might not otherwise have an opportunity for advanced educations. But the university needed drastic improvements if it was to fulfill this mission.

Johnson brought a brash vigor and strict academic discipline to the task. He fired teachers he described as "deadwood," faculty members who did not meet his high academic standards. He became a frequent visitor to Capitol Hill, where he lobbied Congress to increase the university's appropriation. As president of a black university dependent on federal funds, he understood the importance of having access to and maintaining relationships with white people in positions of power, congressmen and senators who controlled the money he needed

to build a first-rate university. Johnson did not go humbly before congressional committees seeking support for Howard. More than once he critically reminded legislators who controlled Howard's appropriations how little they were doing to make Howard University an excellent institution.

He recruited some of the nation's finest black scholars, among them E. Franklin Frazier in sociology, Ralph Bunche in political science, Charles R. Drew and Montague Cobb in medicine, Charles Burch and Sterling Brown in literature, Alain Locke in philosophy, E. E. Just in natural sciences, and John Hope Franklin and Rayford Logan in history. These were men who had already established themselves in distinguished academic careers. Leon A. Ransom, a black student first in his class at Ohio State University's law school, and a young black lawyer from Texas, James Madison Nabrit Jr., a graduate of Northwestern Law School, also joined the faculty.

Amherst College graduate William Henry Hastie, who earned a degree from Harvard Law School, where he was an editor of the prestigious Harvard Law Review, also came to Howard to teach. Charles Houston's second cousin by marriage, Hastie became the nation's first black federal judge in 1949. Raised in a rural suburb of Knoxville, Tennessee, Hastie came to Washington, D.C., to work in the Bureau of Veterans Affairs. In 1930 he joined the law firm of Houston & Houston and began teaching at Howard. Houston and Hastie shared the compelling urgency to build a first-rate law school and to train quickly a group of superlative black lawyers.

Johnson maintained that Howard University as "an institution of learning, while it protect[s] the good and valuable in older traditions, must at the same time encourage that 'higher individualism' that constantly makes for new and greater values." He knew he had to expand and increase the quality of the faculty, improve the physical plant, and broaden the curriculum. He also knew that the night law school, which still operated without ABA and AALS accreditations from the small brick row house on Fifth Street, was in serious trouble.

Johnson cultivated relationships with benevolent white friends in positions of power who contributed their time and talent toward his mission. One of Johnson's closest friends was Supreme Court Justice Louis Dembitz Brandeis, a liberal, legal iconoclast much different from his staid brethren on the High Court. The first Jew to sit on the Supreme Court, he knew what it meant to be a member of a minority group. He took a paternal interest in Howard's law school.

Brandeis and Johnson socialized frequently, even in segregated Washington, where white and black people did not eat in public together and seldom met as guests in private homes. They spent many evenings at each other's homes discussing the Constitution's unfulfilled promises to black America. One evening Justice Brandeis gave his friend some advice. "[Brandeis] told me that the one thing I should do was to build a law school and train men to get the constitutional rights of our people," Johnson recalled, "He said, 'Once you train lawyers to

do this, the Supreme Court will have to hand your people their civil and constitutional rights."

Brandeis said to him frankly, "I can tell you most of the time when I am reading a brief by a Negro attorney. You've got to get yourself a real faculty out there or you're always going to have a fifth-rate law school. And it's got to be full-time and a day school."

In 1929 there were twelve million black Americans, and only eleven hundred of them were lawyers. Fewer than one hundred of them held degrees from accredited law schools. An aging white lawyer, Moorfield Story, had served as the NAACP's appellate warrior in five civil rights cases before the Supreme Court. He died in 1929 at the age of eighty-four. Brandeis told Johnson that African Americans could no longer depend on the charity of white lawyers like Story to win important civil rights cases for them. This was a task they would have to prepare for and take on themselves.

Johnson took his friend's advice and began making plans to upgrade the law school. He looked to Charles Hamilton Houston, a black Phi Beta Kappa graduate and class valedictorian from Amherst College, for help. Houston also held LL.B. and S.J.D. degrees from Harvard Law School and had graduated in the top 5 percent of his law school class. Since 1924 he had taught part-time at Howard Law School and worked in his father's Washington law firm.

After Harvard, Houston spent a memorable year studying at the University of Madrid and traveling in Spain and Italy, where he saw a world much different from his native Washington, D.C. It was a world in which he could eat in any restaurant when he had the money to pay the bill, sit where he wished on public transportation, and enjoy the opera from the orchestra section at Madrid's opera house. It was a world in which the color of a person's skin had little to do with the rights he or she enjoyed.

Houston was the only son of a prominent Washington couple, William and Mary Houston. He was born on September 3, 1895. His father worked as a clerk in the Record and Pension Office of the War Department while earning his degree at Howard University's night law school. He opened a small legal practice in Washington that did well, even as the nation was entering the Great Depression.

While Charles Houston labored on wills, civil suits, and property transfers for his father's law firm, he harbored a desire not just to practice law but to teach it. He arrived at that decision during his days at Harvard Law School, even though he once confided to a friend, poet Sterling Brown, that he agreed that "those who can, do, and those who cannot do, teach."

Like Justice Brandeis and Mordecai Johnson, Houston was concerned about the quality of legal education for African Americans. Houston studied under some of the nation's greatest legal minds, and they convinced him it

was necessary to develop a cadre of competent black lawyers to fight for the rights of black Americans. Houston's mentors included Professors Felix Frankfurter and Joseph H. Beale and Harvard Law School dean Roscoe Pound. Houston believed teachers and legal scholars were the foundation of any law school that wanted to produce competent lawyers, especially lawyers with the commitment to win equal rights for millions of Americans.

Frankfurter had taken a special interest in Houston while he was a Harvard student, inviting him to his Cambridge home for dinners prepared by his wife, Marion. Frankfurter was born in Vienna and was the only Jew on the Harvard Law School faculty. He was a founder of the American Civil Liberties Union (ACLU) and served on the Legal Advisory committee of the NAACP. He argued with Harvard president Abbott Lawrence Lowell over the school's quota on the number of Jewish students admitted to Harvard. He was a guiding influence in Houston's legal education and helped Houston win the eighteen-hundred-dollar Sheldon Traveling Fellowship in 1923 that made it possible for him to study at the University of Madrid, where he met Roscoe Pound.

In December 1923 Roscoe Pound and Felix Frankfurter sent letters of recommendation to Howard dean Fenton W. Booth in support of Houston's application for a part-time faculty position. Frankfurter wrote that Houston was one of his best doctoral students at Harvard Law School. In 1924 Houston accepted Fenton's offer to teach at Howard.

The improvement of Howard Law School was a task that might have taken people of lesser talent, vision, and vigor years to achieve, but Johnson and Houston were impatient pragmatists and understood the importance of a first-rate legal school for black students. They wanted it quickly.

James Madison Nabrit Jr., another law school professor, who would later succeed Johnson as the university's president, warned Houston that the task of educating black lawyers was not an easy one. Nabrit explained, "The real problem in those days was that we didn't have the facilities to argue moot cases. We didn't have the law books, we didn't have the [earlier] cases…We couldn't use the facilities or contacts of the bar associations, since they wouldn't let us belong."

In fact, black lawyers were not admitted to local bar associations. The District of Columbia Bar Association excluded non-whites, maintaining that it was a private, professional organization with the right to maintain a selective membership. In 1932, Felix Frankfurter petitioned it to admit black lawyers, and, while the association denied his request, it did allow black law students to use its extensive law library.

In 1925 Houston and Washington lawyers George E. C. Hayes, Louis R. Mehlinger, and J. Franklin Wilson incorporated the Washington Bar Association for the "improvement or enhancement of professional skills as well as professional and citizenship responsibilities of the members." Black lawyers now had their own professional

association.

Houston welcomed the challenge of building a first-rate law school and he brought more than a keen, analytic legal mind and the desire to produce excellent lawyers to the job. He brought his friends. Frankfurter and Pound became frequent guest lecturers at the school, and in 1931 Clarence Darrow, the eminent trial attorney of the Scopes "monkey" trial and advocate of civil rights and civil liberties, gave a series of lectures. It was an academic luxury few law schools, even those affiliated with large state universities, could provide.

Endowed with a tremendous capacity for hard work, academic honesty, and scholarship, Houston demanded nothing less from his students. Thurgood Marshall remembered Houston as "hard-crust" when he came there as a student in 1930. "First off, you thought he was a mean so-and-so," Marshall recalled. "He used to tell us that doctors could bury their mistakes, but lawyers couldn't. And he'd drive home to us that we would be competing not only with white lawyers but really well trained white lawyers, so there just wasn't any point in crying in our beer about being Negroes. And I'll tell you—the going was rough. There must have been thirty of us in that class when we started, and no more than eight or ten of us finished up. He was so tough we used to call him 'Iron Shoes' and 'Cement Pants' and a few other names that don't bear repeating. But he was a sweet man once you saw what he was up to. He was absolutely fair, and the door to his office was always open. He 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 a speech to Howard law students many years later, Marshall said, "[What] Charlie beat into our heads was excellence." He said that Houston, told his students, "When you get in a courtroom, you can't just say, 'Please, Mr. Court, have mercy on me because I'm a Negro.' You are in competition with a well-trained white lawyer, and you better be at least as good as he is; and if you expect to win, you better be better. If I give you five cases to read overnight, you better read eight. And when I say eight, you read ten. You go that step further, and you might make it."

Hastie later wrote of Houston, "He had a soldier's faith that winning the fight is all that matters, that every battle must be fought until it is won and without pause to take account of those stricken in the fray. He reflected that conviction in a slogan which he gave to his students: 'No tea for the feeble, no crape for the dead.'"

"Harvard was training people to join big law firms," Thurgood Marshall remembered. "Howard was teaching lawyers to go to court. The emphasis was not on theory, the emphasis in this school was on practice, on how to get it done."

Houston taught his students how to use the law to win civil rights and how to employ existing laws to fight racial injustice, constantly reminding them that upon graduation they would be not just lawyers but "social en-

gineers." Houston believed the school's immediate objective was "to make itself a more efficient training school and to produce capable and socially alert Negro lawyers." His term "social engineer" described his philosophy that good lawyers could use the law as "tools to construct a legal machinery that provides and protects the equal rights of all Americans."

In early June 1928 Houston's doctor, Edward Mazique, told him the lingering cold he thought he had actually was tuberculosis. The District of Columbia's health codes prohibited tuberculosis patients from entering schools, so Houston reluctantly took a leave of absence during the 1929 academic year. But much to the dissatisfaction of his wife, Gladys, and his physician, he took his work to bed with him. He studied the Carnegie report and wrote a paper redefining his plan to win accreditation for Howard's law school. He worked on the NAACP's legal strategy to integrate education, and he kept in touch with his father's law firm. From his sickroom came a flood of memos to Howard University president Mordecai Johnson, the law school faculty, and NAACP officials in New York City.

In one memorandum, "Personal Observations on the Summary of Studies in Legal Education as Applied to the Howard University School of Law," he wrote: "Every group must justify and interpret itself in terms of the general welfare; the only justification for the Howard University school of law, in a city having seven white law schools, is that it is doing a distinct, necessary work for the social good,…the indispensable social function of eliminating legal racial discrimination in America."

He went on to describe the mission and the responsibility of black lawyers. "The Negro lawyer must be trained as a social engineer and group interpreter, due to the Negro's social and political condition. The Negro lawyer must be prepared to anticipate, guide and interpret his group's advancement…Moreover, he must act as a business adviser... for the protection of the sacred resources possessed or controlled by the group…He must provide more ways and means for holding within the group the income now flowing through it."

By the end of the 1928 academic year, Howard Law School was operating full-time, but it still needed the important American Bar Association and Association of American Law Schools credentials. On February 4, 1930, the law school's board of trustees gave Houston something he had wanted for a long time: It voted to move full speed ahead with Houston's plan to secure the accreditations and to close the night law school the following June.

The twenty-two night law school students vehemently protested the closing and took their argument to President Johnson. Critics of the decision to abolish the night school accused Johnson and Houston of attempting to "Harvardize" Howard. They argued that Houston's father, now a successful Washington lawyer, was a night-

school graduate. A night school, they said, allowed students to earn a law degree while working full-time day jobs in order to pay for their evening classes. Houston and Johnson worked out an agreement that permitted night-school students to matriculate at the new day school and work at night. By December 1931 Howard Law School had earned the crucial ABA and AALS approvals.

Marshall finished first in his class his freshman year and earned the coveted job as assistant in the school's law library. The job lengthened his law school day to 8:00 P.M. and sometimes later, but it paid his tuition, bought his books, and meant he would no longer have to rush back to Baltimore and his part-time jobs. And the library assistant's job brought collateral benefits. It put Marshall in closer contact with Houston, Nabrit, and other NAACP lawyers who met in the school's library late at night preparing cases and planning strategy for the NAACP's legal attack on segregation. Marshall looked over their shoulders, and it was not long before the second-year law student was given meaningful research assignments that were to become integral parts of important civil rights cases.

NAACP executive secretary Walter White frequently attended the library sessions and was impressed with Marshall: "There was a lanky, brash young senior law student who was always present," White said. "I used to wonder at his presence and sometimes was amazed at his assertiveness in positions [taken] by Charlie [Houston] and the other lawyers. But I soon learned of his great value to the case in doing everything he was asked, from research on obscure legal opinions to foraging for coffee and sandwiches.

Professor William Hastie remembered the preparation of an appellate brief and a moot-court argument in class by Marshall and another student, Oliver Hill. "Their brief was better than many I've seen by practicing lawyers,'' he said."I would have been willing to say unequivocally then and there that they were going to turn out to be darned fine lawyers."

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Hunter R. Clark (b. 1955) is a tenured professor of law at Drake University in Des Moines, Iowa, where he teaches Constitutional Law, a seminar on the U.S. Supreme Court, and directs the International and Comparative Law and Human Rights program. A graduate of Harvard College and Harvard Law School, Clark met Justice Thurgood Marshall in high school while serving as chief page for the U.S. Supreme Court. Marshall wrote Clark's recommendation for admission to Harvard Law School. From 1981 to 1986, Clark wrote weekly articles for Time magazine on subjects ranging from law and politics to science, diplomacy, religion, and the arts. He is the author of Justice Brennan: The Great Conciliator (1995), a biography of the late U.S. Supreme Court justice.

Michael D. Davis (1939-2003) was a pioneering African American journalist and civil rights activist, and a leader of the Atlanta sit-ins in the 1960s. His father, John P. Davis (1905-1973), founded the National Negro Congress in 1935, and worked with Thurgood Marshall during the early years of the civil rights movement. A graduate of Morehouse College, Mike Davis became the first black reporter on the Atlanta Constitution in 1964. He served as a war correspondent in Vietnam, winning an NAACP award for his coverage of black troops in Southeast Asia. Later he worked as a reporter for the Baltimore Sun Papers, and as a metropolitan editor for WRC-TV NBC in Washington, D.C. He was the author of Black American Women in Olympic Track and Field (1992). He died in 2003.