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Marshall's Law

In the segregated South, when hope dimmed, oppressed blacks used to whisper his name. His legal strategy fueled the triumphs of the civil rights movement. Now Thurgood Marshall—the first black Supreme Court justice and still the most powerful black person in America—looks back on his historic career

A TALL, THICK, AGING BLACK MAN STEPS OUT OF A LIMOUSINE AND SLOWLY MAKES his way into the Sheraton-Washington Hotel. As he trudges toward the ballroom where he is scheduled to give one of his rare speeches, black bellhops and maids and doormen freeze in place, pointing. Black waiters and waitresses begin streaming out of the kitchen for a glimpse of the man. Elderly black people, some with tears in their eyes, stand on tiptoes to see better and wave.

A white man, obviously awed by the emotional reaction of those around him, taps a black man on the arm: "What's goin' on? Who is that guy?"

"That's *Thurgood Marshall*."

The white man seems almost confused: "He's one of those Supreme Court judges, right?"

To many, if not most, white Americans, Thurgood Marshall is not a lot more than "one of those Supreme Court judges." They don't doubt that he is an important and honored man in American life, but he is only one of hundreds of equally important and powerful people in the country. Many saw his appointment to the court by Lyndon Johnson as a political response, even a gesture of appeasement, to the power of the civil rights movement.

In American universities and law schools, the opinions of Thurgood Marshall aren't ranked with those of John Marshall or Louis Brandeis. Within the realm of the high court and its place in history, white America may never afford Marshall its highest honors.

By Juan Williams



MARSHALL IN 1936. AFTER HE JOINED THE NAACP'S NATIONAL OFFICE. DURING THE NEXT 30 YEARS, HE ARGUED 32 CASES BEFORE THE SUPREME COURT AND WON 28 OF THEM.

Yet if whites could see Thurgood Marshall more clearly, they might see the most important black man of this century—a man who rose higher than any black person before him and who has had more effect on black lives than any other person, black or white. Perhaps even more important to many blacks, Marshall got where he is the hard way—by risking his life and reputation to help them.

Twenty-two years ago, even before Marshall broke the 178-year color barrier on the Supreme Court, *Newsweek* magazine wrote: "In three decades he has probably done as much to transform the life of his people as any Negro alive today, including Nobel laureate Martin Luther King." The accolade was deserved. Marshall built his reputation slowly, in backwater southern towns, overwhelmed but not overmatched by a twisted white justice wrought by judges and sheriffs who had few second thoughts about beating in black heads. Often the only hope among blacks in these small communities was expressed in a quiet, angry threat, whispered like code: *Thurgood is coming.*

"When I think of great American lawyers, I think of Thurgood Marshall, Abe Lincoln and Daniel Webster," says Thomas G. Krattenmaker, a professor of constitutional law at Georgetown University Law Center. "In this century only Earl Warren approaches Marshall. He is certainly the most important lawyer of the 20th century."

Marshall is the only black leader in American history who can argue that he defeated segregation where it really counts—in court. Devising a legal strategy based on the Constitution, he forced rights to be extended equally to even the poorest and most disadvantaged citizens. Martin Luther King Jr. would not have won his first victory, the Montgomery, Ala., bus boycott, if Marshall's legal team at the NAACP had not first won a Supreme Court ruling outlawing segregation on buses. And it was Marshall who argued *Brown v. Board of Education* before the Supreme Court, ending segregation in public schools.

"For black people he holds special significance because it was Thurgood, Charles Houston [Marshall's law professor] and a few others who told us we could get justice through interpretation of the law," says Duke law professor John Hope Franklin, author of *From Slavery to Freedom: A History of Negro Americans*. "Marshall was at the head of these lawyers who told us to hold fast because they were going to get the law on our side. And they did."

Once on the court, Marshall continued the battle, fighting against the death penalty and for individual rights—freedom of the press, privacy and due process. His efforts have not gone unnoticed. "He is almost an exact contemporary of mine," says Erwin Griswold, a former dean of the Harvard Law School and former solicitor general who is regarded as an expert on the Supreme Court. "I have watched him for all these years. First, he was an extremely

resourceful and energetic advocate in the late 1930s and 1940s, trying difficult cases all over the South with great skill and often much courage. He changed America. And then as a judge on the court of appeals and as solicitor general he upheld the best standards of the legal profession. And now he has been on the Supreme Court for 22 years and has had a distinguished record not only through votes on civil rights but on technical legal questions of varying issues. He has been a strong constitutional influence for the proper, sound develop-



CLOCKWISE FROM TOP LEFT: MARSHALL AT AGE 21 WITH LINCOLN UNIVERSITY CLASSMATES IN 1925 OR 1926 (HE'S IN THE SECOND ROW, FIFTH FROM LEFT); PLAYING WITH THURGOOD JR., AGE 3, AND JOHN WILLIAM, 6 MONTHS, IN 1929; CHATTING WITH LYNDON JOHNSON IN 1967; PREPARING FOR HIS FIRST SUPREME COURT SESSION IN OCTOBER 1967 WITH THE HELP OF HIS WIFE, CECILIA; LEAVING THE COURT WITH ATTORNEYS GEORGE E. C. HAYES, LEFT, AND JAMES M. HARRIS, RIGHT, AFTER THE 1954 SCHOOL DESEGREGATION RULING.

ment of the law and ranks among the strongest members of the Supreme Court in this century.”

“Thurgood Marshall is the living embodiment of how far we Americans have come on the major concern in our history—race—and how far we’ve got to go,” says Drew Days, professor of law at Yale and former assistant attorney general for civil rights. “He has been a conscience. In the law he remains our supreme conscience.”

Marshall has argued more cases before the court—32—than any justice now sitting. He won 29 of them. Marshall alone among the justices can say he has defended a man charged with murder. And only Marshall can say what it feels like to be black in America.

He has been much more than a minority spokesman. Says John Hope Franklin: “If you study the history of Marshall’s career, the history of his rulings on the Supreme Court, even his dissents, you will understand that when he speaks, he is not speaking just for black Americans but for Americans of all times. He reminds us constantly of the great promise this country has made of equality, and he reminds us that it has not been fulfilled. Through his life he has been a great watchdog, insisting that this nation live up to the Constitution.”

But in black America, Thurgood Marshall has become a doubly potent symbol: the protector fighting for the rights of individuals in a white-majority society still stained with racism, and the personification of black achievement. No black American has ever held a higher government office, and none will until a black person is elected president.

THURGOOD MARSHALL’S THINNING SILVER hair is combed straight back. At 81, his wife and friends complain, he is heavier than ever because he refuses to exercise. He wears two hearing aids, and sometimes his still smooth face is suddenly etched with tears caused by glaucoma that keeps him from driving and forces him to hold papers close to his eyes as he reads. But he reads constantly. His massive desk at the court is covered with papers, letters, law books and pictures.

There is a picture of his grandson, Thurgood William Marshall (whose middle name honors Marshall’s friend Justice William Brennan). Also on the desk is a small bust of Frederick Douglass, the black anti-slavery writer who is Marshall’s hero. And there is a picture of Marshall with his wife. It was taken recently after Marshall finally agreed to have painted the portrait of him that will hang in the Supreme Court after his death.

Save for a 1988 documentary he did with Carl Rowan, Marshall hasn’t given any interviews while on the court. As he talks about his extraordinary career, his voice is gruff; he often mumbles or gives brusque answers to questions.

Marshall’s life is a reflection of the changing 20th century. It began in a sharply segregated town of ordinary people—Baltimore—in 1908. Baltimore was a town where blacks attended “colored schools” run by a white superintendent who said he wouldn’t build a swimming pool for students because “Negroes don’t deserve swimming pools.” It was a town where the parochial schools let students out 10 minutes earlier than the black public schools to minimize fights between the two groups. Not a single department store in Baltimore was open to blacks, not a single restroom that blacks could use was to be found downtown.

“The only thing different between the South and Baltimore was trolley cars,” recalls Marshall. “They weren’t segregated. Everything else was segregated.”

As a boy, Marshall did not have a burning desire to fight segregation. He says he rarely felt uncomfortable about race. He lived in a nice house on Druid Hill Avenue, and both of his parents worked. His mother taught kindergarten, and his father held a variety of jobs, including working as the steward at the prestigious Gibson Island Club on Chesapeake Bay. Marshall was the great-grandson of a slave named Thurgood—Marshall shortened it to Thurgood—but both his grandfathers owned large grocery stores in Baltimore.

As young Thurgood grew, his parents and grandparents encouraged him to adjust to segregation, not to fight it. There was even teasing about it, family jokes. Marshall’s father, William Canfield Marshall, a pale-skinned, blue-eyed man who could have passed for white, used to say, “There’s a white man in the woodpile,” or “That’s mighty black of you.”

“Well, the truth is you learn to take it,” Marshall says. “I was taught to go along with it, not to fight it unless you could win it. The only thing was if somebody calls you a nigger.” His father ordered Marshall to fight if anyone called him that.

Marshall’s high school life was full of circumstances that would later prove to be significant. As a mediocre student and a cutup, he was frequently punished, made to read the U.S. Constitution aloud. By the time he graduated from high school, he knew it by heart. The school he attended was located next to a police station. Marshall remembers spending afternoons listening to the police beat up black prisoners and tell some to shut up before they talked themselves into a death sentence. For amusement, Marshall’s father would occasionally take his son down to the local courthouse to watch trials.

In September 1925, Marshall went off to Lincoln University in Oxford, Pa., a premed student hoping eventually to graduate from dental school. But he had problems at Lincoln. He and the biology teacher argued constantly, and Marshall failed the course. He was thrown out of the college twice for fraternity pranks.

Then, in his junior year he married Vivian “Buster” Burey, a beautiful, energetic student at the University of Pennsylvania he had met on a weekend trip. In some ways he began to settle down. In other ways he was just beginning to become unsettled.

At Lincoln, a school for bright, black males founded by a Presbyterian minister and staffed by an all-white faculty, Marshall at first showed little interest in civil rights issues. Some of his fellow students began to argue with him about his indifference. They would ask him why he hadn’t challenged segregation in Baltimore, why he hadn’t used white bathrooms or sat in the white sections of movie theaters. Then came a school-wide vote: Should the Lincoln faculty be integrated? Marshall voted with the majority—two-thirds of Lincoln’s upperclassmen—to keep the faculty all-white.

Classmates wanted Marshall on their side—for integration—when the issue came up again. Among them were Cab Calloway, who went on to fame as a cabaret dancer; Langston Hughes, the writer, who later described Marshall at college as “the loudest individual in the dormitory, good-natured, rough, ready and uncouth”; U. Simpson Tate, who later worked with Marshall on civil rights cases; and Nnamdi Azikiwe, who be-

Marshall tells
his colleagues
stories from the
segregated
South. They’re
usually funny
but serve as a
reminder of the
nation’s racist
history.

came president of Nigeria. (Kwame Nkrumah, who became president of Ghana, also went to Lincoln and became a friend of Marshall's, although he graduated much later.)

Hughes in particular pressed Marshall on the faculty integration question, arguing that lack of support for black teachers was evidence of the students' "belief in their own inferiority." The debate started a radical shift in Marshall's thinking. His mother had taught him to go along so he could get along in a segregated world, but his father's more subtle message, he began to realize, was to fight. Confused, Marshall went to his favorite professor, sociologist Robert M. Labaree. Labaree told Marshall he should be fighting segregation and the faculty should be integrated.

When the issue came up again, Marshall voted for integration. The faculty was integrated two years after that vote.

After graduating from Lincoln in 1930 with a degree in humanities, Marshall enrolled at Howard University's all-black law school in Washington, making daily train trips there from his parents' home in Baltimore, where he lived with his wife.

In law school, the same message Marshall had heard from his father, from Labaree and from his college classmates—don't accept segregation—started to come at him again. Charles H. Houston had transformed Howard's law school from a "dummy's retreat" night school to a rigorous day school for students committed to using legal knowledge to change segregated society. Marshall would later say that everything he knew about the law Houston had pounded into his head. "He taught us with an emphasis on the Constitution," Marshall recalls. "And basically, he said you had to be not as good as the average white lawyer, you had to be better, because you wouldn't get a break on an even basis. He would tell us that the secret was hard work and digging out the facts and the law.

"When I was in law school in my first year, I lost 30 pounds solely from work, intellectual work, studying. And that's how you get ahead of people." Marshall says Houston's message to him was that "lawyers were to bear the brunt of getting rid of segregation, and he made public statements that we would become social engineers rather than lawyers." Although his class began as a group of more than 30 students, only six graduated. The No. 1 student was Thurgood Marshall.

Among the lecturers for the school, then located at Fifth and D streets NW, Houston brought in stars like Felix Frankfurter and Clarence Darrow. Marshall remembers Darrow telling him that a good lawyer studied sociology as much as he studied the law. Years later, when Darrow died, his widow gave all his cases dealing with civil rights to Marshall.

In his last year of law school, Marshall and some of his classmates began reviewing the D.C. Code "just for fun," only to discover it prohibited blacks from voting. The discovery became a cause, and eventually Congress put a civil rights clause into the code. For the first time, Marshall focused on what would become his life's work—fighting segregation.

After graduation, in an effort to impress on his star pupil the devastation of segregation, Houston took Marshall with him on a trip through the South. Traveling anonymously in Houston's old automobile, and prohibited from patronizing most motels and restaurants, they stayed overnight with local black lawyers and ate from bags of fruit they carried with them.

Shortly after their return, Houston had Marshall assist him in the case of George Crawford, a black man charged with murdering a white man in Loudoun County, Va. After a strong defense, Crawford was convicted and given life.

"We won it," Marshall says. "If you got a Negro charged with killing a white person in Virginia and you got life imprisonment, then you've won. Normally they were hanging them in those days."

HOUSTON WENT ON TO NEW YORK TO RUN THE NAACP'S LEGAL Defense and Educational Fund while Marshall returned to Baltimore to open a one-man law firm. His mother took the rug off her living room floor and put it in his otherwise bare office. He took what cases he could get, developing a reputation as a lawyer who would help poor blacks.

"A woman walked into my office one day, a colored woman from South Carolina, and she had a case and she didn't have any money," Marshall remembers. "So I said, 'Well, madam, please tell me: How did you happen to get to me?' And she said, 'In my home town in South Carolina, when we has trouble we goes to the judge, and the judge tells us what to do. So I went over to the courthouse, and when I saw the sign "Judge," I went in and told him of my problem and he said, "We don't operate that way up here. You need a lawyer."' And she said she didn't have any money. And he said, 'You go down to this lawyer Marshall. He's a freebie.'

"So I said, 'I've got to stop that nonsense right now.'"

Though he couldn't afford it, Marshall still made time for the fight against segregation. Representing the local NAACP, he negotiated with white store owners who sold to blacks but would not hire them. He joined John L. Lewis's effort to unionize black and white steelworkers. And he convinced a college graduate who wanted to go to law school to apply to the University of Maryland, which did not accept blacks into its law school program. Marshall had considered applying to Maryland himself after he graduated from

college but decided it would be hopeless. Now he was taking the law school to court.

Houston came to Baltimore and helped argue the case. During the proceedings, Marshall told the court: "What is at stake here is more than the rights of my client; it is the moral commitment stated in our country's creed." No one expected Marshall and Houston to win; they were simply trying to set up a case that could be appealed. "We were hoping to get to the Supreme Court any way we could," Marshall says. "But Judge Eugene O'Dunne said no. He said we won right there."

"The colored people in Baltimore were on fire when Thurgood did that," recalls Juanita Jackson Mitchell, an NAACP activist in Baltimore. "They were euphoric with victory . . . We didn't know about the Constitution. He brought us the Constitution as a document like Moses brought his people the Ten Commandments."

It was during these heady, early days of practice that many of Marshall's ideas about the fallibility of the law would be developed. For example, his repeated contact with black defendants accused of capital crimes helped convince him that his fellow man should not be given the power to condemn others to death. He remembers many stories about lives that could easily have been snuffed out by the capriciousness of the white man's law.

'Just between
you and me,'
said Marshall to
Gen. MacArthur,
'don't you
tell me that
there's no
Negro that
can play
a horn.'



IN JULY 1967 MARSHALL PONDERED HIS FUTURE ON THE SUPREME COURT.

Maryland State Archives S455-D012196A.TIF

One night, he says, he got a call from Frederick, Md., warning that a lynching was about to take place. A black man had been charged with attempting to rape the white daughter of a bank president. Marshall got into his '29 Ford and raced to Frederick. A local judge had stopped the lynching, but he told Marshall it had been close. A mob had captured a suspect and brought him to the young woman to be identified.

"She was laying on the sofa in her home in pain because he broke her jaw," Marshall says, "and she said, 'Yeah, that's him.' And the mob was ready, and they barely got him to the front door when she said, 'Wait a minute. Bring him back.' And they brought him back in, and she said, 'That's not the man.' So the chief of police said, 'Now why did you change your mind like that?' She said, 'The guy that attempted to rape me had his belt buckle on the side, and that one's got it right there.' So they went out, and they found a guy that looked like this guy's twin brother. And they weren't even related. Now you see how easy that would have been? That innocent man would have been lynched."

IN 1936, AFTER THREE YEARS OF PRIVATE PRACTICE, Marshall was invited by Houston to join the NAACP's national office in New York as assistant special counsel. Two years later, Houston returned to his family practice in Washington. Marshall was appointed to fill Houston's position, and for the next

20 years he traveled the country using the Constitution to force state and federal courts to protect the rights of black Americans. The work was dangerous, and Marshall frequently wondered if he might not end up dead or in the same jail holding those he was trying to defend.

In the early 1940s, for example, he was changing trains in a small town in Mississippi when "I got hungry and I saw a restaurant, so I decided that I'd go over there and put my civil rights in my back pocket and go to the back door of the kitchen and see if I could buy a sandwich. And while I was kibitzing myself to do that, this white man came up beside me in plain clothes with a great big pistol on his hip. And he said, 'Nigger boy, what are you doing here?' And I said, 'Well, I'm waiting for the train to Shreveport.' And he said, 'There's only one more train comes through here, and that's the 4 o'clock, and you'd better be on it because the sun is never going down on a live nigger in this town.' I wasn't hungry anymore."

A few years later, Marshall was defending two black men accused of shooting a policeman. The shooting occurred after a black youngster and a storekeeper got into a fight over the cost of repairing a broken radio. The youngster beat up the man and ran away. A mob, including the police, pursued him into the black section of town and shot randomly into homes. Shots were fired back from neighborhood houses, and a policeman was hit. At the end of the trials—one man was found

guilty, the other innocent—Marshall went in search of a bottle of liquor to unwind with.

"The bootlegger said, 'I'm sorry, I had just vodka and whiskey, and I just sold the last two bottles to the judge,' Marshall remembers. So he and the other lawyers left town, only to be stopped by police, who searched the car for liquor, without success. When the car had been driven on a few hundred yards, it was stopped again. After much finger pointing, the police agreed that the tall man in the back seat was "the one we want." Marshall was arrested for drunken driving.

"The justice of the peace was a little, short man—5-4, elderly and about 60. He said, 'What's up?' And they said, 'We got this nigger here for drunk driving.' And he says, 'Boy, you want to take my test? I never had a drink in my life, and I can smell a drink a mile off. You want to take a chance?' I said, 'Well, sure, I'll take a chance.' He said, 'Blow your breath on me.' I blew so hard he rocked. When he got himself together, he said, 'This man hasn't had a drink in 24 hours. What the hell are you talking about?' I turned around, and the police were gone."

Another time, when Marshall went to Dallas to challenge the city's refusal to seat blacks on juries, the police chief "called the top personnel, the captains and lieutenants, and made a speech to them one morning that said a newspaper reported that a nigger lawyer named Marshall was coming down from New York to disrupt our procedures. And he wanted them to know that he was instructing them not to do anything about it, not to touch Thurgood Marshall, because he personally would take him and kick the shit out of him. I sort of considered the idea of having a bad cold or something and not going down there."

Instead, Marshall called the governor and requested protection from a state trooper. But one day as he left the courthouse, Marshall came face to face with the chief. "And when he saw me, he said, 'Hi, you black son of a bitch, I've got you.' And I ran. And the state trooper pulled out his gun and said to the chief, 'You stay right there.'"

Living out of suitcases, hopping trains into and out of small towns dedicated to white supremacy, Marshall lived the segregated life he was challenging, often finding the irony ridiculous. Once, in North Carolina, he told a judge that he had eaten the same exquisite meal, drunk the same expensive wine and been served at the very same segregated restaurant the judge had dined in the night before. The only difference, Marshall said, was that "you had yours in the dining room, and I had mine in the kitchen."

Though many of his clients were ushered off to years in prison despite their innocence, the risks Marshall took paid off in a mass of legal precedents. Among the successes: He ended the use of racially restrictive covenants to keep blacks from buying houses; he argued the case that ended the all-white primary system in Texas (Marshall had already garnered such a reputation among blacks that during the Texas case Duke Ellington stopped his tour for a week to sit in the courtroom and watch Marshall in action); and he won cases calling for black teachers to be paid salaries equal to those of whites.

Between cases, Marshall was constantly involved with other events and personalities in the struggle between American blacks and whites. He was denounced by Muslims as a "half-white son of a bitch." He met Malcom X once and "we spent the

whole time calling each other a bunch of sons of bitches." Once, after he had been threatened by some Muslims on the street, the New York police commissioner came to his house with a beautifully wrapped gift—a gun. Marshall refused.

At the invitation of various federal and state officials, he investigated almost every race riot between 1940 and 1960. He recalls in particular a Detroit riot that began after a rumor was spread among blacks that a white Marine had raped a 7-year-old black girl. In white Detroit, a rumor was spread that a black man had raped a 7-year-old white girl. "The one thing you get out of race riots," he says, "is that no guilty person ever gets hurt. The innocent people get hurt."

In the late 1940s, Branch Rickey, the general manager of the Brooklyn Dodgers, called him to ask if he would help a young ballplayer named Jackie Robinson straighten out his financial affairs.

At the request of President Truman, Marshall traveled to the Far East in 1951 to review treatment of black soldiers under Gen. Douglas MacArthur. Marshall remembers asking MacArthur why there were no blacks in the elite group guarding the general. He was told none were qualified by their performance on the field of battle.

"I said, 'Well, I just talked to a Negro yesterday, a sergeant who has killed more people with a rifle than anybody in history. And he's not qualified?' And he [MacArthur] said, 'No.' I said, 'Well now, general, remember yesterday you had that big band playing at the ceremony over there?' He said, 'Yes, wasn't that wonderful?' I said, 'Yes, it's beautiful.' I said, 'Now, general, just between you and me: Goddammit, don't you tell me that there's no Negro that can play a horn.' That's when he said for me to go."

Today Marshall says the general was a racist: "What else can you say? Every other branch of the armed forces was desegregated, but he wouldn't budge. And when he left, the Army desegregated too. Right away."

MARSHALL'S GREATEST VICTORY CAME IN 1954, when he led the legal team that challenged school segregation before the Warren court. As the case progressed, three secret dramas unfolded.

First, Marshall heard that President Eisenhower had pressured Chief Justice Earl Warren to retain school segregation. Marshall says that Ralph Bunche, former U.S. undersecretary to the United Nations, told him that at a White House dinner he heard Warren tell Eisenhower off in no uncertain terms: "I thought I would never have to say this to you, but I now find it necessary to say to you specifically: You mind your business, and I'll mind mine." Later, Marshall said Eisenhower's attempt to pressure Warren was the "most despicable job any president has done in my life."

Second was Marshall's mental combat with Justice Felix Frankfurter. Throughout the case, the justice had peppered him with questions. At one point, just before recessing for the day, Frankfurter asked him if the case would be affected if the 14th Amendment to the Constitution had not been intended to end segregation. "My God, the light went on, which meant you had to come back in the morning," recalls William T. Coleman, who worked with Marshall on the case. "Well, from 5 o'clock until 7 o'clock in the morning—the work that went into how do you answer that question!"

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Later, Marshall discovered that it was Frankfurter who had put the phrase "all deliberate speed" into the decision, creating a loophole that allowed segregationists to delay the integration of schools instead of immediately obeying the court order.

"If he'd pushed me one more time in the school case," Marshall says, recalling the argument 35 years ago, "I was going to say, 'And may it please the court, I wish to mention the fact that we have not come as far as some people think and as far as other people think. For example, if this case involved a Jewish kid, I don't think we'd have this problem.' And I was going to say it. I was going to say it."

The third drama involved Justice Stanley Reed, a Kentuckian. Marshall had been told that Reed had independently hired a clerk to write a dissent to the opinion. In Marshall's mind, the question was: How many justices will join in Reed's dissent?

As the decision came down, Marshall was watching Reed's eyes. "When Warren read the opinion," he says, Reed "looked me right straight in the face the whole time because he wanted to see what happened when I realized that he didn't write that dissent. I was looking right straight at him, and I did like that [a nod of the head], and he did like that [a nod in response]." The decision was unanimous.

Marshall would later comment that the Brown decision "probably did more than anything else to awaken the Negro from his apathy to demanding his right to equality."

In February 1955, Marshall's wife, Buster, began to fail from cancer. He stayed at home with her for the last weeks of her life, not answering phone calls, not going out except to get food. "She would have done the same thing for me," he says.

He remained single for a year, dating Cecilia Suyat, a secretary who worked at the NAACP. Finally, he asked her to marry him. She said no.

Suyat, who is of Philippine ancestry, thought Marshall would come in for too much criticism if he married her. "They called me a foreigner," she says. "No, with his stature I just didn't want to bring any controversy into it." Eventually, however, she agreed.

Although Marshall's associates and friends at the NAACP didn't object to the marriage, a newspaper in Mississippi did. "They had a front-page editorial that said that Thurgood Marshall, just like his predecessor Walter White, has broken down and admitted his racial prejudice by marrying a white woman," Marshall says. "And I wrote a letter back to them, and I said, not that I object to it, but I just think you ought to be accurate. And I don't know which wife you're talking about, but I have had two wives, and both of 'em were colored." The editor of the newspaper wrote his response on Marshall's letter and sent it back: "So what?"

Between 1955 and 1960, Marshall's legal team at the NAACP filed seven major cases dealing with the right of black children to an education. In 1957 he represented the nine black Little Rock, Ark., students who tried to integrate Central High School, challenging segregationist Gov. Orval Faubus and Arkansas moderate Sen. J. William Fulbright (who filed a brief with the court opposing desegregation because it might create "disruptive conditions"). Marshall, in his arguments to the court, countered: "Even if it be claimed that tension will result which will disturb the educational process, this is preferable to the complete breakdown of education which will result from teaching that courts of law will bow to violence."

Nevertheless, the threat of violence hanging over the Little Rock case was real. Wiley Branton, Marshall's co-counsel, once recalled that fear of firebombs in Little Rock's black com-

munity prompted whole neighborhoods to keep their lights out after dark. Marshall and Branton slept in the same room in the home of Daisy Bates, the head of the local NAACP. Branton joked that he would put Marshall's luggage on the bed nearest the window, but that Marshall would sneak into the room and move his gear to the bed farthest away.

BY 1959, MARSHALL WAS KNOWN INTERNATIONALLY AS "Mr. Civil Rights," and in polls among black Americans he either beat or tied Martin Luther King Jr. for the title of most important black leader. Presidential candidate John F. Kennedy called to ask for campaign advice.

In 1960 Marshall traveled to Kenya and England, where he worked for three months to draft a constitution for the soon-to-be independent republic of Kenya—a constitution, ironically, that included safeguards for the rights of the white minority.

About this time Marshall began talking about joining a private law firm and "making money." But he was also intrigued by the idea of becoming a judge. As a young Baltimore lawyer, he had dreamed of becoming a local magistrate. Now the prospect of a federal judgeship on the appeals court level intrigued him.

After Kennedy won the election—a close victory that would have been impossible without overwhelming black support—pressure began to build to appoint blacks to important jobs. Marshall saw a vacancy on the U.S. Court of Appeals and let it be known that he wanted it. Attorney General Robert Kennedy fought the idea. He told his brother the political cost of getting Marshall, a man despised by southern segregationists, confirmed by the Senate would be too high.

Marshall recalls arguing face to face with Robert Kennedy, who was trying to get him to take a district court job instead: "He said, 'Well, you can't go on the Court of Appeals.' I said, 'There is an opening.' He said, 'But that's already filled.' I said, 'So?' He said, 'You don't seem to understand. It's this [the district court job] or nothing.' I said, 'I do understand. The trouble is that you are different from me. You don't know what it means, but all I've had in my life is nothing. It's not new to me. So goodbye.' And I walked out."

With pressure from black voters building, Louis Martin, the president's principal black adviser, convinced John Kennedy to ignore his brother's caution and nominate him for an appellate seat. But when Kennedy did send Marshall's name to the Senate Judiciary Committee, Marshall wasn't scheduled for confirmation hearings for eight months. In the book *Kennedy Justice*, Committee Chairman James Eastland of Mississippi is quoted as instructing Robert Kennedy to tell the president that Eastland would "give him the nigger" if Kennedy would nominate conservative judge Harold Cox of Mississippi to a district court. After Kennedy nominated Cox, Marshall was confirmed by the Senate.

In 1965, Lyndon Johnson named Marshall as his solicitor general. Representing the government before the Supreme Court, he twice volunteered information about illegal wiretaps that caused the court to throw out the government's case. He also argued one of the cases that resulted in the court voting to adopt the Miranda rule, which requires police to inform suspects of their rights.

Marshall's nomination to the Supreme Court in 1967, like his nomination to the Court of Appeals, was a difficult affair. Four senators on the Judiciary Committee, all southerners, opposed him—Strom Thurmond of South Carolina, James Eastland of Mississippi, John McClellan of Arkansas and Sam Ervin of North Carolina. An openly segregationist Thurmond asked Marshall 60 questions on constitutional history and the meaning of the 13th, 14th and 15th amendments. Nevertheless, Marshall was confirmed by a vote of 69 to 11.

Over the years, Johnson had discovered that he and Mar-

shall shared an appreciation for fine bourbon and political talk. In January 1973, a week before he died, the former president telephoned Marshall and spoke about how dearly Marshall's appointment had cost him.

Marshall remembers that Johnson was "heartbroken" about his decision not to seek reelection in 1968. And while his withdrawal from the race is usually associated with the country's bitter division over the Vietnam War, Johnson told Marshall during that phone conversation that it was his appointment of blacks to high offices that destroyed his chances.

In a sealed 1977 interview, which was given to Columbia University on the condition that it be opened only with his permission and which was unsealed for the first time for this article, Marshall said that Johnson felt he couldn't win reelection because he had appointed a black to the Supreme Court. "He thought that moving me here was what killed him off," Marshall said in the interview.

"You mean that was more critical than the Vietnam War?" asked the Columbia University interviewer.

"He felt that they [Johnson's enemies] used the Vietnam War as the excuse," Marshall said. "He told me that as late as about a week before he died."

Marshall said he talked with Johnson the day he was confirmed to sit on the high court. Johnson said: "Well, congratulations, but the hell you caused me. Goddammit, I never went through so much hell . . ."

In their last phone conversation, Johnson told Marshall: "More and more I'm sure I'm right, and I'm going to write about it." Today the justice speaks of Johnson with passion. "I loved that man," he says.

WHEN MARSHALL CAME TO the Supreme Court in 1967, his first order of business was to ask Earl Warren what had happened 13 years earlier to the dissent Stanley Reed never wrote in the Brown case. Warren told him it would be best if he forgot about the subject and quit asking questions.

"Since I've been on this court," Marshall says, "I've been able to find out everything about the past but the Brown case. Nobody will talk."

Throughout his time on the court, Marshall has remained a strong advocate of individual rights. His position has not changed, but as his fellow justices came and went, Marshall began to find himself on the ideological left. When he joined the Warren court in 1967 he was in the middle, part of a liberal, activist majority. By the early 1970s, on Warren Burger's court, he was part of a four-man minority. On the conservative Rehnquist court, he is at the far left with only one compatriot, William Brennan.

He has remained a conscience on the bench, never wavering in his devotion to ending discrimination. In the midst of the benign 1987 celebration of the bicentennial of the Constitution, Marshall declared the document "defective" for failing to deal with slavery or the rights of women. When the nine members of the Supreme Court were invited to attend a reenactment of the Founding Fathers' deliberations, Marshall refused to go. Later he told an interviewer: "If you are going to do what you did 200 years ago, somebody is going to give me short pants and a tray so I can serve coffee."

And it was Marshall who earlier this year described the court's recent rulings limiting minority set-asides and the rights of employees to sue for discrimination as "a retrenching of the civil rights agenda" that has the nation running "full circle" back to the days before 1954.

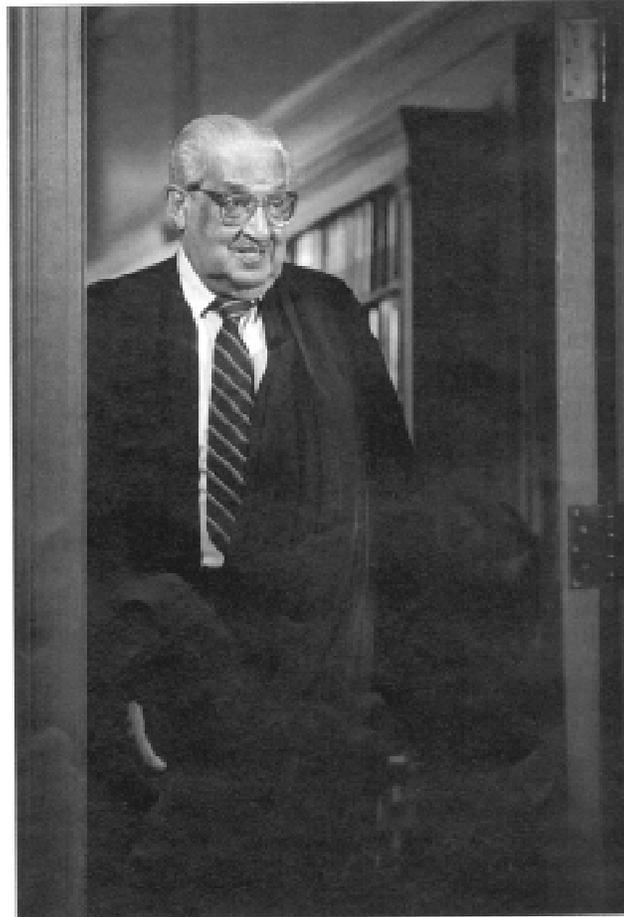
In court conferences Marshall tells stories from his years in the segregated South. Though the stories are usually funny, several justices say they leave "an aftertaste," a reminder of the nation's dismally racist history. Even on the bench, Marshall works on his colleagues. Chief Justice William Rehnquist once asked why the government had to offer psychiatric care for suspects. Replied Marshall sarcastically: Why not skip everything, including the trial, and just "shoot them when you arrest them?"

"The only time Thurgood may make people uncomfortable," says Justice Brennan, "and perhaps it's when they should be made uncomfortable, is when he'll take off in a given case that he thinks . . . is another expression of racism." In conference, Brennan says, "there's no question about where Thurgood stands, no matter how uneasy it may make any of us." Marshall, Brennan continues,

thinks that the court's recent record on civil rights "shows innocently or otherwise that there's still racism. I agree that there is. There is no question. But I will not accept the suggestion that it may also be true of our colleagues [on the court]."

Marshall does not call his colleagues racist, but he is frustrated by what he sees as their lack of awareness of the effects of racism on American society. "They need to stop looking for excuses not to enforce the 14th Amendment as it was intended to be enforced," he says.

He worries about the court sticking its nose into racial issues that seem already worked out: agreements on busing, school admissions, hiring and contract set-asides. "The only problem we've got now is everybody agrees to do it and the court moves in and says no. Now, that's what I object to . . . I don't see why it's the business of the court to come in over the top of all of that and say because of our majesty we say, 'No!'"



"I WOULDN'T DO THE JOB OF EDUCATOR FOR RONALD REAGAN," MARSHALL SAYS.

PHOTOGRAPH BY GREGORY HEISLER

At times he becomes terribly frustrated about failing to change his colleagues' minds. "I mean, I didn't persuade them on affirmative action, did I? I didn't persuade them in the Bakke case [the decision outlawing a quota system for admission of blacks to a medical school]." And he is constantly aware of their innocence. "What do they know about Negroes?" he says. "You can't name one member of this court who knows anything about Negroes before he came to this court. Name me one. Sure, they went to school with one Negro in the class. Name me one who lives in a neighborhood with Negroes. They've got to get over that problem, and the only way they can do it is the person himself. What you have to do—white or black—you have to recognize that you have certain feelings about the other race, good or bad. And then get rid of them. But you can't get rid of them until you recognize them.

"There's not a white man in this country who can say, 'I never benefited by being white,'" said Marshall. "There's not a white man in the country who can say it. Maybe he doesn't know it. For example, all these graduates from Harvard [four of the current Supreme Court justices graduated from Harvard's law school]. They were one of 300 students, and there were two Negroes."

A principal benefit of having him on the court, Marshall believes, is that his fellow justices "know that whatever they do is going to be exposed."

Marshall blames former president Reagan for some of the backsliding on civil rights and has called him the worst president on civil rights in his lifetime. Asked recently if he had ever wanted to be chief justice, Marshall showed a spark of interest, but when it was suggested that Reagan could have appointed him, he said, "I wouldn't do the job of dog-catcher for Ronald Reagan."

Occasionally, Marshall's frustration with his colleagues over racial issues is on view in his dissents. After the court ruled against a contract set-aside plan for minorities in Richmond last year, Marshall wrote: "Racial classifications drawn for the purpose of remedying the effects of discrimination that itself was race-based have a highly pertinent basis: the tragic and indelible fact that discrimination against blacks and other racial minorities in this nation has pervaded our nation's history and continues to scar society."

The Bakke decision, which came down in 1978, particularly incensed Marshall. "I did a lot more research on it because I wanted to win it, and there were times when I almost won it," he says. "I still stand by every word I've said in my opinion."

Marshall wrote in dissent: "It must be remembered that during most of the past 200 years the Constitution as interpreted by this court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a state acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier. At every point from birth to death the impact of the past is reflected in the still disfavored position of the Negro. In light of the sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order."

Despite his strong support for affirmative action, Marshall does not believe there must be a permanent black slot on the Supreme Court. "I don't think there should be another 'Negro' justice," he says, when asked if he should be replaced by an-

other black person. "I think the next justice should be a qualified person."

No Jewish justice, he notes, was named to replace Arthur Goldberg. "I would propose that they get a good person," he says. "The best person they can find, and I would hope that it would be a Negro. But a good one. Not a [William] Lucas," he adds, referring to the former Michigan gubernatorial candidate whose nomination as the Bush administration's assistant attorney general for civil rights was rejected by the Senate.

LAST YEAR, AT A CONGRESSIONAL BLACK CAUCUS DINNER in his honor, Marshall was saluted for a lifetime of service. When he stood to speak, he looked over the large crowd, then stared at a large, mounted photograph of himself that had been given to him. He pointed at the picture and said, "You know, what worries me about this thing, and I ask you to look at it—doesn't it look like a memorial? Well, I've got news for you that I will try to put in the best English available: I ain't dead yet!"

One of the more morbid aspects of the history of the Supreme Court is the constant discussion of the justices' ages and how much longer they will be able to serve. Presidents are forever eager to influence the balance of the court by making as many appointments during their terms as possible. Marshall has never been pleased by the death watch, but he's used to it; for two decades, he has been dealing with those who are anxious to see him replaced.

In 1970, when he was in Bethesda Naval Hospital with pneumonia, a doctor walked into his room one afternoon and informed him that President Nixon had asked for his medical reports. The president apparently wanted to see how close Marshall was to death and thus how close the Republicans were to being able to name a conservative successor. Marshall told the doctor he could send the medical records to Nixon but only with two words written on the outside of the folder. The doctor agreed. Then Marshall wrote on the folder in large black script: "NOT YET!"

He has even heard the same morbid questions from Democrats. In 1979, he says, two White House aides called him and suggested that he quickly quit the court so President Jimmy Carter could name a new justice. The aides reminded Marshall of his heart attack, his difficulties with blood clots and his bouts of pneumonia. They painted a sad picture of the possible replacements that a Republican like Ronald Reagan might select for the court. The justice slammed the phone down. But that didn't stop it.

Reporters started calling day and night about his imminent resignation. One said he had confirmed that the justice had had a pacemaker installed and that was why he was stepping down. No, said an exasperated Cecilia Marshall, the judge does not have a pacemaker. When another reporter called to say she *knew* Marshall had resigned, his wife said, "You reporters know more about my husband than I do—I only sleep with him." Then there was a false radio report that Marshall had died, prompting Warren Burger to have his secretary call Cecilia and urge her to remain calm. "I said, 'Well, I'm very calm because he's there in the living room having his dinner.'"

These days Thurgood Marshall is straightforward about how soon he will retire. "I have a lifetime appointment and I intend to serve it," he says. "I expect to die at 110, shot by a jealous husband." ■

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of awareness:
'They need to
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The Private Thurgood Marshall

As the newly appointed Justice Marshall began his life at the Supreme Court in 1967, he got a pleasant reception from his all-white colleagues, and he is very fond of them. William Brennan, who frequently votes with Marshall, is among his best friends. Marshall feels comfortable joking with any of the justices. In the middle of a boring tax case, former justice Lewis F. Powell Jr. remembers, Marshall leaned over to say, "You can have my vote on this for a future draft pick."

"They've accepted us openly," says Cecilia Marshall. "I never felt any coolness or reservations. We are like a family, actually. We have to be, you know. We're here for life."

It is a life Marshall cherishes, but one that has turned him inward toward his family and close friends and away from the public eye. He does not like to attend public events because too many people bother him. "With them it's one shake; with me it's a hundred," he says with a scowl. A friend tells a story of seeing a man approach Marshall and ask, "You remember me, don't you?" Marshall, without a pause or break in his stride, replied: "Of course I don't."

Now he rarely socializes outside a circle that includes his two sons, Thurgood Jr. and John, their wives and his grandchildren. In 1988, he created a stir among his associates when he agreed to attend an 80th birthday party. He doesn't belong to any of the capital's exclusive social clubs, and he doesn't even like to go out to dinner. "He may be eating a sandwich or something," his wife says, "and they'll want to shake his hand."

At 81, he has outlived most of his friends, including two he felt especially close to: Roy Wilkins and Wiley Branton. Some of the friends who are left think Marshall has soured on the lack of energy and direction in the civil rights movement, deriding the constant glorification of past activists. Asked his opinion of Jesse Jackson, Marshall shakes his head sadly and finally snaps: "No comment." In speeches, though, he emphasizes the need to continue the struggle for rights: "Take it from me, we haven't won it yet. We've got a long way to go."

Marshall's isolation is exacerbated by his age. He has never exercised much, and these days he no longer takes his ritual walks around the Supreme Court building. He usually has lunch—heated-up Campbell soups—alone at his desk, calling the quality of the soup in the Supreme Court cafeteria "uneven." He is a Redskins fan, but he no longer goes to the games because his children are grown. He doesn't go out to movies or plays. And he plays poker—once his favorite pastime—only with his wife, complaining that she doesn't know how to bluff.

He gets his hair cut at work for \$3.50. His doctor is across the street from the Supreme Court. He doesn't

even vote anymore, because after years of listening to Justice John Harlan argue that it was inappropriate for a Supreme Court justice to be involved with a political candidate, he recently decided that Harlan had been right.

He and his wife used to travel to her home state, Hawaii, for vacations, but lately they prefer to stay home. During the summer they spend a few days in Atlantic City, where Marshall—enjoying a certain anonymity among bettors concentrating on their money—places small-time wagers on blackjack and roulette. He recently decided to increase his bets from \$5 to \$20: "It suddenly dawned on me—what the hell's the difference? You get the same card." Last summer he lost \$600.

He turns on the television in free moments at the office, and wherever he is outside the office. He doesn't have a favorite show—TV simply provides a soothing background. He once told his friend Justice Brennan that there was a "lot to be learned about life" from soap operas. He watches wrestling, news and talk shows, but usually reads newspapers, magazines and law books at the same time.

"He'll watch anything," his wife says, "because at times I know he's not looking at it. His mind is working on some legal case."

"You shouldn't tell that," Marshall interrupts.

In the 1979 bestseller *The Brethren*, by Bob Woodward and Scott Armstrong, Marshall was portrayed as watching so much TV that it interfered with his legal work. Marshall, who says he never spoke with the authors, is angry about this, but says, "I don't want to get down in the gutter" with them. Says Woodward: "There were many witnesses to Marshall's television habits. It's like George Bush trying to proclaim that he never plays horseshoes."

Marshall's relationship with his wife, whom he calls Cissy, is warm and romantic. After nearly 35 years of marriage, they still seem to be in love. "Isn't she something?" he said once, interrupting an interview to comment on her good looks. He calls her his "handler," and when it comes to travel, his "seeing-eye dog." They tease each other. She bothers him about not exercising, and he says that's okay as long as he pays the bills. She grumbles back, and he says, "Don't do you any favors, huh?"

When not at work or with his wife, Marshall can usually be found with one of his sons. Thurgood Jr. is a lawyer on Sen. Edward Kennedy's Judiciary Committee staff; John, the younger son, is a Virginia state trooper. Both sons are married to white women ("So what?" says the justice when this fact is mentioned). At one point, when Thurgood Jr. was a prosecutor, his father pointed out this irony: The man who had long fought unfair treatment of blacks by the white law enforcement establishment had a prosecutor and a policeman as sons. □

—J.W.



MARSHALL AND HIS WIFE, CECILIA, HAVE BEEN MARRIED FOR NEARLY 35 YEARS.