

My Personal Debt to Thurgood Marshall

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Now that Thurgood Marshall has announced his decision to retire as a Justice of the Supreme Court, assessments of his life and contributions to the development of American constitutional law are beginning to pour in and, even in this conservative climate, they are all favorable. When viewed against the background of American history over the past half century, the totality of his contributions to the restructuring of American society has rendered him larger than life. However, I fear that his personal, unique contributions to the advancement of women in the law—a profession once totally dominated by men—may be lost in the review of the multitude of events and judicial opinions which now compose his life. My tribute acknowledges my personal debt to Thurgood Marshall for aiding my career at a time when nobody was hiring women lawyers.

My first job interview was an accurate sign of the times. It was October 1945. World War II had abruptly ended a few months earlier, and I was in my final year at Columbia Law School. The women in my class had high hopes but few offers. I learned from my classmates that a small midtown firm was looking to hire a recent graduate. When I appeared for my interview, a balding, middle-aged white male appeared at a door leading to the reception room where I was standing. The receptionist had not even asked me to have a seat. Even after the door to the reception room quickly closed, she still did not invite me to sit down. She knew as well as I that the interview was over.

When I returned to school, another classmate, an African-American male from North Carolina, Herman Taylor, told me about a law clerk vacancy at the NAACP Legal Defense and Educational Fund, Inc. (the Inc. Fund). I hurried down to the Inc. Fund offices on lower Fifth Avenue for an interview, and Thurgood Marshall hired me on the spot. Marshall told me about his admiration for African-American women who had the courage to enter the legal profession. He also told me about Florence Lucas, an African-American woman who was practicing in Queens and who had put herself through law school by working in a laundry at night. When I finished Columbia Law School in June 1946, Marshall received Board approval to hire a woman lawyer. I was a member of the Inc. Fund staff until 1965.

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Thurgood Marshall had no qualms about women being given equal employment opportunities. His mother was a school teacher and his father was a dining car steward. Over the years, he told me about every successful African-American woman he encountered. Marshall was born and grew up in America at a time when nobody had to tell him that African-American males were on the bottom rung of the ladder in every conceivable professional endeavor and that African-American women were not even on the ladder.

When I joined the staff of the Inc. Fund as a clerk in 1945 it was a fledgling public interest law firm with two full-time lawyers in addition to Marshall, one part-time lawyer, and three secretaries. The annual budget was about \$30,000. The law library consisted of a single set of Supreme Court Reports. Since my main responsibilities included research and writing, and we had no library facilities, Marshall suggested that I join the New York City Bar Association (the Association) so that I could use its law library. After securing membership, I presented myself at the front door of the Association on 44th Street in Manhattan. When I got there I saw the "gate keeper" standing at his desk immediately inside the door. He was an elderly white man with snow-white hair who appeared to be one year older than God. He was talking with an Association lawyer. When I approached the desk, the "gate keeper" continued his conversation and never even looked at me. The "gate keeper" obviously assumed that I was a mere messenger. The one or two other women members of the Association at that time had joined so recently that a women's rest room had not yet been provided. When the "gate keeper" finally addressed me an embarrassing two minutes or so later, he said politely, "May I help you," with a quick motion of his head in my direction. When I replied that I wanted to use the library, the "gate keeper," again without looking in my direction, said, "You must be a member." When I assured him that I was a member, he finally ceased his conversation and turned his head fully in my direction for the first time. As if he had seen a ghost, he shouted in disbelief, "*You a member* of this Association." "Yes," I replied. "What is your name," was his retort. "Mrs. Motley," I said, guarding against what all African-American women guarded against in those days. When he found my name on the membership list, he exclaimed, "Oh, right this way, *Constance*." This story is one of the many stories in Marshall's "Stories Repertoire." The Association, forty years later, now has its first African-American president.

Around 1948, Marshall sent me to Baltimore to sit in on a case that was being tried by the founder of the Inc. Fund and Thurgood Marshall's mentor, the great Charles Hamilton Houston. Houston was the Dean of Howard Law School when Thurgood Marshall studied there. In the case I was watching, Houston was representing a black woman against the University of Maryland's School of Nursing. Marshall wanted me to learn from the master. To this day I have never seen a better prepared trial lawyer. Houston had a notebook in which every question he was going to ask was written out. His advice to me

was: "Never ask a question which you have not previously considered." Every exhibit he was going to introduce was carefully laid out on a table. He allowed me to sit next to him at the counsel's table so that I could see and hear every move he made.

As part of my early training, Thurgood Marshall accompanied me to two trials. One of these trials, which was before the Commissioner of Education for the State of New York, involved segregated schools in Hempstead in 1949. (Hempstead now has an African-American mayor.) The other trial was a contempt hearing against the Board of Trustees of the University of Alabama. During the course of that hearing, we stayed in the Birmingham home of local attorney Arthur Shores. His home had been bombed on at least fifteen occasions. (Birmingham now has an African-American mayor.) At night we were guarded by African-American men with machine guns, and during the day others carrying handguns escorted us to and from court.

Among the better known cases that I personally tried were those against the Universities of Mississippi, Georgia, and Alabama, and Clemson College in South Carolina. As a result, James Meredith, the plaintiff in the University of Mississippi case, became a national hero in 1962. Charlene Hunter Gault and Hamilton Holmes, the plaintiffs in the University of Georgia case, brought Georgia kicking and screaming into the twentieth century in 1961. George Wallace and Alabama finally gave up massive resistance to desegregation in 1963. And now South Carolina brags about Harvey Gantt, the plaintiff in the Clemson College case in 1962, who became mayor of Charlotte and recently ran unsuccessfully against Jesse Helms for the United States Senate. During my career with the Inc. Fund, I participated in civil rights cases in federal courts in eleven states and the District of Columbia. Out of the ten cases I argued before the United States Supreme Court, I won nine. One particularly busy day in 1962, I argued four cases on appeal in the Fifth Circuit.

By the time I left the Inc. Fund in February 1965 to become the first woman President of the Borough of Manhattan, I was one of the best known civil rights lawyers in the country. A year earlier I became the first African-American woman and the second woman ever elected to the New York State Senate. In 1965, there were still not very many women who had actually tried cases as the chief counsel. You could count on one hand the number of women who had argued a case before the United States Supreme Court. When I first joined the Marshall team in 1945, women lawyers were a rarity in most court-houses and virtually unheard of outside New York City. I remember that when Thurgood Marshall sent me to Jackson, Mississippi, in 1949 to assist Robert Carter with a case involving the equalization of "Negro" teachers' salaries, the whole town turned out to see the "Nigra" lawyers from New York—one of whom was a woman.

Beginning in 1946, when Thurgood Marshall argued the case striking down segregation on interstate buses, *Morgan v. Virginia*,¹ he allowed me to accompany him to virtually every case he argued, including *Brown v. Board of Education*,² the *School Desegregation Cases*. Since the Nation's Capital was a racially segregated town, I usually ended up staying at a so-called "Negro" hotel, which was no more than a private rooming house in a "Negro" residential area. We stayed in such hotels until 1964 when the Congress reenacted the Civil Rights Act of 1875, making it possible for us to stay in white hotels and eat in white restaurants. The *Restrictive Covenant Cases*³ were argued in 1947. The following year, *Sipuel v. Board of Regents*,⁴ which involved the admission of a "Negro" woman to the law school of the University of Oklahoma, was argued. In 1949, *Sweatt v. Painter*⁵ resulted in the admission of Heman Sweatt to the University of Texas Law School. Finally, in 1952, when the *School Desegregation Cases* were argued in the Supreme Court for the first time, Marshall moved for my admission to the Supreme Court Bar.

My son was born in May 1952. Although the policy at the NAACP—of which the Inc. Fund was part in those days—was to have women take a leave of absence after six months of pregnancy, Marshall simply ignored the pressure brought on him to have me go on leave after six months. I worked until one week before my son arrived. I was the only professional woman employed by the NAACP or the Inc. Fund at that time. All the other women were clerical or semi-professionals and, if pregnant, had left long before the ninth month. I set a new standard for women with Marshall's tacit approval. Thus, there was a big smile on my face when I read Marshall's opinion for the court on pregnancy leaves and Title VII in *California Federal Savings and Loan v. Guerra*.⁶

During his career with the Inc. Fund, Thurgood Marshall argued or participated in about thirty-two cases before the Supreme Court. He was involved in a much greater number of lower court cases. Marshall also had an invaluable training program for lawyers who worked for him. Prior to each Supreme Court argument, he invariably practiced before a panel of Howard Law School faculty members. Not only did Marshall's staff members attend these moot court sessions, but on occasion we participated as well. In addition, we were included in the preparation of cases. All of Marshall's major cases before the Supreme Court benefitted from weeks of discussions with experts and academics in constitutional law. For the *School Desegregation Cases*, these conferences took place over a two-year period and included historians, sociologists, and psychologists.

1. 328 U.S. 373 (1946).

2. 347 U.S. 483 (1954).

3. *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Hurd v. Hodge*, 334 U.S. 24 (1948).

4. 332 U.S. 631 (1948).

5. 339 U.S. 629 (1950).

6. 479 U.S. 272 (1987).

In January 1966, President Johnson submitted my name to the United States Senate for its "Advice and Consent" to my nomination as a United States District Judge. At the time, only two other women were federal district judges: Sarah Hughes in Texas, who swore in Johnson after Kennedy was assassinated in 1963, and Bonita Matthews in the District of Columbia. Florence Allen, the first woman federal judge, was then on the Court of Appeals for the Sixth Circuit. President Johnson had initially submitted my name for a seat on the Court of Appeals for the Second Circuit, but the opposition to my appointment was so great, apparently because I was a woman, that Johnson had to withdraw my name. I remember how stunned both Johnson and Marshall were by the strength and intensity of the opposition. When I went to Washington for the announcement of my appointment, Johnson told me that the first opening in the Supreme Court would go to Thurgood Marshall. At the time, Marshall was the Solicitor General of the United States. Johnson stepped down in 1968, but not before appointing Thurgood Marshall to the Supreme Court.

President Johnson also told me that Ramsey Clark, who was then the Attorney General of the United States, was the first person to bring me to his attention. He said that Clark was in the Supreme Court one day when I argued a case. After the argument Clark went directly to the White House and urged Johnson to appoint me to the bench. Thurgood Marshall held my hand during the entire process. When my name finally reached the Senate floor in August 1966, Senator Eastland of Mississippi, who headed the Judiciary Committee, led the opposition. He had held up my nomination as well as the nomination of every other African-American appointed to the federal bench during the sixties, including Marshall's nomination to the Second Circuit in 1962 and his nomination to the Supreme Court in 1968. I was finally confirmed by the Senate in August 1966 and became the first African-American woman appointed to the federal bench. Marshall came to my swearing in as a district court judge.

When Marshall was appointed to the Second Circuit, there was not a single African-American employee in the United States Courthouse in Manhattan except for the elevator operators. Thurgood Marshall served as the only African-American judge in that courthouse from 1961 to 1965. Before his appointment to the bench, Thurgood Marshall had spent his entire life in the African-American Community, so to speak, so he knew how lonely I would be, with the double handicap of being a woman and black. At the time of my appointment, there were only about seven other African-Americans who had been appointed to the federal bench. It was not until 1970 that the United States Attorney's Office for the Southern District of New York decided that women were as capable as men at handling federal criminal prosecutions. Shira Neiman, who was hired in 1970, was the first woman in the Criminal Division. Before that, Patricia Hynes, who worked in the Civil Division, was the only woman in the United States Attorney's Office in the Southern District.

When I was introduced as a new judge at a Second Circuit Judicial Conference, the master of ceremonies said, "And now I want to introduce Connie Motley who is doing such a good job on the District Court." In contrast, everyone else was introduced with a full blown curriculum vitae. Similarly, in 1968 when I was introduced by the chairman of the Seminar for New Federal Judges, my introduction went as follows: "Judge Motley has served on the Board of United Church Women and the Board of Trustees of the Y.W.C.A." Former Supreme Court Justice Tom Clark, who was helping to chair the meeting, was so astounded by this introduction that he asked the master of ceremonies to let him have the microphone. Clark then told the assembled new judges about the ten cases I had argued before him when he was still on the bench. Later Justice Clark told me about the disparagement of Shirley Hofstedler, who had just been named by President Carter to the Ninth Circuit, by a group of men at the golf course. The thing which amazed him was that none of the judges had ever met Shirley Hofstedler. One of the most critical lessons I learned from my mentor, Thurgood Marshall, was to laugh off these ludicrous antifeminist affronts which were regularly hurled in my direction. Eventually, they all ended up in Marshall's "Stories Repertoire."

After his appointment to the Supreme Court, I saw Thurgood Marshall at least once a year at the Second Circuit Judicial Conference, since he was our Circuit Justice. He pushed unsuccessfully for my appointment to Second Circuit Court Committees. He had a great big smile on his face when I became the Chief Judge of our court and thus appointed the members of all of our twenty-four court committees at the district court level.

Now I am a Senior United States District Judge, having taken senior status on October 1, 1986. I was the Chief Judge of our court, the largest federal trial court in the country, from June 1, 1982 until October 1, 1986. Our full complement was twenty-seven judges. Only one other woman had ever served as a chief judge of a federal district court prior to myself. I was the only woman on our court until June 1978, when Mary Johnson Lowe, another African-American woman, was appointed by President Carter. Carter appointed about forty women to the federal bench during his term. One of Thurgood Marshall's biggest disappointments is that I never was elevated to the Court of Appeals. The opposition to me as a woman and a "liberal" has remained. As Gabe Pressman said when I was sworn in to the District Court: "She just made it, because now the tide has turned."

If it had not been for Thurgood Marshall, no one would ever have heard of Constance Baker Motley.