



University of Arkansas at Little Rock Law Review

Volume 25 | Issue 3

Article 2

2003

Thurgood Marshall—American Revolutionary

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Recommended Citation

Juan Williams, *Thurgood Marshall—American Revolutionary*, 25 U. ARK. LITTLE ROCK L. REV. 443 (2003).
Available at: <https://lawrepository.ualr.edu/lawreview/vol25/iss3/2>

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*Juan Williams**

It's my pleasure to be here at the University of Arkansas at Little Rock for this lecture on "Imagining the Law: Lawyers and Legal Issues in Popular Culture." It's particularly a pleasure for me to be here because Little Rock has played such a central role in my life as a journalist. My mentor, Washington Post editor and correspondent Herbert Denton, was from Little Rock. My assistant when I was writing the Thurgood Marshall biography, Christopher Teal, is from Little Rock—his mom Gail Potter is here tonight, and of course, so much civil rights history has taken place here in Little Rock, especially the 1957 Little Rock Nine case. So I find this a terrific place to talk about the intersection of Justice Marshall's life, the law, and imagination in American culture.

Earlier today at the symposium there were discussions about fictional images of the American lawyer ranging from Perry Mason to Ally McBeal to the team on *Law & Order*. These lawyers are all rather attractive people, especially Ms. McBeal. There is a strong contrast between these fictional characters and the reality of the lawyer that I wrote about in such detail, former Supreme Court Associate Justice Marshall.

Justice Marshall really does not have a place in America's active imagination. In part that is due to the fact that he was not a dashing, attractive young man during his years on the Supreme Court. Pictures of him during his years on the court reveal a rather heavy man in a thick black cloak. And he rarely made public appearances, but when he did he was known to be often—well—truculent, cantankerous, cranky. He could be downright rude. He was the kind of person who, if you went up to him in a restaurant to shake his hand, would ignore you or even turn to whoever he was with and say "One handshake for them, thousands for me." This was Thurgood Marshall. If you invited him to speak here, he would have almost certainly said "no." That was the reality of the man.

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Despite that unpleasant reality, Thurgood Marshall represents something very special in terms of imagination and American law. Thurgood Marshall, the child born in 1908 in Baltimore, Maryland, was born into a world of segregation—a world that was ruled under the 1896 law, the Supreme Court decision *Plessy v. Ferguson*,¹ which said separate but equal treatment for black and white people is the law of the land. That child, little Thurgood Marshall, grew up attending segregated schools. But the child somehow began to imagine a different world. He began to imagine a world where the law could be used as an agent of transformation to create a new and different vision of America. It is truly an incredible triumph of imagination and triumph of the power of law.

But how does the child achieve this miraculous burst of imagination in a society that insists on limited thinking? And more to the point for all of us here tonight—people who care deeply about the law—how does a child grasp the idea that something so abstract as the law can become an agent of change? In Thurgood Marshall's case, it really is an unbelievable lifelong journey.

As Justice Marshall's biographer it was difficult for me to initially grasp this story because when I met Thurgood Marshall, I came to know the cantankerous, cranky older man who seemed to be way out of touch with the energy and the imagination of the young spirited Thurgood Marshall. The man I met didn't return my phone calls and didn't respond to my letters and my requests for interviews as I was working at *The Washington Post*. He was similarly unresponsive when I was going off to write the book *Eyes on the Prize, America's Civil Rights Years, 1954-1965*. As I mentioned earlier he could be a difficult personality, and he had no trouble ignoring me. He didn't have time for journalists, but especially didn't have time for journalists associated with *The Washington Post*. That was because two of my colleagues, Bob Woodward, the famous investigative reporter, and Scott Armstrong, had written a book in 1979 about the Supreme Court called *The Brethren*.² Some of you may have read that book, and you know that in its pages Justice Marshall is portrayed as something of a buffoon; the kind of person who would get into the elevator at the Supreme Court and fool tourists by making them think that he was the elevator operator; and the kind of person who while watching some of the pornographic films that the court had to review in obscenity cases would make off-color jokes that would later be repeated around the courthouse.

The authors treat him as a man who was lucky to be on the Supreme Court, put there by President Johnson only because he was black: a token appointment at a time of great civil rights tumult in the United States. The

1. 163 U.S. 537 (1896).

2. BOB WOODWARD & SCOTT ARMSTRONG, *THE BRETHREN* (1979).

conclusion to be drawn from reading *The Brethren* is that the President wanted Marshall on the nation's high court to symbolize the idea that the Court would represent the interests of all Americans regardless of race. Somehow Marshall was portrayed in this book as the kind of person who came to work around 10:00 in the morning, left at 3:00, watched a lot of soap operas and cartoons on television, and was not quite of the intellectual caliber necessary to sit on the Supreme Court.

And so this vision of Marshall as offered by Woodward and Armstrong came into currency in popular culture without any rebuttal because people didn't see much of the real Justice Marshall. They did not know him. But the flesh and blood Justice Marshall was deeply wounded—speared by the idea that his image in the popular culture would be so negative. He didn't see himself in that way at all. He saw himself as a man who was, in fact, standing tall in the face of great social change and trying to be a voice for people who were voiceless on that high court. A man who had been absolutely central to *Roe v. Wade*,³ protecting women's right to legal abortion; a man who had been central in terms of the *Bakke*⁴ decision with regard to affirmative action in this country and trying to retain the notion of race as a legitimate basis for giving people consideration in terms of admission to schools. He'd also been critically important in terms of the Pentagon papers, and for a time he had stopped the use of the death penalty in this country. I could go on in this regard, but that's the way Marshall saw himself—as a major contributor to the life of the court and a voice not just for African-Americans, but a voice for women, a voice for those who were in prison, a voice for those who had mental problems in our society, a voice for people who previously had not been represented on that Court. But suddenly, here is this popular portrayal of him as an intellectual weakling who is lucky to be on the court. Maybe Marshall's deepest fear was that the sources of this disinformation had been his brethren, his fellow justices on the Court, and their clerks. It worried him that some people might have intentionally fed this information to Woodward and to Armstrong to harm him by damaging his image in the popular culture. So Marshall wanted nothing to do with reporters, with writers, and especially nothing to do with another *Washington Post* writer.

I went off and finished my book on the civil rights movement, but in the course of writing *Eyes on the Prize*, it became increasingly apparent to me what a central role this man had played in transforming America during the twentieth century. And please note that I didn't say transforming American race relations. I said transforming America. It became apparent to me that there was this giant of American legal life sitting there in Washington,

3. 410 U.S. 113 (1973).

4. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

D.C., not surprisingly on the Supreme Court, but even there he was somehow, being overlooked. As I looked at case after case, situation after situation with regard to the American civil rights movement—and you must know this well here in Little Rock—time and again there was Thurgood Marshall. If you look at the Little Rock Nine case—I understand you have some photographs on display here today from that celebrated case—there was Thurgood Marshall. Here in Little Rock he worked with the wonderful civil rights leader Daisy Bates and the brilliant lawyer, Wiley Branton. If you go back and look at the Montgomery bus boycott, it must occur to some that Rosa Parks and Martin Luther King might still be protesting if none other than Thurgood Marshall had won that case in the United States Supreme Court. When it comes to the treatment of black G.I.'s overseas, it was none other than Thurgood Marshall who went to Japan and Korea to argue with General MacArthur over the treatment, the disparate treatment of black G.I.'s in the American military, and to insist on full integration. That's just the beginning: there was Thurgood Marshall arguing over the use of restrictive covenants that kept blacks and Jews from buying property in choice neighborhoods in this country; there was Thurgood Marshall standing up for the rights of blacks to serve on juries in this country; there was Thurgood Marshall again in the forefront of teacher equity under pay scales in this country. This was really, it seems to me, an incredible man, and yet, in the popular imagination, something of a dud as compared to Martin Luther King, Jr. or Malcolm X. Certainly he was not held in the esteem of an Earl Warren or Warren Burger, the Chief Justices of the Court.

Marshall was, despite his amazing accomplishments, invisible in the popular culture and even among many students of the high court. After I finished *Eyes on the Prize* and had a new and deeper appreciation for all of Marshall's contributions, I returned to the Washington Post and continued to send notes and occasionally make a phone call to his chambers requesting time for an interview. I never did get a response. Then I heard that Carl Rowan, the prominent columnist, had reached a deal with Justice Marshall to write an autobiography. To be quite honest I was jealous, quite jealous, that Rowan was going to have this opportunity. On the other hand, I thought, it's great that Marshall's story was finally going to be told. But only a few weeks later there came an announcement, a small little blurb in the newspaper, that Marshall and Rowan had had a falling out and Marshall was not going to do any such book. The story said that Rowan was going to try and finish it on his own.

So being the aggressive reporter that I am, I resumed writing my notes, and this time I got a response. I wasn't at my desk when the phone finally rang. The person on the other end said, "This is Thurgood Marshall, I'd like to speak with Juan Williams." One of the news aides who helps reporters had answered the phone. She said, "Who did you say this was?" and he said "This is Thurgood Marshall, Justice Marshall." She said, "Hey look, I don't

have time to be playing around.” She knew the kind of people that I associated with, and so she thought this was some prankster. He said, “No, this is Justice Marshall, I’m not playing, let me speak to Juan Williams.” She said, “Look, cut it out,” and bam, hung up the phone on him. Well, you know, there are certain privileges in life, and if you’re a Supreme Court justice, you don’t have to put up with that kind of foolishness. You just call the publisher of the paper, in that case you call Katherine Graham, and Katherine Graham can call anybody she wants. So you get Ben Bradley and all these people, and they ran around and found this little reporter. They got me on the phone in a flash to call Justice Marshall. I said “Justice Marshall, what a pleasure and what a surprise to hear from you.” Justice Marshall indicated that I was invited to come have tea tomorrow afternoon. I didn’t quite know what to make of this, but of course I said, “I’d be delighted, thank you, sir.” Then I began calling everyone around town to ask what this meant. “Have I been granted an interview? Is he going to interview me to see if I’m worthy of talking to him? Why does he want me to have tea because I don’t even like tea? So why am I going up there?” Well, no one could quite make sense of this, not his friends, not his clerks, not his son. So off I went to interview Justice Marshall.

Now in my job in Washington, my current jobs at National Public Radio and Fox News Channel, but also at that time in my job at the *Post*, I got to interview lots of important people, from Presidents to senators to congressmen to Supreme Court justices. It normally doesn’t bother me at all, but that day as I was walking up the white marble steps to the Supreme Court I realized I was having a physical reaction to this interview—I had goose bumps. I was almost in a cold sweat. I thought, “What’s going on with me? Why am I having such a nervous response?” When you visit a judge of the court, first you go to the U.S. Marshal’s office. The marshals protect the Supreme Court, and you wait there and sign in. One of the stewards for the justice then comes to that office and escorts you back to the chambers. I was still having this physiological response—my heart was beating pretty quickly. I went into Justice Marshall’s chambers, and his secretary, Jane McHale, came over to say hello because she watched some of the television programs that I appear on. She was quite taken with my presence, and I thought, “Ms. McHale, you sit here every day with Thurgood Marshall!” I told her I was glad to meet her, but I was nervous about meeting the Justice. She said, “Why don’t you just go on back? He’s waiting for you.” Again, I was thunderstruck. I had goosebumps on my skin. As I walked to his office I passed through smaller offices where some law clerks sat reading legal books. Then I walked into the very last office, and there was Thurgood Marshall seated behind a large brown desk. Right away something made sense to me. Right away in that moment I understood why I was so nervous. Because without Marshall even saying a word, I could see on the wall around him evidence of what he had accomplished. There was

an animal skin on the wall that had been given to him by Jomo Kenyatta, president of Kenya, after Marshall had written the constitution for the newly independent Republic of Kenya. Kenya had literally invited Thurgood Marshall to be its lawyer at the time it gained its independence, and he had played that role on the international stage. Also on the wall was an original brief from the Brown decision. There on his desk was a bust of none other than Frederick Douglass—another son Maryland—the famed abolitionist and former slave.

As I looked then at Thurgood Marshall, it occurred to me that my nervousness was due to the difference between Marshall and the people that I normally interview. Thurgood Marshall didn't want to sell me anything. He didn't want me to tell my readers, my listeners, or my viewers how great he was; he didn't want them to support him for some elected office; and he didn't want them to write to someone in support of some legislation he was championing. The real challenge here was for me simply to convey what an amazing role this man played in using his imagination on a democratic society under rule of law to create laws that changed America into a better nation for all of us.

In that instant, looking at Thurgood Marshall, it was hard to see that young man and the power of his imagination. In front of me was the older Thurgood Marshall. He was a hulking man, almost weighing two hundred and eighty pounds, sitting there with steel gray hair combed straight back, his eyes big and watery, sometimes tears flowing down his face because he suffered from glaucoma. On the corner of his desk was a cane that he used to steady himself when he walked. His legs were sticking out, and I could see that he had on white support hose, the kind of socks people with circulatory problems wear. This was the reality of Justice Marshall.

As I sat down, I didn't know what to say or do, I just sat down. I had brought a tape recorder, but didn't know if he was going to be angry if I turned it on. I took the risk, pulled it out, and turned it on, and he started talking; I never asked a question. Lucky for me Justice Marshall was a tremendous storyteller. He started off right away talking about grandparents, one grandfather had, fought with the Union Navy, another grandfather had gone to Texas with the Buffalo Soldiers. He started talking about family members who had been involved in civil rights protests in the late 1800s as free black men in Baltimore City, Baltimore in Maryland, which historians referred to as the middle ground—north of Washington D.C. but south of the Mason Dixon line. Before the Civil War Baltimore was torn between slave-holding plantations in the southern part of the state and the freedom of the North that so many slaves lusted and which was available in Baltimore City. This middle ground was the place that created this child who gave birth to this imagining about the law.

As I sat in his office, Justice Marshall described for me going to school in Baltimore in the early 1900s, going to those segregated schools, learning

the Constitution as a result of being punished, but also describing with great delight going to high school with Cab Calloway, the jazz singer, the Hi-De-Ho man. Marshall described himself going off to the racetrack, to Pimlico, with Cab Calloway. Talk about imagining, here were Cab Calloway and Thurgood Marshall at a racetrack, and they weren't betting on the horses. After the horses raced, they were all hot, sweaty, and matted, and Marshall and Calloway would hose them down, brush them, and get them all cleaned up to earn a few dollars. Then they were off to Pennsylvania Avenue in Baltimore where all the nightclubs, jazz clubs, and performers were and have a great time—just partied to all hours. This was your future Supreme Court justice here.

Then it was off to college, and let me stop here and tell you a story. Thurgood Marshall's grandmother really didn't expect much of him. The expectations in the family all attached to his brother who was older. When it came to Thurgood, the grandmother said, "Thurgood, I'm going to teach you how to cook," and specifically, "I'm going to teach you how to cook crab soup because I never met a black man who could cook who was out of work and I don't ever want you to be out of work." So you understand her low level of expectation for this grandson. His mother's highest expectation was that Thurgood might become a dentist. So Thurgood Marshall went to Lincoln University in the small town of Oxford, Pennsylvania, and when he arrived there, he was just the biggest fraternity prankster you ever met. At one point he got a cow up into the president's office and filled it with Epsom salt so the cow would have diarrhea on the president's carpet. He was a big one for smoking cigarettes and always had a comic book jammed in his back pocket. He was the kind of guy when the football team was going off to play Howard or Hampton in a big game, he'd be out there telling them "Go out there and hit those guys so hard that their mommas feel it." But you notice he was not on the team. He was not playing in the game.

So this was young Thurgood Marshall. Then Langston Hughes, the writer and poet, walked into his life. Hughes had come back to Lincoln as an older student to finish off his college degree and immediately noticed that young Thurgood Marshall was a big man on campus. At one point, he approached Marshall and said to him, "Thurgood, I notice that you have so much to say about going to Baltimore or up to Philadelphia to chase girls or any fraternity prank. You sure have a lot to say about football games. But Thurgood, I never hear you say anything about the fact that your parents can't eat in a restaurant in downtown Baltimore. I never hear you say anything about the fact that when we go up to Philadelphia we can't use the bathroom in that city. I never hear you say anything about the fact that there are no black people on the faculty at this school to educate young black men." Lincoln had been formed by the Presbyterians to educate bright young black men, much as the Presbyterians had formed Princeton University in New Jersey to educate young bright white men, but the faculty at

Lincoln were all white. Marshall's response to Langston Hughes was, "Man, I came to school to have some fun, to join a fraternity, and to meet girls; I did not come here to get involved with all this stuff that you're talking about. I just want to get out of school, that's all it's about. Leave me alone. Get out of my face."

But as fate would have it, young Thurgood Marshall loved cowboy and Indian movies, and one afternoon, a Saturday afternoon, he got a group of his friends and went to watch this movie in downtown Oxford, this little town. He and his friends decided that they were not going to sit up in the balcony, the theatre reserved for colored folks. They wanted to sit down in the lower seating area and decided that once the lights went down, the single ticket taker and usher would not see them; "it's not going to bother anyone, it's an early showing of the movie, it's not going to be a problem." So they slipped down once the lights went down, but wouldn't you know it? The usher noticed, came and turned on the lights, turned off the movie, and the police were called—the one policeman in town, I should say. He came and roused the boys, and they went running back to campus fearing arrest. When they got back to their small, very enclosed community of black people in a mostly white rural community, the word spread almost instantaneously about what had taken place. Within a matter of hours, there was a knock at Thurgood Marshall's dorm room door, and it was none other than Langston Hughes. He said to Marshall, "I told you so, you paid your money, you didn't get to see this movie. This is what I'm talking about, this is what's really going on in this country, and it's what you should be using your voice to speak about."

Now I'm the father of a son that's about that age, and I don't want you to think your visitor here tonight is so foolish that he thinks any nineteen, twenty, twenty-one year old has ever been so bold to admit that he was wrong. I don't think that ability exists in people of that age. What I can say as a biographer is that in the student paper young Thurgood Marshall's name was suddenly attached to quotes that said, "It's a good idea to bring black people onto the faculty at Lincoln. If we want other black people to trust us to be their lawyers, their doctors, their dentists, why shouldn't we trust other black people to be our professors?" Whereas earlier he had made arguments, which also appeared in the paper, saying "Well, if we have blacks on the faculty, they may belong to one fraternity or another and therefore show favoritism to students who belong to certain fraternities and the like." All that was gone. Now Marshall joined with Langston Hughes and with his sociology professor in an effort to get a referendum on campus that would have the students vote to ask the administration to bring blacks onto the faculty at Lincoln. The first time around this petition failed. Langston Hughes graduated. Marshall came back and, within a matter of months, had this referendum going again. This time it became an even more

heated topic on campus, and it passed. Marshall graduated, and the year after he graduated the first black person came onto the faculty at Lincoln.

I mention this story to you as told to me by Justice Marshall because it is the first illustration in Thurgood Marshall's life of his powerful imagination coming to life. Here we can see political consciousness rising in a young mind. Here is the emergence of the thought that he has a voice capable of making a difference suddenly taking flight, and in fact, it's after his actions here that Thurgood Marshall began to say to his mother and father, "I want to be a lawyer; I want to go to law school." So after graduating from Lincoln, the logical step was for Marshall to go to the University of Maryland in Baltimore City. The University of Maryland Law School, however, did not accept people of color. So Marshall didn't even bother to apply. Instead his mother had to pawn her wedding ring and engagement ring to pay his first year of tuition to Howard University Law School in Washington D.C. Marshall would get up at five o'clock in the morning to ride the train so that he could be at school on time. When he got there, on his first day, he met a truly amazing individual. The dean was a man named Charles Hamilton Houston. Houston lined up the thirty-six young men who were there that day in 1930 and said to them, "Look to your left, look to your right"—some of the law students in the audience may have heard this before—"two of the three of you won't be here to graduate in three years." Marshall's response at the time, he later confessed to me, was to think, "What's wrong with this guy? Mr. Iron Pants, Mr. Cement Shoes, he thinks he's so tough." But you know the reality was that only six of the thirty-six would graduate in three years.

Dean Houston was, in fact, creating a law school that was a boot camp. He wanted to train a cadre of revolutionaries, he said, who would use the law—use the law as an instrument of social justice. Now again, here we have Marshall, this young mind, coming into touch with the idea of the law as a transformative agent. By the way, Marshall's mother didn't have to worry about pawning anything else to raise money for his tuition. He became the top student in the school; became the law school librarian; and got a full scholarship for the remainder of law school.

Marshall became so important to Dean Houston that he assisted Houston with several cases, including a case in Leesburg, Virginia. In that case a black man was accused of killing two white women. The man immediately fled the area and went up to Massachusetts; the NAACP asked Dean Houston to get involved to try to prevent extradition of this man, but they couldn't stop it. The man was brought back and put on trial. Marshall sat right next to Houston as the trial progressed. Houston made it clear that there was no evidence that the man was involved with the crime. The police didn't have a weapon; they didn't have a motive; they didn't have witnesses; they didn't even have any reason to think that this man would have committed the murder, but somehow he was the one on trial. Nonetheless,

the jury convicted him and sentenced him to life. Marshall was absolutely furious at the idea that they would have lost a case with the prosecution having such thin gruel to work with. But he was really surprised when he turned and saw that George Crawford, the man on trial, was smiling and congratulating Dean Houston. When the family came over, celebrated, and hugged Dean Houston, he was really befuddled and finally pulled Dean Houston away and said, "Dean, what's going on? Why are you so happy? This man has been sentenced to life in jail." The Dean said to him, "Thurgood, you don't understand. If the jury really thought that he had killed these two women, they would have sentenced him to death. They are just giving him life, and no doubt he will be out soon. We won here today; you have to understand what we're up against." Marshall wrote home to his mother that his mind had been opened to a new vision of the power of the law. He said, "You know mom, the preacher can preach on Sunday, and the politicians can preach when it comes to election time about what they promise to you. But when your life is on the line, you need a good lawyer. And I understand now what the law can do to save a man's life."

After he graduated in the summer of 1933, Dean Houston asked his impressive young law school graduate, Thurgood Marshall, to go with him on a trip down south. Houston planned to look at the disparate conditions of black and white schools in the south. So you have two men traveling in an old car; they traveled with bags of food, pillows, and blankets on the back seat because they couldn't stop in many of the restaurants and hotels. Dean Houston had with him a big camera and note pad. He went into the black schools and took notes. In one school in Mississippi, Dean Houston was inside this schoolhouse—I hesitate to call it a schoolhouse because it was nothing like a building. It was not like this auditorium. There was no roof, just tarpaper pulled over the four sides of a wooden shack. There was no floor, just dirt. If the rain came, the tarpaper leaked, and the floor became thick with mud. When she needed a chalkboard, the teacher improvised by using a piece of coal that she used to mark on the frame of the building. The kids only went to school in the months of December, January, and February, when there weren't crops to be put in the ground or to be harvested. This was the reality of the education being offered to these children. Dean Houston was inside taking notes on this hot summer day about the paucity of facilities available to these young people.

Meanwhile, outside, his young, lanky associate, Thurgood Marshall, was eating a sandwich out of a bag and looking around when he spied a child, an eight-year-old approaching, who was staring at him. Of course the child must have been in wonderment at seeing this black man in a suit next to a car. But Marshall thought, "Oh, this kid must be hungry." He thought the kid was staring at the sandwich and couldn't figure out why the child was not saying anything to him, so finally he tore off a piece of the sandwich and offered it to the child. The child shook his head; he didn't want the

sandwich, instead the child was climbing all over the car. Looking on the back seat, he spied an orange and pointed at it. He still hadn't said a word. Marshall had been saving that orange for dessert and really didn't want to give it up, but got the orange and gave it to the child. The child took the orange and bit at it right through the rind. Marshall was like, "What the hell are you doing? Stop it!" Then the kid took the orange, and as if he were repulsed by the bitter taste of the skin, started to squeeze it and was almost joyful in seeing that the orange expels the juice and the pulp. It got all over his face and his chin, but then it started to sting his eyes. He then threw the orange on the ground. At this point, Marshall was apoplectic, screaming, "What are you doing? Stop it! What the hell are you doing kid? Stop it! What are you doing! What are you doing with my orange?" Dean Houston heard all this commotion from inside the schoolhouse. He, of course, thought, "Oh my God, some crazed segregationist is attacking my young law student." He came racing out of the building to discover that Thurgood Marshall was being, well, confronted by this eight-year-old child. So he said to Thurgood Marshall, "What's going on here, Thurgood, what's happening?" Marshall then recounted to the dean what had happened: this kid took the orange, bit at it through the rind, squeezed it, got the juice all over his face, in his eyes, then threw it on the ground. "Wasted my orange," he said to Dean Houston, "wasted it." Dean Houston said, "You know Thurgood, I signed your diploma, but I don't think you have any idea what's going on here, do you?" He said, "You know, we've been traveling these roads, and you see so many of these roads have open troughs on either side, filled with human waste. Thurgood, do you know why that is? That's because these people have no plumbing, Thurgood." He said, "Thurgood, did you notice that as we travel along we don't see much in the way of factories or office buildings? These people are lucky if they can get a piece of land on which they can be sharecroppers. That's about all they have for hope or economic vitality in this area, Thurgood. And when it comes to education for their children," he pointed to the shack behind them, "Thurgood, this is what they have to offer the next generation in this community. And you're going to stand here and scream at this little kid because he doesn't know anything about peeling an orange, slicing an orange, picking the seeds out of an orange? Damn it Thurgood, the kid's never seen an orange. And you're embarrassing yourself as much as you're embarrassing this child." Thurgood Marshall could not believe his ears. Dean Houston was saying that this American child had never seen an orange. It was incredible to him; he couldn't conceive that this could be true.

Marshall later wrote home to his mother that Dean Houston had created new vision for him about the power and proper use of the law. He wrote to her that Dean Houston had long told students at Howard Law that "a lawyer who is not a social engineer is nothing but a social parasite." He said he had not understood what the dean was talking about at first. He

[Marshall] had gone to law school wanting to impress her, wanting to be known as Lawyer Marshall, to wear a suit and tie. But now, on this trip into the deepest south, for the first time he understood that the little kid was his client. He understood he had to represent the interest of the child so that there was never any child in America who could be so deprived as not to know an orange. Marshall's imagination about the power of the law was now flowering.

Marshall then went back to practice law in Baltimore City. He had a distant cousin who graduated from Amherst College with honors and came back to the city. Thurgood Marshall approached him and said to this young man, named Donald Gaines Murray, "Why don't you apply to the University of Maryland Law School?" Donald Gaines Murray said to Thurgood Marshall, "Well that would be a waste of time, you should know that better than anyone. They don't accept people of color." Thurgood Marshall and his family, with a little help from Dean Houston, got together the money for the application, and the application was sent in. Of course, it comes back stamped "denied." Donald Gaines Murray said, "I knew that was going to happen." "Well," Marshall said, "why don't you just write a letter to the university president asking him why someone who is an honor graduate of Amherst and a lifelong resident of the state of Maryland would be denied admission to the state's university law school?" The letter, a hand-written letter, came back from the university president indicating that, in fact, the school does not accept people of color. Marshall was thrilled and delighted because he intended to use that as the basis for a lawsuit. So he filed this lawsuit, thinking something would come of it in five, ten, twenty years. He was fully aware that the judicial system in the state was controlled by the segregationist politicians, so he thought that the case would not be called for some time and even then imagined the lower courts might turn down the case and leave it to the higher courts. Maybe it will get to the United States Supreme Court some day. But much to his surprise a judge in Baltimore City Court, Eugene O'Dunn, called the case within a matter of months. At the trial the lawyers for the university stood up and said, "Your honor, please don't be impatient with us, we intend to construct a law school for young black people in some distant county at some date, but the state legislature has not given us the money to do so quite yet. To integrate the existing facility would really be to dismantle it and to demolish its potential to educate young people in the laws of the state of Maryland." Thurgood Marshall with Dean Houston by his side and Donald Gaines Murray also at the table stood up and said, "Your honor, under *Plessy v. Ferguson*, the 1896 Supreme Court case, separate but equal is the law of the land and if there is no separate and equal facility to educate young people who want to learn the laws of the state of Maryland—young black people—then the existing institution must be integrated." It was lunch time; they went away, had some lunch, and came back thinking that there were going to be further arguments

in the case. However, the Judge gaveled the courtroom to order, asked everyone to stand, and said "Mr. Marshall, you have prevailed; Mr. Murray will be admitted to the school." Now according to the court records, Thurgood Marshall turned to Donald Gaines Murray and said, "What did he say?" Now there's no indication in the court record of what Donald Gaines Murray said to Thurgood Marshall, but I've always thought to myself, Donald Gaines Murray must have been in shock. He didn't know he was going to have to go to law school. That's a hell of an imposition on someone.

Well it turned out that case in Baltimore City then became the template for efforts by Dean Houston, the NAACP, and later Thurgood Marshall to achieve integration in the professional graduate schools throughout the United States, beginning in Missouri then moving onto Oklahoma and then Texas. Of course, this led Thurgood Marshall on a road where he began to imagine the power of challenging segregation in the nation's elementary and secondary schools. That, of course, then led to the *Brown*⁵ case. Then in 1957 Marshall's imagination leaped, taking the nation to the crossroads of Little Rock. There Marshall challenged President Eisenhower to enforce the integration ruling of the Supreme Court by having the 101st Airborne come in to hold back Governor Faubus and the segregationists who wanted to keep the black children out.

This was all born out of the mind of this child born in 1908 who had somehow now made the law into something more than imagining, something more than theory. He made it into a reality that has transformed a nation. Marshall, of course, went on to become the second African-American federal judge in the country, the first African-American solicitor general, and the first African-American to serve on the Supreme Court. But his greatest contribution to America and to the law was that he had this ability to imagine using the law to achieve change—and what an example he set. His words have fired other imaginations. My goodness today we have a Mexican-American legal defense fund; we have legal defense funds for people who are in prison, people who are gay, and people who are mentally ill. We have so much use of law as an instrument of social change in large part due to the imaginative model provided to so many by Justice Marshall.

Justice Marshall himself was sometimes overwhelmed by the idea that people then would fight back and use that law to try to limit social change, and, of course, Marshall, to the day he died, was frustrated with the conservative turn of the Court in Washington. It came to William Brennan, his lone liberal ally, and Thurgood Marshall on a course lead by Justice Rehnquist, and left Marshall feeling at times even more isolated and angry at the turn of the law, feeling as if the country itself had changed, had become increasingly re-segregated, which he could not have anticipated. He

5. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

did see at some point the notion that the suburb would become whiter and the inner cities would become more black and Hispanic, but in all his efforts to allow for cross jurisdictional bussing, the court would never grant him that license. But he couldn't have imagined the rate of immigration that would bring so many new people of color into society; in fact now we have more Hispanics in the country than blacks. He couldn't have imagined that it would have compounded the level of segregation with regard to our schools.

I remember sitting with him one afternoon in his chambers—and what started out with an invitation to tea continued over a matter of five months—at the end of one of these long sessions, and Justice Marshall told me it was inconceivable to him that there had been a higher rate of integration in the American schools in the 1970s than there was at the start of the 1990s. How frustrating it was to him to realize that there was new ground to be plowed and that there was a new generation of lawyers who would have to find a way to use their imagination to ensure that every child in America would have the opportunity to gain a full and vibrant education.

This was the reality of Justice Marshall. His life is a window on the tremendous social change that took place in the country in the twentieth century. That change is often portrayed in terms of people taking to the street or people giving great speeches; it is sometimes portrayed as the trauma of assassination or even riots. But here was Justice Marshall saying that true change takes place in the courts of our country. His life, created through the power of imagination, proves that if you want to achieve real change, your target must be the court because the law will stand steadfast and will be there for all people and all times. That people might go home from a speech with great enthusiasm and love in their heart, but still have to face discrimination and segregation in regard to jobs and schools. But if you change the law, you change the reality to which people go home. There was Thurgood Marshall saying that people might respond to a political movement but those people are just going to be in harm's way from violent segregationists and bigoted sheriffs who might put them in jail. But if you change the law, if you use the law to achieve social change, then people can have civil rights, voting rights, and housing rights. Here was Thurgood Marshall, investing the law with the life's blood of imagination.

You know after I finished writing *Eyes on the Prize* people said to me, "Why would you call a book about civil rights *Eyes on the Prize*," and I tell them it comes from an old gospel song that goes "keep your eyes on the prize, hold on, hold on. I know the one thing we did right was the day we started to fight." What I'm saying to all of you tonight with regards to Justice Marshall is that Justice Marshall, the little boy growing up in segregated Baltimore, Maryland, at the start of the twentieth century, somehow had the capacity not only to imagine but also to grow and then to share his dream

with others and to inspire others to join him in a greater fight to make that dream a reality.

Now, for you who are in law school here, for you who are heirs to that tremendous legal legacy, it really is time to pick up the means to understand that this requires new imagining—neither so much Perry Mason nor Ally McBeal, not so much Law & Order or any of the other shows—but in fact we have the example of a lawyer in thick black robes at times rather boring and cantankerous and reclusive but who nonetheless gave his mind, his heart, his energy, and maybe most of all his imagination to changing the American landscape.

