Thurgood Marshall and His Journey to Overturn Separate but Equal

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On May 18, 1896, Hommer A. Plessy sat in front of the United States Supreme Court waiting for the decision to be read in his case. Mr. Plessy was a Creole French-speaking man from New Orleans who was one-eighth black. He took his case to the highest court in Louisiana then onto the Supreme Court. The Supreme Court did not rule in his favor and from this, the phrase "separate but equal" was born.[1] Those three words set back African Americans for fifty-seven years until the decision of *Brown v. Board of Education* of *Topeka Kansas*. Thurgood Marshall worked his whole adult life to overturn *Plessy*. His work leading up to the *Brown* case were an attempt to attack "separate but equal" for an African American, nothing is "separate but equal" to a white American. Everything was separate, but nothing was never equal.

Thurgood Marshall was born on July 2, 1908, in Baltimore Maryland. His father, William Marshall, worked for the railroad, while his mother, Norma Marshall was a school teacher. Growing up, his parents taught him the importance of knowing the Constitution and the laws that come with it.[2] Marshall was a good student in school. He was a B plus student and finished in the top third of his class. After high school, he went to the historically all-black school of Lincoln University in Pennsylvania. Law became a passion of his and after he graduated from Lincoln University, Marshall enrolled at Howard University where studied law. Marshall wanted to go to the University of Maryland but was denied because of the school's segregation laws. Marshall understood how the outcome of the Plessy case in 1896 affected his day to day life.

Once Marshall arrived at Howard University, his thoughts on segregation evolved due to his professor and Dean of Howard's Law School, Charles Houston. Houston preached to

[1] Plessy v. Ferguson, 163 U.S. 537 (1896)

[2] Juan Williams, *Thurgood Marshall: American Revolutionary* (New York: Times Books, 1998),22

Marshall and his classmates about the importance of *Plessy*. In the movie *Simple Justice (1993)* Houston, played by James Avery says to Marshall, played Peter James that "Plessy, Mr. Marshall is the reason it is against the law in 17 states for black children to go to school with white children."[3] Houston pushed Marshall in his three years at Howard, Marshall graduated in 1933 at the top of his class. What Marshall was not aware of though is in that same year in a small south Florida town, a white man would be killed, four African American were blamed for the death.[4] This incident would start his journey to overturn Plessy by arguing cases in front of the Supreme Court.

On the night of May 9, 1933, Robert Darsey was murdered in Pompano Beach, Florida. Within the first 24 hours, over forty African American men were arrested for the murder. Among those were Mr. Chambers, Mr. Davis, Mr. Williamson, and Mr. Woodward. The city of Pompano Beach was outraged. Riots started outside the jail where the accused were held. It became so bad that everyone who was arrested had to be moved to Miami for questioning. Once they arrived in Miami, the men were questioned for five days straight. They were not allowed to eat or sleep. On Sunday the 21st, the court record says that Mr. Woodward finally "broke."[5] Mr. Davis, Williamson, and Woodward pleaded guilty, while Mr. Chambers pleaded not guilty. They were all found guilty of murder and sentenced to life in prison.

During this time, Marshall began working for the National Association for the Advancement of Colored People (NAACP) where he was their lead defense attorney on all civil rights issues. Once Marshall and the NAACP heard about the *Chambers* case and that it was

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[3] *Simple Justice,* directed by Helaine Head, (1993, Burgaw, North Carolina: WGBH)
[4] Chambers v. Florida, 309 U.S. 227 (1940)
[5] Chambers v. Florida, 309 U.S. 227 (1940)

going to the Supreme Court, Marshall knew he had to do something. On January 4, 1940, Marshall began his opening arguments by stating that these men were held in atrocious conditions for five days where they were threatened at gunpoint and with a noose around their neck. Marshall argued that the convictions of the lower courts were invalid because the officers interrogating these four men violated their 14th amendment rights to fair due process.

Marshall presented his case to the court showing that Mr. Chambers and the three other men feared what might happen to them and were forced to confess to what would be known as the "sunrise confessions."[6] Marshall went on to state that these men were not given legal counsel or even told that they had the right to legal counsel. The given confessions came while the men were mentally fatigued and confused. In every way possible, these men were stripped from their rights of fair due process under the 14th amendment.

It took the Supreme Court a little over a month to decide the case. Unanimously they voted to overturn the convictions of these four men and set them free due to a violation of the 14th amendment. The Justice who delivered the opinion of the court was Justice Hugo Black, a former Klan member. A section from his opinion of the court reads:

> No higher duty, no more solemn responsibility, rests upon this Court than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed or persuasion.[7]

Marshall, at the age of 32 had successfully argued his first case to the Supreme Court. Marshall would use the *Chambers* case again in 1966 in *Miranda v. Arizona* where he won and

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[6] Rodger Goldman and David Gallen, *Thurgood Marshall: Justice for All* (New York: Carroll & Graf Publishers, 1993), 46.

[7] Roger Newman, *Hugo Black: A Biography*, 2nd ed. (New York: Fordham University Press, 1997), 282.

established Miranda Rights, stating that citizens have the legal right to be appoint an attorney before speaking to law enforcement and force police officers to grant these rights to every citizen. Marshall was an advocate for fair due process for African Americans, and with the *Chambers* case, he had taken his first step into seeing this through and showing the world that what *Plessy* had said with "separate but equal" was wrong.

After winning the *Chambers* case, Marshall and the NAACP had yet another fight on their hands that dealt with the unequal treatment of due process. W.D. Lyons, an African American from Hugo, Oklahoma was the next victim. The police arrested Mr. Lyons for murdering a white family of three and burning their house afterward. Lyons was arrested and beaten until he confessed. Shortly after the murder, Marshall was informed that a convict inside the prison admitted to murdering the family while he was granted a few days away from the prison. Marshall wrote a series of letters to NAACP headquarters where he describes that thousands of African Americans crammed the courtroom on the first day of the trial and that he had raised $120 from nearby towns and from Hugo itself.[8]

As the trial began, the judge on the bench said it is the trial involving "two nations" white and black, meaning this was a fight between race.[9] Marshall argued that the confession Lyons gave came out of fear. During his interrogation, Lyons went through similar conditions as the gentlemen in the *Chambers* case. He was taken to the place of the murder and was forced to testify in front of the District Attorney. Marshall then put the facts in front of the court. He states that an inmate in prison had killed the family while he was out, but that the police and

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[8] Thurgood Marshall to NAACP headquarters, January 28, 1941, http://americanradioworks.publicradio.org/features/marshall/lyons.html

[9]Thurgood Marshall NAACP Letters

special investigator Verni Cheatwood had Lyons arrested as a scapegoat to cover up their mistakes in the investigation by not being able to find the actual murderer. The judge ruled in favor of the state, and so did the higher courts.

As Marshall prepared for the argument in front of Supreme Court, he talks in his letters about how a life sentence for killing three and burning their house shows that the courts thought he was innocent and that this would be a perfect case to appeal.[10] Marshall argued the same thing he had in the *Chambers* case four years earlier that Mr. Lyons did not receive fair due process and that it violated his 14th amendment rights. The confession given under those conditions would scare anyone into confessing, plus someone had admitted to the murder and that the state had recognized the involuntary action.[11]

On June 5, 1944, the Supreme Court came back with a ruling that stuck with Marshall the rest of his life. In a 6-3 decision, the court agreed with the state saying that the confession was, in fact, voluntary and the life sentence was upheld. Justice Reed when giving the opinion of the court said:

> The Fourteenth Amendment does not protect one who has admitted his guilt because of forbidden inducements against the use at trial of his subsequent confessions under all possible circumstances. The admissibility of the later confession depends upon the same test -- is it voluntary.[12]

Marshall showed rare anger with the court's decision. After the decision, money came into the NAACP from all over the place. Marshall stated that he was happy that he was able to save

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[10] Thurgood Marshall NAACP Letters
[11] Goldman and Gallen, *Thurgood Marshall*, 48
[12] Lyons v. Oklahoma, 322 U.S. 596 (1944)

Lyons from the electric chair.[13] Marshall continued to fight for Lyons, and in 1961 he received parole and would later be pardoned in 1965. The decision in the case would fuel Marshall to show how “separate but equal” had no place in society.

For years, Marshall and the NAACP had been fought to change voting rights for African Americans. One of their big points of focus was in the Jim Crow South and the “white primaries” that many states had come to adopt. Most Southern Democratic primaries adopted rules that did not allow African Americans to vote in the elections. Texas was one of these states, and in *Grovey v. Townsend* (1935), the Supreme Court ruled it to be constitutional for the state of Texas. Marshall argued many of these cases trying to overturn the *Grovey* decision, but he did not find the right one until 1942.

Lonnie Smith was a doctor from Houston, he tried to vote in the Democratic primary. When he arrived to vote, he was denied the right to vote by S.S. Allwright, who worked for the Democratic party of Texas. Smith left the primary location and went straight to the courthouse where he filled a suit against Allwright. Marshall met with Smith and asked if he could argue this case on his behalf, and Smith agreed. Marshall lost at both the Houston city courts as well as the Texas District of Appeals court. The courts sided with Allwright stating that the *Grovey* case gave them the right to deny Smith from voting. Marshall’s main argument was that the Texas Democratic Party was a state institution, not a private institution and that the ruling from *United States v. Classic* (1941) that said that Congress had the right to regulate state primaries should be upheld here and due to this ruling, this was a violation of the 15th amendment.

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[13] Gilbert King, “The Awakening of Thurgood Marshall,” The Marshall Project, November 20, 2014, https://www.themarshallproject.org/2014/11/20/the-awakening-of-thurgood-marshall

Marshall argued that the Democratic Party in Texas was a "loose-joined organization with no constitution or by-laws."[14]

The experience that Marshall developed through losing earlier cases on the issue of white primaries made him come up with a new legal strategy to attack the *Smith* case with. He attacked it as a state institution and not a private institution. Granted, this strategy had already failed in the lower courts, but he was confident that he could convince the Supreme Court of this due to their ruling in the *Classic* case and that they would see it was now time to overturn the *Grovey* case. On November 12, 1944, Marshall argued to the Supreme Court that Smith was violated of his 15th amendment right to vote and that the Democratic Party of Texas was a state institution and that Congress should regulate it and allow Smith to vote due to state action. The court could not agree and told both sides that there would be rearguments on the case. Some people believed that the Justices were receiving pressure from Southern Democrats to agree with the lower courts.[15]

Once the rearguments were heard, the court came to a decision, and overturned the ruling of the lower courts and stated that by not allowing Smith to vote that it denied his 15th amendment rights and that the Democratic Party of Texas was indeed a state institution and fell under the jurisdiction of the *Classic* case. Justice Felix Frankfurter was assigned to read the court's opinion, and he stated:

> We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state so far as it deter-mines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it

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[14] Darlene Hine, *Black Victory: The Rise and Fall of the White Primary in Texas,* 2nd ed. (Colombia, Missouri: University of Missouri Printing Press, 2003), EBSCOhost, 236.

[15] Hine, *Black Victory*, 237.

> by state statutes; the duties do not become matters of private law because they are performed by a political party....If the state requires a certain election procedure, prescribes a general election ballot made up of party nominees so chosen and limits the choice of the electorate in general elections for state officers, practically speaking, to those whose names appear on such a ballot, it endorses, adopts and enforces the discrimination against Negroes practiced by a party entrusted by Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment.[16]

The *Smith* case did not bring an end to the white primaries in Texas, but it started to bring an end to them throughout the south. South Carolina tried to argue the decision in court but lost the case. It was now federal law to allow citizens to vote in state-issued primary elections. Marshall once again had paved the way for African Americans to have the rights that the constitution issue to them. This proved again that *Plessy* was not “separate but equal.” For years African Americans were discriminated against when it came to voting, and Marshall had finally brought it to the national stage and won a decisive victory. As happy as he was with the victory, Marshall could not rest long because in 1945 had a new case that dealt with an issue that many African Americans dealt with on a daily basis.

For many African Americans during this time, finding good, equal housing opportunities were extremely rare. One example involved the Shelley family thought they found a good home when they moved into their new house in St. Louis, Missouri in August 1945. What the Shelleys however were not aware of though is that in 1911, thirty of thirty-nine parcel owners on both sides of the street of Labadie Avenue agreed that for 50 years that they would not sell their land to someone of Mongolian or African American race. In October 1945, Louis Kraemer who was an owner one of the parcels in the zone that the document was issued in, sued the Shelleys

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[16] Smith v. Allwright, 321 U.S. 649 (1944)

in court. The city of St. Louis agreed with the Shelley's stating that all landowners did not sign the document, therefore it was invalid. Kraemer applied the case to the state apeales court, and they overturned the city of St. Louis court and said that the document did hold weight.

Marshall and his team at the NAACP had been working on trying to decide which case to bring to the Supreme Court to argue that the use of restrictive covenants and violated the equal protection clause that is part of the 14th amendment. Marshall was very familiar with restrictive covenants because they were first devised in his hometown of Baltimore.[17] On January 13, 1948, the case would was in front of the Supreme Court. Marshall's strategy for showing that these restrictive covenants were unconstitutional was using a tactic that he had never used before. This was the use of social science in a way that showed what African Americans forced with when it came to living conditions. Marshall worked with Bob Weaver whose study showed that African Americans who lived in ghettos had a higher chance to become a criminal and had a high risk of having health problems.[18] Three of the Supreme Court Justices had to recuse themselves from hearing the case because they lived in communities with these covenants.

On May 3, 1948, the court came to a decision. Even though they were highly skeptical of Marshall's social science studies. They voted 6-0 in favor of the Shelley's. Justice Fredrick Vinson delivered the court's opinion. Part of it said:

> These are not cases . . . in which the States have merely abstained from action, leaving private individuals free to impose such discrimination as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement

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[17] Juan Williams, *Thurgood Marshall: American Revolutionary* (New York: Times Books, 1998), 148.
[18] Williams, *American Revolutionary*, 150.

> and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.[19]

Marshall brought an end to restrictive covenants. Legislative branches from states all around the country began banning these covenants. Celebrations among the African American community and Marshall was dubbed the "Jim Crow Buster."[20] With this successful argument, Marshall had chipped away at *Plessy* some more and "separate but equal" had became severely damaged. By 1952, Marshall was ready to destroy it for good.

School segregation was the heart of *Plessy*. It was the reason why Marshall had to leave his home state to attend law school. Marshall and the NAACP argued cases on segregation on college campuses. The main case was *Sweatt v. Painter* where Mr. Sweatt was denied entrance into the University of Texas Law School. They won this case, and Mr. Sweatt was permitted to enroll at the university. They believed it was time to go at the public-school system.

Oliver Brown was a hard-working man from Topeka, Kansas. He worked for the railroad and did everything he could to provide a good life for him and his family. His children were forced to go to an all-black school that required them to walk through the dangerous day-to-day operations of the train switchyard, while an all-white school was less than a mile from their home. In 1951, when his youngest daughter, Linda was due to start the third grade, Mr. Brown went and tried to register her in the all-white school close to his home but was denied entrance. Along with 13 other parents and on behalf of their combined 20 children, they sued

[19] Shelley v. Kraemer, 334 U.S. 1 (1948)
[20] Williams, *American Revolutionary,* 151.

the school for denying them entrance. The lower courts upheld the school's decision, but Marshall knew this was the case that his career had been building up to.

On December 9, 1952, Marshall appeared in front of the Supreme Court ready to argue the case. Marshall knew that it would not be easy to persuade the court and that on the other side of the aisle, Marshall was going up against John Davis. Davis was a man that Marshall admired. Like the *Shelley* case, Marshall would once again turn to social science as one of his main arguments in the case. Dr. Kenneth Clark had started a new test with African American children to show the effects of segregation on these kids. The test was called the Doll Test. In this test, Dr. Clark would ask a series of questions to the kids. The questions were as followed:

- "Show me the doll that you like best or that you'd like to play with,"
- "Show me the doll that is the 'nice' doll,"
- "Show me the doll that looks 'bad',"
- "Give me the doll that looks like a white child,"
- "Give me the doll that looks like a coloured child,"
- "Give me the doll that looks like a Negro child,"
- "Give me the doll that looks like you."[21]

For the *Brown* case, 16 African American kids were asked in South Carolina these questions. Of those 16 kids, 63% said the white doll was the nice doll and the one they wanted to play with. Marshall also argued that segregation was a violation of the 14th amendment.

The court came back and decided that they could not come to an agreement and that they wanted both sides to reargue the case a year later. Marshall was furious about having to wait, but he would not give up hope. On December 8, 1953, Marshall once again stated that the ruling of *Plessy* must be overturned. In part of Marshall's remarks to the court, hesaid: "Those same kids in Virginia and South Carolina—and I have seen them do it—they play in the streets

[21] Carole Weatherford, "Hearts and Minds: How the Doll Test Opened Schoolhouse Doors," *Southern Quarterly* 54, ¾, (spring/summer 2017): 164-168, Academic Search Complete.

together, they play on their farms together, they go down the road together, they separate to go to school, they come out of school and play ball together. They have to be separated in school. There is some magic to it. You can have them voting together; you can have them not restricted because of law in the houses they live in. You can have them going to the same state university and the same college, but if they go to elementary and high school, the world will fall apart. And it is the exact same argument that has been made to this Court over and over again, and we submit that when they charge us with making a legislative argument, it is in truth they who are making the legislative argument."[22]

Marshall had presented all the information he could to the courts about how Plessy and "separate but equal" had destroyed the African American community for 57 years. Finally, on May 17, 1954,the court struck down *Plessy* and ordered that "separate but equal" had no part to be involved in schools. Chief Justice Warren read the court's opinion,

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racially integrated school system… We conclude that in the field of public education the doctrine of "separate but equal" has no place.[23]

Marshall had finally beat the case that his professor, Charles Houston, told him was the reason Marshall was in his classroom. It took close to nine years for all states to integrate finally, but

[22] Thurgood Marshall, speech during the Brown case, December 8, 1953, in *Ripples of Hope: Great American Civil Rights Speeches*, ed. Josh Gottheimer (New York: Civitas Books, 2003)

[23] Brown v. Board of Education of Topeka, Kansas, 347 U.S. 483 (1953)

with the court's ruling on that day in May, Marshall had brought the beginning to the end of Jim Crow throughout the country. Plessy was now an afterthought.

65 years after Marshall helped overturn *Plessy*; history may forgets Marshall's early accomplishments since he became the first African American Supreme Court Justice under the Johnson administration. Marshall was a simple man. He fought for better lives for all African Americans; whether it be on issues of fair due process, voting rights, equal housing rights or segregation in school, Marshall was an agent for change. His contributions to the Civil Rights Movement cannot be stated enough. Marshall saw that in the 1896 ruling of *Plessy* that had set his people back for years, and if someone did not change it, it might never improve. Marshall was that man of change and helped pushed the African American community forward into the spotlight.

Future Research Plan

In continuing my research on Thurgood Marshall, I would like to be able to find his actually statements that he gave in front of the Supreme Court. Juan Williams book, *Thurgood Marshall: American Revolutionary* (1998) would be a good source to begin with to find this specific information. Also, going to the NAACP headquarters in Baltimore, Maryland could lead me in the right direction. Researching some of the other attorneys who worked with or argued against Marshall in my specific cases that I address in my paper may be helpful as well.

I would also like to examine the work that Marshall did with other Civil Rights leaders or the impact he made on them. *Civil Rights Leaders: Profiles of Great Black Americans* (1993) by Rick Rennert would be a great place to start. I would examine any events where Marshall was around other civil rights leaders and could look for news paper articles or even biographies where they talk about Marshall.

Seeing what Marshall meant to the African American community when he became the first black Supreme Court Justice in history would be intriguing to me as well. *Showdown: Thurgood Marshall and the Supreme Court Nomination That Changed America* (2015) by Wil Haygood would be a great starting point as it may be able to give me some primary sources from its index that I could look at to find out this information. Declassified FBI documents on Marshall might help some as it may mention newspaper articles that I could look at as well.

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