

Thurgood Marshall Before the Court

TRANSCRIPT

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Deborah Amos: From Minnesota Public Radio, this is an American RadioWorks documentary, *Thurgood Marshall Before the Court*. I'm Deborah Amos.

Marshall: Education is not the teaching of three R's. Education is teaching to live together with fellow citizens.

Before the sit-ins and freedom marches, lawyer Thurgood Marshall led a 30-year campaign to desegregate America's schools.

Jones: It was incendiary, the idea of little black boys in school with little white girls.

Man: Do you think the Negro students will get in here?

Man: I don't know how long they'll live after they do get in.

Marshall's big victory came 50 years ago in the Supreme Court's *Brown v. Board of Education* ruling.

Bond: What they did was make segregation illegal.

Thurgood Marshall is best known as first African American on the U.S. Supreme Court. But his earlier work as a civil rights lawyer changed history. In the coming hour, Thurgood Marshall Before the Court. First, this news update.

Part 1

Amos: From Minnesota Public Radio, this is an *American RadioWorks* documentary, "Thurgood Marshall Before the Court." I'm Deborah Amos. In 1967, Thurgood Marshall became the first African American named to the United States Supreme Court; but his most significant legal victory came when Marshall was on the other side of the bench, arguing the landmark *Brown v. Board of Education* case. On May 17, 1954, the U.S. Supreme Court outlawed racial segregation in American schools. The ruling was the high point of a long campaign Marshall led to tear down the walls of segregation. Marshall died in 1993 at the age of 84. In the coming hour Stephen Smith of American RadioWorks presents the story of Thurgood Marshall's remarkable career before he joined the Supreme Court, when he was the nation's leading civil rights lawyer.

{Music}

Smith: When Thurgood Marshall was born, times were as bad as they'd ever been for African Americans since slavery. It was 1908. That year there were 89 reported lynchings of black people from Oxford, Georgia to Abraham Lincoln's hometown of Springfield, Illinois. One Southern state after another had passed an extensive series of Jim Crow laws to fence off African Americans from the rest of society.

Litwack: That meant really rigid segregation of blacks and whites in almost every conceivable situation in which they might come into social contact.

Historian, Leon Litwack:

Litwack: That is from public transportation, from the workplace, hospitals, the public parks and schools. From separate textbooks, to Jim Crow bibles for black witnesses in court. New Orleans went so far as to adopt an ordinance segregating black and white prostitutes.

Thurgood Marshall liked to tell people he was born way up South in Baltimore, Maryland. In his later years, Marshall told an interviewer that racial segregation in Baltimore could be as harsh as anywhere in the Deep South.

Marshall: In the department stores downtown, the Negro was not allowed to buy anything off the counter. We were told to get the hell out. Another thing I remember very well was there were no toilet facilities available to Negroes in the downtown area. And one day I had to go. The only thing I could do was get on a trolley car and try to get home. And I did get almost in the house when I ruined the front doorsteps.

Thurgood Marshall never forgot the bitter humiliations of growing up in Jim Crow Baltimore. But he also thrived there. Marshall and his older brother Aubrey had educated, determined parents. Their mother Norma was strong and protective. She worked as a schoolteacher. Their brash, outgoing father Willie was a waiter and a railroad porter who taught his boys to be proud of their race.

Marshall: He was blonde and blue-eyed and he could have passed for white. Lot of times he would get in a big fight because somebody would think he was white. Say I would do something good and my father would say, "Well that's right black of you." You'd always heard, "That's very white of you." Well you understand what he was saying.

Like many gifted and ambitious black people of his generation, Marshall learned when the time was right to fight racism and when to keep cool. Karen Hastie Williams, Marshall's Goddaughter, says these were lessons he carried into adulthood, like the time 16-year-old Thurgood needed money for college.

Williams: He went to get a job working as a porter on the railroads. The white conductor who was interviewing him said, "OK boy, you can have the job. Here's your uniform put it on." Marshall came back and he was tall and lanky and he said, "Sir these pants are too short." And the response was, "Boy it's easier to get another nigger than another pair of pants. You want the job you wear the pants." He said, "I took the job and I wore the short pants because I needed the money to go to school." But he said he did not want another generation to have people make that kind of a comment.

Music:

In 1930, Thurgood Marshall graduated from Lincoln University, a prestigious black college in Pennsylvania. While at Lincoln, Marshall married Vivian Burey. He wanted to go to law school at the University of Maryland in Baltimore, but African Americans were not allowed. So Marshall commuted by train to all-black Howard University, an hour away in Washington D.C.. There, Marshall met a man who would change his life: law professor Charles Hamilton Houston.

Marshall: He was a graduate of Amherst and Harvard. Very brilliant, very decent person but a very hard man.

Wilkins: He was unyielding on these students learning how to do it exactly right.

Law professor, David Wilkins:

Wilkins: He brooked no quarter with any mistake of punctuation, of procedural regularity, of form, because he knew that if you were to give white judges the slightest excuse for dismissing your case or dismissing you as being incompetent, they would do so.

There were few black lawyers in the 1930s and most of them handled routine legal matters like wills and real estate. Charles Houston used his classroom like an anvil, pounding out a generation of exceptional black attorneys for a courtroom crusade against segregation. Marshall was his top student.

Wilkins: I think anybody who ever met Thurgood Marshall would say he was a born leader. First of all he was just a physically imposing man. He was probably six foot three, drop-dead gorgeous, with a booming voice, a towering intellect and a fierce determination to pursue and succeed at whatever task was before him.

Marshall started helping his mentor fight legal cases while still a student. Charles Houston left Howard University in 1934 to become chief lawyer for the National Association for the Advancement of Colored People, or NAACP, the nation's leading civil rights organization. Soon after, he recruited Marshall. Law professor Larry Gibson says the two made an unlikely duo.

Tape: Charles Hamilton Houston was a fairly formal person. Thurgood Marshall was a loud, liquor-drinking, chain-smoking, take-life-easy sort of person. I mean they seemed to have been the quintessential odd couple. But what they had in common was they both were brilliant, they both were willing to work hard, and they both were courageous.

On top of courage, one of Thurgood Marshall's gifts was his good nature. Marshall disarmed courtroom opponents with an easy manner, then clobbered them with the exhaustive legal preparation learned from Charles Houston.

Wilkins: He used to tell stories of white, Southern judges who started out calling him boy and eventually complimented him on the excellence of the way in which he presented the case.

David Wilkins says Marshall was also a brilliant storyteller, a skill he used in the courtroom to win over white judges and juries. Few recordings of Marshall's storytelling survive, but in this tape from the 1960s, Marshall told an NAACP meeting about the organization's early days when he and others had to appeal to the struggling group's bookkeeper, Mr. Turner, to cover the most basic expenses.

Marshall: And Turner would take out his books and find he had 40,000 in this fund, 30,000 in this one, which owed 20,000, and 10 to this one and 50 to this and- He loved bookkeeping {laughter}, he loved it. And when he would get through with all those figures one of us would say, "But Mr. Turner, what we want to know is how much cash do you have in that safe back there?" He'd say, "Oh! Sixteen dollars." {laughter}

Music:

In the late 1930s, the NAACP was still a tiny organization with huge plans. The group had been founded in 1909 by W. E. B. DuBois and a group of liberal whites. Their cause to fight segregation, lynchings and other violence against African Americans. Southern courts and policemen offered little protection for black people. In the 1940s, white journalist, Ray Sprigle of Pittsburgh, posed as a light-skinned Negro for a month of travel to learn what life was like on the other side of the color line.

Sprigle: In the Deep South any Negro can be and all too frequently is murdered by any white man for any or no reason, with the almost inevitable certainty that the white murderer will go scot free. Quite frequently they're hanged for killing white men, never for killing Negroes.

On the other hand, historians say Southern blacks were frequently tried for crimes they didn't commit, if they weren't lynched first. Thurgood Marshall and Charles Houston traveled the South in the 30s and 40s demanding equal rights in local courtrooms. Marshall always kept a pamphlet of the US Constitution in his suit pocket -the way another man might carry a Bible. His aim was to use the Constitution to strike down every Jim Crow law. But Marshall also knew when to leave it tucked away.

Kennedy: Once he talked about going someplace and having to change at a train station somewhere in the Deep South.

Law professor, Randall Kennedy:

Kennedy: Gets off one train and is waiting for the next one to come. Sheriff says, "Boy, no colored man has seen the sun set in this town and lived to tell about it. So you better hope that train you're waiting for comes." Marshall said that he could have reached into his pocket and read the Constitution to this representative of law and order, or he could be quiet and get out of town and live to fight another day. He took the latter course he was happy to leave, and he was happy to fight another day.

Klarman: There's one famous case from Hugo, Oklahoma.

Law professor, Michael Klarman:

Klarman: And Marshall talks about the schoolchildren who had been released from school for what the trial judge somewhat perversely called "this gala event," when this black person might have been falsely accused was on trial for his life. Marshall said those schoolchildren got a constitutional law lesson they never got in school.

Sound: Typewriter

Marshall/Actor: Memo to the office from Thurgood Marshall. Hugo, Oklahoma. Trial of W.D. Lyons.

In 1941, Marshall went to rural Oklahoma to defend a black farmhand accused of shooting a white couple and their little boy, then setting their house on fire.

Marshall/Actor: Several officers took turns beating him that night but he refused to admit to anything. He was taken to the court prosecutors office where 10 or more officers took turns beating him with a special type of blackjack known as a "nigger beater." Defendant made the confession the next morning.

Sound: Typewriter

Marshall/Actor: When we walked into court, word went around that "a nigger lawyer from New York" was on the case. We put on evidence to show that the confessions were secured by force and violence.

Klarman: He could cross-examine white sheriffs on a footing of equality and trap them in lies. And the people in the audience had never seen anything like this because they had no occasions in their life where a black person could accuse a white person of lying, and it was a risky enterprise.

Marshall/Actor: I did all of the cross-examining of the officers because we figured they would resent being questioned by a Negro and would get angry and this would help us. It worked perfect. They all became angry at the idea of a Negro pushing them into tight corners and making their lies so obvious. Boy did I like that, and so did the Negroes in the courtroom. Law enforcement officers now know that when they beat a Negro up, they might have to answer for it on the witness stand.

The jury found W. D. Lyons guilty, but only imposed a life sentence instead of the death penalty. For an innocent black man, tried in a southern court for killing whites, life in jail was still a victory. For Marshall it was an excellent case to appeal all the way to the U.S. Supreme Court and one that could raise money for the cash-strapped NAACP.

Marshall/Actor: This case has enough angles to raise a real defense fund if handled properly. We have been needing a good criminal case and we have it. Let's raise some real money.

Although the appeal eventually failed, the Lyons case was not a total loss. Law professor, Michel Klarman, says Marshall used this and other criminal cases in the South to build NAACP membership. Marshall also used the publicity to show the true face of segregation to America. His audience included the nine justices of the U.S. Supreme Court.

Klarman: Here was the worst aspect of southern Jim Crow. This was not quiet segregation or disenfranchisement. You're taking people who are clearly innocent and sentencing them to death after trials that are a joke and this was going to appall even a justice who didn't care about dis[en]franchisement and segregation. It's one thing to segregate someone, it's something else to essentially lynch them.

Thurgood Marshall combined the high-profile criminal cases with a lengthening string of court victories against segregation laws themselves. He and his legal team won case after case at the U.S. Supreme Court. By 1950, Thurgood Marshall was the most famous black leader in America. People started calling him "Mister Civil Rights."

Amos: This is Deborah Amos. Coming up after a short break, Marshall leads the D-Day battle against Jim Crow.

John Hope Franklin: Marshall appreciated as few of us did that this was a crossroads of history and that this was his time.

AMOS: I'm Deborah Amos. You're listening to "Thurgood Marshall Before the Court" from American RadioWorks, the national documentary unit of Minnesota Public Radio. Our program continues in just a moment, from NPR, National Public Radio

Music:

Part 2

Deborah Amos: This is, "Thurgood Marshall Before the Court," a documentary from American RadioWorks, I'm Deborah Amos.

For more than half of the twentieth century, the American South was a rigidly segregated society. Blacks were barred from many public places.

Reporter: Listen now to results of a hidden recording machine and a Negro's experience. First, in a restaurant:

Waitress: You know we don't serve colored people in here.

Reporter: In a bus:

Bus Driver: Get back there in the back. Man: What do I have to do? Do you want me to get off? Bus Driver: Get back there where I told ya' or get off this bus! Don't give me no more lip boy!

Reporter: In a filling station:

Gas Attendant: Fill it up boy? Man: Give me 5 gallons please. Gas Attendant: All right, where you going boy? Man: I am going to the restroom. Gas Attendant: I am sorry we don't have restrooms here for coloreds.

Man: Well I don't care about a colored restroom; I just want to go to one. Gas Attendant: Well you won't use the one here; you know there's a law in this state.

Nowhere were segregation laws more entrenched than the public schools. To fight those laws, Thurgood Marshall and the NAACP took on a notorious 1896 Supreme Court decision called *Plessy v. Ferguson*. An African American named Homer Plessy had challenged a Louisiana law requiring separate train cars for blacks and whites. The Supreme Court ruled against Plessy and cemented the devastating "separate but equal" doctrine. That allowed states to exclude black people from public places as long as they had access to equal, segregated facilities. But as American RadioWorks producer, Stephen Smith explains, separate was rarely equal.

Smith: In the first half of the twentieth century, caricatures of African Americans were an everyday part of the nation's culture.

Radio program: Aunt Jemima! {music fades under}

Many whites believed that black people were somehow inferior and didn't really mind being treated as second-class citizens.

Radio program: Smiling happy Aunt Jemima. Famous for secret recipe pancakes, waffles and buckwheat. Let's have a Down South saying Aunt Jemima.

Aunt Jemima: Well folks says that the mo' happiness you gives other folks, the mo' happiness you gets. {music fades under}

But times were slowly changing. After World War Two, nearly a million black soldiers returned from the fight against Nazi racism. Civil rights activism surged. African Americans increasingly spoke out on the radio against bigotry at home.

Walter White: There will never be complete equality until the courts and America abandon the myth of separate but equal accommodations.

Man: I should say that the Negro hopes Americans stop giving lip service to Christianity, stop giving lip service to democracy.

Music: If you ask me democracy is fine, but I mean democracy without the color line. {music fades under}

Man: It's pretty hard for a soldier to go out on the field of battle, then to come back home and find segregation, where he can't even get a drink of water.

Music: I said let's get together and kill Jim Crow today.

For Thurgood Marshall and the NAACP, killing Jim Crow meant using the post-war momentum to uproot one state segregation law after another. These challenges generally lost in lower courts. Then the NAACP would appeal to the U.S. Supreme Court, where they won a series of crucial victories. By 1950, the High Court had overturned state segregation laws in voting, housing and transportation. But Jim Crow was hardly dead. Marshall's Goddaughter, Karen Hastie Williams, and civil rights lawyer, Elaine Jones, say the NAACP's Legal Defense Fund had yet to strike directly at the 21 states that segregated their public schools.

Williams: To a segregationist, the most valued prize were their little children. They wanted to be sure there was no invasion of African Americans coming into the white classrooms where their little children were being taught.

Jones: It was incendiary. The idea of little black boys in school with little white girls. That's the way our nation's mind was.

Girl: The main thing that people fear down here is intermarriage {sound fades under}

A South Carolina teenager explained her parents' fears.

Girl: It's not that they're afraid of their children sitting next to the other children because they're not. I think it's morality. After being in New York, I can see what they mean because I've seen at least, I know, five couples were married, negroes and whites, and that's one thing they fear.

Segregationists also saw the public schools as a crucial training ground, according to law professor, Michael Klarman.

Klarman: White southerners really believed that if you teach youngsters the doctrine of white supremacy, by the time they're adults they'll probably never give it up. But if at an early age they go to school with black people and they see black people being treated as equals, they might internalize that there really aren't inherent racial differences.

Announcer: Mr Marshall.

Marshall: The biggest job to end race and caste as determining factors in this country is to do as a friend of mine says, cross the river between the white and black sections of town. The best way to cross the river and to bring people together of different racial groups would be in the public school system. That would be the best way to do it.

Sound: Fade up film music track

The river between white and black schools had always been wide; the inequality between them deep. The poor conditions in black schools were easy to see in this 1930s documentary.

Film: Public schools such as this have always been inadequate for the Negro, and the method of providing education has always been unjust. Black and white are taxed equally, and yet for very dollar spent on the education of a Negro child, five dollars are spent on the education of a white. Negro children go to segregated schools. {sound fade under}

Twenty years later, Southern black schools were still in bad shape.

Reporter: Is your school a wooden structure?

Child: Yes, it's wood.

Reporter: Is any part of it brick or stone?

Child: No, Sir.

Reporter: Do you have an auditorium?

Child: No, Sir.

Reporter: Do you have indoor drinking fountains?

Child: No, Sir.

Reporter: What do you use?

Child: Water pumps and water buckets.

Reporter: Is there a desk for each child?

Child: No, Sir.

Reporter: Do you have teachers for every grade?

Child: No, Sir.

Reporter: Do you have indoor toilets?

Child: No, Sir.

By the early 50s, the press and the American public were paying more attention to the plight of African Americans in the South. Historian Adam Fairclough says pressure was also growing from outside the U.S..

Fairclough: The cold war made America's race problem an international issue. The United States was now posing as the defender of the free world.

Announcer: The Communists have been hitting us at our weakest point, which is the treatment of the Negroes and the practice of segregation. All through India, all through South East Asia. {sound fade under}

Fairclough: Every time there was a lynching, the Soviet Union would publicize this. Its representatives in the United Nations would get up and scold the United States. Racial segregation was an embarrassment.

Beginning in 1950, the NAACP sued in 10 states and the District of Columbia, challenging the constitutionality of school segregation. Five of those cases arrived at the Supreme Court two years later. They were collectively called *Brown v. Board of Education*, named after plaintiff Oliver Brown of Topeka, Kansas. In a radio interview, Thurgood Marshall explained that segregation was unlawful not only because black schools were inferior to white ones, but because segregation itself injured black children.

Marshall: It's impossible to give equal educational facilities within a segregated school system for this reason: that reputable scientists, child psychiatrists, sociologists, anthropologists, without exception, are completely agreed that where we have imposed racial segregation, there is definite harm to the minds of the segregated group. This is not theory. This is actually proven, accepted scientific knowledge.

Actually, the science was not so widely accepted, even within the NAACP. Some of Marshall's most trusted colleagues doubted that social science would help their legal argument. The studies had been done by psychologist Kenneth Clark, who tried to measure the effect of segregation on African American schoolchildren using black and white dolls. Author Richard Kluger:

Kluger: He asked black kids particularly to pick out the doll that they liked best. One that they thought was the good doll and one they thought was the bad doll, and the black children would invariably reach for the white doll as the good doll and the black doll would be the bad one. Pretty moving and shocking, and Marshall was persuaded that this would affect the Court.

Marshall: And when these tests were made, to me they proved what I knew all along that the average Negro had this complex that was built in as a result solely of segregation. When I'd go into these towns I would go down where the poor Negroes were and talk to them and I remember talking to this poor fellow in a poolroom, and he said, "Lawyer, you got anything to do with this business of when you come back after you die?" I said, "You talking about reincarnation?" He said, "I don't know what is it? He said when I come back I don't care whether it's a man, woman, or dog, or cat, let it be white."

Music:

The doll studies were part of a vast, legal, historical and psychological body of research the NAACP lawyers toiled over. One said preparing the Brown case was like launching the D-Day invasion of Normandy, with Marshall as commanding general.

Richard Kluger:

Kluger: He was not a great legal scholar, but a man who was terrifically skilled at bringing together a bunch of the best brains he could find, and there were plenty of them from law professors and others, to figure out how to approach the Supreme Court most effectively.

Taylor: Thurgood had this kitchen cabinet that he would convene on important cases.

Lawyer William Taylor, worked for Thurgood Marshall at the NAACP, where Marshall convened cabinet meetings with advisors that included historian John Hope Franklin and attorney William Coleman.

Taylor: To outward appearances those were the most disorganized meetings. Almost out of hand.

Coleman: They would start. {laughs} They would start about five o'clock on a Friday and go until two o'clock on Monday morning.

Franklin: I never have seen anybody work any harder.

Coleman: There may be about 20 or 30 people in a room from Chicago, people from Harvard.

Franklin: Around midnight Thurgood would say, we'll have half a half-hour break, and I would break for my room at the hotel. When I would go there the next morning he would be there.

Coleman: The food was good, the drinking was good, and Marshall could tell great stories.

Taylor: When the meeting was over, Thurgood has accomplished his purposes. He had gotten the three, four, five ideas that would help him in making the argument and deciding what the strategy would be.

Franklin: I think Marshall appreciated as few of us did that this was one of the crossroads of history. Times at which maybe he could have some impact, which he'd hadn't ever had and would not have again, and that this was his time.

The Supreme Court arguments for *Brown* took place in December 1952 and again, one year later. The chief lawyer for the Southern states was the formidable John W. Davis, a former democratic congressman and presidential nominee. At 79 years old, Davis had taken part in 250 Supreme Court cases, more than anyone else in the twentieth century. The 44-year old Thurgood Marshall had been in on 15 Supreme Court cases, and won 13 of them. There are no tape recordings of the *Brown* arguments, but Supreme Court transcripts show Marshall was firm and plainspoken.

Marshall/Actor: I got the feeling on hearing the discussion yesterday that when you put a white child in a school with a whole lot of colored children, the child would fall apart or something. Everybody knows that is not true. Those same kids in Virginia and South Carolina—and I have seen them do it—they play in the streets 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?

When the stately, silver-haired John W. Davis took the lectern, he dismissed the doll studies as weak and trivial. He also claimed that Southerners, white and black, preferred segregation.

Davis/Actor: Is it not the height of wisdom that the manner in which the young should be educated shall be left to those most immediately affected by it? And that the wishes of the parents, both white and colored, should be ascertained before their children are forced into what may be an unwelcome contact?

Davis reminded the High Court it had upheld the separate-but-equal doctrine repeatedly.

Davis/Actor: This court has spoken in the most clear and unmistakable terms to the effect that segregation is not unlawful. It is a little late, after this question has been presumed to be settled for ninety years, it is a little late to argue that the question is still at large.

In his closing argument, Marshall reminded the justices of all the laws separating blacks and whites the court had already struck down.

Marshall/Actor: 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 we submit the only way to arrive at that decision is to find that for some reason Negroes are inferior to all other human beings.

The only thing it can be is an inherent determination that the people who were formerly in slavery, regardless of anything else, shall be kept as near that stage as is possible; and now is the time, we submit, that this Court should make it clear that that is not what our Constitution stands for.

The justices gave their answer five months later, on May 17, 1954. Chief Justice Earl Warren wrote the opinion, which suggested that the doll studies had some effect in persuading the Court that segregation was psychologically harmful to black children. Warren read from the bench, "We conclude that in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal." The decision was unanimous, a surprise to many in the courtroom. When the session was over, Thurgood Marshall turned to his colleagues and said, "We hit the jackpot."

Music:

There was a big party at NAACP headquarters in New York that night. Thurgood Marshall and his team reveled in their historic victory. But there were still huge problems to solve. The Supreme Court did not say in its ruling when or how the South should desegregate its schools. The justices put off that decision for a year.

Kluger: Well it was one thing to reach a judgment on principle, but there was concern at the same time as to how are we going to do this? If we do it in a way that's too abrupt, too harsh, too confrontational, the South will rise up and really oppose us. There could be violence for we don't know how long. The country could be thrown into chaos.

Richard Kluger, author of *Simple Justice, a History of the Brown decision*, says Marshall understood the Court's dilemma, but urged the Justices to set a firm deadline for desegregation.

Kluger: The blacks, led by Marshall, argued if we have a constitutional right to equal schools, we have that right now and you can't stall us on this. You've got to move ahead.

Girl: would you favor a very gradual integration or do you think it ought to be done right away? Marshall: The question is what you mean by right away?

A few months after the *Brown* ruling, Thurgood Marshall went on a radio program with American teenagers.

Marshall: Believe it or not I am for the gradual approach. But there's a difference in what you mean by gradual. I think 91 years since the Emancipation Proclamation has been gradual enough. Most people who want gradual truly don't want it at all. Talmadge: We have had a separate social system for many hundreds of years.

Stalwart segregationists, like Governor Herman Talmadge of Georgia, warned that Southerners might just ignore the Supreme Court's ruling, whatever timeline the Court imposed.

Talmadge: The only thing they can do is call on the president of the United States to enforce it. And the only way he can enforce it would be with troops and bayonets and come down there and round up three and a half million Georgians and put them in concentration camps and compel them to do something against their will.

On May 31, 1955, the Court ordered schools to desegregate "with all deliberate speed," but the ruling set no firm date for segregation to end. Some states began passing laws to sidestep the Supreme Court's command. Others vowed to close their public schools entirely rather than desegregate. Time and again, Marshall said he expected common sense to prevail.

Marshall: I just do not believe that the citizens of any state are of such bigoted minds that they would be willing to abolish the school system that they've spent, in some instances 70 - 80 years to build up.

Two days after the Court order, Marshall telephoned an old friend. A secretary transcribed the call as Marshall laid out the next steps in the NAACP campaign.

Marshall/Actor: We're going to go state by state, that's what I hope. For example, we're going to treat Georgia one way, we're going to treat Maryland another way, Virginia, we're going to bust wide open! Those white crackers are going to get tired of having Negro lawyers beat 'em every day in court. They're going to get tired of it.

Marshall was wrong. White segregationists would take a very long time to tire. In fact, they were just getting started.

Music:

Amos: I'm Deborah Amos. You're listening to "Thurgood Marshall before the Court." Coming up, "massive resistance" to desegregation in the white South.

Reporter: Do you think the Negro students ever will get in here?

Man: I think they'll get in here but I don't know how long they'll live after they do get in here.

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To hear extensive interviews with Thurgood Marshall, see his letters and photographs and much more, visit our website at AmericanRadioWorks.org.

American RadioWorks is the national documentary unit of Minnesota Public Radio. Our program continues in just a moment, from NPR, National Public Radio.

Part 3

Deborah Amos: This is, "Thurgood Marshall Before the Court," a documentary from American RadioWorks, I'm Deborah Amos.

Music:

Man: American Negroes, they have been taken in by the NAACP and the Communist cause. And we must FIGHT! {Sound: screaming and applause}

It was called "Massive Resistance."

Man: I believe in niggers having equal rights in their own schools.

Across the South whites, led by politicians and school boards, defied the Supreme Court's 1954 order to desegregate America's schools "with all deliberate speed."

Man: We do not intend to have integration under any circumstances in Mississippi. Period.

Man: Let's show the nigger he's in the sunny South. Come on boys! {Sound: mob}

Violent mobs and an ambivalent President Eisenhower tested Thurgood Marshall's deep faith in the American justice system.

Reporter: Do you think the Negro students ever will get in here?

Man: I think they'll get in here but I don't know how long they'll live after they do get in here...

The lead crusader for school desegregation remained calm and confident.

Marshall: Every social step that has been made in this country to better conditions of minority groups, there have been people who have threatened violence, the beautiful part about our country in every such instance, is that violence has not taken place...

In 1957 Massive Resistance reached its peak in Little Rock, Arkansas. In the final part of our program, Stephen Smith of American RadioWorks describes Marshall's last big fight for the NAACP Legal Defense Fund.

Reporter: This is Little Rock Central High School approximately two hours before the school is scheduled to open its doors for the fall semester.

Smith: Little Rock, Arkansas seemed an unlikely place for a racial showdown. By September 1957, the school board had carefully selected nine black students to integrate the all-white Central High School. Local officials expected a smooth start. But the night before school opened, Arkansas Governor Orval Faubus suddenly announced he would block what he called "forcible integration." Faubus claimed that whites and blacks were arming for a battle.

Faubus: One store reported that a gang of Negro youth purchased knives, while another group waited outside...

News: Arkansas governor Orval Faubus moved in national guardsmen to prevent the integration of Little Rock Central High School.

Reporter: In front of the school there, you can see a couple hundred students waiting to see if the colored students show up.

Girl: The minute they walk in, we walk out.

Sound: Mob mayhem

Man: Suddenly there was a shout. They're here! They're here. The Niggers are coming!

Announcer: Elizabeth Anne Eckford missed the rendezvous with the other eight and so had to go it alone.

Woman: They didn't touch her. But they crowded all around her screaming, "Nigger! She's trying to get into our school."

After several harrowing moments a white woman stepped in to help 15-year-old Elizabeth Eckford escape. Arkansas guardsmen used bayonets to block the other black students from entering Central High. Thurgood Marshall, the man who had won the 1954 *Brown* ruling outlawing segregation, flew to Little Rock. He found a black community under siege, but determined and organized. Lois Pattillo's daughter Melba was one of the nine. Mrs. Patillo told an interviewer about threatening phone calls they often got.

Patillo: They'd call me and say, "We're going to come and get her and hang her." I said, "Come right on I'm waiting for you." Sometimes I would hang up the phone trembling but told them to come right on because I'm waiting for you. Reporter: Did you have something to protect yourself with? Patillo: My mother was there. She knew which gun she was supposed to man. My son knew which one he was supposed to man, and I knew which one I was supposed to man. Meanwhile, we had a planned escape for Melba.

For two weeks Melba Patillo, and the other black students, waited to get into Central High as Marshall fought for them in a federal district court, and as the white mob surrounding the high school grew. Thurgood Marshall soon realized he needed reinforcements and called on President Dwight Eisenhower to intervene. Author Richard Kluger says there was reason to doubt the president would help. Eisenhower's ambivalence about integration had been apparent since his first comments on the *Brown* decision in 1954.

Klarman: He was quoted as saying in the summer of 1956 and summer of 1957 that there were no set of circumstances under which he would use federal troops to enforce a school desegregation order.

Law professor, Michael Klarman:

Klarman: That pretty much meant to white southerners that they could never be forced to do what they didn't want to do because ultimately the court order doesn't mean anything unless there's a federal army behind it.

While Eisenhower kept his distance, a federal court ordered Faubus to remove the guardsmen and let the black students into Central High. On September twenty-third, Faubus relented. Now with a police escort, the Little Rock Nine filed into school.

Reporter: We just got word, the students are in the high school.

Sound: screaming

The crowd at Central High School, men in work shirts, gray-haired churchwomen and girls in checkered dresses, erupted in violence. Local police hustled the black students out of the school. The mayor of Little Rock telegraphed Eisenhower for help. The president was still reluctant to endorse integration but saw the crisis as a challenge to federal authority. On September 24, 1957, President Eisenhower spoke from the White House.

Eisenhower: I have today issued an Executive Order directing the use of troops under federal authority to aid in the execution of federal law at Little Rock, Arkansas. Mob rule cannot be allowed to override the decisions of our courts.

Announcer: We have the latest word from Little Rock at the moment. The army has escorted nine Negro students in Central High School {Sound: fade under}

Announcer: For several weeks the nine Negroes were shepherded through crowds of demonstrators by bayonet wielding troops, finally the situation calmed somewhat, but it was not normal. It was not until the end of the year that President Eisenhower was finally able to withdraw the troops.

Citing fears of another year of racial upheaval, the Little Rock school board tried to suspend integration at Central High School. Thurgood Marshall fought back, asking the US Supreme Court to convene a special session to settle the crisis. The court agreed. Lawyers for the Little Rock school board said they were unsure whether the Supreme Court's *Brown* ruling applied to Arkansas schools. On September 11, 1958, Marshall appeared before the nine justices and his argument was recorded on tape.

Marshall: Education is not the teaching of the three R's. Education is the teaching of the overall citizenship, to learn to live together with fellow citizens, and above all to learn to obey the law.

Randall Kennedy: He speaks to the justices in a very non-legalistic way.

Law professor Randall Kennedy:

Randall Kennedy: You get the sense that he is essentially telling these people, "Listen, I'm right, I've got truth on my side; now here's what you've got to do."

Marshall: I don't know of any more horrible destruction of principle of citizenship than to tell young children that those of you who withdrew, rather than to go to school with Negroes, "Come back, all is forgiven, you win." Therefore, I am not worried about Negro children at this stage. I worry about the white children in Little Rock who are told, as young people, that the way to get your rights is to violate the law and defy the lawful authorities. I am worried about their future. I don't worry about the Negro kids' future. They have been struggling with democracy long enough. They know about it.

With unusual speed, the Justices issued a brief, unanimous opinion: Little Rock schools had to obey the Supreme Court and integrate immediately.

Arkansas Governor, Orval Faubus, responded to the Supreme Court ruling on September 15, 1958.

Faubus: I have ordered closed the senior high schools of Little Rock in order to avoid the impending violence and disorder which would occur.

Two weeks later the citizens of Little Rock voted to close all their schools rather than integrate. It took a year of court battles and political turbulence before the schools reopened. Historian Adam Fairclough:

Fairclough: The Little Rock crisis sent a very mixed message. Overall I think it was a very discouraging message.

Song: "We like Faubus, A Governor of courage and of pride!"

Fairclough: Southern politicians looked at what happened to Governor Faubus. He was re-elected again and again and again. Faubus demonstrated resisting integration, defying the federal courts was a vote winner. And that was a profoundly frightening message for the NAACP, because Faubus set the pattern for a certain type of southern politician who would fight tooth and nail against integration.

The pattern would be used by governors like Alabama's George Wallace and Mississippi's Ross Barnett. In his later years, Thurgood Marshall said he and his colleagues at the NAACP had underestimated white opposition to desegregation.

Marshall: I had thought, we had all thought that once we got the *Brown* case the thing was gonna be over. That's when we should have sat down and planned. The other side did. The other side planned all the delaying tactics they could think of.

School districts across the South spent years delaying integration. Southern states also tried to crush the NAACP, firing government employees who belonged to the organization, and publicizing membership lists to intimidate local activists. Meanwhile, a new generation of civil rights activists was emerging. Frustrated with the pace of slow-moving lawsuits, they challenged segregation laws by disobeying them rather than disputing them in court.

Sound: demonstration

Thurgood Marshall and the NAACP defended many of the activists who were sent to jail for civil disobedience, but Marshall's heart wasn't in it. He said by the end of the 1950s he'd outlived his usefulness as a civil rights lawyer. At the time, young activists like Julian Bond thought so too.

Bond: Civil disobedience was something the NAACP frowned upon. Thurgood Marshall was in a mild way condemnatory of the sit-ins, this tactic of breaking the law. He believed so strongly in the law that he couldn't countenance people breaking the law in order to change a law.

Music:

Thurgood Marshall began to draw away from the civil rights spotlight. He was in his 50's, with two young boys by his second wife, Cissy. His time as an advocate before the court was ending; Marshall was ready to shape law from the other side of the bench. In 1961, President John F. Kennedy appointed Marshall to the US Court of Appeals. In 1965, President Lyndon Johnson appointed him solicitor general. And in 1967, LBJ named Thurgood Marshall the first African American justice of the United States Supreme Court, where he served for 25 years.

Music:

Thurgood Marshall never witnessed the full integration of America's public schools. Today, racial segregation in schools is commonplace, but no longer by law. Viewed through the lens of Marshall's own expectations, the 1954 *Brown* ruling would appear to be a failure. Julian Bond:

Julian Bond: That's not the fault of the decision, it's the fault of the inability of the proponents to outfox the opponents. It's the fault of the Congress, which was hesitant about this, it is the fault of presidents who never gave in their full blessing and sanction. It's the fault of many, many people, but it is not Thurgood's fault or the NAACP. That decision is golden. What they did was make segregation illegal.

Wilkins: It salvaged the great promise of freedom, liberty, equality made in the founding documents of our republic, from the stench and stain and lies of first slavery and then Jim Crow.

Law professor, David Wilkins:

Wilkins: It was also the beginning of a whole new understanding of what American law and American society could be. It was the birth of the rights revolution.

The 30-year courtroom crusade against segregation Thurgood Marshall and his colleagues fought, was the first of its kind in the US. No one before had made such comprehensive use of the courts, and the Constitution, to secure the rights of a group of citizens. Later campaigns for the rights of women, minorities and other groups have been modeled on the NAACP Legal Defense Fund.

Music:

Thurgood Marshall retired in 1991, nearly four decades since the Supreme Court's *Brown* ruling. Law professor Randall Kennedy clerked for Thurgood Marshall on the Supreme Court and knew the justice in his old age.

Kennedy: I think he felt people had sort of forgotten him. When you said civil rights revolution and people thought immediately of King, people in the streets. His generation he felt had really been eclipsed.

Justice Thurgood Marshall died in 1993; he was 84 years old. Randall Kennedy and other former law clerks traveled to Washington to stand by the casket as Marshall's body lay in state at the Supreme Court building. It was a bitter, rainy night. Kennedy feared that few people would show up.

Kennedy: I remember the cab driver letting me out. The Supreme Court building was surrounded by people. You had to stand on line for a long time to pay homage to that casket. And people did. People left all sorts of mementos. I remember very distinctly a person who brought the slip opinion, *Brown v. Board of Education*. It was sort of wrinkled, you could tell it was well thumbed. But it was the slip opinion of *Brown* and the person had written just, "thank you."

Music:

Amos: Thurgood Marshall Before the Court was produced by Kate Ellis and Stephen Smith. The editor was Deborah George, with help from Sasha Aslanian, Misha Quill, Ochen Kaylan, and Ellen Guettler. Studio mix by Stephen Smith, Craig Thorson and Tom Mudge. Music by Stanford Moore. Executive producer Bill Buzenberg. I'm Deborah Amos.

For more on Thurgood Marshall's life, visit our website, AmericanRadioWorks.org. You can hear interviews and speeches by Marshall, see photographs and rare film footage of Southern segregation, and order a copy of program. That's all at AmericanRadioWorks.org.



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